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In Senate, January 4, 2023

An Act to Clarify Provisions of the Cannabis Legalization Act Regarding Labels, Packaging and Testing

Submitted by the Department of Administrative and Financial Services pursuant to Joint Rule 204.

Reference to the Committee on Veterans and Legal Affairs suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator PIERCE of Cumberland.

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

2 **Sec. 1. 28-B MRSA §102, sub-§7-A** is enacted to read:

3 7-A. Cartoon. "Cartoon" means any drawing or other depiction of an object, person,
4 animal or creature or similar caricature that meets any of the following criteria:

5 A. The use of comically exaggerated features;

6 B. The attribution of human characteristics to animals, plants or other objects;

7 C. The attribution of animal, plant or other object characteristics to humans; and

8 D. The attribution of unnatural or extra-human abilities.

9 **Sec. 2. 28-B MRSA §102, sub-§26-A** is enacted to read:

10 26-A. Matrix. "Matrix" means, as applicable to the testing of cannabis or a cannabis
11 product, the form the cannabis or cannabis product is in at the time it is subject to mandatory
12 testing under subchapter 6, including cannabis flower, cannabis trim and cannabis
13 concentrate.

14 **Sec. 3. 28-B MRSA §601**, as amended by PL 2021, c. 612, §1 and c. 669, §5, is
15 further amended to read:

16 **§601. Testing program established**

17 The department shall establish a testing program for adult use cannabis and adult use
18 cannabis products. Except as otherwise provided in this subchapter, the program must
19 require a licensee, prior to selling or distributing adult use cannabis or an adult use cannabis
20 product to a consumer, to submit the cannabis or cannabis product to a testing facility for
21 testing to ensure that the cannabis or cannabis product, in the matrix in which it is intended
22 to be sold or distributed to a consumer, does not exceed the maximum level of allowable
23 contamination for any contaminant that is injurious to health and for which testing is
24 required and to ensure correct labeling. The department shall adopt rules establishing a
25 testing program pursuant to this section, rules identifying the types of contaminants that
26 are injurious to health for which cannabis and cannabis products must be tested under this
27 subchapter, based upon the matrix in which the cannabis or cannabis products are intended
28 to be sold or distributed to a consumer, as applicable, and rules regarding the maximum
29 level of allowable contamination for each contaminant. In adopting rules in accordance
30 with this section, the department may waive testing for certain analytes based upon matrix
31 type as applicable to reduce redundant testing. Rules adopted pursuant to this subchapter
32 are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

33 **Sec. 4. 28-B MRSA §602**, as amended by PL 2021, c. 558, §1, c. 612, §2 and c.
34 669, §5, is further amended to read:

35 **§602. Mandatory testing**

36 A licensee may not sell or distribute adult use cannabis or an adult use cannabis product
37 to a consumer under this chapter unless the cannabis or cannabis product has been tested
38 pursuant to this subchapter and the rules adopted pursuant to this subchapter and that
39 mandatory testing has demonstrated that the cannabis or cannabis product does not exceed
40 the maximum level of allowable contamination for any contaminant that is injurious to

1 health and for which testing is required as applicable based upon the matrix in which the
2 cannabis or cannabis product is intended to be sold or distributed to a consumer.

3 **1. Scope of mandatory testing, generally.** Mandatory Except as provided in
4 subsections 1-A to 1-E, mandatory testing of adult use cannabis and adult use cannabis
5 products under this section must include, but is not limited to, testing for:

6 A. Residual solvents, poisons and toxins;

7 B. Harmful chemicals;

8 C. Dangerous molds and mildew;

9 D. Harmful microbes, including, but not limited to, Escherichia coli and ~~salmonella~~
10 Salmonella;

11 E. Pesticides, fungicides and insecticides; and

12 F. THC potency, homogeneity and cannabinoid profiles ~~to ensure correct labeling.~~

13 The department may temporarily waive mandatory testing requirements under this section
14 for any contaminant or factor for which the department has determined that there exists no
15 licensed testing facility in the State capable of and certified to perform such testing. The
16 department may require testing for some analytes in some matrices before the cannabis is
17 further processed, manufactured or combined to ensure that contaminants that are injurious
18 to health do not contaminate other batches of cannabis or cannabis products.

19 **1-A. Scope of mandatory testing for cannabis flower and cannabis trim for sale**
20 **or distribution to a consumer.** The following tests are mandatory for cannabis flower or
21 cannabis trim prior to sale or distribution to a consumer:

22 A. Harmful chemicals;

23 B. Dangerous molds and mildew;

24 C. Harmful microbes, including, but not limited to, Escherichia coli and Salmonella;

25 D. Pesticides, fungicides and insecticides; and

26 E. THC potency and cannabinoid profiles.

27 **1-B. Scope of mandatory testing for cannabis flower and cannabis trim subject**
28 **to further processing, manufacturing or alteration.** The following tests are mandatory
29 for cannabis flower or cannabis trim subject to further processing, manufacturing or
30 alteration before sale or distribution to a consumer:

31 A. Harmful chemicals; and

32 B. Pesticides, fungicides and insecticides.

33 **1-C. Scope of mandatory testing for cannabis concentrate for sale or distribution**
34 **to a consumer.** The following tests are mandatory for cannabis concentrate prior to sale
35 or distribution to a consumer:

36 A. Residual solvents, poisons and toxins; and

37 B. THC potency, homogeneity and cannabinoid profiles.

38 **1-D. Scope of mandatory testing for cannabis concentrate subject to further**
39 **processing, manufacturing or alteration.** The following tests are mandatory for cannabis

1 concentrate subject to further processing, manufacturing or alteration before sale or
2 distribution to a consumer:

3 A. Residual solvents, poisons and toxins.

4 **1-E. Scope of mandatory testing for cannabis products for sale or distribution to**
5 **a consumer.** Except as exempted by section 605, subsection 4, the following tests are
6 mandatory for cannabis products for sale or distribution to a consumer:

7 A. Dangerous molds and mildew;

8 B. Harmful microbes, including, but not limited to, Escherichia coli and Salmonella;
9 and

10 C. THC potency, homogeneity and cannabinoid profiles.

11 **2. Record keeping.** A licensee shall maintain a record of all mandatory testing that
12 includes a description of the adult use cannabis or adult use cannabis product provided to
13 the testing facility, the identity of the testing facility and the results of the mandatory test.

14 **3. Testing process, protocols and standards.** The department shall establish by rule
15 processes, protocols and standards for mandatory and other testing of cannabis and
16 cannabis products that conform with the best practices generally used within the cannabis
17 industry based upon the matrix in which the cannabis or cannabis products are intended to
18 be sold or distributed to a consumer, including, but not limited to, an allowable variance
19 rate for determining the amount or potency of THC or other cannabinoids in edible cannabis
20 products.

21 **Sec. 5. 28-B MRSA §602-A** is enacted to read:

22 **§602-A. Audit testing by the department**

23 Notwithstanding sections 604-A and 605, the department or the Department of Health
24 and Human Services may collect samples of cannabis and cannabis products from a
25 licensee and submit those samples for audit testing by a testing facility, for the purpose of
26 ensuring compliance with the requirements of this chapter and rules adopted pursuant to
27 this chapter. The department or the Department of Health and Human Services may also
28 conduct audit testing of testing facilities to ensure compliance with the requirements of this
29 chapter and rules adopted pursuant to this chapter. Unless a licensee is subject to the
30 collection and submission of more than 24 samples of cannabis or cannabis products for
31 audit testing within a calendar year, all costs of the audit testing must be paid for by the
32 licensee.

33 The department shall adopt rules regarding the circumstances under which audit testing
34 of licensees may be conducted in accordance with this section. Rules adopted pursuant to
35 this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

36 **Sec. 6. 28-B MRSA §603, sub-§1**, as enacted by PL 2017, c. 409, Pt. A, §6 and
37 amended by PL 2021, c. 669, §5, is further amended to read:

38 **1. Notification of testing results required.** If the results of a mandatory test
39 conducted pursuant to section 602 indicate that the tested adult use cannabis or adult use
40 cannabis product exceeds the maximum level of allowable contamination for any
41 contaminant that is injurious to health and for which testing is required, the testing facility
42 immediately shall ~~quarantine, document and properly destroy the cannabis or cannabis~~

1 product, except when the owner of the tested cannabis or cannabis product has successfully
2 undertaken remediation and retesting, and within 30 days of completing the test shall notify
3 the department of the test results notify the department and the licensee that submitted the
4 cannabis or cannabis product for testing. The licensee that submitted the cannabis or
5 cannabis product for testing may undertake remediation or retesting, as applicable, within
6 30 days of receiving the test results indicating that the tested cannabis or cannabis product
7 exceeds the maximum level of allowable contamination for any contaminant that is
8 injurious to health and for which testing is required.

9 A. A licensee may, at any time, voluntarily destroy cannabis or cannabis products.

10 B. A licensee that opts to retest or remediate tested cannabis or a cannabis product that
11 exceeds the maximum level of allowable contamination for any contaminant that is
12 injurious to health and for which testing is required shall retest the cannabis or cannabis
13 product in accordance with this paragraph:

14 (1) For cannabis or a cannabis product that is not remediated, the cannabis or
15 cannabis product must be retested twice for all analytes required for the matrix it
16 was in when it was first tested;

17 (2) For cannabis or a cannabis product that is remediated in a manner that does not
18 cause the matrix of the cannabis or cannabis product to change, the cannabis or
19 cannabis product must be retested twice for all analytes required for the matrix it
20 was in when it was first tested; and

21 (3) For cannabis or a cannabis product that is remediated in a manner that causes
22 the matrix of the cannabis or cannabis product to change, the cannabis or cannabis
23 product must be retested once for all analytes required for the matrix it is in after
24 it has been remediated.

25 **Sec. 7. 28-B MRSA §605, sub-§4**, as amended by PL 2021, c. 612, §4 and c. 669,
26 §5, is further amended to read:

27 **4. No subsequent processing, manufacturing or alteration.** Since the performance
28 of the prior testing under subsection 1, the cannabis or cannabis product has not undergone
29 any further processing, manufacturing or alteration that would result in an increase in the
30 concentration of any contaminants or factors identified in section 602, ~~subsection~~
31 subsections 1 to 1-E or in any rules adopted by the department pursuant to that section.

32 A. The manufacture of edible cannabis products in a products manufacturing facility
33 that is licensed in accordance with the requirements of section 502, subsection 10 must
34 be presumed not to result in an increase in the concentration of dangerous molds and
35 mildew or harmful microbes.

36 B. The department may conduct audits of cannabis products for which additional
37 testing was not required in accordance with paragraph A to ensure the edible cannabis
38 products do not exceed the maximum level of allowable contamination for dangerous
39 molds and mildew or harmful microbes, with all costs of the audits paid for by the
40 licensee.

41 The department shall adopt rules regarding the circumstances under which additional
42 testing is not required pursuant to this section and the conduct of audits of edible cannabis
43 products pursuant to this section. Rules adopted pursuant to this subsection are routine
44 technical rules as defined in Title 5, chapter 375, subchapter 2-A.

