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AB-623 Cannabis: THC testing variances. (2023-2024)

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Assembly Bill No. 623

CHAPTER 267

An act to amend Section 26100 of the Business and Professions Code, relating to cannabis.

[Approved by Governor September 30, 2023. Filed with Secretary of State September 30, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 623, Chen. Cannabis: THC testing variances.

Existing law, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), approved by the voters at the November 8, 2016, statewide general election, regulates the cultivation, distribution, transport, storage, manufacturing, testing, processing, sale, and use of marijuana for nonmedical purposes by people 21 years of age and older. The existing Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA), among other things, consolidates the licensure and regulation of commercial medicinal and adult-use cannabis activities.

MAUCRSA prohibits cannabis and cannabis products from being sold unless a representative sample of specified batches has been tested by a licensed testing laboratory. MAUCRSA requires the testing laboratory to issue a certificate of analysis for selected lots of each batch to report specified information, including whether the chemical profile of the sample conforms to the labeled content of compounds. Existing law, for edible cannabis products, requires the certificate of analysis to report that the milligrams of THC per serving does not exceed 10 milligrams per serving, plus or minus 10%.

This bill would require the Department of Cannabis Control to establish regulations to adjust testing variances for edible cannabis products that include less than 5 milligrams of THC in total.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 26100 of the Business and Professions Code is amended to read:

26100. (a) Except as otherwise provided by law, cannabis or cannabis products shall not be sold pursuant to a license provided for under this division unless a representative sample of the cannabis or cannabis products has been tested by a licensed testing laboratory.

(b) The department shall develop criteria to determine which batches shall be tested. All testing of the samples shall be performed on the final form in which the cannabis or cannabis product will be consumed or used.

(c) Testing of batches to meet the requirements of this division shall only be conducted by a licensed testing laboratory.

(d) For each batch tested, the testing laboratory shall issue a certificate of analysis for selected lots at a frequency determined by the department with supporting data, to report both of the following:

(1) Whether the chemical profile of the sample conforms to the labeled content of compounds, including, but not limited to, all of the following, unless limited through regulation by the department:

- (A) Tetrahydrocannabinol (THC).
- (B) Tetrahydrocannabinolic Acid (THCA).
- (C) Cannabidiol (CBD).
- (D) Cannabidiolic Acid (CBDA).
- (E) The terpenes required by the department in regulation.
- (F) Cannabigerol (CBG).
- (G) Cannabinol (CBN).
- (H) Other compounds or contaminants required by the department.

(2) That the presence of contaminants does not exceed the levels established by the department. In establishing the levels, the department shall consider the American Herbal Pharmacopoeia monograph, guidelines set by the Department of Pesticide Regulation pursuant to subdivision (c) of Section 26060, and any other relevant sources. For purposes of this paragraph, "contaminants" includes, but is not limited to, all of the following:

- (A) Residual solvent or processing chemicals.
- (B) Foreign material, including, but not limited to, hair, insects, or similar or related adulterant.
- (C) Microbiological impurities as identified by the department in regulation.

(3) For edible cannabis products, that the milligrams per serving of THC does not exceed 10 milligrams per serving, plus or minus 12 percent. After January 1, 2022, the milligrams of THC per serving shall not deviate from 10 milligrams by more than 10 percent.

(4) Notwithstanding paragraph (3), the department shall establish regulations to adjust testing variances for edible cannabis products that include less than five milligrams of THC in total.

(e) A testing laboratory may amend a certificate of analysis to correct minor errors, as defined by the department.

(f) (1) Standards for residual levels of volatile organic compounds shall be established by the department.

(2) On or before January 1, 2023, the department shall establish a standard cannabinoids test method, including standardized operating procedures, that shall be utilized by all testing laboratories. The department may establish more than one method for use by testing laboratories and these standards may be developed through a reference laboratory.

(g) The testing laboratory shall conduct all testing required by this section in a manner consistent with general requirements for the competence of testing and calibrations activities, including sampling and using verified methods.

(h) All testing laboratories performing tests pursuant to this section shall obtain and maintain ISO/IEC 17025 accreditation as required by the department in regulation.

(i) (1) If a test result falls outside the specifications authorized by law or regulation, the testing laboratory shall follow a standard operating procedure to confirm or refute the original result.

(2) If a test result falls outside the specifications authorized by law or regulation, the testing laboratory may retest the sample if both of the following occur:

- (A) The testing laboratory notifies the department, in writing, that the test was compromised due to equipment malfunction, staff error, or other circumstances allowed by the department.
- (B) The department authorizes the testing laboratory to retest the sample.

(j) A testing laboratory shall destroy the remains of the sample of cannabis or cannabis product upon completion of the analysis, as determined by the department through regulations.

(k) Presale inspection, testing transfer, or transportation of cannabis or cannabis products pursuant to this section shall conform to a specified chain of custody protocol and any other requirements imposed under this division.

(l) This division does not prohibit a licensee from performing testing on the licensee's premises for the purposes of quality control of the product in conjunction with reasonable business operations. This division also does not prohibit a licensee from performing testing on the licensee's premises of cannabis or cannabis products obtained from another licensee. Onsite testing by the licensee shall not be certified by the department and does not exempt the licensee from the requirements of compliance testing at a testing laboratory pursuant to this section.