

ASSEMBLY BILL NO. 235—ASSEMBLYMEN AIZLEY; CARRILLO,
FLORES, HOGAN, OHRENSCHALL, PIERCE AND SEGERBLOM

MARCH 4, 2011

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions regarding the medical use of
marijuana. (BDR 40-912)

FISCAL NOTE: Effect on Local Government: Increases or Newly
Provides for Term of Imprisonment in County or City
Jail or Detention Facility.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to marijuana; exempting from state prosecution certain persons who engage in the medical use of marijuana; authorizing the production of marijuana under certain circumstances; authorizing the compensation of certain persons who provide marijuana for medical use under certain circumstances; authorizing a local government to adopt ordinances relating to the medical use of marijuana; increasing the amount of marijuana that a person may legally possess for medical use under certain circumstances; providing that the obtaining of a registry identification card for the medical use of marijuana is voluntary; prohibiting a person from engaging in the medical use of marijuana within a certain distance of certain places; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law authorizes the limited and regulated use of marijuana by a person
- 2 who suffers from certain chronic and debilitating medical conditions and who
- 3 obtains a registry identification card from the Health Division of the Department of
- 4 Health and Human Services. Existing law also authorizes a person who is
- 5 designated as a primary caregiver and who obtains a registry identification card to
- 6 assist in the limited and regulated use of marijuana. (Chapter 453A of NRS)

- 7 **Section 3** of this bill makes it optional for a person to obtain a registry
- 8 identification card and exempts from prosecution any person who has not obtained



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a registry identification card if the person has written documentation identifying the person as a qualified patient or as a designated primary caregiver of a qualified patient. **Section 11** of this bill revises the requirements for obtaining a registry identification card, including, without limitation, eliminating the requirement that the criminal history of an applicant be considered before the Health Division issues such a card.

Section 4 of this bill authorizes qualified patients and designated primary caregivers to coordinate the production of marijuana for one or more qualified patients and authorizes reimbursement for costs and services relating to producing marijuana.

Section 8 of this bill revises the definition of "designated primary caregiver" to specify that such a person may be responsible for managing the well-being of more than one patient. **Section 5** of this bill requires a designated primary caregiver who is so designated for more than one qualified patient to reside in the same county as each such qualified patient.

Section 6 of this bill authorizes a governing body of a county, city or town to adopt ordinances consistent with state law governing the medical use of marijuana.

Existing law limits the amount of marijuana that a person may possess, deliver or produce to not more than 1 ounce of usable marijuana, three mature marijuana plants and four immature marijuana plants. (NRS 453A.200) It is an affirmative defense to a charge of exceeding this amount that the attending physician of the patient determined that a greater amount is medically necessary. (NRS 453A.310) **Sections 10 and 15** of this bill authorize a qualified patient or a designated primary caregiver to possess an amount of marijuana determined medically necessary by the attending physician of the qualified patient and eliminate this affirmative defense.

Existing law imposes criminal penalties for possessing marijuana and possessing drug paraphernalia. (NRS 453.336, 453.560, 453.566) Existing law further provides that a person engaged or assisting in the medical use of marijuana is not subject to those penalties unless the person is discovered engaging or assisting in the medical use of marijuana in certain public places. **Section 14** of this bill provides that a person shall not engage or assist in the medical use of marijuana within 1,000 feet of a church, synagogue or other place of religious worship, a public or private school or a recreational center for youths unless such use occurs in the person's residence.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 453A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

Sec. 2. *"Qualified patient" means a person diagnosed with a chronic and debilitating medical condition who:*

- 1. Has been issued a registry identification card; or*
- 2. Possesses written documentation indicating that the person is engaging in the medical use of marijuana.*

Sec. 3. *1. A person who is exempt from state prosecution pursuant to NRS 453A.200 must provide proof that the person is a qualified patient or a designated primary caregiver, as applicable, by showing:*



(a) A valid registry identification card issued pursuant to NRS 453A.220 or 453A.250; or

(b) Written documentation issued within the immediately preceding 12 months.

2. Except as otherwise provided in this section, a law enforcement officer, pharmacy, dispensary or other person shall recognize the proof provided by a qualified patient or a designated primary caregiver pursuant to subsection 1 as evidence that the qualified patient or designated primary caregiver has the right to engage or assist in the medical use of marijuana.

3. A law enforcement officer, pharmacy, dispensary or other person is not required to accept the written documentation described in paragraph (b) of subsection 1 as proof of the right to engage or assist in the medical use of marijuana if the law enforcement officer, pharmacy, dispensary or other person has reasonable cause to believe that such written documentation:

(a) Was not issued within the immediately preceding 12 months;

(b) Has been falsified, including, without limitation, that the attending physician is not licensed to practice medicine pursuant to chapter 630 of NRS or osteopathic medicine pursuant to chapter 633 of NRS; or

(c) Does not otherwise comply with the requirements of this chapter.

Sec. 4. 1. Qualified patients and designated primary caregivers may coordinate the production of marijuana for one or more qualified patients, except that, if producing marijuana for one qualified patient, the qualified patients and designated primary caregivers shall not produce marijuana in an amount which exceeds:

(a) The amount described in subsection 3 of NRS 453A.200 as applied for the qualified patient; or

(b) The cumulative amount described in subsection 3 of NRS 453A.200 as applied for all qualified patients for whom the marijuana is being produced.

2. Except as otherwise provided in subsection 3, a qualified patient or a designated primary caregiver, individually or in cooperation with another qualified patient or designated primary caregiver pursuant to subsection 1, shall not produce marijuana for consideration.

3. A qualified patient or a designated primary caregiver may receive reimbursement for the actual cost of producing marijuana, including, without limitation, reasonable reimbursement for the time and services provided by the person.



1 **Sec. 5. *If a designated primary caregiver is so designated for***
2 ***more than one qualified patient, the designated primary caregiver***
3 ***and each qualified patient must reside in the same county.***

4 **Sec. 6. *The governing board of a county, city or town may***
5 ***adopt such ordinances relating to the medical use of marijuana as***
6 ***are consistent with the provisions of this chapter.***

7 **Sec. 7.** NRS 453A.010 is hereby amended to read as follows:
8 453A.010 As used in this chapter, unless the context otherwise
9 requires, the words and terms defined in NRS 453A.020 to
10 453A.170, inclusive, ***and section 2 of this act*** have the meanings
11 ascribed to them in those sections.

12 **Sec. 8.** NRS 453A.080 is hereby amended to read as follows:
13 453A.080 1. "Designated primary caregiver" means a person
14 who:

- 15 (a) Is 18 years of age or older;
16 (b) Has significant responsibility for managing the well-being of
17 ~~that person~~ ***one or more persons who are*** diagnosed with a chronic
18 or debilitating medical condition; and
19 (c) Is designated as such in the manner required pursuant to
20 NRS 453A.250 ~~and~~ ***or has written documentation designating him***
21 ***or her as such.***

22 2. The term does not include the attending physician of a
23 person diagnosed with a chronic or debilitating medical condition.

24 **Sec. 9.** NRS 453A.170 is hereby amended to read as follows:
25 453A.170 "Written documentation" means:

26 1. A statement signed by the attending physician of a person
27 diagnosed with a chronic or debilitating medical condition ~~that~~
28 ***which identifies the person as a qualified patient;***

29 2. Copies of the relevant medical records of a person diagnosed
30 with a chronic or debilitating medical condition ~~that~~ ***which identifies***
31 ***a person as a qualified patient;***

32 3. ***A written prescription for the medical use of marijuana or***
33 ***a label affixed to a container containing marijuana which shows***
34 ***that a person is diagnosed with a chronic or debilitating medical***
35 ***condition and is a qualified patient engaged in the medical use of***
36 ***marijuana; or***

37 4. ***A statement signed by an attending physician of a qualified***
38 ***patient in which the attending physician approves of the***
39 ***designation of a person as a designated primary caregiver.***

40 **Sec. 10.** NRS 453A.200 is hereby amended to read as follows:
41 453A.200 1. Except as otherwise provided in this section and
42 NRS 453A.300, a ~~person who holds a valid registry identification~~
43 ~~card issued to the person pursuant to NRS 453A.220 or 453A.250~~
44 ***qualified patient or a designated primary caregiver*** is exempt from
45 state prosecution for:



- 1 (a) Possession, delivery or production of marijuana;
2 (b) Possession or delivery of drug paraphernalia;
3 (c) Aiding and abetting another in the possession, delivery or
4 production of marijuana ~~{f}~~ , *including, without limitation,*
5 *coordinating the production of marijuana for one or more*
6 *qualified patients pursuant to section 4 of this act;*
7 (d) Aiding and abetting another in the possession or delivery of
8 drug paraphernalia;
9 (e) *Providing reimbursement to a qualified patient or a*
10 *designated primary caregiver or receiving reimbursement*
11 *pursuant to subsection 3 of section 4 of this act;*
12 (f) Any combination of the acts described in paragraphs (a) to
13 ~~{d}~~ (e), inclusive; and
14 ~~{f}~~ (g) Any other criminal offense in which the possession,
15 delivery or production of marijuana or the possession or delivery of
16 drug paraphernalia is an element.
- 17 2. In addition to the provisions of subsection 1, no person may
18 be subject to state prosecution for constructive possession,
19 conspiracy or any other criminal offense solely for being in the
20 presence or vicinity of the medical use of marijuana in accordance
21 with the provisions of this chapter.
- 22 3. The exemption from state prosecution set forth in subsection
23 1 applies only to the extent that a ~~{person who holds a registry~~
24 ~~identification card issued to the person pursuant to paragraph (a) of~~
25 ~~subsection 1 of NRS 453A.220}~~ *qualified patient* and the designated
26 primary caregiver, if any, of such a ~~{person:}~~ *qualified patient:*
- 27 (a) Engage in or assist in, as applicable, the medical use of
28 marijuana in accordance with the provisions of this chapter as
29 justified to mitigate the symptoms or effects of the ~~{person's}~~
30 chronic or debilitating medical condition ~~{f}~~ *of the qualified patient;*
31 and
32 (b) ~~{Do}~~ *Except as otherwise provided in section 4 of this act,*
33 *do* not, at any one time, collectively possess, deliver or produce
34 ~~{more}~~ :
35 (1) *More* than:
36 ~~{(1)}~~ (I) One ounce of usable marijuana;
37 ~~{(2)}~~ (II) Three mature marijuana plants; and
38 ~~{(3)}~~ (III) Four immature marijuana plants ~~{f}~~ ; or
39 (2) *Marijuana in an amount that is more than medically*
40 *necessary as determined by the attending physician of the*
41 *qualified patient to mitigate the symptoms or effects of the chronic*
42 *or debilitating medical condition of the qualified patient, which*
43 *may be greater than the amount provided in subparagraph (1).*



4. If the persons described in subsection 3 possess, deliver or produce marijuana in an amount which exceeds the amount described in paragraph (b) of that subsection, those persons ~~+~~
~~—(a) Are~~ **are** not exempt from state prosecution for possession, delivery or production of marijuana.

~~[(b) May establish an affirmative defense to charges of possession, delivery or production of marijuana, or any combination of those acts, in the manner set forth in NRS 453A.310.]~~

Sec. 11. NRS 453A.210 is hereby amended to read as follows:

453A.210 1. The Division shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of this section. *A person who is diagnosed with a chronic or debilitating medical condition and whose attending physician has prescribed the medical use of marijuana may, but is not required to, apply for a registry identification card pursuant to this section.*

2. Except as otherwise provided in subsections 3 and 5 , ~~and NRS 453A.225,]~~ the Division or its designee shall issue a registry identification card to a person who is a resident of this State and who submits an application on a form prescribed by the Division accompanied by the following:

(a) ~~[Valid, written]~~ **Written** documentation from the person's attending physician stating that:

(1) The person has been diagnosed with a chronic or debilitating medical condition;

(2) The medical use of marijuana may mitigate the symptoms or effects of that condition; and

(3) The attending physician has explained the possible risks and benefits of the medical use of marijuana;

(b) The name, address, telephone number, social security number and date of birth of the person;

(c) Proof satisfactory to the Division that the person is a resident of this State;

(d) The name, address and telephone number of the person's attending physician; and

(e) If the person elects to designate a primary caregiver at the time of application:

(1) The name, address, telephone number and social security number of the designated primary caregiver; and

(2) A written, signed statement from the person's attending physician in which the attending physician approves of the designation of the primary caregiver.

3. The Division or its designee shall issue a registry identification card to a person who is under 18 years of age if:



(a) The person submits the materials required pursuant to subsection 2; and

(b) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age signs a written statement setting forth that:

(1) The attending physician of the person under 18 years of age has explained to that person and to the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age the possible risks and benefits of the medical use of marijuana;

(2) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age consents to the use of marijuana by the person under 18 years of age for medical purposes;

(3) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to serve as the designated primary caregiver for the person under 18 years of age; and

(4) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to control the acquisition of marijuana and the dosage and frequency of use by the person under 18 years of age.

4. The form prescribed by the Division to be used by a person applying for a registry identification card pursuant to this section must be a form that is in ~~{quintuplicate-}~~ **triplicate**. Upon receipt of an application that is completed and submitted pursuant to this section, the Division shall:

(a) Record on the application the date on which it was received;

(b) Retain one copy of the application for the records of the Division; and

(c) Distribute the other ~~{four}~~ **two** copies of the application in the following manner:

(1) One copy to the person who submitted the application; **and**

(2) One copy to the applicant's designated primary caregiver, if any. ~~†~~

~~(3) One copy to the Central Repository for Nevada Records of Criminal History; and~~

~~(4) One copy to:~~

~~(I) If the attending physician of the applicant is licensed to practice medicine pursuant to the provisions of chapter 630 of NRS, the Board of Medical Examiners; or~~

~~(II) If the attending physician of the applicant is licensed to practice osteopathic medicine pursuant to the provisions of chapter 633 of NRS, the State Board of Osteopathic Medicine.~~



~~↪ The Central Repository for Nevada Records of Criminal History shall report to the Division its findings as to the criminal history, if any, of an applicant within 15 days after receiving a copy of an application pursuant to subparagraph (3) of paragraph (c). The Board of Medical Examiners or the State Board of Osteopathic Medicine, as applicable, shall report to the Division its findings as to the licensure and standing of the applicant's attending physician within 15 days after receiving a copy of an application pursuant to subparagraph (4) of paragraph (c).]~~

5. The Division shall verify the information contained in an application submitted pursuant to this section and shall approve or deny an application within 30 days after receiving the application. The Division may contact an applicant, the applicant's attending physician and **the applicant's** designated primary caregiver, if any, by telephone to determine that the information provided on or accompanying the application is accurate. The Division may deny an application only on the following grounds:

(a) The applicant failed to provide the information required pursuant to subsections 2 and 3 to:

(1) Establish the applicant's chronic or debilitating medical condition; or

(2) Document the applicant's consultation with an attending physician regarding the medical use of marijuana in connection with that condition;

(b) The applicant failed to comply with regulations adopted by the Division, including, without limitation, the regulations adopted by the Administrator pursuant to NRS 453A.740;

(c) The Division determines that the information provided by the applicant was falsified;

(d) The Division determines that the attending physician of the applicant is not licensed to practice medicine or osteopathic medicine in this State ~~for is not in good standing, as reported by the Board of Medical Examiners or the State Board of Osteopathic Medicine, as applicable;~~

~~—(e) The Division determines that the applicant, or the applicant's designated primary caregiver, if applicable, has been convicted of knowingly or intentionally selling a controlled substance;~~

~~—(f) The Division has prohibited the applicant from obtaining or using a registry identification card pursuant to subsection 2 of NRS 453A.300;~~

~~—(g) The Division determines that the applicant, or the applicant's designated primary caregiver, if applicable, has had a registry identification card revoked pursuant to NRS 453A.225; or~~

~~—(h)}~~ ; **or**



(e) In the case of a person under 18 years of age, the custodial parent or legal guardian with responsibility for health care decisions for the person has not signed the written statement required pursuant to paragraph (b) of subsection 3.

6. The decision of the Division to deny an application for a registry identification card is a final decision for the purposes of judicial review. Only the person whose application has been denied or, in the case of a person under 18 years of age whose application has been denied, the person's parent or legal guardian, has standing to contest the determination of the Division. A judicial review authorized pursuant to this subsection must be limited to a determination of whether the denial was arbitrary, capricious or otherwise characterized by an abuse of discretion and must be conducted in accordance with the procedures set forth in chapter 233B of NRS for reviewing a final decision of an agency.

~~7. [A person whose application has been denied may not reapply for 6 months after the date of the denial, unless the Division or a court of competent jurisdiction authorizes reapplication in a shorter time.]~~

~~8.]~~ Except as otherwise provided in this subsection, if a person has applied for a registry identification card pursuant to this section and the Division has not yet approved or denied the application, the person, and the person's designated primary caregiver, if any, shall be deemed to hold a registry identification card upon the presentation to a law enforcement officer of the copy of the application provided to him or her pursuant to subsection 4. A person may not be deemed to hold a registry identification card for a period of more than 30 days after the date on which the Division received the application.

~~9.]~~ 8. As used in this section, "resident" has the meaning ascribed to it in NRS 483.141.

Sec. 12. NRS 453A.220 is hereby amended to read as follows:

453A.220 1. If the Division approves an application pursuant to subsection 5 of NRS 453A.210, the Division or its designee shall, as soon as practicable after the Division approves the application:

(a) Issue a serially numbered registry identification card to the applicant; and

(b) If the applicant has designated a primary caregiver, issue a serially numbered registry identification card to the designated primary caregiver.

2. A registry identification card issued pursuant to paragraph (a) of subsection 1 must set forth:

(a) The name, address, photograph and date of birth of the applicant;



(b) The date of issuance and date of expiration of the registry identification card;

(c) The name and address of the applicant's designated primary caregiver, if any; and

(d) Any other information prescribed by regulation of the Division.

3. A registry identification card issued pursuant to paragraph (b) of subsection 1 must set forth:

(a) The name, address and photograph of the designated primary caregiver;

(b) The date of issuance and date of expiration of the registry identification card;

(c) The name and address of the applicant for whom the person is the designated primary caregiver; and

(d) Any other information prescribed by regulation of the Division.

4. Except as otherwise provided in NRS 453A.225 ~~and~~ subsection 3 of NRS 453A.230, ~~and subsection 2 of NRS 453A.300,~~ a registry identification card issued pursuant to this section is valid for a period of 1 year and may be renewed in accordance with regulations adopted by the Division.

Sec. 13. NRS 453A.225 is hereby amended to read as follows:

453A.225 1. If, at any time after the Division or its designee has issued a registry identification card to a person pursuant to paragraph (a) of subsection 1 of NRS 453A.220, the Division determines, on the basis of official documents or records or other credible evidence, that the person ~~is~~

~~—(a) Provided~~ **provided** falsified information on his or her application to the Division or its designee, as described in paragraph (c) of subsection 5 of NRS 453A.210, ~~is or~~

~~—(b) Has been convicted of knowingly or intentionally selling a controlled substance, as described in paragraph (e) of subsection 5 of NRS 453A.210,~~

~~the~~ the Division shall immediately revoke the registry identification card issued to that person and shall immediately revoke the registry identification card issued to that person's designated primary caregiver, if any.

2. ~~If, at any time after the Division or its designee has issued a registry identification card to a person pursuant to paragraph (b) of subsection 1 of NRS 453A.220 or pursuant to NRS 453A.250, the Division determines, on the basis of official documents or records or other credible evidence, that the person has been convicted of knowingly or intentionally selling a controlled substance, as described in paragraph (e) of subsection 5 of NRS 453A.210, the~~



~~Division shall immediately revoke the registry identification card issued to that person.~~

~~3.]~~ Upon the revocation of a registry identification card pursuant to this section:

(a) The Division shall send, by certified mail, return receipt requested, notice to the person whose registry identification card has been revoked, advising the person of the requirements of paragraph (b); and

(b) The person shall return his or her registry identification card to the Division within 7 days after receiving the notice sent pursuant to paragraph (a).

~~4.]~~ 3. The decision of the Division to revoke a registry identification card pursuant to this section is a final decision for the purposes of judicial review.

~~5. A person whose registry identification card has been revoked pursuant to this section may not reapply for a registry identification card pursuant to NRS 453A.210 for 12 months after the date of the revocation, unless the Division or a court of competent jurisdiction authorizes reapplication in a shorter time.]~~

Sec. 14. NRS 453A.300 is hereby amended to read as follows:

453A.300 1. A ~~person who holds a registry identification card issued to him or her pursuant to NRS 453A.220 or 453A.250]~~ **qualified patient or a designated primary caregiver** is not exempt from state prosecution for, nor may the ~~person]~~ **qualified patient or designated primary caregiver**, establish an affirmative defense to charges arising from, any of the following acts:

(a) Driving, operating or being in actual physical control of a vehicle or a vessel under power or sail while under the influence of marijuana.

(b) Engaging in any other conduct prohibited by NRS 484C.110, 484C.120, 484C.130, 484C.430, subsection 2 of NRS 488.400, NRS 488.410, 488.420, 488.425 or 493.130.

(c) Possessing a firearm in violation of paragraph (b) of subsection 1 of NRS 202.257.

(d) Possessing marijuana in violation of NRS 453.336 or possessing drug paraphernalia in violation of NRS 453.560 or 453.566, if the possession of the marijuana or drug paraphernalia is discovered because the ~~person]~~ **qualified patient** engaged or **the designated primary caregiver** assisted in the medical use of marijuana: ~~fin:]~~

(1) ~~Any]~~ **In any** public place or in any place open to the public or exposed to public view; ~~or]~~

(2) ~~Any]~~ **In any** local detention facility, county jail, state prison, reformatory or other correctional facility, including, without limitation, any facility for the detention of juvenile offenders ~~]] ; or~~



(3) *In or within 1,000 feet of a church, synagogue or other place of religious worship, a public or private school or a recreational center for youths, unless the medical use of marijuana occurs in the residence of the qualified patient or designated primary caregiver and that residence is located within 1,000 feet of the church, synagogue or other place of religious worship, the public or private school or the recreational center for youths.*

(e) Delivering marijuana to another person who he or she knows ~~does not lawfully hold a registry identification card issued by the Division or its designee pursuant to NRS 453A.220 or 453A.250.~~ *is not a qualified patient or a designated primary caregiver.*

(f) ~~Delivering~~ *Except as otherwise provided in section 4 of this act, delivering* marijuana for consideration to any person, regardless of whether the recipient ~~lawfully holds a registry identification card issued by the Division or its designee pursuant to NRS 453A.220 or 453A.250.~~ *is a qualified patient or a designated primary caregiver.*

2. ~~Except as otherwise provided in NRS 453A.225 and in addition to any other penalty provided by law, if the Division determines that a person has willfully violated a provision of this chapter or any regulation adopted by the Division to carry out the provisions of this chapter, the Division may, at its own discretion, prohibit the person from obtaining or using a registry identification card for a period of up to 6 months.~~ *As used in this section:*

(a) *“Recreational center for youths” has the meaning ascribed to it in NRS 453.3345.*

(b) *“Residence” has the meaning ascribed to it in NRS 453.3351.*

Sec. 15. NRS 453A.310 is hereby amended to read as follows:
453A.310 1. Except as otherwise provided in this section and NRS 453A.300, it is an affirmative defense to a criminal charge of possession, delivery or production of marijuana, or any other criminal offense in which possession, delivery or production of marijuana is an element, that the person charged with the offense:

(a) Is a person who:

(1) Has been diagnosed with a chronic or debilitating medical condition within the 12-month period preceding his or her arrest and has been advised by his or her attending physician that the medical use of marijuana may mitigate the symptoms or effects of that chronic or debilitating medical condition;

(2) Is engaged in the medical use of marijuana; and

(3) Possesses, delivers or produces marijuana only in the amount described in paragraph (b) of subsection 3 of NRS 453A.200 ; ~~for in excess of that amount if the person proves by a~~



~~preponderance of the evidence that the greater amount is medically necessary as determined by the person's attending physician to mitigate the symptoms or effects of the person's chronic or debilitating medical condition;]~~ or

(b) Is a person who:

(1) Is assisting a person described in paragraph (a) in the medical use of marijuana; and

(2) Possesses, delivers or produces marijuana only in the amount described in paragraph (b) of subsection 3 of NRS 453A.200 . ~~[or in excess of that amount if the person proves by a preponderance of the evidence that the greater amount is medically necessary as determined by the assisted person's attending physician to mitigate the symptoms or effects of the assisted person's chronic or debilitating medical condition.]~~

2. A person need not ~~[hold a registry identification card issued to the person by the Division or its designee pursuant to NRS 453A.220 or 453A.250]~~ *be a qualified patient or a designated primary caregiver at the time of allegedly committing the criminal offense* to assert an affirmative defense described in this section.

3. Except as otherwise provided in this section and in addition to the affirmative defense described in subsection 1, a person engaged or assisting in the medical use of marijuana who is charged with a crime pertaining to the medical use of marijuana is not precluded from:

(a) Asserting a defense of medical necessity; or

(b) Presenting evidence supporting the necessity of marijuana for treatment of a specific disease or medical condition,
➔ if the amount of marijuana at issue is not greater than the amount described in paragraph (b) of subsection 3 of NRS 453A.200 and the person has taken steps to comply substantially with the provisions of this chapter.

4. A defendant who intends to offer an affirmative defense described in this section shall, not less than 5 days before trial or at such other time as the court directs, file and serve upon the prosecuting attorney a written notice of the defendant's intent to claim the affirmative defense. The written notice must:

(a) State specifically why the defendant believes he or she is entitled to assert the affirmative defense; and

(b) Set forth the factual basis for the affirmative defense.

➔ A defendant who fails to provide notice of his or her intent to claim an affirmative defense as required pursuant to this subsection may not assert the affirmative defense at trial unless the court, for good cause shown, orders otherwise.



1 **Sec. 16.** NRS 453A.400 is hereby amended to read as follows:

2 453A.400 1. The fact that a person ~~possesses a registry~~
3 ~~identification card issued to the person by the Division or its~~
4 ~~designee pursuant to NRS 453A.220 or 453A.250~~ **is a qualified**
5 **patient or a designated primary caregiver** does not, alone:

6 (a) Constitute probable cause to search the person or the
7 person's property; or

8 (b) Subject the person or the person's property to inspection by
9 any governmental agency.

10 2. Except as otherwise provided in this subsection, if officers
11 of a state or local law enforcement agency seize marijuana, drug
12 paraphernalia or other related property from a person engaged or
13 assisting in the medical use of marijuana:

14 (a) The law enforcement agency shall ensure that the marijuana,
15 drug paraphernalia or other related property is not destroyed while
16 in the possession of the law enforcement agency.

17 (b) Any property interest of the person from whom the
18 marijuana, drug paraphernalia or other related property was seized
19 must not be forfeited pursuant to any provision of law providing for
20 the forfeiture of property, except as part of a sentence imposed after
21 conviction of a criminal offense.

22 (c) Upon a determination by the district attorney of the county in
23 which the marijuana, drug paraphernalia or other related property
24 was seized, or the district attorney's designee, that the person from
25 whom the marijuana, drug paraphernalia or other related property
26 was seized is engaging in or assisting in the medical use of
27 marijuana in accordance with the provisions of this chapter, the law
28 enforcement agency shall immediately return to that person any
29 usable marijuana, marijuana plants, drug paraphernalia or other
30 related property that was seized.

31 ➤ The provisions of this subsection do not require a law
32 enforcement agency to care for live marijuana plants.

33 3. For the purposes of paragraph (c) of subsection 2, the
34 determination of a district attorney or the district attorney's designee
35 that a person is engaging in or assisting in the medical use of
36 marijuana in accordance with the provisions of this chapter shall be
37 deemed to be evidenced by:

38 (a) A decision not to prosecute;

39 (b) The dismissal of charges; or

40 (c) Acquittal.

41 **Sec. 17.** NRS 453A.500 is hereby amended to read as follows:

42 453A.500 The Board of Medical Examiners or the State Board
43 of Osteopathic Medicine, as applicable, shall not take any
44 disciplinary action against an attending physician on the basis that
45 the attending physician:



1 1. Advised a person whom the attending physician has
2 diagnosed as having a chronic or debilitating medical condition, or a
3 person whom the attending physician knows has been so diagnosed
4 by another physician licensed to practice medicine pursuant to the
5 provisions of chapter 630 of NRS or licensed to practice osteopathic
6 medicine pursuant to the provisions of chapter 633 of NRS:

7 (a) About the possible risks and benefits of the medical use of
8 marijuana; or

9 (b) That the medical use of marijuana may mitigate the
10 symptoms or effects of the person's chronic or debilitating medical
11 condition,

12 ➤ if the advice is based on the attending physician's personal
13 assessment of the person's medical history and current medical
14 condition.

15 2. Provided ~~{the}~~ written documentation ~~{required pursuant to~~
16 ~~paragraph (a) of subsection 2 of NRS 453A.210 for the issuance of a~~
17 ~~registry identification card or pursuant to subparagraph (1) of~~
18 ~~paragraph (b) of subsection 1 of NRS 453A.230 for the renewal of a~~
19 ~~registry identification card,}~~ *to a qualified patient or a designated*
20 *primary caregiver, if:*

21 (a) Such documentation is based on the attending physician's
22 personal assessment of the ~~{person's}~~ *qualified patient's* medical
23 history and current medical condition; and

24 (b) The physician has advised the ~~{person}~~ *qualified patient*
25 about the possible risks and benefits of the medical use of
26 marijuana.

27 **Sec. 18.** NRS 453A.510 is hereby amended to read as follows:

28 453A.510 A professional licensing board shall not take any
29 disciplinary action against a person licensed by the board on the
30 basis that:

31 1. The person engages in or has engaged in the medical use of
32 marijuana in accordance with the provisions of this chapter; or

33 2. The person acts as or has acted as the designated primary
34 caregiver of a ~~{person who holds a registry identification card issued~~
35 ~~to him or her pursuant to paragraph (a) of subsection 1 of NRS~~
36 ~~453A.220,}~~ *qualified patient in accordance with the provisions of*
37 *this chapter.*

38 **Sec. 19.** This act becomes effective upon passage and
39 approval.

