

HOUSE No. 1612

The Commonwealth of Massachusetts

PRESENTED BY:

John W. Scibak

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 humanitarian use of marijuana.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>John W. Scibak</i>	<i>2nd Hampshire</i>	
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>	

HOUSE No. 1612

By Mr. Scibak of South Hadley, a petition (accompanied by bill, House, No. 1612) of John W. Scibak and Carl M. Sciortino, Jr. relative to the medical marijuana law. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to the humanitarian use of marijuana.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to establish clear guidelines on the humanitarian uses of marijuana,, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the 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 SECTION 1. Chapter 94G of the Massachusetts General Laws is hereby amended by
2 striking it in its entirety and inserting the following in place thereof:

3 “Section 1. Purpose and Intent.

4 The citizens of Massachusetts intend that there should be no punishment under state law
5 for qualifying patients, physicians and health care professionals, personal caregivers for patients,
6 laboratory agents, or medical marijuana treatment center agents for the medical use of marijuana,
7 as defined herein.

8 Section 2. Definitions.

9 As used in this Law, the following words shall, unless the context clearly requires
10 otherwise, have the following meanings:

11 (A) "Card holder" shall mean a qualifying patient, a personal caregiver, or a principal
12 officer, board member, employee, volunteer, or agent of a medical marijuana treatment center or
13 medical marijuana testing laboratory who has been issued and possesses a valid registry
14 identification card.

15 (B) "Debilitating medical condition" shall mean 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, Parkinson's disease, Multiple Sclerosis, post-traumatic stress disorder, 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; or

(3) Any other medical condition or its treatment approved by the Department of Public Health, as provided for in Chapter 94G Section 8(B).

(C) "Department" shall mean the Department of Public Health of the Commonwealth of Massachusetts.

(D) "Dispensary agent" shall mean an employee, staff volunteer, officer, or board member of a non-profit medical marijuana treatment center, who shall be at least twenty-one (21) years of age and who holds a valid, state-issued registration card and any licenses required by the Department.

(E) "Division" shall mean the Medical Marijuana Enforcement Division of the Department of Public Health of the Commonwealth of Massachusetts.

(F) "Enclosed, locked facility" shall mean a closet, room, greenhouse, or other area equipped with locks or other security devices, accessible only to dispensary agents, patients, or personal caregivers.

(G) "Laboratory agent" shall mean an employee, officer, or board member of an independent, third-party laboratory registered with the Department of Public Health and licensed by the Commonwealth for the testing of medical marijuana, who shall be at least twenty-one (21) years of age and who holds a valid, state-issued registration card and any licenses required by the Department.

(H) "Marijuana," has the meaning given "marihuana" in Chapter 94C of the General Laws.

(I) "Medical marijuana testing laboratory" shall mean an independent, third-party laboratory registered with the Department of Public Health and licensed by the Commonwealth for the testing of medical marijuana, including but not limited to THC content, pesticides, and microorganisms.

(J) "Medical marijuana treatment center" shall mean a not-for-profit entity, as defined by Massachusetts law only, registered pursuant to Chapter 94G of the General Laws, that acquires,

cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers.

(K) "Medical use of marijuana" shall mean the acquisition, cultivation, possession, processing, (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfer, transportation, sale, distribution, dispensing, or administration of marijuana, for the benefit of qualifying patients in the treatment of debilitating medical conditions, or the symptoms thereof.

(L) "Personal caregiver" shall mean a person who is at least twenty-one (21) years old, who has not had a felony conviction and who has agreed to assist with a qualifying patient's medical use of marijuana. Personal caregivers are prohibited from consuming marijuana obtained for the personal, medical use of the qualifying patient. An employee of a hospice provider, nursing, or medical facility providing care to a qualifying patient may also serve as a personal caregiver.

(M) "Qualifying patient" shall mean a person who has been diagnosed by a licensed physician or licensed health care provider as having a debilitating medical condition.

(N) "Registration card" shall mean a personal identification card issued by the Department to a qualifying patient, personal caregiver, dispensary agent, or laboratory agent. The registration card shall verify that a physician or licensed health care provider has provided a written certification to the qualifying patient, that the patient has designated the individual as a personal caregiver, or that a medical marijuana treatment center has met the terms of Section 9 and Section 10 of this law. The registration card shall identify for the Department and law enforcement those individuals who are exempt from Massachusetts criminal and civil penalties for conduct pursuant to the medical use of marijuana.

(O) "Sixty-day supply" means that amount of marijuana that a qualifying patient would reasonably be expected to need over a period of sixty days for their personal medical use.

(P) "Written certification" means a document signed by a licensed physician or licensed health care provider, stating that in the provider's professional opinion, the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient. Such certification shall be made only through a bona fide provider-patient relationship and shall specify the qualifying patient's debilitating medical condition(s).

Section 3. Protection from State Prosecution and Penalties for Health Care Professionals

83 A physician, health care provider and other health care professionals under a physician's
84 or provider's supervision, shall not be penalized under Massachusetts law, in any manner, or
85 denied any right or privilege, for:

86 (a) Advising a qualifying patient about the risks and benefits of medical use of marijuana;
87 or

88 (b) Providing a qualifying patient with written certification, based upon an assessment of
89 the qualifying patient's medical condition, that the medical use of marijuana may benefit a
90 particular qualifying patient.

91 Section 4. Protection From State Prosecution and Penalties for Qualifying Patients and
92 Personal Caregivers

93 Any person meeting the requirements under this law shall not be penalized under
94 Massachusetts law in any manner, or denied any right or privilege, for such actions. A
95 qualifying patient or a personal caregiver shall not be subject to arrest or prosecution, or civil
96 penalty, for the medical use of marijuana provided that he or she:

97 (a) Possesses no more marijuana than is necessary for the patient's personal, medical use,
98 not exceeding the amount necessary for a sixty-day supply; and

99 (b) Presents his or her registration card to any law enforcement official who questions the
100 patient or personal caregiver regarding use of marijuana; and

101 (c) Is acting in accordance with all the provisions and requirements of Massachusetts
102 General Laws Chapter 94G and all regulations promulgated by the Department of Public Health
103 pursuant thereto.

104 Section 5. Protection From State Prosecution and Penalties for Dispensary Agents and
105 Laboratory Agents.

106 (A) A dispensary agent shall not be subject to arrest, prosecution, or civil penalty,
107 under Massachusetts law, for actions taken under the authority of a medical marijuana treatment
108 center, provided that he or she:

109 (a) Presents his or her registration card to any law enforcement official who questions the
110 agent concerning their marijuana related activities; and

111 (b) Is acting in accordance with all the provisions and requirements of Massachusetts
112 General Laws Chapter 94G and all regulations promulgated by the Department of Public Health
113 pursuant thereto.

(B) Laboratory agents shall not be subject to arrest, prosecution, or civil penalty, under Massachusetts law, for actions taken under the authority of a medical marijuana testing laboratory, provided that he or she:

(a) Presents his or her registration card to any law enforcement official who questions the laboratory agent concerning their marijuana related activities; and

(b) Is acting in accordance with all the provisions and requirements of Massachusetts General Laws Chapter 94G and all regulations promulgated by the Department of Public Health pursuant thereto.

Section 6. Protection Against Forfeiture and Arrest

(A) The lawful possession, cultivation, transfer, transport, distribution, or manufacture of medical marijuana as authorized by this law shall not result in the forfeiture or seizure of any property.

(B) No person shall be arrested or prosecuted for any criminal offense solely for being in the presence of medical marijuana or its use as authorized by this law.

(C) Except as provided in this paragraph, 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 shall have the same force and effect as a registry identification card issued by the department, and, for purposes of this Act, entitle a visiting qualifying patient to the same rights and protections as a registered qualifying patient residing in Massachusetts. This paragraph shall not apply if the person has been a resident of Massachusetts for 30 days or longer at the time they present their out-of-state identification card or its equivalent.

Section 7. Limitations of Law

(A) Nothing in this law allows the operation of a motor vehicle, boat, or aircraft while under the influence of marijuana.

(B) Nothing in this law requires any health insurance provider, or any government agency or authority, to reimburse any person for the expenses of the medical use of marijuana, however, no such health insurance provider may discriminate against a qualifying patient with respect to the use of medical marijuana or the patient's debilitating medical condition.

(C) Nothing in this law requires any health care professional to authorize the use of medical marijuana for a patient.

(D) Nothing in this law requires any accommodation of any on-site medical use of marijuana in any place of employment, school bus or on school grounds, in any youth center, in any correctional facility, or of smoking medical marijuana in any public place.

(E) Nothing in this law supersedes Massachusetts law prohibiting the possession, cultivation, transport, distribution, or sale of marijuana for nonmedical purposes.

(F) Nothing in this law requires the violation of federal law or purports to give immunity under federal law.

(G) Nothing in this law poses an obstacle to federal enforcement of federal law.

Section 8. Department to issue regulations.

(A) Department to define presumptive 60 day supply. Within 120 days of the effective date of this law, the department shall issue regulations defining the quantity of marijuana that could reasonably be presumed to be a sixty-day supply for qualifying patients, based on the best available evidence. This presumption as to quantity may be overcome with evidence of a particular qualifying patient's appropriate medical use.

(B) Department to establish procedure for adding debilitating medical conditions to those set forth in Chapter 94G. Within 120 days of the effective date of this law, the department shall issue regulations governing the manner in which it shall consider petitions from the public to add debilitating medical conditions to those set forth in Chapter 94G Section 2(B). 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.

Section 9. Registration and licensure of nonprofit medical marijuana treatment centers.

(A) Medical marijuana treatment centers shall register with the department.

(B) Not later than ninety days after approving a completed application for a nonprofit medical marijuana treatment center, the department shall register the nonprofit medical marijuana treatment center to acquire, process, possess, transfer, transport, sell, distribute, dispense, and administer marijuana for medical use, and shall also issue a cultivation registration if:

1. The prospective nonprofit medical marijuana treatment center has submitted:

(a) An application fee in an amount to be determined by the department consistent with Section 15 of this law.

(b) An application, including:

181 (i) The legal name and physical address of the treatment center and the physical address
182 of one additional location, if any, where marijuana will be cultivated.

183 (ii) The name, address and date of birth of each principal officer and board member.

184 (c) Operating procedures consistent with department rules for oversight, including
185 cultivation and storage of marijuana only in enclosed, locked facilities.

186 2. None of the principal officers or board members has served as a principal officer or
187 board member for a medical marijuana treatment center that has had its registration certificate
188 revoked.

189 (C) In the first year after the effective date, the Department shall issue registrations and
190 licenses for up to thirty-five non-profit medical marijuana treatment centers, provided that at
191 least one treatment center shall be located in each county, and not more than five shall be located
192 in any one county. In the event the Department determines in a future year that the number of
193 treatment centers is insufficient to meet patient needs, the Department shall have the power to
194 increase or modify the number of registered treatment centers.

195 (D) A medical marijuana treatment center registered and licensed under this section, and
196 its dispensary agents registered under Section 10, shall not be penalized or arrested under
197 Massachusetts law for acquiring, possessing, cultivating, processing, transferring, transporting,
198 selling, distributing, and dispensing marijuana, products containing marijuana, and related
199 supplies and educational materials, to qualifying patients or their personal caregivers, provided
200 that, prior to sale, distribution, and dispensing of marijuana and/or products containing
201 marijuana, that the medical marijuana treatment center has obtained independent, third-party
202 laboratory testing verification which demonstrates that the product meets the health and safety
203 standards established by the Department.

204 Section 10. Registration and licensure of medical marijuana treatment center dispensary
205 agents.

206 (A) A dispensary agent shall be registered with the Department before volunteering or
207 working at a medical marijuana treatment center.

208 (B) A treatment center must apply to the Department for a registration card for each
209 affiliated dispensary agent by submitting the name, address and date of birth of the agent.

210 (C) A registered nonprofit medical marijuana treatment center shall notify the department
211 within one business day if a dispensary agent ceases to be associated with the center, and the
212 agent's registration card shall be immediately revoked.

(D) No one shall be a dispensary agent who has been convicted of a felony drug offense. The Department is authorized to conduct criminal record checks with the Department of Criminal Justice Information to enforce this provision.

Section 11. Registration and licensure of medical marijuana testing laboratories.

(A) Medical marijuana testing laboratories shall register with the department.

(B) Not later than ninety days after approving a completed application for a medical marijuana testing laboratory, the department shall register the medical marijuana testing laboratory to acquire, process, possess, test, transfer and transport marijuana for the purposes of testing its suitability for medical use if:

1. The prospective medical marijuana testing laboratory has submitted:

(a) An application fee in an amount to be determined by the department consistent with Section 15 of this law.

(b) An application, including:

(i) The legal name and physical address of the medical marijuana testing laboratory.

(ii) The name, address and date of birth of each principal officer and board member.

(c) Operating procedures consistent with department rules for oversight, including handling and storage of marijuana only in enclosed, locked facilities.

2. None of the principal officers or board members has served as a principal officer or board member for a medical marijuana treatment center or medical marijuana testing laboratory that has had its registration certificate revoked.

(C) A medical marijuana testing laboratory registered and licensed under this section, and its laboratory agents registered under Section 12, shall not be penalized or arrested under Massachusetts law for acquiring, possessing, processing, testing, transferring or transporting marijuana, products containing marijuana, and related supplies and educational materials, to medical marijuana treatment centers.

Section 12. Registration and licensure of medical marijuana laboratory agents.

(A) A laboratory agent shall be registered with the Department before volunteering or working at a medical marijuana testing laboratory.

(B) A medical marijuana testing laboratory must apply to the Department for a registration card for each affiliated lab agent by submitting the name, address and date of birth of the agent.

(C) A registered medical marijuana testing laboratory shall notify the department within one business day if a laboratory agent ceases to be associated with the laboratory, and the agent's registration card shall be immediately revoked.

(D) No one shall be a laboratory agent who has been convicted of a felony drug offense. The Department is authorized to conduct criminal record checks with the Department of Criminal Justice Information to enforce this provision.

Section 13. Hardship Cultivation Registrations.

The Department shall issue a cultivation registration to a qualifying patient whose access to a medical treatment center is limited by verified financial hardship, a physical incapacity to access reasonable transportation, or the lack of a treatment center within a reasonable distance of the patient's residence. The Department may deny a registration based on the provision of false information by the applicant. Such registration shall allow the patient or the patient's personal caregiver to cultivate a limited number of plants, sufficient to maintain a 60-day supply of marijuana and shall require cultivation and storage only in an enclosed, locked facility.

The department shall issue regulations consistent with this section within 120 days of the effective date of this law. Until the department issues such final regulations, the written recommendation of a qualifying patient's physician or licensed health care provider shall constitute a limited cultivation registration.

Section 14. Medical marijuana registration cards for qualifying patients and designated personal caregivers.

(A) A qualifying patient may apply to the department for a medical marijuana registration card by submitting:

1. Written certification from a physician or licensed health care provider.

2. An application, including:

- (a) Name, address unless homeless, and date of birth.

- (b) Name, address and date of birth of the qualifying patient's personal caregiver, if any.

- (c) Payment of a non-refundable \$100 registration fee.

(B) The department shall verify the information contained in an application or renewal application submitted pursuant to this section, and shall approve or deny an application or renewal application 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 application is considered a final department action,

subject to judicial review. Jurisdiction and venue for judicial review are vested in the superior court.

(C) The department shall issue registry identification cards within five (5) days of approving an application or renewal, which shall expire twelve months after the date of issuance.

Section 15. Department implementation of Regulations and Fees.

Within 120 days of the effective date of this law, the department shall issue regulations for the implementation of Sections 9 through 14 of this Law. The department shall set application fees for non-profit medical marijuana treatment centers so as to defray the administrative costs of the medical marijuana program and thereby make this law revenue neutral. Until the approval of final regulations, written certification by a physician or licensed health care provider shall constitute a registration card for a qualifying patient. Until the approval of final regulations, a certified mail return receipt showing compliance with Section 14 (A) (2) (b) above by a qualifying patient, and a photocopy of the application, shall constitute a registration card for that patient's personal caregiver.

Section 16. Penalties for Fraudulent Acts.

(A) The department, after a hearing, may revoke any registration card issued under this law for a willful violation of this law. The standard of proof for revocation shall be a preponderance of the evidence. A revocation decision shall be reviewable in the Superior Court.

(B) The fraudulent use of a medical marijuana registration card or cultivation registration shall be a misdemeanor punishable by up to 6 months in the house of correction, or a fine up to \$500, but if such fraudulent use is for the distribution, sale, or trafficking of marijuana for non-medical use for profit it shall be a felony punishable by up to 5 years in state prison or up to two and one half years in the house of correction.

Section 17. Confidentiality

The department shall maintain a confidential list of the persons issued medical marijuana registration cards. Individual names and other identifying information on the list shall be exempt from the provisions of Massachusetts Public Records Law, M.G.L. Chapter 66, section 10, and not subject to disclosure, except to employees of the department in the course of their official duties and to Massachusetts law enforcement officials when verifying a card holder's registration.

Section 18. Effective Date.

This law shall be effective January 1, 2013.

Section 19. Severability.

310 The provisions of this law are severable and if any clause, sentence, paragraph or section
311 of this measure, or an application thereof, shall be adjudged by any court of competent
312 jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder
313 thereof but shall be confined in its operation to the clause, sentence, paragraph, section or
314 application adjudged invalid.

315 We, the Undersigned registered voters of the Commonwealth of Massachusetts, having
316 read the full text of the foregoing proposed law, do fully subscribe to its content and agree to be
317 among the original signers of the Petition.”