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ACLU OF RI POSITION: SUPPORT AND AMEND

TESTIMONY ON 21 – S 568, AN ACT RELATING TO FOOD AND DRUGS – CANNABIS AUTHORIZATION, REGULATION, AND TAXATION April 1, 2021

The ACLU of Rhode Island is appreciative of the opportunity to provide commentary on S 568, which would create a comprehensive program for the legalization of recreational marijuana. Our organization has long been supportive of the state's medical marijuana program and are similarly strongly in favor of the legalizing of adult use recreational marijuana, and thus we fully support the goal of this bill in decriminalizing its use for that purpose. In both of these programs it is critical that civil liberties remain at the forefront, and it is within this context that we are providing commentary on this piece of legislation.

We recognize that the Committee is also hearing the FY 2022 budget article, Article 11, which additionally proposes a legalization structure. As with that Article, we appreciate that this topic and this legislation is complex and detailed, and that providing commentary on every component of the bill that we wish to testify on is not feasible. However, we seek to provide as much detail as possible in the testimony that follows.

Additionally, S-568 focuses mostly on recreational marijuana. We believe that in legalizing recreational marijuana, there should be further revisions made to our current medical marijuana laws to ensure that undue burdens are not placed on patients following legalization. Two areas in particular that warrant attention are provisions governing criminal record disqualifications for patient caregivers and sellers of medical marijuana, and clarifying protections in the medical marijuana law protecting employees from discrimination in the workplace.

Finally, we would like to express our support for various social justice provisions contained within this legislation, including limitations on the consideration of criminal record backgrounds for employment, specific funding for social justice and equity initiatives, protections against discrimination for responsible marijuana users in the workplace and the family, and a mechanism for no-cost expungement for justice-involved individuals with a marijuana charge. Such language is extremely positive and indicative of the manner in which social justice must be central to any efforts to legalize recreational marijuana. In this respect, S 568 is superior to the Governor's budget proposal which fails to address many of these issues. However, as our testimony also argues, some of these provisions should be strengthened in order to make sure that they are accomplishing their stated goal, as they do not always do so. We therefore hope that changes addressing these issues, as delineated in the following pages of our testimony, will be favorably considered.

Our specific comments about the bill follow, with some of our more significant recommendations or comments highlighted in italics:

1. **21-28.11-2 (page 1):** While we appreciate the inclusion of social justice in the section on “Legislative intent,” it is worth noting that the commentary within this section has a largely negative tone and appears to focus on mitigation rather than the positive effect that legalizing marijuana will have on impacted communities.
2. **21-28.11-2(j) (page 8, lines 11-12):** We support the language making clear that the cannabis control commission would be subject to the Open Meetings Act, but we encourage language which additionally would explicitly subject the commission to the provisions of the Access to Public Records Act.
3. **21-28.11-2(l) (page 8, lines 22-34):** We support this section barring discrimination by persons or entities licensed under this chapter. While it requires commission cooperation with the state equal opportunity office to address problems of discrimination, we would urge the inclusion of language making clear that any victims of discrimination protected under this section retain the individual right to seek redress in the courts.
4. **21-28.11-5(a)(14)(iii) & (iv)(page 10, lines 9-10):** *This provision would give the commission the ability to determine suitability or approval for or standards for revocation of licenses under this chapter, which includes the “conviction of a criminal offense” or “any other offense which would disqualify such a licensee from holding a license.” We are concerned not only about the breadth of the language here – which sets no limits for the scope or lookback period of a criminal record check – but that the language under this section does not reference the state “fair chance licensing” statute, which ensures that no individual may be unfairly denied an occupational license due to their criminal record. While we recognize that this legislation does provide for limited disqualifications based on criminal record in a later section (21-28.11-12.1), we urge an amendment which incorporates the fair chance licensing statute’s important protections and significantly narrows the ability for the commission to make broad-based decisions on criminal offense disqualification.*
5. **21-28.11-5(a)(16) (page 10, lines 13-17):** See commentary on #4 above.
6. **21-28.11-5(b)(3) (page 11, lines 18-21):** We are appreciative that the language on criminal record checks under this provision would provide that a prior conviction for a cannabis-related offense does not automatically disqualify an individual for employment or licensure, but we again urge referencing to “fair chance licensing” protections such that all justice-involved individuals have an appropriate opportunity to seek employment within these professions.
7. **21-28.11-5(b)(4) & (5) (page 11, lines 22-27):** *These two provisions appropriately and positively recognize the critical social justice impact of the legalization of recreational marijuana, and the importance of a dedicated funding stream for social equity in*

marijuana licensure. We would urge more specificity in ensuring that a concrete percentage of licenses would be set aside for people and communities that have been most affected by the criminalization of marijuana.

8. **21-28.11-5(b)(10) (page 11, lines 33-34):** This provision would require the fingerprinting or other identifying measures for an applicant for licensure, which, due to its lack of details, we are concerned has implications for social justice and “fair chance licensing” as summarized in #4.
9. **21-28.11-5(b)(29)(xii) & 21-28.11-5(b)(30) (page 15, lines 21-22):** We are concerned that requiring verification that a person merely visiting a cannabis website – as opposed to purchasing anything from it – is at least 21 years old could mandate unnecessary privacy-intrusive measures. If this verification language is intended just to collect the age of the consumer prior to entering the website, we encourage that the language make this explicit. Otherwise, any further personally identifying information collection should be limited to purchases or other interactive activity on the website.
10. **21-28.11-5(c)(2) (page 16, lines 24-27):** This section appropriately seeks to limit the collection of personal information from customers by retailers. In order to better accomplish that goal, we would urge that the word “require” on line 25 be changed to “allow.” This section could also reference the language in state law limiting the collection of personal information of people purchasing alcohol.
11. **21-28.11-6(a)(1) (page 18, lines 3-4):** While we are very appreciative that the ACLU of RI has been specified for inclusion on the cannabis advisory board, organizational policy bars us from formally sitting on any governmental boards, councils, or commissions.
12. **21-28.11-6(3) (page 18-19):** In addition to the subcommittees mentioned in this section, we believe that there should be a subcommittee specifically tasked with examining social justice and equity within the marijuana industry and implementation of the statute.
13. **21-28.11-7(k) (page 20, lines 16-26):** Please see commentary on criminal records checks in #4 above.
14. **21-28.11-7(k)(1) (page 20, lines 27-29):** As an organization, we have long opposed the imposition on applicants of the cost of their required own criminal background check, so we support this provision which would generally bar non-owner applicants from paying for those checks.
15. **21-28.11-7(l)(4) (page 21, lines 8-10):** Please see commentary on criminal records checks in #4 above. Further, this section makes a reference “disqualifying criminal convictions as defined in subsection (k)(2),” but no such subsection exists.
16. **21-28.11-7(m) (page 21, line 14):** We are supportive and appreciative of the provisions under this subsection, which provide certain immunities for cultivators and employees in the progress of their work with recreational marijuana.

17. **21-28.11-9(c)(3) (page 23, lines 29-30):** Please see commentary on criminal records checks in #4 above.
18. **21-28.11-10(d)(3) (page 24, line 20):** Please see commentary on criminal records checks in #4 above.
19. **21-28.11-10(d)(5) (page 24, lines 23-24):** This provision would require all recreational marijuana retailers to abide by all municipal zoning and regulations. Such vague and open-ended language could hold retailers accountable to a patchwork of arbitrary rules. At the very least, this section should make reference to 21-28.11-16(a), which generally bars municipalities from adopting “unreasonable and impracticable” ordinances governing cannabis establishments.
20. **21-28.11-11(b)(5) (page 25, lines 30-34):** This provision would explicitly prohibit anyone with a felony drug offense from serving as a laboratory agent in an independent laboratory that tests cannabis. While we understand the sensitive nature of the work of laboratory agents, blanket bans like this are always concerning. Instead, we urge that the provisions of the state’s “fair chance licensing” law be allowed to come into play so that the person can demonstrate that, notwithstanding a past drug record, they are qualified to serve in this capacity. (Also see #21, below.)
21. **21-28.11-12.1 (page 27):** *This section essentially recodifies the standards of the “fair chance licensing” statute that was approved by the General Assembly last year. That law was designed to ensure that no individual is inappropriately denied licensure for a position which they may be eminently qualified by requiring a close, individualized determination of the relevance and importance of the criminal record to the license being sought. Restricting use of criminal record information is especially critical in the context of this bill, which seeks to recognize a social justice framework in legalizing marijuana. However, in one key respect, the “fair chance licensing” statute doesn’t quite work in this particular context and should be tweaked. That is because the initial trigger for considering whether a criminal record should qualify an applicant is whether the record is “substantially related” to the license. In that regard, the people that we most wish to help in this context – people with criminal records relating to drugs – are going to have “substantially related” crimes on their record and thus be subject to greater scrutiny than applicants with potentially much more serious offenses but unrelated to marijuana or other drugs. We therefore urge that this section be amended to address this unintended anomaly in using fair chance licensing standards here. We would also strongly urge that this bill address criminal records disqualifications for those involved in the selling and caregiving of medical marijuana.*
22. **21-28.11-12.1(a)(2) (page 30, line 10):** Without a definition of a “public nuisance” under this provision, we are concerned that it could facilitate restrictions which are in conflict with the goal of this legislation.

23. **21-28.11-17(b)(4) (page 32, lines 2-6):** We believe this language is in conflict with the “fair chance licensing” statute and inappropriately disqualifies individuals from participating in the ownership of cannabis establishments based on a past criminal record without offering a chance for individualized consideration.
24. **21-28.11-22(b) (page 34, line 30 through page 35, line 2):** The meaning of this sentence is unclear.
25. **21-28.11-22(c)-(g) & 21-28.11-23 (page 35, lines 3-33):** *These sections contain very positive and meaningful protections for immunity for users of recreational marijuana in a variety of important contexts, and we strongly support their inclusion.*
26. **21-28.11-26 (page 37, lines 6-9):** Similar to #25, this section provides important protections for professional immunity and we support their inclusion.
27. **21-28.11-27(a) (page 37, lines 14-16):** We appreciate that individuals who engage in minor violations of the law governing marijuana possession will be subject to only civil fines and not criminal penalties.
28. **21-28.11-27(b) (page 37, lines 17-20):** The ACLU understands the goal of child safety in requiring that all marijuana in a private residence must be kept in a locked and secure area. However, there are no laws that mandate similar conditions for the possession of other substances in a primary residence, such as alcohol or prescription drugs, that can be much more dangerous to ingest. Given that fact, we urge this provision be removed.
29. **21-28.11-27(e) & (f) (page 38, lines 6-24):** We support the imposition of civil, rather than criminal, penalties for violations of these sections, and feel that this is an appropriate approach to centering both social justice and criminal justice reform in the legalization of recreational marijuana.
30. **21-28.11-27(i) (page 39, lines 12-15):** *Though violations of other sections largely only carry civil penalties, the furnishing of marijuana to an individual under the age of 21 could carry potential felony penalties. For a 21-year-old who gives their 20-year-old friend or sibling one hit of a joint, this is a disproportionate and inappropriate punishment. We would urge that this provision contain both an age span requirement and the presence of some sort of financial exchange.*
31. **21-28.11-29(a)(2)(vi) (page 40, lines 2-3):** This provision would restrict use of marijuana where exposure to the smoke would “significantly adversely [affect] the health, safety, or welfare of children.” We are concerned about the use of the vague term “welfare” and its potential mischievous application by child service agencies against poorer families.
32. **21-28.11-29(a)(3) (page 40, lines 4-7):** In this provision dealing with driving under the influence, we would urge that it be amended to codify the standard that has been established through Massachusetts caselaw, that the mere presence of the odor of marijuana in a motor vehicle does not by itself constitute probable cause for searching a car.

33. **21-28.11-29(b)(2) (page 40, line 13):** *Though current Rhode Island law prohibits employment discrimination based upon a medical marijuana patient's status as a cardholder, some employers have claimed that they can fire or not hire a cardholder who tests positive for marijuana on a drug test. The ACLU of RI filed a successful lawsuit on behalf of a Rhode Island resident facing this exact issue, but some employers still take this discredited position. It is therefore critical to clarify the law to ensure that a positive drug test cannot become a roundabout way of firing or refusing to employ a patient who is lawfully using medical marijuana. We urge that this sentence be amended to avoid any further confusion on the issue.*
34. **21-28.11-29(d) (page 40, lines 18-27):** *We are highly supportive of the language within this section which would appropriately ensure that adverse employment action cannot be taken against an individual for their use of legal, recreational marijuana while off-the-clock.*
35. **21-28.11-31(c) (page 41, lines 16-22):** *The creation of a specific social equity assistance fund is a positive step, and we are highly supportive of the way that such social justice and equity initiatives would have deliberate funding attached to their implementation. However, in addition to having the fund consist of application fees and payments of fines, we would urge that a percentage of the tax revenues raised by the law also be used for this fund.*
36. **12-1.3-5 (page 66-67):** *In order to approach and mitigate the disproportionate impact that the criminalization of marijuana has had on lower-income and BIPOC communities in particular, the expungement of marijuana-related offenses has become central to social justice initiatives relating to recreational marijuana legalization. We appreciate both that such a provision for this process is included in this bill, and that impacted individuals would have the ability to apply for expungement without being required to pay a fee. However, we urge that this provision be strengthened by providing for the automatic expungement, where feasible, of criminal records that meet the criteria of this section and expanding the criteria for petitioner expungements of marijuana-related criminal records that involve more than one ounce of marijuana.*

Once again, the ACLU of RI appreciates this budget article's goal and welcome Rhode Island joining the 15 or so states that have already taken this route. We hope that the suggestions contained in our testimony will be utilized to better implement that goal.