

HB 1622-FN – AS AMENDED BY THE HOUSE

6Mar2014... 0548h

2014 SESSION

14-2032
04/05

HOUSE BILL ***1622-FN***

AN ACT permitting qualifying patients and registered caregivers to cultivate cannabis for therapeutic use.

SPONSORS: Rep. Wright, Carr 8; Rep. Renzullo, Hills 37; Rep. O'Flaherty, Hills 12; Rep. Sandblade, Hills 18; Sen. Reagan, Dist 17

COMMITTEE: Health, Human Services and Elderly Affairs

ANALYSIS

This bill permits qualifying patients and registered caregivers to cultivate cannabis for therapeutic use.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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

AN ACT permitting qualifying patients and registered caregivers to cultivate cannabis for therapeutic use.

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

1 1 Use of Therapeutic Cannabis for Therapeutic Purposes; Definitions. Amend RSA 126-X:1, IV
2 to read as follows:

3 IV. “Cultivation location” means a locked and enclosed site, ***under the control of the***
4 ***qualifying patient or designated caregiver who shall report the location to the department***
5 ***in accordance with the provisions of this chapter, or*** under the control of an alternative
6 treatment center where cannabis is cultivated, secured with one or more locks or other security
7 devices in accordance with the provisions of this chapter.

8 2 Use of Therapeutic Cannabis; Definitions. Amend RSA 126-X:1, VI to read as follows:

9 VI. “Designated caregiver” means an individual who:

10 (a) Is at least 21 years of age;

11 (b)(1) Has ~~agreed to assist with one or more (not to exceed 5) qualifying patient’s]~~
12 ***agreed to assist in the*** therapeutic use of cannabis, ***excluding the cultivation of therapeutic***
13 ***cannabis, for up to 5 qualifying patients***, except if the qualifying patient and designated
14 caregiver each live greater than 50 miles from ~~[the nearest]~~ ***an*** alternative treatment center, ~~[in~~
15 ~~which case]~~ the designated caregiver may assist ~~[with]~~ ***in*** the therapeutic use of cannabis,
16 ***excluding cultivation***, for up to 9 qualifying patients; ***or***

17 (2) ***Has agreed to cultivate cannabis for therapeutic use pursuant to this***
18 ***chapter for one qualifying patient, if the qualifying patient resides more than 30 miles***
19 ***from an alternative treatment center or if no alternative treatment centers are in***
20 ***operation in this state;***

21 (c) Has never been convicted of a felony or any felony drug-related offense; and

22 (d) Possesses a valid registry identification card issued pursuant to RSA 126-X:4.

23 3 Use of Cannabis for Therapeutic Purposes; Definitions. Amend RSA 126-X:1, IX(a) to read as
24 follows:

25 (a) “Qualifying medical condition” means the presence of:

26 (1) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired
27 immune deficiency syndrome, hepatitis C currently receiving antiviral treatment, amyotrophic
28 lateral sclerosis, muscular dystrophy, Crohn’s disease, agitation of Alzheimer’s disease, multiple
29 sclerosis, chronic pancreatitis, spinal cord injury or disease, traumatic brain injury, ***epilepsy, lupus,***

1 ***Parkinson's disease***, or one or more injuries that significantly interferes with daily activities as
2 documented by the patient's provider; and

3 (2) A severely debilitating or terminal medical condition or its treatment that has
4 produced at least one of the following: ***dementia associated with Alzheimer's disease***, elevated
5 intraocular pressure, cachexia, chemotherapy-induced anorexia, wasting syndrome, severe pain that
6 has not responded to previously prescribed medication or surgical measures or for which other
7 treatment options produced serious side effects, constant or severe nausea, moderate to severe
8 vomiting, seizures, or severe, persistent muscle spasms.

9 4 New Paragraphs; Use of Cannabis for Therapeutic Purposes. Amend RSA 126-X:2 by inserting
10 after paragraph II the following new paragraphs:

11 II-a. A qualifying patient shall not be subject to arrest by state or local law enforcement,
12 prosecution or penalty under state or municipal law, or be denied any right or privilege for the
13 therapeutic use of cannabis in accordance with this chapter, if the qualifying patient possesses, or
14 cultivates if the qualifying patient resides more than 30 miles from an alternative treatment center
15 or if no alternative treatment centers are in operation in this state, an amount of cannabis that does
16 not exceed the following:

17 (a) If the qualifying patient does not have a designated caregiver, for the possession or
18 cultivation, or both, of cannabis that occurs at the cultivation location reported to the department, or
19 while transporting cannabis and cannabis plants and seedlings to a new cultivation location that has
20 been reported to the department within the prior 21 days:

21 (1) Six ounces of usable cannabis;
22 (2) Any amount of unusable cannabis; and
23 (3) One flowering cannabis plant, one non-flowering cannabis plant not exceeding 12
24 inches in height, and 6 seedlings, with a total canopy of no more than 48 square feet.

25 (b) If the qualifying patient is not at a cultivation location reported to the department:

26 (1) One ounce of usable cannabis; and
27 (2) Any amount of unusable cannabis.

28 II-b. A designated caregiver shall not be subject to arrest by state or local law enforcement,
29 prosecution or penalty under state or municipal law, or denied any right or privilege for the medical
30 use of cannabis in accordance with this chapter on behalf of a qualifying patient if the designated
31 caregiver possesses, or cultivates for a qualifying patient who resides more than 30 miles from an
32 alternative treatment center or if no alternative treatment centers are in operation in this state, an
33 amount of cannabis that does not exceed the following:

34 (a) If, at the cultivation location reported to the department, or while transporting
35 cannabis and cannabis plants and seedlings to a new cultivation location that has been reported to
36 the department within the prior 21 days:

37 (1) Six ounces of usable cannabis; and

1 (2) Any amount of unusable cannabis; and

2 (3) Two mature cannabis plants and 12 seedlings, with a total canopy of no more
3 than 50 square feet.

4 (b) If not at a cultivation location reported to the department:

5 (1) One ounce of usable cannabis; and

6 (2) Any amount of unusable cannabis.

7 II-c. A qualifying patient or designated caregiver shall not be subject to arrest by state or
8 local law enforcement or prosecution or penalty under state or municipal law for giving cannabis to a
9 qualifying patient or a visiting qualifying patient where nothing of value is transferred in return, or
10 for offering to do the same, if the person giving the cannabis does not knowingly cause the recipient
11 to possess more cannabis than is permitted by this section.

12 II-d. Notwithstanding paragraph II-c, a designated caregiver may receive compensation not
13 to exceed \$500 per calendar year for costs, not including labor, associated with assisting a qualifying
14 patient who has designated the designated caregiver to assist him or her with the therapeutic use of
15 cannabis pursuant to RSA 126-X:1, VI. Such compensation shall not constitute the sale of a
16 controlled drug pursuant to RSA 318-B.

17 5 New Subparagraph; Use of Cannabis for Therapeutic Purposes; Departmental Administration.
18 Amend RSA 126-X:4, I by inserting after subparagraph (h) the following new subparagraph:

19 (i) A statement signed by the applicant consenting to random inspections of the
20 cultivation location at the discretion of local public health officials. Such inspections may occur at
21 least quarterly and shall be performed in the presence of the applicant during normal business
22 hours.

23 6 New Subparagraph; Use of Cannabis for Therapeutic Purposes; Departmental Administration.
24 Amend RSA 126-X:4, II by inserting after subparagraph (g) the following new subparagraph:

25 (h) A statement signed by the applicant consenting to random inspections of the
26 cultivation location at the discretion of local public health officials. Such inspections may occur at
27 least quarterly and shall be performed in the presence of the applicant during normal business
28 hours.

29 7 Use of Cannabis for Therapeutic Purposes; Affirmative Defense. Amend RSA 126-X:5, I to
30 read as follows:

31 I. It shall be an affirmative defense for any person charged with manufacturing, possessing,
32 having under his or her control, selling, purchasing, prescribing, administering, transporting, or
33 possessing with intent to sell, dispense, or compound cannabis, cannabis analog, or any preparation
34 containing cannabis, if:

35 (a) The actor is a qualifying patient who has been issued a valid registry identification
36 card, was in possession of cannabis in a quantity and location permitted pursuant to this chapter,
37 and was engaged in the therapeutic use of cannabis; or

1 (b) The actor is a designated caregiver who has been issued a valid registry identification
2 card was in possession of a cannabis in a quantity and location permitted pursuant to this chapter,
3 and was engaged in the therapeutic use of cannabis on behalf of a qualifying patient; *or*

4 (c) *The actor is a person with a qualifying medical condition who does not*
5 *possess a registry identification card and, prior to the arrest, the actor submitted to the*
6 *department a completed application to become a qualifying patient, including a written*
7 *certification, but the actor had not yet received a registry identification card from the*
8 *department; provided that:*

9 (1) *The actor does not possess more than the amount of cannabis permitted*
10 *under RSA 126-X:2, II-a, if the cannabis is not on the actor's property; or*

11 (2) *If the cannabis is on the actor's property, the actor does not possess more*
12 *than the amount of cannabis permitted under RSA 126-X:2, II-a, which shall be in a locked*
13 *and enclosed location on the actor's property; or*

14 (d) *The actor is a person with a qualifying medical condition who is not yet in*
15 *possession of a valid registry identification card and is arrested or cited prior to the date*
16 *on which the department begins accepting registry identification card applications if:*

17 (1) *The actor produces a written statement signed by a provider stating that*
18 *in the provider's professional opinion, after having completed a full assessment made in*
19 *the course of a provider-patient relationship of at least 3 months duration, the actor has a*
20 *qualifying medical condition. The 3-month requirement for the provider-patient*
21 *relationship required in this subparagraph shall not apply if the provider issuing the*
22 *written certification certifies that the onset of the patient's qualifying medical condition*
23 *occurred within the past 3 months and the certifying provider is primarily responsible for*
24 *the patient's care related to his or her qualifying medical condition; and*

25 (2) *The actor does not possess more than the amount of cannabis permitted*
26 *under RSA126-X:2, II-a, if the cannabis is not on the actor's property; or*

27 (3) *If the cannabis is on the actor's property, the actor does not possess more*
28 *than the amount of cannabis permitted under RSA 126-X:2, II-a, which shall be in a locked*
29 *and enclosed location on the actor's property.*

30 8 Effective Date. This act shall take effect upon its passage.

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HB 1622-FN FISCAL NOTE

AN ACT permitting qualifying patients and registered caregivers to cultivate cannabis for therapeutic use.

FISCAL IMPACT:

The Judicial Branch, Judicial Council, the Departments of Safety and Corrections, New Hampshire Association of Counties, and New Hampshire Municipal Association state this bill, **as amended by the House (Amendment #2014-0548h)**, will have an indeterminable fiscal impact on state expenditures, and may increase county and local expenditures by indeterminable amounts in FY 2015 and each year thereafter. There will be no fiscal impact on state, county, and local revenues.

METHODOLOGY:

The Judicial Branch states this bill would amend the medicinal use of marijuana statute by permitting qualifying patients and designated caregivers to cultivate up to certain limits and allow an affirmative defense to certain marijuana related offenses for a qualifying patient who does not possess a registry identification card. The Branch states the proposed changes would lead to fewer prosecutions for marijuana related offenses and result in savings to the Judicial Branch. The Branch indicates all offenses for cultivation of marijuana are felonies and possession of marijuana is a class A misdemeanor. The Judicial Branch has no information on which to estimate how many fewer felonies or misdemeanors will result from this bill, but does have information on the average cost of processing these cases in the trial courts. A felony offense for cultivating marijuana would be classified as a routine criminal case in the superior court. The estimated cost to the Branch of an average routine criminal case in the superior court will be \$425.27 in FY 2015, and \$433.34 in FY 2016. The estimated cost to the Branch of an average class A misdemeanor in the district division of the circuit court will be \$66.17 in FY 2015, and \$67.64 in FY 2016. These amounts do not include the cost of potential appeals. The Branch states these cost figures are based on studies of judicial and clerical weighted caseload times that are 8 years old for judicial time in the superior and district court and clerical time in the district court and 6 years old for clerical time in the district court. The Branch indicates there have been changes during that time with respect to processing cases which would impact the average processing time and costs.

The Judicial Council assumes this bill has the potential to increase the number of class A misdemeanor cases and class B felony cases in which the indigent accused might seek the appointment of counsel to defend them at State expense. The Council assumes:

- An unknown number of qualifying patients will cultivate their own therapeutic cannabis within or about their homes and these personal cultivation sites will have less security and fewer controls than would the licensed alternative treatment centers.
- New Hampshire does not have the enforcement infrastructure necessary to control, monitor, or inspect the cultivation of marijuana by qualifying patients.
- If there is an increase in the number of legal cultivation sites that possess less security and fewer controls than in a commercial environment, there is a possibility of an increased level of crime including theft and burglary. Theft can be prosecuted as a class A misdemeanor or as a felony and burglary is prosecuted as a felony.
- Introducing a potentially significant supply of marijuana legally cultivated in communities across the State could make it possible that more people could come into illegal possession of the controlled substance. Possession of a controlled drug like marijuana is punished as a misdemeanor, and illegal sale or distribution of marijuana is prosecuted as a felony.

The Judicial Council states it would have the responsibility of ensuring that anyone charged with class A misdemeanor or a felony under this proposed statute who cannot afford the assistance of counsel is provided a lawyer at State expense. The Council states, in accordance with RSA 604-A:2, representation is provided in the first instance by the Public Defender Program. The Public Defender Program provides representation in over 85% of the indigent defense cases each year. The Council states there is capacity in the Public Defender Program to absorb a modest number of additional cases without creating pressure to increase State appropriations. In those instances in which the Public Defender Program cannot provide representation because of a potential conflict of interest, the cases go to contract counsel or assigned counsel. These providers are paid on a per-unit or per-hour basis and any increase in the number of cases handled by them will increase expenditures by the Judicial Council. In the contract counsel system, class A misdemeanor cases are paid at \$275 and class B felonies are paid at \$756.25. If those cases are handled by attorneys in the assigned counsel system, then cases are billed at \$60 per hour with a fee cap of \$1,400 for misdemeanors and \$4,100 for felony cases.

The Department of Safety assumes this bill would increase the number of arrests due to illegal use of marijuana resulting in increased testing in the State Police forensics lab, additional prosecutions costs and court time. The Department is not able to estimate the increase or determine the fiscal impact of the bill.

The Department of Corrections states allowing patients and registered caregivers to cultivate cannabis for therapeutic use, they will no longer be subject to the penalties under the controlled drug statute. The Department of Corrections is not able to determine the fiscal impact of this bill because it does not have sufficient detail to predict the number of individuals who would be subject to this legislation. The Department of Corrections states the average annual cost of incarcerating an individual in the general prison population for the fiscal year ending June 30, 2013 was \$32,872. The cost to supervise an individual by the Department's division of field services for the fiscal year ending June 30, 2013 was \$570.

The New Hampshire Association of Counties states to the extent individuals are charged, convicted, and sentenced to incarceration in a county correctional facility, the counties will have increased expenditures. The Association is unable to determine the number of individuals who may be charged, convicted or incarcerated as a result of this bill to determine an exact fiscal impact. The average annual cost to incarcerate an individual in a county correctional facility is approximately \$35,000. There is no impact on county revenue.

The New Hampshire Municipal Association states this bill may affect the number of arrests that are made by local law enforcement authorities for cultivation of cannabis, but the Association does not anticipate a significant effect on municipal revenues or expenditures.

The Department of Health and Human Services states this bill will have no fiscal impact on state revenues and expenditures.