

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 passage of the accompanying bill:

An Act relative to the humanitarian use of marijuana.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

John W. Scibak

2nd Hampshire

Carl M. Sciortino, Jr.

34th Middlesex

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 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:

16 (1) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired
17 immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease,
18 agitation of Alzheimer's disease, Parkinson's disease, Multiple Sclerosis, post-traumatic stress
19 disorder, or the treatment of these conditions;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

82 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.

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

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

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

122 Section 6. Protection Against Forfeiture and Arrest

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

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

128 (C) Except as provided in this paragraph, a registry identification card or its equivalent
129 issued under the laws of another U.S. state, U.S. territory, or the District of Columbia to permit
130 the medical use of marijuana shall have the same force and effect as a registry identification card
131 issued by the department, and, for purposes of this Act, entitle a visiting qualifying patient to the
132 same rights and protections as a registered qualifying patient residing in Massachusetts. This
133 paragraph shall not apply if the person has been a resident of Massachusetts for 30 days or longer
134 at the time they present their out-of-state identification card or its equivalent.

135 Section 7. Limitations of Law

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

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

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

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

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

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

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

152 Section 8. Department to issue regulations.

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

158 (B) Department to establish procedure for adding debilitating medical conditions to
159 those set forth in Chapter 94G. Within 120 days of the effective date of this law, the department
160 shall issue regulations governing the manner in which it shall consider petitions from the public
161 to add debilitating medical conditions to those set forth in Chapter 94G Section 2(B). In
162 considering such petitions, the department shall include public notice of, and an opportunity to
163 comment in a public hearing, upon such petitions. The department shall, after hearing, approve
164 or deny such petitions within one hundred eighty (180) days of submission. The approval or
165 denial of such a petition shall be considered a final department action, subject to judicial review.
166 Jurisdiction and venue for judicial review are vested in the superior court. The denial of a
167 petition shall not disqualify qualifying patients with that condition, if they have a chronic or
168 debilitating medical condition. The denial of a petition shall not prevent a person with the denied
169 condition from raising an affirmative defense.

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

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

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

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

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

180 (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.

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

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

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

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

222 1. The prospective medical marijuana testing laboratory has submitted:

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

225 (b) An application, including:

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

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

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

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

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

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

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

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

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

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

250 Section 13. Hardship Cultivation Registrations.

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

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

262 Section 14. Medical marijuana registration cards for qualifying patients and designated 263 personal caregivers.

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

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

267 2. An application, including:

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

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

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

271 (B) The department shall verify the information contained in an application or renewal
272 application submitted pursuant to this section, and shall approve or deny an application or
273 renewal application within fifteen (15) days of receiving it. The department may deny an
274 application or renewal only if the applicant did not provide the information required pursuant to
275 this section, or if the department determines that the information provided was falsified.
276 Rejection of an application or renewal application is considered a final department action,

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

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

281 Section 15. Department implementation of Regulations and Fees.

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

291 Section 16. Penalties for Fraudulent Acts.

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

295 (B) The fraudulent use of a medical marijuana registration card or cultivation registration
296 shall be a misdemeanor punishable by up to 6 months in the house of correction, or a fine up to
297 \$500, but if such fraudulent use is for the distribution, sale, or trafficking of marijuana for non-
298 medical use for profit it shall be a felony punishable by up to 5 years in state prison or up to two
299 and one half years in the house of correction.

300 Section 17. Confidentiality

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

307 Section 18. Effective Date.

308 This law shall be effective January 1, 2013.

309 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.”