

HB 648-FN - AS AMENDED BY THE HOUSE

24Mar2009... 0877h

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

ANALYSIS

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

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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09-0343

04/01

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 caregiver, 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 or a designated caregiver who has been issued and possesses a valid registry identification card.

II. "Debilitating medical condition" means:

(a) A chronic or terminal disease, or medical condition whose symptoms or result of treatment may include 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.

(b) A chronic or terminal disease which may include cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, muscular dystrophy, Crohn's disease, agitation of Alzheimer's disease, or multiple sclerosis.

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

IV. "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, or a licensed health care professional, who has agreed to assist with a patient's medical use of marijuana, and who has never been convicted of a felony offense. A designated caregiver may assist no more than one qualifying patient with the medical use of marijuana.

V. “Felony offense” means:

(a) A violent crime defined in RSA 651:5, XIII, or an offense that was classified as a felony in the jurisdiction where the individual was convicted; or

(b) A violation of a state or federal controlled substance law that was classified as a felony in the jurisdiction where the individual was convicted. It shall not include:

(1) An offense for which the sentence, including any term of probation, incarceration, or supervised release, was completed 10 or more years earlier; or

(2) An offense that consisted of conduct for which this chapter would likely have prevented a conviction, but the conduct either occurred prior to the effective date of this chapter or was prosecuted by an authority other than the state of New Hampshire.

VI. “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.

VII. “Medical use” means the acquisition, possession, cultivation, 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.

VIII. “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.

IX. “Qualifying patient” means an individual who has been diagnosed by a physician as having a debilitating medical condition.

X. “Registry identification card” means a document issued by the department that identifies an individual as a qualifying patient or designated caregiver.

XI. “Unusable marijuana” means marijuana seeds, stalks, seedlings, and unusable roots. “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.

XII. “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.

XIII. “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.

XIV. “Written certification” means a document signed by a physician, stating that in the physician’s professional opinion the patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient’s debilitating medical condition or symptoms or results of

treatment associated with the debilitating medical condition. A written certification shall be made only in the course of a bona fide physician-patient relationship as defined in RSA 329:1-c after the physician has completed a full assessment of the qualifying patient's medical history. The written certification shall specify the qualifying patient's debilitating medical condition.

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 6 marijuana plants and 2 ounces of usable marijuana. The cultivation process shall occur on the qualifying patient's property. 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 possess an amount of marijuana that does not exceed 6 marijuana plants and 2 ounces of usable marijuana for the qualifying patient to whom he or she is connected through the department's registration process. A designated caregiver shall remain subject to the provisions of RSA 126-S:5.

III. Designated caregivers and qualifying patients shall be allowed to possess a reasonable amount of unusable marijuana, including up to 6 seedlings, which shall not be counted toward the limits in this section.

IV.(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)-(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.

V. A qualifying patient or designated caregiver 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 giving marijuana to another qualifying patient or another qualifying patient's designated caregiver for the other qualifying patient's medical use where nothing of value is transferred in return, or for offering to do the same, provided that the individual giving the marijuana does not knowingly cause the recipient to possess more marijuana than is permitted under paragraph II. The conduct permitted under this paragraph shall not constitute a sale.

VI.(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, if the discrimination is 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.

VII. 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 of the minor as established by clear and convincing evidence.

VIII. 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.

IX. 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.

X. 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.

XI. 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, or for assisting a qualifying patient with using or administering marijuana.

XII. 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, II exists.

XIII. Any cardholder who sells or transfers marijuana to an individual who is not allowed to use marijuana for medical purposes 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.

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.
- (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) 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.
- (g) 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; and
 - (2) Serve as the qualifying patient's designated caregivers; 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 issue a registry identification card to the designated caregiver, if any, who is named in a qualifying patient's approved application. 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.

V. The department shall issue registry identification cards to qualifying patients and to the designated caregiver 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. Registry identification cards shall contain all of the following:

- (a) Name, mailing address, and date of birth of the qualifying patient.
- (b) Name, address, and date of birth of the qualifying patient's designated caregiver, if any.
- (c) The date of issuance and expiration date of the registry identification card.
- (d) A random 20-digit identification number, containing at least 4 numbers and at least 4 letters, that is unique to the cardholder.
- (e) A photograph, if the department decides to require one.
- (f) A statement that the qualifying patient is permitted under state law to possess marijuana pursuant to this chapter for his or her medical use.

VI. The following notifications and department responses are required:

- (a) A qualifying patient shall notify the department of any change in his or her name, address, or designated caregiver, or if the qualifying patient ceases to have his or her debilitating medical condition, within 10 days of such change.
- (b) A qualifying patient 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 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 or designated caregiver notifies the department of any changes listed in this paragraph, the department shall issue the qualifying patient and the designated caregiver a new registry identification card with new random 20-digit identification numbers within 10 days of receiving the updated information and a \$10 fee.
- (e) When a qualifying patient ceases to be a qualifying patient or changes his or her designated caregiver, the department shall notify the designated caregiver within 10 days. The designated caregiver's protections under this chapter as to that qualifying patient shall expire 10 days after notification by the department.
- (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 identification number.

VII. 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.

VIII. The following confidentiality rules shall apply:

- (a) Applications and supporting information submitted by qualifying patients and designated caregivers, including information regarding their designated caregivers and physicians, shall be confidential.
- (b) The department shall maintain a confidential list of the individuals to whom the department has issued registry identification cards. Individual names and other identifying information on the list shall be confidential, and not subject to disclosure, except to authorized employees of the department as necessary to perform official duties of the department.
- (c) The department shall verify to law enforcement personnel whether a registry identification card is valid, without disclosing more information than is reasonably necessary to verify the authenticity of the registry identification card. The department shall establish a secure Internet-based system, or an unstaffed, automated 24-hour toll-free telephone number, or both, which law enforcement personnel can use to verify registry identification cards outside of business hours. The 24-hour number or Internet-based system shall allow law enforcement to enter in a registry identification number to determine whether or not the number corresponds with a current, valid ID card. The system may disclose the name and photograph of the cardholder, but shall not disclose the address. Searches in the 24-hour system can only be conducted by registry identification number.
- (d) An individual shall be guilty of a class 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 reporting.

IX. 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 nature of the debilitating medical conditions of the qualifying patients.
- (d) The number of registry identification cards revoked.
- (e) The number of physicians providing written certifications for qualifying patients.

X. 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.

XI. 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 120 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 that generate revenues sufficient to offset all expenses of implementing and administering this chapter. The department may establish a sliding scale of application and renewal fees based upon a qualifying patient's family income. The department may accept donations from private sources in order to reduce the application and renewal fees.

126-S:5 Applicability.

I. Nothing in this chapter shall be construed to prohibit an individual from being prosecuted for any of the following:

- (a) Undertaking any task under the influence of marijuana, when doing so would constitute negligence or professional malpractice;
- (b) Possessing marijuana, or otherwise engage in the medical use of marijuana in a school bus, on the grounds of any preschool or primary or secondary school, or in any correctional facility.
- (c) Smoking marijuana on any form of public transportation or in any public place.
- (d) Operating, navigating, or being in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marijuana. However, a qualifying patient shall not be considered to be under the influence of marijuana solely because of the presence of metabolites or components of marijuana that appear in insufficient concentration to cause impairment.
- (e) Using marijuana if that individual does not have a serious or debilitating medical condition.

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

- (a) A government medical assistance program or private health insurer to reimburse an individual for costs associated with 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; or
- (c) An employer to accommodate the ingestion of marijuana in any workplace, or any employee working while under the influence of marijuana, provided that a qualifying patient shall not be considered to be under influence of marijuana solely because of the presence of metabolites or components of marijuana that appear in insufficient concentration to cause impairment. 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.

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 Medical Necessity Defense.

I. Except as provided in RSA 126-S:5, a qualifying patient may assert the medical necessity defense for using marijuana as a defense to any prosecution of an offense involving marijuana intended for the qualifying patient's medical use, and this defense shall be presumed valid where the evidence shows by clear and convincing evidence that:

(a) A physician has stated 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 is likely to receive therapeutic or palliative benefit from the medical use of marijuana 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; and

(b) The qualifying patient and the patient's designated caregiver, if any, were collectively in possession of a quantity of marijuana that was not more than was reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of treating or alleviating the qualifying patient's serious or debilitating medical condition or symptoms associated with the qualifying patient's serious or debilitating medical condition; and

(c) The qualifying patient or the qualifying patient's designated caregiver was engaged in the acquisition, possession, cultivation, 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; and

II. If a qualifying patient demonstrates that he or she is using marijuana pursuant to this chapter, except as provided in RSA 126-S:5, the qualifying patient and the patient's designated caregiver shall not be subject to the following:

(a) Disciplinary action by an occupational or professional licensing board or bureau; or

(b) Forfeiture of any interest in or right to non-marijuana, licit property.

(c) Civil or criminal penalties, except as otherwise provide in this chapter.

126-S:7 Enforcement.

I. If the department fails to issue a valid registry identification card in response to a valid application or renewal submitted pursuant to this chapter within 20 days of its submission, 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 120 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 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 Effective Date. This act shall take effect January 1, 2010.

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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.

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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.