

**Testimony of Kirsten LC Figueroa, Commissioner
Department of Administrative and Financial Services**

**Before the Joint Standing Committee on
Veterans and Legal Affairs**

**LD 40 – An Act To Protect Liberty and Advance Justice in the Implementation,
Administration and Enforcement of the Cannabis Legalization Act and To
Implement Certain Recommendations of the Subcommittee on Non-substantive
Changes to the Maine Medical Use of Cannabis Act**

March 4, 2024

Good morning, Senator Hickman, Representative Supica, members of the Joint Standing Committee on Veterans and Legal Affairs, I am Kirsten Figueroa, Commissioner of the Department of Administrative and Financial Services (DAFS) and I am here today on behalf of the Administration in opposition to LD 40. Developing a good faith partnership between the State of Maine and stakeholders is critical to establishing rules and policies that provide interested patients and consumers with access to a regulated industry that ensures public health and public safety are prioritized while diminishing an unregulated, untested illicit market. LD 40 does not do that. LD 40 is a 66-page bill that completely upends the cannabis regulatory system established by the Legislature and implemented by the Administration over the past five years. It also makes Mainers less safe. Because the substantive issues with this bill are too numerous to dig into with the time remaining before this committee must complete its work, my remarks today will focus on the haphazard dismantling of the cannabis regulatory system that cannabis businesses, patients, municipalities, and consumers rely upon.

When the Governor established the Office of Cannabis Policy (OCP) as a division of DAFS in 2019, the small team initially assembled had a big charge: to implement the work of the Marijuana Legalization Implementation (MLI) Committee and assume responsibility for a rapidly evolving medical cannabis program with rules that were outdated the day they were adopted. Within the first six months of its existence, the Office had drafted and provisionally adopted major substantive rules for the adult use program and began building out the staff and technological infrastructure necessary to effectively and responsibly regulate cannabis businesses operating in the state. And they haven't slowed down since then.

A year after it was established, the Office had grown to almost five times its original size, paper and online license applications went live, staff and industry members alike were trained to use the state's inventory tracking system software, and OCP staff reviewed and inspected thousands of applicants for the adult use and medical cannabis programs. Because of the thoughtful and deliberate actions taken by the Office during that first year, the launch of adult use cannabis retail sales was able to happen even in the midst of the global COVID-19 pandemic.

In the years since the Office was established, I have been repeatedly impressed by the hard work, creative problem solving and can-do attitude of this team of cannabis regulators—and that has not changed in the 15 months since Director Hudak joined the Office. For years they have competently navigated the development of licensing and compliance programs while providing education to licensees and registrants regarding the responsibilities for operating a cannabis business in the state. They have proactively engaged with the vast array of stakeholders affected by the State's cannabis policy by meeting folks where they're at – whether that's holding community listening sessions across the state, conducting webinars and trainings about program requirements and emerging issues in cannabis policy, or providing hours of 1-on-1 technical assistance to individual program participants. The team at OCP is meeting its mission to effectively and responsibly regulate cannabis businesses in Maine.

Passing a large, late-introduced amendment to overhaul the statutes that govern both Maine's adult use and medical cannabis programs and dismantle the regulation and upend the administration of these legal industries would be irresponsible policy making. A proposal this wide-reaching that is rushed through in the final week of committee can't receive proper due-diligence and is guaranteed to create more of the types of legal conflicts that already plague the cannabis statutes, the medical statute in particular. No regulatory agency can be reasonably expected to successfully implement such sweeping, poorly integrated changes to the law. Even if this bill didn't endorse the recreational use of cannabis by children or roll back recently negotiated compromises on activities like off-premises sales, delivery or curbside pickup, it would still precipitate a massive disruption of the regulatory framework upon which thousands of Mainers have staked their livelihoods and more than a hundred municipalities have established their own local regulations.

It is not “reefer madness” to acknowledge the precarious legal space that Maine’s legal cannabis programs occupy. As State officials, we can’t ignore the fact that cannabis is still federally illegal and all the complications that stem from the fact that cannabis is, for the time being, still a Schedule I substance. That federal designation means that cannabis cannot be legally transported across state lines nor do legitimate cannabis businesses have the same access as other industries to traditional banking and lending, standard insurance products, the ability to write-off business expenses on their federal taxes or enter into bankruptcy protection. Cannabis is also an industry for which there is still a sizable illicit market, and if the Legislature substantially undermines the statutory and regulatory infrastructure around the legal market, it will hinder the State’s ability to distinguish between the legal cannabis businesses and large-scale illegal cannabis grows that law enforcement has busted nearly every day for the last several months. Not only will passage of this bill allow large-scale illegal cannabis grows to proliferate and undercut the legal market, but greater permeability between the illicit and legal markets may cause the banking and insurance industries to reassess their risk around providing business support services to Maine’s cannabis industry.

When 50.3% of Mainers, myself included, voted to legalize adult use cannabis in November 2016, we weren’t voting simply to legalize the existing illicit market, we were voting to establish a well-regulated market that allowed law-abiding cannabis businesses to operate on Main Street without stigma. That 50.3% was comprised of Mainers who acknowledged that many people find medical relief from cannabis and who don’t take issue with adults responsibly partaking in cannabis. However, those same Mainers are simultaneously parents who don’t want their underage children using cannabis recreationally, consumers who buy organic groceries and don’t want to unwittingly consume pesticides from their cannabis, and drivers who don’t want to share the road with people operating under the influence. These are the public interests that the State has an obligation to hold in balance with the industry’s business interests when regulating anything, but in this specific case cannabis, on behalf of all residents of the State of Maine. OCP is committed to keeping pace with the rapidly evolving cannabis landscape, but eight years after Maine legalized adult-use cannabis more than 300 Maine municipalities still haven’t opted-in to allow adult-use cannabis businesses of any kind to operate within their communities. Rolling back the State’s regulation and limiting local control over cannabis is not how municipalities will be persuaded to welcome cannabis businesses.

From our five years of experience, we know very well that a segment of Maine's cannabis industry doesn't want to be regulated at all; that degree of friction exists between every regulator and the industry they regulate, in every state. However, in contrast to that segment of the industry that is before the legislature regularly, the vast majority of Maine's cannabis business owners are licensed and registered by the Office of Cannabis Policy and between annual renewals successfully operate within the laws and regulations without negative interaction with the Office. Regulation is a facet of every major industry; it exists to provide consumers assurance when they eat at a restaurant they won't get food poisoning, when they take their daily medications they aren't doing long-term harm to their health, that the car they drive every day is mechanically safe, and that the plane they board to vacation isn't going to fall apart mid-air. Regulation allows the public to avoid significant risks and when problems within an industry arise, clear pathways are available to resolve those problems. OCP is a regulatory agency. Contrary to the assertions laid out in this bill, it is not the role of the regulator to "promote" and "advance" the interests of the industries they regulate. That is the obligation and role of the industry and its trade groups. When a regulatory agency becomes co-opted to benefit the interests it is supposed to be regulating or when the industry is allowed write its own laws and regulations, that is regulatory capture, and it means the regulator isn't protecting the broader public interest.

Instead, it is the role of the regulator to administer, with competence and consistency, the requirements of the laws that they execute and to take action to protect the health, safety and wellbeing of the public. And that is just what the Office of Cannabis Policy has done and will continue to do for the people of Maine.

We respectfully urge Committee members to vote LD 40 ought not to pass.

This concludes my testimony. Thank you.