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An Act To Clarify the Pathway for a Registered Dispensary under the Maine Medical Use of Marijuana Act To Become a For-profit Entity

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, Public Law 2017, chapter 452 became law on December 13, 2018 and repealed the requirement that registered medical marijuana dispensaries be required to be nonprofit mutual benefit corporations; and

Whereas, Public Law 2017, chapter 452 authorizes the State to issue 6 additional dispensary registration certificates without the requirement that these dispensaries be established as nonprofit mutual benefit corporations; and

Whereas, Public Law 2017, chapter 452 does not provide a clear pathway for existing registered medical marijuana dispensaries to reorganize as for-profit entities under Maine law; and

Whereas, it is imperative that the law be immediately amended to provide a pathway for an existing registered medical marijuana dispensary to qualify to operate under the law as amended by Public Law 2017, chapter 452; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 22 MRSA §2428, sub-§13 is enacted to read:

13. Reorganization to for-profit status. The reorganization of a registered dispensary operating as a nonprofit mutual benefit corporation to a for-profit entity is governed by this subsection.

A. A registered dispensary that is operating as a nonprofit mutual benefit corporation may enter into any of the following transactions to reorganize the registered dispensary to a for-profit entity:

(1) A mutual benefit corporation operating as a nonprofit registered dispensary may merge with and into a business corporation formed pursuant to Title 13-C;

(2) A business corporation formed pursuant to the laws of this State may purchase substantially all of the assets of a mutual benefit corporation operating as a nonprofit registered dispensary;
and

(3) Notwithstanding any provision of the law to the contrary in this Title, Title 13-B or Title 13-C, a mutual benefit corporation operating as a nonprofit registered dispensary is entitled to convert into a domestic business corporation by adopting a plan of entity conversion in accordance with Title 13-C, section 953 that is approved by a vote of 2/3 of the members of the board of directors of the mutual benefit corporation at a meeting duly called for that purpose or by unanimous written consent. A plan of entity conversion adopted pursuant to this subparagraph must be signed and submitted to the Secretary of State on a form prescribed by the Secretary of State, must be executed and filed in the manner prescribed in Title 13-C, section 955 and is subject to Title 13-C, section 957. The Secretary of State shall approve all such filings submitted in compliance with this subparagraph.

B. Notwithstanding Title 13-B, section 718, and notwithstanding any provision to the contrary in the articles of incorporation or the bylaws of a registered dispensary operating as a nonprofit mutual benefit corporation, there exists no conflict of interest nor violation of fiduciary duty for the directors of a registered dispensary operating as a nonprofit entity to:

(1) Approve a transaction set forth in paragraph A, subparagraph (1), (2) or (3);

(2) Issue any shares, membership interests or other securities, obligations, rights to acquire interests or other securities, cash or other property; or

(3) Designate the directors or a business corporation in which the directors hold interests as members of a nonprofit mutual benefit corporation that previously had no members.

C. The patients of a registered dispensary that is operating as a nonprofit mutual benefit corporation may not be deemed members entitled to vote under Title 13-B, section 604, nor may such patients be deemed members for purposes of a merger, purchase or conversion reorganization transaction pursuant to this subsection.

D. A registered dispensary that reorganizes to a for-profit entity pursuant to this section, or the dispensary's successor in interest, shall pay to the Medical Use of Marijuana Fund established under section 2430:

(1) An amount equal to 10% of the value of a sale or transfer of interest of the reorganized registered dispensary, as determined by an independent appraisal at the time of the sale or transfer of interest, when the sale or transfer of interest is completed in the first year after the reorganization to a for-profit entity;

(2) An amount equal to 7.5% of the value of a sale or transfer of interest of the reorganized registered dispensary, as determined by an independent appraisal at the time of the sale or transfer of interest, when the sale or transfer of interest is completed in the 2nd year after the reorganization to a for-profit entity;

(3) An amount equal to 5% of the value of a sale or transfer of interest of the reorganized registered dispensary, as determined by an independent appraisal at the time of the sale or transfer of interest, when the sale or transfer of interest is completed in the 3rd year after the reorganization to a for-profit entity; and

(4) An amount equal to 2.5% of the value of a sale or transfer of interest of the reorganized registered dispensary, as determined by an independent appraisal at the time of the sale or transfer of interest, when the sale or transfer of interest is completed in the 4th year after the reorganization to a for-profit entity.

E. A registered dispensary that reorganizes to a for-profit entity pursuant to this section, or the dispensary's successor in interest, shall pay to the Medical Use of Marijuana Fund established under section 2430 an amount that is not less than 2% of gross sales of the registered dispensary in the previous year for discounts to qualified patients who:

(1) Are receiving hospice care;

(2) Are 65 years of age or older;

(3) Have a family income that is equal to or below 400% of the nonfarm income official poverty line; or

(4) Are veterans of the United States Armed Forces.

F. A registered dispensary subject to paragraph D shall provide to the Attorney General the independent appraisal required in paragraph D. A registered dispensary subject to paragraph E shall provide to the commissioner an annual accounting demonstrating compliance with paragraph E.

G. A transaction pursuant to this subsection does not require any approval or notice under the provisions of Title 5, chapter 9.

H. Upon completion of a reorganization transaction pursuant to this subsection, the resulting successor entity is, for licensure and all other purposes, deemed to hold the same licensure as was held by the registered dispensary prior to the reorganization. The department shall, promptly upon

request by the officers of a reorganized registered dispensary, confirm the 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. 2. 22 MRSA §2430, sub-§2, ¶¶D and E, as enacted by PL 2009, c. 631, §45 and affected by §51, are amended to read:

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; ~~and~~

Sec. 3. 22 MRSA §2430, sub-§2, ¶F is enacted to read:

F. All money received as a result of a reorganization of a registered dispensary operating as a nonprofit mutual benefit corporation to a for-profit entity pursuant to section 2428, subsection 13.

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

SUMMARY

Public Law 2017, chapter 452 authorized registered dispensaries under the Maine Medical Use of Marijuana Act operating as nonprofit entities to become for-profit entities, but did not outline a pathway to follow for such a transaction. This bill:

1. Specifies the possible pathways of merger, purchase and conversion for such a dispensary to become a for-profit entity;
2. Provides that a registered dispensary operating as a nonprofit entity that reorganizes as a for-profit entity retains its registration certificate;
3. Requires that a registered dispensary that reorganizes as a for-profit entity pay to the Medical Use of Marijuana Fund a percentage of the value of the sale or transfer of interest; and
4. Requires that a registered dispensary that reorganizes as a for-profit entity pay to the Medical Use of Marijuana Fund 2% of gross sales for discounts to certain qualified patients.