

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

FIRST SPECIAL SESSION-2021

Legislative Document

No. 1452

H.P. 1068

House of Representatives, April 12, 2021

An Act To Amend the Law Regarding the Advertising and Marketing of Adult Use Marijuana

Received by the Clerk of the House on April 8, 2021. Referred to the Committee on Veterans and Legal Affairs pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

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

ROBERT B. HUNT
Clerk

Presented by Representative MADIGAN of Waterville.

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

2 **Sec. 1. 28-B MRSA §702, sub-§1, ¶B**, as enacted by PL 2017, c. 409, Pt. A, §6,
3 is amended to read:

4 B. May not involve advertising or marketing that has a high likelihood of reaching that
5 contains either subject matter, an illustration or depiction of a toy, comic animal,
6 popular cultural icon or cartoon character inducing persons under 21 years of age to
7 smoke or ingest marijuana; that depicts any person in the act of smoking or ingesting
8 marijuana; or that is specifically designed to appeal particularly to persons under 21
9 years of age. Rules adopted pursuant to subsection 2 to implement this paragraph may
10 not otherwise interfere with a licensee's right to advertise the licensee's logo or brand
11 or name of the licensee's business;

12 **Sec. 2. 28-B MRSA §702, sub-§1, ¶C**, as enacted by PL 2017, c. 409, Pt. A, §6,
13 is amended to read:

14 C. May not be placed or otherwise used within 1,000 feet of the property line of a
15 preexisting public or private school, except that, if a municipality by ordinance or other
16 regulation, or, in the case of a town, plantation or township located in the unorganized
17 and deorganized areas, the Maine Land Use Planning Commission, chooses to prohibit
18 the placement or use of signs or advertising by or on behalf of a marijuana
19 establishment at distances greater than or less than 1,000 feet but not less than 500 feet
20 from the property line of a preexisting public or private school, that greater or lesser
21 distance applies. As used in this paragraph, "school" has the same meaning as in
22 section 402, subsection 2, paragraph A; ~~and~~

23 **Sec. 3. 28-B MRSA §702, sub-§1, ¶D**, as enacted by PL 2017, c. 409, Pt. A, §6,
24 is amended to read:

25 D. May not violate any other requirement or restriction on signs, advertising and
26 marketing imposed by the department by rule pursuant to subsection 2-; and

27 **Sec. 4. 28-B MRSA §702, sub-§1, ¶E** is enacted to read:

28 E. May not be regulated by the department to unreasonably interfere with a licensee's
29 rights under the First Amendment of the United States Constitution.

30 **Sec. 5. 28-B MRSA §702, sub-§1-A** is enacted to read:

31 **1-A. Definitions.** As used in this section, unless the context otherwise indicates, the
32 following terms have the following meanings.

33 A. "Advertising" means the publicizing of a trade name of a licensee combined with a
34 word or symbol referring to adult use marijuana or adult use marijuana product or
35 publicizing the brand name of adult use marijuana or adult use marijuana product for
36 the express purpose of knowingly seeking or offering to sell, buy or distribute adult use
37 marijuana or adult use marijuana product.

38 **Sec. 6. 28-B MRSA §702, sub-§3** is enacted to read:

39 **3. Certificate of approval.** A licensee shall obtain a certificate of approval from the
40 department for any advertising under this section. The department may not deny a
41 certificate of approval unless the department determines that the advertising was intended

1 to appeal particularly to persons under 21 years of age, through an administrative review
2 of data identifying the proposed target audience of the advertising or behavioral data of
3 potential customers, compiled by the licensee, indicating that the content, design,
4 dissemination or publication of the advertising is not knowingly intended to or designed to
5 solicit persons under 21 years of age. The standard of review by the department is a
6 preponderance of the evidence and, in the case of denial, the department shall provide the
7 licensee with a written finding of facts to support the denial. A denial of a certificate of
8 approval is subject to appeal under Title 5, section 11001 or appeal to Superior Court under
9 subsection 4.

10 **Sec. 7. 28-B MRSA §702, sub-§4** is enacted to read:

11 **4. Denial of certificate of approval or notice of department of a violation.** A
12 licensee who receives a denial of a certificate of approval under subsection 3 or a notice of
13 the department that an advertisement is in violation of this section, the licensee may appeal
14 the denial or violation to Superior Court. If a licensee appeals a violation by the department
15 that an advertisement of the licensee is in violation of this section, the department may not
16 suspend or revoke the licensee's license or take any action to interfere with or prevent the
17 operation of the licensee's business while the appeal is pending. If the court upholds the
18 order of the department, the licensee has 15 days from the date of the decision to remedy
19 the violation without any sanction, fine or penalty.

20 SUMMARY

21 This bill amends the laws regarding the advertising and marketing of adult use
22 marijuana or marijuana product by requiring marijuana establishment licensees to seek a
23 certificate of approval for any advertisement of the licensees. The Department of
24 Administrative and Financial Services is required to determine by a preponderance of the
25 evidence that the advertising is intended for the appropriate audience and not to appeal to
26 persons under 21 years of age. If a licensee is denied a certificate of approval, the licensee
27 may appeal the decision administratively or to Superior Court. If the department issues a
28 notice to a licensee that an advertisement of the licensee is in violation of the laws and rules
29 regarding adult use marijuana or marijuana product advertising, the licensee may appeal
30 that decision to Superior Court and be allowed to operate without interference or license
31 suspension while the appeal is pending. If the court upholds the order of the department,
32 the licensee has 15 days from the date of the decision to remedy the violation without any
33 sanction, fine or penalty. This bill also clarifies that advertising regulation may not
34 unreasonably interfere with a licensee's rights under the First Amendment of the United
35 States Constitution.