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An Act To Provide for Safety, Quality and Transparency in the Retail Marijuana Industry

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

Sec. 1. 5 MRSA §194-B, sub-§2, ¶¶C and D, as enacted by PL 2001, c. 550, Pt. A, §2, are amended to read:

C. Awards, grants or payments to or on behalf of intended beneficiaries, consistent with the public charity's charitable purpose; and

D. A change in the membership of the board of directors or officers of a public charity; and

Sec. 2. 5 MRSA §194-B, sub-§2, ¶E is enacted to read:

E. A transaction described in Title 22, section 2422, subsection 13-B.

Sec. 3. 7 MRSA §2442, sub-§§7 and 9, as enacted by IB 2015, c. 5, §1, are amended to read:

7. Commissioner. "~~Commissioner~~" means the ~~Commissioner of Agriculture, Conservation and Forestry~~Director of the Bureau of Alcoholic Beverages and Lottery Operations within the Department of Administrative and Financial Services.

9. Department. "~~Department~~" means the ~~Department of Agriculture, Conservation and Forestry~~Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations.

Sec. 4. 7 MRSA §2442, sub-§32, as enacted by IB 2015, c. 5, §1, is amended to read:

32. Registered dispensary. "Registered dispensary" means a dispensary that is a ~~nonprofit corporation organized under Title 13-B and~~ registered with the Department of Health and Human Services pursuant to the Maine Medical Use of Marijuana Act and holds one or more dispensary registrations.

Sec. 5. 7 MRSA §2442, sub-§34, as amended by PL 2017, c. 1, §4, is further amended to read:

34. Retail marijuana. "Retail marijuana" means marijuana or marijuana concentrate that is cultivated, manufactured, distributed or sold by a registered dispensary or a licensed retail marijuana establishment or retail marijuana social club.

Sec. 6. 7 MRSA §2444, first ¶, as enacted by IB 2015, c. 5, §1, is amended to read:

For the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, testing and sale of retail marijuana and retail marijuana products in this State, the state licensing authority is the ~~Department of Agriculture, Conservation and Forestry~~department.

Sec. 7. 7 MRSA §2444, sub-§1, as enacted by IB 2015, c. 5, §1, is amended to read:

1. Commissioner is chief administrative officer. ~~The Commissioner of Agriculture, Conservation and Forestry~~ commissioner is the chief administrative officer of the state licensing authority and may employ such officers and employees as may be determined to be necessary. The state licensing authority has the authority to:

- A. Grant or refuse licenses for the cultivation, manufacture, distribution, sale and testing of retail marijuana and retail marijuana products as provided by this chapter;
- B. Suspend, fine, restrict or revoke licenses under paragraph A upon a violation of this chapter or any rule adopted pursuant to this chapter; and
- C. Impose any penalty authorized by this chapter or any rule adopted pursuant to this chapter.

Sec. 8. 7 MRSA §2447, sub-§1, ¶A, as enacted by IB 2015, c. 5, §1, is repealed and the following enacted in its place:

A. Qualifications for applicants are as described in this paragraph.

(1) If the applicant is a natural person, the applicant must be at least 21 years of age and a resident of this State during the 2 years prior to applying for a license under this chapter.

(2) If the applicant is a business entity formed under the laws of this State, including a partnership, association, company, corporation, limited liability company or other organization, the business entity must be wholly owned by natural persons who meet the qualifications specified in subparagraph (1).

(3) The state licensing authority shall adopt rules to allow an applicant that is a business entity as described in subparagraph (2) to be owned through multiple tiers of entity ownership, except that, regardless of the number of tiers of ownership, every entity in the ownership structure of an applicant must be ultimately owned by natural persons who meet the qualifications specified in subparagraph (1). The state licensing authority shall establish procedures through rulemaking by which an applicant that is a business entity as described in subparagraph (2) must confirm compliance with the provisions of this paragraph and provide an organizational chart detailing the full and complete ownership structure of the applicant. Rules adopted pursuant to this subparagraph are routine technical rules as described in Title 5, chapter 375, subchapter 2-A.

Sec. 9. 7 MRSA §2447, sub-§3, ¶B, as enacted by IB 2015, c. 5, §1, is amended to read:

B. An applicant may apply for and be granted more than one type of license ~~except that a person licensed as a retail marijuana testing facility may not hold any other retail marijuana establishment license.~~ An applicant for a retail marijuana establishment or a retail marijuana social club license may not also be the principal owner of an applicant for a retail marijuana testing facility license or hold a license for a retail marijuana testing facility. Registered caregivers and registered dispensaries who have held a registration in good standing for 2 years by the date of the application must be given

priority in the granting of licenses for a retail marijuana cultivation facility, retail marijuana products manufacturing facility or retail marijuana store license. The state licensing authority shall begin accepting and processing applications by 30 days after the adoption of rules under section 2444, subsection 2. If after 90 days those applications do not meet the maximum square footage allotment set by this chapter, the state licensing authority may begin accepting and processing applications by all other qualified applicants.

Sec. 10. 7 MRSA §2447, sub-§7, as enacted by IB 2015, c. 5, §1, is amended to read:

7. Restrictions on applications for licenses. The state licensing authority may not approve an application for the issuance of a license pursuant to this chapter:

A. If the application for the license concerns a location that is the same as or within 1,000 feet of a location for which, within the 2 years immediately preceding the date of the application, the state licensing authority denied an application for the same class of license due to the nature of the use or other concern related to the location; ~~or~~

B. Until it is established that the applicant is in or will be entitled to possession of the licensed premises for which application is made under a lease, rental agreement or other arrangement for possession of the premises or by virtue of ownership of the premises;

C. Until the applicant provides proof acceptable to the commissioner that the applicant has financial resources under its control and can establish and maintain an escrow account in a financial institution in this State or provides a letter of credit drawn from a financial institution in this State or a surety bond issued by a surety company licensed by this State that is of a capacity and rating acceptable to the commissioner in the secured amount applicable to the type of license being applied for, as follows:

(1) For a retail marijuana store, \$500,000;

(2) For a retail marijuana cultivation facility with 3,000 square feet or less of plant canopy, \$600,000;

(3) For a retail marijuana cultivation facility with more than 3,000 square feet of plant canopy, \$1,100,000;

(4) For a retail marijuana products manufacturing facility, \$600,000;

(5) For a retail marijuana testing facility, \$800,000 unless the applicant is accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization by a 3rd-party accrediting body or is certified, registered or accredited by an organization approved by the department; and

(6) For a retail marijuana social club, \$500,000; and

D. Until the applicant has provided the department with a budget calculating funds the applicant has estimated necessary to start its operation and for one year of operation, showing at a minimum:

(1) All salaries and related benefits with assumptions of the number of full-time employees and levels of salary of those employees;

(2) All facility-related expenses, including one year of rent, maintenance and related expenses, capital improvements and taxes;

(3) All fee payments related to the license being applied for, including sales tax;

(4) All expenses related to the operation of the establishment for which a license is being applied for, such as utilities;

(5) All general and administrative expenses, which must represent a minimum of 20% of total expenses, including expenses such as accounting, legal costs and insurance; and

(6) All capital expenditures, equipment purchases and additional financing costs or interest.

Sec. 11. 7 MRSA §2447-A is enacted to read:

§ 2447-A. Sale of marijuana by dispensary

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Limited marijuana retail product" means:

(1) A maximum of 1/4 ounce of retail marijuana;

(2) The equivalent of 1/4 ounce of retail marijuana in retail marijuana products; or

(3) A combination of products under subparagraphs (1) or (2) that is the equivalent of 1/4 ounce of retail marijuana.

B. "Registered primary caregiver" has the same meaning as in Title 22, section 2422, subsection 11.

2. Sales by registered dispensaries. Notwithstanding any provision of law to the contrary, a registered dispensary may sell limited marijuana retail products to a person who is 21 years of age or older if:

A. The person presents proof of age in the form of a valid state-issued identification card or driver's license bearing the person's photograph to the registered dispensary before entering into the registered dispensary;

B. The registered dispensary verifies that the person is 21 years of age or older at the time of the sale; and

C. The person purchases no more than one limited marijuana retail product per sale.

3. Purchases of excess marijuana from caregivers. Notwithstanding any provision of law to the contrary, a registered dispensary may purchase from a registered primary caregiver excess marijuana or retail marijuana products in exchange for reasonable monetary compensation.

A. A registered primary caregiver who transfers excess marijuana or retail marijuana products in accordance with this section does not by virtue of that transfer qualify as a member of a collective.

B. This subsection does not affect:

(1) The number of plants a registered dispensary or a registered primary caregiver is permitted to grow under Title 22, chapter 558-C; or

(2) The number of qualifying patients for whom a registered primary caregiver is allowed to cultivate marijuana for those patients' medical use pursuant to Title 22, section 2423-A, subsection 2.

4. Local authority. A municipality may adopt ordinances prohibiting the sale of limited marijuana retail products as described in this section.

5. Agency authority. The Department of Health and Human Services may prohibit a registered dispensary from selling limited marijuana retail products if the registered dispensary violates this section.

6. Tax on limited marijuana retail products. A registered dispensary shall pay a tax pursuant to Title 36, section 4921 on limited marijuana retail products sold pursuant to this section.

7. Sales tax on limited marijuana retail products. In addition to the tax imposed pursuant to Title 36, section 4921, limited marijuana retail products sold pursuant to this section are subject to state sales tax.

8. Contingent repeal. This section is repealed December 31, 2018 unless, as of that date, the department has not yet begun issuing licenses for retail marijuana establishments, in which case this section remains in effect until such time as the department begins, through final agency action, issuing licenses for retail marijuana establishments pursuant to this chapter.

Sec. 12. 7 MRSA §2448, sub-§6, ¶A, as enacted by IB 2015, c. 5, §1, is amended to read:

~~A. A person that has an interest in a retail marijuana testing facility license from the state licensing authority for testing purposes may not have any interest in products from a registered dispensary, a registered caregiver, a licensed retail marijuana store, a licensed retail marijuana social club, a licensed retail marijuana cultivation facility or a licensed retail marijuana products manufacturing facility. A person that are intended to be sold by a registered dispensary or a registered caregiver or in a retail marijuana store or retail marijuana social club if an owner or officer of the retail marijuana testing facility has an interest in a registered dispensary, a registered caregiver, a licensed retail marijuana store, a licensed retail marijuana social club, a licensed retail marijuana cultivation facility or a licensed retail marijuana products manufacturing facility may not have an interest in a facility that has a retail marijuana testing facility license. For purposes of this paragraph, "interest" includes an ownership interest or partial ownership interest or any other type of financial interest, such as being an investor or serving in a management position.~~

Sec. 13. 7 MRSA §2448, sub-§8-A is enacted to read:

8-A. Audits. In addition to the audit required by the state licensing authority pursuant to subsection 8, a licensee shall obtain an independent financial audit annually, at the licensee's expense, and shall provide a report of the audit's findings to the department. The audit report must be completed and submitted to the department no later than 60 days prior to the end of the license expiration date or at another time as the department may direct. When a license is revoked, suspended or surrendered or expires, the licensee shall file a final audit report no later than 30 days following revocation, suspension, surrender or expiration of the license.

Sec. 14. 7 MRSA §2450, as amended by PL 2017, c. 1, §12, is further amended to read:

§ 2450. Transfer of ownership

Beginning February 1, 2018, a license granted under the provisions of this chapter is not transferable except as provided in this section, but this section does not prevent a change of location as provided in section 2451, subsection 7.

For a transfer of ownership, a licensee shall apply to the state licensing authority on forms prepared and furnished by the state licensing authority. Upon receipt of an application for transfer of ownership, the state licensing authority shall, within 7 days, submit a copy of the application to the appropriate municipality to determine whether the transfer complies with any local restriction on transfer of ownership. In determining whether to permit a transfer of ownership, the state licensing authority shall consider only the requirements of this chapter, any rules adopted by the state licensing authority and any other local restrictions. The municipality may hold a hearing on the application for transfer of ownership. The municipality may not hold a hearing pursuant to this section until the municipality has posted a notice of hearing in the manner described in section 2449, subsection 5 on the licensed premises for a period

of 10 days and has provided notice of the hearing to the applicant at least 10 days prior to the hearing. Any transfer of ownership hearing by the state licensing authority must be held in compliance with the requirements specified for a municipality in this section.

Notwithstanding section 2447, subsection 1, paragraph A, if a retail marijuana establishment or retail marijuana social club that is being transferred has been continuously licensed under this chapter for at least 2 years prior to the application for transfer of ownership, the persons to whom the retail marijuana establishment or retail marijuana social club is being transferred do not need to meet the residency requirements specified in section 2447, subsection 1, paragraph A, subparagraph (1) except as follows:

1. Transferee is United States citizen. The transferee must be a citizen of the United States for at least one year prior to the date of application for transfer of ownership;

2. Owner or officer is Maine resident. At least one owner or officer of the retail marijuana establishment or retail marijuana social club being transferred must be a resident of this State during the 2 years prior to application for transfer of ownership; and

3. Manager is Maine resident. Any person who has day-to-day operational control over the retail marijuana establishment or retail marijuana social club must be a resident of this State.

Sec. 15. 13-B MRSA §901, as amended by PL 2005, c. 531, §2, is further amended to read:

§ 901. Procedure for merger

1. Domestic corporations may merge. Any 2 or more domestic corporationsA corporation organized under this Act ~~and a corporation organized~~ under Title 13, chapter 81 may merge, pursuant to a plan of merger approved in the manner provided in this Act, into one of suchthose corporations pursuant to a plan of merger approved in the manner provided in this Actor, in the case of a merger authorized under Title 22, section 2428, into a domestic business corporation or domestic limited liability company.

2. Plan of merger. Each corporation shall adopt a plan of merger setting forth:

A. The names of the corporations proposing to merge, and the name of the corporation or limited liability company into which they propose to merge, which is hereinafter designated in this section as the surviving corporation or surviving limited liability company;

B. The terms and conditions of the proposed merger;

C. A statement of any changes in the articles of incorporation or certificate of formation of the surviving corporation or surviving limited liability company to be effected by such merger; and

D. Such other provisions with respect to the proposed merger as are ~~deemed~~considered necessary or desirable.

Sec. 16. 22 MRSA §2422, sub-§6, as amended by PL 2011, c. 407, Pt. B, §7, is further amended to read:

6. Registered dispensary. "Registered dispensary" or "dispensary" means a ~~not-for-profit entity~~ registered nonprofit dispensary or a reorganized registered dispensary registered under section 2428 that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana or related supplies and educational materials to qualifying patients and the primary caregivers of those patients.

Sec. 17. 22 MRSA §2422, sub-§13-B is enacted to read:

13-B. Reorganized registered dispensary. "Reorganized registered dispensary" means a business corporation or limited liability company formed pursuant to the laws of this State that:

A. Is the surviving entity in a merger between a mutual benefit nonprofit corporation operating as a registered nonprofit dispensary under the provisions of this chapter and a business corporation or limited liability company formed pursuant to the laws of this State, to the extent that the merger is permitted by applicable law; or

B. Purchases substantially all of the assets of a mutual benefit nonprofit corporation operating as a registered nonprofit dispensary under the provisions of this chapter.

An entity qualifies as a reorganized registered dispensary only if 2/3 of the directors of a reorganized registered dispensary operating as a corporation or 2/3 of the managers of a reorganized registered dispensary operating as a limited liability company are persons that were directors of the registered nonprofit dispensary at the time of the transaction described in paragraph A or B.

Sec. 18. 22 MRSA §2428, sub-§6, ¶A, as amended by PL 2011, c. 407, Pt. B, §32, is repealed and the following enacted in its place:

A. A dispensary may operate as a registered nonprofit dispensary or as a reorganized registered dispensary.

Sec. 19. 22 MRSA §2428, sub-§6, ¶A-1 is enacted to read:

A-1. A registered nonprofit dispensary may enter into and consummate any transaction. The directors of a registered nonprofit dispensary do not violate any duty for approving such a transaction. Upon completion of such a transaction, the reorganized registered dispensary is, for all licensure and all other purposes under this chapter and Title 7, chapter 417, deemed to hold the same licensure as the registered nonprofit dispensary undertaking the transaction. The department shall confirm, promptly upon request by the officers of a reorganized registered dispensary, that licensure status in writing by issuing a certificate of registration naming the reorganized registered dispensary as a registered dispensary for all purposes under this chapter.

Sec. 20. 36 MRSA c. 723 is enacted to read:

CHAPTER 723

LIMITED MARIJUANA RETAIL PRODUCTS TAX

§ 4921. Tax on limited marijuana retail products

1. Definitions. As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

- A. "Limited marijuana retail product" has the same meaning as in Title 7, section 2447-A, subsection 1, paragraph A.
- B. "Registered dispensary" has the same meaning as in Title 22, section 2422, subsection 6.

2. Imposition; rate of tax. A registered dispensary shall pay a tax at the rate of 10% of the sales price of limited marijuana retail products sold pursuant to Title 7, section 2447-A.

3. Returns; payment of tax; penalty. A registered dispensary subject to this chapter shall prepare and file with the assessor, on or before the 15th day of each month, a return made under penalty of perjury on a form prescribed and furnished by the assessor together with payment of the tax due under this chapter. The return must report the total sales price of all sales made pursuant to Title 7, section 2447-A within the State during the preceding calendar month and such other information as the assessor requires. A registered dispensary shall keep a complete and accurate record in an electronic and unalterable form at its principal place of business to substantiate all receipts and sales of products.

4. Application of tax revenue. Revenue received from imposition of the tax pursuant to subsection 2 must be distributed as follows:

- A. Forty-five percent of the revenue must be forwarded directly to the Department of Health and Human Services for regulatory oversight and enforcement of sales of limited marijuana retail products pursuant to Title 7, section 2447-A and for deterring sales of marijuana to persons under 21 years of age;
- B. Forty-five percent of the revenue must be forwarded directly to the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations to fund administration, regulatory development and enforcement of Title 7, chapter 417; and
- C. Ten percent of the revenue must be forwarded directly to the municipalities in which registered dispensaries that have paid the tax imposed pursuant to this section are located.

5. Discontinuance of imposition of tax. The tax imposed pursuant to subsection 2 may not be imposed after the repeal of Title 7, section 2447-A. A registered dispensary continues to be subject to the provisions of subsection 3 until all taxes due have been reported and paid.

Sec. 21. Notification of contingency. If the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations begins issuing licenses for retail marijuana establishments pursuant to the Maine Revised Statutes, Title 7, chapter 417, the Director of the Bureau of Alcoholic Beverages and Lottery Operations shall notify the Secretary of State, the President of the Senate, the Speaker of the House of Representatives and the Revisor of Statutes of that fact.

SUMMARY

This bill amends the laws regarding the sale and distribution of marijuana for adult use and medical purposes as follows.

1. It transfers the state licensing authority from the Department of Agriculture, Conservation and Forestry to the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations.

2. It allows for the limited sale of marijuana for adult use while the bureau begins the rule-making process and issuing licenses for retail marijuana establishments pursuant to those rules by allowing dispensaries registered under the Maine Medical Use of Marijuana Act to sell limited marijuana retail products to persons 21 years of age or older in accordance with certain conditions. These early sales provisions are repealed December 31, 2018 unless the bureau has not, as of December 31, 2018, begun issuing licenses for retail marijuana establishments, in which case the dispensaries can continue to sell limited marijuana retail products until the bureau begins, through final agency action, to issue licenses for retail marijuana establishments. It allows registered dispensaries to purchase marijuana and marijuana products from registered primary caregivers for purposes of distribution to persons 21 years of age and older. It imposes a tax of 10% of the sale price of limited marijuana retail products. It allocates 10% of the tax revenue to the municipality where the tax-paying dispensary is located, 45% of the tax revenue to the Department of Health and Human Services to fund regulatory oversight and enforcement of sales of limited marijuana retail products as well as efforts by the department to deter use of marijuana by persons under 21 years of age and the remaining 45% to the bureau to fund administration, regulatory development and enforcement of the Marijuana Legalization Act. It also imposes state sales tax on limited marijuana retail products.

3. It imposes additional financial qualifications on applicants for retail marijuana establishments and retail marijuana social clubs to ensure future regulatory compliance.

4. It imposes annual financial audit responsibilities on all license holders.

5. It removes the requirement that a dispensary under the Maine Medical Use of Marijuana Act be incorporated under the Maine Nonprofit Corporation Act and operated on a not-for-profit basis and exempts such reorganizations from the requirement to obtain court approval or provide notice.

6. It imposes Maine state residency requirements on all applicants. It also allows for the transfer of a retail marijuana establishment or social club license to a person or entity that does not meet the residency requirement and allows for investment in a retail marijuana establishment or social club license by a person or entity that does not meet the residency requirement once the retail marijuana establishment or social club licensee has been operational for 2 years.

7. It allows for an entity or individual with a minority ownership interest in a retail marijuana testing facility to also have an ownership interest in a retail marijuana establishment or retail marijuana social club to encourage investment in retail marijuana testing facilities. It prohibits testing facilities from testing retail marijuana and retail marijuana products from or intended to be sold at a medical dispensary, by a caregiver or at a retail marijuana establishment or social club in which the retail marijuana testing facility licensee has any financial interest.