City Council Workshop

Agenda Item #4

November 14, 2016

Moratorium on Retail Marijuana Establishments and Social Clubs

On Monday, the City Council will discuss a proposed amendment to Chapter 27, “Zoning,” regarding a moratorium on the licensing of retail marijuana establishments and social clubs. This item has been added to the workshop agenda in response to the likely passage of Citizen’s Initiative Question #1, which would legalize the possession and use of marijuana, as well as its cultivation, manufacture, distribution, testing, and sale of marijuana and marijuana products subject to state regulation, taxation and local ordinance.

If Question #1 is declared to have passed, the State of Maine Department of Agriculture, Conservation, and Forestry will have up to nine months to promulgate rules regarding the licensure of various retail marijuana establishments, including retail marijuana cultivation facilities, retail marijuana products manufacturing facilities, retail marijuana stores, and retail marijuana testing facilities, in addition to retail marijuana social clubs. All of these business types are further defined in the proposed statute, which is included in your meeting packet. However, none of these business types are currently defined in local ordinance and the extent of current land use regulation is limited to medical marijuana dispensaries.

As it relates to licensing retail marijuana establishments and social clubs, the proposed statute empowers municipalities to decide, at the local level, whether to allow these types of businesses in the community or prohibit them altogether. Should a municipality choose to allow such businesses, it has the authority to regulate those businesses through local zoning, business licensing, etc. Therefore, there are several issues to consider. First, should the City of South Portland allow retail marijuana businesses? If yes, how soon should the City allow these types of businesses (i.e. as soon as practical, or prohibit until a future date certain)? Should the City adopt local polices to license and regulate these types of businesses or should those businesses be categorized like any other retail or wholesale/distribution establishment? Due to the various questions that will need to be answered, at this time staff is recommending the City Council adopt a moratorium on retail marijuana establishments and social clubs, which will provide up to 180 days for the City to consider these issues.

Donald H. Gerrish

Interim City Manager

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

Sec. 1. 7 MRSA c. 417 is enacted to read:

CHAPTER 417

MARIJUANA LEGALIZATION ACT

§2441. Short title

This chapter may be known and cited as "the Marijuana Legalization Act."

§2442. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Advertising. "Advertising" means the act of providing consideration for the publication, dissemination, solicitation or circulation, visual, oral or written, to induce directly or indirectly any person to patronize a particular retail marijuana establishment or retail marijuana social club or to purchase particular retail marijuana or a retail marijuana product. "Advertising" includes marketing, but does not include packaging and labeling. "Advertising" proposes a commercial transaction or otherwise constitutes commercial speech.

2. Applicant. "Applicant" means a person that has submitted an application for licensure as a retail marijuana establishment or retail marijuana social club pursuant to this chapter that was accepted by the state licensing authority for review but has not been approved or denied by the state licensing authority.

3. Batch. "Batch" means a specific quantity of cannabis harvested during a specified time period from a specified cultivation area.

4. Batch number. "Batch number" means any distinct group of numbers, letters or symbols, or any combination thereof, assigned by a retail marijuana cultivation facility or retail marijuana products manufacturing facility to a specific harvest batch or production batch of retail marijuana.

5. Cannabis. "Cannabis" means all parts of the plant of the genus Cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin including cannabis concentrate. "Cannabis" does not include industrial hemp, fiber produced from the stalks, oil, cake made from the seeds of the plant, sterilized seed of the plant that is incapable of germination or any ingredient combined with cannabis to prepare topical or oral administrations, food, drink or any other product. "Cannabis" also means marijuana.

6. Child-resistant. "Child-resistant" means special packaging that is:

A. Designed or constructed to be significantly difficult for children under 5 years of age to open and not difficult for normal adults to use properly;

B. Opaque so that the product cannot be seen from outside the packaging; and

C. Closable, for any product intended for more than a single use or containing multiple servings.

7. Commissioner. "Commissioner" means the Commissioner of Agriculture, Conservation and Forestry.

8. Container. "Container" means the sealed package in which retail marijuana or a retail marijuana product is placed for sale to a consumer and that has been labeled according to the requirements set forth in section 2446, subsection 1.

9. Department. "Department" means the Department of Agriculture, Conservation and Forestry.

10. Edible retail marijuana product. "Edible retail marijuana product" means any retail marijuana product that is intended to be consumed orally, including, but not limited to, any type of food, drink or pill.

11. Final agency order. "Final agency order" means an order of the state licensing authority issued in accordance with this chapter and the Maine Administrative Procedure Act following review of the initial decision and any exceptions filed thereto or at the conclusion of the declaratory order process.

12. Flowering marijuana plant. "Flowering marijuana plant" means the gametophytic or reproductive state of cannabis in which the plant is in a light cycle intended to produce flowers, trichomes and cannabinoids characteristic of marijuana.

13. Good cause. "Good cause," for purposes of denial of an initial license application or denial of a renewal or reinstatement of a license application, means:

A. The licensee or applicant has violated, does not meet or has failed to comply with any of the terms, conditions or provisions of this chapter, any rules adopted pursuant to it or any supplemental relevant state or local law, rule or regulation; or

B. The licensee or applicant has failed to comply with any special terms, consent decree or conditions that were placed upon the license pursuant to an order of the state licensing authority or the relevant municipality.

14. Harvest batch. "Harvest batch" means a batch of processed retail marijuana that is uniform in strain, cultivated using the same herbicides, pesticides and fungicides and harvested at the same time.

15. Identity statement. "Identity statement" means the name of the business as it is commonly known and used in any advertising.

16. Immature plant. "Immature plant" means a nonflowering retail marijuana plant that is taller than 24 inches and is wider than 18 inches.

17. Initial decision. "Initial decision" means a decision of a hearing officer in the department following a licensing, disciplinary or other administrative hearing.

18. Law enforcement agency. "Law enforcement agency" means any federal, state or municipal agency or any governmental agency or subunit of such agency or any state or federal court that administers criminal justice pursuant to a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice.

19. Licensed premises. "Licensed premises" means the premises specified in an application for a license pursuant to this chapter that are owned or in possession of the licensee and within which the licensee is authorized to cultivate, manufacture, distribute, sell, consume or test retail marijuana in accordance with the provisions of this chapter and rules adopted pursuant to this chapter.

20. Licensee. "Licensee" means a person licensed pursuant to this chapter or, in the case of a holder of an occupational license, a natural person licensed pursuant to this chapter.

21. Limited access area. "Limited access area" means a building, room or other contiguous area upon the licensed premises where retail marijuana is grown, cultivated, stored, weighed, packaged, sold or processed for sale under control of the licensee.

22. Marijuana. "Marijuana" means cannabis.

23. Marijuana extraction. "Marijuana extraction" means the process of extracting marijuana with solvents or gases.

24. Mother plant. "Mother plant" means a plant that is used solely by a cultivator for the taking of seedling cuttings.

25. Natural person. "Natural person" means a citizen of this State who has a verifiable social security number.

26. Occupational license. "Occupational license" means a license granted to a natural person by the state licensing authority.

27. Owner. "Owner" means a person whose beneficial interest in a retail marijuana establishment or retail marijuana social club is such that the person bears risk of loss other than as an insurer, has an opportunity to gain profit from the operation or sale of a retail marijuana establishment or retail marijuana social club and has a controlling interest in a retail marijuana establishment or retail marijuana social club.

28. Person. "Person" means a natural person, partnership, association, company, corporation, limited liability company or organization or a manager, agent, owner, director, servant, officer or employee thereof. "Person" does not include any governmental organization.

29. Plant canopy. "Plant canopy" means the area upon the licensed premises dedicated to live plant cultivation, such as maintaining mother plants, propagating plants

from seed to plant tissue, cloning and a maintaining a vegetative or flowering area. "Plant canopy" does not include areas such as space for storage of fertilizers, pesticides or other products, quarantine areas, office space, walkways, work areas and other similar areas.

30. Production batch. "Production batch" means a group of retail marijuana products created from a production run of retail marijuana products.

31. Propagation. "Propagation" means the reproduction of retail marijuana plants by seeds, cuttings or grafting.

32. Registered dispensary. "Registered dispensary" means a dispensary that is a nonprofit corporation organized under Title 13-B and registered with the Department of Health and Human Services pursuant to the Maine Medical Use of Marijuana Act and holds one or more dispensary registrations.

33. Restricted access area. "Restricted access area" means a designated and secure area within the licensed premises in a retail marijuana store or retail marijuana social club where retail marijuana and retail marijuana products are sold, possessed for sale and displayed for sale and where no one under 21 years of age is permitted.

34. Retail marijuana. "Retail marijuana" means cannabis that is cultivated, manufactured, distributed or sold by a licensed retail marijuana establishment or retail marijuana social club.

35. Retail marijuana cultivation facility. "Retail marijuana cultivation facility" means an entity licensed to cultivate, prepare and package retail marijuana and sell retail marijuana to retail marijuana establishments and retail marijuana social clubs.

36. Retail marijuana establishment. "Retail marijuana establishment" means a retail marijuana store, a retail marijuana cultivation facility, a retail marijuana products manufacturing facility or a retail marijuana testing facility.

37. Retail marijuana product. "Retail marijuana product" means concentrated retail marijuana and retail marijuana products that are composed of retail marijuana and other ingredients and are intended for use or consumption, including, but not limited to, edible products, ointments and tinctures.

38. Retail marijuana products manufacturing facility. "Retail marijuana products manufacturing facility" means an entity licensed to purchase retail marijuana; manufacture, prepare and package retail marijuana products; and sell retail marijuana and retail marijuana products only to other retail marijuana products manufacturing facilities, retail marijuana stores and retail marijuana social clubs.

39. Retail marijuana social club. "Retail marijuana social club" means an entity licensed to sell retail marijuana and retail marijuana products to consumers for consumption on the licensed premises.

40. Retail marijuana store. "Retail marijuana store" means an entity licensed to purchase retail marijuana from a retail marijuana cultivation facility and to purchase retail

marijuana products from a retail marijuana products manufacturing facility and to sell retail marijuana and retail marijuana products to consumers.

41. Retail marijuana testing facility. "Retail marijuana testing facility" means an entity licensed and certified to analyze and certify the safety and potency of retail marijuana and retail marijuana products.

42. Sample. "Sample" means any retail marijuana or retail marijuana product provided for testing or research purposes to a retail marijuana testing facility by a retail marijuana establishment or retail marijuana social club.

43. Seedling. "Seedling" means a nonflowering retail marijuana plant that is no taller than 24 inches and no wider than 18 inches.

44. State licensing authority. "State licensing authority" means the authority created for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, testing and sale of retail marijuana and retail marijuana products in this State pursuant to this chapter.

45. THC. "THC" means tetrahydrocannabinol.

46. Universal symbol. "Universal symbol" means the image established by the state licensing authority and made available to licensees through the state licensing authority's website for indicating that retail marijuana or a retail marijuana product is within a container.

47. Unreasonably impracticable. "Unreasonably impracticable" means that the measures necessary to comply with the rules require such a high investment of risk, money, time or any other resource or asset that the operation of a retail marijuana establishment or retail marijuana social club is not worth being carried out in practice by a reasonably prudent business person.

§2443. Exemption from criminal and civil penalties, seizure and forfeiture

Notwithstanding Title 17-A, chapter 45 or any other provision of law to the contrary and except as provided in this chapter, the actions specified in this chapter are legal under the laws of this State and do not constitute a civil or criminal offense under the laws of this State or the law of any political subdivision within this State or serve as a basis for seizure or forfeiture of assets under state law. This chapter may not be construed to shield any individual, partnership, corporation, firm, association or other legal entity from federal prosecution.

§2444. State licensing authority

For the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, testing and sale of retail marijuana and retail marijuana products in this State, the state licensing authority is the Department of Agriculture, Conservation and Forestry.

1. Commissioner is chief administrative officer. The Commissioner of Agriculture, Conservation and Forestry 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 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. The state licensing authority shall adopt rules for the proper regulation and control of the cultivation, manufacture, distribution, sale and testing of retail marijuana and retail marijuana products and for the enforcement of this chapter, not later than 9 months after the effective date of this Act, and shall adopt amended rules and such special rules and make findings as necessary. 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 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;

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;

G. Security requirements for any licensed premises 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.

§2445. Independent testing and certification program

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.

1. Content of testing. Testing must include, but is not limited to, analysis for residual solvents, poisons and toxins; harmful chemicals; dangerous molds and mildew; harmful microbes, such as Escherichia coli and salmonella; and pesticides.

2. Presence of injurious substance. In the event that test results indicate the presence of quantities of any substance determined to be injurious to health in any product, these products must be immediately quarantined and immediate notification to the persons responsible for enforcing the marijuana laws must be made. These products must be documented and properly destroyed.

3. THC potency. Testing must verify THC potency representations for correct labeling.

The establishment of an independent testing and certification program does not affect the adoption of rules in section 2444 or affect the implementation of cultivation, production and sale of retail marijuana and retail marijuana products.

§2446. Labeling; health and safety requirements; training; identification cards

1. Labeling requirements for sales of retail marijuana and retail marijuana products. Labeling requirements for sales of retail marijuana and retail marijuana products include when applicable:

A. The license number of the retail marijuana cultivation facility license;

B. The license number of the retail marijuana store license;

C. An identity statement and a universal symbol;

D. The batch number;

E. A net weight statement;

F. THC potency and the potency of such other cannabinoids or other chemicals, including, but not limited to, cannabidiol, as determined relevant by the state licensing authority;

G. Warning labels;

H. Solvents used in marijuana extraction;

I. Amount of THC per serving and the number of servings per package for retail marijuana products;

J. A list of ingredients and possible allergens for retail marijuana products;

K. A recommended use date or expiration date for retail marijuana products; and

L. A nutritional fact panel for edible retail marijuana products.

2. Health and safety rules. The state licensing authority 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 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.

3. Training for local jurisdictions and law enforcement officers. The state licensing authority shall adopt rules, which are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A, and processes for training local jurisdictions and law enforcement officers in the law, including the requirements for inspections, investigations, searches, seizures, forfeitures and such additional activities as may become necessary from time to time.

4. Identification cards. The following provisions govern identification cards.

A. The state licensing authority shall adopt rules detailing the format of, and inclusion of information on, individual identification cards for owners, officers, managers, contractors, employees and other support staff of entities licensed pursuant to this chapter, including a fingerprint-based criminal history record check as may be required by the state licensing authority prior to issuing an identification card.

B. The state licensing authority shall specify those forms of photo identification that a retail marijuana store may accept when verifying a sale, including but not limited to government-issued identification cards.

C. The state licensing authority shall develop procedures for license renewals, reinstatements, initial licenses and the payment of licensing fees, as well as other matters that are necessary for the fair, impartial and comprehensive administration of this chapter.

D. Rules adopted pursuant to this subsection are routine technical rules, pursuant to Title 5, chapter 375, subchapter 2-A.

§2447. License application and issuance

An application for a license under the provisions of this chapter must be made to the state licensing authority on forms prepared and furnished by the state licensing authority and must set forth such information as the state licensing authority may require to enable the state licensing authority to determine whether a license should be granted. The information must include the name and address of the applicant and the names and addresses of the applicant's officers, directors or managers. Each application must be

verified by the oath or affirmation of such person or persons as the state licensing authority may prescribe. The state licensing authority may issue a license to an applicant pursuant to this section upon completion of the applicable criminal history record check associated with the application. The license is conditioned upon municipal approval. An applicant is prohibited from operating a retail marijuana establishment or retail marijuana social club without state licensing authority and municipal approval. If the applicant does not receive municipal approval within one year from the date of state licensing authority approval, the license expires and may not be renewed. If an application is not approved by the municipality, the state licensing authority shall revoke the license.

1. Qualifications. The following provisions govern the qualifications for licensure as a retail marijuana establishment or retail marijuana social club. A person is not qualified to conduct licensed activities until the required annual fee has been paid.

A. An applicant who is a natural person must be at least 21 years of age. If an applicant is a corporation, all members of the board must comply with this paragraph.

B. A person who has been convicted of a disqualifying drug offense may not be a licensee. For purposes of this paragraph, "disqualifying drug offense" means a conviction for a violation of a state or federal controlled substance law that is a crime punishable by imprisonment for 5 years or more. "Disqualifying drug offense" does not include an offense for which the sentence, including any term of probation, incarceration or supervised release, was completed 10 or more years prior to application for licensure or an offense that consisted of conduct that is permitted under this chapter.

C. A person who has had a license for a retail marijuana establishment or retail marijuana social club revoked may not be a licensee.

D. A sheriff, deputy sheriff, police officer, prosecuting officer or an officer or employee of the state licensing authority or a municipality is ineligible to become a licensee.

E. The state licensing authority shall investigate all applicants for compliance with this chapter prior to issuing a license.

F. First priority for licensure must be given to registered caregivers who have been continuously registered with the Department of Health and Human Services pursuant to the Maine Medical Use of Marijuana Act or who have experience serving as a principal officer or board member of a nonprofit medical dispensary registered with the Department of Health and Human Services pursuant to the Maine Medical Use of Marijuana Act. If an applicant, either a business entity or an individual, owns, has a financial interest in or controls the management of more than one dispensary in this State, that applicant may receive preference for only one license in each license class. As long as there are other preferred applicants for any or all license classes an applicant who owns, has a financial interest in or controls the management of more than one dispensary in this State is not eligible for multiple licenses in any class. Preference must be given to an applicant who has at least 3 medical marijuana caregiver registrations when determining which applicants receive licenses.

G. The state licensing authority shall accept applications from registered caregivers and principal officers or board members of registered dispensaries who have continuously registered with the Department of Health and Human Services pursuant to the Maine Medical Use of Marijuana Act.

H. The state licensing authority shall adopt rules, which are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A, for a streamlined application process for registered caregivers and principal officers or board members of dispensaries registered with the Department of Health and Human Services pursuant to the Maine Medical Use of Marijuana Act, which must include an initial site inspection confirming compliance with this chapter.

2. Investigation of qualifications. In investigating the qualifications of an applicant or a licensee, the state licensing authority and municipality may have access to criminal history record information furnished by a law enforcement agency subject to any restrictions imposed by that agency. In the event the state licensing authority or municipality considers the applicant's criminal history record, the state licensing authority or municipality shall also consider any information provided by the applicant regarding such criminal history record, including, but not limited to, evidence of rehabilitation, character references and educational achievements, especially those items pertaining to the time between the applicant's last criminal conviction and the consideration of the application for a license.

At the time of filing an application for issuance of a retail marijuana establishment or retail marijuana social club license, an applicant shall submit a set of the applicant's fingerprints and personal history information concerning the applicant's qualifications for a license on forms prepared by the state licensing authority. The state licensing authority shall submit the fingerprints and the municipality may forward fingerprints to the State Bureau of Investigation for criminal history background information. The state licensing authority shall also forward the fingerprints to the Federal Bureau of Investigation for the purpose of conducting a federal fingerprint-based criminal history record check. The state licensing authority may acquire a name-based criminal history record check for an applicant or a licensee who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable. An applicant who has previously submitted fingerprints for state licensing purposes may request that the fingerprints on file be used. The state licensing authority shall use the information resulting from the fingerprint-based criminal history record check to investigate and determine whether an applicant is qualified to hold a license pursuant to this chapter. The state licensing authority or municipality may verify any of the information an applicant is required to submit.

3. Applications; issuance. The following provisions govern applications for and issuance of a retail marijuana establishment or retail marijuana social club license.

A. An applicant shall file an application in the form required by the state licensing authority for the type of license sought, along with the application fee as set by the state licensing authority.

B. An applicant may apply for and be granted more than one type of license except that a person licensed as a retail marijuana testing facility may not hold any other

retail marijuana establishment license. Registered caregivers and registered dispensaries who have held a registration in good standing for 2 years by the date of the application must be given priority in the granting of licenses for a retail marijuana cultivation facility, retail marijuana products manufacturing facility or retail marijuana store license. The state licensing authority shall begin accepting and processing applications by 30 days after the adoption of rules under section 2444, subsection 2. If after 90 days those applications do not meet the maximum square footage allotment set by this chapter, the state licensing authority may begin accepting and processing applications by all other qualified applicants.

C. The state licensing authority shall issue or renew a license to operate a retail marijuana establishment or retail marijuana social club to an applicant who meets the requirements of the state licensing authority, which must include a review of the site plan, operating plan and relevant experience in the marijuana industry in this State, as set forth in rule, within 90 days of the date of receipt of the application unless:

(1) The state licensing authority finds the applicant is not in compliance with this section or rules adopted by the state licensing authority;

(2) The state licensing authority is notified by the relevant municipality that the applicant is not in compliance with an ordinance, rule or regulation in effect at the time of application; or

(3) The number of retail marijuana establishments or retail marijuana social clubs allowed in the municipality has been limited pursuant to local ordinance or is limited by subsection 7 and the state licensing authority has already licensed the maximum number of retail marijuana establishments or retail marijuana social clubs allowed in the municipality for the class of license that is sought.

D. The following provisions govern the situation when more than one application is received by the state licensing authority for establishment of a retail marijuana establishment or retail marijuana social club in the same municipality.

(1) If a greater number of applications are received from qualified applicants to operate a retail marijuana store in a municipality than are allowed under the limits enacted by that municipality pursuant to subsection 4, the state licensing authority shall solicit and consider input from the municipality as to the municipality's preferences for licensure. Within 180 days of the date the first application is received, the state licensing authority shall issue the maximum number of applicable licenses.

(2) In any competitive application process to determine which applicants receive licenses for any class of license, the state licensing authority shall give first preference to an applicant who has at least 2 years of previous experience cultivating marijuana in compliance with Title 22, section 2423 and who has been continuously registered with the Department of Health and Human Services pursuant to the Maine Medical Use of Marijuana Act. Preference must be given to an applicant who has 3 medical marijuana caregiver registrations when determining which applicants receive licenses.

E. The state licensing authority may not grant a license for a retail marijuana establishment to a licensee who has already received a license to operate the same

type of retail marijuana establishment if doing so would prevent another qualified applicant from receiving a license. The state licensing authority may not grant a license for a retail marijuana social club to a licensee who has already received a license to operate a retail marijuana social club if doing so would prevent another qualified applicant from receiving a license.

4. Limitation on number of retail marijuana stores. The state licensing authority may not limit the total number of retail marijuana stores in this State. A municipality may regulate the number of retail marijuana stores and the location and operation of retail marijuana establishments and retail marijuana social clubs and may prohibit the operation of retail marijuana establishments and retail marijuana social clubs within its jurisdiction.

5. Limitations on retail marijuana cultivation. The state licensing authority may establish limitations upon retail marijuana cultivation through one or more of the following methods:

A. Placing or modifying a limit on the number of licenses that it issues, by class or overall, but in placing or modifying the limits, the state licensing authority shall consider the reasonable availability of new licenses after a limit is placed or modified; and

B. Placing or modifying a limit on the amount of production permitted by a retail marijuana cultivation facility license or class of licenses based upon some reasonable metric or set of metrics, including, but not limited to, previous months' sales, pending sales or other reasonable metric as determined by the state licensing authority.

6. Limitation on retail marijuana cultivation facility size. The amount of space approved for marijuana cultivation at retail marijuana cultivation facilities is limited to 800,000 square feet of plant canopy, unless the state licensing authority determines that a greater amount may be needed to ensure an adequate supply to meet demand for various strains of marijuana throughout the State. An applicant must designate on the applicant's operating plan the size category of the licensed premises and the amount of actual square footage in the applicant's licensed premises that will be designated as plant canopy.

The state licensing authority shall license 2 types of retail marijuana cultivation facilities, those with 3,000 square feet or less of plant canopy and those with more than 3,000 square feet of plant canopy. The state licensing authority shall license marijuana cultivation at retail marijuana cultivation facilities by unit blocks of 10 feet by 10 feet, or 100 square feet, of plant canopy, with 40% of all licenses issued going to licensees of 30 unit blocks or less. The maximum amount of unit blocks allowed to a single licensee is 300.

An applicant who applies for a retail marijuana cultivation facility license for a facility with more than 3,000 square feet of plant canopy but is not licensed by the state licensing authority may be considered for a license for a facility with 3,000 square feet or less of plant canopy.

No more than 6 retail marijuana cultivation facilities or more than 300 unit blocks of plant canopy may be located on the same parcel of property.

The state licensing authority may reduce the number of unit blocks a retail marijuana cultivation facility is authorized to cultivate if 50% or fewer of the unit blocks a facility is authorized to cultivate are not used by the end of the first year of operation.

7. Restrictions on applications for licenses. The state licensing authority may not approve an application for the issuance of a license pursuant to this chapter:

A. If the application for the license concerns a location that is the same as or within 1,000 feet of a location for which, within the 2 years immediately preceding the date of the application, the state licensing authority denied an application for the same class of license due to the nature of the use or other concern related to the location; or

B. Until it is established that the applicant is in or will be entitled to possession of the licensed premises for which application is made under a lease, rental agreement or other arrangement for possession of the premises or by virtue of ownership of the premises.

§2448. Classes of licenses; license provisions

1. State licensing authority may issue license. For the purpose of regulating the cultivation, manufacture, distribution, sale and testing of retail marijuana and retail marijuana products, the state licensing authority, in its discretion, upon receipt of an application in the prescribed form, may issue and grant to the applicant a license from one or more of the following classes, subject to the provisions and restrictions provided by this chapter:

A. Retail marijuana store license;

B. Retail marijuana cultivation facility license;

C. Retail marijuana products manufacturing facility license;

D. Retail marijuana testing facility license;

E. Retail marijuana social club license; and

F. Occupational licenses and registrations for owners, managers, operators, employees, contractors and other support staff employed at, working in or having access to restricted access areas of the licensed premises, as determined by the state licensing authority.

2. Licensee to collect tax. A retail marijuana store licensee or retail marijuana social club licensee shall collect sales tax on all retail sales made at a retail marijuana store or retail marijuana social club, respectively.

3. Retail marijuana store license. The following provisions govern a retail marijuana store.

A. A licensed retail marijuana store may sell only retail marijuana, retail marijuana products, marijuana accessories, nonconsumable products such as apparel and marijuana-related products such as child-resistant containers, but is prohibited from selling or giving away any consumable product, including but not limited to cigarettes, alcohol and edible products that do not contain marijuana, including but

not limited to sodas, candies and baked goods. Automatic dispensing machines that contain retail marijuana and retail marijuana products are prohibited.

B. A retail marijuana store licensee shall track all of its retail marijuana and retail marijuana products from the point at which they are transferred from a retail marijuana cultivation facility or retail marijuana products manufacturing facility to the point of sale.

All retail marijuana and retail marijuana products sold at a licensed retail marijuana store must be packaged and labeled as required by rules of the state licensing authority and pursuant to section 2446, subsection 1. Notwithstanding the provisions of this section, a retail marijuana store licensee may also sell retail marijuana products that are prepackaged and labeled as required by rules of the state licensing authority and pursuant to section 2446, subsection 1.

C. A person must be 21 years of age or older to make a purchase in a retail marijuana store.

(1) Prior to initiating a sale, the employee of the retail marijuana store making the sale shall verify that the purchaser has a valid government-issued identification card, or other acceptable identification, showing that the purchaser is 21 years of age or older. If a person under 21 years of age presents a fraudulent proof of age, any action relying on the fraudulent proof of age may not be grounds for the revocation or suspension of any license issued under this chapter.

(2) The state licensing authority shall adopt rules, which are routine technical rules as described in Title 5, chapter 375, subchapter 2-A, to prohibit certain signs, marketing and advertising, including but not limited to a prohibition on mass-market campaigns that have a high likelihood of reaching persons under 21 years of age.

These rules may include:

(a) A prohibition on health or physical benefit claims in advertising, merchandising and packaging;

(b) A prohibition on unsolicited advertising on the Internet;

(c) A prohibition on opt-in marketing that does not permit an easy and permanent opt-out feature; and

(d) A prohibition on marketing directed toward location-based devices, including but not limited to cellular phones, unless the marketing is a mobile device application installed on the device by the owner of the device who is 21 years of age or older and includes a permanent and easy opt-out feature.

(3) A magazine whose primary focus is marijuana or marijuana businesses may be sold only in a retail marijuana store or behind the counter in an establishment where persons under 21 years of age are present.

(4) A retail marijuana product may not contain an additive designed to make the product more appealing to children.

(5) Notwithstanding any other provision of state law, sales of retail marijuana and retail marijuana products are not exempt from state sales tax.

(6) Nothing in this chapter may be construed to limit a law enforcement agency's ability to investigate unlawful activity in relation to a retail marijuana establishment or retail marijuana social club. A law enforcement agency may run a Maine criminal history record check of a licensee, or employee of a licensee, during an investigation of unlawful activity related to retail marijuana and retail marijuana products.

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

4. Retail marijuana cultivation facility license. The state licensing authority shall create a statewide licensure class system for retail marijuana cultivation facilities.

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 and 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 or immature plant to wholesale purchase. The state licensing authority may not make rules that are unreasonably impracticable concerning the tracking of marijuana from seed 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.

5. Retail marijuana products manufacturing facility license. The following provisions govern retail marijuana products manufacturing facilities and the preparation of retail marijuana products.

A. The following provisions govern retail marijuana products manufacturing facilities.

(1) A retail marijuana products manufacturing facility licensee is permitted to manufacture retail marijuana products pursuant to the terms and conditions of this chapter.

(2) A retail marijuana products manufacturing facility may cultivate its own retail marijuana if it obtains a retail marijuana cultivation facility license, or it may purchase retail marijuana from a licensed retail marijuana cultivation facility. A retail marijuana products manufacturing facility licensee shall track all of its retail marijuana from the point it is either transferred from its retail marijuana cultivation facility or the point when it is delivered to the retail marijuana products manufacturing facility from a licensed retail marijuana cultivation facility to the point of transfer to a licensed retail marijuana store, retail marijuana social club or retail marijuana testing facility.

B. A retail marijuana products manufacturing facility licensee may not:

(1) Add any marijuana to a food product if the manufacturer of the food product holds a trademark to the food product's name, except that a retail marijuana products manufacturing facility licensee may use a trademarked food product if the licensee uses the product as a component or as part of a recipe and if the licensee does not state or advertise to the consumer that the final retail marijuana product contains a trademarked food product;

(2) Intentionally or knowingly label or package a retail marijuana product in a manner that would cause a reasonable consumer confusion as to whether the retail marijuana product was a trademarked food product;

(3) Label or package a product in a manner that violates any federal trademark law or regulation; or

(4) Include harmful additives in any retail marijuana product, including, but not limited to, those that are toxic, designed to make the product more addictive and designed to make the product more appealing to children or misleading to consumers, but not including common baking and cooking items.

C. The following provisions govern the preparation of retail marijuana products.

(1) Retail marijuana products must be prepared on licensed premises that are used exclusively for the manufacture and preparation of retail marijuana or retail marijuana products and prepared using equipment that is used exclusively for the manufacture and preparation of retail marijuana and retail marijuana products.

(2) All licensed premises in which retail marijuana products are manufactured must meet the sanitary standards for retail marijuana product preparation adopted pursuant to section 2446, subsection 2 and must be licensed as commercial kitchens by the Department of Health and Human Services.

(3) Retail marijuana products must be packaged, sealed and conspicuously labeled in compliance with this chapter and any rules adopted pursuant to this chapter.

(4) A retail marijuana products manufacturing facility licensee may provide a sample of the licensee's products to a licensed retail marijuana testing facility pursuant to subsection 6 for testing and research purposes. A retail marijuana products manufacturing facility licensee shall maintain a record of what was provided to the retail marijuana testing facility, the identity of the testing facility and the results of the testing.

(5) A retail marijuana products manufacturing facility licensee may list ingredients and compatibility with dietary practices on an edible retail marijuana product.

(6) All retail marijuana products that require refrigeration to prevent spoilage must be stored and transported in a refrigerated environment.

D. Nothing in this chapter may be construed to limit a law enforcement agency's ability to investigate unlawful activity in relation to a retail marijuana establishment. A law enforcement agency may run a Maine criminal history record check of a licensee, or employee of a licensee, during an investigation of unlawful activity related to retail marijuana and retail marijuana products.

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

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 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.

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.

7. Retail marijuana social club license. The following provisions govern retail marijuana social clubs.

A. A licensed retail marijuana social club may sell only retail marijuana, retail marijuana products, marijuana accessories, nonconsumable products such as apparel, marijuana-related products and edible products that do not contain marijuana, including but not limited to sodas, candies and baked goods, but may not sell or give away cigarettes or alcohol. All retail marijuana and retail marijuana products purchased at a licensed retail marijuana social club must be consumed or disposed of on and may not be taken off the licensed premises.

B. A retail marijuana social club shall track all of its retail marijuana and retail marijuana products from the point at which they are transferred from a retail marijuana cultivation facility, retail marijuana store or retail marijuana products manufacturing facility to the point of sale.

C. The following provisions govern procedures for preventing sales to persons under 21 years of age.

(1) Prior to allowing a person onto the retail marijuana social club's licensed premises, an employee of the retail marijuana social club shall verify that the person has a valid government-issued identification card, or other acceptable identification, showing that the person is 21 years of age or older. If a person under 21 years of age presents a fraudulent proof of age, any action relying on the fraudulent proof of age may not be grounds for the revocation or suspension of any license issued under this chapter.

(2) The state licensing authority shall adopt rules, which are routine technical rules as described in Title 5, chapter 375, subchapter 2-A, to prohibit certain signs, marketing and advertising, including but not limited to a prohibition on mass-market campaigns that have a high likelihood of reaching persons under 21 years of age.

These rules may include:

(a) A prohibition on health or physical benefit claims in advertising, merchandising and packaging;

(b) A prohibition on unsolicited advertising on the Internet;

(c) A prohibition on opt-in marketing that does not permit an easy and permanent opt-out feature; and

(d) A prohibition on marketing directed toward location-based devices, including but not limited to cellular phones, unless the marketing is a mobile device application installed on the device by the owner of the device who is 21 years of age or older and includes a permanent and easy opt-out feature.

(3) Notwithstanding any other provision of state law, sales of retail marijuana and retail marijuana products are not exempt from state sales tax.

(4) Nothing in this chapter may be construed to limit a law enforcement agency's ability to investigate unlawful activity in relation to a retail marijuana establishment. A law enforcement agency may run a Maine criminal history

record check of a licensee, or employee of a licensee, during an investigation of unlawful activity related to retail marijuana and retail marijuana products.

D. Retail marijuana and retail marijuana products may be transported between a licensed retail marijuana social club and other retail marijuana social clubs or retail marijuana testing facilities.

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. The state licensing authority may require any licensee to furnish such information as it 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 it 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.

9. Product pricing. Nothing in this chapter may be construed as granting to the state licensing authority the power to fix prices for retail marijuana or retail marijuana products.

10. License fees. The state licensing authority shall determine the revenue needed to set up the licensing and enforcement operations of the department and set the fees applicable to the categories as outlined in subsection 1 within the ranges specified in the following schedule:

A. Retail marijuana store license, $250 to $2,500, with a $10 to $250 nonrefundable application fee;

B. Retail marijuana cultivation facility license, $10 to $100 per unit block, with a $10 to $250 nonrefundable application fee;

C. Retail marijuana products manufacturing facility license, $100 to $1,000, with a $10 to $250 nonrefundable application fee;

D. Retail marijuana testing facility license, $500, with a $10 to $250 nonrefundable application fee;

E. Retail marijuana social club license, $250 to $2,500, with a $10 to $250 nonrefundable application fee; and

F. Occupational licenses and registrations for owners, managers, operators, employees, contractors and other support staff employed at, working in or having access to restricted access areas of the licensed premises, as determined by the state licensing authority.

11. License terms. All licenses under this chapter are effective for one year from the date of issuance.

12. License renewal. The following provisions govern license renewals.

A. Ninety days prior to the expiration date of an existing license, the state licensing authority shall notify the licensee of the expiration date by first class mail at the licensee's address of record with the state licensing authority. A licensee may apply for the renewal of an existing license to the state licensing authority not less than 30 days prior to the date of expiration. Upon receipt of an application for renewal of an existing license and any applicable fees, the state licensing authority shall, within 7 days, submit a copy of the application to the appropriate municipality to determine whether the application complies with all local restrictions on renewal of licenses.

B. The state licensing authority may not accept an application for renewal of a license after the date of expiration, except that the state licensing authority may extend the expiration date of the license and accept a late application for renewal of a license as long as the applicant has filed a timely renewal application with the municipality. The state licensing authority or the municipality, in its discretion, subject to the requirements of section 2447 and based upon reasonable grounds, may waive the 30-day time requirements set forth in this subsection.

C. Notwithstanding the provisions of paragraph A, a licensee whose license has been expired for not more than 90 days may file a late renewal application upon the payment of a nonrefundable late application fee of $250 to the state licensing authority. A licensee who files a late renewal application and pays the requisite fees may continue to operate until the state licensing authority takes final action to approve or deny the licensee's late renewal application unless the state licensing authority summarily suspends the license pursuant to subsection 16, this chapter and rules adopted pursuant to this chapter.

D. The state licensing authority may administratively extend the expiration date of a license and accept a later application for renewal of a license at the discretion of the state licensing authority.

E. The state licensing authority may, for good cause, elect to not renew a license.

13. Inactive licenses. The state licensing authority, in its discretion, may revoke or elect not to renew any license if it determines that the licensed premises have been inactive, without good cause, for at least one year.

14. Unlawful financial assistance. The state licensing authority shall require a complete disclosure of all persons having a direct or indirect financial interest, and the extent of such interest, in each license issued under this chapter. This subsection is

intended to prohibit and prevent the control of a retail marijuana store, retail marijuana cultivation facility, retail marijuana products manufacturing facility or retail marijuana social club by a person or party other than the persons licensed pursuant to the provisions of this chapter.

15. Denial of license. The state licensing authority may, for good cause, deny approval of a license application. Upon denial of a license application, the state licensing authority shall inform the applicant of the basis for denial and the right to appeal the denial in a hearing.

16. Disciplinary actions. In addition to any other sanctions prescribed by this chapter, or rules adopted pursuant to this chapter, the state licensing authority has the power, on its own motion or on complaint, after investigation and opportunity for a public hearing at which the licensee must be afforded an opportunity to be heard, to fine a licensee or to suspend or revoke a license issued by the state licensing authority for a violation by the licensee, or by any of the agents or employees of the licensee, of the provisions of this chapter or any of the rules adopted pursuant to this chapter or of any of the terms, conditions or provisions of the license issued by the state licensing authority. The state licensing authority has the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books and records necessary for a hearing that the state licensing authority is authorized to conduct.

The state licensing authority shall provide notice of suspension, revocation, fine or other sanction, as well as the required notice of the hearing required by this subsection, by mailing the same in writing to the licensee at the address contained in the license and, if different, at the last address furnished to the state licensing authority by the licensee. Except in the case of a summary suspension, a suspension may not be for a period longer than 6 months. If a license is suspended or revoked, a part of the fees paid must be retained by the state licensing authority.

Whenever a decision of the state licensing authority suspending a license for 14 days or less becomes final, the licensee may, before the operative date of the suspension, petition for permission to pay a fine in lieu of having the license suspended for all or part of the suspension period. Upon the receipt of the petition, the state licensing authority may, in its sole discretion, stay the proposed suspension and cause any investigation to be made that it considers desirable and may, in its sole discretion, grant the petition if the state licensing authority is satisfied that:

A. The public welfare would not be impaired by permitting the licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purposes; and

B. The books and records of the licensee are kept in such a manner that the loss of sales that the licensee would have suffered had the suspension gone into effect can be determined with reasonable accuracy.

The fine imposed may not be less than $500 nor more than $10,000. Payment of a fine pursuant to the provisions of this subsection must be in the form of cash or in the form of a certified check or cashier's check made payable to the state licensing authority.

Upon payment of the fine pursuant to this subsection, the state licensing authority shall enter its order permanently staying the imposition of the suspension. Fines paid to the state licensing authority pursuant to this subsection must be transmitted to the Treasurer of State.

In connection with a petition pursuant to this subsection, the authority of the state licensing authority is limited to the granting of such stays as are necessary for the state licensing authority to complete its investigation and make its findings and, if the state licensing authority makes such findings, to the granting of an order permanently staying the imposition of the entire suspension or that portion of the suspension not otherwise conditionally stayed.

If the state licensing authority does not make the findings required in this subsection and does not order the suspension permanently stayed, the suspension goes into effect on the operative date finally set by the state licensing authority.

No later than January 15th of each year, the state licensing authority shall compile a report of the preceding year's actions in which fines, suspensions or revocations were imposed by the state licensing authority. The state licensing authority shall include this information in its annual report to the Legislature.

17. Disposition of unauthorized retail marijuana or retail marijuana products and related materials. The following provisions apply to the disposition of unauthorized retail marijuana or retail marijuana products and related materials.

A. The provisions of this subsection apply in addition to any criminal, civil or administrative penalties and in addition to any other penalties prescribed by this chapter or any rules adopted pursuant to this chapter. Every licensee is deemed, by virtue of applying for, holding or renewing that licensee's license, to have expressly consented to the procedures set forth in this subsection.

B. If the state licensing authority issues a final agency order imposing a disciplinary action against a licensee pursuant to subsection 16, then, in addition to any other remedies, the state licensing authority's final agency order may specify that some or all of the licensee's marijuana or marijuana products is not retail marijuana or a retail marijuana product and is an illegal controlled substance. The order may further specify that the licensee loses any ownership interest in any of the marijuana or marijuana products even if the marijuana or marijuana products previously qualified as retail marijuana or a retail marijuana product. The final agency order may direct the destruction of any such marijuana and marijuana products. The authorized destruction may include the incidental destruction of any containers, equipment, supplies and other property associated with the marijuana or marijuana products.

C. A district attorney, or an assistant attorney general, shall notify the state licensing authority if an investigation of a retail marijuana establishment or retail marijuana social club is commenced. If the state licensing authority has received notification from a district attorney, or an assistant attorney general, that an investigation is being conducted, the state licensing authority may not destroy any marijuana or marijuana products from the retail marijuana establishment or retail marijuana social club until the destruction is approved by the district attorney or assistant attorney general.

D. A state or local agency may not be required to cultivate or care for any retail marijuana or retail marijuana products belonging to or seized from a licensee. A state or local agency is not authorized to sell marijuana, retail or otherwise.

18. Judicial review. Final agency actions by the state licensing authority are subject to judicial review pursuant to Title 5, section 11001, et seq.

§2449. Local licensing

1. Municipality may regulate retail marijuana establishments and retail marijuana social clubs. A municipality may regulate the location and operation of retail marijuana establishments and retail marijuana social clubs pursuant to Title 30-A, chapter 187, subchapter 3. A municipality may adopt and enforce regulations for retail marijuana establishments and retail marijuana social clubs that are at least as restrictive as the provisions of this chapter and any rule adopted pursuant to this chapter. Nothing in this chapter prohibits the registered voters of a municipality from calling for a vote on any regulations adopted by a municipal legislative body.

2. Municipal approval required. A retail marijuana establishment or retail marijuana social club may not operate until it is licensed by the state licensing authority pursuant to this chapter and approved by the municipality in which it is located. If an application is denied by the municipality, the licensee has 90 days to locate and obtain legal interest in another property in a municipality that approves of the retail marijuana establishment or retail marijuana social club before the license is revoked.

3. Notice and portion of fee must be given to municipality. When the state licensing authority receives an application for original licensing, or renewal of an existing license, for any retail marijuana establishment or retail marijuana social club, the state licensing authority shall, within 7 business days, provide a copy of the application and 50% of the licensing fee to the municipality in which the establishment or club is to be located. The municipality shall determine whether the application complies with the local land use ordinance and any other restrictions on time, place, manner and the number of marijuana businesses within the municipality. The municipality shall inform the state licensing authority whether the application complies with the local land use ordinance and other local restrictions.

4. Municipality may impose licensing requirement. A municipality may impose a separate local licensing requirement as a part of its restrictions on time, place, manner and the number of marijuana businesses. A municipality may decline to impose any local licensing requirements, but a municipality shall notify the state licensing authority that it either approves or denies each application forwarded to it within 14 business days.

5. Public hearing notice. The following provisions govern local public hearings and notice.

A. If a municipality issues local licenses for a retail marijuana establishment or retail marijuana social club, a public hearing on the application may be scheduled. If the municipality schedules such a hearing, it shall post and publish public notice of the hearing not less than 10 days prior to the hearing. The municipality shall give public notice by posting a sign in a conspicuous place on the premises identified in a local

license application and by publication in a newspaper of general circulation in the county in which the premises are located.

B. If a municipality does not issue local licenses, the municipality may give public notice of the state application by posting a sign in a conspicuous place on the premises identified in the application and by publication in a newspaper of general circulation in the county in which the premises are located.

§2450. Transfer of ownership

A license granted under the provisions of this chapter is not transferable except as provided in this section, but this section does not prevent a change of location as provided in section 2451, subsection 7.

For a transfer of ownership, a licensee shall apply to the state licensing authority on forms prepared and furnished by the state licensing authority. Upon receipt of an application for transfer of ownership, the state licensing authority shall, within 7 days, submit a copy of the application to the appropriate municipality to determine whether the transfer complies with any local restriction on transfer of ownership. In determining whether to permit a transfer of ownership, the state licensing authority shall consider only the requirements of this chapter, any rules adopted by the state licensing authority and any other local restrictions. The municipality may hold a hearing on the application for transfer of ownership. The municipality may not hold a hearing pursuant to this section until the municipality has posted a notice of hearing in the manner described in section 2449, subsection 5 on the licensed premises for a period of 10 days and has provided notice of the hearing to the applicant at least 10 days prior to the hearing. Any transfer of ownership hearing by the state licensing authority must be held in compliance with the requirements specified for a municipality in this section.

§2451. Licensing in general

The following provisions govern licensing in general.

1. Notice of new owner, officer, manager or employee. A retail marijuana establishment or retail marijuana social club shall notify the state licensing authority in writing of the name, address and date of birth of an owner, officer, manager or employee before the new owner, officer, manager or employee begins managing, owning or associating with the establishment or club. The owner, officer, manager or employee must pass a fingerprint-based criminal history record check as required by the state licensing authority and obtain the required identification card prior to being associated with, managing, owning or working at the establishment or club.

2. Each license separate. Each license issued under this chapter is separate and distinct. A person may not exercise any of the privileges granted under a license other than the license that the person holds and a licensee may not allow any other person to exercise the privileges granted under the licensee's license. A separate license is required for each specific business or business entity and each geographical location.

3. Licensee to maintain possession of premises. At all times, a licensee shall possess and maintain possession of the licensed premises identified in the license by ownership, lease, rental or other arrangement for possession of the premises.

4. License specifics; display. A license issued pursuant to this chapter must specify the date of issuance, the period of licensure, the name of the licensee and the premises licensed. A licensee shall conspicuously place the license at all times on the licensed premises.

5. Computation of time. In computing any time prescribed by this chapter, the day of the act, event or default from which the designated time begins to run is not included. Saturdays, Sundays and legal holidays are counted as any other day except that any documents due to be submitted to state or local government on a date that falls on a Saturday, Sunday or legal holiday are due on the next business day.

6. Licensee to report transfer of interest. A licensee shall report each transfer or change of financial interest in the license to the state licensing authority and appropriate municipality and receive approval prior to any transfer or change pursuant to section 2450.

7. Relocation of licensed premises. A licensee may move the permanent location of licensed premises to any other place in this State once permission to do so is granted by the state licensing authority and municipality where the retail marijuana establishment or retail marijuana social club proposes to relocate. Upon receipt of an application for change of location, the state licensing authority shall, within 7 days, submit a copy of the application to the municipality to determine whether the transfer complies with all local restrictions on change of location. In permitting a change of location, the municipality where the retail marijuana establishment or retail marijuana social club proposes to relocate shall consider all reasonable restrictions that are or may be placed upon the new location by the governing board of the municipality. Any such change in location must be in accordance with all requirements of this chapter and rules adopted pursuant to this chapter.

§2452. Personal use of marijuana

1. Person 21 years of age or older. A person 21 years of age or older may:

A. Use, possess or transport marijuana accessories and up to 2 1/2 ounces of prepared marijuana;

B. Transfer or furnish, without remuneration, up to 2 1/2 ounces of marijuana and up to 6 immature plants or seedlings to a person who is 21 years of age or older;

C. Possess, grow, cultivate, process or transport up to 6 flowering marijuana plants, 12 immature plants and unlimited seedlings, and possess all the marijuana produced by the plants at the adult's residence;

D. Purchase up to 2 1/2 ounces of retail marijuana and marijuana accessories from a retail marijuana store; and

E. Purchase up to 12 seedlings or immature plants from a retail marijuana cultivation facility.

2. Home cultivation. The following provisions apply to the home cultivation of marijuana for personal use by a person who is 21 years of age or older.

A. A person may cultivate up to 6 flowering marijuana plants at that person's place of residence, on property owned by that person or on another person's property with written permission of the owner of the property.

B. A person who elects to cultivate marijuana shall ensure the marijuana is not visible from a public way without the use of binoculars, aircraft or other optical aids and shall take reasonable precautions to prevent unauthorized access by a person under 21 years of age.

3. Legible tag on each marijuana plant. A person 21 years of age or older must have a legible tag on each marijuana plant. The tag must include at least the person's name and Maine driver's license number or Maine identification number.

4. Exemptions. The following exemptions apply.

A. Marijuana cultivation for medical use is not considered cultivation for personal use under this chapter and is governed by Title 22, section 2423-A.

B. This section does not apply to cultivation by a registered dispensary licensed pursuant to Title 22, section 2428.

5. Use. A person may consume marijuana in a nonpublic place including a private residence.

A. The prohibitions and limitations on smoking tobacco products in specified areas in Title 22, chapters 262 and 263 apply to smoking marijuana.

B. A person who smokes marijuana in a public place other than as governed by Title 22, chapters 262 and 263 commits a civil violation for which a fine of not more than $100 may be adjudged.

C. This subsection may not be construed to shield any adult from federal prosecution.

D. This subsection may not be construed to allow any adult to possess or consume marijuana on federal property.

§2453. Unlawful acts and exceptions

1. Consumption; transfer. Except as otherwise provided in this chapter, a person may not:

A. Consume retail marijuana or retail marijuana products in a retail marijuana establishment. A retail marijuana establishment may not allow retail marijuana or retail marijuana products to be consumed upon its licensed premises; or

B. Buy, sell, transfer, give away or acquire retail marijuana or retail marijuana products.

2. Limited access area; transfer of ownership. Except as otherwise provided in this chapter, a person licensed pursuant to this chapter may not:

A. Be within a limited access area unless the person's identification card is displayed as required by this chapter;

B. Fail to designate areas of ingress and egress for limited access areas and post signs in conspicuous locations as required by this chapter; or

C. Fail to report a transfer as required by section 2450.

3. Person licensed to sell retail marijuana or retail marijuana products. A person licensed to sell retail marijuana or retail marijuana products pursuant to this chapter may not:

A. Display any signs that are inconsistent with local laws or regulations;

B. Use advertising material that is misleading, deceptive or false, or that is designed to appeal to a person under 21 years of age;

C. Have in that person's possession or upon the licensed premises any marijuana the sale of which is not permitted by the license;

D. Sell retail marijuana or retail marijuana products to a person under 21 years of age without checking the person's identification;

E. Except for a retail marijuana social club licensee, have on the licensed premises any retail marijuana, retail marijuana products or marijuana paraphernalia that shows evidence of the retail marijuana having been consumed or partially consumed; or

F. Violate the provisions of section 2450 or abandon the licensed premises or otherwise cease operation without notifying the state licensing authority and appropriate municipality at least 48 hours in advance and without accounting for and forfeiting to the state licensing authority for destruction all marijuana and products containing marijuana.

§2454. Construction

1. Relation to the Maine Medical Use of Marijuana Act. This chapter may not be construed to limit any privileges or rights of a qualifying patient, primary caregiver, registered or otherwise, or registered dispensary under the Maine Medical Use of Marijuana Act.

2. Employment policies. This chapter may not be construed to require an employer to permit or accommodate the use, consumption, possession, trade, display, transportation, sale or growing of cannabis in the workplace. This chapter does not affect the ability of employers to enact and enforce workplace policies restricting the use of marijuana by employees or to discipline employees who are under the influence of marijuana in the workplace.

3. School, employer or landlord may not discriminate. A school, employer or landlord may not refuse to enroll or employ or lease to or otherwise penalize a person 21

years of age or older solely for that person's consuming marijuana outside of the school's, employer's or landlord's property.

4. Person may not be denied parental rights and responsibilities or contact with a minor child. A person may not be denied parental rights and responsibilities with respect to or contact with a minor child as a result of acting in accordance with this chapter, unless the person's conduct is contrary to the best interest of the minor child as set out in Title 19-A, section 1653, subsection 3.

Sec. 2. 22 MRSA §2383, sub-§1, as repealed and replaced by PL 2009, c. 652, Pt. B, §6, is repealed.

Sec. 3. 36 MRSA §1817 is enacted to read:

§1817. Taxes on retail marijuana and retail marijuana products

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

A. "Retail marijuana" has the same meaning as in Title 7, section 2442, subsection 34.

B. "Retail marijuana product" has the same meaning as in Title 7, section 2442, subsection 37.

C. "Retail marijuana social club" has the same meaning as in Title 7, section 2442, subsection 39.

D. "Retail marijuana store" has the same meaning as in Title 7, section 2442, subsection 40.

E. "State licensing authority" has the same meaning as in Title 7, section 2442, subsection 44.

2. Sales tax on retail marijuana and retail marijuana products. The sales tax on retail marijuana and retail marijuana products is 10% and is the only tax charged on the sale of retail marijuana and retail marijuana products at the point of final sale at a retail marijuana store or retail marijuana social club.

3. Returns; payment of tax; penalty. A retail marijuana store or retail marijuana social club shall file, on or before the last day of each month, a return on a form prescribed and furnished by the state licensing authority together with payment of the sales tax due under this section. The return must report all sales of retail marijuana and retail marijuana products within the State during the preceding calendar month. A retail marijuana store or retail marijuana social club shall keep a complete and accurate record at its principal place of business to substantiate all receipts and sales of retail marijuana and retail marijuana products.

4. Failure to make payments. The state licensing authority shall adopt rules to address the case in which a retail marijuana store or retail marijuana social club fails to make tax payments as required by this section, including fines and other penalties up to permanently revoking the retail marijuana store's or retail marijuana social club's license.

Rules adopted pursuant to this subsection are routine technical rules as described in Title 5, chapter 375, subchapter 2-A.

5. Exemption. The tax on marijuana imposed pursuant to this section may not be levied on marijuana sold by a registered nonprofit dispensary or registered caregiver to a qualifying patient or primary caregiver pursuant to Title 22, chapter 558-C.

6. Records. The following records must be kept by a licensee and those records must be available for inspection by an agent of the state licensing authority:

A. The reports and transmittal of monthly sales tax payments by retail marijuana stores and retail marijuana social clubs; and

B. Authorization for the Bureau of Revenue Services to have access to licensing information to ensure sales, excise and income tax payment.

7. Application of tax revenues. All sales tax revenue collected pursuant to this section must be deposited in the General Fund. Sales tax revenue derived from the sale of retail marijuana and retail marijuana products may not be used to directly fund any new state programs except that this revenue may be appropriated to the Maine Criminal Justice Academy for the purpose of training law enforcement personnel on retail marijuana and retail marijuana products laws and rules. Funds appropriated to the Maine Criminal Justice Academy pursuant to this subsection may be used only for the actual costs incurred to provide the necessary education and training of law enforcement personnel.

SUMMARY

This initiated bill allows the possession and use of marijuana by a person 21 years of age or older. It provides for the licensure of retail marijuana facilities including retail marijuana cultivation facilities, retail marijuana products manufacturing facilities, retail marijuana testing facilities and retail marijuana stores. It also provides for the licensure of retail marijuana social clubs where retail marijuana products may be sold to consumers for consumption on the licensed premises. It provides for regulation and control of the cultivation, manufacture, distribution and sale of marijuana by the Department of Agriculture, Conservation and Forestry. It allows the department to establish limitations on retail marijuana cultivation. It allows a municipality to regulate the number of retail marijuana stores and the location and operation of retail marijuana establishments and to prohibit the operation of retail marijuana establishments in the municipality. It also allows a municipality to require separate local licensing of retail marijuana establishments.

The initiated bill allows a person 21 years of age or older to use, possess or transport marijuana accessories and up to 2 1/2 ounces of prepared marijuana; transfer or furnish, without remuneration, up to 2 1/2 ounces of marijuana and up to 6 immature plants or seedlings to a person who is 21 years of age or older; possess, grow, cultivate, process or transport up to 6 flowering marijuana plants, 12 immature marijuana plants and unlimited seedlings, and possess all the marijuana produced by the marijuana plants at that person's residence; purchase up to 2 1/2 ounces of marijuana and marijuana accessories from a

retail marijuana store; and purchase up to 12 marijuana seedlings or immature marijuana plants from a retail marijuana cultivator. It allows the home cultivation of marijuana for personal use of up to 6 flowering marijuana plants by a person 21 years of age or older.

The initiated bill allows a person to consume marijuana in a nonpublic place including a private residence. It provides that the prohibitions and limitations on smoking tobacco products in specified areas as provided by law apply to smoking marijuana and that a person who smokes marijuana in a public place other than as governed by law commits a civil violation for which a fine of not more than $100 may be adjudged.

The initiated bill places a sales tax of 10% on retail marijuana and retail marijuana products.