

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND NINETEEN

S.P. 577 - L.D. 1735

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

Whereas, Public Law 2017, chapter 452 became law on December 13, 2018 and repealed the requirement that registered medical marijuana dispensaries be nonprofit entities; and

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

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

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

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

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

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

13. Reorganization to for-profit status. Any of the 8 registered dispensaries that were issued registration certificates as of April 1, 2018 and that are operating as nonprofit entities may convert to a for-profit entity pursuant to this subsection. A registered

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

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

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

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

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

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

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

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

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

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

D. If a registered dispensary reorganizes as a for-profit entity pursuant to this section and subsequently sells or transfers its interest in the reorganized registered dispensary, the registered dispensary or the dispensary's successor in interest, shall

pay to the Medical Use of Marijuana Fund established under section 2430 a percentage of the value of the sale or transfer of interest, as determined by an independent appraisal at the time of the sale or transfer of interest, in accordance with this paragraph:

(1) If the sale or transfer of interest is completed in the first year after the reorganization, the amount paid to the Medical Use of Marijuana Fund must equal 10% of the value of the sale or transfer of interest;

(2) If the sale or transfer of interest is completed in the 2nd year after the reorganization, the amount paid to the Medical Use of Marijuana Fund must equal 7.5% of the value of the sale or transfer of interest;

(3) If the sale or transfer of interest is completed in the 3rd year after the reorganization, the amount paid to the Medical Use of Marijuana Fund must equal 5% of the value of the sale or transfer of interest; and

(4) If the sale or transfer of interest is completed in the 4th year after the reorganization, the amount paid to the Medical Use of Marijuana Fund must equal 2.5% of the value of the sale or transfer of interest.

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

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

(1) Are receiving hospice care;

(2) Are 65 years of age or older;

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

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

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

This paragraph is repealed July 1, 2023.

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

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

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

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

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

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

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

F. All money received as a result of a reorganization of a registered dispensary operating as a nonprofit entity to a for-profit entity pursuant to section 2428, subsection 13, paragraph D.

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

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