



118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 1059

S.P. 319

In Senate, February 13, 1997

An Act to Establish the Maine Compassionate Use Act.

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

JOY J. O'BRIEN Secretary of the Senate

Presented by Senator RAND of Cumberland. Cosponsored by Senator PENDLETON of Cumberland, Representatives: BRENNAN of Portland, LEMAIRE of Lewiston, MUSE of South Portland, QUINT of Portland, SAXL of Portland, STEVENS of Orono, WATSON of Farmingdale.

	Be it enacted by the People of the State of Maine as follows:
2 4	Sec. 1. 15 MRSA §5821, first \P , as enacted by PL 1987, c. 420, §2, is amended to read:
6	The Except as provided in section 5821-A, the following
8	<pre>shall-be is subject to forfeiture to the State and no property right may exist in them:</pre>
10	Sec. 2. 15 MRSA §5821-A is enacted to read:
12	<u>§5821-A. Property not subject to forfeiture based on medicinal purposes</u>
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16	Beginning November 1, 1997, property is not subject to forfeiture under this chapter if the alleged violation that subjects the person's property to forfeiture is possession or
18	<u>cultivation of marijuana under section 3103, subsection 1, paragraph B or Title 22, section 2383, if:</u>
20	1. Other evidence. There is no other evidence that the
22	person possessed or cultivated marijuana with the intent to furnish or traffick;
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26	2. Limitation on amount. The amount of marijuana cultivated or possessed by the person is limited to 4 ounces of usable marijuana and a total of 15 growing plants, of which no
28	more than 6 may be mature plants;
30 32	3. Personal use. The person possessed or cultivated the marijuana for the person's own use and did not use it in public;
52	4. Medicinal purposes; medical recommendation. The person
34	<u>possessed or cultivated the marijuana for the purpose of alleviating negative medical symptoms after receiving the written</u>
36	recommendation of a diagnosing and treating physician licensed in this State; and
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40	5. Notice to law enforcement. Before forfeiture of the marijuana, the person provided a copy of the recommendation of a physician licensed in this State to local and county law
42	enforcement agencies and the State Police.
44	If the person who possessed or cultivated marijuana is a minor these requirements apply: a physician licensed in this
46	State must have counseled the person on the possible risks and benefits of marijuana use and have notified the parent, legal
48	guardian or legal custodian of the person of the recommendation and the parent, legal guardian or legal custodian must have
50	signed a written consent to the use of the drug.

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2	Sec. 3. 22 MRSA §2383, sub-§§3 and 4 are enacted to read:
4	3. Marijuana for medicinal purposes. Beginning November 1, 1997, medicinal use of marijuana is an affirmative defense to a
6	charge of possession or cultivation of marijuana under this section or under Title 15, section 3103, subsection 1, paragraph
8	B, if:
10	A. There is no other evidence that the person possessed or cultivated marijuana with the intent to furnish or traffick;
12	B. The amount of marijuana cultivated or possessed by the
14	person is limited to 4 ounces of usable marijuana and a total of 15 growing plants, of which no more than 6 may be
16	mature plants;
18	C. The person possessed or cultivated the marijuana for the person's own use and did not use it in public;
20	D. The person possessed or cultivated the marijuana for the
22	purpose of alleviating negative medical symptoms after receiving the written recommendation of a physician licensed
24	in this State;
26	E. Before seizure of the marijuana, the person provided a copy of the written recommendation of a physician licnesed
28	in this State to local and county law enforcement agencies and the State Police; and
30	F. Within 15 days of the commencement of a proceeding
32	brought under Title 15, section 3103, subsection 1, paragraph B or Title 22, section 2383, the person charged
34	or, if that person is a minor, the minor's parent, legal guardian or legal custodian, files in court and serves on
36	the prosecuting authorities a sworn statement of affirmative defense that the person meets the requirements of paragraphs
38	A to F, naming the person's diagnosing and treating physician and waiving the physician-patient privilege for
40	the purpose of allowing the prosecuting authority to confirm with the physician's written recommendation to use
42	marijuana.
44	<u>If the person who possessed or cultivated marijuana is a minor these requirements apply: a physician licensed in this State must</u>
46	have counseled the person on the possible risks and benefits of marijuana use and have notified the parent, legal guardian or
48	legal custodian of the person of the recommendation and the parent, legal guardian or legal custodian must have signed a
50	written consent to the use of the drug.

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<u>4. Limitation.</u> The affirmative defense provided by subsection 3 does not apply to charges brought under chapters 262
 and 263.

- Sec. 4. 32 MRSA §3282-A, sub-§3 is enacted to read:
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3. Recommendation allowed. A physician licensed pursuant to this chapter may recommend the use of marijuana for a patient for whom the physician believes that the drug may alleviate negative medical symptoms.

Sec. 5. Report. The Attorney General shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters by January 1, 1999 on property forfeiture under the Maine Revised Statutes, Title 15, section 5821-A and the experience of prosecuting authorities with claims of affirmative defense under Title 22, section 2383, subsection 3.

Sec. 6. Effective date. This Act takes effect November 1, 1997.

SUMMARY

26 This bill creates an affirmative defense to a charge of possession or cultivation of marijuana provided a licensed physician has recommended in writing use of the drug to alleviate 28 negative medical symptoms and a number of other requirements are met including notification to law enforcement agencies. The bill 30 requires a minor to also have the consent of a parent or legal guardian. The person is required to file in court and serve upon 32 the prosecuting authorities a sworn statement claiming the affirmative defense and naming the person's diagnosing or 34 treating physician. The filing waives the physician-patient privilege to allow the prosecuting authority to confirm with the 36 physician whether the physician recommended use of the drug. It requires the Attorney General to report to the joint standing 3.8 committee of the Legislature having jurisdiction over health and 40 human services matters by January 1, 1999 on the experience of prosecuting authorities with claims of affirmative defense under The bill provides professional protection to 42 these provisions. physicians who recommend the use of marijuana to their patients. 44 The bill contains an effective date of November 1, 1997.