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## **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)