

## HB 774-FN – AS INTRODUCED

2007 SESSION

07-0015

04/03

### HOUSE BILL **774-FN**

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

SPONSORS: Rep. T. Robertson, Ches 3; Rep. Weed, Ches 3; Rep. Ingbretson, Graf 5;  
Rep. Vaillancourt, Hills 15; Rep. L. Hammond, Graf 11

COMMITTEE: Health, Human Services and Elderly Affairs

#### ANALYSIS

This bill establishes procedures for the use of medical marijuana under a physician's supervision.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

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. The general court finds that:

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

II. The general court admits that it would prefer for the federal government to permit marijuana to be prescribed by physicians and to be dispensed at pharmacies. However, the general court finds that the federal government has shown no indication that it will change federal policy with regard to medical marijuana, as evidenced by the federal government's reluctance to allow even FDA-approved clinical trials to move forward.

III. According to the U.S. Sentencing Commission and the Federal Bureau of Investigation, more than 99 out of every 100 marijuana arrests are made under state law, rather than under federal law. Consequently, the general court finds that

changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marijuana.

IV. Although federal law expressly prohibits the use of marijuana, the general court recognizes that the laws of Alaska, California, Colorado, Hawaii, Maine, Nevada, Oregon, Vermont, Montana, Rhode Island, and Washington permit the medical use and cultivation of marijuana. The general court intends to join in this effort for the health and welfare of its citizens. However, the general court does not intend to make marijuana legally available for other than medical purposes.

V. The state is not required to enforce federal law or prosecute individuals for engaging in activities prohibited by federal law. Therefore, compliance with this act does not put the state in violation of federal law.

VI. State law should make a distinction between the medical and non-medical use of marijuana. Hence, the purpose of this act is to ensure that physicians are not penalized for discussing marijuana as a treatment option with their patients, and seriously ill people who engage in the medical use of marijuana upon their physicians' advice are not arrested and incarcerated for using marijuana for medical purposes.

2 New Chapter; Use of Medical Marijuana. Amend RSA by inserting after chapter 126-Q the following new chapter:

## CHAPTER 126-R

### USE OF MEDICAL MARIJUANA

126-R:1 Definitions. In this chapter:

I. "Adequate supply" means an amount of marijuana collectively possessed between the qualifying patient and the qualifying patient's primary caregivers that is not more than is reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition; provided that an "adequate supply" shall not exceed 3 mature marijuana plants, 4 immature marijuana plants, and 3 ounces of usable marijuana. "Usable marijuana" means the dried leaves and flowers of marijuana, and any mixture or preparation thereof, that are appropriate for the medical use of marijuana, and does not include the seeds, stalks, and roots of the plant.

II. "Commissioner" means the commissioner of the department of health and human services.

III. "Debilitating medical condition" means:

(a) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, or the treatment of these conditions;

(b) A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe or chronic pain; severe nausea; seizures, including but not limited to those characteristic of epilepsy; or severe and persistent muscle spasms, including those characteristic of multiple sclerosis or Crohn's disease or agitation of Alzheimer's disease; or

(c) Any other medical condition or its treatment approved by the department, as provided for in RSA 126-R:2.

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

V. "Medical use" means the acquisition, manufacture, cultivation, use, transfer, or transportation of marijuana or paraphernalia relating to the consumption of marijuana to alleviate a qualifying patient's debilitating medical condition or symptoms associated with such medical condition. For the purposes of "medical use," the term "transfer" is limited to the transfer of marijuana and paraphernalia between primary caregivers and qualifying patients.

VI. "Physician" means a person who is licensed under RSA 329.

VII. "Primary caregiver" means a person who is at least 18 years old and who has agreed to undertake responsibility for managing the well-being of a patient with respect to the medical use of marijuana.

VIII. "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

IX. "Written certification" means the qualifying patient's medical records or a statement 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, 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.

126-R:2 Rulemaking; Debilitating Medical Conditions. Not later than 90 days after the effective date of this chapter, the department shall adopt rules, under RSA 541-A, relative to governing the manner in which it will consider petitions submitted by physicians or patients to add debilitating medical conditions to those included in this chapter. In considering such petitions, the department shall include public notice of and an opportunity to comment in a public hearing upon such petitions. The department shall, after hearing, approve or deny such petitions within 180 days of submission. The approval or denial of such a petition shall be considered a final agency action, subject to judicial review pursuant to RSA 541.

126-R:3 Exemption from Criminal and Civil Penalties for the Medical Use of Marijuana.

I. A qualifying patient who has in his or her possession written certification shall not be subject to arrest, prosecution, disciplinary action by a professional licensing board, or penalty in any manner, or denied any right or privilege for the medical use of marijuana, provided the quantity of marijuana does not exceed an adequate supply.

II. Paragraph I shall not apply to a qualifying patient under the age of 18 years, unless:

(a) The qualifying patient's physician has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient and to a parent, guardian, or person having legal custody of the qualifying patient; and

(b) A parent, guardian, or person having legal custody consents in writing to:

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

(2) Serve as the qualifying patient's primary 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. A primary caregiver shall not be subject to arrest, prosecution, disciplinary action by a professional licensing board, or penalty of any kind, or denied any right or privilege for assisting a qualifying patient with the medical use of marijuana provided that the primary caregiver possesses a quantity of marijuana not in excess of an adequate supply.

IV. A physician shall not be subject to arrest, prosecution, disciplinary action by a professional licensing board, or penalized in any manner, or denied any right or privilege for providing written certification for the medical use of marijuana to qualifying patients.

V. Any interest in or right to property that is possessed, owned, or used in connection with the medical use of marijuana, or acts incidental to such use shall not be forfeited. A law enforcement agency that seizes and fails to return usable marijuana to a qualifying patient shall be liable to the qualifying patient for the fair market value of the marijuana.

VI. No person shall be subject to arrest or prosecution for "constructive possession," "conspiracy," "aiding and abetting as an accessory," or any other offense for simply being in the presence or vicinity of the medical use of marijuana as permitted under this chapter, or for assisting a qualifying patient with using or administering marijuana.

#### 126-R:4 Prohibitions, Restrictions, and Limitations Regarding the Medical Use of Marijuana.

I. The authorization for the medical use of marijuana in this chapter shall not apply to:

(a) The medical use of marijuana that endangers the health or well-being of another person, such as driving or operating heavy machinery while under the influence of marijuana.

(b) The smoking of marijuana:

(1) In a school bus, public bus, or other public vehicle.

(2) In the workplace of one's employment.

(3) On any school grounds.

(4) In any correctional facility.

(5) At any public park, public beach, public recreation center, or youth center.

(c) Any person operating, navigating, or physically controlling a motor vehicle, aircraft, or motorboat while under the influence of marijuana.

(d) The use of marijuana by a qualifying patient, primary caregiver, or any other

person for purposes other than medical use permitted by this chapter.

II. A government medical assistance program or private health insurer shall not be required to reimburse a qualifying patient for costs of medical marijuana.

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 a class B misdemeanor. This penalty shall be in addition to any other penalties that may apply for the non-medical use of marijuana.

126-R:5 Establishing a Defense in Court for Patients and Primary Caregivers. Except as provided in RSA 126-R:4, a patient or primary caregiver may assert the medical use of marijuana as a defense to any prosecution involving marijuana, and such defense shall be presumed valid where the evidence shows that:

I. The patient's medical records indicate, or a physician has stated that, in the physician's professional opinion, after having completed a full assessment of the patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the potential benefits of the medical use of marijuana would likely outweigh the health risks for the patient.

II. The patient and the patient's primary caregivers were collectively in possession of a quantity of marijuana not more than was reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of alleviating the person's medical condition or symptoms associated with such condition.

126-R:6 Severability. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provisions or applications, and to this end the provisions of this chapter are severable.

3 Repeal. The following are repealed:

I. RSA 318-B:9, VI, relative to dispensing prescribed cannabis-type drugs.

II. RSA 318-B:10, VI, relative to a physician prescribing cannabis-type drugs for certain medical purposes.

4 Effective Date. This act shall take effect January 1, 2008.

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### **HB 774-FN - FISCAL NOTE**

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

#### **FISCAL IMPACT:**

The Judicial Branch, Judicial Council, and Department of Justice state this bill may have an indeterminable fiscal impact on state expenditures in FY 2008 and each year thereafter. 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-R relative to the use of marijuana for medicinal purposes. The Branch states this bill would allow the Department of Health and Human Services to add debilitation medical conditions to those included in the proposed statute through rules, which could be appealed to the Supreme Court pursuant to RSA 541. The Branch is unable to determine how many appeals may arise, but full appellate consideration would have a fiscal impact on the Branch. The bill also adds a new class B misdemeanor 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 estimates the clerical and judicial cost of a class B misdemeanor at \$36.71 per charge using current salary levels. 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 estimates the hourly cost of a jury trial at \$225.73, and the hourly cost in District Court of a judge and bailiff at \$101.86. The Branch is unable to determine the exact fiscal impact at this time.

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 B 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 B misdemeanors. The Council states this bill may reduce indigent defense costs, but are unable to determine the exact fiscal impact at this time.

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The Department of Justice states they prosecute some marijuana cases, although the quantities involved are generally larger than those referenced in the bill. Because the bill legalizes the manufacture, possession, and use of marijuana under specified circumstances, it may result in a slight decrease in the number of cases referred to the Department for prosecution. However, because this bill would be applicable to only a select group of individuals, the decrease would likely be negligible.

The Board of Medicine states this bill will have no fiscal impact on the Board.