

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 975

I.B. 2

House of Representatives, March 10, 2009

An Act To Establish the Maine Medical Marijuana Act

Transmitted to the Clerk of the 124th Maine Legislature by the Secretary of State on March 4, 2009, and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

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

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

3 **§5821-A. Property not subject to forfeiture based on medical use of marijuana**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (2) Water pipes;

8 (3) Carburetion tubes and devices;

9 (4) Smoking and carburetion masks;

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

12 (6) Miniature cocaine spoons and cocaine vials;

13 (7) Chamber pipes;

14 (8) Carburetor pipes;

15 (9) Electric pipes;

16 (10) Air-driven pipes;

17 (11) Chillums;

18 (12) Bongs; or

19 (13) Ice pipes or chillers.

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

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

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

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

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

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

33 **CHAPTER 558-C**

34 **MAINE MEDICAL MARIJUANA ACT**

1 **§2421. Short title**

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

3 **§2422. Definitions**

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

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

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

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

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

17 C. A chronic or debilitating disease or medical condition or its treatment that
18 produces one or more of the following: cachexia or wasting syndrome; severe nausea;
19 seizures, including but not limited to those characteristic of epilepsy; or severe and
20 persistent muscle spasms, including but not limited to those characteristic of multiple
21 sclerosis; or

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

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

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

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

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

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

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

5 **7. Physician.** "Physician" means a person licensed as an osteopathic physician by the
6 Board of Osteopathic Licensure pursuant to Title 32, chapter 36 or a person licensed as a
7 physician or surgeon by the Board of Licensure in Medicine pursuant to Title 32, chapter
8 48.

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

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

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

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

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

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

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

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

36 **16. Written certification.** "Written certification" means a document signed by a
37 physician and stating that in the physician's professional opinion a patient is likely to
38 receive therapeutic or palliative benefit from the medical use of marijuana to treat or
39 alleviate the patient's debilitating medical condition or symptoms associated with the
40 debilitating medical condition. A written certification may be made only in the course of

1 a bona fide physician-patient relationship after the physician has completed a full
2 assessment of the qualifying patient's medical history. The written certification must
3 specify the qualifying patient's debilitating medical condition.

4 **§2423. Protections for the medical use of marijuana**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 **10. Person not subject to penalty for providing registered qualifying patient or**
39 **registered primary caregiver marijuana paraphernalia.** A person may not be subject
40 to arrest, prosecution or penalty in any manner or denied any right or privilege, including
41 but not limited to a civil penalty or disciplinary action by a business or occupational or
42 professional licensing board or bureau, for providing a registered qualifying patient or a

1 registered primary caregiver with marijuana paraphernalia for purposes of a qualifying
2 patient's medical use of marijuana.

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

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

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

19 **§2424. Rules**

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

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

33 **3. Registry identification cards.** Not later than 120 days after the effective date of
34 this chapter, the department shall adopt rules governing the manner in which it considers
35 applications for and renewals of registry identification cards. The department's rules must
36 establish application and renewal fees that generate revenues sufficient to offset all
37 expenses of implementing and administering this chapter. The department may establish a
38 sliding scale of application and renewal fees based upon a qualifying patient's family
39 income. The department may accept donations from private sources in order to reduce the
40 application and renewal fees.

1 **§2425. Registry identification cards**

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

5 A. Written certification;

6 B. Application or renewal fee;

7 C. Name, address and date of birth of the qualifying patient, except that if the
8 applicant is homeless, no address is required;

9 D. Name, address and telephone number of the qualifying patient's physician;

10 E. Name, address and date of birth of each primary caregiver, if any, of the
11 qualifying patient. A qualifying patient may designate only one primary caregiver
12 unless the qualifying patient is under 18 years of age and requires a parent to serve as
13 a primary caregiver or the qualifying patient designates a nonprofit dispensary to
14 cultivate marijuana for the qualifying patient's medical use and the qualifying patient
15 requests the assistance of a second caregiver to assist with the qualifying patient's
16 medical use; and

17 F. If the qualifying patient designates one or 2 primary caregivers, a designation as to
18 who will be allowed under state law to cultivate marijuana plants for the qualifying
19 patient's medical use. Only one person may be allowed to cultivate marijuana plants
20 for a qualifying patient.

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

23 A. The qualifying patient's physician has explained the potential risks and benefits of
24 the medical use of marijuana to the qualifying patient and to a parent, guardian or
25 person having legal custody of the qualifying patient; and

26 B. The parent, guardian or person having legal custody consents in writing to:

27 (1) Allow the qualifying patient's medical use of marijuana;

28 (2) Serve as one of the qualifying patient's primary caregivers; and

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

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

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

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

11 A. The name, address and date of birth of the qualifying patient;

12 B. The name, address and date of birth of each primary caregiver, if any, of the
13 qualifying patient;

14 C. The date of issuance and expiration date of the registry identification card;

15 D. A random identification number that is unique to the cardholder;

16 E. A photograph, if the department decides to require one; and

17 F. A clear designation showing whether the cardholder will be allowed under state
18 law to cultivate marijuana plants for the qualifying patient's medical use, which must
19 be determined based solely on the qualifying patient's preference.

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

22 A. A registered qualifying patient shall notify the department within 10 days of any
23 change in the registered qualifying patient's name, address, primary caregiver or
24 preference regarding who may cultivate marijuana for the registered qualifying
25 patient or if the registered qualifying patient ceases to have a debilitating medical
26 condition.

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

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

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

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

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

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

15 **8. Confidentiality.** This subsection governs confidentiality.

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

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

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

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

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

38 **9. Cardholder who sells marijuana to person not allowed to possess.** Any
39 cardholder who sells marijuana to a person who is not allowed to possess marijuana for
40 medical purposes under this chapter must have that cardholder's registry identification
41 card revoked and is liable for any other penalties for the sale of marijuana. The

1 department may revoke the registry identification card of any cardholder who violates
2 this chapter, and the cardholder is liable for any other penalties for the violation.

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

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

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

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

10 D. The number of registry identification cards revoked;

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

12 F. The number of registered nonprofit dispensaries; and

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

15 **§2426. Scope**

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

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

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

20 (1) In a school bus;

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

22 (3) In any correctional facility;

23 C. Smoke marijuana:

24 (1) On any form of public transportation; or

25 (2) In any public place;

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

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

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

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

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

34 **3. Penalty for fraudulent representation.** Fraudulent representation to a law
35 enforcement official of any fact or circumstance relating to the medical use of marijuana

1 to avoid arrest or prosecution is a civil violation punishable by a fine of \$500, which must
2 be in addition to any other penalties that may apply for making a false statement or for
3 the use of marijuana other than use undertaken pursuant to this chapter.

4 **§2427. Affirmative defense and dismissal for medical marijuana**

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

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

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

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

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

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

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

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

1 **§2428. Nonprofit dispensaries**

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

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

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

9 (1) A fee paid to the department in the amount of \$5,000;

10 (2) The legal name of the nonprofit dispensary;

11 (3) The physical address of the nonprofit dispensary and the physical address of
12 one additional location, if any, where marijuana will be cultivated;

13 (4) The name, address and date of birth of each principal officer and board
14 member of the nonprofit dispensary; and

15 (5) The name, address and date of birth of any person who is an agent of or
16 employed by the nonprofit dispensary.

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

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

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

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

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

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

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

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

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

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

12 B. Minimum oversight requirements for nonprofit dispensaries;

13 C. Minimum record-keeping requirements for nonprofit dispensaries;

14 D. Minimum security requirements for nonprofit dispensaries; and

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

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

26 **5. Inspection.** A nonprofit dispensary is subject to reasonable inspection by the
27 department. The department shall give reasonable notice of an inspection under this
28 subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 **§2429. Enforcement**

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

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

