

# MAINE STATE LEGISLATURE

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# 126th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2014

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Legislative Document

No. 1739

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H.P. 1245

House of Representatives, January 21, 2014

### **An Act To Amend the Maine Medical Use of Marijuana Act**

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Submitted by the Department of Health and Human Services pursuant to Joint Rule 204.  
Reference to the Committee on Health and Human Services suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative DION of Portland.  
Cosponsored by Senator HAMPER of Oxford and  
Representatives: GATTINE of Westbrook, HICKMAN of Winthrop.

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

2 **Sec. 1. 22 MRSA §2422, sub-§1-B** is enacted to read:

3 **1-B. Certified nurse practitioner.** "Certified nurse practitioner" means a registered  
4 professional nurse licensed under Title 32, chapter 31 who has received postgraduate  
5 education designed to prepare the nurse for advanced practice registered nursing in a  
6 clinical specialty in nursing that has a defined scope of practice and who has been  
7 certified in the clinical specialty by a national certifying organization acceptable to the  
8 State Board of Nursing and who is a qualifying patient's primary care provider.

9 **Sec. 2. 22 MRSA §2422, sub-§§4-C and 4-D** are enacted to read:

10 **4-C. Kief.** "Kief" means the tetrahydrocannabinol crystals and hairs from cannabis  
11 plants that have been extracted by scraping or shaking or another method.

12 **4-D. Medical provider.** "Medical provider" means a physician or a certified nurse  
13 practitioner.

14 **Sec. 3. 22 MRSA §2422, sub-§9**, as amended by PL 2011, c. 407, Pt. B, §10, is  
15 further amended to read:

16 **9. Qualifying patient.** "Qualifying patient" or "patient" means a person who has  
17 been diagnosed by a ~~physician~~ medical provider as having a debilitating medical  
18 condition and who possesses a valid written certification regarding medical use of  
19 marijuana in accordance with section 2423-B.

20 **Sec. 4. 22 MRSA §2422, sub-§16**, as amended by PL 2011, c. 407, Pt. B, §15, is  
21 further amended to read:

22 **16. Written certification.** "Written certification" means a document on tamper-  
23 resistant paper signed by a ~~physician~~ medical provider, that expires ~~in~~ within one year  
24 and that states that in the ~~physician's~~ medical provider's professional opinion a patient is  
25 likely to receive therapeutic or palliative benefit from the medical use of marijuana to  
26 treat or alleviate the patient's debilitating medical condition or symptoms associated with  
27 the debilitating medical condition. A written certification may be made only in the  
28 course of a bona fide ~~physician-patient~~ medical provider-patient relationship after the  
29 ~~physician~~ medical provider has completed a full assessment of the qualifying patient's  
30 medical history.

31 **Sec. 5. 22 MRSA §2423-A, sub-§2, ¶C**, as enacted by PL 2009, c. 631, §21 and  
32 affected by §51, is amended to read:

33 C. Assist ~~no more than~~ a maximum of 5 patients at any one time with who have  
34 designated the primary caregiver to cultivate marijuana for their medical use of  
35 marijuana;

36 **Sec. 6. 22 MRSA §2423-A, sub-§2, ¶G**, as amended by PL 2013, c. 371, §1; c.  
37 393, §1 and c. 396, §5, is further amended to read:

1 G. Prepare food as defined in section 2152, subsection 4 containing marijuana,  
2 including tinctures of marijuana, for medical use by a qualifying patient pursuant to  
3 section 2152, subsection 4-A and section 2167;

4 **Sec. 7. 22 MRSA §2423-A, sub-§2, ¶J**, as reallocated by RR 2013, c. 1, §39, is  
5 amended to read:

6 J. Use a pesticide in the cultivation of marijuana if the pesticide is exempt from the  
7 federal registration requirements pursuant to 7 United States Code, Section 136w(b),  
8 is registered with the Department of Agriculture, Conservation and Forestry, Board of  
9 Pesticides Control pursuant to Title 7, section 607 and is used consistent with best  
10 management practices approved by the Commissioner of ~~Agriculture, Conservation~~  
11 ~~and Forestry~~ Health and Human Services. A registered primary caregiver may not in  
12 the cultivation of marijuana use a pesticide exempt from the federal registration  
13 requirements and that is registered with the Board of Pesticides Control unless the  
14 registered primary caregiver or the registered primary caregiver's employee is  
15 certified in the application of the pesticide pursuant to section 1471-D and any  
16 employee who has direct contact with treated plants has completed safety training  
17 pursuant to 40 Code of Federal Regulations, ~~Part~~ Section 170.130. An employee of  
18 the registered primary caregiver who is not certified pursuant to section 1471-D and  
19 who is involved in the application of the pesticide or handling of the pesticide or  
20 equipment must first complete safety training described in 40 Code of Federal  
21 Regulations, ~~Part~~ Section 170.230; and

22 **Sec. 8. 22 MRSA §2423-B**, as repealed and replaced by PL 2011, c. 407, Pt. B,  
23 §17, is amended to read:

24 **§2423-B. Authorized conduct by a medical provider**

25 A ~~physician~~ medical provider may provide a written certification for the medical use  
26 of marijuana under this chapter and, after having done so, may otherwise state that in the  
27 ~~physician's~~ medical provider's professional opinion a qualifying patient is likely to  
28 receive therapeutic benefit from the medical use of marijuana to treat or alleviate the  
29 patient's debilitating medical condition.

30 **1. Adult qualifying patient.** Prior to providing written certification for the medical  
31 use of marijuana under this section, a ~~physician~~ medical provider shall inform an adult  
32 qualifying patient of the risks and benefits of the medical use of marijuana and that the  
33 patient may benefit from the medical use of marijuana.

34 **2. Minor qualifying patient.** Prior to providing written certification for the medical  
35 use of marijuana by a minor qualifying patient under this section, a ~~physician~~ medical  
36 provider, referred to in this subsection as "the treating ~~physician~~ medical provider," shall  
37 inform the minor qualifying patient and the parent or legal guardian of the patient of the  
38 risks and benefits of the medical use of marijuana and that the patient may benefit from  
39 the medical use of marijuana. Except with regard to a minor qualifying patient who is  
40 eligible for hospice care, prior to providing a written certification under this section, the  
41 treating ~~physician~~ medical provider shall consult with a qualified physician, referred to in  
42 this paragraph as "the consulting physician," from a list of physicians who may be willing

1 to act as consulting physicians maintained by the department that is compiled by the  
2 department after consultation with statewide associations representing licensed medical  
3 professionals. The consultation between the treating ~~physician~~ medical provider and the  
4 consulting physician may consist of examination of the patient or review of the patient's  
5 medical file. The consulting physician shall provide an advisory opinion to the treating  
6 ~~physician~~ medical provider and the parent or legal guardian of the minor qualifying  
7 patient concerning whether the patient is likely to receive therapeutic or palliative benefit  
8 from the medical use of marijuana to treat or alleviate the patient's debilitating medical  
9 condition. If the department or the consulting physician does not respond to a request by  
10 a the treating physician medical provider within 10 days of receipt of the request, the  
11 treating ~~physician~~ medical provider may provide written certification for treatment  
12 without consultation with ~~another~~ a physician.

13 **3. Expiration.** A written certification form for the medical use of marijuana under  
14 this section expires within one year after issuance by the qualifying patient's ~~physician~~  
15 medical provider.

16 **4. Form; content.** A written certification under this section must be in the form  
17 required by rule adopted by the department and may not require a qualifying patient's  
18 ~~physician~~ medical provider to state the patient's specific medical condition.

19 **5. Possible sanctions.** Nothing in this chapter prevents a professional licensing  
20 board from sanctioning a ~~physician~~ medical provider for failing to properly evaluate or  
21 treat a patient's medical condition or otherwise violating the applicable standard of care  
22 for evaluating or treating medical conditions.

23 **Sec. 9. 22 MRSA §2423-D**, as amended by PL 2011, c. 407, Pt. B, §19, is further  
24 amended to read:

25 **§2423-D. Authorized conduct by a visiting qualifying patient**

26 A qualifying patient who is visiting the State from another jurisdiction that authorizes  
27 the medical use of marijuana pursuant to a law recognized by the department who  
28 possesses a valid written certification as described in section 2423-B from the patient's  
29 treating ~~physician~~ medical provider and a valid medical marijuana certification from that  
30 other jurisdiction and photographic identification or a driver's license from that  
31 jurisdiction may engage in conduct authorized for a qualifying patient under this chapter.

32 **Sec. 10. 22 MRSA §2425, sub-§1, ¶D**, as enacted by IB 2009, c. 1, §5, is  
33 amended to read:

34 D. Name, address and telephone number of the qualifying patient's ~~physician~~  
35 medical provider;

36 **Sec. 11. 22 MRSA §2425, sub-§2, ¶A**, as amended by PL 2009, c. 631, §29 and  
37 affected by §51, is further amended to read:

38 A. The qualifying patient's ~~physician~~ medical provider has explained the potential  
39 risks and benefits of the medical use of marijuana to the qualifying patient and to a  
40 parent, guardian or person having legal custody of the qualifying patient;

1           **Sec. 12. 22 MRSA §2425, sub-§6, ¶B**, as enacted by IB 2009, c. 1, §5, is  
2 amended to read:

3           B. A registered qualifying patient who fails to notify the department as required  
4 under paragraph A commits a civil violation for which a fine of not more than \$150  
5 may be adjudged. If the registered qualifying patient's certifying ~~physician~~ medical  
6 provider notifies the department in writing that the registered qualifying patient has  
7 ceased to suffer from a debilitating medical condition, the registered qualifying  
8 patient's registry identification card becomes void upon notification by the  
9 department to the qualifying patient.

10           **Sec. 13. 22 MRSA §2425, sub-§8**, as amended by PL 2011, c. 691, Pt. A, §22, is  
11 further amended to read:

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

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

16           B. Applications and supporting information submitted by primary caregivers and  
17 ~~physicians~~ medical providers operating in compliance with this chapter are  
18 confidential.

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

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

28           F. Applications, supporting information and other information regarding a registered  
29 dispensary are not confidential except that information that is contained within  
30 dispensary information that identifies a qualifying patient, a registered patient, the  
31 registered patient's ~~physician~~ medical provider and the primary caregiver of the  
32 qualifying patient or registered patient is confidential.

33           G. Records maintained by the department pursuant to this chapter that identify  
34 applicants for a registry identification card, registered patients, registered primary  
35 caregivers and registered patients' ~~physicians~~ medical providers are confidential and  
36 may not be disclosed except as provided in this subsection and as follows:

- 37           (1) To department employees who are responsible for carrying out this chapter;
- 38           (2) Pursuant to court order or subpoena issued by a court;
- 39           (3) With written permission of the registered patient or the patient's guardian, if  
40 the patient is under guardianship, or a parent, if the patient has not attained 18  
41 years of age;

1 (4) As permitted or required for the disclosure of health care information  
2 pursuant to section 1711-C;

3 (5) To a law enforcement official for verification purposes. The records may not  
4 be disclosed further than necessary to achieve the limited goals of a specific  
5 investigation; ~~and~~

6 (6) To a registered patient's treating ~~physician~~ medical provider and to a  
7 registered patient's registered primary caregiver for the purpose of carrying out  
8 this chapter; ~~and~~

9 (7) To the Department of Administrative and Financial Services, Maine Revenue  
10 Services for taxation compliance purposes. The records may not be disclosed  
11 further than necessary to achieve the needs of Maine Revenue Services.

12 H. This subsection does not prohibit a ~~physician~~ medical provider from notifying the  
13 department if the ~~physician~~ medical provider acquires information indicating that a  
14 registered patient or qualifying patient is no longer eligible to use marijuana for  
15 medical purposes or that a registered patient or qualifying patient falsified  
16 information that was the basis of the ~~physician's~~ medical provider's certification of  
17 eligibility for use.

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

23 J. A hearing concerning the revocation of a registry identification card under  
24 subsection 3-A is confidential.

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

32 **Sec. 14. 22 MRSA §2425, sub-§10, ¶E**, as enacted by IB 2009, c. 1, §5, is  
33 amended to read:

34 E. The number of ~~physicians~~ medical providers providing written certifications for  
35 qualifying patients;

36 **Sec. 15. 22 MRSA §2426, sub-§1, ¶D**, as amended by PL 2009, c. 631, §38 and  
37 affected by §51, is further amended to read:

38 D. Operate, navigate or be in actual physical control of any motor vehicle, aircraft,  
39 motorboat, snowmobile or all-terrain vehicle while under the influence of marijuana;  
40 ~~or~~

1           **Sec. 16. 22 MRSA §2426, sub-§1, ¶E**, as amended by PL 2011, c. 407, Pt. B,  
2 §30, is further amended to read:

3           E. Use or possess marijuana if that person is not a qualifying patient, primary  
4 caregiver, registered dispensary or other person authorized to use or possess  
5 marijuana under this chapter; or

6           **Sec. 17. 22 MRSA §2426, sub-§1, ¶F** is enacted to read:

7           F. Use, possess or sell kif.

8           **Sec. 18. 22 MRSA §2428, sub-§6, ¶J**, as amended by PL 2011, c. 407, Pt. B,  
9 §32, is further amended to read:

10           J. A dispensary that is required to obtain a license for the preparation of food  
11 pursuant to section 2167 shall obtain the license prior to preparing goods containing  
12 marijuana, including tinctures of marijuana, for medical use by a qualifying patient.

13           **Sec. 19. 22 MRSA §2428, sub-§9, ¶G**, as enacted by PL 2013, c. 371, §4, is  
14 amended to read:

15           G. A registered dispensary may not use a pesticide on marijuana except a pesticide  
16 that is exempt from the federal registration requirements pursuant to 7 United States  
17 Code, Section 136w(b), is registered with the Department of Agriculture,  
18 Conservation and Forestry, Board of Pesticides Control pursuant to Title 7, section  
19 607 and is used consistent with best management practices approved by the  
20 Commissioner of ~~Agriculture, Conservation and Forestry~~ Health and Human  
21 Services. A registered dispensary may not in the cultivation of marijuana use a  
22 pesticide exempt from federal registration requirements and registered with the Board  
23 of Pesticides Control unless at least one registered dispensary employee involved in  
24 the application of the pesticide is certified pursuant to section 1471-D and all other  
25 registered dispensary employees who have direct contact with treated plants have  
26 completed safety training pursuant to 40 Code of Federal Regulations, ~~Part~~ Section  
27 170.130. A registered dispensary employee who is not certified pursuant to section  
28 1471-D and who is involved in the application of the pesticide or handling of the  
29 pesticide or equipment must first complete safety training described in 40 Code of  
30 Federal Regulations, ~~Part~~ Section 170.230.

31           **Sec. 20. 22 MRSA §2430-A**, as enacted by PL 2009, c. 631, §46 and affected by  
32 §51, is repealed and the following enacted in its place:

33           **§2430-A. Compliance**

34           The department may take action necessary to ensure compliance with this chapter.

35           **1. Laboratory testing; evidence collection.** The department may collect, possess,  
36 transport and perform laboratory testing on soil and marijuana plant samples and samples  
37 of products containing marijuana from registered primary caregivers and registered  
38 dispensaries to determine compliance with this chapter and for evidence purposes.



1 2. Complaint investigation. The department may investigate complaints against a  
2 registered primary caregiver or a registered dispensary to ensure compliance with this  
3 chapter.

4 3. Penalties; injunctive relief. The Office of the Attorney General may file a  
5 complaint with the District Court seeking civil fines or injunctive relief or both for a  
6 violation of this chapter by a registered primary caregiver or a registered dispensary.

7 When an injunction has been issued in accordance with this subsection, the District Court  
8 may order the registered primary caregiver or the registered dispensary subject to the  
9 injunction to pay to the General Fund the costs of the investigation incurred by the Office  
10 of the Attorney General and the costs of suit, including attorney's fees.

11 **SUMMARY**

12 During the First Regular Session of the 126th Legislature, the Legislature passed 6  
13 separate laws that affected the Maine Medical Use of Marijuana Act in various ways.  
14 The purpose of this bill is to clarify and coordinate those changes, including doing the  
15 following:

16 1. Defining "medical provider" to mean a physician or a certified nurse practitioner  
17 and adding a definition of "certified nurse practitioner" in order to authorize a certified  
18 nurse practitioner who is a qualifying patient's primary care provider to issue a written  
19 certification for the qualifying patient's medical use of marijuana;

20 2. Defining and prohibiting the use, possession or sale of kief;

21 3. Clarifying that tinctures containing marijuana are considered food or goods  
22 containing marijuana;

23 4. Clarifying that a medical provider's written certification for the medical use of  
24 marijuana expires within one year after issuance;

25 5. Authorizing disclosure of registered primary caregiver and dispensary information  
26 to the Department of Administrative and Financial Services, Maine Revenue Services for  
27 taxation compliance purposes;

28 6. Enacting provisions regarding compliance, including collection of evidence,  
29 complaint investigation, penalty and injunctive relief provisions; and

30 7. Authorizing the Department of Health and Human Services to transport marijuana  
31 for laboratory testing and evidence collection purposes.