

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Provide Patients with Their Medication

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

Sec. 1. 22 MRSA §2383-B, sub-§3, ¶B-1, as enacted by IB 1999, c. 1, §8, is repealed.

Sec. 2. 22 MRSA §2383-B, sub-§3, ¶B-2 is enacted to read:

B-2. "Practitioner" has the same meaning as in Title 32, section 13702, subsection 23.

Sec. 3. 22 MRSA §2383-B, sub-§3, ¶E, as amended by PL 2001, c. 580, §2, is further amended to read:

E. "Usable amount of marijuana for medical use" means 2 1/2 ounces or less, the weight not to include stems, seeds or roots, of harvested marijuana and a total of 612 plants, ~~of which no more than 3 may be mature, flowering plants.~~

Sec. 4. 22 MRSA §2383-B, sub-§5, ¶A, as enacted by IB 1999, c. 1, §10, is amended to read:

A. Notwithstanding any other provision of law, a person who is at least 18 years of age may lawfully possess a usable amount of marijuana for medical use if, at the time of that possession, the person has available an authenticated copy of a medical record or other written documentation from a physicianpractitioner, demonstrating that:

(1) The person has been diagnosed by a physicianpractitioner as suffering from one or more of the following conditions:

(a) Persistent nausea, vomiting, wasting syndrome or cachexia or loss of appetite as a result of a debilitating disease or medical condition such as:

(i) Acquired immune deficiency syndrome or human immunodeficiency virus or the treatment thereof; or

(ii) Chemotherapy or radiation therapy used to treat cancer;

(b) Heightened intraocular pressure as a result of glaucoma;

(c) Seizures associated with a chronic, debilitating disease, such as epilepsy; ~~or~~

(d) Persistent muscle spasms associated with a chronic, debilitating disease, such as multiple sclerosis, Crohn's disease or Alzheimer's disease;

(e) Hepatitis C; or

(f) Any other medical condition or its treatment approved by the department under this section;

(2) A ~~physician, in the context of a bona fide physician-patient relationship with the person~~practitioner:

(a) Has discussed with the person the possible health risks and therapeutic or palliative benefits of the medical use of marijuana to relieve pain or alleviate symptoms of the person's condition, based on information known to the ~~physieian~~practitioner, including, but not limited to, clinical studies or anecdotal evidence reported in medical literature or observations or information concerning the use of marijuana by other patients with the same or similar conditions;

(b) Has provided the person with the ~~physieian's~~practitioner's professional opinion concerning the possible balance of risks and benefits of the medical use of marijuana to relieve pain or alleviate symptoms in the person's particular case; and

(c) Has advised the person, on the basis of the ~~physieian's~~practitioner's knowledge of the person's medical history and condition, that the person might benefit from the medical use of marijuana to relieve pain or alleviate symptoms of the person's condition;

(3) The person has disclosed to the ~~physieian~~practitioner that person's medical use of marijuana; and

(4) The person is under the continuing care of the ~~physieian~~practitioner.

Sec. 5. 22 MRSA §2383-B, sub-§5, ¶E, as enacted by IB 1999, c. 1, §10, is amended to read:

E. A ~~physieian~~practitioner who, ~~in the context of a bona fide physician-patient relationship~~, advises a patient that the patient might benefit from the medical use of marijuana may not be deemed to have violated any provision of Title 32, section 2591-A, subsection 2 or section 3282-A, subsection 2.

Sec. 6. 22 MRSA §2383-B, sub-§5, ¶I is enacted to read:

I. The department shall issue or reissue an identification card to an eligible patient and up to 2 designated care givers of the patient upon such proof and documentation as the commissioner by rule may require to an eligible patient or a designated care giver who submits the following:

(1) Written documentation that all requirements under paragraph A are met;

(2) The application or renewal fee;

(3) The name, address and date of birth of the eligible patient, except that if the patient is homeless, no address is required;

(4) The name, address and telephone number of the eligible patient's practitioner; and

(5) The name, address and date of birth of a designated care giver of as eligible patient.

An identification card issued under this paragraph must contain the patient's name, address and date of birth, the designated care giver's, if any, name, address and date of birth, the date of issuance and expiration of the card, a random registry number issued under paragraph J, a photo of the patient and any other information the commissioner determines necessary. A patient who holds an identification card under this paragraph must notify the department within 10 days of any change of information required for the card. A person with an identification card or similar documentation from another jurisdiction permitting the person to use marijuana for medical purposes has the same rights and privileges as a person who is issued an identification card under this paragraph. A person using, procuring or in the possession of marijuana for medical use must present the identification card to a law enforcement officer upon request of the law enforcement officer. An identification card issued under this paragraph expires one year after issuance.

Sec. 7. 22 MRSA §2383-B, sub-§5, ¶J is enacted to read:

J. The department shall maintain a registry of all holders of an identification card under paragraph I using a random registry number for each card holder. All personal information in the registry is confidential and not subject to disclosure except to authorized employees of the department as necessary to perform official duties of the department. The department shall verify to a law enforcement official that an identification card is valid solely by confirming the random registry number. Without divulging personal information, the department shall report annually to the Legislature on the number of applications for identification cards, the number of eligible patients and designated care givers approved, the number and nature of the medical conditions for which patients have been approved, the number of identification cards revoked and the number of practitioners providing written certification for eligible patients. A violation of the confidentiality provisions of this paragraph is a Class E crime.

Sec. 8. 22 MRSA §2383-B, sub-§5, ¶K is enacted to read:

K. A person may not be discriminated against for possession of or application for an identification card pursuant to paragraph I or being listed in the registry pursuant to paragraph J, including:

- (1) The searching of the person or property by a law enforcement official or inspection by a governmental agency;
- (2) Arresting or prosecuting the person or a law enforcement official using possession or application for an identification card under paragraph I or listing in the registry under paragraph J as probable cause or reasonable suspicion that a crime has been committed;
- (3) Subjecting the person to disciplinary action or penalty or denying the person a right or privilege by a business, occupational or professional licensing board or agency; or
- (4) Refusing to enroll the person in school, employ the person, lease to the person or otherwise penalize the person.

A practitioner is immune from criminal or civil prosecution or penalty and may not be denied any right or privilege under the practitioner's license for providing written documentation under this subsection to a person for the purpose of procuring an identification card. A person is immune from criminal or civil prosecution for being in the presence of or assisting a person with an identification card using medical marijuana. Any interest in or right to property may not be seized or forfeited if the property was used in connection with medical marijuana use under this subsection. A law enforcement agency that seizes and does not return usable marijuana to a person with an identification card under paragraph I is liable to that person for the fair market value of the marijuana. A person with an identification card under this subsection may not smoke marijuana at the workplace, in a public place or correctional facility, on school grounds, on a school bus or any public transportation or operate a motor vehicle, aircraft or motorboat while under the influence of marijuana, although the person may not be considered under the influence solely for having marijuana metabolites in the person's system. This paragraph does not apply to a person who is in violation of the provisions of this subsection.

Sec. 9. 22 MRSA §2383-B, sub-§5, ¶L is enacted to read:

L. A designated care giver with an identification card issued under paragraph I may receive reimbursement for costs associated with assisting an eligible patient's medical use of marijuana pursuant to the provisions of this subsection, which may not be considered trafficking or furnishing of a controlled substance.

Sec. 10. 22 MRSA §2383-B, sub-§5, ¶M is enacted to read:

M. An eligible patient who fails to notify the department that information provided under paragraph I has changed including that the patient has ceased to suffer from a medical condition allowing the use of medical marijuana under paragraph A within 10 days of the change commits a civil violation for which not more than \$150 may be adjudged. A person who provides fraudulent information to the department in applying for or renewing an identification card under paragraph I or to a law enforcement officer concerning the provisions of this subsection to avoid arrest or prosecution, including fabricating, selling, possessing or presenting an invalid identification card, commits a Class E crime.

Sec. 11. 22 MRSA §2383-B, sub-§5, ¶N is enacted to read:

N. A law enforcement officer who knowingly cooperates with a federal law enforcement agent or organization to investigate, arrest or prosecute or search the person or property of a holder of an identification card issued under paragraph I or section 2390, subsection 3 without probable cause that a violation of the provisions of this section or section 2390 has been committed must be suspended or have the law enforcement officer's employment terminated.

Sec. 12. 22 MRSA §2383-B, sub-§5, ¶O is enacted to read:

O. The department may adopt routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A to carry out the purposes of this subsection, unless otherwise provided for.

Sec. 13. 22 MRSA §2390 is enacted to read:

§ 2390. Nonprofit dispensaries

1. Registered dispensaries. A nonprofit corporation may register with the department to acquire, possess, cultivate, manufacture, deliver, transfer, transport, supply or dispense marijuana, marijuana seeds, marijuana cultivation equipment and marijuana-related supplies and educational materials to a card holder.

2. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Card holder" means a person who holds an identification card issued pursuant to section 2383-B, subsection 5, paragraph I.

B. "Employee" means a person who works for a registered dispensary for compensation or for no compensation.

C. "Nonprofit corporation" means a nonprofit corporation organized pursuant to Title 13-B.

D. "Registered dispensary" means a nonprofit corporation registered under this section.

3. Registration. The department shall register a nonprofit corporation as a registered dispensary if the nonprofit corporation:

A. Pays a registration fee to the department not to exceed \$1,000;

- B. Provides the legal name of the nonprofit corporation;
- C. Provides the physical address of the nonprofit corporation and any other real property where marijuana is to be possessed, cultivated, manufactured, supplied or dispensed under this section;
- D. Provides the name, address and date of birth of any person that is a board member of, agent of or employed by the nonprofit corporation.

Upon receipt of an application for registration under this subsection and if the nonprofit corporation meets all the requirements of this subsection, the department shall approve the nonprofit corporation for registration and issue the nonprofit corporation and each agent or employee of the nonprofit corporation an identification card. An identification card issued under this subsection must contain a random identification number, the name of the registered dispensary and the name of the agent or employee and state that the registered dispensary is a registered dispensary and that the agent or employee is an agent or employee of the registered dispensary. An identification card issued under this subsection expires one year after issuance.

4. Requirements. The following are required of a registered dispensary:

- A. A registered dispensary shall submit to inspection by the department to determine if the provisions of this section and rules adopted by the department pursuant to this section are being followed. The department shall give reasonable notice of an inspection under this subsection;
- B. The operation of a registered dispensary may not be located within 500 feet of the property line of a school or place used primarily for religious service or worship;
- C. The registered dispensary shall include written procedures for the oversight of the registered dispensary and to ensure adequate record keeping. A registered dispensary shall keep a record of each card holder served by the dispensary;
- D. A registered dispensary shall inform the department within 10 days of an agent or employee ceasing to work for or a board member leaving the board of the registered dispensary; and
- E. A registered dispensary shall notify the department prior to a new agent or employee becoming employed by or a board member joining the board of the registered dispensary, providing the department with the name, address and date of birth for the person intended to be a new agent, employee or board member.

5. Immunity. A registered dispensary is immune from search, arrest, prosecution, seizure or penalty or from being denied any right or privilege, including civil penalty or disciplinary action by a business, occupational or professional licensing board, for operating in accordance with this section, as long as the registered dispensary possesses an amount of marijuana that does not exceed 12 marijuana plants and 2 1/2 ounces of usable marijuana for each card holder served by the dispensary. An agent, employee or board member of a registered dispensary is immune from search, arrest, prosecution, seizure

or penalty or from being denied any right or privilege, including civil penalty or disciplinary action by a business, occupational or professional licensing board, for performing necessary duties for the registered dispensary.

6. Prohibitions. A registered dispensary may not:

A. Obtain marijuana from outside the State in violation of federal law; or

B. Acquire, possess, cultivate, manufacture, deliver, transfer, supply or dispense marijuana for any purpose except to assist a card holder with the medical use of marijuana.

7. Municipalities. A municipality may not prevent a registered dispensary from operating in accordance with this section in an area that is zoned for retail use.

8. Rules. The department may adopt major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A to carry out the purposes of this section.

9. Violations. A violation of this section is a Class E crime.

Sec. 14. Rules. No more than 90 days after the effective date of this Act, the Department of Health and Human Services shall adopt rules and provide a public hearing pursuant to the Maine Revised Statutes, Title 5, section 8052 to establish the manner in which it will consider adding debilitating medical conditions to those already allowed under Title 22, section 2303-B, subsection 5, paragraph N, the manner in which the department will accept applications and renewals for an identification card, fees that offset the expenses of implementing and administering the provisions of this subsection and a sliding scale for an eligible patient who demonstrates financial need.

SUMMARY

This bill:

1. Increases the usable amount of marijuana for medical use to up to 12 plants and exempts seeds, stems and roots from the weight limitations;

2. Changes a person who may document the need for a person to use marijuana for medical purposes from a physician to a person who is licensed to prescribe medicine;

3. Directs the Department of Health and Human Services to create a registry system with identification cards for patients eligible to receive marijuana for medical use and their care givers;

4. Immunizes patients eligible to receive marijuana for medical use and their care givers from search, arrest or prosecution or from civil penalty for using marijuana for medical use;

5. Prohibits a law enforcement officer from cooperating with federal authorities in investigating, searching, arresting or prosecuting patients eligible to receive marijuana for medical use and their care givers and registered dispensaries; and

6. Directs the Department of Health and Human Services to create a registry of nonprofit corporations that may become registered dispensaries to acquire, possess, cultivate, manufacture, deliver,

transfer, transport, supply or dispense marijuana, marijuana seeds, marijuana cultivation equipment and marijuana-related supplies and educational materials to patients eligible to receive marijuana for medical use and their care givers.