

MAINE STATE LEGISLATURE

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SMG
R. O. O. O.

MAJORITY

Date: 3/16/20

(Filing No. S-440)

VETERANS AND LEGAL AFFAIRS

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STATE OF MAINE

SENATE

129TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 482, L.D. 1545, Bill, "An Act Regarding the Testing of Adult Use Marijuana and Marijuana Products"

Amend the bill by striking out the title and substituting the following:

'An Act Regarding the Collection of Samples for Testing of Adult Use Marijuana and Adult Use Marijuana Products'

Amend the bill by striking out everything after the title and inserting the following:

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

Whereas, licenses to authorize the cultivation, manufacturing, testing and sale of adult use marijuana and adult use marijuana products are expected to be issued in the spring of 2020; and

Whereas, the changes to the adult use marijuana laws proposed in this legislation must take effect prior to the issuance of such licenses; 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. 28-B MRSA §102, sub-§29, as enacted by PL 2017, c. 409, Pt. A, §6, is amended to read:

29. Marijuana establishment. "Marijuana establishment" means a cultivation facility, a products manufacturing facility, a testing facility or a marijuana store or a sample collector licensed under this chapter.

Sec. 2. 28-B MRSA §102, sub-§50, as enacted by PL 2017, c. 409, Pt. A, §6, is amended to read:

COMMITTEE AMENDMENT

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- 1 **50. Sample.** "Sample" means:
- 2 A. An amount of marijuana or an amount of a marijuana product provided to a
- 3 testing facility by a marijuana establishment or other person for testing or research
- 4 and development purposes in accordance with subchapter 6;
- 5 B. An amount of adult use marijuana or an amount of an adult use marijuana product
- 6 collected from a licensee by the department for the purposes of testing the marijuana
- 7 or marijuana product for product quality control purposes pursuant to section 512,
- 8 subsection 2;
- 9 C. An amount of adult use marijuana provided by a cultivation facility to another
- 10 licensee for business or marketing purposes pursuant to section 501, subsection 8; ~~or~~
- 11 D. An amount of adult use marijuana or an amount of an adult use marijuana product
- 12 provided to another licensee by a products manufacturing facility for business or
- 13 marketing purposes pursuant to section 502, subsection 6.;
- 14 E. An amount of marijuana or an amount of a marijuana product collected by a
- 15 sample collector licensee and provided to a testing facility for testing consistent with
- 16 the requirements of section 503-A; or
- 17 F. An amount of adult use marijuana or an amount of an adult use marijuana product
- 18 collected by a cultivation facility licensee, products manufacturing facility licensee or
- 19 marijuana store licensee, or an employee of the licensee, and provided to a testing
- 20 facility for testing consistent with the requirements of section 604-A.

21 This paragraph is repealed October 1, 2021.

22 **Sec. 3. 28-B MRSA §102, sub-§50-A** is enacted to read:

23 **50-A. Sample collector.** "Sample collector" means a person licensed under this

24 chapter to collect samples of marijuana and marijuana products for testing and to

25 transport and deliver those samples to a testing facility for testing.

26 **Sec. 4. 28-B MRSA §102, sub-§53,** as enacted by PL 2017, c. 409, Pt. A, §6, is

27 amended to read:

28 **53. Testing or test.** "Testing" or "test" means the research and analysis of

29 marijuana, marijuana products or other substances for contaminants, safety or potency.

30 "Testing" or "test" includes the collection of samples of marijuana and marijuana

31 products for testing purposes, but does not include cultivation or manufacturing.

32 **Sec. 5. 28-B MRSA §201,** as enacted by PL 2017, c. 409, Pt. A, §6, is amended to

33 read:

34 **§201. License process; license types**

35 The department, upon receipt of an application in the prescribed form that meets all

36 applicable requirements for licensure under this chapter and the rules adopted pursuant to

37 this chapter, shall issue to the applicant a conditional license to operate one or more of the

38 following types of marijuana establishments or shall deny the application in accordance

39 with section 206:

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1 **1. Cultivation facility.** Consistent with the requirements and restrictions of section
2 205, subsection 2, paragraph A and subchapter 3, a cultivation facility license;

3 **2. Testing facility.** Consistent with the requirements and restrictions of section 205,
4 subsection 2, paragraph B and section 503, subsection 2, a testing facility license;

5 **3. Products manufacturing facility.** A products manufacturing facility license; ~~or~~

6 **4. Marijuana store.** Consistent with the restrictions of section 205, subsection 2,
7 paragraph C, a marijuana store license; ~~or~~

8 **5. Sample collector.** Consistent with the requirements and restrictions of section
9 205, subsection 2, paragraph B and section 503-A, a sample collector license.

10 Except as provided in section 205, the department may not impose any limitation on
11 the number of each type of license that it issues to a qualified individual applicant or on
12 the total number of each type of license that it issues to qualified applicants pursuant to
13 this chapter.

14 **Sec. 6. 28-B MRSA §205, sub-§2, ¶B,** as enacted by PL 2017, c. 409, Pt. A, §6
15 and amended by c. 452, §37, is further amended to read:

16 B. If the applicant has applied for the issuance or renewal of a testing facility license
17 or sample collector license, the applicant may not be a caregiver or registered
18 caregiver or have an interest in a registered dispensary, a cultivation facility license, a
19 products manufacturing facility license or a marijuana store license. If the applicant
20 has applied for the issuance or renewal of any license under this chapter that is not a
21 testing facility license or a sample collector license, the applicant may not have an
22 interest in a testing facility license or a sample collector license. An applicant that
23 meets the requirements for the issuance of a testing facility license under this chapter
24 and the requirements of this paragraph may apply for and be issued multiple testing
25 facility licenses. For purposes of this paragraph, "interest" means an equity
26 ownership interest or a partial equity ownership interest or any other type of financial
27 interest, including, but not limited to, being an investor or serving in a management
28 position; and

29 **Sec. 7. 28-B MRSA §205, sub-§4, ¶B,** as enacted by PL 2017, c. 409, Pt. A, §6,
30 is amended to read:

31 B. The department shall prepare and furnish to applicants, municipalities and the
32 Maine Land Use Planning Commission a certification form by which the
33 municipality may certify to the department that the applicant has obtained local
34 authorization as required by section 402, subsection 3, paragraph B or, in the case of
35 a marijuana establishment to be located in the unorganized and deorganized areas, the
36 Maine Land Use Planning Commission may certify to the department that the
37 applicant has obtained local authorization as required by section 403, subsection 3,
38 paragraphs B and C. Notwithstanding any provision of this chapter to the contrary,
39 applicants for a sample collector license are not required to seek local authorization
40 prior to issuance of an active license by the department but must submit all other
41 information required by the department under this chapter and the rules adopted
42 pursuant to this chapter.

43 **Sec. 8. 28-B MRSA §207, sub-§3-A** is enacted to read:

COMMITTEE AMENDMENT

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1 **3-A. Fees for sample collectors.** For a sample collector license, the department
2 shall require payment of an application fee of \$100 and a license fee of not more than
3 \$250.

4 **Sec. 9. 28-B MRSA §209, sub-§5, ¶A,** as enacted by PL 2017, c. 409, Pt. A, §6,
5 is amended to read:

6 A. The department may not issue an active license to a licensee seeking renewal of a
7 license until the licensee obtains local authorization as required by section 402,
8 subsection 3, paragraph B or, in the case of a marijuana establishment located in the
9 unorganized and deorganized areas, as required by section 403, subsection 3,
10 paragraphs B and C, pays the applicable license fee required under section 207 and
11 meets all other applicable requirements for the issuance of an active license under
12 section 205, subsection 4. Notwithstanding any provision of this chapter to the
13 contrary, a sample collector licensee is not required to seek local authorization as a
14 condition for renewal of that license by the department but must submit all other
15 information required by the department under this chapter and the rules adopted
16 pursuant to this chapter.

17 **Sec. 10. 28-B MRSA §401, last ¶,** as enacted by PL 2017, c. 409, Pt. A, §6, is
18 amended to read:

19 Notwithstanding any other provision of law to the contrary, a municipal ordinance
20 regulating marijuana establishments within the municipality adopted pursuant to this
21 subchapter is not subject to the requirements or limitations of Title 7, chapter 6 or 8-F.
22 Nothing in this subchapter may be construed to require an applicant for a sample collector
23 license or a sample collector licensee to seek local authorization prior to the issuance or
24 renewal of an active license.

25 **Sec. 11. 28-B MRSA §503, sub-§3,** as enacted by PL 2017, c. 409, Pt. A, §6, is
26 amended to read:

27 **3. Compliance with testing protocols, standards and criteria.** A testing facility
28 shall follow all testing protocols, standards and criteria adopted by rule by the department
29 for the testing of different forms of marijuana and marijuana products; determining batch
30 size; sampling; testing validity; and approval and disapproval of tested marijuana and
31 marijuana products. A testing facility may use a sample collector for the collection of
32 samples for mandatory testing as long as the testing facility's operating plan and standard
33 operating procedures indicate the use of a sample collector for that purpose.

34 **Sec. 12. 28-B MRSA §503, sub-§8,** as enacted by PL 2017, c. 409, Pt. A, §6 and
35 amended by c. 452, §37, is further amended to read:

36 **8. Independence of testing facility interest.** A person with an interest in a testing
37 facility may not be a caregiver or a registered caregiver or have an interest in a registered
38 dispensary, a marijuana store license, a cultivation facility license or a products
39 manufacturing facility license, but may hold or have an interest in multiple testing facility
40 or sample collector licenses. A person who is a caregiver or a registered caregiver or who
41 has an interest in a registered dispensary, a marijuana store license, a cultivation facility
42 license or a products manufacturing facility license may not have an interest in a testing

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1 facility or sample collector license. As used in this subsection, "interest" has the same
2 meaning as in section 205, subsection 2, paragraph B.

3 **Sec. 13. 28-B MRSA §503-A** is enacted to read:

4 **§503-A. Operation of sample collectors**

5 A sample collector shall operate in accordance with the provisions of this section and
6 the rules adopted pursuant to this chapter.

7 1. Authorized operation. A sample collector is authorized to collect samples of
8 marijuana and marijuana products from a marijuana establishment for mandatory and
9 other testing by a testing facility and to transport and deliver those samples to the testing
10 facility for those purposes. A sample collector may operate as an independent contractor
11 or employee of a testing facility or as an employee of a business entity that employs 2 or
12 more sample collectors and that is not a cultivation facility, a products manufacturing
13 facility, a marijuana store, a registered caregiver, a registered dispensary or a
14 manufacturing facility as defined in Title 22, section 2422, subsection 4-R.

15 2. Compliance with sampling protocols, standards and criteria. A sample
16 collector shall follow all sampling protocols, standards and criteria adopted by rule or
17 otherwise approved by the department for the sampling of different forms of marijuana
18 and marijuana products.

19 3. Record keeping. A sample collector shall maintain records of all business
20 transactions in accordance with the record-keeping requirements of section 511 and
21 section 602, subsections 2 and 3.

22 4. Disposal of marijuana and marijuana products. A sample collector shall
23 dispose of or destroy used, unused and waste marijuana and marijuana products in
24 accordance with rules adopted by the department.

25 5. Independence of sample collector interest. A person with an interest in a
26 sample collector license may not be a caregiver or a registered caregiver or have an
27 interest in a registered dispensary, a marijuana store license, a cultivation facility license
28 or a products manufacturing facility license but may hold or have an interest in a business
29 entity that employs 2 or more sample collectors, in a testing facility license or in multiple
30 testing facility licenses. A person who is a caregiver or a registered caregiver or who has
31 an interest in a registered dispensary, a marijuana store license, a cultivation facility
32 license or a products manufacturing facility license may not have an interest in a sample
33 collector license. As used in this subsection, "interest" has the same meaning as in section
34 205, subsection 2, paragraph B.

35 6. Tracking. In accordance with the requirements of section 105, a sample collector
36 shall track all adult use marijuana and adult use marijuana products it collects from a
37 licensee for testing purposes from the point at which the marijuana or marijuana products
38 are collected from a licensee to the point at which the marijuana or marijuana products
39 are delivered to a testing facility or the marijuana or marijuana products are disposed of
40 or destroyed.

41 7. Rules. The department shall adopt rules regarding the licensing and operation of
42 sample collectors pursuant to this chapter, including, but not limited to, rules establishing

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licensing requirements, acceptable sample collection methods, sample collector record keeping, documentation and business practices, and standards for the disposal of used, unused and waste marijuana and marijuana products. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 14. 28-B MRSA §604, as enacted by PL 2017, c. 409, Pt. A, §6, is amended to read:

§604. Sampling Sample collection for testing

~~If Except as provided in section 604-A, if a test to be performed by a testing facility is a mandatory test under section 602, an employee or designee of the testing facility or a sample collector must perform the sampling collect the sample required for the test. If a test to be performed by a testing facility is not a mandatory test, the owner of the marijuana or marijuana product, or a designee of the owner, may perform the sampling collect the sample required for the test.~~

Sec. 15. 28-B MRSA §604-A is enacted to read:

§604-A. Sample collecting for mandatory testing by licensee

1. Sample collecting by licensee authorized; rules. Notwithstanding any provision of this chapter to the contrary, a cultivation facility licensee, products manufacturing facility licensee or marijuana store licensee, or an employee of such licensee, may collect samples of the licensee's adult use marijuana or adult use marijuana products for mandatory testing under section 602 and may deliver those samples to a testing facility for testing. The department shall adopt rules regarding the collection of samples of adult use marijuana and adult use marijuana products for mandatory testing by a licensee or an employee of a licensee as authorized under this section, which must include, but are not limited to:

A. The establishment of sample collecting processes, protocols and standards, which must be complied with by the licensee and its employees in collecting samples of adult use marijuana and adult use marijuana products for testing purposes;

B. Requirements for the licensee to provide video, onsite or other demonstration of its sample collecting practices to ensure compliance with paragraph A;

C. Provisions authorizing the department to conduct audits of adult use marijuana or adult use marijuana products that were tested using samples collected by the licensee or its employees pursuant to this section, with all costs of the audits to be paid for by the licensee;

D. Requirements for the transportation, delivery and transfer of samples of adult use marijuana and adult use marijuana products collected by the licensee or an employee of the licensee to a testing facility, which must require the in-person transfer of the samples by the licensee or an employee of the licensee to the testing facility licensee or an employee of the testing facility licensee;

E. A prohibition on the intentional tampering with or interference in the mandatory testing process or auditing process by a licensee or an employee of the licensee, which, notwithstanding any provision of this chapter to the contrary, may be treated by the department as constituting a major license violation affecting public safety and

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as a basis for imposition of a license suspension or revocation pursuant to section 802; and

F. Authorization for the department to suspend or revoke the licensee's license following 2 or more failed sample collecting audits conducted by the department pursuant to this section.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

2. Repeal. This section is repealed October 1, 2021.

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

SUMMARY

This amendment, which is the majority report of the committee, changes the title of and replaces the bill and adds an emergency preamble and emergency clause. It authorizes the licensure and operation of sample collectors to collect samples of marijuana and marijuana products for testing by marijuana testing facilities. It also authorizes a cultivation facility licensee, products manufacturing facility licensee or marijuana store licensee, or an employee of a licensee, to collect samples of the licensee's adult use marijuana or adult use marijuana products for mandatory testing and to deliver those samples to a marijuana testing facility for testing; this authorization is repealed October 1, 2021.

FISCAL NOTE REQUIRED

(See attached)



129th MAINE LEGISLATURE

LD 1545

LR 2171(02)

An Act Regarding the Testing of Adult Use Marijuana and Marijuana Products

Fiscal Note for Bill as Amended by Committee Amendment "#(S-440)"
Committee: Veterans and Legal Affairs
Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor revenue increase - General Fund

Fiscal Detail and Notes

This bill authorizes the licensure and operation of sample collectors to collect samples of marijuana and marijuana products for testing by marijuana testing facilities. Any additional costs to the Office of Marijuana Policy within the Department of Administrative and Financial Services as a result of these provisions are anticipated to be minor and can be absorbed within existing budgeted resources. No estimate is made at this time of the number of new licenses that will be issued, but the impact on General Fund revenues is not anticipated to be significant.