

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **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:**

**Sec. 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 registeredqualified patient, pursuant to Title 22, chapter 558-C, are not considered to be adulterated under this subchapter.

**Sec. 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 ~~118-A~~, and a registered dispensary, as defined in section 2422, subsection 6, that prepare food containing marijuana for medical use by a registeredqualified 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 family or household member of the primary caregiver. For purposes of this paragraph, "family or household member" has the same meaning as in Title 19-A, section 4002, subsection 4.

**Sec. 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 qualified patient, pursuant to chapter 558-C, are not considered to be adulterated under this subchapter.

**Sec. 4. 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 qualifying patient's physician pursuant to section 2423-B.~~

**Sec. 5. 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, fenced region or other enclosed area that is equipped with locks a lock or other security devices ~~device~~ that permit permits access only by a ~~cardholder~~ authorized personnel.

**Sec. 6. 22 MRSA §2422, sub-§4-A** is enacted to read:

**4-A. Incidental amount of marijuana.** "Incidental amount of marijuana" means any amount of nonflowering marijuana plants, flowering marijuana plants that are 12 inches or less in height and 12 inches or less in width and marijuana leaves, seeds, stalks and roots.

**Sec. 7. 22 MRSA §2422, sub-§4-B** is enacted to read:

**4-B. Mature marijuana plant.** "Mature marijuana plant" means a harvestable female marijuana plant that is flowering and is greater than 12 inches in height and 12 inches in diameter.

**Sec. 8. 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. 9. 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. 10. 22 MRSA §2422, sub-§6-A,** as enacted by PL 2009, c. 631, §13 and affected by §51, is repealed.

**Sec. 11. 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 and that has been designated in a written document signed and dated by the patient as a primary caregiver to assist with the qualifying 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.

**Sec. 12. 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 has received the physician's written certification recommending medical use of marijuana.

**Sec. 13. 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. 14. 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. 15. 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:

A. Copying of the paper;

B. Erasure or modification of information on the paper; or

C. The use of counterfeit documentation.

**Sec. 16. 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 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. 17. 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~~Obtain and possess up to 2 1/2 ounces a 2-month supply of prepared marijuana and an incidental amount of marijuana as provided in subsection 5 ~~in an amount not to exceed 10 ounces.~~  
A qualifying patient may possess an incidental amount of marijuana, which is not included in the amount of prepared marijuana allowed in this paragraph;

B. ~~Cultivate up to 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.~~ In addition to the 6 mature marijuana plants, the patient who is cultivating the patient's own marijuana may have one or more mature marijuana plants in varying stages of processing or cultivation in order to ensure the patient is able to maintain supply and meet personal needs. If 2 or more cohabitating qualifying patients cultivate their own marijuana, the cohabitating patients may share the same cultivation area;

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 in a written document signed and dated by the qualifying patient. 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; 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, paragraph E~~, may:

A. ~~Possess~~Obtain and possess up to ~~2 1/2 ounces~~a one-month supply not to exceed 5 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 each for ~~each patient~~up to 5 qualifying patients who ~~has~~have designated the primary caregiver to cultivate marijuana on the patient's behalf. 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 mature marijuana plants in varying stages of processing or cultivation 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 qualifying 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, receive reasonable compensation for the transfer of marijuana to a registered dispensary or primary caregiver.

**3. Cultivation of marijuana.** The following provisions apply to the cultivation of marijuana by a ~~registered patient under subsection 1 or 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. ~~If a primary caregiver who has been designated by a patient more than 2 qualifying patients to cultivate marijuana for the patient's patients' medical use, the primary caregiver must keep all marijuana plants in an enclosed, locked facility unless the marijuana plants are being transported because the primary caregiver is moving or taking the marijuana plants to the primary caregiver's own property in order to cultivate them.~~

**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.~~

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

**§ 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. Prior to providing written certification for the medical use of marijuana under this section, a physician shall inform 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. A written certification for the medical use of marijuana under this section must be written on tamper-resistant paper. A written certification for the medical use of marijuana under this section expires one year after issuance by the patient's physician. 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. 19. 22 MRSA §2423-C**, as enacted by PL 2009, c. 631, §23 and affected by §51, is amended to read:

**§ 2423-C. Authorized conduct by anyone for the medical use of marijuana**

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. 20. 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 from another jurisdiction who possesses a valid registry identification card or its equivalent 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.~~

**Sec. 21. 22 MRSA §2423-E**, as enacted by PL 2009, c. 631, §25 and affected by §51, is amended to read:

**§ 2423-E. Prohibited acts against persons or entities engaged in authorized conduct for the medical use of marijuana**

**1. Rights of persons or entities acting pursuant to this chapter.** A person whose conduct is authorized under this chapter, including a physician under section 2423-B, 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. Law enforcement department or state agency may not seize or possess marijuana.** Except in the case when it is necessary for an ongoing criminal or civil investigation, a law enforcement officer, law enforcement department, state agency or employee of the State may not seize marijuana that is in the lawful possession of a qualifying patient, primary caregiver or registered dispensary as authorized by this chapter. A law enforcement officer, law enforcement department, state agency or employee of the State in possession of marijuana in violation of this subsection must return the marijuana within 7 days after receiving written request for return by the owner of the marijuana. Notwithstanding the provisions of Title 14, chapter 741, if the law enforcement officer, law enforcement department, state agency or employee of the State fails to return marijuana possessed in violation of this subsection after 7 days of receiving a written request to return 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, law enforcement department, state agency or employee of the State is located.

**5. Conditions ordered by a court.** In imposing conditions relating to a criminal sentence, bail, probation, continuance, deferred disposition or dispositional order, a court may permit the use of medical marijuana under this chapter. This subsection does not require the accommodation of on-site medical marijuana use in a correctional facility.

**6. 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 copy of the certification by a physician for the person to use medical marijuana under section 2423-B and official proof of identity, including a 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 resident of another state, the equivalent proof of identify from that state;

B. If the person is a primary caregiver, present upon request of a law enforcement officer the original copy of the designation as a primary caregiver by the qualifying patient required under section 2423-A, subsection 1, paragraph E and official proof of identity, including a driver's license 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 resident of another state, the equivalent proof of identify from that state.

**Sec. 22. 22 MRSA §2424, sub-§2**, as repealed and replaced by PL 2009, c. 631, §26 and affected by §51, is repealed.

**Sec. 23. 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 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 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. 24. 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; and

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

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

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

(3) Control the acquisition of the marijuana, 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.~~

**Sec. 25. 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 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 registered patient;~~
- B. ~~The name, address and date of birth of each registered primary caregiver, if any, of the registered 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;
- E. A photograph, if required by the department; and
- F. For a registered primary caregiver, a clear designation showing whether the cardholder is allowed under this chapter to cultivate marijuana plants for the registered patient's medical use.

**Sec. 26. 22 MRSA §2425, sub-§7**, as repealed and replaced by PL 2009, c. 631, §33 and affected by §51, is amended to read:

**7. Possession of or application for registry identification card or possession of a written certification is not evidence of unlawful conduct or a basis for a search.**

Possession of a registry identification card by a cardholder, or the act of applying for such a card, or possession of a written certification issued under section 2423-B 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. 27. 22 MRSA §2425, sub-§8**, as amended by PL 2009, c. 631, §34 and affected by §51, is further amended to read:

**8. Confidentiality.** This subsection governs confidentiality.

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

B. Applications and supporting information submitted by primary caregivers and physicians operating in compliance with this chapter are confidential.

C. The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list are confidential, exempt from the freedom of access laws, Title 1, chapter 13, and not subject to disclosure except as provided in this subsection and to authorized employees of the department as necessary to perform official duties of the department.

D. The department shall verify to law enforcement personnel whether a registry identification card is valid without disclosing more information than is reasonably necessary to verify the authenticity of the registry identification card.

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 registered patient, the registered patient's physician and the registered patient's registered primary caregivers 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 purposes~~ upon presentation of a valid search warrant. The records may not be disclosed further than necessary to achieve the limited goals of a specific investigation ~~satisfy the warrant~~; 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.

I. The department may disclose to an agency of State Government designated by the commissioner and employees of that agency any information necessary to produce registry identification cards or manage the identification card program and may disclose data for statistical or research purposes in such a manner that individuals cannot be identified.

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.~~

K. Except as otherwise provided in this subsection, a person who knowingly violates the confidentiality of information protected under this chapter commits a civil violation for which a fine of up to \$1,000 may be imposed. This paragraph does not apply to a physician or staff of a hospice provider or nursing facility named as a primary caregiver or any other person directly associated with a physician or a hospice provider or nursing facility that provides services to a registered patient.

L. If a cardholder ceases to be registered under this section for any reason, the department must purge all information concerning the cardholder, including information regarding any qualifying patient or primary caregiver of the cardholder, within 30 days of the termination of the registered status of the cardholder. The department shall notify a cardholder that the cardholder's information has been purged within 7 days of purging the cardholder's information pursuant to this paragraph.

M. The department shall maintain a log of persons requesting registration information under this subsection. The log required by this paragraph must contain the name and agency of the requestor and the information requested. A person who is the subject of an information request under this paragraph may view and copy the portion of the log relating to the person during ordinary department hours upon providing official proof of identity or may receive a copy of the portion of the log relating to the person upon written request and official proof of identity.

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

**9-A. Registration voluntary.** Registration under this section is voluntary. Failure to register under this section does not affect the authorized conduct for a qualifying patient or primary caregiver under section 2423-A.

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

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

**3-A. Penalty for fraudulent representation.** A person who makes a fraudulent representation to a law enforcement official of 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 in addition to any other penalty that may apply for making a false statement or for the possession or use of marijuana other than possession or use pursuant to this chapter.

**Sec. 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~~Obtain, possess and dispense up to 2 1/2 ounces~~one~~one-month supply not to exceed 5 ounces of prepared marijuana and 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 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;

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.

For purposes of this subsection, any incidental amount of marijuana is lawful for a registered dispensary to possess and is not included in the amounts of prepared marijuana specified in this subsection.

**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; and

(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 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 registeredqualifying 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 registeredqualifying 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 registeredqualifying 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~~expires 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~~the patient is 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 registeredqualifying patients who have designated the dispensary to cultivate marijuana. The bylaws of a dispensary and its contracts with registeredqualifying 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 registeredqualifying 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 registeredqualifying patients who have designated the dispensary to cultivate marijuana for them with the medical use of marijuana directly or through the registeredqualifying 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 registeredqualifying 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 registeredqualifying patient or to a primary caregiver on behalf of a registered patient 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 may not be 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, or denied any right or privilege solely for acting in accordance with this section or otherwise assisting qualifying patients with the medical use of marijuana.

B. A principal officer, board member, agent or employee of a registered dispensary may not be 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, or 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 livemature marijuana plants, ~~as defined in rules adopted by the department,~~ for each registeredqualifying patient who has designated the dispensary to cultivate marijuana for the registeredqualifying patient's medical use.

B. A dispensary may not dispense, deliver or otherwise transfer marijuana to a person other than a registeredqualifying 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 acquire prepared marijuana or marijuana plants ~~except from a patient or caregiver 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 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 political subdivision of the State may not adopt any order, ordinance, rule or regulation concerning the sale, purchase, purchase delay, transfer, ownership, use, possession, bearing, transportation, licensing, permitting, registration or taxation of medical marijuana or any other matter pertaining to medical marijuana other than the regulations allowed in this subsection.

**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 as long as the number of dispensaries is not less than 8.

**Sec. 33. 22 MRSA §2430, sub-§2, ¶B,** as enacted by PL 2009, c. 631, §45 and affected by §51, is amended to read:

B. All money received as a result of applications and reapplications for registry identification cards for registered patients, primary caregivers and dispensaries ~~and board members, officers and employees of dispensaries;~~

## SUMMARY

This bill amends the Maine Medical Use of Marijuana Act to protect patient privacy. The bill provides for expanded access and optional registration under the Act. The bill does the following:

1. It allows a physician to determine whether a condition requires the use of medical marijuana.
2. It amends the definition of "enclosed, locked facility."
3. It defines "mature marijuana plant."
4. It clarifies the definition of "qualifying patient" and removes the requirement of registration for certain authorized conduct of the patient.

5. It creates a definition for "primary caregiver."
6. It allows patients who cultivate their own marijuana to possess, beyond 6 mature marijuana plants, other marijuana plants in various stages of cultivation or processing.
7. It allows a primary caregiver to possess, beyond 6 mature marijuana plants for each of 5 qualifying patients of the caregiver, other marijuana plants in various stages of cultivation or processing.
8. It requires the use of an enclosed, locked facility only if marijuana is grown for 3 or more qualifying patients.
9. It allows a primary caregiver to sell excess marijuana to a marijuana dispensary and for dispensaries to contract out marijuana cultivation.
10. It removes the requirement that a patient who cultivates marijuana plants keep the plants in an enclosed, locked facility.
11. It removes the registration requirements for a hospice provider or nursing facility named as a patient's primary caregiver.
12. It removes the registration requirements for visiting qualifying patients.
13. It clarifies that a person may not be subject to arrest or prosecution for engaging in conduct authorized by the Maine Medical Use of Marijuana Act.
14. It prohibits a law enforcement officer, law enforcement department, state agency or employee of the State from seizing or possessing marijuana in the lawful possession of a qualifying patient, primary caregiver or dispensary.
15. It allows a business owner to prohibit smoking medical marijuana on the business's premises.
16. It allows a sliding scale registration fee based upon a patient's status as a veteran of the Armed Forces of the United States.
17. It removes the registration requirement that the Commissioner of Health and Human Services approve the registration application.
18. It removes the requirement that registration cards contain an applicant's address and date of birth.
19. It clarifies that possession of a written certification from a physician prescribing use of medical marijuana cannot be used as evidence of unlawful conduct or be the basis for a search of the patient.
20. It requires that the records of a patient no longer registered as a medical marijuana user be purged and requires that the patient be notified of the purge of information.
21. It removes the requirement of listing the nature of the debilitating conditions of registered patients in the annual report of the registration process by the Department of Health and Human Services to the Legislature.
22. It clarifies that registration is voluntary and failure to register does not affect the authorized conduct for a qualifying patient or primary caregiver.
23. It allows for a civil penalty for a person making a fraudulent representation relating to the possession or medical use of marijuana under the Maine Medical Use of Marijuana Act.

24. It allows a marijuana dispensary to obtain and possess up to 5 ounces of marijuana for each patient of the dispensary.

25. It removes the registration requirement of listing the name, address and date of birth for each principal officer, board member and employee of a marijuana dispensary or issuing registration cards to those individuals.

26. It provides for immunity for marijuana dispensaries and their principal officers, board members and employees.

27. It prohibits a political subdivision of the State from enacting any law or ordinance concerning use of medical marijuana other than reasonable rules concerning the locations of marijuana dispensaries.

28. It requires the Department of Health and Human Services to amend rules to retain at least 8 marijuana dispensaries throughout the State.

29. It requires a written certification by a physician recommending use of medical marijuana to be written on tamper-resistant paper.

30. It allows a primary caregiver to assist a qualifying patient in the preparation of marijuana.

31. It exempts from the definition of "food establishment" a primary caregiver who prepares medical marijuana for use by a qualifying patient who is a family or household member of the primary caregiver.

32. It requires a designation of a primary caregiver from a qualifying patient to be in a written document signed and dated by the qualifying patient.

33. It requires a physician to advise a patient of the risks and benefits of the use of medical marijuana and that the patient may benefit from the use of medical marijuana prior to issuing a certification prescribing the use of medical marijuana.

34. It allows a patient to grow marijuana for personal use and designate a primary caregiver or registered dispensary.

35. It allows a court to permit the use of medical marijuana while imposing conditions of a criminal sentence, bail, probation, continuance or other dispositional order.

36. It includes dispensing in conduct allowed by a registered dispensary.

37. It requires a registered dispensary to display its certificate issued by the Department of Health and Human Services in a publicly visible location in the dispensary.

38. It clarifies that physicians are protected for conduct authorized by the Maine Medical Use of Marijuana Act.

39. It requires a qualifying patient or primary caregiver to provide, upon request by a law enforcement officer, official proof of identification and the original copy of the physician's certification or qualifying patient's designation of primary caregiver.

40. It requires the Department of Health and Human Services to maintain a log of requests to view registration information, including the name and agency of the requestor, and allows a person whose information is subject to an information request to copy or receive copies of portions of the log relating to that request.