MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

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.

Reference to the Committee on Judiciary suggested and ordered printed.

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 for	follows	as f	Maine	of N	State	of the	People	the	bv	enacted	3e it
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Sec. 1. 15 MRSA §5821, first \P , as enacted by PL 1987, c. 420, \S 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 medical purposes

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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.

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

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- 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.
- 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.
- 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.
- 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.

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

	Sec. 4. 22 MRSA C. 556-C is enacted to read:
2	CHAPTER 558-C
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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
16	otherwise, the following terms have the following meanings.
10	1. Board. "Board" means the Board of Registration in
18	Medicine as established in Title 5, section 12004-A, subsection 24.
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22	2. Marijuana. "Marijuana" means marijuana, tetrahydrocannabinol or a chemical derivative of tetrahydrocannabinol.
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26	3. Practitioner. "Practitioner" means an allopathic or osteopathic physician licensed to practice in this State.
28	4. Program. "Program" means the Marijuana Therapeutic
	Research Program.
30	§2423. Marijuana Therapeutic Research Program
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	1. Establishment; administration. There is established
34	within the department the Marijuana Therapeutic Research Program, administered by the commissioner.
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38	2. Rules. Subject to Title 5, chapter 375, the department shall adopt rules necessary for the proper administration of the
4.0	program. In adopting rules, the department shall consider
40	pertinent rules adopted by the federal Drug Enforcement Agency, the federal Food and Drug Administration, the National Institute
42	on Drug Abuse and any other federal agency concerned with the
	subject of this chapter.
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	3. Supply. The commissioner shall contract with the
46	National Institute on Drug Abuse for the receipt of marijuana under rules adopted by the National Institute on Drug Abuse, the
48	federal Food and Drug Administration and the federal Drug
	Enforcement Agency. If, within a reasonable period of time, the
50	commissioner is unable to obtain marijuana as provided in this
F 2	subsection, the commissioner shall contract with appropriate law
52	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 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

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- 16 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;
- 52 B. The board;

C.	The	Attorney	General	or the	Attorney	General '	's desid	mee:
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D. Any person directly connected with the program who has a legitimate need for the information; and

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

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

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

\$2427. Reports

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

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STATEMENT OF FACT

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This bill reestablishes the Marijuana Therapeutic Research Program, administered by the Commissioner of Human Services, that was repealed December 31, 1987. The Board of Registration in Medicine must review any patient wishing to participate in the Participation is limited to patients diagnosed as program. having Acquired Immune Deficiency Syndrome. If the board approves a patient, the patient's physician may write prescription that can be filled at a state or privately operated licensed pharmacy designated by the board. The commissioner may obtain analyzed marijuana available from the Federal Government and deliver it to the pharmacy for dispensing to any approved a patient with written prescription from the patient's physician. The commissioner and the board are required to make an annual report to the Governor and the Legislature, enabling both the legislative branch and executive branch to monitor the program closely.

The bill creates an affirmative defense to prosecution for the civil violation for possession of 1 1/4 ounces or less of marijuana if the person possesses the marijuana for the person's own use and the person was diagnosed before the alleged violation as having Acquired Immune Deficiency Syndrome.