

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

SECOND REGULAR SESSION-2020

Legislative Document

No. 2091

S.P. 741

In Senate, January 30, 2020

An Act To Amend the Marijuana Legalization Act and Make Other Implementing Changes

Submitted by the Department of Administrative and Financial Services pursuant to Joint Rule 203.

Reference to the Committee on Veterans and Legal Affairs suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator LUCHINI of Hancock.

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

2 **PART A**

3 **Sec. A-1. 28-B MRSA §102, sub-§20**, as enacted by PL 2017, c. 409, Pt. A, §6,
4 is amended to read:

5 **20. Inherently hazardous substance.** "Inherently hazardous substance" means a
6 liquid chemical, compressed gas or commercial product that has a flash point at or lower
7 than 38 degrees Celsius or 100 degrees Fahrenheit, including, but not limited to, butane,
8 propane and, diethyl ether. ~~"Inherently hazardous substance" does not include and any~~
9 form of alcohol or ethanol.

10 **Sec. A-2. 28-B MRSA §102, sub-§24**, as enacted by PL 2017, c. 409, Pt. A, §6,
11 is amended to read:

12 **24. Licensee.** "Licensee" means a person licensed pursuant to this chapter to operate
13 a marijuana establishment or marijuana establishment support entity.

14 **Sec. A-3. 28-B MRSA §102, sub-§29-A** is enacted to read:

15 **29-A. Marijuana establishment support entity.** "Marijuana establishment support
16 entity" means an individual or business entity licensed under this chapter to provide
17 services to support the specific needs of marijuana establishments licensed under this
18 chapter. "Marijuana establishment support entity" includes, but is not limited to, sample
19 collectors.

20 **Sec. A-4. 28-B MRSA §102, sub-§35**, as amended by PL 2019, c. 528, §19, is
21 further amended to read:

22 **35. Marijuana trim.** "Marijuana trim" means any part of a marijuana plant, whether
23 processed or unprocessed, that is not marijuana flower or a marijuana seed except that
24 "marijuana trim" does not include the stalks or roots of the marijuana plant. "Marijuana
25 trim" does not include any part of a hemp plant as defined in Title 7, section 2231,
26 subsection 1-A, paragraph D.

27 **Sec. A-5. 28-B MRSA §102, sub-§50-A** is enacted to read:

28 **50-A. Sample collector.** "Sample collector" means:

29 A. An individual who possesses an individual identification card issued by the
30 department and who is authorized to sample marijuana and marijuana products for
31 mandatory testing required by this chapter and rules adopted pursuant to this chapter;
32 or

33 B. An individual or entity that is licensed under this chapter, that is not a testing
34 facility and that employs a sample collector as described in paragraph A.

35 **Sec. A-6. 28-B MRSA §102, sub-§51**, as enacted by PL 2017, c. 409, Pt. A, §6,
36 is amended to read:

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

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

7 **Sec. C-3. 28-B MRSA §205, sub-§2, ¶B,** as enacted by PL 2017, c. 409, Pt. A,
8 §6 and amended by c. 452, §37, is further amended to read:

9 B. If the applicant has applied for the issuance or renewal of a testing facility license
10 or sample collector license, the applicant or, in the case of a sample collector
11 licensee, any individual or entity contracting with or employing the applicant, may
12 not be a caregiver or registered caregiver or have an interest in a registered
13 dispensary, a cultivation facility license, a products manufacturing facility license or
14 a marijuana store license. If the applicant has applied for the issuance or renewal of
15 any license under this chapter that is not a testing facility license or a sample collector
16 license, the applicant may not have an interest in a testing facility license or a sample
17 collector license. An applicant that meets the requirements for the issuance of a
18 testing facility license under this chapter and the requirements of this paragraph may
19 apply for and be issued multiple testing facility licenses. For purposes of this
20 paragraph, "interest" means an equity ownership interest or a partial equity ownership
21 interest or any other type of financial interest, including, but not limited to, being an
22 investor or serving in a management position; and

23 **Sec. C-4. 28-B MRSA §205, sub-§3,** as enacted by PL 2017, c. 409, Pt. A, §6, is
24 amended to read:

25 **3. Issuance of conditional license.** Within 90 days of receipt of an application for a
26 license to operate a marijuana establishment or a marijuana establishment support entity
27 or for renewal of an existing license to operate a marijuana establishment or a marijuana
28 establishment support entity, the department either shall issue to the applicant a
29 conditional license to operate the marijuana establishment or marijuana establishment
30 support entity if the applicant meets all applicable requirements for licensure under this
31 chapter and the rules adopted pursuant to this chapter or shall deny the application in
32 accordance with section 206.

33 A. A licensee that has been issued a conditional license by the department may not
34 engage in the cultivation, manufacture, testing, sampling or sale of adult use
35 marijuana or adult use marijuana products until the department has issued an active
36 license to the licensee pursuant to subsection 4.

37 B. A conditional license issued by the department pursuant to this subsection is
38 effective for a period of one year from the date of issuance and may not be renewed.
39 If a licensee issued a conditional license by the department fails to obtain an active
40 license from the department pursuant to subsection 4 within one year from the date of
41 issuance of the conditional license, the conditional license expires.

1 **Sec. C-5. 28-B MRSA §205, sub-§4, ¶B**, as enacted by PL 2017, c. 409, Pt. A,
2 §6, is amended to read:

3 B. The department shall prepare and furnish to applicants, except applicants for a
4 sample collector license, municipalities and the Maine Land Use Planning
5 Commission a certification form by which the municipality may certify to the
6 department that the applicant has obtained local authorization as required by section
7 402, subsection 3, paragraph B or, in the case of a marijuana establishment to be
8 located in the unorganized and deorganized areas, the Maine Land Use Planning
9 Commission may certify to the department that the applicant has obtained local
10 authorization as required by section 403, subsection 3, paragraphs B and C.
11 Applicants for a sample collector license are not required to seek local authorization
12 prior to issuance of an active license by the department but must submit all other
13 information required by the department under this chapter.

14 **Sec. C-6. 28-B MRSA §207, sub-§3-A** is enacted to read:

15 **3-A. Fees for sample collectors.** For a sample collector license, the department
16 shall require payment of an application fee of \$100 and a license fee of not more than
17 \$250.

18 **Sec. C-7. 28-B MRSA §209, sub-§3**, as enacted by PL 2017, c. 409, Pt. A, §6, is
19 amended to read:

20 **3. Operation under expired license.** A licensee that files an application for renewal
21 of its existing license and pays all required fees under this section prior to the expiration
22 of the license may continue to operate the marijuana establishment or the marijuana
23 establishment support entity under that license notwithstanding its expiration until such
24 time as the department takes final action on the renewal application, except when the
25 department suspends or revokes the license in accordance with the provisions of
26 subchapter 8 prior to taking final action on the renewal application.

27 **Sec. C-8. 28-B MRSA §209, sub-§4**, as enacted by PL 2017, c. 409, Pt. A, §6, is
28 amended to read:

29 **4. Expired license; cessation of activity and forfeiture of marijuana and**
30 **marijuana products.** Except as provided in subsection 3, a person whose license has
31 expired shall immediately cease all activities relating to the operation of the marijuana
32 establishment or marijuana establishment support entity previously authorized under that
33 license and ensure that all adult use marijuana and adult use marijuana products
34 cultivated, manufactured, sampled or otherwise in the possession of the person pursuant
35 to that license are forfeited to the department for destruction in accordance with section
36 803.

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

39 **5. Renewal application process; fees; rules.** An applicant seeking renewal of a
40 license to operate a marijuana establishment or marijuana establishment support entity

1 must pay to the department a renewal application fee or, if applicable, a late renewal
2 application fee, and must demonstrate continued compliance with all applicable licensing
3 criteria under this chapter, including, but not limited to, obtaining local authorization as
4 required by section 402, subsection 3, paragraph B or, in the case of a marijuana
5 establishment located in the unorganized and deorganized areas, as required by section
6 403, subsection 3, paragraphs B and C, except that an applicant seeking renewal of a
7 license is not required to submit to a criminal history record check under section 204
8 unless specifically required to do so by the department.

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

18 B. The department shall by rule set forth requirements for the submission, processing
19 and approval of a renewal application, which must include, but are not limited to,
20 setting of a reasonable renewal application fee and a reasonable late renewal
21 application fee.

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

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

30 **Sec. C-11. 28-B MRSA c. 1, sub-c. 5, headnote** is amended to read:

31 SUBCHAPTER 5

32 OPERATING REQUIREMENTS FOR MARIJUANA ESTABLISHMENTS 33 AND MARIJUANA ESTABLISHMENT SUPPORT ENTITIES

34 **Sec. C-12. 28-B MRSA §503, sub-§3**, as enacted by PL 2017, c. 409, Pt. A, §6,
35 is amended to read:

36 **3. Compliance with testing protocols, standards and criteria.** A testing facility
37 shall follow all testing protocols, standards and criteria adopted by rule by the department
38 for the testing of different forms of marijuana and marijuana products; determining batch
39 size; sampling; testing validity; and approval and disapproval of tested marijuana and
40 marijuana products. A testing facility may use an independent sample collector for the

1 collection of samples for mandatory testing, as long as the testing facility has indicated
2 the use of an independent sample collector in its operating plan and standard operating
3 procedures.

4 **Sec. C-13. 28-B MRSA §503, sub-§8**, as enacted by PL 2017, c. 409, Pt. A, §6
5 and amended by c. 452, §37, is further amended to read:

6 **8. Independence of testing facility interest.** A person with an interest in a testing
7 facility may not be a caregiver or a registered caregiver or have an interest in a registered
8 dispensary, a marijuana store license, a cultivation facility license or a products
9 manufacturing facility license, but may hold or have an interest in multiple testing facility
10 or sample collector licenses. A person who is a caregiver or a registered caregiver or who
11 has an interest in a registered dispensary, a marijuana store license, a cultivation facility
12 license or a products manufacturing facility license may not have an interest in a testing
13 facility or sample collector license. As used in this subsection, "interest" has the same
14 meaning as in section 205, subsection 2, paragraph B.

15 **Sec. C-14. 28-B MRSA §503-A** is enacted to read:

16 **§503-A. Operation of sample collectors**

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

19 **1. Sample collector may operate as independent contractor, as entity or as**
20 **employee of testing facility.** A sample collector is authorized to collect samples from a
21 marijuana establishment for mandatory and other testing by a marijuana testing facility.
22 A sample collector may operate as an independent contractor, as an employee of a
23 marijuana testing facility or as an employee of a business entity that is not a registered
24 caregiver, registered dispensary, registered manufacturing facility under the Maine
25 Medical Use of Marijuana Act, registered manufacturing facility using inherently
26 hazardous substances for marijuana extraction in accordance with Title 22, section
27 2423-F, cultivation facility, products manufacturing facility or marijuana store if that
28 entity employs more than one individual who is a sample collector.

29 **2. Compliance with sampling protocols, standards and criteria.** A sample
30 collector shall follow all sampling protocols, standards and criteria adopted by rule or
31 otherwise approved by the department for the sampling of different forms of marijuana
32 and marijuana products.

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

36 **4. Disposal of marijuana and marijuana products.** A sample collector shall
37 dispose of or destroy used, unused and waste marijuana and marijuana products in
38 accordance with rules adopted by the department.

1 **5. Independence of sample collector interest.** A person with an interest in a
2 sample collector license may not be a caregiver or a registered caregiver or have an
3 interest in a registered dispensary, a marijuana store license, a cultivation facility license
4 or a products manufacturing facility license but may hold or have an interest in a business
5 entity that employs multiple sample collectors, in a testing facility license or in multiple
6 testing facility licenses. A person who is a caregiver or a registered caregiver or who has
7 an interest in a registered dispensary, a marijuana store license, a cultivation facility
8 license or a products manufacturing facility license may not have an interest in a sample
9 collector license. As used in this subsection, "interest" has the same meaning as in section
10 205, subsection 2, paragraph B.

11 **6. Tracking.** In accordance with the requirements of section 105, a sample collector
12 shall track all adult use marijuana and adult use marijuana products it collects from a
13 licensee for testing purposes from the point at which the marijuana or marijuana products
14 are collected from a licensee to the point at which the marijuana or marijuana products
15 are delivered to a testing facility or the marijuana or marijuana products are disposed of
16 or destroyed.

17 **7. Rules.** The department shall adopt rules regarding the sampling of marijuana and
18 marijuana products by sample collectors pursuant to this chapter, including, but not
19 limited to, rules establishing acceptable sampling methods, sample collector record
20 keeping, documentation and business practices, and regarding the disposal of used,
21 unused and waste marijuana and marijuana products. Rules adopted pursuant to this
22 section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

23 **Sec. C-15. 28-B MRSA §601,** as enacted by PL 2017, c. 409, Pt. A, §6, is
24 amended to read:

25 **§601. Testing program established**

26 The department shall establish a testing program for adult use marijuana and adult
27 use marijuana products. Except as otherwise provided in this subchapter, the program
28 must require a licensee, prior to selling or distributing adult use marijuana or an adult use
29 marijuana product to a consumer or to another licensee, to submit the marijuana or
30 marijuana product to a testing facility for testing to ensure that the marijuana or marijuana
31 product does not exceed the maximum level of allowable contamination for any
32 contaminant that is injurious to health and for which testing is required and to ensure
33 correct labeling. The department shall adopt rules establishing a testing program pursuant
34 to this section, rules identifying the types of contaminants that are injurious to health for
35 which marijuana and marijuana products must be tested under this subchapter ~~and~~, rules
36 regarding the maximum level of allowable contamination for each contaminant and rules
37 regarding the qualifications of sample collectors authorized by the department to sample
38 marijuana and marijuana products for mandatory testing and the approval of sampling
39 protocols implemented by sample collectors. Rules adopted pursuant to this subchapter
40 are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

41 **Sec. C-16. 28-B MRSA §604,** as enacted by PL 2017, c. 409, Pt. A, §6, is
42 amended to read:

1 **§604. Sampling for testing**

2 If a test to be performed by a testing facility is a mandatory test under section 602, an
3 employee or designee of the testing facility or an independent sample collector must
4 perform the sampling required for the test. If a test to be performed by a testing facility is
5 not a mandatory test, the owner of the marijuana or marijuana product, or a designee of
6 the owner, may perform the sampling required for the test.

7 **PART D**

8 **Sec. D-1. 36 MRSA §191, sub-§2, ¶KKK** is enacted to read:

9 KKK. The disclosure by employees of the bureau to an authorized representative of
10 the Department of Administrative and Financial Services, office of marijuana policy
11 for determining the eligibility for registration under the Maine Medical Use of
12 Marijuana Act or eligibility for an individual identification card or license issued
13 under the Marijuana Legalization Act.

14 **PART E**

15 **Sec. E-1. 1 MRSA §402, sub-§3, ¶U**, as amended by PL 2017, c. 118, §2, is
16 further amended to read:

17 U. Records provided by a railroad company describing hazardous materials
18 transported by the railroad company in this State, the routes of hazardous materials
19 shipments and the frequency of hazardous materials operations on those routes that
20 are in the possession of a state or local emergency management entity or law
21 enforcement agency, a fire department or other first responder. For the purposes of
22 this paragraph, "hazardous material" has the same meaning as set forth in 49 Code of
23 Federal Regulations, Section 105.5; ~~and~~

24 **Sec. E-2. 1 MRSA §402, sub-§3, ¶V**, as enacted by PL 2017, c. 118, §3, is
25 amended to read:

26 V. Participant application materials and other personal information obtained or
27 maintained by a municipality or other public entity in administering a community
28 well-being check program, except that a participant's personal information, including
29 health information, may be made available to first responders only as necessary to
30 implement the program. For the purposes of this paragraph, "community well-being
31 check program" means a voluntary program that involves daily, or regular, contact
32 with a participant and, when contact cannot be established, sends first responders to
33 the participant's residence to check on the participant's well-being; and

34 **Sec. E-3. 1 MRSA §402, sub-§3, ¶W** is enacted to read:

35 W. Application materials obtained by the Department of Administrative and
36 Financial Services, office of marijuana policy containing information regarding the
37 security of marijuana establishments licensed or registered by that office; trade
38 secrets related to marijuana cultivation, marijuana product recipes or marijuana
39 extraction methods; or standard operating procedures for marijuana establishments.

1 **SUMMARY**

2 This bill does the following.

3 In the Marijuana Legalization Act, it amends the definition of "inherently hazardous
4 substance" to include ethanol and alcohol, amends the definition of "marijuana trim" to
5 exclude from that definition stalks and roots of the marijuana plant, amends the definition
6 of "seedling" to include larger plants and adds definitions of "marijuana establishment
7 support entity" and "sample collector."

8 In the Marijuana Legalization Act, it changes the requirements of the operating plan
9 for cultivation facilities to require such facilities to obscure from public view by anyone
10 under 21 years of age any marijuana or marijuana plants.

11 In the Marijuana Legalization Act, it provides for sample collectors to collect samples
12 of marijuana and marijuana products for mandatory testing by marijuana testing facilities
13 and provides for the licensing of marijuana establishment support entities.

14 It allows the Department of Administrative and Financial Services, Maine Revenue
15 Services to provide tax information directly to the Department of Administrative and
16 Financial Services, office of marijuana policy for the purposes of determining applicant
17 eligibility for licenses issued by the office.

18 It amends the Freedom of Access Act to exclude from the definition of "public
19 record" application materials provided to the office of marijuana policy regarding
20 security, trade secrets and standard operating procedures.