Public Comment Before the Joint Standing Committee on Veterans and Legal Affairs In Support of L.D. 881, L.D. 525, and L.D. 605

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Senator Luchini, Representative Caiazzo 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 Drummond Woodsum based in Portland, Maine. I am here today on behalf of Maine Organic Therapy and Remedy Compassion Center, two of the eight registered dispensaries in Maine, and Curaleaf Maine, which has several pending adult use licenses. We generally support L.D. 881, L.D. 525, and L.D. 605, for the reasons outlined below.

1. L.D. 881 "An Act To Make Technical Changes to the Maine Medical Use of Marijuana Act"

We support L.D. 881, which makes important practical and technical changes needed to implement what is already in statute and agreed upon by stakeholders in 2018.

Several of the changes in this bill are in regards to registration requirements and fees for operating a caregiver retail store. However, the Office of Marijuana Policy indicated that they will introduce an amendment to the bill to remove those provisions as they were included in error. Our understanding is that this is because the proposed new medical marijuana rule incorporates mechanisms for the Office of Marijuana Policy to obtain additional information about the operations of caregiver retail stores and other medical marijuana program registrants through the application and annual renewal process. As the proposed rule is currently drafted, one of the requirements for submitting a complete application would be to include proof of all required approvals from the municipality in which the caregiver retail store is located, and a local authorization form completed by that municipality. If the final rule that is enacted does not contain these provisions, however, then we have serious concerns that the local authorization provisions in statute will be rendered meaningless, and a caregiver retail store registration process as was outlined in this bill may need to be established through legislation if that is the case.

The medical marijuana statute is clear that the operation of a caregiver retail store[1] requires local authorization by the municipality. *See* 22 M.R.S. §2429-D(3).[2] This was an

[1] The definition of "caregiver retail store" is "a store that has attributes generally associated with retail stores, including, but not limited to, a fixed location, a sign, regular business hours, accessibility to the public and sales of goods or services directly to a consumer, and that is used by a registered caregiver to offer marijuana plants or harvested marijuana for sale to qualifying patients." 22 M.R.S. §2422(1-F).

[2]Section 2429-D ("Local regulation") states that "A municipality may not"… "[a]uthorize caregiver retail stores, registered dispensaries, marijuana testing facilities and manufacturing facilities that are not operating on the

important compromise that was made between stakeholders years ago. Caregivers wanted the ability to open retail stores to expand their business opportunities, and municipalities were concerned about the proliferation of stores and their ability to control the expansion of businesses in their communities. Stakeholders opposed to this expansion agreed not to oppose the amendments, however, so long as local authorization was required for caregiver retail stores (as well as for registered dispensaries, manufacturing facilities, and testing facilities). Language was also included in the amendments to the medical marijuana statute in December 2018 to prevent municipalities from shutting down caregiver retail stores that were already operating with municipal approval (as defined in the statute) prior to the effective date of these local authorization provisions in order to not retroactively shut down legal businesses. However, new caregiver retail stores are constantly popping up across the state in towns that have either not opted in or have not granted all necessary approvals.

It is impossible for the state and municipalities to adequately enforce what is in state law without additional measures to register the stores and notify the state if the location changes, whether those measures are incorporated into the new medical marijuana rule or in statute. It is also important to note that when Maine voters voted to legalize medical marijuana, retail stores were not contemplated. When registered dispensaries were allowed to open, the number was limited and caregiver retail stores were not yet authorized. If you look at the voting numbers in communities across the state for legalizing adult use marijuana, you can see many towns did not support adult use marijuana sales and the vote was carried by the numbers in larger cities. It is completely reasonable for towns to be able to decide if they want to allow either medical or adult use retail stores or not, and that is what the law currently requires.

The change to the legal definition of "seedling" is also important to address the current intersections between the medical and adult use marijuana programs. Again, the amendment is a compromise: reducing the maximum height for a marijuana plant to be considered a seedling in the medical marijuana program, and increasing the maximum height in the adult use program to align at 18 inches. It is already possible for medical marijuana plants to be transferred to adult use cultivation facilities under the transfer provisions in statute, and it is necessary for the definitions to align for this reason alone from a practical standpoint. The change does not reflect an alignment between the programs generally or a merger of these programs, but rather addresses an already existing intersection between the two and provides a technical fix. While we believe it is necessary to align the definitions, the number that is ultimately decided upon is not important to us. The key is to have consistency, whether that is at 6 inches, 18 inches, 24 inches, or some other number.

Finally, the change to the calculation of plant canopy fees is an important technical fix. Currently, caregivers electing the canopy option as opposed to plant count still have to identify the number of mature plants they will cultivate within that canopy limit and then calculate the fees accordingly, which can be quite high depending on the number of plants. The amendment

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effective date of this section to operate in the municipality unless the municipal legislative body, as defined in Title 30-A, section 2001, subsection 9, has voted to adopt or amend an ordinance or approve a warrant article allowing caregiver retail stores, registered dispensaries, marijuana testing facilities or manufacturing facilities, as applicable, to operate within the municipality." 22 M.R.S. §2429-D(3) ("Municipal authorization needed).

would place a reasonable cap on the fees and simplify the registration process for caregivers moving forward.

2. L.D. 525 "An Act To Allow Medical and Adult Use Marijuana Stores To Share a Common Space"

We strongly support the co-location of medical and adult use marijuana stores, and believe L.D. 525 provides the best model to move this forward. As more adult use marijuana businesses continue to come online, allowing medical and adult use marijuana businesses to co-locate can help ensure that medical marijuana stores will continue to thrive. Rather than shutting down a caregiver retail store or registered dispensary to transition to adult use marijuana sales, a business could co-locate these businesses in the same space so long as this is allowed by the municipality. Allowing sales to take place in the same premise reduces the costs and complications associated with either finding a new property or reconfiguring spaces in the building to ensure that these businesses occupy separate premises, which would be the case for many businesses wishing to co-locate if the alternative model in L.D. 605 is adopted instead.

While we support this bill, we believe one important amendment needs to be made in order to effectuate the apparent intent. As it is currently drafted, the bill says that "a marijuana store licensee that is also a registered caregiver or dispensary" may sell both medical and adult use marijuana in the same premise with two separate points of sale. This seems to indicate that the entity that holds the adult use marijuana store license from the state must be the entity that runs the registered dispensary or is listed on the registered caregiver's card. Given the different restrictions on who can own and run businesses in the medical marijuana program and in the adult use marijuana program, it would not be possible for the vast majority of businesses to meet this requirement and stay compliant with other laws and regulations governing these programs. For example, registered caregiver entities are limited to having one owner, the registered caregiver, whereas very few adult use marijuana businesses are sole proprietorships.

In amending the bill, the Legislature could look to how plant transfers currently work between the medical marijuana program and the adult use marijuana program. A licensed adult use marijuana cultivation facility that has an owner or principal who is a registered caregiver or is an officer of a registered dispensary is authorized to purchase plants from other registered caregivers or dispensaries. Similarly, an adult use marijuana store licensee should be able to co-locate with a registered caregiver or dispensary that shares a common owner or principal if the intent is to require these businesses to be affiliated.

We also agree with the Maine Municipal Association's testimony that amendments should be made to make it clear that medical and adult use marijuana stores can only co-locate if the municipality has authorized both uses through an ordinance or warrant article, and that the businesses must have all required state and local approvals for the operation of a caregiver retail store or registered dispensary and the adult use marijuana store.

3. L.D. 605 “An Act To Amend the Marijuana Legalization Act”

We support L.D. 605, which provides another possible model for co-location of medical and adult use marijuana stores. To the extent there may be concerns around medical and adult use marijuana being sold in the same room with separate points of sale, the co-location model in L.D. 605 should address those concerns. While we would strongly prefer to have caregiver retail stores and dispensaries operate out of the same premise as an adult use marijuana store, we would support the model of medical and adult use sales taking place in the same building as an alternative.

We also support other amendments made by this bill. As explained in the testimony in support of L.D. 881, it is important to align the legal definitions of a “seedling” in the medical and adult use marijuana programs because of the way those programs currently intersect.

In terms of sample collection, we strongly support the bill’s proposal to remove the sunset provision for marijuana establishment licensees to collect their own samples and deliver them to testing facilities. Given the size of our state, the limited number of testing facilities, and the dearth of sample collector licensees, it is critical to allow marijuana establishments to engage in self-sampling. Otherwise, there will almost certainly be a significant backlog in mandatory testing. It also makes sense to not require sample collector licensees to obtain a sales tax ID number, as these licensees are not authorized to sell marijuana or marijuana products.