



# 128th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2017

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Legislative Document

No. 1641

H.P. 1132

House of Representatives, June 21, 2017

**An Act To Amend the Marijuana Legalization Act Regarding Retail  
Marijuana Testing Facilities**

(EMERGENCY)

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Reported by Representative PIERCE of Falmouth for the Joint Select Committee on  
Marijuana Legalization Implementation pursuant to Joint Order 2017, H.P. 96.

A handwritten signature in cursive script that reads "R(t) B. Hunt".

ROBERT B. HUNT  
Clerk

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

3           **Whereas,** the people of the State of Maine in November 2016 passed into law the  
4 Marijuana Legalization Act, which establishes a system of licensing for marijuana  
5 cultivation, testing, processing and retail sale to enable persons 21 years of age or older to  
6 legally acquire, possess and consume marijuana and marijuana products under the laws of  
7 this State; and

8           **Whereas,** amendments to the Marijuana Legalization Act are necessary to provide  
9 clarity in the licensing and regulation of retail marijuana testing facilities and in the  
10 testing of marijuana and marijuana products to guard the public health and safety by  
11 ensuring that marijuana and marijuana products entering the retail market will be safe and  
12 fit for consumption by persons 21 years of age or older; and

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

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

18           **Sec. 1. 7 MRSA §2442, sub-§20,** as enacted by IB 2015, c. 5, §1, is repealed.

19           **Sec. 2. 7 MRSA §2442, sub-§§23-A, 31-A and 31-B** are enacted to read:

20           **23-A. Marijuana product.** "Marijuana product" means concentrated marijuana or a  
21 product composed of marijuana and other ingredients that is intended for use or  
22 consumption. "Marijuana product" includes, but is not limited to, an edible marijuana  
23 product, a marijuana ointment and a marijuana tincture.

24           **31-A. Qualifying patient.** "Qualifying patient" means a person who possesses a  
25 valid certification for the medical use of marijuana pursuant to Title 22, section 2423-B.

26           **31-B. Registered caregiver.** "Registered caregiver" means a primary caregiver who  
27 is registered by the Department of Health and Human Services pursuant to Title 22,  
28 section 2425, subsection 4.

29           **Sec. 3. 7 MRSA §2442, sub-§32,** as enacted by IB 2015, c. 5, §1, is amended to  
30 read:

31           **32. Registered dispensary.** "Registered dispensary" means a nonprofit dispensary  
32 that is ~~a nonprofit corporation organized under Title 13-B and~~ registered with by the  
33 Department of Health and Human Services pursuant to ~~the Maine Medical Use of~~  
34 ~~Marijuana Act and holds one or more dispensary registrations~~ Title 22, section 2428,  
35 subsection 2, paragraph A.

36           **Sec. 4. 7 MRSA §2442, sub-§36-A** is enacted to read:

1           **36-A. Retail marijuana licensee.** "Retail marijuana licensee" or "licensee" means a  
2 person licensed pursuant to this chapter.

3           **Sec. 5. 7 MRSA §2442, sub-§37,** as enacted by IB 2015, c. 5, §1, is amended to  
4 read:

5           **37. Retail marijuana product.** "Retail marijuana product" means ~~concentrated~~  
6 ~~retail marijuana and retail marijuana products that are composed of retail marijuana and~~  
7 ~~other ingredients and are intended for use or consumption, including, but not limited to,~~  
8 ~~edible products, ointments and tinctures~~ a marijuana product that is manufactured,  
9 processed, distributed or sold by a licensed retail marijuana establishment or a retail  
10 marijuana social club.

11           **Sec. 6. 7 MRSA §2445,** as amended by PL 2017, c. 1, §7, is further amended to  
12 read:

13           **§2445. Independent testing and certification program**

14           Beginning February 1, 2018, the state licensing authority shall establish, ~~within a~~  
15 ~~specific time frame, a~~ an independent testing and certification program for retail  
16 marijuana and retail marijuana products ~~independent testing and certification program.~~  
17 ~~This~~ Except as otherwise provided in this section, the program must require licensees to  
18 ~~test retail marijuana and retail marijuana products to ensure at a minimum that products~~  
19 ~~sold for human consumption do~~ a retail marijuana licensee, prior to selling or furnishing  
20 retail marijuana or a retail marijuana product to a consumer or to another licensee, to  
21 submit the marijuana or marijuana product to a retail marijuana testing facility for testing  
22 pursuant to this section to ensure that the marijuana or marijuana product does not contain  
23 ~~contaminants~~ exceed the maximum level of allowable contamination for any contaminant  
24 ~~that are~~ is injurious to health and for which testing is required and to ensure correct  
25 labeling. The Commissioner of Agriculture, Conservation and Forestry shall adopt rules  
26 identifying the types of contaminants that are injurious to health for which marijuana and  
27 marijuana products must be tested under this section and the maximum level of allowable  
28 contamination for each contaminant.

29           **1. Mandatory testing.** ~~Testing~~ A retail marijuana licensee may not sell or furnish  
30 retail marijuana or a retail marijuana product to a consumer or to another licensee under  
31 this chapter unless the marijuana or marijuana product has been tested pursuant to this  
32 section and rules adopted pursuant to this section and that mandatory testing has  
33 demonstrated that the marijuana or marijuana product does not exceed the maximum  
34 level of allowable contamination for any contaminant that is injurious to health and for  
35 which testing is required. Mandatory testing of retail marijuana and retail marijuana  
36 products under this section must include, but is not limited to, analysis testing for residual  
37 solvents, poisons and toxins; harmful chemicals; dangerous molds and mildew; harmful  
38 microbes, such as including, but not limited to, Escherichia coli and salmonella; and  
39 pesticides, fungicides and insecticides; and THC potency, homogeneity and cannabinoid  
40 profiles for correct labeling. The Commissioner of Agriculture, Conservation and  
41 Forestry shall establish by rule processes, protocols and standards for mandatory and  
42 other testing of marijuana and marijuana products that conform with the best practices  
43 generally used within the marijuana testing industry.

1           **2. Notification requirements.** ~~In the event that test~~ If the results of a mandatory test  
2 required under subsection 1 indicate the presence of quantities of any substance  
3 determined to be that the tested marijuana or marijuana product exceeds the maximum  
4 level of allowable contamination for any contaminant that is injurious to health in any  
5 product, these products must be immediately quarantined and immediate notification to  
6 the persons responsible for enforcing the marijuana laws must be made. These products  
7 must be documented and properly destroyed, and for which testing is required, the testing  
8 facility shall immediately quarantine, document and properly destroy the marijuana or  
9 marijuana product, except when the owner of the tested marijuana or marijuana product  
10 has successfully undertaken remediation and retesting. If the results of a mandatory test  
11 indicate that the tested marijuana or marijuana product exceeds the maximum level of  
12 allowable contamination for any contaminant that is injurious to health and for which  
13 testing is required, the testing facility shall within 30 days of completing the test notify  
14 the Department of Agriculture, Conservation and Forestry of the test results. A testing  
15 facility is not required to notify the Department of Agriculture, Conservation and Forestry  
16 of the results of any test:

17           A. Conducted on marijuana or a marijuana product at the direction of a retail  
18 marijuana licensee pursuant to subsection 1 that demonstrates that the marijuana or  
19 marijuana product does not exceed the maximum level of allowable contamination  
20 for any contaminant that is injurious to health and for which testing is required;

21           B. Conducted on marijuana or a marijuana product at the direction of a retail  
22 marijuana licensee for research and development purposes only, as long as the  
23 licensee notifies the testing facility prior to the performance of the test that the testing  
24 is for research and development purposes only;

25           C. Conducted on a substance that is not marijuana or a marijuana product at the  
26 direction of any person; or

27           D. Conducted on marijuana or a marijuana product at the direction of any person  
28 who is not a retail marijuana licensee.

29           ~~**3. THC potency.** Testing must verify THC potency representations for correct~~  
30 ~~labeling.~~

31           **4. Sampling.** If a test to be performed by a retail marijuana testing facility is a  
32 mandatory test required under subsection 1, an employee or designee of the testing  
33 facility must perform the sampling required for the test. If a test to be performed by a  
34 retail marijuana testing facility is not a mandatory test, the owner of the marijuana or  
35 marijuana product may perform the sampling required for the test.

36           **5. Additional testing not required.** A retail marijuana licensee may sell or furnish  
37 to a consumer or to another licensee retail marijuana or a retail marijuana product that the  
38 retail marijuana licensee has not submitted for testing pursuant to this section if:

39           A. The marijuana or marijuana product has previously been tested pursuant to this  
40 section by another retail marijuana licensee and that testing demonstrated that the  
41 marijuana or marijuana product does not exceed the maximum level of allowable  
42 contamination for any contaminant that is injurious to health and for which testing is  
43 required;

1 B. The mandatory testing process and the test results for the marijuana or marijuana  
2 product under paragraph A are documented in accordance with the requirements of  
3 this chapter and all applicable rules adopted pursuant to this chapter; and

4 C. Tracking from seed or immature plant to retail sale has been maintained for the  
5 marijuana or marijuana product and transfers of the marijuana or marijuana product  
6 to a consumer or another licensee can be easily identified.

7 The establishment of an independent testing and certification program in accordance  
8 with this section does not affect the adoption of rules ~~in~~ under section 2444, subsection 2  
9 or affect the implementation of cultivation, production and sale of retail marijuana and  
10 retail marijuana products in accordance with the requirements of this chapter.

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

13 **6. Retail marijuana testing facility license.** ~~A retail marijuana testing facility~~  
14 ~~license may be issued to a person who performs testing and research on retail marijuana.~~  
15 ~~The facility may develop and test retail marijuana products~~ The state licensing authority  
16 may issue a full or a provisional retail marijuana testing facility license in accordance  
17 with this chapter to a person to operate a retail marijuana testing facility for the purposes  
18 of developing, researching and testing marijuana, marijuana products and other  
19 substances.

20 ~~The state licensing authority shall adopt rules pursuant to its authority in section 2445~~  
21 ~~related to acceptable testing and research practices, including but not limited to testing,~~  
22 ~~standards, quality control analysis, equipment certification and calibration, chemical~~  
23 ~~identification and other practices used in bona fide research methods.~~

24 A. A person ~~that has~~ with an interest in a retail marijuana testing facility ~~license from~~  
25 ~~the state licensing authority for testing purposes~~ licensed under this chapter may not  
26 ~~be a registered caregiver or have any an~~ interest in a registered dispensary, ~~a~~  
27 ~~registered caregiver, or in a licensed~~ retail marijuana store, a ~~licensed~~ retail marijuana  
28 social club, a ~~licensed~~ retail marijuana cultivation facility or a ~~licensed~~ retail  
29 marijuana products manufacturing facility licensed under this chapter. A person ~~that~~  
30 ~~has who is a registered caregiver or who has~~ an interest in a registered dispensary, ~~a~~  
31 ~~registered caregiver, or in a licensed~~ retail marijuana store, a ~~licensed~~ retail marijuana  
32 social club, a ~~licensed~~ retail marijuana cultivation facility or a ~~licensed~~ retail  
33 marijuana products manufacturing facility licensed under this chapter may not have  
34 an interest in a ~~facility that has a~~ retail marijuana testing facility ~~license~~ licensed  
35 under this chapter. For purposes of this paragraph, "interest" ~~includes~~ means an  
36 ownership interest or partial ownership interest or any other type of financial interest,  
37 ~~such as including, but not limited to,~~ being an investor or serving in a management  
38 position.

39 B. Retail marijuana and retail marijuana products may be transported between ~~the~~  
40 ~~licensed a~~ retail marijuana testing facility and ~~a~~ retail marijuana cultivation ~~facilities~~  
41 ~~facility,~~ facility, ~~a~~ retail marijuana products manufacturing ~~facilities~~ facility, ~~a~~ retail marijuana  
42 ~~stores~~ store and ~~a~~ retail marijuana social ~~clubs~~ club.

1 C. A licensed retail marijuana testing facility may not commence or continue  
2 operation unless the facility:

3 (1) Is certified for operation by the Department of Health and Human Services,  
4 Maine Center for Disease Control and Prevention in accordance with rules  
5 adopted by the Commissioner of Agriculture, Conservation and Forestry in  
6 consultation with the Department of Health and Human Services, Maine Center  
7 for Disease Control and Prevention;

8 (2) Except as otherwise provided in this subparagraph, is accredited pursuant to  
9 standard ISO/IEC 17025 of the International Organization for Standardization by  
10 a 3rd-party accrediting body or is certified, registered or accredited by an  
11 organization approved by the Commissioner of Agriculture, Conservation and  
12 Forestry. The Commissioner of Agriculture, Conservation and Forestry shall  
13 adopt rules regarding the scope of certification, registration or accreditation  
14 required for licensure as a retail marijuana testing facility.

15 The state licensing authority may issue a full retail marijuana testing facility  
16 license to a person who meets all applicable requirements of this chapter and  
17 rules adopted under this chapter and who has obtained accreditation pursuant to  
18 standard ISO/IEC 17025 of the International Organization for Standardization  
19 from a 3rd-party accrediting body or who is certified, registered or accredited by  
20 an approved organization.

21 The state licensing authority may issue a provisional retail marijuana testing  
22 facility license to a person who otherwise meets all applicable requirements of  
23 this chapter and rules adopted under this chapter and who has applied for but not  
24 yet obtained accreditation from a 3rd-party accrediting body or who has applied  
25 for but not yet obtained certification, registration or accreditation from an  
26 approved organization. The state licensing authority may not renew a provisional  
27 retail marijuana testing facility license more than once;

28 (3) Is determined by the Department of Agriculture, Conservation and Forestry  
29 to meet all operational and technical requirements for retail marijuana testing  
30 facilities under this chapter and applicable rules adopted under this chapter; and

31 (4) Is approved or licensed by the municipality in which the facility is physically  
32 located and notice of approval or licensure has been provided by the municipality  
33 to the state licensing authority.

34 D. A retail marijuana testing facility shall follow all testing protocols, standards and  
35 criteria adopted by rule by the Commissioner of Agriculture, Conservation and  
36 Forestry for the testing of different forms of marijuana and marijuana products;  
37 determining batch size; sampling; testing validity; and approval and disapproval of  
38 tested marijuana and marijuana products.

39 E. If a retail marijuana testing facility determines that a sample of marijuana or a  
40 marijuana product has failed testing, the facility shall offer to the owner of the sample  
41 that failed testing an opportunity for remediation and retesting in accordance with  
42 rules adopted by the Commissioner of Agriculture, Conservation and Forestry.

1 F. A retail marijuana testing facility shall maintain records of all business  
2 transactions and testing results in accordance with the record-keeping requirements of  
3 subsection 8-A and in accordance with applicable standards for licensing and  
4 accreditation under paragraph C and testing protocols, standards and criteria adopted  
5 by the Commissioner of Agriculture, Conservation and Forestry under paragraph D.

6 G. A retail marijuana testing facility shall dispose of used, unused and waste  
7 marijuana and marijuana products in accordance with rules adopted by the  
8 Commissioner of Agriculture, Conservation and Forestry.

9 H. A retail marijuana testing facility shall notify the Department of Agriculture,  
10 Conservation and Forestry of test results in accordance with section 2445, subsection  
11 2.

12 I. A retail marijuana testing facility may develop, research and test marijuana and  
13 marijuana products for that facility; for another retail marijuana establishment or a  
14 retail marijuana social club; for a person who intends to use the marijuana or  
15 marijuana product for personal use as allowed under this chapter; or for a qualifying  
16 patient, a registered caregiver or a registered dispensary. A retail marijuana testing  
17 facility may develop, research and test other substances that are not marijuana or  
18 marijuana products for that facility or for any other person.

19 The Commissioner of Agriculture, Conservation and Forestry shall adopt rules regarding  
20 the testing of marijuana and marijuana products by retail marijuana testing facilities  
21 pursuant to this chapter, including, but not limited to, rules establishing acceptable testing  
22 and research practices for retail marijuana testing facilities, including, but not limited to,  
23 provisions relating to testing practices, methods and standards; remediation and retesting  
24 procedures; quality control analysis; equipment certification and calibration; chemical  
25 identification; testing facility record-keeping, documentation and business practices;  
26 disposal of used, unused and waste marijuana and marijuana products; and reporting of  
27 test results; rules establishing an independent testing and certification program pursuant  
28 to section 2445; and rules governing sampling and testing of retail marijuana and retail  
29 marijuana products pursuant to section 2448, subsection 8-A. Rules adopted pursuant to  
30 this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter  
31 2-A.

32 **Sec. 8. 7 MRSA §2448, sub-§8,** as enacted by IB 2015, c. 5, §1, is repealed.

33 **Sec. 9. 7 MRSA §2448, sub-§8-A** is enacted to read:

34 **8-A. Inspections; record-keeping requirements; audit requirements; testing and**  
35 **sampling for product quality control.** A retail marijuana licensee shall submit to  
36 inspections and maintain business records in accordance with this subsection.

37 A. A licensee shall maintain a complete set of all records of the licensee's business  
38 transactions, which must be open to inspection and examination by the state licensing  
39 authority upon demand and without notice during all business hours. Records must  
40 be maintained by a licensee for a period comprising the current tax year and the 2  
41 immediately preceding tax years.

1           B. The state licensing authority may require a licensee to furnish any additional  
 2           information necessary for the proper administration of this chapter and may require a  
 3           licensee to submit to an audit of the licensee's business records. If the state licensing  
 4           authority requires a licensee to submit to an audit, the licensee shall provide the  
 5           auditor selected by the state licensing authority with access to all business records of  
 6           the licensee and the cost of the audit must be paid by the licensee.

7           C. A licensee shall submit to an inspection of the licensed premises, including any  
 8           places of storage, upon demand and without notice during all business hours and  
 9           other times of apparent activity by the state licensing authority, a law enforcement  
 10           agency or an official authorized by the municipality in which the licensed premises  
 11           are located. If any part of the licensed premises consists of a locked area, a licensee  
 12           shall, upon demand of the state licensing authority, a law enforcement agency or the  
 13           official authorized by the municipality, open the locked area for inspection.

14           D. A licensee shall submit to the sampling and testing of retail marijuana or retail  
 15           marijuana products upon demand and without notice during all business hours by the  
 16           Department of Agriculture, Conservation and Forestry for the purposes of product  
 17           quality control. Sampling and testing by the Department of Agriculture,  
 18           Conservation and Forestry pursuant to this paragraph must be conducted in  
 19           accordance with the requirements of section 2445 and rules adopted pursuant to  
 20           section 2448, subsection 6.

21           **Sec. 10. Appropriations and allocations.** The following appropriations and  
 22           allocations are made.

23           **AGRICULTURE, CONSERVATION AND FORESTRY, DEPARTMENT OF**  
 24           **Cannabis Regulation and Licensing Fund N219**

25           Initiative: Provides allocations for one Consumer Protection Inspector position, one pool  
 26           vehicle and position technology costs.

27

<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2017-18</b>	<b>2018-19</b>
28           POSITIONS - LEGISLATIVE COUNT	0.000	1.000
29           Personal Services	\$0	\$79,801
30           All Other	\$0	\$12,500
31		
32		
33           OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$92,301

34           **Cannabis Regulation and Licensing Fund N219**

35           Initiative: Provides one-time funding for the first year of one Consumer Protection  
 36           Inspector position, one pool vehicle, position technology costs and rule-making costs.

37

<b>GENERAL FUND</b>	<b>2017-18</b>	<b>2018-19</b>
38           POSITIONS - LEGISLATIVE COUNT	1.000	0.000
39           Personal Services	\$76,032	\$0
40		

1	All Other	\$15,000	\$0
2			
3	GENERAL FUND TOTAL	<u>\$91,032</u>	<u>\$0</u>
4			
5	<b>AGRICULTURE, CONSERVATION AND</b>		
6	<b>FORESTRY, DEPARTMENT OF</b>		
7	<b>DEPARTMENT TOTALS</b>	<b>2017-18</b>	<b>2018-19</b>
8			
9	GENERAL FUND	\$91,032	\$0
10	OTHER SPECIAL REVENUE FUNDS	\$0	\$92,301
11			
12	DEPARTMENT TOTAL - ALL FUNDS	<u>\$91,032</u>	<u>\$92,301</u>
13	<b>HEALTH AND HUMAN SERVICES, DEPARTMENT OF (FORMERLY DHS)</b>		
14	<b>Maine Center for Disease Control and Prevention 0143</b>		
15	Initiative: Provides appropriations and allocations for one Environmental Specialist III		
16	position to certify licensed retail marijuana testing facilities.		
17			
18	<b>GENERAL FUND</b>	<b>2017-18</b>	<b>2018-19</b>
19	POSITIONS - LEGISLATIVE COUNT	1.000	0.000
20	Personal Services	\$74,552	\$0
21	All Other	\$10,170	\$0
22			
23	GENERAL FUND TOTAL	<u>\$84,722</u>	<u>\$0</u>
24			
25	<b>OTHER SPECIAL REVENUE FUNDS</b>	<b>2017-18</b>	<b>2018-19</b>
26	POSITIONS - LEGISLATIVE COUNT	0.000	1.000
27	Personal Services	\$0	\$77,185
28	All Other	\$0	\$10,170
29			
30	OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$0</u>	<u>\$87,355</u>
31			
32	<b>HEALTH AND HUMAN SERVICES,</b>		
33	<b>DEPARTMENT OF (FORMERLY DHS)</b>		
34	<b>DEPARTMENT TOTALS</b>	<b>2017-18</b>	<b>2018-19</b>
35			
36	GENERAL FUND	\$84,722	\$0
37	OTHER SPECIAL REVENUE FUNDS	\$0	\$87,355
38		<u></u>	<u></u>







# 128th MAINE LEGISLATURE

LD 1641

LR 2391(01)

## An Act To Amend the Marijuana Legalization Act Regarding Retail Marijuana Testing Facilities

**Fiscal Note for Original Bill**  
**Committee: Marijuana Legalization Implementation**  
**Fiscal Note Required: Yes**

### Fiscal Note

	FY 2017-18	FY 2018-19	Projections FY 2019-20	Projections FY 2020-21
<b>Net Cost (Savings)</b>				
General Fund	\$175,754	\$0	\$0	\$0
<b>Appropriations/Allocations</b>				
General Fund	\$175,754	\$0	\$0	\$0
Other Special Revenue Funds	\$0	\$179,656	\$184,297	\$189,098

#### Fiscal Detail and Notes

The bill includes a General Fund appropriation to the Department of Health and Human Services of \$84,722 in fiscal year 2017-18 and an Other Special Revenue Funds allocation of 87,355 in fiscal year 2018-19 for one Environmental Specialist III position to certify the licensed retail marijuana testing facilities. The bill also includes a General Fund appropriation to the Department of Agriculture, Conservation and Forestry of \$91,032 in fiscal year 2017-18 and an Other Special Revenue Funds allocation of \$92,301 in fiscal year 2018-19 for one Consumer Protection Inspector position to inspect licensed retail marijuana testing facilities for compliance. The Other Special Revenue Funds allocations will be funded by license fees authorized by the Marijuana Legalization Act, 7 MRSA, §2448, subsection 10. The General Fund appropriations are required because there will not be sufficient revenue from license fees in fiscal year 2017-18.