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S.P. 296	In Senate, March 8, 2021

An Act To Amend the Maine Medical Use of Marijuana Act

Submitted by the Department of Administrative and Financial Services pursuant to Joint Rule 204.

Reference to the Committee on Veterans and Legal Affairs suggested and ordered printed.

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DAREK M. GRANT Secretary of the Senate

Presented by Senator LUCHINI of Hancock.

1 Be it enacted by the People of the State of Maine as follows:

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2 Sec. 1. 22 MRSA §2430-E, as enacted by PL 2017, c. 452, §24, is amended to read:

§2430-E. Possession penalties; fraud penalty<u>; administrative holds</u>

- **1. Excess marijuana; forfeiture.** A person who possesses marijuana plants or harvested marijuana in excess of the limits provided in this section shall forfeit the excess amounts to a law enforcement officer. The law enforcement officer is authorized to remove all excess marijuana plants or harvested marijuana possessed by that person in order to catalog the amount of excess marijuana. Possession of marijuana in excess of the limits provided in this section is a violation as follows:
- 10A. Possession of harvested marijuana by a qualifying patient or a caregiver operating11under section 2423-A, subsection 3, paragraph C in an excess amount up to 1 1/412ounces commits a civil violation for which a fine of not less than \$350 and not more13than \$600 must be adjudged, none of which may be suspended;
- 14B. Possession of harvested marijuana by a qualifying patient or a caregiver operating15under section 2423-A, subsection 3, paragraph C in an excess amount over 1 1/4 ounces16and up to 2 1/2 ounces commits a civil violation for which a fine of not less than \$70017and not more than \$1,000 must be adjudged, none of which may be suspended; and
- C. Possession of harvested marijuana by a qualifying patient or a caregiver operating
 under section 2423-A, subsection 3, paragraph C in an excess amount over 2 1/2 ounces
 is a violation of Title 17-A, chapter 45.
- 21 **2.** Repeat forfeiture. If a cardholder or registration certificate holder has previously 22 forfeited excess marijuana pursuant to subsection 1 and a subsequent forfeiture occurs, the department shall revoke the registry identification card of the cardholder and, as applicable, 23 24 the cardholder's registration certificate and the entire amount of marijuana plants or 25 harvested marijuana possessed by that cardholder must be forfeited to a law enforcement officer. Nothing in this section may be construed to require a law enforcement officer to 26 27 accept forfeited marijuana plants or harvested marijuana or to require a law enforcement officer or the department to bear the costs associated with the destruction or disposal of 28 forfeited marijuana plants or harvested marijuana. The department shall adopt rules to 29 30 implement this subsection. Rules adopted pursuant to this subsection are routine technical 31 rules as defined in Title 5, chapter 375, subchapter 2-A.
- 32 **3.** Defense for possession of excess marijuana. Except as provided in section 2426, a qualifying patient may assert the medical purpose for using marijuana as a defense to any 33 34 prosecution involving marijuana possession and may present evidence in court that the 35 patient's necessary medical use or cultivation circumstances warranted exceeding the amount of marijuana allowed under section 2423-A and was reasonably necessary to ensure 36 37 the uninterrupted availability of marijuana for the purpose of treating or alleviating the patient's medical diagnosis or symptoms associated with the patient's medical diagnosis 38 39 that, in a medical provider's professional opinion, may be alleviated by the therapeutic or palliative medical use of marijuana. 40
- 4. Calculation of marijuana weight. The amount of marijuana possessed under this
 42 chapter must be calculated by the weight of dried harvested marijuana. A calculation of the
 43 weight of marijuana that is not dried must reduce the weight by at least 75% to account for
 44 moisture content. A calculation of the weight of marijuana in a marijuana product may not

include ingredients in the product other than marijuana, except that the weight of marijuana
 concentrate must be included whether the marijuana concentrate is possessed by itself or
 within a marijuana product.

5. Penalty for fraud. Fraudulent misrepresentation regarding lawful possession or medical use of marijuana and fraudulent procurement under this chapter are governed by this subsection. A person who misrepresents to a law enforcement official any fact or circumstance relating to the possession or medical use of marijuana under this chapter to avoid arrest or prosecution commits a civil violation for which a fine of \$200 must be adjudged.

10 6. Administrative holds. In accordance with the provisions of this subsection, the department may impose an administrative hold on a registry identification cardholder or 11 12 registration certificate holder or an assistant or other authorized agent of a registry 13 identification cardholder or registration certificate holder if, as a result of an inspection or 14 investigation by the department or a law enforcement agency, the department determines 15 there are reasonable grounds to believe that entity has committed or is committing a violation of the provisions of this chapter, the rules adopted pursuant to this chapter or the 16 terms, conditions or provisions of a registry identification card or registration certificate 17 18 issued to that entity.

19A. The department shall provide to a registry identification cardholder or registration20certificate holder subject to an administrative hold, or whose assistant or other21authorized agent is subject to an administrative hold, notice of the imposition of that22administrative hold, which must:

- (1) Include a concise statement of the basis for the administrative hold, which may
 include without limitation that the registry identification cardholder or registration
 certificate holder possesses or otherwise controls:
- 26(a) Marijuana plants or harvested marijuana not appropriately tracked or27disclosed in accordance with section 2430-G and the rules adopted pursuant to28that section;
- 29(b) Harvested marijuana that is altered or not properly packaged or labeled in30accordance with this chapter and rules adopted pursuant to this chapter;
- 31(c) Marijuana plants or harvested marijuana that has not been cultivated,32harvested, manufactured or transferred or is otherwise not in a form in33compliance with this chapter or rules adopted pursuant to this chapter; or
- 34(d) Marijuana plants or harvested marijuana that the department has a35reasonable articulable suspicion may present a threat to public health or safety;
- 36(2) Detail any marijuana plants or harvested marijuana subject to the
administrative hold;
- 38 (3) Describe any operational restrictions to be placed on the registry identification
 39 cardholder or registration certificate holder during the duration of the
 40 administrative hold; and
- 41 (4) Indicate actions that must be taken by the registry identification cardholder or
 42 registration certificate holder as a result of the administrative hold.

1	An administrative hold takes effect at the time that the notice under this paragraph is
2	provided by the department to the registry identification cardholder or registration
3	certificate holder.
4	B. A registry identification cardholder or registration certificate holder or an assistant
5	or other authorized agent of a registry identification cardholder or registration
6	certificate holder subject to an administrative hold must physically segregate any
7	marijuana plants or harvested marijuana subject to the administrative hold, as detailed
8	in the notice under paragraph A, from any other marijuana plants or harvested
9	marijuana not subject to the administrative hold. For the duration of the administrative
10	hold, the registry identification cardholder or registration certificate holder may not
11	sell, give away, transfer, transport, dispose of or destroy any marijuana plants or
12	harvested marijuana subject to the administrative hold, but may, as applicable,
13	cultivate, harvest, manufacture or otherwise maintain the marijuana plants or harvested
14	marijuana subject to the administrative hold unless specifically restricted by the
15	department from engaging in such activities pursuant to this subsection.
16	C. A registry identification cardholder or registration certificate holder subject to an
17	administrative hold shall, for the duration of the administrative hold, maintain any
18	premises and otherwise continue to engage in authorized activities in accordance with
19 20	all provisions of this chapter, the rules adopted pursuant to this chapter and the
20 21	provisions of the administrative hold. Except as specifically restricted by the department pursuant to a notice under paragraph A, a registry identification cardholder
21	or registration certificate holder may, for the duration of the administrative hold and as
22	authorized pursuant to this chapter, cultivate, manufacture, test or sell any marijuana
24	plants or harvested marijuana not subject to the administrative hold.
25 26	D. The department may terminate an administrative hold at any time following the imposition of the administrative hold, except that an administrative hold under this
20 27	subsection may not be imposed for a period exceeding 30 consecutive days from the
28	date notice is provided to the registry identification cardholder or registration
20	certificate holder or the assistant or other authorized agent of the registry identification
30	cardholder or registration certificate holder in accordance with paragraph A. Notice of
31	termination of an administrative hold must be provided by the department to the
32	registry identification cardholder or registration certificate holder or the assistant or
33	other authorized agent of the registry identification cardholder or registration certificate
34	holder.
35	E. Subsequent to the termination of an administrative hold under paragraph D, the
36	department, in accordance with the applicable provisions of this chapter and the rules
37	adopted pursuant to this chapter, may impose a fine on the registry identification
38	cardholder or registration certificate holder or the assistant or other authorized agent of
39	the registry identification cardholder or registration certificate holder that was subject
40	to the administrative hold or suspend or revoke the registry identification card or
41	registration certificate of that registry identification cardholder or registration
42 43	certificate holder for a violation of the provisions of this chapter or the rules adopted pursuant to this chapter.
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44	For the purposes of this subsection, "registry identification cardholder or registration
45	certificate holder" means a registered caregiver, caregiver retail store, dispensary,

manufacturing facility or person authorized to engage in marijuana extraction using
 inherently hazardous substances.

3 Sec. 2. 22 MRSA §2430-F, sub-§1, as enacted by PL 2017, c. 452, §24, is amended
 4 to read:

5 **1.** Department suspension or revocation. The department may suspend or revoke a 6 registry identification card or a registration certificate for violation of this chapter and the rules adopted under this chapter. Revocation in accordance with section 2430-E, 7 8 subsection 2 is considered a final agency action, subject to judicial review under Title 5, 9 chapter 375, subchapter 7. Unless otherwise specified as final agency action, a person who has had authorization for conduct under this chapter revoked due to failure to comply with 10 11 this chapter and rules adopted by the department may request an informal hearing. The 12 department shall adopt rules to specify the period of time, which may not exceed one year, that the person whose registry identification card or registration certificate was revoked is 13 14 ineligible for reauthorization under this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. 15

The department shall immediately revoke the registry identification card of an officer or
director or assistant of a dispensary who is found to have violated section 2428, subsection
9, paragraph B, and that person is disqualified from serving as an officer or director or
assistant of a dispensary.

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Sec. 3. 22 MRSA §2430-H, as enacted by PL 2017, c. 452, §24, is amended to read:

21 §2430-H. Fines collected <u>authorized</u>; <u>Maine Administrative Procedure Act applies</u>

22 In addition to any other administrative action to suspend or revoke a registry 23 identification card or registration certificate, the department, on its own initiative or on 24 complaint and after investigation, notice and the opportunity for a public hearing, by written order may impose a fine on a registered caregiver, caregiver retail store, dispensary, 25 26 manufacturing facility or person authorized to engage in marijuana extraction using 27 inherently hazardous substances operating under this chapter or an assistant or other authorized agent of a registered caregiver, caregiver retail store, dispensary, manufacturing 28 29 facility or person authorized to engage in marijuana extraction using inherently hazardous 30 substances for any violation by that entity or assistant or other authorized agent of that 31 entity of the provisions of this chapter, the rules adopted pursuant to this chapter or any other terms, conditions or provisions imposed pursuant to the issuance of a registry 32 33 identification card or registration certificate. Fines collected pursuant to this chapter and 34 rules adopted by the department must be credited to the Medical Use of Marijuana Fund 35 pursuant to section 2430.

36 <u>1. Fines in addition to other penalties.</u> Any fines imposed by the department
 37 pursuant to this section are in addition to any criminal or civil penalties that may be imposed
 38 pursuant to other applicable laws or rules.

2. Limits. A fine imposed by the department for a violation of this chapter may not
 exceed \$10,000 per violation for a caregiver retail store, dispensary, manufacturing facility
 or person authorized to engage in marijuana extraction using inherently hazardous
 substances. A fine imposed by the department for a violation of this chapter may not exceed
 \$2,000 per violation for a registered caregiver or an assistant or other authorized agent of

1 2	a registered caregiver, caregiver retail store, dispensary, manufacturing facility or person authorized to engage in marijuana extraction using inherently hazardous substances.
3 4 5 6	A. The department shall adopt rules setting fines to be imposed for violations of this chapter based upon the following specific categories of unauthorized conduct by a caregiver retail store, dispensary, manufacturing facility or person authorized to engage in marijuana extraction using inherently hazardous substances:
7	(1) Not more than \$1,000 per minor registration violation;
8 9	(2) Except as provided in subparagraph (3), not more than \$5,000 per major registration violation; and
10	(3) Not more than \$10,000 per major registration violation affecting public safety.
11 12 13 14 15	B. The department shall adopt rules setting fines to be imposed for violations of this chapter based upon the following specific categories of unauthorized conduct by a registered caregiver or an assistant or other authorized agent of a registered caregiver, caregiver retail store, dispensary, manufacturing facility or person authorized to engage in marijuana extraction using inherently hazardous substances:
16	(1) Not more than \$200 per minor registration violation;
17 18	(2) Except as provided in subparagraph (3), not more than \$1,000 per major registration violation; and
19	(3) Not more than \$2,000 per major registration violation affecting public safety.
	(2) ($2)$
20 21 22	3. Form of payment. A fine imposed pursuant to this section must be paid to the department in the form of cash or in the form of a certified check or cashier's check payable to the department.
21	3. Form of payment. A fine imposed pursuant to this section must be paid to the department in the form of cash or in the form of a certified check or cashier's check payable
21 22 23 24 25 26 27 28 29 30 31 32 33 34 35	 Form of payment. A fine imposed pursuant to this section must be paid to the department in the form of cash or in the form of a certified check or cashier's check payable to the department. Maine Administrative Procedure Act applies. Except as otherwise provided in this chapter or in rules adopted pursuant to this chapter, the imposition of a fine or the suspension or revocation of a registry identification card or registration certificate by the department, including, but not limited to, the provision of notice and the conduct of hearings, is governed by the Maine Administrative Procedure Act. A final order of the department imposing a fine or suspending or revoking a registry identification card or registration certificate is a final agency action, as defined in Title 5, section 8002, subsection 4, and the registered caregiver, caregiver retail store, dispensary, manufacturing facility or person authorized to engage in marijuana extraction using inherently hazardous substances may appeal that final order to the Superior Court in accordance with Rule 80C of the Maine Rules of Civil Procedure. Rules. The department shall adopt rules governing the imposition of fines under this section. Rules adopted pursuant to this subsection are routine technical rules as defined

1 1. Place an administrative hold on marijuana plants and harvested marijuana or impose 2 an administrative hold on certain registry identification cardholders and registration 3 certificate holders;

4 2. Permanently revoke registry identification cards and registration certificates issued
by the department; and

6 3. Assess fines for misconduct by a registered caregiver retail store, dispensary, 7 manufacturing facility or person authorized to engage in marijuana extraction using 8 inherently hazardous substances up to \$10,000. It authorizes the department to assess fines 9 for misconduct by registered caregivers or assistants or other authorized agents of a 10 registered caregiver, caregiver retail store, dispensary, manufacturing facility or person 11 authorized to engage in marijuana extraction using inherently hazardous substances of up 12 to \$2,000.