



SPONSOR: Rep. Michael Smith & Rep. Bennett & Sen. Delcollo  
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HOUSE OF REPRESENTATIVES  
150th GENERAL ASSEMBLY

HOUSE BILL NO. 243

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE CULTIVATION OF MEDICAL MARIJUANA BY REGISTERED QUALIFYING PATIENTS AND DESIGNATED CAREGIVERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1           Section 1. Amend § 4902A, Title 16 of the Delaware Code by making deletions as shown by strike through and  
2     insertions as shown by underline as follows:

3           § 4902A. Definitions.

4           In this chapter, unless the context otherwise requires, the following definitions shall apply:

5           (11) "Medical use" means the acquisition; administration; delivery; possession; transportation; transfer;  
6     transportation; or use of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a  
7     registered qualifying patient's debilitating medical condition or symptoms associated with the patient's debilitating medical  
8     condition. "Medical use" also means the cultivation and manufacture of marijuana under § 4929A of this section.

9           Section 2. Amend § 4903A, Title 16 of the Delaware Code by making deletions as shown by strike through and  
10    insertions as shown by underline as follows:

11          § 4903A. Protections for the medical use of marijuana.

12          (d) A registered qualifying patient or registered designated caregiver ~~shall not be~~ is not subject to prosecution, or  
13     denial of any right or privilege, including ~~but not limited to~~ civil penalty or disciplinary action by a court or occupational or  
14     professional licensing board or ~~bureau~~ entity for ~~possession~~ any of the following:

15           (1) Possession of marijuana seeds and stalks.

16           (2) Possession of marijuana leaves and roots under § 4929A of this section.

17          (m) An entity that is registered to dispense marijuana for medical use in other jurisdictions ~~shall not be~~ is not  
18     subject to prosecution; search or inspection, except by the Department ~~pursuant to~~ under § 4919A(u) of this title; seizure; or  
19     penalty in any manner or be denied any right or privilege, including ~~but not limited to~~ civil penalty or disciplinary action by  
20     a court or business licensing board or entity, for providing marijuana seeds to registered compassion ~~centers~~ centers or to a  
21     registered qualifying patient of a registered designated caregiver under § 4929A of this section.

Section 3. Amend § 4904A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4904A. Limitations.

(c) This chapter does not require a landlord, homeowners association, or common interest community to allow the cultivation and manufacture of marijuana under § 4942A of this title.

Section 4. Amend § 4911A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4911A. Registry identification cards.

(a) Registry identification cards ~~shall~~ must contain all of the following:

(7) If the cardholder is approved to cultivate and manufacture marijuana.

Section 5. Amend § 4920A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4920A. Confidentiality.

(a) The following information received and records kept by the Department for purposes of administering this chapter are confidential and exempt from the Delaware Freedom of Information Act [Chapter 100 of Title 29], and not subject to disclosure to any individual or public or private entity, except as necessary for authorized employees of the State of Delaware to perform official duties ~~pursuant to~~ under this chapter:

(6) Records maintained under § 4929A of this title.

Section 6. Amend § 4922A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4922A. Oversight Committee; annual report by Department.

(a) The Medical Marijuana Act Oversight Committee is established to evaluate and make recommendations regarding the implementation of this chapter.

(6) The Oversight Committee shall meet at least 2 times per year for the purpose of evaluating and making recommendations to the Governor, the General Assembly, and the Department regarding the following:

f. Any research studies regarding health effects of medical marijuana for patients.

g. The sufficiency of the regulatory and security safeguards under this chapter regarding home cultivation of marijuana for personal use.

(b) The Department shall submit to the Governor and the General Assembly an annual report that does not disclose any identifying information about cardholders, registered compassion centers, or physicians, but does contain, at a minimum, all of the following information:

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

(2) The number of qualifying patients and designated caregivers approved in each county.

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

(4) The number of registry identification cards revoked for misconduct.

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

(6) The number of registered compassion centers.

(7) Specific accounting of fees and costs.

(8) The number of applications filed by registered qualifying patients and registered designated caregivers under § 4929A of this title.

(9) The number of applications approved under § 4929A of this title for registered qualifying patients and registered designated caregivers.

(10) The number of registered qualifying patients and registered designated caregivers for whom the Department revoked permission to cultivate and manufacture marijuana under § 4929A of this title.

Section 7. Amend § 4923A, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 4923A. Department to issue regulations.

~~Not later than July 1, 2012, the~~ The Department shall promulgate regulations regarding all of the following:

(1) Governing the manner in which the Department shall consider petitions from the public to add debilitating medical conditions or treatments to the list of debilitating medical conditions set forth in § 4902A(3) of this title, including public notice of and an opportunity to comment in public hearings on the ~~petitions;~~ petitions.

(2) Establishing the form and content of registration and renewal applications submitted under this ~~chapter;~~ chapter.

(3) Governing the manner in which it shall consider applications for and renewals of registry identification ~~eards; and~~ cards.

(4) Governing the following matters related to registered compassion centers and security compliance facilities, with the goal of protecting against diversion and theft, without imposing an undue burden on the registered compassion centers or compromising the confidentiality of cardholders:

- 80 a. Minimum oversight requirements for registered compassion ~~centers;~~ centers.
- 81 b. Minimum recordkeeping requirements for registered compassion ~~centers;~~ centers.
- 82 c. Minimum security requirements for registered compassion centers, which shall include that each
- 83 registered compassion center location must be protected by a fully operational security alarm ~~system;~~ system.
- 84 d. The competitive scoring process addressed in §§ 4914A and 4915A of this ~~title;~~ title.
- 85 e. Procedures for suspending or terminating the registration certificates or registry identification cards of
- 86 cardholders, registered compassion centers, and registered safety compliance facilities that commit multiple or
- 87 serious violations of the provisions of this chapter or the regulations promulgated ~~pursuant to this section; and~~
- 88 under this section.
- 89 f. The design and security features of medical marijuana containers to be provided by the compassion
- 90 centers.

91 (5) Requiring application and renewal fees for registry identification cards, and registered compassion center

92 registration certificates, according to the following:

- 93 a. The total fees collected must generate revenues sufficient to offset all expenses of implementing and
- 94 administering this chapter, except that fee revenue may be offset or supplemented by private ~~donations;~~ donations.
- 95 b. The total amount of revenue from application, renewal, and registration fees for compassion centers
- 96 and security compliance facilities shall be sufficient to implement and administer the compassion center and safety
- 97 compliance facility provisions of this ~~chapter;~~ chapter.
- 98 c. The Department may establish a sliding scale of patient application and renewal fees based upon a
- 99 qualifying patient's household ~~income; and~~ income.
- 100 d. The Department may accept donations from private sources to reduce application and renewal fees.
- 101 e. The total amount of revenue from application, renewal, and registration fees for compassion centers,
- 102 security compliance facilities, and registry identification cards will be deposited to a special account within the
- 103 Department for the operation of the program created by this chapter and shall be used as necessary to support
- 104 program operations and growth.

105 (6) Implementing § 4929A of this title, including all of the following:

- 106 a. Governing the manner in which the Department considers, approves, and revokes applications to
- 107 cultivate and manufacture marijuana.
- 108 b. The form for monthly records.

Section 8. Amend § 4926A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4926A. Date of effect.

(a) This chapter shall take effect on the first day of the fiscal year following its enactment into law. If, however, the chapter, is not enacted before July 1, 2011, then the effective date shall be 90 days from enactment. [The chapter became effective on July 1, 2011.]

(b) Notwithstanding subsection (a) of this section, § 4929A of this title is effective on enactment and is implemented the earlier of the following:

(1) 1 year from [the effective date of this chapter].

(2) On promulgation of final regulations implementing § 4929A of this title and the Secretary of the Department providing notice to the Registrar of Regulations, published in the Register of Regulations, that the contingency under this paragraph (b)(2) of this section has been fulfilled.

Section 9. Amend Chapter 49A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4929A. Home cultivation of marijuana for personal adult use.

(a)(1) A registered qualifying patient or a registered designated caregiver may apply to the Department for approval to cultivate and manufacture marijuana.

(2) A registered qualifying patient or registered designated caregiver must include with an application for approval to cultivate and manufacture marijuana, a signed affidavit attesting to the patient's or caregiver's ability to comply with each requirement under this section.

(3) The Department may require a registered qualifying patient or registered designated caregiver to produce the records required under subsection (f) of this section at any time.

(4)a. The Department may conduct random inspections of a facility used by a registered qualifying patient or registered designated caregiver to cultivate and manufacture marijuana to verify compliance with the requirements under this section.

b. Unless the Department has a credible reason to suspect that the facility is in violation of a requirement under this section, the Department may not inspect the same facility more than 2 times in a 12 month period.

(5)a. The Department may revoke approval for a registered qualifying patient or registered designated caregiver to cultivate and manufacture marijuana if the registered qualifying patient or registered designated caregiver fails to comply with the requirements under this section.

b. The Department must provide a notice of contemplated action with no fewer than 5 calendar days to correct a violation under this section to a registered qualifying patient or a registered designated caregiver before revoking approval to cultivate and manufacture marijuana.

c. A registered qualifying patient or registered designated caregiver may request a hearing to review the contemplated action or a decision to revoke approval to cultivate and manufacture marijuana under § 4470-9.0 of Title 16 of the Delaware Administrative Code.

d. If a registered qualifying patient or a registered designated caregiver requests a hearing under paragraph (a)(5)c. of this section, the approval to cultivate and manufacture marijuana may not be revoked until the Secretary's action after receiving the hearing officer's recommendation.

e. If approval to cultivate and manufacture marijuana under this section is revoked, the registered qualifying patient or registered designated caregiver has 5 days after the date of the decision to properly dispose of the marijuana plants before the registered qualifying patient or registered designated caregiver is in violation of this section.

(b) A registered qualifying patient may cultivate and manufacture marijuana for personal use as follows:

(1) No more than 6 mature, flowering marijuana plants that are producing a usable form of marijuana.

(2) No more than 6 immature marijuana plants or seedlings.

(3) Marijuana cultivated under this subsection must be cultivated at the home address of record for the registered qualifying patient.

(4) A legible tag containing the registered qualifying patient's name, address, and registry identification card number must be attached to each marijuana plant or seedling.

(c) A registered designated caregiver may cultivate, manufacture, and transport marijuana as follows:

(1) The marijuana is for a registered qualifying patient who is unable to cultivate marijuana.

(2) Marijuana is cultivated for no more than 3 registered qualifying patients.

(3) No more than 6 mature, flowering marijuana plants that are producing a usable form of marijuana for each registered qualifying patient.

(4) No more than 6 immature marijuana plants or seedlings for each registered qualifying patient.

(5) Marijuana cultivated under this subsection must be cultivated at the home address of record for the registered designated caregiver.

(6) A registered designated caregiver may transport no more than 6 ounces of usable marijuana to a registered qualifying patient.

(7) A legible tag containing the registered qualifying patient's name, registry identification card number, and the registered designated caregiver's registry identification card number must be attached to each marijuana plant or seedling and to packages containing marijuana.

(d) Marijuana must be cultivated and manufactured as follows:

(1) In an enclosed, locked facility.

(2) The electrical system must meet all State and local requirements and be sufficient to safely support marijuana cultivation.

(3) Medical marijuana waste, including liquid waste, must be disposed of as required for compassion centers under § 4470, Title 16 of the Delaware Administrative Code.

(e) A registered qualifying patient or a registered designated caregiver may not cultivate or manufacture marijuana under this section by using any of the following:

(1) Pesticides.

(2) A solvent extraction process that includes the use of a compressed, flammable gas as a solvent.

(f) A registered qualifying patient or a registered designated caregiver cultivating and manufacturing marijuana under this section must maintain the following information regarding marijuana in the individual's possession, updated monthly, in the form designated by the Department:

(1) The number of mature marijuana plants and immature marijuana plants.

(2) The amount of marijuana leaves and flowers being dried.

(3) The amount of usable marijuana.

(4) The name and registry identification card number of each registered qualifying patient for whom marijuana is cultivated or manufactured.

Section 10. This Act is known as "The Delaware Patient Right to Grow Act".

#### SYNOPSIS

This Act allows registered qualifying patients and registered designated caregivers to grow limited amounts of medical marijuana if the following requirements are met:

1. The Department of Health and Social Services approves an application to cultivate and manufacture medical marijuana. This application must include an affidavit attesting to the applicant's ability to meet all of the requirements under this Act.

2. Only 6 mature plants and 6 immature plants may be cultivated for each registered qualifying patient and a designated caregiver can cultivate marijuana for no more than 3 registered qualifying patients.

3. Marijuana must be cultivated at the home address of record for the registered qualifying patient or designated caregiver.

4. Each marijuana plant must have a tag containing the registered qualifying patient's name, address, and registry identification number.

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5. Marijuana must be cultivated in an enclosed, locked facility with an electrical system that is compliant with all State and local codes and waste must be disposed of safely, in the manner required by regulations for compassion centers.
6. Marijuana may not be cultivated using pesticides or manufactured using compressed, flammable gas as a solvent.
7. Detailed monthly records must be maintained regarding the amount of marijuana being cultivated.

This Act also gives the Department the authority to perform random inspections of home cultivation facilities and to require the production of the detailed monthly records. Unless there is credible reason to suspect a violation of this Act, the Department may only perform 2 inspections of the same location in a 12 month period. The Department must provide at least 5 days to correct a violation and the opportunity for a hearing on a decision to revoke approval to cultivate and manufacture marijuana. A registered patient or qualified caregiver has at least 5 days after the Secretary's final decision to revoke approval to cultivate and manufacture marijuana to properly dispose of the marijuana plants.

This Act also allows a landlord, homeowners association, or common interest communities to prohibit the cultivation of marijuana and requires that the annual report from the Medical Marijuana Act Oversight Committee provide data and recommendations regarding home cultivation of marijuana.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.