

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1735

S.P. 577

In Senate, May 14, 2019

**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)

Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by President JACKSON of Aroostook.
Cosponsored by Representative O'CONNOR of Berwick and
Representatives: BICKFORD of Auburn, HARNETT of Gardiner, HICKMAN of Winthrop,
MADIGAN of Waterville, McCREIGHT of Harpswell, PERRY of Calais.

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

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4 repealed the requirement that registered medical marijuana dispensaries be required to be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

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

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

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

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

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

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

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

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

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

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

32 (3) Notwithstanding any provision of the law to the contrary in this Title, Title
33 13-B or Title 13-C, a mutual benefit corporation operating as a nonprofit
34 registered dispensary is entitled to convert into a domestic business corporation
35 by adopting a plan of entity conversion in accordance with Title 13-C, section
36 953 that is approved by a vote of 2/3 of the members of the board of directors of
37 the mutual benefit corporation at a meeting duly called for that purpose or by
38 unanimous written consent. A plan of entity conversion adopted pursuant to this

1 subparagraph must be signed and submitted to the Secretary of State on a form
2 prescribed by the Secretary of State, must be executed and filed in the manner
3 prescribed in Title 13-C, section 955 and is subject to Title 13-C, section 957.
4 The Secretary of State shall approve all such filings submitted in compliance with
5 this subparagraph.

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

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

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

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

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

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

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

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

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

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

40 E. A registered dispensary that reorganizes to a for-profit entity pursuant to this
41 section, or the dispensary's successor in interest, shall pay to the Medical Use of
42 Marijuana Fund established under section 2430 an amount that is not less than 2% of

1 gross sales of the registered dispensary in the previous year for discounts to qualified
2 patients who:

3 (1) Are receiving hospice care;

4 (2) Are 65 years of age or older;

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

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

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

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

14 H. Upon completion of a reorganization transaction pursuant to this subsection, the
15 resulting successor entity is, for licensure and all other purposes, deemed to hold the
16 same licensure as was held by the registered dispensary prior to the reorganization.
17 The department shall, promptly upon request by the officers of a reorganized
18 registered dispensary, confirm the licensure status in writing by issuing a certificate
19 of registration naming the reorganized registered dispensary as a registered
20 dispensary for all purposes under this chapter.

21 **Sec. 2. 22 MRSA §2430, sub-§2, ¶¶D and E**, as enacted by PL 2009, c. 631,
22 §45 and affected by §51, are amended to read:

23 D. All money from any other source, whether public or private, designated for
24 deposit into or credited to the fund; ~~and~~

25 E. Interest earned or other investment income on balances in the fund; ~~and~~

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

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

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

32 SUMMARY

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

36 1. Specifies the possible pathways of merger, purchase and conversion for such a
37 dispensary to become a for-profit entity;

1 2. Provides that a registered dispensary operating as a nonprofit entity that
2 reorganizes as a for-profit entity retains its registration certificate;

3 3. Requires that a registered dispensary that reorganizes as a for-profit entity pay to
4 the Medical Use of Marijuana Fund a percentage of the value of the sale or transfer of
5 interest; and

6 4. Requires that a registered dispensary that reorganizes as a for-profit entity pay to
7 the Medical Use of Marijuana Fund 2% of gross sales for discounts to certain qualified
8 patients.