



JANET T. MILLS
GOVERNOR

STATE OF MAINE
OFFICE OF CANNABIS POLICY
162 STATE HOUSE STATION
19 UNION STREET
FIRST FLOOR
AUGUSTA, MAINE 04333-0162

ADMINISTRATIVE & FINANCIAL SERVICES

KIRSTEN LC FIGUEROA
COMMISSIONER

OFFICE OF CANNABIS POLICY

JOHN HUDAK
DIRECTOR

January 24, 2024

Re: LD 2155– An Act to Clarify Licensing Criteria and Criminal History Record Check and Notification Requirements for Adult Use Cannabis Establishment

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

I am Gabrielle Bérubé Pierce, Policy Director for the Office of Cannabis Policy (OCP) and I am before you today to provide testimony in support of our department bill, LD 2155. This bill was necessitated after OCP was notified by the Federal Bureau of Investigation (FBI) that it would stop conducting federal criminal history record checks for our adult use program unless the state defined several terms in the Cannabis Legalization Act. It is OCP's understanding that about half a dozen other Maine state agencies and numerous cannabis regulatory programs across the country received similar notices from the FBI regarding deficiencies with the statutory authority for those programs to conduct federal criminal history record checks. We come before you today not out of any internal interest to change the policies related to background checks. This request arises because federal law requires any state or program that utilizes the federal criminal history record check database to have clear authorization in law to conduct such checks as well as a clear description of the individuals subject to such criminal history record checks.

To be clear: the FBI had previously approved and has been conducting criminal history record checks for OCP under the existing statutory framework since 2020. In a broad, national audit by the FBI last spring, of state-level criminal history record information handling procedures, OCP was found to be using those criminal history record checks in accordance with federal requirements, and the FBI auditor found no deficiencies with our agency's handling of those data. It appears that one of the laws our office administers, along with other laws impacting a number of agencies in Maine and across the country, has been found to be insufficient to satisfy current FBI standards. This bill seeks to amend the criminal history record check requirements of the adult use cannabis law to ensure compliance with those FBI standards and preserve OCP's ability to continue to conduct these statutorily required federal record checks.

Before I get into the specifics of the FBI's request and the solution presented in this bill, I want to state plainly: this bill will not change the eligibility requirements for criminal history records checks or expand the group of individuals subject to such record checks. It is intended to ensure a level playing field between Maine business owners and operators and out-of-state business owners and operators. This bill will not impact OCP's ability to check criminal history records maintained by the Department of Public Safety's State Bureau of Investigation (SBI) – we will

still know about disqualifying offenses adjudicated in Maine. But given the decision of the federal courts that Maine cannot restrict out-of-state actors from participating in our state cannabis programs, it is critical that OCP can apply the same scrutiny to the criminal history records of those out-of-state actors who are coming to Maine to do business. Failure to enact the changes contemplated in this bill will disadvantage Maine entrepreneurs by making it easier for unqualified out-of-state actors to conceal their criminal history from regulators, while OCP continues to have access to in-state criminal history information.

Turning now to the issues addressed in this bill: last year the FBI informed the State that the terms “owner”, “officer”, “director,” “manager”, and “general partner” were “overly broad” and “need to be defined in statute”. Since the implementation of the Cannabis Legalization Act, OCP’s policy has been to use the term “principal” when referring to statutory provisions involving “officer, director, manager, general partner” and have provided a definition on our website (which is also incorporated into the major substantive rules our office provisionally adopted earlier this year) of that term in order to make clear to applicants which owners, financial interest holders and managers are subject to background checks during the application process.

Therefore, in the interest of simplifying program administration while addressing the FBI’s concerns, our office opted to do away with the terms owner, officer, director, manager, and general partner in favor of defining and using the term “principal” in statute when identifying those individuals subject to criminal history record checks. That is the solution presented in this bill.

One important drafting note: At the time we drafted this bill, we were also engaged in rulemaking for the major substantive rules we submitted for review by this committee earlier this month. We incorporated the definition of “principal” we used in that rule into this bill, and we made revisions to that definition (in the bill and the rule) based upon public comments we received during the rulemaking process. If any amendment is made to the definition presented in this bill or in the rules, we would ask that the committee be sure to carry that change through to both documents. A copy of the public comments received during the rulemaking process is included in the rulemaking materials provided to the committee by our office.

As always, we thank you for your time and we’ll do our best to answer any questions you may have.