

A 9016 Gottfried (MS) Same as [S 4041-B](#) DUANE
Public Health Law
TITLE....Legalizes the possession, manufacture, use, delivery,
transfer, transport or administration of marihuana by a certified
patient or designated caregiver
06/19/09 referred to health
06/22/09 reported referred to codes

S4041-B DUANE Same as [A 9016](#) Gottfried (MS)
ON FILE: 08/26/09 Public Health
Law
TITLE....Provides for medical use
of marihuana
04/08/09REFERRED TO
HEALTH
04/17/09AMEND AND
RECOMMIT TO
HEALTH
04/17/09PRINT NUMBER 4041A
05/26/09REPORTED AND
COMMITTED TO
CODES
08/24/09AMEND AND
RECOMMIT TO
CODES
08/24/09PRINT NUMBER 4041B

STATE OF NEW YORK

9016

2009-2010 Regular Sessions

IN ASSEMBLY

June 19, 2009

Introduced by M. of A. GOTTFRIED, BRADLEY, CAHILL, CLARK, CYMBROWITZ, DINOWITZ, O'DONNELL, PAULIN, PEOPLES, LIFTON, KAVANAGH, COOK, SPANO, DenDEKKER, SKARTADOS, CALHOUN -- Multi-Sponsored by -- M. of A. ALFANO, AUBRY, BOYLAND, BRENNAN, BROOK-KRASNY, GALEF, GLICK, HIKIND, HOYT, JACOBS, JAFFEE, KELLNER, V. LOPEZ, LUPARDO, MAISEL, MARKEY, MAYERSOHN, McENENY, MILLER, MILLMAN, PHEFFER, POWELL, PRETLOW, N. RIVERA, ROBINSON, ROSENTHAL, SCARBOROUGH, SCHIMEL, SWEENEY, TOWNS, WALKER, WEISENBERG, WRIGHT -- read once and referred to the Committee on Health

AN ACT to amend the public health law and the general business law, in relation to medical use of marihuana

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative findings and intent. The legislature finds that
2 thousands of New Yorkers have serious medical conditions that can be
3 improved by medically-approved use of marihuana. The law should not
4 stand between them and treatment necessary for life and health. This
5 legislation follows the well-established public policy that a controlled
6 substance can have a legitimate medical use. Many controlled substances
7 that are legal for medical use (such as morphine and steroids) are ille-
8 gal for any other use. The purposes of article 33 of the public health
9 law include allowing legitimate use of controlled substances in health
10 care, including palliative care. This policy and this legislation do not
11 in any way diminish New York state's strong public policy and laws
12 against illegal drug use, nor should it be deemed in any manner to advo-
13 cate, authorize, promote, or legally or socially accept the use of mari-
14 huana for children or adults, for any non-medical use. This legislation
15 is an appropriate exercise of the state's legislative power to protect
16 the health of its people under article 17 of the state constitution and
17 the tenth amendment of the United States constitution.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 It is the legislative intent that this act be implemented consistently
2 with these findings and principles, through a reasonable and workable
3 system with appropriate oversight, evaluation and continuing research.

4 § 2. Article 33 of the public health law is amended by adding a new
5 title 5-A to read as follows:

6 TITLE V-A

7 MEDICAL USE OF MARIHUANA

8 Section 3360. Definitions.

9 3361. Certification of patients.

10 3362. Possession.

11 3363. Registry identification cards.

12 3364. Registered organizations.

13 3365. Registering of registered organizations.

14 3366. Reports by registered organizations.

15 3367. Evaluation; research programs; report by department.

16 3368. Relation to other laws.

17 § 3360. Definitions. As used in this title, the following terms shall
18 have the following meanings, unless the context clearly requires other-
19 wise:

20 1. "Certified medical use" means the acquisition, possession, use,
21 delivery, transfer, transportation, or administration of medical mari-
22 huana by a certified patient or designated caregiver for use as part of
23 the treatment of the patient's serious condition specified in a certif-
24 ication under section thirty-three hundred sixty-one of this title,
25 including enabling the patient to tolerate treatment for the serious
26 condition.

27 2. "Certified patient" means a patient who is certified under section
28 thirty-three hundred sixty-one of this title.

29 3. "Certification" means a certification, made under section thirty-
30 three hundred sixty-one of this title.

31 4. "Designated caregiver" means the individual designated by a certi-
32 fied patient in a registry application.

33 5. "Public place" means a public place as defined in section 240.00 of
34 the penal law, a motor vehicle as defined in section one hundred twen-
35 ty-five of the vehicle and traffic law, an aircraft as defined in
36 section two hundred forty of the general business law or a vessel as
37 defined in section two of the navigation law.

38 6. "Serious condition" means a severe debilitating or life-threatening
39 condition, or a condition associated with or a complication of such a
40 condition or its treatment (including but not limited to inability to
41 tolerate food, nausea, vomiting, dysphoria or pain).

42 7. "Medical marihuana" means marihuana as defined in subdivision twen-
43 ty-one of section thirty-three hundred two of this title intended for a
44 certified medical use.

45 8. "Registered organization" means a registered organization under
46 sections thirty-three hundred sixty-four and thirty-three hundred
47 sixty-five of this title.

48 9. "Registry application" means an application properly completed and
49 filed with the department by a certified patient under section thirty-
50 three hundred sixty-three of this title.

51 10. "Registry identification card" means a document that identifies a
52 certified patient or designated caregiver, as provided under section
53 thirty-three hundred sixty-three of this title.

54 11. "Usable marihuana" means marihuana consisting of the harvested
55 leaves and flowers of the plant of the genus cannabis, but does not
56 include any food that is not marihuana.

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1 12. "Unusable marihuana" means seeds, stalks, and unusable roots.

2 § 3361. Certification of patients. 1. A patient certification may only
3 be issued if a practitioner certifies that: (a) the patient has a seri-
4 ous condition, which shall be specified in the patient's health care
5 record; (b) the patient is under the practitioner's care for the serious
6 condition; and (c) in the practitioner's professional opinion, the
7 patient is likely to receive therapeutic or palliative benefit from the
8 primary or adjunctive treatment with medical use of marihuana for the
9 serious condition.

10 2. The certification shall be in writing and include (a) the name,
11 date of birth and address of the patient; (b) a statement that the
12 patient has a serious condition; the patient is under the practitioner's
13 care for the serious condition and, in the practitioner's professional
14 opinion, the patient is likely to receive therapeutic or palliative
15 benefit from the primary or adjunctive treatment with medical use of
16 marihuana for the serious condition; (c) the date; and (d) the name,
17 address, federal registration number, telephone number, and the hand-
18 written signature of the certifying practitioner. The commissioner may
19 require by regulation that the certification shall be on a form provided
20 by the department if the commissioner determines that the department is
21 making certification forms adequately available.

22 3. The practitioner shall give the certification to the certified
23 patient, and place a copy in the patient's health care record.

24 4. No practitioner shall issue a certification under this section for
25 himself or herself.

26 5. A registry identification card based on a certification shall
27 expire one year after the date the certification is signed by the prac-
28 titioner; except that where a certified patient has a registry identifi-
29 cation card based on a current valid certification, a new registry iden-
30 tification card based on a new certification shall expire one year after
31 the expiration of the registry identification card based on the current
32 valid certification. However, if the practitioner states in the certif-
33 ication that he or she believes the patient would benefit from medical
34 marihuana only until a specified earlier date, then the registry iden-
35 tification card shall expire on that date.

36 § 3362. Possession. 1. The possession, acquisition, use, delivery,
37 transfer, transportation, or administration of medical marihuana by a
38 certified patient or designated caregiver possessing a valid registry
39 identification card, for certified medical use, shall be lawful under
40 this title; provided that the marihuana that may be possessed by a
41 certified patient and such certified patient's designated caregiver does
42 not exceed a total aggregate weight of two and one-half ounces of usable
43 marihuana. A certified patient or designated caregiver possessing a
44 valid registry identification card may also lawfully possess a reason-
45 able amount of unusable marihuana, which shall not be counted toward the
46 limits in this section. A designated caregiver may possess the quanti-
47 ties referred to in this subdivision for each certified patient for whom
48 the caregiver possesses a valid registry identification card, up to five
49 certified patients.

50 2. Notwithstanding subdivision one of this section: (a) possession of
51 marihuana shall not be lawful under this title if it is consumed or
52 displayed in a public place; (b) medical marihuana may not be smoked in
53 any place where tobacco may not be smoked under article thirteen-E of
54 this chapter; (c) except that in a health care facility, medical mari-
55 huana may be smoked by a patient of the facility, subject to other
56 provisions of this title, in an area, and under circumstances, permitted

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1 by the facility, provided that the patient does not smoke in the pres-
2 ence of patients who are not certified under this title.

3 3. It shall be lawful under this article to give or dispose of mari-
4 huana to a certified patient or designated caregiver for a certified
5 medical use where nothing of value is transferred in return, or to offer
6 to do the same. This prohibition on transferring or offering to trans-
7 fer a thing of value shall not (a) apply to sale of medical marihuana to
8 or by a registered organization under this article; nor (b) prevent a
9 designated caregiver from being reimbursed for activities relating to
10 caring for a certified patient, including, but not limited to,
11 reimbursement for legitimate expenses relating to the purchase of
12 medical marihuana from a registered organization under section thirty-
13 three hundred sixty-six of this title.

14 4. No school, employer or landlord shall refuse to enroll, employ or
15 lease to or otherwise penalize a person solely for his or her status as
16 a certified patient or designated caregiver; provided, however, that
17 nothing in this paragraph requires a school, employer or landlord to
18 make any additional accommodations.

19 § 3363. Registry identification cards. 1. The department shall issue
20 registry identification cards for certified patients and designated
21 caregivers. A registry identification card shall expire as provided in
22 section thirty-three hundred sixty-one of this title or as otherwise
23 provided in this section. The department shall begin issuing registry
24 identification cards no later than one hundred eighty days after the
25 effective date of this section. The department may specify a form for a
26 registry application, in which case the department shall provide the
27 form on request, reproductions of the form may be used, and the form
28 shall be available for downloading from the department's website.

29 2. To obtain or renew a registry identification card, a certified
30 patient shall file a registry application with the department. The
31 registry application or renewal application shall include:

32 (a) a copy of the patient's certification (a new written certification
33 shall be provided with a renewal application);

34 (b) (i) the name, address, and date of birth of the patient; (ii) the
35 date of the certification; (iii) if the patient has a registry identifi-
36 cation card based on a current valid certification, the registry iden-
37 tification number and expiration date of that registry identification
38 card; (iv) the specified date until which the patient would benefit from
39 medical marihuana, if the certification states such a date; (v) the
40 name, address, federal registration number, and telephone number of the
41 certifying practitioner; and (vi) other individual identifying informa-
42 tion required by the department;

43 (c) if the patient designates a designated caregiver, the name,
44 address, and date of birth of the designated caregiver, and other indi-
45 vidual identifying information required by the department; a certified
46 patient may designate up to two designated caregivers;

47 (d) a statement that a false statement made in the application is
48 punishable under section 210.45 of the penal law;

49 (e) the date of the application and the signature of the certified
50 patient; and

51 (f) a reasonable application fee, as determined by the department;
52 provided, that the department may waive or reduce the fee in cases of
53 financial hardship.

54 3. Where a certified patient is under the age of eighteen:

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1 (a) The application for a registry identification card shall be made
2 by an appropriate person over twenty-one years of age. The application
3 shall state facts demonstrating that the person is appropriate.

4 (b) The designated caregiver shall be (i) a parent or legal guardian
5 of the certified patient, (ii) a person designated by a parent or legal
6 guardian, or (iii) an appropriate person approved by the department upon
7 a sufficient showing that no parent or legal guardian is appropriate or
8 available.

9 4. No person may be a designated caregiver if the person is under
10 twenty-one years of age unless a sufficient showing is made to the
11 department that the person should be permitted to serve as a designated
12 caregiver.

13 5. No person may be a designated caregiver for more than five certi-
14 fied patients at one time. A designated caregiver shall carry a separate
15 registry identification card for each certified patient for whom he or
16 she is a designated caregiver. Each registry identification card shall
17 contain the same registry identification number specified in this
18 section.

19 6. The department shall issue separate registry identification cards
20 for the certified patient and the designated caregiver (if one is desig-
21 nated in the registry application) within thirty days of receiving a
22 complete application under this section, unless it determines that the
23 application is incomplete or facially inaccurate, in which case it shall
24 promptly notify the applicant.

25 7. If the department does not approve the designation of an individ-
26 ual as a designated caregiver, that shall not affect the approval of the
27 application as to the certified patient.

28 8. A registry identification card shall contain:

29 (a) the name, address, and date of birth of the certified patient and
30 the designated caregiver (if one is designated in the registry applica-
31 tion);

32 (b) the date of issuance and expiration date of the registry identifi-
33 cation card;

34 (c) a registry identification number for the certified patient and a
35 registry identification number for the designated caregiver (if one is
36 designated in the registry application); and

37 (d) a photograph of the individual to whom the registry identification
38 card is being issued, which shall be obtained by the department in a
39 manner specified by the commissioner in regulations; provided, however,
40 that if the department required certified patients to submit photographs
41 for this purpose, there shall be a reasonable accommodation of certified
42 patients who are confined to their homes due to their medical conditions
43 and may therefore have difficulty procuring photographs.

44 9. A certified patient or designated caregiver who has been issued a
45 registry identification card shall notify the department of any change
46 in his or her name or address or, with respect to the patient, or if he
47 or she ceases to have the serious condition noted on the certification,
48 within ten days of such change.

49 10. If a certified patient or designated caregiver loses his or her
50 registry identification card, he or she shall notify the department and
51 submit a ten dollar fee within ten days of losing the card to maintain
52 the registration. Within five days after such notification and payment,
53 the department shall issue a new registry identification card, which may
54 contain a new registry identification number, to the certified patient
55 or designated caregiver, as the case may be.

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1 11. The department shall maintain a confidential list of the persons
2 to whom it has issued registry identification cards. Individual identi-
3 fying information obtained by the department under this title shall be
4 confidential and exempt from disclosure under article six of the public
5 officers law. Notwithstanding this subdivision, the department may noti-
6 fy any appropriate law enforcement agency of information relating to any
7 violation or suspected violation of this title.

8 12. The department shall verify to law enforcement personnel in an
9 appropriate case whether a registry identification card is valid.

10 13. If a certified patient or designated caregiver willfully violates
11 any provision of this title as determined by the department, his or her
12 registry identification card may be revoked. This is in addition to any
13 other penalty that may apply.

14 14. Temporary registry identification cards. (a) Registry implementa-
15 tion date. As used in this subdivision, the "registry implementation
16 date" is the date determined by the commissioner when the department is
17 ready to receive and expeditiously act on applications for registry
18 identification cards under this section. The commissioner shall give at
19 least sixty days prior written public notice of the registry identifica-
20 tion date, by publication in the state register.

21 (b)(i) Certified patient. A copy of the certified patient's certifi-
22 cation shall temporarily serve as and have the same effect as his or
23 her registry identification card. It shall expire as a registry iden-
24 tification card on the earlier of the expiration date of the certifi-
25 cation or sixty days after the registry implementation date.

26 (ii) Designated caregiver. A copy of the certified patient's certifi-
27 cation, together with a copy of a written statement signed by the
28 certified patient containing the same information as an application for
29 a registry identification card under this section designating a person
30 as the certified patient's designated caregiver, shall temporarily serve
31 as and have the same effect as a registry identification card for the
32 designated caregiver. In the case of a certified patient under eighteen
33 years of age, the statement shall be signed by a person authorized to
34 make an application under this section for the certified patient. It
35 shall expire as a registry identification card on the earlier of the
36 expiration date of the certification or sixty days after the registry
37 implementation date.

38 (c) On and after the registry implementation date, upon receipt of an
39 application for a registry identification card, the department shall
40 send to the applicant a letter acknowledging such receipt. While the
41 application for a registry identification card is pending, a copy of the
42 registry application, together with a copy of the certification and a
43 copy of the letter of receipt from the department, shall serve as and
44 have the same effect as a registry identification card for the certified
45 patient and designated caregiver if any, provided that a certification
46 and application shall not serve as a valid registry identification card
47 after the initial thirty day period under subdivision six of this
48 section. This paragraph shall expire and have no effect one year after
49 the registry implementation date.

50 § 3364. Registered organizations. 1. A registered organization shall
51 be:

52 (a) a pharmacy;

53 (b) a facility licensed under article twenty-eight of this chapter;

54 (c) a not-for-profit corporation organized for the purpose of acquir-
55 ing, possessing, manufacturing, selling, delivering, transporting or
56 distributing marihuana for certified medical use;

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1 (d) the department;
2 (e) a local health department; or
3 (f) a registered producer, which shall be a person or entity, with
4 appropriate expertise in agriculture, registered for the purpose of
5 acquiring or manufacturing marihuana and selling, delivering, transport-
6 ing, or distributing it to another registered organization; a certified
7 producer shall not sell, deliver or distribute marihuana to a certified
8 patient or designated caregiver for that person's use.

9 2. The acquiring, possession, manufacture, sale, delivery, transport-
10 ing or distributing of marihuana by a registered organization under this
11 title in accordance with its registration under section thirty-three
12 hundred sixty-five of this title or a renewal thereof shall be lawful
13 under this title.

14 3. A registered organization (other than a registered producer) may
15 lawfully, in good faith, sell, deliver or distribute medical marihuana
16 to a certified patient or designated caregiver upon presentation to the
17 registered organization of a valid registry identification card for that
18 certified patient or designated caregiver. When presented with the
19 registry identification card, the registered organization shall provide
20 to the certified patient or designated caregiver a receipt, which shall
21 state: the name, address, and registry identification number of the
22 registered organization; the registry identification number of the
23 certified patient and the designated caregiver (if any); and the quanti-
24 ty of marihuana sold. The registered organization shall retain a copy of
25 the registry identification card and the receipt for one year.

26 4. No registered organization may sell, deliver or distribute to any
27 certified patient or designated caregiver a quantity of medical marihua-
28 na larger than that individual would be allowed to possess under this
29 title.

30 5. When a registered organization sells, delivers or distributes
31 medical marihuana to a certified patient or designated caregiver, it
32 shall provide to that individual a safety insert, which will be devel-
33 oped and approved by the commissioner and include, but not be limited
34 to, information on: (a) methods for administering medical marihuana, (b)
35 any potential dangers stemming from the use of medical marihuana, and
36 (c) how to recognize what may be problematic usage of medical marihuana
37 and obtain appropriate services or treatment for problematic usage.

38 § 3365. Registering of registered organizations. 1. Application for
39 initial registration. (a) An applicant for registration as a registered
40 organization under section thirty-three hundred sixty-four of this title
41 shall furnish to the department a description of the activities in which
42 it intends to engage as a registered organization and any information
43 the department shall reasonably require and evidence that the applicant:

44 (i) and its managing officers are of good moral character;
45 (ii) possesses or has the right to use sufficient land, buildings and
46 equipment to properly carry on the activity described in the applica-
47 tion;

48 (iii) is able to maintain effective control against diversion of the
49 marihuana; and

50 (iv) is able to comply with all applicable state laws and regulations
51 relating to the activities in which it intends to engage under the
52 registration.

53 (b) The application shall establish the applicant's status under para-
54 graph (a), (b), (c), (d) or (e) of subdivision one of section thirty-
55 three hundred sixty-four of this title, or its intention to qualify

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1 under paragraph (c) or (f) of subdivision one of section thirty-three
2 hundred sixty-four of this title.

3 (c) The application shall include the name, residence address and
4 title of each of the officers and directors and the name and residence
5 address of any person or entity that is a member of the applicant. Each
6 such person, if an individual, or lawful representative if a legal enti-
7 ty, shall submit an affidavit with the application setting forth:

8 (i) any position of management or ownership during the preceding ten
9 years of a ten per centum or greater interest in any other business,
10 located in or outside this state, manufacturing or distributing drugs;

11 (ii) whether such person or any such business has been convicted,
12 fined, censured or had a registration suspended or revoked in any admin-
13 istrative or judicial proceeding relating to or arising out of the manu-
14 facture, distribution, sale, or possession of drugs; and

15 (iii) such other information as the commissioner may reasonably
16 require.

17 (d) The applicant shall be under a continuing duty to report to the
18 department any change in facts or circumstances reflected in the appli-
19 cation or any newly discovered or occurring fact or circumstance which
20 is required to be included in the application.

21 2. Granting of registration. (a) The commissioner shall grant a regis-
22 tration or amendment to a registration under this section if he or she
23 is satisfied that:

24 (i) the applicant will be able to maintain effective control against
25 diversion of marihuana;

26 (ii) the applicant will be able to comply with all applicable state
27 laws;

28 (iii) the applicant and its officers are ready, willing and able to
29 properly carry on the manufacturing or distributing activity for which a
30 registration is sought;

31 (iv) the applicant possesses or has the right to use sufficient land,
32 buildings and equipment to properly carry on the activity described in
33 the application;

34 (v) it is in the public interest that such registration be granted;
35 and

36 (vi) the applicant and its managing officers are of good moral charac-
37 ter.

38 (b) If the commissioner is not satisfied that the applicant should be
39 issued a registration, he or she shall notify the applicant in writing
40 of those factors upon which further evidence is required. Within thirty
41 days of the receipt of such notification, the applicant may submit addi-
42 tional material to the commissioner or demand a hearing or both.

43 (c) The fee for a registration under this section shall be an amount
44 determined by the department in regulations; provided however, if the
45 registration is issued for a period greater than two years the fee shall
46 be increased, pro rata, for each additional month of validity.

47 (d) Registrations issued under this section shall be effective only
48 for and shall specify:

49 (i) the name and address of the registered organization; and

50 (ii) which activities of a registered organization are permitted by
51 the registration.

52 (e) Upon application of a registered organization, a registration may
53 be amended to allow the registered organization to relocate within the
54 state or to add or delete permitted registered organization activities.
55 The fee for such amendment shall be two hundred fifty dollars.

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1 3. A registration issued under this section shall be valid for two
2 years from the date of issue, except that in order to facilitate the
3 renewals of such registrations, the commissioner may upon the initial
4 application for a registration, issue some registrations which may
5 remain valid for a period of time greater than two years but not exceed-
6 ing an additional eleven months.

7 4. Applications for renewal of registrations. (a) An application for
8 the renewal of any registration issued under this section shall be filed
9 with the department not more than six months nor less than four months
10 prior to the expiration thereof. A late-filed application for the
11 renewal of a registration may, in the discretion of the commissioner, be
12 treated as an application for an initial license.

13 (b) The application for renewal shall include such information
14 prepared in the manner and detail as the commissioner may require,
15 including but not limited to:

16 (i) any material change in the circumstances or factors listed in
17 subdivision one of this section; and

18 (ii) every known charge or investigation, pending or concluded during
19 the period of the registration, by any governmental agency with respect
20 to:

21 (1) each incident or alleged incident involving the theft, loss, or
22 possible diversion of marihuana manufactured or distributed by the
23 applicant; and

24 (2) compliance by the applicant with the laws of the state with
25 respect to any substance listed in section thirty-three hundred six of
26 this article.

27 (c) An applicant for renewal shall be under a continuing duty to
28 report to the department any change in facts or circumstances reflected
29 in the application or any newly discovered or occurring fact or circum-
30 stance which is required to be included in the application.

31 (d) If the commissioner is not satisfied that the applicant is enti-
32 tled to a renewal of the registration, he or she shall within forty-five
33 days after the filing of the application serve upon the applicant or his
34 or her attorney of record in person or by registered or certified mail
35 an order directing the applicant to show cause why his or her applica-
36 tion for renewal should not be denied. The order shall specify in detail
37 the respects in which the applicant has not satisfied the commissioner
38 that the registration should be renewed.

39 (e) Within thirty days of service of such order, the applicant may
40 either submit additional material to the commissioner or demand a hear-
41 ing or both. If a hearing is demanded, the commissioner shall fix a date
42 for a hearing not sooner than fifteen days nor later than thirty days
43 after receipt of the demand, unless such time limitation is waived by
44 the applicant.

45 5. Granting of renewal of registrations. (a) The commissioner shall
46 renew a registration unless he or she determines and finds that the
47 applicant:

48 (i) is unlikely to maintain or be able to maintain effective control
49 against diversion; or

50 (ii) is unlikely to comply with all state laws applicable to the
51 activities in which it may engage under the registration.

52 (b) For purposes of this section, proof that a registered organiza-
53 tion, during the period of its registration, has failed to maintain
54 effective control against diversion or has knowingly or negligently
55 failed to comply with applicable state laws relating to the activities
56 in which it engages under the registration, shall constitute substantial

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1 evidence that the applicant will be unlikely to maintain effective
2 control against diversion or will be unlikely to comply with the appli-
3 cable state statutes during the period of proposed renewal.

4 6. The department may suspend or terminate the registration of a
5 registered organization, on grounds and using procedures under this
6 article relating to a license, to the extent consistent with this title.

7 § 3366. Reports by registered organizations. The commissioner shall,
8 by regulation, require each registered organization that sells, delivers
9 or distributes medical marihuana to a certified patient or designated
10 caregiver to file reports of all such sales, deliveries or distributions
11 by the registered organization during a particular period, on forms
12 provided by the department. Reports shall be not more frequently than
13 every six months, except that within the first year after this title has
14 taken effect reports shall be required not more frequently than every
15 three months. Each report shall include for each such sale, delivery or
16 distribution: the date, the quantity sold, delivered or distributed; and
17 the name, address and registry identification number of the certified
18 patient and the designated caregiver (if any).

19 § 3367. Evaluation; research programs; report by department. 1. The
20 commissioner may provide for the analysis and evaluation of the opera-
21 tion of this title. The commissioner may enter into agreements with one
22 or more persons, not-for-profit corporations or other organizations, for
23 the performance of an evaluation of the implementation and effectiveness
24 of this title.

25 2. The department may develop, seek any necessary federal approval
26 for, and carry out research programs relating to medical use of marihua-
27 na. Participation in any such research program shall be voluntary on
28 the part of practitioners, patients, and designated caregivers.

29 3. The department shall report every two years, beginning one year
30 after the effective date of this title, to the governor and the legisla-
31 ture on the medical use of marihuana under this title and make appropri-
32 ate recommendations.

33 § 3368. Relation to other laws. 1. The provisions of this article
34 shall apply to this title, except that where a provision of this title
35 conflicts with another provision of this article, this title shall
36 apply.

37 2. Nothing in this title shall be construed to require or prohibit an
38 insurer or health plan under the insurance law or the public health law
39 to provide coverage for medical marihuana. Nothing in this title shall
40 be construed to require coverage for medical marihuana under article
41 twenty-five of this chapter or article five of the social services law.

42 3. A person or entity shall not be subject to criminal or civil
43 liability or professional discipline for acting reasonably and in good
44 faith pursuant to this title.

45 § 3. Section 853 of the general business law is amended by adding a
46 new subdivision 3 to read as follows:

47 3. This article shall not apply to any sale, furnishing or possession
48 which is for a lawful purpose under title five-A of article thirty-three
49 of the public health law.

50 § 4. This act shall take effect sixty days after it shall become a
51 law; provided that the commissioner of health may make regulations and
52 issue forms provided for in this act before such effective date.

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)**

BILL NUMBER: A9016

SPONSOR: Gottfried (MS)

TITLE OF BILL: An act to amend the public health law and the general business law, in relation to medical use of marihuana

PURPOSE OR GENERAL IDEA OF BILL: Allows patient to use marihuana to treat a serious illness under medical supervision.

SUMMARY OF SPECIFIC PROVISIONS: Section 1. Legislative findings and Intent.

Section 2. Amends Public Health Law Article 33 by adding a new Title V-A, Medical Use of Marihuana.

§3360 defines certified medical use, certified patient, certification, designated caregiver, public place, serious condition, medical marihuana, registry application, registry identification card, and usable marihuana. A serious condition is defined as a severe debilitating or life-threatening condition or a condition associated with or a complication of such a condition, or its treatment.

§3361 allows a licensed practitioner (the defined term in the Public Health Law for people who may prescribe controlled substances) to certify that a patient has a serious condition that in the practitioner's judgment can and should be treated with the medical use of marihuana. A copy of the certification will be placed in the patient's medical records and the patient will get the original. A prescriber is not allowed to certify medical marijuana for himself or herself. A certification will be valid for a maximum of one year from the date it is written.

§3362 allows the possession of up to two and one half ounces of marihuana by a certified patient in possession of a valid registry identification card, for medical use. A designated caregiver may possess that amount for each patient for whom her or she is the caregiver. Use of medical marihuana is not allowed in a public place.

§3363 directs the Department of Health to issue registry identification cards to certified patients and designated caregivers. No individual shall be a designated caregiver for more than five patients.

§3364 creates registered organizations for the purpose of acquiring, possessing, manufacturing, selling, delivering, transporting or distributing marihuana for certified medical use. A registered organization may be a pharmacy; an Article 28-licensed facility (hospital, clinic, etc.); a not-for-profit corporation organized to be a registered organization; the Department; a local health department; or a registered producer (an entity that produces marihuana, solely for sale to other registered organizations).

§3365 establishes guidelines for the registering of registered organizations. Allows the department to suspend or terminate a registration on grounds, and using procedures under this article relating to a license, to the extent consistent with this title.

§3366 requires registered organizations to report to the commissioner all sales, deliveries or distributions of medical marihuana to certified patients or designated caregivers during a particular period.

§3367 directs the Health Department to contract with a third party to conduct an evaluation of the operation of the law.

§3368 applies other provisions of Article 33 to this title. Where a provision of this title conflicts with another provision of Article 33, this title applies. The bill does not require any public or private health plan to cover medical marihuana. Re-states the rule that reasonable good-faith actions in compliance with this title, absent some other element, would not subject a person or entity to criminal or civil liability or professional discipline.

Section 3 of the bill amends Section 853-g of the General Business Law to allow for the sale, furnishing and possession of materials used in the lawful administration of medical marihuana to a certified patient.

JUSTIFICATION: Thousands of New Yorkers have serious medical conditions that may benefit from medical use of marijuana. The National Academy of Sciences' Institute of Medicine concluded in a 1999 report that "nausea, appetite loss, pain and anxiety..all can be mitigated by marijuana." Doctors and patients have documented that marijuana can be an effective treatment - where other medications have failed - for at least some patients who suffer from HIV/AIDS, cancer, epilepsy, multiple sclerosis, and other life-threatening or debilitating conditions. Although other drugs are more effective than marijuana for some patients, the Institute of Medicine noted that "there will likely always be a subpopulation of patients who do not respond well to other medications." Medical marihuana must be available to those patients.

The active ingredient in marijuana, THC, has been approved for medical use by the Federal Food and Drug Administration and the Drug Enforcement Agency since 1986 in synthetic pill form. But consuming it in natural form - which many physicians say is more effective - continues to be illegal. In an editorial in the January 30, 1997 New England Journal of Medicine, Dr. Jerome P. Kassirer, editor of the Journal, explained that inhaling THC is more effective than taking the synthetic pill: "smoking marijuana produces a rapid increase in the blood level of the active ingredients and is thus more likely to be therapeutic." It also enables tighter control of the amount ingested. According to the Institute of Medicine, "it is well recognized that (the) oral route of administration hampers its effectiveness because of slow absorption and patients' desire for more control over dosing."

Legalizing the medical use of effective medicine does not undermine the message that nonmedical use of illegal drugs is wrong. Many controlled substances that are legal for medical use (such as morphine, Valium and steroids) are otherwise illegal. In the same New England Journal of Medicine editorial, Dr. Kassirer argued that "it is also hypocritical to forbid physicians to prescribe marijuana while permitting them to use morphine and meperidine to relive extreme dyspnea and pain."

The bill amends the Public Health Law rather than the Penal Law because the Penal Law's controlled substances provisions all relate back to the Public Health Law. Thus, all the acts that the bill makes lawful under the Public Health Law would, by definition, be legal under the Penal Law.

PRIOR LEGISLATIVE HISTORY:

1997-98 : A.6407 - referred to Health
1999-00: A.8082 - referred to Health
2001-02: A.5878 - referred to Health
2003: A.5796 - reported to Rules 2004:
A.57960-A - reported to Rules 2005-06:
A.8265 - reported to Rules 2007-08:
A.4867-A and -B - passed Assembly

FISCAL IMPLICATIONS: Minimal administrative expenses,
largely covered
by registration fees and substantial Medicaid savings.

EFFECTIVE DATE: Sixty days after it shall become law.
