

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

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Legislative Document

No. 1242

H.P. 908

House of Representatives, March 25, 2021

**An Act To Ensure Appropriate Oversight of Maine's Medical
Marijuana Program**

(EMERGENCY)

Received by the Clerk of the House on March 23, 2021. Referred to the Committee on Veterans and Legal Affairs pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative WILLIAMS of Bar Harbor.
Cosponsored by President JACKSON of Aroostook and
Representatives: ANDREWS of Paris, DILLINGHAM of Oxford, TALBOT ROSS of
Portland, Senators: CLAXTON of Androscoggin, FARRIN of Somerset, HICKMAN of
Kennebec, MOORE of Washington, POULIOT of Kennebec.

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

3 **Whereas,** the Department of Administration and Financial Services, Office of
4 Marijuana Policy is currently proposing rules that may go into effect before the expiration
5 of the 90-day period; and

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

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

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

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

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

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

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

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

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

27 **2. Rulemaking.** The department, after consultation with the Department of Health
28 and Human Services, may adopt rules as necessary to administer and enforce this chapter
29 or amend rules previously adopted pursuant to this chapter. Rules After February 1, 2018,
30 rules adopted pursuant to this subsection are routine technical major substantive rules as
31 defined in Title 5, chapter 375, subchapter 2-A. Before adopting rules pursuant to this
32 subsection, the department shall consult with caregivers, registered caregivers and patients
33 and physicians and certified nurse practitioners with significant knowledge and experience
34 certifying patients under this chapter. The department shall develop a process to retain any
35 consultant hired to advise on rule changes related to this chapter and shall report on the
36 development of this process no later than September 1, 2021 and shall report on any
37 subsequent changes to this process to the joint standing committee of the Legislature having
38 jurisdiction over health and human services matters.

39 **Sec. 2. 22 MRSA §2423-A, sub-§10, ¶D,** as repealed and replaced by PL 2019, c.
40 331, §13 and c. 354, §3, is repealed and the following enacted in its place:

1 D. The department shall adopt routine technical rules as defined in Title 5, chapter
2 375, subchapter 2-A governing marijuana testing facilities, including but not limited
3 to:

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

8 The failure of the department to adopt rules under this paragraph does not prevent a
9 marijuana testing facility from engaging in activities in compliance with this chapter.
10 After February 1, 2018, rules adopted pursuant to this paragraph are major substantive
11 rules as defined in Title 5, chapter 375, subchapter 2-A.

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

14 D-1. Upon the adoption of rules pursuant to paragraph D and this paragraph, a
15 marijuana testing facility must be certified by the certification program established
16 pursuant to section 569 as meeting all operational and technical requirements in
17 accordance with rules adopted by the department after consultation with the Maine
18 Center for Disease Control and Prevention. Rules adopted pursuant to this paragraph
19 are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A, except
20 that after February 1, 2018 rules adopted pursuant to this paragraph are major
21 substantive rules as defined in Title 5, chapter 375, subchapter 2-A. A marijuana
22 testing facility operating in compliance with this chapter on the date of the adoption of
23 rules pursuant to this paragraph and paragraph D may continue to operate pending
24 completion of certification under this paragraph. The failure of the department to adopt
25 rules under this paragraph does not prevent a marijuana testing facility from engaging
26 in activities in compliance with this chapter.

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

29 The department shall adopt routine technical rules as defined in Title 5, chapter 375,
30 subchapter 2-A to implement the reimbursement request under this paragraph, except
31 that after February 1, 2018 rules adopted pursuant to this paragraph are major
32 substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

33 **Sec. 5. 22 MRSA §2423-F, sub-§10**, as repealed and replaced by PL 2019, c. 331,
34 §17, is amended to read:

35 **10. Rulemaking.** The department shall adopt routine technical rules as defined in
36 Title 5, chapter 375, subchapter 2-A governing manufacturing facilities, including but not
37 limited to:

- 38 A. Requirements for the registration of a manufacturing facility and an officer or
39 director or assistant of a registered manufacturing facility;
- 40 B. Requirements for engaging in marijuana extraction using inherently hazardous
41 substances;
- 42 C. Manufacturing facility officer or director qualification requirements;

- 1 D. Required security for manufacturing facilities;
- 2 E. Requirements of a disposal plan for harvested marijuana used in the manufacturing
- 3 process; and
- 4 F. Minimum record-keeping requirements, including an annual audit requirement.

5 The failure of the department to adopt rules under this subsection does not prevent a person
6 authorized pursuant to subsection 3, paragraph A from engaging in conduct authorized
7 under this section. After February 1, 2018, rules adopted pursuant to this subsection are
8 major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

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

11 **1-A. Rulemaking.** The department may adopt rules to carry out the purposes of this
12 chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in
13 Title 5, chapter 375, subchapter 2-A, except that after February 1, 2018 rules adopted
14 pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375,
15 subchapter 2-A.

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

18 **4. Enforcement and compliance.** ~~The~~ On or before February 1, 2018, the department
19 shall adopt routine technical rules and after February 1, 2018, the department shall adopt
20 major substantive rules as defined in Title 5, chapter 375, subchapter 2-A regarding
21 enforcement and compliance of authorized conduct under this chapter, including rules
22 governing:

23 A. Minimum oversight requirements for dispensaries and registered caregivers and the
24 one permitted additional location at which a dispensary cultivates marijuana plants for
25 medical use by qualifying patients; and

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

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

32 The department, with the Department of Public Safety, Bureau of State Police, State Bureau
33 of Identification, shall adopt rules to implement this subsection. Rules adopted pursuant to
34 this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter
35 2-A, except that after February 1, 2018 rules adopted pursuant to this subsection are major
36 substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

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

39 **10. Fees.** The department shall adopt rules to establish fees in accordance with this
40 subsection. The fees must be credited to the Medical Use of Marijuana Fund pursuant to
41 section 2430. Rules adopted pursuant to this subsection are routine technical rules as
42 defined in Title 5, chapter 375, subchapter 2-A, except that after February 1, 2018 rules

1 adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter
2 375, subchapter 2-A.

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

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

12 C. There is an annual registration fee for a dispensary, which may not be less than
13 \$5,000 or more than \$12,000. There is a fee to change the location of a registered
14 dispensary or the location at which a registered dispensary cultivates marijuana plants,
15 which may not be less than \$3,000 or more than \$4,000.

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

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

20 F. There is an annual registration fee to engage in marijuana extraction under section
21 2423-F, subsection 3, which may not be less than \$250 or more than \$350.

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

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

28 I. There is a fee to replace a registry identification card that has been lost, stolen or
29 destroyed or a card that contains information that is no longer accurate, which may not
30 be less than \$10 or more than \$20. Replacement of a registry identification card does
31 not extend the expiration date.

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

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

40 A. A registered caregiver or a dispensary shall submit annually a report of the number
41 of qualifying patients and visiting qualifying patients assisted by the caregiver or
42 dispensary. A report may not directly or indirectly disclose patient identity. The
43 department shall adopt rules to implement this paragraph. Rules adopted pursuant to

1 this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter
2 2-A, except that after February 1, 2018 rules adopted pursuant to this paragraph are
3 major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

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

6 **5. Medical marijuana research grant program established.** The medical marijuana
7 research grant program, referred to in this subsection as "the program," is established within
8 the department to provide grant money to support objective scientific research, including
9 observational and clinical trials and existing research, on the efficacy of harvested
10 marijuana as part of medical treatment and the health effects of harvested marijuana used
11 as part of medical treatment. The program must be funded from the fund. The department
12 shall adopt rules necessary to implement the program, including, but not limited to,
13 required qualifications of persons conducting the research; determining the scientific merit
14 and objectivity of a research proposal; criteria for determining the amount of program funds
15 distributed; criteria for determining the duration of the research; procedures for soliciting
16 research participants, including outreach to patients, and for obtaining the informed consent
17 of participants; and reporting requirements for the results of the research and evaluation of
18 the research results. Rules adopted pursuant to this subsection are routine technical rules
19 as defined in Title 5, chapter 375, subchapter 2-A, except that after February 1, 2018 rules
20 adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter
21 375, subchapter 2-A.

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

24 **2. Repeat forfeiture.** If a cardholder has previously forfeited excess marijuana
25 pursuant to subsection 1 and a subsequent forfeiture occurs, the department shall revoke
26 the registry identification card of the cardholder and the entire amount of marijuana plants
27 or harvested marijuana possessed by that cardholder must be forfeited to a law enforcement
28 officer. The department shall adopt rules to implement this subsection. Rules adopted
29 pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375,
30 subchapter 2-A, except that after February 1, 2018 rules adopted pursuant to this subsection
31 are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

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

34 **1. Department suspension or revocation.** The department may suspend or revoke a
35 registry identification card for violation of this chapter and the rules adopted under this
36 chapter. Revocation in accordance with section 2430-E, subsection 2 is considered a final
37 agency action, subject to judicial review under Title 5, chapter 375, subchapter 7. Unless
38 otherwise specified as final agency action, a person who has had authorization for conduct
39 under this chapter revoked due to failure to comply with this chapter and rules adopted by
40 the department may request an informal hearing. The department shall adopt rules to
41 specify the period of time, which may not exceed one year, that the person whose registry
42 identification card was revoked is ineligible for reauthorization under this chapter. Rules
43 adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter
44 375, subchapter 2-A, except that after February 1, 2018 rules adopted pursuant to this
45 subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

1 The department shall immediately revoke the registry identification card of an officer or
2 director or assistant of a dispensary who is found to have violated section 2428, subsection
3 9, paragraph B, and that person is disqualified from serving as an officer or director or
4 assistant of a dispensary.

5 **Sec. 14. 22 MRSA §2430-G, sub-§1, ¶A**, as enacted by PL 2017, c. 452, §24, is
6 amended to read:

7 A. A registered caregiver, a registered dispensary, a marijuana testing facility and a
8 manufacturing facility shall:

9 (1) Keep a record of all transfers of marijuana plants and harvested marijuana;

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

13 ~~(3) Complete an annual audit of business transactions of the registered caregiver,
14 registered dispensary, marijuana testing facility or manufacturing facility by an
15 independent 3rd party; and~~

16 (4) Make the books and records maintained under this subsection available to
17 inspection by the department upon the department's demand.

18 Records kept under this paragraph must avoid identifying qualifying patients.

19 **Sec. 15. 22 MRSA §2430-G, sub-§1, ¶B**, as amended by PL 2019, c. 331, §32, is
20 repealed.

21 **Sec. 16. Rules governing the medical use of marijuana.** The rules governing
22 the medical use of marijuana are those rules that were last amended February 1, 2018.
23 Before adopting or amending rules governing the medical use of marijuana, the Department
24 of Administrative and Financial Services shall establish a process to include caregivers,
25 registered caregivers and patients, as these terms are defined in the Maine Medical Use of
26 Marijuana Act, and physicians and certified nurse practitioners, as these terms are defined
27 in the Maine Medical Use of Marijuana Act, with significant knowledge and experience
28 certifying patients under the Maine Medical Use of Marijuana Act, in the development of
29 these rules or amendments and shall consult with caregivers, registered caregivers, patients,
30 physicians and certified nurse practitioners.

31 **Sec. 17. Retroactivity.** This Act applies retroactively to February 1, 2018.

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

34 SUMMARY

35 This bill makes the following changes to the laws governing the medical use of
36 marijuana.

37 1. It changes the designation of rules governing the medical use of marijuana from
38 routine technical to major substantive.

39 2. It provides that the Department of Administrative and Financial Services rules
40 governing the medical use of marijuana are those that were last amended February 1, 2018.
41 Before adopting or amending rules governing the medical use of marijuana, the department

1 must establish a process to include caregivers, registered caregivers and patients and
2 physicians and certified nurse practitioners with significant knowledge and experience
3 certifying patients under the laws governing the medical use of marijuana in the
4 development of these rules or amendments and must consult with caregivers, registered
5 caregivers, patients, physicians and certified nurse practitioners.

6 3. It requires the department to develop a process to retain any consultant hired to
7 advise on rule changes related to the laws governing the medical use of marijuana and
8 report on the development of this process no later than September 1, 2021 and shall report
9 on any subsequent changes to this process to the joint standing committee of the Legislature
10 having jurisdiction over health and human services matters.

11 4. It eliminates the requirement that a registered caregiver, a registered dispensary, a
12 marijuana testing facility and a manufacturing facility complete an annual audit conducted
13 by a 3rd party of business transactions.

14 5. It eliminates the requirement that the department develop and implement a statewide
15 electronic portal through which registered caregivers, registered dispensaries, marijuana
16 testing facilities and manufacturing facilities may submit certain records to the department.