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An Act To Amend the Maine Medical Marijuana Act

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

Sec. 1. 17-A MRSA §1117, sub-§1, as repealed and replaced by PL 2001, c. 383, §148 and affected by §156, is amended to read: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. 2. 17-A MRSA §1117, sub-§4 is enacted to read:

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

Sec. 3. 22 MRSA §2422, sub-§4, as enacted by IB 2009, c. 1, §5, is amended to read:

4. Felony drug offense. "Felony 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. 4. 22 MRSA §2422, sub-§6, as enacted by IB 2009, c. 1, §5, is amended to read:

6. Nonprofit dispensary. "Nonprofit 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. ~~A nonprofit dispensary is a primary caregiver.~~

Sec. 5. 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 to any site where marijuana is grown pursuant to this chapter for the purpose of ensuring compliance with the requirements of this chapter pertaining to growing and distributing medical marijuana.

Sec. 6. 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. 7. 22 MRSA §2422, sub-§8, as enacted by IB 2009, c. 1, §5, is amended to read:

8. Primary caregiver. "Primary caregiver" means a person who is at least 21 years of age who has agreed to assist with a qualifying patient's medical use of marijuana and who has never been convicted of a felony drug offense. ~~Unless the primary caregiver is a nonprofit dispensary, the~~An employee of a hospice provider licensed under chapter 1681 or nursing facility licensed under chapter 405 providing care to an eligible patient may be substituted for a primary caregiver. A primary caregiver may assist no more than 5 qualifying patients with their medical use of marijuana.

Sec. 8. 22 MRSA §2423, as enacted by IB 2009, c. 1, §5, is repealed.

Sec. 9. 22 MRSA §2423-A is enacted to read:

§ 2423-A. Authorized conduct by a cardholding qualifying patient or primary caregiver for the medical use of marijuana

1. Qualifying patient. Except as provided in section 2426, a qualifying patient who is a cardholder may, for the medical use of marijuana in accordance with this chapter:

A. Possess up to 2 1/2 ounces of usable marijuana;

B. Cultivate up to 6 marijuana plants if the qualifying patient elects to do the cultivating and the qualifying patient has not specified that a primary caregiver or nonprofit dispensary is cultivating the marijuana plants on the qualifying patient's behalf. A qualifying patient who elects to cultivate marijuana plants must keep the plants in an enclosed, locked facility unless the plants are being transported because the qualifying patient is moving or because the qualifying patient is bringing the plants to the qualifying patient's own property in order to cultivate them;

C. Possess marijuana paraphernalia;

D. Furnish or offer to furnish marijuana paraphernalia to another qualifying patient who is a cardholder for that person's medical use of marijuana;

E. Furnish or offer to furnish to another qualifying patient who is a cardholder for that person's medical use of marijuana up to 2 1/2 ounces of usable marijuana as long as nothing of value is offered or transferred in return; or

F. Be in the presence or vicinity of the medical use of marijuana and assist any qualifying patient who is a cardholder with using or administering marijuana.

2. Primary caregiver. Except as provided in section 2426, a primary caregiver, including staff of a hospice provider licensed under chapter 1681 or nursing facility licensed under chapter 405, who is a cardholder, for the purpose of assisting a qualifying patient who is a cardholder and to whom the primary caregiver is connected through the department's registration process as provided in section 2425, may, for the medical use of marijuana in accordance with this chapter:

A. Possess up to 2 1/2 ounces of usable marijuana for each qualifying patient to whom the primary caregiver is connected through the department's registration process;

B. Cultivate up to 6 marijuana plants for each of up to 5 qualifying patients who have specified that the primary caregiver cultivate the plants on the qualifying patient's behalf. A primary caregiver must keep all plants cultivated in an enclosed, locked facility unless the plants are being transported because the primary caregiver is moving or because the primary caregiver is bringing the plants to the primary caregiver's own property in order to cultivate them;

C. Furnish or offer to furnish marijuana paraphernalia to any qualifying patient who is a cardholder for that person's medical use of marijuana;

D. Furnish or offer to furnish marijuana paraphernalia to any primary caregiver who is a cardholder for purposes of a qualifying patient's medical use of marijuana;

E. Receive reasonable monetary compensation for costs associated with assisting a qualifying patient who is a cardholder for the person's medical use of marijuana so long as the primary caregiver is connected to the qualifying patient through the department's registration process; and

F. Be in the presence or vicinity of the medical use of marijuana and assist any qualifying patient who is a cardholder with using or administering marijuana for medical use.

3. Incidental amount of marijuana. For purposes of this section, any incidental amount of marijuana seeds, stalks and unusable roots is lawful for a qualifying patient who is a cardholder or a primary caregiver who is a cardholder to possess and is not included in the amounts of usable marijuana specified in this section.

4. Onsite assessments by the department. Prior to making an onsite assessment the department must:

A. Provide 24 hours' notice to a qualifying patient who is a cardholder who has elected to cultivate up to 6 marijuana plants; and

B. Provide 24 hours' notice to a primary caregiver who is a cardholder who is cultivating up to 6 marijuana plants for each of up to 5 qualifying patients who have specified that the primary caregiver cultivate the plants on the qualifying patient's behalf.

5. Cardholder not subject to arrest. A cardholder may not be subject to arrest, prosecution or penalty in any manner, including but not limited to a civil penalty or disciplinary action by any business or occupational or professional licensing board or bureau, or denied any right or privilege, for giving an amount of marijuana the person is allowed to possess under subsection 1 or 2 to a cardholder for the registered qualifying patient's medical use when nothing of value is transferred in return or for offering to do the same.

6. Registered primary caregiver may receive reasonable monetary compensation for costs. A registered primary caregiver may receive reasonable monetary compensation for costs associated with assisting a registered qualifying patient's medical use of marijuana as long as the registered primary caregiver is connected to the registered qualifying patient through the department's registration process under section 2425. Any such compensation does not constitute the sale of controlled substances.

7. Physician not subject to penalty. A physician may not be subject to arrest, prosecution or penalty in any manner, including but not limited to a civil penalty or disciplinary action by the Board of Licensure in Medicine or the Board of Osteopathic Licensure or by any other business or occupational or professional licensing board or bureau, or denied any right or privilege, solely for providing written certifications or for otherwise stating that, in the physician's professional opinion, a patient is likely to receive therapeutic benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition except that nothing 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.

8. Person not subject to penalty for providing registered qualifying patient or registered primary caregiver marijuana paraphernalia. A person may not be subject to arrest, prosecution or penalty in any manner, including but not limited to a civil penalty or disciplinary action by the Board of Licensure in Medicine or the Board of Osteopathic Licensure or by any other business or occupational or professional licensing board or bureau, or denied any right or privilege, for providing a registered qualifying patient or a registered primary caregiver with marijuana paraphernalia for purposes of a qualifying patient's medical use of marijuana.

9. Property not subject to forfeiture. Any marijuana, marijuana paraphernalia, licit property or interest in licit property that is possessed, owned or used in connection with the medical use of marijuana, as allowed under this chapter, or property incidental to such use, may not be seized or forfeited.

10. Person not subject to penalty for being in presence of medical use of marijuana. A person may not be subject to arrest, prosecution or penalty in any manner, including but not limited to a civil penalty or disciplinary action by any business or occupational or professional licensing board or bureau, or denied any right or privilege, simply for being in the presence or vicinity of the medical use of marijuana as allowed under this chapter or for assisting a registered qualifying patient with using or administering marijuana.

11. Effect of registry identification card issued by another jurisdiction. A registry identification card, or its equivalent, that is issued under the laws of another state, district, territory, commonwealth or insular possession of the United States that allows the medical use of marijuana by a visiting qualifying patient also allows the possession and use of marijuana in this State. The possession limits are those of this State under this chapter. In order to obtain medical marijuana in this State and be afforded the protections of this law, the patient must register with this State as a qualifying patient.

Sec. 10. 22 MRSA §2423-B is enacted to read:

§ 2423-B. Authorized conduct by a physician

A physician may for the medical use of marijuana in accordance with this chapter provide a written certification or, after having done so, otherwise state that, in the physician's professional opinion, a 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. 11. 22 MRSA §2423-C is enacted to read:

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

A person may for the medical use of marijuana in accordance with this chapter:

1. Provide marijuana paraphernalia. Provide a qualifying patient who is a cardholder or a primary caregiver who is a cardholder with marijuana paraphernalia for purposes of a qualifying patient's medical use of marijuana; and

2. Assistance to cardholder. Be in the presence or vicinity of the medical use of marijuana as allowed under this chapter or assist a qualifying patient who is a cardholder with using or administering marijuana.

Sec. 12. 22 MRSA §2423-D is enacted to read:

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

A visiting qualifying patient from another qualifying jurisdiction who possesses a valid registry identification card, or its equivalent, from that jurisdiction may, while in this State, engage in conduct authorized for a qualifying patient who is a cardholder pursuant to section 2423-A, subsection 1 without having to obtain a registry identification card issued by the department. For purposes of this section,

"another qualifying jurisdiction" means the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa and any state other than this State that allows the medical use of marijuana by a visiting qualifying patient from this State who is a cardholder.

Sec. 13. 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 qualifying patient, primary caregiver, physician, nonprofit dispensary, principal officer, board member, agent or employee of a nonprofit dispensary or any other person covered 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 for 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 qualifying patient who is a cardholder or a primary caregiver who is a cardholder 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 use or cultivation of marijuana on premises when that use or cultivation would be inconsistent with the general use of the premises.

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

Sec. 14. 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 8 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 and gynecology. The practitioners must be national board-certified 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 qualifying 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. Review and recommend to the commissioner for approval additional debilitating medical conditions that would benefit from the medical use of marijuana;

B. Accept and review petitions to add medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of marijuana;

C. Convene at least once per year to conduct public hearings and to evaluate petitions, which must be maintained in the same manner as confidential personal health information under section 2425, subsection 8, to add medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of marijuana;

D. Issue recommendations concerning rules for the issuance of registry identification cards; and

E. Recommend quantities of marijuana that are necessary to constitute an adequate supply for qualifying patients and primary caregivers.

Sec. 15. 22 MRSA §2425, sub-§1, ¶E, as enacted by IB 2009, c. 1, §5, is amended to read:

E. Name, address and date of birth of each primary caregiver, if any, of 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. The staff of a hospice provider licensed under chapter 1681 or a nursing facility licensed under chapter 405 may be substituted for one primary caregiver, but is not permitted to grow marijuana for carrying out the purposes of this chapter; and

Sec. 16. 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. Jurisdiction and venue for judicial review are vested in the Superior Court.

Sec. 17. 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 primary caregiver, if any, who is named in a qualifying 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, except when the staff of a hospice provider licensed under chapter 1681 or a nursing facility licensed under chapter 405 has been substituted. That person may either be the qualifying patient or one of the 2 primary caregivers.

Sec. 18. 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 patients and, to primary caregivers and to staff of hospice providers licensed under chapter 1681 and nursing facilities licensed under chapter 405 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 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 the department decides to require one; and
- F. A clear designation showing whether the cardholder will be allowed under state law to cultivate marijuana plants for the qualifying patient's medical use, which must be determined based solely on the qualifying patient's preference.

Sec. 19. 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 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 by a qualifying applicant, 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. 20. 22 MRSA §2425, sub-§8, ¶E, as enacted by IB 2009, c. 1, §5, is repealed and the following enacted in its place:

E. Except as otherwise provided in this subsection, a person who knowingly violates the confidentiality of information obtained pursuant to this chapter commits a civil violation for which a fine of up to \$1,000 may be imposed. This paragraph does not apply to physicians, personnel of hospice facilities licensed under chapter 1681 or nursing facilities licensed under chapter 405 or any other person directly associated with physicians or licensed facility services to a qualifying patient except to the extent that such conduct may be subject to penalties or discipline under a separate provision of law, rule or regulation.

Sec. 21. 22 MRSA §2425, sub-§8, ¶F is enacted to read:

F. Records maintained by the department pursuant to this chapter that identify qualifying patients are confidential and may not be disclosed except 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 for the disclosure of health care information pursuant to section 1711-C;

(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.

Sec. 22. 22 MRSA §2425, sub-§8, ¶G is enacted to read:

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

Sec. 23. 22 MRSA §2425, sub-§8, ¶H is enacted to read:

H. 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.

Sec. 24. 22 MRSA §2425, sub-§8, ¶I is enacted to read:

I. This subsection does not prohibit disclosure to an agency of State Government designated by the commissioner and employees of that agency of any information necessary to produce registry identification cards or manage the identification card program.

Sec. 25. 22 MRSA §2425, sub-§8, ¶J is enacted to read:

J. This subsection does not prohibit the disclosure of data for statistical or research purposes in such a manner that individuals cannot be identified.

Sec. 26. 22 MRSA §2425, sub-§9, as enacted by IB 2009, c. 1, §5, is amended to read:

9. Cardholder who sells, furnishes or gives marijuana to person not allowed to possess. Any 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 is liable for any other penalties for the sale of marijuana. 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. 27. 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. 28. 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. 29. 22 MRSA §2426, sub-§3, as enacted by IB 2009, c. 1, §5, is repealed.

Sec. 30. 22 MRSA §2427, as enacted by IB 2009, c. 1, §5, is repealed.

Sec. 31. 22 MRSA §2428, sub-§5, as enacted by IB 2009, c. 1, §5, is amended to read:

5. Inspection. A nonprofit dispensary is subject to reasonable inspection by the department. The department ~~shall give reasonable notice of~~ may enter the nonprofit dispensary at any time, without notice, to carry out an inspection under this subsection.

Sec. 32. 22 MRSA §2428, sub-§6, ¶A, as enacted by IB 2009, c. 1, §5, is amended to read:

A. A nonprofit dispensary must be operated on a not-for-profit basis for the mutual benefit of its members and patrons. The bylaws of a nonprofit dispensary and its contracts with patrons must contain such provisions relative to the disposition of revenues and receipts as may be necessary and appropriate to establish and maintain its nonprofit character. 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 13-B.

Sec. 33. Retroactivity. This Act applies retroactively to December 23, 2009.

SUMMARY

This bill amends the statutes enacted by Initiated Bill 2009, chapter 1, which allows a person who has been diagnosed by a physician as suffering from certain medical conditions to possess marijuana for medical use. It reflects the recommendations of the Committee on the Implementation of the Maine Medical Marijuana Act and the Criminal Law Advisory Commission. It also clarifies many of the provisions of the statutes, clarifies the process to add new debilitating conditions and conforms the language of the statutes to other Maine laws. It also applies retroactively to December 23, 2009, the effective date of the initiated bill.