

HB 648-FN - VERSION ADOPTED BY BOTH BODIES

24Mar2009... 0877h
24Jun2009... 2251cofc
24Jun2009... 2358eba

2009 SESSION

09-0343

04/01

HOUSE BILL **648-FN**

AN ACT relative to the use of marijuana for medicinal purposes.

SPONSORS: Rep. E. Merrick, Coos 2; Rep. T. Russell, Rock 13; Rep. Donovan, Sull 4;
Rep. Pilliod, Belk 5; Rep. D. Petterson, Rock 10; Sen. Fuller Clark, Dist 24;
Sen. Gallus, Dist 1

COMMITTEE: Health, Human Services and Elderly Affairs

AMENDED ANALYSIS

This bill permits the use of marijuana for medicinal purposes if recommended by a physician. The department of health and human services is to administer this chapter.

Explanation: Matter added to current law appears in **bold italics**.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nine

AN ACT relative to the use of marijuana for medicinal purposes.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Findings.

I. Modern medical research has discovered beneficial uses for marijuana in treating or alleviating the pain, nausea, and other symptoms associated with a variety of debilitating medical conditions, as found by the National Academy of Sciences' Institute of Medicine in March 1999.

II. Subsequent studies since the 1999 National Academy of Sciences' Institute of Medicine report continue to show the therapeutic value of marijuana in treating a wide array of debilitating medical conditions, including increasing the chances of patients finishing their treatments for HIV/AIDS and hepatitis C.

III. Data from the Federal Bureau of Investigation's Uniform Crime Reports and the Compendium of Federal Justice Statistics show that approximately 99 out of every 100 marijuana arrests in the United States are made under state law, rather than under federal law. Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill patients who have a medical need to use marijuana.

IV. Although federal law currently prohibits any use of marijuana except under very limited circumstances, Alaska, California, Colorado, Hawaii, Maine, Michigan, Montana, Nevada, New Mexico, Oregon, Vermont, Rhode Island, and Washington have removed state-level criminal penalties from the medical use and cultivation of marijuana. New Hampshire joins in this effort for the health and welfare of its citizens.

V. States are not required to enforce federal law or prosecute people for engaging in activities prohibited by federal law. Therefore, compliance with this act does not put the state of New Hampshire in violation of federal law.

VI. State law should make a distinction between the medical and non-medical uses of marijuana. Hence, the purpose of this act is to protect patients with debilitating medical conditions, as well as their physicians and designated caregivers, from arrest and prosecution, criminal and other penalties, and property forfeiture if such patients engage in the medical use of marijuana.

VII. The people of the state of New Hampshire declare that they enact this act pursuant to the police power to protect the health of its citizens that is reserved to the state of New Hampshire and its people under the 10th Amendment to the United States Constitution.

2 New Chapter; Use of Marijuana for Medicinal Purposes. Amend RSA by inserting after chapter 126-R the following new chapter:

CHAPTER 126-S

USE OF MARIJUANA FOR MEDICINAL PURPOSES

126-S:1 Definitions. In this chapter:

I. "Cardholder" means a qualifying patient, a designated caregiver, or a principal officer, board member, employee, volunteer, or agent of a compassion center who has been issued and possesses a valid registry identification card.

II. "Chronic or terminal disease" means cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C currently receiving antiviral treatment, amyotrophic lateral sclerosis, muscular dystrophy, Crohn's disease, agitation of Alzheimer's disease, or multiple sclerosis.

III. "Compassion center" means a not-for-profit entity registered under RSA 126-S:8 that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, supplies, or dispenses marijuana, or related supplies and educational materials, to a

registered qualifying patient who has designated it, either by dispensing it directly to the registered qualifying patient or by dispensing it to their registered designated caregiver.

IV. "Debilitating medical condition" means the presence of both:

- (a) A chronic or terminal disease, or other diagnosed medical condition, and
- (b) Whose symptoms or result of treatment includes at least one of the following: cachexia or wasting syndrome, severe pain that has not responded to previously prescribed medication or surgical measures for more than 3 months, severe nausea, severe vomiting, seizures, or severe, persistent muscle spasms.

V. "Department" means the department of health and human services.

VI. "Designated caregiver" means an individual who is at least 21 years of age, who is either a member of the qualifying patient's household, a member of the qualifying patient's family, a friend of the qualifying patient, or a licensed health care professional, but who is not a qualifying patient, and who has agreed to assist with a patient's medical use of marijuana, including acquiring medical marijuana from a compassion center and delivering it to the qualified patient, and who has never been convicted of any drug-related offense. A designated caregiver may serve as a designated caregiver for only one qualifying patient at a time.

VII. "Marijuana" means all parts of any plant of the Cannabis genus of plants, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, salt, derivative, mixture, or preparation of such plant, its seeds, or resin. Such term does not include the mature stalks of such plants, fiber produced from such stalks, oil or cake made from the seeds of such plants, any other compound, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seeds of such plants which are incapable of germination.

VIII. "Medical use" means the acquisition, possession, preparation, use, delivery, transfer, or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a qualifying patient's debilitating medical condition or symptoms or results of treatment associated with the patient's debilitating medical condition.

IX. "Physician" means an individual licensed to prescribe drugs to humans under RSA 329 and who possesses certification from the United States Drug Enforcement Administration to prescribe controlled substances, except that in relation to a visiting qualifying patient, "physician" means an individual licensed to prescribe drugs to humans in the state of the patient's residence and who possesses certification from the United States Drug Enforcement Administration to prescribe controlled substances.

X. "Qualifying patient" means an individual who has been diagnosed by a physician as having a debilitating medical condition.

XI. "Registry identification card" means a document issued by the department that identifies an individual as a qualifying patient, a designated caregiver, or a registered principal officer, board member, employee, volunteer, or agent of a compassion center.

XII. "Seedling" means a marijuana plant that has no flowers and is less than 12 inches in height and less than 12 inches in diameter. A seedling shall meet all 3 criteria set forth in this paragraph.

XIII. "Usable marijuana" means the dried leaves and flowers of the marijuana plant and any mixture or preparation thereof, but does not include the seeds, stalks, and roots of the plant and does not include the weight of any non-marijuana ingredients combined with marijuana and prepared for consumption as food or drink.

XIV. "Visiting qualifying patient" means a patient with a debilitating medical condition who is not a resident of New Hampshire or who has been a resident of New Hampshire for less than 30 days.

XV. "Written certification" means a document signed by a physician stating that in the physician's professional opinion, after having completed a full assessment of the qualifying patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship as defined in RSA 329:1-c, the qualifying patient has a debilitating medical condition, and the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient. The written certification shall specify the qualifying patient's debilitating medical condition, which also shall be noted in the qualifying patient's medical records.

126-S:2 Protections for the Medical Use of Marijuana.

I. A qualifying patient who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty, or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau, for the medical use of marijuana in accordance with this chapter, provided that the qualifying patient possess an amount of marijuana that does not exceed 2 ounces of usable marijuana. A qualifying patient shall remain subject to the provisions of RSA 126-S:5.

II. A designated caregiver who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau, for assisting a qualifying patient to whom he or she is connected through the department's registration process with the medical use of marijuana in accordance with this chapter, provided that the designated caregiver possesses an amount of marijuana that does not exceed 2 ounces of usable marijuana. A designated caregiver shall remain subject to the provisions of RSA 126-S:5.

III.(a) A qualifying patient is deemed to be lawfully engaged in the medical use of marijuana in accordance with this chapter if the qualifying patient possesses a registry identification card and possesses an amount of marijuana that does not exceed the amount allowed under this chapter.

(b) A designated caregiver is deemed to be lawfully engaged in the medical use of marijuana in accordance with this chapter if the designated caregiver possesses a registry identification card and possesses an amount of marijuana that does not exceed the amount allowed under this chapter.

(c) The presumptions made in subparagraphs (a) and (b) may be rebutted by evidence that conduct related to marijuana was not for the purpose of treating or alleviating the qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition, in accordance with this chapter.

IV.(a) A compassion center may accept marijuana seeds, seedlings, plants, or useable marijuana from other licensed compassion centers in New Hampshire or similar licensed entities in other jurisdictions.

(b) A compassion center may accept a donation of marijuana seeds or seedlings, without compensation from licensees from jurisdictions outside of New Hampshire who are licensed to cultivate medical marijuana in their home state.

V.(a) No school or landlord may refuse to enroll or lease to, or otherwise penalize, an individual solely for his or her status as a qualifying patient or a designated caregiver, unless failing to do so would put the school or landlord in violation of federal law or regulations.

(b) For the purposes of medical care, including organ transplants, a qualifying patient's authorized use of marijuana in accordance with this chapter shall be considered the equivalent of the authorized use of any other medication used at the direction of a physician, and shall not constitute the use of an illicit substance.

(c) An employer shall not discriminate against an individual in hiring, termination, or any term or condition of employment, or otherwise penalize an individual, based upon either of the following:

(1) The individual's status as a qualifying patient or designated caregiver; or

(2) A qualifying patient's positive drug test for marijuana components or metabolites, unless the patient used, possessed, or was impaired by marijuana on the premises of the place of employment or during the hours of employment.

VI. An individual shall not be denied custody of, or visitation or parenting time with, a minor and there shall be no presumption of neglect or child endangerment for conduct allowed under this chapter, unless the individual's behavior is such that it creates an unreasonable danger to the safety or welfare of the minor as established by clear and convincing evidence.

VII. A designated caregiver who is a licensed health care professional may receive compensation for costs associated with assisting with the medical use of marijuana. Such compensation shall not constitute the sale of controlled substances.

VIII. A physician shall not be subject to arrest, prosecution, or penalty, or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by the New Hampshire board of medicine or any other occupational or professional licensing board or bureau, solely for providing written certifications or for otherwise stating that, in the physician's professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms associated with the serious or debilitating medical condition, provided that nothing shall prevent a professional licensing board from sanctioning a physician for failing to properly evaluate a patient's medical condition or otherwise violating the standard of care for evaluating medical conditions.

IX. Any marijuana, marijuana paraphernalia, licit property, or interest in licit property that is possessed, owned, or used in connection with the medical use of marijuana as allowed under this chapter, or acts incidental to such use, shall not be seized or forfeited.

X. An individual shall not be subject to arrest, prosecution, or penalty, or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau, simply for being in the presence or vicinity of the medical use of marijuana as allowed under this chapter.

XI. A registry identification card, or its equivalent, that is issued under the laws of another state, district, territory, commonwealth, or insular possession of the United States that allows, in the jurisdiction of issuance, a visiting qualifying patient to possess marijuana for medical purposes, shall have the same force and effect as a registry identification card issued by the department, provided that the same debilitating medical condition as defined in RSA 126-S:1, IV exists.

XII. Any cardholder who transfers marijuana to an individual who is not a cardholder under this chapter shall be guilty of a class B felony, shall have his or her registry identification card revoked, and shall be subject to other penalties as provided in RSA 318-B:26. The department may revoke the registry identification card of any cardholder who violates any provision of this chapter, and the cardholder shall be subject to any other penalties established in law for the violation.

XIII. The protections provided to cardholders in this section shall exist only upon presentation of a valid registry identification card.

126-S:3 Departmental Administration.

I. The department shall issue registry identification cards to qualifying patients who submit all of the following information:

(a) Written certification as defined in RSA 126-S:1, XV.

(b) Application or renewal fee.

(c) Name, residential and mailing address, and date of birth of the qualifying patient, except that if the applicant is homeless, no residential address is required.

(d) Name, address, and telephone number of the qualifying patient's physician.

(e) Name, address, and date of birth of the qualifying patient's designated caregiver, if any.

(f) Name and address of the compassion center that the qualifying patient designates; a qualifying patient may designate no more than one compassion center at any time.

(g) A statement signed by the qualifying patient, pledging not to divert marijuana to anyone who is not allowed to possess marijuana pursuant to this chapter.

(h) A complete set of fingerprints for the qualifying patient's designated caregiver, if any.

(i) A signed statement from the designated caregiver, if any, agreeing to be designated as the patient's designated caregiver and pledging not to divert

marijuana to anyone who is not allowed to possess marijuana pursuant to this chapter.

II. The department shall not issue a registry identification card to a qualifying patient who is under the age of 18 unless:

(a) The qualifying patient's physician has explained the potential risks and benefits of the medical use of marijuana to the custodial parent or legal guardian with responsibility for health care decisions for the qualifying patient; and

(b) The custodial parent or legal guardian with responsibility for health care decisions for the qualifying patient consents in writing to:

(1) Allow the qualifying patient's medical use of marijuana;

(2) Serve as the qualifying patient's designated caregiver; and

(3) Control the acquisition of the marijuana, the dosage, and the frequency of the medical use of marijuana by the qualifying patient.

III. The department shall verify the information contained in an application or renewal submitted pursuant to this section, and shall approve or deny an application or renewal within 15 days of receiving it. The department may deny an application or renewal only if the applicant did not provide the information required pursuant to this section, the applicant previously had a registry identification card revoked for violating the provisions of this chapter, or if the department determines that the information provided was falsified. Rejection of an application or renewal is considered a final department action, subject to judicial review in the Merrimack county superior court.

IV. The department shall require a state and federal criminal records check on each person who is applying to be a designated caregiver or a principal officer, agent, employee, or volunteer of a compassion center. The department shall request the department of safety to perform the state and federal criminal records check and the department of safety shall complete such records checks and convey the findings of such check to the department within 30 days of the request. The department and the department of safety may exchange necessary data including fingerprint data with the Federal Bureau of Investigation without disclosing that the records check is related to the provisions of RSA 126-S and acts permitted by it. The department and the department of safety shall destroy each set of fingerprints obtained pursuant to this chapter after the criminal records check is complete.

V. The department shall issue a registry identification card to the designated caregiver and compassion center if any, who is named in a qualifying patient's approved application and who qualifies under this chapter. The department shall notify the qualifying patient who has designated someone to serve as his or her designated caregiver if a registry identification card will not be issued to the individual.

VI. The department shall issue registry identification cards to qualifying patients and to the designated caregivers and compassion centers within 5 days of approving an application or renewal. Each registry identification card shall expire one year after the date of issuance, unless the physician states in the written certification that he or she believes the qualifying patient would benefit from

medical marijuana only until a specified earlier or later date, then the registry identification card shall expire on that date.

(a) In the case of qualified patients and designated caregivers, registry identification cards shall contain all of the following:

- (1) Name, mailing address, and date of birth of the qualifying patient.
- (2) If the cardholder is a designated caregiver, the designated caregiver's name, address, and date of birth.
- (3) The date of issuance and expiration date of the registry identification card.
- (4) A random 20-digit identification number, containing at least 4 numbers and at least 4 letters, that is unique to the cardholder.
- (5) A photograph of the cardholder, if the department decides to require one.
- (6) A statement that the cardholder is permitted under state law to possess marijuana pursuant to this chapter for the medical use of the qualifying patient.

(b) In the case of a principal officer, board member, employee, volunteer, or agent of a compassion center, registry identification cards shall contain all of the following:

- (1) Name, mailing address, and date of birth of the cardholder.
- (2) The name and address of the compassion center.
- (3) The date of issuance and expiration date of the registry identification card.
- (4) A random 20-digit identification number, containing at least 4 numbers and at least 4 letters, that is unique to the cardholder.
- (5) A photograph of the cardholder, if the department decides to require one.
- (6) A statement that the cardholder is permitted to engage in activities for the compassion center to cultivate and provide medical marijuana to qualified patients and designated caregivers in accordance with this chapter.

VII. The following notifications and department responses are required:

(a) A qualifying patient or principal officer, board member, employee, volunteer, or agent of a compassion center shall notify the department of any change in his or her name, address, or designated caregiver within 10 days of such change.

(b) A registered qualifying patient or principal officer, board member, employee, volunteer, or agent of a compassion center who fails to notify the department of any of these changes is subject to a civil infraction, punishable by a penalty of no more than \$150. If the qualifying patient's certifying physician notifies the department in writing that either the qualifying patient has ceased to suffer from a debilitating medical condition or that the physician no longer believes the patient would receive therapeutic or palliative benefit from the medical use of marijuana, the card is null and void upon notification by the department to the qualifying patient.

(c) A designated caregiver shall notify the department of any change in his or her name or address within 10 days of such change. A registered designated caregiver

who fails to notify the department of any of these changes is subject to a civil infraction, punishable by a penalty of no more than \$150.

(d) When a qualifying patient, designated caregiver, or a principal officer, board member, employee, volunteer, or agent of a compassion center notifies the department of any change to a name, address, compassion center, or designated caregiver, the department shall issue the cardholder a new registry identification card with a new random 20-digit identification number within 10 days of receiving the updated information and a \$10 fee.

(e) A qualifying patient who no longer has a debilitating medical condition and the patient's registered designated caregiver and compassion center shall return all registry identification cards associated with that qualifying patient to the department within 48 hours of receiving the diagnosis by the patient's physician. When a qualifying patient ceases to be a qualifying patient, the family or designated caregiver shall notify the designated compassion center within 24 hours, the compassion center shall make arrangements to pick up any remaining supply of marijuana within 48 hours of receiving such notification, and the protections of this chapter shall no longer apply.

(f) If a cardholder loses his or her registry identification card, he or she shall notify the department and submit a \$10 fee within 10 days of losing the card. Within 5 days after such notification, the department shall issue a new registry identification card with a new random 20-digit identification number.

VIII. Mere possession of, or application for, a registry identification card shall not constitute probable cause or reasonable suspicion, nor shall it be used to support the search of the individual or property of the individual possessing or applying for the registry identification card. The possession of, or application for, a registry identification card shall not preclude the existence of probable cause if probable cause exists on other grounds.

IX.(a) The department shall create and maintain a confidential registry of qualifying patients, designated caregivers, and principal officers, board members, employees, volunteers, and agents of compassion centers who have applied for and are entitled to receive a registry identification card in accordance with the provisions of this chapter.

(b)(1) Except as specifically provided in this chapter, no person shall be permitted to gain access to any information about qualifying patients, designated caregivers, and principal officers, board members, employees, volunteers, and agents of a compassion center in the department's confidential registry, or any information otherwise maintained by the department about physicians and compassion centers, except for authorized employees of the department in the course of their official duties and authorized employees of local and state law enforcement agencies who have stopped or arrested an individual who claims to be engaged in the medical use of marijuana. Authorized employees of local and state law enforcement agencies shall be granted access to the information within the department's confidential registry only for the purpose of verifying that an individual who has presented a registry identification card to the state or local law enforcement official is lawfully in possession of such card.

(2) An employer, landlord, court, administrative hearings officer, or health care provider that has been presented with a registry identification card by a person asserting that they are entitled to protections under RSA 126-S:2 may contact the department to verify the validity of the registry identification card. The department shall verify a registry identification card to an employer, landlord, court, or health care provider who requests verification pursuant to this paragraph, provided that the employer, landlord, court, or health care provider provides the random identification card number on the registry identification card. In verifying the validity of a registry identification card, the department shall only confirm whether a card bearing the random identification card number is a valid card issued and the name of the person to whom it was issued.

(c) An individual shall be guilty of a misdemeanor for breaching the confidentiality of information obtained pursuant to this chapter, except that department employees shall be exempt for notifying law enforcement officials about falsified or fraudulent information submitted to the department, provided the employee who suspects that falsified or fraudulent information has been submitted confers with his or her supervisor, and both agree that circumstances exist that warrant the notification.

X. The department shall submit to the legislature an annual report that does not disclose any identifying information about qualifying patients, designated caregivers, or physicians, but does contain, at a minimum, all of the following information:

(a) The number of applications and renewals filed for registry identification cards.

(b) The number of qualifying patients and designated caregivers approved in the state.

(c) The number of compassion centers registered in the state.

(d) The nature of the debilitating medical conditions of the qualifying patients.

(e) The number of registry identification cards revoked.

(f) The number of physicians providing written certifications for qualifying patients.

XI. Where a state or local law enforcement agency encounters an individual who, during the course of the investigation, credibly asserts that he or she is a qualifying patient or designated caregiver, the law enforcement agency shall not provide any information from any marijuana-related investigation of the individual to any law enforcement authority that does not recognize the protection of this chapter and any prosecution of the individual for a violation of this chapter shall be conducted pursuant to the laws of this state. This paragraph shall not apply in cases where the state or local law enforcement agency has probable cause to believe the person is distributing marijuana to a person who is not allowed to possess it under this chapter, nor shall it prevent the sharing of information if the primary offense is unrelated to marijuana.

XII. The application for qualifying patients' registry identification cards shall include a question asking whether the patient would like the department to notify him or her of any clinical studies regarding marijuana's risk or efficacy that seek human subjects. The department shall inform those patients who answer in the affirmative

of any such studies it is notified of that will be conducted in the United States.

126-S:4 Department Rules. Not later than 180 days after the effective date of this chapter, the department shall adopt rules, pursuant to RSA 541-A, governing the manner in which it shall consider applications for and renewals of registry identification cards for qualifying patients and designated caregivers. The department's rules shall establish application and renewal fees for registry identification cards in accordance with the following:

I. The total fees collected by the department for compassion centers and registry identification cards shall generate revenues sufficient to offset all state expenses of implementing and administering this chapter; and

II. The department may accept donations from private sources in order to reduce the application and renewal fees.

126-S:5 Prohibitions, Restrictions, and Limitations on the Use of Medical Marijuana.

I. A qualifying patient may use medical marijuana on privately-owned real property only with the permission of the property owner or in the case of leased property with the permission of the tenant in possession of the property, except that a tenant shall not allow a qualified patient to smoke medical marijuana on rented property if smoking on the property violates the lease or the lessor's rental policies that apply to all tenants at the property. However, a tenant in possession may permit a qualified patient to use medical marijuana on leased property by ingestion or inhalation through vaporization even if smoking is prohibited by the lease or rental policies. For purposes of this chapter, vaporization shall mean the inhalation of marijuana without the combustion of the marijuana.

II. Nothing in this chapter shall exempt any person from arrest or prosecution for:

(a) Being under the influence of marijuana while:

(1) Operating a motor vehicle, commercial vehicle, boat, or vessel, or any other vehicle propelled or drawn by power other than muscular power;

(2) In his or her workplace or place of employment, without the written permission of the employer; or

(3) Operating heavy machinery or handling a dangerous instrumentality.

(b) The use or possession of marijuana by a qualified patient or other cardholder:

(1) For purposes other than symptom relief as permitted by this chapter; or

(2) In a manner that endangers the health, well-being, or safety of another person;

(c) The smoking of marijuana in any public place, including:

(1) A school bus, public bus, or other public vehicle;

(2) A workplace or place of employment, without the written permission of the employer;

(3) The grounds of any preschool or primary or secondary school;

(4) Any correctional facility; or

(5) Any public park, public beach, public recreation center, public field, or youth

center.

II. Nothing in this chapter shall be construed to require:

(a) A governmental, private, or any other health insurance provider, health care plan, or medical assistance program to be liable for any claim for reimbursement for the medical use of marijuana;

(b) Any individual or establishment in lawful possession of property to allow a guest, client, customer, or other visitor to use marijuana on or in that property. This chapter shall not limit an individual or entity in lawful possession of property, or an agent of such individual or entity, from expelling an individual who uses marijuana without permission from their property and from seeking civil and criminal penalties for the unauthorized use of marijuana on their property;

(c) Any accommodation of any medical use of marijuana on the property or premises of any place of employment or on the property or premises of any jail, correctional facility, or other type of penal institution where prisoners reside or persons under arrest are detained. This chapter shall in no way limit an employer's ability to discipline an employee for ingesting marijuana in the workplace or working while under the influence of marijuana; or

(d) A landlord to permit a qualified patient to smoke marijuana on any leased property in a manner that would violate a lease or the rental policies that prohibits smoking by tenants or guests on the property, except that a landlord may not prohibit the medical use of marijuana on leased property by a qualified patient through means that do not violate a no smoking rule, including but not limited to the ingestion of medical marijuana or the inhalation through vaporization, as long as the tenant in possession of the property provides permission to the qualified patient to use medical marijuana in the rented property.

III. Fraudulent representation to a law enforcement official of any fact or circumstance relating to the medical use of marijuana to avoid arrest or prosecution shall be punishable by a fine of \$500, which shall be in addition to any other penalties that may apply for making a false statement or for the use of marijuana other than use undertaken pursuant to this chapter.

126-S:6 Affirmative Defense. Except as provided in RSA 126-S:5, it is an affirmative defense to any prosecution of an offense involving marijuana intended for medical use that:

I. The defendant is a qualifying patient in possession of a valid registry identification card and at the time of arrest or prosecution was in possession of a quantity of marijuana that was not more than is allowed under this chapter; or

II. The defendant is a designated caregiver in possession of a valid registry identification card and at the time of arrest or prosecution was in possession of a quantity of marijuana that was not more than is allowed under this chapter; and

III. The qualifying patient or the qualifying patient's designated caregiver was engaged in the acquisition, possession, preparation, use, or transportation of marijuana, paraphernalia, or both, relating to the administration of marijuana solely to treat or alleviate the qualifying patient's serious or debilitating medical condition or symptoms associated with the qualifying patient's serious or debilitating medical

condition.

126-S:7 Enforcement.

I. If the department fails to issue a valid registry identification card in response to a completed application or renewal submitted by certified mail pursuant to this chapter within 20 days, the registry identification card shall be deemed granted, and a copy of the registry identification application or renewal shall be deemed a valid registry identification card.

II. If at any time after the 180 days following the effective date of this chapter the department is not accepting applications, including if it has not adopted rules allowing qualifying patients to submit applications, a notarized statement by a qualifying patient containing the information required in an application, pursuant to RSA 126-S:3, I together with a written certification shall be deemed a valid registry identification card.

126-S:8 Compassion Centers

I. A compassion center registered under this section may acquire, possess, cultivate, manufacture, deliver, transfer, transport, supply, and/or dispense marijuana, and/or related supplies and educational materials, to registered qualifying patients who have designated it as their compassion center and to their registered designated caregivers for the registered qualifying patients' medical use. A compassion center may cultivate and possess whichever of the following quantities is greater: (a) 96 marijuana plants, 96 seedlings, and 32 ounces of useable marijuana; or (b) 6 plants, 6 seedlings, and 2 ounces for each registered qualifying patient who has designated the compassion center to provide him or her with marijuana for medical use. A compassion center may also possess marijuana seeds, stalks, and unusable roots.

II.(a) Not later than 180 days after the effective date of this section, the department shall adopt rules, pursuant to RSA 541-A, governing the manner in which it shall consider applications for registration certificates for compassion centers, including rules governing:

- (1) The form and content of registration and renewal applications.
- (2) Minimum oversight requirements for compassion centers.
- (3) Minimum record-keeping requirements for compassion centers.
- (4) Minimum security requirements for compassion centers, which shall include that each compassion center location must be protected by a fully operational security alarm system.
- (5) Procedures for suspending or terminating the registration of compassion centers that violate the provisions of this section or the rules adopted pursuant to this section.
- (6) The fees for the processing and review of applications submitted by an applicant for a compassion center and the fees for the licensing of a compassion center after it has been approved by the department. Such application and licensing fees shall be established in an amount that covers all costs of the department and other state agencies, as applicable, for the review and licensing of compassion centers.

(b) The department shall adopt rules with the goal of protecting against diversion and theft, without imposing an undue burden on the registered compassion centers or compromising the confidentiality of registered qualifying patients and their registered designated caregivers. Any dispensing records that a registered compassion center is required to keep shall track transactions according to registered qualifying patients', registered designated caregivers', and registered compassion centers' registry identification numbers, rather than their names, to protect their confidentiality.

(c) Within 30 days of the adoption of rules, the department shall begin accepting applications for the operation of compassion centers.

(d) Within 230 days of the effective date of this section, the department shall grant registration certificates to 3 compassion centers, provided at least 3 applicants apply and meet the requirements of this section.

(e) Any time a compassion center registration certificate is revoked, is relinquished, or expires, the department shall accept applications for a new compassion center.

(f) If at any time after one year after the effective date of this section fewer than 3 compassion centers hold valid registration certificates in New Hampshire, the department shall accept applications for a new compassion center. Except as provided in subparagraph (g), no more than 3 compassion centers may hold valid registration certificates at one time.

(g) If at any time after 2 years after the effective date of this section the report issued pursuant to RSA 126-S:9 determines that 3 compassion centers are not sufficient to ensure access to registered qualifying patients throughout the state, the department shall accept applications for up to 2 additional compassion centers. The number of additional compassion centers shall be determined by the department, based on the report issued pursuant to RSA 126-S:9.

III.(a) Each application for a compassion center shall include all of the following:

(1) A non-refundable application fee paid to the department in accordance with the rules adopted by the department.

(2) The legal name, articles of incorporation, and bylaws of the compassion center.

(3) The proposed physical address of the compassion center, if a precise address has been determined, or, if not, the general location where it would be located. This may include a second location for the cultivation of medical marijuana.

(4) A description of the enclosed, locked facility that would be used in the cultivation of marijuana by the compassion center.

(5) The name, address, and date of birth of each principal officer and board member of the compassion center, and a complete set of fingerprints for each of them.

(6) Proposed security and safety measures, which shall include at least one security alarm system for each location, and planned measures to deter and prevent the unauthorized entrance into areas containing marijuana and the theft of marijuana.

(7) Proposed procedures to ensure accurate record keeping.

(b) Any time one or more compassion center registration applications are being considered, the department shall also allow for comment by the public and shall solicit input from registered qualifying patients, registered designated caregivers, and the towns or cities where the applicants would be located.

(c) Each time a compassion center certificate is granted, the decision shall be based on the overall health needs of qualified patients and the safety of the public, including, but not limited to, the following factors:

(1) Geographic convenience to patients from throughout the state of New Hampshire to compassion centers if the applicant were approved.

(2) The entity's ability to provide a steady supply to the registered qualifying patients in the state.

(3) The entity's ability to demonstrate its members' experience running a non-profit organization or business.

(4) The comments, if any, of qualifying patients regarding which applicant should be granted a registration certificate.

(5) The comments, if any, of the city or town where the applicant would be located.

(6) The sufficiency of the applicant's plans for record keeping, which records shall be considered confidential health care information under New Hampshire law and are intended to be deemed protected health care information for purposes of the federal Health Insurance Portability and Accountability Act of 1996, as amended.

(7) The sufficiency of the applicant's plans for safety and security, including proposed location and security devices employed.

(d) After a compassion center is approved, but before it begins operations, it shall submit the following to the department:

(1) A licensing fee paid to the department in accordance with the rules adopted by the department.

(2) The legal name and articles of incorporation of the compassion center.

(3) The physical address of the compassion center; this may include a second address for the secure cultivation of marijuana.

(4) The name, address, and date of birth of each principal officer and board member of the compassion center and a complete set of fingerprints for each of them.

(5) The name, address, and date of birth of any person who will be an agent of or employed by the compassion center at its inception, along with a complete set of fingerprints for each of them.

(e) The department shall track the number of registered qualifying patients who have designated each compassion center and issue a monthly written statement to the compassion center identifying the number of registered qualifying patients who have designated that compassion center along with the registry identification numbers of each patient and each patient's designated caregivers.

(f) In addition to the monthly reports, the department shall also provide written

notice to a compassion center which identifies the names and registration identification numbers of a qualifying patient and his or her designated caregivers whenever any of the following events occur:

- (1) A qualifying patient designates the compassion center to serve his or her needs under this chapter;
 - (2) An existing registered qualifying patient revokes the designation of the compassion center because he or she has designated a different compassion center instead; or
 - (3) A registered qualifying patient who has designated the compassion center loses his or her status as a registered qualifying patient under this chapter.
- (g) Except as provided in subparagraph (h), the department shall issue each principal officer, board member, agent, volunteer, and employee of a compassion center a registry identification card or renewal card within 10 days of receipt of the person's name, address, and date of birth and a fee in an amount established by the department. Each card shall specify that the cardholder is a principal officer, board member, agent, volunteer, or employee of a compassion center and shall contain the following:
- (1) The name, address, and date of birth of the principal officer, board member, agent, volunteer, or employee.
 - (2) The legal name of the compassion center to which the principal officer, board member, agent, volunteer, or employee is affiliated.
 - (3) A random identification number that is unique to the cardholder.
 - (4) The date of issuance and expiration date of the registry identification card.
 - (5) A photograph, if the department decides to require one.
- (h) Except as provided in this section, the department shall not issue a registry identification card to any principal officer, board member, agent, volunteer, or employee of a compassion center who has been convicted of a drug-related offense. The department shall conduct a background check of each principal officer, board member, agent, volunteer, or employee in order to carry out this provision. The department shall notify the compassion center in writing of the purpose for denying the registry identification card. The department may grant such person a registry identification card if the department determines that the offense was for conduct that occurred prior to the effective date of this chapter or that was prosecuted by an authority other than the state of New Hampshire and for which the provisions of this chapter would otherwise have prevented a conviction.
- (i) A registration identification card of a principal officer, board member, agent, volunteer, or employee shall expire one year after its issuance, or upon the expiration of the registered organization's registration certificate, whichever occurs first.
- (j) Notwithstanding any other provision of law, information required to be submitted to the department on an application for a compassion center identifying the locations where marijuana is proposed to be grown, cultivated, harvested, and otherwise prepared for distribution to qualifying patients, registered caregivers, and

compassion centers, if such location is different from the location of the compassion center, and any other department records identifying such location, shall be considered to be confidential information and not subject to disclosure pursuant to RSA 91-A, provided that such information may be disclosed to a law enforcement agency upon request for purposes of enforcement under this chapter.

IV.(a) A compassion center's registration shall expire 2 years after its registration certificate is issued. The compassion center may submit a renewal application beginning 60 days prior to the expiration of its registration certificate.

(b) The department shall grant a compassion center's renewal application within 30 days of its submission if the following conditions are all satisfied:

(1) The compassion center submits the materials required under subparagraph III(d), including the required fee, which shall be refunded within 30 days if the renewal application is rejected.

(2) The department has not suspended the compassion center's registration for violations of this chapter or rules adopted pursuant to this chapter.

(3) The compassion center is complying with the requirements in paragraph VI.

(4) The inspections authorized by paragraph V and the report, provided pursuant to subparagraph VI(h), do not raise serious concerns about the continued operation of the compassion center applying for renewal.

(c) If the department determines that any of the conditions listed in subparagraphs IV(b)(1)-(4) do not exist, the department shall begin an open application process for the operation of a compassion center. In granting a new registration certificate, the department shall consider factors listed in subparagraph III(c).

(d) The department shall issue a compassion center one or more 30-day temporary registration certificates after that compassion center's registration would otherwise expire if the following conditions are all satisfied:

(1) The compassion center previously applied for a renewal, but the department had not yet come to a decision.

(2) The compassion center requested a temporary registration certificate.

(3) The compassion center has not had its registration certificate revoked due to violations of this chapter or rules adopted pursuant to this chapter.

V. Compassion centers shall be subject to reasonable inspection by the department of health and human services. The department shall give reasonable notice of an inspection under this paragraph. During an inspection, the department may review the compassion center's confidential records, including its dispensing records, which shall track transactions according to qualifying patients' registry identification numbers to protect their confidentiality.

VI.(a) A compassion center shall be operated on a not-for-profit basis for the mutual benefit of its patients. A compassion center need not be recognized as a tax-exempt organization by the Internal Revenue Service.

(b) A compassion center may not be located within 500 feet of the property line of a pre-existing public or private school.

(c) A compassion center shall notify the department within 10 days of when a principal officer, board member, agent, volunteer, or employee ceases to be associated with and/or work at the compassion center. His or her registry identification card shall be deemed null and void and the person shall be liable for any other penalties that may apply to the person's non-medical use of marijuana.

(d) A compassion center shall notify the department in writing of the name, address, and date of birth of any proposed new principal officer, board member, agent, volunteer, or employee and shall submit a fee in an amount established by the department for a new registry identification card before a new agent or employee begins working at the compassion center, and shall submit a complete set of fingerprints for the prospective principal officer, board member, agent, volunteer, or employee.

(e) A compassion center shall implement appropriate security measures to deter and prevent the unauthorized entrance into areas containing marijuana and the theft of marijuana, and shall ensure that each location has an operational security alarm system.

(f) The operating documents of a compassion center shall include procedures for the oversight of the compassion center and procedures to ensure accurate record keeping.

(g) A compassion center is prohibited from acquiring, possessing, cultivating, manufacturing, delivering, transferring, transporting, supplying, and/or dispensing marijuana for any purpose except to assist patients who are allowed to use marijuana pursuant to this chapter with the medical use of marijuana directly or through the qualifying patients' designated caregiver.

(h) A compassion center shall submit an annual report to the department which evaluates whether the compassion center is adequately providing patients with access to medical marijuana.

VII.(a) A compassion center or principal officer, board member, agent, volunteer, or employee of a compassion center shall not dispense more than 2 ounces of usable marijuana to a registered qualifying patient directly or through the qualifying patient's registered designated caregiver during a 10-day period.

(b) A compassion center or principal officer, board member, agent, volunteer, or employee of a compassion center shall not dispense an amount of usable marijuana to a qualifying patient or a designated caregiver that the compassion center, principal officer, board member, agent, volunteer, or employee knows would cause the recipient to possess more marijuana than is permitted under this chapter.

VIII.(a) No registered compassion center shall be subject to the following:

(1) Prosecution for the acquisition, possession, cultivation, manufacture, delivery, transfer, transport, supply, or dispensing of marijuana, and/or related supplies for medical purposes in accordance with the provisions of this chapter and any rule adopted by the department pursuant to this chapter.

(2) Inspection and search, except pursuant to paragraph V or upon a search warrant issued by a court or judicial officer.

(3) Seizure of marijuana, except upon any order issued by a court or judicial officer.

(4) Imposition of any penalty or denied any right or privilege including, but not limited to, imposition of a civil penalty or disciplinary action by an occupational or professional licensing board or entity, solely for acting in accordance with this chapter to assist registered qualifying patients or registered caregivers with the medical use of marijuana.

(b) No principal officers, board members, agents, volunteers, or employees of a compassion center shall be subject to arrest, prosecution, search, seizure, or penalty in any manner, or denied any right or privilege including, but not limited to, civil penalty or disciplinary action by a business, occupational, or professional licensing board or entity, solely for working for or with a compassion center to engage in acts permitted by this chapter.

IX.(a)(1) A compassion center shall not possess an amount of marijuana that exceeds whichever of the following quantities is greater: (a) 96 marijuana plants, 96 seedlings, and 32 ounces of useable marijuana; or (b) 6 plants, 6 seedlings, and 2 ounces for each registered qualifying patient who has designated the compassion center to provide him or her with marijuana for medical use.

(2) A compassion center may possess marijuana seeds, stalks, and unusable roots.

(b) A compassion center shall not dispense, deliver, or otherwise transfer marijuana to a person other than a registered qualifying patient who has designated it or such patient's registered designated caregiver.

(c) A person found to have violated subparagraph (b) of this section shall not be an employee, volunteer, agent, principal officer, or board member of any compassion center, and such person's registry identification card shall be immediately revoked.

(d) No person who has been convicted of a drug-related offense shall be a principal officer, board member, agent, volunteer, or employee of a compassion center unless the department has determined that the person's conviction was for the medical use of marijuana or assisting with the medical use of marijuana and issued the person a registry identification card as provided under subparagraph III(g). A person who is employed by or is an agent, volunteer, principal officer, or board member of a compassion center in violation of this paragraph shall be guilty of a civil violation punishable by a fine of up to \$1,000. A subsequent violation of this paragraph shall be a misdemeanor.

(e) All cultivation of marijuana shall take place in an enclosed, locked facility, which can only be accessed by principal officers, board members, agents, volunteers, or employees of the registered compassion center who are cardholders.

126-S:9 Annual Report. The commissioner of the department of health and human services shall report annually on the medical marijuana program established under this chapter to the health and human services oversight committee established under RSA 126-A:13. The report shall be filed with the chairman of the committee by November 1 of each year beginning with November 1, 2010. The commissioner's report shall include the following areas:

I. The ability of qualifying patients and registered caregivers in all areas of the state to obtain timely access to medical marijuana.

II. The effectiveness of the registered compassion centers individually and together in serving the needs of qualifying patients and registered caregivers, including the provision of educational and support services.

III. Physician participation in the medical marijuana program.

IV. The number of registered caregivers and the number of qualifying patients, by county.

V. Sufficiency of the regulatory and security safeguards contained in this chapter to ensure that access to and use of marijuana cultivated is provided only to cardholders authorized for such purposes.

VI. Any illegal distribution or diversion of marijuana cultivated pursuant to this chapter to individuals who are not cardholders.

VII. Any other issues related to the implementation of the medical use of marijuana permitted under this chapter that the committee shall request.

VIII. A detailed summary of the reports submitted by the compassion centers as required under RSA 126-S:8, VI(h).

126-S:10 Severability. If any provision of this chapter or the application thereof to any individual or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

3 Contingency. If SB 147-FN of the 2009 legislative session becomes law, RSA 126-S and all references to RSA 126-S as inserted by this act shall be renumbered as RSA 126-T.

4 Effective Date.

I. Section 1 of this act shall take effect January 1, 2010.

II. Section 2 of this act, except for RSA 126-S:3, IV, RSA 126-S:4, and RSA 126-S:8, II, shall take effect January 1, 2010.

III. The remainder of this act shall take effect upon its passage.

LBAO

09-0343

01/23/09

HB 648-FN - FISCAL NOTE

AN ACT relative to the use of marijuana for medicinal purposes.

FISCAL IMPACT:

The Judicial Branch, Judicial Council, and Department of Corrections state this bill may have an indeterminable fiscal impact on state expenditures in FY 2010 and each year thereafter. The Department of Health and Human Services states this bill will increase state expenditures by \$194,044 in FY 2010, \$46,435 in FY 2011, \$48,959 in FY 2012, and \$51,797 in FY 2013. This bill will have no fiscal impact on

state, county and local revenue, or county and local expenditures.

METHODOLOGY:

The Judicial Branch states this bill would enact RSA 126-S relative to the use of marijuana for medicinal purposes when prescribed by a physician. RSA 126-S:3, VIII (d) adds a new class A misdemeanor for breaching confidentiality of information pursuant to the chapter. The Branch does not have any information on the number of new class A misdemeanors that will be brought pursuant to this section, however, the average cost of processing a class A misdemeanor charge in the district court is \$51.14. The Branch is unable to determine how many appeals may arise, but full appellate consideration would have a fiscal impact on the Branch. The cost to the Branch of an average complex equity case in the superior court is \$506.60. RSA 126-S:5, III, provides for a \$500 fine for fraudulent representation to a law enforcement official of any fact or circumstance relative to the medical use of marijuana to avoid arrest or prosecution. The Branch has no information on the number of fines that would be issued pursuant to this section. The Branch also states this bill could elongate trials for the illegal use of marijuana where a defendant raises the defense of medical use. The Branch has no information to determine how many trials will be elongated due to this defense or what the fiscal impact will be. The Branch states if the Department of Health and Human Services fails to adopt rules to implement the chapter within 120 days of its effective date, such an action would be considered a complex equity case, in which the case would be brought to the superior court, which holds an average cost of \$506.50 per case. Lastly, this bill will provide no one shall be prosecuted for a marijuana-related offense if his or her actions were in accordance with this proposed RSA Chapter 126-S. The Branch would see savings due to the decreased number of marijuana prosecutions tried.

The Judicial Council states that, according to the Public Defender, there are approximately ten cases which arise usually from the production of marijuana which is used for medicinal purposes. It could be assumed that those cases may not arise if this bill is enacted. The bill also establishes a class A misdemeanor for the fraudulent representation to a law enforcement official of any fact or circumstance relating to the medical use of marijuana to avoid arrest or prosecution. There is no right to counsel for class A misdemeanors. The Council states this bill may reduce indigent defense costs, but are unable to determine the exact fiscal impact at this time.

The Department of Corrections states the number of individuals who would no longer be incarcerated can not be determined, however, the average annual cost of incarcerating an individual in the general prison population for the fiscal year ending June 30, 2008 was \$32,753. The cost to supervise an individual by the Department's division of field services for the fiscal year ending June 30, 2008 was \$779. The Department states this bill may decrease expenditures by an indeterminable amount, but is unable to predict the number of individuals that might be impacted.

The Department of Health and Human Services states this bill will require DHHS to register and issue "registry identification cards" to individuals

qualified to use marijuana for medicinal purposes. The Department would be required to process applications and verify information presented by the applicant, issue registry identification cards that would include a unique identification number, establish a secure internet based system that law enforcement can use to verify registry identification cards, and revoke registry identification cards for violation of the law. The Department assumes that 1 full time licensing clerk (labor grade 11) would be required. The salary and benefits of this position would cost \$44,044 in FY 2010, \$46,435 in FY 2011, \$48,959 in FY 2012, and \$51,797 in FY 2013. The Department anticipates a one-time cost to build a secure internet based system of \$150,000 in FY 2010.

The Department of Safety states the proposed legislation will have no fiscal impact to the Department. This bill will require the Division of State Police to continue to test marijuana on non-card carrying individuals and card carrying individuals if they claim they are possessing, cultivating, using, delivering, transferring, or transporting the marijuana relating to the administration of the marijuana for medicinal purposes.

This bill does not establish positions or contain an appropriation.