

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)



130th MAINE LEGISLATURE

FIRST REGULAR SESSION-2021

Legislative Document

No. 882

S.P. 296

In Senate, March 8, 2021

An Act To Amend the Maine Medical Use of Marijuana Act

Submitted by the Department of Administrative and Financial Services pursuant to Joint Rule 204.

Reference to the Committee on Veterans and Legal Affairs suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator LUCHINI of Hancock.

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

2 **Sec. 1. 22 MRSA §2430-E**, as enacted by PL 2017, c. 452, §24, is amended to read:

3 **§2430-E. Possession penalties; fraud penalty; administrative holds**

4 **1. Excess marijuana; forfeiture.** A person who possesses marijuana plants or
5 harvested marijuana in excess of the limits provided in this section shall forfeit the excess
6 amounts to a law enforcement officer. The law enforcement officer is authorized to remove
7 all excess marijuana plants or harvested marijuana possessed by that person in order to
8 catalog the amount of excess marijuana. Possession of marijuana in excess of the limits
9 provided in this section is a violation as follows:

10 A. Possession of harvested marijuana by a qualifying patient or a caregiver operating
11 under section 2423-A, subsection 3, paragraph C in an excess amount up to 1 1/4
12 ounces commits a civil violation for which a fine of not less than \$350 and not more
13 than \$600 must be adjudged, none of which may be suspended;

14 B. Possession of harvested marijuana by a qualifying patient or a caregiver operating
15 under section 2423-A, subsection 3, paragraph C in an excess amount over 1 1/4 ounces
16 and up to 2 1/2 ounces commits a civil violation for which a fine of not less than \$700
17 and not more than \$1,000 must be adjudged, none of which may be suspended; and

18 C. Possession of harvested marijuana by a qualifying patient or a caregiver operating
19 under section 2423-A, subsection 3, paragraph C in an excess amount over 2 1/2 ounces
20 is a violation of Title 17-A, chapter 45.

21 **2. Repeat forfeiture.** If a cardholder or registration certificate holder has previously
22 forfeited excess marijuana pursuant to subsection 1 and a subsequent forfeiture occurs, the
23 department shall revoke the registry identification card of the cardholder and, as applicable,
24 the cardholder's registration certificate and the entire amount of marijuana plants or
25 harvested marijuana possessed by that cardholder must be forfeited to a law enforcement
26 officer. Nothing in this section may be construed to require a law enforcement officer to
27 accept forfeited marijuana plants or harvested marijuana or to require a law enforcement
28 officer or the department to bear the costs associated with the destruction or disposal of
29 forfeited marijuana plants or harvested marijuana. The department shall adopt rules to
30 implement this subsection. Rules adopted pursuant to this subsection are routine technical
31 rules as defined in Title 5, chapter 375, subchapter 2-A.

32 **3. Defense for possession of excess marijuana.** Except as provided in section 2426,
33 a qualifying patient may assert the medical purpose for using marijuana as a defense to any
34 prosecution involving marijuana possession and may present evidence in court that the
35 patient's necessary medical use or cultivation circumstances warranted exceeding the
36 amount of marijuana allowed under section 2423-A and was reasonably necessary to ensure
37 the uninterrupted availability of marijuana for the purpose of treating or alleviating the
38 patient's medical diagnosis or symptoms associated with the patient's medical diagnosis
39 that, in a medical provider's professional opinion, may be alleviated by the therapeutic or
40 palliative medical use of marijuana.

41 **4. Calculation of marijuana weight.** The amount of marijuana possessed under this
42 chapter must be calculated by the weight of dried harvested marijuana. A calculation of the
43 weight of marijuana that is not dried must reduce the weight by at least 75% to account for
44 moisture content. A calculation of the weight of marijuana in a marijuana product may not

1 include ingredients in the product other than marijuana, except that the weight of marijuana
2 concentrate must be included whether the marijuana concentrate is possessed by itself or
3 within a marijuana product.

4 **5. Penalty for fraud.** Fraudulent misrepresentation regarding lawful possession or
5 medical use of marijuana and fraudulent procurement under this chapter are governed by
6 this subsection. A person who misrepresents to a law enforcement official any fact or
7 circumstance relating to the possession or medical use of marijuana under this chapter to
8 avoid arrest or prosecution commits a civil violation for which a fine of \$200 must be
9 adjudged.

10 **6. Administrative holds.** In accordance with the provisions of this subsection, the
11 department may impose an administrative hold on a registry identification cardholder or
12 registration certificate holder or an assistant or other authorized agent of a registry
13 identification cardholder or registration certificate holder if, as a result of an inspection or
14 investigation by the department or a law enforcement agency, the department determines
15 there are reasonable grounds to believe that entity has committed or is committing a
16 violation of the provisions of this chapter, the rules adopted pursuant to this chapter or the
17 terms, conditions or provisions of a registry identification card or registration certificate
18 issued to that entity.

19 A. The department shall provide to a registry identification cardholder or registration
20 certificate holder subject to an administrative hold, or whose assistant or other
21 authorized agent is subject to an administrative hold, notice of the imposition of that
22 administrative hold, which must:

23 (1) Include a concise statement of the basis for the administrative hold, which may
24 include without limitation that the registry identification cardholder or registration
25 certificate holder possesses or otherwise controls:

26 (a) Marijuana plants or harvested marijuana not appropriately tracked or
27 disclosed in accordance with section 2430-G and the rules adopted pursuant to
28 that section;

29 (b) Harvested marijuana that is altered or not properly packaged or labeled in
30 accordance with this chapter and rules adopted pursuant to this chapter;

31 (c) Marijuana plants or harvested marijuana that has not been cultivated,
32 harvested, manufactured or transferred or is otherwise not in a form in
33 compliance with this chapter or rules adopted pursuant to this chapter; or

34 (d) Marijuana plants or harvested marijuana that the department has a
35 reasonable articulable suspicion may present a threat to public health or safety;

36 (2) Detail any marijuana plants or harvested marijuana subject to the
37 administrative hold;

38 (3) Describe any operational restrictions to be placed on the registry identification
39 cardholder or registration certificate holder during the duration of the
40 administrative hold; and

41 (4) Indicate actions that must be taken by the registry identification cardholder or
42 registration certificate holder as a result of the administrative hold.

1 An administrative hold takes effect at the time that the notice under this paragraph is
2 provided by the department to the registry identification cardholder or registration
3 certificate holder.

4 B. A registry identification cardholder or registration certificate holder or an assistant
5 or other authorized agent of a registry identification cardholder or registration
6 certificate holder subject to an administrative hold must physically segregate any
7 marijuana plants or harvested marijuana subject to the administrative hold, as detailed
8 in the notice under paragraph A, from any other marijuana plants or harvested
9 marijuana not subject to the administrative hold. For the duration of the administrative
10 hold, the registry identification cardholder or registration certificate holder may not
11 sell, give away, transfer, transport, dispose of or destroy any marijuana plants or
12 harvested marijuana subject to the administrative hold, but may, as applicable,
13 cultivate, harvest, manufacture or otherwise maintain the marijuana plants or harvested
14 marijuana subject to the administrative hold unless specifically restricted by the
15 department from engaging in such activities pursuant to this subsection.

16 C. A registry identification cardholder or registration certificate holder subject to an
17 administrative hold shall, for the duration of the administrative hold, maintain any
18 premises and otherwise continue to engage in authorized activities in accordance with
19 all provisions of this chapter, the rules adopted pursuant to this chapter and the
20 provisions of the administrative hold. Except as specifically restricted by the
21 department pursuant to a notice under paragraph A, a registry identification cardholder
22 or registration certificate holder may, for the duration of the administrative hold and as
23 authorized pursuant to this chapter, cultivate, manufacture, test or sell any marijuana
24 plants or harvested marijuana not subject to the administrative hold.

25 D. The department may terminate an administrative hold at any time following the
26 imposition of the administrative hold, except that an administrative hold under this
27 subsection may not be imposed for a period exceeding 30 consecutive days from the
28 date notice is provided to the registry identification cardholder or registration
29 certificate holder or the assistant or other authorized agent of the registry identification
30 cardholder or registration certificate holder in accordance with paragraph A. Notice of
31 termination of an administrative hold must be provided by the department to the
32 registry identification cardholder or registration certificate holder or the assistant or
33 other authorized agent of the registry identification cardholder or registration certificate
34 holder.

35 E. Subsequent to the termination of an administrative hold under paragraph D, the
36 department, in accordance with the applicable provisions of this chapter and the rules
37 adopted pursuant to this chapter, may impose a fine on the registry identification
38 cardholder or registration certificate holder or the assistant or other authorized agent of
39 the registry identification cardholder or registration certificate holder that was subject
40 to the administrative hold or suspend or revoke the registry identification card or
41 registration certificate of that registry identification cardholder or registration
42 certificate holder for a violation of the provisions of this chapter or the rules adopted
43 pursuant to this chapter.

44 For the purposes of this subsection, "registry identification cardholder or registration
45 certificate holder" means a registered caregiver, caregiver retail store, dispensary,

1 manufacturing facility or person authorized to engage in marijuana extraction using
2 inherently hazardous substances.

3 **Sec. 2. 22 MRSA §2430-F, sub-§1**, as enacted by PL 2017, c. 452, §24, is amended
4 to read:

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

16 The department shall immediately revoke the registry identification card of an officer or
17 director or assistant of a dispensary who is found to have violated section 2428, subsection
18 9, paragraph B, and that person is disqualified from serving as an officer or director or
19 assistant of a dispensary.

20 **Sec. 3. 22 MRSA §2430-H**, as enacted by PL 2017, c. 452, §24, is amended to read:

21 **§2430-H. Fines collected authorized; Maine Administrative Procedure Act applies**

22 In addition to any other administrative action to suspend or revoke a registry
23 identification card or registration certificate, the department, on its own initiative or on
24 complaint and after investigation, notice and the opportunity for a public hearing, by
25 written order may impose a fine on a registered caregiver, caregiver retail store, dispensary,
26 manufacturing facility or person authorized to engage in marijuana extraction using
27 inherently hazardous substances operating under this chapter or an assistant or other
28 authorized agent of a registered caregiver, caregiver retail store, dispensary, manufacturing
29 facility or person authorized to engage in marijuana extraction using inherently hazardous
30 substances for any violation by that entity or assistant or other authorized agent of that
31 entity of the provisions of this chapter, the rules adopted pursuant to this chapter or any
32 other terms, conditions or provisions imposed pursuant to the issuance of a registry
33 identification card or registration certificate. Fines collected pursuant to this chapter and
34 rules adopted by the department must be credited to the Medical Use of Marijuana Fund
35 pursuant to section 2430.

36 **1. Fines in addition to other penalties.** Any fines imposed by the department
37 pursuant to this section are in addition to any criminal or civil penalties that may be imposed
38 pursuant to other applicable laws or rules.

39 **2. Limits.** A fine imposed by the department for a violation of this chapter may not
40 exceed \$10,000 per violation for a caregiver retail store, dispensary, manufacturing facility
41 or person authorized to engage in marijuana extraction using inherently hazardous
42 substances. A fine imposed by the department for a violation of this chapter may not exceed
43 \$2,000 per violation for a registered caregiver or an assistant or other authorized agent of

1 a registered caregiver, caregiver retail store, dispensary, manufacturing facility or person
2 authorized to engage in marijuana extraction using inherently hazardous substances.

3 A. The department shall adopt rules setting fines to be imposed for violations of this
4 chapter based upon the following specific categories of unauthorized conduct by a
5 caregiver retail store, dispensary, manufacturing facility or person authorized to engage
6 in marijuana extraction using inherently hazardous substances:

7 (1) Not more than \$1,000 per minor registration violation;

8 (2) Except as provided in subparagraph (3), not more than \$5,000 per major
9 registration violation; and

10 (3) Not more than \$10,000 per major registration violation affecting public safety.

11 B. The department shall adopt rules setting fines to be imposed for violations of this
12 chapter based upon the following specific categories of unauthorized conduct by a
13 registered caregiver or an assistant or other authorized agent of a registered caregiver,
14 caregiver retail store, dispensary, manufacturing facility or person authorized to engage
15 in marijuana extraction using inherently hazardous substances:

16 (1) Not more than \$200 per minor registration violation;

17 (2) Except as provided in subparagraph (3), not more than \$1,000 per major
18 registration violation; and

19 (3) Not more than \$2,000 per major registration violation affecting public safety.

20 **3. Form of payment.** A fine imposed pursuant to this section must be paid to the
21 department in the form of cash or in the form of a certified check or cashier's check payable
22 to the department.

23 **4. Maine Administrative Procedure Act applies.** Except as otherwise provided in
24 this chapter or in rules adopted pursuant to this chapter, the imposition of a fine or the
25 suspension or revocation of a registry identification card or registration certificate by the
26 department, including, but not limited to, the provision of notice and the conduct of
27 hearings, is governed by the Maine Administrative Procedure Act. A final order of the
28 department imposing a fine or suspending or revoking a registry identification card or
29 registration certificate is a final agency action, as defined in Title 5, section 8002,
30 subsection 4, and the registered caregiver, caregiver retail store, dispensary, manufacturing
31 facility or person authorized to engage in marijuana extraction using inherently hazardous
32 substances may appeal that final order to the Superior Court in accordance with Rule 80C
33 of the Maine Rules of Civil Procedure.

34 **5. Rules.** The department shall adopt rules governing the imposition of fines under
35 this section. Rules adopted pursuant to this subsection are routine technical rules as defined
36 in Title 5, chapter 375, subchapter 2-A.

37 SUMMARY

38 This bill makes the following changes to the Maine Medical Use of Marijuana Act. It
39 authorizes the Department of Administrative and Financial Services to:

1 1. Place an administrative hold on marijuana plants and harvested marijuana or impose
2 an administrative hold on certain registry identification cardholders and registration
3 certificate holders;

4 2. Permanently revoke registry identification cards and registration certificates issued
5 by the department; and

6 3. Assess fines for misconduct by a registered caregiver retail store, dispensary,
7 manufacturing facility or person authorized to engage in marijuana extraction using
8 inherently hazardous substances up to \$10,000. It authorizes the department to assess fines
9 for misconduct by registered caregivers or assistants or other authorized agents of a
10 registered caregiver, caregiver retail store, dispensary, manufacturing facility or person
11 authorized to engage in marijuana extraction using inherently hazardous substances of up
12 to \$2,000.