

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

SECOND REGULAR SESSION-2024

Legislative Document

No. 2215

H.P. 1421

House of Representatives, February 20, 2024

**An Act to Implement the Recommendations of the Right to Know
Advisory Committee Regarding Public Records Exceptions**

Reported by Representative MOONEN of Portland for the Joint Standing Committee on Judiciary pursuant to the Maine Revised Statutes, Title 1, section 411, subsection 6, paragraph G.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint Rule 218.

Robert B. Hunt

ROBERT B. HUNT
Clerk

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

2 **Sec. 1. 22 MRSA §2425-A, sub-§12**, as amended by PL 2023, c. 365, §8, is
3 repealed.

4 **Sec. 2. 22 MRSA §2425-A, sub-§14** is enacted to read:

5 **14. Confidentiality.** This subsection governs confidentiality.

6 A. For purposes of this subsection, "personal contact information" has the same
7 meaning as in Title 1, section 402, subsection 3, paragraph O, subparagraph (1) and
8 "caregiver exempt from registration" means a caregiver who is not required to register
9 pursuant to section 2423-A, subsection 3, paragraph C.

10 B. Information that identifies a qualifying patient, a visiting qualifying patient or a
11 registered patient under this chapter is confidential and may not be disclosed by the
12 department, except:

13 (1) With the written consent of the patient; or

14 (2) Pursuant to a court order or a subpoena.

15 C. Information that identifies a caregiver exempt from registration is confidential and
16 may not be disclosed by the department, except:

17 (1) With the written consent of the caregiver; or

18 (2) Pursuant to a court order or a subpoena or as provided in paragraph F.

19 D. Except as provided in this paragraph and in paragraphs B and C, applications,
20 supporting information and other information regarding a registered caregiver,
21 including any address where the registered caregiver cultivates, manufactures, tests,
22 packages, stores or sells cannabis plants or harvested cannabis under this chapter, are
23 not confidential. The personal contact information of a registered caregiver or of an
24 applicant for registration as a registered caregiver is confidential and may not be
25 disclosed by the department, except:

26 (1) With the written consent of the registered caregiver or applicant for registration
27 as a registered caregiver;

28 (2) Pursuant to a court order or a subpoena;

29 (3) As provided in paragraph F; or

30 (4) If a registered caregiver resides at the same address where the registered
31 caregiver cultivates, manufactures, tests, packages, stores or sells cannabis plants
32 or harvested cannabis under this chapter, the department may disclose that address
33 to a state, county or municipal employee responsible for the administration of this
34 chapter or of rules, ordinances or warrant articles authorized under this chapter,
35 including, but not limited to, law enforcement officers and code enforcement
36 officers. Any information received by a state, county or municipal employee under
37 this subparagraph is confidential and may not be further disclosed or disseminated,
38 except as otherwise provided by law.

39 E. Except as provided in this paragraph and in paragraphs B and C, applications,
40 supporting information and other information regarding a dispensary, manufacturing
41 facility, cannabis testing facility and an assistant, officer or director of a registered

1 caregiver, dispensary, manufacturing facility or cannabis testing facility under this
2 chapter are not confidential. The personal contact information of a cardholder who is
3 an assistant, officer or director of a registered caregiver, dispensary, manufacturing
4 facility or cannabis testing facility and an applicant for a registry identification card as
5 an assistant, officer or director of a registered caregiver, dispensary, manufacturing
6 facility or cannabis testing facility or registration certificate for a dispensary,
7 manufacturing facility or cannabis testing facility is confidential and may not be
8 disclosed by the department, except:

9 (1) With the written consent of the cardholder or applicant; or

10 (2) Pursuant to a court order or a subpoena.

11 F. Notwithstanding any provision of this subsection to the contrary, the department
12 may, when necessary to protect the public from a threat to public health or safety, notify
13 the public of the following:

14 (1) The identity of a caregiver exempt from registration, a registered caregiver, a
15 dispensary, a manufacturing facility or a cannabis testing facility associated with
16 the threat to public health or safety and that person's status as a caregiver exempt
17 from registration, registered caregiver, dispensary, manufacturing facility or
18 cannabis testing facility; and

19 (2) The location where any cannabis plants or harvested cannabis associated with
20 the threat to public health or safety were cultivated, manufactured, tested,
21 packaged, stored or sold.

22 G. Notwithstanding any provision of this subsection to the contrary, the department
23 shall comply with Title 36, section 175. Information provided by the department
24 pursuant to this paragraph may be used by the department's Bureau of Revenue
25 Services only for the administration and enforcement of taxes imposed under Title 36.

26 H. A final written decision of the department pursuant to section 2430-I imposing an
27 administrative penalty; ordering forfeiture and destruction of cannabis plants, cannabis
28 or cannabis products; or suspending or revoking a registry identification card or
29 registration certificate is not confidential.

30 I. A caregiver, dispensary, manufacturing facility or cannabis testing facility or an
31 officer, director or assistant of a caregiver, dispensary, manufacturing facility or
32 cannabis testing facility may not be required to disclose to a law enforcement officer
33 information that could reasonably identify an individual's identity without a warrant
34 requiring the disclosure.

35 J. A person who accompanies a patient to obtain cannabis plants or harvested cannabis
36 may not be required to disclose to a law enforcement officer information that could
37 reasonably identify an individual patient's identity without a warrant requiring the
38 disclosure.

39 **Sec. 3. 22 MRSA §3022, sub-§8**, as amended by PL 2017, c. 475, Pt. A, §33, is
40 further amended to read:

41 **8. Certain information confidential.** The following records ~~in the possession or~~
42 ~~custody of a medical examiner or the Office of Chief Medical Examiner are not public~~
43 ~~records within the meaning of Title 1, section 402, subsection 3 and are confidential:~~

- 1 A. Medical records relating to a medical examiner case;
- 2 B. Law enforcement agency reports or records relating to a medical examiner case;
- 3 C. Communications with the Department of the Attorney General relating to a medical
- 4 examiner case;
- 5 D. Communications with the office of a district attorney relating to a medical examiner
- 6 case;
- 7 E. Death certificates and amendments made to the certificates, except for the
- 8 information for which the medical examiner is responsible, as listed in section 2842,
- 9 subsection 3, and not ordered withheld by the Attorney General relating to a medical
- 10 examiner case or missing person;
- 11 F. Photographs and transparencies, histological slides, videotapes and other like items
- 12 relating to a medical examiner case; and
- 13 G. Written or otherwise recorded communications that express or are evidence of
- 14 suicidal intent obtained under section 3028, subsections 4 and 5.

15 **Sec. 4. 22 MRSA §3294**, as enacted by PL 1987, c. 714, §2, is amended to read:

16 **§3294. Confidential information provided to professional and occupational licensing**
 17 **boards**

18 If confidential information regarding a person subject to or seeking licensure,
 19 certification or registration by a licensing board indicates that the person may have engaged
 20 in unlawful activity, professional misconduct or conduct ~~which that~~ may be in violation of
 21 the laws or rules relating to the licensing board, the director may release this information
 22 to the appropriate licensing board. Confidential information ~~shall~~ must be disclosed and
 23 used in accordance with section 3292 and may also be disclosed to members, employees
 24 and agents of a licensing board who are directly related to the matter at issue.

25 **1. Notice to the licensee or applicant.** Notice of the release of confidential
 26 information ~~shall~~ must be provided by the board to the licensee or applicant in accordance
 27 with the law and rules relating to the licensing board. If the law or rules relating to a
 28 licensing board do not provide for notice to licensees or applicants subject to or seeking
 29 licensure, certification or registration, the licensing board shall provide notice to the
 30 licensee or applicant upon determination of the board to take further action following its
 31 investigation.

32 **2. Licensing board requests for confidential information.** Any licensing board
 33 pursuing action within the scope of the board's authority or conducting an investigation of
 34 any person subject to or seeking licensure, certification or registration by the board for
 35 engaging in unlawful activity, professional misconduct or conduct ~~which that~~ may be in
 36 violation of the laws or rules relating to the board may request confidential information
 37 from the bureau. Any information provided to the board for an investigation ~~shall be~~ is
 38 governed by section 3292 and this section.

39 **3. Use of confidential information in proceedings and investigations.** The use of
 40 confidential information in proceedings, informal conferences and adjudicatory hearings
 41 ~~shall be~~ is governed by Title 5, section 9057, subsection 6. The use of confidential
 42 information in investigations is governed by Title 10, section 8003-B, subsection 2,
 43 paragraph G as long as any confidential information disclosed under that paragraph is not

1 further disclosed by any person for purposes other than an investigation by a licensing
2 board.

3 **Sec. 5. 22 MRSA §5409**, as enacted by PL 2019, c. 653, Pt. A, §1, is amended to
4 read:

5 **§5409. Records**

6 Except as provided in this section or by other provision of law, information obtained
7 by the marketplace under this chapter is a public record within the meaning of Title 1,
8 chapter 13, subchapter 1.

9 **1. Financial information.** Any personally identifiable financial information,
10 supporting data or tax return of any person obtained by the marketplace under this chapter
11 is confidential ~~and not open to public inspection~~ pursuant to 26 United States Code, Section
12 6103 and Title 36, section 191.

13 **2. Health information.** Health information obtained by the marketplace under this
14 chapter that is covered by the federal Health Insurance Portability and Accountability Act
15 of 1996, Public Law 104-191, or information covered by ~~Title 22~~, section 1711-C is
16 confidential ~~and not open to public inspection~~.

17 **3. Personally identifiable information.** Personally identifiable information not
18 otherwise described in subsection 1 or 2 that is obtained by the marketplace under this
19 chapter is confidential. As used in this subsection, "personally identifiable information"
20 means information that permits the identity of an individual to whom the information
21 applies to be able to be reasonably inferred or known by either direct or indirect means.

22 **Sec. 6. 36 MRSA §191, sub-§3-B**, as amended by PL 2017, c. 452, §29, is further
23 amended to read:

24 **3-B. Additional restrictions for certain information provided by the Department**
25 **of Administrative and Financial Services.** Information provided to the assessor by the
26 Department of Administrative and Financial Services pursuant to section 175 and Title 22,
27 section 2425-A, subsection ~~12~~ 14, paragraph ~~E~~ G may be used by the bureau only for the
28 administration and enforcement of taxes imposed under this Title. These restrictions are
29 in addition to those imposed by subsection 1.

30 **SUMMARY**

31 This bill implements statutory changes recommended by the Right to Know Advisory
32 Committee after reviewing certain existing public records exceptions in the Maine Revised
33 Statutes, Title 22.

34 The bill replaces the provisions of law governing the confidentiality of records and
35 information under the Maine Medical Use of Cannabis Act.

36 The bill specifies the following.

37 1. Information that identifies a qualifying patient, a visiting qualifying patient or a
38 registered patient is confidential and may not be disclosed by the Department of
39 Administrative and Financial Services, except with the written consent of the patient or
40 pursuant to a court order or a subpoena.

1 2. Information that identifies a caregiver who is exempt from registration under the
2 Maine Medical Use of Cannabis Act is confidential and may not be disclosed by the
3 Department of Administrative and Financial Services, except with the written consent of
4 the caregiver, pursuant to a court order or a subpoena or when necessary to protect the
5 public from a threat to public health or safety.

6 3. Personal contact information of a registered caregiver or of an applicant for
7 registration as a registered caregiver is confidential and may not be disclosed by the
8 Department of Administrative and Financial Services, except with the written consent of
9 the registrant or applicant, pursuant to a court order or a subpoena or when necessary to
10 protect the public from a threat to public health or safety. In addition, if the registered
11 caregiver resides at the same address where the registered caregiver engages in activities
12 authorized under the Maine Medical Use of Cannabis Act, the department may disclose
13 that address to a state, county or municipal employee responsible for the administration of
14 the Act or of rules, ordinances or warrant articles authorized under the Act, including a law
15 enforcement officer or code enforcement officer.

16 4. Personal contact information of a holder of a registry identification card who is an
17 assistant, officer or director of a registered caregiver, dispensary, manufacturing facility or
18 cannabis testing facility or of an applicant for a registry identification card as an assistant,
19 officer or director of a registered caregiver, dispensary, manufacturing facility or cannabis
20 testing facility or registration certificate for a dispensary, manufacturing facility or
21 cannabis testing facility is confidential and may not be disclosed by the Department of
22 Administrative and Financial Services, except in response to a court order or a subpoena.

23 5. A final written decision of the Department of Administrative and Financial Services
24 imposing an administrative penalty, ordering forfeiture and destruction of cannabis or
25 suspending or revoking a registry identification card or registration certificate is not
26 confidential.

27 The bill preserves the obligation of the Department of Administrative and Financial
28 Services under current law to provide information to the department's Bureau of Revenue
29 Services for the administration and enforcement of taxes and the requirement in current
30 law that law enforcement officers obtain a warrant before they may require a caregiver,
31 dispensary, manufacturing facility or cannabis testing facility to disclose information that
32 could reasonably identify an individual or require a person who accompanies a patient to
33 disclose information that could reasonably identify a patient.

34 The bill clarifies that a record relating to a medical examiner case is confidential and
35 that the location or custodian of the record does not affect the record's confidentiality. It
36 also makes other technical and grammatical changes to conform with drafting standards
37 recommended by the Right to Know Advisory Committee.

38 The bill clarifies that a professional or occupational licensing board that receives
39 confidential information from the Director of the Office of Child and Family Services or
40 the Director of the Office of MaineCare Services within the Department of Health and
41 Human Services may release that confidential information during the pendency of an
42 investigation as long as that confidential information is not further disclosed for any other
43 purpose.

44 The bill clarifies that any personally identifiable information obtained by the Maine
45 Health Insurance Marketplace is confidential.

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The bill also makes technical and grammatical changes and corrects a cross-reference.