

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 Legalize and Tax Marijuana**

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

### **PART A**

**Sec. A-1. 36 MRSA c. 723** is enacted to read:

#### **CHAPTER 723**

#### **MARIJUANA TAX**

##### **§ 4921. Rate of tax**

A tax at the rate of 7% is imposed on the value of marijuana sold for commercial purposes pursuant to Title 22, chapter 558 or for medical use as defined in Title 22, chapter 558-C, beginning on or after January 1, 2012.

##### **§ 4922. Application of revenues**

Revenues derived from the tax imposed by this chapter must be credited to a General Fund suspense account. On or before the last day of each month, the State Controller shall transfer the revenues received by the State Tax Assessor during the preceding month pursuant to the tax imposed by section 4921 in equal amounts to the Land for Maine's Future Fund established under Title 5, section 6203, the Agricultural Marketing Loan Fund established under Title 10, section 1023-J, the Community Policing Grant Program Fund established under Title 25, section 2917, the Heating Fuels Efficiency and Weatherization Fund established under Title 35-A, section 10119, the University of Maine System established under Title 20-A, chapter 411, the Maine Community College System established under Title 20-A, chapter 431 and the Maine Maritime Academy.

##### **§ 4923. Annual report**

The bureau shall report annually beginning January 30, 2013 the amount of tax revenue collected pursuant to section 4921 and the amount distributed to each fund pursuant to section 4922 to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over taxation matters.

**Sec. A-2. Review and report recommendations.** The Department of Administrative and Financial Services, Bureau of Revenue Services shall review methods for ensuring that all marijuana that is sold in the State is assessed. The bureau shall report its findings and recommendations, including any necessary legislation, to the Joint Standing Committee on Taxation by November 1, 2011. The Joint Standing Committee on Taxation is authorized to submit a bill to the Second Regular Session of the 125th Legislature to implement the recommendations.

## PART B

**Sec. B-1. 22 MRS §2383, sub-§1**, as repealed and replaced by PL 2009, c. 652, Pt. B, §6, is amended to read:

**1. Marijuana.** Except as provided in sections 2390 and 2391 and chapter 558-C, a person may not possess marijuana.

A. A person who possesses a usable amount of marijuana commits a civil violation for which a fine of not less than \$350 and not more than \$600 must be adjudged for possession of up to 1 1/4 ounces of marijuana and a fine of not less than \$700 and not more than \$1,000 ~~\$250~~ must be adjudged for possession of over 1 1/4 ounces to 2 1/2 ounces up to one pound of marijuana, none of which may be suspended.

[PL 2009, c. 652, Pt. B, § 6 (RPR).]

**Sec. B-2. 22 MRS §2390** is enacted to read:

### **§ 2390. Personal use of marijuana**

Notwithstanding Title 17-A, chapter 45, a person 21 years of age or older may possess, cultivate, store and purchase marijuana for personal use.

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

A. "Incidental amount of marijuana" means a minor amount of marijuana plants, seeds, stalks and roots or a residual amount of prepared marijuana or used marijuana that is not included in the amounts of prepared marijuana as defined by rule adopted by the department.

B. "Prepared marijuana" has the same meaning as in section 2422, subsection 14.

**2. Possession.** A person may possess up to one pound of prepared marijuana, marijuana paraphernalia and an incidental amount of marijuana.

**3. Cultivation and storage of marijuana.** The following provisions apply to the cultivation and storage of marijuana for personal use.

A. A person may use up to 75 square feet of space for the cultivation and storage of marijuana at that person's place of residence, on property owned by that person or on another person's property with the written permission of the other property owner.

B. Up to 3 people who share a residence may use a common space for the cultivation and storage of marijuana of 75 square feet of space per person at the residence.

C. A person who elects to cultivate and store marijuana shall ensure the plants, paraphernalia and equipment are secure from unauthorized access or access by a person under 21 years of age.

D. Marijuana cultivation for medical use is not considered cultivation for personal use under this section and is governed by chapter 558-C.

**4. Purchase.** A person may purchase up to 2 1/2 ounces of prepared marijuana, marijuana paraphernalia and marijuana seedlings from a person or an establishment licensed to sell these products under section 2391.

**5. Use.** A person may smoke or ingest marijuana in a nonpublic place including a private residence. The existing prohibitions and limitations on smoking tobacco products in specified areas pursuant to chapters 262 and 263 apply to marijuana.

**6. Limitations.** This section does not permit a person to:

A. Undertake a task under the influence of marijuana when doing so would constitute negligence or professional malpractice or would otherwise violate a professional standard;

B. Possess marijuana or otherwise engage in the use of marijuana:

(1) In a school bus;

(2) On the grounds of any preschool or primary or secondary school; or

(3) In a correctional facility;

C. Smoke marijuana:

(1) On any form of public transportation; or

(2) In a public place; or

D. Operate a motor vehicle, aircraft, motorboat, snowmobile or all-terrain vehicle while under the influence of marijuana.

**7. Construction.** This section may not be construed to require an employer to accommodate the smoking or ingestion of marijuana in a workplace or an employee working while under the influence of marijuana.

**8. Rulemaking.** Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. B-3. 22 MRSA §2391** is enacted to read:

**§ 2391. Commercial marijuana-related activities**

Notwithstanding Title 17-A, chapter 45, a person who holds a license under section 2392 may cultivate, harvest, possess, process, package, transport, store and sell marijuana and marijuana paraphernalia for commercial purposes.

**Sec. B-4. 22 MRSA §2392** is enacted to read:

**§ 2392. Licensing requirements**

**1. License issued.** The department shall issue or renew a license for commercial marijuana-related activities to a person who meets the requirements of the department as set forth in rule and in subsection 2. For purposes of this section, "commercial marijuana-related activities" means cultivating, harvesting, processing, packaging, transporting, storing or selling marijuana for commercial purposes.

A. The department shall limit the number of licenses issued as determined by the department by rule in the first year and may issue no more than 30 additional licenses per year in subsequent years.

B. The department shall grant provisional licenses to dispensaries that on June 30, 2011 are registered pursuant to section 2428 and to persons who on June 30, 2011 are registered as primary caregivers pursuant to section 2422, subsection 11. A dispensary or primary caregiver may decline provisional licensing by notifying the department in writing. The department shall remove the provisional status of the license once the primary caregiver completes the licensing process set forth in rule and meets all licensing requirements.

**2. Requirements.** This subsection governs the operations of a licensee engaged in commercial marijuana-related activities.

A. A person who has been convicted of a disqualifying drug offense may not be a licensee. For purposes of this section, "a disqualifying drug offense" means a conviction for a violation of a state or federal controlled substance law that is a crime punishable by imprisonment for one year or more. It does not include an offense for which the sentence, including any term of probation, incarceration or supervised release, was completed 10 or more years earlier or an offense that consisted of conduct that is permitted under this chapter.

B. A licensee may use no more than 2,000 square feet of space for commercial marijuana cultivation.

C. A licensee may sell no more than 2 1/2 ounces of marijuana to a given individual within a 7-day period. This restriction does not apply to sales to nonprofit dispensaries registered pursuant to section 2428.

D. Commercial marijuana-related activities may not be located within 500 feet of the property line of a preexisting public or private school.

E. A licensee shall implement appropriate security measures to prevent:

(1) Unauthorized entrance into areas containing marijuana;

- (2) The theft of marijuana located on the premises or in transit;
- (3) Tampering with or adulteration of the marijuana products;
- (4) Unauthorized access to marijuana or marijuana paraphernalia by customers; and
- (5) Access to or sales of marijuana to persons under 18 years of age.

F. A licensee shall prepare and maintain documents that include procedures for the oversight of all aspects of operations and procedures to ensure accurate record keeping.

G. A person must be a resident of this State for a minimum of 1 year prior to applying for a license.

**Sec. B-5. 22 MRSA §2393** is enacted to read:

**§ 2393. Commercial Marijuana-related Activities Licensing Fund established**

**1. Fund established.** The Commercial Marijuana-related Activities Licensing Fund, referred to in this section as "the fund," is established as an Other Special Revenue Funds account in the department for the purposes specified in this section.

**2. Sources of fund.** The State Controller shall credit to the fund:

A. All money received as a result of applications and renewal registrations for licensing under section 2392;

B. All penalties and fines assessed for violations of sections 2390 to 2392;

C. All money from any other source, whether public or private, designated for deposit into or credited to the fund; and

D. Interest earned or other investment income on balances in the fund.

**3. Uses of the fund.** The fund may be used for expenses of the department to regulate commercial marijuana-related activities, as allocated by the Legislature.

**Sec. B-6. Rulemaking.** By December 1, 2011, the Department of Health and Human Services shall adopt major substantive rules, as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, to implement the provisions of Title 22, sections 2290 to 2293, governing the personal use of marijuana and commercial marijuana-related activities, including rules governing:

1. Provisions for administering and enforcing section 2390 including oversight requirements and penalties for violations;

2. The types of licenses for commercial marijuana-related activities that may be issued pursuant to section 2392, including but not limited to a distinct license for commercial marijuana cultivation and sales;

3. The terms, conditions and duration of each type of license pursuant to section 2392, including the provisional license pursuant to section 2392, subsection 1, paragraph B;

4. The form and content of applications, renewal registration forms and associated licensing and renewal fee schedules;

5. Procedures and timelines for application decisions, background checks and appeals;

6. Minimum standards for employment, including requirements for background checks, restrictions against hiring minors and safeguards to protect against unauthorized employee access to marijuana;

7. Minimum record-keeping requirements, including the recording of the disposal of marijuana that is not sold;

8. Minimum security requirements, including standards to reasonably protect against unauthorized access to marijuana at all stages of the licensee's possession of the marijuana, including receiving, processing, packing, storage, transporting and delivery to licensed sales outlets;

9. Procedures for enforcing section 2393, including penalties for violations, and procedures for suspending or terminating the license of a licensee that violates licensing provisions or the rules adopted pursuant to this section;

10. A streamlined application and approval process for a person named as a primary caregiver pursuant to Title 22, section 2425 and for an entity that is operating as a registered dispensary under Title 22, section 2428; and

11. Any other oversight requirements that the department determines are necessary to administer the laws relating to licensing commercial marijuana-related activities.

Rules adopted pursuant to this section may not prohibit a political subdivision of this State from limiting the number of licensees that may operate in the political subdivision or from enacting reasonable regulations applicable to licensees.

## **PART C**

**Sec. C-1. 25 MRSA §2917** is enacted to read:

### **§ 2917. Community Policing Grant Program established; fund established**

**1. Established.** The commissioner shall establish the Community Policing Grant Program, referred to in this section as "the program," to assist county and municipal law enforcement with community policing efforts in accordance with this section through grants from the program.

**2. Fund.** The Community Policing Grant Program Fund, referred to in this section as "the fund," is established within the Department of Public Safety to be used for the program in accordance with rules established by the commissioner. The fund consists of revenues deposited in the fund pursuant to Title 36, section 4922, any other funds appropriated or allocated for inclusion in the fund, from any source, and any other money available for deposit in the fund, including any federal funds or other public funds or any donations made to the fund. The commissioner may apply for federal or other funds that may be available for the purposes of the program. The fund is nonlapsing, and any balance remaining in the fund at the end of any fiscal year must be carried forward to the next fiscal year. The fund may also be used to pay for administrative expenses associated with the program.

**3. Relation to other funding.** Grants from the program supplement any other sources or levels of funding appropriated or allocated by the Legislature.

**4. Annual report.** The Department of Public Safety shall report annually, beginning January 30, 2013, the amount of grant funds distributed to each recipient and the projects that were funded pursuant to this section to the joint standing committees of the Legislature having jurisdiction over criminal justice and public safety matters and taxation matters.

**Sec. C-2. Rules.** The Commissioner of Public Safety shall, by December 1, 2011, adopt routine technical rules, as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, establishing the administration of the Community Policing Grant Program and the Community Policing Grant Program Fund established in Title 25, section 2917, including rules governing:

1. Application procedures, forms, deadlines and eligibility criteria for the grants;
2. Selection criteria and composition of a grant review committee, which must include representatives from groups involved in law enforcement, education, farming, community development and the reform of marijuana policy;
3. Criteria for awarding grants, dates for decisions of grant awards and methods for disbursement of funds;
4. Minimum record-keeping and reporting requirements for grantees; and
5. Any other oversight requirements that the commissioner determines necessary to administer the grants.

## PART D

**Sec. D-1. 22 MRSA §2422, sub-§1,** as amended by PL 2009, c. 631, §8 and affected by §51, is repealed.

**Sec. D-2. 22 MRSA §2422, sub-§3,** as enacted by IB 2009, c. 1, §5, is repealed.

**Sec. D-3. 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 registeredqualifying patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition.

**Sec. D-4. 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 registeredqualifying patients who have designated the dispensary to cultivate marijuana for their medical use and the registered primary caregivers of those patients.

**Sec. D-5. 22 MRSA §2422, sub-§6-A**, as enacted by PL 2009, c. 631, §13 and affected by §51, is repealed.

**Sec. D-6. 22 MRSA §2422, sub-§9**, as enacted by IB 2009, c. 1, §5, is amended to read:

**9. Qualifying patient.** "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition and in the physician's professional opinion is likely to receive therapeutic or palliative benefits from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the condition.

**Sec. D-7. 22 MRSA §2422, sub-§11**, as repealed and replaced by PL 2009, c. 631, §16 and affected by §51, is amended to read:

**11. Primary caregiver.** "~~Registered primary caregiver~~" or "~~primary~~"**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 registeredqualifying patient and that has been ~~named~~designated in writing by the patient as a primary caregiver to assist with a registeredqualifying 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. D-8. 22 MRSA §2422, sub-§12**, as amended by PL 2009, c. 631, §17 and affected by §51, is repealed.

**Sec. D-9. 22 MRSA §2422, sub-§13**, as amended by PL 2009, c. 631, §18 and affected by §51, is repealed.

**Sec. D-10. 22 MRSA §2422, sub-§15**, as enacted by IB 2009, c. 1, §5, is repealed.

**Sec. D-11. 22 MRSA §2422, sub-§16**, as enacted by IB 2009, c. 1, §5, is repealed.

**Sec. D-12. 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 up to 6 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;

C. Possess marijuana paraphernalia;

D. Furnish or offer to furnish to another registered qualifying patient for that person'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 one person, hospice provider or nursing facility as a primary caregiver. A 2nd person or hospice provider or nursing facility may be named 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~~ patient 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 as a primary caregiver by a registered qualifying 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~~ in writing; 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 in writing the primary caregiver as provided in section 2425, subsection 1 in writing, 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 patient who has ~~named~~ designated in writing the person as a primary caregiver;

B. Cultivate up to 6 marijuana plants for each patient who has designated in writing 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;

- 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 patient who named the primary caregiver through the department's registration process if licensed under chapter 558;
- E. Receive reasonable monetary compensation, if licensed under chapter 558, for costs associated with cultivating marijuana for a patient who designated in writing 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 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 2167.

**3. Cultivation of marijuana.** The following provisions apply to the cultivation of marijuana by a registered qualifying 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~~ secure from unauthorized access or from access by a person under 18 years of age.
- 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~~ secure from unauthorized access or from access by a person under 18 years of age.

**4. Hospice provider or nursing facility.** A registered qualifying 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~~ 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. D-13. 22 MRSA §2423-B**, as enacted by PL 2009, c. 631, §22 and affected by §51, is repealed.

**Sec. D-14. 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 registeredqualifying patient or a registered primary caregiver with marijuana paraphernalia for purposes of the registeredqualifying 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. D-15. 22 MRSA §2423-D**, as enacted by PL 2009, c. 631, §24 and affected by §51, is repealed.

**Sec. D-16. 22 MRSA §2423-E, sub-§2**, as enacted by PL 2009, c. 631, §25 and affected by §51, is amended to read:

**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 registeredqualifying 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 may prohibit the smoking of marijuana for medical purposes on the premises of the landlord if the landlord prohibits all smoking on the premises and posts notice to that effect on the premises.

**Sec. D-17. 22 MRSA §2424, sub-§2**, as repealed and replaced by PL 2009, c. 631, §26 and affected by §51, is amended to read:

**2. Adding debilitating medical conditions.** The commissioner shall establish, chair and staff an advisory board consisting of at least 11 health care practitioners representing various fields of practice, including but not limited to neurology, gastroenterology, pain management, medical oncology, psychiatry, infectious disease, hospice medicine, family medicine, pediatrics, treatment of addiction and gynecology. The practitioners must be certified by a national board in their areas of specialty and knowledgeable about the medical use of marijuana. The advisory board must also include at least 2 members of the public, at least one of whom is a registeredqualifying patient. The members must be chosen for appointment by the commissioner from a list proposed by the Maine Medical Association and the Maine Osteopathic Association or their successor organizations and from a list of individuals who have volunteered to serve on the advisory board. The advisory board shall:

A. Accept, review and evaluate petitions to add medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of marijuana. If a petition contains information that is confidential under section ~~2425, subsection 8, paragraph F~~2425-A, the board shall protect the confidentiality of that information;

B. Convene at least once per year to conduct public hearings regarding adding medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of marijuana;

C. Review and recommend to the commissioner for approval additional debilitating medical conditions that would benefit from the medical use of marijuana; and

D. Recommend quantities of marijuana that are necessary to constitute an adequate supply for ~~registered~~qualifying patients, ~~registered~~ primary caregivers and registered dispensaries.

**Sec. D-18. 22 MRSA §2424, sub-§3**, as amended by PL 2009, c. 631, §27 and affected by §51, is repealed.

**Sec. D-19. 22 MRSA §2425**, as amended by PL 2009, c. 631, §§28 to 36 and affected by §51, is repealed.

**Sec. D-20. 22 MRSA §2425-A** is enacted to read:

**§ 2425-A. Confidentiality**

**1. Dispensary confidentiality.** Applications, supporting information and other information regarding a registered dispensary are not confidential, except that dispensary information that identifies a qualifying patient, the patient's physician or the patient's primary caregivers is confidential.

**2. Disclosure of records.** A record maintained by a registered dispensary or the department pursuant to this section that identifies a qualifying patient, a primary caregiver or a qualifying patient's physician is confidential and may not be disclosed except as provided in this subsection. Records may be disclosed:

A. To department employees who are responsible for carrying out this chapter;

B. Pursuant to court order;

C. With the written permission of the patient or the patient's guardian, if the patient is under guardianship, or a parent, if the patient has not attained 18 years of age;

D. As permitted or required for the disclosure of health care information pursuant to section 1711-C; and

E. To a patient's treating physician and to a patient's primary caregiver for the purpose of carrying out this chapter.

**3. Physician communication.** This section does not prohibit a physician from notifying the department if the physician acquires information indicating that a qualifying patient is no longer eligible to use marijuana for medical purposes or that a qualifying patient falsified information that was the basis of the physician's determination of eligibility for use.

**4. Violations.** A person who knowingly violates the confidentiality of information protected under this section commits a civil violation for which a fine of up to \$1,000 may be imposed. This subsection 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 qualifying patient.

**Sec. D-21. 22 MRSA §2425-B** is enacted to read:

### **§ 2425-B. Reporting**

The department shall submit by April 1st each year to the Legislature an annual report that does not disclose any identifying information about qualifying patients or physicians, but does contain, at a minimum:

- 1. Dispensaries.** The number of registered dispensaries;
- 2. Patients.** The number of qualifying patients served by the dispensaries in each county; and
- 3. Officers.** The number of principal officers, board members and employees of each dispensary.

**Sec. D-22. 22 MRSA §2428, sub-§1-A,** as enacted by PL 2009, c. 631, §42 and affected by §51, is amended to read:

**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 up to 2 1/2 ounces of prepared marijuana and an incidental amount of marijuana for each patient who has designated the dispensary. For the purposes of this ~~chapter~~section, 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 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; and

E. Purchase marijuana from a person who holds a license pursuant to section 2392.

**Sec. D-23. 22 MRSA §2428, sub-§2, ¶B**, as amended by PL 2009, c. 631, §42 and affected by §51, is further amended to read:

B. The department shall track the number of registeredqualifying 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 registeredqualifying 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.

**Sec. D-24. 22 MRSA §2428, sub-§2, ¶C**, as amended by PL 2009, c. 631, §42 and affected by §51, is repealed.

**Sec. D-25. 22 MRSA §2428, sub-§2, ¶D**, as amended by PL 2009, c. 631, §42 and affected by §51, is further amended to read:

D. The department may not issue a ~~registry identification card~~ registration certificate to a dispensary if any principal officer, board member or employee of ~~the~~ 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 through its principal officers or board members in writing of the reason for denying the ~~registry identification card~~ registration certificate.

**Sec. D-26. 22 MRSA §2428, sub-§3, ¶B**, as amended by PL 2009, c. 631, §42 and affected by §51, is further amended to read:

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;

**Sec. D-27. 22 MRSA §2428, sub-§3, ¶C**, as amended by PL 2009, c. 631, §42 and affected by §51, is further amended to read:

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;

**Sec. D-28. 22 MRSA §2428, sub-§3, ¶D**, as amended by PL 2009, c. 631, §42 and affected by §51, is further amended to read:

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

**Sec. D-29. 22 MRSA §2428, sub-§5**, as amended by PL 2009, c. 631, §42 and affected by §51, is further amended to read:

**5. Inspection.** A dispensary 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 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.

**Sec. D-30. 22 MRSA §2428, sub-§6, ¶A**, as amended by PL 2009, c. 631, §42 and affected by §51, is further amended to read:

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.

**Sec. D-31. 22 MRSA §2428, sub-§6, ¶E**, as amended by PL 2009, c. 631, §42 and affected by §51, is further amended to read:

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.

**Sec. D-32. 22 MRSA §2428, sub-§6, ¶G**, as amended by PL 2009, c. 631, §42 and affected by §51, is repealed.

**Sec. D-33. 22 MRSA §2428, sub-§6, ¶I**, as amended by PL 2009, c. 631, §42 and affected by §51, is repealed.

**Sec. D-34. 22 MRSA §2428, sub-§6, ¶J**, as enacted by PL 2009, c. 631, §42 and affected by §51, is amended to read:

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.

**Sec. D-35. 22 MRSA §2428, sub-§7**, as amended by PL 2009, c. 631, §42 and affected by §51, is further amended to read:

**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 registeredqualifying patient during a 15-day period.

**Sec. D-36. 22 MRSA §2428, sub-§9**, as amended by PL 2009, c. 631, §42 and affected by §51, is repealed.

**Sec. D-37. 22 MRSA §2429**, as amended by PL 2009, c. 631, §§43 and 44 and affected by §51, is repealed and the following enacted in its place:

**§ 2429. Enforcement**

**1. Department fails to adopt rules.** If the department fails to adopt rules to implement this chapter by December 1, 2011, a qualifying patient may commence an action in Superior Court to compel the department to perform the actions mandated pursuant to the provisions of this chapter.

**2. Department fails to respond to application.** If the department fails to issue or deny a registration certificate in response to a valid dispensary application or renewal within 45 days of submission, the registration certificate is deemed granted.

**Sec. D-38. 22 MRSA §2430, sub-§2, ¶A**, as enacted by PL 2009, c. 631, §45 and affected by §51, is amended to read:

A. All money received as a result of applications and reapplications for registration as a qualifying patient, primary caregiver and dispensary;

**Sec. D-39. 22 MRSA §2430, sub-§2, ¶B**, as enacted by PL 2009, c. 631, §45 and affected by §51, is repealed.

**Sec. D-40. 22 MRSA §2430-A**, as enacted by PL 2009, c. 631, §46 and affected by §51, is amended to read:

**§ 2430-A. Compliance**

The department may take action necessary to ensure compliance with this chapter, including but not limited to obtaining, possessing and performing laboratory testing on marijuana from registered qualifying patients, registered primary caregivers and registered dispensaries in accordance with this chapter.

**PART E**

**Sec. E-1. 17-A MRSA §1111-A, sub-§1**, as amended by IB 2009, c. 1, §2, is further amended to read:

**1.** As used in this section the term "drug paraphernalia" means all equipment, products and materials of any kind that are used or intended for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a scheduled drug in violation of this chapter or Title 22, section 2383, except that this section does not apply to a person who is authorized to possess marijuana



for medical use pursuant to Title 22, chapter 558-C, to the extent the drug paraphernalia is used for that person's medical use of marijuana or as allowed under Title 22, chapter 558. It includes, but is not limited to:

- A. Kits used or intended for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a scheduled drug or from which a scheduled drug can be derived;
- B. Kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing scheduled drugs;
- C. Isomerization devices used or intended for use in increasing the potency of any species of plant that is a scheduled drug;
- D. Testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness or purity of scheduled drugs;
- E. Scales and balances used or intended for use in weighing or measuring scheduled drugs;
- F. Dilutents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used or intended for use in cutting scheduled drugs;
- G. Separation gins and sifters, used or intended for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
- H. Blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding scheduled drugs;
- I. Capsules, balloons, envelopes and other containers used or intended for use in packaging small quantities of scheduled drugs;
- J. Containers and other objects used or intended for use in storing or concealing scheduled drugs; and
- K. Objects used or intended for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:
  - (1) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;
  - (2) Water pipes;
  - (3) Carburetion tubes and devices;
  - (4) Smoking and carburetion masks;

(5) Roach clips, meaning objects used to hold burning material, such as a marijuana cigarette that has become too small or too short to be held in the hand;

(6) Miniature cocaine spoons and cocaine vials;

(7) Chamber pipes;

(8) Carburetor pipes;

(9) Electric pipes;

(10) Air-driven pipes;

(11) Chillums;

(12) Bongs; or

(13) Ice pipes or chillers.

**Sec. E-2. 17-A MRSA §1111-A, sub-§4**, as corrected by RR 2009, c. 2, §39, is amended to read:

**4.** A person is guilty of the sale and use of drug paraphernalia if:

A. The person uses drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a scheduled drug in violation of this chapter or Title 22, section 2383. Violation of this paragraph is a civil violation for which a fine of \$300 must be adjudged, none of which may be suspended;

B. The person possesses with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a scheduled drug in violation of this chapter or Title 22, section 2383. Violation of this paragraph is a civil violation for which a fine of \$300 must be adjudged, none of which may be suspended;

C. The person trafficks in or furnishes drug paraphernalia knowing, or under circumstances when one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store,

contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a scheduled drug in violation of this chapter or Title 22, section 2383, and the person to whom that person is trafficking or furnishing drug paraphernalia is:

(1) At least 16 years of age. Violation of this subparagraph is a Class E crime; or

(2) Less than 16 years of age. Violation of this subparagraph is a Class D crime; or

D. The person places in a newspaper, magazine, handbill or other publication an advertisement knowing, or under circumstances when one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects intended for use as drug paraphernalia. Violation of this paragraph is a Class E crime.

This subsection does not apply to a person who is authorized to possess marijuana under Title 22, section 2390 or 2391 or who is authorized to possess marijuana for medical use pursuant to Title 22, chapter 558-C to the extent the drug paraphernalia is required for that person's medical use of marijuana.

**Sec. E-3. 17-A MRSA §1117, sub-§4**, as enacted by PL 2009, c. 631, §3 and affected by §51, is amended to read:

**4.** A person is not guilty of cultivating marijuana if the conduct is expressly authorized by Title 22, chapter 558-C or Title 22, section 2390 or 2391.

## PART F

**Sec. F-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. F-2. 7 MRSA §2231, sub-§3**, as enacted by PL 2009, c. 320, §1, is amended to read:

**3. Application.** A person desiring to grow industrial hemp for commercial purposes shall apply to the commissioner for a license on a form prescribed by the commissioner. The application must include the name and address of the applicant, the legal description of the land area to be used for the production of industrial hemp and a map, an aerial photograph or global positioning coordinates sufficient for locating the production fields. ~~Except for employees of the Maine Agricultural Experiment Station and the University of Maine System involved in research and related activities, an applicant for an initial licensure must submit a set of the applicant's fingerprints, taken by a law enforcement officer, and any other information necessary to complete a statewide and nationwide criminal history record check by the~~

~~Department of Public Safety, State Bureau of Identification and the Federal Bureau of Investigation. All costs associated with the criminal history record check are the responsibility of the applicant and must be submitted with the fingerprints. Criminal history records provided to the commissioner under this section are confidential. The results of criminal records checks received under this subsection may only be used in determining an applicant's eligibility for licensure. A person with a prior criminal conviction is not eligible for licensure.~~

**Sec. F-3. 7 MRSA §2231, sub-§4**, as enacted by PL 2009, c. 320, §1, is amended to read:

**4. License issued.** Upon review and approval of an application, the commissioner shall notify the applicant and request that the application fee determined under subsection 7 be submitted. Upon receipt of the appropriate fee and in accordance with subsection 8, the commissioner shall issue a license, which is valid for a period of one year and only for the site or sites specified in the license.

**Sec. F-4. 7 MRSA §2231, sub-§5**, as enacted by PL 2009, c. 320, §1, is repealed.

**Sec. F-5. 7 MRSA §2231, sub-§8**, as enacted by PL 2009, c. 320, §1, is repealed.

**Sec. F-6. 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 11, 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.

**Sec. F-7. 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 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.

**SUMMARY**

This bill reforms state marijuana laws by establishing a special tax rate for marijuana, legalizing the personal use and cultivation of marijuana, legalizing and licensing certain commercial marijuana-related activities, while providing provisions to protect minors, employers and schools, and removing the registry system from the Maine Medical Use of Marijuana Act.

Part A of the bill establishes a tax rate of 7%, beginning January 1, 2012, for marijuana that is sold for commercial or medical purposes. It directs the State Controller to distribute the revenue generated by the tax equally among specific programs that benefit farmers, preserve land, assist law enforcement, provide aid to a state weatherization program and support higher education. It directs the Department of Administrative and Financial Services, Bureau of Revenue Services to report annually, beginning January 30, 2013, the amount of tax revenue generated and the amount distributed to each program to the joint standing committees of the Legislature having jurisdiction over appropriations and financial affairs and taxation matters. The bill directs the Bureau of Revenue Services to review methods for ensuring that all marijuana that is sold in the State is assessed and to report its findings and recommendations to the Joint Standing Committee on Taxation. The bureau must submit the report and any necessary legislation by November 1, 2011.

Part B of the bill allows a person 21 years of age or older to possess, purchase and use marijuana within certain limits and to cultivate a limited amount of marijuana for personal use. It allows a person to possess up to one pound of marijuana, possess marijuana paraphernalia and an incidental amount of marijuana. It allows a person to cultivate and store marijuana for personal use within 75 square feet of

space and to purchase up to 2 1/2 ounces of marijuana or seedlings from someone who is licensed to sell these products. The bill includes restrictions that impose the same limitations on use that apply to tobacco. It requires those cultivating marijuana to secure it from access by unauthorized persons and access by minors. It also provides protections for schools and employers.

It includes specific requirements for the operations of commercial marijuana-related activities regarding the location of operations, security measures and record keeping as well as requirements for the licensee such as residency for a year prior to applying for a license. It allows a licensee up to 2,000 square feet of space for commercial marijuana cultivation and allows a licensee to sell no more than 2 1/2 ounces to any one individual per week. It limits the number of licenses as determined by department rule in the first year and requires that provisional licenses be automatically granted for dispensaries and persons who are registered as primary caregivers on June 30, 2011. It provides a funding mechanism for regulation of commercial marijuana-related activities. It provides special protections for minors, employers and schools.

Part C of the bill establishes the Community Policing Grant Program within the Department of Public Safety, which is funded by part of the revenue generated from the marijuana tax, to assist county and municipal law enforcement with community policing efforts. The Commissioner of Public Safety shall adopt rules for administering the program by December 1, 2011.

Part D of the bill removes the patient and primary caregiver registry system from the Maine Medical Use of Marijuana Act and repeals the provision requiring written certification from a physician for the medical use of marijuana as part of this registry system. It also repeals the requirement for patients, primary caregivers and dispensaries to keep marijuana in an enclosed, locked facility. Instead, it requires that the marijuana be secured from unauthorized access or from access by a person under 21 years of age. It allows dispensaries to acquire prepared marijuana or marijuana plants from persons licensed to cultivate or sell marijuana commercially. It updates the confidentiality and reporting requirements in the law to reflect the removal of the registry.

Part E of the bill updates the existing exceptions regarding possession of marijuana for medical use in the Maine Criminal Code.

Part F of the bill amends the existing laws on industrial hemp to allow a person to apply to the Department of Agriculture, Food and Rural Resources for a license to grow industrial hemp. It removes provisions in the law that make licensing of industrial hemp farming contingent upon federal action. This Part also updates various provisions of the Maine Revised Statutes, Title 7 and Title 22 that are affected by changes in terminology proposed to the Maine medical marijuana law in this bill.