

**HOUSE . . . . . No.**

**The Commonwealth of Massachusetts**

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PRESENTED BY:

**Frank I. Smizik**

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*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

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

**The Commonwealth of Massachusetts**

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**In the Year Two Thousand and Nine**

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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:*

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

3

4 Chapter 94E Section 1. Short Title; Purpose.

5

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

10

11 Chapter 94E Section 2. Definitions.

12

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

15

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

17

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

21

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

26

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

29

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

31

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

33

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

37

38 (e) “Practitioner” means a person who is licensed with authority to prescribe drugs pursuant to Chapter  
39 94C Section 18.

40

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

44

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

47

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

50

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

57

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

59

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

66

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

69

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

78

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

81

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

83

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

88

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

92

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

99

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

103

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

108

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

113

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

118

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

123

124 Chapter 94E Section 4. Department to issue regulations.

125

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

135

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

138

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

146

147 Chapter 94E Section 5. Administration of regulations.

148

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

151

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

153

154 (2) Application or renewal fee;

155

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

158

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

160

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

162

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

165

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

169

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

171

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

173

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

175

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

178

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

185

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

189

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

193

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

195

196 (2) A random registry identification number; and

197

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

199

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

201

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

203



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

207

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

213

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

218

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

223

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

228

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

233

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

236

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

241

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

245

246 (2) The department shall maintain a confidential list of the persons to whom the department has issued  
247 registry identification cards. Individual names and other identifying information on the list shall be  
248 confidential, exempt from the provisions of Massachusetts Public Records Law, M.G.L. Chapter 66,  
249 section 10, and not subject to disclosure, except to authorized employees of the department as  
250 necessary to perform official duties of the department.

251

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

254

255 (j) It shall be a crime, punishable by up to one hundred eighty (180) days in jail and a one thousand  
256 dollar (\$1,000) fine, for any person, including an employee or official of the department or another state  
257 agency or local government, to breach the confidentiality of information obtained pursuant to this  
258 chapter. Notwithstanding this provision, the department employees may notify law enforcement about  
259 falsified or fraudulent information submitted to the department.

260

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

264

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

269

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

272

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

275

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

277

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

280

281 Chapter 94E Section 6. Scope of chapter.

282

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

284

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

287

288 (2) The smoking of marijuana:

289

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

291

292 (ii) On any school grounds;

293

294 (iii) In any correctional facility;

295

296 (iv) In any public place; or

297

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

299

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

303

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

305

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

308

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

310

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

315

316 Chapter 94E Section 7. Affirmative defense and dismissal.

317

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

321

322 (1) The qualifying patient's practitioner has stated that, in the practitioner's professional opinion, after  
323 having completed a full assessment of the person's medical history and current medical condition made  
324 in the course of a bona fide practitioner patient relationship, the potential benefits of using marijuana  
325 for medical purposes would likely outweigh the health risks for the qualifying patient; and

326

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

331

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

335

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

339

340 Chapter 94E Section 8. Enforcement.

341

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

346

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

351

352 Chapter 94E Section 9. Severability. –

353

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