

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND ELEVEN

—
H.P. 951 - L.D. 1296

**An Act To Amend the Maine Medical Use of Marijuana Act To Protect
Patient Privacy**

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

PART A

Sec. A-1. 7 MRSA §483, first ¶, as amended by PL 2009, c. 631, §1 and affected by §51, is further amended to read:

For the purpose of this chapter and chapter 103, unless the term is more specifically defined, "adulterated" means made impure or inferior by adding extraneous ingredients. Goods that are prepared in food establishments that are licensed facilities under Title 22, section 2167 and that contain marijuana for medical use by a ~~registered~~ qualifying patient, pursuant to Title 22, chapter 558-C, are not considered to be adulterated under this subchapter.

Sec. A-2. 22 MRSA §2152, sub-§4-A, as amended by PL 2009, c. 631, §4 and affected by §51, is further amended to read:

4-A. Food establishment. "Food establishment" means a factory, plant, warehouse or store in which food and food products are manufactured, processed, packed, held for introduction into commerce or sold. "Food establishment" includes a ~~registered~~ primary caregiver, as defined in section 2422, subsection ~~4~~ 8-A, and a registered dispensary, as defined in section 2422, subsection 6, that prepare food containing marijuana for medical use by a ~~registered~~ qualifying patient pursuant to chapter 558-C. The following establishments are not considered food establishments required to be licensed under section 2167:

- A. Eating establishments, as defined in section 2491, subsection 7;
- B. Fish and shellfish processing establishments inspected under Title 12, section 6101, 6102 or 6856;
- C. Storage facilities for native produce;
- D. Establishments such as farm stands and farmers' markets primarily selling fresh produce not including dairy and meat products;

E. Establishments engaged in the washing, cleaning or sorting of whole produce, provided the produce remains in essentially the same condition as when harvested. The whole produce may be packaged for sale, provided that packaging is not by a vacuum packaging process or a modified atmosphere packaging process; ~~and~~

F. Establishments that are engaged in the drying of single herbs that are generally recognized as safe under 21 Code of Federal Regulations, Sections 182 to 189. The single herbs may be packaged for sale, provided that packaging is not by a vacuum packaging process or a modified atmosphere packaging process; and

G. A primary caregiver, as defined in section 2422, subsection 8-A, conducting an activity allowed in section 2423-A for a qualifying patient who is a member of the family, as defined in section 2422, subsection 5-A, or member of the household, as defined in section 2422, subsection 5-B, of the primary caregiver.

Sec. A-3. 22 MRSA §2158, as amended by PL 2009, c. 631, §5 and affected by §51, is further amended to read:

§2158. Addition of certain substances limited

Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, must be deemed to be unsafe for purposes of the application of section 2156, subsection 1, paragraph B; but when such substance is so required or cannot be avoided, the Commissioner of Agriculture, Food and Rural Resources shall adopt rules limiting the quantity therein or thereon to such extent as the commissioner finds necessary for the protection of public health, and any quantity exceeding the limits so fixed must be deemed to be unsafe for purposes of the application of section 2156, subsection 1, paragraph B. While such a rule is in effect limiting the quantity of any such substance in the case of any food, such food may not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of section 2156, subsection 1, paragraph A. In determining the quantity of such added substance to be tolerated in or on different articles of food, the commissioner shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances. Goods that are prepared by a primary caregiver under section 2152, subsection 4-A, paragraph G or in a food establishment that is a licensed facility under section 2167 and that contain marijuana for medical use by a ~~registered~~ qualifying patient, pursuant to chapter 558-C, are not considered to be adulterated under this subchapter.

PART B

Sec. B-1. 22 MRSA §2422, sub-§1-A is enacted to read:

1-A. Collective. "Collective" means an association, cooperative, affiliation or group of primary caregivers who physically assist each other in the act of cultivation, processing or distribution of marijuana for medical use for the benefit of the members of the collective.

Sec. B-2. 22 MRSA §2422, sub-§2, ¶D, as amended by PL 2009, c. 631, §9 and affected by §51, is further amended to read:

D. Any other medical condition or its treatment ~~approved by the commissioner~~ as provided for in section 2424, subsection 2.

Sec. B-3. 22 MRSA §2422, sub-§3, as enacted by IB 2009, c. 1, §5, is amended to read:

3. Enclosed, locked facility. "Enclosed, locked facility" means a closet, room, building, greenhouse or other enclosed area that is equipped with locks or other security devices that permit access only by a cardholder the individual authorized to cultivate the marijuana.

Sec. B-4. 22 MRSA §2422, sub-§§4-A and 4-B are enacted to read:

4-A. Incidental amount of marijuana. "Incidental amount of marijuana" means an amount of nonflowering marijuana plants and marijuana seeds, stalks and roots defined by rules adopted by the department.

4-B. Mature marijuana plant. "Mature marijuana plant" means a harvestable female marijuana plant that is flowering.

Sec. B-5. 22 MRSA §2422, sub-§5, as amended by PL 2009, c. 631, §11 and affected by §51, is further amended to read:

5. Medical use. "Medical use" means the acquisition, possession, cultivation, manufacture, use, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a ~~registered~~ qualifying patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition.

Sec. B-6. 22 MRSA §2422, sub-§§5-A and 5-B are enacted to read:

5-A. Member of the family. "Member of the family" means a person who is a spouse, domestic partner, child, sibling, aunt, uncle, niece, nephew, parent, stepparent, grandparent or grandchild of another person. "Member of the family" includes a person living with a person as a spouse and a natural parent of a child of a person.

5-B. Members of the same household. "Members of the same household" means 2 or more people who share a dwelling unit.

Sec. B-7. 22 MRSA §2422, sub-§6, as amended by PL 2009, c. 631, §12 and affected by §51, is further amended to read:

6. Registered dispensary. "Registered dispensary" or "dispensary" means a not-for-profit entity registered under section 2428 that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana or related supplies and educational materials to ~~registered~~ qualifying patients ~~who have~~

~~designated the dispensary to cultivate marijuana for their medical use and the registered primary caregivers of those patients.~~

Sec. B-8. 22 MRSA §2422, sub-§6-A, as enacted by PL 2009, c. 631, §13 and affected by §51, is repealed.

Sec. B-9. 22 MRSA §2422, sub-§8-A is enacted to read:

8-A. Primary caregiver. "Primary caregiver" means a person, a hospice provider licensed under chapter 1681 or a nursing facility licensed under chapter 405 that provides care for a qualifying patient in accordance with section 2423-A, subsection 2. A person who is a primary caregiver must be at least 21 years of age and may not have been convicted of a disqualifying drug offense.

Sec. B-10. 22 MRSA §2422, sub-§9, as enacted by IB 2009, c. 1, §5, is amended to read:

9. Qualifying patient. "Qualifying patient" or "patient" means a person who has been diagnosed by a physician as having a debilitating medical condition and who possesses a valid written certification regarding medical use of marijuana in accordance with section 2423-B.

Sec. B-11. 22 MRSA §2422, sub-§11, as repealed and replaced by PL 2009, c. 631, §16 and affected by §51, is amended to read:

11. Registered primary caregiver. ~~"Registered primary caregiver" or "primary caregiver" means a person, a hospice provider licensed under chapter 1681 or a nursing facility licensed under chapter 405 that provides care for a registered patient and that has been named by the patient as a primary caregiver to assist with a registered patient's medical use of marijuana. A person who is a primary caregiver must be at least 21 years of age and may not have been convicted of a disqualifying drug offense~~ primary caregiver who is registered by the department pursuant to section 2425, subsection 4.

Sec. B-12. 22 MRSA §2422, sub-§12, as amended by PL 2009, c. 631, §17 and affected by §51, is further amended to read:

12. Registered patient. ~~"Registered patient" or "patient"~~ means a qualifying patient who is registered by the department pursuant to section 2425, subsection 1.

Sec. B-13. 22 MRSA §2422, sub-§13-A is enacted to read:

13-A. Tamper-resistant paper. "Tamper-resistant paper" means paper that possesses an industry-recognized feature that prevents copying of the paper, erasure or modification of information on the paper and the use of counterfeit documentation.

Sec. B-14. 22 MRSA §2422, sub-§14, as repealed and replaced by PL 2009, c. 631, §19 and affected by §51, is amended to read:

14. Prepared marijuana. "Prepared marijuana" means the dried leaves and flowers of the marijuana plant that require no further processing and any mixture or preparation

of those dried leaves and flowers, including but not limited to tinctures, ointments and other preparations, but does not include the seeds, stalks, leaves that are disposed of and not dried for use and roots of the plant and does not include the ingredients, other than marijuana, in tinctures, ointments or other preparations that include marijuana as an ingredient or food or drink prepared with marijuana as an ingredient for human consumption.

Sec. B-15. 22 MRSA §2422, sub-§16, as enacted by IB 2009, c. 1, §5, is amended to read:

16. Written certification. "Written certification" means a document on tamper-resistant paper signed by a physician ~~and stating that, that expires in one year and that states that~~ in the physician's professional opinion a patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition. A written certification may be made only in the course of a bona fide physician-patient relationship after the physician has completed a full assessment of the qualifying patient's medical history. ~~The written certification must specify the qualifying patient's debilitating medical condition.~~

Sec. B-16. 22 MRSA §2423-A, as enacted by PL 2009, c. 631, §21 and affected by §51, is amended to read:

§2423-A. Authorized conduct for the medical use of marijuana

1. Qualifying patient. Except as provided in section 2426, a ~~registered~~ qualifying patient may:

A. Possess up to 2 1/2 ounces of prepared marijuana and an incidental amount of marijuana as provided in subsection 5;

B. ~~Cultivate, or designate a primary caregiver to cultivate under paragraph F, up to a total of 6 mature marijuana plants if the patient elects to cultivate and the patient has not designated a registered primary caregiver or registered dispensary to cultivate marijuana on the patient's behalf for that qualifying patient. The total number of mature marijuana plants per qualifying patient, whether cultivated by the patient or by a primary caregiver, may not exceed 6. In addition to the 6 mature marijuana plants, the patient who is cultivating the patient's own marijuana may have harvested marijuana in varying stages of processing in order to ensure the patient is able to maintain supply and meet personal needs. Two or more qualifying patients who are members of the same household and cultivating their own marijuana may share one enclosed, locked facility for cultivation;~~

C. Possess marijuana paraphernalia;

D. Furnish or offer to furnish to another ~~registered~~ qualifying patient for that ~~person's~~ patient's medical use of marijuana up to 2 1/2 ounces of prepared marijuana if nothing of value is offered or transferred in return;

E. ~~Name~~ Designate one person, hospice provider or nursing facility as a primary caregiver to assist with the qualifying patient's medical use of marijuana in a

standardized written document, developed by the department, signed and dated by the qualifying patient, including a one-year expiration and the signed acknowledgment of the primary caregiver that the primary caregiver may be contacted to confirm the designation of the primary caregiver. A 2nd person or hospice provider or nursing facility may be ~~named~~ designated as a 2nd primary caregiver if the patient is under 18 years of age. The primary caregivers for a patient are determined solely by the patient's preference ~~as named on the application under section 2425, subsection 1~~ except that a parent, guardian or person having legal custody shall serve as a primary caregiver for a minor child ~~pursuant to section 2425, subsection 2, paragraph B, subparagraph (2);~~

F. Designate one primary caregiver or a registered dispensary to cultivate marijuana for the medical use of the patient, except that a hospice provider or a nursing facility that is ~~named~~ designated as a primary caregiver by a ~~registered~~ patient and the staff of the provider or facility may not be designated to cultivate marijuana for the patient. ~~The primary caregiver or dispensary that may cultivate marijuana for a patient is determined solely by the patient's designation on the application under section 2425, subsection 1~~ The qualifying patient must designate the primary caregiver or registered dispensary to cultivate for the patient in a standardized written document, developed by the department, signed and dated by the qualifying patient, which must include a one-year expiration, the total number of mature plants the primary caregiver is designated to cultivate and the signed acknowledgment of the primary caregiver that the primary caregiver may be contacted to confirm the designation of the primary caregiver to cultivate for the patient and the number of mature plants to be cultivated and being cultivated for the patient or the signed acknowledgment of a person on behalf of the registered dispensary that the registered dispensary may be contacted to confirm the designation of the dispensary to cultivate for the patient and the number of mature plants to be cultivated and being cultivated for the patient; and

G. Be in the presence or vicinity of the medical use of marijuana and assist any ~~registered~~ qualifying patient with using or administering marijuana.

2. Primary caregiver. Except as provided in section 2426, a ~~registered~~ primary caregiver, for the purpose of assisting a ~~registered~~ qualifying patient who has ~~named~~ designated the primary caregiver as provided in ~~section 2425, subsection 1,~~ may:

A. Possess up to 2 1/2 ounces of prepared marijuana and an incidental amount of marijuana as provided in subsection 5 for each qualifying patient who has ~~named~~ designated the person as a primary caregiver;

B. Cultivate up to 6 mature marijuana plants for each qualifying patient who has designated the primary caregiver to cultivate marijuana on the patient's behalf, subject to the limitation in subsection 1, paragraph B on the total number of plants authorized per qualifying patient. A primary caregiver may not cultivate marijuana for a patient unless the patient has designated the primary caregiver for that purpose and the patient has not designated a registered dispensary to cultivate marijuana for the patient's medical use. In addition to the marijuana plants otherwise authorized under this paragraph, a primary caregiver may have harvested marijuana plants in varying stages of processing in order to ensure the primary caregiver is able to meet the needs of the primary caregiver's qualifying patients;

C. Assist no more than 5 patients at any one time with their medical use of marijuana;

D. Receive reasonable monetary compensation for costs associated with assisting a qualifying patient who ~~named~~ designated the primary caregiver through the department's registration process;

E. Receive reasonable monetary compensation for costs associated with cultivating marijuana for a patient who designated the primary caregiver to cultivate marijuana ~~through the department's registration process;~~

F. Be in the presence or vicinity of the medical use of marijuana and assist any patient with the medical use ~~or~~ administration or preparation of marijuana; ~~and~~

G. Prepare food as defined in section 2152, subsection 4 containing marijuana for medical use by a ~~registered~~ qualifying patient if the primary caregiver preparing the food has obtained a license pursuant to section 2152, subsection 4-A and section 2167; and

H. For the purpose of disposing of excess prepared marijuana, transfer marijuana to a registered dispensary or another primary caregiver if nothing of value is received. A primary caregiver who transfers prepared marijuana pursuant to this paragraph does not by virtue of only that transfer qualify as a member of a collective.

3. Cultivation of marijuana. The following provisions apply to the cultivation of marijuana by a ~~registered~~ qualifying patient under subsection 1 ~~or~~ and a ~~registered~~ primary caregiver under subsection 2.

A. A patient who elects to cultivate marijuana plants must keep the plants in an enclosed, locked facility unless the plants are being transported because the patient is moving or taking the plants to the patient's own property in order to cultivate them.

B. A primary caregiver who has been designated by a patient to cultivate marijuana for the patient's medical use must keep all plants in an enclosed, locked facility unless the plants are being transported because the primary caregiver is moving or taking the plants to the primary caregiver's own property in order to cultivate them.

C. A primary caregiver designated to cultivate marijuana for a qualifying patient is required to register with the department, except that the following primary caregivers are not required to register:

(1) A primary caregiver designated to cultivate for a qualifying patient if that qualifying patient is a member of the household of that primary caregiver;

(2) Two primary caregivers who are qualifying patients, if those primary caregivers are members of the same household and assist one another with cultivation; and

(3) A primary caregiver who cultivates for a qualifying patient if that qualifying patient is a member of the family of that primary caregiver.

D. Two primary caregivers who are members of the same family or household may share the same enclosed, locked facility.

4. Hospice provider or nursing facility. A registered patient may name a hospice provider licensed under chapter 1681 or a nursing facility licensed under chapter 405 to serve as a registered primary caregiver. If a hospice provider or nursing facility is named as a primary caregiver, the provider or facility shall complete the registration process with the department and obtain a primary caregiver registration card and the staff of the provider or facility shall obtain registry identification cards. To be issued a registry identification card, a staff person of a hospice provider or nursing facility that has been named as a primary caregiver must be at least 21 years of age and may not have been convicted of a disqualifying drug offense. The hospice provider or nursing facility and the staff of the provider or facility may not cultivate marijuana for the patient.

5. Incidental amount of marijuana. For purposes of this section, any incidental amount of marijuana ~~plants, seeds, stalks and roots, as defined by rule adopted by the department,~~ is lawful for a registered qualifying patient or a registered primary caregiver to possess and is not included in the amounts of prepared marijuana specified in this section.

~~**6. Onsite assessments by the department.** Prior to making an onsite assessment of a registered primary caregiver who is designated to cultivate marijuana by 3 or more patients at any one time, the department shall provide 24 hours' notice to the registered primary caregiver.~~

7. Collectives prohibited. Collectives are prohibited under this chapter. A person may not form or participate in a collective.

Sec. B-17. 22 MRSA §2423-B, as enacted by PL 2009, c. 631, §22 and affected by §51, is repealed and the following enacted in its place:

§2423-B. Authorized conduct by a physician

A physician may provide a written certification for the medical use of marijuana under this chapter and, after having done so, may otherwise state that in the physician's professional opinion a qualifying patient is likely to receive therapeutic benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition.

1. Adult qualifying patient. Prior to providing written certification for the medical use of marijuana under this section, a physician shall inform an adult qualifying patient of the risks and benefits of the medical use of marijuana and that the patient may benefit from the medical use of marijuana.

2. Minor qualifying patient. Prior to providing written certification for the medical use of marijuana by a minor qualifying patient under this section, a physician, referred to in this subsection as "the treating physician," shall inform the minor qualifying patient and the parent or legal guardian of the patient of the risks and benefits of the medical use of marijuana and that the patient may benefit from the medical use of marijuana. Except with regard to a minor qualifying patient who is eligible for hospice care, prior to providing a written certification under this section, the treating physician shall consult with a qualified physician, referred to in this paragraph as "the consulting physician," from a list of physicians who may be willing to act as consulting physicians maintained

by the department that is compiled by the department after consultation with statewide associations representing licensed medical professionals. The consultation between the treating physician and the consulting physician may consist of examination of the patient or review of the patient's medical file. The consulting physician shall provide an advisory opinion to the treating physician and the parent or legal guardian of the minor qualifying patient concerning whether the patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition. If the department or the consulting physician does not respond to a request by a treating physician within 10 days of receipt of the request, the treating physician may provide written certification for treatment without consultation with another physician.

3. Expiration. A written certification form for the medical use of marijuana under this section expires one year after issuance by the qualifying patient's physician.

4. Form; content. A written certification under this section must be in the form required by rule adopted by the department and may not require a qualifying patient's physician to state the patient's specific medical condition.

5. Possible sanctions. Nothing in this chapter prevents a professional licensing board from sanctioning a physician for failing to properly evaluate or treat a patient's medical condition or otherwise violating the applicable standard of care for evaluating or treating medical conditions.

Sec. B-18. 22 MRSA §2423-C, as enacted by PL 2009, c. 631, §23 and affected by §51, is amended to read:

§2423-C. Authorized conduct

A person may provide a ~~registered~~ qualifying patient or a ~~registered~~ primary caregiver with marijuana paraphernalia for purposes of the ~~registered~~ qualifying patient's medical use of marijuana in accordance with this chapter and be in the presence or vicinity of the medical use of marijuana as allowed under this chapter.

Sec. B-19. 22 MRSA §2423-D, as enacted by PL 2009, c. 631, §24 and affected by §51, is amended to read:

§2423-D. Authorized conduct by a visiting qualifying patient

A ~~visiting~~ qualifying patient who is visiting the State from another jurisdiction that authorizes the medical use of marijuana pursuant to a law recognized by the department who possesses a valid registry identification card or its equivalent written certification as described in section 2423-B from the patient's treating physician and a valid medical marijuana certification from that other jurisdiction and photographic identification or a driver's license from that jurisdiction may for 30 days after entering the State engage in conduct authorized for a registered qualifying patient without having to obtain a registry identification card issued by the department except that the visiting qualifying patient may not obtain in Maine marijuana for medical use based on a registry identification card from another jurisdiction under this chapter.

Sec. B-20. 22 MRSA §2423-E, as enacted by PL 2009, c. 631, §25 and affected by §51, is amended to read:

§2423-E. Requirements

1. Rights of persons or entities acting pursuant to this chapter. A person whose conduct is authorized under this chapter may not be denied any right or privilege or be subjected to ~~any~~ arrest, prosecution, penalty or disciplinary action, including but not limited to a civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for lawfully engaging in conduct involving the medical use of marijuana authorized under this chapter.

2. School, employer or landlord may not discriminate. A school, employer or landlord may not refuse to enroll or employ or lease to or otherwise penalize a person solely for that person's status as a ~~registered~~ qualifying patient or a ~~registered~~ primary caregiver unless failing to do so would put the school, employer or landlord in violation of federal law or cause it to lose a federal contract or funding. This subsection does not prohibit a restriction on the administration or cultivation of marijuana on premises when that administration or cultivation would be inconsistent with the general use of the premises. A landlord or business owner may prohibit the smoking of marijuana for medical purposes on the premises of the landlord or business if the landlord or business owner prohibits all smoking on the premises and posts notice to that effect on the premises.

3. Person may not be denied parental rights and responsibilities or contact with a minor child. A person may not be denied parental rights and responsibilities with respect to or contact with a minor child as a result of acting in accordance with this chapter, unless the person's conduct is contrary to the best interests of the minor child as set out in Title 19-A, section 1653, subsection 3.

4. Prohibition on seizure and retention. Except when necessary for an ongoing criminal or civil investigation, a law enforcement officer may not seize marijuana that is in the possession of a qualifying patient, primary caregiver or registered dispensary as authorized by this chapter. A law enforcement officer in possession of marijuana in violation of this subsection must return the marijuana within 7 days after receiving a written request for return by the owner of the marijuana. Notwithstanding the provisions of Title 14, chapter 741, if the law enforcement officer fails to return marijuana possessed in violation of this subsection within 7 days of receiving a written request for return of the marijuana under this subsection, the owner of the marijuana may file a claim in the District Court in the district where the owner lives or where the law enforcement officer is employed.

5. 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, present upon request of a law enforcement officer the original written certification for the patient and the patient's driver's license as described under Title 29-A, section 1401 or a nondriver identification card as described under Title 29-A, section 1410 or, if the person is a visiting patient under

section 2423-D, the equivalent proof of identity from the visiting patient's state of residence; and

B. If the person is a primary caregiver, present upon request of a law enforcement officer the original written document designating the person as a primary caregiver by the qualifying patient under section 2423-A, subsection 1, paragraph E or F and the primary caregiver's driver's license described under Title 29-A, section 1401 or a nondriver identification card as described under Title 29-A, section 1410.

6. Excess marijuana; forfeiture. A person who possesses marijuana in excess of the limits provided in section 2423-A and rules adopted under that section must forfeit the excess amounts to a law enforcement officer. The law enforcement officer is authorized to remove all excess marijuana seedlings, marijuana plants and prepared marijuana in order to catalog the amount of excess marijuana. Possession of marijuana in excess of the limits provided in section 2423-A and rules adopted under that section is a violation as follows:

A. Possession of prepared marijuana in an excess amount up to 2 1/2 ounces is a violation of section 2383; and

B. Possession of marijuana in an excess amount over 2 1/2 ounces is a violation of Title 17-A, chapter 45.

7. Repeat forfeiture. If a cardholder has previously forfeited excess marijuana pursuant to subsection 6 and a subsequent forfeiture occurs, the department shall revoke the registry identification card of the cardholder and the entire amount of marijuana seedlings, marijuana plants and prepared marijuana must be forfeited to a law enforcement officer. The department shall adopt rules to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

8. 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 prosecution involving marijuana possession and may present evidence in court that the 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 the uninterrupted availability of marijuana for the purpose of treating or alleviating the patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition.

Sec. B-21. 22 MRSA §2424, sub-§2, as repealed and replaced by PL 2009, c. 631, §26 and affected by §51, is repealed and the following enacted in its place:

2. Adding debilitating medical conditions. The department in accordance with section 2422, subsection 2, paragraph D shall adopt rules regarding the consideration of petitions from the public to add medical conditions or treatments to the list of debilitating medical conditions set forth in section 2422, subsection 2. In considering those petitions, the department shall provide an opportunity for public hearing of, and an opportunity to comment on those petitions. After the hearing, the commissioner shall approve or deny a petition within 180 days of its submission. The approval or denial of such a petition

constitutes final agency action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the Superior Court.

Sec. B-22. 22 MRSA §2424, sub-§3, as amended by PL 2009, c. 631, §27 and affected by §51, is further amended to read:

3. Registry identification cards. ~~Not later than July 1, 2010, the~~ The department shall adopt rules governing the manner in which it considers applications for and renewals of registry identification cards for registered patients, registered caregivers, principal officers, board members and employees of dispensaries and staff of hospice providers and nursing facilities ~~named~~ designated as primary caregivers. The department's rules must establish application and renewal fees that generate revenues sufficient to offset all expenses of implementing and administering this chapter. The department may establish a sliding scale of application and renewal fees based upon a registered patient's family income and status as a veteran of the Armed Forces of the United States. The department may accept donations from private sources in order to reduce the application and renewal fees.

Sec. B-23. 22 MRSA §2425, sub-§2, as amended by PL 2009, c. 631, §29 and affected by §51, is further amended to read:

2. Issuing patient registry identification card to minor child. The department may not register and issue a registry identification card to a qualifying patient who is under 18 years of age unless:

A. The qualifying patient's physician has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient and to a parent, guardian or person having legal custody of the qualifying patient;

B. The parent, guardian or person having legal custody consents in writing to:

(1) ~~Allow the~~ The qualifying patient's medical use of marijuana;

(2) ~~Serve~~ Serving as one of the qualifying patient's ~~registered~~ primary caregivers; and

(3) ~~Control~~ Controlling the acquisition of the marijuana; and the dosage and the frequency of the medical use of marijuana by the qualifying patient; and

~~C. Except with regard to a qualifying patient who is eligible for hospice care, the commissioner or the commissioner's designee has approved an application for the medical use of marijuana by the qualifying patient. Prior to approving an application under this paragraph, the commissioner or the commissioner's designee must have received confirmation from a pediatrician and a psychiatrist chosen from a list maintained by the advisory board established under section 2424, subsection 2 that the pediatrician and psychiatrist have reviewed the medical file of or examined the qualifying patient and that in their professional opinions the qualifying patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition. If the commissioner or commissioner's designee fails to approve or disapprove a recommendation under this~~

~~paragraph within 10 days of receipt of the statements of the pediatrician and psychiatrist under this paragraph, the application is deemed approved.~~

D. The requirements of section 2423-B, subsection 2 have been met.

Sec. B-24. 22 MRSA §2425, sub-§5, as amended by PL 2009, c. 631, §32 and affected by §51, is further amended to read:

5. Registry identification card issuance. The department shall issue registry identification cards to registered patients, to registered primary caregivers and to staff of hospice providers and nursing facilities ~~named~~ designated by registered patients as primary caregivers within 5 days of approving an application or renewal under this section. Registry identification cards expire one year after the date of issuance. Registry identification cards must contain:

- A. ~~The name, address and date of birth of the patient~~ cardholder;
- ~~B. The name, address and date of birth of each registered primary caregiver, if any, of the patient;~~
- C. The date of issuance and expiration date of the registry identification card;
- D. A random identification number that is unique to the cardholder; and
- ~~E. A photograph, if required by the department; and~~
- F. ~~For a registered primary caregiver, a~~ A clear designation showing whether the cardholder is allowed under this chapter to cultivate marijuana ~~plants for the patient's medical use.~~

Sec. B-25. 22 MRSA §2425, sub-§7, as repealed and replaced by PL 2009, c. 631, §33 and affected by §51, is repealed and the following enacted in its place:

7. Possession of certain documents; application for registry identification card. 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 form executed under section 2423-A, subsection 1, paragraph E or F is not evidence of unlawful 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. B-26. 22 MRSA §2425, sub-§8, ¶A, as amended by PL 2009, c. 631, §34 and affected by §51, is further amended to read:

- A. Applications and supporting information submitted by qualifying patients and registered patients under this chapter, including information regarding their primary caregivers and physicians, are confidential.

Sec. B-27. 22 MRSA §2425, sub-§8, ¶¶F, G, H and J, as enacted by PL 2009, c. 631, §34 and affected by §51, are amended to read:

F. Applications, supporting information and other information regarding a registered dispensary are not confidential except that information that is contained within dispensary information that identifies a qualifying patient, a registered patient, the registered patient's physician and the patient's registered primary caregivers caregiver of the qualifying patient or registered patient is confidential.

G. Records maintained by the department pursuant to this chapter that identify applicants for a registry identification card, registered patients, registered primary caregivers and registered patients' physicians are confidential and may not be disclosed except as provided in this subsection and as follows:

- (1) To department employees who are responsible for carrying out this chapter;
- (2) Pursuant to court order;
- (3) With written permission of the patient or the registered patient's guardian, if the patient is under guardianship, or a parent, if the patient has not attained 18 years of age;
- (4) As permitted or required for the disclosure of health care information pursuant to section 1711-C;
- (5) To a law enforcement official for law enforcement verification purposes. The records may not be disclosed further than necessary to achieve the limited goals of a specific investigation; and
- (6) To a registered patient's treating physician and to a registered patient's primary caregiver for the purpose of carrying out this chapter.

H. This subsection does not prohibit a physician from notifying the department if the physician acquires information indicating that a registered patient or qualifying patient is no longer eligible to use marijuana for medical purposes or that a registered patient or qualifying patient falsified information that was the basis of the physician's certification of eligibility for use.

J. A hearing concerning the revocation of a registry identification card under subsection 3-A is confidential. ~~If a registry identification card is revoked, the findings of the hearing and the revocation are public information.~~

Sec. B-28. 22 MRSA §2425, sub-§9-A is enacted to read:

9-A. Registration requirement. Registration under this section is voluntary for a qualifying patient and for a primary caregiver who is exempt under section 2423-A, subsection 3, paragraph C. Failure to register under this section does not affect authorized conduct for a qualifying patient or for a primary caregiver who is exempt under section 2423-A, subsection 3, paragraph C.

Sec. B-29. 22 MRSA §2425, sub-§10, ¶C, as enacted by IB 2009, c. 1, §5, is repealed.

Sec. B-30. 22 MRSA §2426, sub-§1, ¶E, as enacted by IB 2009, c. 1, §5, is amended to read:

E. Use or possess marijuana if that person does is not have a debilitating medical condition qualifying patient, primary caregiver, registered dispensary or other person authorized to use or possess marijuana under this chapter.

Sec. B-31. 22 MRSA §2426, sub-§3-A is enacted to read:

3-A. 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. 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.

B. A qualifying patient who obtains marijuana from more than one source with the result that the person receives more than 2 1/2 ounces of prepared marijuana in a 15-day period commits a civil violation for which a fine of \$200 must be adjudged.

Sec. B-32. 22 MRSA §2428, as amended by PL 2009, c. 631, §42 and affected by §51, is further amended to read:

§2428. Registered dispensaries

1-A. Provisions pertaining to registered dispensary. For the purpose of assisting a ~~registered~~ qualifying patient who has designated a registered dispensary to cultivate marijuana for the patient's medical use, a registered dispensary may in accordance with rules adopted by the department:

A. Possess and dispense up to 2 1/2 ounces of prepared marijuana and possess an incidental amount of marijuana for each qualifying patient who has designated the dispensary. For the purposes of this chapter, any incidental amount of marijuana ~~plants, seeds, stalks and roots, as defined by rule adopted by the department,~~ is lawful for a registered dispensary to possess and is not included in the amounts of prepared marijuana specified in this paragraph;

B. Cultivate up to 6 mature marijuana plants for each patient who has designated the dispensary to cultivate the plants on the patient's behalf subject to the limit of 6 mature plants total for a patient who also cultivates marijuana;

C. Receive reasonable monetary compensation for costs associated with assisting or for cultivating marijuana for a patient who designated the dispensary ~~through the department's registration process;~~ and

D. Assist any patient who designated the dispensary ~~through the department's registration process~~ to cultivate marijuana with the medical use or administration of marijuana; and

E. Obtain prepared marijuana from a primary caregiver under section 2423-A, subsection 2, paragraph H.

2. Registration requirements. Subject to limitations on the number and location of dispensaries in subsection 11 and rules adopted pursuant to this section, this subsection governs the registration of a dispensary.

A. The department shall register a dispensary and issue a registration certificate within 30 days to any person or entity that provides:

- (1) An annual fee paid to the department as set by rule, in an amount not less than \$5,000 and not more than \$15,000;
- (2) The legal name of the dispensary, evidence of incorporation under Title 13-B and evidence that the corporation is in good standing with the Secretary of State;
- (3) The physical address of the dispensary and the physical address of a maximum of one additional location, if any, where marijuana will be cultivated for patients who have designated the dispensary to cultivate for them;
- (4) The name, address and date of birth of each principal officer and board member of the dispensary; and
- (5) The name, address and date of birth of any person who is employed by the dispensary.

B. The department shall track the number of registered patients who designate a dispensary to cultivate marijuana for them and issue to each dispensary a written statement of the number of patients who have designated the dispensary to cultivate marijuana for them. This statement must be updated each time a new registered patient designates the dispensary or ceases to designate the dispensary. The statement may be transmitted electronically if the department's rules so provide. The department may provide by rule that the updated written statements may not be issued more frequently than once each week.

C. The department shall issue each principal officer, board member and employee of a dispensary a registry identification card within 10 days of receipt of the person's name, address and date of birth under paragraph A and a fee in an amount established by the department. Each card must specify that the cardholder is a principal officer, board member or employee of a dispensary and must contain:

- (1) The name, address and date of birth of the principal officer, board member or employee;
- (2) The legal name of the dispensary with which the principal officer, board member or employee is affiliated;
- (3) A random identification number that is unique to the cardholder;
- (4) The date of issuance and expiration date of the registry identification card; and
- (5) A photograph if required by the department.

D. The department may not issue a registry identification card to any principal officer, board member or employee of a dispensary who has been convicted of a disqualifying drug offense. The department may conduct a background check of each principal officer, board member or employee in order to carry out this provision. The

department shall notify the dispensary in writing of the reason for denying the registry identification card.

3. Rules. ~~By July 1, 2010, the~~ The department shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A governing the manner in which it considers applications for and renewals of registration certificates for dispensaries, including rules governing:

- A. The form and content of registration and renewal applications;
- B. Minimum oversight requirements for dispensaries and the one permitted additional location at which the dispensary cultivates marijuana for medical use by ~~registered~~ qualifying patients who have designated the dispensary to cultivate for them;
- C. Minimum record-keeping requirements for dispensaries, including recording the disposal of marijuana that is not distributed by the dispensary to ~~registered~~ qualifying patients who have designated the dispensary to cultivate for them;
- D. Minimum security requirements for dispensaries and any additional location at which the dispensary cultivates marijuana for medical use by ~~registered~~ qualifying patients who have designated the dispensary to cultivate for them; and
- E. Procedures for suspending or terminating the registration of dispensaries that violate the provisions of this section or the rules adopted pursuant to this subsection.

4. Expiration. A dispensary registration certificate and the registry identification card for each principal officer, board member or employee expire one year after the date of issuance. The department shall issue a renewal dispensary registration certificate and renewal registry identification cards within 10 days to any person who complies with the requirements contained in subsection 2. A registry identification card of a principal officer, board member or employee expires 10 days after notification by a dispensary that such person ceases to work at the dispensary.

5. Inspection. A dispensary and any additional location at which the dispensary cultivates marijuana for medical use by ~~registered patients~~ a qualifying patient who ~~have~~ has designated the dispensary to cultivate for ~~them~~ is the patient are subject to reasonable inspection by the department. The department may enter the dispensary and the one permitted additional location at which the dispensary cultivates marijuana at any time, without notice, to carry out an inspection under this subsection.

6. Registered dispensary requirements. This subsection governs the operations of registered dispensaries.

- A. A dispensary must be operated on a not-for-profit basis for the mutual benefit of ~~registered~~ qualifying patients who have designated the dispensary to cultivate marijuana. The bylaws of a dispensary and its contracts with ~~registered~~ qualifying patients must contain such provisions relative to the disposition of revenues and receipts as may be necessary and appropriate to establish and maintain its not-for-profit status. A dispensary need not be recognized as a tax-exempt organization under 26 United States Code, Section 501(c)(3) but is required to incorporate

pursuant to Title 13-B and to maintain the corporation in good standing with the Secretary of State.

B. A dispensary may not be located within 500 feet of the property line of a preexisting public or private school.

C. A dispensary shall notify the department within 10 days of when a principal officer, board member or employee ceases to work at the dispensary.

D. A dispensary shall notify the department in writing of the name, address and date of birth of any new principal officer, board member or employee and shall submit a fee in an amount established by the department for a new registry identification card before the new principal officer, board member or employee begins working at the dispensary.

E. A dispensary shall implement appropriate security measures to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana at the dispensary and the one permitted additional location at which the dispensary cultivates marijuana for medical use by ~~registered~~ qualifying patients who have designated the dispensary to cultivate for them.

F. The operating documents of a dispensary must include procedures for the oversight of the dispensary and procedures to ensure accurate record keeping.

G. A dispensary is prohibited from acquiring, possessing, cultivating, manufacturing, delivering, transferring, transporting, supplying or dispensing marijuana for any purpose except to assist ~~registered~~ qualifying patients who have designated the dispensary to cultivate marijuana for them ~~with~~ for the medical use of marijuana directly or through the ~~registered~~ qualifying patients' ~~other~~ primary caregivers.

H. All principal officers and board members of a dispensary must be residents of this State.

I. All cultivation of marijuana must take place in an enclosed, locked facility unless the marijuana plants are being transported between the dispensary and a location at which the dispensary cultivates ~~them~~ the marijuana plants, as disclosed to the department in subsection 2, paragraph A, subparagraph (3).

J. A dispensary that is required to obtain a license for the preparation of food pursuant to section 2167 shall obtain the license prior to preparing goods containing marijuana for medical use by a ~~registered~~ qualifying patient.

K. A dispensary shall display the dispensary's registration certificate issued under subsection 2, paragraph A in a publicly visible location in the dispensary.

7. Maximum amount of marijuana to be dispensed. A dispensary or a principal officer, board member or employee of a dispensary may not dispense more than 2 1/2 ounces of prepared marijuana to a ~~registered~~ qualifying patient who has designated the dispensary or to a primary caregiver on behalf of a ~~registered~~ qualifying patient who has designated the dispensary during a 15-day period.

8-A. Immunity. The immunity provisions in this subsection apply to a registered dispensary and officers, board members, agents and employees of the dispensary.

A. A registered dispensary is not subject to prosecution, search, seizure or penalty in any manner, including but not limited to a civil penalty or disciplinary action by a business or an occupational or professional licensing board or entity, and may not be denied any right or privilege solely for acting in accordance with this section to assist qualifying patients with the medical use of marijuana in accordance with this chapter.

B. A principal officer, board member, agent or employee of a registered dispensary is not subject to arrest, prosecution, search, seizure or penalty in any manner, including but not limited to a civil penalty or disciplinary action by a business or an occupational or professional licensing board or entity, and may not be denied any right or privilege solely for working for or with a registered dispensary to provide prepared marijuana to qualifying patients or to otherwise assist qualifying patients with the medical use of marijuana in accordance with this chapter.

9. Prohibitions. The prohibitions in this subsection apply to a registered dispensary.

A. A dispensary may not possess more than 6 ~~live~~ mature marijuana plants, ~~as defined in rules adopted by the department,~~ for each registered qualifying patient who has designated the dispensary to cultivate marijuana for the ~~registered~~ qualifying patient's medical use subject to a limit of 6 mature plants total for a patient who also cultivates marijuana.

B. A dispensary may not dispense, deliver or otherwise transfer marijuana to a person other than a ~~registered~~ qualifying patient who has designated the dispensary to cultivate marijuana for the patient or to the patient's ~~other registered~~ primary caregiver.

C. The department shall immediately revoke the registry identification card of a principal officer, board member or employee of a dispensary who is found to have violated paragraph B, and such a person is disqualified from serving as a principal officer, board member or employee of a dispensary.

D. A person who has been convicted of a disqualifying drug offense may not be a principal officer, board member or employee of a dispensary.

(1) A person who is employed by or is a principal officer or board member of a dispensary in violation of this paragraph commits a civil violation for which a fine of not more than \$1,000 may be adjudged.

(2) A person who is employed by or is a principal officer or board member of a dispensary in violation of this paragraph and who at the time of the violation has been previously found to have violated this paragraph commits a Class D crime.

E. A dispensary may ~~not~~ only acquire prepared marijuana or marijuana plants ~~except from a primary caregiver in accordance with section 2423-A, subsection 2, paragraph H or~~ through the cultivation of marijuana by that dispensary either at the location of the dispensary or at the one permitted additional location at which the dispensary cultivates marijuana for medical use by ~~registered~~ qualifying patients who have designated the dispensary to cultivate for them.

F. A dispensary may not contract for the cultivation of seeds, seedlings or small plants or the cultivation, production or preparation of marijuana or food containing marijuana for medical use.

10. Local regulation. This chapter does not prohibit a political subdivision of this State from limiting the number of dispensaries that may operate in the political subdivision or from enacting reasonable regulations applicable to dispensaries. A local government may not adopt an ordinance that is duplicative of or more restrictive than the provisions of this Act. An ordinance that violates this subsection is void and of no effect.

11. Limitation on number of dispensaries. The department shall adopt rules limiting the number and location of registered dispensaries. During the first year of operation of dispensaries the department may not issue more than one registration certificate for a dispensary in each of the 8 public health districts of the department, as defined in section 411. After review of the first full year of operation of dispensaries and periodically thereafter, the department may amend the rules on the number and location of dispensaries; however, the number of dispensaries may not be less than 8.

Sec. B-33. 22 MRSA §2429, sub-§1, as amended by PL 2009, c. 631, §43 and affected by §51, is repealed.

Sec. B-34. 22 MRSA §2429, sub-§3, as amended by PL 2009, c. 631, §44 and affected by §51, is repealed.

Sec. B-35. 22 MRSA §2430-B is enacted to read:

§2430-B. Admissibility of records

A certificate, signed by the commissioner or the commissioner's designee, stating what the records of the department show on any given matter related to this chapter is admissible in evidence in all courts of this State to prove what the records of the department are on that matter. Upon testimony of a law enforcement officer that the certificate and records were obtained by that law enforcement officer from the department, the court shall admit that certificate and those records as evidence without any further foundation or testimony. If the department stores records in a computer or similar device, a printout or other output readable by sight of information stored in the department's computer or similar device, certified by the commissioner or the commissioner's designee as an accurate reflection of the stored information, is admissible in evidence to prove the content of the records.

PART C

Sec. C-1. Department of Health and Human Services to expunge information. Within 60 days following the effective date of this Act, the Department of Health and Human Services shall expunge all information in the records of the State's medical use of marijuana program indicating a patient's specific medical condition. For 6 months following the effective date of this Act, cardholders under the Maine Revised Statutes, Title 22, section 2425 may request to be removed from the registry and have all of their information expunged by the State. Expungement must be completed within 60 days of receipt of a request. Beyond the allotted 6-month time for expungement requests, all new and remaining information required for a person to register as a patient or primary caregiver must be retained by the State for 6 years. The expungement requirements of

this section do not apply to a record with respect to which there is a pending law enforcement investigation.

In House of Representatives, 2011

Read twice and passed to be enacted.

..... Speaker

In Senate, 2011

Read twice and passed to be enacted.

..... President

Approved 2011

..... Governor