

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1448

H.P. 1000

House of Representatives, April 13, 2017

**An Act To Clarify Certain Provisions of the Marijuana Legalization
Act and To Deter the Use of Marijuana by Minors**

(EMERGENCY)

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

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative HARRINGTON of Sanford.
Cosponsored by Representatives: BICKFORD of Auburn, CEBRA of Naples, CHACE of
Durham, PERKINS of Oakland, PIERCE of Dresden, Senator: LIBBY of Androscoggin.

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,** the provisions of the citizen-initiated legislation, Legislative Document
4 1701, An Act to Legalize Marijuana, were approved by majority vote in the November 8,
5 2016 General Election; and

6 **Whereas,** Public Law 2017, chapter 1, which was enacted by the 128th Legislature
7 and signed into law on January 27, 2017, delays the implementation of the retail sales
8 portion of the Marijuana Legalization Act until February 1, 2018 but did not change the
9 ability of persons over 21 years of age to cultivate and possess marijuana for personal
10 use;

11 **Whereas,** the lack of safe, regulated establishments for individuals over 21 years of
12 age to legally purchase marijuana during this time will encourage black market activity
13 which could result in an increase in access to marijuana by individuals under 21 years of
14 age; and

15 **Whereas,** certain measures to discourage minors from using marijuana illegally, to
16 further clarify the provisions of the Marijuana Legalization Act and to create a revenue
17 stream to aid in the enforcement activities for deterring black market sales of marijuana
18 need to be implemented as soon as possible; and

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

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

24 **Sec. 1. 7 MRSA §2442, sub-§9,** as enacted by IB 2015, c. 5, §1, is amended to
25 read:

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

29 **Sec. 2. 7 MRSA §2442, sub-§23-A** is enacted to read:

30 **23-A. Minor.** "Minor" means a person who has not attained 21 years of age.

31 **Sec. 3. 7 MRSA §2444, first ¶,** as enacted by IB 2015, c. 5, §1, is amended to
32 read:

33 For the purpose of regulating and controlling the licensing of the cultivation,
34 manufacture, distribution, testing and sale of retail marijuana and retail marijuana
35 products in this State, the state licensing authority is the Department of ~~Agriculture,~~
36 ~~Conservation and Forestry~~ Administrative and Financial Services, Bureau of Alcoholic
37 Beverages and Lottery Operations.

1 **Sec. 4. 7 MRSA §2444, sub-§1**, as enacted by IB 2015, c. 5, §1, is amended to
2 read:

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

8 A. Grant or refuse licenses for the cultivation, manufacture, distribution, sale and
9 testing of retail marijuana and retail marijuana products as provided by this chapter;

10 B. Suspend, fine, restrict or revoke licenses under paragraph A upon a violation of
11 this chapter or any rule adopted pursuant to this chapter; and

12 C. Impose any penalty authorized by this chapter or any rule adopted pursuant to this
13 chapter.

14 **Sec. 5. 7 MRSA §2447-A** is enacted to read:

15 **§2447-A. Authorized conduct of a registered dispensary and registered primary**
16 **caregiver**

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

19 A. "Limited marijuana retail product" means:

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

21 (2) The equivalent of 1/4 ounce of marijuana in products infused with marijuana;

22 (3) One-milliliter pre-filled vaporizer cartridges containing some form of
23 marijuana concentrate; or

24 (4) Any combination of marijuana under subparagraphs (1) and (2) that is the
25 equivalent of 1/4 ounce of marijuana.

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

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

31 A. The person presents proof that the person is 21 years of age or older in the form
32 of a valid government-issued photo identification card or driver's license to the
33 registered dispensary before being allowed to enter the registered dispensary;

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

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

1 **3. Purchases of excess marijuana from caregivers.** A registered dispensary
2 registered with the Department of Health and Human Services may purchase from a
3 registered primary caregiver excess marijuana or retail marijuana products in exchange
4 for reasonable monetary compensation.

5 A. Notwithstanding Title 22, section 2423-A, subsection 2, paragraph K, a registered
6 primary caregiver may transfer more than 2 pounds of excess marijuana to a
7 registered dispensary in a calendar year.

8 B. A registered primary caregiver who transfers excess marijuana or retail marijuana
9 products does not by virtue of that transfer qualify as a member of a collective under
10 Title 22, section 2423-A, subsection 2, paragraph H.

11 C. This subsection does not affect:

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

14 (2) The number of qualifying patients for whom a registered primary caregiver is
15 allowed to cultivate marijuana for those patients' medical use pursuant to Title
16 22, section 2423-A, subsection 2.

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

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

22 **6. Tax on limited marijuana retail products.** Each registered dispensary shall pay
23 a tax pursuant to Title 36, section 4911 on the retail sale of limited marijuana retail
24 products.

25 **7. Sales tax on limited marijuana retail products.** In addition to the tax imposed
26 pursuant to Title 36, section 4911, limited marijuana retail products sold pursuant to this
27 section are subject to state sales tax.

28 **8. Contingent repeal.** This section is repealed on December 31, 2018 unless, as of
29 that date, the state licensing authority, pursuant to section 2444, has not yet begun issuing
30 licenses for retail marijuana establishments, in which case this section remains in effect
31 until such time as the state licensing authority begins, through final agency action, issuing
32 licenses for retail marijuana establishments pursuant to this chapter.

33 **Sec. 6. 7 MRSA §§2453-A to 2453-C** are enacted to read:

34 **§2453-A. Prohibited acts by minors**

35 **1. Prohibited acts.** Except as provided in this chapter or in Title 22, chapter 558-C,
36 a minor may not:

37 A. Possess marijuana. The following penalties apply to a violation of this paragraph.

1 (1) A minor who possesses up to and including 2 1/2 ounces of marijuana
2 commits a civil violation for which a fine of not more than \$100 may be
3 adjudged. If the minor does not commit another violation of this paragraph
4 within one year following adjudication, the court shall expunge the record of the
5 civil violation.

6 (2) A minor who violates this paragraph after having previously violated this
7 section commits a civil violation for which a fine of not less than \$300 and not
8 more than \$600 must be adjudged, none of which may be suspended except as
9 provided in subsection 2, paragraph B.

10 (3) A minor who violates this paragraph after having previously violated this
11 section 2 or more times commits a civil violation for which a fine of \$600 must
12 be adjudged, none of which may be suspended except as provided in subsection
13 2, paragraph B.

14 (4) A minor who possesses more than 2 1/2 ounces of marijuana is subject to the
15 provisions of Title 17-A, section 1107-A, subsection 1, paragraph F:

16 B. Purchase marijuana or retail marijuana products. The following penalties apply to
17 a violation of this paragraph.

18 (1) A minor who violates this paragraph commits a civil violation for which a
19 fine of not less than \$200 and not more than \$400 must be adjudged.

20 (2) A minor who violates this paragraph after having previously violated this
21 section commits a civil violation for which a fine of not less than \$300 and not
22 more than \$600 must be adjudged, none of which may be suspended except as
23 provided in subsection 2, paragraph B.

24 (3) A minor who violates this paragraph after having previously violated this
25 section 2 or more times commits a civil violation for which a fine of \$600 must
26 be adjudged, none of which may be suspended except as provided in subsection
27 2, paragraph B; or

28 C. Present or offer to a licensee or the licensee's agent or employee any written or
29 oral evidence of age that is false, fraudulent or not actually the minor's own, for the
30 purpose of ordering, purchasing, attempting to purchase or otherwise procuring or
31 attempting to procure marijuana. The following penalties apply to a violation of this
32 paragraph.

33 (1) A minor who violates this paragraph commits a civil violation for which a
34 fine of not less than \$200 and not more than \$400 must be adjudged.

35 (2) A minor who violates this paragraph after having previously violated this
36 section commits a civil violation for which a fine of not less than \$300 and not
37 more than \$600 must be adjudged, none of which may be suspended except as
38 provided in subsection 2, paragraph B.

39 (3) A minor who violates this paragraph after having previously violated this
40 section 2 or more times commits a civil violation for which a fine of \$600 must
41 be adjudged, none of which may be suspended except as provided in subsection
42 2, paragraph B.

1 **2. Information regarding subsequent offenses; community service.** The
2 following apply to the penalties imposed for violations of this section.

3 A. When a minor is adjudged to have committed a first offense under this section,
4 the judge shall inform that minor that the fines for the 2nd and subsequent offenses
5 are mandatory and may not be suspended except as provided in paragraph B. Failure
6 to inform the first-time offender that subsequent fines are mandatory is not a ground
7 for suspension of any subsequent fine.

8 B. The judge, as an alternative to or in addition to the civil fines required by this
9 section, may assign the minor to perform specified work for the benefit of the State,
10 the municipality or other public entity or charitable institution.

11 **3. Minor may not be charged with more than one offense.** A minor may not be
12 charged with more than one offense under this section in any given instance in which the
13 same set of facts is involved.

14 **4. Illegal possession and illegal transportation.** If a minor is charged with illegal
15 possession under this section, the minor may not be charged with illegal transportation
16 under section 2453-B pertaining to the possession.

17 **§2453-B. Illegal transportation of marijuana by minors**

18 **1. Minor may not transport marijuana.** Except as provided in subsection 2 or in
19 Title 22, chapter 558-C, a minor may not knowingly transport or knowingly permit to be
20 transported marijuana in a motor vehicle under the minor's control. The following
21 penalties apply to violations of this subsection.

22 A. A minor who violates this subsection commits a civil violation for which a fine of
23 not more than \$500 may be adjudged.

24 B. A minor who violates this subsection after having previously violated this
25 subsection commits a civil violation for which a fine of not less than \$200 and not
26 more than \$500 must be adjudged, none of which may be suspended.

27 C. A minor who violates this subsection after having previously violated this
28 subsection 2 or more times commits a civil violation for which a fine of not less than
29 \$400 and not more than \$500 must be adjudged, none of which may be suspended.

30 **2. Permitted transportation.** A minor may transport marijuana or permit marijuana
31 to be transported in a motor vehicle under the minor's control if the transportation is in
32 the scope of the minor's employment or at the request of the minor's parent or guardian or
33 custodian, as defined in Title 22, section 4002.

34 **3. No violation if marijuana not within minor's section.** A minor may not be
35 found in violation of any offense under subsection 1 if marijuana is found outside the
36 passenger's or driver's section of a motor vehicle under the minor's control, unless the
37 minor has actual knowledge of the presence of the marijuana. For purposes of this
38 subsection, the trunk or locked glove compartment of a vehicle is not within the
39 passenger's or driver's section of the motor vehicle.

1 **4. Minor may not be charged with both illegal transportation and illegal**
2 **possession.** A minor charged with illegal transportation under subsection 1 may not be
3 **charged with illegal possession pertaining to the transportation under section 2453-A. A**
4 **minor who possesses marijuana in a motor vehicle under the terms of this section must be**
5 **charged under this section, rather than under section 2453-A. This subsection does not**
6 **preclude charges under Title 15, section 3103, subsection 1, paragraph F, when**
7 **appropriate.**

8 **§2453-C. Furnishing marijuana to minors by certain persons prohibited**

9 **1. Offense.** Except as provided in Title 22, chapter 558-C, a person may not
10 **knowingly:**

11 **A. Procure, or in any way aid or assist in procuring, furnish, give, sell or deliver**
12 **marijuana for or to a minor. The following penalties apply to violations of this**
13 **paragraph.**

14 **(1) A person who violates this paragraph commits a Class D crime.**

15 **(2) A person who violates this paragraph commits a Class D crime for which a**
16 **fine of not less than \$500 must be adjudged, none of which may be suspended, if**
17 **the violation involves a minor who has not attained 18 years of age.**

18 **(3) A person who violates this paragraph after having been previously convicted**
19 **of violating this paragraph or paragraph B within a 6-year period commits a Class**
20 **D crime for which a fine of not less than \$1,000 must be adjudged, none of which**
21 **may be suspended.**

22 **(4) A person who violates this paragraph after having been previously convicted**
23 **of violating this paragraph or paragraph B 2 or more times within a 6-year period**
24 **commits a Class D crime for which a fine of not less than \$1,500 must be**
25 **adjudged, none of which may be suspended.**

26 **(5) A person who violates this paragraph commits a Class C crime if the**
27 **consumption of marijuana by the minor in fact causes serious bodily injury to or**
28 **death of the minor or any other individual. For purposes of this subsection,**
29 **"serious bodily injury" has the same meaning as in Title 17-A, section 2,**
30 **subsection 23;**

31 **B. Allow a minor under that person's control or in a place under that person's control**
32 **to possess or consume marijuana. The following penalties apply to a violation of this**
33 **paragraph.**

34 **(1) A person who violates this paragraph commits a Class D crime.**

35 **(2) A person who violates this paragraph commits a Class D crime for which a**
36 **fine of not less than \$1,000 must be adjudged, none of which may be suspended,**
37 **if the violation involves a minor who has not attained 18 years of age.**

38 **(3) A person who violates this paragraph after having been previously convicted**
39 **of violating this paragraph or paragraph A within a 6-year period commits a**
40 **Class D crime for which a fine of not less than \$2,000 must be adjudged, none of**
41 **which may be suspended.**

1 electronic and nonalterable form at its principal place of business to substantiate all
2 receipts and sales of products.

3 **4. Application of tax revenue.** Revenue received from a registered dispensary in
4 payment of the tax imposed pursuant to subsection 2 must be distributed as follows:

5 A. Forty-five percent of the revenue must be forwarded directly to the Department of
6 Health and Human Services for regulatory oversight and enforcement of sales of
7 limited marijuana retail products pursuant to Title 7, section 2447-A and for deterring
8 sales of marijuana to persons who have not attained 21 years of age;

9 B. Forty-five percent of the revenue must be forwarded directly to the Department of
10 Agriculture, Conservation and Forestry or the Department of Administrative and
11 Financial Services, Bureau of Alcoholic Beverages and Lottery Operations to fund
12 administration, regulatory development and enforcement of Title 7, chapter 417; and

13 C. Ten percent of the revenue must be forwarded directly to the municipality in
14 which the registered dispensary is located.

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

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

21 SUMMARY

22 This bill provides clarifications to the Marijuana Legalization Act, as approved at
23 referendum in November 2016, as follows:

24 1. It specifies that, for purposes of the Marijuana Legalization Act, a minor is a
25 person who is under 21 years of age. The bill prohibits the possession, purchase and
26 transportation of marijuana by minors, and the furnishing of marijuana to minors, except
27 when permitted under the Maine Medical Use of Marijuana Act and in other certain
28 circumstances. The prohibitions in this bill are modeled on the statutes prohibiting the
29 possession, purchase and transportation of alcohol by minors;

30 2. It specifies that the state licensing authority is the Department of Administrative
31 and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations;

32 3. It allows for the limited sale of adult use marijuana while the bureau begins the
33 rule-making process and issuing licenses for retail marijuana establishments pursuant to
34 those rules by allowing medical marijuana dispensaries to sell limited marijuana retail
35 products to persons 21 years of age or older in accordance with certain conditions. These
36 early sales begin on the effective date of this bill and end December 31, 2018 unless the
37 bureau has not yet begun issuing licenses for retail marijuana establishments. In that
38 case, medical marijuana dispensaries can continue to sell limited marijuana retail
39 products until the bureau begins, through final agency action, to issue licenses for retail

1 marijuana establishments. It allows dispensaries to purchase prepared marijuana and
2 marijuana products from registered primary caregivers for purposes of distribution to
3 persons 21 years of age and older. It imposes a marijuana tax of 10% of the sale price of
4 limited marijuana retail products. It allocates 10% of the tax revenue to the host
5 community where the dispensary is located, 45% of the special tax revenue to the
6 Department of Health and Human Services to fund regulatory oversight and enforcement
7 of sales of limited marijuana retail products as well as efforts by the department to deter
8 use of marijuana by persons under 21 years of age and the remaining 45% to the
9 Department of Agriculture, Conservation and Forestry or the bureau to fund
10 administration, regulatory development and enforcement of the Marijuana Legalization
11 Act. It also imposes state sales tax on limited marijuana retail products; and

12 4. It imposes a cap on the issuance of primary caregiver registry identification cards.