

Testimony in Support of L.D. 1996 “An Act to Regulate Synthetic Hemp-derived Cannabinoids”

Before the Joint Standing Committee on Agriculture, Conservation and Forestry

January 31, 2024

Senator Ingwersen, Representative Pluecker, and members of the Joint Standing Committee on Agriculture, Conservation and Forestry:

My name is Dana Brearley and I am a board member of CannabisME, a coalition of operators in the state legal adult use cannabis industry. CannabisME urges this committee to support the Sponsor’s amendment to L.D. 1996, which will close a loophole that has resulted in the production and sale of unregulated, intoxicating synthetic hemp-derived cannabinoids and other high THC hemp-derived products, while the state works through the best options for regulating these hemp-derived products in a manner that will protect public health and safety. This bill will also help mitigate impacts on licensed operators in the cannabis industry in Maine, which have been harmed by the proliferation of these unregulated, competing products over the past year. We support the amendment proposed by Senator Pierce, and ask that you vote ought to pass as amended.

There is no downside to passing this legislation. The bill will continue to allow the production and sale of non-intoxicating hemp products (i.e., CBD), while temporarily prohibiting the production and sale of a small class of currently unregulated and potentially dangerous products; namely, high-dose, intoxicating hemp-derived THC products, while a working group studies the issue. This pause on sales will give regulators time to think through the best path forward. Consumers will still be able to readily access comparable products with the same THC content from any of the hundreds of medical and adult use stores across the state or through delivery services by Maine licensed providers.

While I understand that your committee does not work on bills related to Maine’s medical and adult use cannabis industries, you likely know that this is a highly regulated industry where barriers to entry are high, as are tax burdens. Cannabis businesses across the state pay hundreds of thousands of dollars in taxes and licensing fees to the State of Maine every year. The most recent annual reports from the Office of Cannabis Policy shows more than \$28 million in revenues to the state from the adult use cannabis program alone in 2022. Further, this legislature has already decided that psychoactive cannabis products sold for recreational purposes must be subject to strict tracking, testing, packaging standards, may only be produced and sold by licensed businesses and cannot be sold to individuals who are under the age of 21. While products sold in the cannabis program are derived from “marijuana” instead of “hemp,” the reality is that these products come from the same plant *cannabis sativa L.*, and the only other difference is that the products in the cannabis program are highly regulated by the State of Maine to protect our citizens. As intoxicating hemp-derived delta 9 THC products are the same as intoxicating adult use cannabis-derived delta 9 THC products, they should be regulated in same manner. The rapid increase of unlicensed businesses selling unregulated high THC products across the state of Maine poses a threat to every legal operator in our cannabis program and increases the risk of minors accessing psychoactive substances.

Out-of-state companies are selling hemp-derived cannabis products in gas stations, liquor stores, grocery stores, and other retail outlets across Maine. Many of these products have misleading labels and while they may say that they are hemp-derived (do not contain marijuana) they are marketed as being

intoxicating. Often the products themselves state that they are 21 + products. However, there is no law placing age restrictions on the sale of these products or regulatory body in charge of ensuring age restricted sales. Because these are hemp products, not marijuana, this issue is squarely within your jurisdiction for a quick and temporary fix under Title 7. In the longer term, we would expect the Department of Agriculture, Conservation, and Forestry (which licenses and regulates hemp cultivation in Maine) to coordinate with the Office of Cannabis Policy in the Department of Administrative and Financial Services around the legal sale of these products.

At a minimum, the legislature must close this loophole now to protect consumers, including minors, from unknowingly consuming intoxicating, untested products. While some businesses, including the many large out of state companies selling intoxicating hemp products in Maine currently, may push back on this effort, those businesses will still have a path forward to sell THC-infused products legally in our state if this bill passes. There are no longer Maine residency requirements in the medical or adult use cannabis programs, which means operators in other states can apply for licenses to operate in Maine.

Of note, the 2018 Farm Bill expressly authorizes states to impose more restrictive regulations on hemp and hemp derived products. 7 U.S.C. 1639g (“No preemption. Nothing in this subsection preempts or limits any law of a State or Indian Tribe that – (i) regulates the production of hemp; and (ii) is more stringent than this subchapter.”). A federal district court recently upheld Virginia’s restrictions on the production and sale of hemp derived products, rejecting the argument that such restrictions were preempted by the 2018 Farm Bill because the Farm Bill expressly authorizes states to regulate the production of hemp and to regulate it more stringently than the federal law.

Senator Pierce’s proposed amendment would allow for the creation of a working group to develop recommendations regarding the regulation of hemp-derived products, and the working group would be required to submit a report to your committee as well as the Veterans and Legal Affairs Committee by April 30, 2025. This report will provide the context and data necessary for the legislature to make an informed decision about how the state should regulate these products for the longer term. Thank you in advance for taking my comments into consideration.