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An Act To Amend the Maine Medical 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, Initiated Bill 2009, chapter 1 was passed by the voters of the State in November 2009, establishing a new law to provide protections under state law for registered qualifying patients who use marijuana for medical purposes effective in March 2010; and

Whereas, immediate action is required by the Department of Health and Human Services to adopt rules to implement the new law, including rules to set the procedures for a registration system for patients, primary caregivers and nonprofit dispensaries; 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. 7 MRSA §483, first ¶, as amended by PL 2005, c. 512, §18, is further amended to read:

For the purpose of this chapter and chapter 103, unless the term is more specifically defined, "adulterated" means made impure or inferior by adding extraneous ingredients. Goods that are prepared in food establishments that are licensed facilities under Title 22, section 2167 and that contain marijuana for medical use by a registered patient, pursuant to Title 22, chapter 558C, are not considered to be adulterated under this subchapter.

Sec. 2. 17-A MRSA §1117, sub-§1, as repealed and replaced by PL 2001, c. 383, §148 and affected by §156, is amended to read:

1. -A Except as provided in subsection 4, a person is guilty of cultivating marijuana if:

A. The person intentionally or knowingly grows or cultivates marijuana. Violation of this paragraph is a Class E crime; or

B. The person violates paragraph A and the number of marijuana plants is:

(1) Five hundred or more. Violation of this subparagraph is a Class B crime;

(2) One hundred or more but fewer than 500. Violation of this subparagraph is a Class C crime;

(3) More than 5 but fewer than 100. Violation of this subparagraph is a Class D crime; or

(4) Five or fewer. Violation of this subparagraph is a Class E crime.

Sec. 3. 17-A MRSA §1117, sub-§4 is enacted to read:

4. A person is not guilty of cultivating marijuana if the conduct is expressly authorized by Title 22, chapter 558C.

Sec. 4. 22 MRSA §2152, sub-§4-A, as amended by PL 2005, c. 434, §13, is further amended to read:

4-A. Food establishment. "Food establishment" means a factory, plant, warehouse or store in which food and food products are manufactured, processed, packed, held for introduction into commerce or sold. "Food establishment" includes a registered primary caregiver, as defined in section 2422, subsection 11, and a registered dispensary, as defined in section 2422, subsection 6, that prepare food containing marijuana for medical use by a registered patient pursuant to chapter 558C. The following establishments are not considered food establishments required to be licensed under section 2167:

- A. Eating establishments, as defined in section 2491, subsection 7;
- B. Fish and shellfish processing establishments inspected under Title 12, section 6101, 6102 or 6856;
- C. Storage facilities for native produce;
- D. Establishments such as farm stands and farmers' markets primarily selling fresh produce not including dairy and meat products;
- E. Establishments engaged in the washing, cleaning or sorting of whole produce, provided the produce remains in essentially the same condition as when harvested. The whole produce may be packaged for sale, provided that packaging is not by a vacuum packaging process or a modified atmosphere packaging process; and
- F. Establishments that are engaged in the drying of single herbs that are generally recognized as safe under 21 Code of Federal Regulations, Sections 182 to 189. The single herbs may be packaged for sale, provided that packaging is not by a vacuum packaging process or a modified atmosphere packaging process.

Sec. 5. 22 MRSA §2158, as amended by PL 1979, c. 731, §19, is further amended to read:

§ 2158. Addition of certain substances limited

Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, ~~shall~~must be deemed to be unsafe for purposes of the application of section 2156, subsection 1, paragraph B; but when such substance is so required or cannot be avoided, the Commissioner of Agriculture, Food and Rural Resources shall ~~promulgate regulations~~adopt rules limiting the quantity therein or thereon to such extent as the commissioner finds necessary for the protection of public health, and any quantity exceeding the limits so fixed ~~shall~~must be deemed to be unsafe for purposes of the application of section 2156, subsection 1, paragraph B. While such a ~~regulation~~rule is in effect limiting the quantity of any such

substance in the case of any food, such food ~~shall~~may not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of section 2156, subsection 1, paragraph A. In determining the quantity of such added substance to be tolerated in or on different articles of food, the commissioner shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances. Goods that are prepared in a food establishment that is a licensed facility under section 2167 and that contain marijuana for medical use by a registered patient, pursuant to chapter 558C, are not considered to be adulterated under this subchapter.

Sec. 6. 22 MRSA §2383-B, sub-§3, ¶E, as amended by PL 2001, c. 580, §2, is further amended to read:

E. "Usable amount of marijuana for medical use" means 2 1/2 ounces or less of ~~harvested~~prepared marijuana, ~~as defined in section 2422, subsection 14, and a total of 6 plants, of which no more than 3 may be mature, flowering plants~~as defined by the department pursuant to section 2424, subsection 1.

Sec. 7. 22 MRSA §2421, as enacted by IB 2009, c. 1, §5, is amended to read:

§ 2421.Short title

This chapter may be known and cited as "the Maine Medical Use of Marijuana Act."

Sec. 8. 22 MRSA §2422, sub-§1, as enacted by IB 2009, c. 1, §5, is amended to read:

1. Cardholder. "Cardholder" means a ~~qualifying~~registered patient, a registered primary caregiver or a principal officer, board member,or employee ~~or agent of a nonprofit~~registered dispensary who has been issued and possesses a valid registry identification card.

Sec. 9. 22 MRSA §2422, sub-§2, ¶D, as enacted by IB 2009, c. 1, §5, is amended to read:

D. Any other medical condition or its treatment approved by the ~~department~~commissioner as provided for in section 2424, subsection 2.

Sec. 10. 22 MRSA §2422, sub-§4, as enacted by IB 2009, c. 1, §5, is amended to read:

4. Disqualifying drug offense. "~~Felony~~Disqualifying drug offense" means a conviction for a violation of a state or federal controlled substance law that was classified as a felony in the jurisdiction where the person was convicted is a crime punishable by imprisonment for one year or more. It does not include:

A. An offense for which the sentence, including any term of probation, incarceration or supervised release, was completed 10 or more years earlier; or

B. An offense that consisted of conduct that would have been permitted under this chapter.

Sec. 11. 22 MRSA §2422, sub-§5, as enacted by IB 2009, c. 1, §5, is amended to read:

5. Medical use. "Medical use" means the acquisition, possession, cultivation, manufacture, use, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a registered ~~qualifying~~ patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition.

Sec. 12. 22 MRSA §2422, sub-§6, as enacted by IB 2009, c. 1, §5, is amended to read:

6. Registered dispensary. "~~Nonprofit~~Registered dispensary" or "dispensary" means a not-for-profit entity registered under section 2428 that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana or related supplies and educational materials to ~~cardholders~~registered patients who have designated the dispensary to cultivate marijuana for their medical use and the registered primary caregivers of those patients. A nonprofit dispensary is a primary caregiver.

Sec. 13. 22 MRSA §2422, sub-§6-A is enacted to read:

6-A. Onsite assessment. "Onsite assessment" means a visit by an employee of the department for the purpose of ensuring compliance with the requirements of this chapter to any site where marijuana is grown by a registered primary caregiver who has been designated pursuant to section 2425, subsection 1, paragraph F to cultivate marijuana for 3, 4 or 5 registered patients at one time.

Sec. 14. 22 MRSA §2422, sub-§7, as enacted by IB 2009, c. 1, §5, is amended to read:

7. Physician. "Physician" means a person licensed as an osteopathic physician by the Board of Osteopathic Licensure pursuant to Title 32, chapter 36 or a person licensed as a physician or surgeon by the Board of Licensure in Medicine pursuant to Title 32, chapter 48 who is in good standing and who holds a valid federal Drug Enforcement Administration license to prescribe drugs.

Sec. 15. 22 MRSA §2422, sub-§8, as enacted by IB 2009, c. 1, §5, is repealed.

Sec. 16. 22 MRSA §2422, sub-§11, as enacted by IB 2009, c. 1, §5, is repealed and the following enacted in its place:

11. Registered primary caregiver. "Registered primary caregiver" or "primary caregiver" means a person, a hospice provider licensed under chapter 1681 or a nursing facility licensed under chapter 405 that provides care for a registered patient and that has been named by the patient as a primary caregiver to assist with a registered patient's medical use of marijuana. A person who is a primary caregiver must be at least 21 years of age and may not have been convicted of a disqualifying drug offense.

Sec. 17. 22 MRSA §2422, sub-§12, as enacted by IB 2009, c. 1, §5, is amended to read:

12. Registered patient. "Registered qualifying patient" or "patient" means a qualifying patient who is registered by the department pursuant to section 2425, subsection 1.

Sec. 18. 22 MRSA §2422, sub-§13, as enacted by IB 2009, c. 1, §5, is amended to read:

13. Registry identification card. "Registry identification card" means a document issued by the department that identifies a person as a registered ~~qualifying~~ patient, registered primary caregiver or a principal officer, board member, ~~or~~ employee ~~or~~ agent of a ~~nonprofit~~ dispensary.

Sec. 19. 22 MRSA §2422, sub-§14, as enacted by IB 2009, c. 1, §5, is repealed and the following enacted in its place:

14. Prepared marijuana. "Prepared marijuana" means the dried leaves and flowers of the marijuana plant and any mixture or preparation of those dried leaves and flowers, including but not limited to tinctures, ointments and other preparations, but does not include the seeds, stalks and roots of the plant and does not include the ingredients, other than marijuana, in tinctures, ointments or other preparations that include marijuana as an ingredient or food or drink prepared with marijuana as an ingredient for human consumption.

Sec. 20. 22 MRSA §2423, as enacted by IB 2009, c. 1, §5, is repealed.

Sec. 21. 22 MRSA §2423-A is enacted to read:

§ 2423-A. Authorized conduct for the medical use of marijuana

1. Registered patient. Except as provided in section 2426, a registered patient may:

A. Possess up to 2 1/2 ounces of prepared marijuana and an incidental amount of marijuana as provided in subsection 5;

B. Cultivate up to 6 marijuana plants if the patient elects to cultivate and the patient has not designated a registered primary caregiver or registered dispensary to cultivate marijuana on the patient's behalf;

C. Possess marijuana paraphernalia;

D. Furnish or offer to furnish to another registered patient for that person's medical use of marijuana up to 2 1/2 ounces of prepared marijuana if nothing of value is offered or transferred in return;

E. Name one person, hospice provider or nursing facility as a primary caregiver. A 2nd person or hospice provider or nursing facility may be named as a 2nd primary caregiver if the patient is under 18 years of age. The primary caregivers for a patient are determined solely by the patient's preference as named on the application under section 2425, subsection 1 except that a parent, guardian or person having legal custody shall serve as a primary caregiver for a minor child pursuant to section 2425, subsection 2, paragraph B, subparagraph (2);

F. Designate one primary caregiver or a registered dispensary to cultivate marijuana for the medical use of the patient, except that a hospice provider or a nursing facility that is named as a primary caregiver by a registered patient and the staff of the provider or facility may not be designated to cultivate marijuana for the patient. The primary caregiver or dispensary that may cultivate marijuana for a patient is determined solely by the patient's designation on the application under section 2425, subsection 1; and

G. Be in the presence or vicinity of the medical use of marijuana and assist any registered patient with using or administering marijuana.

2. Registered primary caregiver. Except as provided in section 2426, a registered primary caregiver, for the purpose of assisting a registered patient who has named the primary caregiver as provided in section 2425, subsection 1, may:

- A. Possess up to 2 1/2 ounces of prepared marijuana and an incidental amount of marijuana as provided in subsection 5 for each patient who has named the person as a primary caregiver;
- B. Cultivate up to 6 marijuana plants for each patient who has designated the primary caregiver to cultivate marijuana on the patient's behalf. A primary caregiver may not cultivate marijuana for a patient unless the patient has designated the primary caregiver for that purpose and the patient has not designated a registered dispensary to cultivate marijuana for the patient's medical use;
- C. Assist no more than 5 patients at any one time with their medical use of marijuana;
- D. Receive reasonable monetary compensation for costs associated with assisting a patient who named the primary caregiver through the department's registration process;
- E. Receive reasonable monetary compensation for costs associated with cultivating marijuana for a patient who designated the primary caregiver to cultivate marijuana through the department's registration process;
- F. Be in the presence or vicinity of the medical use of marijuana and assist any patient with the medical use or administration of marijuana; and
- G. Prepare food as defined in section 2152, subsection 4 containing marijuana for medical use by a registered patient if the primary caregiver preparing the food has obtained a license pursuant to section 2167.

3. Cultivation of marijuana. The following provisions apply to the cultivation of marijuana by a registered patient under subsection 1 or a registered primary caregiver under subsection 2.

- A. A patient who elects to cultivate marijuana plants must keep the plants in an enclosed, locked facility unless the plants are being transported because the patient is moving or taking the plants to the patient's own property in order to cultivate them.
- B. A primary caregiver who has been designated by a patient to cultivate marijuana for the patient's medical use must keep all plants in an enclosed, locked facility unless the plants are being transported because the primary caregiver is moving or taking the plants to the primary caregiver's own property in order to cultivate them.

4. Hospice provider or nursing facility. A registered patient may name a hospice provider licensed under chapter 1681 or a nursing facility licensed under chapter 405 to serve as a registered primary caregiver. If a hospice provider or nursing facility is named as a primary caregiver, the provider or facility shall complete the registration process with the department and obtain a primary caregiver registration card and the staff of the provider or facility shall obtain registry identification cards. To be issued a registry identification card, a staff person of a hospice provider or nursing facility that has been

named as a primary caregiver must be at least 21 years of age and may not have been convicted of a disqualifying drug offense. The hospice provider or nursing facility and the staff of the provider or facility may not cultivate marijuana for the patient.

5. Incidental amount of marijuana. For purposes of this section, any incidental amount of marijuana plants, seeds, stalks and roots, as defined by rule adopted by the department, is lawful for a registered patient or a registered primary caregiver to possess and is not included in the amounts of prepared marijuana specified in this section.

6. Onsite assessments by the department. Prior to making an onsite assessment of a registered primary caregiver who is designated to cultivate marijuana by 3 or more patients at any one time, the department shall provide 24 hours' notice to the registered primary caregiver.

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

§ 2423-B. Authorized conduct by a physician

A physician may provide a written certification for the medical use of marijuana under this chapter and, after having done so, may otherwise state that in the physician's professional opinion a qualifying patient is likely to receive therapeutic benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition. Nothing in this chapter prevents a professional licensing board from sanctioning a physician for failing to properly evaluate or treat a patient's medical condition or otherwise violating the applicable standard of care for evaluating or treating medical conditions.

Sec. 23. 22 MRSA §2423-C is enacted to read:

§ 2423-C. Authorized conduct by anyone for the medical use of marijuana

A person may provide a registered patient or a registered primary caregiver with marijuana paraphernalia for purposes of the registered patient's medical use of marijuana in accordance with this chapter and be in the presence or vicinity of the medical use of marijuana as allowed under this chapter.

Sec. 24. 22 MRSA §2423-D is enacted to read:

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

A visiting qualifying patient from another jurisdiction who possesses a valid registry identification card or its equivalent from that jurisdiction may for 30 days after entering the State engage in conduct authorized for a registered patient without having to obtain a registry identification card issued by the department except that the visiting qualifying patient may not obtain in Maine marijuana for medical use based on a registry identification card from another jurisdiction.

Sec. 25. 22 MRSA §2423-E is enacted to read:

§ 2423-E. Prohibited acts against persons or entities engaged in authorized conduct for the medical use of marijuana

1. Rights of persons or entities acting pursuant to this chapter. A person whose conduct is authorized under this chapter may not be denied any right or privilege or be subjected to any penalty or disciplinary action, including but not limited to a civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for lawfully engaging in conduct involving the medical use of marijuana authorized under this chapter.

2. School, employer or landlord may not discriminate. A school, employer or landlord may not refuse to enroll or employ or lease to or otherwise penalize a person solely for that person's status as a registered patient or a registered primary caregiver unless failing to do so would put the school, employer or landlord in violation of federal law or cause it to lose a federal contract or funding. This subsection does not prohibit a restriction on the administration or cultivation of marijuana on premises when that administration or cultivation would be inconsistent with the general use of the premises. A landlord may prohibit the smoking of marijuana for medical purposes on the premises of the landlord if the landlord prohibits all smoking on the premises and posts notice to that effect on the premises.

3. Person may not be denied parental rights and responsibilities or contact with a minor child. A person may not be denied parental rights and responsibilities with respect to or contact with a minor child as a result of acting in accordance with this chapter, unless the person's conduct is contrary to the best interests of the minor child as set out in Title 19A, section 1653, subsection 3.

Sec. 26. 22 MRSA §2424, sub-§2, as enacted by IB 2009, c. 1, §5, is repealed and the following enacted in its place:

2. Adding debilitating medical conditions. The commissioner shall establish, chair and staff an advisory board consisting of at least 11 health care practitioners representing various fields of practice, including but not limited to neurology, gastroenterology, pain management, medical oncology, psychiatry, infectious disease, hospice medicine, family medicine, pediatrics, treatment of addiction and gynecology. The practitioners must be certified by a national board in their areas of specialty and knowledgeable about the medical use of marijuana. The advisory board must also include at least 2 members of the public, at least one of whom is a registered patient. The members must be chosen for appointment by the commissioner from a list proposed by the Maine Medical Association and the Maine Osteopathic Association or their successor organizations and from a list of individuals who have volunteered to serve on the advisory board. The advisory board shall:

A. Accept, review and evaluate petitions to add medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of marijuana. If a petition contains information that is confidential under section 2425, subsection 8, paragraph F, the board shall protect the confidentiality of that information;

B. Convene at least once per year to conduct public hearings regarding adding medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of marijuana;

C. Review and recommend to the commissioner for approval additional debilitating medical conditions that would benefit from the medical use of marijuana; and

D. Recommend quantities of marijuana that are necessary to constitute an adequate supply for registered patients, registered primary caregivers and registered dispensaries.

Sec. 27. 22 MRSA §2424, sub-§3, as enacted by IB 2009, c. 1, §5, is amended to read:

3. Registry identification cards. ~~Not later than 120 days after the effective date of this chapter~~July 1, 2010, the department shall adopt rules governing the manner in which it considers applications for and renewals of registry identification cards for registered patients, registered caregivers, principal officers, board members and employees of dispensaries and staff of hospice providers and nursing facilities named as primary caregivers. The department's rules must establish application and renewal fees that generate revenues sufficient to offset all expenses of implementing and administering this chapter. The department may establish a sliding scale of application and renewal fees based upon a qualifying registered patient's family income. The department may accept donations from private sources in order to reduce the application and renewal fees.

Sec. 28. 22 MRSA §2425, sub-§1, as enacted by IB 2009, c. 1, §5, is amended to read:

1. Application for patient registry identification card; qualifications. The department shall register and issue registry identification cards to qualifying patients who submit the documents and information described in this subsection, in accordance with the department's rules:

A. Written certification;

B. Application or renewal fee;

C. Name, address and date of birth of the qualifying patient, except that if the applicant is homeless; no address is required;

D. Name, address and telephone number of the qualifying patient's physician;

E. Name, address and date of birth of each primary caregiver, if any, ~~of named by~~ named by the qualifying patient. ~~A qualifying patient may designate only one primary caregiver unless the qualifying patient is under 18 years of age and requires a parent to serve as a primary caregiver or the qualifying patient designates a nonprofit dispensary to cultivate marijuana for the qualifying patient's medical use and the qualifying patient requests the assistance of a second caregiver to assist with the qualifying patient's medical use; and~~

F. If the qualifying patient ~~designates~~ names one or 2 primary caregivers, ~~a designation as to who will be allowed under state law~~ an indication of which person, if any, is designated to cultivate marijuana plants for the qualifying patient's medical use. Only one person may be allowed to cultivate marijuana plants for a qualifying registered patient.; and

G. If the qualifying patient elects to cultivate marijuana for the qualifying patient's own medical use, the qualifying patient shall indicate that choice on the application.

Sec. 29. 22 MRSA §2425, sub-§2, as enacted by IB 2009, c. 1, §5, is amended to read:

2. Issuing patient registry identification card to minor child. The department may not register and issue a registry identification card to a qualifying patient who is under 18 years of age unless:

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

B. The parent, guardian or person having legal custody consents in writing to:

(1) Allow the qualifying patient's medical use of marijuana;

(2) Serve as one of the qualifying patient's registered primary caregivers; and

(3) Control the acquisition of the marijuana, the dosage and the frequency of the medical use of marijuana by the qualifying patient-; and

C. Except with regard to a qualifying patient who is eligible for hospice care, the commissioner or the commissioner's designee has approved an application for the medical use of marijuana by the qualifying patient. Prior to approving an application under this paragraph, the commissioner or the commissioner's designee must have received confirmation from a pediatrician and a psychiatrist chosen from a list maintained by the advisory board established under section 2424, subsection 2 that the pediatrician and psychiatrist have reviewed the medical file of or examined the qualifying patient and that in their professional opinions the qualifying patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition. If the commissioner or commissioner's designee fails to approve or disapprove a recommendation under this paragraph within 10 days of receipt of the statements of the pediatrician and psychiatrist under this paragraph, the application is deemed approved.

Sec. 30. 22 MRSA §2425, sub-§3-A is enacted to read:

3-A. Department revocation. The department may revoke a registry identification card for violation of this chapter and the rules adopted under this chapter. Revocation is considered a final agency action, subject to judicial review under Title 5, chapter 375, subchapter 7.

Sec. 31. 22 MRSA §2425, sub-§4, as enacted by IB 2009, c. 1, §5, is amended to read:

4. Primary caregiver registry identification card. The department shall issue a registry identification card to each registered primary caregiver, if any, who is named in a qualifying registered patient's approved application pursuant to subsection 1, paragraph E. ~~Only one person may cultivate marijuana for the qualifying patient's medical use, who is determined based solely on the qualifying patient's preference. That person may either be the qualifying patient or one of the 2 primary caregivers.~~

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

5. Registry identification card issuance. The department shall issue registry identification cards to ~~qualifying~~registered patients and, to registered primary caregivers ~~and to staff of hospice providers and nursing facilities named as primary caregivers~~ within 5 days of approving an application or renewal under this section. Registry identification cards expire one year after the date of issuance. Registry identification cards must contain:

- A. The name, address and date of birth of the ~~qualifying~~ patient;
- B. The name, address and date of birth of each registered primary caregiver, if any, of the ~~qualifying~~ patient;
- C. The date of issuance and expiration date of the registry identification card;
- D. A random identification number that is unique to the cardholder;
- E. A photograph, if required by the department ~~decides to require one~~; and
- F. ~~A~~For a registered primary caregiver, a clear designation showing whether the cardholder ~~will be~~is allowed under ~~state law~~this chapter to cultivate marijuana plants for the ~~qualifying~~ patient's medical use, which ~~must be determined based solely on the qualifying patient's preference.~~

Sec. 33. 22 MRSA §2425, sub-§7, as enacted by IB 2009, c. 1, §5, is repealed and the following enacted in its place:

7. Possession of or application for registry identification card is not evidence of unlawful conduct or a basis for a search. Possession of a registry identification card by a cardholder, or the act of applying for such a card, is not evidence of unlawful conduct and may not be used to support the search of that person or that person's property. The possession of or application for a registry identification card does not prevent the issuance of a warrant if probable cause exists on other grounds.

Sec. 34. 22 MRSA §2425, sub-§8, as enacted by IB 2009, c. 1, §5, is amended to read:

8. Confidentiality. This subsection governs confidentiality.

- A. Applications and supporting information submitted by qualifying and registered patients under this chapter, including information regarding their primary caregivers and physicians, are confidential.
- B. Applications and supporting information submitted by primary caregivers and physicians operating in compliance with this chapter, ~~including the physical address of a nonprofit dispensary,~~ are confidential.
- C. The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list are confidential, exempt from the freedom of access laws, Title 1, chapter 13, and not subject to disclosure except as provided in this subsection and to authorized employees of the department as necessary to perform official duties of the department.

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

E. ~~A person, including an employee or official of the department or another state agency or local government, who breaches the confidentiality of information obtained pursuant to this chapter commits a Class E crime. Notwithstanding this subsection, department employees may notify law enforcement about falsified or fraudulent information submitted to the department as long as the employee who suspects that falsified or fraudulent information has been submitted confers with the employee's supervisor and both agree that circumstances exist that warrant reporting.~~

F. Applications, supporting information and other information regarding a registered dispensary are not confidential except that information that is contained within dispensary information that identifies a registered patient, the patient's physician and the patient's registered primary caregivers is confidential.

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

(1) To department employees who are responsible for carrying out this chapter;

(2) Pursuant to court order;

(3) With written permission of the patient or the patient's guardian, if the patient is under guardianship, or a parent, if the patient has not attained 18 years of age;

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

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

(6) To a patient's treating physician and to a patient's primary caregiver for the purpose of carrying out this chapter.

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

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

J. A hearing concerning the revocation of a registry identification card under subsection 3-A is confidential. If a registry identification card is revoked, the findings of the hearing and the revocation are public information.

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

Sec. 35. 22 MRSA §2425, sub-§9, as enacted by IB 2009, c. 1, §5, is amended to read:

9. Revocation of registry identification card. ~~Any~~The department shall revoke the registry identification card of a cardholder who sells, furnishes or gives marijuana to a person who is not allowed to possess marijuana for medical purposes under this chapter ~~must have that cardholder's registry identification card revoked and. A cardholder who sells, furnishes or gives marijuana to a person who is not allowed to possess marijuana for medical purposes under this chapter is liable for any other penalties for the sale of selling, furnishing or giving marijuana to a person. The department may revoke the registry identification card of any cardholder who violates this chapter, and the cardholder is liable for any other penalties for the violation.~~

Sec. 36. 22 MRSA §2425, sub-§10, as enacted by IB 2009, c. 1, §5, is amended to read:

10. Annual report. The department shall submit to the Legislature an annual report by April 1st each year that does not disclose any identifying information about cardholders or physicians, but does contain, at a minimum:

- A. The number of applications and renewals filed for registry identification cards;
- B. The number of qualifying patients and primary caregivers approved in each county;
- C. The nature of the debilitating medical conditions of the qualifying patients;
- D. The number of registry identification cards revoked;
- E. The number of physicians providing written certifications for qualifying patients;
- F. The number of registered ~~nonprofit~~ dispensaries; and
- G. The number of principal officers, board members,and employees ~~and agents of nonprofit~~ dispensaries.

Sec. 37. 22 MRSA §2426, sub-§1, ¶A, as enacted by IB 2009, c. 1, §5, is amended to read:

A. Undertake any task under the influence of marijuana when doing so would constitute negligence or professional malpractice or would otherwise violate any professional standard;

Sec. 38. 22 MRSA §2426, sub-§1, ¶D, as enacted by IB 2009, c. 1, §5, is amended to read:

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

Sec. 39. 22 MRSA §2426, sub-§3, as enacted by IB 2009, c. 1, §5, is repealed.

Sec. 40. 22 MRSA §2427, sub-§1, as enacted by IB 2009, c. 1, §5, is amended to read:

1. Affirmative defense. Except as provided in section 2426, a qualifying patient and a qualifying patient's primary caregiver, ~~other than a nonprofit dispensary~~, may assert the medical purpose for using marijuana as a defense to any prosecution involving marijuana, and this defense must be presumed valid where the evidence shows that:

A. A physician has stated that, in the physician's professional opinion, after having completed a full assessment of the qualifying patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the qualifying patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the qualifying patient's debilitating medical condition or symptoms associated with the qualifying patient's debilitating medical condition;

B. The qualifying patient and the qualifying patient's primary caregiver, if any, were collectively in possession of a quantity of prepared marijuana and marijuana plants that was not more than was reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of treating or alleviating the qualifying patient's debilitating medical condition or symptoms associated with the qualifying patient's debilitating medical condition the amount they would be authorized to possess if they were registered as provided in section 2423A, subsections 1 and 2; and

C. The qualifying patient and the qualifying patient's primary caregiver, if any, were engaged in the acquisition, possession, cultivation, manufacture, use, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana solely to treat or alleviate the qualifying patient's debilitating medical condition or symptoms associated with the qualifying patient's debilitating medical condition.

Sec. 41. 22 MRSA §2427, sub-§4 is enacted to read:

4. Repeal. This section is repealed January 1, 2011.

Sec. 42. 22 MRSA §2428, as enacted by IB 2009, c. 1, §5, is amended to read:

§ 2428. Registered dispensaries

1. Provisions pertaining to primary caregiver apply to nonprofit dispensary. ~~All provisions of this chapter pertaining to a primary caregiver apply to a nonprofit dispensary unless they conflict with a provision contained in this section.~~

1-A. Provisions pertaining to registered dispensary. For the purpose of assisting a registered patient who has designated a registered dispensary to cultivate marijuana for the patient's medical use, a registered dispensary may in accordance with rules adopted by the department:

A. Possess up to 2 1/2 ounces of prepared marijuana and an incidental amount of marijuana for each patient who has designated the dispensary. For the purposes of this chapter, any incidental amount of marijuana plants, seeds, stalks and roots, as defined by rule adopted by the department, is lawful for a dispensary to possess and is not included in the amounts of prepared marijuana specified in this paragraph;

B. Cultivate up to 6 marijuana plants for each patient who has designated the dispensary to cultivate the plants on the patient's behalf;

C. Receive reasonable monetary compensation for costs associated with assisting or for cultivating marijuana for a patient who designated the dispensary through the department's registration process; and

D. Assist any patient who designated the dispensary through the department's registration process to cultivate marijuana with the medical use or administration of marijuana.

2. Registration requirements.~~This~~Subject to limitations on the number and location of dispensaries in subsection 11 and rules adopted pursuant to this section, this subsection governs the registration of a nonprofit dispensary.

A. The department shall register a nonprofit dispensary and issue a registration certificate within 30 days to any person or entity that provides:

(1) ~~A~~An annual fee paid to the department in the amount of \$5,000 as set by rule, in an amount not less than \$5,000 and not more than \$15,000;

(2) The legal name of the nonprofit dispensary, evidence of incorporation under Title 13B and evidence that the corporation is in good standing with the Secretary of State;

(3) The physical address of the nonprofit dispensary and the physical address of a maximum of one additional location, if any, where marijuana will be cultivated for patients who have designated the dispensary to cultivate for them;

(4) The name, address and date of birth of each principal officer and board member of the nonprofit dispensary; and

(5) The name, address and date of birth of any person who is ~~an agent of or~~ employed by the nonprofit dispensary.

B. The department shall track the number of registered ~~qualifying~~ patients who designate a nonprofit dispensary as a ~~primary caregiver to~~ cultivate marijuana for them and issue to each nonprofit dispensary a written statement of the number of ~~qualifying~~ patients who have designated the nonprofit dispensary to cultivate marijuana for them. This statement must be updated each time a new registered ~~qualifying~~ patient designates the nonprofit dispensary or ceases to designate the nonprofit dispensary ~~and~~. The statement may be transmitted electronically if the department's rules so provide. The department may provide by rule that the updated written statements may not be issued more frequently than once each week.

C. The department shall issue each principal officer, board member, ~~agent~~ and employee of a nonprofit dispensary a registry identification card within 10 days of receipt of the person's name, address and date of birth under paragraph A and a fee in an amount established by the department. Each card must specify that the cardholder is a principal officer, board member, ~~agent~~ or employee of a nonprofit dispensary and must contain:

(1) The name, address and date of birth of the principal officer, board member, ~~agent~~ or employee;

(2) The legal name of the nonprofit dispensary with which the principal officer, board member, ~~agent~~ or employee is affiliated;

(3) A random identification number that is unique to the cardholder;

(4) The date of issuance and expiration date of the registry identification card; and

(5) A photograph, ~~if the department decides to require one~~ if required by the department.

D. The department may not issue a registry identification card to any principal officer, board member, ~~agent~~ or employee of a nonprofit dispensary who has been convicted of a ~~felony~~ disqualifying drug offense. The department may conduct a background check of each principal officer, board member, ~~agent~~ or employee in order to carry out this provision. The department shall notify the nonprofit dispensary in writing of the ~~purpose~~ reason for denying the registry identification card.

3. Rules. ~~Not later than 120 days after the effective date of this chapter~~By July 1, 2010, the department shall adopt routine technical rules as defined in Title 5, chapter 375, subchapter 2A governing the manner in which it considers applications for and renewals of registration certificates for ~~nonprofit~~ dispensaries, including rules governing:

A. The form and content of registration and renewal applications;

B. Minimum oversight requirements for nonprofit dispensaries and the one permitted additional location at which the dispensary cultivates marijuana for medical use by registered patients who have designated the dispensary to cultivate for them;

C. Minimum record-keeping requirements for nonprofit dispensaries, including recording the disposal of marijuana that is not distributed by the dispensary to registered patients who have designated the dispensary to cultivate for them;

D. Minimum security requirements for nonprofit dispensaries and any additional location at which the dispensary cultivates marijuana for medical use by registered patients who have designated the dispensary to cultivate for them; and

E. Procedures for suspending or terminating the registration of ~~nonprofit~~ dispensaries that violate the provisions of this section or the rules adopted pursuant to this subsection.

4. Expiration. A ~~nonprofit~~ dispensary registration certificate and the registry identification card for each principal officer, board member, ~~agent~~ or employee expire one year after the date of issuance. The department shall issue a renewal ~~nonprofit~~ dispensary registration certificate and renewal registry identification cards within 10 days to any person who complies with the requirements contained in subsection 2. A registry identification card of a principal officer, board member, ~~agent~~ or employee expires 10 days after notification by a ~~nonprofit~~ dispensary that such person ceases to work at the ~~nonprofit~~ dispensary.

5. Inspection. A ~~nonprofit~~ dispensary and any additional location at which the dispensary cultivates marijuana for medical use by registered patients who have designated the dispensary to cultivate for them is subject to reasonable inspection by the department. The department ~~shall give reasonable notice of~~may enter the dispensary and the one permitted additional location at which the dispensary cultivates marijuana at any time, without notice, to carry out an inspection under this subsection.

6. Registered dispensary requirements. This subsection governs the operations of ~~nonprofit~~registered dispensaries.

A. A ~~nonprofit~~ dispensary must be operated on a not-for-profit basis for the mutual benefit of its ~~members and patrons~~registered patients who have designated the dispensary to cultivate marijuana. The bylaws of a ~~nonprofit~~ dispensary and its contracts with ~~patrons~~registered patients must contain such provisions relative to the disposition of revenues and receipts as may be necessary and appropriate to establish and maintain its ~~nonprofit~~ not-for-profit status. A ~~nonprofit~~

dispensary need not be recognized as a tax-exempt organization under 26 United States Code, Section 501(c)(3) ~~and~~ but is not required to incorporate pursuant to Title 13B and to maintain the corporation in good standing with the Secretary of State.

B. A ~~nonprofit~~ dispensary may not be located within 500 feet of the property line of a preexisting public or private school.

C. A ~~nonprofit~~ dispensary shall notify the department within 10 days of when a principal officer, board member, ~~agent~~ or employee ceases to work at the ~~nonprofit~~ dispensary.

D. A ~~nonprofit~~ dispensary shall notify the department in writing of the name, address and date of birth of any new principal officer, board member, ~~agent~~ or employee and shall submit a fee in an amount established by the department for a new registry identification card before the new principal officer, board member, ~~agent~~ or employee begins working at the ~~nonprofit~~ dispensary.

E. A ~~nonprofit~~ dispensary shall implement appropriate security measures to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana at the dispensary and the one permitted additional location at which the dispensary cultivates marijuana for medical use by registered patients who have designated the dispensary to cultivate for them.

F. The operating documents of a ~~nonprofit~~ dispensary must include procedures for the oversight of the ~~nonprofit~~ dispensary and procedures to ensure accurate record keeping.

G. A ~~nonprofit~~ dispensary is prohibited from acquiring, possessing, cultivating, manufacturing, delivering, transferring, transporting, supplying or dispensing marijuana for any purpose except to assist registered qualifying patients who have designated the dispensary to cultivate marijuana for them with the medical use of marijuana directly or through the registered qualifying patients' other primary caregivers.

H. All principal officers and board members of a ~~nonprofit~~ dispensary must be residents of this State.

I. All cultivation of marijuana must take place in an enclosed, locked facility unless the plants are being transported between the dispensary and a location at which the dispensary cultivates them, as disclosed to the department in subsection 2, paragraph A, subparagraph (3).

J. A dispensary that is required to obtain a license for the preparation of food pursuant to section 2167 shall obtain the license prior to preparing goods containing marijuana for medical use by a registered patient.

7. Maximum amount of marijuana to be dispensed. A ~~nonprofit~~ dispensary or a principal officer, board member, ~~agent~~ or employee of a ~~nonprofit~~ dispensary may not dispense more than 2 1/2 ounces of ~~usable~~ prepared marijuana to a qualifying registered patient or to a primary caregiver on behalf of a qualifying registered patient during a 15-day period.

8. Immunity. ~~This subsection governs immunity for a nonprofit dispensary.~~

A. ~~A nonprofit dispensary may not be subject to prosecution, search, seizure or penalty in any manner or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a business or occupational or professional licensing board or entity, solely for acting in accordance with this section to provide usable marijuana to or to otherwise assist registered qualifying patients to whom it is connected through the department's registration process with the medical use of marijuana.~~

B. ~~Principal officers, board members, agents and employees of a registered nonprofit dispensary may not be subject to arrest, prosecution, search, seizure or penalty in any manner or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a business or occupational or professional licensing board or entity, solely for working for or with a nonprofit dispensary to provide usable marijuana to or to otherwise assist registered qualifying patients to whom the nonprofit dispensary is connected through the department's registration process with the medical use of marijuana in accordance with this chapter.~~

9. Prohibitions. The prohibitions in this subsection apply to a ~~nonprofit~~registered dispensary.

A. ~~A nonprofit dispensary may not possess more than 6 live marijuana plants, as defined in rules adopted by the department, for each registered qualifying patient who has designated the nonprofit dispensary as a primary caregiver and designated that the dispensary will be permitted to cultivate marijuana for the registered qualifying patient's medical use.~~

B. ~~A nonprofit dispensary may not dispense, deliver or otherwise transfer marijuana to a person other than a qualifying registered patient who has designated the nonprofit dispensary as a primary caregiver to cultivate marijuana for the patient or to the patient's other registered primary caregiver.~~

C. ~~The department shall immediately revoke the registry identification card of a principal officer, board member, or employee or agent of a nonprofit dispensary who is found to have violated paragraph B, and such a person is disqualified from serving as a principal officer, board member, or employee or agent of a nonprofit dispensary.~~

D. ~~A person who has been convicted of a felony disqualifying drug offense may not be a principal officer, board member, agent or employee of a nonprofit dispensary.~~

(1) ~~A person who is employed by or is an agent, a principal officer or board member of a nonprofit dispensary in violation of this paragraph commits a civil violation for which a fine of not more than \$1,000 may be adjudged.~~

(2) ~~A person who is employed by or is an agent, a principal officer or board member of a nonprofit dispensary in violation of this paragraph and who at the time of the violation has been previously found to have violated this paragraph commits a Class D crime.~~

E. A nonprofit dispensary may not acquire usable prepared marijuana or mature marijuana plants except through the cultivation of marijuana by that nonprofit dispensary either at the location of the dispensary or at the one permitted additional location at which the dispensary cultivates marijuana for medical use by registered patients who have designated the dispensary to cultivate for them.

F. A dispensary may not contract for the cultivation of seeds, seedlings or small plants or the cultivation, production or preparation of marijuana or food containing marijuana for medical use.

10. Local regulation. This chapter does not prohibit a political subdivision of this State from limiting the number of nonprofit dispensaries that may operate in the political subdivision or from enacting reasonable zoning regulations applicable to nonprofit dispensaries.

11. Limitation on number of dispensaries. The department shall adopt rules limiting the number and location of registered dispensaries. During the first year of operation of dispensaries the department may not issue more than one registration certificate for a dispensary in each of the 8 public health districts of the department, as defined in section 411. After review of the first full year of operation of dispensaries and periodically thereafter, the department may amend the rules on the number and location of dispensaries.

Sec. 43. 22 MRSA §2429, sub-§1, as enacted by IB 2009, c. 1, §5, is amended to read:

1. Department fails to adopt rules. If the department fails to adopt rules to implement this chapter ~~within 120 days of the effective date of this chapter~~ by July 1, 2010, a qualifying patient may commence an action in Superior Court to compel the department to perform the actions mandated pursuant to the provisions of this chapter.

Sec. 44. 22 MRSA §2429, sub-§3, as enacted by IB 2009, c. 1, §5, is amended to read:

3. Department fails to accept applications. If at any time after ~~the 140 days following the effective date of this chapter~~ July 1, 2010 the department is not accepting applications, including if it has not adopted rules allowing qualifying patients to submit applications, a notarized statement by a qualifying patient containing the information required in an application, pursuant to section 2425, subsection 1, is deemed a valid registry identification card.

Sec. 45. 22 MRSA §2430 is enacted to read:

§ 2430. Medical Use of Marijuana Fund established

1. Fund established. The Medical Use of Marijuana Fund, referred to in this section as "the fund," is established as an Other Special Revenue Funds account in the Department of Health and Human Services for the purposes specified in this section.

2. Sources of fund. The State Controller shall credit to the fund:

A. All money received as a result of applications and reapplications for registration as a qualifying patient, primary caregiver and dispensary;

B. All money received as a result of applications and reapplications for registry identification cards for registered patients, primary caregivers and dispensaries and board members, officers and employees of dispensaries;

C. All penalties and fines assessed for violations of this chapter;

D. All money from any other source, whether public or private, designated for deposit into or credited to the fund; and

E. Interest earned or other investment income on balances in the fund.

3. Uses of the fund. The fund may be used for expenses of the department to administer this chapter, as allocated by the Legislature.

Sec. 46. 22 MRSA §2430-A is enacted to read:

§ 2430-A. Compliance

The department may take action necessary to ensure compliance with this chapter, including but not limited to obtaining, possessing and performing laboratory testing on marijuana from registered patients, registered primary caregivers and registered dispensaries in accordance with this chapter.

Sec. 47. 26 MRSA §772, sub-§2, as enacted by PL 2003, c. 59, §1, is amended to read:

2. Rules; list of occupations. The director shall adopt rules to develop and maintain a list of occupations not suitable for employment of a minor. The rules must conform as far as practicable to the child labor provisions of the federal Fair Labor Standards Act of 1938, 29 United States Code, Section 212 and any associated regulations. The rules must also contain a ~~provision~~provisions prohibiting the employment of minors in places having nude entertainment and in registered dispensaries of marijuana for medical use authorized under Title 22, chapter 558C.

Sec. 48. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 22, chapter 558C, in the chapter headnote, the words "Maine medical marijuana act" are amended to read "Maine medical use of marijuana act" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

Sec. 49. Working capital advance. For fiscal year 2010-11, the State Controller is authorized to advance up to \$250,000 from the General Fund to the Medical Use of Marijuana Fund, established under the Maine Revised Statutes, Title 22, section 2430 in the Department of Health and Human Services, to provide start-up funds for the implementation of this Act.

Funds advanced to the Medical Use of Marijuana Fund under this section for fiscal year 2010-11 must be returned to the General Fund on or before June 30, 2011. Repayment of the working capital advance is considered an expense of the Department of Health and Human Services in administering this Act, and funds in the Medical Use of Marijuana Fund may be used to repay the working capital advance provided during fiscal year 2010-11.

On April 1, 2011, the State Controller and the Department of Health and Human Services shall report to the joint standing committees of the Legislature having jurisdiction over health and human services matters and appropriations and financial affairs on the status of funds advanced and repaid under this section.

Sec. 50. Appropriations and allocations. The following appropriations and allocations are made.

HEALTH AND HUMAN SERVICES, DEPARTMENT OF (FORMERLY DHS)

Medical Use of Marijuana Fund N107

Initiative: Allocates funds for the costs of one Social Services Program Specialist II position and one Office Associate II position and other related costs for the administration of the Maine Medical Use of Marijuana Act.

OTHER SPECIAL REVENUE FUNDS	2009-10	2010-11
POSITIONS - LEGISLATIVE COUNT	0.000	2.000
Personal Services	\$0	\$177,486
All Other	\$0	\$73,659
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$251,145

Sec. 51. Retroactivity. This Act applies retroactively to December 23, 2009.

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

Effective 90 days following adjournment of the 124th
Legislature, Second Regular Session, unless otherwise indicated.