HB 1476 - AS INTRODUCED

2018 SESSION

18-2433
01/04

HOUSE BILL ***1476***

AN ACT permitting qualifying patients and designated caregivers to cultivate cannabis for therapeutic use.

SPONSORS: Rep. Cushing, Rock. 21; Rep. E. Edwards, Hills. 11; Rep. P. Gordon, Rock. 29; Rep. Bean, Rock. 21; Rep. Read, Rock. 17; Rep. O'Brien, Hills. 36; Rep. Cleaver, Hills. 35; Rep. Rand, Graf. 8; Rep. Vann, Hills. 24; Rep. King, Hills. 33; Sen. Reagan, Dist 17; Sen. Woodburn, Dist 1; Sen. French, Dist 7; Sen. Hennessey, Dist 5; Sen. Fuller Clark, Dist 21

COMMITTEE: Health, Human Services and Elderly Affairs

ANALYSIS

This bill permits qualifying patients and designated caregivers to cultivate cannabis for therapeutic use.

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Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eighteen

AN ACT permitting qualifying patients and designated caregivers to cultivate cannabis for therapeutic use.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Use of Therapeutic Cannabis for Therapeutic Purposes; Definitions. Amend RSA 126-X:1, IV to read as follows:

IV. "Cultivation location" means a locked and enclosed site, ***under the control of the qualifying patient or designated caregiver, or*** under the control of an alternative treatment center where cannabis is cultivated, secured with one or more locks or other security devices in accordance with the provisions of this chapter.

2 Use of Therapeutic Cannabis; Definitions. Amend RSA 126-X:1, VI to read as follows:

VI. "Designated caregiver" means an individual who:

(a) Is at least 21 years of age;

(b)***(1)*** Has agreed to assist with one or more (not to exceed 5) qualifying [~~patient's~~] ***patients in the*** therapeutic use of cannabis, except if the qualifying patient and designated caregiver each live greater than 50 miles from the nearest alternative treatment center, [~~in which case~~] the designated caregiver may assist with the therapeutic use of cannabis for up to 9 qualifying patients; ***or***

(2) Has agreed to cultivate cannabis for therapeutic use pursuant to this chapter for no more than one qualifying patient;

(c) Has never been convicted of a felony or any felony drug-related offense; and

(d) Possesses a valid registry identification card issued pursuant to RSA 126-X:4.

3 Use of Therapeutic Cannabis; Definitions. Amend RSA 126-X:1, VII(b) to read as follows:

(b) For a visiting qualifying patient, "provider" means an individual licensed to prescribe drugs to humans in the state of the patient's residence and who possesses an active registration from the United States Drug Enforcement Administration to prescribe controlled substances. Such visiting patient shall not be eligible to purchase [~~or transfer~~] cannabis [~~from an eligible New Hampshire patient~~].

4 Use of Therapeutic Cannabis; Definitions. Amend RSA 126-X:1, XIII(c) to read as follows:

(c) Cultivation by a designated caregiver or qualifying patient***, except as provided under RSA 126-X:2, II-a or II-b***.

5 Use of Therapeutic Cannabis; Definitions. Amend RSA 126-X:1, XVI to read as follows:

XVI. "Visiting qualifying patient" means a patient with a qualifying medical condition who is not a resident of New Hampshire or who has been a resident of New Hampshire for fewer than 30

days and is not eligible to purchase therapeutic cannabis in New Hampshire [~~or receive cannabis from a qualifying New Hampshire patient~~].

6 Use of Therapeutic Cannabis Purposes; Protections. Amend RSA 126-X:2, I-III to read as follows:

I. A qualifying patient shall not be subject to arrest by state or local law enforcement, prosecution or penalty under state or municipal law, or denied any right or privilege for the therapeutic use of cannabis in accordance with this chapter, if the qualifying patient possesses an amount of cannabis that does not exceed the following***, if the qualifying patient is not at the cultivation location he or she reported to the department, or transporting cannabis as allowed under paragraph II-a***:

(a) Two ounces of usable cannabis; and

(b) Any amount of unusable cannabis.

II. A designated caregiver shall not be subject to arrest by state or local law enforcement, prosecution or penalty under state or municipal law, or denied any right or privilege for the therapeutic use of cannabis in accordance with this chapter on behalf of a qualifying patient if the designated caregiver possesses an amount of cannabis that does not exceed the following***, if the designated caregiver is not at the cultivation location he or she reported to the department, or transporting cannabis as allowed under paragraph II-b***:

(a) Two ounces of usable cannabis, or the total amount allowable for the number of qualifying patients for which he or she is a designated caregiver; and

(b) Any amount of unusable cannabis.

II-a. A qualifying patient shall not be subject to arrest by state or local law enforcement, prosecution or penalty under state or municipal law, or be denied any right or privilege for the therapeutic use of cannabis in accordance with this chapter, if the qualifying patient possesses or cultivates an amount of cannabis that does not exceed the following:

(a) If the qualifying patient does not have a designated caregiver who is authorized to cultivate cannabis for him or her, for the possession or cultivation, or both, of cannabis that occurs at the cultivation location under the control of the patient reported to the department, or while transporting cannabis and cannabis plants and seedlings to a new cultivation location that has been reported to the department within the prior 21 days:

(1) Six ounces of usable cannabis;

(2) Any amount of unusable cannabis; and

(3) Two mature cannabis plants and 12 seedlings, where the plants are subject to public view, including to view from another private property, without the use of optical aids, with a total canopy of no more than 50 square feet.

(b) If more than one qualifying patient, designated caregiver, or both, share a

cultivation location, the total canopy of all marijuana plants may not exceed 100 square feet at one dwelling.

II-b. A designated caregiver shall not be subject to arrest by state or local law enforcement, prosecution or penalty under state or municipal law, or denied any right or privilege for the [~~medical~~] therapeutic use of cannabis in accordance with this chapter on behalf of a qualifying patient, an amount of cannabis that does not exceed the following:

(a) If, at the cultivation location under control of the caregiver and that has been reported to the department, or while transporting cannabis and cannabis plants and seedlings to a new cultivation location that has been reported to the department within the prior 21 days:

(1) Six ounces of usable cannabis;

(2) Any amount of unusable cannabis; and

(3) Two mature cannabis plants and 12 seedlings, where the plants are subject to public view, including to view from another private property, without the use of optical aids, with a total canopy of no more than 50 square feet.

(b) If more than one qualifying patient, designated caregiver, or both, share a cultivation location, the total canopy of all marijuana plants may not exceed 100 square feet at one dwelling.

II-c. A qualifying patient or designated caregiver shall not be subject to arrest by state or local law enforcement, or prosecution or penalty under state or municipal law, for giving cannabis to a qualifying patient or a visiting qualifying patient where nothing of value is transferred in return, or for offering to do the same if the person giving the cannabis does not knowingly cause the recipient to possess more cannabis than is permitted by this section.

III. A designated caregiver may receive compensation for costs, ***not to exceed $500 per calendar year,*** not including labor, associated with assisting a qualifying patient who has designated the designated caregiver to assist him or her with the therapeutic use of cannabis. Such compensation shall not constitute the sale of [~~controlled substances~~] ***a controlled drug pursuant to RSA 318-B***.

7 Use of Therapeutic Cannabis; Protections. Amend RSA 126-X:2, XV to read as follows:

XV. A laboratory which conducts testing of cannabis [~~required under rules for~~] ***delivered to it by*** alternative treatment centers [~~adopted under this chapter, and~~]***,*** the employees thereof, ***qualified patients, or designated caregivers, and the employees thereof,*** shall not be subject to arrest by state or local law enforcement, prosecution or penalty under state or municipal law, or search, for acting pursuant to this chapter and department rules to possess cannabis on the premises of the laboratory for the purposes of testing, and, in the case of a laboratory employee, denied any right or privilege for working for such a laboratory.

8 Use of Therapeutic Cannabis; Prohibitions and Limits. Amend RSA 126-X:3, I to read as

follows:

I. A qualifying patient may use ***or cultivate*** cannabis on privately-owned real property only with written permission of the property owner or, in the case of leased property, with the permission of the tenant in possession of the property, except that a tenant shall not allow a qualifying patient to smoke cannabis on rented property if smoking on the property violates the lease or the lessor's rental policies that apply to all tenants at the property. ***A tenant or guest of a tenant shall not cultivate cannabis on rented property if the lessor has prohibited therapeutic cannabis cultivation.*** However, a tenant may permit a qualifying patient to use cannabis on leased property by ingestion or inhalation through vaporization even if smoking is prohibited by the lease or rental policies. For purposes of this chapter, vaporization shall mean the inhalation of cannabis without the combustion of the cannabis.

9 New Subparagraph; Use of Therapeutic Cannabis; Registry Identification Cards. Amend RSA 126-X:4, I by inserting after subparagraph (h) the following new subparagraph:

(i) The qualifying patient's cultivation location, if any.

10 New Subparagraph; Use of Therapeutic Cannabis; Registry Identification Cards. Amend RSA 126-X:4, II by inserting after subparagraph (g) the following new subparagraph:

(h) The designated caregiver's cultivation location, where he or she may cultivate cannabis on behalf of a single qualifying patient who has not reported a cultivation location.

11 Use of Therapeutic Cannabis; Registry Identification Cards. Amend RSA 126-X:4, IX(a) to read as follows:

(a) A qualifying patient shall notify the department before changing his or her designated caregiver***, cultivation location,*** or alternative treatment center. ***A designated caregiver shall notify the department before changing his or her cultivation location.***

12 Use of Therapeutic Cannabis; Registry Identification Cards. Amend RSA 126-X:4, XI(a) through XI(b)(1)-(3) to read as follows:

XI.(a) The department shall create and maintain a confidential registry of each individual who has applied for and received a registry identification card as a qualifying patient or a designated caregiver in accordance with the provisions of this chapter. Each entry in the registry shall contain the qualifying patient's or designated caregiver's name, mailing address, date of birth, date of registry identification card issuance, date of registry identification card expiration, random 10-digit identification number, ***cultivation location, if any,*** and registry identification number of the qualifying patient's designated alternative treatment center, if any. The confidential registry and the information contained in it shall be exempt from disclosure under RSA 91-A.

(b)(1) Except as specifically provided in this chapter, no person shall have access to any information about qualifying patients or designated caregivers in the department's confidential registry, or any information otherwise maintained by the department about providers and alternative treatment centers, except for authorized employees of the department in the course of their official duties and local and state law enforcement personnel who have detained or arrested an

individual who claims to be engaged in the therapeutic use of cannabis.

(2) If a local or state law enforcement officer submits a sworn affidavit to the department affirming that he or she has probable cause to believe cannabis is possessed ***or cultivated*** at a specific address, an authorized employee for the department may disclose whether the location is associated with a qualifying patient, designated caregiver, or cultivation location [~~of an alternative treatment center~~].

(3) If a local or state law enforcement officer submits a sworn affidavit to the department affirming that he or she has probable cause to believe a specific individual possesses ***or cultivates*** cannabis, an authorized employee for the department may disclose whether the person is a qualifying patient or a designated caregiver, provided that the law enforcement officer provides the person's name and address or name and date of birth.

13 New Paragraph; Use of Therapeutic Cannabis; Registry Identification Cards. Amend RSA 126-X:4 by inserting after paragraph XII the following new paragraph:

XIII. No later than October 1, 2018, the department shall allow existing and new qualifying patients and designated caregivers to designate a cultivation location provided that:

(a) A qualifying patient may only designate a cultivation location if he or she does not have a designated caregiver who will cultivate for him or her.

(b) A designated caregiver may only cultivate for a single qualifying patient, and may only cultivate for a patient who does not have a cultivation location.

14 Use of Therapeutic Cannabis; Affirmative Defense. Amend RSA 126-X:5, I to read as follows:

I. It shall be an affirmative defense for any person charged with manufacturing, possessing, having under his or her control, selling, purchasing, prescribing, administering, transporting, ***cultivating,*** or possessing with intent to sell, dispense, or compound cannabis, cannabis analog, or any preparation containing cannabis, if:

(a) The actor is a qualifying patient who has been issued a valid registry identification card, was in possession of ***or was cultivating*** cannabis in a quantity and location permitted pursuant to this chapter, and was engaged in the therapeutic use of cannabis;

(b) The actor is a designated caregiver who has been issued a valid registry identification card, was in possession of ***or was cultivating*** cannabis in a quantity and location permitted pursuant to this chapter, and was engaged in the therapeutic use of cannabis on behalf of a qualifying patient; [~~or~~]

(c) The actor is an employee of a laboratory conducting testing required for alternative treatment centers pursuant to rules adopted under this chapter[~~.~~] ***or that tests cannabis provided to it by qualifying patients, and designated caregivers; or***

(d) The actor is a person with a qualifying medical condition who does not possess a registry identification card and, prior to the arrest, the actor submitted to the department a completed application to become a qualifying patient, including a written

certification, but the actor had not yet received a registry identification card from the department; provided that:

(1) The actor does not possess more than the amount of cannabis permitted under RSA 126-X:2, I, if the cannabis is not on the actor's property; or

(2) If the cannabis is on the actor's property, the actor does not possess more than the amount of cannabis permitted under RSA 126-X:2, II-a, which shall be in a locked and enclosed location on the actor's property.

15 Use of Therapeutic Cannabis; Alternative Treatment Centers. Amend RSA 126-X:8, XIII(b) to read as follows:

(b) Except as provided in subparagraph (c), ***and excluding any cannabis cultivated by the patient pursuant to RSA 126-X:2, II-a,*** a qualifying patient shall not obtain more than 2 ounces of usable cannabis directly or through the qualifying patient's designated caregiver during a 10-day period.

16 Effective Date. This act shall take effect July 1, 2018.