

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE

SECOND REGULAR SESSION
January 6, 2010 to April 12, 2010

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 12, 2010

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Augusta, Maine
2010

The following initiated legislation

(I.B. 2009, ch. 1)

was approved in a referendum,

November 3, 2009

Question:

"Do you want to change the medical marijuana laws to allow treatment of more medical conditions and to create a regulated system of distribution?"

Yes: 332,038

No: 232,024

INITIATED BILL OF THE STATE OF MAINE
REFERRED TO THE VOTERS BY
THE ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE
AND APPROVED AT REFERENDUM

CHAPTER 1
I.B. 2 - L.D. 975

**An Act To Establish the Maine
Medical Marijuana Act**

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

Sec. 1. 15 MRSA §5821-A, as enacted by IB 1999, c. 1, §3, is amended to read:

§5821-A. Property not subject to forfeiture based on medical use of marijuana

~~Beginning January 1, 1999, property~~ Property is not subject to forfeiture under this chapter if the activity that subjects the person's property to forfeiture is ~~possession~~ medical use of marijuana and the person meets the requirements for medical use of marijuana under Title 22, ~~section 2383-B, subsection 5~~ chapter 558-C.

Sec. 2. 17-A MRSA §1111-A, sub-§1, as amended by PL 2001, c. 383, §135 and affected by §156, is further amended to read:

1. As used in this section the term "drug paraphernalia" means all equipment, products and materials of any kind that are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a scheduled drug in violation of this chapter or Title 22, section 2383, except that this section does not apply to a person who is authorized to possess marijuana for medical use pursuant to Title 22, ~~section 2383-B, subsection 5~~ chapter 558-C, to the extent the drug paraphernalia is ~~required~~ used for that person's medical use of marijuana. It includes, but is not limited to:

A. Kits used or intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a scheduled drug or from which a scheduled drug can be derived;

B. Kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing scheduled drugs;

C. Isomerization devices used or intended for use in increasing the potency of any species of plant that is a scheduled drug;

D. Testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness or purity of scheduled drugs;

E. Scales and balances used or intended for use in weighing or measuring scheduled drugs;

F. Dilutents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used or intended for use in cutting scheduled drugs;

G. Separation gins and sifters, used or intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

H. Blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding scheduled drugs;

I. Capsules, balloons, envelopes and other containers used or intended for use in packaging small quantities of scheduled drugs;

J. Containers and other objects used or intended for use in storing or concealing scheduled drugs; and

K. Objects used or intended for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

(1) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

(2) Water pipes;

(3) Carburetion tubes and devices;

(4) Smoking and carburetion masks;

(5) Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand;

(6) Miniature cocaine spoons and cocaine vials;

(7) Chamber pipes;

(8) Carburetor pipes;

(9) Electric pipes;

(10) Air-driven pipes;

(11) Chillums;

(12) Bong; or

(13) Ice pipes or chillers.

Sec. 3. 22 MRSA §2383, sub-§1, as amended by PL 2005, c. 386, Pt. DD, §3, is further amended to read:

1. Marijuana. Except as provided in ~~section 2383-B, subsection 5~~ chapter 558-C, a person may not possess marijuana.

A. A person who possesses a usable amount of marijuana commits a civil violation for which a fine of not less than \$350 and not more than \$600 must be adjudged, none of which may be suspended.

B. A person who possesses a usable amount of marijuana after having previously violated this subsection within a 6-year period commits a civil violation for which a fine of \$550 must be adjudged, none of which may be suspended.

Sec. 4. 22 MRSA §2383-B, sub-§5, as amended by PL 2001, c. 580, §3, is repealed.

Sec. 5. 22 MRSA c. 558-C is enacted to read:

CHAPTER 558-C

MAINE MEDICAL MARIJUANA ACT

§2421. Short title

This chapter may be known and cited as "the Maine Medical Marijuana Act."

§2422. Definitions

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

1. Cardholder. "Cardholder" means a qualifying patient, a primary caregiver or a principal officer, board member, employee or agent of a nonprofit dispensary who has been issued and possesses a valid registry identification card.

2. Debilitating medical condition. "Debilitating medical condition" means:

A. Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, nail-patella syndrome or the treatment of these conditions;

B. A chronic or debilitating disease or medical condition or its treatment that produces intractable pain, which is pain that has not responded to ordinary medical or surgical measures for more than 6 months;

C. A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe nausea; seizures, including but not

limited to those characteristic of epilepsy; or severe and persistent muscle spasms, including but not limited to those characteristic of multiple sclerosis; or

D. Any other medical condition or its treatment approved by the department as provided for in section 2424, subsection 2.

3. Enclosed, locked facility. "Enclosed, locked facility" means a closet, room, greenhouse or other enclosed area equipped with locks or other security devices that permit access only by a cardholder.

4. Felony drug offense. "Felony drug offense" means a violation of a state or federal controlled substance law that was classified as a felony in the jurisdiction where the person was convicted. It does not include:

A. An offense for which the sentence, including any term of probation, incarceration or supervised release, was completed 10 or more years earlier; or

B. An offense that consisted of conduct that would have been permitted under this chapter.

5. Medical use. "Medical use" means the acquisition, possession, cultivation, manufacture, use, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition.

6. Nonprofit dispensary. "Nonprofit dispensary" means a not-for-profit entity registered under section 2428 that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana or related supplies and educational materials to cardholders. A nonprofit dispensary is a primary caregiver.

7. Physician. "Physician" means a person licensed as an osteopathic physician by the Board of Osteopathic Licensure pursuant to Title 32, chapter 36 or a person licensed as a physician or surgeon by the Board of Licensure in Medicine pursuant to Title 32, chapter 48.

8. Primary caregiver. "Primary caregiver" means a person who is at least 21 years of age who has agreed to assist with a qualifying patient's medical use of marijuana and who has never been convicted of a felony drug offense. Unless the primary caregiver is a nonprofit dispensary, the primary caregiver may assist no more than 5 qualifying patients with their medical use of marijuana.

9. Qualifying patient. "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

10. Registered nonprofit dispensary. "Registered nonprofit dispensary" means a nonprofit dispensary that is registered by the department pursuant to section 2428, subsection 2, paragraph A.

11. Registered primary caregiver. "Registered primary caregiver" means a primary caregiver who is registered by the department pursuant to section 2425, subsection 4.

12. Registered qualifying patient. "Registered qualifying patient" means a qualifying patient who is registered by the department pursuant to section 2425, subsection 1.

13. Registry identification card. "Registry identification card" means a document issued by the department that identifies a person as a registered qualifying patient, registered primary caregiver or a principal officer, board member, employee or agent of a nonprofit dispensary.

14. Usable marijuana. "Usable marijuana" means the dried leaves and flowers of the marijuana plant, and any mixture or preparation of those dried leaves and flowers, but does not include the seeds, stalks and roots of the plant and does not include the weight of other ingredients in marijuana prepared for consumption as food.

15. Visiting qualifying patient. "Visiting qualifying patient" means a patient with a debilitating medical condition who is not a resident of this State or who has been a resident of this State less than 30 days.

16. Written certification. "Written certification" means a document signed by a physician and stating that in the physician's professional opinion a patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition. A written certification may be made only in the course of a bona fide physician-patient relationship after the physician has completed a full assessment of the qualifying patient's medical history. The written certification must specify the qualifying patient's debilitating medical condition.

§2423. Protections for the medical use of marijuana

1. Qualifying patient. A qualifying patient who has been issued and possesses a registry identification card may not be subject to arrest, prosecution or penalty in any manner or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the medical use of marijuana in accordance with this chapter as long as the qualifying patient possesses an amount of marijuana that:

A. Is not more than 2 1/2 ounces of usable marijuana; and

B. If the qualifying patient has not specified that a primary caregiver is allowed under state law to cultivate marijuana for the qualifying patient, does not exceed 6 marijuana plants, which must be kept in an enclosed, locked facility unless they are being transported because the qualifying patient is moving or they are being transported to the qualifying patient's property.

2. Primary caregiver. A primary caregiver, other than a nonprofit dispensary, who has been issued and possesses a registry identification card may not be subject to arrest, prosecution or penalty in any manner or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for assisting a qualifying patient to whom the primary caregiver is connected through the department's registration process with the medical use of marijuana in accordance with this chapter as long as the primary caregiver possesses an amount of marijuana that:

A. Is not more than 2 1/2 ounces of usable marijuana for each qualifying patient to whom the primary caregiver is connected through the department's registration process; and

B. For each qualifying patient who has specified that the primary caregiver is allowed under state law to cultivate marijuana for the qualifying patient, does not exceed 6 marijuana plants, which must be kept in an enclosed, locked facility unless they are being transported because the primary caregiver is moving.

3. Incidental amount of marijuana. Any incidental amount of seeds, stalks and unusable roots must be allowed and may not be included in the amounts specified in this section.

4. Presumption. There is a presumption that a qualifying patient or primary caregiver is engaged in the medical use of marijuana in accordance with this chapter if the qualifying patient or primary caregiver:

A. Is in possession of a registry identification card; and

B. Is in possession of an amount of marijuana that does not exceed the amount allowed under this chapter.

The presumption may be rebutted by evidence that conduct related to marijuana was not for the purpose of treating or alleviating the qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition in accordance with this chapter.

5. Cardholder not subject to arrest. A cardholder may not be subject to arrest, prosecution or penalty in any manner or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for giving an amount of marijuana the person is allowed to possess under subsection 1 or 2 to a cardholder for the registered qualifying patient's medical use when nothing of value is transferred in return or for offering to do the same.

6. School, employer or landlord may not discriminate. A school, employer or landlord may not refuse to enroll or employ or lease to or otherwise penalize a person solely for that person's status as a registered qualifying patient or a registered primary caregiver unless failing to do so would put the school, employer or landlord in violation of federal law or cause it to lose a federal contract or funding.

7. Person may not be denied custody or visitation of minor. A person may not be denied custody or visitation of a minor for acting in accordance with this chapter unless the person's behavior is such that it creates an unreasonable danger to the minor that can be clearly articulated and substantiated.

8. Registered primary caregiver may receive compensation for costs. A registered primary caregiver may receive compensation for costs associated with assisting a registered qualifying patient's medical use of marijuana as long as the registered primary caregiver is connected to the registered qualifying patient through the department's registration process. Any such compensation does not constitute the sale of controlled substances.

9. Physician not subject to penalty. A physician may not be subject to arrest, prosecution or penalty in any manner or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by the Board of Licensure in Medicine or the Board of Osteopathic Licensure or by any other business or occupational or professional licensing board or bureau, solely for providing written certifications or for otherwise stating that, in the physician's professional opinion, a patient is likely to receive therapeutic benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition except that nothing prevents a professional licensing board from sanctioning a physician for failing to properly evaluate a patient's medical condition or otherwise violating the standard of care for evaluating medical conditions.

10. Person not subject to penalty for providing registered qualifying patient or registered primary caregiver marijuana paraphernalia. A person may not be subject to arrest, prosecution or penalty in any manner or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a

business or occupational or professional licensing board or bureau, for providing a registered qualifying patient or a registered primary caregiver with marijuana paraphernalia for purposes of a qualifying patient's medical use of marijuana.

11. Property not subject to forfeiture. Any marijuana, marijuana paraphernalia, licit property or interest in licit property that is possessed, owned or used in connection with the medical use of marijuana, as allowed under this chapter, or property incidental to such use, may not be seized or forfeited.

12. Person not subject to penalty for being in presence of medical use of marijuana. A person may not be subject to arrest, prosecution or penalty in any manner or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, simply for being in the presence or vicinity of the medical use of marijuana as allowed under this chapter or for assisting a registered qualifying patient with using or administering marijuana.

13. Effect of registry identification card issued by another jurisdiction. A registry identification card, or its equivalent, that is issued under the laws of another state, district, territory, commonwealth or insular possession of the United States that allows the medical use of marijuana by a visiting qualifying patient has the same force and effect as a registry identification card issued by the department.

§2424. Rules

1. Rulemaking. The department may adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

2. Adding debilitating medical conditions. Not later than 120 days after the effective date of this chapter, the department shall adopt rules that govern the manner in which the department shall consider petitions from the public to add medical conditions or treatments to the list of debilitating medical conditions set forth in section 2422, subsection 2. In considering such petitions, the department shall include public notice of, and an opportunity to comment in a public hearing upon, such petitions. The department shall, after hearing, approve or deny such petitions within 180 days of their submission. The approval or denial of such a petition constitutes final agency action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the Superior Court.

3. Registry identification cards. Not later than 120 days after the effective date of this chapter, the department shall adopt rules governing the manner in which it considers applications for and renewals of registry identification cards. The department's rules must establish application and renewal fees that generate revenues sufficient to offset all expenses of imple-

menting and administering this chapter. The department may establish a sliding scale of application and renewal fees based upon a qualifying patient's family income. The department may accept donations from private sources in order to reduce the application and renewal fees.

§2425. Registry identification cards

1. Application for registry identification card: qualifications. The department shall issue registry identification cards to qualifying patients who submit the documents and information described in this subsection, in accordance with the department's rules:

- A. Written certification;
- B. Application or renewal fee;
- C. Name, address and date of birth of the qualifying patient, except that if the applicant is homeless, no address is required;
- D. Name, address and telephone number of the qualifying patient's physician;
- E. Name, address and date of birth of each primary caregiver, if any, of the qualifying patient. A qualifying patient may designate only one primary caregiver unless the qualifying patient is under 18 years of age and requires a parent to serve as a primary caregiver or the qualifying patient designates a nonprofit dispensary to cultivate marijuana for the qualifying patient's medical use and the qualifying patient requests the assistance of a second caregiver to assist with the qualifying patient's medical use; and
- F. If the qualifying patient designates one or 2 primary caregivers, a designation as to who will be allowed under state law to cultivate marijuana plants for the qualifying patient's medical use. Only one person may be allowed to cultivate marijuana plants for a qualifying patient.

2. Issuing registry identification card to minor. The department may not issue a registry identification card to a qualifying patient who is under 18 years of age unless:

- A. The qualifying patient's physician has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient and to a parent, guardian or person having legal custody of the qualifying patient; and
- B. The parent, guardian or person having legal custody consents in writing to:
 - (1) Allow the qualifying patient's medical use of marijuana;
 - (2) Serve as one of the qualifying patient's primary caregivers; and

(3) Control the acquisition of the marijuana, the dosage and the frequency of the medical use of marijuana by the qualifying patient.

3. Department approval or denial. The department shall verify the information contained in an application or renewal submitted pursuant to this section and shall approve or deny an application or renewal within 30 days of receiving it. The department may deny an application or renewal only if the applicant did not provide the information required pursuant to this section or the department determines that the information provided was falsified. Rejection of an application or renewal is considered a final agency action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the Superior Court.

4. Primary caregiver registry identification card. The department shall issue a registry identification card to each primary caregiver, if any, who is named in a qualifying patient's approved application pursuant to subsection 1, paragraph E. Only one person may cultivate marijuana for the qualifying patient's medical use, who is determined based solely on the qualifying patient's preference. That person may either be the qualifying patient or one of the 2 primary caregivers.

5. Registry identification card issuance. The department shall issue registry identification cards to qualifying patients and to primary caregivers within 5 days of approving an application or renewal under this section. Registry identification cards expire one year after the date of issuance. Registry identification cards must contain:

- A. The name, address and date of birth of the qualifying patient;
- B. The name, address and date of birth of each primary caregiver, if any, of the qualifying patient;
- C. The date of issuance and expiration date of the registry identification card;
- D. A random identification number that is unique to the cardholder;
- E. A photograph, if the department decides to require one; and
- F. A clear designation showing whether the cardholder will be allowed under state law to cultivate marijuana plants for the qualifying patient's medical use, which must be determined based solely on the qualifying patient's preference.

6. Notification of changes in status or loss of card. This subsection governs notification of changes in status or the loss of a registry identification card.

- A. A registered qualifying patient shall notify the department within 10 days of any change in the registered qualifying patient's name, address, pri-

mary caregiver or preference regarding who may cultivate marijuana for the registered qualifying patient or if the registered qualifying patient ceases to have a debilitating medical condition.

B. A registered qualifying patient who fails to notify the department as required under paragraph A commits a civil violation for which a fine of not more than \$150 may be adjudged. If the registered qualifying patient's certifying physician notifies the department in writing that the registered qualifying patient has ceased to suffer from a debilitating medical condition, the registered qualifying patient's registry identification card becomes void upon notification by the department to the qualifying patient.

C. A registered primary caregiver shall notify the department of any change in the caregiver's name or address within 10 days of such change. A registered primary caregiver who fails to notify the department of any of these changes commits a civil violation for which a fine of not more than \$150 may be adjudged.

D. When a registered qualifying patient or registered primary caregiver notifies the department of any changes listed in this subsection, the department shall issue the registered qualifying patient and each registered primary caregiver a new registry identification card within 10 days of receiving the updated information and a \$10 fee.

E. When a registered qualifying patient changes the patient's registered primary caregiver, the department shall notify the old primary caregiver within 10 days. The old primary caregiver's protections as provided in this chapter expire 10 days after notification by the department.

F. If a cardholder loses the cardholder's registry identification card, the cardholder shall notify the department and submit a \$10 fee within 10 days of losing the card. Within 5 days after such notification, the department shall issue a new registry identification card with a new random identification number.

7. Possession of or application for card not probable cause for search. Possession of, or application for, a registry identification card does not constitute probable cause or reasonable suspicion, nor may it be used to support the search of the person or property of the person possessing or applying for the registry identification card. The possession of, or application for, a registry identification card does not prevent the issuance of a warrant if probable cause exists on other grounds.

8. Confidentiality. This subsection governs confidentiality.

A. Applications and supporting information submitted by qualifying patients under this chapter, including information regarding their primary caregivers and physicians, are confidential.

B. Applications and supporting information submitted by primary caregivers operating in compliance with this chapter, including the physical address of a nonprofit dispensary, are confidential.

C. The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list are confidential, exempt from the freedom of access laws, Title 1, chapter 13, and not subject to disclosure except to authorized employees of the department as necessary to perform official duties of the department.

D. The department shall verify to law enforcement personnel whether a registry identification card is valid without disclosing more information than is reasonably necessary to verify the authenticity of the registry identification card.

E. A person, including an employee or official of the department or another state agency or local government, who breaches the confidentiality of information obtained pursuant to this chapter commits a Class E crime. Notwithstanding this subsection, department employees may notify law enforcement about falsified or fraudulent information submitted to the department as long as the employee who suspects that falsified or fraudulent information has been submitted confers with the employee's supervisor and both agree that circumstances exist that warrant reporting.

9. Cardholder who sells marijuana to person not allowed to possess. Any cardholder who sells marijuana to a person who is not allowed to possess marijuana for medical purposes under this chapter must have that cardholder's registry identification card revoked and is liable for any other penalties for the sale of marijuana. The department may revoke the registry identification card of any cardholder who violates this chapter, and the cardholder is liable for any other penalties for the violation.

10. Annual report. The department shall submit to the Legislature an annual report that does not disclose any identifying information about cardholders or physicians, but does contain, at a minimum:

A. The number of applications and renewals filed for registry identification cards;

B. The number of qualifying patients and primary caregivers approved in each county;

C. The nature of the debilitating medical conditions of the qualifying patients;

D. The number of registry identification cards revoked;

E. The number of physicians providing written certifications for qualifying patients;

F. The number of registered nonprofit dispensaries; and

G. The number of principal officers, board members, employees and agents of nonprofit dispensaries.

§2426. Scope

1. Limitations. This chapter does not permit any person to:

A. Undertake any task under the influence of marijuana when doing so would constitute negligence or professional malpractice;

B. Possess marijuana or otherwise engage in the medical use of marijuana:

(1) In a school bus;

(2) On the grounds of any preschool or primary or secondary school; or

(3) In any correctional facility;

C. Smoke marijuana:

(1) On any form of public transportation; or

(2) In any public place;

D. Operate, navigate or be in actual physical control of any motor vehicle, aircraft or motorboat while under the influence of marijuana; or

E. Use marijuana if that person does not have a debilitating medical condition.

2. Construction. This chapter may not be construed to require:

A. A government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana; or

B. An employer to accommodate the ingestion of marijuana in any workplace or any employee working while under the influence of marijuana.

3. Penalty for fraudulent representation. Fraudulent representation to a law enforcement official of any fact or circumstance relating to the medical use of marijuana to avoid arrest or prosecution is a civil violation punishable by a fine of \$500, which must be in addition to any other penalties that may apply for making a false statement or for the use of marijuana other than use undertaken pursuant to this chapter.

§2427. Affirmative defense and dismissal for medical marijuana

1. Affirmative defense. Except as provided in section 2426, a qualifying patient and a qualifying patient's primary caregiver, other than a nonprofit dispensary, may assert the medical purpose for using marijuana as a defense to any prosecution involving marijuana, and this defense must be presumed valid where the evidence shows that:

A. A physician has stated that, in the physician's professional opinion, after having completed a full assessment of the qualifying patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the qualifying patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the qualifying patient's debilitating medical condition or symptoms associated with the qualifying patient's debilitating medical condition;

B. The qualifying patient and the qualifying patient's primary caregiver, if any, were collectively in possession of a quantity of marijuana that was not more than was reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of treating or alleviating the qualifying patient's debilitating medical condition or symptoms associated with the qualifying patient's debilitating medical condition; and

C. The qualifying patient and the qualifying patient's primary caregiver, if any, were engaged in the acquisition, possession, cultivation, manufacture, use, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana solely to treat or alleviate the qualifying patient's debilitating medical condition or symptoms associated with the qualifying patient's debilitating medical condition.

2. Motion to dismiss. A person may assert the medical purpose for using marijuana in a motion to dismiss, and the charges must be dismissed following an evidentiary hearing where the person proves the elements listed in subsection 1.

3. No sanction for medical use of marijuana. If a qualifying patient or a qualifying patient's primary caregiver demonstrates the qualifying patient's medical purpose for using marijuana pursuant to this section, the qualifying patient and the qualifying patient's primary caregiver may not be subject, for the qualifying patient's medical use of marijuana, to any state sanction, including:

A. Disciplinary action by a business or occupational or professional licensing board or bureau; and

B. Forfeiture of any interest in or right to property.

§2428. Nonprofit dispensaries

1. Provisions pertaining to primary caregiver apply to nonprofit dispensary. All provisions of this chapter pertaining to a primary caregiver apply to a nonprofit dispensary unless they conflict with a provision contained in this section.

2. Registration requirements. This subsection governs the registration of a nonprofit dispensary.

A. The department shall register a nonprofit dispensary and issue a registration certificate within 30 days to any person or entity that provides:

- (1) A fee paid to the department in the amount of \$5,000;
- (2) The legal name of the nonprofit dispensary;
- (3) The physical address of the nonprofit dispensary and the physical address of one additional location, if any, where marijuana will be cultivated;
- (4) The name, address and date of birth of each principal officer and board member of the nonprofit dispensary; and
- (5) The name, address and date of birth of any person who is an agent of or employed by the nonprofit dispensary.

B. The department shall track the number of registered qualifying patients who designate a nonprofit dispensary as a primary caregiver and issue to each nonprofit dispensary a written statement of the number of qualifying patients who have designated the nonprofit dispensary to cultivate marijuana for them. This statement must be updated each time a new registered qualifying patient designates the nonprofit dispensary or ceases to designate the nonprofit dispensary and may be transmitted electronically if the department's rules so provide. The department may provide by rule that the updated written statements may not be issued more frequently than once each week.

C. The department shall issue each principal officer, board member, agent and employee of a nonprofit dispensary a registry identification card within 10 days of receipt of the person's name, address and date of birth under paragraph A and a fee in an amount established by the department. Each card must specify that the cardholder is a principal officer, board member, agent or employee of a nonprofit dispensary and must contain:

(1) The name, address and date of birth of the principal officer, board member, agent or employee;

(2) The legal name of the nonprofit dispensary with which the principal officer, board member, agent or employee is affiliated;

(3) A random identification number that is unique to the cardholder;

(4) The date of issuance and expiration date of the registry identification card; and

(5) A photograph, if the department decides to require one.

D. The department may not issue a registry identification card to any principal officer, board member, agent or employee of a nonprofit dispensary who has been convicted of a felony drug offense. The department may conduct a background check of each principal officer, board member, agent or employee in order to carry out this provision. The department shall notify the nonprofit dispensary in writing of the purpose for denying the registry identification card.

3. Rules. Not later than 120 days after the effective date of this chapter, the department shall adopt rules governing the manner in which it considers applications for and renewals of registration certificates for nonprofit dispensaries, including rules governing:

A. The form and content of registration and renewal applications;

B. Minimum oversight requirements for nonprofit dispensaries;

C. Minimum record-keeping requirements for nonprofit dispensaries;

D. Minimum security requirements for nonprofit dispensaries; and

E. Procedures for suspending or terminating the registration of nonprofit dispensaries that violate the provisions of this section or the rules adopted pursuant to this subsection.

4. Expiration. A nonprofit dispensary registration certificate and the registry identification card for each principal officer, board member, agent or employee expire one year after the date of issuance. The department shall issue a renewal nonprofit dispensary registration certificate and renewal registry identification cards within 10 days to any person who complies with the requirements contained in subsection 2. A registry identification card of a principal officer, board member, agent or employee expires 10 days after notification by a nonprofit dispensary that such person ceases to work at the nonprofit dispensary.

5. Inspection. A nonprofit dispensary is subject to reasonable inspection by the department. The de-

partment shall give reasonable notice of an inspection under this subsection.

6. Nonprofit dispensary requirements. This subsection governs the operations of nonprofit dispensaries.

A. A nonprofit dispensary must be operated on a not-for-profit basis for the mutual benefit of its members and patrons. The bylaws of a nonprofit dispensary and its contracts with patrons must contain such provisions relative to the disposition of revenues and receipts as may be necessary and appropriate to establish and maintain its nonprofit character. A nonprofit dispensary need not be recognized as a tax-exempt organization under 26 United States Code, Section 501(c)(3) and is not required to incorporate pursuant to Title 13-B.

B. A nonprofit dispensary may not be located within 500 feet of the property line of a preexisting public or private school.

C. A nonprofit dispensary shall notify the department within 10 days of when a principal officer, board member, agent or employee ceases to work at the nonprofit dispensary.

D. A nonprofit dispensary shall notify the department in writing of the name, address and date of birth of any new principal officer, board member, agent or employee and shall submit a fee in an amount established by the department for a new registry identification card before the new principal officer, board member, agent or employee begins working at the nonprofit dispensary.

E. A nonprofit dispensary shall implement appropriate security measures to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana.

F. The operating documents of a nonprofit dispensary must include procedures for the oversight of the nonprofit dispensary and procedures to ensure accurate record keeping.

G. A nonprofit dispensary is prohibited from acquiring, possessing, cultivating, manufacturing, delivering, transferring, transporting, supplying or dispensing marijuana for any purpose except to assist registered qualifying patients with the medical use of marijuana directly or through the registered qualifying patients' other primary caregivers.

H. All principal officers and board members of a nonprofit dispensary must be residents of this State.

I. All cultivation of marijuana must take place in an enclosed, locked facility.

7. Maximum amount of medical marijuana to be dispensed. A nonprofit dispensary or a principal officer, board member, agent or employee of a nonprofit dispensary may not dispense more than 2 1/2 ounces of usable marijuana to a qualifying patient or to a primary caregiver on behalf of a qualifying patient during a 15-day period.

8. Immunity. This subsection governs immunity for a nonprofit dispensary.

A. A nonprofit dispensary may not be subject to prosecution, search, seizure or penalty in any manner or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a business or occupational or professional licensing board or entity, solely for acting in accordance with this section to provide usable marijuana to or to otherwise assist registered qualifying patients to whom it is connected through the department's registration process with the medical use of marijuana.

B. Principal officers, board members, agents and employees of a registered nonprofit dispensary may not be subject to arrest, prosecution, search, seizure or penalty in any manner or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a business or occupational or professional licensing board or entity, solely for working for or with a nonprofit dispensary to provide usable marijuana to or to otherwise assist registered qualifying patients to whom the nonprofit dispensary is connected through the department's registration process with the medical use of marijuana in accordance with this chapter.

9. Prohibitions. The prohibitions in this subsection apply to a nonprofit dispensary.

A. A nonprofit dispensary may not possess more than 6 live marijuana plants for each registered qualifying patient who has designated the nonprofit dispensary as a primary caregiver and designated that the dispensary will be permitted to cultivate marijuana for the registered qualifying patient's medical use.

B. A nonprofit dispensary may not dispense, deliver or otherwise transfer marijuana to a person other than a qualifying patient who has designated the nonprofit dispensary as a primary caregiver or to the patient's other registered primary caregiver.

C. The department shall immediately revoke the registry identification card of a principal officer, board member, employee or agent of a nonprofit dispensary who is found to have violated paragraph B, and such a person is disqualified from serving as a principal officer, board member, employee or agent of a nonprofit dispensary.

D. A person who has been convicted of a felony drug offense may not be a principal officer, board member, agent or employee of a nonprofit dispensary.

(1) A person who is employed by or is an agent, principal officer or board member of a nonprofit dispensary in violation of this paragraph commits a civil violation for which a fine of not more than \$1,000 may be adjudged.

(2) A person who is employed by or is an agent, principal officer or board member of a nonprofit dispensary in violation of this paragraph and who at the time of the violation has been previously found to have violated this paragraph commits a Class D crime.

E. A nonprofit dispensary may not acquire usable marijuana or mature marijuana plants except through the cultivation of marijuana by that nonprofit dispensary.

10. Local regulation. This chapter does not prohibit a political subdivision of this State from limiting the number of nonprofit dispensaries that may operate in the political subdivision or from enacting reasonable zoning regulations applicable to nonprofit dispensaries.

§2429. Enforcement

1. Department fails to adopt rules. If the department fails to adopt rules to implement this chapter within 120 days of the effective date of this chapter, a qualifying patient may commence an action in Superior Court to compel the department to perform the actions mandated pursuant to the provisions of this chapter.

2. Department fails to issue a valid registry identification card. If the department fails to issue a valid registry identification card or a registration certificate in response to a valid application or renewal submitted pursuant to this chapter within 45 days of its submission, the registry identification card or registration certificate is deemed granted, and a copy of the registry identification application or renewal is deemed a valid registry identification card.

3. Department fails to accept applications. If at any time after the 140 days following the effective date of this chapter the department is not accepting applications, including if it has not adopted rules allowing qualifying patients to submit applications, a notarized statement by a qualifying patient containing the information required in an application, pursuant to section 2425, subsection 1, is deemed a valid registry identification card.

Effective December 23, 2009.
