

MAINE STATE LEGISLATURE

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STATE OF MAINE
128TH LEGISLATURE
FIRST SPECIAL, SECOND REGULAR AND SECOND SPECIAL SESSIONS



Summaries of bills, adopted amendments and laws enacted or finally passed

**JOINT SELECT COMMITTEE ON MARIJUANA
LEGALIZATION IMPLEMENTATION**

October 2018

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STATE OF MAINE

128TH LEGISLATURE

FIRST SPECIAL, SECOND REGULAR AND SECOND SPECIAL SESSIONS



LEGISLATIVE DIGEST OF BILL SUMMARIES AND ENACTED LAWS

This *Legislative Digest of Bill Summaries and Enacted Laws* contain summaries of all LDs and adopted amendments and all laws enacted or finally passed during the First Special, Second Regular and Second Special Sessions of the 128th Maine Legislature.

The *Digest* is arranged alphabetically by committee and within each committee by Legislative Document (LD) number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each LD title. All adopted amendments are summarized and listed by paper number. A subject index is included with each committee. An appendix provides a summary of relevant session statistics.

Final action on each LD is noted to the right of the LD title. The following describes the various final actions.

CARRIED OVER..... carried over to a subsequent session of the Legislature
CON RES XXX..... chapter # of constitutional resolution passed by both houses
CONF CMTE UNABLE TO AGREE..... Committee of Conference unable to agree; legislation died
DIED BETWEEN HOUSES..... House & Senate disagreed; legislation died
DIED IN CONCURRENCE..... defeated in each house, but on different motions; legislation died
DIED ON ADJOURNMENT..... action incomplete when session ended; legislation died
EMERGENCY..... enacted law takes effect sooner than 90 days after session adjournment
FAILED, EMERGENCY ENACTMENT or FINAL PASSAGE..... emergency failed to receive required 2/3 vote
FAILED, ENACTMENT or FINAL PASSAGE..... failed to receive final majority vote
FAILED, MANDATE ENACTMENT..... legislation proposing local mandate failed required 2/3 vote
HELD BY GOVERNOR..... Governor has not signed; final disposition to be determined at subsequent session
LEAVE TO WITHDRAW..... sponsor's request to withdraw legislation granted
NOT PROPERLY BEFORE THE BODY..... ruled out of order by the presiding officer; legislation died
INDEF PP..... indefinitely postponed; legislation died
ONTP, ACCEPTED, MAJORITY, MINORITY or REPORT X... ought-not-to-pass report accepted; legislation died
P&S XXX..... chapter # of enacted private & special law
PUBLIC XXX..... chapter # of enacted public law
RESOLVE XXX..... chapter # of finally passed resolve
VETO SUSTAINED..... Legislature failed to override Governor's veto

The effective dates for non-emergency legislation enacted in the First Special, Second Regular or Second Special Sessions of the 128th Legislature are: Monday, February 5, 2018; Wednesday, August 1, 2018; and Thursday, December 13, 2018, respectively. The effective date for legislation enacted as an emergency measure may be found in the enacted law summary for that legislation.

Joint Select Committee on Marijuana Legalization Implementation

LD 1651 An Act To Delay Further the Implementation of Certain Portions of the Marijuana Legalization Act

INDEF PP

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
FREDETTE K		

This bill further delays, until January 1, 2019, the effective date of those provisions of the Marijuana Legalization Act that were delayed until February 1, 2018 by Public Law 2017, chapter 1.

This bill was not referred to a committee.

LD 1719 An Act To Implement a Regulatory Structure for Adult Use Marijuana

**PUBLIC 409
EMERGENCY**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
PIERCE T KATZ R	OTP-AM OTP-AM	H-733

This bill facilitates the development and administration of a regulated marketplace in the State for adult use marijuana and the regulation of the personal use of marijuana and the home cultivation of marijuana for personal adult use pursuant to the Marijuana Legalization Act, as approved by the voters at referendum in November 2016.

Part A of the bill repeals the Marijuana Legalization Act, as codified in the Maine Revised Statutes, Title 7, chapter 417, and recodifies it as the Marijuana Legalization Act, referred to in this summary as "the Act," in a new Title 28-B, Adult Use Marijuana, while retaining the substance of the original Act with the following changes.

1. It uses the term "adult use marijuana" instead of the term "retail marijuana."
2. It clarifies the distinction between and provides definitions for the terms "marijuana plant," "mature marijuana plant," "immature marijuana plant" and "seedling."
3. It clarifies that any conduct relating to the possession, cultivation, manufacture, testing, consumption, sale or offering for sale of marijuana or marijuana products that is not specifically authorized under the Act, pursuant to a license issued under the Act or pursuant to the Maine Medical Use of Marijuana Act is not authorized and that a person who engages in such unauthorized conduct is subject to penalties under the Act and any additional criminal or civil penalties that may be imposed under other applicable laws or rules.
4. It retains the division of regulatory authority regarding the regulation of adult use marijuana enacted as Public Law 2017, chapter 278, whereby the Department of Administrative and Financial Services, referred to in this summary as "the department," is designated as the primary regulatory authority in the implementation, administration and enforcement of the Act, with the Department of Agriculture, Conservation and Forestry retaining regulatory authority concerning the cultivation, manufacture, testing, packaging and labeling of adult use marijuana and adult use marijuana products.
5. It further clarifies the roles and authorities, including the respective rule-making authorities, of the department and the Department of Agriculture, Conservation and Forestry in the implementation, administration and enforcement of the Act and provides for the provisional adoption of major substantive rules pursuant to the Act by each department and the submission of those rules to the Legislature for review pursuant to the Maine Administrative Procedure Act on or before December 1, 2018.

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6. It requires the department to implement and administer a tracking system for adult use marijuana from immature marijuana plant to the point of retail sale, disposal or destruction.
7. It requires the department to facilitate the collection and analysis of public health and safety data relating to the effects of the use of marijuana in the State.
8. It requires the department to facilitate the development and implementation of programs, initiatives and campaigns focused on increasing the awareness of and educating the public on health and safety matters relating to the use of marijuana and marijuana products. Such programs, initiatives and campaigns may be funded with a portion of the excise tax and sales tax revenues resulting from the sale of adult use marijuana and adult use marijuana products.
9. It requires the department to facilitate the development and implementation of programs or initiatives providing enhanced training for criminal justice agencies in the requirements and enforcement of the Act. Such programs and initiatives may be funded with a portion of the excise tax and sales tax revenues resulting from the sale of adult use marijuana and adult use marijuana products.
10. It requires the department and the Department of Agriculture, Conservation and Forestry to submit to the Legislature an annual report, beginning February 15, 2020, which must include specific information and data relating to the regulated market for adult use marijuana in the State.
11. It implements a moratorium on the issuance of adult use marijuana social club licenses until June 1, 2020 but provides for the regulation of licensed adult use marijuana social clubs after that date.
12. It removes from the former Marijuana Legalization Act provisions relating to the issuance of occupational licenses.
13. It clarifies general licensing criteria for applicants seeking to operate an adult use marijuana establishment, which include a two-year residency requirement and specific additional licensing requirements applicable to the licensing of adult use marijuana cultivation facilities. It removes from the former Marijuana Legalization Act provisions relating to preference in licensure for medical marijuana caregivers and medical marijuana dispensaries. It removes from the former Marijuana Legalization Act the caps on the number of each license type that may be issued, except that it:
 - A. Limits the number of marijuana store licenses in common ownership to 4 marijuana store licenses, but repeals that limitation January 1, 2022; and
 - B. Limits the number of cultivation facility licenses in common ownership to 3 cultivation facility licenses not exceeding a combined licensed plant canopy of 30,000 square feet.
14. It separates within the Act the state-level and municipal-level licensing and approval processes for adult use marijuana establishments. An applicant for a license to operate an adult use marijuana establishment must submit an application along with the required application fee to the department, which, after review, may conditionally approve the license. The licensee may then seek municipal authorization from the municipality in which the licensee proposes to operate the marijuana establishment. A municipality, which includes towns, cities and plantations, by adopted ordinance may regulate marijuana establishments within the municipality, including, but not limited to, through the adoption of:
 - A. Land use regulations applicable to marijuana establishments within the municipality;
 - B. Municipal licensing requirements applicable to marijuana establishments within the municipality that may include the imposition of municipal approval or license fees; and

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C. Limitations on the number of any type of marijuana establishment that may be approved or licensed to operate within the municipality.

A municipality may not authorize the operation of a marijuana establishment within the municipality unless the legislative body of the municipality has voted to generally authorize some or all types of marijuana establishments within the municipality, including that type of marijuana establishment. A person that has been issued a conditional license by the department may not request municipal authorization to operate a marijuana establishment within a municipality unless the legislative body of the municipality has voted to generally authorize some or all types of marijuana establishments within the municipality, including that type of marijuana establishment. Once the department receives certification of municipal authorization and the applicant pays the applicable license fee and submits any additional required documentation, the department must issue an active license, good for a term of one year from the date of issuance. A licensee may not engage in the cultivation, manufacture, testing, sale or offering for sale of marijuana or marijuana products until the licensee has been issued an active license by the department.

15. It revises and clarifies the application process for issuance and renewal of a state license to operate an adult use marijuana establishment, including revision of the application and license fees to be imposed by the department under the Act.

16. It revises the manner in which cultivation facilities are to be licensed and regulated by removing the statewide limitation on the total amount of licensed plant canopy and by authorizing five tiers of cultivation facility license types, the smallest of which, a tier 1 license, provides for the cultivation of up to 30 mature marijuana plants or up to 500 square feet of plant canopy and the largest of which, a tier 4 license, provides for the cultivation of up to 30,000 square feet of plant canopy. It also creates a nursery cultivation facility license tier, which allows for the cultivation of immature plants, seedlings and seeds and the sale of those immature plants, seedlings and seeds to other licensees and to consumers. A licensee seeking renewal of a tier 4 license may seek approval from the department to expand the area of plant canopy authorized under the license by 10,000 square feet, so long as certain criteria are met.

17. It clarifies operational requirements for each type of adult use marijuana establishment, including:

A. Providing for the payment of an excise tax by cultivation facilities on the adult use marijuana sold to other licensees;

B. Providing for the collection and remittance of a sales tax by marijuana stores and marijuana social clubs on adult use marijuana and adult use marijuana products sold to consumers;

C. Specifying standards for the extraction of marijuana concentrate by products manufacturing facilities;

D. Specifying standards for the tracking of adult use marijuana and adult use marijuana products by each type of adult use marijuana establishment;

E. Specifying standards for the sharing of facilities for the cultivation, manufacturing or sale of adult use marijuana and adult use marijuana products and marijuana and marijuana products for medical use by a licensee that is also a registered primary caregiver or registered dispensary;

F. Requiring compliance by licensees with applicable packaging, labeling and health and safety requirements;

G. Incorporating standards and requirements applicable to testing facilities as enacted in Public Law 2017, chapter 309;

H. Clarifying sales authorizations and prohibitions applicable to marijuana stores and marijuana social clubs,

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including prohibitions on drive-through sales, sales by use of a delivery service, sales by use of an automated vending machine and Internet sales;

I. Providing that the smoking of marijuana or marijuana products at a marijuana social club is prohibited in accordance with state law regarding smoking in public places and public areas; and

J. Prohibiting the employment of any person under 21 years of age by any adult use marijuana establishment.

18. It clarifies and expands upon the standards and requirements for the testing of adult use marijuana and adult use marijuana products; the packaging, labeling and health and safety of adult use marijuana and adult use marijuana products; and the use of signs, advertising and marketing relating to adult use marijuana and adult use marijuana products.

19. It provides for the imposition by the department of monetary penalties on a licensee or suspensions or revocations of a licensee's license for a violation of the Act, in accordance with the Maine Administrative Procedure Act, and limits the amount of such monetary penalties imposed to not more than \$10,000 per minor license violation, not more than \$50,000 per major license violation and not more than \$100,000 per major license violation affecting public safety.

20. It establishes the Marijuana Advisory Commission for the purpose of conducting a continuing study of the laws relating to marijuana and reporting to the Legislature its findings and recommendations on an annual basis.

21. It imposes an excise tax on adult use marijuana to be paid by cultivation facilities on adult use marijuana sold to other licensees. The excise tax is imposed in the following amounts:

A. For marijuana flower or mature marijuana plants, \$130 per pound;

B. For marijuana trim, \$36.29 per pound;

C. For each immature marijuana plant or seedling, \$1.50; and

D. For each marijuana seed, \$0.30.

22. It provides that monthly, a cultivation facility must pay directly to the municipality in which the cultivation facility is located 5% of the excise tax payments required under the Act during the prior month. All other revenue resulting from the imposition of the excise tax on adult use marijuana under the Act must be deposited into the General Fund, except that:

A. One percent of the total monthly other excise tax revenue generated statewide must be distributed in equal amounts to each municipality that had a cultivation facility, products manufacturing facility, marijuana store or marijuana social club in operation within the municipality during the prior month; and

B. Twelve percent of the remaining total monthly other excise tax revenue after the distribution to municipalities under paragraph A must be transferred to the Adult Use Marijuana Public Health and Safety Fund.

23. It establishes the Adult Use Marijuana Public Health and Safety Fund, which is primarily funded through dedicated excise and sales tax revenue from the sale of adult use marijuana and adult use marijuana products, to be used by the department to facilitate public health and safety awareness and education programs, initiatives, campaigns and activities and enhanced law enforcement training programs for local, county and state law enforcement officers.

24. It eliminates the Retail Marijuana Regulatory Coordination Fund, which was created and funded through the

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enactment of Public Law 2017, chapter 278, and transfers its remaining balances to the new Adult Use Marijuana Regulatory Coordination Fund.

25. It affects the provisions of the former Marijuana Legalization Act relating to the personal use of marijuana and marijuana products and the home cultivation of marijuana for personal adult use by:

A. Retaining the provisions of the former Marijuana Legalization Act authorizing a person 21 years of age or older to purchase from a marijuana store or, where applicable, from a marijuana social club and possess for personal use up to 2 1/2 ounces of marijuana or 2 1/2 ounces of a combination of marijuana and marijuana concentrate that includes no more than five grams of marijuana concentrate;

B. Clarifying language regarding the transfer or furnishing of marijuana or marijuana products, without remuneration, to another person to specify that remuneration includes a donation or any other monetary payment received directly or indirectly by a person in exchange for goods or services as part of a transaction in which marijuana or marijuana products are transferred or furnished by that person to another person;

C. Authorizing a person 21 years of age or older to purchase up to 12 immature marijuana plants or seedlings from a marijuana store or a nursery cultivation facility;

D. Clarifying the provisions relating to the home cultivation of marijuana for personal adult use by authorizing a person 21 years of age or older to grow and harvest the marijuana produced by up to 6 mature marijuana plants, up to 12 immature marijuana plants and an unlimited number of seedlings at that person's place of residence, on a parcel or tract of land owned by that person or on a parcel or tract of land owned by another person with the written permission of that owner. It provides, however, that no more than 12 mature marijuana plants may be cultivated for personal adult use on any one parcel or tract of land, except when the parcel or tract of land is located in a municipality that has, by adopted ordinance, authorized the cultivation of more than 12 mature marijuana plants for personal adult use but not more than 18 mature marijuana plants for personal adult use. These limitations on home cultivation of marijuana for personal adult use do not apply to the cultivation of marijuana for medical use by a qualifying patient, a primary caregiver, a registered primary caregiver or a registered dispensary under the Maine Medical Use of Marijuana Act;

E. Retaining the provisions relating to the consumption of marijuana and marijuana products as enacted by Public Law 2017, chapter 1; and

F. Prohibiting the home extraction of marijuana concentrate by use of inherently hazardous substances.

Part B of the bill provides that possession of drug paraphernalia, as prohibited under the Maine Revised Statutes, Title 17-A, section 1111-A, does not apply to drug paraphernalia relating to the adult use of marijuana by a person as authorized under the Act or to drug paraphernalia relating to the sale or offering for sale of marijuana by a licensed adult use marijuana store or adult use marijuana social club. Part B also amends the law concerning the Department of Public Safety, Bureau of State Police, State Bureau of Identification as necessary for the State Police and the State Bureau of Identification to conduct criminal history record checks on applicants for a license to operate an adult use marijuana establishment and on other persons as required under the Act.

Part C of the bill amends the State's laws governing municipal powers and duties to provide that plantations have the same powers and duties as cities and towns under the Act.

Part D of the bill amends the tax laws as follows.

1. It provides for a 10% sales tax on adult use marijuana and adult use marijuana products to be imposed at the point of final sale to a consumer by a marijuana store or marijuana social club.

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2. It stipulates that all the revenue resulting from the imposition of the sales tax on adult use marijuana and adult use marijuana products must be deposited into the General Fund, except that:
 - A. Five percent of all monthly tax revenue generated within a municipality by all marijuana stores and marijuana social clubs within that municipality must be distributed to that municipality;
 - B. One percent of the total monthly tax revenue generated statewide must be distributed in equal amounts to each municipality that had a cultivation facility, products manufacturing facility, marijuana store or marijuana social club in operation within the municipality during the prior month; and
 - C. Twelve percent of the remaining total monthly tax revenue after the distribution to municipalities under paragraphs A and B must be transferred to the Adult Use Marijuana Public Health and Safety Fund.

Committee Amendment "A" (H-733)

This amendment is the majority report of the committee and it replaces the bill. Like the bill, this amendment facilitates the development and administration of a regulated marketplace in the State for adult use marijuana and the regulation of the personal use of marijuana and the home cultivation of marijuana for personal adult use pursuant to the Marijuana Legalization Act, as approved by the voters at referendum in November 2016; however, the amendment makes the following changes to the bill.

Like Part A in the bill, Part A of this amendment repeals the Act, as codified in the Maine Revised Statutes, Title 7, chapter 417, and recodifies it in a new Title 28-B, Adult Use Marijuana, but makes the following changes.

1. It designates the department as the sole regulatory agency in the implementation, administration and enforcement of the Act, but requires the department to consult with the Department of Agriculture, Conservation and Forestry prior to the adoption of rules relating to the regulation of the cultivation, manufacture, testing, labeling and packaging of adult use marijuana and adult use marijuana products.
2. It removes from the Act provisions regulating the licensure and operation of marijuana social clubs.
3. It removes from the Act specific provisions for the sharing of sales tax and excise tax revenue with municipalities.
4. It changes the definition of the term "plant canopy" to include in the calculation of plant canopy only those areas in which mature marijuana plants are to be cultivated. The amendment reduces the maximum cultivation facility license tier sizes under the bill by approximately 1/3 to account for this changed definition but does not change the application fees or license fees amount for cultivation facility licenses as provided in the bill.
5. It defines the term "resident" for the purposes of licensure as a natural person who is domiciled in Maine, maintains a permanent place of abode in Maine and spends in the aggregate more than 183 days of the taxable year in Maine and has filed a resident individual income tax return pursuant to Title 36, Part 8 in each of the three years prior to the year in which the person files an application for licensure under the Act. The provision of this definition requiring the filing of resident individual income tax returns for the three years prior to applying for a license is repealed June 1, 2021. It removes the explicit two-year residency requirement;
6. It retains the provisions authorizing the sharing of facilities for the cultivation and manufacturing of adult use marijuana and adult use marijuana products and marijuana and marijuana products for medical use by a licensee that is also a registered primary caregiver or registered dispensary. The amendment, however, prohibits a marijuana store licensee that is also a registered primary caregiver or registered dispensary from selling adult use marijuana and adult use marijuana products to consumers and marijuana and marijuana products for medical use to qualifying patients from the same facility or building.

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7. It provides technical clarifications to the municipal-level licensing and approval process and also includes provisions applicable to the local authorization of marijuana establishments to be located in towns, plantations or townships in the unorganized and deorganized areas of the State.
8. It explicitly prohibits the entry into any marijuana establishment by a person under 21 years of age.
9. It changes the membership provisions and duties of the Marijuana Advisory Commission as proposed in the bill.
10. It increases the excise tax rate on marijuana flower and mature marijuana plants from \$130 per pound to \$335 per pound and the excise tax rate on marijuana trim from \$36.29 per pound to \$94 per pound. The excise tax rates imposed on immature marijuana plants, seedlings and marijuana seeds remain as proposed in the bill.
11. It changes the provisions proposed in the bill relating to the personal adult use of marijuana and marijuana products and the home cultivation of marijuana for personal adult use by reducing the number of mature marijuana plants that may be possessed, cultivated or transported by a person 21 years of age or older from six plants to three plants. The amendment authorizes a municipality to adopt an ordinance or other regulation limiting the total number of mature marijuana plants that may be cultivated on any one parcel or tract of land within the municipality, so long as that ordinance or regulation allows for the cultivation of three mature marijuana plants, 12 immature marijuana plants and an unlimited number of seedlings by each person 21 years of age or older who is domiciled on a parcel or tract of land. The amendment includes language providing that this reduction in the number of authorized mature marijuana plants from six plants to three plants does not take effect until six months after the effective date of the legislation.
12. It clarifies advertising and marketing standards and standards relating to signs used by a licensee to ensure a prohibition on advertising, marketing and signs that have a high likelihood of reaching persons under 21 years of age or that are specifically designed to appeal particularly to persons under 21 years of age. The amendment also requires the department, after consultation with the Department of Health and Human Services, Maine Center for Disease Control and Prevention, to develop rules on required health and safety warning labels. It also authorizes the use of the terms "organic," "organically cultivated" or "organically grown" on the label or packaging of adult use marijuana and adult use marijuana products consistent with rules on the use of such terms to be adopted by the department.
13. It clarifies that the authorized sampling of adult use marijuana and adult use marijuana products by the employees of a products manufacturing facility for product quality control or research and development purposes may not involve the consumption of the marijuana or marijuana product by means of smoking the marijuana or marijuana products.
14. It removes language proposed in the bill requiring the department to employ as a portion of its staff sworn law enforcement officers; language regarding the investigation by a criminal justice agency of unlawful activity relating to the personal adult use of marijuana or marijuana products or the home cultivation of marijuana for personal adult use; and language regarding withdrawal of municipal authorization for the operation of a marijuana establishment within a municipality.
15. It clarifies provisions in the Act relating to employment practices in a manner that ensures that the rights and protections for qualifying patients afforded by the Maine Medical Use of Marijuana Act are not affected by the provisions of the Act.
16. It directs the department to ensure that, when necessary and practicable, the regulation of the labeling and packaging of adult use marijuana and adult use marijuana products under the Act is consistent with the regulation of the labeling and packaging of marijuana and marijuana products for medical use under the Maine Medical Use of Marijuana Act.

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17. It provides for a limited period in which a cultivation facility licensee that is also a registered primary caregiver or registered dispensary may purchase an unlimited number of marijuana plants and seeds from an entity that is also a registered primary caregiver or registered dispensary. Any such transactions are subject to the imposition of the excise tax imposed under the Act.

18. It makes a number of other technical changes to the Act to incorporate these changes within Part A of the bill.

Part B of this amendment amends the Maine Criminal Code and the law concerning the Department of Public Safety, Bureau of State Police, State Bureau of Identification to include provisions that address a statutory conflict between Maine Criminal Code provisions prohibiting the possession and cultivation of marijuana and marijuana plants and provisions of the Act authorizing such possession and cultivation of marijuana and marijuana plants. These amendments to the Maine Criminal Code are consistent with current exemptions in the Maine Criminal Code relating to conduct authorized under the Maine Medical Use of Marijuana Act. Part B of this amendment also provides an exemption from the laws concerning criminal asset forfeiture relating to conduct authorized under the Act.

Part C of this amendment is identical to Part C of the bill, which amends the State's laws governing municipal powers and duties of plantations.

Part D of this amendment, which addresses the collection of sales tax revenue relating to adult use marijuana and adult use marijuana products sold to a consumer, strikes language proposed in the bill relating to the collection of sales taxes at marijuana social clubs and municipal revenue sharing of sales tax revenue.

Part E of this amendment includes provisions to shift the administration and enforcement of the Maine Medical Use of Marijuana Act and the medical marijuana program adopted thereunder from the Department of Health and Human Services to the department, including the following.

1. It restricts the department from assigning the administration and enforcement of the Maine Medical Use of Marijuana Act to any bureau or division within the department responsible for the administration and enforcement of the laws governing the manufacture, sale and distribution of liquor.
2. It requires the department to consult with the Department of Health and Human Services prior to the adoption or amendment of rules under the Maine Medical Use of Marijuana Act.
3. It directs the transfer of the balance of the Medical Use of Marijuana Fund in the Department of Health and Human Services to the Medical Use of Marijuana Fund in the department.
4. It includes a number of additional provisions to facilitate the transition of the administration and enforcement of the Maine Medical Use of Marijuana Act from the Department of Health and Human Services to the department. It requires the Commissioner of Administrative and Financial Services to submit a report on or before January 31, 2019 to the joint standing committee of the Legislature having jurisdiction over health and human services matters regarding the status of this transition and authorizes the joint standing committee to report out legislation relating to the report.
5. As it is the intent of the committee that oversight of the medical marijuana program adopted under the Maine Medical Use of Marijuana Act remain with the joint standing committee of the Legislature having jurisdiction over health and human services matters, Part E of the amendment does the following:

A. Amends the State Government Evaluation Act to provide that the review of the bureau or division within the department that administers and enforces the Maine Medical Use of Marijuana Act remain with the joint standing committee of the Legislature having jurisdiction over health and human services matters; and

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B. Amends the Maine Medical Use of Marijuana Act to direct that the registry identification cards annual report specifically be submitted to the joint standing committee of the Legislature having jurisdiction over health and human services matters.

Part F of the amendment adds an appropriations and allocations section.

Committee Amendment "B" (H-734)

This amendment is the minority report of the committee and replaces the bill. Under this amendment, as directed by a revision clause, the term "marijuana" will be replaced with the term "cannabis" in the Maine Revised Statutes. This amendment makes the following changes to the Act.

1. It changes provisions in the Act that authorize the state licensing authority, which is the department, to delegate rulemaking to other state agencies as cited under the Act to say that the state licensing authority may, or in some instances must, consult with those agencies regarding rulemaking.
2. It expands the type of retail marijuana licenses that may be established under the Act to include transportation licenses, delivery services licenses, storage service licenses, research licenses and special event licenses for on-premises consumption of marijuana.
3. It directs the state licensing authority to ensure that the license privileges encourage competition with the unregulated marijuana market and allow for small-scale cultivators and products manufacturers to have a streamlined application process for licenses that authorize retail sales directly to consumers.
4. It provides that law enforcement, upon encountering a representative of a retail marijuana licensee transporting marijuana, must presume that the possession, cultivation and transportation of the marijuana is legal and in compliance with the Act. This presumption of lawful possession, cultivation and transportation of marijuana is also applied to a person 21 years of age or older.
5. It amends the several provisions in the Act that state the Act is not intended to limit law enforcement authority to investigate unlawful activity related to a retail marijuana establishment to clarify that law enforcement's role is to investigate only suspected criminal activity as the Act authorizes the state licensing authority to regulate retail marijuana licensees for other violations related to the operation of a licensed establishment.
6. It amends the definition of "plant canopy" to include in the calculation of plant canopy only those areas in which mature marijuana plants are to be cultivated.
7. It repeals the statewide cultivation cap under the Act and establishes a new structure for retail marijuana cultivation facility licenses that allows for, among other cultivation license types, nursery cultivation facilities and small cultivator cooperatives.
8. It requires licenses for licensed retail marijuana establishments and social clubs to prohibit the licensees from transferring information to an official with the Federal Government regarding any person who transacts business with the licensees unless presented with a court order or search warrant.
9. It allows for the consumption of marijuana on the premises of a retail marijuana store licensee that is not licensed as a social club under a temporary license issued by the state licensing authority or under a permanent license issued by the state licensing authority as part of a licensing pilot project.
10. It permits a municipality to impose a licensing fee and a public health and safety impact fee on marijuana licensees within the municipality and also allows for a local option sales tax.
11. It specifies that the Act, or rules adopted pursuant to the Act, may not be construed as altering existing

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penalties, including those relating to actions such as operating vehicles while impaired by marijuana, or laws prohibiting furnishing marijuana to persons under 21 years of age or the possession of marijuana on the grounds of a public or private school where children attend classes or as altering other similar laws governing marijuana.

12. It provides protections of parental rights similar to those under the Maine Medical Use of Marijuana Act pertaining to the lawful possession or consumption of marijuana.

13. It prohibits a law enforcement officer from engaging in profiling or taking action resulting from profiling to enforce provisions of the Act. The amendment provides a definition of profiling.

14. It provides that the Retail Marijuana Regulatory Coordination Fund must be used to support public and behavioral health programs and services, including evidence-based substance abuse prevention and treatment programs, and for training municipal police in restorative justice and other programs mitigating negative social impacts.

15. It establishes a working group on retail marijuana energy and environmental standards, the Special Commission on Impaired Driving and the Marijuana Advisory Commission. It also directs the development of a marijuana research agenda and a craft marijuana report regarding marijuana industry participation of farmers and businesses of all sizes.

16. It establishes a retail sales tax rate of 17.5% on marijuana sold by licensees under the Act.

17. It requires that rules required under the Act must be provisionally adopted by December 1, 2018. In adopting such rules, the state licensing authority must consider proposals considered by the Joint Select Committee on Marijuana Legalization Implementation as amendments to the Marijuana Legalization Act.

18. It directs the Department of Public Safety, Bureau of State Police, State Bureau of Identification to make confidential all records of criminal convictions in the State that relate to convictions for activities that are now authorized under the Act.

19. It adds an appropriations and allocations section.

Enacted Law Summary

Public Law 2017, chapter 409 facilitates the development and administration of a regulated marketplace in the State for adult use marijuana and the regulation of the personal use of marijuana and the home cultivation of marijuana for personal adult use pursuant to the Marijuana Legalization Act, as approved by the voters at referendum in November 2016.

Public Law 2017, chapter 409 repeals the Act, as codified in the Maine Revised Statutes, Title 7, chapter 417, and recodifies it in a new Title 28-B, Adult Use Marijuana, while retaining the substance of the original Act with the following changes.

1. It uses the term "adult use marijuana" instead of the term "retail marijuana."

2. It clarifies the distinction between and provides definitions for the terms "marijuana plant," "mature marijuana plant," "immature marijuana plant" and "seedling."

3. It changes the definition of the term "plant canopy" to include in the calculation of plant canopy only those areas in which mature marijuana plants are to be cultivated.

4. It defines the term "resident" for the purposes of licensure as a natural person who is domiciled in Maine, maintains a permanent place of abode in Maine and spends in the aggregate more than 183 days of the taxable year

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in Maine and has filed a resident individual income tax return pursuant to Title 36, Part 8 in each of the four years prior to the year in which the person files an application for licensure under the Act. The provision of this definition requiring the filing of resident individual income tax returns for the four years prior to applying for a license is repealed June 1, 2021.

5. It clarifies that any conduct relating to the possession, cultivation, manufacture, testing, consumption, sale or offering for sale of marijuana or marijuana products that is not specifically authorized under the Act, pursuant to a license issued under the Act or pursuant to the Maine Medical Use of Marijuana Act is not authorized and that a person who engages in such unauthorized conduct is subject to penalties under the Act and any additional criminal or civil penalties that may be imposed under other applicable laws or rules.

6. It designates the department of Administrative and Financial Services as the sole regulatory agency in the implementation, administration and enforcement of the Act, but requires the department to consult with the Department of Agriculture, Conservation and Forestry prior to the adoption of rules relating to the regulation of the cultivation, manufacture, testing, labeling and packaging of adult use marijuana and adult use marijuana products. It further clarifies the role and authority of the department in the implementation, administration and enforcement of the Act.

7. It requires the department to implement and administer a tracking system for adult use marijuana from immature marijuana plant to the point of retail sale, disposal or destruction.

8. It requires the department to facilitate the collection and analysis of public health and safety data relating to the effects of the use of marijuana in the State.

9. It requires the department to facilitate the development and implementation of programs, initiatives and campaigns focused on increasing the awareness of and educating the public on health and safety matters relating to the use of marijuana and marijuana products. Such programs, initiatives and campaigns may be funded with a portion of the excise tax and sales tax revenues resulting from the sale of adult use marijuana and adult use marijuana products.

10. It requires the department to facilitate the development and implementation of programs or initiatives providing enhanced training for criminal justice agencies in the requirements and enforcement of the Act. Such programs and initiatives may be funded with a portion of the excise tax and sales tax revenues resulting from the sale of adult use marijuana and adult use marijuana products.

11. It requires the department to submit to the Legislature an annual report, beginning February 15, 2020, which must include specific information and data relating to the regulated market for adult use marijuana in the State.

12. It removes from the Act provisions regulating the licensure and operation of marijuana social clubs and the issuance of occupational licenses.

13. It clarifies general licensing criteria for applicants seeking to operate an adult use marijuana establishment and specific additional licensing requirements applicable to the licensing of adult use marijuana cultivation facilities. It removes from the former Act provisions relating to preference in licensure for medical marijuana caregivers and medical marijuana dispensaries. It removes from the former Act the caps on the number of each license type that may be issued, except that it:

A. Limits the number of marijuana store licenses in common ownership to four marijuana store licenses, but repeals that limitation January 1, 2022; and

B. Limits the number of cultivation facility licenses in common ownership to three cultivation facility licenses not exceeding a combined licensed plant canopy of 30,000 square feet.

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14. It separates within the Act the state-level and local-level licensing and approval processes for adult use marijuana establishments. An applicant for a license to operate an adult use marijuana establishment must submit an application along with the required application fee to the department, which, after review, may conditionally approve the license. The licensee may then seek local authorization from the locality in which the licensee proposes to operate the marijuana establishment. A municipality, which includes towns, cities and plantations not located within the unorganized and deorganized areas, by adopted ordinance may regulate marijuana establishments within the municipality, including, but not limited to, through the adoption of:

- A. Land use regulations applicable to marijuana establishments within the municipality;
- B. Municipal licensing requirements applicable to marijuana establishments within the municipality that may include the imposition of municipal approval or license fees; and
- C. Limitations on the number of any type of marijuana establishment that may be approved or licensed to operate within the municipality.

A municipality may not authorize the operation of a marijuana establishment within the municipality unless the legislative body of the municipality has voted to adopt a new ordinance, amend an existing ordinance or approve a warrant article allowing some or all types of marijuana establishments within the municipality, including that type of marijuana establishment. A person that has been issued a conditional license by the department may not request municipal authorization to operate a marijuana establishment within a municipality unless the legislative body of the municipality has voted to adopt a new ordinance, amend an existing ordinance or approve a warrant article allowing some or all types of marijuana establishments within the municipality, including that type of marijuana establishment. Public Law 2017, chapter 409 includes similar provisions regarding local authorization of marijuana establishments that are proposed to be located in towns, plantations or townships in the unorganized and deorganized areas of the State.

Once the department receives certification of local authorization and the applicant pays the applicable license fee and submits any additional required documentation, the department must issue an active license, good for a term of one year from the date of issuance. A licensee may not engage in the cultivation, manufacture, testing, sale or offering for sale of marijuana or marijuana products until the licensee has been issued an active license by the department.

15. It revises and clarifies the application process for issuance and renewal of a state license to operate an adult use marijuana establishment, including revision of the application and license fees to be imposed by the department under the Act.

16. It revises the manner in which cultivation facilities are to be licensed and regulated by removing the statewide limitation on the total amount of licensed plant canopy and by authorizing five tiers of cultivation facility license types, the smallest of which, a tier 1 license, provides for the cultivation of up to 30 mature marijuana plants or up to 500 square feet of plant canopy and the largest of which, a tier 4 license, provides for the cultivation of up to 20,000 square feet of plant canopy. It also creates a nursery cultivation facility license tier, which allows for the cultivation of immature plants, seedlings and seeds and the sale of those immature plants, seedlings and seeds to other licensees and to consumers. A licensee seeking renewal of a tier 4 license may seek approval from the department to expand the area of plant canopy authorized under the license by 7,000 square feet, so long as certain criteria are met.

17. It clarifies operational requirements for each type of adult use marijuana establishment, including:

- A. Providing for the payment of an excise tax by cultivation facilities on the adult use marijuana sold to other licensees;

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- B. Providing for the collection and remittance of a sales tax by marijuana stores on adult use marijuana and adult use marijuana products sold to consumers;
 - C. Specifying standards for the extraction of marijuana concentrate by products manufacturing facilities;
 - D. Specifying standards for the tracking of adult use marijuana and adult use marijuana products by each type of adult use marijuana establishment;
 - E. Specifying standards for the sharing of facilities for the cultivation of adult use marijuana and the manufacturing of adult use marijuana and adult use marijuana products and marijuana and marijuana products for medical use by a licensee that is also a registered primary caregiver or registered dispensary, but prohibiting a marijuana store licensee that is also a registered primary caregiver or registered dispensary from selling adult use marijuana and adult use marijuana products to consumers and marijuana and marijuana products for medical use to qualifying patients from the same facility or building;
 - F. Requiring compliance by licensees with applicable packaging, labeling and health and safety requirements;
 - G. Incorporating standards and requirements applicable to testing facilities as enacted in Public Law 2017, chapter 309;
 - H. Clarifying sales authorizations and prohibitions applicable to marijuana stores including prohibitions on drive-through sales, sales by use of a delivery service, sales by use of an automated vending machine and Internet sales;
 - I. Providing for a limited period in which a cultivation facility licensee that is also a registered primary caregiver or registered dispensary may purchase an unlimited number of marijuana plants and seeds from an entity that is also a registered primary caregiver or registered dispensary. Any such transactions are subject to the imposition of the excise tax imposed under the Act; and
 - J. Prohibiting the employment of any person under 21 years of age by any marijuana establishment and prohibiting the entry into any marijuana establishment by a person under 21 years of age.
18. It clarifies and expands upon the standards and requirements for the testing of adult use marijuana and adult use marijuana products; the packaging, labeling and health and safety of adult use marijuana and adult use marijuana products; and the use of signs, advertising and marketing relating to adult use marijuana and adult use marijuana products.
19. It requires the department, after consultation with the Department of Health and Human Services, Maine Center for Disease Control and Prevention, to develop rules on required health and safety warning labels. It authorizes the use of the terms "organic," "organically cultivated" or "organically grown" on the label or packaging of adult use marijuana and adult use marijuana products consistent with rules on the use of such terms to be adopted by the department.
20. It provides for the imposition by the department of monetary penalties on a licensee or suspensions or revocations of a licensee's license for a violation of the Act, in accordance with the Maine Administrative Procedure Act, and limits the amount of such monetary penalties imposed to not more than \$10,000 per minor license violation, not more than \$50,000 per major license violation and not more than \$100,000 per major license violation affecting public safety.
21. It establishes the Marijuana Advisory Commission for the purpose of conducting a continuing study of the laws relating to marijuana and reporting to the Legislature its findings and recommendations on an annual basis.

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22. It imposes an excise tax on adult use marijuana to be paid by cultivation facilities on adult use marijuana sold to other licensees. The excise tax is imposed in the following amounts:

- A. For marijuana flower or mature marijuana plants, \$335 per pound;
- B. For marijuana trim, \$94 per pound;
- C. For each immature marijuana plant or seedling, \$1.50; and
- D. For each marijuana seed, \$0.30.

23. It establishes the Adult Use Marijuana Public Health and Safety Fund, which is primarily funded through dedicated excise and sales tax revenue from the sale of adult use marijuana and adult use marijuana products, to be used by the department to facilitate public health and safety awareness and education programs, initiatives, campaigns and activities and enhanced law enforcement training programs for local, county and state law enforcement officers.

24. It eliminates the Retail Marijuana Regulatory Coordination Fund, which was created and funded through the enactment of Public Law 2017, chapter 278, and transfers its remaining balances to the new Adult Use Marijuana Regulatory Coordination Fund.

25. It affects the provisions of the former Act relating to the personal use of marijuana and marijuana products and the home cultivation of marijuana for personal adult use by:

- A. Retaining the provisions of the former Act authorizing a person 21 years of age or older to purchase from a marijuana store and possess for personal use up to 2 1/2 ounces of marijuana or 2 1/2 ounces of a combination of marijuana and marijuana concentrate that includes no more than five grams of marijuana concentrate;
- B. Clarifying language regarding the transfer or furnishing of marijuana or marijuana products, without remuneration, to another person to specify that remuneration includes a donation or any other monetary payment received directly or indirectly by a person in exchange for goods or services as part of a transaction in which marijuana or marijuana products are transferred or furnished by that person to another person;
- C. Authorizing a person 21 years of age or older to purchase up to 12 immature marijuana plants or seedlings from a marijuana store or a nursery cultivation facility;
- D. Clarifying the provisions relating to the home cultivation of marijuana for personal adult use by reducing the number of mature marijuana plants that may be possessed, cultivated or transported by a person 21 years of age or older from six plants to three plants. It authorizes a municipality to adopt an ordinance or other regulation limiting the total number of mature marijuana plants that may be cultivated on any one parcel or tract of land within the municipality, so long as that ordinance or regulation allows for the cultivation of three mature marijuana plants, 12 immature marijuana plants and an unlimited number of seedlings by each person 21 years of age or older who is domiciled on a parcel or tract of land. It also includes language providing that this reduction in the number of authorized mature marijuana plants from six plants to three plants does not take effect until six months after the effective date of the law.
- E. Retaining the provisions relating to the consumption of marijuana and marijuana products as enacted by Public Law 2017, chapter 1; and
- F. Prohibiting the home extraction of marijuana concentrate by use of inherently hazardous substances.

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Public Law 2017, chapter 409 also amends the Maine Criminal Code to include provisions that address a statutory conflict between Maine Criminal Code provisions prohibiting the possession and cultivation of marijuana and marijuana plants and provisions of the Act authorizing such possession and cultivation of marijuana and marijuana plants. These amendments to the Maine Criminal Code are consistent with current exemptions in the Maine Criminal Code relating to conduct authorized under the Maine Medical Use of Marijuana Act. It also provides an exemption from the laws concerning criminal asset forfeiture relating to conduct authorized under the Act and amends the law concerning the Department of Public Safety, Bureau of State Police, State Bureau of Identification as necessary for the State Police and the State Bureau of Identification to conduct criminal history record checks on applicants for a license to operate an adult use marijuana establishment and on other persons as required under the Act.

Public Law 2017, chapter 409 also amends the State's laws governing municipal powers and duties to provide that plantations have the same powers and duties as cities and towns under the Act.

Public Law 2017, chapter 409 also amends the tax laws as follows.

1. It provides for a 10% sales tax on adult use marijuana and adult use marijuana products to be imposed at the point of final sale to a consumer by a marijuana store.
2. It stipulates that all the revenue resulting from the imposition of the sales tax on adult use marijuana and adult use marijuana products must be deposited into the General Fund, except that 12% of the total monthly tax revenue must be transferred to the Adult Use Marijuana Public Health and Safety Fund.

Public Law 2017, chapter 409 also shifts the administration and enforcement of the Maine Medical Use of Marijuana Act and the medical marijuana program adopted thereunder from the Department of Health and Human Services to the department, including:

1. Restricting the department from assigning the administration and enforcement of the Maine Medical Use of Marijuana Act to any bureau or division within the department responsible for the administration and enforcement of the laws governing the manufacture, sale and distribution of liquor;
2. Requiring the department to consult with the Department of Health and Human Services prior to the adoption or amendment of rules under the Maine Medical Use of Marijuana Act;
3. Directing the transfer of the balance of the Medical Use of Marijuana Fund in the Department of Health and Human Services to the Medical Use of Marijuana Fund in the department;
4. Including a number of additional provisions to facilitate the transition of the administration and enforcement of the Maine Medical Use of Marijuana Act from the Department of Health and Human Services to the department. It requires the Commissioner of Administrative and Financial Services to submit a report on or before January 31, 2019 to the joint standing committee of the Legislature having jurisdiction over health and human services matters regarding the status of this transition and authorizes the joint standing committee to report out legislation relating to the report;
5. Amending the State Government Evaluation Act to provide that the review of the bureau or division within the department that administers and enforces the Maine Medical Use of Marijuana Act remain with the joint standing committee of the Legislature having jurisdiction over health and human services matters; and
6. Amending the Maine Medical Use of Marijuana Act to direct that the registry identification cards annual report specifically be submitted to the joint standing committee of the Legislature having jurisdiction over health and human services matters.

Public Law 2017, chapter 409 was enacted as an emergency measure effective May 2, 2018.