

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND EIGHTEEN

—
S.P. 84 - L.D. 238

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 medical marijuana industry has developed a variety of products containing marijuana to serve the needs of qualifying patients; and

Whereas, the process of manufacturing those products may involve substances that are hazardous to use or that are hazardous to health; and

Whereas, increased oversight over the manufacturing and testing of medical marijuana products is needed to ensure safety during the process of manufacturing and the safety of medical marijuana products intended for human consumption; 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, sub-§4-D to 4-I are enacted to read:

4-D. Inherently hazardous substance. "Inherently hazardous substance" means a liquid chemical; a compressed gas; carbon dioxide; or a commercial product that has a flash point at or lower than 38 degrees Celsius or 100 degrees Fahrenheit, including, but not limited to, butane, propane and diethyl ether. "Inherently hazardous substance" does not include any form of alcohol or ethanol.

4-E. Manufacture or manufacturing. "Manufacture" or "manufacturing" means the production, blending, infusing, compounding or other preparation of marijuana concentrate and marijuana products, including, but not limited to, marijuana extraction or preparation by means of chemical synthesis.

4-F. Manufacturing facility. "Manufacturing facility" means a registered tier 1 or tier 2 manufacturing facility or a person or entity authorized to engage in marijuana extraction under section 2423-F.

4-G. Marijuana concentrate. "Marijuana concentrate" means the resin extracted from any part of a marijuana plant and every compound, manufacture, salt, derivative, mixture or preparation from such resin, including, but not limited to, hashish.

4-H. Marijuana extraction. "Marijuana extraction" means the process of extracting marijuana concentrate from marijuana using water, lipids, gases, solvents or other chemicals or chemical processes.

4-I. Marijuana product. "Marijuana product" means a product composed of marijuana or marijuana concentrate and other ingredients that is intended for medical use. "Marijuana product" includes, but is not limited to, an edible marijuana product, a marijuana ointment and a marijuana tincture. "Marijuana product" does not include marijuana concentrate.

Sec. 2. 22 MRSA §2422, sub-§5-C, ¶A, as enacted by PL 2015, c. 475, §3, is amended to read:

A. ~~Is licensed, certified or otherwise approved by the department authorized in accordance with rules adopted by the department under section 2423-A, subsection 10, paragraph D to analyze contaminants in and the potency and cannabinoid profile of samples; and~~

Sec. 3. 22 MRSA §2422, sub-§14-A, as enacted by PL 2015, c. 475, §5, is amended to read:

14-A. Sample. "Sample" means any marijuana or product containing marijuana regulated under this chapter that is provided for testing or research purposes to a marijuana testing facility by a qualifying patient, designated primary caregiver ~~or~~, dispensary or manufacturing facility.

Sec. 4. 22 MRSA §2423-A, sub-§1, ¶H, as amended by PL 2015, c. 475, §7, is further amended to read:

H. ~~Accept excess prepared marijuana from a primary caregiver in accordance with subsection 2, paragraph H if nothing of value is provided to the primary caregiver; and~~

Sec. 5. 22 MRSA §2423-A, sub-§1, ¶I, as enacted by PL 2015, c. 475, §8, is amended to read:

I. ~~Provide samples to a marijuana testing facility for testing and research purposes;~~

Sec. 6. 22 MRSA §2423-A, sub-§1, ¶¶J and K are enacted to read:

J. Manufacture marijuana products and marijuana concentrate for medical use, except that a qualifying patient may not produce marijuana concentrate using

inherently hazardous substances unless authorized pursuant to section 2423-F, subsection 3; and

K. Provide harvested marijuana to a manufacturing facility and obtain marijuana products and marijuana concentrate from the manufacturing facility that are produced from the harvested marijuana the qualifying patient provided to the manufacturing facility.

Sec. 7. 22 MRSA §2423-A, sub-§2, ¶G, as amended by PL 2013, c. 516, §7, is repealed and the following enacted in its place:

G. Manufacture marijuana products and marijuana concentrate for medical use, except that a primary caregiver may not produce marijuana concentrate using inherently hazardous substances unless authorized pursuant to section 2423-F, subsection 3;

Sec. 8. 22 MRSA §2423-A, sub-§2, ¶¶L and M, as enacted by PL 2015, c. 475, §11, are amended to read:

L. If the primary caregiver is a registered primary caregiver, provide samples to a marijuana testing facility for testing and research purposes; ~~and~~

M. If the primary caregiver is a registered primary caregiver, conduct marijuana testing at the request of anyone authorized to possess marijuana under this chapter for research and development purposes only; and

Sec. 9. 22 MRSA §2423-A, sub-§2, ¶N is enacted to read:

N. Provide harvested marijuana to a manufacturing facility and obtain marijuana products and marijuana concentrate from the manufacturing facility that are produced from the harvested marijuana the primary caregiver provided to the manufacturing facility.

Sec. 10. 22 MRSA §2423-A, sub-§10, as enacted by PL 2015, c. 475, §14, is amended to read:

10. Marijuana testing facility. The following provisions apply to a marijuana testing facility.

A. A marijuana testing facility that meets the requirements of this subsection and any rules adopted under paragraph D may receive and possess samples from qualifying patients, designated primary caregivers ~~and~~, dispensaries and manufacturing facilities to provide testing for the cannabinoid profile and potency of the samples and for contaminants in the samples, including but not limited to mold, mildew, heavy metals, plant regulators and illegal pesticides. For the purposes of this paragraph, "plant regulator" has the same meaning as in Title 7, section 604, subsection 26.

B. An employee of a marijuana testing facility may have access to cultivation facilities pursuant to subsection 3, paragraphs A and B and section 2428, subsection 6, paragraph I.

C. A marijuana testing facility shall:

(1) ~~Properly dispose~~ Dispose of marijuana residue ~~in compliance with department rules in a manner that prevents diversion of marijuana to persons not authorized to possess marijuana tested by the facility;~~

(2) House and store marijuana in the facility's possession or control during the process of testing, transport or analysis in a manner to prevent diversion, theft or loss;

(3) Label marijuana being transported to and from the facility with the following statement: "For Testing Purposes Only";

(4) Maintain testing results as part of the facility's business books and records; and

(5) Operate in accordance with any rules adopted by the department.

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

(1) Marijuana testing facility director qualification requirements;

(2) Required security for marijuana testing facilities; and

(3) Requirements for the licensing, certifying 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 subsection.

E. A marijuana testing facility shall obtain and must be able to produce, upon demand of the department or a municipal code enforcement officer, documentation of the facility's accreditation pursuant to standard ISO/IEC 17025 of the International Organization for Standardization by a 3rd-party accrediting body. The department may inspect a marijuana testing facility during regular business hours and hours of apparent activity for compliance with this Act.

Sec. 11. 22 MRSA §2423-A, sub-§11, ¶B, as enacted by PL 2015, c. 475, §14, is amended to read:

B. A principal officer, board member, agent or employee of a marijuana testing facility is not subject to arrest, prosecution, search, seizure or penalty in any manner, including but not limited to a civil penalty or disciplinary action by a business or an occupational or professional licensing board or entity, and may not be denied any right or privilege solely for working for or with a marijuana testing facility to test marijuana provided by a qualifying patient, registered primary caregiver or dispensary or manufacturing facility.

Sec. 12. 22 MRSA §2423-A, sub-§12, as enacted by PL 2015, c. 475, §14, is amended to read:

12. Interest. A principal officer, board member or employee of a registered dispensary or primary caregiver or manufacturing facility may not have a financial or

other interest in a marijuana testing facility providing services associated with product labeling for that dispensary or primary caregiver or manufacturing facility.

Sec. 13. 22 MRSA §2423-A, sub-§13, as enacted by PL 2017, c. 271, §1, is repealed.

Sec. 14. 22 MRSA §2423-A, sub-§14 is enacted to read:

14. Municipal regulation. Pursuant to the home rule authority granted under the Constitution of Maine, Article VIII, Part Second and Title 30-A, section 3001, a municipality may regulate registered primary caregivers, registered dispensaries, marijuana testing facilities and manufacturing facilities, except that municipalities may not prohibit or limit the number of registered primary caregivers.

Sec. 15. 22 MRSA §2423-F is enacted to read:

§2423-F. Marijuana manufacturing facilities

A person may not manufacture marijuana products or marijuana concentrate or engage in marijuana extraction except as provided in this chapter.

1. Tier 1 manufacturing facility. A tier 1 manufacturing facility registered pursuant to subsection 8 may engage in the activities authorized under subsection 4 in accordance with rules adopted pursuant to subsection 10 and may possess up to 40 pounds of harvested marijuana and marijuana in various stages of processing at any one time.

2. Tier 2 manufacturing facility. A tier 2 manufacturing facility registered pursuant to subsection 8 may engage in the activities authorized under subsection 4 in accordance with rules adopted pursuant to subsection 10 and may possess up to 200 pounds of harvested marijuana and marijuana in various stages of processing at any one time.

3. Authorization for extraction using inherently hazardous substances. This subsection governs the authority of a person or entity to engage in marijuana extraction using inherently hazardous substances in accordance with subsection 5.

A. A qualifying patient, primary caregiver, registered dispensary or manufacturing facility may engage in marijuana extraction using inherently hazardous substances if the person or entity can produce, upon demand of the department:

(1) Certification from a professional engineer licensed in this State of the safety of the equipment used for marijuana extraction and the location of the equipment and the professional engineer's approval of the standard operating procedures for the marijuana extraction;

(2) Documentation from a professional engineer licensed in this State or a state or local official authorized to certify compliance that the equipment used for marijuana extraction and the location of the equipment comply with state law and all applicable local and state building codes, electrical codes and fire codes.

including the chapters of the most recent National Fire Protection Association Fire Code relating to marijuana extraction facilities;

(3) Documentation from the manufacturer of the marijuana extraction system or a professional engineer licensed in this State showing that a professional grade, closed-loop extraction system that is capable of recovering the solvents used to produce marijuana concentrate is used by the person or entity; and

(4) Evidence that the person or entity has provided notice to the department of the person's or entity's intent to engage in marijuana extraction using inherently hazardous substances and the location where the marijuana extraction will occur prior to engaging in marijuana extraction using inherently hazardous substances.

A person or entity that intends to engage in marijuana extraction using inherently hazardous substances shall notify the department of that intention prior to engaging in marijuana extraction using inherently hazardous substances. The department may deny an application of a person or entity authorized under this subsection to register pursuant to rules adopted under subsection 10 if the person or entity did not notify the department in accordance with this subsection.

B. A person or entity that is not a qualifying patient, primary caregiver or registered dispensary and that meets the requirements of a person or entity authorized under paragraph A, pays the fee required by section 2425, subsection 12 and meets the requirements of rules adopted under subsection 10 is authorized to engage in marijuana extraction using inherently hazardous substances and may possess up to 40 pounds of harvested marijuana and marijuana in various stages of processing at any one time.

4. Authorized conduct; manufacturing facilities. A registered manufacturing facility:

A. May manufacture marijuana products and marijuana concentrate for medical use using any method that does not involve an inherently hazardous substance, except that a registered manufacturing facility may manufacture marijuana concentrate using inherently hazardous substances if authorized under subsection 3;

B. May obtain harvested marijuana from a qualifying patient, a primary caregiver or a registered dispensary and may transfer marijuana products and marijuana concentrate to the person or entity that provided the harvested marijuana used to manufacture the marijuana product or marijuana concentrate;

C. May transfer marijuana products or marijuana concentrate to a marijuana testing facility for testing;

D. May conduct testing of marijuana products or marijuana concentrate manufactured by the facility for research and development purposes;

E. May receive reasonable compensation for manufacturing marijuana products or marijuana concentrate;

F. Shall dispose of marijuana used in the manufacturing process in a manner that prevents diversion of marijuana to persons not authorized to possess marijuana or

marijuana products possessed by the facility and in accordance with rules adopted by the department; and

G. May employ staff.

5. Authorized conduct; extraction using inherently hazardous substances. A person or entity that is authorized to engage in marijuana extraction using inherently hazardous substances pursuant to subsection 3:

A. May engage in marijuana extraction to produce marijuana concentrate for medical use;

B. May obtain harvested marijuana from a qualifying patient, a primary caregiver or a registered dispensary and may transfer marijuana concentrate to the person or entity that provided the harvested marijuana used to produce the marijuana concentrate;

C. May transfer marijuana concentrate to a marijuana testing facility for testing;

D. May conduct testing of marijuana concentrate produced by the person or entity for research and development purposes;

E. May receive reasonable compensation for producing marijuana concentrate;

F. Shall dispose of marijuana used in the extraction process in a manner that prevents diversion of marijuana to persons not authorized to possess marijuana or marijuana products possessed by the person or entity and in accordance with rules adopted by the department; and

G. May employ staff, except that a qualifying patient authorized under subsection 3 may not employ staff and a primary caregiver shall comply with the employment limit established in section 2423-A, subsection 2, paragraph I.

Notwithstanding the authorizations established in this subsection, a person, entity or facility that is authorized to engage in marijuana extraction using inherently hazardous substances pursuant to subsection 3 shall comply with any rules adopted pursuant to subsection 10.

6. Retail sale prohibited. A registered manufacturing facility or a person or entity authorized to engage in marijuana extraction under subsection 3 may not engage in retail sales of marijuana products or marijuana concentrate unless the person or entity is authorized to engage in retail sales under this chapter.

7. Food establishment license required to manufacture food products. A registered manufacturing facility or a person or entity authorized to manufacture marijuana concentrate using inherently hazardous substances may not manufacture edible marijuana products or marijuana tinctures unless licensed pursuant to section 2167.

8. Registration requirements. This section governs registration requirements of a manufacturing facility or a person or entity authorized to engage in marijuana extraction under subsection 3 using inherently hazardous substances and the principal officers, board members and employees of the facility, person or entity.

A. In accordance with rules adopted under subsection 10, the department shall register and issue a registration certificate with a registry identification number to a

manufacturing facility or a person or entity authorized to engage in marijuana extraction within 30 days to the facility, person or entity if the facility, person or entity provides:

- (1) The annual fee required pursuant to section 2425, subsection 12;
- (2) The legal name of the facility, person or entity and, if incorporated, evidence of incorporation and evidence that the corporation is in good standing with the Secretary of State;
- (3) The physical address of the facility or entity, or the physical address where an applicant who is an individual will engage in the activities authorized under this section. If the facility or entity changes its physical location, or if a person registered under this subsection changes the location at which the person engages in activities authorized under this section, the facility, entity or person shall notify the department of the new location; and
- (4) The name, address and date of birth of each principal officer, board member and employee of the facility or entity.

B. In accordance with rules adopted under subsection 10, the department shall issue registry identification cards to the principal officers, board members and employees of a registered manufacturing facility or entity authorized to engage in marijuana extraction using inherently hazardous substances within 5 business days of approving an application or renewal under this section. A registry identification card is required to be issued to a principal officer, board member or employee of a registered manufacturing facility or entity authorized to engage in marijuana extraction using inherently hazardous substances. Registry identification cards expire one year after the date of issuance. A registry identification card issued under this paragraph must contain:

- (1) The name of the cardholder;
- (2) The date of issuance and expiration date of the registry identification card; and
- (3) A random identification number that is unique to the cardholder.

The department may not issue a registry identification card to any principal officer, board member or employee of a registered manufacturing facility or person or entity authorized to engage in marijuana extraction using inherently hazardous substances who has been convicted of a disqualifying drug offense. The department shall conduct a criminal history record check of each person, principal officer, board member or employee subject to this subsection on an annual basis in order to ensure that each person, principal officer, board member or employee has not been convicted of a disqualifying drug offense. If the department determines not to issue a registry identification card for a person, principal officer, board member or employee, the department shall notify the registered manufacturing facility or person or entity authorized to engage in marijuana extraction using inherently hazardous substances in writing of the reason for denying the registry identification card.

9. Packaging and labeling requirements. A manufacturing facility shall package and label its marijuana products and marijuana concentrate prior to transfer from the

manufacturing facility in a form intended for use or consumption by a qualifying patient in tamper-evident packaging and with a label that includes the following information:

- A. The registry identification number of the manufacturing facility;
- B. Information that allows the provider of the marijuana to the manufacturing facility to confirm that the marijuana provided was used to manufacture the marijuana product or marijuana concentrate transferred back to that provider;
- C. Ingredients other than marijuana contained in the marijuana product or marijuana concentrate; and
- D. Any chemicals, solvents or other substances used to manufacture the marijuana product or marijuana concentrate.

10. Rulemaking. The department shall adopt routine technical 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 the principal officers, board members and employees of a registered manufacturing facility;
- B. Requirements for engaging in marijuana extraction using inherently hazardous substances;
- C. Manufacturing facility director or principal officer qualification requirements;
- D. Required security for manufacturing facilities;
- E. Requirements of a disposal plan for marijuana used in the manufacturing process;
- F. Minimum record-keeping requirements, including an annual audit requirement; and
- G. Minimum content of educational materials provided to the recipient of the marijuana products or marijuana concentrate.

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

11. Multiple authorizations. A person or entity registered pursuant to subsection 8 may also be a qualifying patient or a primary caregiver, and an entity registered pursuant to subsection 8 may also be a registered dispensary. A person or entity authorized to possess marijuana under this Act may possess the amount allowed for that person or entity in addition to the possession amount allowed under this section if registered pursuant to this section. The marijuana possessed must be distinguishable with respect to the purposes for which it is authorized to be possessed.

12. Record keeping. A registered manufacturing facility or person or entity authorized to engage in marijuana extraction using inherently hazardous substances under subsection 3 shall maintain records of all transactions for a minimum of one year after the date of the transaction.

13. Compliance. The department may inspect a manufacturing facility during regular business hours and hours of apparent activity for compliance with this chapter.

14. Immunity. The immunity provisions in this subsection apply to manufacturing facilities and the officers, board members, agents and employees of manufacturing facilities.

A. A manufacturing facility is not subject to prosecution, search, seizure or penalty in any manner, including but not limited to a civil penalty or disciplinary action by a business or an occupational or professional licensing board or entity, and may not be denied any right or privilege solely for acting in accordance with this section to assist with the medical use of marijuana in accordance with this chapter.

B. A principal officer, board member, agent or employee of a manufacturing facility is not subject to arrest, prosecution, search, seizure or penalty in any manner, including but not limited to a civil penalty or disciplinary action by a business or an occupational or professional licensing board or entity, and may not be denied any right or privilege solely for working for or with a manufacturing facility to provide prepared marijuana to qualifying patients, primary caregivers, registered dispensaries or marijuana testing facilities or to otherwise assist with the medical use of marijuana in accordance with this chapter.

Sec. 16. 22 MRSA §2425, sub-§1-A, as amended by PL 2015, c. 475, §19, is further amended to read:

1-A. Criminal history record check. An applicant for a registry identification card who is a primary caregiver ~~or~~, an employee of a primary caregiver or a person authorized to engage in marijuana extraction under section 2423-F, subsection 3 or who is a principal officer, board member or employee of a registered dispensary ~~or a~~ marijuana testing facility or manufacturing facility must undergo a criminal history record check annually.

Sec. 17. 22 MRSA §2425, sub-§4-A, as enacted by PL 2015, c. 475, §20, is amended to read:

4-A. Marijuana testing facility identification card. The department shall issue registry identification cards to principal officers, board members and employees of a marijuana testing facility within 5 business days of approving an application or renewal under this section ~~in accordance with department rules~~. The department may not issue a registry identification card to a principal officer, board member or employee of a marijuana testing facility who has been convicted of a disqualifying drug offense. Registry identification cards expire one year after the date of issuance. Registry identification cards must contain:

- A. The name of the cardholder;
- B. The date of issuance and expiration date of the registry identification card; and
- C. A random identification number that is unique to the cardholder.

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.

Sec. 18. 22 MRSA §2425, sub-§12, ¶¶H to J are enacted to read:

H. There is an annual fee to register a tier 1 manufacturing facility of not less than \$50 and not more than \$150.

I. There is an annual fee to register a tier 2 manufacturing facility of not less than \$150 and not more than \$250.

J. There is an annual fee to register to engage in marijuana extraction under section 2423-F, subsection 3 of not less than \$250 and not more than \$350.

Sec. 19. 22 MRSA §2428, sub-§1-A, ¶D, as amended by PL 2011, c. 407, Pt. B, §32, is further amended to read:

D. Assist any patient who designated the dispensary to cultivate marijuana with the medical use or administration of marijuana; ~~and~~

Sec. 20. 22 MRSA §2428, sub-§1-A, ¶E, as amended by PL 2013, c. 503, §2, is further amended to read:

E. Obtain prepared marijuana from a primary caregiver under section 2423-A, subsection 2, paragraph H or from another registered dispensary for the purposes of addressing an extended inventory supply interruption under subsection 6, paragraph G;₂

Sec. 21. 22 MRSA §2428, sub-§1-A, ¶¶F and G are enacted to read:

F. Manufacture marijuana products and marijuana concentrate for medical use, except that a registered dispensary may not produce marijuana concentrate using inherently hazardous substances unless authorized pursuant to section 2423-F, subsection 3; and

G. Provide harvested marijuana to a manufacturing facility and obtain marijuana products and marijuana concentrate from the manufacturing facility that is produced from the harvested marijuana the registered dispensary provided to the manufacturing facility.

Sec. 22. 22 MRSA §2428, sub-§10, as amended by PL 2011, c. 407, Pt. B, §32, is repealed.

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