

SENATE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

January 30, 2017

Date

Committee on State, Veterans, & Military Affairs.

After consideration on the merits, the Committee recommends the following:

SB17-017 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation and with a recommendation that it be placed on the consent calendar:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

3 "SECTION 1. In Colorado Revised Statutes, 25-1.5-106, **amend**
4 (2)(a.5)(II), (2)(a.5)(III), (2)(d.5) introductory portion, (3)(a)(VI), (5)
5 introductory portion, (5)(b), (5)(d)(III), (5)(d)(IV), (9)(a), (9)(b),
6 (12)(b)(VII), (14), and (16)(a); and **add** (2)(a.7), (2)(d.3), and (2.5) as
7 follows:

8 **25-1.5-106. Medical marijuana program - powers and duties**
9 **of state health agency - rules - medical review board - medical**
10 **marijuana program cash fund - subaccount - created - repeal.**

11 (2) **Definitions.** In addition to the definitions set forth in section 14 (1)
12 of article XVIII of the state constitution, as used in this section, unless the
13 context otherwise requires:

14 (a.5) "Bona fide physician-patient relationship", for purposes of
15 the medical marijuana program, means:

16 (II) The physician has consulted with the patient with respect to
17 the patient's debilitating medical condition OR DISABLING MEDICAL
18 CONDITION before the patient applies for a registry identification card; and

19 (III) The physician is available to or offers to provide follow-up
20 care and treatment to the patient, including patient examinations, to
21 determine the efficacy of the use of medical marijuana as a treatment of

1 the patient's debilitating medical condition OR DISABLING MEDICAL
2 CONDITION.

3 (a.7) "DISABLING MEDICAL CONDITION" MEANS ACUTE STRESS
4 DISORDER OR POST-TRAUMATIC STRESS DISORDER.

5 (d.3) "PATIENT" MEANS A PERSON WHO HAS A DEBILITATING
6 MEDICAL CONDITION OR DISABLING MEDICAL CONDITION.

7 (d.5) "Primary caregiver" means a natural person, other than the
8 patient or the patient's physician, who is eighteen years of age or older
9 and has significant responsibility for managing the well-being of a patient
10 who has a debilitating medical condition OR DISABLING MEDICAL
11 CONDITION. A primary caregiver may have one or more of the following
12 relationships:

13 (2.5) (a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS
14 (2.5)(h) AND (2.5)(i) OF THIS SECTION AND SECTION 18-18-406.3, A
15 PATIENT WITH A DISABLING MEDICAL CONDITION OR HIS OR HER PRIMARY
16 CAREGIVER CHARGED WITH A VIOLATION OF THE STATE'S CRIMINAL LAWS
17 RELATED TO THE PATIENT'S MEDICAL USE OF MARIJUANA WILL BE DEEMED
18 TO HAVE ESTABLISHED AN AFFIRMATIVE DEFENSE TO SUCH ALLEGATION
19 WHERE:

20 (I) THE PATIENT WAS PREVIOUSLY DIAGNOSED BY A PHYSICIAN AS
21 HAVING A DISABLING MEDICAL CONDITION;

22 (II) THE PATIENT WAS ADVISED BY HIS OR HER PHYSICIAN, IN THE
23 CONTEXT OF A BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP, THAT THE
24 PATIENT MIGHT BENEFIT FROM THE MEDICAL USE OF MARIJUANA IN
25 CONNECTION WITH A DISABLING MEDICAL CONDITION; AND

26 (III) THE PATIENT AND HIS OR HER PRIMARY CAREGIVER WERE
27 COLLECTIVELY IN POSSESSION OF AMOUNTS OF MARIJUANA ONLY AS
28 PERMITTED UNDER THIS SECTION.

29 (b) THE AFFIRMATIVE DEFENSE IN SUBSECTION (2.5)(a) OF THIS
30 SECTION DOES NOT EXCLUDE THE ASSERTION OF ANY OTHER DEFENSE
31 WHERE A PATIENT OR PRIMARY CAREGIVER IS CHARGED WITH A VIOLATION
32 OF STATE LAW RELATED TO THE PATIENT'S MEDICAL USE OF MARIJUANA.

33 (c) IT IS AN EXCEPTION FROM THE STATE'S CRIMINAL LAWS FOR
34 ANY PATIENT WITH A DISABLING MEDICAL CONDITION OR HIS OR HER
35 PRIMARY CAREGIVER IN LAWFUL POSSESSION OF A REGISTRY
36 IDENTIFICATION CARD TO ENGAGE OR ASSIST IN THE MEDICAL USE OF
37 MARIJUANA, EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2.5)(h) OF
38 THIS SECTION OR SECTION 18-18-406.3.

39 (d) IT IS AN EXCEPTION FROM THE STATE'S CRIMINAL LAWS FOR
40 ANY PHYSICIAN TO:

1 (I) ADVISE A PATIENT WHOM THE PHYSICIAN HAS DIAGNOSED AS
2 HAVING A DISABLING MEDICAL CONDITION ABOUT THE RISKS AND
3 BENEFITS OF THE MEDICAL USE OF MARIJUANA OR THAT HE OR SHE MIGHT
4 BENEFIT FROM THE MEDICAL USE OF MARIJUANA, PROVIDED THAT SUCH
5 ADVICE IS BASED UPON THE PHYSICIAN'S CONTEMPORANEOUS ASSESSMENT
6 OF THE PATIENT'S MEDICAL HISTORY AND CURRENT MEDICAL CONDITION
7 AND A BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP; OR

8 (II) PROVIDE A PATIENT WITH WRITTEN DOCUMENTATION, BASED
9 UPON THE PHYSICIAN'S CONTEMPORANEOUS ASSESSMENT OF THE
10 PATIENT'S MEDICAL HISTORY AND CURRENT MEDICAL CONDITION AND A
11 BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP, STATING THAT THE PATIENT
12 HAS A DISABLING MEDICAL CONDITION AND MIGHT BENEFIT FROM THE
13 MEDICAL USE OF MARIJUANA. NO PHYSICIAN SHALL BE DENIED ANY RIGHTS
14 OR PRIVILEGES FOR THE ACTS AUTHORIZED BY THIS SECTION.

15 (e) NOTWITHSTANDING THE FOREGOING PROVISIONS, NO PERSON,
16 INCLUDING A PATIENT WITH A DISABLING MEDICAL CONDITION OR HIS OR
17 HER PRIMARY CAREGIVER, IS ENTITLED TO THE PROTECTION OF THIS
18 SECTION FOR HIS OR HER ACQUISITION, POSSESSION, MANUFACTURE,
19 PRODUCTION, USE, SALE, DISTRIBUTION, DISPENSING, OR TRANSPORTATION
20 OF MARIJUANA FOR ANY USE OTHER THAN MEDICAL USE.

21 (f) ANY PROPERTY INTEREST THAT IS POSSESSED, OWNED, OR USED
22 BY A PATIENT WITH A DISABLING MEDICAL CONDITION OR HIS OR HER
23 PRIMARY CAREGIVER IN CONNECTION WITH THE MEDICAL USE OF
24 MARIJUANA OR ACTS INCIDENTAL TO SUCH USE SHALL NOT BE HARMED,
25 NEGLECTED, INJURED, OR DESTROYED WHILE IN THE POSSESSION OF STATE
26 OR LOCAL LAW ENFORCEMENT OFFICIALS WHERE SUCH PROPERTY HAS
27 BEEN SEIZED IN CONNECTION WITH THE CLAIMED MEDICAL USE OF
28 MARIJUANA. ANY SUCH PROPERTY INTEREST SHALL NOT BE FORFEITED
29 UNDER ANY PROVISION OF STATE LAW PROVIDING FOR THE FORFEITURE OF
30 PROPERTY OTHER THAN AS A SENTENCE IMPOSED AFTER CONVICTION OF A
31 CRIMINAL OFFENSE OR ENTRY OF A PLEA OF GUILTY TO SUCH OFFENSE.
32 MARIJUANA AND PARAPHERNALIA SEIZED BY STATE OR LOCAL LAW
33 ENFORCEMENT OFFICIALS FROM A PATIENT OR PRIMARY CAREGIVER IN
34 CONNECTION WITH THE CLAIMED MEDICAL USE OF MARIJUANA MUST BE
35 RETURNED IMMEDIATELY UPON THE DETERMINATION OF THE DISTRICT
36 ATTORNEY OR HIS OR HER DESIGNEE THAT THE PATIENT OR PRIMARY
37 CAREGIVER IS ENTITLED TO THE PROTECTION CONTAINED IN THIS SECTION
38 AS MAY BE EVIDENCED, FOR EXAMPLE, BY A DECISION NOT TO PROSECUTE,
39 THE DISMISSAL OF CHARGES, OR ACQUITTAL.

40 (g) (I) A PATIENT WITH A DISABLING MEDICAL CONDITION MAY

1 ENGAGE IN THE MEDICAL USE OF MARIJUANA, WITH NO MORE MARIJUANA
2 THAN IS MEDICALLY NECESSARY TO ADDRESS A DISABLING MEDICAL
3 CONDITION. THE MEDICAL USE OF MARIJUANA BY A PATIENT WITH A
4 DISABLING MEDICAL CONDITION IS LAWFUL WITHIN THE FOLLOWING
5 LIMITS:

6 (A) NO MORE THAN TWO OUNCES OF A USABLE FORM OF
7 MARIJUANA; AND

8 (B) NO MORE THAN SIX MARIJUANA PLANTS, WITH THREE OR
9 FEWER BEING MATURE, FLOWERING PLANTS THAT ARE PRODUCING A
10 USABLE FORM OF MARIJUANA.

11 (II) FOR QUANTITIES OF MARIJUANA IN EXCESS OF THESE
12 AMOUNTS, A PATIENT OR HIS OR HER PRIMARY CAREGIVER MAY RAISE AS
13 AN AFFIRMATIVE DEFENSE TO CHARGES OF VIOLATION OF STATE LAW THAT
14 SUCH GREATER AMOUNTS WERE MEDICALLY NECESSARY TO ADDRESS THE
15 PATIENT'S DISABLING MEDICAL CONDITION.

16 (h) (I) NO PATIENT WITH A DISABLING MEDICAL CONDITION SHALL:

17 (A) ENGAGE IN THE MEDICAL USE OF MARIJUANA IN A WAY THAT
18 ENDANGERS THE HEALTH OR WELL-BEING OF ANY PERSON; OR

19 (B) ENGAGE IN THE MEDICAL USE OF MARIJUANA IN PLAIN VIEW OF,
20 OR IN A PLACE OPEN TO, THE GENERAL PUBLIC.

21 (II) IN ADDITION TO ANY OTHER PENALTIES PROVIDED BY LAW, THE
22 STATE HEALTH AGENCY SHALL REVOKE FOR A PERIOD OF ONE YEAR THE
23 REGISTRY IDENTIFICATION CARD OF ANY PATIENT FOUND TO HAVE
24 WILLFULLY VIOLATED THE PROVISIONS OF THIS SECTION.

25 (i) NOTWITHSTANDING THE PROVISIONS OF THIS SUBSECTION (2.5),
26 NO PATIENT WITH A DISABLING MEDICAL CONDITION UNDER EIGHTEEN
27 YEARS OF AGE SHALL ENGAGE IN THE MEDICAL USE OF MARIJUANA
28 UNLESS:

29 (I) TWO PHYSICIANS HAVE DIAGNOSED THE PATIENT AS HAVING A
30 DISABLING MEDICAL CONDITION;

31 (II) ONE OF THE PHYSICIANS REFERRED TO IN SUBSECTION
32 (2.5)(i)(I) OF THIS SECTION HAS EXPLAINED THE POSSIBLE RISKS AND
33 BENEFITS OF THE MEDICAL USE OF MARIJUANA TO THE PATIENT AND EACH
34 OF THE PATIENT'S PARENTS RESIDING IN COLORADO;

35 (III) THE PHYSICIAN REFERRED TO IN SUBSECTION (2.5)(i)(II) OF
36 THIS SECTION HAS PROVIDED THE PATIENT WITH THE WRITTEN
37 DOCUMENTATION SPECIFYING THAT THE PATIENT HAS BEEN DIAGNOSED
38 WITH A DISABLING MEDICAL CONDITION AND THE PHYSICIAN HAS
39 CONCLUDED THAT THE PATIENT MIGHT BENEFIT FROM THE MEDICAL USE
40 OF MARIJUANA;

1 (IV) EACH OF THE PATIENT'S PARENTS RESIDING IN COLORADO
2 CONSENT IN WRITING TO THE STATE HEALTH AGENCY TO PERMIT THE
3 PATIENT TO ENGAGE IN THE MEDICAL USE OF MARIJUANA;

4 (V) A PARENT RESIDING IN COLORADO CONSENTS IN WRITING TO
5 SERVE AS THE PATIENT'S PRIMARY CAREGIVER;

6 (VI) A PARENT SERVING AS A PRIMARY CAREGIVER COMPLETES
7 AND SUBMITS AN APPLICATION FOR A REGISTRY IDENTIFICATION CARD AND
8 THE WRITTEN CONSENTS REFERRED TO IN SUBSECTIONS (2.5)(i)(IV) AND
9 (2.5)(i)(V) OF THIS SECTION TO THE STATE HEALTH AGENCY;

10 (VII) THE STATE HEALTH AGENCY APPROVES THE PATIENT'S
11 APPLICATION AND TRANSMITS THE PATIENT'S REGISTRY IDENTIFICATION
12 CARD TO THE PARENT DESIGNATED AS A PRIMARY CAREGIVER;

13 (VIII) THE PATIENT AND PRIMARY CAREGIVER COLLECTIVELY
14 POSSESS AMOUNTS OF MARIJUANA NO GREATER THAN THOSE SPECIFIED IN
15 SUBSECTION (2.5)(g) OF THIS SECTION; AND

16 (IX) THE PRIMARY CARE-GIVER CONTROLS THE ACQUISITION OF
17 SUCH MARIJUANA AND THE DOSAGE AND FREQUENCY OF ITS USE BY THE
18 PATIENT WITH A DISABLING MEDICAL CONDITION.

19 (3) **Rule-making.** (a) The state health agency shall, pursuant to
20 section 14 of article XVIII of the state constitution, promulgate rules of
21 administration concerning the implementation of the medical marijuana
22 program that specifically govern the following:

23 (VI) Communications with law enforcement officials about
24 registry identification cards that have been suspended when a patient is
25 no longer diagnosed as having a debilitating medical condition OR
26 DISABLING MEDICAL CONDITION;

27 (5) **Physicians.** A physician who certifies a debilitating medical
28 condition OR DISABLING MEDICAL CONDITION for an applicant to the
29 medical marijuana program shall comply with all of the following
30 requirements:

31 (b) After a physician, who has a bona fide physician-patient
32 relationship with the patient applying for the medical marijuana program,
33 determines, for the purposes of making a recommendation, that the
34 patient has a debilitating medical condition OR DISABLING MEDICAL
35 CONDITION and that the patient may benefit from the use of medical
36 marijuana, the physician shall certify to the state health agency that the
37 patient has a debilitating medical condition OR DISABLING MEDICAL
38 CONDITION and that the patient may benefit from the use of medical
39 marijuana. If the physician certifies that the patient would benefit from
40 the use of medical marijuana based on a chronic or debilitating disease or

1 medical condition OR DISABLING MEDICAL CONDITION, the physician shall
2 specify the chronic or debilitating disease or medical condition OR
3 DISABLING MEDICAL CONDITION and, if known, the cause or source of the
4 chronic or debilitating disease or medical condition OR DISABLING
5 MEDICAL CONDITION.

6 (d) A physician shall not:

7 (III) Examine a patient for purposes of diagnosing a debilitating
8 medical condition OR A DISABLING MEDICAL CONDITION at a location
9 where medical marijuana is sold or distributed; or

10 (IV) Hold an economic interest in an enterprise that provides or
11 distributes medical marijuana if the physician certifies the debilitating
12 medical condition OR DISABLING MEDICAL CONDITION of a patient for
13 participation in the medical marijuana program.

14 (9) **Registry identification card required - denial - revocation**

15 **- renewal.** (a) A PERSON WITH A DISABLING MEDICAL CONDITION MAY
16 APPLY TO THE STATE HEALTH AGENCY FOR A REGISTRY IDENTIFICATION
17 CARD. To be considered in compliance with the provisions of section 14
18 of article XVIII of the state constitution, this section, and the rules of the
19 state health agency, a patient or primary caregiver shall have his or her
20 registry identification card in his or her possession at all times that he or
21 she is in possession of any form of medical marijuana and produce the
22 same upon request of a law enforcement officer to demonstrate that the
23 patient or primary caregiver is not in violation of the law; except that, if
24 more than thirty-five days have passed since the date the patient or
25 primary caregiver filed his or her medical marijuana program application
26 and the state health agency has not yet issued or denied a registry
27 identification card, a copy of the patient's or primary caregiver's
28 application along with proof of the date of submission shall be in the
29 patient's or primary caregiver's possession at all times that he or she is in
30 possession of any form of medical marijuana until the state health agency
31 issues or denies the registry identification card. A person who violates
32 section 14 of article XVIII of the state constitution, this section, or the
33 rules promulgated by the state health agency may be subject to criminal
34 prosecution for violations of section 18-18-406. ~~C.R.S.~~

35 (b) The state health agency may deny a patient's or primary
36 caregiver's application for a registry identification card or revoke the card
37 if the state health agency, in accordance with article 4 of title 24, ~~C.R.S.~~,
38 determines that the physician who diagnosed the patient's debilitating
39 medical condition OR DISABLING MEDICAL CONDITION, the patient, or the
40 primary caregiver violated section 14 of article XVIII of the state

1 constitution, this section, or the rules promulgated by the state health
2 agency pursuant to this section; except that, when a physician's violation
3 is the basis for adverse action, the state health agency may only deny or
4 revoke a patient's application or registry identification card when the
5 physician's violation is related to the issuance of a medical marijuana
6 recommendation.

7 (12) **Use of medical marijuana.** (b) A patient or primary
8 caregiver shall not:

9 (VII) Use medical marijuana if the person does not have a
10 debilitating medical condition OR DISABLING MEDICAL CONDITION as
11 diagnosed by the person's physician in the course of a bona fide
12 physician-patient relationship and for which the physician has
13 recommended the use of medical marijuana.

14 (14) **Affirmative defense.** If a patient or primary caregiver raises
15 an affirmative defense as provided in section 14 (4)(b) of article XVIII of
16 the state constitution OR SUBSECTION (2.5)(g)(II) OF THIS SECTION, the
17 patient's physician shall certify the specific amounts in excess of two
18 ounces that are necessary to address the patient's debilitating medical
19 condition OR DISABLING MEDICAL CONDITION and why such amounts are
20 necessary. A patient who asserts this affirmative defense shall waive
21 confidentiality privileges related to the condition or conditions that were
22 the basis for the recommendation. If a patient, primary caregiver, or
23 physician raises an exception to the state criminal laws as provided in
24 section 14 (2)(b) or (2)(c) of article XVIII of the state constitution OR
25 SUBSECTION (2.5)(c) OR (2.5)(d) OF THIS SECTION, the patient, primary
26 caregiver, or physician waives the confidentiality of his or her records
27 related to the condition or conditions that were the basis for the
28 recommendation maintained by the state health agency for the medical
29 marijuana program. Upon request of a law enforcement agency for such
30 records, the state health agency shall only provide records pertaining to
31 the individual raising the exception, and shall redact all other patient,
32 primary caregiver, or physician identifying information.

33 (16) **Fees.** (a) The state health agency may collect fees from
34 patients who, pursuant to section 14 of article XVIII of the state
35 constitution OR SUBSECTION (9) OF THIS SECTION, apply to the medical
36 marijuana program for a registry identification card for the purpose of
37 offsetting the state health agency's direct and indirect costs of
38 administering the program. The amount of the fees shall be set by rule of
39 the state health agency. The amount of the fees set pursuant to this section
40 shall reflect the actual direct and indirect costs of the state licensing

1 authority in the administration and enforcement of this article so that the
2 fees avoid exceeding the statutory limit on uncommitted reserves in
3 administrative agency cash funds as set forth in section 24-75-402 (3).
4 C.R.S. The state health agency shall not assess a medical marijuana
5 registry application fee to an applicant who demonstrates, pursuant to a
6 copy of the applicant's state tax return certified by the department of
7 revenue, that the applicant's income does not exceed one hundred
8 eighty-five percent of the federal poverty line, adjusted for family size.
9 All fees collected by the state health agency through the medical
10 marijuana program shall be transferred to the state treasurer who shall
11 credit the same to the medical marijuana program cash fund, which fund
12 is hereby created.

13 **SECTION 2. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, and safety."

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