

Testimony Neither For Nor Against of L.D. 2155 “An Act to Clarify Licensing Criteria and Criminal History Record Check and Notification Requirements for Adult Use Cannabis Establishments”

Before the Joint Standing Committee on Veterans and Legal Affairs

January 24, 2024

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

My name is Malina Dumas. I am an attorney with the law firm Dentons and am testifying neither for nor against L.D. 2155. My practice is focused on licensing and regulatory compliance for cannabis businesses in Maine and I am the licensing point of contact on hundreds of adult use cannabis licenses. My concern with L.D. 2155 is that the expansive definition of “principal” would create an undue burden on adult use cannabis business applicants and licensees. I understand the reason why the bill was put forward, but would appreciate the opportunity to work with the Department of Administrative and Financial Services, Office of Cannabis Policy and the Committee to narrow the definition while still addressing the underlying issue raised by the Department.

My primary concerns are as follows:

- The Department’s new definition of “principal” would cover a much larger set of individuals than those that are currently required to meet certain criteria and vetting under state law.
- A formal “transfer of ownership application” is currently required to add or remove principals from an adult use license.
- Each application to change a principal requires the payment of a \$250 fee to the Department and a significant amount of paperwork. It is our understanding that OCP’s current policy is to approve “transfer of ownership applications” (including changes in principals) within 90 days if possible. This is a significant amount of time to wait for approval to hire certain types of employees. There is also very little chance that an application to remove a principal would be approved before that individual leaves the company.
- The Department has the authority to impose a significant monetary penalty and/or suspend or revoke an adult use cannabis license if the licensee does not obtain OCP’s pre-approval to add or remove a principal.
- A principal’s outstanding court payments or tax compliance issues for an unrelated business can jeopardize an adult use cannabis license during the renewal period. Adding individuals that the legislature did not intend to include in this category creates an undue risk for licensees.
- Changing who is listed as a “principal” on OCP’s website and on licenses may cause issues with local licensing by creating confusion for municipal officials/staff.

While the term “principal” is not currently defined in statute, the term has been used in practice since the Department began accepting applications for adult use cannabis licenses, referring to the people that need to meet certain requirements under state law (currently “officers, directors, managers, and general partners”). I wanted to provide some context as to why the definition of “principal” is so important, given the practical implications of what is required for individuals that fall into this category and how this intersects with licensing. These implications extend far beyond the background check process, and all employees (in addition to principals) are already required to pass a state and criminal background check to ensure they do not have disqualifying violations. It is unfair that a Maine company could be put out of business over something they cannot control, like an executive-level or even mid-level employee of the company quitting without providing sufficient notice or having some kind of issue with their paperwork during a renewal period or otherwise.

From a corporate law perspective, we have concerns with adding a new definition for “principal” into the regulations that is detached from the requirements in the adult use cannabis statute and significantly more expansive. Directors (Title 13-C, Chapter 8 (Corporations)), Officers (Title 13-C, Chapter 8(Corporations)), Managers (Title 31, Chapter 21 (LLCs)) and General Partners (Title 31, Chapter 19 (limited partnerships)) are positions defined by statute relating to specific entities, and the persons serving in those positions are readily identifiable via each entities’ organizational documents (or in the case of corporate officers, minutes and annual reporting with the Secretary of State). For each of these positions, there should be no ambiguity as to who is serving in such position at any given time. While I understand that the FBI has stated that the terms “officers,” “directors,” “managers,” and “general partners” are “overly broad,” we should be able to find a way to address the issue without putting an increased burden on licensees and the Department’s licensing division.

I. Not Obtaining Approval Prior to Adding or Removing a “Principal” May Result in Significant Penalties and/or License Revocation: A Lack of Clarity and Increase in Numbers Will Lead to Increased Risks

In the provisionally adopted rules, the Department classifies “failure to request and obtain from the Department approval for a change in ownership *or principals* prior to making the change in ownership or principals” as a “major license violation affecting public safety,” for which they would be able to impose a fine of up to \$100,000 and/or suspend or revoke a license. It is important to have clarity around who needs to be vetted as a principal, and our concern is that widening the pool of principals creates more opportunities for inadvertent errors on behalf of a licensee and/or unanticipated issues with the vetting/approval process.

The current process to add or remove a “principal” on an adult use license involves filing a “transfer of ownership” application online and paying a \$250 fee for each active license held by the licensee. It is our understanding that OCP’s current internal policy has been that the licensing division has up to 90 days to approve a transfer of ownership application, which includes changes in principals. Assuming an executive level employee provides two weeks’ notice prior to leaving their position (which may not always be the case), it is exceedingly rare to have any application approved within that amount of time. If a company is vertically integrated,

the business has at least three active licenses: cultivation, manufacturing and retail. Any time the licensee wants to bring on a new principal, or when a principal is resigning, a vertically integrated licensee has to pay a minimum of \$750 to the Department. If the definition is expanded to cover executive level employees and individuals like head cultivators, for example, licensees may be going through multiple rounds of changes annually. This increases administrative burdens for licensees (as well as the Department's cannabis licensing team) and while \$250 per application may seem like a minor expense, cannabis businesses are already taxed to death and struggling to cover basic business expenses. It is challenging enough to remain in compliance with all of the existing regulations and stay on top of required paperwork. The fees associated with applications to change principals would add up quickly. The more principals on a license, the more paperwork that needs to be completed on a regular basis by each individual principal and processed by Maine Revenue Services and OCP.

II. A Principal's Outstanding Court-Ordered Payments or Tax Compliance Issues for an Unrelated Company Can Jeopardize an Adult Use Cannabis License

The statute currently states that a "license may not be issued to an applicant that has any outstanding payments due in this State on court-ordered fines, court-appointed attorney's fees or court-ordered restitution." 28-B M.R.S. §202 (10). The "applicant" is currently considered to be the "officers, directors, managers, and general partners" of a business entity. 28-B M.R.S. §202. The Department is proposing to replace "officers, directors, managers, and general partners" in this section with their new expansive definition of "principal" that would in most if not all instances capture a much larger number of individuals than those that actually have controlling authority over the company. Even if an individual does not have an issue with outstanding payments when they are hired initially, it is possible there could be an issue that the business would not have reason to anticipate during a subsequent license renewal period. The level of due diligence that would be required of an employer on certain individuals who are not owners or officers, directors, managers, or general partners of the business entity holding the license seems unduly burdensome and does not make sense from a policy perspective.

The "principals" on an adult use cannabis license must pass a tax compliance review completed by Maine Revenue Services (MRS) before the state license is renewed or any new license is issued to the company. The individual must include any entity (cannabis or non-cannabis related) for which they are an owner, officer, director, manager, or general partner on the form. If a "principal" ends up having an issue with their review because of their ownership or management of an entirely unrelated company, this could end up jeopardizing the adult use cannabis license that is up for renewal and/or the company would be forced to file an application to remove that individual from the license (executing any necessary paperwork and paying the fees) within a very short time frame. I am also concerned that OCP and MRS will be using different definitions of "principals" and that this will cause even more confusion about how the OCP and MRS principal forms need to be completed and what supporting documentation needs to be provided to each of the respective agencies.

III. Requiring a Broad Set of Individuals to Be Identified as “Principals” Causes Confusion for Municipalities

Another concern is that changing the definition of “principal,” without making significant changes to the Department’s website and other materials, would cause confusion for municipalities. OCP’s open data website lists all adult use cannabis licenses along with the “principals” and owners on the license. Currently, each principal is identified as either an officer, director, manager or general partner. It is unclear how the Department would, if at all, change the website to incorporate this new definition of “principal.” The principals are also currently listed on conditional licenses as officers, directors, managers or general partners. Municipalities review conditional licenses before they sign off on a required local authorization form. Most municipalities that have a licensing ordinance requires officers, directors, managers, and general partners to be listed on local license application forms and in some cases go through their own local background checks. If they are seeing different names in OCP licenses or OCP’s website, this may create issues for applicants.

Given all of the above, while I am supportive of an amendment to add a definition of “principal” (or some other term) to the adult use cannabis statute, to the extent it is necessary to allow certain individuals to obtain background checks as required under state law, my hope is that the language can be narrowed in order to avoid undue impacts on current and prospective licensees.