

AMENDED IN SENATE MARCH 30, 2000

SENATE BILL

No. 2089

Introduced by Senator Johannessen
(Coauthors: Assembly Members Dickerson and Zettel)

February 25, 2000

An act to add Chapter 5.5 (commencing with Section 11340) to Division 10 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 2089, as amended, Johannessen. Medicinal marijuana.

Existing law, the Compassionate Use Act of 1996, prohibits any physician from being punished or denied any right or privilege for having recommended marijuana to a patient for medical purposes. The act prohibits the provisions of law making unlawful the possession or cultivation of marijuana from applying to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

This bill would specify requirements of any physician recommending *or approving* marijuana to a patient for medical purposes. The bill would require that the physician document the recommendation *or approval* in the patient's record, and include in any recommendation *or approval to a patient, and documentation in the patient's record*, the patient's name, the date of the recommendation *or approval*, the dosage, quantity, and frequency of usage of the marijuana, the illness or illnesses for which the marijuana is

recommended *or approved*, and the ~~duration~~ *of period of time for which the recommendation or approval is valid*. The bill would specify the maximum amount of marijuana that a physician is permitted to recommend *or approve* for medicinal use. The bill would require that the recommendation *or approval* be for no longer than one year, notwithstanding the time period for which the marijuana is recommended *or approved*. The bill would provide that the failure of a physician to comply with these requirements shall constitute unprofessional conduct. The bill would require the State Department of Health Services to adopt regulations to implement these provisions.

The bill would prohibit any person from possessing or cultivating marijuana for medicinal use under these provisions unless the person has a valid recommendation *or approval* from a physician that meets the requirements of the bill. ~~The bill would require, prior to the possession or cultivation by any person of marijuana in accordance with a valid recommendation of a physician, a person to register with the department.~~ The bill would subject to criminal proceedings any person who possesses or cultivates a quantity of marijuana that is inconsistent with the recommendation *or approval* of the physician and ~~would specify that amount of marijuana that would be presumed to be for nonmedicinal use.~~

The bill would change the definition of crimes related to the possession or cultivation of marijuana out of compliance with the requirements of the bill, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



The people of the State of California do enact as follows:

1 SECTION 1. Chapter 5.5 (commencing with Section
2 11340) is added to Division 10 of the Health and Safety
3 Code, to read:

4

5 CHAPTER 5.5. MEDICINAL USE OF MARIJUANA

6

7 11340. (a) In recommending *or approving* marijuana
8 to a patient for medical purposes pursuant to the
9 authority granted under Section 11362.5, a physician shall
10 meet all of the following requirements:

11 (1) (A) No person other than a physician who
12 possesses a current license in good standing to practice in
13 this state and who is acting within his or her scope of
14 practice shall write or ~~issue a recommendation~~ *give a*
15 *recommendation or approval* for the medicinal use of
16 marijuana.

17 (B) The physician shall document the issuance of any
18 recommendation *or approval* of marijuana to a patient for
19 medicinal purposes in the patient’s record *at the time the*
20 *recommendation or approval is made.*

21 (2) (A) ~~The recommendation shall contain the~~ *The*
22 *recommendation or approval to the patient shall contain,*
23 *and the physician shall document, all of the following in*
24 *the patient’s record:*

25 (A) *The* date of the recommendation *or approval* and
26 the name of the person for whom the marijuana is
27 recommended *or approved.*

28 (B) ~~The recommendation shall specify the~~ *The* illness
29 or illnesses for which the marijuana is recommended *or*
30 *approved.*

31 (C) ~~The recommendation shall specify the~~ *The*
32 dosage, quantity, and frequency of usage of the
33 marijuana. The quantity of marijuana recommended *or*
34 *approved* for medicinal use pursuant to this section shall
35 not exceed one-fourth ounce per week.

36 (D) ~~The recommendation shall specify the duration of~~
37 ~~the recommendation. The recommendation may not be~~
38 ~~for longer than one year.~~



1 (D) The period of time for which the
2 recommendation or approval is valid. The validity of any
3 recommendation or approval shall not exceed one year.

4 (b) The failure of a physician to comply with the
5 requirements of this section shall constitute
6 unprofessional conduct.

7 (c) The department shall adopt regulations to
8 implement this section.

9 11341. (a) It is the intent of the Legislature in
10 enacting this section to regulate the illegal use and
11 cultivation of marijuana, which is a controlled substance
12 pursuant to paragraph (13) of subdivision (d) of Section
13 11054, while at the same time permitting the medicinal
14 use of marijuana for purposes of Section 11362.5.

15 (b) No person shall possess or cultivate marijuana for
16 medicinal use for purposes of Section 11362.5, unless the
17 person has a valid recommendation *or approval* from a
18 physician that meets the requirements of Section 11340.

19 ~~(c) Prior to possession or cultivation by any person of~~
20 ~~marijuana in accordance with a valid recommendation of~~
21 ~~a physician, a person shall register with the department.~~
22 ~~The registration with the department shall include all of~~
23 ~~the information required to be in a recommendation~~
24 ~~under paragraph (2) of subdivision (a) of Section 11340.~~

25 ~~(d) The department shall provide to the patient a copy~~
26 ~~of the registration. With the patient's consent, the~~
27 ~~department shall provide to local law enforcement in the~~
28 ~~jurisdiction where the patient resides a copy of the~~
29 ~~registration. Except as provided in this subdivision, the~~
30 ~~registration of the patient with the department shall be~~
31 ~~confidential.~~

32 ~~(e)~~

33 (c) (1) A person who possesses or cultivates a quantity
34 of marijuana that is inconsistent with the
35 recommendation *or approval* of the physician shall be
36 subject to criminal proceedings for the illegal possession
37 or cultivation of marijuana.

38 ~~(f) Possession of amounts of marijuana in excess of any~~
39 ~~one of the following amounts shall be presumed to be for~~
40 ~~nonmedicinal use:~~



1 (2) *It is an affirmative defense to a charge of illegal*
2 *possession of marijuana if the defendant proves by a*
3 *preponderance of the evidence that his or her possession*
4 *of marijuana is for medicinal purposes as provided under*
5 *Section 11340 and this chapter.*

6 (d) *The total amount of medicinal marijuana*
7 *recommended or approved by a physician for a patient*
8 *for a one-year period shall not exceed any of the following*
9 *amounts:*

10 (1) Two outdoor plants.

11 (2) Six indoor plants. Three plants in the flowering bud
12 stage and three plants in the vegetative (growing) state.

13 (3) One and thirty-three hundredths pounds.

14 SEC. 2. No reimbursement is required by this act
15 pursuant to Section 6 of Article XIII B of the California
16 Constitution because the only costs that may be incurred
17 by a local agency or school district will be incurred
18 because this act creates a new crime or infraction,
19 eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section
21 17556 of the Government Code, or changes the definition
22 of a crime within the meaning of Section 6 of Article
23 XIII B of the California Constitution.

