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Guest Column: 8 Things Cannabis Businesses Need to Know About Using Receivership

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In this challenging business environment, cannabis operators could find themselves in need of contractual relief from existing debt. Here's what to consider when examining the option to restructure business debt.

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July 22, 2020

Lloyd Pierre-Louis, Benton B. Bodamer and Daniel Briggs (/author/14161)

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No industry is immune from **COVID-19's impact**

(<https://www.cannabisbusinesstimes.com/keyword/coronavirus-cannabis/>), not even state-compliant cannabis. When the pandemic began, most states with legal cannabis programs designated cultivation, manufacturing and dispensary businesses and workers “**essential**” (<https://www.cannabisbusinesstimes.com/article/coronavirus-outbreak-cannabis-businesses-declared-essential/>.)” However, these essential businesses are still illegal in the eyes of the federal government. As a result, CARES Act funding and other coronavirus-specific federal debt relief measures have not been available to state-compliant but federally illegal cannabis companies.

Compounding liquidity issues, the tight capital-raising environment for cannabis companies before COVID-19 is now ever tighter, while operating expenses have increased. For cannabis operators with existing debt, the terms were already onerous by necessity, as traditional commercial lending terms have long eluded most cannabis businesses. The pandemic has undoubtedly forced upon certain operators difficult decisions regarding the short-term viability and long-term prospects of their operations.

Despite many states’ efforts to maintain access to medical cannabis—and in most cases, adult-use dispensaries—stay-at-home orders and consumer caution have meant that in some cases, patients and customers haven’t been frequenting retailers, dispensaries and provisioning centers as often as previously. Additionally, limited onsite capacities due to social distancing requirements have reduced the number of customers that some businesses are able to serve each day.

In this challenging business environment, cannabis operators and pre-operators could find themselves in need of contractual relief from existing debt. One option is a receivership, where a court-appointed receiver or trustee steps in to temporarily manage a company and its assets. Many people only think of receiverships as something initiated at the request of creditors to help them recover money owed. However, receiverships might also be initiated by a business owner in financial distress as part of a restructuring process, or to help avoid bankruptcy. In that situation, you might think of receivership as a sort of “time out” for the troubled business.

One potential drawback of a receivership is that while it's in place, a business owner's management and operational authority is substantially reduced. However, the business

owner may, with court permission, still participate in operational aspects that help the business's bottom line. Though the receiver must be an independent party, a business owner might also have a role in deciding who the proposed receiver will be.

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Is receivership an option you should consider? Here are eight things you need to know:

1. Receivership is an option under state law.

Reorganization through federal bankruptcy law remains generally unavailable for state-legal cannabis businesses whose investors want to maintain value in a licensed operation. However, although rarely used to date, receivership under state law *can* provide an option, even in the federally illegal cannabis industry.

2. State courts can appoint a receiver in a wide range of circumstances.

Usually, a receivership is initiated at the request of a creditor, a business partner or mortgagee. However, depending on the state statute, it can also be requested by a business owner or license holder. In Ohio, for example, a cannabis license holder can make the request if the business is in imminent danger of insolvency and wants to avoid bankruptcy. Where a license holder initiates a receivership, it can be part of a restructuring process, with the goal of returning the business to profitability.

3. Once appointed, a receiver has broad powers.

Answering to the court, a receiver essentially displaces the business owner or management team on a temporary basis to preserve the property or assets. A receiver may take and keep possession of real or personal property; collect rents and other obligations; enter into sale or lease contracts; execute deeds, leases or other documents of conveyance; open and maintain deposit accounts in the receiver's name; bring and defend actions in the receiver's own name as receiver; and generally perform any other acts that the court authorizes. Most importantly, a receiver can compel parties to renegotiate or restructure agreements to preserve an asset or value.

4. There's still some legal uncertainty over receiverships for cannabis businesses.

The unsettled or developing question of law in states that more recently legalized medical or adult-use cannabis is whether a receiver appointed over a cannabis business is controlled by the appointing court or the state regulator, and whether a receiver can actually exercise some of its powers. Often, existing statutes clearly give state agencies regulatory authority over the cultivation, manufacture, transportation and consumer sales of cannabis products. Increasingly, state regulators have also expanded their oversight into matters such as management, real estate, marketing, customer communications and other ancillary parts of cannabis business operations.

Meanwhile, courts pride themselves on independence, and a receiver acting pursuant to a court order ultimately answers to a judge. When a court acquires jurisdiction over the subject matter of an action, its authority continues until the matter is completely and finally disposed of. So, who would control a receiver appointed over a cannabis-related business? Perhaps this question can be answered by using conflicts-of-law principles—a set of rules for determining which law to apply in a case that's subject to two or more contradictory laws—and by considering later-enacted statutes in other jurisdictions.

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5. Several states have passed legislation to allow court-appointed receiverships.

In Colorado, for example, in response to a court ruling in the case of *Yates v. Hartman* (<https://casetext.com/case/yates-v-hartman>), the legislature recently amended applicable law to allow court-appointed receivers to temporarily manage cannabis businesses upon a certification to the court that the receiver is not prohibited from operating such a business. Other states have responded by undertaking similar legislation and rulemaking to accommodate court-appointed receiverships. These include Washington, Oregon, Oklahoma and, most recently, [Michigan](http://www.legislature.mi.gov/documents/2019-2020/billengrossed/House/pdf/2020-HEBH-5490.pdf) (<http://www.legislature.mi.gov/documents/2019-2020/billengrossed/House/pdf/2020-HEBH-5490.pdf>).

6. Conflict can be avoided by coordinating all parties.

It would seem that the most efficient way to avoid a potential clash of authority is to ensure all parties are at the table—the state licensee, creditor(s) or other party desiring the receiver; the proposed receiver; and the state agency. What's your role as the licensee? You may be required, for example, to limit access to a facility to only certain categories of persons, such as licensed employees, registered visitors, specified state and local officials and law enforcement. The licensee is also responsible for limiting access to cannabis products and patient information, reporting sales, keeping accurate records, and a range of other areas with which a court or receiver will have little to no experience. State regulations governing cannabis companies do not contemplate a receiver gaining physical access to property and records.

7. Receivers must be state-approved.

As a practical matter, a court receiver cannot be privy to the sensitive parts of a cannabis business unless and until the applicable state has vetted the person or company. The state agency can protect its various interests if it is a party to a receivership action and the process. Additionally, the displaced licensee, creditor(s) and receiver can collectively determine a strategy and plan for the receivership's scope and duration, and for its approach to restructuring debt, and transferring or liquidating assets.

8. Businesses can often continue to trade during receivership.

Importantly, there's no rule suggesting that a debt that needs restructuring or the mere act of requesting a receiver will trigger an automatic administrative action to revoke a license to operate. This will be a question of state law, and a competent attorney should be consulted before initiating any receivership request. There may be a tug-of-war between the regulating authority and the court. Therefore, it's best to work with an attorney familiar with the customs and practices within the jurisdiction where the licensee is located. In terms of social welfare and oversight (key goals of any well-regulated cannabis marketplace), the state has an incentive to keep its licensees operational because a regulated business is preferable to an illegal, unsafe market. Paradoxically, onerous restrictions on state-licensed cannabis businesses actually serve as an encouragement to illicit operators.

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Lloyd Pierre-Louis, Benton B. Bodamer and Daniel Briggs are attorney members of Dickinson Wright's Cannabis Practice Group (<https://www.dickinson-wright.com/practice-areas/cannabis-law?tab=0>). Dickinson Wright is a full-service law firm serving cannabis industry clients, providing specialized counsel both to clients operating with state-issued licenses and to businesses providing goods and services to the industry.

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Massachusetts Police Reform Bill Indicates Lawmakers Plan to Continue Directing Cannabis Tax Dollars to Police Training

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This part of the bill has drawn criticism, as have draft rules and regulations issued by the Boston Cannabis Board, which will meet July 22 to finalize them.

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July 22, 2020



Patrick Williams (/author/13500)

State by State: Massachusetts (/news/category/state-by-state-ma)

Legislation and regulation (/news/category/legislation-and-regulation)

The Massachusetts House of Representatives has released [its version of a police reform bill](https://assets.documentcloud.org/documents/6997808/S-2820-Police-Reform.pdf) (https://assets.documentcloud.org/documents/6997808/S-2820-Police-Reform.pdf), which references how tax dollars from the state's Marijuana Regulation Fund are used for police training.

Shaleen Title, commissioner of the [Massachusetts Cannabis Control Commission](https://mass-cannabis-control.com/) (https://mass-cannabis-control.com/), tweeted about that version of the bill and a subsequent amendment that would in addition, but not instead, direct tax dollars to restorative justice and other measures.



Shaleen Title
@shaleentitle



People were heard: [@RepLizMiranda](#) has filed an important amendment (Amendment 86 to H. 4860) that would direct an equal or greater amount of cannabis tax revenue to programming for restorative justice, jail diversion, workforce development, + technical assistance. Good first step



Shaleen Title @shaleentitle

The Massachusetts police reform bill that was just released (House version) directs cannabis tax revenue to the police

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7:39 PM · Jul 21, 2020



105 32 people are Tweeting about this

Cannabis Business Times and *Cannabis Dispensary* spoke with Kobie Evans, co-owner of [Pure Oasis](https://www.mypureoasis.com/) in Boston, about how cannabis tax dollars are used in Massachusetts.

He said the decision to direct tax dollars to police training looked like a compromise to try to “appease both sides. But I think that it still represents the fact that a lot of people, especially lawmakers, are somewhat tone-deaf as it relates to racial injustice and over-policing—and the disparity that exists between people of color that are engaged by the police and our white counterparts who receive far less scrutiny and far less apprehension.”

Cannabis is often used as probable cause, legitimately or illegitimately, for police to interact with people of color, he said.


Related: Oregon Cannabis Association Demands Portland Cannabis Tax Not Be Used on Law Enforcement (<https://www.cannabisbusinesstimes.com/article/oca-portland-cannabis-tax/>)

U.S. Census data shows that Black people make up about 25% of Boston's population, but Suffolk County District Attorney Rachael Rollins shared [in a recent webinar hosted by the Marijuana Policy Project](https://www.cannabisdispensarymag.com/article/reimagining-justice-cannabis-race-cannabis-policing-marijuana-policy-project-mpp/) that Black drivers account for 70% of total stops in the city.

Cannabis legalization can help address police reform, Evans said, by “eliminating the smell of weed as a gateway to someone dying at the hands of the police.”


Evans applauded that the movement for racial justice in 2020 involves numerous people and groups working to advance conversations. “I think that as there is more attention brought to the matter and some of this stuff is decloaked, then sometimes that's enough to sanitize the language and to clean it up,” he said.

The police reform bill will be debated on July 22, according to State Rep. Liz Miranda (D).
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Representative Liz Miranda
@RepLizMiranda



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Today we begin debate on H4860, on Policing in a Massachusetts. Beginning at 11am. To follow along: malegislature.gov/Events/Session...



9:44 AM · Jul 22, 2020 from Massachusetts State House 

 52  25 people are Tweeting about this

In related news, the Boston Cannabis Board will meet July 22 to adopt rules and regulations. City Councilor Lydia Edwards' office provided a statement to *CBT* and *CD*.

Part of the statement, addressing the current draft rules and regulations, reads:

“The number one concern that I have heard from people that are trying to get into the industry is that they don’t know how long the approval process is going to take. These rules and regulations do nothing to fix that problem. The final regulations should establish a clear timeline from the time an application is filed until the end of the process.”

Edwards also argues that there also needs to be more transparency with regard to host community agreements in the city. She writes: "The agreements need to be reviewed and executed by the BCB during their public review of a complete application. Negotiating HCAs behind closed doors after a license has been issued and not establishing a timeline for execution will continue the status quo of inequity and opaqueness."

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Edwards also tweeted her thoughts on the rules and regulations.



Lydia Edwards
@LydiaMEwards



Thread: On Wednesday the Boston Cannabis Board will hold a meeting to adopt its rules and regulations. Major changes to the draft rules and regs are needed to ensure we will have an equitable marijuana industry in Boston. #bospoli #mapoli

2:36 PM · Jul 20, 2020

 36  See Lydia Edwards's other Tweets

The board meeting (<https://www.boston.gov/public-notices/13659546>) will take place at 1 p.m. on July 22. It is open to the public, but the comment period has already closed.

Correction (July 24, 2020, 1:40 p.m. ET): An earlier version of this story stated that the House version of the police reform bill proposes directing cannabis tax dollars to police training. The state already uses cannabis tax dollars for police training.

Adult-Use Legalization Debate (/keyword/adult-use-debate/)

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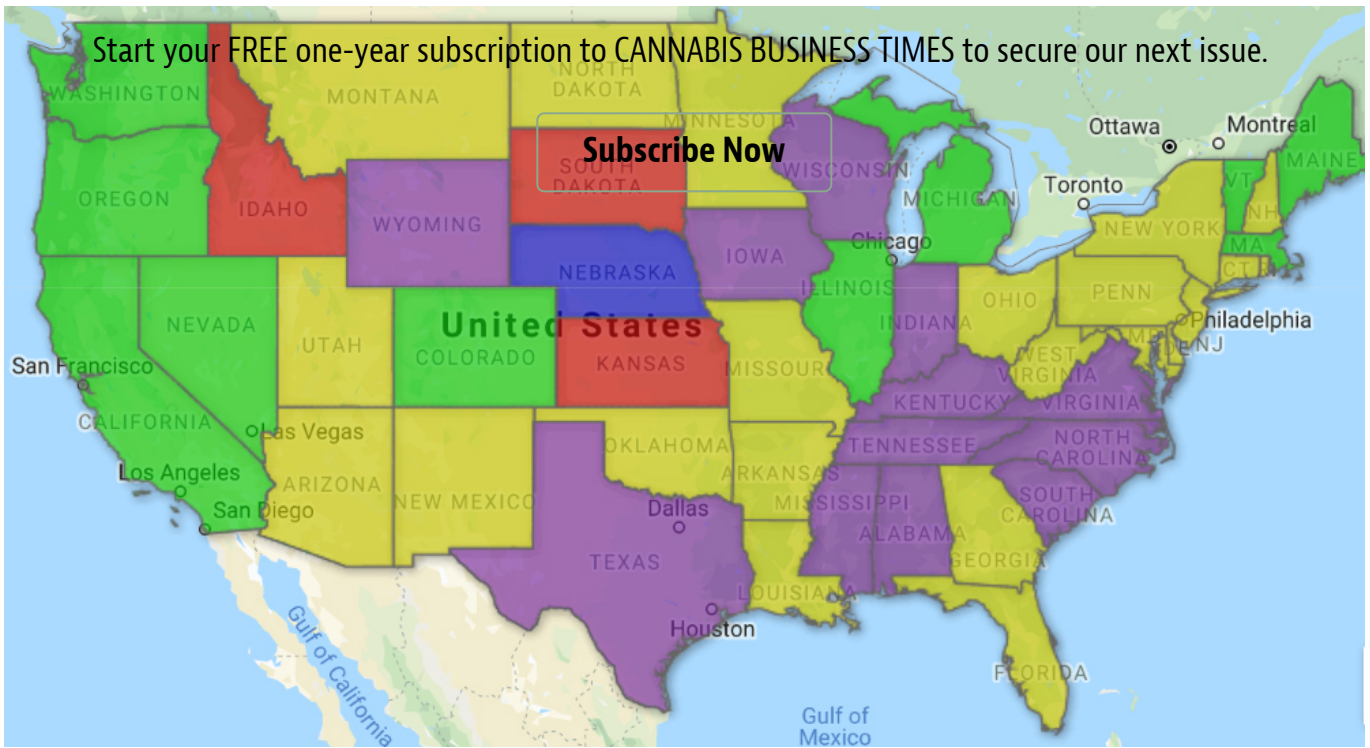
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LEGISLATIVE MAP



(<https://www.cannabisbusinesstimes.com/page/marijuana-legislative-map-cbt/>)

Cannabis Business Times' interactive legislative map is another tool to help cultivators quickly navigate state cannabis laws and find news relevant to their markets. [view more](https://www.cannabisbusinesstimes.com/page/marijuana-legislative-map-cbt/) (<https://www.cannabisbusinesstimes.com/page/marijuana-legislative-map-cbt/>)

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