

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-THREE

—
H.P. 521 - L.D. 832

An Act to Sustain the Medical Use of Cannabis Program

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

Sec. 1. 22 MRSA §2422-A, as amended by PL 2021, c. 387, §1, c. 669, §5 and PL 2023, c. 96, §1, is repealed and the following enacted in its place:

§2422-A. Administration and enforcement; rulemaking

1. Administration and enforcement. The department shall administer and enforce this chapter and the rules adopted pursuant to this chapter.

2. Rules. The department shall adopt rules as necessary to administer and enforce this chapter. Unless otherwise indicated, rules adopted pursuant to this chapter are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. These rules may include, but are not limited to, minimum oversight requirements for dispensaries and registered caregivers and minimum security requirements for dispensaries and registered caregivers operating retail stores.

A. Before adopting or provisionally adopting rules pursuant to this section, the department shall consult with qualifying patients, caregivers, registered caregivers, registered dispensaries, cannabis testing facilities, manufacturing facilities and medical providers.

B. Notwithstanding Title 5, section 8072, subsection 11, rules provisionally adopted by the department in accordance with this section and submitted for legislative review may not be finally adopted by the department unless legislation authorizing final adoption is enacted into law.

Sec. 2. 22 MRSA §2423-A, sub-§10, ¶E, as repealed and replaced by PL 2019, c. 331, §13 and c. 354, §5 and amended by PL 2021, c. 669, §5, is repealed and the following enacted in its place:

E. A cannabis testing facility must be accredited pursuant to the standard ISO/IEC 17025 of the International Organization for Standardization by a 3rd-party accrediting body and shall produce documentation of accreditation to the department or a municipal code enforcement officer, upon demand.

Sec. 3. 22 MRSA §2424, as amended by PL 2021, c. 387, §§6 and 7; c. 652, §2; and c. 669, §5, is repealed.

Sec. 4. 22 MRSA §2425-A, sub-§5, ¶A, as amended by PL 2021, c. 367, §12 and c. 669, §5, is further amended by amending subparagraph (3) to read:

(3) A random identification number that is unique to the cardholder; ~~and~~

Sec. 5. 22 MRSA §2425-A, sub-§5, ¶A, as amended by PL 2021, c. 367, §12 and c. 669, §5, is further amended by amending subparagraph (4) to read:

(4) A clear designation showing whether the cardholder is allowed under this chapter to cultivate cannabis plants; ~~and~~

Sec. 6. 22 MRSA §2425-A, sub-§5, ¶A, as amended by PL 2021, c. 367, §12 and c. 669, §5, is further amended by enacting a new subparagraph (5) to read:

(5) A photograph of the cardholder, if required by the department.

Sec. 7. 22 MRSA §2425-A, sub-§10, as amended by PL 2021, c. 662, §28 and c. 669, §5, is further amended to read:

10. Fees. The department shall adopt rules to establish fees in accordance with this subsection. The application and renewal fees must generate revenues sufficient to offset all expenses of implementing and administering this chapter. The department may accept donations from private sources to offset the expenses of implementing and administering this chapter and shall, if those donations are received, reduce application and renewal fees accordingly. The fees and donations must be credited to the Medical Use of Cannabis Fund pursuant to section 2430. Rules adopted pursuant to this subsection ~~are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that, beginning July 1, 2021, rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.~~

A. There is no annual registration fee for a qualifying patient or visiting qualifying patient or a caregiver who is not required to register pursuant to section 2423-A, subsection 3, paragraph C. There is no annual registration fee for a caregiver who does not cultivate cannabis plants for a qualifying patient.

B. There is an annual registration fee for a caregiver who cultivates cannabis plants on behalf of a qualifying patient pursuant to section 2423-A, subsection 2, paragraph B.

(1) For a caregiver registering based upon plant count, the fee may not be less than \$50 or more than \$240 for each group of up to 6 mature cannabis plants cultivated by the caregiver. The caregiver shall notify the department of the number of cannabis plants the caregiver cultivates.

(2) For a caregiver registering based upon plant canopy, the fee may not be less than \$50 or more than \$1,500 for a total mature plant canopy of 500 square feet or less.

C. There is an annual registration fee for a dispensary, which may not be less than \$5,000 or more than \$12,000. There is a fee to change the location of a registered dispensary or the location at which a registered dispensary cultivates cannabis plants, which may not be less than \$3,000 or more than \$4,000.

D. There is an annual registration fee for a tier 1 manufacturing facility, which may not be less than \$50 or more than \$150.

E. There is an annual registration fee for a tier 2 manufacturing facility, which may not be less than \$150 or more than \$250.

F. There is an annual registration fee to engage in cannabis extraction under section 2423-F, subsection 3, which may not be less than \$250 or more than \$350.

G. There is an annual registration fee for a cannabis testing facility, which may not be less than \$250 or more than \$1,000, except that there is no fee if the testing facility is licensed in accordance with Title 28-B, chapter 1.

H. There is an annual registration fee for an officer or director or assistant of a registered caregiver or registered dispensary, which may not be less than \$20 or more than \$50.

I. There is a fee to replace a registry identification card that has been lost, stolen or destroyed or a card that contains information that is no longer accurate, which may not be less than \$10 or more than \$20. Replacement of a registry identification card does not extend the expiration date.

J. There is an annual fee for a criminal history record check for a caregiver or an officer or director or assistant of a registered dispensary, cannabis testing facility or manufacturing facility, which may not be less than \$31 or more than \$60. The fee must be paid by the caregiver or by the registered dispensary, cannabis testing facility or manufacturing facility for an officer or director or assistant of the registered dispensary, cannabis testing facility or manufacturing facility.

Sec. 8. 22 MRSA §2425-A, sub-§12, ¶J, as enacted by PL 2017, c. 452, §12, is repealed.

Sec. 9. 22 MRSA §2425-A, sub-§13, as amended by PL 2021, c. 387, §10 and c. 669, §5, is repealed.

Sec. 10. 22 MRSA §2428, sub-§6, ¶F, as amended by PL 2017, c. 452, §16, is further amended to read:

F. The operating documents of a dispensary must include procedures for the oversight of the dispensary and procedures to ensure accurate record keeping in accordance with section ~~2430-G~~ 2430-J.

Sec. 11. 22 MRSA §2430-C, sub-§6, as enacted by PL 2017, c. 452, §24 and amended by PL 2021, c. 669, §5, is amended to read:

6. Prohibition on seizure and retention. Except when necessary for an ongoing criminal ~~or civil~~ investigation, a law enforcement officer may not seize cannabis that is in the possession of a qualifying patient, caregiver, cannabis testing facility, manufacturing facility or registered dispensary as authorized by this chapter. A law enforcement officer in possession of cannabis in violation of this subsection shall return the cannabis within 7 days after receiving a written request for return by the owner of the cannabis. Notwithstanding the provisions of Title 14, chapter 741, if the law enforcement officer fails to return cannabis possessed in violation of this subsection within 7 days of receiving a written request for return of the cannabis under this subsection, the owner of the cannabis

may file a claim in the District Court in the district where the owner lives or where the law enforcement officer is employed.

Sec. 12. 22 MRSA §2430-C, sub-§7, as amended by PL 2021, c. 662, §34, is further amended to read:

7. Requirements for protection. To receive protection under this section for conduct authorized under this chapter, a person must:

A. If the person is a qualifying patient or visiting qualifying patient, present upon request of a law enforcement officer the patient's written certification ~~and the patient's government-issued identification that includes a photo and proof of address~~; or

B. If the person is a caregiver, present upon request of a law enforcement officer the ~~original written document designating the person as a caregiver by the qualifying patient under section 2423-A, subsection 1, paragraph F-1 and the caregiver's government-issued identification that includes a photo and proof of address~~ caregiver's registry identification card or registration certificate.

Sec. 13. 22 MRSA §2430-C, sub-§8, as enacted by PL 2017, c. 452, §24 and amended by PL 2021, c. 669, §5, is amended to read:

8. Evidence of lawful conduct. ~~A person who has been issued a registry identification card pursuant to section 2425-A must also possess a valid government-issued identification that includes a photo and proof of address in order to establish proof of authorized participation in the medical use of cannabis under this chapter.~~ Possession of a registry identification card by a cardholder, the act of applying for ~~such~~ a registry identification card, possession of a written certification issued under section 2423-B or possession of a designation document executed under section 2423-A, subsection 1, paragraph F-1 is ~~not~~ evidence of ~~unlawful~~ lawful conduct and may not be used to support the search of that person or that person's property. The possession of or application for a registry identification card or possession of a written certification does not prevent the issuance of a warrant if probable cause exists on other grounds.

Sec. 14. 22 MRSA §2430-C, sub-§10 is enacted to read:

10. Defense for possession of excess cannabis. Except as provided in section 2426, a qualifying patient may assert as a defense to any prosecution involving cannabis possession use of cannabis for a medical purpose and may present evidence in court that the patient's medical use or cultivation of an amount of cannabis exceeding the amount allowed under section 2423-A was reasonably necessary to ensure the uninterrupted availability of cannabis for the purpose of treating or alleviating the patient's medical diagnosis or symptoms associated with the patient's medical diagnosis that, in a medical provider's professional opinion, may be alleviated by the therapeutic or palliative medical use of cannabis.

Sec. 15. 22 MRSA §2430-C, sub-§11 is enacted to read:

11. Calculation of cannabis weight. The amount of cannabis possessed under this chapter must be calculated by the weight of dried harvested cannabis. A calculation of the weight of cannabis that is not dried must reduce the weight by at least 75% to account for moisture content. A calculation of the weight of cannabis in a cannabis product may not include ingredients in the product other than cannabis, except that the weight of cannabis

concentrate must be included regardless of whether the cannabis concentrate is within a cannabis product or not within a cannabis product.

Sec. 16. 22 MRSA §2430-E, as amended by PL 2021, c. 387, §12 and c. 669, §5, is repealed.

Sec. 17. 22 MRSA §2430-F, as amended by PL 2021, c. 387, §13 and c. 669, §5, is repealed.

Sec. 18. 22 MRSA §2430-G, as amended by PL 2021, c. 367, §16; c. 387, §§14 to 16; c. 669, §5; c. 676, Pt. A, §35; and PL 2023, c. 96, §2, is repealed.

Sec. 19. 22 MRSA §2430-H, as enacted by PL 2017, c. 452, §24 and amended by PL 2021, c. 669, §5, is repealed.

Sec. 20. 22 MRSA §2430-I is enacted to read:

§2430-I. Suspension, revocation, administrative penalty; forfeiture; surrender

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Covered entity" means a registered caregiver, dispensary, cannabis testing facility, manufacturing facility or person authorized to engage in cannabis extraction using inherently hazardous substances under this chapter.

B. "Covered entity agent" means an assistant, employee, officer, director or other authorized agent of a registered caregiver, dispensary, cannabis testing facility, manufacturing facility or person authorized to engage in cannabis extraction using inherently hazardous substances under this chapter.

C. "Major registration violation" means an intentional, willful or reckless violation or a repeat pattern of minor registration violations.

D. "Major registration violation affecting public safety" means a major registration violation that jeopardizes public safety.

E. "Minor registration violation" means a knowing or negligent violation.

F. "Violation" means a violation of a provision of this chapter, rules adopted pursuant to this chapter or terms or conditions of a registry identification card or registration certificate issued under this chapter.

2. Penalties. The department, in accordance with this section, on its own initiative or on complaint and after investigation, may, by written order:

A. Impose an administrative penalty in accordance with this section for a violation. Penalties collected pursuant to this paragraph must be credited to the Medical Use of Cannabis Fund established under section 2430;

B. Seize and destroy cannabis or cannabis products under subsection 5; and

C. Suspend or revoke a registry identification card or registration certificate issued under this chapter for a violation.

3. Administrative penalties, generally. The department may impose administrative penalties for a violation of this chapter or rules adopted under this chapter as follows:

A. For a registered caregiver who does not operate a retail store and a covered entity agent:

- (1) Not more than \$200 for each minor registration violation;
- (2) Not more than \$600 for each major registration violation; or
- (3) Not more than \$1,500 for each major registration violation affecting public safety; and

B. For a covered entity, except a registered caregiver who does not operate a retail store:

- (1) Not more than \$1,000 for each minor registration violation;
- (2) Not more than \$3,000 for each major registration violation; or
- (3) Not more than \$7,500 for each major registration violation affecting public safety.

4. Administrative penalty for sale or transfer to nonpatient. The department shall notify a covered entity within one business day after the department discovers that a covered entity or covered entity agent sold, furnished or gave cannabis for medical use to a person who is not authorized to possess cannabis for medical use under this chapter. Both the covered entity and covered entity agent that sold, furnished or gave cannabis for medical use to a person who is not authorized to possess cannabis for medical use may be held responsible as follows.

A. The first time a covered entity or covered entity agent sells, furnishes or gives cannabis for medical use to a person who is not authorized to possess cannabis for medical use under this chapter, the covered entity or covered entity agent that sold, furnished or gave cannabis for medical use to a person not authorized to possess cannabis for medical use may be subject to an administrative penalty for a minor registration violation.

B. The 2nd time a covered entity or covered entity agent sells, furnishes or gives cannabis for medical use to a person who is not authorized to possess cannabis for medical use under this chapter, the covered entity or covered entity agent that sold, furnished or gave cannabis for medical use to a person not authorized to possess cannabis for medical use may be subject to an administrative penalty for a major registration violation.

C. The 3rd time a covered entity or covered entity agent sells, furnishes or gives cannabis for medical use to a person who is not authorized to possess cannabis for medical use under this chapter and for any subsequent violations of this subsection thereafter, the covered entity or covered entity agent that sold, furnished or gave cannabis for medical use to a person not authorized to possess cannabis for medical use may be subject to suspension or revocation of the covered entity's or covered entity agent's registry identification card or registration certificate or an administrative penalty for a major registration violation.

A covered entity is subject to the penalties in this section whether the covered entity violated this subsection or the covered entity agent violated this subsection. Violations of this section by a covered entity are cumulative whether the same or a different covered entity agent violated this subsection.

5. Forfeit and destruction under final order. This subsection governs the forfeiture and destruction of cannabis plants, cannabis or cannabis products when a final order is issued.

A. If the department issues a final order imposing an administrative penalty under this section, the department may require, in the final order, that all or a portion of the cannabis plants, cannabis or cannabis products in the possession of the covered entity subject to the final order be destroyed.

B. The covered entity subject to the final order shall forfeit the cannabis plants, cannabis or cannabis products to the department or destroy the cannabis plants, cannabis and cannabis products at the time and place and in the manner required by the department in writing.

6. Destruction prohibition. If the department is notified by a criminal justice agency that there is a pending investigation of a covered entity subject to a final order under this section, the department may not destroy, or allow the covered entity to destroy, any cannabis plants, cannabis or cannabis products of that covered entity until the destruction is approved by the criminal justice agency.

7. Form of payment. The department shall accept payment of an administrative penalty imposed under this section in the form of cash or a certified check or cashier's check payable to the department.

8. Suspension or revocation. The department may suspend or revoke a registry identification card or registration certificate for violation of this chapter and the rules adopted under this chapter for a period not to exceed one year. Until the suspension or revocation period ends, the person is ineligible for reauthorization under this chapter.

9. Maine Administrative Procedure Act; final agency action. Except as otherwise provided in this chapter, the suspension or revocation of a registry identification card or registration certificate and the imposition of an administrative penalty by the department is governed by Title 5, chapter 375, subchapter 4, including, but not limited to, the provisions on notice and hearings.

Sec. 21. 22 MRS §2430-J is enacted to read:

§2430-J. Reporting; record keeping; labels

The department shall develop, implement and maintain a statewide electronic portal through which registered caregivers, registered dispensaries, cannabis testing facilities and manufacturing facilities may submit to the department the records required pursuant to this chapter. The department may not require records submitted through the portal to contain information identifying qualifying patients.

1. Required records. A registered caregiver, a registered dispensary, a cannabis testing facility and a manufacturing facility shall:

A. Keep a record of all transfers of cannabis plants and harvested cannabis;

B. Keep the books and records for a period of 4 years; and

C. Make the books and records maintained under this subsection available for inspection by the department upon the department's request.

2. Required label. A registered caregiver, registered dispensary, cannabis testing facility and manufacturing facility shall accompany all cannabis plants and harvested cannabis being transported pursuant to this chapter with a label that identifies:

A. The person transferring the cannabis plants or harvested cannabis, including the person's registry identification number;

B. The person receiving the cannabis plants or harvested cannabis, including the person's registry identification number or, if the person is not required to register under this chapter, a unique identifier assigned to the person;

C. A description of the cannabis plants or harvested cannabis being transferred, including the amount and form;

D. The time and date of the transfer; and

E. The destination of the cannabis plants or harvested cannabis.

The department may adopt rules to implement this subsection. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 22. 22 MRSA §2430-K is enacted to read:

§2430-K. Inspections; limitation

The department may conduct inspections of registered caregivers, registered dispensaries, cannabis testing facilities and manufacturing facilities in accordance with this section and rules adopted pursuant to this chapter. The department may not conduct an inspection of a qualifying patient or caregiver operating under section 2423-A, subsection 3, paragraph C.

1. Criteria. The department shall maintain a publicly accessible electronic version of the criteria for inspection of registered caregivers, registered dispensaries, cannabis testing facilities and manufacturing facilities.

2. Access to premises. Notwithstanding any provision of law to the contrary, to ensure compliance with this chapter or in response to a complaint, the department may inspect the premises where a registered caregiver, registered dispensary, cannabis testing facility or manufacturing facility conducts activity authorized under this chapter, without notice during regular business hours or during hours of apparent activity, except that the department may not enter the dwelling unit of a registered caregiver if the registered caregiver is not present and may inspect the area of a dwelling unit only where activity authorized under this chapter occurs.

3. Complaints. If the department conducts an inspection in response to a complaint, the department shall provide the registered caregiver, registered dispensary, cannabis testing facility or manufacturing facility subject to the inspection a written statement of the substance of the complaint at the time of the inspection.

4. Contamination prevention. The department shall develop and post on the department's publicly accessible website guidance on how a person conducting inspections under this section can prevent contaminating the premises being inspected.

5. Notification of unauthorized conduct. If during an inspection the department finds evidence of a violation of this chapter or rules adopted pursuant to this chapter, the

department shall, within one business day of the completion of the inspection, provide written notification of the identified violation to the registered caregiver, registered dispensary, cannabis testing facility or manufacturing facility. Notice under this subsection does not constitute final agency action.

6. Penalty. In addition to any other penalty authorized under this chapter, the registry identification card or registration certificate of a registered caregiver, registered dispensary, cannabis testing facility or manufacturing facility that refuses or willfully avoids 2 or more inspections under this section may be suspended or revoked pursuant to section 2430-I or the department may refuse to renew the registry identification card or registration certificate.

Sec. 23. 22 MRSA §2430-L is enacted to read:

§2430-L. Compliance check

Notwithstanding section 2430-K and in accordance with section 2430-C, subsection 6-A, the department, or an agent of the department, may enter the premises of a caregiver retail store or a dispensary to conduct a compliance check of the operation of the store or dispensary by attempting to purchase a nominal amount of cannabis for medical use. The department, or its agent, is not required to identify affiliation with the department. Evidence of a violation of this chapter or rules adopted pursuant to this chapter must be handled pursuant to section 2430-I.

Sec. 24. 22 MRSA §2430-M is enacted to read:

§2430-M. Voluntary surrender and destruction

A registered caregiver, dispensary, cannabis testing facility or manufacturing facility may elect to voluntarily surrender cannabis plants, cannabis or cannabis products to the department for destruction under the following conditions.

1. Request. A registered caregiver's, dispensary's, cannabis testing facility's or manufacturing facility's request to surrender cannabis plants, cannabis or cannabis products to the department for destruction must be made on a form made available by the department and must be signed by a person who certifies that the person is an authorized representative of the registered caregiver, dispensary, cannabis testing facility or manufacturing facility.

2. Investigation or prosecution. The department may decline to accept cannabis plants, cannabis or cannabis products for destruction under this section if the department is aware of a pending investigation of the registered caregiver, dispensary, cannabis testing facility or manufacturing facility submitting the request until such time as the department confirms with the appropriate criminal justice agency that the cannabis plants, cannabis or cannabis products are not part of an ongoing investigation or prosecution.

Sec. 25. 22 MRSA §2430-N is enacted to read:

§2430-N. Report to the Legislature

By February 15th each year, the department shall submit a report that does not disclose identifying information about qualifying patients, cardholders or medical providers to the joint standing committee of the Legislature having jurisdiction over medical cannabis matters that contains for the previous year unless otherwise indicated, at a minimum:

1. Applications and renewals. The number of applications and renewals filed for registry identification cards and registration certificates;

2. Patients and caregivers. The number of qualifying patients and registered caregivers approved in each county;

3. Suspensions or revocations. The number of registry identification cards suspended or revoked;

4. Medical providers. The number of medical providers providing written certifications for qualifying patients;

5. Dispensaries, manufacturing facilities and testing facilities. The number of registered dispensaries, manufacturing facilities and cannabis testing facilities approved in each county;

6. Officers, directors and assistants. The number of officers, directors and assistants of registered caregivers and registered dispensaries, manufacturing facilities and cannabis testing facilities;

7. Medical Use of Cannabis Fund. The revenue and expenses of the Medical Use of Cannabis Fund established in section 2430; and

8. Sales tax revenue. The sales tax revenue from the sale of cannabis for medical use deposited into the General Fund for the current and prior fiscal years.