

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: 5-10-21

To: Veterans & Legal Affairs Committee

From: Sam Praver, Legislative Analyst

[LD 939, An Act To Support Maine's Medical Marijuana Program and Ensure Patient Access](#)

Summary

This bill makes the following changes to the Maine Medical Use of Marijuana Act.

1. It allows caregivers to employ assistants who are between 18 and 21 years of age, if they are also a member of the family of the caregiver, and clarifies that assistants hired by caregivers, registered dispensaries, marijuana testing facilities and manufacturing facilities must otherwise be 21 years of age or older.
2. It allows registered caregivers and dispensaries to transfer to, and accept from, another registered caregiver or a dispensary an unlimited amount of marijuana plants and harvested marijuana in a wholesale transaction.
3. It allows caregivers to accept a digital image of a written certification for the purposes of initiating a transaction for harvested marijuana and requires the caregiver to verify the written certification in person before transferring any harvested marijuana to the qualifying patient.
4. It allows registration identification cards and criminal history record checks to be valid for one year regardless of employment status.
5. It adds a fee structure for a caregiver cultivating based upon plant canopy.
6. It repeals the prohibition on marketing marijuana plants or harvested marijuana to any adult use marijuana market within the same sign, advertisement or marketing material.
7. It removes the provision allowing the Department of Administrative and Financial Services to adopt rules allowing advertising or marketing using location-based services if the marketing is a mobile device application installed on a device by the owner of the device who is 21 years of age or older if it includes a permanent and easy opt-out feature. It provides instead that the Department of Administrative and Financial Services may adopt rules allowing advertising or marketing using location-based services if such marketing includes a permanent and easy opt-out feature and the owner of the device is 21 years of age or older.
8. It changes the period of time registered caregivers, registered dispensaries, marijuana testing facilities and manufacturing facilities must keep records from 7 years to 2 years.
9. It repeals the requirement that registered caregivers, registered dispensaries, marijuana testing facilities and manufacturing facilities have annual audits by an independent 3rd party.

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LD 939	Current Law
<p><b>Sec. 1. 22 MRSA §2423-A, sub-§2, ¶I</b>, as amended by PL 2017, c. 452, §4, is further amended to read:</p> <p>I. Hire any number of assistants <u>who are 21 years of age or older</u> to assist in performing the duties of the caregiver;</p> <p><b>Sec. 2. 22 MRSA §2423-A, sub-§2, ¶I-1</b> is enacted to read:</p> <p><u>I-1. Hire any number of assistants who are 18 years of age or older and under 21 years of age if they are also a member of the family of the caregiver to assist in performing the duties of the caregiver;</u></p> <p><b>Sec. 3. 22 MRSA §2423-A, sub-§2, ¶K-1</b>, as amended by PL 2019, c. 354, §2, is further amended to read:</p> <p>K-1. Transfer to and accept from another registered caregiver or a dispensary marijuana plants and harvested marijuana in a wholesale transaction in accordance with this paragraph. A registered caregiver may transfer in wholesale transactions for reasonable compensation or for no remuneration <del>up to 75% an unlimited amount</del> of the mature marijuana plants grown by the caregiver over the course of a calendar year, including any marijuana products or marijuana concentrate manufactured from <del>that 75% an unlimited amount</del> of the mature marijuana plants grown by the caregiver. A registered caregiver may transfer to or accept from other registered caregivers and dispensaries in wholesale transactions an unlimited amount of immature marijuana plants and seedlings. A registered caregiver that acquires mature marijuana plants, marijuana products or marijuana concentrate in a wholesale transaction under this paragraph may not resell the mature marijuana plants, marijuana products or marijuana concentrate except to a qualifying patient or to another registered caregiver or dispensary to assist a qualifying patient;</p> <p><b>Sec. 4. 22 MRSA §2423-A, sub-§2, ¶P</b>, as amended by PL 2019, c. 217, §2, is further amended to read:</p> <p>P. Operate one caregiver retail store to sell harvested marijuana to qualifying patients for the patients' medical use in accordance with this chapter; <del>and</del></p>	<p><a href="#"><u>22 MRSA §2423-A</u></a></p>

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**Sec. 5. 22 MRSA §2423-A, sub-§2, ¶Q**, as enacted by PL 2017, c. 452, §4, is amended to read:

Q. Be organized as any type of legal business entity recognized under the laws of the State; and

**Sec. 6. 22 MRSA §2423-A, sub-§2, ¶R** is enacted to read:

R. Accept a digital image of a written certification for the purposes of initiating a transaction for harvested marijuana. The caregiver must verify the written certification in person before transferring any harvested marijuana to the qualifying patient.

**Sec. 7. 22 MRSA §2423-A, sub-§10, ¶B**, as repealed and replaced by PL 2019, c. 331, §13, is amended to read:

B. An assistant of a marijuana testing facility may have access to cultivation areas pursuant to subsection 3, paragraphs A and B and section 2428, subsection 6, paragraph I. An assistant of a marijuana testing facility must be 21 years of age or older.

**Sec. 8. 22 MRSA §2423-F, sub-§4, ¶G**, as repealed and replaced by PL 2019, c. 331, §17, is amended to read:

G. May hire any number of assistants who are 21 years of age or older to assist in performing the duties of the manufacturing facility.

**Sec. 9. 22 MRSA §2423-F, sub-§5, ¶G**, as repealed and replaced by PL 2019, c. 331, §17, is amended to read:

G. May hire any number of assistants who are 21 years of age or older to assist in performing the activities authorized under this subsection, except that a qualifying patient authorized under subsection 3 may not hire an assistant.

**Sec. 10. 22 MRSA §2423-F, sub-§10, ¶F**, as repealed and replaced by PL 2019, c. 331, §17, is amended to read:

F. Minimum record-keeping requirements, ~~including an annual audit requirement.~~

← OMP testified that currently, the law and rule allow for this so long as the sale and verification of the patient certificate are done in person.

**Sec. 11. 22 MRSA §2425-A, sub-§3**, as enacted by PL 2017, c. 452, §12, is amended to read:

**3. Application for registry identification card; qualifications.** The department shall register and issue a registry identification card to an applicant who submits a complete application that meets the requirements of this subsection.

The department shall conduct a criminal history record check for any applicant for a registry identification card. The criminal history record check is valid for one year from the date it was conducted, regardless of the person's employment status. Except as provided in subsection 3-A, the department may not issue a registry identification card to an applicant who is not permitted under this chapter to have a disqualifying drug offense. An application must include, as applicable:

- A. The annual fee required pursuant to subsection 10; and
- B. A statement that the requirements of section 2423-B have been met if the qualifying patient applying for the registry identification card has not attained 18 years of age and the qualifying patient's parent, guardian or person having legal custody of the patient consents in writing to:
  - (1) The qualifying patient's medical use of marijuana;
  - (2) Serving as one of the qualifying patient's caregivers; and
  - (3) Controlling the acquisition of the marijuana plants or harvested marijuana and the dosage and the frequency of the medical use of marijuana by the qualifying patient.

**Sec. 12. 22 MRSA §2425-A, sub-§5, ¶A**, as enacted by PL 2017, c. 452, §12, is amended to read:

- A. A registry identification card expires one year after the date of issuance, regardless of the person's employment status. The card must contain:
- (1) The name of the cardholder;
  - (2) The date of issuance and expiration date;

[22 MRSA §2425-A](#)

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- (3) A random identification number that is unique to the cardholder; and
- (4) A clear designation showing whether the cardholder is allowed under this chapter to cultivate marijuana plants.

**Sec. 13. 22 MRSA §2425-A, sub-§10, ¶B**, as enacted by PL 2017, c. 452, §12, is repealed and the following enacted in its place:

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

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

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

**Sec. 14. 22 MRSA §2428, sub-§1-A, ¶K**, as enacted by PL 2017, c. 452, §16, is amended to read:

K. Hire any number of assistants who are 21 years of age or older to assist in performing the duties of the dispensary; and

**Sec. 15. 22 MRSA §2429-B, sub-§1, ¶C**, as enacted by PL 2017, c. 452, §18, is amended to read:

C. Be placed or otherwise used within 1,000 feet of the property line of a preexisting public or private school, except that, if a municipality chooses to prohibit the placement or use of signs or advertising by or on behalf of a registered caregiver or dispensary at distances greater than or less than 1,000 feet but not less than 500 feet from the property line of a preexisting public or private school, that greater or lesser distance applies; or

B. There is an annual registration fee for a caregiver who cultivates marijuana plants on behalf of a qualifying patient pursuant to [section 2423-A, subsection 2, paragraph B](#). The fee may not be less than \$50 or more than \$240 for each group of up to 6 mature marijuana plants cultivated by the caregiver. The caregiver shall notify the department of the number of marijuana plants the caregiver cultivates.

← *Changes are same as included in LD 881 (OTP-AM)*

[22 MRSA §2428](#)

[22 MRSA §2429-B](#)

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**Sec. 16. 22 MRSA §2429-B, sub-§1, ¶D**, as enacted by PL 2017, c. 452, §18, is amended to read:

D. Violate any other requirement or restriction on signs, advertising and marketing imposed by the department by rule pursuant to subsection 2; ~~or.~~

**Sec. 17. 22 MRSA §2429-B, sub-§1, ¶E**, as amended by PL 2019, c. 331, §29, is repealed.

**Sec. 18. 22 MRSA §2429-B, sub-§2, ¶D**, as enacted by PL 2017, c. 452, §18, is amended to read:

D. A prohibition on advertising or marketing directed toward location-based devices, ~~including, but not limited to, cellular telephones, unless the marketing is a mobile device application installed on the device by the owner of the device who is 21 years of age or older and unless such marketing includes a permanent and easy opt-out feature and the owner of the device is 21 years of age or older.~~

**Sec. 19. 22 MRSA §2430-G, sub-§1, ¶A**, as enacted by PL 2017, c. 452, §24, is amended by amending subparagraph (2) to read:

(2) Keep the books and records maintained by the registered caregiver, registered dispensary, marijuana testing facility or manufacturing facility for a period of ~~7~~ 2 years; and

**Sec. 20. 22 MRSA §2430-G, sub-§1, ¶A**, as enacted by PL 2017, c. 452, §24, is amended by repealing subparagraph (3).

E. Market to any person authorized to possess marijuana plants or harvested marijuana under this chapter and specifically to any adult use or recreational marijuana market within the same sign, advertisement or marketing material.

[22 MRSA §2430-G](#)

(3) Complete an annual audit of business transactions of the registered caregiver, registered dispensary, marijuana testing facility or manufacturing facility by an independent 3rd party; and

**Tech Notes**

- **Section 12.** As drafted, this language makes a registration card expire after 1 year, even if the holder is employed. However, if the goal is to prevent a registration card from expiring until a full year from the date it was issued, even if the holder ceases to be employed in that timeline, then the language needs to be adjusted.
- **Section 18.**
  - (a) What is the goal of removing “including but not limited to cellular phones”? If cellular phones are still intended to be covered, removing that language may make unclear their inclusion. What other location based devices are envisioned?
  - (b) How does the marketing know the owner of the device is 21 years or older? The language being repealed tied the age requirement to the person installing the marketing application, the new language does not.

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**Fiscal  
Impact**

Fiscal impact information not available at time of writing.