Matt B. Hale

From: Matt B. Hale
Sent: Friday, August 15, 2025 11:48 AM
To: Matt B. Hale
Subject: FW: Potential BLS Legislative Action - Perhaps create a Task Force to Review? - Cannabis Businesses that Fail

On Jul 28, 2025, at 8:26 AM, James C. Moon <jmoon@melandbudwick.com> wrote:

Dear Dineen and Mariane,

I'm reaching out to flag what appears to be a significant and unaddressed gap in the Florida Statutes relating to cannabis businesses—specifically, what happens when such a business fails, needs to be reorganized, or liquidated.
Medical Marijuana Treatment Centers (MMTCs) are governed by Fla. Stat. § 381.986. Like any other enterprise, MMTCs are susceptible to financial failure. When that happens, owners may seek to:

1. Restructure and reorganize their debts,
2. Sell the business as a going concern, or
3. Liquidate the business and distribute the proceeds to creditors.

However, cannabis businesses face unique legal and operational challenges:

1. **Federal Bankruptcy Exclusion**: Because cannabis remains a Schedule I controlled substance under federal law, MMTCs cannot avail themselves of federal bankruptcy protection—even if their operations are lawful under Florida law.
2. **Collateral Restrictions**: Even if secured creditors seek to enforce their rights, they cannot readily liquidate inventory (e.g., cannabis stock), since Florida law restricts sales exclusively to qualified patients or caregivers through licensed entities.
3. **Banking Limitations**: Due to federal restrictions and reporting requirements, most FDIC-insured institutions will not bank cannabis businesses, further complicating financial administration in a wind-down scenario.

Florida's state-law remedies such as receivership or assignment for the benefit of creditors (ABC) may be viable options. These procedures enable the appointment of a neutral fiduciary to manage the sale or liquidation of a business. But here lies the central problem:

How can a receiver or assignee manage and sell cannabis inventory without a license to do so?

Even in a straightforward liquidation, a court-appointed fiduciary would be unable to sell inventory unless licensed—and the Florida Statutes are entirely silent on how to address this issue.

By contrast, other states have enacted thoughtful solutions that offer practical guidance and statutory authority to receivers or court-appointed fiduciaries:

1. **Colorado**: In *Yates v. Hartman*, 488 P.3d 348 (Colo. App. 2018), the court required receivers to obtain cannabis licenses. The legislature responded by enacting Colo. Rev. Stat. § 44-10-401(3), which allows a receiver to apply for temporary registration within seven days of appointment.

2. **Massachusetts**: The Cannabis Control Commission permits receivership arrangements, subject to the receiver applying for and receiving temporary licensure.

3. **Michigan**: The Marijuana Regulatory Agency allows receivers to operate cannabis businesses during transition, subject to agency approval and transfer protocols.

4. **Washington**: WAC 314-55-137 and 314-55-140 authorize licensed operations under a receivership with oversight by the Liquor and Cannabis Board.

5. **California**: 16 C.C.R. § 5024 permits receivers to continue business operations after notifying the Bureau of Cannabis Control.

6. **Oregon**: O.A.R. 845-025-1260 provides a formal process for receivers to obtain temporary authority to operate licensed cannabis businesses.

Given the growing number of MMTCs in Florida and increasing financial strain on some operators, the time may be ripe for legislative reform.

A statutory mechanism allowing a receiver or assignee to obtain temporary authority to operate and liquidate a cannabis business—potentially including the ability to sell inventory to other licensed dispensaries—would provide a vital and orderly solution where none currently exists.

This issue seems well-suited for consideration by the Business Law Section as a legislative proposal. Florida's MMTC approval process is still relatively new, but it's becoming clear that not all of these businesses will succeed.

Without legislative action, courts and practitioners are left to navigate a legal vacuum—often through improvised negotiations with the Office of Medical Marijuana Use (OMMU).

I'd welcome the opportunity to discuss this further if there's interest in advancing a BLS-sponsored initiative.

Regards,

Jim

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pronouns: he/him
Why I Share My Pronouns

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