

MAINE STATE LEGISLATURE

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L.D. 929

DATE: 5/17/95

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MAJORITY
HUMAN RESOURCES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 678, L.D. 929, Bill, "An Act to Legalize the Use of Marijuana for Medical Purposes"

Amend the bill by striking out the title and substituting the following:

'An Act to Provide an Affirmative Defense to a Charge of Possession of a Usable Amount of Marijuana'

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

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

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:

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

§5821-A. Property not subject to forfeiture based on medicinal purposes

Beginning November 1, 1995, 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 section 3103, subsection 1, paragraph B or Title 22, section 2383, if:

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2 1. Other evidence. There is no other evidence that the
3 person possessed marijuana with the intent to furnish or traffic;

4
5 2. Personal use. The person possessed the marijuana for
6 the person's own use;

7
8 3. Amount possessed. The amount of marijuana the person
9 possessed is 1 1/4 ounces or less;

10
11 4. Medicinal purposes. The person possessed the marijuana
12 for the purpose of alleviating, at the time of the violation,
13 anorexia, nausea or vomiting as a result of:

14 A. Chemotherapy or radiation therapy for the treatment of
15 cancer; or

16
17 B. Human immunodeficiency virus; and

18
19 5. Location. The person was not using or displaying the
20 marijuana in a public place, as defined in Title 17-A, section
21 501, subsection 5, paragraph A.

22
23 This section is repealed July 1, 1997.

24
25 Sec. 3. 22 MRSA §2383, sub-§§3 and 4 are enacted to read:

26
27 3. Marijuana for medicinal purposes. Beginning November
28 1, 1995, medicinal use of marijuana is an affirmative defense to
29 a charge of possession of marijuana under this section or under
30 Title 15, section 3103, subsection 1, paragraph B, if:

31
32 A. There is no other evidence that the person possessed
33 marijuana with the intent to furnish or traffic;

34
35 B. The person possessed the marijuana for the person's own
36 use;

37
38 C. The amount of marijuana the person possessed is 1 1/4
39 ounces or less;

40
41 D. The person possessed the marijuana for the purpose of
42 alleviating, at the time of the violation, anorexia, nausea
43 or vomiting as a result of:

44
45 (1) Chemotherapy or radiation therapy for the
46 treatment of cancer; or

47
48 (2) Human immunodeficiency virus;

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2 E. The person was not using or displaying the marijuana in
3 a public place, as defined in Title 17-A, section 501,
4 subsection 5, paragraph A; and

6 F. Within 15 days of the commencement of the proceeding
7 brought under this section or Title 15, section 3103,
8 subsection 1, paragraph B, the person charged or, if that
9 person is a juvenile, the juvenile's parent, guardian or
10 legal custodian, files in court and serves on the
11 prosecuting authorities a sworn statement of affirmative
12 defense stating that the person meets the requirements of
13 paragraphs A to E, naming the person's diagnosing and
14 treating physicians and waiving the physician-patient
15 privilege for the purpose of allowing the prosecuting
16 authority to confirm with the physicians whether at the time
17 of the alleged offense the person was experiencing anorexia,
18 nausea or vomiting as a result of either chemotherapy or
19 radiation therapy for the treatment of cancer or human
20 immunodeficiency virus.

22 This subsection is repealed July 1, 1997.

24 4. Limitation. The affirmative defense provided by
25 subsection 3 does not apply to charges brought under chapters 262
26 and 263.

28 This subsection is repealed July 1, 1997.

30 **Sec. 4. Report.** The Attorney General shall report to the
31 joint standing committee of the Legislature having jurisdiction
32 over human resource matters by January 1, 1997 on the experience
33 of prosecuting authorities with claims of affirmative defense
34 under the Maine Revised Statutes, Title 22, section 2383,
35 subsection 3 and property forfeiture under Title 15, section
36 5821-A.'

38 Further amend the bill by inserting at the end before the
39 statement of fact the following:

40
41 **'FISCAL NOTE**

42
43 The ability to use this new defense in court may decrease
44 General Fund revenue from fines by minor amounts.'

46
47 **STATEMENT OF FACT**

48
49 This amendment replaces the bill. It retains the
50 cross-reference to the forfeiture provisions of the Maine Revised
51 Statutes, Title 15, section 5821 and adds the same conditions as
52 are required for the affirmative defense. It deletes portions of

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2 the bill that refer to the prescribing of marijuana by
physicians. It creates an affirmative defense to a charge of
4 possession of marijuana provided a number of requirements are
met. The defense is not available for use or display of
6 marijuana in a public place. The person is required to file in
court and serve upon the prosecuting authorities a sworn
8 statement claiming the affirmative defense and naming the
person's diagnosing or treating physicians. The filing waives
the physician-patient privilege to allow the prosecuting
10 authority to confirm with the physician whether at the time of
the alleged offense the person was experiencing anorexia, nausea
12 or vomiting as a result of chemotherapy or radiation therapy for
the treatment of cancer or human immunodeficiency virus. It
14 contains an effective date of November 1, 1995 and a repeal date
of July 1, 1997. It adds a fiscal note to the bill.

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