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Weed Like Our Money Back: Amending Pennsylvania's Medical Cannabis Law for Insolvent Cannabusinesses

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Weed Like Our Money Back: Amending Pennsylvania's Medical Cannabis Law for Insolvent Cannabusinesses

Nikolajs V. Gaikis*

ABSTRACT

In 2016, Pennsylvania joined what is now 37 states and the District of Columbia in legalizing medical cannabis. The Commonwealth's cannabusinesses share in a struggle that is common in other legal jurisdictions: operating within the confines of the Controlled Substances Act and the Bankruptcy Code. Insolvent individuals and businesses that profit from cannabis or hold cannabis assets cannot declare bankruptcy because cannabis is a Schedule I drug. Under state law, other insolvency alternatives like an assignment for the benefit of creditors, receiverships, and compositions with creditors exist as potential alternatives.

Pennsylvania's insolvent cannabusinesses are in a uniquely poor position because of the state's prohibition on the transferability of cannabis permits to third parties. These permits are an incredibly valuable asset for these businesses. To fix this issue, Pennsylvania can look to both its own Liquor Code or New Jersey's cannabis permitting transfer scheme. Yes, even New Jersey gets some things right. As a result, if Pennsylvania adopted a cannabis permit transferability provision in its medical cannabis law, insolvent cannabusiness could likely resolve their financial issues through an assignment for the benefit of creditors.

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INTRODUCTION

As states legalize cannabis to varying degrees, cannabis businesses (“cannabusinesses”¹) are popping up everywhere. Despite a federal prohibition on cannabis, 37 states and the District of Columbia have legalized medical or recreational cannabis.² Legal cannabis sales continue to grow nationwide, as some onlookers are incredibly bullish about the market.³ However, some stakeholders are hedging their bets, especially in the short term, while the economy looms on the brink of recession.⁴ Pennsylvania’s cannabusinesses may report record sales year after year, but considering recent cannabusiness closures, these businesses are uniquely disadvantaged by the Commonwealth’s lack of a permit transferability provision in the medical cannabis law if they become distressed.⁵

I. BACKGROUND

The Controlled Substances Act of 1970 (“CSA”) established cannabis as a controlled substance under federal law.⁶ The CSA classifies substances under five different schedules, and cannabis is

1. “Cannabusiness” is a cannabis industry term used to refer to any business engaged in the legal sale of cannabis, products, or services. *See* Noni Cavaliere, *What is a Cannabusiness?*, MARIJUANA MKTG. XPERTS (Oct. 22, 2021), <http://tinyurl.com/5auj29ch> [<https://perma.cc/S8U2-U5W5>]. Any use of the term “cannabusiness” in this Comment refers to any business engaged in the legal sale of cannabis that requires a license or permit from the state.

2. *See* Controlled Substances Act of 1970, 21 U.S.C. §§ 801–971; *see also* *Quick Reference to State Cannabis Laws, State Health Law*, BLOOMBERG L., <http://tinyurl.com/yc3wmarr> [<https://perma.cc/P8GY-4387>] (last visited Mar. 25, 2024).

3. *See* Reid Wilson, *Legal Marijuana Jobs Booming, Study Finds*, THE HILL (Feb. 2, 2021, 2:10 PM), <http://tinyurl.com/3xmhum36> [<https://perma.cc/S54H-3GE4>].

4. *See* Max Borg, *Trouble Brewing? A Look at the Cannabis Industry’s Signs of Distress—and Resilience*, BURNS LEVINSON (Aug. 18, 2022), <http://tinyurl.com/bdzmzs59> [<https://perma.cc/5B4T-24B6>]; *see also* Kris B. Mamula, *After Ambitious Launch, Medical Cannabis Company to Shutter Pennsylvania Operations*, PITT. POST-GAZETTE (July 20, 2023, 6:02 AM), <https://tinyurl.com/te3zaaba> [<https://perma.cc/38AP-MDK8>]; David Wenner, *Pa. Medical Marijuana Grower Lays Off Dozens, Says Industry Taken Over by Out-of-Staters*, PENNLIVE (July 29, 2022, 8:17 AM), <http://tinyurl.com/5bn6h6jr> [<https://perma.cc/86LV-N2WC>].

5. *See* Bart Schaneman, *Pennsylvania Marijuana Market in Tumult Amid Falling Prices, Consolidation*, MJBIZDAILY (Aug. 25, 2022), <https://tinyurl.com/4fys4hbv> [<https://perma.cc/TW79-8KMR>]; *see also* 35 PA. CONS. STAT. § 10231.603(b) (2016) (establishing that in Pennsylvania all medical cannabis permits for grower-processors and dispensaries are non-transferable). As interest rates continue to rise and inflation remains high, the U.S. economy is still on the verge of recession. *See* Christopher Rugaber, *Powell Says Inflation ‘Remains Too High’—Hints: Fed Not Done Flirting with Recession*, HUFFPOST (Aug. 25, 2023, 3:00 PM), <https://tinyurl.com/56zxu7j3> [<https://perma.cc/RQ64-EWBJ>].

6. *See* Controlled Substances Act of 1970, 21 U.S.C. §§ 801–971.

a Schedule I drug.⁷ These classifications are made by determining the substances' "medical use, potential for abuse, and safety."⁸ The Drug Enforcement Administration is the federal agency tasked with enforcing controlled substances laws and regulations, including the CSA.⁹

Broadly speaking, the CSA criminalizes nearly every aspect of selling, growing or manufacturing, distributing, and possessing controlled substances.¹⁰ Further, the CSA expressly criminalizes the act of conspiring to commit any offense under the CSA.¹¹ The CSA conflicts with state laws because 42 states have legalized cannabis to various degrees.¹² In *Gonzales v. Raich*,¹³ the Supreme Court held that the federal scheme to regulate cannabis under the CSA supersedes state cannabis legalization schemes because of the Commerce Clause.¹⁴ It follows that cannabis creates unique issues in other areas of federal law, like the bankruptcy code.

A. Importance of Bankruptcy Protections

1. Types of Bankruptcies

The U.S. Constitution grants Congress the exclusive authority to enact bankruptcy laws.¹⁵ Further, bankruptcy courts have exclusive jurisdiction over all debtors seeking bankruptcy.¹⁶ Congress first

7. See 21 C.F.R. § 1308.11(d)(31) (2023); see also *The Controlled Substances Act*, U.S. DRUG ENF'T ADMIN. (July 25, 2018), <https://tinyurl.com/4ab8y8jy8> [<https://perma.cc/ER95-7RJ6>]. Schedule I drugs are those which have no accepted medical use and have a high potential for abuse. See *Drug Scheduling*, U.S. DRUG ENF'T ADMIN. (July 10, 2018), <https://tinyurl.com/bddk6cav> [<https://perma.cc/8WVG-EJET>]. Schedule II drugs are those which have a high potential for abuse, but some medical use exists. See *id.* Schedule III drugs are those which have a moderate to low potential for abuse and have medical use. See *id.* Schedule IV drugs have a low potential for abuse and have medical use. See *id.* Schedule V drugs have the lowest level of abuse potential and have medical use. See *id.*

8. See *The Controlled Substances Act*, *supra* note 7; see also 21 U.S.C. § 811(c) (outlining the factors for changing the schedule of a substance).

9. See *About*, U.S. DRUG ENF'T ADMIN. (April 28, 2021), <https://tinyurl.com/58tpmb29> [<https://perma.cc/8RTG-GYXR>]; see also *The Controlled Substances Act*, *supra* note 7.

10. See 21 U.S.C. §§ 841(a), 856(a).

11. See *id.* § 846.

12. See *Map of Marijuana Legality by State*, DISA (Mar. 1, 2024), <https://tinyurl.com/4dcyj3sb> [<https://perma.cc/P6FR-DXDQ>].

13. *Gonzales v. Raich*, 545 U.S. 1 (2005).

14. See *id.* at 31–33; see also U.S. CONST. art. I, § 8, cl. 1. The commerce clause is used by Congress to justify legislation relating to commerce which can regulate a large swath of issues. *Commerce Clause*, LEGAL INFO. INST. (July 2022), <https://tinyurl.com/49wpfphx> [<https://perma.cc/95QG-PDBQ>].

15. See U.S. CONST. art. I, § 8, cl. 4.

16. See *Tenn. Student Assistance Corp. v. Hood*, 541 U.S. 440, 447 (2004).

exercised its power to promulgate bankruptcy legislation in 1800.¹⁷ The modern bankruptcy codes were born in 1978 when Congress substantially revised the preexisting bankruptcy code.¹⁸

A Chapter 7 bankruptcy is what most people think of when they think of bankruptcy.¹⁹ Chapter 7 bankruptcies are often called “liquidations” because Chapter 7 bankruptcies release individuals from personal liability for their debts.²⁰ Here, most debtors are eligible for debt discharge,²¹ barring an exception.²² These exceptions include, but are not limited to, the debtor refusing to obey lawful orders of the court; providing false information to the court; or withholding any information about the estate, like records or books, from the court or creditors.²³ However, if an exception is met, such as a pending proceeding where the debtor could be found guilty of a felony, a bankruptcy court could refuse to discharge all of the debtor’s debt.²⁴ Further, most debts are dischargeable.²⁵ Once the bankruptcy court approves the petition, all of the debtor’s non-exempt property, which is any property that creditors can seize to satisfy debts, is transferred to a trustee for liquidation to satisfy the creditors, and the debtor’s dischargeable debt is discharged.²⁶

In a Chapter 11 bankruptcy, the debtor maintains control of their property, business, or estate, and they must propose a plan to reorganize and repay their debts.²⁷ Any individual—including corporations, limited liability companies (“LLCs”), and partnerships—may file for Chapter 11 bankruptcy.²⁸ The essence of a Chapter 11 plan is to reorganize the debtor’s debts to determine when, how, and to what extent the debtor will pay the creditors.²⁹ Once the debtor proposes the plan, the creditors must vote to accept or reject the plan.³⁰

17. See C. RICHARD McQUEEN, *TAX ASPECTS OF BANKRUPTCY LAW* § 1.1 (Jack F. Williams ed., 3d ed. 2022).

18. See *id.*

19. See James W. McNeilly Jr., *Representing Chapter 7 Bankruptcy Debtors: Going for Broke*, 77 WIS. LAW. 10, 12 (2004).

20. See *id.*

21. When a debt is discharged, that debt is no longer legally enforceable against the debtor by the creditor. See 11 U.S.C. § 524(a).

22. See 11 U.S.C. § 727.

23. See *id.* § 727(a).

24. See *id.* § 727(a)(12)(B).

25. See *id.* § 523.

26. See *id.* § 726; see also *Exempt Property*, LEGAL INFO. INST. (July 2021), <https://tinyurl.com/296tjryw> [<https://perma.cc/CSE3-M4PC>].

27. See 11 U.S.C. §§ 1101, 1121.

28. See LISA THOMPSON, *ARIZONA LEGAL FORMS: DEBTOR-CREDITOR 2* (3d ed. 2021).

29. See 11 U.S.C. §§ 1122–24.

30. See *id.* § 1126 (accepting the Chapter 11 plan); see also 11 U.S.C. § 1129 (confirming the Chapter 11 plan).

Further, the plan must adhere to the statutory requirements within Section 1129.³¹ These requirements include that the plan: is proposed in good faith, is not forbidden by law, complies with the Chapter 11 title, and is accepted by the creditors.³²

Chapter 13 bankruptcies involve no asset liquidation. Rather, the debtor proposes a plan to repay creditors monthly over three to five years.³³ The debtor's monthly payments are paid to a trustee who distributes them to the creditors.³⁴ Secured creditors³⁵ have a property interest in some of the debtor's property until the debt is repaid.³⁶ Secured creditors receive priority for payments distributed by the trustee.³⁷ Creditors may only object to the confirmation of the Chapter 13 plan, rather than vote to approve the plan.³⁸

2. *The Prohibition on Cannabusinesses Declaring Bankruptcy*

Generally, cannabusinesses cannot enter bankruptcy because of the legality and good faith requirements mandated by the bankruptcy code.³⁹ Further, a court could dismiss a cannabusiness's bankruptcy petition if the court determines that "granting relief would be an abuse."⁴⁰

Good faith is a well-established requirement for the confirmation of a bankruptcy plan.⁴¹ This requirement is met when the debtor proposes a plan "with 'honesty and good intentions' and with 'a basis for expecting that a reorganization can be effected.'"⁴² While Chapter 7 contains no express provisions excluding illegal plans, courts may

31. See 11 U.S.C. § 1129.

32. See *id.* § 1129(a)(3).

33. See *id.* § 1322.

34. See *id.* § 1326.

35. Secured creditors are creditors that lent assets to the debtor backed by the debtor's property as collateral. See *Secured Creditors and Unsecured Creditors: What's the Difference?*, FIRST CORP. SOLS., <https://tinyurl.com/4njp5vku> [<https://perma.cc/6FMZ-YX4T>] (last visited Mar. 25, 2024).

36. See *Dewsnup v. Timm*, 502 U.S. 410, 417 (1992).

37. See 11 U.S.C. § 1326(a)(1)(C).

38. See *id.* § 1325(a)–(b)(1).

39. See Peter C. Alexander, *Up in Smoke: Bankruptcy and Cannabis*, 43 U. ARK. LITTLE ROCK L. REV. 81, 87–89 (2020) (explaining the significance of good faith and legality requirements for cannabusinesses attempting to declare bankruptcy); see also 11 U.S.C. § 1129(a)(3) (stating the good faith requirement); 11 U.S.C. 1325(a)(3) (stating the legality requirement).

40. See 11 U.S.C. § 707(b)(1).

41. See *Manati Sugar Co. v. Mock*, 75 F.2d 284, 285 (2d Cir. 1935) (requiring a good faith showing for discharge in a bankruptcy case).

42. See *In re Emmons-Sheepshead Bay Dev., LLC*, 518 B.R. 212, 225 (E.D.N.Y. 2014) (quoting *Koelbl v. Glessing*, 751 F.2d 137, 139 (2d Cir. 1984) (quoting *Manati Sugar Co.*, 75 F.2d at 285)).

dismiss Chapter 7 petitions “for cause.”⁴³ Courts have concluded that “for cause” in Section 707 includes federally illegal acts, like operating or owning a cannabusiness, because a trustee could not lawfully administer an estate that holds cannabis assets.⁴⁴

Further, under the broad “legality” requirement, cannabusinesses operate in a space “forbidden by law.”⁴⁵ As a matter of public policy, bankruptcy courts held that there is no way for a bankruptcy trustee to administer a bankruptcy plan without committing federal crimes under the CSA.⁴⁶ Further, Clifford J. White III, the former Director of Executive Office for U.S. Trustees, instructed U.S. Trustees to file motions to dismiss whenever a Chapter 7 or 13 bankruptcy reveals that the debtor holds cannabis assets.⁴⁷ Director White explicitly noted that cannabis assets which are legal under state law are not exempt from the U.S. Trustee Program’s cannabis policy.⁴⁸ The U.S. Trustee Program’s policy is significant because it represents that both the courts and the federal office overseeing nearly all bankruptcies oppose cannabusinesses declaring bankruptcy.⁴⁹

3. *Surveying Cannabis Bankruptcy Case Law*

A survey of cannabis bankruptcy case law reveals much of the same—courts generally dismiss bankruptcy petitions when the debtor holds cannabis assets. In *In re Arenas*,⁵⁰ the Bankruptcy Appellate Panel for the Ninth Circuit held that Chapter 7 and Chapter 13 trustees cannot administer a debtor’s cannabis assets in a bankruptcy proceeding.⁵¹ Here, the debtors owned a commercial building where they operated a cannabis cultivation business in one-half of the building.⁵² They leased the other half of the building to a cannabis dispensary.⁵³

43. See 11 U.S.C. § 707(a).

44. See *In re Arenas*, 535 B.R. 845, 853 (B.A.P. 10th Cir. 2015).

45. See 11 U.S.C. § 1129(a)(3); see also *id.* § 1325(a)(3); *id.* § 707(a); Controlled Substances Act of 1970, 21 U.S.C. §§ 801–971. Courts have dismissed bankruptcy petitions “for cause,” the language from section 707(a), because the debtor’s assets or income were illegal under federal law. See *In re Arenas*, 535 B.R. at 853–855.

46. See *In re Arenas*, 535 B.R. at 852.

47. See Letter from Clifford J. White III, Dir. Exec. Off. for U.S. Tr., to Chapter 7 and 13 Trustees (April 26, 2017), <https://tinyurl.com/yc6pwtwdw> [<https://perma.cc/26T7-9NMD>]. The U.S. Trustee oversees and administers all bankruptcy cases by appointing federal employees or private individuals to each case. See *U.S. Trustee Program*, U.S. DEP’T OF JUST., <https://tinyurl.com/4smw6we7> [<https://perma.cc/D6F2-7CG2>] (last visited Mar. 23, 2024).

48. See *U.S. Trustee Program*, *supra* note 47.

49. See Alexander, *supra* note 39, at 90–91.

50. See *In re Arenas*, 535 B.R. 845, 849–50 (B.A.P. 9th Cir. 2015).

51. See *id.*

52. See *id.* at 847.

53. See *id.*

The debtors also owned 25 cannabis plants.⁵⁴ When the debtors petitioned the court for Chapter 7 bankruptcy, the trustee filed a Notice of No Distribution, which effectively petitions the court to close the case.⁵⁵ The trustee then filed a motion to dismiss and alleged that it would be impossible to administer the debtor's assets without breaking federal law.⁵⁶ The court dismissed the case, but only after the debtors attempted to convert their case into a Chapter 13 bankruptcy, and the debtors appealed.⁵⁷

The court reasoned that the impossibility of lawfully administering the debtor's estate because of their cannabis assets was proper grounds for dismissing their bankruptcy petition.⁵⁸ Further, the court reasoned that even if a trustee abandoned, rather than sold, the debtor's cannabis assets, the debtors would still "expose the Trustee to grave risk [of breaking federal law]."⁵⁹ Had the trustee abandoned the assets, the debtors would have received relief against the creditors' injunctions, which would have prejudiced the creditors.⁶⁰

In re Arenas is not an outlier. *In re Arm Ventures*⁶¹ stands for the proposition that a debtor's intent to rent to a cannabusiness fails the good faith test, and thus bars the debtor from declaring bankruptcy.⁶² Here, the debtor intended to repay their debts from rental income.⁶³ One of the lessees ran a pharmacy and applied for the appropriate licenses to sell medical cannabis.⁶⁴ The court reasoned that any plan requiring a creditor to break federal law by accepting payments from cannabis income could not be confirmed.⁶⁵

In *In re Basrah Custom Design*,⁶⁶ a bankruptcy court dismissed a debtor's Chapter 11 petition because the debtor's lease contract with a business seeking a medical cannabis license would violate federal law by funding the Chapter 11 plan with revenue derived from cannabis.⁶⁷ The court put it simply:

54. *See id.* at 848.

55. *See id.*

56. *See id.*

57. *See id.*

58. *See id.* at 853.

59. *See id.*

60. *See In re Arenas*, 535 B.R. 845, 853–54 (B.A.P. 9th Cir. 2015).

61. *In re Arm Ventures, LLC*, 564 B.R. 77 (Bankr. S.D. Fla. 2017).

62. *See id.* at 86–87.

63. *See id.* at 81.

64. *See id.*

65. *See id.* at 86.

66. *In re Basrah Custom Design, Inc.*, 600 B.R. 368 (Bankr. E.D. Mich. 2019).

67. *See id.* at 372–73, 385.

The granting of stay [to the debtor] would obviously assist [the debtor] in its efforts to open and operate a medical marijuana dispensary, in violation of federal law. Just as “a federal court cannot be asked to enforce the protection of the Bankruptcy Code in aid of a Debtor whose activities constitute a continuing federal crime,” neither can a federal court be asked to enforce any creditor protections . . . in aid of a creditor’s commission of a federal crime.⁶⁸

In *In re Johnson*,⁶⁹ the judge enjoined the debtor from operating his cannabis cultivation and caregiving business, which was legal under Michigan law, during his Chapter 13 petition.⁷⁰ Additionally, the court ordered the debtor to abandon any cannabis plants or related inventory during the proceedings.⁷¹ *In re Johnson* illustrates the norm in bankruptcy cases: when federal and state cannabis laws conflict, federal law will prevail.⁷²

In rare instances, bankruptcy courts have permitted petitions for debtors that derive income from cannabusinesses to continue. In *Garvin v. Cook Investments*,⁷³ the Ninth Circuit affirmed the bankruptcy court’s confirmation of a Chapter 11 plan for a debtor that leased property to a cannabis grower.⁷⁴ In *Garvin*, the debtor owned and managed five real estate companies, one of which leased property to a cannabis cultivation business, which was legal under Washington law.⁷⁵ The trustee filed a motion to dismiss, arguing that the Chapter 11 plan was forbidden by federal law.⁷⁶ The court denied the trustee’s motion because the debtor structured the Chapter 11 plan without funds from the rental company that leased to the cannabusiness.⁷⁷ The Ninth Circuit declined to hear this issue because the trustee failed to renew this motion to dismiss at the confirmation hearing.⁷⁸

The bankruptcy court acknowledged that the debtor’s cannabis funds indirectly supported their Chapter 11 plan because the debtor used the funds to support their businesses and lessees.⁷⁹ However, the

68. See *id.* at 384 (quoting *In re Rent-Rite Super Kegs W. Ltd.*, 484 B.R. 799, 805 (Bankr. D. Colo. 2012)).

69. *In re Johnson*, 532 B.R. 53 (Bankr. W.D. Mich. 2015).

70. See *id.* at 54, 59.

71. See *id.* at 59.

72. See *United States v. Parker*, 219 F. Supp. 3d 183, 188 (D.D.C. 2016) (citing *Gonzales v. Raich*, 545 U.S. 1, 27, 29 (2005)).

73. *Garvin v. Cook Invs.*, 922 F.3d 1031 (9th Cir. 2019).

74. See *id.* at 1033–34.

75. See *id.* at 1033.

76. See *id.* at 1034.

77. See *id.*

78. See *id.*

79. See *id.* at 1035.

court reasoned that the proposal of the plan, not the terms, was more significant because the proposed plan only relied on legal funds.⁸⁰ Further, the court's reasoning also applied to the prohibition of proposed plans that are illegal under federal law.⁸¹ Finally, the court was confident that its decision would not spark a wave of cannabis bankruptcies because the debtor was still liable for their federal crimes and bankruptcy judges are not required to seek out every possible illegality in each proposed plan.⁸²

One other notable exception exists. In *In re Olson*,⁸³ the Bankruptcy Appellate Panel for the Ninth Circuit vacated the dismissal of a petition by a debtor who accepted rent from a cannabusiness.⁸⁴ However, the court stated that on remand, the bankruptcy court should specifically address and analyze why the debtor violated the CSA.⁸⁵ The bankruptcy judge later dismissed the case at the debtor's request.⁸⁶ Notwithstanding *Olson* and *Garvin*, dismissing cannabusinesses' bankruptcy petitions is the norm in bankruptcy courts.

B. Insolvency Under State Law

1. Assignment for the Benefit of Creditors

Assignment for the benefit of creditors ("ABC") is a state law insolvency proceeding governed by statute or common law.⁸⁷ ABC "is a business liquidation device available to an insolvent debtor as an alternative to formal bankruptcy proceedings."⁸⁸

Each state has its own statutory and common law for ABC.⁸⁹ Generally, in an ABC, the debtor voluntarily transfers control of all of their assets to a third party, who then holds title to the debtor's assets.⁹⁰ These assets are held in a trust and are distributed to creditors based on the creditor's priority as established under the jurisdiction's

80. *See id.*

81. *See id.*

82. *See id.* at 1036.

83. *In re Olson*, B.A.P. No. NV-17-1168, 2018 WL 989263 (B.A.P. 9th Cir. 2018).

84. *See id.* at *3, *6.

85. *See id.* at *6.

86. *See* Order Approving Ex Parte Motion to Dismiss at *1, *In re Olson*, No. 3-17-50081 (Bankr. Nev. 2017) (No. 261).

87. *See* Gene Kohut, *Barred from Bankruptcy: Struggling Marijuana Businesses Need to Learn Their ABCs*, 39 AM. BANKR. INST. J. 28, 50 (2020).

88. *See* Credit Managers Ass'n v. Nat'l Indep. Bus. All., 209 Cal. Rptr. 119, 120 (Cal. Ct. App. 1984).

89. *See id.* at 120.

90. *See* 6 WILLIAM L. NORTON, III, NORTON BANKRUPTCY LAW AND PRACTICE § 171:1 (3d ed. 2022).

law.⁹¹ ABCs only apply to secured creditors.⁹² By contrast, an unsecured creditor must prove to the debtor that they have a claim, and subsequently, if approved, the unsecured creditor receives the right to partake in the assignment of the debtor's debts.⁹³ If the debtor is an insolvent corporation, generally, the board of directors and shareholders must approve the ABC before it can start.⁹⁴ However, in some states, an ABC may be retroactively secured.⁹⁵ As an important note, ABCs are preempted by the bankruptcy code.⁹⁶ However, in the context of cannabusinesses, this is irrelevant because these businesses cannot declare bankruptcy under federal law.⁹⁷

2. *Receiverships*

Generally, appointing a receiver puts the business entity or corporation under court supervision and in its custody, and the court has the absolute authority to run the entity and dispose of its property in any way it sees fit.⁹⁸ Receivership can arise as an equitable remedy.⁹⁹ It is an extreme remedy only imposed if a safe, expedient, adequate, and less drastic remedy is unavailable.¹⁰⁰ Further, receivership is an involuntary remedy because the debtor cannot initiate receivership proceedings.¹⁰¹ Only shareholders, directors, and creditors may initiate receivership proceedings.¹⁰²

For a corporation, receivership places the court in charge of all aspects of management under the supervision of a receiver.¹⁰³

91. *See id.*

92. *See id.* § 171:2.

93. *See id.*

94. *See id.*; *see also* N.Y. BUS. CORP. LAW. § 909(a)(3) (McKinney 2019).

95. *See* NORTON, *supra* note 90, § 171:2.

96. *See, e.g.,* Sherwood Partners, Inc. v. Lycos, Inc., 394 F.3d 1198, 1208 (9th Cir. 2005) (Nelson, J., dissenting).

97. *Compare* NORTON, *supra* note 90, § 171:3 (discussing how the bankruptcy code preempts state law), *with* Garvin v. Cook Invs., 922 F.3d 1031, 1035 (9th Cir. 2019) (holding that bankruptcy courts cannot grant bankruptcy to businesses illegal under federal law).

98. *See* 19 C.J.S. *Corporations* § 852 (2022).

99. *See* Credit All. Corp. v. Philadelphia Minit-Man Car Wash Corp., 301 A.2d 816, 818–19 (Pa. 1973).

100. *See id.* at 819.

101. *See* 15 PA. CONS. STAT. § 1981 (1989). While receivership is considered an involuntary remedy, a director may file a petition with the court. *See id.* Then the board of directors can approve a resolution, without the approval of the shareholders, that orders an officer to consent to the receivership in the corporation's answer. *See id.* This effectively results in a voluntary receivership if the director knows the board will approve the consent resolution. Nevertheless, the court must determine whether the receivership is valid before it orders the receivership. *See id.*

102. *See id.* §§ 1981–82.

103. *See id.* § 1985.

However, entities can also consent to the appointment of a receiver.¹⁰⁴ The effect of appointing a receiver makes the entity's insolvency into a legal reality, not just an economic reality, because the purpose of the receiver is to liquidate the assets of the business.¹⁰⁵

For partnerships and LLCs (collectively "partnerships"), the process is similar. Here, court may order a receiver "upon cause shown" by the plaintiff.¹⁰⁶ Nevertheless, the purpose of a receiver for partnerships is still to wind up and liquidate the business.¹⁰⁷ Further, fraud or mismanagement of a partnership is one justification for a court-ordered receivership. However, courts have wide discretion to appoint a receiver when a liquidation case is brought before them.¹⁰⁸ Likewise, the receiver's role is to sell the partnership's assets at the highest price possible.¹⁰⁹

When an entity appoints a receiver, creditors maintain their substantive right to repayment.¹¹⁰ Instead, the appointment of a receiver affects what remedies creditors can pursue.¹¹¹ On top of the receiver conserving the existing assets of the entity, the receiver has the power to sue third parties with outstanding liabilities to the entity, so that those liabilities can be realized and distributed to the creditors.¹¹²

C. *The Importance of Cannabusinesses to Pennsylvania*

Cannabusinesses are important because they provide relief to individuals suffering from debilitating illnesses, create jobs in local communities, and increase tax revenues to states.¹¹³ Medical cannabis benefits patients with Alzheimer's, amyotrophic lateral sclerosis, HIV/AIDS, Crohn's disease, epilepsy, seizures, glaucoma, multiple

104. See *City Nat'l Bank v. 728 Market Street, LP*, No. 4490, 2012 WL 781185, at *4 (Pa. Ct. Com. Pl. Feb. 21, 2012) (approving appointment of a receiver with the consent of the debtor).

105. See 18 CECILY FUHR ET AL., *STANDARD PENNSYLVANIA PRACTICE* § 84:74 (2d ed. 2023).

106. See *Oppenheimer v. Bland*, 10 Pa. D. & C. 2d 247, 250–51 (Pa. Ct. Com. Pl. 1958).

107. See *id.*

108. See *Hankin v. Hankin*, 493 A.2d 675, 677 (Pa. 1985).

109. See *id.* at 679.

110. See 19 C.J.S. *Corporations* § 853 (2022).

111. See *id.*

112. See *id.*

113. See Mayo Clinic Staff, *Medical Marijuana*, MAYO CLINIC (Dec. 4, 2021), <https://tinyurl.com/ye26nv3m> [<https://perma.cc/A78V-HTDH>] (explaining the benefits of medical cannabis); see also Nate Doughty, *Report: Pennsylvania Cannabis Job Numbers Reach New Highs in 2020*, PITT. BUS. TIMES (Feb. 16, 2021), <https://tinyurl.com/mwdfzkn9> [<https://perma.cc/MS8F-JW7Q>] (discussing how many people the cannabis industry employs in Pennsylvania); Andrew Dorn, *Canna-Billions: How is Pennsylvania Using Pot Tax Revenue?*, ABC27 (Apr. 20, 2022, 12:59 PM), <https://tinyurl.com/yc7hxcse> [<https://perma.cc/7N6U-D7TR>].

sclerosis, muscle spasms, chronic pain, and nausea, amongst many other medical conditions.¹¹⁴

At the start of 2021, Pennsylvania cannabusinesses employed just shy of 16,000 workers.¹¹⁵ The number of jobs nearly doubled from the previous year when cannabusinesses employed only 7,000 workers.¹¹⁶ Nationally, cannabusinesses grew by about 31 percent during the same period.¹¹⁷ In 2021, over 321,000 full-time cannabis jobs existed across the then 37 states with some form of legal cannabis.¹¹⁸

Currently, the only tax imposed on cannabis in Pennsylvania is the five percent gross receipts tax.¹¹⁹ The Commonwealth uses these funds to help medical cannabis patients with financial hardship and to pay caregivers.¹²⁰ Further, drug and alcohol abuse programs, prevention programs, counseling, and treatment services also receive cannabis tax revenue.¹²¹

D. Pennsylvania Cannabis Permitting Scheme

In Pennsylvania, the Department of Health (“Department”) issues all cannabis permits for dispensaries and grower-processors.¹²² Depending on the type of permit, the Department authorizes an entity to grow, process, or dispense medical marijuana as either a grower-processor or a dispensary.¹²³

All permits are nontransferable, and are valid for one year after issuance.¹²⁴ The number of permits is extremely limited for grower-processors because the Department may only issue up to 25 grower-processor permits.¹²⁵ The Department has the leeway to issue more dispensary permits because it can issue up to 50.¹²⁶ If a permit-holder wishes to transfer their cannabis permit, regardless of whether they

114. See Mayo Clinic Staff, *supra* note 113.

115. See Doughty, *supra* note 113.

116. See *id.*

117. See *id.*

118. See *id.*

119. See 35 PA. STAT. ANN. § 10231.901(a) (West 2016).

120. See 35 PA. STAT. ANN. § 10231.902(c) (West 2021).

121. See *id.*

122. See *Resources for Growers & Processors*, PA. DEP’T HEALTH, <https://tinyurl.com/35fjtcys> [<https://perma.cc/CU7F-NJT3>] (last visited Mar. 27, 2024) [hereinafter *G&P Permit*]; see also *Resources for Dispensaries*, PA. DEP’T HEALTH, <https://tinyurl.com/4fxsdxuv> [<https://perma.cc/7LPP-JS6K>] (last visited Mar. 27, 2024) [hereinafter *Dispensary Permit*].

123. See 35 PA. STAT. ANN. § 10231.601 (West 2016).

124. See *id.* § 10231.603(b) (establishing that in Pennsylvania all medical cannabis permits for grower-processors and dispensaries are non-transferable); see also *id.* § 10231.610 (establishing that permits shall be valid for one year from date of issuance).

125. See *G&P Permit*, *supra* note 122.

126. See *Dispensary Permit*, *supra* note 122.

are a grower-processor or a dispensary, the permit would almost have to go to an individual not involved in cannabis growing-processing or dispensing because no more than five grower-processors can also receive a dispensary permit.¹²⁷ A single individual may not hold more than five dispensary permits.¹²⁸

An applicant must jump through many hoops and meet many requirements to receive their cannabis grower-processor permit. Applicants must provide standard information, like their name and facility information.¹²⁹ However, most of the application is based on a 950-point scoring system.¹³⁰ The application is based on four major categories and corresponding point values: diversity is worth 100 points; plan of operation is worth 675 points; applicant organization, ownership, capital, and tax status are worth 75 points; and community impact is with 100 points.¹³¹ The plan of operation, the most significant part of the application by far, includes 16 separate sections with operational topics ranging from growing practices, nutrition additives, and employee qualifications to transportation, storage, and security.¹³² Applicants must also prove that they will prevent diversion, abuse, or illegality by implementing security measures.¹³³ Further, applicants must prove that their proposed location complies with all municipal zoning requirements.¹³⁴ Finally, if approved, the permit-holder must complete a two-hour training course by the Department and any other courses that the Department may require.¹³⁵

Applicants must also share information about the business entity or corporation that will hold the permit and any individual or business entity or corporation that will be an owner of the company that holds the permit.¹³⁶ Applicants must also include all the state and federal tax information for their business.¹³⁷ The applicant must provide proof of at least \$2 million in capital, \$500,000 of which is required to be deposited in a financial institution.¹³⁸ Finally, the applicant is required to pay a non-refundable application fee of \$10,000

127. See *G&P Permit*, *supra* note 122.

128. See 35 PA. CONS. STAT. § 10231.616(3) (2016).

129. See PA. DEP'T HEALTH, MEDICAL MARIJUANA GROWER/PROCESSOR PERMIT APPLICATION 2, <https://tinyurl.com/tpbtwazj> [<https://perma.cc/HP35-CJ2P>] (last visited Mar. 27, 2024) [hereinafter G&P APPLICATION].

130. See *id.* at 3, 8, 24, 34.

131. See *id.*

132. See *id.* at 8–24.

133. See *id.* at 9.

134. See *id.* at 2.

135. See *id.* at 10.

136. See *id.* at 26–34.

137. See *id.*

138. See *G&P Permit*, *supra* note 122.

and a permit fee of \$200,000.¹³⁹ However, if the Department denies the applicant's permit application, the applicant is refunded the \$200,000 permit fee.¹⁴⁰

Cannabis dispensary permit applications are similar to grower-processor applications, with several notable differences.¹⁴¹ The most important commonality between the two applications is that the dispensary application approval hinges on the same 950-point scoring system as the grower-processor application.¹⁴² The most distinct differences between the two applications are the fees and capital requirements.¹⁴³ A dispensary must pay a non-refundable \$5,000 application fee and a permit fee of \$30,000 when submitting a permit application.¹⁴⁴ As with grower-processor permits, the dispensary permit fee is refundable if the Department of Health denies the application.¹⁴⁵ Further, the applicant must provide proof of \$150,000 of capital, but there is no requirement for this capital to be held in a financial institution.¹⁴⁶ Finally, dispensary permit holders must also complete a two-hour class by the Department of Health and any other classes the Department requires.¹⁴⁷

II. ANALYSIS

A. *Cannabis Permits are Simultaneously Valuable and Worthless Assets to Cannabusinesses*

Three methods exist for valuing cannabusinesses: fair market value, investment value, and fair value.¹⁴⁸ The Internal Revenue Service (IRS) defines fair market value as “the amount at which the property would change hands between a hypothetical willing buyer and a hypothetical willing seller.”¹⁴⁹ Investment value is another method to valuing cannabusinesses. Determining investment value is

139. *See id.*

140. *See id.*

141. *See Dispensary Permit*, *supra* note 122.

142. *See* PA. DEP'T HEALTH, MEDICAL MARIJUANA DISPENSARY APPLICATION 4, 5, 9, 20, 30, <https://tinyurl.com/592ayh5h> [<https://perma.cc/JH84-G76F>] (last visited Mar. 27, 2024) [hereinafter DISPENSARY APPLICATION].

143. *Compare G&P Permit*, *supra* note 122, with *Dispensary Permit*, *supra* note 122.

144. *See Dispensary Permit*, *supra* note 122.

145. *See id.*

146. *See id.*

147. *See id.*

148. *See* Steve Schain, *Valuing that Golden Ticket: What's a Marijuana License Actually Worth?*, LEGAL INTELLIGENCER (Apr. 28, 2022), <https://tinyurl.com/4xhf4kdk> [<https://perma.cc/Q2VN-8DZB>].

149. *See* 26 C.F.R. § 20.2031-1 (2023).

subjective.¹⁵⁰ Each investor determines the investment value of a cannabis business using their unique “knowledge, expectations and assessments of the business, financial, economic and liquidity risks.”¹⁵¹ Fair value is also subjective because the party utilizing the method lacks a buyer, seller, or reasonable knowledge that would normally influence an asset’s value.¹⁵²

Under all valuation definitions, the value of a Pennsylvania cannabis business’s cannabis permit is zero because a Pennsylvania cannabis permit is non-transferrable.¹⁵³ A non-transferrable asset cannot be purchased by a third party. Thus, without a permit, all of a cannabis business’s cannabis assets—including the plants and flowers, oils, or edibles—are worthless to a creditor because they cannot take possession of them. A creditor could only take possession of any non-cannabis-related assets through procedures like ABC.¹⁵⁴

However, methods exist to determine the value of a cannabis business to investors.¹⁵⁵ Four factors comprise the valuation method: jurisdiction, permit-holder’s business status, deal structure, and purchaser goals.¹⁵⁶ These methods are applicable to Pennsylvania cannabis businesses because they are recognized methods of valuing businesses.¹⁵⁷

The jurisdiction factor alone demonstrates that Pennsylvania cannabis permits have value because it considers statewide factors which would be uniform across all cannabis permit sales.¹⁵⁸ This factor considers the population of the permitting state, the population of surrounding states, and whether a cap exists on the number of permits.¹⁵⁹

Pennsylvania is a large state with roughly 13 million residents.¹⁶⁰ Bordering states are irrelevant to the jurisdictional factor analysis because only Pennsylvanians that hold a medical cannabis card can purchase cannabis in Pennsylvania.¹⁶¹ Further, the statutory limits on both the total number of permits and the number of permits an individual or entity can own create scarcity, and thus increase

150. See Schain, *supra* note 148.

151. See *id.*

152. See *id.*

153. See 35 PA. STAT. ANN. § 10231.603(b) (West 2016).

154. See NORTON, *supra* note 90, § 171:1.

155. See Schain, *supra* note 148.

156. See *id.*

157. See *id.*

158. See *id.*

159. See *id.*

160. See *QuickFacts Pennsylvania*, U.S. CENSUS BUREAU, <https://tinyurl.com/jf64pkku> [<https://perma.cc/8V8L-287A>] (last visited Mar. 27, 2024) (estimating Pennsylvania’s population as of June 1, 2022 to be 12,972,008).

161. See *Getting Medical Marijuana*, COMMW. PA., <https://tinyurl.com/3a76r4jf> [<https://perma.cc/2B3B-QQ3J>] (last visited Mar. 27, 2024).

the value of a permit.¹⁶² These limits vastly increase the value of an individual cannabis permit because a permit holder may now compete in a market whose value is \$1.5 billion in 2023 and is experiencing explosive growth.¹⁶³ Also, the speculation that Pennsylvania will soon legalize recreational adult-use cannabis fuels excitement to enter into the market and secure permits.¹⁶⁴ Further, if Pennsylvania legalized recreational cannabis, over 49 million people from bordering states could purchase cannabis from Pennsylvania's cannabis businesses.¹⁶⁵

While methods exist for investors to value cannabis businesses, these methods are currently useless for creditors because a distressed cannabis business cannot transfer its permit to a third party, like a creditor.¹⁶⁶ Further, these methods rely heavily on the value of a business' cannabis assets.¹⁶⁷

In summary, cannabis businesses have some measure of value if they were to be sold, but the owners of those businesses cannot realize that value because they cannot transfer the permits.¹⁶⁸ The value of a cannabis business lies in its ability to sell cannabis, and thus in its permit because the permit allows a cannabis business to sell cannabis.¹⁶⁹ Therefore, without permit transferability, Pennsylvania cannabis businesses have no exit opportunities.¹⁷⁰

B. How Pennsylvania Could Amend its Medical Cannabis Law to Allow Permit Transfers

Pennsylvania must amend its cannabis permit transfer law to allow partial or complete transfers of cannabis permits to creditors, and then potentially to another third-party buyer. Pennsylvania cannabis permits have value to both permit holders and buyers. However,

162. See 35 PA. STAT. ANN. § 10231.616 (West 2016) (listing the limitations on Pennsylvania marijuana permits).

163. See Schaneman, *supra* note 5 (projecting explosive growth in Pennsylvania's medical cannabis market); see also *Pennsylvania Cannabis Market*, CANNABIS BUS. PLANS (Mar. 7, 2024), <https://tinyurl.com/yc79ws32> [<https://perma.cc/59GS-3UQ3>].

164. See Schaneman, *supra* note 5 (speculating that recreational marijuana legalization may happen by 2024).

165. See *QuickFacts West Virginia; Ohio; Maryland; Delaware; New Jersey; New York*, U.S. CENSUS BUREAU, bit.ly/3XITnnD (last visited Oct. 10, 2023) (estimating populations as of July 1, 2022 to be as follows: West Virginia—1,775,156; Ohio—11,756,058; Maryland—6,164,660; Delaware—1,018,396; New Jersey—9,261,699; New York—19,677,151; Total—49,653,120).

166. See 35 PA. STAT. ANN. § 10231.603(b) (West 2016).

167. See Schain, *supra* note 148.

168. See *supra* Section II.A.

169. See *id.*

170. See *id.*

without transferability of some or all the permit's ownership, a cannabis business's permit is not an asset that can satisfy creditors.¹⁷¹ New Jersey's permit transferring scheme offers one potential solution to solve this problem.¹⁷²

1. New Jersey's Cannabis Permit Transfer Scheme Offers a Solution to Pennsylvania's Transfer Issue

New Jersey's cannabis permit transfer scheme allows for the transfer of partial (and sometimes full) ownership in limited circumstances.¹⁷³ Generally, New Jersey prohibits transferring more than 50 percent cannabis permit ownership for two years after a cannabis business starts operations.¹⁷⁴ After two years, a cannabis business is free to transfer up to all of its permit ownership interest.¹⁷⁵

Two notable exceptions exist.¹⁷⁶ If a permit owner dies, the owner's heir may inherit the owner's interest in the cannabis permit.¹⁷⁷ Alternatively, the permit owner's surviving spouse, domestic partner, or civil union partner may inherit the permit owner's share, if the permit was issued to both parties jointly.¹⁷⁸

After a cannabis business meets the two-year operating requirement, the owner of a cannabis permit can transfer their interest subject to numerous conditions.¹⁷⁹ Every time a cannabis business transfers any percentage of the permit, it must apply to amend its permit.¹⁸⁰ A permit holder transfers their permit any time the business adds or removes owners, converts the business's entity structure, receives new financial backing, changes the business's location, modifies the physical capacity of the business, changes the name of the business, or changes management.¹⁸¹ Finally, New Jersey unilaterally

171. See 35 PA. STAT. ANN. § 10231.603(b) (West 2016) (stating that a permit is nontransferable).

172. For purposes of all the following sections, "permit" is interchangeable with "license." New Jersey uses the term "license" rather than "permit" in their recreational cannabis statutory scheme. See, e.g., N.J. ADMIN. CODE § 17:30-9.1 (2021).

173. See *id.* § 17:30-9.3.

174. See *id.* § 17:30-9.3(a).

175. See *id.* Micro-cannabusinesses may not transfer ownership of their permit if the transfer would no longer qualify it for micro-business status. See *id.* § 17:30-9.3(e).

176. See *id.*

177. See *id.* § 17:30-9.3(a)(1).

178. See *id.* § 17:30-9.3(a)(2).

179. See *id.* § 17:30-9.3; see also N.J. STAT. ANN. §§ 24:6I-26 to -29 (2021) (establishing restrictions for cannabis commission members).

180. See N.J. ADMIN. CODE § 17:30-9.2 (2021); see also *id.* § 17:30-7.10 (2021) (detailing the requirements for a cannabis permit application).

181. See *id.* § 17:30-9.2(a)(1).

prohibits cannabis regulators from holding any direct interest in a cannabis business.¹⁸²

2. *Pennsylvania Should Allow for the Transfer of Cannabis Permits Because the Cannabis Permit Application Process is Stricter than the Liquor License Application Process*

Pennsylvania already has a viable template for a cannabis permit transfer scheme in its liquor license transfer scheme.¹⁸³ Much like the current cannabis permitting scheme, the liquor license scheme imparts near absolute authority to the Pennsylvania Liquor Control Board to make decisions about whether an applicant should receive a license.¹⁸⁴

Using the liquor code to regulate cannabis is not a new idea.¹⁸⁵ In 2019, Representative David Dellosa, who represents the 162nd district, introduced a bill to amend the Pennsylvania Liquor Code to allow for the adult use of cannabis.¹⁸⁶ Under Representative Dellosa's bill, the current liquor code scheme would govern all aspects of the Pennsylvania cannabis market.¹⁸⁷ Subsequently, the Liquor Code's permit transferability rules would apply to adult-use cannabis permits.¹⁸⁸ Thus, applying Pennsylvania's Liquor Code permit transferability laws to medical cannabis permits is within the realm of possibility.

Both schemes impose criminal background checks to determine the character and fitness of the individuals applying for a license or permit.¹⁸⁹ The cannabis background check process is far more rigorous because it requires background checks by the Department of Health for employees and financial backers.¹⁹⁰ Finally, unlike the

182. See N.J. STAT. ANN. § 24:6I-26(a) (2021).

183. See 47 PA. STAT. ANN. § 4-404 (West 2020) (outlining the process of transferring a liquor license); see also 40 PA. CODE § 3.21 (1960) (establishing the authority of the Pennsylvania Liquor Control Board to authorize the transfer of liquor licenses).

184. Compare 35 PA. STAT. ANN. § 10231.301(a) (West 2016) (establishing authority of the Pennsylvania Department of Health to implement and administer the entire medical marijuana program), with 47 PA. STAT. ANN. § 4-401 (West 2012) (vesting the authority to issue liquor licenses in the Pennsylvania Liquor Control Board).

185. See H.R. 1899, 2019 Gen. Assemb., Reg. Sess. (Pa. 2019).

186. See generally *id.*

187. See generally *id.*

188. See generally *id.*

189. See 47 PA. STAT. ANN. § 4-404(a) (2020) (empowering the Liquor Control Board to deny applicants who were convicted of a felony within five years of their liquor license application); 40 PA. CODE § 3.35 (1997) (requiring criminal background checks for liquor license applicants, transfer applicants, directors or principals, and managers of businesses serving liquor).

190. See 28 PA. CODE § 1141a.31(a) (2023).

cannabis permitting regime, the liquor code imposes no blanket prohibition on the issuance of licenses to individuals convicted of a crime.¹⁹¹

The cannabis permitting scheme presents an incredibly high financial hurdle compared to the liquor code.¹⁹² Under the liquor code, applicants must merely disclose their financial arrangements to purchase the liquor license, inventory, real estate, and construction costs.¹⁹³ These requirements are in stark contrast to the medical cannabis financial requirements.¹⁹⁴ Pennsylvania cannabis grower and processor permit applicants must make a sworn statement that they have at least \$2 million in capital and \$500,000 of that must be deposited in at least one financial institution.¹⁹⁵ The requirements for dispensaries are lower, but applicants still must prove that they have \$150,000 in capital.¹⁹⁶

Permitting the transfer of cannabis permits would not create an avalanche of new businesses because the number of cannabis permits is fixed.¹⁹⁷ This fixed restriction is far stricter than the liquor license scheme because the statutory quota allows for a new liquor license for every 3,000 new residents in a county.¹⁹⁸

With a functioning permit transferring scheme, cannabis business owners could sell off their businesses even when they are insolvent.¹⁹⁹

C. If Pennsylvania Allowed Cannabis Permit Transfers, ABC is a Cannabis Business's Best Method to Resolve its Insolvency Issues

ABC has several distinct advantages over receiverships and compositions with creditors. First, ABC distributes funds to creditors

191. Compare 47 PA. STAT. ANN. § 4-437 (2012) (imposing no prohibition on the issuance of licenses to individuals with a criminal record), with 28 PA. CODE § 1141a.31(d) (2023) (prohibiting individuals convicted of controlled substance offenses from working in legal cannabis businesses).

192. Compare 28 PA. CODE § 1141.30 (2022), with 40 PA. CODE § 3.6 (1997) (illustrating the disparity between the capital requirements for cannabis permits and liquor licenses).

193. See 40 PA. CODE § 3.6 (1997).

194. See 28 PA. CODE § 1141a.30 (2023).

195. See *id.* § 1141a.30(a).

196. See *id.* § 1141a.30(b).

197. See 35 PA. STAT. ANN. § 10231.616(1)–(2) (West 2016) (imposing an initial limit of 25 grower and processor permits and 50 dispensary permits statewide). It should be noted that each dispensary may sell medical marijuana at up to three separate locations, which effectively increases the maximum number of dispensaries throughout Pennsylvania to 150. See *id.* § 10231.616(2).

198. See *Licensing*, PA. LIQUOR BD., <https://tinyurl.com/2vh7ddcx> [<https://perma.cc/J7ZU-UDZV>] (last visited Mar. 27, 2024); see also *The Retail Liquor License Quota*, PA. LIQUOR BD., <https://tinyurl.com/459t8wp7> [<https://perma.cc/9PYK-T7ZF>] (last visited Apr. 10, 2024).

199. See *supra* Section II.A.

based on each creditor's priority, unlike receiverships and compositions with creditors, where creditors are paid at the debtor's or receiver's leisure.²⁰⁰ This is significant because ABC is similar to bankruptcy with respect to priority.²⁰¹ Priority is such a significant protection²⁰² for creditors that the Supreme Court has expressly held that bankruptcy courts must order the U.S. Trustee to distribute the assets in the estate strictly in order of priority.²⁰³ Unsecured creditors are not without recourse because they can still petition the court to participate in the ABC.²⁰⁴

Along these lines, priority protections are incredibly important to cannabusinesses because cannabis growers and processors must obtain at least \$2 million of capital and dispensaries must obtain at least \$150,000 of capital. Further, companies' ability to pursue ABC further protects secured creditors because ABC affords the company the ability to completely ignore unsecured creditors.²⁰⁵

ABC also affords cannabusinesses another advantage over other insolvency alternatives: it is quick.²⁰⁶ If the permit transfer process is approved, a quick assignment of the permit maximizes its value to a creditor because the creditor can become the operator of the business in a very short period.²⁰⁷

200. See NORTON, *supra* note 90, § 171:1. But see 19 C.J.S. *Corporations* § 830 (2022) (noting that compositions with creditors are essentially contracts to settle debt, and thus, priority of the creditor is irrelevant for the modality); 19 C.J.S. *Corporations* § 828 (2022) (describing how creditor preference is generally restricted—if not eliminated—in receivership proceedings).

201. See 11 U.S.C. § 1326(a)(1)(C) (distributing bankruptcy trust payments to secured creditors based on their priority).

202. Creditor priority is important because it protects vulnerable groups, like spouses and children, by prioritizing the payment of any support owed to them. See Adam H. Rosenblum, *Priority Among Unsecured Creditors*, ROSENBLUM LAW (Nov. 18, 2020), <https://tinyurl.com/5h5xuwnx> [<https://perma.cc/X6YU-YHVU>]. Additionally, creditor priority is fair because creditors must file claims in bankruptcy court if they are to receive money. See *id.*

203. See *Czyewski v. Jevic Holding Corp.*, 580 U.S. 451, 455 (2017) (holding that the bankruptcy court lacked “priority-skipping kind of distribution” power as per the legislative scheme of a Chapter 11 plan).

204. See NORTON, *supra* note 90, § 171:2.

205. See David S. Kupetz, *Assignment for the Benefit of Creditors: Effective Tool for Acquiring and Winding Up Distressed Business*, AM. BAR ASS'N (Nov. 15, 2015), <https://tinyurl.com/htwecnkx> [<https://perma.cc/9JKK-VDQH>].

206. See *id.*

207. See *id.*

CONCLUSION

Pennsylvania cannabusinesses have few opportunities to resolve their financial problems because of the Bankruptcy Code.²⁰⁸ Nevertheless, ABC provides these insolvent businesses with an escape hatch.²⁰⁹ However, Pennsylvania's blanket ban on the transferability of cannabis permits prohibits cannabis businesses from offloading their most valuable asset in insolvency negotiations.²¹⁰

Pennsylvania should amend its medical cannabis law to allow for the transfer of cannabis permits. New Jersey's cannabis permit transfer laws offer a sensible and conservative approach to transferring permits that mirrors the initial application process.²¹¹ Pennsylvania already allows for the transfer of liquor licenses, and it is about time the Commonwealth does the same for cannabis permits.²¹² In doing so, Pennsylvania will afford insolvent cannabusinesses a financial escape valve.²¹³

208. *See supra* Sections I.B–C.

209. *See supra* Sections I.D.1, II.C.

210. *See supra* Section I.D.

211. *See supra* Section II.B.1.

212. *See supra* Section II.B.2.

213. *See supra* Section II.C.

