

A bill for an act

relating to health; providing for the medical use of marijuana; providing civil and criminal penalties; appropriating money; amending Minnesota Statutes 2006, section 13.3806, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter 152.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2006, section 13.3806, is amended by adding a subdivision to read:

Subd. 21. **Medical use of marijuana data.** Data collected by the commissioner of health relating to registrations for the medical use of marijuana are classified in section 152.25, subdivision 5.

Sec. 2. **[152.22] DEFINITIONS.**

Subdivision 1. **Applicability.** For purposes of sections 152.22 to 152.31, the terms defined in this section have the meanings given them.

Subd. 2. **Allowable amount of marijuana.** (a) With respect to a qualifying patient, the "allowable amount of marijuana" means:

(1) 2.5 ounces of usable marijuana; and

(2) any amount of other parts of the marijuana plant.

(b) With respect to a primary caregiver, the "allowable amount of marijuana" for each patient means:

(1) 2.5 ounces of usable marijuana; and

(2) any amount of other parts of the marijuana plant.

(c) With respect to a registered organization, the "allowable amount of marijuana" for each patient means:

(1) 12 marijuana plants;

(2) 2.5 ounces of usable marijuana; and

(3) any amount of other parts of the marijuana plant.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of health.

Subd. 4. **Debilitating medical condition.** "Debilitating medical condition" means:

(1) cancer, glaucoma, acquired immune deficiency syndrome, hepatitis C, Tourette's Syndrome, or the treatment of these conditions;

(2) a chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; intractable pain, which is pain that has not responded to ordinary medical or surgical measures for more than six months; severe nausea; seizures, including, but not limited to, those characteristic of epilepsy; severe and persistent muscle spasms, including, but not limited to, those characteristic of multiple sclerosis and Crohn's disease; or agitation of Alzheimer's disease;

(3) the condition of an HIV-positive patient when the patient's condition has worsened and the patient's physician believes the patient could benefit from consumption of marijuana; or

(4) any other medical condition or its treatment approved by the commissioner.

Subd. 5. **Department.** "Department" means the Minnesota Department of Health.

Subd. 6. **Medical use.** "Medical use" means the acquisition, possession, use, delivery, transfer, or transportation of marijuana or paraphernalia relating to the consumption of marijuana to alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the medical condition.

Subd. 7. **Practitioner.** "Practitioner" means a licensed doctor of medicine, a licensed doctor of osteopathy licensed to practice medicine, a physician assistant, or an advance practice registered nurse.

Subd. 8. **Primary caregiver.** "Primary caregiver" means a person who is at least 18 years old and who has agreed to assist with a qualifying patient's medical use of marijuana. A primary caregiver may assist no more than five qualifying patients with their medical use of marijuana.

Subd. 9. **Qualifying patient.** "Qualifying patient" means a person who has been diagnosed by a practitioner as having a debilitating medical condition.

Subd. 10. **Registry identification card.** "Registry identification card" means a document issued by the commissioner that identifies a person as a qualifying patient or primary caregiver.

3.1 Subd. 11. **Usable marijuana.** "Usable marijuana" means the dried leaves and
3.2 flowers of the marijuana plant, and any mixture or preparation of it, but does not include
3.3 the seeds, stalks, and roots of the plant.

3.4 Subd. 12. **Written certification.** "Written certification" means a statement signed
3.5 by a practitioner, stating that in the practitioner's professional opinion the potential
3.6 benefits of the medical use of marijuana would likely outweigh the health risks for the
3.7 qualifying patient. A written certification shall only be made in the course of a bona fide
3.8 practitioner-patient relationship after the practitioner has completed a full assessment
3.9 of the qualifying patient's medical history. The written certification shall specify the
3.10 qualifying patient's debilitating medical condition or conditions.

3.11 **Sec. 3. [152.23] PROTECTIONS FOR MEDICAL USE OF MARIJUANA.**

3.12 Subdivision 1. **Qualifying patient.** A qualifying patient who possesses a registry
3.13 identification card shall not be subject to arrest, prosecution, or penalty in any manner, or
3.14 denied any right or privilege, including, but not limited to, civil penalty or disciplinary
3.15 action by a business or occupational or professional licensing board or entity, for the
3.16 medical use of marijuana, provided that the qualifying patient possesses an amount of
3.17 marijuana that does not exceed the allowable amount.

3.18 Subd. 2. **Primary caregiver.** A primary caregiver who possesses a registry
3.19 identification card shall not be subject to arrest, prosecution, or penalty in any manner, or
3.20 denied any right or privilege, including, but not limited to, civil penalty or disciplinary
3.21 action by a business or occupational or professional licensing board or entity, for
3.22 assisting a qualifying patient to whom the primary caregiver is connected through the
3.23 commissioner's registration process with the medical use of marijuana, provided that the
3.24 primary caregiver possesses an amount of marijuana that does not exceed the allowable
3.25 amount of marijuana for each qualifying patient to whom the primary caregiver is
3.26 connected through the registration process.

3.27 Subd. 3. **Discrimination prohibited.** No school, employer, or landlord may refuse
3.28 to enroll, employ, lease to, or otherwise penalize a person solely for the person's status as a
3.29 registered qualifying patient or a registered primary caregiver.

3.30 Subd. 4. **Presumption.** (a) There is a presumption that a qualifying patient or
3.31 primary caregiver is engaged in the medical use of marijuana if the qualifying patient or
3.32 primary caregiver:

3.33 (1) is in possession of a registry identification card; and

3.34 (2) is in possession of an amount of marijuana that does not exceed the amount
3.35 permitted under sections 152.22 to 152.31.

(b) The presumption may be rebutted by evidence that conduct related to marijuana was not for the purpose of alleviating the qualifying patient's debilitating medical condition or symptoms associated with the medical condition.

Subd. 5. **Caregiver's reimbursement.** A primary caregiver may receive reimbursement for costs associated with assisting with a registered qualifying patient's medical use of marijuana. Compensation does not constitute sale of controlled substances.

Subd. 6. **Practitioner.** A practitioner shall not be subject to arrest, prosecution, or penalty in any manner or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by the Board of Medical Practice or by another business, occupational, or professional licensing board or entity, solely for providing written certifications or otherwise stating that, in the practitioner's professional opinion, the potential benefits of the medical use of marijuana would likely outweigh the health risks for a patient, provided that nothing shall prevent a practitioner from being sanctioned for failure to properly evaluate a patient's medical condition or otherwise violate the standard of care for evaluating medical conditions.

Subd. 7. **Property rights.** (a) 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, is not forfeited.

(b) A law enforcement agency that seizes and does not return usable marijuana to a registered qualifying patient or a registered primary caregiver is liable to the cardholder for the value of the marijuana. The value shall be presumed to be \$200 per ounce, or the proportionate share of an ounce, unless the cardholder shows that the cardholder purchased the marijuana from a registered organization at a different price.

Subd. 8. **Arrest and prosecution prohibited.** No person is subject to arrest or prosecution for constructive possession, conspiracy, aiding and abetting, being an accessory, or any other offense for being in the presence or vicinity of the medical use of marijuana as permitted under sections 152.22 to 152.31 or for assisting a registered qualifying patient with using or administering marijuana.

Subd. 9. **Nursing facilities.** Nursing facilities licensed under chapter 144A or boarding care homes licensed under section 144.50 may adopt reasonable restrictions on the use of medical marijuana by their residents. Such restrictions may include a provision that the facility will not store or maintain the patient's supply of medical marijuana, that caregivers or the hospice agencies serving their residents are not responsible for providing the marijuana for qualifying patients, that marijuana be consumed in a method other than smoking, and that medical marijuana be consumed only in a place specified by the facility.

5.1 Nothing contained herein, however, shall require such facilities to adopt such restrictions
5.2 and no facility shall unreasonably limit a qualifying patient's access to or use of marijuana.

5.3 Sec. 4. **[152.25] REGISTRY IDENTIFICATION CARDS; ISSUANCE.**

5.4 Subdivision 1. **Requirements; issuance.** (a) The commissioner shall issue registry
5.5 identification cards to qualifying patients who submit:

5.6 (1) a written certification;

5.7 (2) the application or renewal fee of \$100;

5.8 (3) the name, address, and date of birth of the qualifying patient, except that if the
5.9 applicant is homeless, no address is required;

5.10 (4) the name, address, and telephone number of the qualifying patient's practitioner;
5.11 and

5.12 (5) the name, address, and date of birth of each primary caregiver of the qualifying
5.13 patient, if any.

5.14 (b) The commissioner shall not issue a registry identification card to a qualifying
5.15 patient under the age of 18 unless:

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

5.19 (2) a parent, guardian, or person having legal custody consents in writing to:

5.20 (i) allow the qualifying patient's medical use of marijuana;

5.21 (ii) serve as one of the qualifying patient's primary caregivers; and

5.22 (iii) control the acquisition of marijuana, the dosage, and the frequency of the
5.23 medical use of marijuana by the qualifying patient.

5.24 (c) The commissioner shall verify the information contained in an application or
5.25 renewal submitted under this section and shall approve or deny an application or renewal
5.26 within 15 days of receiving it. The commissioner may deny an application or renewal
5.27 only if the applicant did not provide the information required under this section or if the
5.28 commissioner determines that the information provided was falsified. Rejection of an
5.29 application or renewal is a final agency action, subject to judicial review. Jurisdiction and
5.30 venue for judicial review are vested in the district court.

5.31 (d) The commissioner shall issue a registry identification card to each primary
5.32 caregiver, if any, who is named in a qualifying patient's approved application, up to a
5.33 maximum of two primary caregivers per qualifying patient.

(e) The commissioner shall issue a registry identification card within five days of approving an application or renewal. The card expires one year after the date of issuance.

A registry identification card shall contain:

(1) the name, address, and date of birth of the qualifying patient;

(2) the name, address, and date of birth of each primary caregiver of the qualifying patient, if any;

(3) the date of issuance and expiration date of the registry identification card; and

(4) a random registry identification number.

Subd. 2. **Notification of changes; penalties.** (a) A qualifying patient who has been issued a registry identification card shall notify the commissioner within ten days of any change in the qualifying patient's name, address, or primary caregiver or if the qualifying patient ceases to have a debilitating medical condition.

(b) Failure to notify the commissioner of a change as required under paragraph (a) is a civil violation, punishable by a fine of no more than \$150. If the person has ceased to have a debilitating medical condition, the card is null and void and the person is liable for any other penalties that may apply to the person's nonmedical use of marijuana.

(c) A registered primary caregiver shall notify the commissioner within ten days of any change in the caregiver's name or address. Failure to notify the commissioner of the change is a civil violation, punishable by a fine of no more than \$150.

(d) When a qualifying patient or primary caregiver notifies the commissioner of any changes under this subdivision, the commissioner shall issue the qualifying patient and each primary caregiver a new registry identification card within ten days of receiving the updated information and a \$10 fee.

(e) When a registered qualifying patient ceases to use the assistance of a registered primary caregiver, the commissioner shall notify the primary caregiver within ten days. The primary caregiver's protections as provided under section 152.23 expire ten days after notification by the commissioner.

Subd. 3. **Lost cards.** If a registered qualifying patient or a registered primary caregiver loses a registry identification card, the patient or caregiver shall notify the commissioner and submit a \$10 fee within ten days of losing the card. Within five days of receiving notification and the required fee, the commissioner shall issue a new registry identification card with a new random identification number.

Subd. 4. **Card as probable cause.** Possession of, or application for, a registry identification card does not constitute probable cause or reasonable suspicion, nor shall it be used to support a search of the person or property of the person possessing or applying

for the registry identification card, or otherwise subject the person or property of the person to inspection by any governmental agency.

Subd. 5. Data practices. (a) Applications and supporting information submitted by qualifying patients, including information regarding their primary caregivers and practitioners, are confidential.

(b) The commissioner shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list shall be confidential, exempt from the Minnesota Freedom of Information Act, and not subject to disclosure, except to authorized employees of the department as necessary to perform official duties of the department.

(c) The commissioner shall verify to law enforcement personnel whether a registry identification card is valid solely by confirming the random registry identification number.

(d) It shall be a crime, punishable by up to 90 days in jail and a \$1,000 fine, for any person, including an employee or official of the department or another state agency or local government, to breach the confidentiality of information obtained pursuant to this act. Notwithstanding this provision, the department employees may notify law enforcement about falsified or fraudulent information submitted to the department.

Subd. 6. Report. The commissioner shall report annually to the legislature on the number of applications for registry identification cards, the number of qualifying patients and primary caregivers approved, the nature of the debilitating medical conditions of the qualifying patients, the number of registry identification cards revoked, and the number of practitioners providing written certification for qualifying patients. The commissioner must not include identifying information on qualifying patients, primary caregivers, or practitioners in the report.

Subd. 7. Submission of false records; criminal penalty. A person who knowingly submits false records or documentation required by the commissioner of health to certify an organization under sections 152.22 to 152.31 is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

Subd. 8. Appropriations. Fees raised by this section and section 152.31 are deposited in the state government special revenue fund.

Sec. 5. ~~[152.26]~~ CONSTRUCTION.

(a) Sections 152.22 to 152.31 do not permit:

(1) a person to undertake a task under the influence of marijuana, when doing so would constitute negligence, professional malpractice, or failure to practice with reasonable skill and safety;

(2) smoking of marijuana:

(i) in a school bus or other form of public transportation;

(ii) on school grounds;

(iii) in a correctional facility;

(iv) in any public place; or

(v) where the smoke may be inhaled by a minor child; or

(3) a person to operate, navigate, or be in actual physical control of any motor vehicle, aircraft, train, or motorboat while under the influence of marijuana. However, a registered qualifying patient shall not be considered to be under the influence solely for having marijuana metabolites in the patient's system.

(b) Nothing in sections 152.22 to 152.31 shall be construed to require:

(1) a government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana; or

(2) an employer to accommodate the medical use of marijuana in any workplace.

Sec. 6. **[152.27] PENALTIES.**

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

Sec. 7. **[152.29] AFFIRMATIVE DEFENSE AND DISMISSAL FOR MEDICAL MARIJUANA.**

(a) Except as provided in section 152.26, a person and a person's primary caregiver, if any, may assert the medical purpose for using marijuana as a defense to any prosecution involving marijuana, and such defense shall be presumed valid where the evidence shows that:

(1) a practitioner has stated that, in the practitioner's professional opinion, after having completed a full assessment of the person's medical history and current medical condition made in the course of a bona fide practitioner-patient relationship, the potential benefits of using marijuana for medical purposes would likely outweigh the health risks for the person; and

(2) the person and the person's primary 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 alleviating the person's medical condition or symptoms associated with the medical condition.

(b) A person may assert the medical purpose for using marijuana in a motion to dismiss, and the charges shall be dismissed following an evidentiary hearing where the defendant shows the elements listed in paragraph (a).

(c) Any interest in or right to property that was possessed, owned, or used in connection with a person's use of marijuana for medical purposes shall not be forfeited if the person or the person's primary caregiver demonstrates the person's medical purpose for using marijuana under this section.

(d) This section sunsets on June 30, 2008.

Sec. 8. **[152.30] SEVERABILITY.**

Any provision of sections 152.22 to 152.31 being held invalid as to any person or circumstances shall not affect the application of any other provision of sections 152.22 to 152.31 that can be given full effect without the invalid section or application.

Sec. 9. **[152.31] REGISTERED ORGANIZATION.**

Subdivision 1. **Definition.** For purposes of this section, "registered organization" means a nonprofit entity registered with the commissioner under this section that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, supplies, or dispenses marijuana, or related supplies and educational materials to registered qualifying patients and their registered primary caregivers. A registered organization is a primary caregiver, although it may supply marijuana to any number of registered qualifying patients who have designated it as one of their primary caregivers.

Subd. 2. **Registration requirements.** (a) The commissioner shall issue a registered organization license within 20 days to any person who provides:

(1) a fee in an amount established by the commissioner notwithstanding section 16A.1283, which shall not exceed \$1,000;

(2) the name of the registered organization;

(3) the physical addresses of the registered organization and any other real property where marijuana is to be possessed, cultivated, manufactured, supplied, or dispensed relating to the operations of the registered organization; and

(4) the name, address, and date of birth of any person who is an agent of or employed by the registered organization.

(b) The commissioner shall issue each agent and employee of a registered organization a registry identification card for a cost of \$10 each within ten days of receipt of the person's identifying information and the fee. Each card shall specify that the cardholder is an employee or agent of a registered organization.

Subd. 3. **Expiration.** A license for a registered organization and each employee or agent registry identification card expires one year after the date of issuance.

Subd. 4. **Inspection.** Registered organizations are subject to reasonable inspection by the commissioner.

Subd. 5. **Organization requirements.** (a) Registered organizations must be established as nonprofit entities. Registered organizations are subject to all applicable state laws governing nonprofit entities, but need not be recognized as a 501(c)(3) organization by the Internal Revenue Service.

(b) Registered organizations may not be located within 500 feet of the property line of a public school, private school, or structure used primarily for religious services or worship.

(c) The operating documents of a registered organization shall include procedures for the oversight of the registered organization and procedures to ensure adequate record keeping.

(d) A registered organization shall notify the commissioner within ten days of when an employee or agent ceases to work at the registered organization.

(e) The registered organization shall notify the commissioner before a new agent or employee begins working at the registered organization, in writing, and the organization shall submit a \$10 fee for the person's registry identification card.

(f) No registered organization shall be subject to 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, for acting according to sections 152.22 to 152.31 to assist registered qualifying patients to whom it is connected through the commissioner's registration process with the medical use of marijuana, provided that the registered organization possesses an amount of marijuana that does not exceed 12 marijuana plants and 2.5 ounces of usable marijuana for each registered qualifying patient.

(g) No employees, agents, or board members of a registered organization 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, for working for a registered organization according to sections 152.22 to 152.31.

11.1 (h) The registered organization is prohibited from acquiring, possessing, cultivating,
11.2 manufacturing, delivering, transferring, transporting, supplying, or dispensing marijuana
11.3 for any purpose except to assist registered qualifying patients with the medical use of
11.4 marijuana directly or through the qualifying patients' other primary caregivers.

11.5 Subd. 6. **Background checks; felony drug convictions.** (a) The department shall
11.6 request a criminal history background check from the superintendent of the Bureau of
11.7 Criminal Apprehension on all employees, agents, and board members of a registered
11.8 organization. An application for registry identification cards for employees, agents, and
11.9 board members must be accompanied by an executed criminal history consent form,
11.10 including fingerprints.

11.11 (b) The superintendent of the Bureau of Criminal Apprehension shall perform
11.12 the background check required under paragraph (a) by retrieving criminal history data
11.13 maintained in the Criminal Justice Information System computers and shall also conduct
11.14 a search of the national criminal records repository, including the criminal justice data
11.15 communications network. The superintendent is authorized to exchange fingerprints with
11.16 the Federal Bureau of Investigation for purposes of the criminal history check.

11.17 (c) The Bureau of Criminal Apprehension and its agents may not directly or
11.18 indirectly disclose to the Federal Bureau of Investigation or any other person that the
11.19 purpose of the background check is related to the medical use of marijuana or registered
11.20 organizations.

11.21 (d) The department shall refuse to issue a registry card to any agent, employee, or
11.22 board member of a registered organization who has been convicted of a drug felony. The
11.23 department shall notify the registered organization in writing of the purpose for denying
11.24 the registry identification card. However, the department may grant the person a registry
11.25 identification card if the person's conviction was for the medical use of marijuana or
11.26 assisting with the medical use of marijuana.

11.27 (e) If a registered organization has employed an agent, board member, or employee
11.28 and is notified that the person failed the background check, it shall terminate the person's
11.29 status as an agent, board member, or employee within 24 hours of receiving written
11.30 notification. The result of the criminal background check is private information, and the
11.31 registered organization may not disclose it, except to defend itself of any charges related
11.32 to employment law.

11.33 (f) No person who has been convicted of a drug felony may be the agent, board
11.34 member, or employee of a registered organization. Notwithstanding this provision, a
11.35 person may apply to the department for a waiver if the person's conviction was for the
11.36 medical use of marijuana or assisting with the medical use of marijuana. A person who is

12.1 employed by, an agent of, or a board member of a registered organization in violation of
12.2 this section is guilty of a civil violation punishable by a fine of up to \$1,000. A subsequent
12.3 violation of this section is a crime punishable by up to six months in jail and a \$1,000 fine.

12.4 (g) No registered organization may knowingly and willfully allow a person who has
12.5 been convicted of a drug felony to be its agent, board member, or employee unless the
12.6 department has granted the person a registry identification card because the person's
12.7 conviction was for the medical use of marijuana. A violation is punishable by a fine of
12.8 up to \$2,000.

12.9 Subd. 7. **Penalty.** The registered organization may not possess an amount of
12.10 marijuana that exceeds the total of the allowable amounts of marijuana for the registered
12.11 qualifying patients for whom the organization is a registered primary caregiver. The
12.12 registered organization may not dispense, deliver, or otherwise transfer marijuana to a
12.13 person other than a qualifying patient or the patient's primary caregiver. An intentional
12.14 violation of this subdivision is a felony punishable by imprisonment for not more than two
12.15 years or by payment of a fine of not more than \$3,000, or both. This penalty is in addition
12.16 to any other penalties applicable in law.

12.17 **Sec. 10. APPROPRIATIONS.**

12.18 \$379,000 for fiscal year 2008 and \$615,000 for fiscal year 2009 are appropriated
12.19 from the state government special revenue fund to the commissioner of health to
12.20 implement Minnesota Statutes, sections 152.22 to 152.31.

12.21 **Sec. 11. EFFECTIVE DATE.**

12.22 Sections 1 to 9 are effective the day following final enactment.