SENATE DOCKET, NO. 1466 FILED ON: 1/21/2011

# SENATE . . . . . No. 818

## The Commonwealth of Massachusetts

PRESENTED BY:

***Thomas M. McGee***

*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 adoption of the accompanying bill:

An Act relative to the arrest and prosecution for the possession of marihuana for medical purposes..

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|---|---|
| *Thomas M. McGee* | *Third Essex and Middlesex* |
| *Steven A. Tolman* | |
| *Cynthia S. Creem* | |
| *Patricia D. Jehlen* | |

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# SENATE . . . . . No. 818

By Mr. McGee, a petition (accompanied by bill, Senate, No. 818) of Thomas M. McGee, Steven A. Tolman, Cynthia S. Creem and Patricia D. Jehlen for legislation relative to the arrest and prosecution for the possession of marijuana for medical purposes. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *1739* OF 2009-2010.]

## The Commonwealth of Massachusetts

**In the Year Two Thousand Eleven**

An Act relative to the arrest and prosecution for the possession of marihuana for medical purposes..

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

SECTION 1. Section 34 of Chapter 94C of the General Laws as appearing in the 1998 Official Edition, is hereby amended by striking the fourth paragraph thereof and inserting the following:— It shall be a prima facie defense to a charge of possession, manufacturing or trafficking of marihuana under this section if the defendant is a patient, caregiver or physician under the definitions and pursuant to the conditions set out in chapter ninety-four D. Police officers shall have the right to exercise judgment in determining whether or not to arrest an individual if there is evidence that marihuana possession, manufacturing or trafficking falls under the exception set out in this section or in chapter ninety-four D.

SECTION 2. Section 1 of Chapter 94D of the General Laws as appearing in the 1998 Official Edition, is hereby amended by including the following:— "Debilitating Medical

11 Condition", means a chronic or debilitating disease, medical condition or treatment that produces
12 one or more of the following: cachexia or wasting syndrome, chronic or severe pain, severe
13 nausea, seizures, severe and persistent muscle spasms, or any other condition or its treatment
14 approved by a patient's doctor in the exercise of his professional judgment.

15 "Medical use", means the acquisition, possession, cultivation, manufacture, use, delivery,
16 transfer, or transportation of marihuana or paraphernalia relating to the consumption of
17 marihuana to alleviate the symptoms or effects of a qualifying patient's debilitating medical
18 condition.

19 "Personal medical use", is an amount of marihuana that is not more than is
20 reasonably necessary to ensure the uninterrupted availability of marihuana, for the purpose of
21 alleviating the symptoms or effects of a patient's medical condition for which he or she has been
22 recommended to use marihuana, and shall be presumed to be not more than four ounces of dried,
23 useable, marihuana, and no more than ten plants, four of which can be mature (flowering).

24 "Primary caregiver", means a person who is at least eighteen (18) years old, who has

25 never been convicted of a felony drug offense, and who has agreed not to provide
26 marihuana to any person other than qualifying patients and who is given a written designation of
27 their caregiver status. A qualifying patient may have only one primary caregiver at any one time.

28 "Qualifying patient", means a person who has been diagnosed by a licensed physician as
29 having a debilitating medical condition.

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

32 “Written recommendation” means the qualifying patient’s medical records, or a statement
33 signed by a physician, stating that in the physician’s professional opinion, after having
34 completed a full assessment of the qualifying patient’s medical history and current medical
35 condition made in the course of a bona fide physician-patient relationship, the qualifying patient
36 has a debilitating medical condition and the potential benefits of the medical use of marihuana
37 would likely outweigh the health risks for the qualifying patient.

38 SECTION 3. Said chapter 94D is amended by adding the following new
39 section:—

40 Chapter 94D: Section 4 Private Recommendation of Marihuana

41 Section 4

42 A. Protections for the medical use of marihuana.

43 (i) A qualifying patient who has in his possession a written recommendation shall not
44 be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege,
45 including civil penalty or disciplinary action by a professional licensing board, for the medical
46 use of marihuana; provided, that the qualifying patient possesses personal medical use amounts.

47 (ii) Subsection (i) of this section shall not apply to a qualifying patient under the age of
48 eighteen (18) years, unless:

49 (a) The qualifying patient’s physician has explained the potential risks and benefits of
50 the medical use of marihuana to the qualifying patient and to a parent, guardian, or person having
51 legal custody of the qualifying patient; and

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

53 (1) allow the qualifying patient's medical use of marihuana;

54 (2) serve as the qualifying patient's primary caregiver; and

55 (3) control the acquisition of the marihuana, the dosage, and the frequency of the
56 medical use of marihuana by the qualifying patient.

57 (iii) A primary caregiver who has in his or her possession a written recommendation
58 and a designation of caregiver statement shall not be subject to arrest, prosecution, or penalty in
59 any manner, or denied any right or privilege, including civil penalty or disciplinary action by a
60 professional licensing board, for assisting the qualifying patient to whom he is connected;
61 provided, that the primary caregiver possesses personal medical use amounts.

62 (iv) There shall exist a presumption that a qualifying patient or primary caregiver is
63 engaged in the medical use of marihuana if the qualifying patient or primary caregiver:

64 (a) is in possession of a written recommendation; and

65 (b) is in possession of personal medical use amounts. Such presumption may be
66 rebutted by evidence that conduct related to marihuana was not for the purpose of alleviating the
67 symptoms or effects of a qualifying patient's debilitating medical condition.

68 (v) A physician shall not be subject to arrest, prosecution, or penalty in any manner, or
69 denied any right or privilege, including civil penalty or disciplinary action by the Massachusetts
70 Board of Medical Licensure and Discipline, for providing written recommendation for the
71 medical use of marihuana to qualifying patients.

72 (vi) Any interest in or right to property that is possessed, owned, or used in connection
73 with the medical use of marihuana, or acts incidental to such use, shall not be forfeited.

74 (vii) No person shall be subject to arrest or prosecution for "constructive possession,"
75 "conspiracy," or any other offense for simply being in the presence or vicinity of the medical use
76 of marihuana as permitted under this chapter.

77 (viii) A written recommendation, a registry identification card, or equivalent, issued by
78 another state government to permit the medical use of marihuana by a qualifying patient, or to
79 permit a person to assist with a qualifying patient's medical use of marihuana, shall have the
80 same force of effect as a registry identification card issued by the department.

81 B. This chapter shall not permit

82 (i) any person to operate, navigate, or be in actual physical control of any motor
83 vehicle, aircraft, or motorboat while under the influence of marihuana; and

84 (ii) the smoking of marihuana:

85 (a) in a school bus or other form of public transportation;

86 (b) on any school grounds;

87 (c) in any correctional facility; or

88 (d) at any public park, public beach, public recreation center, or youth center.

89 C. Nothing in this chapter shall be construed to require:

90 (i) a government medical assistance program or private health insurer to reimburse a
91 person for costs associated with the medical use of marihuana; or

92 (ii) an employer to accommodate the medical use of marihuana in any workplace.

93 D. Notwithstanding any law to the contrary, fraudulent representation to a law
94 enforcement official of any fact or circumstance relating to the medical use of marihuana to
95 avoid arrest or prosecution shall be punishable by a fine of five hundred dollars ($500) which
96 shall be in addition to any other penalties that may apply for the non-medical use of marihuana.

97 E. Affirmative defense.

98 (i) A person and a person's primary caregiver, if any, may assert the medical use of
99 marihuana as a defense to any prosecution involving marihuana, and such defense shall be
100 presumed valid where the evidence shows that:

101 (a) the person's medical records indicate, or a physician has stated that, in the
102 physician's professional opinion, after having completed a full assessment of the person's
103 medical history and current medical condition made in the course of a bona fide physician-
104 patient relationship, the potential benefits of the medical use of marihuana would likely outweigh
105 the health risks for the person; and

106 (b) the person and the person's primary caregiver, if any, were collectively in
107 possession of a quantity of marihuana in excess of what is defined as personal medical use
108 amounts in this section.

109 F. Repealer.

110 All laws and parts of laws in Massachusetts that are in conflict with this chapter are
111 hereby repealed.

112 G. Severability.

113 Any part of this section of this chapter being held invalid as to any person or
114 circumstances shall not affect the application of any other section of this chapter that can be
115 given full effect without the invalid section or application.