

2007 -- S 0791 AS AMENDED

LC01364

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2007

A N A C T

RELATING TO FOOD AND DRUGS -- THE EDWARD O. HAWKINS AND THOMAS C.
SLATER MEDICAL MARIJUANA ACT

Introduced By: Senators Perry, Miller, Sosnowski, C Levesque, and Pichardo

Date Introduced: March 01, 2007

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 21-28.6-1, 21-28.6-2, 21-28.6-3, 21-28.6-4, 21-28.6-5, 21-28.6-6,
2 21-28.6-7, 21-28.6-8, 21-28.6-9 and 21-28.6-10 of the General Laws in Chapter 21-28.6 entitled
3 "The Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act" are hereby amended to
4 read as follows:

5 **21-28.6-1. Short title.** ~~Repealed effective June 30, 2007.~~ -- This chapter shall be
6 known and may be cited as "The Edward O. Hawkins and Thomas C. Slater Medical Marijuana
7 Act."

8 **21-28.6-2. Legislative findings.** ~~Repealed effective June 30, 2007.~~ -- The general
9 assembly finds and declares that:

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

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

18 (3) Although federal law currently prohibits any use of marijuana, the laws of Alaska,

1 California, Colorado, Hawaii, Maine, Montana, Nevada, Oregon, Vermont, and Washington
2 permit the medical use and cultivation of marijuana. Rhode Island joins in this effort for the
3 health and welfare of its citizens.

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

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

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

14 **21-28.6-3. Definitions.** ~~[Repealed effective June 30, 2007.]~~ – The purposes of this
15 chapter:

16 (1) "Debilitating medical condition" means:

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

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

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

26 (2) "Department" means the Rhode Island department of health or its successor agency.

27 (3) "Marijuana" has the meaning given that term in section 21-28-1.02(26).

28 (4) "Medical use" means the acquisition, possession, cultivation, manufacture, use,
29 delivery, transfer, or transportation of marijuana or paraphernalia relating to the consumption of
30 marijuana to alleviate a registered qualifying patient's debilitating medical condition or symptoms
31 associated with the medical condition.

32 (5) "Practitioner" means a person who is licensed with authority to prescribe drugs
33 pursuant to chapter 37 of title 5.

34 (6) "Primary caregiver" means a person who is at least twenty-one (21) years old and

1 who has agreed to assist with a person's medical use of marijuana and who doesn't have a felony
2 drug conviction. A primary caregiver may assist no more than five (5) qualifying patients with
3 their medical use of marijuana.

4 (7) "Qualifying patient" means a person who has been diagnosed by a physician as
5 having a debilitating medical condition and is a resident of Rhode Island.

6 (8) "Registry identification card" means a document issued by the department that
7 identifies a person as a qualifying patient or primary caregiver.

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

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

17 **21-28.6-4. Protections for the medical use of marijuana. ~~Repealed effective June 30,~~**

18 **2007-1** -- (a) A qualifying patient who has in his or her possession a registry identification card
19 shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or
20 privilege, including but not limited to, civil penalty or disciplinary action by a business or
21 occupational or professional licensing board or bureau, for the medical use of marijuana;
22 provided, that the qualifying patient possesses an amount of marijuana that does not exceed
23 twelve (12) marijuana plants and two and one-half (2.5) ounces of usable marijuana. Said plants
24 shall be stored in an indoor facility.

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

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

1 each qualifying patient to whom he or she is connected through the department's registration
2 process.

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

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

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

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

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

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

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

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

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

34 [\(k\) Notwithstanding the provisions of subsection 21-28.6-3\(6\) or subsection 21-28.6-4\(c\),](#)

1 no primary caregiver shall possess an amount of marijuana in excess of twenty-four (24)
2 marijuana plants and five (5) ounces of usable marijuana for qualifying patients to whom he or
3 she is connected through the department's registration process.

4 **21-28.6-5. Department to issue regulations. [Repealed effective June 30, 2007.]** -- (a)

5 Not later than ninety (90) days after the effective date of this chapter, the department shall
6 promulgate regulations governing the manner in which it shall consider petitions from the public
7 to add debilitating medical conditions to those included in this chapter. In considering such
8 petitions, the department shall include public notice of, and an opportunity to comment in a
9 public hearing, upon such petitions. The department shall, after hearing, approve or deny such
10 petitions within one hundred eighty (180) days of submission. The approval or denial of such a
11 petition shall be considered a final department action, subject to judicial review. Jurisdiction and
12 venue for judicial review are vested in the superior court. The denial of a petition shall not
13 disqualify qualifying patients with that condition, if they have a debilitating medical condition.
14 The denial of a petition shall not prevent a person with the denied condition from raising an
15 affirmative defense.

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

24 **21-28.6-6. Administration of regulations. [Repealed effective June 30, 2007.]** -- (a)

25 The department shall issue registry identification cards to qualifying patients who submit the
26 following, in accordance with the department's regulations:

- 27 (1) Written certification as defined in section 23-28.6-3(10) of this chapter;
- 28 (2) Application or renewal fee;
- 29 (3) Name, address, and date of birth of the qualifying patient; provided, however, that if
30 the patient is homeless, no address is required;
- 31 (4) Name, address, and telephone number of the qualifying patient's practitioner; and
- 32 (5) Name, address, and date of birth of each primary caregiver of the qualifying patient,
33 if any.

34 (b) The department shall not issue a registry identification card to a qualifying patient

1 under the age of eighteen (18) unless:

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

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

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

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

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

10 (c) The department shall verify the information contained in an application or renewal
11 submitted pursuant to this section, and shall approve or deny an application or renewal within
12 ~~thirty (30)~~ fifteen (15) days of receiving it. The department may deny an application or renewal
13 only if the applicant did not provide the information required pursuant to this section, or if the
14 department determines that the information provided was falsified. Rejection of an application or
15 renewal is considered a final department action, subject to judicial review. Jurisdiction and venue
16 for judicial review are vested in the superior court.

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

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

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

24 ~~(2) Name, address, and date of birth of the each primary caregiver of the qualifying~~
25 ~~patient, if any;~~

26 ~~(3)~~ (1) The date of issuance and expiration date of the registry identification card;

27 ~~(4)~~ (2) A random registry identification number; and

28 ~~(5)~~ (3) A photograph; and

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

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

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

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

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

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

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

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

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

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

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

32 (2) The department shall maintain a confidential list of the persons to whom the
33 department has issued registry identification cards ~~and shall notify local and state law~~
34 ~~enforcement of the number of qualified patients in any given city or town.~~ Individual names and

1 other identifying information on the list shall be confidential, exempt from the provisions of
2 Rhode Island Access to Public Information, chapter 2 of title 38, and not subject to disclosure,
3 except to authorized employees of the department as necessary to perform official duties of the
4 department.

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

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

13 (k) On or before January 1, ~~2007~~ of each odd numbered year, the department shall report
14 to the House Committee on Health, Education and Welfare and to the Senate Committee on the
15 Judiciary on the use of marijuana for symptom relief. The report shall provide:

16 (1) The number of applications for registry identification cards, the number of qualifying
17 patients and primary caregivers approved, the nature of the debilitating medical conditions of the
18 qualifying patients, the number of registry identification cards revoked, and the number of
19 practitioners providing written certification for qualifying patients;

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

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

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

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

29 **21-28.6-7. Scope of chapter. [Repealed effective June 30, 2007.]** -- (a) This chapter
30 shall not permit:

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

33 (2) The smoking of marijuana:

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

1 (ii) On any school grounds;

2 (iii) In any correctional facility;

3 (iv) In any public place; or

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

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

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

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

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

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

17 **21-28.6-8. Affirmative defense and dismissal. [Repealed effective June 30, 2007.] --**

18 (a) Except as provided in section 21-28.6-7, a person and a person's primary caregiver, if any,
19 may assert the medical purpose for using marijuana as a defense to any prosecution involving
20 marijuana, and such defense shall be presumed valid where the evidence shows that:

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

26 (2) The person and the person's primary caregiver, if any, were collectively in possession
27 of a quantity of marijuana that was not more than what is permitted under this chapter to ensure
28 the uninterrupted availability of marijuana for the purpose of alleviating the person's medical
29 condition or symptoms associated with the medical condition.

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

33 (c) Any interest in or right to property that was possessed, owned, or used in connection
34 with a person's use of marijuana for medical purposes shall not be forfeited if the person or the

1 person's primary caregiver demonstrates the person's medical purpose for using marijuana
2 pursuant to this section.

3 **21-28.6-9. Enforcement.** ~~[Repealed effective June 30, 2007.]~~ -- (a) If the department
4 fails to adopt regulations to implement this chapter within one hundred twenty (120) days of the
5 effective date of this act, a qualifying patient may commence an action in a court of competent
6 jurisdiction to compel the department to perform the actions mandated pursuant to the provisions
7 of this chapter.

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

12 **21-28.6-10. Severability.** ~~[Repealed effective June 30, 2007.]~~ -- Any section of this act
13 being held invalid as to any person or circumstances shall not affect the application of any other
14 section of this act that can be given full effect without the invalid section or application.

15 SECTION 2. Section 21-28.6-11 of the General Laws in Chapter 21-28.6 entitled "The
16 Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act" is hereby repealed.

17 ~~**21-28.6-11. Sunset provision.** -- The provisions of this chapter shall be repealed~~
18 ~~effective June 30, 2007.~~

19 SECTION 3. This act shall take effect upon passage.

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LC01364
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO FOOD AND DRUGS -- THE EDWARD O. HAWKINS AND THOMAS C.
SLATER MEDICAL MARIJUANA ACT

- 1 This act would remove the repeal date for the medical marijuana act and would expand
- 2 the definition of primary caregiver.
- 3 This act would take effect upon passage.

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