

Public Comment Before the Joint Standing Committee on Veterans and Legal Affairs In Support of LD 1029 and LD 882

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Senator Luchini, Representative Caiazzo and members of the Committee on Veterans and Legal Affairs:

My name is Hannah King. I am a partner at the law firm of Drummond Woodsum, a full service law firm located in Portland, Maine. I am the founder and chair of the firm's Regulated Substances Practice. In that capacity, I represent over 300 cannabis businesses. I also advise investors, financial institutions, accounting firms, municipalities, and tribal nations on issues related to the marijuana industry. I have represented stakeholders before the Marijuana Legalization Implementation Committee and the Health and Human Services Committee since 2016, and was before this Committee when it took up its first marijuana bills last session. I was appointed to the Marijuana Advisory Commission by former Speaker of the House Sara Gideon as representative of the adult use marijuana industry. That appointment was recently renewed by Speaker of the House Ryan Fecteau.

I am here today on behalf of Maine Organic Therapy and Remedy Compassion Center, two of the eight registered medical marijuana dispensaries in the State of Maine, and Curaleaf Maine, which has several pending adult use licenses. Their operations and prospective operations are located in Biddeford, Auburn, Ellsworth, South Portland, Wells, and Bangor; communities which many of you represent. Once fully operational, their investment in these locations will be around 30 million dollars. Together, they currently employ 75 Maine residents in positions ranging from administrators such as Director of Human Resources, Director of Operations, and President to employees running the day to day operations, such as cultivators, store managers, and extraction technicians. These are good paying jobs with benefits. Curaleaf Maine anticipates employing an additional 75 Maine residents once its adult use licenses are operational.

For the reasons discussed below, we support L.D. 1029 and L.D. 882.

1. L.D. 1029, "Act To Amend the Marijuana Legalization Act and the Laws Governing the Taxation of Marijuana"

The purpose of L.D. 1029 is to provide for a short term infusion of marijuana flower and trim into the adult use market to allow retail stores and manufacturing facilities to operate while cultivation infrastructure is being built out. This is necessary to ensure a successful rollout of the program. Marijuana flower and trim is both an end product that is sold to consumers for consumption, but it is also the basis of value added products such as edibles and concentrates.

That is, without an adequate supply of flower, fledgling adult use retail and manufacturing businesses will struggle and in some cases unnecessarily fail. These businesses are particularly vulnerable because they have been expending startup capital for years on leases, buildouts, security systems with no revenues, because of the length of time between legalization and license.

It takes four to six months for a cultivation facility to produce flower that is shelf-ready. This means that cultivation facilities take many months to begin producing marijuana following licensure, whereas retail stores and manufacturing facilities are ready to begin operations upon licensure. The approximately six month period of time the bill would allow medical flower and trim to be sold into the adult use market, purposely aligns with the four to six month period for cultivation facilities to begin producing flower and trim. With the intent being that when the transfer sunsets there will be a sufficient supply of adult use marijuana produced by licensed adult use cultivation facilities to support the market

2. L.D. 882, “Act To Amend the Maine Medical Use of Marijuana Act”

L.D. 882 would provide the Office of Marijuana Policy with a range of tools to ensure industry participants are complying with the law. This is necessary to protect both industry and consumers. Right now, the only enforcement action that Office of Marijuana Policy can take is to revoke a caregiver or dispensaries registration (i.e., license to operate). That is draconian action that should be reserved for intentional violations that have a direct and adverse impact on public health and safety. However, without fines or other administrative tools for progressive enforcement, the regulators will have no choice but revoke caregiver and dispensary registrations for lessor offenses that still merit enforcement. In the alternative, they cannot take enforcement action, which means industry would have no reason to comply with the important public health and safe provision in the law, putting patients at risk.

There are a few things that are important to note. First, the amount of the fines are significantly less than those that the regulators can assess in the adult use program. Also, the larger fines, up to \$10,000, are reserved for the larger operators: dispensaries, manufacturing facilities using inherently hazardous substances, and caregiver retail stores. The maximum fine that could be assessed against a caregiver is \$2,000. Second, to be subject to a fine, there must be evidence that the registrant knew that what they were doing was a violation of the law. Third, similar to the adult use marijuana regulations the rules would articulate each possible offense within the three categories: Major License Violation Affecting Public Safety, Major License Violation, Minor License Violations. *See Attached* (Full List of Adult Use Violations). There is also a process for challenging enforcement actions that includes an administrative hearing with an independent adjudicator and, as with all final agency actions, consideration by the superior court.

12.1.4 Enforcement Actions.

- A. The Department may take the following actions against licensees, alone or in combination, subject to the requirements of this Section:
 - (1) Impose monetary penalties;
 - (2) Restrict a license;
 - (3) Suspend a license;
 - (4) Revoke a license;
 - (5) Accept the voluntary surrender of a license;
 - (6) Confiscate or seize marijuana plants, marijuana or marijuana products;
 - (7) Destroy marijuana plants, marijuana or marijuana products;
 - (8) Recall marijuana or marijuana products; or
 - (9) Accept the voluntary surrender of marijuana plants, marijuana or marijuana products.
- B. The Department may revoke an individual identification card for any violation of 28-B MRS or this Rule

12.1.5 Procedures for Enforcement Actions.

- A. The Department may, on its own initiative or on complaint and after investigation, initiate enforcement actions, notwithstanding any other criminal, civil or administrative proceedings against the licensee.
- B. Enforcement actions require a finding of the following:
 - (1) Any false or misleading statements to the Department;
 - (2) Other violations by the licensee or by an agent or employee of the licensee of 28-B MRS or this Rule;
 - (3) Violations by the licensee or by an agent or employee of the licensee of the terms, conditions or provisions of the licensee's license, including all licensing criteria required to be granted a conditional or active license; or
 - (4) Inactivity at the licensed premises for a period of 1 year or more without reasonable justification, including without limitation death or illness of a licensee, fire, natural disaster, or building conditions outside of the licensee's control.
- C. Any enforcement action by the Department shall be made only on the basis of relevant evidence and shall be communicated in writing to the licensee, along with a notice of the licensee's right to appeal, consistent with the Maine Administrative Procedures Act, 5 MRS, chapter 375.

12.2 – Administrative Monetary Penalties

A monetary penalty imposed by the Department on a licensee pursuant to this subchapter may not exceed \$100,000 per license violation. Penalties to be imposed on a licensee based upon specific categories of unauthorized conduct by the licensee, including major and minor license violations, as follows:

- A. Not more than \$100,000 per major license violation affecting public safety
- B. Not more than \$50,000 per other major license violation; and
- C. Not more than \$10,000 per minor license violation.

12.2.1 Major License Violations Affecting Public Safety

- A. The Department may impose a fine of up to \$100,000 for each major license violation affecting public safety.
- B. Such violations include, but are not limited to:
 - (1) Intentionally or recklessly selling marijuana or marijuana products containing any other federally controlled substance, including but not limited to opioids, stimulants or hallucinogens;
 - (2) Intentionally or recklessly using prohibited agricultural chemicals that pose a threat to public health and concealing their use from the Department, other licensees or consumers;
 - (3) Engaging in a deliberate pattern of 2 or more instances of marketing or selling marijuana plants, marijuana or marijuana products to individuals who are younger than 21 years old;

- (4) Intentionally destroying, damaging, altering, removing or concealing potential evidence of a violation under this subsection, attempting to do so or asking or encouraging another person to do so;
- (5) Misleading the Department for the purposes of involving a person with a disqualifying drug offense in the operation of a marijuana establishment;
- (6) Knowingly diverting marijuana or marijuana products to the illicit market;
- (7) Three or more instances of a licensee failing to have on the premises, at all times during the hours of operation and periods of apparent activity, an individual identification card holder who is authorized to allow and cooperate with Department requests to inspect the premises;
- (8) Two or more instances of a licensee refusing to permit the Department to inspect the premises during hours of operation or periods of apparent activity;
- (9) Intentionally tampering with or interfering with mandatory testing processes, including sample collection, or the auditing thereof; or
- (10) Other conduct that shows willful or reckless disregard for health and safety.

12.2.2 Major License Violations

- A. The Department may impose a fine of up to \$50,000 for each other major license violation.
- B. Such violations include, but are not limited to:
 - (1) Deliberately making a false statement to the Department, the Maine Revenue Service, the Maine Land Use Planning Commission, or any law enforcement officer for the purpose of evading responsibility for any requirements of Titles 28-B or 36 of the Maine Revised Statutes, this Rule, or the license;
 - (2) Deliberately purchasing marijuana plants, marijuana or marijuana products from out of state or outside of the licensed and tracked adult use system;
 - (3) Engaging in a pattern of reporting adult use marijuana plants, marijuana or marijuana products as medical marijuana for the purposes of avoiding taxation or regulation;
 - (4) Selling marijuana plants, marijuana or marijuana products to anyone under the age of 18 by failing to take all necessary steps to verify age;
 - (5) Allowing any individual under the age of 21 to engage in any marijuana-related activity.
 - (6) Engaging in a pattern of selling or transferring marijuana plants, marijuana or marijuana products outside of the tracking system;
 - (7) Supporting, facilitating or willfully or recklessly ignoring suspicious purchasing patterns that suggest a customer is in possession of illegal amounts of marijuana plants, marijuana or marijuana products or is diverting marijuana or marijuana products them to persons under 21 years of age or out of state;
 - (8) Engaging in a deliberate pattern of minor license violations;
 - (9) Intentionally destroying, damaging, altering, removing or concealing potential evidence of a violation that does not threaten public safety, attempting to do so or asking or encouraging another person to do so;
 - (10) Two instances of a licensee failing to have on the premises, at all times during the hours of operation and periods of apparent activity, an individual identification card holder who is authorized to allow and cooperate with Department requests to inspect the premises;
 - (11) Refusal to permit the Department to inspect the premises during hours of operation or periods of apparent activity; and
 - (12) Other conduct that shows a pattern of willful or reckless disregard for the tracking system requirements, sales tax obligations, excise tax obligations, mandatory testing obligations, facility requirements or other provisions of 28-B MRS, 36 MRS, this Rule or other laws or rules.

12.2.3 Minor License Violations

- C. The Department may impose a fine of up to \$10,000 for each minor license violation.
- D. Such violations include, but are not limited to:
 - (1) Knowingly buying, selling, transferring or receiving any marijuana, marijuana plant or marijuana product that was illegally entered into the tracking system;

- (2) Allowing anyone without a valid individual identification card to engage in any marijuana-related activity;
- (3) Selling marijuana plants, marijuana or marijuana products to anyone under the age of 21, but over the age of 18, by failing to take all necessary steps to verify age;
- (4) Misrepresenting any marijuana product to a consumer, licensee or the public, including:
 - (a) Its contents;
 - (b) Its testing results; or
 - (c) Its potency.
- (5) Making representations or claims that the marijuana or marijuana product has curative or therapeutic effects;
- (6) Treating or otherwise adulterating marijuana with any chemical (excluding a controlled substance or prohibited agricultural chemical but including nicotine) that has the effect or intent of altering the marijuana's color, appearance, weight or smell or that has the effect or intent of increasing potency, toxicity or addictiveness;
- (7) Supplying adulterated marijuana or marijuana products;
- (8) Failing to report suspicious purchasing patterns that suggest a customer is in possession of illegal amounts of marijuana plants, marijuana or marijuana products or is diverting marijuana or marijuana products to persons under 21 years of age or out of state;
- (9) Refusing to give, or failing to promptly give, a Department regulatory specialist, representative of the State Tax Assessor, or law enforcement officer evidence when lawfully requested to do so.
- (10) Subletting any portion of the premises;
- (11) Except by way of authorized transfer of trade samples or testing samples, giving away or otherwise transferring marijuana in exchange for a monetary sum less than the licensee has paid for the marijuana by way of authorized transfer or less than the value the licensee has invested, in labor and materials, in the marijuana;
- (12) Allowing consumption of marijuana on a marijuana establishment premises, except as allowed by this Rule;
- (13) Failure to have on the premises, at all times during the hours of operation and periods of apparent activity, an individual identification card holder who is authorized to allow and cooperate with Department requests to inspect the premises;
- (14) Not operating in accordance with the current operations, cultivation or facility plan of record with the Department; or
- (15) Any other violation of 28-B MRS or this Rule.

12.3 - License Restriction, Suspension, Revocation and Voluntary Surrender

The Department shall have the authority to suspend or revoke licenses subject to Title 28-B, Section 802.

12.3.1 Certain Restrictions. The Department may place certain restrictions on licenses in cases where the restrictions may, in addition to other civil or administrative penalties, prevent recurring violations or conflicts with this Rule.

- A. The Department will provide written notice to a licensee if a license is to be restricted and a licensee will be given an opportunity to appeal pursuant to the Maine Administrative Procedure Act, 5 MRS, chapter 375.
- B. A marijuana establishment with a restricted license may only exercise license privileges in compliance with the restrictions of the license.
- C. Failure to comply with restrictions is a violation of this Rule.
- D. A restriction remains in effect until the Department removes it.

12.3.2 Suspension.

- A. Upon the finding of any license violation described in subsection 12.2, in addition to any monetary penalties, the Department may suspend for a period of up to one year, any or all marijuana establishment licenses held by the licensee found in violation, including any other licenses with a common officer, director, manager or general partner.