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April 24, 2023

Re: LD 1691 – *An Act to Provide Parity in State Energy Rate Relief Payments and Tax Exemptions for Maine Cannabis Businesses*

Senator Hickman, Representative Supica, Members of the Joint Standing Committee on Veterans and Legal Affairs:

I am John Hudak, Director of the Office of Cannabis Policy (OCP) and I am writing on behalf of our office to submit the following remarks neither for nor against LD 1691. We are providing the following information to assist the committee in contextualizing the issues raised in this bill, and to provide some preliminary information regarding the costs associated with the initiatives contemplated in LD 1691.

Since the beginning of the Adult Use Cannabis Program (AUCP), our office has received feedback from licensees regarding disparate tax treatment incurred by adult use cannabis businesses as a result of the federal prohibition on the cannabis economy. At present, there are a number of initiatives to provide tax relief to cannabis businesses, including extension of business expense deductions (commonly referred to as “280E” deductions in reference to the federal tax code, 26 U.S.C. § 280E) to adult use cannabis businesses¹ (they have been available to medical cannabis businesses under state tax law since 2018²) and a reduction in the excise tax on adult use cannabis³. Adult use cannabis licensees point to the lack of 280E deductions as a major disadvantage of participating in the adult use program compared to the medical program.

Additionally, the Maine Medical Use of Cannabis Program (MMCP) saw over 1350 caregivers exit the program from the end of 2020 to the end of January 2023. The impacts of this exodus—a net loss of 770 caregivers—have been felt by the remaining caregivers and resulted in a number

¹ See LD 1063, [An Act to Provide Equitable Tax Treatment to State-licensed Cannabis Businesses](#), Sponsored by Senator Teresa Pierce

² 36 M.R.S. §§ 5122, sub-§2, ¶PP and 5200-A, sub-§2, ¶BB.

³ See LD 1384, [An Act to Promote Fairness in the Taxation of Adult Use Cannabis by Basing the Excise Tax on the Tier of a Cultivation Facility](#), Sponsored by Senator Benjamin Chipman

LD 1392, [An Act to Change How the Adult Use Cannabis Excise Tax Is Calculated](#), Sponsored by Senator Teresa Pierce

LD 1382, [An Act to Establish the Guiding Public Health Principles of Focused Protection for Pandemics of a Highly Infectious Respiratory Disease](#), Sponsored by Senator Brakey

LD 1405, [An Act to Change How Adult Use Cannabis Excise Tax Is Calculated](#), Sponsored by Representative Boyer

of theories about why this trend has emerged and why caregivers are continuing to leave the program. Rather than relying on anecdotal evidence, in early 2023, the Office of Cannabis Policy (OCP) surveyed former caregivers to gain a better understanding of why so many registrants exited the program. The results show that business and market conditions were the central drivers of program exits rather than other narratives, such as state regulations being too arduous and costly for most caregivers to operate. Chief among the business and market conditions cited by former caregivers who were surveyed were energy costs and market over saturation⁴. A report detailing our findings from that survey is forthcoming.

Turning to the specific text of the bill, we have a few concerns regarding Section 1 that we want to highlight for the committee. First, the standard outlined in Section 1, which would be used to determine whether a registrant is required to pay an annual renewal fee, is vague and unenforceable. OCP regularly provides technical assistance during inspections to assist registrants in coming into compliance with the statute. It is rare that a registrant is found to be fully compliant with program requirements when they are inspected, so it would be challenging to ascertain which registrants would be eligible for this waiver.

Next, Section 1 of this bill also contemplates the annual inspection of caregivers in order to qualify for the above-referenced waiver of renewal fees. We have shared with this committee in the past that at current capacity, with 12 full time field investigators and 2 field investigator supervisors, we are only able to inspect caregivers once every three years. In order to inspect all existing caregivers on an annual basis, OCP would need to add to our staff 24 more field investigators and 4 more field investigator supervisors. The cost for adding these 28 new positions would be in excess of \$3 million in the first year. We can provide a more detailed breakdown of the expenses for these positions upon request, but we want to be clear about the limitations of our existing staff capacity.

In addition to the concerns raised above regarding the standard for determining whether a registrant must pay the annual renewal fee, we want to highlight the economic challenge presented by Section 2 in light of the fee waivers contemplated in Section 1. At present, the Maine Medical Use of Cannabis Fund is funded exclusively from annual registration fees paid by caregivers, dispensaries, and their employees. Depending on how the fee waiver in Section 1 is implemented, it is likely that the Fund will become rapidly depleted through the issuance of relief payments under Section 2, ultimately resulting in far fewer resources, funded primarily by registered dispensaries and medical cannabis business employee registration fees, to provide the relief payments contemplated in this bill.

Furthermore, there does not appear to be any discernable limit on the kinds of future relief payments that might be available to our program participants in the future. We expect that you will also hear from our colleagues at Maine Revenue Services or the Office of the State

⁴ “...the medical cannabis market in Maine has been active for over ten years, making the 6:1 ratio an anomaly to trends observed in other states. Typically, as states progress in their timeline post market legalization for medical or adult-use, the demand-to-supply ratio decreases as efficiencies are met.” Maine Office of Cannabis Policy, Cannabis Markets & Associated Outcomes - Survey Findings and Implications, Medical Supply Estimates, pp. 22- 28, available at: <https://www.maine.gov/dafs/ocp/sites/maine.gov.dafs.ocp/files/inline-files/Maine%20OCP%20AHP%20Report%2006-22.pdf>, published Spring 2022.

Controller regarding the difficulty of determining which individuals and businesses are eligible for these payments, since taxpayers do not indicate what particular kind of business they are engaged in on their tax returns.

We thank the committee for the opportunity to provide this information and we'll do our best to answer any questions you may have at the work session.