SENATE BILL 3:
NC Compassionate Care Act.

2023-2024 General Assembly

Committee:	Senate Rules and Operations of the Senate	**Date:**	February 23, 2023
Introduced by:	Sens. Rabon, Lee, Lowe	**Prepared by:**	Robert Ryan* Staff Attorney
Analysis of:	Third Edition		

OVERVIEW: Senate Bill 3 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.

BILL ANALYSIS: Senate Bill 3 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 states the General Assembly 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 enacts definitions, including definitions for adequate supply, cannabis, debilitating medical condition, medical cannabis center, medical use of cannabis or medical use, production facility, qualified patient, regulated medical cannabis supply system or system, registry identification cardholder, 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 Compassionate Use Advisory Board.

COMPASSIONATE USE ADVISORY BOARD: G.S. 90-113.113 establishes the Compassionate Use Advisory Board ("Board") consisting of 11 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.

PHYSICIAN REQUIREMENTS: G.S. 90-113.114 requires a physician to complete a 10 hour continuing medical education course about prescribing medical cannabis before issuing a written certification and requires a 3 hour supplemental course thereafter. A physician may only issue a written certification to a patient with whom the physician has a bona fide physician-patient relationship. A physician would have to conduct risk screenings, patient education, and specified follow-up care when issuing written certifications.

REGISTRY IDENTIFICATION CARDS: G.S. 90-113.115 instructs 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. The registry identification cards must contain specified information.

REQUIREMENT TO CARRY AND DISCLOSE REGISTRY IDENTIFICATION CARD OR SUPPLIER REGISTRY IDENTIFICATION CARD TO LAW ENFORCEMENT. G.S. 90-113.116 requires a registry identification cardholder or a supplier registry identification cardholder (identification issued to suppliers and their employees) to carry their cards, along with valid identification, whenever carrying cannabis or cannabis-infused products. When approached, the registry identification cardholder or supplier registry identification cardholder would be required to disclose to any law enforcement officer the valid registry identification card or supplier registry identification card and valid identification.

CONFIDENTIAL MEDICAL CANNABIS REGISTRY DATABASE: G.S. 90-113.117 directs the Department to create a secure, confidential, electronic database containing information about qualified patients, designated caregivers, and physicians. The database would be confidential and accessible only for authorized employees of the Department as necessary to perform official duties of the Department. Law enforcement agencies may contact the Department to validate a registry identification card if the law enforcement agency is unable to do so by using the medical cannabis verification system established by G.S. 90-113.127. A breach of information in the database would be a Class 2 misdemeanor.

MEDICAL CANNABIS PRODUCTION COMMISSION: G.S. 90-113.118 establishes the Medical Cannabis Production Commission ("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 Commission would be allowed to issue 10 medical cannabis supplier licenses. Each supplier would be allowed to operate no more than eight medical cannabis centers, one of which must be located in a Tier 1 county. The Commission is directed to give priority to a supplier who: (i) commits to establishing a medical cannabis center in more than one Tier 1 county, or (ii) commits to establishing medical cannabis centers in a manner that would ensure equitable distribution.

REGULATED MEDICAL CANNABIS SUPPLY SYSTEM: G.S. 90-113.119 directs the Commission to establish a medical cannabis supply system to provide a safe, regulated supply of cannabis and ensure statewide access. The Commission must establish a seed-to-sale tracking system. The General Assembly may appropriate funds for the initial development and implementation of the system. The Commission and Department may not use appropriations from the General Fund to operate the system. The intent of the General Assembly is for the system to be funded solely from fees authorized under this Act.

MEDICAL CANNABIS SUPPLIER LICENSE: G.S. 90-113.120 requires 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. 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. A license is valid for 12 months and may be renewed. A supplier must begin cultivation of cannabis within 120 days of receiving a license and begin selling cannabis and cannabis-infused products within 270 days of initiating cultivation.

RESTRICTIONS ON SUPPLIER SALES AND SUPPLY: G.S. 90-113.121 restricts a supplier to only selling cannabis or cannabis-infused products through a 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, MONTHLY FEES, FINES, AUDIT: G.S. 90-113.122 requires a supplier to submit monthly reports to the Department on financial transactions. Each supplier would pay a monthly fee equal to 10% of the gross revenue derived from the sale of cannabis and cannabis-infused products. It would allow the Department to impose a $10,000 fine for specified violations and allow the Commission to require an audit of the financial transactions of a supplier. Each supplier must also submit quarterly reports to the Commission on all cannabis or cannabis-infused products sold or manufactured in the previous quarter.

SUPPLIER QUALIFIED 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: (i) delivering cannabis to any individual who the person knows or has reason to know is not a qualified patient, designated caregiver, or supplier, (ii) manufacturing or distributing cannabis at an unregistered location, (iii) failure to report transfer of cannabis, or (iv) otherwise acting in a manner not 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.

PROTECTIONS FOR MEDICAL USE OF CANNABIS: G.S. 90-113.124 provides 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. 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 prohibits 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. A Class I felony would be created for any registry identification cardholder who possesses 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. This section also creates a Class

3 misdemeanor for possession of cannabis that is not in a closed retailer's container when in public, and a Class 2 misdemeanor for using or attempting to use a registry identification card in certain fraudulent manners to obtain cannabis or cannabis-infused products.

NORTH CAROLINA MEDICAL CANNABIS VERIFICATION SYSTEM: G.S. 90-113.127 creates the North Carolina Medical Cannabis Verification System ("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 AND SECURITY MEASURES: G.S. 90-113.128 requires 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. Suppliers would have to implement appropriate security measures in accordance with rules adopted by the Commission.

MEDICAL CANNABIS CENTER HOURS, LOCATION, AND RESTRICTIONS: G.S. 90-113.129 prohibits a medical cannabis center from 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 restricts who is allowed to enter a medical cannabis center to qualified patients, designated caregivers, and individuals whose job requires their presence in the location. Employees of a medical cannabis center must be 21 years of age or older, and consumption of cannabis or cannabis-infused products at a medical cannabis center is prohibited.

TESTING OF CANNABIS AND CANNABIS-INFUSED PRODUCTS: G.S. 90-113.130 requires the Department to establish standards for testing and license up to five 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. The test results from the independent testing laboratory must then be reported to the Department and the Commission. The Commission also has the authority to conduct its own testing.

ADVERTISING: G.S. 90-113.131 directs that the production facility or medical cannabis center logo, advertising, and signage must be tasteful, respectful, medically focused, and not appeal to minors. It would specify advertising restrictions. 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 requires suppliers 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 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 provides for the disposal of unused and returned cannabis.

NORTH CAROLINA CANNABIS RESEARCH PROGRAM: G.S. 90-113.134 establishes 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.

NORTH CAROLINA MEDICAL CANNABIS PROGRAM FUND: G.S. 90-113.135 establishes 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. 90-113.136, 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 instructs 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 explains the North Carolina Compassionate Care Act shall not be construed in specified ways, including: (i) to require an accommodation of onsite medical use of cannabis in any correctional institution or detention facility, place of education or employment, or smoking or vaping cannabis in any public place, (ii) to require an insurance claim reimbursement for the medical use of cannabis, or (iii) to permit the operation of any vehicle while under the influence of cannabis.

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

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

EVIDENCE: Under Section 5, evidence obtained as the result of a search that was supported by probable cause at the time of the search would not be suppressed on the basis of specified subsequent determinations. This section becomes effective December 1, 2023, and applies to motions filed on or after that date.

EXEMPTION FROM DEFINITION OF MARIJUANA: Section 6 exempts 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).

CLARIFY NO CHANGE TO SCHEDULE VI: Section 7 would clarify that the North Carolina Compassionate Care Act is not to have any effect on the criteria the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services uses to reschedule the controlled substances listed on Schedule VI of the North Carolina Controlled Substances Act. The substances listed on Schedule VI are Marijuana and THC.

EFFECTIVE DATE: Except as otherwise provided, this act is effective when it becomes law and applies to acts committed on and after that date.

**Jessica Boney, Staff Attorney, substantially contributed to this summary.*