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.

Presented by Senator PIERCE of Cumberland.
Be it enacted by the People of the State of Maine as follows:

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

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

A. The use of comically exaggerated features;
B. The attribution of human characteristics to animals, plants or other objects;
C. The attribution of animal, plant or other object characteristics to humans; and
D. The attribution of unnatural or extra-human abilities.

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

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

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

§601. Testing program established

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

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

§602. Mandatory testing

A licensee may not sell or distribute adult use cannabis or an adult use cannabis product to a consumer under this chapter unless the cannabis or cannabis product has been tested pursuant to this subchapter and the rules adopted pursuant to this subchapter and that mandatory testing has demonstrated that the cannabis or cannabis product does not exceed the maximum level of allowable contamination for any contaminant that is injurious to
health and for which testing is required as applicable based upon the matrix in which the cannabis or cannabis product is intended to be sold or distributed to a consumer.

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

   A. Residual solvents, poisons and toxins;
   B. Harmful chemicals;
   C. Dangerous molds and mildew;
   D. Harmful microbes, including, but not limited to, Escherichia coli and Salmonella;
   E. Pesticides, fungicides and insecticides; and
   F. THC potency, homogeneity and cannabinoid profiles to ensure correct labeling.

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

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

   A. Harmful chemicals;
   B. Dangerous molds and mildew;
   C. Harmful microbes, including, but not limited to, Escherichia coli and Salmonella;
   D. Pesticides, fungicides and insecticides; and
   E. THC potency and cannabinoid profiles.

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

   A. Harmful chemicals; and
   B. Pesticides, fungicides and insecticides.

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

   A. Residual solvents, poisons and toxins; and
   B. THC potency, homogeneity and cannabinoid profiles.

1-D. Scope of mandatory testing for cannabis concentrate subject to further processing, manufacturing or alteration. The following tests are mandatory for cannabis
concentrate subject to further processing, manufacturing or alteration before sale or distribution to a consumer:

A. Residual solvents, poisons and toxins.

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

A. Dangerous molds and mildew;
B. Harmful microbes, including, but not limited to, Escherichia coli and Salmonella;
and
C. THC potency, homogeneity and cannabinoid profiles.

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

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

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

§602-A. Audit testing by the department

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

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

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

1. Notification of testing results required. If the results of a mandatory test conducted pursuant to section 602 indicate that the tested adult use cannabis or adult use cannabis product exceeds the maximum level of allowable contamination for any contaminant that is injurious to health and for which testing is required, the testing facility immediately shall quarantine, document and properly destroy the cannabis or cannabis
product, except when the owner of the tested cannabis or cannabis product has successfully undertaken remediation and retesting, and within 30 days of completing the test shall notify the department of the test results. The licensee that submitted the cannabis or cannabis product for testing may undertake remediation or retesting, as applicable, within 30 days of receiving the test results indicating that the tested cannabis or cannabis product exceeds the maximum level of allowable contamination for any contaminant that is injurious to health and for which testing is required.

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

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

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

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

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

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

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

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

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

The department shall adopt rules regarding the circumstances under which additional testing is not required pursuant to this section and the conduct of audits of edible cannabis products pursuant to this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
Sec. 8. 28-B MRSA §701, sub-§4, ¶D, as enacted by PL 2017, c. 409, Pt. A, §6, is amended to read:

D. May not be sold or offered for sale using a label or packaging that depicts includes a human, animal or fruit cartoon; and

Sec. 9. 28-B MRSA §703, sub-§1, ¶F, as amended by PL 2021, c. 558, §4, is further amended to read:

F. May not contain more than 10 milligrams of THC per serving of the product and may not contain more than 100 milligrams of THC per package of the product, with an allowable variance rate of 10%, except that the allowable variance may not be less than 0.6 milligrams or greater than 5 milligrams. In the calculation of the amount of THC allowed under this paragraph, the allowable variance rate must be in addition to the allowable variance rate applicable to a testing facility pursuant to section 602, subsection 3;

Sec. 10. 28-B MRSA §703, sub-§1, ¶F-1, as enacted by PL 2021, c. 558, §5, is amended to read:

F-1. May, except as provided in paragraph F, have the amount or potency of cannabinoids calculated using an allowable variance rate of 10%, except that the allowable variance may not be less than 0.6 milligrams or greater than 5 milligrams. In the calculation of the amount or potency of cannabinoids allowed under this paragraph, the allowable variance rate may be in addition to the allowable variance rate applicable to a testing facility pursuant to section 602, subsection 3;

SUMMARY

This bill amends the Cannabis Legalization Act. It defines "cartoon" and "matrix," removes the prohibition against a label or packaging that depicts a human, animal or fruit and adds a prohibition against a label or packaging that includes a cartoon. It removes the 0.6 to 5 milligram limitation on the allowable variance rate of 10% on the amount or potency of cannabinoids for a serving or package of edible cannabis products. It also amends testing requirements to account for matrices, including adding specific testing requirements for cannabis flower, cannabis trim, cannabis concentrate and cannabis products. It also provides for audit testing and amends the provisions regarding notification of testing results to address retesting and remediation.