



# 129th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2020

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Legislative Document

No. 2091

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S.P. 741

In Senate, January 30, 2020

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

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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 **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.