

CHAPTER 149

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 01-1371

BY REPRESENTATIVE(S) Cloer, Hefley, and Mace;
also SENATOR(S) Anderson.

AN ACT

CONCERNING THE IMPLEMENTATION OF RESTRICTIONS ON THE MEDICAL USE OF MARIJUANA.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Part 4 of article 18 of title 18, Colorado Revised Statutes, is amended BY THE ADDITION OF NEW SECTION to read:

18-18-406.3. Medical use of marijuana by persons diagnosed with debilitating medical conditions - unlawful acts - penalty - medical marijuana program cash fund. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION WAS APPROVED BY THE REGISTERED ELECTORS OF THIS STATE AT THE 2000 GENERAL ELECTION;

(b) SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION CREATES LIMITED EXCEPTIONS TO THE CRIMINAL LAWS OF THIS STATE FOR PATIENTS, PRIMARY CARE GIVERS, AND PHYSICIANS CONCERNING THE MEDICAL USE OF MARIJUANA BY A PATIENT TO ALLEVIATE AN APPROPRIATELY DIAGNOSED DEBILITATING MEDICAL CONDITION;

(c) SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION REQUIRES A STATE HEALTH AGENCY DESIGNATED BY THE GOVERNOR TO ESTABLISH AND MAINTAIN A CONFIDENTIAL REGISTRY OF PATIENTS AUTHORIZED TO ENGAGE IN THE MEDICAL USE OF MARIJUANA;

(d) THE GOVERNOR, IN ACCORDANCE WITH PARAGRAPH (h) OF SUBSECTION (1) OF SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION, HAS DESIGNATED THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, REFERRED TO IN THIS SECTION AS THE DEPARTMENT, TO BE THE STATE HEALTH AGENCY RESPONSIBLE FOR THE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

ADMINISTRATION OF THE MEDICAL MARIJUANA PROGRAM;

(e) SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION REQUIRES THE DEPARTMENT TO PROCESS THE APPLICATIONS OF PATIENTS WHO WISH TO QUALIFY FOR AND BE PLACED ON THE CONFIDENTIAL REGISTRY FOR THE MEDICAL USE OF MARIJUANA, AND TO ISSUE REGISTRY IDENTIFICATION CARDS TO PATIENTS WHO QUALIFY FOR PLACEMENT ON THE REGISTRY;

(f) SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION SETS FORTH THE LAWFUL LIMITS ON THE MEDICAL USE OF MARIJUANA;

(g) SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION REQUIRES THE GENERAL ASSEMBLY TO DETERMINE AND ENACT CRIMINAL PENALTIES FOR SPECIFIC ACTS DESCRIBED IN THE CONSTITUTIONAL PROVISION;

(h) IN INTERPRETING THE PROVISIONS OF SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION, THE GENERAL ASSEMBLY HAS APPLIED THE DEFINITIONS CONTAINED IN SUBSECTION (1) OF THE CONSTITUTIONAL PROVISION AND HAS ATTEMPTED TO GIVE THE REMAINING WORDS OF THE CONSTITUTIONAL PROVISION THEIR PLAIN MEANING;

(i) THIS SECTION REFLECTS THE CONSIDERED JUDGMENT OF THE GENERAL ASSEMBLY REGARDING THE MEANING AND IMPLEMENTATION OF THE PROVISIONS OF SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION.

(2) (a) ANY PERSON WHO FRAUDULENTLY REPRESENTS A MEDICAL CONDITION TO A PHYSICIAN, THE DEPARTMENT, OR A STATE OR LOCAL LAW ENFORCEMENT OFFICIAL FOR THE PURPOSE OF FALSELY OBTAINING A MARIJUANA REGISTRY IDENTIFICATION CARD FROM THE DEPARTMENT, OR FOR THE PURPOSE OF AVOIDING ARREST AND PROSECUTION FOR A MARIJUANA-RELATED OFFENSE, COMMITS A CLASS 1 MISDEMEANOR.

(b) IF AN OFFICER OR EMPLOYEE OF THE DEPARTMENT RECEIVES INFORMATION THAT CAUSES SUCH OFFICER OR EMPLOYEE REASONABLY TO BELIEVE THAT FRAUDULENT REPRESENTATION, AS DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (2), HAS OCCURRED, SUCH OFFICER OR EMPLOYEE SHALL REPORT THE INFORMATION TO EITHER THE DISTRICT ATTORNEY OF THE COUNTY IN WHICH THE APPLICANT FOR THE MARIJUANA REGISTRY IDENTIFICATION CARD RESIDES, OR TO THE ATTORNEY GENERAL.

(3) THE FRAUDULENT USE OR THEFT OF ANY PERSON'S MARIJUANA REGISTRY IDENTIFICATION CARD, INCLUDING, BUT NOT LIMITED TO, ANY CARD THAT IS REQUIRED TO BE RETURNED TO THE DEPARTMENT PURSUANT TO SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION, IS A CLASS 1 MISDEMEANOR.

(4) THE FRAUDULENT PRODUCTION OR COUNTERFEITING OF, OR TAMPERING WITH, ONE OR MORE MARIJUANA REGISTRY IDENTIFICATION CARDS IS A CLASS 1 MISDEMEANOR.

(5) ANY PERSON INCLUDING, BUT NOT LIMITED TO, ANY OFFICER, EMPLOYEE, OR AGENT OF THE DEPARTMENT, OR ANY OFFICER, EMPLOYEE, OR AGENT OF ANY STATE

OR LOCAL LAW ENFORCEMENT AGENCY, WHO RELEASES OR MAKES PUBLIC ANY CONFIDENTIAL RECORD OR ANY CONFIDENTIAL INFORMATION CONTAINED IN ANY SUCH RECORD THAT IS PROVIDED TO OR BY THE MARIJUANA REGISTRY OF THE DEPARTMENT WITHOUT THE WRITTEN AUTHORIZATION OF THE MARIJUANA REGISTRY PATIENT COMMITS A CLASS 1 MISDEMEANOR.

SECTION 2. 25-1-107 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

25-1-107. Powers and duties of the department - repeal. (1) The department has, in addition to all other powers and duties imposed upon it by law, the following powers and duties:

(jj) (I) THE DEPARTMENT SHALL, PURSUANT TO SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION, PROMULGATE RULES OF ADMINISTRATION CONCERNING THE IMPLEMENTATION OF THE MEDICAL MARIJUANA PROGRAM ESTABLISHED BY SUCH SECTION AND THAT SPECIFICALLY GOVERN THE FOLLOWING:

(A) THE ESTABLISHMENT AND MAINTENANCE OF A CONFIDENTIAL REGISTRY OF PATIENTS WHO HAVE APPLIED FOR AND ARE ENTITLED TO RECEIVE A REGISTRY IDENTIFICATION CARD;

(B) THE DEVELOPMENT BY THE DEPARTMENT OF AN APPLICATION FORM AND MAKING SUCH FORM AVAILABLE TO RESIDENTS OF THIS STATE SEEKING TO BE LISTED ON THE CONFIDENTIAL REGISTRY OF PATIENTS WHO ARE ENTITLED TO RECEIVE A REGISTRY IDENTIFICATION CARD;

(C) THE VERIFICATION BY THE DEPARTMENT OF MEDICAL INFORMATION CONCERNING PATIENTS WHO HAVE APPLIED FOR A CONFIDENTIAL REGISTRY CARD;

(D) THE ISSUANCE AND FORM OF CONFIDENTIAL REGISTRY IDENTIFICATION CARDS;

(E) COMMUNICATIONS WITH LAW ENFORCEMENT OFFICIALS ABOUT CONFIDENTIAL REGISTRY IDENTIFICATION CARDS THAT HAVE BEEN SUSPENDED WHERE A PATIENT IS NO LONGER DIAGNOSED AS HAVING A DEBILITATING MEDICAL CONDITION; AND

(F) THE MANNER IN WHICH THE DEPARTMENT MAY CONSIDER ADDING DEBILITATING MEDICAL CONDITIONS TO THE LIST OF DEBILITATING MEDICAL CONDITIONS CONTAINED IN SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION.

(II) THE DEPARTMENT MAY COLLECT FEES FROM PATIENTS WHO, PURSUANT TO SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION, APPLY TO THE MEDICAL MARIJUANA PROGRAM ESTABLISHED BY SUCH SECTION FOR A MARIJUANA REGISTRY IDENTIFICATION FOR THE PURPOSE OF OFFSETTING THE DEPARTMENT'S DIRECT AND INDIRECT COSTS OF ADMINISTERING THE PROGRAM. THE AMOUNT OF SUCH FEES SHALL BE SET BY RULE OF THE STATE BOARD OF HEALTH. ALL FEES COLLECTED BY THE DEPARTMENT THROUGH THE MEDICAL MARIJUANA PROGRAM SHALL BE TRANSFERRED TO THE STATE TREASURER WHO SHALL CREDIT THE SAME TO THE MEDICAL MARIJUANA PROGRAM CASH FUND, WHICH FUND IS HEREBY CREATED.

(III) THE MEDICAL MARIJUANA PROGRAM CASH FUND SHALL BE SUBJECT TO ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY TO THE DEPARTMENT FOR THE PURPOSE OF ESTABLISHING, OPERATING, AND MAINTAINING THE MEDICAL MARIJUANA PROGRAM ESTABLISHED BY SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION. ALL MONEYS CREDITED TO THE MEDICAL MARIJUANA PROGRAM CASH FUND AND ALL INTEREST DERIVED FROM THE DEPOSIT OF SUCH MONEYS THAT ARE NOT EXPENDED DURING THE FISCAL YEAR SHALL BE RETAINED IN THE FUND FOR FUTURE USE AND MAY NOT BE CREDITED OR TRANSFERRED TO THE GENERAL FUND OR ANY OTHER FUND.

SECTION 3. 42-4-1301 (1) (e), Colorado Revised Statutes, is amended to read:

42-4-1301. Driving under the influence - driving while impaired - driving with excessive alcoholic content - tests - penalties - useful public service program - alcohol and drug driving safety program. (1) (e) The fact that any person charged with a violation of this subsection (1) is or has been entitled to use one or more drugs under the laws of this state, INCLUDING, BUT NOT LIMITED TO, THE MEDICAL USE OF MARIJUANA PURSUANT TO SECTION 18-18-406.3, C.R.S., shall not constitute a defense against any charge of violating this subsection (1).

SECTION 4. Effective date - applicability. This act shall take effect upon passage and shall apply to offenses committed on or after said date.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 27, 2001