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House of Representatives, April 12, 2021

An Act To Require the Testing of Marijuana for Medical Use

Received by the Clerk of the House on April 8, 2021. Referred to the Committee on Veterans and Legal Affairs pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative HYMANSON of York.

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

2 **Sec. 1. 22 MRSA §2429-E** is enacted to read:

3 **§2429-E. Harvested marijuana testing program**

4 **1. Mandatory testing program established.** The department shall establish a testing
5 program for harvested marijuana. Except as otherwise provided in this section or in rules
6 adopted pursuant to this section, the program must require a registered caregiver,
7 dispensary or manufacturing facility, prior to selling or distributing harvested marijuana to
8 a qualifying patient or to another registered caregiver, dispensary or manufacturing facility,
9 to submit the harvested marijuana to a testing facility licensed pursuant to Title 28-B,
10 chapter 1 for testing to ensure that the harvested marijuana does not exceed the maximum
11 level of allowable contamination for any contaminant that is injurious to health and for
12 which testing is required and to ensure correct labeling.

13 **2. Scope of mandatory testing; record keeping; processes, protocols and**
14 **standards.** A registered caregiver, dispensary or manufacturing facility may not sell or
15 distribute harvested marijuana to a qualifying patient or caregiver or to another registered
16 caregiver, dispensary or manufacturing facility under this section unless the harvested
17 marijuana has been tested pursuant to this section and the rules adopted pursuant to this
18 section and that mandatory testing has demonstrated that the tested harvested marijuana
19 does not exceed the maximum level of allowable contamination for any contaminant that
20 is injurious to health and for which testing is required.

21 **A. Mandatory testing of harvested marijuana under this section must include, but is**
22 **not limited to, testing for:**

23 **(1) Residual solvents, poisons and toxins;**

24 **(2) Harmful chemicals;**

25 **(3) Dangerous molds and mildew;**

26 **(4) Harmful microbes, including, but not limited to, Escherichia coli and**
27 **salmonella;**

28 **(5) Pesticides, fungicides and insecticides; and**

29 **(6) THC, or tetrahydrocannabinol, potency, homogeneity and cannabinoid profiles**
30 **to ensure correct labeling.**

31 **The department may temporarily waive mandatory testing requirements under this**
32 **paragraph for any contaminant or factor for which the department has determined that**
33 **there exists no testing facility licensed pursuant to Title 28-B, chapter 1 in the State**
34 **capable of and certified to perform such testing.**

35 **B. A registered caregiver, dispensary or manufacturing facility shall maintain a record**
36 **of all mandatory testing under this section that includes a description of the harvested**
37 **marijuana provided to the testing facility, the identity of the testing facility and the**
38 **results of the mandatory test.**

39 **C. The department shall establish by rule processes, protocols and standards for**
40 **mandatory and other testing of harvested marijuana that conform with the best practices**
41 **generally used within the marijuana industry.**

1 **3. Notification requirements.** Testing facilities are required to notify the department
2 of test results on harvested marijuana as follows.

3 A. If the results of a mandatory test conducted pursuant to subsection 2 indicate that
4 the tested harvested marijuana exceeds the maximum level of allowable contamination
5 for any contaminant that is injurious to health and for which testing is required, the
6 testing facility immediately shall notify the department and the registered caregiver,
7 dispensary or manufacturing facility that submitted the sample for testing of the failed
8 mandatory test. If a registered caregiver, dispensary or manufacturing facility
9 successfully undertakes remediation and retesting of harvested marijuana that
10 previously failed a mandatory test, the testing facility shall notify the department and
11 the registered caregiver, dispensary or manufacturing facility of the test results of the
12 retested harvested marijuana.

13 B. A testing facility is not required to notify the department of the results of any test:

14 (1) Conducted on harvested marijuana at the direction of a registered caregiver,
15 dispensary or manufacturing facility pursuant to subsection 2 that demonstrates
16 that the harvested marijuana does not exceed the maximum level of allowable
17 contamination for any contaminant that is injurious to health and for which testing
18 is required;

19 (2) Conducted on harvested marijuana at the direction of a registered caregiver,
20 dispensary or manufacturing facility for research and development purposes only,
21 so long as the registered caregiver, dispensary or manufacturing facility notifies
22 the testing facility prior to the performance of the test that the testing is for research
23 and development purposes only;

24 (3) Conducted on harvested marijuana at the direction of a person who is not a
25 registered caregiver, dispensary or manufacturing facility; or

26 (4) Conducted on a substance that is not harvested marijuana.

27 **4. Sampling for testing.** A registered caregiver, an assistant of a registered caregiver,
28 a dispensary, a manufacturing facility, a sample collector licensed pursuant to Title 28-B,
29 chapter 1 or an employee of a sample collector or marijuana testing facility licensed
30 pursuant to Title 28-B, chapter 1 may collect samples of harvested marijuana for mandatory
31 testing.

32 A. The department shall adopt rules regarding the collection of samples of harvested
33 marijuana by a registered caregiver, an assistant of a registered caregiver, a dispensary,
34 a manufacturing facility, a sample collector licensed pursuant to Title 28-B, chapter 1
35 or an employee of a sample collector or marijuana testing facility licensed pursuant to
36 Title 28-B, chapter 1 for mandatory testing as authorized under this subsection that
37 must include, but are not limited to:

38 (1) The establishment of sample collecting processes, protocols and standards,
39 which must be complied with in collecting samples of harvested marijuana;

40 (2) Requirements for a demonstration to the department of sample collecting
41 practices to ensure compliance with subparagraph (1);

42 (3) Provisions authorizing the department to conduct audits of harvested marijuana
43 that was tested using samples collected pursuant to this subsection, with all costs

1 of the audits to be paid by the registered caregiver, dispensary or manufacturing
2 facility;

3 (4) Requirements for the transportation, delivery and transfer of collected samples
4 of harvested marijuana to a testing facility, which must require the in-person
5 transfer of the collected samples; and

6 (5) A prohibition on the intentional tampering with or interference in the
7 mandatory testing process or auditing process, including failure of any audit
8 conducted in accordance with subparagraph (3), by a registered caregiver, an
9 assistant of a registered caregiver, a dispensary, a manufacturing facility, a sample
10 collector or employee of a sample collector licensed pursuant to Title 28-B, chapter
11 1 or a marijuana testing facility or employee of a marijuana testing facility licensed
12 pursuant to Title 28-B, chapter 1, which, notwithstanding any provision of this
13 chapter to the contrary, may be treated by the department as constituting a violation
14 of program requirements and as a basis for imposition of a suspension, revocation
15 or termination of a registry identification card or registration certificate, as
16 applicable.

17 **5. Additional testing not required.** Notwithstanding subsection 2, a registered
18 caregiver, dispensary or manufacturing facility may sell, transfer or otherwise furnish to a
19 qualifying patient or caregiver or to another registered caregiver, dispensary or
20 manufacturing facility harvested marijuana that the registered caregiver, dispensary or
21 manufacturing facility has not submitted for testing in accordance with this section and
22 rules adopted pursuant to this section if:

23 A. The harvested marijuana has previously undergone testing in accordance with this
24 section and rules adopted pursuant to this section at the direction of another registered
25 caregiver, dispensary or manufacturing facility and that testing demonstrated that the
26 harvested marijuana does not exceed the maximum level of allowable contamination
27 for any contaminant that is injurious to health and for which testing is required;

28 B. The mandatory testing process and the test results for the harvested marijuana are
29 documented in accordance with this section and all applicable rules adopted pursuant
30 to this section;

31 C. Tracking from immature marijuana plant to the point of sale or transfer to a
32 qualifying patient or caregiver on behalf of a qualifying patient has been maintained
33 for the harvested marijuana, and transfers of the harvested marijuana to another
34 registered caregiver, dispensary or manufacturing facility or to a qualifying patient or
35 caregiver on behalf of a qualifying patient can be easily identified; and

36 D. Since the performance of the prior testing under paragraph A, the harvested
37 marijuana has not undergone any further processing, manufacturing or alteration other
38 than the packaging and labeling of the harvested marijuana in accordance with this
39 section and rules adopted pursuant to this section.

40 **6. Rulemaking.** The department shall adopt rules establishing a testing program
41 pursuant to this section, including rules identifying the types of contaminants that are
42 injurious to health for which harvested marijuana must be tested under this section, rules
43 regarding the maximum level of allowable contamination for each contaminant, rules
44 permitting the temporary or permanent waiver of mandatory testing for registered

1 caregivers, dispensaries or manufacturing facilities and rules regarding the collection of
2 samples of harvested marijuana for testing, as described in subsection 4. Rules adopted
3 pursuant to this section are routine technical rules as defined in Title 5, chapter 375,
4 subchapter 2-A.

5 **SUMMARY**

6
7 This bill makes changes to the Maine Medical Use of Marijuana Act.

8 1. It establishes a mandatory testing program for harvested marijuana sold or
9 distributed pursuant to the Maine Medical Use of Marijuana Act.

10 2. It requires mandatory testing of all harvested marijuana for harmful contaminants
11 by a licensed marijuana testing facility prior to sale or distribution.

12 3. It requires a licensed marijuana testing facility to notify the Department of
13 Administrative and Financial Services if a sample of harvested marijuana fails mandatory
14 testing.

15 4. It allows caregivers or their assistants, dispensaries, manufacturing facilities or
16 sample collectors or testing facilities licensed pursuant to the Maine Revised Statutes, Title
17 28-B, chapter 1 or their employees to collect samples of harvested marijuana for mandatory
18 testing.

19 5. It requires the Department of Administrative and Financial Services to adopt routine
20 technical rules regarding the mandatory testing program, the types of contaminants that
21 must be tested for and their maximum allowable levels and the collection, transfer,
22 transport and auditing of samples of harvested marijuana for testing.

23 6. It exempts harvested marijuana that has previously undergone mandatory testing
24 and has not been subsequently processed from additional mandatory testing.