



SENATE BILL 711: NC Compassionate Care Act.

2021-2022 General Assembly

Committee:	Senate Judiciary. If favorable, re-refer to Health Care. If favorable, re-refer to Rules and Operations of the Senate	Date:	August 18, 2021
Introduced by:	Sens. Rabon, Lee, Lowe	Prepared by:	Jessica Boney Staff Attorney
Analysis of:	PCS to Third Edition S711-CSBPx-20		

OVERVIEW: *The Proposed Committee Substitute (PCS) to Senate Bill 711 would enact the North Carolina Compassionate Care Act to provide for the sale of cannabis and cannabis-infused products to qualified patients with a debilitating medical condition through a regulated medical cannabis supply system. The PCS would do the following:*

- Amend the definitions for cannabis-infused product and debilitating medical conditions. (Page 2)
- Add a definition for smoking and for vaping. (Page 3)
- Change the name of the Medical Use Advisory Board to the Compassionate Use Advisory Board.
- Create new requirements for physicians. (Page 5)
- Instruct the Medical Care Commission to adopt a rule limiting the number of written certifications a physician may issue at any given time. (Page 7)
- Requ Coast a registry identification cardholder to carry and disclose their registry identification card to law enforcement. (Page 7)
- Add the Agriculture Commissioner and a chief of police to the membership of the Medical Cannabis Production Commission. (Page 8)
- Prohibit smoking and vaping in certain places. (Page 14)
- Regulate hours, age to enter, and location of medical cannabis centers. (Page 17)
- Make various technical changes.

CURRENT LAW: G.S. 90-94 includes marijuana and THC in Schedule VI. G.S. 90-95 makes it unlawful to manufacture, create, sell or deliver, possess, or possess with intent to manufacture, sell or deliver, a Schedule VI Controlled Substance. It is a Class H felony for possession of a Controlled Substance in a penal institution or local confinement facility and it is a Class E felony for transfer of marijuana within 1,000 feet of school property.

The criminal penalties for possession of Schedule VI are based on amount and classified as follows:

- Up to one-half of an ounce: Class 3 Misdemeanor
- More than one-half of an ounce: Class 1 Misdemeanor
- More than one and one-half ounces: Class I Felony

The criminal penalties for trafficking in marijuana are as follows:

- In excess of 10 pounds: Class H felony

Jeffrey Hudson
Director



Legislative Analysis
Division
919-733-2578

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50-2,000 pounds: Class G felony
2,000-10,000 pounds: Class F felony
Over 10,000 pounds is a Class D felony

BILL ANALYSIS: The PCS would enact Article 5H of Chapter 90 of the General Statutes and it would be known as the North Carolina Compassionate Care Act.

FINDINGS AND PURPOSE: G.S. 90-113.111 would state the General Assembly makes findings regarding the effectiveness of cannabis and cannabinoid compounds, and the North Carolina Compassionate Care Act would be intended to make only those changes to existing State laws that are necessary to protect patients and their doctors from criminal and civil penalties and would not intend to change current civil and criminal laws governing the use of cannabis for nonmedical purposes.

DEFINITIONS: G.S. 90-113.112 would enact definitions for adequate supply, cannabis, medical cannabis center, medical use of cannabis or medical use, production facility, qualified patient, regulated medical cannabis supply system or system, supplier, and written certification.

The following would be defined as debilitating medical conditions: cancer, epilepsy, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), amyotrophic lateral sclerosis (ALS), Crohn's disease, sickle cell anemia, Parkinson's disease, post-traumatic stress disorder (subject to evidence that an applicant experienced one or more traumatic events), multiple sclerosis, cachexia or wasting syndrome, severe or persistent nausea in a person who is not pregnant that is related to end of life or hospice care, or who is bedridden or homebound because of a condition, a terminal illness when the patient's remaining life expectancy is less than six months, a condition resulting in the individual receiving hospice care, and any other serious medical condition or its treatment added by the Medical Cannabis Advisory Board.

COMPASSIONATE USE ADVISORY BOARD: G.S. 90-113.113 would establish the Compassionate Use Advisory Board consisting of 13 members with specified experience. The Board would review petitions to add a new debilitating medical condition and have the power to add a new debilitating medical condition.

REGISTRY IDENTIFICATION CARDS: G.S. 90-113.115 would require the Department of Health and Human Services (Department) to issue a registry identification card to any individual who applies to the Department on prescribed forms demonstrating that the individual is a qualified patient with a debilitating medical condition for which a physician has issued a written certification, or to any individual who is at least 21 years of age who has (i) been named as a designated caregiver in a registry identification card application submitted by a qualified patient and (ii) agreed to serve as that qualified patient's designated caregiver. The Department would not issue a registry identification card to a qualified patient under 18 years of age unless specified criteria is met.

REQUIREMENT TO CARRY AND DISCLOSE REGISTRY IDENTIFICATION CARD TO LAW ENFORCEMENT. G.S. 90-113.116 would require a registry identification cardholder to carry their registry identification card, along with valid identification, whenever carrying cannabis or cannabis-infused products. When approached, the registry identification cardholder would be required to disclose to any law enforcement officer the valid registration identification card and valid identification.

CONFIDENTIAL MEDICAL CANNABIS REGISTRY DATABASE: G.S. 90-113.117 would require the Department to create a secure, confidential, electronic database containing information about qualified patients, designated caregivers, and physicians. The Department would monitor the database and in the event of an unusual pattern in written certifications, would notify the Attorney General's office. The

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database would be confidential and accessible only for authorized employees of the Department as necessary to perform official duties of the Department and law enforcement agencies.

MEDICAL CANNABIS PRODUCTION COMMISSION: G.S. 90-113.118 would establish the Medical Cannabis Production Commission consisting of 11 members with specified experience. It would have the power to approve applications for medical cannabis supplier licenses upon recommendation by the Department, and to suspend or revoke a medical cannabis supplier license.

The Medical Cannabis Production Commission would be allowed to issue 10 medical cannabis supplier licenses. Each supplier would be allowed to operate no more than four medical cannabis centers, two of which must be in Tier 1 counties. Each supplier would pay to the Department a monthly fee equal to ten percent (10%) of the gross revenue derived from the sale of cannabis.

REGULATED MEDICAL CANNABIS SUPPLY SYSTEM: G.S. 90-113.119 would require the Medical Cannabis Production Commission to establish a medical cannabis supply system. The Commission would do the following in establishing the system: provide a safe, regulated supply of cannabis appropriate for medical use by qualified registry identification cardholders; ensure statewide access to safe and affordable cannabis to registry identification cardholders; establish a system that is well regulated, includes a seed to sale tracking system, and is financially viable for suppliers to ensure the highest quality cannabis and cannabis infused products for patients; and generate sufficient revenue for the Commission to oversee and for the Department to maintain and operate the system.

MEDICAL CANNABIS SUPPLIER LICENSE: G.S. 90-113.120 would require an applicant for a medical cannabis supplier license to submit specified information to the Department, including the applicant's name, address of all production facilities and medical cannabis centers, proposed operating procedures, information on each principal officer/board member, and proof of sufficient assets to operate as a supplier. The applicant would also submit documentation demonstrating the applicant has requisite experience (including 5 years of experience in a medical or adult use cannabis operation), The applicant would pay a \$50,000 nonrefundable fee, plus \$5,000 for each production facility or medical cannabis center the applicant proposes to operate under the license. The applicant would provide proof of being a State resident for at least two years and of being the majority owner. The applicant may include nonresident partners with demonstrated experience. Certain criminal convictions would disqualify an applicant from licensure.

RESTRICTIONS ON SALES AND SUPPLY: G.S. 90-113-121 would allow a supplier to only sell cannabis only through the medical cannabis center the supplier is licensed to operate. The supplier may only sell cannabis grown by the supplier at production facilities. The supplier would be permitted to sell cannabis or cannabis-infused products for resale to another licensed supplier.

SUPPLIER REPORTING AND MONTHLY FEES: G.S. 90-113-122 would require a supplier to submit quarterly reports to the Department on financial transactions. Each supplier would pay a monthly fee equal to 10% pf the gross revenue derived from the sale of cannabis and cannabis-infused products.

SUPPLIER EXEMPTION FROM CRIMINAL LAWS: Under G.S. 90-113-123, a supplier would be exempt from the criminal laws of the State for possession, production, delivery, or transportation of cannabis if the individual is in compliance with the North Carolina Compassionate Care Act. The exemption is lost upon committing the following: driving while impaired in violation of G.S. 20-138.1, G.S. 20-138.2, or G.S. 20-138.5; delivering cannabis to any individual who the person knows or has reason to know is not a qualified patient, designated caregiver, or supplier; manufacturing or distributing cannabis at an unregistered location; or failure to report transfer of cannabis.

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PROTECTIONS FOR MEDICAL USE OF CANNABIS: G.S. 90-113.124 would provide a registry identification cardholder shall not be subject to arrest, prosecution, or penalty for the possession or purchase of an adequate supply of cannabis for medical use. It would clarify the weight of other ingredients in a cannabis-infused product would not be included for purposes of determining a qualified patient's adequate supply. A supplier would not be subject to arrest, prosecution, or penalty for producing, possessing, distributing, or dispensing cannabis in a manner consistent with the North Carolina Compassionate Care Act. Nothing shall be construed to extend protections to any person who acts in a manner inconsistent with the North Carolina Compassionate Care Act.

SMOKING AND VAPING PROHIBITED IN CERTAIN PLACES: G.S. 90-113.125 would prohibit a registry identification cardholder from smoking or vaping cannabis in a public place or place open to the public, in any place of employment, in a vehicle, in or within 1,000 feet of a church, child care facility or school. Any individual in violation of this section would be guilty of an infraction and punishable by a fine not to exceed \$25.

VIOLATIONS AND PENALTIES: G.S. 90-113.126 creates a Class G felony for violation of this Article at a medical cannabis center or production facility related to the delivery or possession of cannabis and a Class H felony for violation of this Article at a medical cannabis center or production facility related to the delivery or possession of counterfeit cannabis. A Class A1 misdemeanor and a Class H felony would be created for possession of certain amounts of cannabis in violation of this Article. It would create an enhancement to certain drug trafficking offenses that could increase the sentence class and add 12 months to the mandatory minimum sentence.

NORTH CAROLINA MEDICAL CANNABIS VERIFICATION SYSTEM: G.S. 90-113.127 would create the North Carolina Verification System, a secure web-based verification system. The System would be accessible to authorized Department personnel, State and local law enforcement, and medical cannabis centers to determine whether a registry identification card is valid. A medical cannabis center employee would be required to check the System and enter specified information before dispensing cannabis or cannabis-infused products.

INSPECTIONS: G.S. 90-113-128 would require the Department to perform annual inspections of any production facilities or medical cannabis centers. All production facilities and medical cannabis centers are subject to random inspections by the Department and the State Bureau of Investigations.

MEDICAL CANNABIS CENTER HOURS, LOCATION, AND AGE RESTRICTIONS: G.S. 90-113.129 would prohibit a medical cannabis center from not selling cannabis or cannabis-infused products between the hours of 7:00 PM and 7:00 AM. It would also restrict where a medical cannabis center may be located and would state an individual must be 18 years old or older to enter.

TESTING OF CANNABIS AND CANNABIS-INFUSED PRODUCTS: G.S. 90-113.130 would require the Department to establish standards for and license up to 5 independent testing laboratories. A representative sample of the cannabis or cannabis-infused product would be analyzed by the independent testing laboratory before the sale or transfer to a medical cannabis center by a production facility.

ADVERTISING: G.S. 90-113.131 would outline requirements for the production facility or medical cannabis center logo, advertising, and signage to be tasteful, respectful, medically focused, and not appeal to minors. A production facility or medical cannabis center would have to maintain a discreet, professional appearance.

CANNABIS AND CANNABIS-INFUSED PRODUCT PACKAGING: G.S. 90-113.132 Suppliers would have to safely package the cannabis and cannabis-infused products in child-resistant packaging, and all cannabis or cannabis-infused products purchased would be placed in child-resistant exit packaging

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before leaving the medical cannabis center. Suppliers would also be required to accurately label cannabis or cannabis-infused products with specified criteria.

DISPOSAL: G.S. 90-113.133 would provide for the disposal of unused and returned cannabis.

NORTH CAROLINA CANNABIS RESEARCH PROGRAM: G.S. 90-113.134 would establish the North Carolina Cannabis Research Program to conduct objective, scientific research regarding the administration of cannabis or cannabis-infused products as part of medical treatment.

EDUCATIONAL CAMPAIGN: G.S. 90-113.135 would require the Department to develop an educational campaign about the regulated medical cannabis supply system.

NORTH CAROLINA MEDICAL CANNABIS PROGRAM FUND: G.S. 90-113.136 would establish the North Carolina Medical Cannabis Program Fund. All monies collected pursuant to the North Carolina Compassionate Care Act would be deposited in the fund and the fund would be used for direct and indirect costs associated with the implementation, administration, and enforcement of the act. Excess revenue would be annually distributed to the State General Fund.

SELF-SUPPORTING REQUIREMENT: Under G.S. 90-113.137, the Medical Cannabis Production Commission would use system revenue from license fees and monthly gross revenue fees to fund a designated list of priorities.

ANNUAL REPORT: G.S. 90-113.140 would instruct the Department to submit a report to the Joint Legislative Oversight Committee on Health and Human Services and to the Joint Legislative Oversight Committee on Justice and Public Safety by October 1 of each year. The report would include the number of registry identification card applications submitted, the number of qualifying patients and designated caregivers served by each medical cannabis center, and the number of suppliers, production facilities, and medical cannabis centers by county.

CONSTRUCTION OF ARTICLE: G.S. 90-113.141 would clarify the construction of the North Carolina Compassionate Care Act, including that the following is not required: any accommodation of any on site medical use of cannabis in any correctional institution or detention facility, place of education or employment, or of smoking or vaping cannabis in any public place, or insurance claim reimbursement for the medical use of cannabis.

SEVERABILITY: There would be a severability clause in G.S. 90-113.142.

SALES TAX EXEMPTION: Section 3 would exempt cannabis and cannabis-infused products from the sales and use tax.

FOOD, DRUG AND COSMETIC ACT EXEMPTION: Section 4 would exempt cannabis and cannabis-infused products from the definitions of 'food' and 'drug' found in the N.C. Food, Drug and Cosmetic Act.

EXEMPTION FROM DEFINITION OF MARIJUANA: Section 5 would exempt an adequate supply as defined in G.S. 90-113.112 of cannabis for medical use in compliance with Article 5H of the Chapter 90 of the General Statutes from the definition of marijuana found in G.S. 90-87(16).

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

BACKGROUND: S.L. 2015-299 created the North Carolina Industrial Hemp Commission and decriminalized the production and use of industrial hemp upon the completion of permanent rulemaking by the Board of Agriculture. Article 5G of Chapter 90, the Epilepsy Alternative Treatment Act, allows hemp extract to be used for intractable epilepsy. S.L. 2015-154 repealed that Article effective July 1, 2021.