



## STATE OF VERMONT

### MEMORANDUM

To: Representative Gannon  
Representative Ancel  
Representative LaClair

From: Senator Sears  
Senator Benning  
Senator White

Date: September 11, 2020

Subject: S.54 Conference Report

As the time for coming to an agreement between the bodies is dwindling in light of our September 25 target adjournment date, we would like to make a proposal to resolve the final outstanding issues regarding S.54.

#### Farming and Use Value Appraisal

The Senate proposes to amend the language it offered on September 4 regarding amendments to 7 V.S.A. § 869, Cultivation of cannabis; Environmental and land use standards, by reducing the amount of land currently enrolled in current use that may continue to stay in the program if it is used to cultivate cannabis. Instead of one acre, the Senate will agree to limiting this exception to small cultivators growing cannabis on 1,000 square feet or less.

(a)(1) A cannabis establishment shall not be regulated as “farming” under the Required Agricultural Practices, 6 V.S.A. chapter 215, or other State law, and cannabis produced from cultivation shall not be considered an agricultural product or agricultural crop for the purposes of 32 V.S.A. chapter 124, 32 V.S.A. § 9741, or other relevant State law.

(2) Notwithstanding subdivision (1) of this subsection, the cultivation of cannabis on agricultural land and the use of farm buildings to dry or process that cannabis shall not disqualify the land or buildings from the use value appraisal program or constitute “development” under 32 V.S.A. § 3752(5), provided that:

(A) the agricultural land or farm building is enrolled in the use value appraisal program at the time cannabis cultivation commences;

(B) the agricultural land or farm building is not transferred to another owner;

(C) the cultivation, drying, or processing of cannabis is done by a licensed small cultivator on 1,000 square feet or less of agricultural land; and

(D) all other requirements under 32 V.S.A. chapter 124 continue to be met.

The Senate proposes extending these environmental and land use provisions to medical dispensaries once those entities begin to operate under new statutes and rules under the authority of the Board on March 1, 2022 by adding 7 V.S.A. § 979.

§ 979. CULTIVATION OF CANNABIS; ENVIRONMENTAL AND LAND USE STANDARDS

(a)(1) A dispensary shall not be regulated as “farming” under the Required Agricultural Practices, 6 V.S.A. chapter 215, or other State law, and cannabis produced from cultivation shall not be considered an agricultural product or agricultural crop for the purposes of 32 V.S.A. chapter 124, 32 V.S.A. § 9741, or other relevant State law.

(2) Notwithstanding subdivision (1) of this subsection, the cultivation of cannabis on agricultural land and the use of farm buildings to dry or process that cannabis shall not disqualify the land or buildings from the use value appraisal program or constitute “development” under 32 V.S.A. § 3752(5), provided that:

(A) the agricultural land or farm building is enrolled in the use value appraisal program at the time cannabis cultivation commences;

(B) the agricultural land or farm building is not transferred to another owner;

(C) the cultivation, drying, or processing of cannabis is done by a licensed dispensary on 1,000 square feet or less of agricultural land; and

(D) all other requirements under 32 V.S.A. chapter 124 continue to be met.

(b) The cultivation, processing, and manufacturing of cannabis regulated under this chapter shall comply with all applicable State, federal, and local environmental, energy, or public health law, unless otherwise provided under this chapter.

(c) A dispensary regulated under this chapter shall be subject to regulation under 24 V.S.A. chapter 117 as authorized by this chapter.

(d)(1) The cultivation, processing, and manufacturing of cannabis regulated under this chapter shall comply with the following sections of the Required Agricultural Practices:

(A) section 6, regarding conditions, restriction, and operating standards;

(B) section 8, regarding groundwater quality and groundwater quality investigations;

and

(C) section 12, regarding subsurface tile drainage.

(2) Application of or compliance with the Required Agricultural Practices under subdivision (1) of this subsection shall not be construed to provide a presumption of compliance with or exemption to any applicable State, federal, and local environmental, energy, public health, or land use law required under subsections (b) and (c) of this section.

(e) Persons cultivating cannabis or handling pesticides for the purposes of the manufacture of cannabis products shall comply with the worker protection standard of 40 C.F.R. part 170.

## Advertising

When the conferees met on September 4, the Senate conferees indicated we would be willing to accept the House's language on advertising despite our strong reservations about the constitutionality of a complete ban on advertising. Since that time, the Attorney General's Office reached out to us to express its concerns with a total ban on advertising and the difficulty in defending such a ban if challenged. No other state with a regulated market has banned all advertising. We feel the goals of consumer and public safety can be accomplished through the adoption of the language that passed out of House Government Operations, imposing tough restrictions on cannabis advertising while allowing some protected commercial speech, thus potentially avoiding costly and time-consuming litigation. We propose adopting the HGO language below and including a similar section that would apply to medical dispensaries.

### § 864. ADVERTISING

(a) "Advertise" and "advertisement" have the same meaning as in section 831 of this title.

(b) A cannabis establishment advertisement shall not contain any statement or illustration that:

(1) is deceptive, false or misleading;

(2) promotes overconsumption;

(3) represents that the use of cannabis has curative effects;

(4) offers a prize, award, or inducement for purchasing cannabis or a cannabis product,

except that price discounts are allowed;

(5) offers free samples of cannabis or cannabis products;

(6) depicts a person under 21 years of age consuming cannabis or cannabis products; or

(7) is designed to be or has the effect of being particularly appealing to persons under 21 years of age.

(c) Cannabis establishments shall not advertise their products via any medium unless the licensee can show that not more than 15 percent of the audience is reasonably expected to be under 21 years of age.

(d) All advertisements shall contain health warnings adopted by rule by the Board in consultation with the Department of Health.

(e) All advertisements shall be submitted to the Board on a form or in a format prescribed by the Board, prior to the dissemination of the advertisement. The Board may:

(1) require a specific disclosure be made in the advertisement in a clear and conspicuous manner if the Board determines that the advertisement would be false or misleading without such a disclosure; or

(2) require changes that are necessary to protect the public health, safety, and welfare or consistent with dispensing information for the product under review.

(f) The Board may charge and collect fees for review of advertisements.

## Taxes and Fees

After much discussion, the Senate conferees continue to have concerns about using a State-assessed local license fee instead of tax monies to defer costs incurred by municipalities. We feel that requiring a State-assessed local license fee of each licensee, in addition to the fees they must already pay for the application and a State license, will mean those fee costs will be passed on by each licensee, and cumulatively raise the price of cannabis and cannabis products. An important goal of S.54 is to compete with and, eventually, substantially diminish the illegal cannabis market. Thus, the Senate conferees reiterate the proposal made on August 24, which includes:

- A 14% State cannabis excise tax on the retail sale of cannabis and cannabis products where 200 basis points (the equivalent of the revenue from a 2% tax) is dedicated to municipalities that host any cannabis establishment and apportioned to those municipalities under a formula, which takes into account the numbers and types of licensees in the municipality, adopted by the General Assembly based on a recommendation from the Cannabis Control Board. The remaining revenue from the State cannabis excise tax (the equivalent of the revenue from a 12% tax) is allocated to the General Fund with 30% of that allocation (with a cap of \$10,000,000.00 per year) dedicated to funding substance misuse prevention programming.
- A 6% State sales and use tax on the retail sale of cannabis and cannabis products with the revenue from the sales and use tax earmarked for grants to start and expand afterschool and summer learning opportunities.
- State licensing fees.
- No State-assessed local licensing fees.

We hope you will give our proposals sincere consideration and that we can meet again soon, hopefully, to sign a conference report that is long overdue. If our proposal is acceptable and no meeting is required, we should set up a meeting with Joint Rules as soon as possible.