

SENATE BILL NO. 447—COMMITTEE ON JUDICIARY

MARCH 23, 2015

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to marijuana.
(BDR 15-85)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
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; revising the crime of counterfeiting or forging a registry identification card for the medical use of marijuana; revising the definition of marijuana for certain purposes; requiring the State Board of Pharmacy to include certain substances, chemical compounds and isomers of chemical compounds on the list of schedule I controlled substances; revising certain exemptions from state prosecution for marijuana related offenses; revising provisions governing the return of seized marijuana, paraphernalia or related property from certain persons; providing that certain records created by the Division of Public and Behavioral Health of the Department of Health and Human Services relating to the medical use of marijuana are not confidential; authorizing law enforcement agencies to adopt policies and procedures governing the medical use of marijuana by a peace officer; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law makes it a crime, punishable as a category E felony, for a person
2 to counterfeit or forge or attempt to counterfeit or forge a registry identification
3 card, which is the instrument that indicates a bearer is entitled to engage in the
4 medical use of marijuana. (NRS 207.335) **Section 1** of this bill makes it unlawful to
5 possess with the intent to use any such counterfeit or forged registry identification
6 card. Existing law defines marijuana for the purposes of the regulation of controlled
7 substances. (NRS 453.096) **Section 2** of this bill revises the definition of marijuana
8 to remove the term "resin."



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Existing law authorizes the State Board of Pharmacy to adopt regulations to add substances to, or delete or reschedule substances included in, the schedules of controlled substances. (NRS 453.146) Existing law also provides criminal penalties for various acts involving a schedule I controlled substance, including, without limitation, possession, manufacture, compounding, importation, distribution, sale, transfer, trafficking or driving under the influence. (NRS 453.316-453.348, 484C.110, 484C.120, 488.410) In addition to criminal penalties, existing law provides for civil penalties against a person who engages in certain acts involving the unlawful manufacture, distribution or sale of a schedule I controlled substance. (NRS 453.553-453.5533) The Board currently designates certain substances, chemical compounds and isomers of chemical compounds as schedule I controlled substances, including, without limitation, certain substances known as synthetic marijuana. (NAC 453.510) **Section 3** of this bill requires the Board to repeal and replace, by extraordinary regulation, the definition of tetrahydrocannabinols, as contained in the list of schedule I controlled substances.

Existing law provides certain acts for which the holder of a registry identification card is not exempt from state prosecution for certain offenses relating to marijuana. (NRS 453A.300) **Section 4** of this bill provides that such a person is not exempt from state prosecution for possessing marijuana or paraphernalia on school property.

The Nevada Constitution requires the Legislature to provide by law for protection of the plant of the genus *Cannabis* for medical purposes and property related to its use from forfeiture except upon conviction or plea of guilty or nolo contendere. (Nev. Const. Art. 4 § 38) Existing law requires a district attorney of the county in which marijuana, drug paraphernalia or other related property was seized, or the district attorney's designee, to make a determination that a person is engaging in or assisting in the medical use of marijuana under certain circumstances. (NRS 453A.400) **Section 5** of this bill removes the requirement to make such a determination and instead requires law enforcement to return any usable marijuana, marijuana plants, drug paraphernalia and other related property that was seized upon: (1) a decision not to prosecute; (2) the dismissal of the charges; or (3) acquittal.

Section 6 of this bill provides that the contents of applications, records or other written documentation created by the Division of Public and Behavioral Health of the Department of Health and Human Services or its designee relating to the medical use of marijuana are not confidential and may be disclosed.

Existing law does not require an employer to modify the job or working conditions of an employee who engages in the medical use of marijuana, but does require that an employer must attempt to make reasonable accommodations for the employee under certain circumstances. (NRS 453A.800) **Section 7** of this bill provides that a law enforcement agency is not prohibited from adopting policies or procedures that preclude a peace officer from engaging in the medical use of marijuana.

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

Section 1. NRS 207.335 is hereby amended to read as follows:
207.335 1. It is unlawful for any person to ~~counterfeit~~ :
(a) *Counterfeit* or forge or attempt to counterfeit or forge a
registry identification card.



(b) Have in his or her possession with the intent to use any counterfeit or forged registry identification card.

2. Any person who violates the provisions of subsection 1 is guilty of a category E felony and shall be punished as provided in NRS 193.130.

3. As used in this section, "registry identification card" has the meaning ascribed to it in NRS 453A.140.

Sec. 2. NRS 453.096 is hereby amended to read as follows:

453.096 1. "Marijuana" means:

(a) All parts of any plant of the genus Cannabis, whether growing or not;

(b) The seeds thereof; *and*

(c) ~~the resin extracted from any part of the plant; and~~

~~—(d)—~~ Every compound, manufacture, salt, derivative, mixture or preparation of the plant, *or* its seeds. ~~for resin.~~

2. "Marijuana" does not include the mature stems of the plant, fiber produced from the stems, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stems, ~~except the resin extracted therefrom.~~ fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination.

Sec. 3. NRS 453.146 is hereby amended to read as follows:

453.146 1. The Board shall administer the provisions of NRS 453.011 to 453.552, inclusive, and may add substances to or delete or reschedule all substances enumerated in schedules I, II, III, IV and V by regulation.

2. In making a determination regarding a substance, the Board shall consider the following:

(a) The actual or relative potential for abuse;

(b) The scientific evidence of its pharmacological effect, if known;

(c) The state of current scientific knowledge regarding the substance;

(d) The history and current pattern of abuse;

(e) The scope, duration and significance of abuse;

(f) The risk to the public health;

(g) The potential of the substance to produce psychic or physiological dependence liability; and

(h) Whether the substance is an immediate precursor of a controlled substance.

3. The Board may consider findings of the federal Food and Drug Administration or the Drug Enforcement Administration as prima facie evidence relating to one or more of the determinative factors.



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4. After considering the factors enumerated in subsection 2, the Board shall make findings with respect thereto and adopt a regulation controlling the substance if it finds the substance has a potential for abuse.

5. The Board shall designate as a controlled substance a steroid or other product which is used to enhance athletic performance, muscle mass, strength or weight without medical necessity. The Board may not designate as a controlled substance an anabolic steroid which is:

(a) Expressly intended to be administered through an implant to cattle, poultry or other animals; and

(b) Approved by the Food and Drug Administration for such use.

6. Notwithstanding any other provision of law, the Board shall, by extraordinary regulation as provided for in NRS 453.2184, repeal the existing definition of Tetrahydrocannabinols as a controlled substance included in schedule I and replace the definition as follows:

Tetrahydrocannabinols, including:

Delta 9 cis or trans tetrahydrocannabinol, and their optical isomers;

Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;

Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers;

Delta 8 cis or trans tetrahydrocannabinol, and their optical isomers;

Tetrahydrocannabinols contained in the genus Cannabis or in the resinous extractives of the genus Cannabis; or

Synthetic equivalents of tetrahydrocannabinol substances or synthetic substances, derivatives and their isomers with a similar chemical structure and pharmacological activity to tetrahydrocannabinol,

↪ Because nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions, are covered.

Sec. 4. 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 is not exempt from state prosecution for, nor may the person establish an affirmative defense to charges arising from, any of the following acts:



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(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 paraphernalia in violation of NRS 453.560 or 453.566 ~~†~~ ~~††~~ :

(1) If the possession of the marijuana or paraphernalia is discovered because the person engaged or assisted in the medical use of marijuana in:

~~††~~ *(I) Any public place or in any place open to the public or exposed to public view; or*

~~††~~ *(II) 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*

(2) If the possession of the marijuana or paraphernalia occurs on school property.

(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.

(f) 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.

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.

3. As used in this section, "school property" means the grounds of any public school described in NRS 388.020 and any private school as defined in NRS 394.103.

Sec. 5. NRS 453A.400 is hereby amended to read as follows:

453A.400 1. The fact that a person possesses a registry identification card issued to the person by the Division or its designee pursuant to NRS 453A.220 or 453A.250, a medical marijuana establishment registration certificate issued to the person by the Division or its designee pursuant to NRS 453A.322 or a medical marijuana establishment agent registration card issued to



1 the person by the Division or its designee pursuant to NRS
2 453A.332 does not, alone:

3 (a) Constitute probable cause to search the person or the
4 person's property; or

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

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

11 (a) The law enforcement agency shall ensure that the marijuana,
12 paraphernalia or other related property is not destroyed while in the
13 possession of the law enforcement agency.

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

19 (c) Upon ~~the determination by the district attorney of the county~~
20 ~~in which the marijuana, paraphernalia or other related property was~~
21 ~~seized, or the district attorney's designee, that the person from~~
22 ~~whom the marijuana, paraphernalia or other related property was~~
23 ~~seized is engaging in or assisting in the medical use of marijuana in~~
24 ~~accordance with the provisions of this chapter, the~~ :

25 (1) *A decision not to prosecute;*

26 (2) *The dismissal of charges; or*

27 (3) *Acquittal,*

28 ➔ *the* law enforcement agency shall immediately return to that
29 person any usable marijuana, marijuana plants, paraphernalia or
30 other 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. 6.** NRS 453A.700 is hereby amended to read as follows:

42 453A.700 1. Except as otherwise provided in this section,
43 NRS 239.0115 and subsection 4 of NRS 453A.210, the Division and
44 any designee of the Division shall maintain the confidentiality of
45 and shall not disclose:



(a) The contents of any applications, records or other written documentation that the Division or its designee ~~creates or~~ receives pursuant to the provisions of this chapter; or

(b) The name or any other identifying information of:

(1) An attending physician; or

(2) A person who has applied for or to whom the Division or its designee has issued a registry identification card.

➔ Except as otherwise provided in NRS 239.0115, the items of information described in this subsection are confidential, not subject to subpoena or discovery and not subject to inspection by the general public.

2. Notwithstanding the provisions of subsection 1, the Division or its designee may release the name and other identifying information of a person to whom the Division or its designee has issued a registry identification card to:

(a) Authorized employees of the Division or its designee as necessary to perform official duties of the Division; and

(b) Authorized employees of state and local law enforcement agencies, only as necessary to verify that a person is the lawful holder of a registry identification card issued to him or her pursuant to NRS 453A.220 or 453A.250.

Sec. 7. NRS 453A.800 is hereby amended to read as follows:
453A.800 The provisions of this chapter do not:

1. Require an insurer, organization for managed care or any person or entity who provides coverage for a medical or health care service to pay for or reimburse a person for costs associated with the medical use of marijuana.

2. Require any employer to allow the medical use of marijuana in the workplace.

3. ~~Require~~ *Except as otherwise provided in subsection 4, require* an employer to modify the job or working conditions of a person who engages in the medical use of marijuana that are based upon the reasonable business purposes of the employer but the employer must attempt to make reasonable accommodations for the medical needs of an employee who engages in the medical use of marijuana if the employee holds a valid registry identification card, provided that such reasonable accommodation would not:

(a) Pose a threat of harm or danger to persons or property or impose an undue hardship on the employer; or

(b) Prohibit the employee from fulfilling any and all of his or her job responsibilities.

4. *Prohibit a law enforcement agency from adopting policies and procedures that preclude a peace officer from engaging in the medical use of marijuana.*



1 **Sec. 8.** This act becomes effective on July 1, 2015.

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