

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: 5-3-21

To: Veterans & Legal Affairs Committee

From: Sam Praver, Legislative Analyst

LD 882, An Act To Amend the Maine Medical Use of Marijuana Act

<b>Summary</b>	<p>This bill makes the following changes to the Maine Medical Use of Marijuana Act. It authorizes the Department of Administrative and Financial Services to:</p> <ol style="list-style-type: none"> <li>1. Place an administrative hold on marijuana plants and harvested marijuana or impose an administrative hold on certain registry identification cardholders and registration certificate holders;</li> <li>2. Permanently revoke registry identification cards and registration certificates issued by the department; and</li> <li>3. Assess fines for misconduct by a registered caregiver retail store, dispensary, manufacturing facility or person authorized to engage in marijuana extraction using inherently hazardous substances up to \$10,000. It authorizes the department to assess fines for misconduct by registered caregivers or assistants or other authorized agents of a registered caregiver, caregiver retail store, dispensary, manufacturing facility or person authorized to engage in marijuana extraction using inherently hazardous substances of up to \$2,000.</li> </ol>
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<b>LD 882</b>	<b>Current Law</b>
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<p><b>Sec. 1. 22 MRSA §2430-E</b>, as enacted by PL 2017, c. 452, §24, is amended to read:</p> <p><b>§2430-E. Possession penalties; fraud penalty; <u>administrative holds</u></b></p> <p><b>1. Excess marijuana; forfeiture.</b> 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:</p> <p>A. Possession of harvested marijuana by a qualifying patient or a caregiver operating under section 2423-A, subsection 3, paragraph C in an excess amount up to 1 1/4 ounces commits a civil violation for which a fine of not less than \$350 and not more than \$600 must be adjudged, none of which may be suspended;</p> <p>B. 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 1 1/4 ounces and up to 2 1/2 ounces commits a civil violation for which a fine of not less than \$700 and not more than \$1,000 must be adjudged, none of which may be suspended; and</p>	<p><u><a href="#">Title 22 §2430-E. Possession penalties; fraud penalty</a></u></p>
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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.

**2. Repeat forfeiture.** If a cardholder or registration certificate holder has previously 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, the cardholder's registration certificate and the entire amount of marijuana plants or 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 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 forfeited marijuana plants or harvested marijuana. 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.

**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 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 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 marijuana.

**4. Calculation of marijuana weight.** The amount of marijuana possessed under this chapter must be calculated by the weight of dried harvested marijuana. A calculation of the weight of marijuana that is not dried must reduce the weight by at least 75% to account for 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.

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**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.

**6. Administrative holds.** In accordance with the provisions of this subsection, the department may impose an administrative hold on a registry identification cardholder or registration certificate holder or an assistant or other authorized agent of a registry identification cardholder or registration certificate holder if, as a result of an inspection or investigation by the department or a law enforcement agency, the department determines 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 terms, conditions or provisions of a registry identification card or registration certificate issued to that entity.

A. The department shall provide to a registry identification cardholder or registration certificate holder subject to an administrative hold, or whose assistant or other authorized agent is subject to an administrative hold, notice of the imposition of that administrative 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:

(a) Marijuana plants or harvested marijuana not appropriately tracked or disclosed in accordance with section 2430-G and the rules adopted pursuant to that section;

(b) Harvested marijuana that is altered or not properly packaged or labeled in accordance with this chapter and rules adopted pursuant to this chapter;

(c) Marijuana plants or harvested marijuana that has not been cultivated, harvested, manufactured or transferred or is otherwise not in a form in compliance with this chapter or rules adopted pursuant to this chapter; or

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(d) Marijuana plants or harvested marijuana that the department has a reasonable articulable suspicion may present a threat to public health or safety;

(2) Detail any marijuana plants or harvested marijuana subject to the administrative hold;

(3) Describe any operational restrictions to be placed on the registry identification cardholder or registration certificate holder during the duration of the administrative hold; and

(4) Indicate actions that must be taken by the registry identification cardholder or registration certificate holder as a result of the administrative hold.

An administrative hold takes effect at the time that the notice under this paragraph is provided by the department to the registry identification cardholder or registration certificate holder.

B. A registry identification cardholder or registration certificate holder or an assistant or other authorized agent of a registry identification cardholder or registration certificate holder subject to an administrative hold must physically segregate any marijuana plants or harvested marijuana subject to the administrative hold, as detailed in the notice under paragraph A, from any other marijuana plants or harvested marijuana not subject to the administrative hold. For the duration of the administrative hold, the registry identification cardholder or registration certificate holder may not sell, give away, transfer, transport, dispose of or destroy any marijuana plants or harvested marijuana subject to the administrative hold, but may, as applicable, cultivate, harvest, manufacture or otherwise maintain the marijuana plants or harvested marijuana subject to the administrative hold unless specifically restricted by the department from engaging in such activities pursuant to this subsection.

C. A registry identification cardholder or registration certificate holder subject to an administrative hold shall, for the duration of the administrative hold, maintain any premises and otherwise continue to engage in authorized activities in accordance with all provisions of this chapter, the rules adopted pursuant to this chapter and the provisions of the administrative hold. Except as specifically restricted by the department pursuant to a notice under paragraph A, a registry identification cardholder or registration certificate holder may, for the duration of the administrative hold and as authorized pursuant to this

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chapter, cultivate, manufacture, test or sell any marijuana plants or harvested marijuana not subject to the administrative hold.

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 subsection may not be imposed for a period exceeding 30 consecutive days from the date notice is provided to the registry identification cardholder or registration certificate holder or the assistant or other authorized agent of the registry identification cardholder or registration certificate holder in accordance with paragraph A. Notice of termination of an administrative hold must be provided by the department to the registry identification cardholder or registration certificate holder or the assistant or other authorized agent of the registry identification cardholder or registration certificate holder.

E. Subsequent to the termination of an administrative hold under paragraph D, the department, in accordance with the applicable provisions of this chapter and the rules adopted pursuant to this chapter, may impose a fine on the registry identification cardholder or registration certificate holder or the assistant or other authorized agent of the registry identification cardholder or registration certificate holder that was subject to the administrative hold or suspend or revoke the registry identification card or registration certificate of that registry identification cardholder or registration certificate holder for a violation of the provisions of this chapter or the rules adopted pursuant to this chapter.

For the purposes of this subsection, "registry identification cardholder or registration certificate holder" means a registered caregiver, caregiver retail store, dispensary, manufacturing facility or person authorized to engage in marijuana extraction using inherently hazardous substances.

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

**1. Department suspension or revocation.** The department may suspend or revoke a 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, subsection 2 is considered a final agency action, subject to judicial review under Title 5, 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 this chapter and rules adopted by

[§2430-F. Registration suspension or revocation](#)

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the department may request an informal hearing. The 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 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.

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.

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

**§2430-H. Fines collected authorized; Maine Administrative Procedure Act applies**

In addition to any other administrative action to suspend or revoke a registry identification card or registration certificate, the department, on its own initiative or on 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, manufacturing facility or person authorized to engage in marijuana extraction using inherently hazardous substances operating under this chapter 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 for any violation by that entity or assistant or other authorized agent of that 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 identification card or registration certificate. Fines collected pursuant to this chapter and rules adopted by the department must be credited to the Medical Use of Marijuana Fund pursuant to section 2430.

**1. Fines in addition to other penalties.** Any fines imposed by the department pursuant to this section are in addition to any criminal or civil penalties that may be imposed 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

**§2430-H. Fines collected**

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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 a registered caregiver, caregiver retail store, dispensary, manufacturing facility or person authorized to engage in marijuana extraction using inherently hazardous substances.

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:

- (1) Not more than \$1,000 per minor registration violation;
- (2) Except as provided in subparagraph (3), not more than \$5,000 per major registration violation; and
- (3) Not more than \$10,000 per major registration violation affecting public safety.

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:

- (1) Not more than \$200 per minor registration violation;
- (2) Except as provided in subparagraph (3), not more than \$1,000 per major registration violation; and
- (3) Not more than \$2,000 per major registration violation affecting public safety.

**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.

**4. 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

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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.

5. 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 in Title 5, chapter 375, subchapter 2-A.

Notes

- **Administrative Holds.** Subsection 6 on administrative holds were modelled on similar provisions in 28-B §803-A.
- **Fines.** In section 3 of the bill, §2430-H, sub-§1 on fines in addition to other penalties, could cause confusion about whether fines stack generally. This is based on provisions in 28-B §801. If language is left in, it could be clarified by re-writing to read “nothing in this section may be construed to prevent the enforcement of any additional criminal or civil penalties that may apply.”
- **Technical Edits.** There are a number of provisions that could be clarified with minor technical edits.
- **Minor vs Major Violations.** See attached document on minor vs major violations.

Fiscal Impact

Fiscal impact information not available at time of writing.