



1 permit the medical use and cultivation of marijuana. Rhode Island joins in this effort for the  
2 health and welfare of its citizens.

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

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

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

13 **21-28.6-3. Definitions.** – The purposes of this chapter:

14 (1) “Debilating medical condition” means:

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

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

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

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

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

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

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

32 (6) “Primary caregiver” means a person who is at least twenty-one (21) years old and  
33 who has agreed to assist with a person's medical use of marijuana and who doesn't have a felony  
34 drug conviction. A primary caregiver may assist no more than five (5) qualifying patients with

1 their medical use of marijuana.

2 (7) “Qualifying patient” means a person who has been diagnosed by a physician as  
3 having a debilitating medical condition and is a resident of Rhode Island.

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

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

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

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

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

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

34 (d) There shall exist a presumption that a qualifying patient or primary caregiver is

1 engaged in the medical use of marijuana if the qualifying patient or primary caregiver:

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

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

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

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

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

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

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

31 **21-28.6-5. Department to issue regulations.** – (a) Not later than ninety (90) days after  
32 the effective date of this chapter, the department shall promulgate regulations governing the  
33 manner in which it shall consider petitions from the public to add debilitating medical conditions  
34 to those included in this chapter. In considering such petitions, the department shall include

1 public notice of, and an opportunity to comment in a public hearing, upon such petitions. The  
2 department shall, after hearing, approve or deny such petitions within one hundred eighty (180)  
3 days of submission. The approval or denial of such a petition shall be considered a final  
4 department action, subject to judicial review. Jurisdiction and venue for judicial review are  
5 vested in the superior court. The denial of a petition shall not disqualify qualifying patients with  
6 that condition, if they have a debilitating medical condition. The denial of a petition shall not  
7 prevent a person with the denied condition from raising an affirmative defense.

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

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

19 (1) written certification as defined in section 23-28.6-3(10) of this chapter;

20 (2) application or renewal fee;

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

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

24 (5) name, address, and date of birth of each primary caregiver of the qualifying patient, if  
25 any.

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

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

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

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

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

34 (iii) Control the acquisition of the marijuana, the dosage, and the frequency of the

1 medical use of marijuana by the qualifying patient.

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

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

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

14 Registry identification cards shall contain:

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

16 (2) Name, address, and date of birth of the each primary caregiver of the qualifying  
17 patient, if any;

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

19 (4) A random registry identification number; and

20 (5) A photograph.

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

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

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

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

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

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

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

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

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

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

22           (2) The department shall maintain a confidential list of the persons to whom the  
23 department has issued registry identification cards and shall notify local and state law  
24 enforcement of the number of qualified patients in any given city or town. Individual names and  
25 other identifying information on the list shall be confidential, exempt from the provisions of  
26 Rhode Island Access to Public Information, chapter 2 of title 38, and not subject to disclosure,  
27 except to authorized employees of the department as necessary to perform official duties of the  
28 department.

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

31           (j) It shall be a crime, punishable by up to one hundred eighty (180) days in jail and a one  
32 thousand dollar (\$1,000) fine, for any person, including an employee or official of the department  
33 or another state agency or local government, to breach the confidentiality of information obtained  
34 pursuant to this chapter. Notwithstanding this provision, the department employees may notify

1 law enforcement about falsified or fraudulent information submitted to the department.

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

5 (i) The number of applications for registry identification cards, the number of qualifying  
6 patients and primary caregivers approved, the nature of the debilitating medical conditions of the  
7 qualifying patients, the number of registry identification cards revoked, and the number of  
8 practitioners providing written certification for qualifying patients;

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

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

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

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

18 **21-28.6-7. Scope of chapter.** – (a) This chapter shall not permit:

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

21 (2) The smoking of marijuana:

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

23 (ii) On any school grounds;

24 (iii) In any correctional facility;

25 (iv) In any public place; or

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

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

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

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

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

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

5 **21-28.6-8. Affirmative defense and dismissal.** – (a) Except as provided in section 21-  
6 28.6-7, a person and a person’s primary caregiver, if any, may assert the medical purpose for  
7 using marijuana as a defense to any prosecution involving marijuana, and such defense shall be  
8 presumed valid where the evidence shows that:

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

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

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

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

25 **21-28.6-9. Enforcement.** – (a) If the department fails to adopt regulations to implement  
26 this chapter within one hundred twenty (120) days of the effective date of this act, a qualifying  
27 patient may commence an action in a court of competent jurisdiction to compel the department to  
28 perform the actions mandated pursuant to the provisions of this chapter.

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

33 **21-28.6-10. Severability.** – Any section of this act being held invalid as to any person or  
34 circumstances shall not affect the application of any other section of this act that can be given full

1 [effect without the invalid section or application.](#)

2           **21-28.6-11. Sunset provision.** – [The provisions of this chapter shall be repealed effective](#)  
3 [June 30, 2007.](#)

4           SECTION 2. This act shall take effect upon passage and shall expire on June 30, 2007.

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LC01479/SUB A  
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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T  
RELATING TO FOOD AND DRUGS -- THE EDWARD O. HAWKINS MEDICAL  
MARIJUANA ACT

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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 and would expire on June 30, 2007.

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