

=====
LC00988
=====

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 RHODE ISLAND MEDICAL MARIJUANA ACT

5 **21-28.6-1. Short title.** – This chapter shall be known and may be cited as “The Rhode
6 Island 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 or chronic pain; severe
18 nausea; seizures, including but not limited to, those characteristic of epilepsy; or severe and
19 persistent muscle spasms, including but not limited to, those characteristic of multiple sclerosis
20 and Crohn’s disease; and agitation of Alzheimer's Disease; and

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 eighteen (18) years old, and who
32 has agreed to assist with a person's medical use of marijuana. A primary caregiver may assist no
33 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, for the medical use of marijuana; provided, that the qualifying patient possesses an amount
18 of marijuana that does not exceed twelve (12) marijuana plants and two and one-half (2.5) ounces
19 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
30 through the department’s registration process.

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

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

34 (2) Is in possession of an amount of marijuana that does not exceed the amount permitted

1 under this chapter. Such presumption may be rebutted by evidence that conduct related to
2 marijuana was not for the purpose of alleviating the qualifying patient’s debilitating medical
3 condition or symptoms associated with the medical condition.

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

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

13 (g) Any interest in or right to property that is possessed, owned, or used in connection
14 with the medical use of marijuana, or acts incidental to such use, shall not be forfeited. A law
15 enforcement agency that seizes and does not return usable marijuana to a registered qualifying
16 patient or a registered primary caregiver shall be liable to the cardholder for the fair market value
17 of the marijuana.

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

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

26 **21-28.6-5. Department to issue regulations.** – (a) Not later than ninety (90) days after
27 the effective date of this chapter, the department shall promulgate regulations governing the
28 manner in which it shall consider petitions from the public to add debilitating medical conditions
29 to those included in this chapter. In considering such petitions, the department shall include
30 public notice of, and an opportunity to comment in a public hearing, upon such petitions. The
31 department shall, after hearing, approve or deny such petitions within one hundred eighty (180)
32 days of submission. The approval or denial of such a petition shall be considered a final
33 department action, subject to judicial review. Jurisdiction and venue for judicial review are
34 vested in the superior court. The denial of a petition shall not disqualify qualifying patients with

1 that condition, if they have a debilitating medical condition. The denial of a petition shall not
2 prevent a person with the denied condition from raising an affirmative defense.

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

11 **21-28.6-6. Administration of regulations.** – (a) The department shall issue registry
12 identification cards to qualifying patients who submit the following, in accordance with the
13 department's regulations:

14 (1) written certification that the person is a qualifying patient;

15 (2) application or renewal fee;

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

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

19 (5) name, address, and date of birth of the qualifying patient's primary caregiver, if any.

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

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

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

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

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

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

30 (c) The department shall verify the information contained in an application or renewal
31 submitted pursuant to this section, and shall approve or deny an application or renewal within
32 fifteen (15) days of receiving it. The department may deny an application or renewal only if the
33 applicant did not provide the information required pursuant to this section, or if the department
34 determines that the information provided was falsified. Rejection of an application or renewal is

1 considered a final department action, subject to judicial review. Jurisdiction and venue for
2 judicial review are vested in the superior court.

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

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

8 Registry identification cards shall contain:

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

10 (2) Name, address, and date of birth of the qualifying patient's primary caregiver, if any;

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

12 (4) A random registry identification number; and

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

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

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

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

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

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

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

1 notification by the department.

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

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

10 (h) Applications and supporting information submitted by qualifying patients, including
11 information regarding their primary caregivers and practitioners, are confidential. The
12 department shall maintain a confidential list of the persons to whom the department has issued
13 registry identification cards. Individual names and other identifying information on the list shall
14 be confidential, exempt from the provisions of Rhode Island Access to Public Information,
15 chapter 2 of title 38, and not subject to disclosure, except to authorized employees of the
16 department as necessary to perform official duties of the department.

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

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

24 (k) The department shall report annually to the legislature on the number of applications
25 for registry identification cards, the number of qualifying patients and primary caregivers
26 approved, the nature of the debilitating medical conditions of the qualifying patients, the number
27 of registry identification cards revoked, and the number of practitioners providing written
28 certification for qualifying patients. The department shall not provide any identifying information
29 of qualifying patients, primary caregivers, or practitioners.

30 (l) Any state or local law enforcement official who knowingly cooperates with federal
31 law enforcement agents to arrest, investigate, prosecute, or search a registered qualifying patient
32 or a registered primary caregiver or his or her property for acting in compliance with this chapter
33 shall have his or her employment suspended or terminated.

34 **21-28.6-7. Scope of chapter. – (a) This chapter shall not permit:**

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

3 (2) The smoking of marijuana:

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

5 (ii) On any school grounds;

6 (iii) In any correctional facility; or

7 (iv) In any public place; and

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

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

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

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

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

20 **21-28.6-8. Affirmative defense and dismissal.** – (a) Except as provided in section 21-
21 28.6-7, a person and a person’s primary caregiver, if any, may assert the medical purpose for
22 using marijuana as a defense to any prosecution involving marijuana, and such defense shall be
23 presumed valid where the evidence shows that:

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

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

33 (b) A person may assert the medical purpose for using marijuana in a motion to dismiss,
34 and the charges shall be dismissed following an evidentiary hearing where the defendant shows

1 the elements listed in section 21-28.6-8.

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

6 **21-28.6-9. Enforcement.** – (a) If the department fails to adopt regulations to implement
7 this chapter within one hundred twenty (120) days of the effective date of this act, a qualifying
8 patient may commence an action in a court of competent jurisdiction to compel the department to
9 perform the actions mandated pursuant to the provisions of this chapter.

10 (b) If the department fails to issue a valid registry identification card in response to a
11 valid application submitted pursuant to this chapter within twenty (20) days of its submission, the
12 registry identification card shall be deemed granted and a copy of the registry identification
13 application shall be deemed valid registry identification card.

14 **21-28.6-10. Repealer.** – All laws and parts of laws in Rhode Island that are in conflict
15 with this chapter are hereby repealed.

16 **21-28.6-11. Severability.** – Any section of this act being held invalid as to any person or
17 circumstances shall not affect the application of any other section of this act that can be given full
18 effect without the invalid section or application.

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

=====
LC00988
=====

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.

=====
LC00988
=====