I am Barry Chaffin, cofounder of Nova Analytic Labs in Portland Maine.

We are neither for nor against LD40. Simply put it was released with too little time to fully evaluate, especially for a 60 plus page bill that completely rewrites how the program(s) work or may work in the future.

There appears to be much in this bill we would support in terms of reducing potential overburdensome regulations, removing stigma and reducing costs, but other things that we do not necessarily support or are unclear to us in their intent.

Although we've heard this bill does not directly do some of the following, it appears to lay the groundwork for doing so by removing OCP's ability to "may" enforce and appears to put the ultimate fate in the hands of future legislative agenda. We hear that there may be last minute amendments and changes brought before the committee, so we are using this opportunity to voice our concern should those changes go down that path. Our concern is that this bill or in conjunction with LD48 will ultimately remove testing, track and trace and expand batch sizes.

We would like to see clarity and assurance that the following tenants of the AU program are preserved:

- Mandatory testing in its current form and not replacing with audit testing. Audit testing should be in addition or supplemental to the current AU mandatory testing program. The lab industry would cease to exist under audit testing only, preventing Maine from being able to export in the future. Testing is paramount for public health and safety. There is a good article in the Wall Street journal I encourage you all to read as well as the study our lab put out last year highlighting the drastic difference in failure rates of pesticides between the two programs in Maine. This shows the effectiveness of testing and how the AU program keeps contaminated material off the shelf. I have included links to these articles below.

- A singular, approved, track and trace system must be present that does not allow "group batching" Without one, this hurts the effectiveness of testing by making it harder to track the correct product was tested, allows for black market product to enter the program (see the issues in the state of NY that are well documented, as well as the author of LD40's answer to a committee members question: METRC is THE one thing preventing illegal grows in the AU program). Without tracking it will eliminate the ability of producers and manufacturers to get product liability insurance, access to banking and will eliminate Maine producers from being able to participate in legal interstate commerce after federal legality. We are not advocating for METRC specifically, but one unified piece of software is required.
-
- Prevention of inflated batch size. A successful program cannot have one test for unlimited pounds or units of product, this dilutes the contaminants and does not provide a statistically relevant sample size. Arizona has allowed this and their

program appears to be rife with fraud. The proposed definition change allows more products to be combined over a longer period of time and as a result products/flower experiencing different conditions may be combined. The is a common worry that lab testing can be variable, while much of this sentiment is rooted in non-scientists incorrectly interpreting data, this expansion of batch size would absolutely increase testing variability and make our results less relevant to what is put on the shelf

- Protections for OCPs power to govern testing by keeping it routine non-technical. We Need to be flexible, adaptive and efficient when rule making around testing. We are discovering things all the time. For instance, we have an ongoing study, at our own cost at our lab, that seems to show that we may not be testing for the correct molds and mycotoxins that are actually present in Maine. This would benefit the producers as well as public health by making the necessary changes. We need a mechanism to make these adjustments efficiently without onerous legislative processes.

As we, the labs, are members of the industry and were not consulted as such in the creation of this bill, we would like to add one change that we would be in support of, that is requiring that the OCP's lab testing data should be made available to the public, with the client de-identified of course, so labs can be held accountable, and the integrity of the program can be monitored by the markets participants. In addition, we would like to see the requirement of blinded, biannual round robin testing. We have many great ideas and would love to be part of the discussion.

Our concern with LD40 is based on public statements by those familiar with the bill's inception there will be other bills addressing seed to sale tracking and potential consequences to the testing program in Maine caused by the interplay between LD40 and, for example, language submitted at the work session on Friday to replace LD48. Because that is a work session, we would not have the opportunity to speak. Specifically, LD40 limits the number of audit tests the state can take from a single licensee to 3 every sixty days, which is fine within the context of the current mandatory testing program. However, if language is introduced on Friday to change Maine's adult use from mandatory testing to audit testing, which is not best practices and puts businesses and consumers at risks and make the market more attractive to illicit operators, reading LD40 and LD48 together (which no one would be doing because they would be two changes to the law happening at the same time) OCP would be severely limited in their ability to audit test. Based on the current number of licenses for cultivation and manufacturing in the state, OCP would by law only be able to test around 750 samples every 60 days. Not only is that not enough to protect public safety (that is around 370 samples a month, when in the month of January 2024 there were 320,916 transactions, meaning **only .01% of products would be tested**. Additionally in the summery months the amount of product sold increases significantly, but the number of audit tests that OCP could perform would stay the same significantly reducing the percentage of product tested), but it is not enough to sustain a testing lab. Because cannabis is still a federally controlled substance, it cannot be shipped over state lines to

be tested. This means that there is a risk that Maine businesses lose access to testing (even if they want to test) and consumers will not have access to tested cannabis in either program (right now adult use is the only program in Maine that has testing). Testing labs provide more services than just product testing. Our lab specifically helps producers by swabbing their facilities to check for contaminants, check soil, water and air as well as consult on best practices to avoid harmful contamination to products or facility areas.

The authors of this bill claimed it was to bring the program back to it's original language from the 2016 bill which called for a "well-regulated industry" and "diminished the presence of the black market". This bill does neither. It is our understanding that this bill was slipped in last minute, along with some anticipated amendments at work session and LD48, in order to ultimately remove or severely weaken the items I have addressed above. We sincerely hope that is not the case and that the committee remain vigilant against such tactics.

Links:
Wall Street journal:
https://www.wsj.com/health/healthcare/for-marijuana-users-even-legalization-doesnt-guarantee-safety-ef1660a5

Nova samples study:
https://testnovalabs.com/nova-analytic-labs-finds-dangerous-pesticides-in-maines-legal-cannabis/#

Barry Chaffin
Nova Analytic Labs
LD 40

I am Barry Chaffin, cofounder of Nova Analytic Labs in Portland Maine.

We are neither for nor against LD40. Simply put it was released with too little time to fully evaluate, especially for a 60 plus page bill that completely rewrites how the program(s) work or may work in the future.

There appears to be much in this bill we would support in terms of reducing potential overburdensome regulations, removing stigma and reducing costs, but other things that we do not necessarily support or are unclear to us in their intent.

Although we've heard this bill does not directly do some of the following, it appears to lay the groundwork for doing so by removing OCP's ability to "may" enforce and appears to put the ultimate fate in the hands of future legislative agenda. We hear that there may be last minute amendments and changes brought before the committee, so we are using this opportunity to voice our concern should those changes go down that path. Our concern is that this bill or in conjunction with LD48 will ultimately remove testing, track and trace and expand batch sizes.

We would like to see clarity and assurance that the following tenants of the AU program are preserved:

•Mandatory testing in its current form and not replacing with audit testing. Audit testing should be in addition or supplemental to the current AU mandatory testing program. The lab industry would cease to exist under audit testing only, preventing Maine from being able to export in the future. Testing is paramount for public health and safety. There is a good article in the Wall Street journal I encourage you all to read as well as the study our lab put out last year highlighting the drastic difference in failure rates of pesticides between the two programs in Maine. This shows the effectiveness of testing and how the AU program keeps contaminated material off the shelf. I have included links to these articles below.

•A singular, approved, track and trace system must be present that does not allow "group batching" Without one, this hurts the effectiveness of testing by making it harder to track the correct product was tested, allows for black market product to enter the program (see the issues in the state of NY that are well documented, as well as the author of LD40's answer to a committee members question: METRC is THE one thing preventing illegal grows in the AU program). Without tracking it will eliminate the ability of producers and manufacturers to get product liability insurance, access to banking and will eliminate Maine producers from being able to participate in legal interstate commerce after federal legality. We are not advocating for METRC specifically, but one unified piece of software is required.
•

•Prevention of inflated batch size. A successful program cannot have one test for unlimited pounds or units of product, this dilutes the contaminants and does not provide a statistically relevant sample size. Arizona has allowed this and their program appears to be rife with fraud. The proposed definition change allows more products to be combined over a longer period of time and as a result products/flower experiencing different conditions may be combined. The is a common worry that lab testing can be variable, while much of this sentiment is rooted in non-scientists incorrectly interpreting data, this expansion of batch size would absolutely increase testing variability and make our results less relevant to what is put on the shelf

•Protections for OCPs power to govern testing by keeping it routine non-technical. We Need to be flexible, adaptive and efficient when rule making around testing. We

are discovering things all the time. For instance, we have an ongoing study, at our own cost at our lab, that seems to show that we may not be testing for the correct molds and mycotoxins that are actually present in Maine. This would benefit the producers as well as public health by making the necessary changes. We need a mechanism to make these adjustments efficiently without onerous legislative processes.

As we, the labs, are members of the industry and were not consulted as such in the creation of this bill, we would like to add one change that we would be in support of, that is requiring that the OCP's lab testing data should be made available to the public, with the client de-identified of course, so labs can be held accountable, and the integrity of the program can be monitored by the markets participants. In addition, we would like to see the requirement of blinded, biannual round robin testing. We have many great ideas and would love to be part of the discussion.

Our concern with LD40 is based on public statements by those familiar with the bill's inception there will be other bills addressing seed to sale tracking and potential consequences to the testing program in Maine caused by the interplay between LD40 and, for example, language submitted at the work session on Friday to replace LD48. Because that is a work session, we would not have the opportunity to speak. Specifically, LD40 limits the number of audit tests the state can take from a single licensee to 3 every sixty days, which is fine within the context of the current mandatory testing program. However, if language is introduced on Friday to change Maine's adult use from mandatory testing to audit testing, which is not best practices and puts businesses and consumers at risks and make the market more attractive to illicit operators, reading LD40 and LD48 together (which no one would be doing because they would be two changes to the law happening at the same time) OCP would be severely limited in their ability to audit test. Based on the current number of licenses for cultivation and manufacturing in the state, OCP would by law only be able to test around 750 samples every 60 days. Not only is that not enough to protect public safety (that is around 370 samples a month, when in the month of January 2024 there were 320,916 transactions, meaning only .01% of products would be tested. Additionally in the summery months the amount of product sold increases significantly, but the number of audit tests that OCP could perform would stay the same significantly reducing the percentage of product tested), but it is not enough to sustain a testing lab. Because cannabis is still a federally controlled substance, it cannot be shipped over state lines to be tested. This means that there is a risk that Maine businesses lose access to testing (even if they want to test) and consumers will not have access to tested cannabis in either program (right now adult use is the only program in Maine that has testing). Testing labs provide more services than just product testing. Our lab specifically helps producers by swabbing their facilities to check for contaminants, check soil, water and air as well as consult on best practices to avoid harmful contamination to products or facility areas.

The authors of this bill claimed it was to bring the program back to it's original language from the 2016 bill which called for a "well-regulated industry" and "diminished the presence of the black market". This bill does neither. It is our understanding that this bill was slipped in last minute, along with some anticipated amendments at work session and LD48, in order to ultimately remove or severely weaken the items I have addressed above. We sincerely hope that is not the case and that the committee remain vigilant against such tactics.

Links:

Wall Street journal:
https://www.wsj.com/health/healthcare/for-marijuana-users-even-legalization-doesnt-guarantee-safety-ef1660a5

Nova samples study:

https://testnovalabs.com/nova-analytic-labs-finds-dangerous-pesticides-in-maines-legal-cannabis/#