



# HOUSE BILL 78: Enact Medical Cannabis Act

**This Bill Analysis  
reflects the contents  
of the bill as it was  
presented in  
committee.**

2015-2016 General Assembly

<b>Committee:</b>	House Serial Referral To Appropriations Added	<b>Date:</b>	March 24, 2015
<b>Introduced by:</b>	Reps. Alexander, Carney, Harrison, Cunningham	<b>Prepared by:</b>	R. Erika Churchill and Jennifer Bedford, Committee Counsel
<b>Analysis of:</b>	PCS to First Edition H78-CSSTxf-12		

**SUMMARY:** *The proposed committee substitute for House Bill 78 would permit the sale and possession of marijuana in North Carolina for medical use to qualified patients possessing a registry identification issued by the Department of Health and Human Services, would direct the Department of Agriculture to establish a marijuana supply system regulated under rules promulgated by the N.C. Medical Care Commission, and would protect persons from criminal, civil, or professional licensure penalties for their authorized use, or assistance in the use, of marijuana for medical purposes.*

**CURRENT LAW:** Marijuana is currently classified as a Schedule VI controlled substance under the North Carolina Controlled Substances Act. Its manufacture, sale, delivery, or possession are prohibited, with no exceptions. G.S.90-95. The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services established under Part 4 of Article 3 of Chapter 143B of the General Statutes finds that marijuana has no currently accepted medical use in the United States, or a relatively low potential for abuse in terms of risk to public health and potential to produce dependence liability based upon present medical knowledge, or a need for further and continuing study to develop scientific evidence of its pharmacological effects. G.S. 90-94.

Under federal law, the Comprehensive Drug Abuse prevention and Control Act of 1979 categorizes marijuana as a Schedule I controlled substance. Federal law prohibits growing, distributing, and possessing marijuana except as part of a strictly controlled research project registered with the Drug Enforcement Agency and approved by the FDA.

### **BILL ANALYSIS:**

The pcs would enact a new Article 43 to Chapter 90 of the General Statutes to establish a statutory scheme to (i) register qualified patients and up to 2 designated caregivers per qualified patient to use marijuana for medical purposes, (ii) establish licensure for producing and selling medical marijuana, (iii) collect fees and sales taxes for licensure and sales, (iv) provide immunity and defenses for use of medical marijuana, and (v) further study, as further detailed below:

#### **Registration of Qualified Patients**

- Allows qualified patients (persons diagnosed by a physician as having a debilitating medical condition – see below for definition) and designated caregivers (a person at least 21 years old who has agreed to assist with a qualified patient's use of marijuana) to register with the Department of Health and Human Services (DHHS). G.S. 90-730.5
- "Debilitating medical condition" is defined as any of the following:



# House Bill 78

Page 2

- Cancer, gliomas, glaucoma, positive status HIV, AIDS, hepatitis C, porphyria, ALS, Alzheimer's disease, nail-patella syndrome, fibromyalgia, severe migraines, multiple sclerosis, celiac disease, Crohn's disease, diabetes mellitus, dystonia, gastrointestinal disorders, hypertension, incontinence, injury or disease to the spinal cord, spinal column, or vertebra, MRSA, myelomalacia, osteoporosis, pruritus, rheumatoid arthritis, sleep apnea, Tourette's syndrome, or the treatment of such conditions.
  - A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe pain; severe nausea; anorexia; seizures, including those characteristic of epilepsy; or severe and persistent muscle spasms, including those characteristic of MS, ALS, or Crohn's disease.
  - Any other serious medical or mental condition or its treatment approved by a physician or other practitioner authorized to prescribe or recommend a controlled substance.
- Registration process is left to DHHS to develop, as the requirements to obtain a registry identification card are not set forth in the pcs.
  - The registry identification card is to contain at least the date of issuance, date of expiration, registry number, and a photograph of the cardholder.
  - The registry identification card is valid for two years.

## **Licensure for Production and Sales**

- Directs the Department of Agriculture and Consumer Services to establish a medical cannabis supply system requiring licensure of all medical marijuana supply centers and producers, and cannabis infused-products producers, to be funded solely by authorized fees. If there are leftover funds from the fees, the Department of Agriculture is to use those funds for other Department needs.
- The Department of Agriculture's licensure program is to be governed by rules adopted by the NC Medical Care Commission.
- License applicants must provide certain information, including the names and dates of birth of all employees. Licenses are not to be issued to individuals who have been convicted of certain felonies. However, there is no mechanism for criminal background checks performed by the Department of Public Safety in conjunction with the applications.
- Licenses are valid for one year, and must be renewed annually thereafter.
- Directs the Department of Agriculture to issue temporary certificates for participation in the medical marijuana supply system during the first 30 days after the effective date of this act.

## **Collection of Fees and Sales Tax**

- **Registry Identification Card.** Fee of \$10 to make a change of information, with a fine of up to \$150 for failure to notify DHHS of changes.
- **Medical Cannabis Center License.** Fee of \$5,000 for the first license, and \$5,000 each year thereafter to renew the license. Fee of \$10 per cardholder for each employee of the medical cannabis center.

# House Bill 78

Page 3

- **Producer of Medical Cannabis License.** Fee of \$5,000 for the first license, and \$5,000 each year thereafter to renew the license. Fee of \$10 per cardholder for each employee of the producer of medical cannabis.
- **Producer of Cannabis-Infused Products License.** Fee of \$5,000 for the first license, and \$5,000 each year thereafter to renew the license. Fee of \$10 per cardholder for each employee of the producer of cannabis-infused products.
- **Retail sales tax collection.** The medical cannabis center is to collect 5% sales tax on gross receipts. It is unclear if the sales tax applies to the sale of the cannabis between the producer and the center.

## **Immunity and Defenses for Medical Marijuana Use**

- Provides "qualified patients" and "designated caregivers" with immunity from civil or criminal liability for the sale or possession of an "adequate supply" (generally, a three month supply) of marijuana for medical use. G.S. 90-730.3(a)
- Prohibits schools, employers and landlords from denying qualified patients or designated caregivers school enrollment, employment opportunities, or the opportunity to enter into a lease based on their status under the Act or their use of medical marijuana. G.S. 90-730.3(h)
- Provides physicians with immunity from criminal or professional disciplinary penalty for discussing the benefits or risks of medical marijuana use (G.S. 90-730.3(k)-(l)) or for providing written certification for the medical use of marijuana pursuant to Article 43. G.S. 90-730.8
- Prohibits denial of custody rights or any presumption of neglect or child endangerment for conduct allowed under new Article 43. G.S. 90-730.3(n),(o)
- Prohibits destruction of or damage to property owned in connection with medical marijuana use seized by law enforcement officials unless convicted of a criminal violation of new Article 43. G.S. 90-730.3(m)
- Prohibits operating a motor vehicle, aircraft or motorboat while impaired by marijuana, doing anything while under the influence of marijuana that would constitute negligence or professional malpractice, or smoking marijuana on a school bus or any form of public transportation, on any school grounds, in any correctional facility, or in any public place in this State. However, a qualified patient is not to be considered impaired solely due to the presence of cannabis metabolites in their system. G.S. 90-730.4(a)
- Makes it a Class 2 misdemeanor to make a fraudulent representation to a law enforcement officer about medical marijuana use to avoid arrest or prosecution. G.S. 90-730.4(d)
- Establishes affirmative defenses to criminal charges of possession, delivery or production of marijuana that may be asserted by any defendant, without requiring proof of registration or licensure. G.S. 90-730.7

## **Further Study**

- Directs the UNC system to research the safety and efficacy of medical marijuana use and, upon approval by the Board of Governors, to create the North Carolina Cannabis Research Program to conduct this research. G.S. 90-730.9

**EFFECTIVE DATE:** This act is effective when it becomes law and applies to acts committed on and after that date.