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April 24, 2023

Re: LD 1757 – *An Act to Amend the Laws Governing the Reporting and Tracking of Adult Use Cannabis*

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 before you today to provide testimony on behalf of our office in vigorous opposition to LD 1757, because this bill will:

- Completely undermine Maine’s adult use regulatory framework;
- Exacerbate existing barriers to banking by cannabis businesses;
- Subject businesses owners and the State to increased federal scrutiny; and
- Jeopardize the health and safety of adult use cannabis consumers.

It also creates an incredibly concerning precedent that threatens the certainty and enforceability of contracts with the State, which could lead to increased contracting costs for all state agencies, not just OCP, as potential vendors attempt to account for the risk of future legislative intervention in their contracts with the State of Maine.

Tracking, testing and taxes are the three foundational elements of any well-regulated cannabis program and this bill would effectively eliminate inventory tracking, make it nearly impossible to effectively administer the state’s mandatory testing system, and would make it difficult to verify that taxes are appropriately remitted in this all-cash industry.

As you heard last Tuesday, we have just completed contract renegotiations to implement the last round of fundamental inventory tracking changes the legislature enacted, creating a first in the nation structure for flexible size batch tagging (FSBT). This bill would overturn those good faith negotiations and leave adult use cannabis program participants and OCP in a lurch while the state spends millions of dollars to develop the inadequate and ill-conceived “portal” described in this bill. There is simply no switch that we can flip to implement this portal, and regardless of whether the costs of developing and implementing this system are borne by the State, licensees will suffer incalculable costs when banks and financial institutions refuse to assume the risks associated with banking cannabis businesses.

Indeed, in remarks submitted to this committee last week, the Maine Credit Union League indicated:

Any proposed change that would widen the gap between what is accepted by federal guidance and what is required at the state increases the challenge in providing cannabis banking in Maine. Currently cannabis businesses need to decipher the differing regulations between what is required by the state and what is required to access banking services. As much as possible, we would urge the committee to create parity between these regulatory requirements. Doing so will increase access and availability to banking service for cannabis businesses.¹

It's not only federal banking regulators who are keenly aware of the important relationship between robust inventory tracking and a well-regulated cannabis industry. No other state in the country has implemented a cannabis reporting system as insufficient as the one contemplated in this bill, because to do so would swiftly upset the tenuous nonenforcement relationship between state cannabis programs and the Department of Justice that has existed since the publication of the Ogden² and Cole³ Memoranda.

We want to be clear: no other state is doing what is proposed in this bill, and the states that have tried to implement their own tracking or reporting systems quickly discovered just how cumbersome, inadequate and expensive is a homegrown system to operate. Washington state regulators have shared with our office the challenges of the reporting system developed by that state.⁴ At best, they described their system as unable to adequately address their needs as regulators and at worst completely unsatisfactory to regulators and licensees alike. Washington has between 8 and 13 full time IT and data analytics staff holding that system together, and reports from our colleagues in Vermont are even more concerning. We are certain that licensees in Maine's adult use program would immediately grow frustrated with systems like Washington's, that often cannot effectively integrate with third party software; or the one in Vermont that requires licensees to upload Excel spreadsheets and have an agency staffer manually verify the mandatory test results of every single cannabis item bound for retail sale.

Turning to testing for a moment: this bill does not contemplate the tracking of the mandatory test results required under Maine's existing testing law, nor does it account for the inevitable delays in inventory transfers that will result from delays in matching mandatory test results with whatever records are submitted through the portal contemplated in this bill. Maine law is clear: no cannabis or cannabis product can be sold to a consumer unless it has passed all mandatory testing. If this bill is enacted the Legislature will have to decide whether it wants to subject licensees to long delays in moving their product to retail while test results are manually verified to the best of our ability based upon the minimal reporting requirements of this bill, or whether it is acceptable for consumers to be exposed to contaminants like pathogenic bacteria, heavy metals or extraction solvents.

¹ See Testimony from the Maine Credit Union League, Neither For Nor Against LD 1529, submitted April 19, 2023, and available at: <https://legislature.maine.gov/testimony/resources/VLA20230419Simonis133263845165277263.pdf>

² *Memorandum for Selected United States Attorneys*, issued October 19, 2009 by Deputy Attorney General David W. Ogden, available at: <https://www.justice.gov/sites/default/files/opa/legacy/2009/10/19/medical-marijuana.pdf>

³ *Memorandum for All United States Attorneys*, issued August 29, 2013 by Deputy Attorney General James M. Cole, available at: <https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>

⁴ Washington state regulators shared with OCP staff that their in-house reporting platform was intended to be a stopgap measure until the state is able to secure a contract with an inventory tracking system vendor.

Finally, it is important to note that the inventory tracking system infrastructure we have in Maine is not only effective as a regulators tool, providing our office with real-time access to inventory tracking and testing information, but it also serves as a deterrent to diversion of cannabis by requiring licensees to account for all cannabis within the system from the time it is planted to the time it is sold to a consumer. It is difficult to overstate how crucial is robust inventory tracking to Maine's adult use cannabis program: from testing to taxes to consumer confidence in the cannabis they are consuming to providing our 15 compliance staff with the information they need to monitor licensees across 35,000+ square miles of this state, inventory tracking is critical to maintaining the future of Maine's adult use market.

We thank the committee for its time and we'll do our best to answer any questions you may have.