

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-ONE

—
H.P. 908 - L.D. 1242

An Act To Amend the Maine Medical Use of Marijuana Act

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Department of Administration and Financial Services' office of marijuana policy is currently proposing rules that may go into effect before the expiration of the 90-day period; and

Whereas, the proposed rules would significantly damage the well-being and health of tens of thousands of citizens of the State by restricting their access to medical marijuana; and

Whereas, the proposed rules would do irreparable economic harm to thousands of citizens of the State through a dramatic increase in the cost of medical marijuana; and

Whereas, the proposed rules would do irreparable economic harm to thousands of medical marijuana caregivers and to their thousands of employees; and

Whereas, the proposed rules would do irreparable harm to the economy of the State by destroying businesses owned and domiciled in the State to the benefit of companies that are not based in the State and will not reinvest in this State; and

Whereas, the proposed rules would impact the most vulnerable communities in this State the hardest, including rural municipalities with aging populations; and

Whereas, the proposed rules make major changes that warrant legislative involvement and oversight; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 22 MRSA §2422-A, sub-§2, as enacted by PL 2017, c. 409, Pt. E, §3, is amended to read:

2. Rulemaking. The department, after consultation with the Department of Health and Human Services, may adopt rules as necessary to administer and enforce this chapter or amend rules previously adopted pursuant to this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that, beginning July 1, 2021, rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. Before adopting rules pursuant to this subsection, the department shall consult with caregivers, registered caregivers, patients and medical providers with significant knowledge and experience certifying patients under this chapter. The department shall develop a process to use when hiring consultants to advise on rule changes related to this chapter and shall report any subsequent changes to that process to the joint standing committee of the Legislature having jurisdiction over medical use of marijuana matters.

Sec. 2. 22 MRSA §2423-A, sub-§10, ¶D, as repealed and replaced by PL 2019, c. 331, §13 and c. 354, §3, is repealed and the following enacted in its place:

D. The department shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that, beginning July 1, 2021, rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A, governing marijuana testing facilities, including but not limited to:

- (1) Marijuana testing facility officer or director qualification requirements;
- (2) Required security for marijuana testing facilities; and
- (3) Requirements for the registration, certification or other approval of marijuana testing facilities.

The failure of the department to adopt rules under this paragraph does not prevent a marijuana testing facility from engaging in activities in compliance with this chapter.

Sec. 3. 22 MRSA §2423-A, sub-§10, ¶D-1, as enacted by PL 2019, c. 354, §4, is amended to read:

D-1. Upon the adoption of rules pursuant to paragraph D and this paragraph, a marijuana testing facility must be certified by the certification program established pursuant to section 569 as meeting all operational and technical requirements in accordance with rules adopted by the department after consultation with the Maine Center for Disease Control and Prevention. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that, beginning July 1, 2021, rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. A marijuana testing facility operating in compliance with this chapter on the date of the adoption of rules pursuant to this paragraph and paragraph D may continue to operate pending completion of certification under this paragraph. The failure of the department to adopt rules under this paragraph does not prevent a marijuana testing facility from engaging in activities in compliance with this chapter.

Sec. 4. 22 MRSA §2423-B, sub-§2-A, ¶D, as enacted by PL 2017, c. 452, §5, is amended by amending the last blocked paragraph to read:

The department shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A to implement the reimbursement request under this paragraph, except

that, beginning July 1, 2021, rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 5. 22 MRSA §2423-F, sub-§10, as repealed and replaced by PL 2019, c. 331, §17, is amended to read:

10. Rulemaking. The department shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that, beginning July 1, 2021, rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A, governing manufacturing facilities, including but not limited to:

- A. Requirements for the registration of a manufacturing facility and an officer or director or assistant of a registered manufacturing facility;
- B. Requirements for engaging in marijuana extraction using inherently hazardous substances;
- C. Manufacturing facility officer or director qualification requirements;
- D. Required security for manufacturing facilities;
- E. Requirements of a disposal plan for harvested marijuana used in the manufacturing process; and
- F. Minimum record-keeping requirements, including an annual audit requirement.

The failure of the department to adopt rules under this subsection does not prevent a person authorized pursuant to subsection 3, paragraph A from engaging in conduct authorized under this section.

Sec. 6. 22 MRSA §2424, sub-§1-A, as enacted by PL 2017, c. 452, §10, is amended to read:

1-A. Rulemaking. The department may adopt rules to carry out the purposes of this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that, beginning July 1, 2021, rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 7. 22 MRSA §2424, sub-§4, as amended by PL 2019, c. 217, §4, is further amended to read:

4. Enforcement and compliance. The department shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that, beginning July 1, 2021, the department shall adopt major substantive rules as defined in Title 5, chapter 375, subchapter 2-A, regarding enforcement and compliance of authorized conduct under this chapter, including rules governing:

- A. Minimum oversight requirements for dispensaries and registered caregivers and the one permitted additional location at which a dispensary cultivates marijuana plants for medical use by qualifying patients; and
- B. Minimum security requirements for registered caregivers operating caregiver retail stores pursuant to section 2423-A, subsection 2, paragraph P and registered dispensaries and any additional location at which a dispensary cultivates marijuana plants for medical use by qualifying patients.

Sec. 8. 22 MRSA §2425-A, sub-§3-A, as amended by PL 2019, c. 331, §19, is further amended by amending the 2nd blocked paragraph to read:

The department, with the Department of Public Safety, Bureau of State Police, State Bureau of Identification, shall adopt rules to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that, beginning July 1, 2021, rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 9. 22 MRSA §2425-A, sub-§10, as enacted by PL 2017, c. 452, §12, is amended to read:

10. Fees. The department shall adopt rules to establish fees in accordance with this subsection. The fees must be credited to the Medical Use of Marijuana Fund pursuant to section 2430. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that, beginning July 1, 2021, rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

A. There is no annual registration fee for a qualifying patient or visiting qualifying patient or a caregiver who is not required to register pursuant to section 2423-A, subsection 3, paragraph C. There is no annual registration fee for a caregiver who does not cultivate marijuana plants for a qualifying patient.

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

C. There is an annual registration fee for a dispensary, which may not be less than \$5,000 or more than \$12,000. There is a fee to change the location of a registered dispensary or the location at which a registered dispensary cultivates marijuana plants, which may not be less than \$3,000 or more than \$4,000.

D. There is an annual registration fee for a tier 1 manufacturing facility, which may not be less than \$50 or more than \$150.

E. There is an annual registration fee for a tier 2 manufacturing facility, which may not be less than \$150 or more than \$250.

F. There is an annual registration fee to engage in marijuana extraction under section 2423-F, subsection 3, which may not be less than \$250 or more than \$350.

G. There is an annual registration fee for a marijuana testing facility, which may not be less than \$250 or more than \$1,000, except that there is no fee if the testing facility is licensed in accordance with Title 28-B, chapter 1.

H. There is an annual registration fee for an officer or director or assistant of a registered caregiver or registered dispensary, which may not be less than \$20 or more than \$50.

I. There is a fee to replace a registry identification card that has been lost, stolen or destroyed or a card that contains information that is no longer accurate, which may not

be less than \$10 or more than \$20. Replacement of a registry identification card does not extend the expiration date.

J. There is an annual fee for a criminal history record check for a caregiver or an officer or director or assistant of a registered dispensary, marijuana testing facility or manufacturing facility, which may not be less than \$31 or more than \$60. The fee must be paid by the caregiver or by the registered dispensary, marijuana testing facility or manufacturing facility for an officer or director or assistant of the registered dispensary, marijuana testing facility or manufacturing facility.

Sec. 10. 22 MRSA §2425-A, sub-§13, ¶A, as enacted by PL 2017, c. 452, §12, is amended to read:

A. A registered caregiver or a dispensary shall submit annually a report of the number of qualifying patients and visiting qualifying patients assisted by the caregiver or dispensary. A report may not directly or indirectly disclose patient identity. The department shall adopt rules to implement this paragraph. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that, beginning July 1, 2021, rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 11. 22 MRSA §2430, sub-§5, as amended by PL 2019, c. 331, §31, is further amended to read:

5. Medical marijuana research grant program established. The medical marijuana research grant program, referred to in this subsection as "the program," is established within the department to provide grant money to support objective scientific research, including observational and clinical trials and existing research, on the efficacy of harvested marijuana as part of medical treatment and the health effects of harvested marijuana used as part of medical treatment. The program must be funded from the fund. The department shall adopt rules necessary to implement the program, including, but not limited to, required qualifications of persons conducting the research; determining the scientific merit and objectivity of a research proposal; criteria for determining the amount of program funds distributed; criteria for determining the duration of the research; procedures for soliciting research participants, including outreach to patients, and for obtaining the informed consent of participants; and reporting requirements for the results of the research and evaluation of the research results. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that, beginning July 1, 2021, rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 12. 22 MRSA §2430-E, sub-§2, as enacted by PL 2017, c. 452, §24, is amended to read:

2. Repeat forfeiture. If a cardholder has previously forfeited excess marijuana pursuant to subsection 1 and a subsequent forfeiture occurs, the department shall revoke the registry identification card of the cardholder and the entire amount of marijuana plants or harvested marijuana possessed by that cardholder must be forfeited to a law enforcement officer. The department shall adopt rules to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that, beginning July 1, 2021, rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 13. 22 MRSA §2430-F, sub-§1, as enacted by PL 2017, c. 452, §24, is amended to read:

1. Department suspension or revocation. The department may suspend or revoke a registry identification card for violation of this chapter and the rules adopted under this chapter. Revocation in accordance with section 2430-E, subsection 2 is considered a final agency action, subject to judicial review under Title 5, chapter 375, subchapter 7. Unless otherwise specified as final agency action, a person who has had authorization for conduct under this chapter revoked due to failure to comply with this chapter and rules adopted by the department may request an informal hearing. The department shall adopt rules to specify the period of time, which may not exceed one year, that the person whose registry identification card was revoked is ineligible for reauthorization under this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except that, beginning July 1, 2021, rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

The department shall immediately revoke the registry identification card of an officer or director or assistant of a dispensary who is found to have violated section 2428, subsection 9, paragraph B, and that person is disqualified from serving as an officer or director or assistant of a dispensary.

Sec. 14. 22 MRSA §2430-G, sub-§1, ¶A, as enacted by PL 2017, c. 452, §24, is amended by amending subparagraph (2) to read:

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

Sec. 15. 22 MRSA §2430-G, sub-§1, ¶A, as enacted by PL 2017, c. 452, §24, is amended by repealing subparagraph (3).

Sec. 16. 22 MRSA §2430-G, sub-§1, as amended by PL 2019, c. 331, §32, is further amended by amending the blocked paragraph to read:

The department may adopt rules to implement this subsection. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 17. Rules governing medical use of marijuana. The rules governing the medical use of marijuana are those rules that were in effect as of February 28, 2021. Pursuant to the authority designated in this legislation, rules governing the medical use of marijuana beginning July 1, 2021 are major substantive rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A. Before provisionally adopting new rules and submitting the rules to the Legislature for review pursuant to Title 5, section 8072, including but not limited to rules necessary for the implementation of a statewide electronic portal under Title 22, section 2430-G, subsection 1, paragraph B, the Department of Administrative and Financial Services shall:

1. Develop a process to consult with caregivers, registered caregivers, qualifying patients and medical providers with significant knowledge and experience certifying patients under the Maine Medical Use of Marijuana Act, in accordance with Title 22, section 2422-A, subsection 2;

2. Develop a process to use when hiring consultants to advise on any new rules or proposed changes to existing rules governing the medical use of marijuana, in accordance with Title 22, section 2422-A, subsection 2; and

3. Using existing resources, conduct a study evaluating the economic effects that any new rules or proposed changes to existing rules may have, including, but not limited to, the effects of implementing a statewide electronic portal on caregiver businesses of all sizes and how such rules could affect the access of patients to marijuana for medical use.

The Department of Administrative and Financial Services shall submit a report including the processes developed under subsections 1 and 2 and the findings under subsection 3 to the joint standing committee of the Legislature having jurisdiction over medical use of marijuana matters no later than January 15, 2022. The joint standing committee of the Legislature having jurisdiction over medical use of marijuana matters may introduce legislation for presentation to the Second Regular Session of the 130th Legislature based on the information provided in the report.

Sec. 18. Appropriations and allocations. The following appropriations and allocations are made.

ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF

Medical Use of Marijuana Fund Z265

Initiative: Provides allocations for 8 Field Investigator positions and 2 Field Investigator Supervisor positions to handle increased inspections for providers to obtain compliance within the program.

OTHER SPECIAL REVENUE FUNDS	2021-22	2022-23
POSITIONS - LEGISLATIVE COUNT	10.000	10.000
Personal Services	\$852,486	\$890,292
All Other	\$194,362	\$194,935
OTHER SPECIAL REVENUE FUNDS TOTAL	\$1,046,848	\$1,085,227

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.