

MAINE STATE LEGISLATURE

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8/16/19
R.O.B.

Date: 6/14/19

(Filing No. S-214)

HEALTH AND HUMAN SERVICES

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STATE OF MAINE

SENATE

129TH LEGISLATURE

FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 577, L.D. 1735, Bill, "An Act To Clarify the Pathway for a Registered Dispensary under the Maine Medical Use of Marijuana Act To Become a For-profit Entity"

Amend the bill by striking out everything after the title and inserting the following:

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Whereas, Public Law 2017, chapter 452 became law on December 13, 2018 and repealed the requirement that registered medical marijuana dispensaries be nonprofit entities; and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 entities; 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. Any of the 8 registered dispensaries that were issued registration certificates as of April 1, 2018 and that are operating as nonprofit

COMMITTEE AMENDMENT

1 entities may convert to a for-profit entity pursuant to this subsection. A registered
2 dispensary established pursuant to subsection 11-A, paragraph A that was not issued a
3 dispensary registration certificate before April 1, 2018 and operates as a nonprofit entity
4 may not convert to a for-profit entity.

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

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

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

13 (3) Notwithstanding any provision of the law to the contrary in this Title, Title
14 13-B or Title 13-C, a registered dispensary operating as a nonprofit entity is
15 entitled to convert into a domestic business corporation by adopting a plan of
16 entity conversion in accordance with Title 13-C, section 953 that is approved by a
17 vote of 2/3 of the members of the board of directors of the nonprofit entity at a
18 meeting duly called for that purpose or by unanimous written consent. A plan of
19 entity conversion adopted pursuant to this subparagraph must be signed and
20 submitted to the Secretary of State on a form prescribed by the Secretary of State,
21 must be executed and filed in the manner prescribed in Title 13-C, section 955
22 and is subject to Title 13-C, section 957. If the Secretary of State finds that such
23 filings comply with this subparagraph, the Secretary of State shall accept the
24 filings.

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

30 (1) Approving a transaction in order to reorganize pursuant to this section as set
31 forth in paragraph A, subparagraph (1), (2) or (3);

32 (2) Issuing any shares, membership interests or other securities, obligations,
33 rights to acquire interests or other securities, cash or other property in order to
34 reorganize pursuant to this section; or

35 (3) Designating the directors or a business corporation in which the directors
36 hold interests as members of a nonprofit entity that previously had no members in
37 order to reorganize pursuant to this section.

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

L.O.S.

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D. If a registered dispensary reorganizes as a for-profit entity pursuant to this section and subsequently sells or transfers its interest in the reorganized registered dispensary, the registered dispensary or the dispensary's successor in interest, shall pay to the Medical Use of Marijuana Fund established under section 2430 a percentage of the value of the sale or transfer of interest, as determined by an independent appraisal at the time of the sale or transfer of interest, in accordance with this paragraph:

- (1) If the sale or transfer of interest is completed in the first year after the reorganization, the amount paid to the Medical Use of Marijuana Fund must equal 10% of the value of the sale or transfer of interest;
- (2) If the sale or transfer of interest is completed in the 2nd year after the reorganization, the amount paid to the Medical Use of Marijuana Fund must equal 7.5% of the value of the sale or transfer of interest;
- (3) If the sale or transfer of interest is completed in the 3rd year after the reorganization, the amount paid to the Medical Use of Marijuana Fund must equal 5% of the value of the sale or transfer of interest; and
- (4) If the sale or transfer of interest is completed in the 4th year after the reorganization, the amount paid to the Medical Use of Marijuana Fund must equal 2.5% of the value of the sale or transfer of interest.

The cost of an appraisal required under this paragraph must be paid from the Medical Use of Marijuana Fund.

E. A registered dispensary that reorganizes as a for-profit entity pursuant to this section, or the dispensary's successor in interest if the dispensary sells or transfers its interest in the reorganized registered dispensary, shall demonstrate to the department as a condition of registration pursuant to section 2425 that the registered dispensary or the dispensary's successor in interest has provided discounts in an amount that is not less than 2% of gross sales of the registered dispensary in the previous year to qualifying 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.

The department shall submit a report to the joint standing committee of the Legislature having jurisdiction over health and human services matters by January 15, 2023 regarding the discounts provided by registered dispensaries or the dispensary's successor in interest pursuant to this paragraph. A registered dispensary subject to this paragraph shall provide to the commissioner an annual accounting demonstrating compliance with this paragraph.

This paragraph is repealed July 1, 2023.

COMMITTEE AMENDMENT

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F. A registered dispensary subject to paragraph D shall provide to the Attorney General the independent appraisal required in paragraph D.

G. Except as provided in paragraph F, a transaction pursuant to this subsection does not require any approval or notice under the provisions of Title 5, chapter 9.

H. The registration status of a registered dispensary that has completed a reorganization transaction pursuant to this subsection is governed by subsection 11-A, paragraph B.

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 entity to a for-profit entity pursuant to section 2428, subsection 13, paragraph D.

Sec. 4. Secretary of State to develop form for reorganization of registered dispensary to a for-profit entity. No later than August 1, 2019, the Secretary of State shall develop a form for a registered dispensary reorganizing as a for-profit entity pursuant to the Maine Revised Statutes, Title 22, section 2428, subsection 13 to submit a plan of entity conversion to the Secretary of State in accordance with Title 22, section 2428, subsection 13, paragraph A, subparagraph (3).

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

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

This amendment, which is the unanimous report of the committee:

1. Provides that the reorganization of a registered dispensary operating as a nonprofit entity to a for-profit entity may be accomplished only by any of the 8 registered dispensaries that were issued registration certificates as of April 1, 2018 and that operate as any type of nonprofit entity;

2. Specifies that any exemptions from fiduciary duty and conflicts of interest otherwise required by the law do not apply for the limited purposes required in order for a registered dispensary operating as a nonprofit entity to reorganize as a for-profit entity;

3. Clarifies that the triggering event for a registered dispensary to pay a fine to the Medical Use of Marijuana Fund is only upon the sale or transfer of interest within 4 years after the reorganization to a for-profit entity and provides that the cost of an appraisal

1 required to determine the value of the sale or transfer of interest must be paid from the
2 Medical Use of Marijuana Fund;

3 4. Requires a registered dispensary that reorganizes as a for-profit entity or the
4 dispensary's successor in interest to provide discounts in an amount that is not less than
5 2% of gross sales of the dispensary in the previous year to certain qualifying patients as a
6 condition of registration. The Department of Administrative and Financial Services is
7 required to submit a report to the joint standing committee of the Legislature having
8 jurisdiction over health and human services matters by January 15, 2023 regarding the
9 discounts provided. The requirement to provide discounts is repealed July 1, 2023; and

10 5. Directs the Secretary of State to develop a form for use by registered dispensaries
11 to accomplish the reorganization from a nonprofit to a for-profit entity.

12 **FISCAL NOTE REQUIRED**

13 (See attached)



129th MAINE LEGISLATURE

LD 1735

LR 1776(02)

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

Fiscal Note for Bill as Amended by Committee Amendment "A" (S-214)

Committee: Health and Human Services

Fiscal Note Required: Yes

Fiscal Note

Potential current biennium revenue increase - Other Special Revenue Funds

Potential current biennium cost increase - Other Special Revenue Funds

Fiscal Detail and Notes

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 transition. This bill specifies the possible pathways of merger, purchase and conversion for a dispensary to become a for-profit entity. This includes that a registered dispensary pay to the Medical Use of Marijuana Fund (MUMF) a percentage of the value of the sale or transfer of interest if a sale occurs within 4 years of becoming for-profit and that the appraisal to identify the sale or transfer value must be paid by the MUMF. It is unknown if any of the 8 eligible dispensaries would transfer to for-profit status and if so whether they would sell within 4 years. It is expected that any proceeds to the MUMF from such activity would outweigh the cost of the required appraisals and lead to a significant increase in revenue.