# MAINE STATE LEGISLATURE

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## 128th MAINE LEGISLATURE

### FIRST REGULAR SESSION-2017

**Legislative Document** 

No. 486

H.P. 349

House of Representatives, February 9, 2017

An Act To Authorize Vacating the Convictions of Members of the Houlton Band of Maliseet Indians Convicted under Prior Laws Governing the Possession and Use of Marijuana

(EMERGENCY)

Reference to the Committee on Judiciary suggested and ordered printed.

ROBERT B. HUNT

R(+ B. Hunt

Clerk

Presented by Representative BEAR of the Houlton Band of Maliseet Indians.

1 Emergency preamble. Whereas, acts and resolves of the Legislature do not 2 become effective until 90 days after adjournment unless enacted as emergencies; and 3 Whereas, the Marijuana Legalization Act decriminalizes and removes civil 4 penalties related to the personal use of marijuana effective January 30, 2017; and 5 Whereas, it is necessary that this Act take effect as soon as possible to enable members of the Houlton Band of Maliseet Indians who have been criminally and civilly 6 7 charged for conduct that would have been legal under the Marijuana Legalization Act to clear their criminal records; and 8 9 Whereas, in the judgment of the Legislature, these facts create an emergency within 10 the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, 11 12 therefore, 13 Be it enacted by the People of the State of Maine as follows: Sec. 1. 15 MRSA c. 313 is enacted to read: 14 15 **CHAPTER 313** 16 POST-JUDGMENT MOTION TO VACATE CERTAIN MARIJUANA **CONVICTIONS OF MEMBERS OF THE HOULTON BAND OF MALISEET** 17 18 **INDIANS** 19 §2401. Legislative findings and intent 20 The Legislature finds that Indian tribes and their members have unique status under the United States Constitution, including under Article I, Section 8; the Constitution of 21 Maine, including under Article X, Section 5; and various treaties affecting Indian tribes in 22 23 this State, including the Treaty of Watertown of 1776. The Legislature further finds that 24 Maine laws and rules reflect this unique status, including provisions relating to child 25 welfare, tribal representation in the Legislature, mortgage insurance for Indian housing and hunting and fishing rights and privileges. The Legislature further finds that these 26 provisions of Maine law, including the provisions of this chapter, treat members of a 27 28 federally recognized Indian tribe in this State in a manner consistent with the unique 29 status that Indian tribes possess under the United States Constitution. 30 The Legislature further finds that members of the Houlton Band of Maliseet Indians 31 consider marijuana to be a medicine with important uses and benefits. Members of the Houlton Band of Maliseet Indians have suffered unnecessary and unacceptable stigma 32 33 from prosecutions for and convictions of possessing marijuana for personal use, which 34 were unfairly based on non-Indian social norms regarding the personal cultivation and 35 personal use of marijuana. 36 It is the intent of the Legislature to remedy these past injustices by establishing a

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process for members of the Houlton Band of Maliseet Indians to petition the court to

vacate all past criminal convictions or civil violation adjudications for conduct that would

have been legal had that conduct been committed after enactment of the Marijuana
 Legalization Act.

#### §2402. Post-judgment motion for vacation of certain marijuana convictions

- 1. Motion. A member of the Houlton Band of Maliseet Indians who has been convicted of a criminal offense involving marijuana or who has been adjudicated as having committed a civil violation involving marijuana who reasonably believes that the conduct underlying the conviction or adjudication would have been legal under the provisions of the Marijuana Legalization Act may file a written motion in the underlying criminal or civil violation proceeding seeking vacation of the conviction or adjudication and correction of the court records and related criminal justice agency records.
- **2.** Time for filing. A motion under this section must be filed within 3 years of the effective date of this section.

#### §2403. Motion and hearing; process

- 1. Filing motion. A motion filed pursuant to section 2402 must be filed in the underlying criminal or civil violation proceeding. The appropriate chief judge or justice shall specially assign the motion. The judge or justice to whom the motion is assigned shall determine upon whom and how service of the motion is to be made and enter an order in this regard.
- **2.** Counsel. A person who files a motion pursuant to section 2402 has the right to employ counsel but is not entitled to assignment of counsel at state expense.
- 3. Representation of the State. The prosecutorial office that represented the State in the underlying criminal or civil violation proceeding shall represent the State for purposes of this chapter. If the underlying criminal or civil violation proceeding was disposed of without the appearance of an attorney for the State, the office of the District Attorney in whose district the crime or civil violation was committed shall represent the State for purposes of this chapter. On a case-by-case basis, a different prosecutorial office may represent the State on agreement between the 2 prosecutorial offices.
- 4. Request for hearing. The court may decide a motion filed pursuant to section 2402 without hearing, unless a hearing is requested by the person filing the motion or by the State within 14 days of service of the motion. If either party requests a hearing, the court shall review the pleadings and any other material of record and determine whether an evidentiary hearing is required.
- 5. Evidence. The Maine Rules of Evidence do not apply to proceedings under this chapter. The court shall take judicial notice of the record in the underlying criminal or civil violation proceeding.
- 6. Burden of proof. A person who files a motion pursuant to section 2402 bears the
  burden of demonstrating a right to relief under this chapter by a preponderance of the
  evidence.

#### **§2404.** Relief

- 1. **Decision.** The court shall issue a written decision on a motion filed pursuant to section 2402. A copy of the court's written order must be provided to the person who filed the motion and to the prosecutorial office that represented the State. The court must grant the motion and vacate the criminal conviction or civil violation adjudication if the court finds:
  - A. That the person who filed the motion was a member of the Houlton Band of Maliseet Indians at the time of the conduct; and
  - B. That the conduct for which the person who filed the motion was convicted or adjudicated would have been legal under the provisions of the Marijuana Legalization Act if that conduct had been committed after the effective date of that Act.
- 2. Correction of record. If the court grants a motion filed pursuant to section 2402, it shall determine what court records and related criminal justice records require correction and shall order the corrections to be made in the court records and the records of each of the appropriate criminal justice agencies.
- 3. Other relief. If the court grants a motion filed pursuant to section 2402, it shall grant all other appropriate relief, including release from incarceration, discharge from probation and reimbursement of fines, surcharges and assessments paid by the person who filed the motion.

#### §2405. Appeal

- A final judgment entered under section 2404 may be reviewed by the Supreme Judicial Court.
  - 1. Appeal by person filing motion. A person aggrieved by the final judgment under section 2404 may not appeal as of right. The time for taking the appeal and the manner and any conditions for the taking of the appeal are as the Supreme Judicial Court provides by rule.
    - 2. Appeal by State. If the State is aggrieved by the final judgment under section 2404, it may appeal as of right, and a certificate of approval by the Attorney General is not required. The time for taking the appeal and the manner and any conditions for the taking of the appeal are as the Supreme Judicial Court provides by rule.
      - Sec. 2. 17-A MRSA §111 is enacted to read:

#### §111. Conduct legal under the Marijuana Legalization Act

If a member of the Houlton Band of Maliseet Indians is charged with a crime or civil violation for conduct that occurred prior to the effective date of the Marijuana Legalization Act, it is a defense to the prosecution that the conduct would have been legal under the provisions of the Marijuana Legalization Act had the conduct occurred after the effective date of that Act.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.

3 SUMMARY

This bill establishes a process for members of the Houlton Band of Maliseet Indians to seek vacation of a criminal conviction or civil violation adjudication if the conduct that formed the basis of the conviction or adjudication would have been legal had that conduct been committed after enactment of the Marijuana Legalization Act. The bill also establishes that, if a member of the Houlton Band of Maliseet Indians is charged with a civil violation or criminal offense for conduct that occurred prior to the effective date of the Marijuana Legalization Act, it is a defense to the prosecution that the conduct would have been legal had the conduct occurred after the effective date of the Marijuana Legalization Act.