



# House of Representatives

**File No. 597**

General Assembly

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February Session, 2012 **(Reprint of File No. 313)**

House Bill No. 5389  
As Amended by House Amendment  
Schedule "A"

Approved by the Legislative Commissioner  
April 27, 2012

**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 from passage*) As used in sections 1 to 16,  
2 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 (A) 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 (B) any medical condition, medical treatment or disease approved by  
12 the Department of Consumer Protection pursuant to regulations  
13 adopted under section 14 of this act;

14 (3) "Licensed dispensary" or "dispensary" means a person licensed

15 as a dispensary pursuant to section 9 of this act;

16 (4) "Licensed producer" or "producer" means a person licensed as a  
17 producer pursuant to section 10 of this act;

18 (5) "Marijuana" means marijuana, as defined in section 21a-240 of  
19 the general statutes;

20 (6) "Palliative use" means the acquisition, distribution, transfer,  
21 possession, use or transportation of marijuana or paraphernalia  
22 relating to marijuana, including the transfer of marijuana and  
23 paraphernalia relating to marijuana from the patient's primary  
24 caregiver to the qualifying patient, to alleviate a qualifying patient's  
25 symptoms of a debilitating medical condition or the effects of such  
26 symptoms, but does not include any such use of marijuana by any  
27 person other than the qualifying patient;

28 (7) "Paraphernalia" means drug paraphernalia, as defined in section  
29 21a-240 of the general statutes;

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

33 (9) "Primary caregiver" means a person, other than the qualifying  
34 patient and the qualifying patient's physician, who is eighteen years of  
35 age or older and has agreed to undertake responsibility for managing  
36 the well-being of the qualifying patient with respect to the palliative  
37 use of marijuana, provided (A) in the case of a qualifying patient  
38 lacking legal capacity, such person shall be a parent, guardian or  
39 person having legal custody of such qualifying patient, and (B) the  
40 need for such person shall be evaluated by the qualifying patient's  
41 physician and such need shall be documented in the written  
42 certification;

43 (10) "Qualifying patient" means a person who is eighteen years of  
44 age or older, is a resident of Connecticut and has been diagnosed by a

45 physician as having a debilitating medical condition. "Qualifying  
46 patient" does not include an inmate confined in a correctional  
47 institution or facility under the supervision of the Department of  
48 Correction;

49 (11) "Usable marijuana" means the dried leaves and flowers of the  
50 marijuana plant, and any mixtures or preparations of such leaves and  
51 flowers, that are appropriate for the palliative use of marijuana, but  
52 does not include the seeds, stalks and roots of the marijuana plant; and

53 (12) "Written certification" means a written certification issued by a  
54 physician pursuant to section 4 of this act.

55 Sec. 2. (NEW) (*Effective October 1, 2012*) (a) A qualifying patient shall  
56 register with the Department of Consumer Protection pursuant to  
57 section 5 of this act prior to engaging in the palliative use of marijuana.  
58 A qualifying patient who has a valid registration certificate from the  
59 Department of Consumer Protection pursuant to subsection (a) of  
60 section 5 of this act and complies with the requirements of sections 1 to  
61 15, inclusive, of this act shall not be subject to arrest or prosecution,  
62 penalized in any manner, including, but not limited to, being subject to  
63 any civil penalty, or denied any right or privilege, including, but not  
64 limited to, being subject to any disciplinary action by a professional  
65 licensing board, for the palliative use of marijuana if:

66 (1) The qualifying patient's physician has issued a written  
67 certification to the qualifying patient for the palliative use of marijuana  
68 after the physician has prescribed, or determined it is not in the best  
69 interest of the patient to prescribe, prescription drugs to address the  
70 symptoms or effects for which the certification is being issued;

71 (2) The combined amount of marijuana possessed by the qualifying  
72 patient and the primary caregiver for palliative use does not exceed an  
73 amount of usable marijuana reasonably necessary to ensure  
74 uninterrupted availability for a period of one month, as determined by  
75 the Department of Consumer Protection pursuant to regulations  
76 adopted under section 14 of this act; and

77 (3) The qualifying patient has not more than one primary caregiver  
78 at any time.

79 (b) The provisions of subsection (a) of this section do not apply to:

80 (1) Any palliative use of marijuana that endangers the health or  
81 well-being of a person other than the qualifying patient or the primary  
82 caregiver; or

83 (2) The ingestion of marijuana (A) in a motor bus or a school bus or  
84 in any other moving vehicle, (B) in the workplace, (C) on any school  
85 grounds or any public or private school, dormitory, college or  
86 university property, (D) in any public place, or (E) in the presence of a  
87 person under the age of eighteen. For the purposes of this subdivision,  
88 (i) "presence" means within the direct line of sight of the palliative use  
89 of marijuana or exposure to second-hand marijuana smoke, or both; (ii)  
90 "public place" means any area that is used or held out for use by the  
91 public whether owned or operated by public or private interests; (iii)  
92 "vehicle" means a vehicle, as defined in section 14-1 of the general  
93 statutes; (iv) "motor bus" means a motor bus, as defined in section 14-1  
94 of the general statutes; and (v) "school bus" means a school bus, as  
95 defined in section 14-1 of the general statutes.

96 Sec. 3. (NEW) (*Effective October 1, 2012*) (a) No person may serve as a  
97 primary caregiver for a qualifying patient (1) unless such qualifying  
98 patient has a valid registration certificate from the Department of  
99 Consumer Protection pursuant to subsection (a) of section 5 of this act,  
100 and (2) if such person has been convicted of a violation of any law  
101 pertaining to the illegal manufacture, sale or distribution of a  
102 controlled substance. A primary caregiver may not be responsible for  
103 the care of more than one qualifying patient at any time, except that a  
104 primary caregiver may be responsible for the care of more than one  
105 qualifying patient if the primary caregiver and each qualifying patient  
106 have a parental, guardianship, conservatorship or sibling relationship.

107 (b) A primary caregiver who has a valid registration certificate from  
108 the Department of Consumer Protection pursuant to subsection (a) of

109 section 5 of this act and complies with the requirements of sections 1 to  
110 15, inclusive, of this act shall not be subject to arrest or prosecution,  
111 penalized in any manner, including, but not limited to, being subject to  
112 any civil penalty, or denied any right or privilege, including, but not  
113 limited to, being subject to any disciplinary action by a professional  
114 licensing board, for the acquisition, distribution, possession or  
115 transportation of marijuana or paraphernalia related to marijuana on  
116 behalf of such primary caregiver's qualifying patient, provided (1) the  
117 amount of any marijuana so acquired, distributed, possessed or  
118 transported, together with the combined amount of usable marijuana  
119 possessed by the qualifying patient and the primary caregiver, does  
120 not exceed an amount reasonably necessary to ensure uninterrupted  
121 availability for a period of one month, as determined by the  
122 Department of Consumer Protection pursuant to regulations adopted  
123 under section 14 of this act, and (2) such amount is obtained solely  
124 within this state from a licensed dispensary. For the purposes of this  
125 subsection, "distribution" or "distributed" means the transfer of  
126 marijuana and paraphernalia related to marijuana from the primary  
127 caregiver to the qualifying patient.

128 Sec. 4. (NEW) (*Effective October 1, 2012*) (a) A physician may issue a  
129 written certification to a qualifying patient that authorizes the  
130 palliative use of marijuana by the qualifying patient. Such written  
131 certification shall be in the form prescribed by the Department of  
132 Consumer Protection and shall include a statement signed and dated  
133 by the qualifying patient's physician stating that, in such physician's  
134 professional opinion, the qualifying patient has a debilitating medical  
135 condition and the potential benefits of the palliative use of marijuana  
136 would likely outweigh the health risks of such use to the qualifying  
137 patient.

138 (b) Any written certification for the palliative use of marijuana  
139 issued by a physician under subsection (a) of this section shall be valid  
140 for a period not to exceed one year from the date such written  
141 certification is signed and dated by the physician. Not later than ten  
142 calendar days after the expiration of such period, or at any time before

143 the expiration of such period should the qualifying patient no longer  
144 wish to possess marijuana for palliative use, the qualifying patient or  
145 the primary caregiver shall destroy all usable marijuana possessed by  
146 the qualifying patient and the primary caregiver for palliative use.

147 (c) A physician shall not be subject to arrest or prosecution,  
148 penalized in any manner, including, but not limited to, being subject to  
149 any civil penalty, or denied any right or privilege, including, but not  
150 limited to, being subject to any disciplinary action by the Connecticut  
151 Medical Examining Board or other professional licensing board, for  
152 providing a written certification for the palliative use of marijuana  
153 under subdivision (1) of subsection (a) of section 2 of this act if:

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

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

160 (3) The written certification issued by the physician is based upon  
161 the physician's professional opinion after having completed a  
162 medically reasonable assessment of the qualifying patient's medical  
163 history and current medical condition made in the course of a bona  
164 fide physician-patient relationship; and

165 (4) The physician has no financial interest in a dispensary licensed  
166 under section 9 of this act or a producer licensed under section 10 of  
167 this act.

168 Sec. 5. (NEW) (*Effective October 1, 2012*) (a) Each qualifying patient  
169 who is issued a written certification for the palliative use of marijuana  
170 under subdivision (1) of subsection (a) of section 2 of this act, and the  
171 primary caregiver of such qualifying patient, shall register with the  
172 Department of Consumer Protection. Such registration shall be  
173 effective from the date the Department of Consumer Protection issues

174 a certificate of registration until the expiration of the written  
175 certification issued by the physician. The qualifying patient and the  
176 primary caregiver shall provide sufficient identifying information, as  
177 determined by the department, to establish the personal identity of the  
178 qualifying patient and the primary caregiver. The qualifying patient or  
179 the primary caregiver shall report any change in such information to  
180 the department not later than five business days after such change. The  
181 department shall issue a registration certificate to the qualifying  
182 patient and to the primary caregiver and may charge a reasonable fee,  
183 not to exceed twenty-five dollars, for each registration certificate  
184 issued under this subsection. Any registration fees collected by the  
185 department under this subsection shall be paid to the State Treasurer  
186 and credited to the account established pursuant to section 19 of this  
187 act.

188 (b) Information obtained under this section shall be confidential and  
189 shall not be subject to disclosure under the Freedom of Information  
190 Act, as defined in section 1-200 of the general statutes, except that  
191 reasonable access to registry information obtained under this section  
192 and temporary registration information obtained under section 15 of  
193 this act shall be provided to: (1) State agencies, federal agencies and  
194 local law enforcement agencies for the purpose of investigating or  
195 prosecuting a violation of law; (2) physicians and pharmacists for the  
196 purpose of providing patient care and drug therapy management and  
197 monitoring controlled substances obtained by the qualifying patient;  
198 (3) public or private entities for research or educational purposes,  
199 provided no individually identifiable health information may be  
200 disclosed; (4) a licensed dispensary for the purpose of complying with  
201 sections 1 to 15, inclusive, of this act; (5) a qualifying patient, but only  
202 with respect to information related to such qualifying patient or such  
203 qualifying patient's primary caregiver; or (6) a primary caregiver, but  
204 only with respect to information related to such primary caregiver's  
205 qualifying patient.

206 Sec. 6. (NEW) (*Effective October 1, 2012*) No person shall be subject to  
207 arrest or prosecution solely for being in the presence or vicinity of the

208 palliative use of marijuana as permitted under sections 1 to 15,  
209 inclusive, of this act.

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

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

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

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

238 (b) The Commissioner of Consumer Protection shall determine the  
239 number of dispensaries appropriate to meet the needs of qualifying

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

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

256 (B) Provide that only a pharmacist licensed under chapter 400j of the  
257 general statutes may apply for and receive a dispensary license;

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

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

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

267 (F) Describe areas in this state where licensed dispensaries may not  
268 be located, after considering the criteria for the location of retail liquor  
269 permit premises set forth in subsection (a) of section 30-46 of the  
270 general statutes;

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

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

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

285 (c) Any fees collected by the Department of Consumer Protection  
286 under this section shall be paid to the State Treasurer and credited to  
287 the account established pursuant to section 19 of this act.

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

292 (b) The Commissioner of Consumer Protection shall determine the  
293 number of producers appropriate to meet the needs of qualifying  
294 patients in this state and shall adopt regulations, in accordance with  
295 chapter 54 of the general statutes, to provide for the licensure,  
296 standards and locations for producers in this state and specify the  
297 maximum number of producers that may be licensed in this state at  
298 any time. On and after the effective date of such regulations, the  
299 commissioner may license any person who applies for a license in  
300 accordance with such regulations, provided (1) such person is  
301 organized for the purpose of cultivating marijuana for palliative use in  
302 this state, (2) the commissioner finds that such applicant has

303 appropriate expertise in agriculture and that such applicant is  
304 qualified to cultivate marijuana and sell, deliver, transport or  
305 distribute marijuana solely within this state pursuant to sections 1 to  
306 15, inclusive, of this act, and (3) the number of producer licenses issued  
307 does not exceed the number appropriate to meet the needs of  
308 qualifying patients in this state, as determined by the commissioner  
309 pursuant to this subsection. At a minimum, such 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) Define "pharmaceutical grade marijuana for palliative use" for  
341 the purposes of this section;

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

346 (K) Establish other licensing, renewal and operational standards  
347 deemed necessary by the commissioner.

348 (c) Any fees collected by the Department of Consumer Protection  
349 under this section shall be paid to the State Treasurer and credited to  
350 the account established pursuant to section 19 of this act.

351 Sec. 11. (NEW) (*Effective October 1, 2012*) (a) No licensed dispensary  
352 or employee of the dispensary may: (1) Acquire marijuana from a  
353 person other than a licensed producer; (2) distribute or dispense  
354 marijuana to a person who is not (A) a qualifying patient registered  
355 under section 5 or 15 of this act, or (B) a primary caregiver of such  
356 qualifying patient; or (3) obtain or transport marijuana outside of this  
357 state in violation of state or federal law.

358 (b) No licensed dispensary or employee of the dispensary acting  
359 within the scope of his or her employment shall be subject to arrest or  
360 prosecution, penalized in any manner, including, but not limited to,  
361 being subject to any civil penalty, or denied any right or privilege,  
362 including, but not limited to, being subject to any disciplinary action  
363 by a professional licensing board, for acquiring, possessing,

364 distributing or dispensing marijuana pursuant to sections 1 to 15,  
365 inclusive, of this act.

366 Sec. 12. (NEW) (*Effective October 1, 2012*) (a) No licensed producer or  
367 employee of the producer may: (1) Sell, deliver, transport or distribute  
368 marijuana to a person who is not a licensed dispensary, or (2) obtain or  
369 transport marijuana outside of this state in violation of state or federal  
370 law.

371 (b) No licensed producer or employee of the producer acting within  
372 the scope of his or her employment shall be subject to arrest or  
373 prosecution, penalized in any manner, including, but not limited to,  
374 being subject to any civil penalty, or denied any right or privilege,  
375 including, but not limited to, being subject to any disciplinary action  
376 by a professional licensing board, for cultivating marijuana or selling,  
377 delivering, transporting or distributing marijuana to licensed  
378 dispensaries under sections 1 to 15, inclusive, of this act.

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

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

395 (c) The Board of Physicians shall:

396 (1) Review and recommend to the Department of Consumer  
397 Protection for approval the debilitating medical conditions, medical  
398 treatments or diseases to be added to the list of debilitating medical  
399 conditions that qualify for the palliative use of marijuana;

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

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

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

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

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

420 Sec. 14. (NEW) (*Effective from passage*) (a) The Commissioner of  
421 Consumer Protection may adopt regulations, in accordance with  
422 chapter 54 of the general statutes, to establish (1) a standard form for  
423 written certifications for the palliative use of marijuana issued by  
424 physicians under subdivision (1) of subsection (a) of section 2 of this  
425 act, and (2) procedures for registrations under section 5 of this act.  
426 Such regulations, if any, shall be adopted after consultation with the

427 Board of Physicians established in section 13 of this act.

428 (b) The Commissioner of Consumer Protection shall adopt  
429 regulations, in accordance with chapter 54 of the general statutes, to  
430 establish a reasonable fee to be collected from each qualifying patient  
431 to whom a written certification for the palliative use of marijuana is  
432 issued under subdivision (1) of subsection (a) of section 2 of this act,  
433 for the purpose of offsetting the direct and indirect costs of  
434 administering the provisions of sections 1 to 15, inclusive, of this act.  
435 The commissioner shall collect such fee at the time the qualifying  
436 patient registers with the Department of Consumer Protection under  
437 subsection (a) of section 5 of this act. Such fee shall be in addition to  
438 any registration fee that may be charged under said subsection. The  
439 fees required to be collected by the commissioner from qualifying  
440 patients under this subsection shall be paid to the State Treasurer and  
441 credited to the account established pursuant to section 19 of this act.

442 (c) The Commissioner of Consumer Protection shall adopt  
443 regulations, in accordance with chapter 54 of the general statutes, to  
444 implement the provisions of sections 1 to 8, inclusive, and section 13 of  
445 this act. At a minimum, such regulations shall:

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

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

454 (3) Establish criteria for adding medical conditions, medical  
455 treatments or diseases to the list of debilitating medical conditions that  
456 qualify for the palliative use of marijuana;

457 (4) Establish a petition process under which members of the public

458 may submit petitions, in such manner and in such form as prescribed  
459 in the regulations, regarding the addition of medical conditions,  
460 medical treatments or diseases to the list of debilitating medical  
461 conditions;

462 (5) Establish a process for public comment and public hearings  
463 before the board regarding the addition of medical conditions, medical  
464 treatments or diseases to the list of debilitating medical conditions,  
465 medical treatments or diseases;

466 (6) Add additional medical conditions, medical treatments or  
467 diseases to the list of debilitating medical conditions that qualify for  
468 the palliative use of marijuana as recommended by the board; and

469 (7) Develop a distribution system for marijuana for palliative use  
470 that provides for:

471 (A) Marijuana production facilities within this state that are housed  
472 on secured grounds and operated by licensed producers; and

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

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

478 Sec. 15. (NEW) (*Effective October 1, 2012*) (a) During the period  
479 beginning on October 1, 2012, and ending thirty calendar days after the  
480 effective date of regulations adopted pursuant to section 14 of this act,  
481 a qualifying patient who would be determined to be eligible for a  
482 registration certificate pursuant to subsection (a) of section 5 of this act,  
483 except for the lack of effective regulations concerning licensed  
484 dispensaries, licensed producers, distribution systems and amounts of  
485 marijuana, may obtain a written certification from a physician and  
486 upon presenting the written certification to the Department of  
487 Consumer Protection, the department shall issue a temporary

488 registration certificate for the palliative use of marijuana. The  
489 department shall indicate on such temporary registration certificate the  
490 amount of usable marijuana that constitutes a one month supply which  
491 may be possessed pursuant to such temporary registration certificate.  
492 The department shall maintain a list of all temporary registration  
493 certificates issued pursuant to this section and the information on such  
494 list shall be confidential and shall not be subject to disclosure under the  
495 Freedom of Information Act, as defined in section 1-200 of the general  
496 statutes, except that such information may be disclosed in the manner  
497 set forth in subsection (b) of section 5 of this act.

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

507 (c) A physician shall not be subject to arrest or prosecution,  
508 penalized in any manner, including, but not limited to, being subject to  
509 any civil penalty, or denied any right or privilege, including, but not  
510 limited to, being subject to any disciplinary action by the Connecticut  
511 Medical Examining Board or other professional licensing board, for  
512 providing a written certification for the palliative use of marijuana  
513 pursuant to this section.

514 Sec. 16. (NEW) (*Effective October 1, 2012*) Nothing in sections 1 to 15,  
515 inclusive, of this act, or section 21a-243 of the general statutes, as  
516 amended by this act, shall be construed to require health insurance  
517 coverage for the palliative use of marijuana.

518 Sec. 17. (NEW) (*Effective October 1, 2012*) (a) For the purposes of this  
519 section:

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

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

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

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

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

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

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

534 (8) "School" means a public or private elementary or secondary  
535 school in this state or a public or private institution of higher education  
536 in this state; and

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

539 (b) Unless required by federal law or required to obtain federal  
540 funding:

541 (1) No school may refuse to enroll any person or discriminate  
542 against any student solely on the basis of such person's or student's  
543 status as a qualifying patient or primary caregiver under sections 1 to  
544 15, inclusive, of this act;

545 (2) No landlord may refuse to rent a dwelling unit to a person or  
546 take action against a tenant solely on the basis of such person's or

547 tenant's status as a qualifying patient or primary caregiver under  
548 sections 1 to 15, inclusive, of this act; and

549 (3) No employer may refuse to hire a person or may discharge,  
550 penalize or threaten an employee solely on the basis of such person's  
551 or employee's status as a qualifying patient or primary caregiver under  
552 sections 1 to 15, inclusive, of this act. Nothing in this subdivision shall  
553 restrict an employer's ability to prohibit the use of intoxicating  
554 substances during work hours or restrict an employer's ability to  
555 discipline an employee for being under the influence of intoxicating  
556 substances during work hours.

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

559 Sec. 18. Section 21a-243 of the 2012 supplement to the general  
560 statutes is repealed and the following is substituted in lieu thereof  
561 (*Effective October 1, 2012*):

562 (a) The Commissioner of Consumer Protection shall adopt  
563 regulations for the efficient enforcement and operation of sections 21a-  
564 244 to 21a-282, inclusive.

565 (b) The Commissioner of Consumer Protection may, so far as may  
566 be consistent with sections 21a-244 to 21a-282, inclusive, adopt the  
567 regulations existing under the federal Controlled Substances Act and  
568 pertinent regulations existing under the federal food and drug laws  
569 and conform regulations adopted hereunder with those existing under  
570 the federal Controlled Substances Act and federal food and drug laws.

571 (c) The Commissioner of Consumer Protection, acting upon the  
572 advice of the Commission of Pharmacy, may by regulation designate,  
573 after investigation, as a controlled substance, a substance or chemical  
574 composition containing any quantity of a substance which has been  
575 found to have a stimulant, depressant or hallucinogenic effect upon  
576 the higher functions of the central nervous system and having a  
577 tendency to promote abuse or physiological or psychological

578 dependence or both. Such substances are classifiable as amphetamine-  
579 type, barbiturate-type, cannabis-type, cocaine-type, hallucinogenic,  
580 morphine-type and other stimulant and depressant substances, and  
581 specifically exclude alcohol, caffeine and nicotine. Substances which  
582 are designated as controlled substances shall be classified in schedules  
583 I to V by regulations adopted pursuant to subsection (a) of this section.

584 (d) The Commissioner of Consumer Protection may by regulation  
585 change the schedule in which a substance classified as a controlled  
586 substance in schedules I to V of the controlled substance scheduling  
587 regulations is placed. On or before December 15, 1986, and annually  
588 thereafter, the commissioner shall submit a list of all such schedule  
589 changes to the chairmen and ranking members of the joint standing  
590 committee of the General Assembly having cognizance of matters  
591 relating to public health.

592 (e) Notwithstanding the provisions of subsections (a) to (d),  
593 inclusive, of this section, not later than January 1, 2013, the  
594 Commissioner of Consumer Protection shall submit amendments to  
595 sections 21a-243-7 and 21a-243-8 of the regulations of Connecticut state  
596 agencies to the standing legislative regulation review committee to  
597 reclassify marijuana as a controlled substance in schedule II under the  
598 Connecticut controlled substance scheduling regulations.

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

601 [(f)] (g) In the event of any inconsistency between the contents of  
602 schedules I, II, III, IV and V of the controlled substance scheduling  
603 regulations and schedules I, II, III, IV and V of the federal Controlled  
604 Substances Act, as amended, the provisions of the federal act shall  
605 prevail, except (1) when the provisions of the Connecticut controlled  
606 substance scheduling regulations place a controlled substance in a  
607 schedule with a higher numerical designation, schedule I being the  
608 highest designation, or (2) as provided in subsection (e) of this section.

609 [(g)] (h) When a drug that is not a controlled substance in schedule

610 I, II, III, IV or V, as designated in the Connecticut controlled substance  
611 scheduling regulations, is designated to be a controlled substance  
612 under the federal Controlled Substances Act, such drug shall be  
613 considered to be controlled at the state level in the same numerical  
614 schedule for a period of two hundred forty days from the effective date  
615 of the federal classification.

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

621 (1) 1-pentyl-3-(1-naphthoyl)indole (JWH-018);

622 (2) 1-butyl-3-(1-naphthoyl)indole (JWH-073);

623 (3) 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200);

624 (4) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol  
625 (CP-47,497);

626 (5) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol  
627 (cannabicyclohexanol; CP-47,497 C8 homologue);

628 (6) *Salvia divinorum*; and

629 (7) *Salvinorum A*.

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

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

636 (2) MDPV (3,4-methylenedioxypropylvalerone).

637       Sec. 19. (NEW) (*Effective from passage*) There is established a  
 638 palliative marijuana administration account which shall be a separate,  
 639 nonlapsing account within the General Fund. The account shall  
 640 contain any fees collected pursuant to subsection (a) of section 5 of this  
 641 act, any fees collected pursuant to sections 9 and 10 of this act, any fees  
 642 collected pursuant to subsection (b) of section 14 of this act, and any  
 643 other moneys required by law to be deposited in the account, and shall  
 644 be held in trust separate and apart from all other moneys, funds and  
 645 accounts. Any balance remaining in the account at the end of any fiscal  
 646 year shall be carried forward in the account for the fiscal year next  
 647 succeeding. Investment earnings credited to the account shall become  
 648 part of the account. Amounts in the account shall be expended only for  
 649 the purpose of providing funds to the Department of Consumer  
 650 Protection for administering the provisions of sections 1 to 16,  
 651 inclusive, of this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>October 1, 2012</i>	New section
Sec. 3	<i>October 1, 2012</i>	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>	New section
Sec. 18	<i>October 1, 2012</i>	21a-243
Sec. 19	<i>from passage</i>	New section

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:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 13 \$</b>	<b>FY 14 \$</b>
Consumer Protection, Dept.	GF - Cost	166,900	195,500
Comptroller Misc. Accounts (Fringe Benefits) <sup>1</sup>	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

<sup>1</sup> 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 costs 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.

House "A" (LCO 3891) made various technical, clarifying and minor programmatic changes which resulted in no fiscal impact.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would

continue into the future subject to inflation.

*Sources: Various state registration databases.*

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**OLR Bill Analysis****HB 5389 (as amended by House "A")\******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 medical condition and could potentially benefit from the palliative use of marijuana, among other requirements. The bill lists certain conditions that qualify as debilitating (e.g., cancer, AIDS or HIV, and 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 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 three 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, along with financial requirements for producers that may include a \$2 million escrow account. The DCP commissioner must establish fees that offset the costs of administering the palliative use of marijuana.

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 a patient or caregiver 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 told 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.

\*House Amendment "A":

1. changes certain conditions under which the bill's protections and prohibitions apply, such as specifying that a patient's palliative use of marijuana must not endanger the health or well-being of anyone else other than the primary caregiver and extending certain provisions to dispensaries' and producers' employees;
2. deletes a provision providing for an affirmative defense for patients and primary caregivers;
3. adds a provision concerning an employer's right to (a) prohibit employees' use of intoxicating substances during work hours or (b) discipline employees for being under the influence;
4. adds to and changes certain required regulations;
5. makes the bill's definitions effective upon passage; and
6. makes various minor, technical, and clarifying changes to the bill.

EFFECTIVE DATE: October 1, 2012, except for the provisions (1) defining various terms (§ 1), (2) providing for dispensary and producer

licensing (§§ 9-10), (3) creating a Board of Physicians (§ 13), (4) requiring or allowing certain regulations (§ 14), and (5) establishing the palliative marijuana administration account (§ 19), which are effective upon passage.

### **§§ 1 & 2 – USE OF MARIJUANA FOR PALLIATIVE PURPOSES**

Under the bill, “palliative use” means the acquisition, distribution, transfer, possession, use, or transportation of marijuana or related paraphernalia to alleviate a qualifying patient’s symptoms of a debilitating condition, or the symptoms’ effects. Palliative use includes the transfer of marijuana and related paraphernalia from the patient’s primary caregiver to the qualifying patient. It does not include any marijuana use by someone other than a 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 medical conditions, treatments, or diseases that DCP approves through regulations, as explained below.

#### ***Qualifying Patients***

Under the bill, a qualifying patient is a state resident who is at least age 18 and has been diagnosed by a physician as having a debilitating medical condition. The term does not include inmates confined in a correctional institution or facility under the supervision of the Department of Correction.

#### ***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, a qualifying patient cannot be his or her own primary caregiver.

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 caregivers to only one patient at a time, unless the caregiver and each patient have a parental, guardianship, conservatorship, or sibling relationship.

#### **§§ 1 & 4 – CERTIFICATION OF MARIJUANA USE**

Under the bill, a physician may certify a qualifying 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 include a statement to this effect. The certification must be (1) in writing, (2) signed and dated by the physician, and (3) in DCP-prescribed form.

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 then 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 the leaves and flowers, that are appropriate for the palliative use of marijuana, but not including the plant's seeds, stalks, and roots.

#### **§§ 5 & 15 – PATIENT AND CAREGIVER REGISTRATION**

##### ***Registration Requirement***

The bill requires certified, qualifying 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 FOIA. 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 qualifying 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 themselves 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 the DCP commissioner, 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 on 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 limiting the 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. provide that only a licensed pharmacist may apply for and 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 locate, 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 (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 ensure 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 palliative marijuana producers, and 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.

To qualify for a producer license, the person must be organized to cultivate (plant, propagate, cultivate, grow, and harvest) marijuana for palliative use in the state. The commissioner must also find that the applicant (1) has appropriate expertise in agriculture and (2) is qualified to cultivate marijuana and sell, deliver, transport, or distribute marijuana solely within the state pursuant to the bill.

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.

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 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. define “pharmaceutical grade marijuana for palliative use” for this purpose;
  9. establish standards and procedures for license revocation, suspension, summary suspension, and nonrenewal, that comply with the UAPA’s standards for such actions; and
  10. 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.

**§§ 2-4, 6, 11-12, & 15 – PROTECTIONS FROM PUNISHMENT RELATED TO PALLIATIVE MARIJUANA USE; EXCEPTIONS**

The bill prohibits qualifying patients, their caregivers or doctors, or marijuana dispensaries or producers from being arrested, prosecuted, or 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.

The bill also prohibits anyone from being arrested or prosecuted solely for being present during or in the vicinity of the palliative use of marijuana permitted by the bill.

### **§§ 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. the patient has a valid registration certificate from DCP;
2. the patient’s physician has issued a written certification for the patient’s palliative use of marijuana after prescribing, or determining it is not in the patient’s best interest to prescribe, prescription drugs to address the symptoms or effects the marijuana is supposed to treat;
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;
4. the patient does not have more than one primary caregiver at a time; and
5. the patient otherwise complies with the bill.

The protection against such punishments or actions does not apply if a patient’s palliative use of marijuana endangers the health or well-being of someone else, other than the primary caregiver. The

protection also does not apply if the patient ingests marijuana:

1. on a motor bus or school bus, or in any other moving vehicle;
2. at work;
3. on school grounds or any public or private school, dormitory, college, or university property;
4. in any public place (i.e., any 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.

#### **§§ 4 & 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 to 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 it does not allow physician assistants to issue certifications for palliative marijuana use.

### **§§ 3 & 15 – Primary Caregivers**

Under the bill, if a primary caregiver has a valid registration certificate from DCP and complies with the bill, he or she is protected from the punishments or penalties specified above for acquiring, distributing, possessing, or transporting marijuana or related paraphernalia for the 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, or their employees acting within the scope of their employment, from the actions or penalties specified above for acquiring, possessing, distributing, or dispensing marijuana pursuant to the bill.

The bill prohibits licensed dispensaries or their employees from:

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 state or federal law.

### **§ 12 – Producers**

The bill protects licensed producers, or their employees acting within the scope of their employment, from the actions or penalties specified above for cultivating marijuana or selling, delivering, transporting, or distributing it to licensed dispensaries.

It prohibits licensed producers or their employees from (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 state or federal law.

### **§ 7 – RETURN OF SEIZED PROPERTY**

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 the palliative use of marijuana 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 implementing regulations on various matters. 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. set criteria for adding medical conditions, treatments, or diseases to the list of debilitating conditions that qualify for the palliative use of marijuana;
4. establish a process for members of the public to submit petitions, in the manner and form prescribed in the regulations, regarding the addition of medical conditions, treatments, or diseases to the list of debilitating conditions;
5. establish a process for public comment and public hearings before the physician board regarding the addition of medical conditions, treatments, or diseases to the list of debilitating conditions;

6. add medical conditions, treatments, or diseases to the list of debilitating conditions, as the physician board recommends; and
7. develop a system for distributing marijuana for palliative use that provides for (a) marijuana production facilities housed 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 certified patients to offset the direct and indirect costs of administering the palliative use of marijuana. 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.

While the bill does not require DCP to establish a standard form for written certifications, it requires such certifications to be in DCP-prescribed form.

**§ 17 – 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; but this provision does not restrict an employer's ability to prohibit the use of intoxicating substances during work hours or to discipline an employee for being under the influence of intoxicating substances during work hours.

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).

#### **§ 18 – 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).

### **§ 19 – 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 money 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.

To be placed in either Schedule I or Schedule II, the drug must have a high potential for abuse. Placement in Schedule I requires the drug to have no currently accepted medical use in the U.S. By contrast, placement in Schedule II requires the drug to have a currently accepted medical use or such a use with severe restrictions (21 U.S.C. §§ 812, 823, and 841(a)(1)).

### **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 35 Nay 8 (03/21/2012)

Finance, Revenue and Bonding Committee

Joint Favorable

Yea 36 Nay 15 (04/20/2012)

Public Health Committee

Joint Favorable

Yea 19 Nay 6 (04/24/2012)