

LC00988/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2005

A N A C T

**RELATING TO FOOD AND DRUGS -- THE RHODE ISLAND MEDICAL MARIJUANA
ACT**

Introduced By: Senators Perry, Polisen, Damiani, McCaffrey, and Sosnowski

Date Introduced: February 17, 2005

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 21 of the General Laws entitled "Food And Drugs" is hereby amended
2 by adding thereto the following chapter:

3 CHAPTER 28.6

4 THE EDWARD O. HAWKINS MEDICAL MARIJUANA ACT

5 **21-28.6-1. Short title.** – This chapter shall be known and may be cited as “The Edward
6 O. Hawkins Medical Marijuana Act.”

7 **21-28.6-2. Legislative findings.** – The general assembly finds and declares that:

8 (1) Modern medical research has discovered beneficial uses for marijuana in treating or
9 alleviating pain, nausea and other symptoms associated with certain debilitating medical
10 conditions, as found by the National Academy of Sciences’ Institute of Medicine in March 1999.

11 (2) According to the U.S. Sentencing Commission and the Federal Bureau of
12 Investigation, ninety-nine (99) out of every one hundred (100) marijuana arrests in the United
13 States are made under state law, rather than under federal law. Consequently, changing state law
14 will have the practical effect of protecting from arrest the vast majority of seriously ill people
15 who have a medical need to use marijuana.

16 (3) Although federal law currently prohibits any use of marijuana, the laws of Alaska,
17 California, Colorado, Hawaii, Maine, Montana, Nevada, Oregon, Vermont, and Washington
18 permit the medical use and cultivation of marijuana. Rhode Island joins in this effort for the

1 health and welfare of its citizens.

2 (4) States are not required to enforce federal law or prosecute people for engaging in
3 activities prohibited by federal law. Therefore, compliance with this chapter does not put the state
4 of Rhode Island in violation of federal law.

5 (5) State law should make a distinction between the medical and nonmedical use of
6 marijuana. Hence, the purpose of this chapter is to protect patients with debilitating medical
7 conditions, and their physicians and primary caregivers, from arrest and prosecution, criminal and
8 other penalties, and property forfeiture if such patients engage in the medical use of marijuana.

9 (6) The general assembly enacts this chapter pursuant to its police power to enact
10 legislation for the protection of the health of its citizens, as reserved to the state in the Tenth
11 Amendment of the United States Constitution.

12 **21-28.6-3. Definitions.** – The purposes of this chapter:

13 (1) “Debilating medical condition” means:

14 (i) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired
15 immune deficiency syndrome, Hepatitis C, or the treatment of these conditions;

16 (ii) A chronic or debilitating disease or medical condition or its treatment that produces
17 one or more of the following: cachexia or wasting syndrome; severe, debilitating, chronic pain;
18 severe nausea; seizures, including but not limited to, those characteristic of epilepsy; or severe
19 and persistent muscle spasms, including but not limited to, those characteristic of multiple
20 sclerosis or Crohn’s disease; or agitation of Alzheimer's Disease; or

21 (iii) Any other medical condition or its treatment approved by the department, as
22 provided for in section 21-28.6-5.

23 (2) “Department” means the Rhode Island department of health or its successor agency.

24 (3) “Marijuana” has the meaning given that term in section 21-28-1.02(26).

25 (4) “Medical use” means the acquisition, possession, cultivation, manufacture, use,
26 delivery, transfer, or transportation of marijuana or paraphernalia relating to the consumption of
27 marijuana to alleviate a registered qualifying patient’s debilitating medical condition or
28 symptoms associated with the medical condition.

29 (5) “Practitioner” means a person who is licensed with authority to prescribe drugs
30 pursuant to chapter 37 of title 5.

31 (6) “Primary caregiver” means a person who is at least twenty-one (21) years old, and
32 who has agreed to assist with a person's medical use of marijuana. A primary caregiver may
33 assist no more than five (5) qualifying patients with their medical use of marijuana.

34 (7) “Qualifying patient” means a person who has been diagnosed by a physician as

1 having a debilitating medical condition.

2 (8) “Registry identification card” means a document issued by the department that
3 identifies a person as a qualifying patient or primary caregiver.

4 (9) “Usable marijuana” means the dried leaves and flowers of the marijuana plant, and
5 any mixture or preparation thereof, but does not include the seeds, stalks, and roots of the plant.

6 (10) “Written certification” means the qualifying patient’s medical records, or a statement
7 signed by a practitioner, stating that in the practitioner’s professional opinion the potential
8 benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying
9 patient. A written certification shall be made only in the course of a bona fide practitioner-patient
10 relationship after the practitioner has completed a full assessment of the qualifying patient’s
11 medical history. The written certification shall specify the qualifying patient’s debilitating
12 medical condition or conditions.

13 **21-28.6-4. Protections for the medical use of marijuana.** – (a) A qualifying patient
14 who has in his or her possession a registry identification card shall not be subject to arrest,
15 prosecution, or penalty in any manner, or denied any right or privilege, including but not limited
16 to, civil penalty or disciplinary action by a business or occupational or professional licensing
17 board or bureau, for the medical use of marijuana; provided, that the qualifying patient possesses
18 an amount of marijuana that does not exceed twelve (12) marijuana plants and two and one-half
19 (2.5) ounces of usable marijuana.

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

23 (c) A primary caregiver, who has in his or her possession, a registry identification card
24 shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or
25 privilege, including but not limited to, civil penalty or disciplinary action by a business or
26 occupational or professional licensing board or bureau, for assisting a qualifying patient to whom
27 he or she is connected through the department’s registration process with the medical use of
28 marijuana; provided, that the primary caregiver possesses an amount of marijuana which does not
29 exceed twelve (12) marijuana plants and two and one-half (2.5) ounces of usable marijuana for
30 each qualifying patient to whom he or she is connected through the department’s registration
31 process.

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

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

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

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

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

14 (g) Any interest in or right to property that is possessed, owned, or used in connection
15 with the medical use of marijuana, or acts incidental to such use, shall not be forfeited.

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

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

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

29 **21-28.6-5. Department to issue regulations . – (a) Not later than ninety (90) days after**
30 the effective date of this chapter, the department shall promulgate regulations governing the
31 manner in which it shall consider petitions from the public to add debilitating medical conditions
32 to those included in this chapter. In considering such petitions, the department shall include
33 public notice of, and an opportunity to comment in a public hearing, upon such petitions. The
34 department shall, after hearing, approve or deny such petitions within one hundred eighty (180)

1 days of submission. The approval or denial of such a petition shall be considered a final
2 department action, subject to judicial review. Jurisdiction and venue for judicial review are
3 vested in the superior court. The denial of a petition shall not disqualify qualifying patients with
4 that condition, if they have a debilitating medical condition. The denial of a petition shall not
5 prevent a person with the denied condition from raising an affirmative defense.

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

14 **21-28.6-6. Administration of regulations.** – (a) The department shall issue registry
15 identification cards to qualifying patients who submit the following, in accordance with the
16 department's regulations:

- 17 (1) written certification as defined in section 23-28.6-3(10) of this chapter;
- 18 (2) application or renewal fee;
- 19 (3) name, address, and date of birth of the qualifying patient; provided, however, that if
20 the patient is homeless, no address is required;
- 21 (4) name, address, and telephone number of the qualifying patient's practitioner; and
- 22 (5) name, address, and date of birth of each primary caregiver of the qualifying patient., if
23 any.

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

- 26 (1) The qualifying patient's practitioner has explained the potential risks and benefits of
27 the medical use of marijuana to the qualifying patient and to a parent, guardian or person having
28 legal custody of the qualifying patient; and
- 29 (2) A parent, guardian or person having legal custody consents in writing to:
 - 30 (i) Allow the qualifying patient's medical use of marijuana;
 - 31 (ii) Serve as one of the qualifying patient's primary caregivers; and
 - 32 (iii) Control the acquisition of the marijuana, the dosage, and the frequency of the
33 medical use of marijuana by the qualifying patient.

34 (c) The department shall verify the information contained in an application or renewal

1 submitted pursuant to this section, and shall approve or deny an application or renewal within
2 thirty (30) days of receiving it. The department may deny an application or renewal only if the
3 applicant did not provide the information required pursuant to this section, or if the department
4 determines that the information provided was falsified. Rejection of an application or renewal is
5 considered a final department action, subject to judicial review. Jurisdiction and venue for
6 judicial review are vested in the superior court.

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

10 (e) The department shall issue registry identification cards within five (5) days of
11 approving an application or renewal, which shall expire one year after the date of issuance.

12 Registry identification cards shall contain:

13 (1) Name, address, and date of birth of the qualifying patient;

14 (2) Name, address, and date of birth of each primary caregiver of the qualifying patient.,

15 if any;

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

17 (4) A random registry identification number; and

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

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

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

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

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

33 (4) When a qualifying patient or primary caregiver notifies the department of any
34 changes listed in this subsection, the department shall issue the registered qualifying patient and

1 each primary caregiver a new registry identification card within ten (10) days of receiving the
2 updated information and a ten dollar (\$10.00) fee.

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

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

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

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

18 (2) The department shall maintain a confidential list of the persons to whom the
19 department has issued registry identification cards. Individual names and other identifying
20 information on the list shall be confidential, exempt from the provisions of Rhode Island Access
21 to Public Information, chapter 2 of title 38, and not subject to disclosure, except to authorized
22 employees of the department as necessary to perform official duties of the department.

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

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

30 (k) On or before January 1, 2007, the department shall report to the House Committee on
31 Health, Education and Welfare and to the Senate Committee on the Judiciary on the use of
32 marijuana for symptom relief. The report shall provide:

33 (i) The number of applications for registry identification cards, the number of qualifying
34 patients and primary caregivers approved, the nature of the debilitating medical conditions of the

1 qualifying patients, the number of registry identification cards revoked, and the number of
2 practitioners providing written certification for qualifying patients;

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

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

7 (iv) Statistics regarding the number of prosecutions against physicians for violations of
8 this act; and

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

12 **21-28.6-7. Scope of chapter.** – (a) This chapter shall not permit:

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

15 (2) The smoking of marijuana:

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

17 (ii) On any school grounds;

18 (iii) In any correctional facility;

19 (iv) In any public place; or

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

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

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

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

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

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

33 **21-28.6-8. Affirmative defense and dismissal.** – (a) Except as provided in section 21-
34 28.6-7, a person and a person's primary caregiver, if any, may assert the medical purpose for

1 using marijuana as a defense to any prosecution involving marijuana, and such defense shall be
2 presumed valid where the evidence shows that:

3 (1) The person's medical records indicate, or a practitioner has stated that, in the
4 practitioner's professional opinion, after having completed a full assessment of the person's
5 medical history and current medical condition made in the course of a bona fide practitioner-
6 patient relationship, the potential benefits of using marijuana for medical purposes would likely
7 outweigh the health risks for the person; and

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

12 (b) A person may assert the medical purpose for using marijuana in a motion to dismiss,
13 and the charges shall be dismissed following an evidentiary hearing where the defendant shows
14 the elements listed in section 21-28.6-8(a).

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

19 **21-28.6-9. Enforcement.** – (a) If the department fails to adopt regulations to implement
20 this chapter within one hundred twenty (120) days of the effective date of this act, a qualifying
21 patient may commence an action in a court of competent jurisdiction to compel the department to
22 perform the actions mandated pursuant to the provisions of this chapter.

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

27 **21-28.6-10. Severability.** – Any section of this act being held invalid as to any person or
28 circumstances shall not affect the application of any other section of this act that can be given full
29 effect without the invalid section or application.

30 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO FOOD AND DRUGS -- THE RHODE ISLAND MEDICAL MARIJUANA
ACT

1 This act would protect patients with debilitating medical conditions, and their physicians
2 and primary caregivers, from arrest and prosecution, criminal and other penalties, and property
3 forfeiture if such patients engage in the medical use of marijuana.

4 This act would take effect upon passage.

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Presented by