

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1995

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Legislative Document

No. 204

S.P. 85

In Senate, January 24, 1995

**An Act to Legalize Cannabis for Medical Treatment of Patients With  
HIV/AIDS.**

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS  
Secretary of the Senate

Presented by Senator RAND of Cumberland.  
Cosponsored by Senator: McCORMICK of Kennebec.

Be it enacted by the People of the State of Maine as follows:

2  
4       **Sec. 1. 15 MRSA §5821, first ¶**, as enacted by PL 1987, c. 420, §2, is amended to read:

6       The ~~Except~~ as provided in section 5821-A, the following shall-be are subject to forfeiture to the State and no property right may exist in them:

10       **Sec. 2. 15 MRSA §5821-A** is enacted to read:

12       **§5821-A. Property not subject to forfeiture based on medical purposes**

14  
16       Property is not subject to forfeiture under this chapter if the alleged violation that subjects the person's property to forfeiture is possession of marijuana under Title 22, section 2383, the person possessed the marijuana for the person's own use, the amount of marijuana possessed is 1 1/4 ounces or less and the person was diagnosed by a physician before the alleged violation as having Acquired Immune Deficiency Syndrome.

22       **Sec. 3. 22 MRSA §2383, sub-§§3 to 6** are enacted to read:

24  
26       **3. Marijuana for medicinal purposes.** It is an affirmative defense to an adjudication for possession of marijuana under this section that the person possessed the marijuana for the person's own use, the amount of marijuana possessed is 1 1/4 ounces or less and the person was diagnosed by a physician before the alleged violation as having Acquired Immune Deficiency Syndrome.

32       **4. Juveniles.** It is an affirmative defense to an adjudication of a juvenile under Title 15, section 3103, subsection 1, paragraph B that the juvenile possessed 1 1/4 ounces or less of marijuana, the juvenile possessed the marijuana for the juvenile's own use, the juvenile's parent or other person authorized to make medical decisions for the juvenile authorized the possession and use and the juvenile was diagnosed by a physician before the alleged violation as having Acquired Immune Deficiency Syndrome.

42       **5. Burden of proof.** The affirmative defense provided by subsections 3 and 4 must be proved by the defendant by a preponderance of the evidence.

46       **6. Location.** Notwithstanding the affirmative defense provided by subsections 3 and 4, smoking marijuana under circumstances where smoking tobacco would be prohibited under chapter 262 or 263 is subject to the same penalties provided by those chapters for smoking tobacco under the same circumstances.

2                   Sec. 4. 22 MRSA c. 558-C is enacted to read:

4                                   CHAPTER 558-C

6                                   MARIJUANA THERAPEUTIC RESEARCH PROGRAM

8                   **§2421. Short title**

10                   This chapter may be cited as the "Marijuana Therapeutic Research Act."

12                   **§2422. Definitions**

14                   As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings.

16                   1. Board. "Board" means the Board of Registration in Medicine as established in Title 5, section 12004-A, subsection 24.

18                   2. Marijuana. "Marijuana" means marijuana, tetrahydrocannabinol or a chemical derivative of tetrahydrocannabinol.

20                   3. Practitioner. "Practitioner" means an allopathic or osteopathic physician licensed to practice in this State.

22                   4. Program. "Program" means the Marijuana Therapeutic Research Program.

24                   **§2423. Marijuana Therapeutic Research Program**

26                   1. Establishment; administration. There is established within the department the Marijuana Therapeutic Research Program, administered by the commissioner.

28                   2. Rules. Subject to Title 5, chapter 375, the department shall adopt rules necessary for the proper administration of the program. In adopting rules, the department shall consider pertinent rules adopted by the federal Drug Enforcement Agency, the federal Food and Drug Administration, the National Institute on Drug Abuse and any other federal agency concerned with the subject of this chapter.

30                   3. Supply. The commissioner shall contract with the National Institute on Drug Abuse for the receipt of marijuana under rules adopted by the National Institute on Drug Abuse, the federal Food and Drug Administration and the federal Drug Enforcement Agency. If, within a reasonable period of time, the commissioner is unable to obtain marijuana as provided in this subsection, the commissioner shall contract with appropriate law enforcement agencies in this State for the receipt of confiscated marijuana not intended for use as evidence in any criminal

proceeding. Any marijuana so received must be made free of impurities and analyzed for potency by the department.

**4. Distribution.** The commissioner shall deliver marijuana received under subsection 3 to appropriate state or privately operated licensed pharmacies designated by the commissioner. Any marijuana so delivered must be distributed to patients upon the written prescription of their approved practitioners. Any privately operated licensed pharmacy designated by the commissioner under this subsection is not liable, except for gross negligence, in any civil action on account of marijuana distributed to patients under this chapter.

**§2424. Participation in the program**

**1. Application.** Any practitioner who wants to participate in the program must apply to the board for approval and pay a \$50 application fee.

**2. Review and approval.** The board shall review all applicants and approve them for participation if they are eligible under subsection 3 and the rules adopted by the department under section 2423, subsection 2. In performing these duties, the board is subject to Title 5, chapter 375.

**3. Prescriptions.** A practitioner approved for participation in the program may prescribe marijuana to only those patients who are diagnosed as having Acquired Immune Deficiency Syndrome and who are approved for participation by the board.

**§2425. Expressly authorized possession, prescription and distribution**

A practitioner approved for participation in the program is expressly authorized to prescribe marijuana under this chapter. A patient for whom marijuana has been prescribed by a practitioner approved for participation in the program is expressly authorized to possess marijuana under this chapter. A state or privately operated licensed pharmacy designated by the commissioner is expressly authorized to possess and distribute marijuana under this chapter.

**§2426. Confidentiality**

**1. Access to information.** Only the following persons have access to the name and other identifying characteristics of a patient for whom marijuana has been prescribed under this chapter:

A. The commissioner;

B. The board;

