

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND SEVENTEEN

—
H.P. 1132 - L.D. 1641

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

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

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

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

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

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

Sec. 1. 7 MRSA §2442, sub-§20, as enacted by IB 2015, c. 5, §1, is repealed.

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

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

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

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

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

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

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

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

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

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 a marijuana product that is manufactured, processed, distributed or sold by a licensed retail marijuana establishment or a retail marijuana social club.

Sec. 6. 7 MRSA §2445, as amended by PL 2017, c. 278, §5 is further amended to read:

§2445. Independent testing and certification program

Beginning February 1, 2018, the state licensing authority shall establish, ~~within a specific time frame, a~~ an independent testing and certification program for retail marijuana and retail marijuana products independent testing and certification program. ~~This~~ Except as otherwise provided in this section, the program must require ~~licensees to test retail marijuana and retail marijuana products to ensure at a minimum that products sold for human consumption do~~ a retail marijuana licensee, prior to selling or furnishing retail marijuana or a retail marijuana product to a consumer or to another licensee, to submit the marijuana or marijuana product to a retail marijuana testing facility for testing pursuant to this section to ensure that the marijuana or marijuana product does not contain contaminants exceed the maximum level of allowable contamination for any contaminant that are is injurious to health and for which testing is required and to ensure correct labeling. The Commissioner of Agriculture, Conservation and Forestry shall adopt rules regarding ~~retail marijuana testing facilities as authorized by sections 1-C and 2444,~~

~~subsection 2. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2 A identifying the types of contaminants that are injurious to health for which marijuana and marijuana products must be tested under this section and the maximum level of allowable contamination for each contaminant.~~

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

2. Notification requirements. ~~In the event that test~~ If the results of a mandatory test required under subsection 1 indicate the presence of quantities of any substance determined to be that the tested marijuana or marijuana product exceeds the maximum level of allowable contamination for any contaminant that is 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- and for which testing is required, the testing facility shall immediately quarantine, document and properly destroy the marijuana or marijuana product, except when the owner of the tested marijuana or marijuana product has successfully undertaken remediation and retesting. If the results of a mandatory test indicate that the tested marijuana or marijuana 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 shall within 30 days of completing the test notify the Department of Agriculture, Conservation and Forestry of the test results. A testing facility is not required to notify the Department of Agriculture, Conservation and Forestry of the results of any test:

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

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

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

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

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

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

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

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

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

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

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

Sec. 7. 7 MRSA §2448, sub-§6, as amended by PL 2017, c. 278, §8, is further amended to read:

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

The Department of Agriculture, Conservation and Forestry shall adopt rules pursuant to its authority in section 2445 related to acceptable testing and research practices, including

but not limited to testing, standards, quality control analysis, equipment certification and calibration, chemical identification and other practices used in bona fide research methods. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

A. A person ~~that has~~ with an interest in a retail marijuana testing facility ~~license from the state licensing authority for testing purposes licensed under this chapter~~ may not ~~be a registered caregiver or have any an interest in a registered dispensary, a registered caregiver, or in 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 licensed under this chapter.~~ A person ~~that has~~ who is a registered caregiver or who has an interest in a registered dispensary, ~~a registered caregiver, or in 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 licensed under this chapter~~ may not have an interest in a ~~facility that has a retail marijuana testing facility license licensed under this chapter.~~ For purposes of this paragraph, "interest" ~~includes~~ means an ownership interest or partial ownership interest or any other type of financial interest, ~~such as including, but not limited to,~~ being an investor or serving in a management position.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Commissioner of Agriculture, Conservation and Forestry shall adopt rules regarding the testing of marijuana and marijuana products by retail marijuana testing facilities pursuant to this chapter, including, but not limited to, rules establishing acceptable testing

and research practices for retail marijuana testing facilities, including, but not limited to, provisions relating to testing practices, methods and standards; remediation and retesting procedures; quality control analysis; equipment certification and calibration; chemical identification; testing facility record-keeping, documentation and business practices; disposal of used, unused and waste marijuana and marijuana products; and reporting of test results; rules establishing an independent testing and certification program pursuant to section 2445; and rules governing sampling and testing of retail marijuana and retail marijuana products pursuant to section 2448, subsection 8-A. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 8. 7 MRSA §2448, sub-§8, as amended by PL 2017, c. 278, §9, is repealed.

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

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

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

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

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

D. A licensee shall submit to the sampling and testing of retail marijuana or retail marijuana products upon demand and without notice during all business hours by the Department of Agriculture, Conservation and Forestry for the purposes of product quality control. Sampling and testing by the Department of Agriculture, Conservation and Forestry pursuant to this paragraph must be conducted in

accordance with the requirements of section 2445 and rules adopted pursuant to section 2448, subsection 6.

Sec. 10. Transfer; Marijuana Regulation and Licensing Fund program.

Notwithstanding any other provision of law to the contrary, the State Controller, within 5 days of the effective date of this Act, shall transfer \$91,032 from the Retail Marijuana Regulatory Coordination Fund in the Department of Administrative and Financial Services to the Marijuana Regulation and Licensing Fund program in the Department of Agriculture, Conservation and Forestry.

Sec. 11. Transfer; Maine Center for Disease Control and Prevention program.

Notwithstanding any other provision of law to the contrary, the State Controller, within 5 days of the effective date of this Act, shall transfer \$84,722 from the Retail Marijuana Regulatory Coordination Fund in the Department of Administrative and Financial Services to the Maine Center for Disease Control and Prevention program in the Department of Health and Human Services.

Sec. 12. Appropriations and allocations. The following appropriations and allocations are made.

**AGRICULTURE, CONSERVATION AND FORESTRY, DEPARTMENT OF
Marijuana Regulation and Licensing Fund N219**

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

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
POSITIONS - LEGISLATIVE COUNT	1.000	1.000
Personal Services	\$76,032	\$79,801
All Other	\$15,000	\$12,500
OTHER SPECIAL REVENUE FUNDS TOTAL	\$91,032	\$92,301

AGRICULTURE, CONSERVATION AND FORESTRY, DEPARTMENT OF DEPARTMENT TOTALS	2017-18	2018-19
OTHER SPECIAL REVENUE FUNDS	\$91,032	\$92,301
DEPARTMENT TOTAL - ALL FUNDS	\$91,032	\$92,301

HEALTH AND HUMAN SERVICES, DEPARTMENT OF (FORMERLY DHS)

Maine Center for Disease Control and Prevention 0143

Initiative: Provides allocations for one Environmental Specialist III position to certify licensed retail marijuana testing facilities.

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
POSITIONS - LEGISLATIVE COUNT	1.000	1.000
Personal Services	\$74,552	\$77,185
All Other	\$10,170	\$10,170
OTHER SPECIAL REVENUE FUNDS TOTAL	\$84,722	\$87,355

HEALTH AND HUMAN SERVICES, DEPARTMENT OF (FORMERLY DHS) DEPARTMENT TOTALS	2017-18	2018-19
OTHER SPECIAL REVENUE FUNDS	\$84,722	\$87,355
DEPARTMENT TOTAL - ALL FUNDS	\$84,722	\$87,355

SECTION TOTALS	2017-18	2018-19
OTHER SPECIAL REVENUE FUNDS	\$175,754	\$179,656
SECTION TOTAL - ALL FUNDS	\$175,754	\$179,656

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