

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1995

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Legislative Document

No. 784

H.P. 579

House of Representatives, March 9, 1995

### An Act to Legalize Marijuana for Medicinal Purposes.

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Reference to the Committee on Criminal Justice suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative STEVENS of Orono.

Cosponsored by Representatives: ADAMS of Portland, BRENNAN of Portland, CLOUTIER of South Portland, ETNIER of Harpswell, FITZPATRICK of Durham, GOULD of Greenville, GWADOSKY of Fairfield, HEESCHEN of Wilton, JACQUES of Waterville, JOHNSON of South Portland, JONES of Bar Harbor, JOSEPH of Waterville, KILKELLY of Wiscasset, MITCHELL of Vassalboro, MITCHELL of Portland, RICHARDSON of Portland, SAXL of Bangor, SAXL of Portland, SHIAH of Bowdoinham, TRIPP of Topsham, VOLNIK of Sedgwick, WATSON of Farmingdale, WINN of Glenburn, Senators: ABROMSON of Cumberland, McCORMICK of Kennebec, O'DEA of Penobscot, RAND of Cumberland.

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

4 **Sec. 1. 5 MRSA § 12004-G, sub-§14-B** is enacted to read:

6 **14-B.** Participation \$40/Day 22 MRSA  
Human Review Board §2424  
8 Services

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

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

16 **Sec. 3. 15 MRSA §5821-A** is enacted to read:

18 **§5821-A. Property not subject to forfeiture based on medical**  
20 **purposes**

22 Property may not be forfeited under this chapter in the  
following situations.

24 **1. Possession of marijuana for medical purposes.** The  
26 alleged offense that subjects the actor's property to forfeiture  
is possession of marijuana under Title 22, section 2383; the  
28 actor possessed the marijuana for the actor's own use; and:

30 A. The actor was diagnosed by a physician before the  
alleged offense as having glaucoma. This paragraph is  
32 repealed on October 1, 1998; or

34 B. The actor suffered from significant nausea or vomiting  
as a result of chemotherapy or radiation therapy.

36 **Sec. 4. 17-A MRSA §1117** is enacted to read:

38 **§1117. Marijuana for medical purposes**

40 **1. It is an affirmative defense to a prosecution for**  
42 **possession of marijuana under Title 22, section 2383 that the**  
**actor possessed the marijuana for the actor's own use and:**

44 A. The actor was diagnosed by a physician before the  
alleged offense as having glaucoma. This paragraph is  
46 repealed on October 1, 1998; or

48 B. The actor suffered from significant nausea or vomiting  
as a result of chemotherapy or radiation therapy.

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Sec. 5. 22 MRSA §2383-C is enacted to read:

**§2383-C. Marijuana for medical purposes**

**1. Patients.** Notwithstanding section 2383, subsection 1, a person may possess a useable amount of marijuana if the person possesses the marijuana for the person's own use and:

A. The person was diagnosed by a physician before the alleged offense as having glaucoma. This paragraph is repealed on October 1, 1998; or

B. The person suffered from significant nausea or vomiting as a result of chemotherapy or radiation therapy.

**2. Juveniles.** Notwithstanding Title 15, section 3103, subsection 1, paragraph B, a juvenile may possess a useable amount of marijuana if the juvenile possesses the marijuana for the juvenile's own use; the juvenile's parent or guardian authorized the possession and use; and:

A. The juvenile was diagnosed by a physician before the alleged offense as having glaucoma. This paragraph is repealed on October 1, 1998; or

B. The juvenile suffered from significant nausea or vomiting as a result of chemotherapy or radiation therapy.

Sec. 6. 22 MRSA c. 558-C is enacted to read:

**CHAPTER 558-C**

**MARIJUANA THERAPEUTIC RESEARCH PROGRAM**

**§2421. Short title**

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

**§2422. Definitions**

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

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

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

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

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

8           5. Review board. "Review board" means the Participation  
Review Board as established in Title 5, section 12004-G,  
10 subsection 14-B.

12           **§2423. Marijuana Therapeutic Research Program**

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

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

26           3. Supply. The commissioner shall contract with the  
National Institute on Drug Abuse for the receipt of marijuana  
28 under rules adopted by the National Institute on Drug Abuse, the  
federal Food and Drug Administration and the federal Drug  
30 Enforcement Agency. If, within a reasonable period of time, the  
commissioner is unable to obtain marijuana as provided in this  
32 subsection, the commissioner shall contract with appropriate law  
enforcement agencies in this State for the receipt of confiscated  
34 marijuana not intended for use as evidence in any criminal  
proceeding. Any marijuana so received must be made free of  
36 impurities and analyzed for potency by the department.

38           4. Distribution. The commissioner shall deliver marijuana  
received under subsection 3 to appropriate state or privately  
40 operated licensed pharmacies designated by the commissioner. Any  
marijuana so delivered must be distributed to patients upon the  
42 written prescription of their approved practitioners under  
section 2425, subsection 3. Any privately operated licensed  
44 pharmacy designated by the commissioner under this subsection is  
not liable, except for gross negligence, in any civil action on  
46 account of marijuana distributed to patients under this chapter.

48           **§2424. Participation Review Board**

50           The commissioner shall appoint the Participation Review  
Board to review practitioners for participation in the program.

2 The review board serves at the pleasure of the commissioner and  
3 consists of at least:

4 1. Ophthalmology. A physician licensed to practice in this  
5 State and certified by the American Board of Ophthalmology or the  
6 American Osteopathic Board of Ophthalmology and  
7 Otorhinolaryngology; and

8 2. Internal medicine. A physician licensed to practice in  
9 this State and certified by the American Board of Internal  
10 Medicine or the American Osteopathic Board of Internal Medicine  
11 and also certified in the subspecialty of medical oncology.

12 Members of the review board are entitled to compensation for  
13 attendance at meetings at the rate of \$40 per day.

14 **§2425. Participation in the program**

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

18 2. Review and approval. The board shall review all  
19 applications submitted by patients and approve them for  
20 participation if they are eligible under subsection 3 and the  
21 rules adopted by the department under section 2423, subsection  
22 2. In performing these duties, the board is subject to Title 5,  
23 chapter 375.

24 3. Prescriptions. A practitioner approved for  
25 participation in the program may prescribe marijuana to only  
26 those patients who are undergoing chemotherapy or radiation  
27 therapy or suffering from glaucoma, who are in a life-threatening  
28 or sense-threatening situation and are not responding to  
29 conventional treatment or who are suffering severe side effects  
30 even though conventional treatment is proving effective.

31 **§2426. Expressly authorized possession, prescription and**  
32 **distribution**

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

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3 **§2427. Confidentiality**

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

7 A. The commissioner;

8 B. The board;

9 C. The Attorney General or the Attorney General's designee;

10 D. Any person directly connected with the program who has a  
11 legitimate need for the information; and

12 E. Any person for whom access has been specifically  
13 authorized by that patient.

14 Meetings and records of the review board are not subject to the  
15 requirements of Title 1, chapter 13.

16 2. Exceptions. This section does not affect the right to  
17 inspect the records of any pharmacy under Title 32, section 13723  
18 or prohibit access to or release of information concerning any  
19 persons acting under authority of this chapter with respect to  
20 conduct not expressly authorized by this chapter.

21 **§2428. Reports**

22 The commissioner and the review board shall report annually  
23 their findings and recommendations regarding the program to the  
24 Governor and the Legislature.

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27 **STATEMENT OF FACT**

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29 This bill reestablishes the Marijuana Therapeutic Research  
30 Program, administered by the Commissioner of Human Services,  
31 which was repealed December 31, 1987. The bill also establishes  
32 the Participation Review Board. The Board of Registration in  
33 Medicine must review any patient wishing to participate in the  
34 program. Participation is limited to chemotherapy or radiation  
35 therapy and glaucoma patients who are not responding to  
36 conventional treatment or who are suffering severe side effects,  
37 and any other patient when medical evidence presented to the  
38 board justifies that participation. If the Board of Registration  
39 in Medicine approves a patient, the patient's physician may write  
40 a prescription that can be filled at a state or privately  
41 operated licensed pharmacy designated by the commissioner. The  
42 commissioner may obtain analyzed marijuana available from the

2 Federal Government and deliver it to the pharmacy for dispensing  
to any approved patient with a written prescription from the  
4 patient's physician. The commissioner and the Participation  
Review Board are required to make an annual report to the  
6 Governor and the Legislature, enabling both the legislative  
branch and executive branch to monitor the program closely. This  
8 bill also defines side effects of chemotherapy or radiation  
therapy as "significant nausea or vomiting." The bill also  
10 repeals the provisions related to glaucoma patients on October 1,  
1998.