

HOUSE No. 2160

The Commonwealth of Massachusetts

PRESENTED BY:
Frank I. Smizik

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:
An Act to regulate the medical use of marijuana by patients approved by physicians and certified by the department of public health.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Frank I. Smizik	15th Norfolk
John V. Fernandes	10th Worcester
Charles A. Murphy	21st Middlesex
Tom Sannicandro	7th Middlesex
Elizabeth A. Malia	11th Suffolk
Alice K. Wolf	25th Middlesex
Patricia D. Jehlen	Second Middlesex
Byron Rushing	9th Suffolk
Anne M. Gobi	5th Worcester
James B. Eldridge	Middlesex and Worcester
Ellen Story	3rd Hampshire
Robert L. Hedlund	Plymouth and Norfolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2247 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO REGULATE THE MEDICAL USE OF MARIJUANA BY PATIENTS APPROVED BY PHYSICIANS AND CERTIFIED BY THE DEPARTMENT OF PUBLIC HEALTH.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority
of the same, as follows:*

Chapter 94 of the Massachusetts General Law is hereby amended by inserting the following as
Chapter 94E: —

Chapter 94E Section 1. Short Title; Purpose.

Section 1. Sections 1 to 10, inclusive, shall be known, and may be cited, as “The Massachusetts Medical
Marijuana Act.” It is the purpose of this act is to protect patients with debilitating medical conditions, as
well as their practitioners and designated caregivers, from arrest and prosecution, criminal and other
penalties, and property forfeiture if such patients engage in the medical use of marijuana.

Chapter 94E Section 2. Definitions.

Section 2. As used in this chapter, the following words shall, unless the context clearly requires
otherwise, have the following meanings:

(a) “Debilitating medical condition” means one or more of the following:

(1) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency
syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn’s disease, agitation of Alzheimer’s disease,
nail patella, or the treatment of these conditions;

(2) A chronic or debilitating disease or medical condition or its treatment that produces one or more of the
following: cachexia or wasting syndrome; severe pain; severe nausea; seizures, including but not limited
to, those characteristic of epilepsy; or severe and persistent muscle spasms, including but not limited to,
those characteristic of multiple sclerosis; or

(3) Any other medical condition or its treatment approved by the department, as provided for in Chapter
94E section 4.

(b) “Department” means the Massachusetts Department of Public Health or its successor agency.

(c) “Marijuana” has the meaning given that term in Chapter 94C Section 1.

(d) “Medical use” means the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or
transportation of marihuana or paraphernalia relating to the consumption of marijuana to alleviate the
symptoms or effects of a registered qualifying patient’s debilitating medical condition.

(e) “Practitioner” means a person who is licensed with authority to prescribe drugs pursuant to Chapter
94C Section 18.

(f) “Primary caregiver” means a person who is at least eighteen (18) years old who has agreed to assist
with a person’s medical use of marijuana and who does not have a felony drug conviction. A primary
caregiver may assist no more than five (5) qualifying patients with their medical use of marijuana.

(g) "Qualifying patient" means a person who has been diagnosed by a licensed physician as having a debilitating medical condition.

(h) "Usable marijuana" means the dried leaves and flowers of marihuana, and any mixture or preparation thereof, and does not include the seeds, stalks, and roots of the plant.

(i) "Written certification" means a document signed by a practitioner, stating that in the practitioner's professional opinion the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient. A written certification shall be made only in the course of a bona fide practitioner-patient relationship after the practitioner has completed a full assessment of the qualifying patient's medical history. The written certification shall specify the qualifying patient's debilitating medical condition or conditions.

Chapter 94E Section 3. Protections for the medical use of marijuana.

Section 3. (a) A qualifying patient who has in his or her possession a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the medical use of marijuana; provided, that the qualifying patient possesses an amount of marijuana that does not exceed twelve (12) marijuana plants and four (4) ounces of usable marijuana. Said plants shall be stored in an enclosed, locked facility.

(b) No school, employer or landlord may refuse to enroll, employ or lease to or otherwise penalize a person solely for his or her status as a registered qualifying patient or a registered primary caregiver.

(c) A primary caregiver, who has in his or her possession, a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for assisting a qualifying patient to whom he or she is connected through the department's registration process with the medical use of marijuana; provided, that the primary caregiver possesses an amount of marijuana which does not exceed twelve (12) marijuana plants and four (4) ounces of usable marijuana for each qualifying patient to whom he or she is connected through the department's registration process.

(d) There shall exist a presumption that a qualifying patient or primary caregiver is engaged in the medical use of marijuana in accordance with this act if the qualifying patient or primary caregiver:

(1) Is in possession of a registry identification card; and

(2) Is in possession of an amount of marijuana that does not exceed the amount permitted under this chapter. Such presumption may be rebutted by evidence that conduct related to marijuana was not for the purpose of alleviating the qualifying patient's debilitating medical condition or symptoms associated with the medical condition.

(e) A primary caregiver may receive reimbursement for costs associated with assisting a registered qualifying patient's medical use of marijuana. Compensation shall not constitute sale of controlled substances.

(f) A practitioner shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by the Massachusetts Board of Registration in Medicine or by any another business or occupational or professional licensing board or bureau solely for providing written certifications or for otherwise stating that, in the practitioner's professional opinion, the potential benefits of the medical marijuana would likely outweigh the health risks for a patient.

(g) Any marijuana, marijuana paraphernalia, interest in or right to property that is possessed, owned, or used in connection with the medical use of marijuana as allowed under this act, or acts incidental to such use, shall not be seized or forfeited.

(h) No person shall be subject to arrest or prosecution for constructive possession, conspiracy, aiding and abetting, being an accessory, or any other offense for simply being in the presence or vicinity of the medical use of marijuana as permitted under this chapter or for assisting a registered qualifying patient with using or administering marijuana.

(i) A practitioner, nurse or pharmacist shall not be subject to arrest, prosecution or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, solely for discussing the benefits or health risks of medical marijuana or its interaction with other substances with a patient.

(j) A registry identification card, or its equivalent, issued under the laws of another U.S. state, U.S. territory, or the District of Columbia to permit the medical use of marijuana by a qualifying patient, or to permit a person to assist with a qualifying patient's medical use of marijuana, shall have the same force and effect as a registry identification card issued by the department.

(k) Notwithstanding the provisions of Chapter 94E subsection 2(f) or subsection 3(c), no primary caregiver shall possess an amount of marijuana in excess of twenty-four (24) marijuana plants and eight (8) ounces of usable marijuana for qualifying patients to whom he or she is connected through the department's registration process.

Chapter 94E Section 4. Department to issue regulations.

Section 4. (a) Not later than ninety (90) days after the effective date of this chapter, the department shall promulgate regulations governing the manner in which it shall consider petitions from the public to add debilitating medical conditions to those set forth in Chapter 94 E section 2(a). In considering such petitions, the department shall include public notice of, and an opportunity to comment in a public hearing, upon such petitions. The department shall, after hearing, approve or deny such petitions within one hundred eighty (180) days of submission. The approval or denial of such a petition shall be considered a final department action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the superior court. The denial of a petition shall not disqualify qualifying patients with that condition, if they have a chronic or debilitating medical condition.

The denial of a petition shall not prevent a person with the denied condition from raising an affirmative defense.

(b) Not later than ninety (90) days after the effective date of this chapter, the department shall promulgate regulations governing the manner in which it shall consider applications for and renewals of registry identification cards for qualifying patients and primary caregivers. The department's regulations shall establish application and renewal fees that generate revenues sufficient to offset all expenses of implementing and administering this chapter. The department may vary the application and renewal fees along a sliding scale that accounts for a qualifying patient's or caregiver's income. The department may accept donations from private sources in order to reduce the application and renewal fees.

Chapter 94E Section 5. Administration of regulations.

Section 5. (a) The department shall issue registry identification cards to qualifying patients who submit the following, in accordance with the department's regulations:

(1) Written certification as defined in Chapter 94E subsection 2(i);

(2) Application or renewal fee;

(3) Name, address, and date of birth of the qualifying patient; provided, however, that if the patient is homeless, no address is required;

(4) Name, address, and telephone number of the qualifying patient's practitioner; and

(5) Name, address, and date of birth of each primary caregiver of the qualifying patient, if any.

(b) The department shall not issue a registry identification card to a qualifying patient under the age of eighteen (18) unless:

(1) The qualifying patient's practitioner has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient and to a parent, guardian or person having legal custody of the qualifying patient; and

(2) A parent, guardian or person having legal custody consents in writing to:

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

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

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

(c) The department shall verify the information contained in an application or renewal submitted pursuant to this section, and shall approve or deny an application or renewal within fifteen (15) days of receiving it. The department may deny an application or renewal only if the applicant did not provide the information required pursuant to this section, or if the department determines that the information provided was falsified. Rejection of an application or renewal is considered a final department action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the superior court.

(d) The department shall issue a registry identification card to each primary caregiver, if any, who is named in a qualifying patient's approved application, up to a maximum of two (2) primary caregivers per qualifying patient.

(e) The department shall issue registry identification cards within five (5) days of approving an application or renewal, which shall expire two (2) years after the date of issuance. Registry identification cards shall contain:

(1) The date of issuance and expiration date of the registry identification card;

(2) A random registry identification number; and

(3) A photograph, if the department decides to require one; and

(4) Any additional information as required by regulation or the department.

(f) Persons issued registry identification cards shall be subject to the following:

(1) A qualifying patient who has been issued a registry identification card shall notify the department of any change in the qualifying patient's name, address, or primary caregiver; or if the qualifying patient ceases to have his or her debilitating medical condition, within ten (10) days of such change.

(2) A registered qualifying patient who fails to notify the department of any of these changes is responsible for a civil infraction, punishable by a fine of no more than one hundred fifty dollars (\$150). If the person has ceased to suffer from a debilitating medical condition, the card shall be deemed null and void and the person shall be liable for any other penalties that may apply to the person's non-medical use of marijuana.

(3) A registered primary caregiver shall notify the department of any change in his or her name or address within ten (10) days of such change. A primary caregiver who fails to notify the department of any of these changes is responsible for a civil infraction, punishable by a fine of no more than one hundred fifty dollars (\$150).

(4) When a qualifying patient or primary caregiver notifies the department of any changes listed in this subsection, the department shall issue the registered qualifying patient and each primary caregiver a new registry identification card within ten (10) days of receiving the updated information and a ten dollar (\$10.00) fee.

(5) When a qualifying patient who possesses a registry identification card changes his or her primary caregiver, the department shall notify the primary caregiver within ten (10) days. The primary caregiver's protections as provided in this chapter shall expire ten (10) days after notification by the department.

(6) If a registered qualifying patient or a primary caregiver loses his or her registry identification card, he or she shall notify the department and submit a ten dollar (\$10.00) fee within ten (10) days of losing the card. Within five (5) days, the department shall issue a new registry identification card with new random identification number.

(7) If a qualifying patient and/or primary caregiver willfully violates any provision of this chapter as determined by the department, his or her registry identification card may be revoked.

(g) Possession of, or application for, a registry identification card shall not constitute probable cause or reasonable suspicion, nor shall it be used to support the search of the person or property of the person possessing or applying for the registry identification card, or otherwise subject the person or property of the person to inspection by any governmental agency.

(h) (1) Applications and supporting information submitted by qualifying patients, including information regarding their primary caregivers and practitioners, are confidential and protected under the federal Health Insurance Portability and Accountability Act of 1996.

(2) The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list shall be

confidential, exempt from the provisions of Massachusetts Public Records Law, M.G.L. Chapter 66, section 10, and not subject to disclosure, except to authorized employees of the department as necessary to perform official duties of the department.

(i) The department shall verify to law enforcement personnel whether a registry identification card is valid solely by confirming the random registry identification number.

(j) It shall be a crime, punishable by up to one hundred eighty (180) days in jail and a one thousand dollar (\$1,000) fine, for any person, including an employee or official of the department or another state agency or local government, to breach the confidentiality of information obtained pursuant to this chapter.

Notwithstanding this provision, the department employees may notify law enforcement about falsified or fraudulent information submitted to the department.

(k) On or before January 1 of each odd numbered year, the department shall report to the Joint Committee on Public Health, and to the Joint Committee on the Judiciary, on the use of marijuana for symptom relief. The report shall provide:

(1) The number of applications for registry identification cards, the number of qualifying patients and primary caregivers approved, the nature of the debilitating medical conditions of the qualifying patients, the number of registry identification cards revoked, and the number of practitioners providing written certification for qualifying patients;

(2) An evaluation of the costs permitting the use of marijuana for symptom relief, including any costs to law enforcement agencies and costs of any litigation;

(3) Statistics regarding the number of marijuana-related prosecutions against registered patients and caregivers, and an analysis of the facts underlying those prosecutions;

(4) Statistics regarding the number of prosecutions against physicians for violations of this chapter; and

(5) Whether the United States Food and Drug Administration has altered its position regarding the use of marijuana for medical purposes or has approved alternative delivery systems for marijuana.

Chapter 94E Section 6. Scope of chapter.

Section 6. (a) This chapter shall not permit:

(1) Any person to undertake any task under the influence of marijuana, when doing so would constitute negligence or professional malpractice;

(2) The smoking of marijuana:

(i) In a school bus or other form of public transportation;

(ii) On any school grounds;

(iii) In any correctional facility;

(iv) In any public place; or

(v) In any licensed drug treatment facility in this state.

(3) Any person to operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marijuana. However, a registered qualifying patient shall not be considered to be under the influence solely for having marijuana metabolites in his or her system.

(b) Nothing in this chapter shall be construed to require:

(1) A government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana; or

(2) An employer to accommodate the medical use of marijuana in any workplace.

(c) Fraudulent representation to a law enforcement official of any fact or circumstance relating to the medical use of marijuana to avoid arrest or prosecution shall be punishable by a fine of five hundred dollars (\$500) which shall be in addition to any other penalties that may apply for making a false statement for the non-medical use of marijuana.

Chapter 94E Section 7. Affirmative defense and dismissal.

Section 7. (a) Except as provided in section 6, a person and a person's primary caregiver, if any, may assert the medical purpose for using marijuana as a defense to any prosecution involving marijuana, and such defense shall be presumed valid where the evidence shows that:

(1) The qualifying patient's practitioner has stated that, in the practitioner's professional opinion, after having completed a full assessment of the person's medical history and current medical condition made in

the course of a bona fide practitioner patient relationship, the potential benefits of using marijuana for medical purposes would likely outweigh the health risks for the qualifying patient; and

(2) The person and the person's primary caregiver, if any, were collectively in possession of a quantity of marijuana that was not more than what is reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of alleviating the person's medical condition or symptoms associated with the medical condition.

(b) A person may assert the medical purpose for using marijuana in a motion to dismiss, and the charges shall be dismissed following an evidentiary hearing where the defendant shows the elements listed in subsection (a) of this section.

(c) Any interest in or right to property that was possessed, owned, or used in connection with a person's use of marijuana for medical purposes shall not be forfeited if the person or the person's primary caregiver demonstrates the person's medical purpose for using marijuana pursuant to this section.

Chapter 94E Section 8. Enforcement.

Section 8. (a) If the department fails to adopt regulations to implement this chapter within one hundred twenty (120) days of the effective date of this act, a qualifying patient may commence an action in a court of competent jurisdiction to compel the department to perform the actions mandated pursuant to the provisions of this chapter.

(b) If the department fails to issue a valid registry identification card in response to a valid application submitted pursuant to this chapter within thirty-five (35) days of its submission, the registry identification card shall be deemed granted and a copy of the registry identification application shall be deemed valid registry identification card.

Chapter 94E Section 9. Severability. –

Section 9. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.