

# MAINE STATE LEGISLATURE

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# 123rd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2007

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Legislative Document

No. 1418

S.P. 496

March 15, 2007

### An Act To Provide Patients with Their Medication

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Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator STRIMLING of Cumberland.  
Cosponsored by Representative SAVIELLO of Wilton and Senators: BRANNIGAN of Cumberland, DAMON of Hancock, Representatives: GROSE of Woolwich, JACKSON of Allagash, MILLER of Somerville, WALCOTT of Lewiston, WEBSTER of Freeport.

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

2 **Sec. 1. 22 MRSA §2383-B, sub-§3, ¶B-1**, as enacted by IB 1999, c. 1, §8, is  
3 repealed.

4 **Sec. 2. 22 MRSA §2383-B, sub-§3, ¶B-2** is enacted to read:

5 B-2. "Practitioner" has the same meaning as in Title 32, section 13702, subsection  
6 23.

7 **Sec. 3. 22 MRSA §2383-B, sub-§3, ¶E**, as amended by PL 2001, c. 580, §2, is  
8 further amended to read:

9 E. "Usable amount of marijuana for medical use" means 2 1/2 ounces or less, the  
10 weight not to include stems, seeds or roots, of harvested marijuana and a total of ~~6~~ 12  
11 plants, of which no more than 3 may be mature, flowering plants.

12 **Sec. 4. 22 MRSA §2383-B, sub-§5, ¶A**, as enacted by IB 1999, c. 1, §10, is  
13 amended to read:

14 A. Notwithstanding any other provision of law, a person who is at least 18 years of  
15 age may lawfully possess a usable amount of marijuana for medical use if, at the time  
16 of that possession, the person has available an authenticated copy of a medical record  
17 or other written documentation from a ~~physician~~ practitioner, demonstrating that:

18 (1) The person has been diagnosed by a ~~physician~~ practitioner as suffering from  
19 one or more of the following conditions:

20 (a) Persistent nausea, vomiting, wasting syndrome or cachexia or loss of  
21 appetite as a result of a debilitating disease or medical condition such as:

22 (i) Acquired immune deficiency syndrome or human immunodeficiency  
23 virus or the treatment thereof; or

24 (ii) Chemotherapy or radiation therapy used to treat cancer;

25 (b) Heightened intraocular pressure as a result of glaucoma;

26 (c) Seizures associated with a chronic, debilitating disease, such as epilepsy;  
27 ~~or~~

28 (d) Persistent muscle spasms associated with a chronic, debilitating disease,  
29 such as multiple sclerosis, Crohn's disease or Alzheimer's disease;

30 (e) Hepatitis C; or

31 (f) Any other medical condition or its treatment approved by the department  
32 under this section;

33 (2) A ~~physician, in the context of a bona fide physician-patient relationship with~~  
34 ~~the person~~ practitioner:

35 (a) Has discussed with the person the possible health risks and therapeutic  
36 or palliative benefits of the medical use of marijuana to relieve pain or  
37 alleviate symptoms of the person's condition, based on information known to

1 the ~~physician practitioner~~, including, but not limited to, clinical studies or  
2 anecdotal evidence reported in medical literature or observations or  
3 information concerning the use of marijuana by other patients with the same  
4 or similar conditions;

5 (b) Has provided the person with the ~~physician's practitioner's~~ professional  
6 opinion concerning the possible balance of risks and benefits of the medical  
7 use of marijuana to relieve pain or alleviate symptoms in the person's  
8 particular case; and

9 (c) Has advised the person, on the basis of the ~~physician's practitioner's~~  
10 knowledge of the person's medical history and condition, that the person  
11 might benefit from the medical use of marijuana to relieve pain or alleviate  
12 symptoms of the person's condition;

13 (3) The person has disclosed to the ~~physician practitioner~~ that person's medical  
14 use of marijuana; and

15 (4) The person is under the continuing care of the ~~physician practitioner~~.

16 **Sec. 5. 22 MRSA §2383-B, sub-§5, ¶E**, as enacted by IB 1999, c. 1, §10, is  
17 amended to read:

18 E. A ~~physician practitioner~~ who, ~~in the context of a bona fide physician-patient~~  
19 ~~relationship~~, advises a patient that the patient might benefit from the medical use of  
20 marijuana may not be deemed to have violated any provision of Title 32, section  
21 2591-A, subsection 2 or section 3282-A, subsection 2.

22 **Sec. 6. 22 MRSA §2383-B, sub-§5, ¶I** is enacted to read:

23 I. The department shall issue or reissue an identification card to an eligible patient  
24 and up to 2 designated care givers of the patient upon such proof and documentation  
25 as the commissioner by rule may require to an eligible patient or a designated care  
26 giver who submits the following:

27 (1) Written documentation that all requirements under paragraph A are met;

28 (2) The application or renewal fee;

29 (3) The name, address and date of birth of the eligible patient, except that if the  
30 patient is homeless, no address is required;

31 (4) The name, address and telephone number of the eligible patient's  
32 practitioner; and

33 (5) The name, address and date of birth of a designated care giver of as eligible  
34 patient.

35 An identification card issued under this paragraph must contain the patient's name,  
36 address and date of birth, the designated care giver's, if any, name, address and date  
37 of birth, the date of issuance and expiration of the card, a random registry number  
38 issued under paragraph J, a photo of the patient and any other information the  
39 commissioner determines necessary. A patient who holds an identification card  
40 under this paragraph must notify the department within 10 days of any change of

1 information required for the card. A person with an identification card or similar  
2 documentation from another jurisdiction permitting the person to use marijuana for  
3 medical purposes has the same rights and privileges as a person who is issued an  
4 identification card under this paragraph. A person using, procuring or in the  
5 possession of marijuana for medical use must present the identification card to a law  
6 enforcement officer upon request of the law enforcement officer. An identification  
7 card issued under this paragraph expires one year after issuance.

8 **Sec. 7. 22 MRSA §2383-B, sub-§5, ¶J** is enacted to read:

9 J. The department shall maintain a registry of all holders of an identification card  
10 under paragraph I using a random registry number for each card holder. All personal  
11 information in the registry is confidential and not subject to disclosure except to  
12 authorized employees of the department as necessary to perform official duties of the  
13 department. The department shall verify to a law enforcement official that an  
14 identification card is valid solely by confirming the random registry number. Without  
15 divulging personal information, the department shall report annually to the  
16 Legislature on the number of applications for identification cards, the number of  
17 eligible patients and designated care givers approved, the number and nature of the  
18 medical conditions for which patients have been approved, the number of  
19 identification cards revoked and the number of practitioners providing written  
20 certification for eligible patients. A violation of the confidentiality provisions of this  
21 paragraph is a Class E crime.

22 **Sec. 8. 22 MRSA §2383-B, sub-§5, ¶K** is enacted to read:

23 K. A person may not be discriminated against for possession of or application for an  
24 identification card pursuant to paragraph I or being listed in the registry pursuant to  
25 paragraph J, including:

26 (1) The searching of the person or property by a law enforcement official or  
27 inspection by a governmental agency;

28 (2) Arresting or prosecuting the person or a law enforcement official using  
29 possession or application for an identification card under paragraph I or listing in  
30 the registry under paragraph J as probable cause or reasonable suspicion that a  
31 crime has been committed;

32 (3) Subjecting the person to disciplinary action or penalty or denying the person  
33 a right or privilege by a business, occupational or professional licensing board or  
34 agency; or

35 (4) Refusing to enroll the person in school, employ the person, lease to the  
36 person or otherwise penalize the person.

37 A practitioner is immune from criminal or civil prosecution or penalty and may not  
38 be denied any right or privilege under the practitioner's license for providing written  
39 documentation under this subsection to a person for the purpose of procuring an  
40 identification card. A person is immune from criminal or civil prosecution for being  
41 in the presence of or assisting a person with an identification card using medical  
42 marijuana. Any interest in or right to property may not be seized or forfeited if the

1 property was used in connection with medical marijuana use under this subsection. A  
2 law enforcement agency that seizes and does not return usable marijuana to a person  
3 with an identification card under paragraph I is liable to that person for the fair  
4 market value of the marijuana. A person with an identification card under this  
5 subsection may not smoke marijuana at the workplace, in a public place or  
6 correctional facility, on school grounds, on a school bus or any public transportation  
7 or operate a motor vehicle, aircraft or motorboat while under the influence of  
8 marijuana, although the person may not be considered under the influence solely for  
9 having marijuana metabolites in the person's system. This paragraph does not apply  
10 to a person who is in violation of the provisions of this subsection.

11 **Sec. 9. 22 MRSA §2383-B, sub-§5, ¶L** is enacted to read:

12 L. A designated care giver with an identification card issued under paragraph I may  
13 receive reimbursement for costs associated with assisting an eligible patient's medical  
14 use of marijuana pursuant to the provisions of this subsection, which may not be  
15 considered trafficking or furnishing of a controlled substance.

16 **Sec. 10. 22 MRSA §2383-B, sub-§5, ¶M** is enacted to read:

17 M. An eligible patient who fails to notify the department that information provided  
18 under paragraph I has changed including that the patient has ceased to suffer from a  
19 medical condition allowing the use of medical marijuana under paragraph A within  
20 10 days of the change commits a civil violation for which not more than \$150 may be  
21 adjudged. A person who provides fraudulent information to the department in  
22 applying for or renewing an identification card under paragraph I or to a law  
23 enforcement officer concerning the provisions of this subsection to avoid arrest or  
24 prosecution, including fabricating, selling, possessing or presenting an invalid  
25 identification card, commits a Class E crime.

26 **Sec. 11. 22 MRSA §2383-B, sub-§5, ¶N** is enacted to read:

27 N. A law enforcement officer who knowingly cooperates with a federal law  
28 enforcement agent or organization to investigate, arrest or prosecute or search the  
29 person or property of a holder of an identification card issued under paragraph I or  
30 section 2390, subsection 3 without probable cause that a violation of the provisions of  
31 this section or section 2390 has been committed must be suspended or have the law  
32 enforcement officer's employment terminated.

33 **Sec. 12. 22 MRSA §2383-B, sub-§5, ¶O** is enacted to read:

34 O. The department may adopt routine technical rules pursuant to Title 5, chapter 375,  
35 subchapter 2-A to carry out the purposes of this subsection, unless otherwise  
36 provided for.

37 **Sec. 13. 22 MRSA §2390** is enacted to read:

38 **§2390. Nonprofit dispensaries**

39 **1. Registered dispensaries.** A nonprofit corporation may register with the  
40 department to acquire, possess, cultivate, manufacture, deliver, transfer, transport, supply

1 or dispense marijuana, marijuana seeds, marijuana cultivation equipment and marijuana-  
2 related supplies and educational materials to a card holder.

3 **2. Definitions.** As used in this section, unless the context otherwise indicates, the  
4 following terms have the following meanings.

5 A. “Card holder” means a person who holds an identification card issued pursuant to  
6 section 2383-B, subsection 5, paragraph I.

7 B. “Employee” means a person who works for a registered dispensary for  
8 compensation or for no compensation.

9 C. “Nonprofit corporation” means a nonprofit corporation organized pursuant to  
10 Title 13-B.

11 D. “Registered dispensary” means a nonprofit corporation registered under this  
12 section.

13 **3. Registration.** The department shall register a nonprofit corporation as a  
14 registered dispensary if the nonprofit corporation:

15 A. Pays a registration fee to the department not to exceed \$1,000;

16 B. Provides the legal name of the nonprofit corporation;

17 C. Provides the physical address of the nonprofit corporation and any other real  
18 property where marijuana is to be possessed, cultivated, manufactured, supplied or  
19 dispensed under this section;

20 D. Provides the name, address and date of birth of any person that is a board member  
21 of, agent of or employed by the nonprofit corporation.

22 Upon receipt of an application for registration under this subsection and if the nonprofit  
23 corporation meets all the requirements of this subsection, the department shall approve  
24 the nonprofit corporation for registration and issue the nonprofit corporation and each  
25 agent or employee of the nonprofit corporation an identification card. An identification  
26 card issued under this subsection must contain a random identification number, the name  
27 of the registered dispensary and the name of the agent or employee and state that the  
28 registered dispensary is a registered dispensary and that the agent or employee is an agent  
29 or employee of the registered dispensary. An identification card issued under this  
30 subsection expires one year after issuance.

31 **4. Requirements.** The following are required of a registered dispensary:

32 A. A registered dispensary shall submit to inspection by the department to determine  
33 if the provisions of this section and rules adopted by the department pursuant to this  
34 section are being followed. The department shall give reasonable notice of an  
35 inspection under this subsection;

36 B. The operation of a registered dispensary may not be located within 500 feet of the  
37 property line of a school or place used primarily for religious service or worship;

1        C. The registered dispensary shall include written procedures for the oversight of the  
2        registered dispensary and to ensure adequate record keeping. A registered dispensary  
3        shall keep a record of each card holder served by the dispensary;

4        D. A registered dispensary shall inform the department within 10 days of an agent or  
5        employee ceasing to work for or a board member leaving the board of the registered  
6        dispensary; and

7        E. A registered dispensary shall notify the department prior to a new agent or  
8        employee becoming employed by or a board member joining the board of the  
9        registered dispensary, providing the department with the name, address and date of  
10       birth for the person intended to be a new agent, employee or board member.

11       **5. Immunity.** A registered dispensary is immune from search, arrest, prosecution,  
12       seizure or penalty or from being denied any right or privilege, including civil penalty or  
13       disciplinary action by a business, occupational or professional licensing board, for  
14       operating in accordance with this section, as long as the registered dispensary possesses  
15       an amount of marijuana that does not exceed 12 marijuana plants and 2 1/2 ounces of  
16       usable marijuana for each card holder served by the dispensary. An agent, employee or  
17       board member of a registered dispensary is immune from search, arrest, prosecution,  
18       seizure or penalty or from being denied any right or privilege, including civil penalty or  
19       disciplinary action by a business, occupational or professional licensing board, for  
20       performing necessary duties for the registered dispensary.

21       **6. Prohibitions.** A registered dispensary may not:

22       A. Obtain marijuana from outside the State in violation of federal law; or

23       B. Acquire, possess, cultivate, manufacture, deliver, transfer, supply or dispense  
24       marijuana for any purpose except to assist a card holder with the medical use of  
25       marijuana.

26       **7. Municipalities.** A municipality may not prevent a registered dispensary from  
27       operating in accordance with this section in an area that is zoned for retail use.

28       **8. Rules.** The department may adopt major substantive rules pursuant to Title 5,  
29       chapter 375, subchapter 2-A to carry out the purposes of this section.

30       **9. Violations.** A violation of this section is a Class E crime.

31       **Sec. 14. Rules.** No more than 90 days after the effective date of this Act, the  
32       Department of Health and Human Services shall adopt rules and provide a public hearing  
33       pursuant to the Maine Revised Statutes, Title 5, section 8052 to establish the manner in  
34       which it will consider adding debilitating medical conditions to those already allowed  
35       under Title 22, section 2303-B, subsection 5, paragraph N, the manner in which the  
36       department will accept applications and renewals for an identification card, fees that  
37       offset the expenses of implementing and administering the provisions of this subsection  
38       and a sliding scale for an eligible patient who demonstrates financial need.



1 **SUMMARY**

2 This bill:

3 1. Increases the usable amount of marijuana for medical use to up to 12 plants and  
4 exempts seeds, stems and roots from the weight limitations;

5 2. Changes a person who may document the need for a person to use marijuana for  
6 medical purposes from a physician to a person who is licensed to prescribe medicine;

7 3. Directs the Department of Health and Human Services to create a registry system  
8 with identification cards for patients eligible to receive marijuana for medical use and  
9 their care givers;

10 4. Immunizes patients eligible to receive marijuana for medical use and their care  
11 givers from search, arrest or prosecution or from civil penalty for using marijuana for  
12 medical use;

13 5. Prohibits a law enforcement officer from cooperating with federal authorities in  
14 investigating, searching, arresting or prosecuting patients eligible to receive marijuana for  
15 medical use and their care givers and registered dispensaries; and

16 6. Directs the Department of Health and Human Services to create a registry of  
17 nonprofit corporations that may become registered dispensaries to acquire, possess,  
18 cultivate, manufacture, deliver, transfer, transport, supply or dispense marijuana,  
19 marijuana seeds, marijuana cultivation equipment and marijuana-related supplies and  
20 educational materials to patients eligible to receive marijuana for medical use and their  
21 care givers.