

**ASA Model Legislation**  
(updated July 2014)

**WHEREAS** cannabis has been used as a medicine for at least 5,000 years and can be effective for serious medical conditions for which conventional medications fail to provide relief;

**WHEREAS** modern medical research has shown that cannabis can slow the progression of such serious diseases as Alzheimer's and Parkinson's and stop HIV and cancer cells from spreading; has both anti-inflammatory and pain-relieving properties; can alleviate the symptoms of epilepsy, PTSD and multiple sclerosis; is useful in the treatment of depression, anxiety and other mental disorders; and can help reverse neurological damage from brain injuries and stroke;

**WHEREAS** the World Health Organization has acknowledged the therapeutic effects of cannabinoids, the primary active compounds found in cannabis, including as an anti-depressant, appetite stimulant, anticonvulsant and anti-spasmodic, and identified cannabinoids as beneficial in the treatment of asthma, glaucoma, and nausea and vomiting related to illnesses such as cancer and AIDS;

**WHEREAS** the American Medical Association has called for the review of the classification of cannabis as a Schedule I controlled substance to allow for clinical research and the development of cannabinoid-based medicines;

**WHEREAS** the National Cancer Institute has concluded that cannabis has antiemetic effects and is beneficial for appetite stimulation, pain relief, and improved sleep among cancer patients;

**WHEREAS** the American Herbal Pharmacopoeia and the American Herbal Products Association have developed qualitative standards for the use of cannabis as a botanical medicine;

**WHEREAS** the U.S. Supreme Court has long noted that states may operate as "laboratories of democracy" in the development of innovative public policies;

**WHEREAS** twenty-three states and the District of Columbia have enacted laws that allow for the medical use of cannabis (marijuana);

**WHEREAS** ten additional states have enacted laws authorizing the medical use of therapeutic compounds extracted from the cannabis plant;

**WHEREAS** more than 17 years of state-level experimentation provides a guide for state and federal law and policy related to the medical use of cannabis;

**WHEREAS** accredited educational curricula concerning the medical use of cannabis have been established that meets Continuing Medical Education requirements for practicing physicians;

**WHEREAS** the Department of Justice has issued guidance to U.S. Attorneys indicating that enforcement of the Controlled Substances Act is not a priority when individual patients and their care providers are in compliance with state law, and that federal prosecutors should defer to state and local enforcement so long as a viable state regulatory scheme is in place;

Be it enacted by the People of (State) and by their authority:

**Section 1. Purpose and Intent.**

The citizens of (State) intend that there should be no criminal or civil penalty under state law for qualifying patients who use cannabis as a medical treatment or for the personal caregivers who may assist those patients, the physicians and health care professionals who certify patients as qualifying

for medical use, or the individuals who provide medical cannabis to qualified patients or otherwise participate in accordance with state law and regulations in the medical cannabis program, as defined herein.

The purpose of this act is to:

- (a) provide legal protections to persons with medical conditions who engage in the use of cannabis to alleviate the symptoms of a medical condition under the supervision of a medical professional; and
- (b) allow for the regulated cultivation, manufacture, processing, delivery, and possession of cannabis as permitted by this chapter;

## **Section 2. Definitions**

As used in this Law, the following words shall, unless the context clearly requires otherwise, have the following meanings:

(A) "Bona fide medical professional-patient relationship" means a patient and a licensed health care professional that includes:

- 1. Referral from a primary care practitioner or a physical examination and review of medical history
- 2. An explanation of the benefits and risks of medical use of cannabis
- 3. On-going expectation of care

(B) "Cannabis" has the meaning given "marijuana" in [insert state-relevant code citation] of the General Laws.

(C) "Cannabis-derived product" means: a product other than whole-plant cannabis which is manufactured from cannabis and is intended for use or consumption by humans through means such as, but not limited to, food stuffs, extracts, oils, tinctures, topicals, and suppositories.

(D) "Card holder" shall mean a qualifying patient, a personal caregiver, or a medical cannabis agent who possesses a valid registration card issued by the Department.

(E) "Cultivation facility" means a business that:

- 1. Is registered with the Department of Agriculture; and
- 2. Acquires, possesses, cultivates, harvests, dries, cures, and packages cannabis and other related supplies for the purpose of delivery, transfer, transport, supply, or sales to:
  - (a) dispensing facilities;
  - (b) processing facilities;
  - (c) manufacturing facilities;
  - (d) other cultivation facilities;
  - (e) research facilities.
  - (f) independent testing laboratories.

(F) "Department" shall mean the Department of Public Health of (STATE), or its successor agency.

(G) "Dispensing facility" shall mean a business that:

1. is registered with the Department; and
2. acquires and possesses cannabis and cannabis-derived products for the purpose of sales, delivery transport, transfer, and distribution to:

- (a) cardholding qualifying patients;
- (b) cardholding personal caregivers;
- (c) other dispensing facilities;
- (d) independent testing laboratories.

(H) "Excluded felony offense" means:

1. A criminal offense for which the sentence, including any term of probation, incarceration or supervised release, was completed more than 10 years before the date of application to participate in the state medical cannabis program described herein; or
2. An offense involving conduct that would be immune from arrest, prosecution or penalty pursuant to this law,

(I) "Independent testing laboratory" shall mean a private and independent testing facility that tests cannabis and/or cannabis-derived products that are to be sold by a licensed medical cannabis establishment to identify the content of the cannabis or cannabis-derived products, including but not limited to such constitutive elements as cannabinoids, to detect the presence of any pesticides, bacteria, or other contaminants, and/or for other purposes determined by the Department.

(J) "Manufacturing facility" means a business that

1. Is registered with the Department; and
2. Acquires, possesses, manufactures, and packages cannabis-derived products for the purpose of delivery, transfer, transport, supply or sale to
  - a) dispensing facilities;
  - b) other manufacturing facilities;
  - c) processing facilities;
  - d) independent testing laboratories.

(K) "Medical cannabis agent" shall mean an employee, staff volunteer, officer, or board member of a "medical cannabis establishment,"

(L) "Medical cannabis establishment" shall mean an entity, as defined by State law, registered under this law including: medical cannabis 1) cultivation facilities; (2) processing facilities (3) manufacturing facilities; (4) independent testing laboratories; (5) dispensing facilities, and (6) a business that is authorized to operate more than one of the types of businesses listed in (L)(1)-(5).

(M) "Medical cannabis establishment registration certificate" means a registration certificate that is issued by the Department pursuant to authorize the operation of a medical cannabis establishment pursuant to this statute.

(N) "Medical use of cannabis" shall mean the acquisition, cultivation, possession, processing, manufacturing, transfer, transportation, sale, distribution, dispensing, or administration of cannabis and/or cannabis derived products for the benefit of qualifying patients

(O) "Ninety-day supply" means the amount of cannabis that a qualifying patient or their personal caregiver may presumptively possess for the qualifying patient's personal medical use.

(P) "Nonresident card" means a card or other identification that:

1. Is issued by a state or jurisdiction other than [State]; and
2. Is the functional equivalent of a registration card

(Q) "Paraphernalia" means accessories, devices and other equipment that is necessary or used to assist (or facilitate) in the consumption of medical cannabis

(R) "Personal caregiver" shall mean a person who has agreed to assist with a qualifying patient's medical use of cannabis.

(S) "Processing facility" means a business that:

1. Is registered with the Department; and
2. Acquires, possesses, trims, inspects, or grades cannabis or places cannabis in bulk storage or retail containers for the purpose of delivery transfer, transport, supply or sales to:
  - (a) dispensing facilities;
  - (b) manufacturing facilities;
  - (c) other processing facilities;
  - (d) independent testing laboratory

(T) "Qualified medical professional" is any individual authorized in the STATE to prescribe medications or any other medical professional authorized by the Department to recommend cannabis pursuant to this statute.

(U) "Qualifying medical condition" shall mean any condition for which treatment with medical cannabis would be beneficial, as determined by a patient's qualified medical professional, including but not limited to cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome (AIDS), hepatitis C, amyotrophic lateral sclerosis (ALS), Crohn's disease, Parkinson's disease, post-traumatic stress disorder, arthritis, chronic pain, neuropathic and other intractable chronic pain, and multiple sclerosis.

(V) "Qualifying patient" shall mean a person who has a written recommendation from a qualified medical professional for the medical use of cannabis.

(W) "Registration card" shall mean a personal identification card issued by the Department to authorize participation in [STATE]'s medical cannabis program of a qualifying patient, personal caregiver, or medical cannabis agent. The registration card shall identify for the Department and law enforcement those individuals who are exempt from State criminal and civil penalties for conduct pursuant to this Chapter.

(X) "Restricted access area" shall mean a location where cannabis is cultivated, including open air, green house, row cover, or other structure that secures the cultivating cannabis from non-card holders or individuals authorized by the Department while obscuring the view of cannabis from any public right of way.

(Y) "Written recommendation" means a document authorizing a patient's medical use of cannabis that is written on tamper-resistant paper and signed by a qualified medical professional. Such

recommendation shall be made only in the course of a bona fide medical professional-patient relationship and shall specify the qualifying patient's qualifying medical condition(s).

### **Section 3: Scheduling of Cannabis**

Under section [STATE STATUTE] Cannabis will be classified as a Schedule 4 substance.

### **Section 4. Protection from State Prosecution and Penalties for Qualified Medical Professionals**

A qualified medical professional shall not be penalized under [State] law, in any manner, or denied any right or privilege, for:

- (A) advising a qualifying patient about the risks and benefits of the medical use of cannabis; or
- (B) providing a qualifying patient with a written recommendation, based upon a full assessment of the qualifying patient's medical history and condition, that the use of cannabis may prove beneficial for the patient's condition(s).

### **Section 5. Protection From State Prosecution and Penalties for Card Holders**

A card holder shall not be subject to arrest, prosecution, or civil penalty, under (STATE) law, provided the card holder:

- (A) is in possession of his or her registration card;
- (B) if the cardholder is a patient, has no more than a 90-day supply of cannabis;
- (C) if the card holder is a personal caregiver, has no more than a 90-day supply for each qualifying patient who has designated the card holder as a personal caregiver under this Chapter; and
- (D) is acting in accordance with all the requirements of this law.

### **Section 6. Affirmative Defense**

An individual may establish an affirmative defense to charges of violations of state law relating to cannabis through proof at trial, by a preponderance of the evidence, that their use was medical if the individual is:

- (A) a qualifying patient or a personal caregiver who is not registered with the (STATE) but is in compliance with all other terms and conditions of the state law; or
- (B) a qualifying patient or a personal caregiver who is in possession of more than a 90-day supply of cannabis and can demonstrate the amount possessed in excess of the 90-day supply was necessary to provide a consistent and reliable source of medical cannabis to treat the qualifying patient.
- (C) a non-resident of [STATE] shall be considered a qualifying patient for this Section if they have can establish through a preponderance of the evidence that an individual authorized in their state of residence who is authorized to prescribe medications has recommended the therapeutic use of cannabis for the non-resident.

### **Section 7. Protection Against Forfeiture and Arrest**

(A) The lawful possession, cultivation, processing, transfer, transport, distribution, or manufacture of medical cannabis and/or cannabis-derived products as authorized by this law shall not result in the forfeiture or seizure of any property.

(B) No person shall be arrested or prosecuted for any criminal or civil offense solely for being in the presence of medical cannabis or its use as authorized by this law.

[C] No person shall be subject to arrest or prosecution for a marijuana offense if that person is in possession of a valid registry identification card and is in compliance with this law.

### **Section 8. Discrimination Prohibited**

(A) Unless a failure to do so would cause the employer to lose a monetary or licensing-related benefit under federal law or federal regulations, an employer may not discriminate against a person in hiring, termination, or any term or condition of employment, or otherwise penalize a person, based upon either of the following:

1. The person's status as a qualifying patient, caregiver, or cardholder; or
2. A qualifying patient, caregiver, or cardholder tests positive for cannabis components or metabolites, unless the individual was impaired by cannabis on the premises of the place of employment or during the hours of employment.

(B) Unless required by federal law or required to obtain federal funding, no landlord may refuse to rent a dwelling unit to a person or take action against a tenant solely on the basis of an individual's status of a qualifying patient or cardholder under this act.

(C) For the purposes of medical care, including organ transplants, a qualifying patient's medical use of cannabis does not constitute the use of an illicit substance or otherwise disqualify a qualifying patient from medical care.

(D) Neither the presence of cannabinoid components or metabolites in a person's bodily fluids, nor conduct related to the medical use of cannabis by a custodial or noncustodial parent, grandparent, pregnant woman, legal guardian, or other person charged with the well-being of a child, shall form the sole or primary basis for any action or proceeding by a child welfare agency or a family or juvenile court. This subsection shall apply only to conduct in compliance with this chapter.

### **Section 9. Driving Protections**

A qualifying patient shall not operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of cannabis. A qualifying patient shall not be considered to be under the influence of cannabis solely because of the detectable presence of cannabis components or metabolites.

A person's status as a qualified patient is not a sufficient basis for conducting roadside sobriety tests or the suspension of a driver's license. The officer must have an independent, factual basis giving reasonable suspicion that the person is driving under the influence of cannabis to conduct standardized field sobriety tests.

### **Section 10. Recognition of nonresident cards**

(A) The (STATE) and the medical cannabis dispensing facilities in this State which hold valid medical cannabis establishment registration certificates will recognize a medical cannabis registry identification card issued by another state or the District of Columbia only under the following circumstances:

1. The state or jurisdiction from which the holder or bearer obtained the nonresident card grants an exemption from criminal prosecution for the medical use of cannabis;
2. The nonresident card has an expiration date and has not yet expired;
3. The holder or bearer of the nonresident card signs an affidavit in a form prescribed by the Department which sets forth that the holder or bearer is entitled to engage in the medical use of cannabis in his or her state or jurisdiction of residence; and
4. The holder or bearer of the nonresident card is in possession of no more than a 90-day supply of cannabis.

(B) For the purposes of the reciprocity described in this section:

1. The amount of medical cannabis that the holder or bearer of a nonresident card is entitled to possess in his or her state or jurisdiction of residence is not relevant; and
2. Under no circumstances, while in this State, may the holder or bearer of a nonresident card possess cannabis for medical purposes in excess of a 90-day supply of cannabis.

### **Section 11. Limitations of Law**

(A) Nothing in this law requires any physician to recommend the use of medical cannabis for a patient.

(B) Nothing in this law requires any accommodation of on-site medical use of cannabis in a place of employment, school bus or on school grounds or in any youth center, or in any correctional facility.

(C) Nothing in this law supersedes (STATE) law prohibiting the possession, cultivation, transport, distribution, or sale of cannabis for nonmedical purposes.

(D) Nothing in this law prohibits any place of employment from creating accommodations for use of medical cannabis

(E) Nothing in this law authorizes personal caregivers to consume medical cannabis acquired for a qualifying patient that they serve.

### **Section 12. Department to define presumptive 90-day supply for qualifying patients**

Within 120 days of the effective date of this law, the Department shall issue regulations defining the quantity of cannabis that may reasonably be presumed to be a ninety-day supply for qualifying patients, based on the best available medical evidence. This amount shall determine that amount of medical cannabis a qualifying patient or their personal caregiver may possess.

### **Section 13. Registration of medical cannabis establishments**

(A) Within 120 days of the effective date of this law, the Department shall establish a method for licensing medical cannabis establishments and begin accepting applications for medical cannabis establishments to register with the Department. Medical cannabis establishments must register with the Department pursuant to this method.

(B) Not later than ninety days after receiving an application for a medical cannabis establishment, the department shall register the medical cannabis establishment if:

1. The prospective medical cannabis establishment has submitted:

(a) An application fee in an amount to be determined by the Department or Department of Agriculture consistent with Section 20 of this law.

(b) An application, including:

(i) the legal name and physical address of the establishment;

(ii) the name, address and date of birth of each principal officer and board member.

(c) Operating procedures consistent with Department rules for oversight

2. None of the principal officers or board members has served as a principal officer or board member for a medical cannabis establishment that has had its registration certificate revoked.

(C) In the first year after the effective date, the Department shall issue registrations for up to [XXX] medical cannabis establishments, provided that at least one dispensing facility shall be located in each county, and not more than five shall be located in any one county. In the event the Department determines in a future year that the number of dispensing facilities is insufficient to meet patient needs, the Department shall have the power to increase the number of registered medical cannabis dispensing facilities in the state, or raise the limit of medical cannabis dispensing facilities in a county.

(D) A medical cannabis establishment registered under this section shall not be penalized, and its registered medical cannabis agents shall not be penalized or arrested under [STATE] law for acquiring, possessing, cultivating, processing, transferring, transporting, selling, distributing, or dispensing cannabis, and cannabis derived products to qualifying patients who are cardholders or their personal caregivers who are cardholders.

#### **Section 14. Registration of medical cannabis agents**

(A) A medical cannabis agent shall be registered with the Department before volunteering or working at a medical cannabis establishment.

(B) A medical cannabis establishment must apply to the Department for a registration card for each affiliated medical cannabis agent by submitting the name, address, and date of birth of the agent.

(C) A registered medical cannabis establishment shall notify the department within one business day if a medical cannabis agent ceases to be associated with the facility, and the agent's registration card shall be immediately revoked.

#### **Section 15. Patient Cultivation Registrations**

The Department shall issue a cultivation registration to a qualifying patient or their personal caregiver. No more than 10 qualified patients may collectively cultivate, and each participating patient must obtain a cultivation registration. The Department may deny a registration based on the provision of false information by the applicant. Such registration shall allow the qualifying patient or their personal caregiver to cultivate an area of limited square footage of plant canopy, sufficient to maintain a 90-day supply of cannabis, and shall require cultivation and storage only in a restricted access area.

The Department shall issue regulations consistent with this section within 120 days of the effective date of this law. Until the department issues such final regulations, the written recommendation of a qualifying patient's physician shall constitute a limited cultivation registration.

A qualifying patient or personal caregiver shall not be considered to be in possession of more than a 90-day supply at the location of a restricted access area used collectively by more than one patient, so long as the total amount of cannabis within the restricted access area is not more than a 90-supply for

all the participating qualifying patients. A copy of each qualifying patient's written recommendation shall be retained at the shared enclosed locked facility.

### **Section 16. Medical cannabis registration cards for qualifying patients and designated caregivers**

(A) A qualifying patient may apply to the Department for a single or multiple-year medical cannabis registration card by submitting:

1. Written certification from a physician.
2. An application, including:
  - (a) Name, address unless homeless, and date of birth.
  - (b) Name, address, and date of birth of the qualifying patient's personal caregiver, if any.

(B) A physician may deem a card valid for one year or two years

(C) Until the Department begins to issue registration ID cards, a licensed physician's written certification shall provide a qualifying patient the same legal status as a card holder.

(D) The Department shall issue any rules necessary for how an employee of a hospice provider, nursing, or medical facility providing care to a qualifying patient may serve as a personal caregiver for the purposes of administering medical cannabis to a qualifying patient.

### **Section 17. Registration of Independent testing laboratory**

(A) The Department shall establish analytic standards based on the American Herbal Pharmacopeia's Cannabis Monograph and certify private and independent testing laboratories to test medical cannabis and cannabis-derived products that are to be sold by a licensed medical cannabis establishment.

(B) Such a laboratory must be able to accurately determine the following for all medical cannabis and cannabis-derived products sold by medical cannabis establishments:

1. The concentration therein of delta-9 tetrahydrocannabinol (THC), and cannabidiol (CBD) .
2. The presence and identification of molds and fungi.
3. The presence and concentration of pesticides, fertilizers and other nutrients.

(C) The Department shall establish within 120 days of the effective date of this law an application process for the registration of independent testing laboratories.

### **Section 18. Creation of an Advisory Committee on Medical Cannabis**

(A) Within 120 days of the effective date of this law, the Director of the Department shall create the Advisory Committee on Medical Cannabis (Committee), consisting of 11 members to be appointed by the Director.

(B) The Director shall appoint as members of the Committee: at least one person who possesses a qualifying patient registry identification card, at least one person who is a designated primary caregiver of one or more qualifying patients, at least one person who is an officer, board member, or other responsible party for a licensed medical cannabis dispensing facility, and at least one person

who is a licensed medical professional with knowledge of and experience with treating patients with medical cannabis; provided that the Director shall appoint of an officer, board member, or other responsible party for a licensed medical cannabis dispensing facility within 270 days of the effective date of the this law. The Director shall appoint nine members of the Committee within 120 days of the effective date of this law, and shall appoint an additional 2 members to the Committee within 270 days of the effective date of this law.

(C) The Committee shall advise the director on the administrative aspects of the [STATE] Medical Cannabis Program, review current and proposed administrative rules of the program, and provide annual input on the fee structure of the program.

(D) The Committee shall meet at least four times per year, at times and places specified by the Director.

(E) The Department shall provide staff support to the committee.

(F) All agencies of state government are directed to assist the Committee in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish information and advice that the members of the committee consider necessary to perform their duties.

(G) Committee members shall a serve a term of four years; provided that in order to maintain five of the members initially appointed to the Committee, as determined by the Director at the time of appointment, shall serve terms of two years. Appointments to fill vacancies shall be appointed by the Director no later than 30 days prior to the end of a term of a current Director, or within 30 days of a resignation or vote of removal of a Committee member by a three-quarters majority vote of the other members of the Committee.

### **Section 19. Product Safety**

The Department will adopt product safety standards for the cultivation, processing, manufacturing, labeling, testing, and distribution of cannabis based on the American Herbal Products Association Cannabis Guidelines and determine a comprehensive plan for inspection, oversight, and enforcement of such guidelines.

### **Section 20. Implementation of Regulations and Fees**

Within 120 days of the effective date of this law, the Department with the Department of Agriculture shall issue regulations for the implementation of Sections 15 through 22 of this Law. The Department shall create a Merit Based Approval Process, to solicit the best applications for Medical Cannabis Establishments that include solutions to foreseeable environmental, product safety, public safety, and labor & employment issues. The Department shall set application fees for medical cannabis establishments so as to defray the administrative costs of the medical cannabis program and thereby make this law revenue neutral. The Department shall establish different categories of medical cannabis establishment agent registration cards, including, without limitation, criteria for mandatory training and certification for each of the different types of medical cannabis establishments at which such an agent may be employed or volunteer. Fees shall be on a sliding scale based on the projected and/or annual gross of the medical cannabis establishment.

Until the approval of final regulations, written certification by a physician shall constitute a registry identification card for a qualifying patient. Until the approval of final regulations, a certified mail return receipt showing compliance with Section 12 (A) (2) (b) above by a qualifying patient, and a photocopy of the application, shall constitute a registry identification card for that patient's personal caregiver.

### **Section 21. Confidentiality**

The Department shall maintain a confidential list of the persons issued medical cannabis registry identification cards. Individual names and other identifying information on the list shall be exempt from the provisions of (STATE) Public Records Law, and not subject to disclosure, except to employees of the department in the course of their official duties.

It shall be a crime, punishable by up to one hundred eighty (180) days in jail and a one thousand dollar (\$1,000) fine, for any person, including an employee or official of the department or another state agency or local government, to breach the confidentiality of information obtained pursuant to this chapter. Notwithstanding this provision, the Department employees may notify law enforcement about falsified or fraudulent information submitted to the department.

Non-public data maintained by the Department may not be used for any purpose not provided for in this Act, and may not be combined or linked in any manner with any other list, dataset, or database.

### **Section 22. Effective Date**

This law shall be effective [MONTH DAY, YEAR].

### **Section 22. Severability**

The provisions of this law are severable, and if any clause, sentence, paragraph, or section of this measure, or an application thereof, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section, or application adjudged invalid.