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Re: LD 1840, An Act to Amend the Maine Medical Use of Cannabis Act

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

The Office of Cannabis Policy (OCP) respectfully submits the following comments in strong opposition to LD 1840, a bill that explicitly rolls back compromises agreed to late last session, as well as concessions made during the last major overhaul of the medical cannabis statute in 2018. It is an affront to the substantial efforts made by individuals, in this room and elsewhere, to carefully negotiate program requirements that addressed the public health and safety concerns embedded in every activity authorized by Title 22, chapter 558-C.

This bill strips municipalities of their ability to authorize or prohibit hazardous extraction activities within their communities and effectively waives local authorization requirements for registrants who manage to obtain from OCP a registry identification card or registration certificate before the end of this year. It reinstates a convoluted definition of “caregiver retail store” that was replaced just last spring, with the definition in this bill specifically designed to eliminate local control of caregiver retail operations. In addition, this bill hamstring OCP’s ability to simply issue guidance or require the use of an application form in order to obtain a registry identification card or registration certificate, and it claws back the public’s right to know who is operating a medical cannabis business in their community.

Municipal approval and authorization are not just some regulatory hoops for program participants to clear—they are an opportunity for local governments to determine what kind of businesses are the right fit for their community and to assess annually whether the businesses that do operate in their community are in continued compliance with local operating requirements. It is how our local governments assert their home rule authority. It is how code enforcement officers can ensure that inherently hazardous substance extraction equipment is installed, maintained, and operated in accordance with the national fire code and not located next to a home daycare or public school. It is also part of the annual renewal process for liquor licensing, a process we have been asked time and again to emulate when a particular liquor (or tobacco or prescription drug) policy suits a particular business owner’s needs. This is another example not of an industry and its supporters wanting to be treated like any other business, but instead wanting to be treated singularly as one for whom rules and regulations do not apply and/or cannot be enforced.

It is deeply disappointing to see this committee once again take up the definition of what is a “caregiver retail store”, an issue that was discussed at length not only by this committee during the 131st Legislature, but also by the special subcommittee of this committee convened to review the Maine Medical Use of Cannabis Act. The consequences of the previous definition were explained multiple times and stakeholders agreed to this new definition during the work sessions for LD 40. The definition now proposed in this bill reinstates a loophole that shields caregivers operating retail stores “by appointment only” from obtaining or maintaining municipal approval to operate. This loophole is problematic for those municipalities who have not opted in for the operation of caregiver retail stores, in some cases as the result of residents explicitly voting not to allow cannabis retail sales of any kind within their town’s borders. On the other hand, many municipalities have taken steps over the past year to update their ordinances and bring all caregiver retail stores into compliance with local regulations as a result of the changes enacted last session, yet this proposal completely undermines those efforts.

Next, we are thoroughly perplexed as to how to obtain the required application or renewal information from applicants and registrants without the use of an application form. How should the Office communicate with medical program participants about its enforcement of various provisions of this law without the use of guidance documents or memoranda? Forms, guidance documents, and other communications are part of the day-to-day operations of the Executive Branch and OCP works diligently to ensure its materials are not out of alignment with any statutory provisions.

Similarly, this bill will substantially increase the number of requests under the Freedom of Access Act received by our Office for information that was made public last year upon the recommendation of the Right to Know Advisory Committee (RTKAC). This bill limits the availability of this public information, information that is of interest not only to the public but to financial institutions, municipalities, and other registrants who want to ensure they are doing business with lawfully operating registrants. The provisions before the committee today were appropriately considered by the Judiciary Committee last session, and that committee heard testimony from OCP and members of the cannabis industry about the impact of the changes to the confidentiality provisions.¹ These privacy provisions are being administered as intended and it is unnecessary to undo the carefully considered work of both the RTKAC and the Judiciary Committee.

Bills like LD 1840 send a clear signal to stakeholders, including the Administration: if you negotiate with the Legislature, industry concessions will simply be reversed in a future legislative session, but the Administration will be expected to honor their own concessions. That is negotiation in bad faith and will jeopardize a willingness to enter into future negotiations. As always we thank the committee for its consideration of our concerns and we are happy to take any questions you may have at the work session.

¹ See <https://legislature.maine.gov/billtracker/#Paper/HP1421?legislature=131> for detailed information regarding the history of PL 2023, ch. 637, including testimony from OCP Director John Hudak.