

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1491

S.P. 520

In Senate, April 19, 2017

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

Reference to the Joint Select Committee on Marijuana Legalization Implementation
suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator KATZ of Kennebec.

Cosponsored by Senator: LIBBY of Androscoggin, Representative: HARVELL of Farmington.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 B. An applicant may apply for and be granted more than one type of license ~~except~~
35 ~~that a person licensed as a retail marijuana testing facility may not hold any other~~
36 ~~retail marijuana establishment license.~~ An applicant for a retail marijuana
37 establishment or a retail marijuana social club license may not also be the principal
38 owner of an applicant for a retail marijuana testing facility license or hold a license
39 for a retail marijuana testing facility. Registered caregivers and registered
40 dispensaries who have held a registration in good standing for 2 years by the date of
41 the application must be given priority in the granting of licenses for a retail marijuana
42 cultivation facility, retail marijuana products manufacturing facility or retail

1 marijuana store license. The state licensing authority shall begin accepting and
2 processing applications by 30 days after the adoption of rules under section 2444,
3 subsection 2. If after 90 days those applications do not meet the maximum square
4 footage allotment set by this chapter, the state licensing authority may begin
5 accepting and processing applications by all other qualified applicants.

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

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

10 A. If the application for the license concerns a location that is the same as or within
11 1,000 feet of a location for which, within the 2 years immediately preceding the date
12 of the application, the state licensing authority denied an application for the same
13 class of license due to the nature of the use or other concern related to the location; ~~or~~

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

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

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

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

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

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

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

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

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

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

- 1 (2) All facility-related expenses, including one year of rent, maintenance and
2 related expenses, capital improvements and taxes;
- 3 (3) All fee payments related to the license being applied for, including sales tax;
- 4 (4) All expenses related to the operation of the establishment for which a license
5 is being applied for, such as utilities;
- 6 (5) All general and administrative expenses, which must represent a minimum of
7 20% of total expenses, including expenses such as accounting, legal costs and
8 insurance; and
- 9 (6) All capital expenditures, equipment purchases and additional financing costs
10 or interest.

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

12 **§2447-A. Sale of marijuana by dispensary**

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

15 A. "Limited marijuana retail product" means:

- 16 (1) A maximum of 1/4 ounce of retail marijuana;
- 17 (2) The equivalent of 1/4 ounce of retail marijuana in retail marijuana products;
18 or
- 19 (3) A combination of products under subparagraphs (1) or (2) that is the
20 equivalent of 1/4 ounce of retail marijuana.

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

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

- 26 A. The person presents proof of age in the form of a valid state-issued identification
27 card or driver's license bearing the person's photograph to the registered dispensary
28 before entering into the registered dispensary;
- 29 B. The registered dispensary verifies that the person is 21 years of age or older at the
30 time of the sale; and
- 31 C. The person purchases no more than one limited marijuana retail product per sale.

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

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

4 B. This subsection does not affect:

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

7 (2) The number of qualifying patients for whom a registered primary caregiver is
8 allowed to cultivate marijuana for those patients' medical use pursuant to Title
9 22, section 2423-A, subsection 2.

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

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

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

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

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

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

28 A. A person that has an interest in a retail marijuana testing facility license from the
29 state licensing authority for testing purposes may not have any interest in test
30 products from a registered dispensary, a registered caregiver, a licensed retail
31 marijuana store, a licensed retail marijuana social club, a licensed retail marijuana
32 cultivation facility or a licensed retail marijuana products manufacturing facility.—A
33 person that or that are intended to be sold by a registered dispensary or a registered
34 caregiver or in a retail marijuana store or retail marijuana social club if an owner or
35 officer of the retail marijuana testing facility has an interest in a registered
36 dispensary, a registered caregiver, a licensed retail marijuana store, a licensed retail
37 marijuana social club, a licensed retail marijuana cultivation facility or a licensed
38 retail marijuana products manufacturing facility may not have an interest in a facility
39 that has a retail marijuana testing facility license. For purposes of this paragraph,
40 "interest" includes an ownership interest or partial ownership interest or any other

1 type of financial interest, such as being an investor or serving in a management
2 position.

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

4 **8-A. Audits.** In addition to the audit required by the state licensing authority
5 pursuant to subsection 8, a licensee shall obtain an independent financial audit annually,
6 at the licensee's expense, and shall provide a report of the audit's findings to the
7 department. The audit report must be completed and submitted to the department no later
8 than 60 days prior to the end of the license expiration date or at another time as the
9 department may direct. When a license is revoked, suspended or surrendered or expires,
10 the licensee shall file a final audit report no later than 30 days following revocation,
11 suspension, surrender or expiration of the license.

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

14 **§2450. Transfer of ownership**

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

18 For a transfer of ownership, a licensee shall apply to the state licensing authority on
19 forms prepared and furnished by the state licensing authority. Upon receipt of an
20 application for transfer of ownership, the state licensing authority shall, within 7 days,
21 submit a copy of the application to the appropriate municipality to determine whether the
22 transfer complies with any local restriction on transfer of ownership. In determining
23 whether to permit a transfer of ownership, the state licensing authority shall consider only
24 the requirements of this chapter, any rules adopted by the state licensing authority and
25 any other local restrictions. The municipality may hold a hearing on the application for
26 transfer of ownership. The municipality may not hold a hearing pursuant to this section
27 until the municipality has posted a notice of hearing in the manner described in section
28 2449, subsection 5 on the licensed premises for a period of 10 days and has provided
29 notice of the hearing to the applicant at least 10 days prior to the hearing. Any transfer of
30 ownership hearing by the state licensing authority must be held in compliance with the
31 requirements specified for a municipality in this section.

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

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

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

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

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

9 **§901. Procedure for merger**

10 **1. Domestic corporations may merge.** ~~Any 2 or more domestic corporations~~ A
11 corporation organized under this Act ~~or~~ and a corporation organized under Title 13,
12 chapter 81 may merge, pursuant to a plan of merger approved in the manner provided in
13 this Act, into one of such those corporations pursuant to a plan of merger approved in the
14 manner provided in this Act or, in the case of a merger authorized under Title 22, section
15 2428, into a domestic business corporation or domestic limited liability company.

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

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

21 B. The terms and conditions of the proposed merger;

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

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

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

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

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

35 **13-B. Reorganized registered dispensary.** "Reorganized registered dispensary"
36 means a business corporation or limited liability company formed pursuant to the laws of
37 this State that:

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

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

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

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

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

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

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