October 27, 2022

IDFPR Position in Litigation about Transfers of Conditional Licenses

The Department is currently engaged in litigation regarding the sale or transfer of Conditional Adult Use Dispensing Organization Licenses ("conditional license"). See *HAAAYY, LLC et al., v. Illinois Department of Financial and Professional Regulation, et al.*, Cook County Chancery Court, Case No. 2022 CH 09257 (filed September 19, 2022). In its *Memorandum of Law in Support of Their Motion to Dismiss Plaintiffs' Amended Complaint* (see below), the Department has asserted its interpretation of the Cannabis Regulation and Tax Act ("CRTA") concerning the sale or transfer of conditional licenses.

It is the Department's position in that litigation that the CRTA does not allow an entity that has received only a conditional license to transfer any ownership interest in a conditional license to another person, including by any means that would make the other party to that agreement a principal officer of the business. As further articulated in the *Memorandum*, the Department has not foreclosed the opportunity that applicants might enter financially beneficial arrangements, such as investments, loans, or other agreements, so long as they do not result in the transfer of ownership in a conditional license (See *Memorandum* p. 13/16). Please note that any arrangements that result in the addition of principal officers to an Adult Use Dispensing Organization License issued under 410 ILCS 705/15-36 ("15-36 Adult Use License") must be approved by the Department pursuant to 410 ILCS 705/15-60 (b).

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

HAAAYY, LLC, et al.,

Plaintiffs,

v.

ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION, et al.,

Defendants.

No. 2022 CH 09257

Hon. Allen P. Walker

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT

Dated: October 20, 2022

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Introduction and Summary of Argument

Subject to compliance with specified criteria, including prior approval from the Illinois Department of Financial and Professional Regulation after examination of the proposed change in ownership, the Cannabis Regulation and Tax Act, 410 ILCS 705/15-5 *et seq*., allows the sale or transfer of an ownership interest in a *final* cannabis dispensary license, which is issued only *after* the dispensary is ready to operate a business at a particular location. 410 ILCS 705/15-60; *see also* 410 ILCS 705/7-25. But the Cannabis Act does not similarly allow the transfer of such an interest in a *conditional* license *before* a dispensary is ready to open for business.

This case is brought by two entities with *conditional* licenses, Haaayy, LLC and WAH Group, LLC, that have not yet identified locations for cannabis dispensaries or completed the required physical preparations to open for business at such locations. Plaintiffs nonetheless seek a court order allowing them to sell ownership interests in their conditional licenses, including through a "Management Service Agreement" that would give someone else a financial interest in, or control over, those conditional licenses before Plaintiffs are ready to open their doors for business pursuant to a final license. Plaintiffs' legal theory is that because the Cannabis Act does not expressly prohibit transfers of conditional licenses, they must be allowed, and the Department should be enjoined from not recognizing such premature transfers. Plaintiffs are wrong, and they must wait until they have final licenses before seeking Department approval to transfer any ownership interest in their businesses, as expressly provided in the Cannabis Act.

The Cannabis Act extensively regulates ownership of applicants for dispensary licenses and licensees. The Act also expressly distinguishes between *conditional* licenses, which authorize applicants to proceed with the process of preparing to open a dispensary, and *final* licenses, which authorize the licensee to operate the business and sell cannabis to adult retail

customers. Directly relevant here, Section 15-60 of the Cannabis Act expressly authorizes the transfer of an interest in a *final* dispensary license subject to various statutory criteria, including Department approval after review of the proposed new principal officers. 410 ILCS 705/15-60. Section 7-25 provides additional criteria for the transfer of an interest in a final license held by a Qualified Social Equity Applicant. 410 ILCS 705/7-25. By contrast, no similar provision of the Cannabis Act explicitly allows the transfer of an ownership interest in a conditional license.

In light of these provisions of the Cannabis Act, the only reasonable interpretation of its terms, read as a whole, is that the Act does not allow an entity that has received only a conditional license to transfer any ownership interest in a conditional license to another person, including by any means that would make the other party to that agreement a principal officer of the business. Sections 15-60 and 7-25 of the Cannabis Act show that when the General Assembly wants to authorize transfers of an ownership interest in a dispensary license, it knows exactly how to do so and does so expressly. *See, e.g.*, *Chicago Teachers Union, Local No. 1 v. Bd. of Educ. of City of Chicago*, 2012 IL 112566, ¶ 24. Further, when the legislature enumerates specific circumstances subject to a particular treatment, it is assumed to exclude other circumstances not so enumerated. *People v. Clark*, 2019 IL 122891, ¶ 23. These principles apply here. Indeed, it is illogical to assume that the General Assembly would have expressly specified multiple criteria, including Department approval that must be satisfied before any transfer of an ownership interest in a final license, but also silently intended to allow transfers of conditional licenses without any restrictions whatsoever. The Court (and the Department) are not at liberty to read into the Cannabis Act provisions that the legislature itself did not express. *In re Craig H.*, 2022 IL 126256, ¶ 25. Accordingly, because Plaintiffs' complaint asserts an untenable interpretation of the Cannabis Act, it should be dismissed.

Background

Statutory Requirements for Conditional and Final Cannabis Dispensary Licenses

Illinois, like a number of other States, has legalized the use, cultivation, and sale of cannabis—first for medical use, and more recently for adult recreational use. Regulation of commercial sales of cannabis is governed by the Cannabis Act, which took effect in June of 2019 and was substantially amended in July of 2021. The Cannabis Act establishes a statutory framework for the Department to issue cannabis dispensary licenses to qualified applicants, based on their application scores, in 17 regions in the State. *See* 410 ILCS 705/15-25, 15-30. The maximum score allowed under the Cannabis Act is 252 points, with 50 points allocated to applicants that qualify as Social Equity Applicants.[1] As described below, the Department first issues conditional licenses to selected applicants and then, when they are ready to open and operate a dispensary at a specific location, issues final licenses that authorize applicants to do so.

The Cannabis Act distinguishes between a "Conditional Adult Use Dispensing Organization License" and a final "Adult Use Dispensing Organization License," each of which confers certain rights subject to specified conditions. A *Conditional* Adult Use Dispensing Organization License means "a contingent license awarded to applicants for an Adult Use Dispensing Organization License that reserves the right to an Adult Use Dispensing Organization License if the applicant meets certain conditions described in this [Cannabis] Act, but does not entitle the recipient to begin purchasing or selling cannabis or cannabis-infused products." 410 ILCS 705/1-10 (definition of "Conditional Adult Use Dispensing Organization License").

On the other hand, an Adult Use Dispensing Organization License ("final license")

[1] *See* 410 ILCS 705/15-30(c). An applicant could qualify as a Social Equity Applicant in various ways, including by living in a Disproportionately Impacted Area or by hiring employees living in such an area, or by showing a qualifying arrest or conviction that the Act made eligible for expungement. 410 ILCS 705/1-10 (definition of "Social Equity Applicant").

means "a license issued by the Department of Financial and Professional Regulation that permits a person to act as a dispensing organization under this [Cannabis] Act and any administrative rule made in furtherance of this Act." 410 ILCS 705/1-10 (definition of Adult Use Dispensing Organization License). Similarly, a "Dispensing organization" means "a facility operated by an organization or business that is licensed by the Department of Financial and Professional Regulation to acquire cannabis from a cultivation center, craft grower, processing organization, or another dispensary for the purpose of selling or dispensing cannabis, cannabis-infused products, cannabis seeds, paraphernalia, or related supplies under this Act to purchasers or to qualified registered medical cannabis patients and caregivers." *Id.* (definition of "Dispensing organization"). Thus, only a "dispensing organization" with a *final* license (i.e., an Adult Use Dispensing Organization License) may "purchase, possess, sell, or dispense cannabis or cannabis-infused products." *See* 410 ILCS 705/15-25(f).

Before receiving a final license, a conditional licensee must "identify a physical location for the dispensing organization retail storefront" within 180 days of receiving its conditional license. 410 ILCS 705/15-25(e). If a suitable physical location cannot be located within 180 days, the Department may allow another 180 days to find a location if the conditional licensee "demonstrates concrete attempts to secure a location and a hardship." *Id.* If the conditional licensee cannot identify a physical location within 360 days of the award of the conditional license, the Department "shall rescind the conditional license . . . ." *Id.*; 410 ILCS 705/15-25(j). Moreover, to receive a conditional license, applicants were required to "attest[] that if granted a [conditional] license[,] the applicant will have access to sufficient funds to own and operate an adult use cannabis dispensing organization."[2]

[2] Application for Conditional Dispensary License, *available at* https://idfpr.illinois.gov/Forms/AUC/I-AUOL.pdf. This Court can take judicial notice of the Department's application for conditional licenses.

Additionally, the Department cannot issue a final license to a conditional licensee until the following conditions are satisfied: (1) the Department has inspected the dispensary site and proposed operations and verified they comply with the Cannabis Act and zoning laws; (2) the conditional licensee has paid the licensing fees; and (3) the conditional licensee has satisfied all of the requirements of the Cannabis Act and administrative regulations. 410 ILCS 705/15-36(b).

The Cannabis Act's Provisions Regarding Transfer and Sale of Licenses

The Cannabis Act expressly provides for the transfer of an ownership interest in a "dispensing organization," which has a final license and therefore is legally authorized to sell cannabis at a particular location. By contrast, as Plaintiffs admit, the Cannabis Act does not contain any similar provision authorizing the transfer of an ownership interest in a conditional license. (Am. Compl., ¶ 55.)

Section 15-60 of the Cannabis Act, entitled "Changes to a dispensing organization," governs changes in the ownership composition of a dispensing organization (i.e., an entity with a final license), assignments or transfers of final licenses, and sales of the organization. 410 ILCS 705/15-60. In particular, subsection (b) provides that "[a] dispensing organization may only add principal officers after being approved by the Department." 410 ILCS 705/15-60(b). A "principal officer" is defined as a:

> board member, owner with more than 1% interest of the total cannabis business establishment or more than 5% interest of the total cannabis business establishment of a publicly traded company, president, vice president, secretary, treasurer, partner, officer, member, manager member, or person with a profit sharing, financial interest, or revenue sharing arrangement . . . includ[ing] a person with authority to control the cannabis business establishment [and] a person who assumes responsibility for the debts of the cannabis business establishment . . . .

See Leach v. Dep't of Employment Sec., 2020 IL App (1st) 190299, ¶ 44 (court may take judicial notice of information on governmental website); *May Dep't Stores Union v. Teamsters Union*, 64 Ill. 2d 153, 159 (1976) (court may take judicial notice of records of administrative bodies).

410 ILCS 705/1-10. For such additions, Section 15-60(d) provides that "[a] dispensing organization shall provide a written request to the Department for the addition of principal officers," and "shall submit proposed principal officer applications on forms approved by the Department." 410 ILCS 705/15-60(d). And Sections 15-60(e) and 15-60(f) state that "proposed new principal officers shall be subject to the requirements of this Act, this Article, and any rules that may be adopted pursuant to this Act," and that "[t]he Department may prohibit the addition of a principal officer to a dispensing organization for failure to comply with this Act, this Article, and any rules that may be adopted pursuant to this Act," 410 ILCS 705/15-60(e), (f), such as if a principal officer has been convicted of a felony, 410 ILCS 705/15-15(a)(10), or is delinquent with their tax obligations, 410 ILCS 705/15-30(g) and 68 Ill. Admin. Code § 1291.95. A dispensing organization also must provide written notice of the removal of any principal officers of the organization, 410 ILCS 705/15-60(c).

Section 15-60(g) states that a dispensing organization "may not assign a license." Section 15-60(h) states that a dispensing organization "may not transfer a license without prior Department approval," which "may be withheld if the person to whom the license is being transferred does not commit to the same or a similar community engagement plan provided as part of the dispensing organization's application," with that commitment being a condition for the license. 410 ILCS 705/15-60(h).

Section 7-25 of the Cannabis Act imposes additional conditions, including the payment of certain fees, outstanding loan amounts, or grants, for the transfer of "cannabis business establishment licenses" by "Qualified Social Equity Applicants" within five years after they are issued. 410 ILCS 705/7-25. A "cannabis business establishment" is defined to mean a "dispensing organization," 410 ILCS 705/1-10 (definition of "cannabis business establishment"),

so Section 7-25 applies only to entities with a final license, not a conditional license.

In contrast to these extensive provisions for permitted changes in the ownership of an entity with a *final* license, the Cannabis Act contains no similar provisions for such ownership changes in an entity that has only a *conditional* license. Instead, the Cannabis Act refers only to a transfer of the *location* of a conditional license from the region for which it was initially issued to another region in the State if the conditional licensee is "unable to find a location within the [region to which the conditional license is assigned] because no jurisdiction within the [region] allows for the operation of" a cannabis dispensary. 410 ILCS 705/15-25(e-5), 15-35(d), 15-35.10(d).

In light of the foregoing provisions of the Cannabis Act, the Department, in the summer of 2022, stated on its website its understanding that the Act allows the transfer of ownership interests only in *final* licenses, not *conditional* licenses. The Department adopted the position that "Conditional Licenses cannot be sold, transferred, or assigned" to new owners or by adding new principal officers, and that once an entity receives a *final* license, "it may apply to the Department to change ownership." (Am. Compl., Ex. D at 3.) The Department also advised that conditional licensees may not enter into Management Service Agreements that have the effect of adding new principal officers to an ownership structure of a conditional license. (*Id.* at 4.)

Plaintiffs Received Conditional Licenses, Not Final Licenses

Following an application process that included licensing lotteries, the Department awarded Plaintiffs conditional licenses—Haaayy received one conditional license in the Chicago/Naperville/Elgin region, while WAH received two conditional licenses (one in the Chicago/Naperville Elgin region, and the other in the Rockford region). (Am. Compl., ¶¶ 1–2.) These conditional licenses state in bold that the licenses "cannot be sold, transferred, or

otherwise assigned." (*Id.* at Exs. A–B.) Neither Haaayy nor WAH has yet been awarded *final* adult use dispensing organization licenses. (*Id.*, ¶ 20.) Accordingly, Plaintiffs are not "dispensing organizations" under the Cannabis Act because their conditional licenses do not entitle them to "purchase, possess, sell, or dispense cannabis or cannabis-infused products." *See* 410 ILCS 705/15-25(f); *see also* 410 ILCS 705/1-10 (definition of "Dispensing organization").

Plaintiffs' Lawsuit

Plaintiffs' amended complaint seeks a declaration that the Cannabis Act permits them (as conditional licensees) to transfer or sell ownership interests in their conditional licenses, either directly or through a Management Service Agreement. (Am. Compl. ¶ 85.) Plaintiffs further seek an injunction enjoining the Department from prohibiting Plaintiffs from either transferring or selling their interests in their conditional licenses and from entering into a Management Service Agreement during the conditional license phase. (*Id.*) Plaintiffs further request an extension of the 180-day deadline that conditional license holders have to identify a physical location for their dispensing organization (cannabis dispensary storefront). (*Id.*)

Argument

I. The Cannabis Act Permits Only the Transfer of Ownership in Dispensing Organizations with *Final* Licenses, Not Applicants with *Conditional* Licenses.

Plaintiffs claim that because the Cannabis Act does not explicitly *prohibit* the transfer of an ownership interest by an entity with a conditional license, the Act must be read to *allow* such a transfer. (Am. Compl. ¶¶ 26, 40, 54, 64, 79.) They are mistaken as a matter of law. Read as a whole, the Cannabis Act's provisions—including provisions expressly allowing ownership transfers by *final* licensees subject to Department approval and other specified conditions, but no similar provisions for *conditional* licensees—show the General Assembly's intent to allow transfers of ownership interests only in dispensing organizations, with final licenses.

In interpreting a statute, the court's ultimate goal is to ascertain and give effect to the legislature's intent. *Craig H.*, 2022 IL 126256, ¶ 25. The best evidence of legislative intent "is the language used in the statute, given its plain and ordinary meaning," and considering "the reason for the law, the problems to be addressed, and the consequences of construing the statute one way or another." *Id.* "When the statutory language is clear and unambiguous, it must be construed as written, without reading in exceptions, conditions, or limitations not expressed by the legislature." *Id.*

And "[w]hen the legislature includes particular language in one section of a statute but omits it in another section of the same statute, courts presume that the legislature acted intentionally and purposely in the inclusion or exclusion, and that the legislature intended different meanings and results." *Chicago Teachers Union, Local No. 1*, 2012 IL 112566, ¶ 24 (citations omitted); *see also Millennium Park Joint Venture v. Houlihan*, 241 Ill. 2d 281, 306 (2010) (separate statutory provision "show[ed] that the legislature knew how to abrogate a specific common law principle when it desired that result"); *Waste Mgmt. of Ill., Inc. v. Ill. Pollution Control Bd.*, 145 Ill. 2d 345, 351 (1991) ("the legislature is aware of how to include the requirement of filing an opinion with a final order in administrative reviews and we believe that its failure to do so in section 40.1 shows an intent not to have such be a requirement"); *Estate of Howell v. Howell*, 2015 IL App (1st) 133247, ¶ 30 ("when the General Assembly wishes to dictate a certain result, it knows how to do so and it has done so expressly").

As similar principle, based on related considerations and commonly known by the Latin expression *espressio unius est exclusio alterius*, holds that when the legislature includes particular language from one section of a statute but omits it from another section of the same statute, the legislature acts intentionally in the inclusion or exclusion, and the legislature intended

for different meaning and results. *People v. Clark*, 2019 IL 122891, ¶ 23; *see also In re C.C.*, 2011 IL 111795, ¶ 34 ("[w]hen a statute lists the things to which it refers, there is an inference that all omissions should be understood as exclusions, despite the lack of any negative words of limitation."). This maxim is consistent with the rule of statutory construction that "[t]erms excluded by the legislature cannot be implied in the statute." *Norris v. Nat'l Union Fire Ins. Co.*, 326 Ill. App. 3d 314, 323 (1st Dist. 2001); *see Craig H.*, 2022 IL 126256, ¶ 25. It is also closely related to the principle that courts look to the plain meaning of a statute's text to determine what the legislature intended. *Bridgestone/Firestone, Inc. v. Aldridge*, 179 Ill. 2d 141, 152 (1997) (citing 2A Norman J. Singer, Statutes and Statutory Construction §§ 47.24, 47.25, at 228, 234 (5th ed.1992)); *see also Schultz v. Performance Lighting, Inc.*, 2013 IL 115738, ¶ 17.

These principles of statutory interpretation mandate the conclusion that the Cannabis Act allows transfers of ownership interests only in final licenses, not conditional licenses. By expressly allowing the former under detailed conditions, including Department approval, but not including any similar provisions for the latter, the Cannabis Act reflects a clear legislative intent to allow ownership changes in dispensing organizations that have a final license, and not to allow ownership changes in entities that have only a conditional license.

As described above, Section 15-60(h) of the Cannabis Act provides that a dispensing organization (i.e., an entity with a final license) may transfer an ownership interest in its license subject to specific conditions. In particular, the dispensing organization must seek the Department's approval to add principal officers, and where the organization seeks a transfer to new owners, the Department must, among other things, ensure that they "commit to the same or a similar community engagement plan as part of the dispensing organization's application" for a conditional license. 410 ILCS 705/15-60(d), (h), (i). Additional requirements apply to transfers

by dispensing organizations that are "Qualified Social Equity Applicants" within five years after their final licenses are issued. 410 ILCS 705/7-25. Given these detailed statutory provisions, it is inconceivable that the General Assembly also silently intended to allow transfers of ownership interests in entities that hold only conditional licenses—and intended to allow such transfers without any conditions at all, including Department approval.

Given this necessary interpretation of the Act, there is no basis for, or merit to, Plaintiffs' request that the Court enjoin the Department from attempting "to prohibit the sale, transfer, or assignment of conditional adult use dispensing organization licenses." (Am. Comp. ¶ 58.) It is the Cannabis Act itself, not any action by the Department, that prohibits such transfers. The Department, as a creature of statute, has no authority to act in excess of the powers granted to it by the legislature. *See Goral v. Dart*, 2020 IL 125085, ¶ 33. And the Cannabis Act does not give the Department authority to allow transfers of ownership interests in conditional licensees.

II. The Cannabis Act's Goal to Have Dispensary Licenses Issued to Social Equity Applicants Does Not Justify Disregarding the Act's Language Allowing Transfers of Ownership Interests Only for Final Licenses, Not Conditional Licenses.

In support of their proposed contrary interpretation of the Cannabis Act, Plaintiffs note that the Act favors the issuance of licenses to social equity applicants, which Plaintiffs say will be facilitated by allowing conditional licensees to sell ownership interests to other persons. (Am. Compl., ¶ 57.) Plaintiffs also assert that unless they can sell ownership interests in their conditional licenses, they will be unable to raise sufficient funds to open their dispensaries within the statutory deadlines. (*Id.* ¶¶ 62, 68, 70.) But neither the Cannabis Act's overall purpose to favor social equity applicants, nor Plaintiffs' particular financial circumstances, justify rewriting the Act to mean what it does not say.

First, Plaintiffs' reliance on the Cannabis Act's supposed purposes is misplaced because

the Court is not at liberty to revise the actual text of the Cannabis Act just because that revision might conceivably better promote those purposes. The legislative power is vested in the General Assembly. Courts cannot "inject provisions not found in a statute, however desirable or beneficial they may be." *Droste*, 34 Ill. 2d at 504. But that is what Plaintiffs ask the Court to do here: allow transfers of ownership interests in conditional licenses that the Cannabis Act's terms do not allow. And such a revision of what the General Assembly enacted is not necessary to prevent absurd results or total frustration of the Cannabis Act's purposes. As the court stated in *Dusthimer v. Board of Trustees of University of Illinois*, 368 Ill. App. 3d 159 (4th Dist. 2006):

> Whenever a court disregards the clear language of legislation in the name of "avoiding absurdity," it runs the risk of implementing its own notions of optimal public policy and effectively becoming a legislature. Interpreting legislation to mean something other than what it clearly says is a measure of last resort, to avoid "great injustice" or an outcome that could be characterized, without exaggeration, as an absurdity and an utter frustration of the apparent purpose of the legislation.

Id. at 169. That is not the situation here, or even close to it.

The Cannabis Act does reflect the legislature's intention to make dispensary licenses available to persons who lived in economically disadvantaged areas or were adversely affected by the enforcement of cannabis-related laws, "who are interested in *starting cannabis business establishments*." 410 ILCS 705/7-1(h) (emphasis added). That intention is fulfilled by the Cannabis Act's provisions allowing ownership transfers for final licensees, not conditional licensees. Indeed, the category of persons interested in starting a dispensary (a "cannabis business establishment") does not include persons who just want to sell after winning a lottery to obtain a conditional license, without actually starting a cannabis business. In conformity with the Cannabis Act's purpose, the application for a dispensary license requires the applicant to "attest[] that . . . the applicant will have access to sufficient funds to own and operate an adult use

cannabis dispensing organization."[3] Then, after an applicant obtains a final license and is actually running a dispensary, the Cannabis Act anticipates possible ownership changes, instead of freezing the original ownership permanently. The Cannabis Act also contemplates a short period—typically up to 180 days, subject to a single extension for another 180 days—for conditional licensees to get their dispensaries running. Thus, it cannot realistically be maintained that not allowing transfers of ownership interests in conditional licensees would completely frustrate the Cannabis Act's purposes or cause truly absurd consequences. On the contrary, if conditional licensees (all of whom are social equity applicants) could sell their conditional licenses before opening dispensaries, the Cannabis Act's purpose of encouraging them to start operating cannabis dispensaries would be thwarted.

Nor do Plaintiffs' particular alleged circumstances justify rewriting the Cannabis Act to allow them to transfer an ownership interest in their businesses when they have only conditional licenses. As noted, all applicants, including Plaintiffs, were required to explain how they would have the financial means to open dispensaries. The Act, which addresses general categories of applicants and licensees, should not be rewritten to make it easier for Plaintiffs to open dispensaries because they now claim to lack such means. *See Harshman v. DePhillips*, 218 Ill. 2d 482, 500–01 (2006) (refusing to interpret statute to protect individual parties in light of their "particular circumstances"). Nor has the Department foreclosed the opportunity that applicants might enter financially beneficial arrangements, such as investments, loans, or other agreements, so long as they do not result in the transfer of ownership in a conditional license. In any event, even if the Cannabis Act's meaning were subject to reasonable doubt, the Court should adopt the Department's interpretation of it, which cannot fairly be characterized as unreasonable. *See*

[3] Application for Conditional Dispensary License, *available at* https://idfpr.illinois.gov/Forms/AUC/I-AUOL.pdf.

Hadley, 224 Ill. 2d 365, 371 (2007).

III. JCAR's Response to Proposed Rules by the Department Does Not Change the Cannabis Act's Meaning as Enacted by the General Assembly.

Plaintiffs also rely on recent actions by the Joint Committee on Administrative Rules ("JCAR") relating to proposed rules by the Department, including a rule that would expressly forbid the transfer and sale of conditional licenses in a future round of dispensary licensing, to support their proposed interpretation of the Cannabis Act. (Am. Compl., ¶¶ 7, 14, 17, 41, 44, 47.) That reliance is misplaced for several reasons.

Most importantly, the issue here involves the intent of the legislature that passed the Cannabis Act, which is determined by what it enacted, not by anything JCAR did later. In any event, JCAR's actions do not have the meaning that Plaintiffs attribute to them. On March 25, 2022, the Department proposed a *series* of rules, including, among other things, rules related to a new application procedure for the next round of cannabis dispensary licensing, a new lottery process for the next round of licensing, post-lottery proof requirements for the next round, and post-license-issuance requirements, which included a proposed rule expressly disallowing sales and transfers of ownership interests in conditional licenses). (Am. Compl., ¶¶ 14, 41 & Ex. C.)[4] Although JCAR objected to the passage of the proposed rules based on the lack of a "disparity study," it did not register any objection to the proposed rule related to precluding the transfer or sale of conditional licenses. *See* 2022 Illinois Register, Vol. 46, Issue 41 at 16957.[5] Thus, JCAR's objection to the proposed rules filed on March 25, 2022 is irrelevant.

[4] The Department's proposed rule is consistent with the Cannabis Act and would clarify that sales or transfers of conditional licensees are not allowed. *See Fort Stewart Sch. v. Fed. Lab. Rels. Auth.*, 495 U.S. 641, 646 (1990) (noting common practice of adding "technically unnecessary" provisions "out of an abundance of caution").

[5] The relevant page in the Illinois Register is pdf page 376, available at https://www.ilsos.gov/departments/index/register/volume46/register_volume46_issue_41.pdf.

IV. The Court May Not Extend the Time for Plaintiffs to Identify a Dispensary Location or Direct the Department to Do So.

Plaintiffs' amended complaint also asks the Court for an order granting "[a]n extension of the 180-day deadline that license holders have to identify a location" to operate a dispensary. (Am. Comp. ¶ 85.) But the Cannabis Act gives the Department, not the Court, the responsibility to determine whether a conditional licensee shall be given such an extension based on whether it "demonstrates concrete attempts to secure a location and a hardship." 410 ILCS 705/15-25(e). Of course, if Plaintiffs apply for such extensions and the Department denies them, that decision will be subject to judicial review. But in the meantime, Plaintiffs must follow the procedures prescribed by the Cannabis Act rather than asking this Court to decide a matter entrusted to the Department, which is best suited to resolve the issue in the first instance.

Conclusion

Because the text of the Cannabis Act expressly allows the transfer of an ownership interest in a final license subject to specific requirements, including Department approval, but contains no provisions allowing the transfer of an ownership interest in a conditional license, which is a status intended to last only until the conditional licensee is ready to open a dispensary, the Court should conclude that the Act does not allow transfers of ownership interests in conditional licenses and, based on this interpretation, dismiss Plaintiffs' claims.

Dated: October 20, 2022

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