



MEMORANDUM

TO: Peter Mlynarik, Chair, and
Members of the Board

DATE: July 12, 2017

FROM: Erika McConnell, Director
Marijuana Control Board

RE: Regulations Project – Definition of
“Direct or Indirect Financial Interest”

Summary: As noted in discussion at the May 15, 2017, meeting, the definition of “direct or indirect financial interest” (3 AAC 306.015(e)(1)) excludes a person’s right to receive rental charges on a percentage lease-rent agreement for real estate leased to a licensee, meaning that a rental or lease agreement can be set up allowing the landlord to receive a percentage of the marijuana facility’s earnings when the landlord is not a licensee. This exemption has the potential to allow a landlord, who is not a licensee, to be in a position to exert influence on the facility’s operations in a manner that is expected to be limited to licensees.

I have proposed two alternatives for the Board’s consideration. The first version proposes to eliminate percentage lease or rent agreements from the exemption of direct or indirect financial interest. Under this scenario, any percentage lease or rent agreement could be created but the landlord would have to be a licensee.

The second version limits percentage lease or rent agreements to 5 percent or less. Any greater percentage and the landlord would have to be a licensee.

Recommendation: Choose a version and put out for public comment.

(Words in **boldface and underlined** indicate language being added; words [CAPITALIZED AND BRACKETED] indicate language being deleted.)

3 AAC 306.015 is amended to read:

3 AAC 306.015. License conditions. (a) The board will issue each marijuana establishment license to a specific individual, to a partnership, including a limited partnership, to a limited liability company, to a corporation, or to a local government. A person other than a licensee may not have a direct or indirect financial interest in the business for which a marijuana establishment license is issued.

(b) The board will not issue a marijuana establishment license to

(1) an individual or a sole proprietorship unless the individual or proprietor is a resident of the state;

(2) a partnership unless each partner is a resident of the state;

(3) a limited liability company unless the limited liability company is qualified to do business in the state and each member of the limited liability company is a resident of the state; or

(4) a corporation unless the corporation is incorporated or qualified to do business in the state and each shareholder is a resident of the state.

(c) The board will issue each license for a specific location identified on the license as the licensed premises. A marijuana establishment must have a right to possession of its licensed premises at all times, and may not lease its licensed premises to another person for any reason. If a marijuana establishment wishes to reduce or expand the area of the licensed premises used for a marijuana establishment, the marijuana establishment must submit a new line drawing showing the proposed changes to the premises, and must obtain the board's written approval. A marijuana

establishment may not relocate its licensed premises to a different place without obtaining a license for the new premises as required under 3 AAC 306.050.

(d) The board will impose other conditions or restrictions on a license issued under this chapter when it finds that it is in the interests of the public to do so.

(e) In this section,

(1) "direct or indirect financial interest" means

(A) a legal or equitable interest in the operation of a business licensed under this chapter;

(B)) does not include a person's right to receive

(i) rental charges on a graduated [OR PERCENTAGE] lease-rent agreement for real estate leased to a licensee; or

(ii) consulting fee from a licensee for services that are allowed under this chapter;

(2) "resident of the state" means a person who meets the residency requirement under AS 43.23 for a permanent fund dividend in the calendar year in which that person applies for a marijuana establishment license under this chapter.

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(b) The board will not issue a marijuana establishment license to

(1) an individual or a sole proprietorship unless the individual or proprietor is a resident of the state;

(2) a partnership unless each partner is a resident of the state;

(3) a limited liability company unless the limited liability company is qualified to do business in the state and each member of the limited liability company is a resident of the state; or

(4) a corporation unless the corporation is incorporated or qualified to do business in the state and each shareholder is a resident of the state.

(c) The board will issue each license for a specific location identified on the license as the licensed premises. A marijuana establishment must have a right to possession of its licensed premises at all times, and may not lease its licensed premises to another person for any reason. If a marijuana establishment wishes to reduce or expand the area of the licensed premises used for a marijuana establishment, the marijuana establishment must submit a new line drawing showing the proposed changes to the premises, and must obtain the board's written approval. A marijuana

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(d) The board will impose other conditions or restrictions on a license issued under this chapter when it finds that it is in the interests of the public to do so.

(e) In this section,

(1) "direct or indirect financial interest" means

(A) a legal or equitable interest in the operation of a business licensed under this chapter;

(B)) does not include a person's right to receive

(i) rental charges on a graduated or percentage lease-rent agreement for real estate leased to a licensee, as long as the percentage of a percentage lease-rent agreement is 5 percent or less; or

(ii) consulting fee from a licensee for services that are allowed under this chapter;

(2) "resident of the state" means a person who meets the residency requirement under AS 43.23 for a permanent fund dividend in the calendar year in which that person applies for a marijuana establishment license under this chapter.