

Summary of S.241 as amended by Senate Committees on Judiciary, Finance, and Appropriations

February 23, 2016

Findings and Intent

Any efforts to legalize and regulate marijuana must comply with the 2013 memo from Deputy Attorney General James M. Cole regarding guidance to states that elect to legalize marijuana in some form, as well as the principles articulated in the Governor's 2016 State of the State.

Vermont seeks to take a new comprehensive approach to marijuana use and abuse that incorporates prevention, education, regulation, treatment, and law enforcement and results in a net reduction in public harm and an overall improvement in public safety.

Revenue generated by the act shall be used to provide for the implementation, administration, and enforcement of the act and to provide additional funding for State efforts on the prevention of substance abuse, treatment of substance abuse, and criminal justice efforts to combat the illegal drug trade and impaired driving. As used in the act, "criminal justice efforts" shall include efforts by both State and local criminal justice agencies, including law enforcement, prosecutors, public defenders, and the courts.

Prevention

Directs the Department of Health (DOH), in collaboration with the Department of Public Safety, the Agency of Education, and the Governor's Highway Safety Program, to develop and administer an education and prevention program focused on the use of marijuana by youth under 25 years of age. DOH must adopt rules on or before March 15, 2017 and implement the program on or before September 15, 2017.

\$350,000 is appropriated in FY17 to DOH for initial prevention, education, and counter marketing programs.

The Agency of Transportation, through its Vermont Governor's Highway Safety Program, is directed to expand its public education and prevention campaign on "drunk driving" to "impaired driving" which shall include "drugged driving."

Adult Use; Legal Possession; Civil and Criminal Penalties

The act removes current civil penalties for possession of one ounce or less of marijuana by a person 21 years of age or older.

Cultivation of any marijuana without a license is not permitted and will remain a criminal offense as under current law.

Criminal penalties remain for possession of over an ounce of marijuana and for dispensing or selling marijuana without a license.

Consuming marijuana in a public place is prohibited and violators subject to a civil ticket.

Employers and landlords are not required to accommodate marijuana possession or use and the act does not make any changes to employment law or landlord-tenant law.

Unlicensed chemical extraction to produce marijuana concentrate will be prohibited and violators subject to criminal penalties.

Youth

Civil and criminal penalties remain for possession of marijuana by a person under 21 years of age. Youth are referred to Court Diversion and successful completion results in no record of the event.

Civil and criminal penalties are established for furnishing or selling marijuana to a person under 21 years of age.

Persons under 21 years of age are prohibited from being on the premises of a marijuana establishment.

Advertising and labeling of marijuana may not be designed to appeal to youth.

Marijuana establishments and outdoor advertising of such establishments are prohibited from being located within 1,000 feet of a school or child care center.

Distribution of handbills featuring marijuana establishments or products is prohibited.

The Department of Health will monitor marijuana use by youth and collect data in a manner that enables future studies.

Marijuana Establishments

Marijuana establishments will be regulated by the Department of Public Safety (DPS), which is primarily responsible for adopting rules to implement and enforce the provisions of the act. DPS will share authority with the Agency of Agriculture, Food and Markets regarding regulation of cultivators and testing laboratories.

Three types of licenses will be available—cultivator, retailer, and testing laboratory. A person may only hold one license, with the exception of an existing dispensary which may hold one of each.

An applicant must be a Vermont resident 21 years of age or older and subject to a criminal background check. A financier must also be a Vermont resident and subject to a criminal background check.

From 6/1/17 to 6/30/18, a maximum of 10 small (up to 5,000 sf) cultivator licenses and 5 large (5,001–10,000 sf) cultivator licenses, 5 testing lab licenses, and 15 retailer licenses may be issued. From 7/1/18 to 6/30/19, an additional 10 small (up to 5,000 sf) cultivator licenses and 5 large (5,001–10,000 sf) cultivator licenses, 5 testing lab licenses, and 15 retailer licenses may be issued. Total issued prior to 7/1/19 = 30 cultivator, 10 testing lab, 30 retailer licenses.

Only marijuana flowers may be sold to the public, and marijuana may not be packaged with other products for sale. A Vermont resident may purchase a maximum of one-half ounce in a single daily transaction and a nonresident may purchase no more than one-quarter ounce in a single daily transaction.

Monies from license application fees, annual license fees, and civil penalties from marijuana establishments would be allocated to the Department of Public Safety for implementation, administration, and enforcement of the provisions relating to marijuana establishments.

Application fees:

Small cultivator = \$15,000
Large cultivator = \$25,000
Retailer = \$15,000
Testing laboratory = \$500

Annual and renewal fees:

Small cultivator = \$15,000
Large cultivator = \$25,000
Retailer = \$15,000
Testing laboratory = \$2,500

Administrative fees range from \$100 – \$1,000

Retail marijuana will be taxed at 25 percent. Medical marijuana will continue to be untaxed. Dispensaries and marijuana establishments will be permitted to deduct expenses at the State level that are currently prohibited by federal law.

Local Government

A municipality would retain any current authority to issue a civil ordinance to provide additional penalties for marijuana in a public place.

Voters may prohibit the operation of a marijuana establishment within a municipality by majority vote at an annual or special meeting. The ban would stay in effect until repealed by the voters.

A municipality could establish a local board of marijuana control for the purpose of issuing permits to marijuana establishments located in the municipality.

A municipality could regulate marijuana establishments through local ordinances or land use bylaws or require a marijuana establishment to obtain a license or permit from the municipality prior to beginning operations.

Medical Marijuana Dispensaries

The act provides an advantage in obtaining a commercial cultivator, retailer, or testing license, or all, and may be vertically integrated.

Dispensaries may continue to provide edible marijuana products to patients provided they are in child-resistant packaging.

Dispensaries may provide marijuana samples to a Vermont academic institution for research purposes.

Dispensaries would no longer be required to operate as a nonprofits.

Impaired Driving

Directs the Secretary of Transportation and the Commissioner of Public Safety to work collaboratively to ensure that funding is available, either through the Governor's Highway Safety Program's administration of National Highway Traffic Safety Administration funds or other State funding sources, for training the number of officers necessary to provide sufficient statewide coverage for the enforcement of impaired driving laws through Advanced Roadside Impaired Driving Enforcement (ARIDE) and Drug Recognition Expert (DRE) programs.

Provides \$63,500 for matching funds needed for Drug Recognition Expert training for the department and other State law enforcement agencies in FY17 after other available matching funds are applied.

The Agency of Transportation, through its Vermont Governor's Highway Safety Program, is directed to expand its public education and prevention campaign on "drunk driving" to "impaired driving" which shall include "drugged driving."

Marijuana is added to Vermont's "open container" law that prohibits use or possession of an open container of alcohol in a motor vehicle.

Places a commercial motor vehicle driver on 24 hour hiatus if a law enforcement officer has reasonable grounds to believe the driver has a detectable amount of marijuana in his or her system, authorizes the law enforcement officer to test the person for the presence of marijuana, and to advise the driver that he or she will be subject to a CDL suspension of one year if the driver refuses to submit to a test.

The Secretary of Transportation and the Commissioner of Public Safety are required to report annually to the committees of jurisdiction regarding the previous year's impaired driving data in Vermont, the latest information regarding best practices on prevention and enforcement, and his or her recommendations for legislative action.

Marijuana Program Review Commission

Established for three years for the purpose of facilitating efficient and lawful implementation of the act and examination of issues important to the future of marijuana regulation in Vermont.

Commission is composed of four members appointed by the Governor, one of whom shall have experience in public health, one member of the Senate, one member of the House, and the Attorney General or designee, and operates until July 1, 2019.

Commission duties include:

- Collecting information about the implementation, operation, and effect of this act from members of the public, State agencies, and private and public sector businesses and organizations.
- Communicating with other states that have legalized marijuana and monitoring those states regarding their implementation of regulation, policies, and strategies that have been successful and problems that have arisen.
- Considering the issue of personal cultivation of a small number of marijuana plants and whether Vermont could permit home grown in a manner that would not create diversion or enforcement issues that hinder efforts to divert the marijuana economy from the illegal to the regulated market.
- Examining the issue of marijuana concentrates and edible marijuana products and whether Vermont safely can allow and regulate their manufacture and sale and, if so, how.
- Keeping updated on the latest information in Vermont and other jurisdictions regarding the prevention and detection of drugged driving as it relates to marijuana;

- studying the opportunity for a cooperative agriculture business model and licensure and community supported agriculture.
- Examining whether Vermont should allow additional types of marijuana establishment licenses, including a processor license and a product manufacturer license.
- Reviewing the statutes and rules for the therapeutic marijuana programs and dispensaries and determining whether additional amendments are necessary to maintain patient access to marijuana and the viability of the dispensaries.
- Monitoring supply and demand of marijuana cultivated and sold pursuant to the act to assist with determining appropriate numbers of licenses and limitations on the amount of marijuana cultivated and offered for retail sale in Vermont so that the adult market is served without unnecessary surplus marijuana.
- Monitoring the extent to which marijuana is accessed through both the legal and illegal market by persons under 21 years of age.
- Identifying strategies for preventing youth from using marijuana.
- Identifying academic and scientific research, including longitudinal research questions, that when completed may assist policymakers in developing marijuana policy.
- Considering whether to create a local revenue stream which may include a local option excise tax on marijuana sales or municipally assessed fees.
- Reporting any recommendations to the General Assembly and the Governor, as needed.

The Commission is staffed by the Administration and the act creates a position of Commission Director.

Marijuana Regulation and Resource Fund; Appropriations; Positions

Creates the Marijuana Regulation and Resource Fund which is composed of all application fees, license fees, renewal fees, and civil penalties collected by Departments pursuant to this chapter and all taxes collected pursuant to the act.

Appropriations made from the Fund are to be in addition to current funding of the identified priorities¹ and not be used in place of existing State funding.

The Commissioner of Finance and Management shall anticipate receipts in accordance with current law and the Secretary of Administration shall report annually to the Joint Fiscal Committee on receipts and expenditures through the prior fiscal year on or before the Committee's regularly scheduled November meeting.

In fiscal year 2017, the follow amounts are appropriated from the Marijuana Regulation and Resource Fund:

¹ Implementation, administration, and enforcement of the act and to provide additional funding for State efforts on the prevention of substance abuse, treatment of substance abuse, and criminal justice efforts to combat the illegal drug trade and impaired driving.

- Department of Health: \$350,000 for initial prevention, education, and counter marketing programs.
- Tax Department: \$660,000 for the acquisition of an excise tax module and staffing expenses to administer the excise tax established in this act.
- Department of Public Safety:
 - \$160,000 for staffing expenses related to rulemaking, program administration, and processing of applications.
 - \$124,000 for laboratory equipment, supplies, training, testing, and contractual expenses required by this act.
 - \$63,500 for matching funds needed for Drug Recognition Expert training for the department and other State law enforcement agencies in FY17 after other available matching funds are applied.
 - Funding shall be transferred to the Agency of Transportation Governors Highway Safety Program. The \$493,000 federal Governor's Highway Safety Program funds are appropriated in FY17 to the Agency of Transportation.
- Agency of Agriculture, Food and Markets:
 - \$112,500 for the Vermont Agriculture and Environmental Lab.
 - \$112,500 for staffing expenses related to rulemaking and program administration.
- Agency of Administration: \$150,000 for expenses and staffing of the Marijuana Program Review Commission established in this act.

The establishment of the following new permanent classified positions is authorized in fiscal year 2017 as follows:

- In the Department of Health—one (1) Substance Abuse Program Manager.
- In the Department of Taxes—one (1) Business Analyst AC: Tax and one (1) Tax Policy Analyst.
- In the Department of Public Safety—one (1) Program Administrator and one (1) Administrative Assistant.
- In the Agency of Agriculture, Food and Markets—one (1) Agriculture Chemist and one (1) Program Administrator.
- In the Marijuana Program Review Commission—one (1) exempt Commission Director.

Requires the Secretary of Administration to report annually through 2018 to the Joint Fiscal Committee on the following:

- An update of the Administration's efforts concerning implementation, administration, and enforcement of the act.
- Any changes or updates to revenue expectations from fees and taxes based on changes in competitive pricing or other information.
- Projected budget adjustment needs for current year appropriations from the Marijuana Regulation and Resource Fund.
- A comprehensive spending plan with recommended appropriations from the Fund for the next the fiscal year, by department, including an explanation and justification for the expenditures and how each recommendation meets the intent of the act.

General Timeline

Upon passage	Department of Public Safety (DPS), Agency of Agriculture, Food and Markets (Agency), and Department of Health (DOH) begin rulemaking process
8/1/16	Marijuana Program Review Commission begins meeting
3/15/17	DPS, Agency, and DOH adopt final rules
4/15/17–5/15/17	Cultivator and testing laboratory application period
5/15/17–6/15/17	Retailer application period
6/15/17	DPS issues first cultivator (15) and testing laboratory licenses (5)
9/15/17	DPS issues first retailer licenses (15) DOH implements education and prevention program
1/2/18	Licensed retail stores may sell marijuana to persons 21 years or older
1/2/18	No civil or criminal penalties for possession of one ounce or less of marijuana by a person 21 years or older
7/1/18-7/1/19	DPS may issue additional cultivator (15), testing lab (5), and retailer (15) licenses
7/1/19	DPS may issue licenses in size and number at discretion Commission ends