

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND SEVENTEEN

—
H.P. 176 - L.D. 243

An Act To Amend the Marijuana Legalization Act to Provide Licensing, Rulemaking and Regulatory and Enforcement Authority within the Department of Administrative and Financial Services; Assign Rulemaking, Regulatory and Enforcement Authority Related to Agricultural Purposes to the Department of Agriculture, Conservation and Forestry; and Allocate Funds for Implementation

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

Whereas, implementing a system for the regulation and administration of the cultivation, distribution and retail sale of recreational marijuana, a controlled substance, is a complex function with significant financial costs; and

Whereas, ensuring that possession and use of recreational marijuana is limited to persons who are 21 years of age and older is necessary to protect those who have not yet reached adulthood from the potential negative effects of irresponsible use of a controlled substance; 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. 7 MRSA §1-C is enacted to read:

§1-C. Rules and regulatory and enforcement authority regarding the Marijuana Legalization Act

1. Rules and regulatory and enforcement authority. The department shall adopt rules and exercise regulatory and enforcement authority regarding retail marijuana cultivation facilities, retail marijuana manufacturing facilities and retail marijuana testing

facilities licensed by the Department of Administrative and Financial Services pursuant to section 2444. This authority pertains to marijuana cultivation, including, but not limited to, all aspects of marijuana seeds, clones, seedlings and plants, use of pesticides, harvesting and storage, and the preparation, manufacturing, testing, packaging and labeling of retail marijuana under the Marijuana Legalization Act.

2. Effective administration and enforcement. For the purposes of the effective administration and enforcement of chapter 417, the department and the Department of Administrative and Financial Services shall work cooperatively to ensure that rules are adopted and the Marijuana Legalization Act is implemented and enforced in a manner that is consistent with the requirements of chapter 417.

Sec. 2. 7 MRSA §2442, sub-§7, as enacted by IB 2015, c. 5, §1, is amended to read:

7. Commissioner. "Commissioner" means the Commissioner of ~~Agriculture, Conservation and Forestry~~ Administrative and Financial Services.

Sec. 3. 7 MRSA §2442, sub-§9, as enacted by IB 2015, c. 5, §1, is amended to read:

9. Department. "Department" means the Department of ~~Agriculture, Conservation and Forestry~~ Administrative and Financial Services.

Sec. 4. 7 MRSA §2444, as amended by PL 2017, c. 1, §6, is further amended to read:

§2444. State licensing authority

For the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, testing, tracking from seed or clone to sale and sale of retail marijuana and retail marijuana products and the licensing of retail marijuana social clubs in this State, the state licensing authority is the ~~Department of Agriculture, Conservation and Forestry~~ department.

1. Commissioner is chief administrative officer. The ~~Commissioner of Agriculture, Conservation and Forestry~~ commissioner is the chief administrative officer of the state licensing authority and may employ such officers and employees as may be determined to be necessary. The state licensing authority has the authority to:

- A. Grant or refuse licenses for the cultivation, manufacture, distribution, sale and testing of retail marijuana and retail marijuana products and licenses for the operation of retail marijuana social clubs as provided by this chapter;
- B. Suspend, fine, restrict or revoke licenses under paragraph A upon a violation of this chapter or any rule adopted pursuant to this chapter; and
- C. Impose any penalty authorized by this chapter or any rule adopted pursuant to this chapter.

2. Adoption of rules by commissioner. The state licensing authority shall adopt rules for the proper regulation and control of the ~~cultivation, manufacture,~~ distribution, ~~tracking and sale and testing by retail marijuana stores~~ of retail marijuana and retail marijuana products; ~~for the licensing and operation of retail marijuana social clubs;~~ and for the enforcement of this chapter, ~~not later than 9 months after the effective date of this Act,~~ and shall ~~adopt amended~~ amend rules and ~~such special rules and make findings~~ as necessary. For the purpose of adopting and amending rules pursuant to this subsection, the commissioner may delegate rule-making authority granted under this section to the Commissioner of ~~Administrative and Financial Services~~ Agriculture, Conservation and Forestry, the Commissioner of Labor or the Commissioner of Public Safety, ~~or both,~~ if the commissioner determines that the expertise and resources of those other departments would be beneficial in the development of the rules and the enforcement of those rules. These rules are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A. Rules must address but are not limited to the following issues:

- A. ~~The hearing of contested state license denials~~ appeal of the denial of a license issued pursuant to this chapter at a public hearing, employing full due process, including the subpoena power, the taking of oaths, the calling of witnesses and the maintaining of the confidentiality of customer records. Provision must be made for the conduct of appeal hearings following license actions, including, but not limited to, the denial of a license renewal or of an initial license and license revocation and suspension, and hearings contesting the imposition of a fine;
- B. The development of such forms, licenses, identification cards and applications as necessary for the administration of this chapter or of any of the rules adopted under this chapter;
- C. The preparation and transmission annually, in the form and manner prescribed by this chapter, of a report to the Legislature accounting for the efficient discharge of all responsibilities assigned by law or rules to the state licensing authority;
- D. Procedures consistent with this chapter for the issuance, renewal, suspension and revocation of licenses to operate retail marijuana establishments and retail marijuana social clubs;
- E. ~~Limits on the concentration of THC and other cannabinoids per serving in any retail marijuana product;~~
- F. Qualifications for licensure including, but not limited to, the requirement for a fingerprint-based criminal history record check for all owners, officers, managers, employees and other support staff of entities licensed pursuant to this chapter; and
- G. Security requirements for any ~~licensed~~ licensed premises licensed as retail marijuana stores, retail marijuana testing facilities and retail marijuana social clubs under this chapter including, at a minimum, lighting, physical security, alarm requirements and other minimum procedures for internal control as determined necessary by the state licensing authority to properly administer and enforce the provisions of this chapter, including reporting requirements for changes, alterations or modifications to the licensed premises. Security requirements may not be unreasonably impracticable; and

~~H. Securing and recording permission for a local fire department or the State Fire Marshal to conduct an annual fire inspection of a retail marijuana cultivation facility.~~

3. Adoption of rules by Commissioner of Agriculture, Conservation and Forestry. The Commissioner of Agriculture, Conservation and Forestry shall adopt rules for the proper regulation and control of the cultivation, manufacture and testing of retail marijuana and retail marijuana products and shall amend rules as necessary. For the purpose of adopting and amending rules pursuant to this subsection, the Commissioner of Agriculture, Conservation and Forestry may delegate rule-making authority granted under this section to the Commissioner of Administrative and Financial Services, the Commissioner of Labor or the Commissioner of Public Safety if the Commissioner of Agriculture, Conservation and Forestry determines that the expertise and resources of those other departments would be beneficial in the development of the rules and the enforcement of those rules. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. Rules must address but are not limited to the following issues:

A. The appeal of the denial of a license issued pursuant to this chapter at a public hearing, employing full due process, including the subpoena power, the taking of oaths, the calling of witnesses and the maintaining of the confidentiality of customer records. Provision must be made for the conduct of appeal hearings following license actions, including, but not limited to, the denial of a license renewal or of an initial license and license revocation and suspension, and hearings contesting the imposition of a fine;

B. The development of any forms, licenses, identification cards and applications that are necessary for the administration of this chapter or of any of the rules adopted under this chapter;

C. The preparation and transmission annually, in the form and manner prescribed by this chapter, of a report to the Legislature accounting for the efficient discharge of all responsibilities assigned by law or rules to the Department of Agriculture, Conservation and Forestry;

D. Procedures consistent with this chapter for the issuance, renewal, suspension and revocation of licenses to operate retail marijuana cultivation facilities, retail marijuana production facilities and retail marijuana testing facilities;

E. Limits on the concentration of THC and other cannabinoids per serving in any retail marijuana product;

F. Security requirements for any premises licensed as a retail marijuana cultivation facility, retail marijuana products manufacturing facility or retail marijuana testing facility under this chapter including, at a minimum, lighting, physical security, alarm requirements and other minimum procedures for internal control as determined necessary by the state licensing authority to properly administer and enforce the provisions of this chapter, including reporting requirements for changes, alterations or modifications to the licensed premises. Security requirements may not be unreasonably impracticable; and

G. Securing and recording permission for a local fire department or the State Fire Marshal to conduct an annual fire inspection of a retail marijuana cultivation facility.

Sec. 5. 7 MRSA §2445, first ¶, as amended by PL 2017, c. 1, §7, is further amended to read:

Beginning February 1, 2018, the state licensing authority shall establish, within a specific time frame, a retail marijuana and retail marijuana products independent testing and certification program. This program must require licensees to test retail marijuana and retail marijuana products to ensure at a minimum that products sold for human consumption do not contain contaminants that are injurious to health and to ensure correct labeling. The Commissioner of Agriculture, Conservation and Forestry shall adopt rules regarding retail marijuana testing facilities as authorized by sections 1-C and 2444, subsection 2. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 6. 7 MRSA §2446, sub-§2, as enacted by IB 2015, c. 5, §1, is amended to read:

2. Health and safety rules. The state licensing authority and the Department of Agriculture, Conservation and Forestry, as provided in section 2444, subsections 2 and 3, shall adopt health and safety rules, which are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A, and standards for the manufacture of retail marijuana products, the sale of retail marijuana by a retail marijuana store and the cultivation of retail marijuana, which must include:

- A. Limitations on the display of retail marijuana and retail marijuana products;
- B. Regulation of the storage of, warehouses for and transportation of retail marijuana and retail marijuana products; and
- C. Sanitary requirements for retail marijuana establishments, including but not limited to sanitary requirements for the preparation of retail marijuana products.

Sec. 7. 7 MRSA §2448, sub-§4, as enacted by IB 2015, c. 5, §1, is amended to read:

4. Retail marijuana cultivation facility license. The state licensing authority shall create a statewide licensure class system for retail marijuana cultivation facilities. The Commissioner of Agriculture, Conservation and Forestry shall adopt rules to implement the statewide licensure class system. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

- A. The following provisions govern retail marijuana cultivation facilities.
 - (1) A retail marijuana cultivation facility licensee is permitted to cultivate retail marijuana for sale and distribution only to licensed retail marijuana stores, retail marijuana products manufacturing facilities, other retail marijuana cultivation facilities or retail marijuana social clubs.
 - (2) A retail marijuana cultivation facility may have a retail marijuana store if it is located on the same licensed premises as the retail marijuana cultivation facility.

If the retail marijuana cultivation facility chooses the option to have a retail marijuana store, it must meet all requirements set by the state licensing authority, the Department of Agriculture, Conservation and Forestry and the municipality in which it is located. A retail marijuana store located on the licensed premises of a retail marijuana cultivation facility does not count against any municipal limits on the number of retail marijuana stores.

(3) A retail marijuana cultivation facility shall track the marijuana it cultivates from seed, clone or immature plant to wholesale purchase. ~~The state licensing authority~~ Commissioner of Agriculture, Conservation and Forestry may not make rules that are unreasonably impracticable concerning the tracking of marijuana from seed, clone or immature plant to wholesale purchase.

(4) A retail marijuana cultivation facility may provide, except as required by subsection 6, a sample of its products to a retail marijuana testing facility for testing and research purposes. A retail marijuana cultivation facility shall maintain a record of what was provided to the retail marijuana testing facility, the identity of the retail marijuana testing facility and the testing results.

B. Retail marijuana may be transported between a licensed retail marijuana cultivation facility and retail marijuana stores, other retail marijuana cultivation facilities, retail marijuana products manufacturing facilities, retail marijuana social clubs and retail marijuana testing facilities.

Sec. 8. 7 MRSA §2448, sub-§6, as enacted by IB 2015, c. 5, §1, is amended to read:

6. Retail marijuana testing facility license. A retail marijuana testing facility license may be issued to a person who performs testing and research on retail marijuana. The facility may develop and test retail marijuana products.

~~The state licensing authority~~ Department of Agriculture, Conservation and Forestry shall adopt rules pursuant to its authority in section 2445 related to acceptable testing and research practices, including but not limited to testing, standards, quality control analysis, equipment certification and calibration, chemical identification and other practices used in bona fide research methods. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

A. A person that has an interest in a retail marijuana testing facility license from the state licensing authority for testing purposes may not have any interest in a registered dispensary, a registered caregiver, a licensed retail marijuana store, a licensed retail marijuana social club, a licensed retail marijuana cultivation facility or a licensed retail marijuana products manufacturing facility. A person that has an interest in a registered dispensary, a registered caregiver, a licensed retail marijuana store, a licensed retail marijuana social club, a licensed retail marijuana cultivation facility or a licensed retail marijuana products manufacturing facility may not have an interest in a facility that has a retail marijuana testing facility license. For purposes of this paragraph, "interest" includes an ownership interest or partial ownership interest or any other type of financial interest, such as being an investor or serving in a management position.

B. Retail marijuana and retail marijuana products may be transported between the licensed retail marijuana testing facility and retail marijuana cultivation facilities, retail marijuana products manufacturing facilities, retail marijuana stores and retail marijuana social clubs.

Sec. 9. 7 MRSA §2448, sub-§8, as enacted by IB 2015, c. 5, §1, is amended to read:

8. Inspection of books and records. Each licensee shall keep a complete set of all records necessary to show fully the business transactions of the licensee, all of which must be open at all times during business hours for the inspection and examination by the state licensing authority or its duly authorized representatives and the Department of Agriculture, Conservation and Forestry and its duly authorized representatives. The state licensing authority and the Department of Agriculture, Conservation and Forestry may require any licensee to furnish such information as ~~the department~~ considers necessary for the proper administration of this chapter and may require an audit to be made of the books of account and records on such occasions as ~~the department~~ may consider necessary by an auditor to be selected by the state licensing authority. The auditor must have access to all books and records of the licensee, and the cost of the audit must be paid by the licensee.

The licensed premises, including any places of storage, where retail marijuana or retail marijuana products are stored, cultivated, sold, dispensed or tested are subject to inspection by the State or the municipality in which the licensed premises are located and by the investigators of the State or municipality during all business hours and other times of apparent activity for the purpose of inspection or investigation. Access must be granted during business hours for examination of any inventory or books and records required to be kept by a licensee. When any part of the licensed premises consists of a locked area, upon demand to the licensee this area must be made available for inspection, and, upon request by authorized representatives of the State or municipality, the licensee shall open the area for inspection.

Each licensee shall retain all books and records necessary to show fully the business transactions of the licensee for a period comprising the current tax year and the 2 immediately preceding tax years.

Sec. 10. 7 MRSA §2455 is enacted to read:

§2455. Retail Marijuana Regulatory Coordination Fund

The Retail Marijuana Regulatory Coordination Fund, referred to in this section as "the fund," is established as a dedicated, nonlapsing Other Special Revenue Funds account in the department. The fund is administered and used by the commissioner for the purposes of adopting rules as required by this chapter by the department and by any other department of State Government that is authorized to adopt rules under this chapter. The commissioner may expend funds to enter into contracts with consultants and employ staff, as determined necessary by the commissioner, conduct meetings with stakeholders and conduct other activities related to the operation of this chapter.

Sec. 11. Transfer from General Fund unappropriated surplus; Retail Marijuana Regulatory Coordination Fund, Other Special Revenue Funds account; fiscal year 2016-17. Notwithstanding any other provision of law to the contrary, the State Controller shall transfer \$1,400,000 from the General Fund unappropriated surplus to the Retail Marijuana Regulatory Coordination Fund program, Other Special Revenue Funds account within the Department of Administrative and Financial Services no later than 10 days after the effective date of this Act.

Sec. 12. Progress reports. The Department of Administrative and Financial Services shall report to the Joint Select Committee on Marijuana Legalization Implementation 60 days after the effective date of this Act and every 60 days thereafter until final adjournment of the Second Regular Session of the 128th Legislature. The report must provide information on the progress of the Department of Administrative and Financial Services, the Department of Agriculture, Conservation and Forestry and all other state departments involved with implementing the Marijuana Legalization Act.

Sec. 13. Appropriations and allocations. The following appropriations and allocations are made.

ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF

Retail Marijuana Regulatory Coordination Fund N233

Initiative: Allocates funds to establish the Retail Marijuana Regulatory Coordination Fund.

OTHER SPECIAL REVENUE FUNDS	2016-17	2017-18	2018-19
All Other	\$500	\$1,400,000	\$0
OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$500</u>	<u>\$1,400,000</u>	<u>\$0</u>

ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF DEPARTMENT TOTALS

	2016-17	2017-18	2018-19
OTHER SPECIAL REVENUE FUNDS	\$500	\$1,400,000	\$0
DEPARTMENT TOTAL - ALL FUNDS	<u>\$500</u>	<u>\$1,400,000</u>	<u>\$0</u>

LEGISLATURE

Legislature 0081

Initiative: Appropriates funds on a one-time basis to the Legislature to provide resources for the Joint Select Committee on Marijuana Legalization Implementation for the purposes of covering the costs of consultant services and necessary travel and expenses and any other purposes determined to be appropriate by the Joint Select Committee on Marijuana Legalization Implementation to assist the committee in the performance of its duties.

GENERAL FUND	2016-17	2017-18	2018-19
All Other	\$0	\$200,000	\$0
GENERAL FUND TOTAL	<u>\$0</u>	<u>\$200,000</u>	<u>\$0</u>

LEGISLATURE	2016-17	2017-18	2018-19
DEPARTMENT TOTALS			
GENERAL FUND	\$0	\$200,000	\$0
DEPARTMENT TOTAL - ALL FUNDS	<u>\$0</u>	<u>\$200,000</u>	<u>\$0</u>

SECTION TOTALS	2016-17	2017-18	2018-19
GENERAL FUND	\$0	\$200,000	\$0
OTHER SPECIAL REVENUE FUNDS	\$500	\$1,400,000	\$0
SECTION TOTAL - ALL FUNDS	<u>\$500</u>	<u>\$1,600,000</u>	<u>\$0</u>

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