

**Recommendations for Possible  
Taxing and Regulating of Adult-  
Use Marijuana in Vermont as  
Adopted by the Governor's  
Advisory Commission on  
Marijuana**

**Governor's Marijuana Advisory Commission**

Submitted by Co-Chairs, Governor's Marijuana Advisory Commission  
Montpelier, Vermont  
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### **Purpose of Report**

The Subcommittee on Taxation and Regulation submitted its findings and recommendations regarding the taxation and regulation of cannabis for adult recreational use to the Governor's Marijuana Advisory Commission in accordance with the Governor's Executive Order.<sup>1</sup> The Commission adopts those recommendations as reflected herein.

### **Subcommittee Role**

The Subcommittee on Taxation and Regulation was charged under the Governor's Executive Order to examine and present findings regarding the sale and taxation of cannabis for recreational use. The Subcommittee was tasked with assessing structures for doing so which address areas such as: banking, landlord and tenant relationships, local zoning, insurance, host liability, economic sustainability, and reduction of the illegal cannabis market. The Subcommittee was also required to assist the Roadway Safety and Education and Prevention Subcommittees on identifying funding strategies and options for recommended resources and programming based on a taxed and regulated cannabis market, and other sources.

### **Subcommittee Membership**

The Governor's Executive Order named the Commissioner of the Department of Taxes, Kaj Samsom, as the Chair of the Subcommittee on Taxation and Regulation. The other Subcommittee members were as follows:

- Joan Goldstein, designee of the Secretary of Agency of Commerce and Community Development ,
- Aaron Ferenc, Designee of the Commissioner of Department of Financial Regulation,
- Martin Manahan, Chair of Liquor Control Board,
- Dan Yates of the Vermont Bankers Association,
- Chuck Karparis of the Association of Vermont Credit Unions,
- Gwynn Zakov of the Vermont League of Cities and Towns,
- Jon Jamieson representing the business community, and
- Laura Subin of the Vermont Coalition to Regulate Marijuana.

Additional staff provided crucial support for the efforts of this subcommittee, including Deputy Commissioner of Taxes, Craig Bolio, Tax Policy Analyst Abby Shepard, Research Economist Andrew Stein, Executive Assistant Kate Strousse, Cary Giguere of the Agency of Agriculture and Food Sciences, Deputy Commissioner Gary Kessler of the Department of Liquor and Lottery, and Lindsey Wells of the Department of Public Service.

## EXECUTIVE SUMMARY

If adult sales of cannabis for recreational use are legalized in Vermont, the Commission recommends creating a regulatory structure that allows private industry to develop a viable market, while the State retains the crucial roles of gatekeeper and enforcer. This new structure would primarily be funded by taxing retail sales of recreational cannabis and charging fees to cannabis establishments for licensing and other necessary regulation. The underlying goals of creating a new regulatory structure are multifaceted: to protect consumers, to prevent the diversion of cannabis to under-age consumers and the illicit market, and to generate sufficient revenue to self-fund the administrative and public health and safety program costs resulting from cannabis use and sales in the state, all while fostering economic opportunities for Vermonters.

The Commission recommends creating a tax structure that will, at a minimum, maintain a revenue-neutral balance sheet for the State. Retail sales of cannabis should be subject to a new 20% excise tax and the existing 6% sales tax. By imposing the State sales tax, the 1% local option sales tax will automatically apply in jurisdictions that have adopted such a tax. The Commission does not recommend subjecting sales of edible cannabis products to the 9% meals tax to avoid unnecessary complication for both tax compliance and administrative reasons. The Commission recommends following current law for the allocation of State sales tax and local option sales tax revenues. Regarding the new excise tax revenues, the Commission recommends allocating 5% to every municipality in the State, regardless of whether they have opted out of allowing cannabis establishments to operate in their jurisdiction, and an additional 10% to municipalities that host retail cannabis establishments. Excise tax revenues should be allocated to fund the administrative and programmatic needs of the State agencies that would regulate cannabis establishments and respond to the impacts of cannabis use and sales. Regulatory agencies would also be able to fund their day-to-day cannabis-related operations through fees charged to all cannabis establishments for license applications and renewals.

The Commission recommends creating five license categories: Cultivator, Processor, Retailer, Transporter, and Testing. Cultivator licenses should be structured on a tier basis according to plant canopy size, with the smallest tier being issued in an unlimited number at the discretion of a cannabis Control Board. At the start of legalized sales, only the smallest tier of cultivation licenses would be available, so as to encourage small, local farmers to enter the market. Issuance of medium- and large-tier cultivator licenses would be phased-in over time. Any statute should include the basic structure, and a maximum fee per tier, but the licensing authorities and the Board of Control would make final decisions about fee amounts and the number of licenses. License applicants would have to meet requirements such as background checks. Other restrictions such as Vermont residency or limits on vertical integration would not apply, although in rating and awarding cultivator license applications, preference will be given to Vermont residents. Licensees would only be able to hold one license per category to avoid creating monopolies. Only licensed retailers would be permitted to sell to consumers. No consumption of cannabis products should be allowed on any licensed premises, including retail stores. Wholesale transactions would only be permitted between licensees, so that products can be tracked from seed to sale to prevent diversion and tax evasion, and to ensure quality control for consumers. The Commission recommends enacting strong protections for consumers that include restricting the allowable forms of consumption, requiring clear labeling and packaging,

limiting dosage and potency per serving, and prohibiting certain types of advertising. Incorporated into the consumer protection recommendations are measures to prevent products that are enticing and accessible to children from entering the stream of commerce.

To centralize the administration of a new regulatory structure for recreational cannabis, and potentially for medical cannabis as well, the Commission recommends creating a new Board of Control. The Board would regulate a marketplace run by private industry, so that the State would not own or possess a controlled substance that is still illegal under federal law at any point in the chain of production and sale. The State would therefore be able to retain control over the form and manner of sales of recreational cannabis, while avoiding the predicament of the State and State employees violating federal law. The Board would have certain specified administrative and quasi-judicial powers in relation to licensing and enforcement. The Commission recommends that embedding the Board within the Department of Liquor and Lottery is the most advantageous option to leverage the budgetary resources and expertise of DLL and the Liquor Control Board. However, other stakeholders and regulators in addition to DLL should have a presence on the Board. The regulatory agencies should be statutorily named members either of the Board or its subcommittees with the primary authority to adopt rules on licensing requirements. Other crucial State agencies with a role on the Board or its subcommittees should include the Department of Health and the Department of Public Safety. The Vermont Marijuana Registry should also have an advisory role on the Board or be regulated by the Board. Public members and members with industry expertise should also be involved in the Board in an advisory capacity. The statute creating the Board should include conflict of interest provisions prohibiting members or members' immediate families from maintaining any financial interest in the cannabis industry.

As a Dillon's Rule state, Vermont's version of legalized recreational cannabis should include an express grant of legislative authority from the General Assembly to municipalities, so that municipalities may regulate cannabis activities at the local level. This notably would include granting authority to towns to enact local zoning rules, bylaws, and ordinances that regulate the time, place, and manner of cannabis activities within town boundaries. The Commission additionally recommends authorizing municipalities the choice of allowing cannabis establishments to operate in their jurisdiction by providing either an opt-out or opt-in procedure that municipalities can implement. Another important consideration is to ensure that any implementation deadlines take into account the statutory timing that towns need to follow to enact local decisions.

Additional recommendations in this report concern the impact of introducing a recreational market on the Vermont medical cannabis program, the status of hemp, the implications of cannabis use under employment and labor law, considerations for cannabis establishments seeking financial services and insurance coverage, and security concerns for a cash-based industry.

Importantly, the analysis performed by this Subcommittee indicates that in the early years of legalization the amount of tax revenues expected to be generated by a legalized market will fail to meet the funding needs for programs deemed necessary to address the impacts of such a market. This is due in part to the lag between the start-up of a new regulatory structure with its attendant costs, and the beginning of legalized retail sales.

## REVENUE AND BUDGET

### Proposed Tax Structure

The Commission recommends creating a new Vermont Cannabis excise tax at 20% of the retail price of cannabis, which should be defined in the same way as marijuana under current statute.<sup>ii</sup> The existing Vermont sales tax and the associated local option sales tax, where applicable, should also apply. The Commission recommends against subjecting sales of edible cannabis products to the meals and rooms tax. The following chart summarizes the recommended tax types and rates. An in-depth discussion and analysis of the taxes follow below.

Proposed Taxes on Cannabis Retail Sales	
Tax Type	Rate
Cannabis Retail Excise Tax	20%
State Sales Tax	6%
Local Option Sales Tax (if imposed in municipality where sold)	1%
<b>TOTAL EFFECTIVE TAX RATE IMPOSED</b>	<b>26% or 27%</b>

#### *Other States' Cannabis Tax Structures*

The Subcommittee on Taxation and Regulation based its recommendations to the Commission on the tax structures in states that have legalized recreational cannabis sales. The following charts on the eight states with legalized commercial cannabis outline the legal authority for imposing cannabis taxes, the dates when regulated sales began, the tax structures, and the revenues collected.



	Colorado	Washington	Oregon
<b>Legalization</b>	Constitutional Amendment 64 by ballot vote, November 2012	Initiative 502 November 2012	Measure 91 November 2014
<b>Regulated Sales Begin</b>	2014	July 2014	October 2015
<b>Tax Rate &amp; Base</b>	<p>15% Retail Marijuana Excise Tax</p> <ul style="list-style-type: none"> <li>on 1st sale or transfer from retail marijuana cultivation facility to retail marijuana store or product manufacturing facility.</li> </ul> <p>15% Retail Marijuana Sales Tax</p> <p>Local Option Taxes: Up to 8%</p> <ul style="list-style-type: none"> <li>optional local sales taxes (4.6% is average rate in CO)</li> <li>optional local excise marijuana taxes (e.g., 3.5% in Denver)</li> </ul>	<p>37% excise tax on retail sale to consumers</p> <p>6.5% state sales tax</p> <p>Local option tax</p>	<p>17% state sales tax</p> <p>Up to 3% optional local municipality tax</p>
<b>Tax Revenues</b>	FY2017: \$210.4 million <sup>iii</sup>	FY2017: \$314.8 million <sup>iv</sup>	FY2017: \$70.2 million <sup>v</sup>

	Alaska	California	Nevada
<b>Legalization</b>	Ballot measure 2 November 2014	Proposition 64, Nov. 2016 Amended by SB 94, June 2017	Question 2 November 2016
<b>Regulated Sales Begin</b>	October 2016	January 1, 2018	July 1, 2017
<b>Tax Rate &amp; Base</b>	Excise tax on marijuana cultivation facilities at time of sale to retail store: <ul style="list-style-type: none"> <li>• \$50 per ounce of flowers</li> <li>• \$15 per ounce of stems/leaves</li> </ul>	15% gross receipts excise tax on retail sales <ul style="list-style-type: none"> <li>• Collected from buyer by retailer, paid to distributor</li> </ul> Weight-based cultivation tax to distributors or manufacturers when cannabis enters commercial market: <ul style="list-style-type: none"> <li>• \$9.25 per ounce of flowers</li> <li>• \$2.75 per ounce of leaves</li> </ul> Sales tax (gross receipts) <ul style="list-style-type: none"> <li>• Statewide sales tax: 6%</li> <li>• Local sales tax: 1.25%</li> <li>• District sales tax: up to 1% (some areas have more than 1 district tax in effect)</li> </ul>	15% wholesale excise tax calculated on fair market value at wholesale  10% excise tax on retail sales  General state and local retail sales tax
<b>Tax Revenues</b>	FY17: \$1.7 million <sup>vi</sup>	Calendar year 2018 1 <sup>st</sup> two quarters (until June 30): \$104.4 million <ul style="list-style-type: none"> <li>• Weight-based cultivation tax: \$6.1 million</li> <li>• Excise tax on retail sales: \$44.8 million</li> <li>• Sales tax on gross receipts: \$53.5<sup>vii</sup></li> </ul>	FY2018: \$69.8 million <sup>viii</sup>  Projected FY 2019: \$69.4 million <ul style="list-style-type: none"> <li>• Wholesale Marijuana Tax: \$32.4 million</li> <li>• Retail Marijuana Tax: \$37 million</li> </ul>

	Maine	Massachusetts
<b>Legalization</b>	Ballot initiative Question 1, November 2016	Ballot initiative Question 4, December 15, 2016 H.3818 signed by Governor July 2017
<b>Regulated Sales Begin</b>		July 1, 2018 (delayed)
<b>Tax Rate &amp; Base</b>	<p>4 Excise Taxes on Wholesale paid by cultivators</p> <ol style="list-style-type: none"> <li>1. \$335 per pound of marijuana flower and mature marijuana plants</li> <li>2. \$94 per pound of marijuana trim</li> <li>3. \$1.50 per immature marijuana plant or seedling</li> <li>4. \$0.30 per marijuana seed</li> </ol> <p>10% State Retail Sales Tax imposed on the value of adult use marijuana and adult use marijuana products.</p>	<p>10.75% excise tax on retail sales</p> <p>State sales tax: 6.25%</p> <p>Local option municipality tax: Up to 3%</p>
<b>Tax Revenues</b>	<p>Estimates:</p> <ul style="list-style-type: none"> <li>• FY18-FY19 \$2.65 million</li> <li>• FY19-FY20 \$8.91 million</li> <li>• FY20-FY21 \$9.3 million<sup>ix</sup></li> </ul>	FY2019 estimated \$64 million

## *20% Cannabis Excise Tax*

The Commission adopts the Subcommittee's recommendation for imposing a 20% excise tax on the retail sale price of any cannabis product with tetrahydrocannabinol (THC) concentration above the hemp limit.

Cannabis, which should be defined in the same way as the only existing statutory definition of "Marijuana," was redefined in Section 2 of Act 86 of 2018 to mean "all parts of the plant *Cannabis sativa* L. [...] whether growing or harvested, and includes: (i) the seeds of the plant; (ii) the resin extracted from any part of the plant; and (iii) any compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin."<sup>x</sup> This means that the sale of mature or immature cannabis plants, seeds, or resin would be subject to the excise tax, as well as any edibles or other derivatives from those plants, seeds, or resin. The statute goes on to exclude any hemp products and hemp derivatives, as well as the sterilized seeds of the plant from the definition of cannabis, which means that hemp and hemp plants would not be subject to the excise tax.<sup>xi</sup> Additionally, setting the THC concentration threshold above the legal limit for hemp is consistent with the intent to exempt the sale of hemp from excise tax. The current legal limit for hemp is a delta-9 THC concentration of not more than 0.3% on a dry weight basis.<sup>xii</sup> A clone is currently defined as "a plant section from a female marijuana plant not yet root-bound, growing in a water solution, which is capable of developing into a new plant."<sup>xiii</sup> This definition should be used with slight modification, so as not to include the "growing in a water solution" limitation, which would be easy to avoid at the point of sale in order to make the transaction nontaxable. It also needs to be clear that the clones subject to the excise tax are only clones from cannabis plants, not from hemp plants, which should remain non-taxable.

The tax would only apply to retail sales, not to wholesale transactions between licensed establishments. This means that the tax would be borne by the final consumer. In the chain of custody, only licensed retailers would be allowed to sell to retail consumers; not cultivators, processors, transporters/distributors, or testing facilities. Given that retailers could purchase from other retailers and then resell the same product even in a different form such as an edible, a resale exemption should be created to avoid double taxation of the same product under the same tax type. A resale exemption exists under the existing sales tax that could be duplicated for the cannabis excise tax. The excise tax would therefore only apply to the final retail sale transaction when the final consumer purchases the product.

The type of tax recommended by the Subcommittee and endorsed by the Commission is called an "ad valorem tax," which is defined as a "tax imposed proportionally on the value of something (especially real property), rather than on its quantity or some other measure."<sup>xiv</sup> Creating an ad valorem tax structure where tax is imposed on retail sales would be the simplest option to allow for a quick and streamlined rollout by the Department of Taxes. Imposing an ad valorem tax at the retail level has been shown by other states to generate reliable levels of revenue. The disadvantage of imposing an ad valorem tax is that price fluctuations in this new market can affect revenues. The experience in other markets has been that prices of legal cannabis products dropped precipitously in the first few years of legalized cannabis. Despite the downward trend in prices in those new markets, however, revenues continued to grow.

The Subcommittee considered unit-based taxes, which could be imposed by amount, weight, or potency, but decided against those structures for the sake of administrative

effectiveness and efficiency. While a potency-based tax (e.g., based on THC content) would operate as a deterrent to consumption of higher potency products, it would be complex and expensive to monitor and control. It could incentivize misrepresentation of THC content to evade tax and gain a competitive advantage, which would endanger consumers. Imposing the correct tax rate would likely require expensive State testing infrastructure. Weight- and quantity-based taxes are also more complex to administer than ad valorem taxes, because they are not well adapted to the diverse forms of cannabis products, such as edibles. States that have weight-based taxes like Alaska and California impose tax on flowers, stems, and leaves by the ounce, with a higher tax on flowers. These are wholesale taxes imposed at the time of sale by the cultivator, so they do not apply to final products sold to consumers like edibles. California imposes additional ad valorem taxes at retail, but Alaska does not.

One of the fundamental goals of creating a regulatory system for recreational cannabis is to eradicate the illicit market to the greatest extent possible. An important way to achieve that goal is to ensure that the tax rate is set at the appropriate level to support a viable legal market. The tax rate will increase the final price that the consumer pays and can impact the consumer's purchasing behavior. The price of regulated cannabis products should be competitive with illicit market prices to incentivize buyers to pay taxes and support licensed establishments and controlled products.

The Commission recommends imposing both the new excise tax, the existing sales tax, and any applicable local option taxes. This means that the effective tax rate paid by the consumer on retail purchases of cannabis will be higher than the excise tax rate alone. The effective rate will depend on where the sale takes place. If the sale takes place in a municipality that imposes a local option tax on sales, then the 1% local option tax will also apply. This is similar to the Vermont tax treatment of sales of alcohol and tobacco products. The Subcommittee reviewed and reported those tax rates to the Commission, which are presented in Appendix 1.

### *6% State Sales and Use Tax*

Because the Commission recommends imposing the existing 6% Vermont Sales and Use tax on all sales of cannabis in addition to the new 20% Cannabis Excise Tax. A change to statute is required to exclude recreational cannabis products from the sales tax exemption for food or food ingredients. The sales tax rate would apply in addition to the proposed marijuana excise tax, as well as the 1% local option sales tax, where applicable, for a total effective tax rate of either 26% or 27%.

Under current law, the sale of tangible personal property in Vermont is subject to sales and use tax unless an exemption applies.<sup>xv</sup> Cannabis products are tangible personal property because they “may be seen, weighed, measured, felt, touched, or in any other manner perceived by the senses.”<sup>xvi</sup> Vermont law exempts the sale of certain categories of property from tax, including drugs intended for human use and food and food ingredients.<sup>xvii</sup> Recreational cannabis products would not qualify for the drug exemption because a prescription would not be required to purchase them, and they are not required to contain a label that identifies the product as a drug under federal regulation.<sup>xviii</sup> Recreational cannabis products other than edibles would not be eligible for the food exemption, because they are not “consumed for their taste or nutritional value” and are not required to be labeled as a dietary supplement under federal regulation.<sup>xix</sup> However, because cannabis products can be incorporated into an edible product that might be “consumed [at least in part] for its taste or nutritional value,” edibles can be categorized as food

ingredients and be exempt from sales tax. Therefore, in order to subject all sales of cannabis products to sales tax, cannabis as defined under title 18 of the Vermont Statutes should be explicitly excluded from the food and food exemption from sales and use tax.<sup>xx</sup> This would be consistent with the current treatment of sales of alcoholic beverages, tobacco, and soft drinks, thereby subjecting all sales of cannabis to the Vermont Sales Tax.

### *1% Local Option Tax*

The Commission adopts the Subcommittee's recommendation to maintain the current state of law on the local option tax, which will result in the existing 1% local option sales tax applying to retail sales of cannabis that are subject to the Vermont sales tax. The local option tax applies when sales are made in any municipality that has voted to impose a local option tax.<sup>xxi</sup> The Department of Taxes typically administers local option taxes, with some exceptions. See the explanation below regarding the allocation of local option tax revenues in the section "Allocation and Proposed Budgets."

The local option sales tax could be an important source of revenue for municipalities to absorb the costs of legalizing recreational cannabis. However, only those municipalities that already have a local option tax or complete the statutory process to adopt one will have access to this funding stream to cover their costs related to cannabis. For this reason, the Commission adopts the Subcommittee's recommendation that municipalities receive a portion of any cannabis excise tax revenues.

### *9% Meals and Rooms Tax*

The Subcommittee considered imposing the 9% Meals Tax on edibles and, by extension, the 1% local option meals tax in those towns that have adopted one. The Subcommittee decided against adding complexity to the tax code and the regulation of a new industry. The Commission adopts this recommendation. Imposing Meals Tax on edibles would require several amendments to statute that would likely increase confusion and thus errors for retailers, and subsequently burden administrative and compliance efforts. Added complexity could create confusion for vendors and consumers concerning how to collect and report the tax properly, and it could add greater costs for the State to administer and enforce the tax code effectively.

### *Income Tax Deduction for Business-Related Expenses*

The Commission adopts the Subcommittee's recommendation authorizing a deduction against Vermont income tax for business-related expenses of cannabis establishments to partially counter-act the effect of federal income tax law. Federal law prevents cannabis dispensaries, cultivators, and retailers from deducting business expenses on their federal income tax returns.<sup>xxii</sup> The U.S. Congress added Section 280E to the federal tax code in 1982 in response to federal tax court decisions allowing convicted drug dealers to deduct business expenses.<sup>xxiii</sup> The types of business expenses that the regulations on Section 280E preclude for dispensaries, but allow other businesses to deduct, include marketing, research, and some administrative expenses.<sup>xxiv</sup> The cost of goods sold is currently the only deductible business expense for cannabis establishments. The easiest approach to allow a Vermont deduction would be to enact language stating that for the purpose of calculating Vermont net income, a licensed cannabis business shall be allowed any

federal income tax deduction that is disallowed by Section 280E. This deduction would be available for both corporations, and individual filers, such as sole proprietors and pass-through entities like S Corporations and limited liability companies. The Department of Taxes would be able to accept a federal pro forma return that includes business expense deductions and calculate Vermont income tax liability using the pro forma return. See Appendix 2 for draft legislative language.

## **Market and Revenue Considerations**

There are many factors that can and will influence the performance of a newly legalized recreational cannabis market and the revenues associated with it. While the State can directly control for some of these factors, others it cannot. Among the factors that will affect the size and performance of a legal cannabis market and associated revenues are:

- Vermont's population size
- Vermont's age distribution
- Usage rates
- Types of use (raw or processed product)
- Range of available products
- The end price of cannabis products
- Taxes assessed on cannabis products
- The medical cannabis population
- The rate of home-growing
- The size of the illegal market
- The tourism population
- Other states' regulation of cannabis products
- Vermont's regulation of cannabis (number of licenses, products allowed, etc.)
- Vermont government implementation and administration of a legal market
- Federal government regulation of cannabis
- Industry access to banking services
- Industry access to capital
- The supply of cannabis products
- Lead time to generate supply prior to opening a legal market

The non-exhaustive list above provides a general overview of major impactful factors, and these factors can influence each other. For example, a short leadup time prior to retail sale of recreational cannabis, featuring a small number of licensed producers and sellers with limited quantities of cannabis products, would lead to a short supply when the legal market opens. If this were to occur, consumption of cannabis through the illegal market and home-growing would likely continue in order to meet current levels of demand. The legal market associated with these conditions is therefore anticipated to be smaller and lead to fewer revenues than would be expected from a market with supply that can meet demand at the outset of legalization.

Another major set of factors that will influence the market and associated revenues are state and federal regulations. Since cannabis is regulated by the federal government as a Schedule 1 substance, the industry has restricted access to markets, banking services, capital, tax advantages, and research opportunities. All these factors will inhibit a legalized recreational market and may affect the State's ability to collect revenues. However, if the federal government

were to revise this law, then the market could expand and further standardize (e.g., ensured access to banking, insurance, and other typical business products, advantages, and services), yielding more market growth and revenue. Similarly, the restrictions that the State of Vermont places on the market (e.g., permitted products, size of growers, number of licenses, permitted places of consumption, etc.) will also influence the size of the market and associated revenues.

Due to the many factors that can influence a legal cannabis market in Vermont, revenue estimates are made in an environment of great uncertainty. In the event recreational cannabis is legalized, the following estimates should be updated as more information concerning the above factors becomes clearer. While the Commission believes the proposed tax rate represents a balance between the need to generate revenues and the need to disincentivize trade in the illicit market, Vermont should be prepared to act with speed and flexibility in the response to the fluid dynamics of a legal adult-use cannabis market.

### **Revenue Estimate Overview**

Analysts at the Department of Taxes and the Legislative Joint Fiscal Office (JFO) prepared consensus revenue estimates for a legal recreational cannabis market based on the 20% excise tax and 6% sales tax. This effort built upon the Department's and JFO's previous work in 2015 and 2016 to estimate revenues associated with a recreational cannabis market.

The model pulls from a range of data sources, including: state population forecasts; the National Survey on Drug Use and Health; The US Census Bureau's American Community Survey; the Vermont Marijuana Registry; the draft 2017 Benchmark Report for Tourism in Vermont; data, analyses, and studies from Colorado, Washington, and Oregon; and other sources.

The estimates below were derived in November 2018 and are aimed at estimating a full year of revenue receipts for the 20% retail and 6% sales taxes. If a legal market opens partway through a year or even at the outset of a fiscal year, the amount of revenues will vary based on the months of active collections. If this structure or any other tax-and-regulate model is proposed in the future, these estimates should be revisited to ensure they are derived from the most recent and best-available information.

### **Sales and Revenue Estimates**

The Department of Taxes and JFO employed a three-year outlook to estimate legal cannabis revenues and sales. The estimates are for full fiscal years, and year 1 represents a full year of cannabis-related revenue received in FY20.

As described below, other states that have legalized recreational cannabis have witnessed consistent growth in sales and revenue over the first three years of these newly legalized markets. The Department and JFO accounted for this growth and employed low, medium, and high estimates for each year to account for the confidence intervals of public health data and prices of products.

Table 1 provides an overview of anticipated revenues from the 20% retail excise tax that would fund administration, public health, public safety, and other efforts associated with the legalization of recreational cannabis.



<b>Table 1: 20% Retail Excise Tax Estimates</b>			
	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>
<b>Low</b>	\$5,100,000	\$8,000,000	\$10,500,000
<b>Mid</b>	\$7,200,000	\$11,300,000	\$14,800,000
<b>High</b>	\$9,800,000	\$15,500,000	\$20,300,000

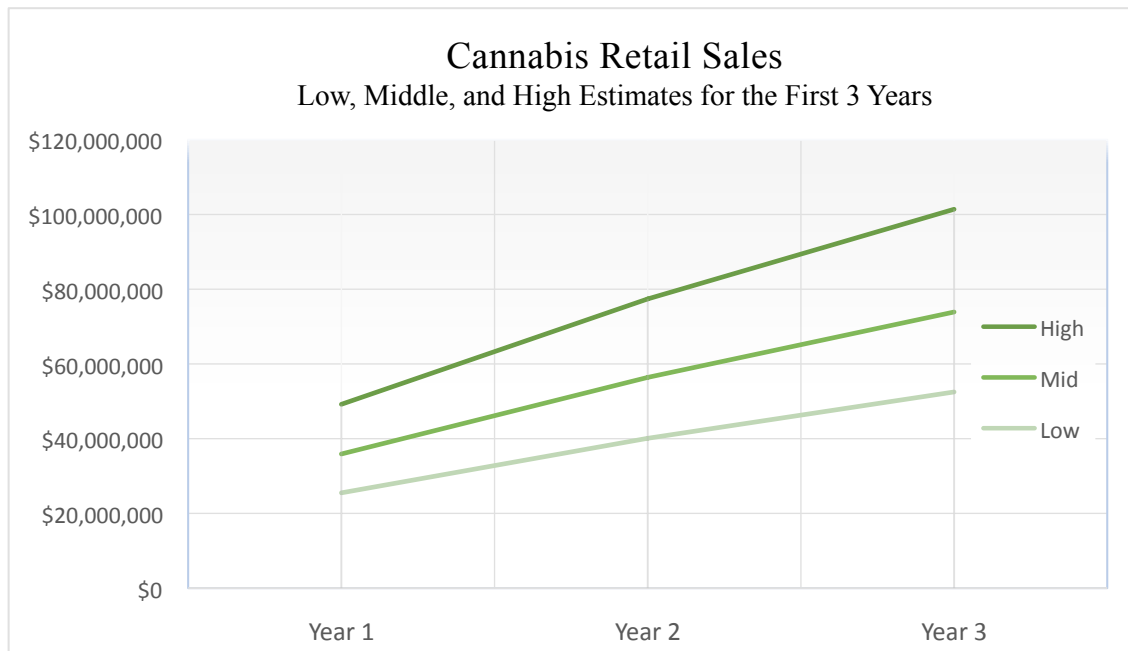
Table 2 outlines the sales tax revenue that is estimated in the first three years of this new market. Under current law, this revenue would be directed to the State’s Education Fund.

<b>Table 2: 6% Sales Tax Estimates</b>			
	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>
<b>Low</b>	\$1,500,000	\$2,400,000	\$3,200,000
<b>Mid</b>	\$2,100,000	\$3,400,000	\$4,400,000
<b>High</b>	\$3,000,000	\$4,600,000	\$6,100,000

The total combined estimates for these two revenue sources are outlined in Table 3 below.

<b>Table 3: Combined Retail Excise &amp; Sales Taxes</b>			
	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>
<b>Low</b>	\$6,600,000	\$10,400,000	\$13,700,000
<b>Mid</b>	\$9,300,000	\$14,700,000	\$19,200,000
<b>High</b>	\$12,800,000	\$20,100,000	\$26,400,000

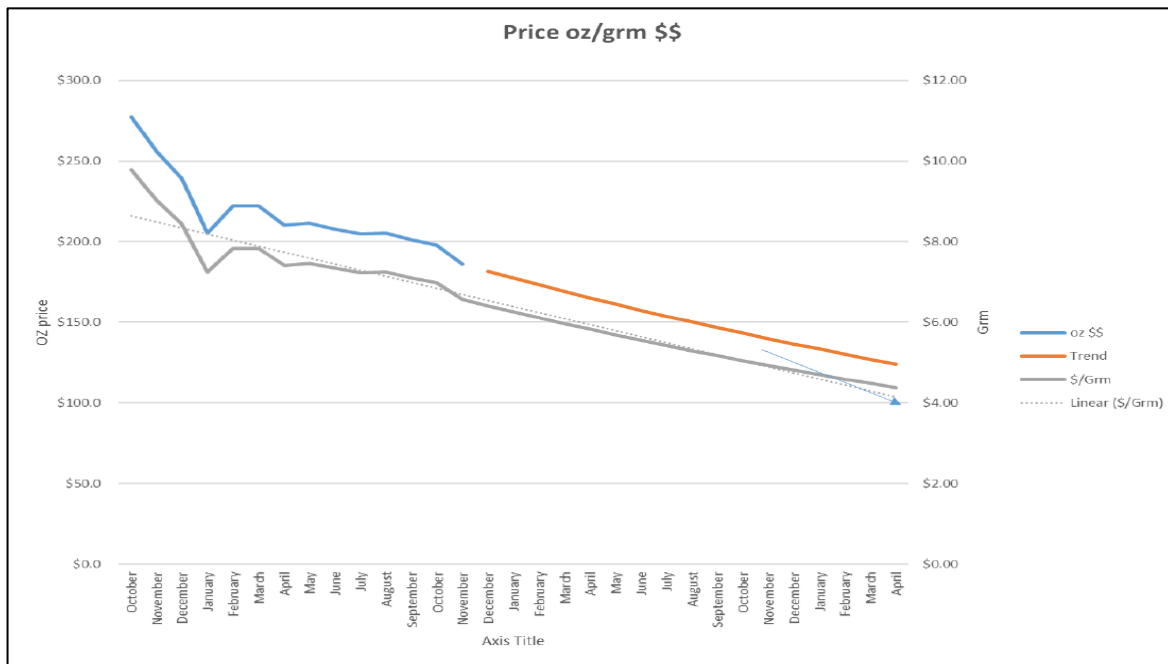
These revenue sources are tied directly to the value (price and volume) of sales in the first three years of a legal cannabis market. Below is a graph outlining estimated retail sales over the first three years.



These estimates are solely for the two revenue sources that would be assessed directly on retail sales. These estimates do not include potential income taxes, other economic impacts, and other ancillary revenue effects associated with new economic activity. Furthermore, while there is speculation that discretionary income spent on cannabis products will draw sales and revenues away from other discretionary items, there is also an argument to the counter. Since prices tend to decrease in these new markets, there is speculation that those already consuming cannabis will be able to obtain it at a more competitive price, which will free up more discretionary income for other purchases. These areas may demand further exploration, along with the issue of additional economic benefits and detriments associated with this new industry.

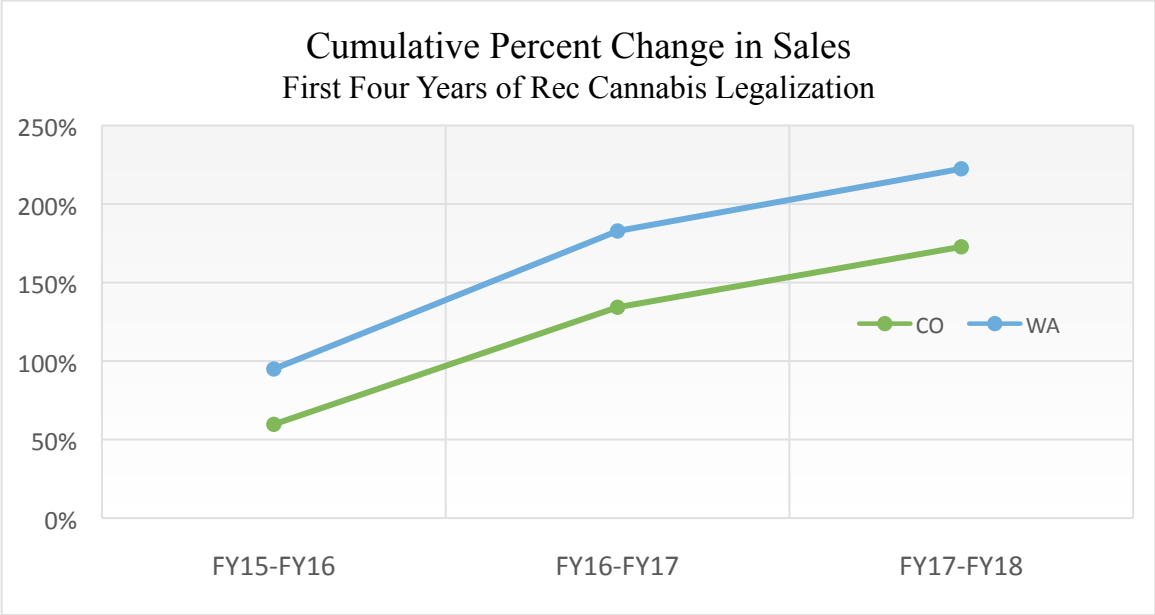
### Brief Overview of Other States' Markets

As mentioned above, evidence from other states has shown that the price of most cannabis products falls substantially over the first several years of legalization. This trend is displayed clearly in the graph below from the Oregon Legislative Revenue Office.<sup>xxv</sup> Similarly, between 2014 and 2017, Colorado observed a 62 percent decline in average annual flower prices and a 48 percent decrease in concentrate prices. Edible prices, however, have remained steady in Colorado at around \$18 per 100 mg package.<sup>xxvi</sup> Washington experienced similar price trends in its cannabis flower market, with an even larger decrease in prices over the course of the first year than Colorado.<sup>xxvii</sup>



Source: Oregon Legislative Revenue Office

Despite the decline in prices, total cannabis sales and associated revenues in Colorado, Washington, and Oregon grew in the early years of legalization.<sup>xxviii</sup> The graph below shows how Colorado and Washington cannabis sales grew over the first four full fiscal years of legalization.



Sources: Colorado Department of Revenue and Washington Department of Revenue.

At the time of this analysis, Colorado and Washington had completed four full fiscal years of legal cannabis sales, and Oregon had completed two years. The below graph compares the three states’ growth in revenue over the first two fiscal years. Although Oregon’s growth rate was less than the other two states, Oregon’s population-adjusted sales were the highest in year one.<sup>xxix</sup> Meanwhile, Washington had the lowest population-adjusted sales in its first full fiscal year of legalization, but the highest rate of growth between years one and two.



Sources: Colorado Department of Revenue, Washington Department of Revenue, and Oregon Department of Revenue

## Allocation and Proposed Budgets

The administrative and programmatic costs across all State agencies that will have regulatory authority over the recreational cannabis system would need to be met through the tax and fee structure. The Commission adopts the Subcommittee's recommendation to allocate excise tax revenues to dedicated purposes such as public safety, prevention and education programs, and to State administrative agencies and municipalities. This division can be done by a percentage of revenues generated or a specific dollar amount. It is also possible to earmark certain percentages or dollar amounts of the revenues generated by the other state taxes (notably sales tax imposed on cannabis) for cannabis-related programs and administrative expenses.

Licensing agencies will also collect fee revenues. These include the Department of Liquor and Lottery, Agency of Agriculture, Food and Markets, and others. Some agencies, however, like the Department of Taxes, rely on the General Fund to fund their operating budget, and would not collect fees to pay for their costs related to administering recreational cannabis. In that case, operational funding for departments like the Department of Taxes could come from cannabis excise tax revenues or the General Fund. It would be critical to specify what special funds or enterprise funds would be used to deposit and make disbursements of specific tax and fee revenues.

The Commission adopts the Subcommittee's recommendation to retain the allocation of sales tax and local option tax under current statute. As of July 1, 2018, all sales and use tax revenues are allocated to the Education Fund.<sup>xxx</sup> The current allocation of local option tax revenue is set out under statute as follows:

1. \$5.96 administrative fee per return (70% of which is paid by the town with the local option tax, and 30% of which is borne by the State Payment in Lieu of Taxes (PILOT) special fund);
2. 70% of remaining revenues go to the town with the local option tax; and
3. 30% of remaining revenues go to the State PILOT special fund.<sup>xxxi</sup>

Disbursements of local option tax revenues to towns are made quarterly. See Appendix 1 for a chart showing disbursements to towns in fiscal year 2018.

PILOT special fund disbursements are directed to municipalities that have reduced or foregone property tax revenues because of state-owned property located in their jurisdiction. State-owned property is exempt from property tax.<sup>xxxii</sup> These programs are for state-owned buildings, Agency of Natural Resources' land, correctional facilities, and the City of Montpelier. The allocations from the PILOT fund are split based on appraised values, appropriations, and legislated mandates. The method of determining the payments is different for each type of program. The general PILOT special fund appropriation for fiscal year 2018 was \$7,600,000 and for fiscal year 2019 was \$7,866,000. These payments are made to the eligible towns once a year in October.

The Commission adopts the Subcommittee's recommendation against setting different statutory allocations for the revenues that would be generated from the existing local option tax on sales of cannabis only, because that would create administrative complexity. More complexity could cause confusion for consumers and the retailers collecting the tax, who would have to report differently, which can result in erroneous tax collection. Bifurcating the existing allocation of local option tax revenues so that cannabis revenues would be divided differently from all other types of local option tax revenues would also be more expensive for the Department of Taxes to implement and administer.

The administrative infrastructure needed to regulate a legal recreational cannabis market is vast, involving many existing state agencies and requiring new structures and programs. An overview of the known budgeting needs and requests to date by agency and department, program, and component are described below.

*Agency of Agriculture, Food and Markets*

The Agency of Agriculture, Food and Markets provided the Subcommittee on Taxation and Regulation with a budget estimate. Below is a chart summarizing the costs, and the Agency’s explanation of its estimated budgetary needs and an outline of necessary operations.

<b>Agency of Agriculture Food &amp; Markets</b>				
<b>Budget Items</b>	<b>Prior to Retail</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>
<b>Implementation Expenses</b>				
<b>General Expenses</b>	\$20,000	\$170,000	\$0	\$0
<b>Equipment</b>	\$0	\$350,000	\$0	\$0
<b>Subtotal</b>	<b>\$20,000</b>	<b>\$520,000</b>	<b>\$0</b>	<b>\$0</b>
<b>Labor Expenses</b>				
<b>Program Lead</b>	\$100,000	\$100,000	\$100,000	\$100,000
<b>Chemist</b>	\$100,000	\$100,000	\$100,000	\$100,000
<b>Chemist</b>	\$0	\$0	\$100,000	\$100,000
<b>Staff Attorney</b>	\$0	\$120,000	\$120,000	\$120,000
<b>Field Inspector</b>	\$0	\$100,000	\$100,000	\$100,000
<b>Program Admin</b>	\$0	\$80,000	\$80,000	\$80,000
<b>Subtotal</b>	<b>\$200,000</b>	<b>\$500,000</b>	<b>\$600,000</b>	<b>\$600,000</b>
<b>Totals</b>	<b>\$220,000</b>	<b>\$1,020,000</b>	<b>\$600,000</b>	<b>\$600,000</b>

- Program Lead
  - Writing rules and regulations
    - Compliance assistance, education and training
  - Assemble internal Cannabis Program Development team
  - Build stakeholder groups
- Laboratory Chemist
  - Method Development-
    - THC analysis methods development
    - Pesticide residue method development
    - Pathogen testing methods
    - Commercial Lab evaluation
- Operating
- Field Inspector
  - Sample Collection and Transportation
  - Site Inspection

- Admin
  - Registration of cultivators
  - Registration of Labs
  - Check Sample Program
- Staff Attorney
  - Program Enforcement
- Chemist
  - Additional capacity as samples increase
- Operating
  - Outreach and Education
  - Sample equipment
  - Lab Supplies
- Equipment
  - Analytical Equipment

• High Performance Liquid Chromatograph (HPLC)	50
• Gas Chromatograph with Mass Spec. (GS/MS)	200 (shared 50:50)
• Laboratory Information Management Module (LIMS)	50
• Misc. Equipment, scales, secure sample storage, etc.	50

The Vermont Agency of Agriculture, Food & Markets proposes to establish a robust regulatory program to ensure cannabis grown in Vermont meets standards of product integrity, quality and safety and is grown in an environmentally responsible manner. See the chart below for the rollout plan.

<b>Program – 2020</b>	<b>Laboratory – 2020</b>
<ul style="list-style-type: none"> <li>○ Marijuana Cultivation Regulation               <ul style="list-style-type: none"> <li>○ Develop rules</li> <li>○ License cultivators                   <ul style="list-style-type: none"> <li>▪ Cultivation standards</li> <li>▪ Pesticide use</li> <li>▪ Nutrient management practices</li> <li>▪ Record keeping requirements</li> <li>▪ Genetic drift control</li> </ul> </li> </ul> </li> <li>○ Commercial Laboratory Regulation               <ul style="list-style-type: none"> <li>○ Develop rules and standards</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>○ Methods Development for Cannabinoid concentration validation               <ul style="list-style-type: none"> <li>○ THC</li> <li>○ CBD</li> <li>○ <i>etc.</i></li> </ul> </li> <li>○ Pesticide Residue Analysis               <ul style="list-style-type: none"> <li>○ Insecticides</li> <li>○ Fungicides</li> </ul> </li> <li>○ Adulterated products               <ul style="list-style-type: none"> <li>○ Powdery Mildew</li> <li>○ Pathogens (e-coli, salmonella)</li> </ul> </li> </ul>

<b>Program – 2020</b>
<ul style="list-style-type: none"> <li>○ License Commercial Laboratories</li> <li>○ Establish statewide testing protocols and reporting requirements</li> <li>○ Pesticide Use Regulation <ul style="list-style-type: none"> <li>○ Issue state registrations for approved pesticide products</li> <li>○ Worker Protection Standard implementation</li> <li>○ Pesticide use inspection and laboratory QA</li> </ul> </li> </ul>
<b>Future</b>
<ul style="list-style-type: none"> <li>○ Outreach and Education</li> <li>○ Field Inspection</li> <li>○ Program Administration</li> <li>○ Analytical Equipment</li> </ul>

<b>Laboratory – 2020</b>
<b>Future</b>
<ul style="list-style-type: none"> <li>○ Check sample program</li> <li>○ Laboratory stakeholder collaboration</li> <li>○ Additional laboratory chemist</li> </ul>

### *Department of Taxes*

The Department of Taxes based its estimated budget needs on the administration of a new 20% excise tax and imposing the existing 6% sales tax and 1% local option sales tax with no changes made to the sales tax statute. The Department of Taxes strongly prefers to not accept cash payments as it does not currently have the infrastructure to collect large cash payments. Substantial investments would need to be made to ensure accurate cash collections and protect State employees and taxpayers. Security equipment, new space, additional personnel, and secure transport for the cash would be necessary expenses.

<b>Department of Taxes</b>				
<b>Budget Items</b>	<b>Prior to Retail</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>
<b>Computer System</b>				
Software	\$750,000	\$750,000	\$0	\$0
Software Maintenance	\$0	\$50,000	\$50,000	\$50,000
<b>Subtotal</b>	<b>\$750,000</b>	<b>\$800,000</b>	<b>\$50,000</b>	<b>\$50,000</b>
<b>Cash Collection Expenses</b>				
Vault/Safe	\$75,000	\$5,000	\$5,000	\$5,000
Construction Enhancements	\$600,000	\$100,000	\$0	\$0
Cash Equipment	\$60,000	\$5,000	\$5,000	\$5,000
2 Cash Managers	\$0	\$80,000	\$80,000	\$80,000
<b>Subtotal</b>	<b>\$735,000</b>	<b>\$190,000</b>	<b>\$90,000</b>	<b>\$90,000</b>
<b>General Labor Expenses</b>				
Implementation Coordinator/ Business Analyst	\$80,000	\$80,000	\$80,000	\$80,000
Attorney / Policy Analyst	\$80,000	\$80,000	\$80,000	\$80,000
Tax Examiners	\$0	\$160,000	\$160,000	\$160,000
Discovery	\$0	\$40,000	\$80,000	\$80,000
Audit	\$0	\$0	\$80,000	\$80,000
Collections	\$0	\$80,000	\$80,000	\$80,000
Training	\$10,000	\$2,000	\$0	\$0
<b>Subtotal</b>	<b>\$170,000</b>	<b>\$442,000</b>	<b>\$560,000</b>	<b>\$560,000</b>
<b>Total</b>	<b>\$1,655,000</b>	<b>\$1,432,000</b>	<b>\$700,000</b>	<b>\$700,000</b>

#### Assumptions

- Budget based on research and numbers from other states (Washington and Colorado).
- Enforcement structure like Colorado's with seed-to-sale tracking.
- Ad valorem excise tax at the point of retail sale.

#### FTE Positions



The Department of Taxes anticipates a need for two full-time equivalent (FTE) positions in the initial fiscal year 2020 budget to begin building capacity for this new tax type. By contrast, Colorado added 22 FTEs to work on cannabis taxation in the industry’s first two years. Washington and Alaska added more positions to deal with taxation over time.

- Business Analyst / Implementation Coordinator (approx. \$80,000; PG25)
  - Serve as subject-matter expert (SME) for implementation of excise tax and then SME for tax when it launches
  - 8 FTEs are currently in these roles who all have working knowledge of the tax types they will be implementing.
  - To ensure continued success, position will be SME for design sessions, testing scenarios, and outreach post-launch.
- Attorney / Policy Analyst (approx. \$80,000; PG26)
  - Colorado and Washington emphasized the increase in legal work during their implementation of a recreational cannabis
  - Legal work will entail issuing formal rulings, technical bulletins and fact sheets; communicating with other states; monitoring federal and state legal cases that would impact Vermont’s cannabis industry
  - Currently there are three attorneys working as policy analysts in the Department who are already at capacity doing ongoing research, answering taxpayer questions, and promulgating rules for our existing tax types.

*Department of Health - Subcommittee on Education and Prevention*

The Subcommittee on Education and Prevention crafted a budget as part of their recommendations to the full Commission and that subcommittee’s report and recommendations to the Commission contain further discussion and details regarding these budget items.<sup>xxxiii</sup>

<b>Department of Health</b>				
<b>Budget Items</b>	<b>Prior to Retail</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>
<b>Comprehensive Substance Misuse Prevention</b>				
<b>Regional Prevention Networks (RPNs)</b>	\$0	\$6,000,000	\$6,000,000	\$6,000,000
<b>Substance Misuse Advisory Committee</b>	\$10,000	\$10,000	\$10,000	\$10,000
<b>Evaluation of RPNs</b>	\$0	\$150,000	\$150,000	\$200,000
<b>Statewide media and communication</b>	\$300,000	\$300,000	\$300,000	\$300,000
<b>Substance Misuse Prevention Fund (SMPF) manager</b>	\$100,000	\$100,000	\$100,000	\$100,000
<b>Subtotal</b>	<b>\$410,000</b>	<b>\$6,560,000</b>	<b>\$6,560,000</b>	<b>\$6,610,000</b>
<b>School Prevention &amp; Research</b>				
<b>School-based prevention specialists (Increasing to \$18.75M over time)</b>	\$0	\$1,125,000	\$2,250,000	\$3,375,000
<b>Annual longitudinal study of health effects</b>	\$0	\$1,000,000	\$1,000,000	\$1,000,000
<b>Subtotal</b>	<b>\$0</b>	<b>\$2,125,000</b>	<b>\$3,250,000</b>	<b>\$4,375,000</b>

	<b>Total</b>	<b>\$410,000</b>	<b>\$8,685,000</b>	<b>\$9,810,000</b>	<b>\$10,985,000</b>
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*Department of Public Safety*

The Department of Public Safety provided the Subcommittee on Taxation and Regulation with a comprehensive budget estimate. See the attached letter from the Department of Public Safety explaining its estimated budget in detail.

<b>Department of Public Safety</b>				
<b>Budget Items</b>	<b>Prior to Retail</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>
<b>Road Side Oral Fluid Testing</b>				
100 Instruments	\$370,000	\$0	\$0	\$0
1,000 Cartridges	\$20,000	\$0	\$0	\$0
500 Cartridges	\$0	\$10,000	\$10,000	\$10,000
Training Materials	\$5,000	\$0	\$0	\$0
Equipment Service/ Extended warranty	\$0	\$40,000	\$40,000	\$40,000
Ongoing supplies	\$0	\$10,000	\$10,000	\$10,000
<b>Subtotal</b>	<b>\$395,000</b>	<b>\$60,000</b>	<b>\$60,000</b>	<b>\$60,000</b>
<b>Laboratory Expenses</b>				
Forensic Lab Start-Up	\$30,000	\$0	\$0	\$0
25% Increase in Tests	\$0	\$53,000	\$53,000	\$53,000
<b>Subtotal</b>	<b>\$30,000</b>	<b>\$53,000</b>	<b>\$53,000</b>	<b>\$53,000</b>
<b>Law Enforcement</b>				
12 New Investigators	\$2,200,000	\$1,600,000	\$1,600,000	\$1,600,000
Assistant Attorney General	\$100,000	\$100,000	\$100,000	\$100,000
DRE Program	\$560,000	\$560,000	\$560,000	\$560,000
<b>Subtotal</b>	<b>\$2,860,000</b>	<b>\$2,260,000</b>	<b>\$2,260,000</b>	<b>\$2,260,000</b>
<b>Data Collection and Analysis</b>				
Crime Research Group Contract	\$137,000	\$137,000	\$137,000	\$137,000
<b>Subtotal</b>	<b>\$137,000</b>	<b>\$137,000</b>	<b>\$137,000</b>	<b>\$137,000</b>
<b>Total</b>	<b>\$3,422,000</b>	<b>\$2,510,000</b>	<b>\$2,510,000</b>	<b>\$2,510,000</b>

*Vermont Marijuana Registry*

The Vermont Marijuana Registry administers the medical cannabis program in Vermont for registered patients, caregivers, and dispensaries. The Registry reviews and processes applications, issuing registry identification cards to residents of Vermont with verified debilitating medical conditions, and evaluates registered dispensaries' compliance with state law. Its current annual operating budget of approximately \$320,000 relies solely on licensing fees. If licensing fees are reduced, then statutory requirements would need to be removed and staffing

would need to be decreased. Subsequently, the Registry’s operating budget and services would have to be reduced. Allowing other funding alternatives such as tax revenues would avoid the need for layoffs or a reduction in statutory requirements.

*Department of Liquor and Lottery*

The Department of Liquor and Lottery did not provide a budget estimate for this report.

*Seed-to-Sale Tracking System*

These figures are based on Colorado’s experience of a seed-to-sale traceability system for tracking cannabis production through retail operations.

<b>Seed-to-Sale Tracking System</b>			
<b>Prior to Retail</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>
\$2,000,000	\$175,000	\$175,000	\$175,000

*Municipalities: Revenue Allocation and Local Taxing Authority*

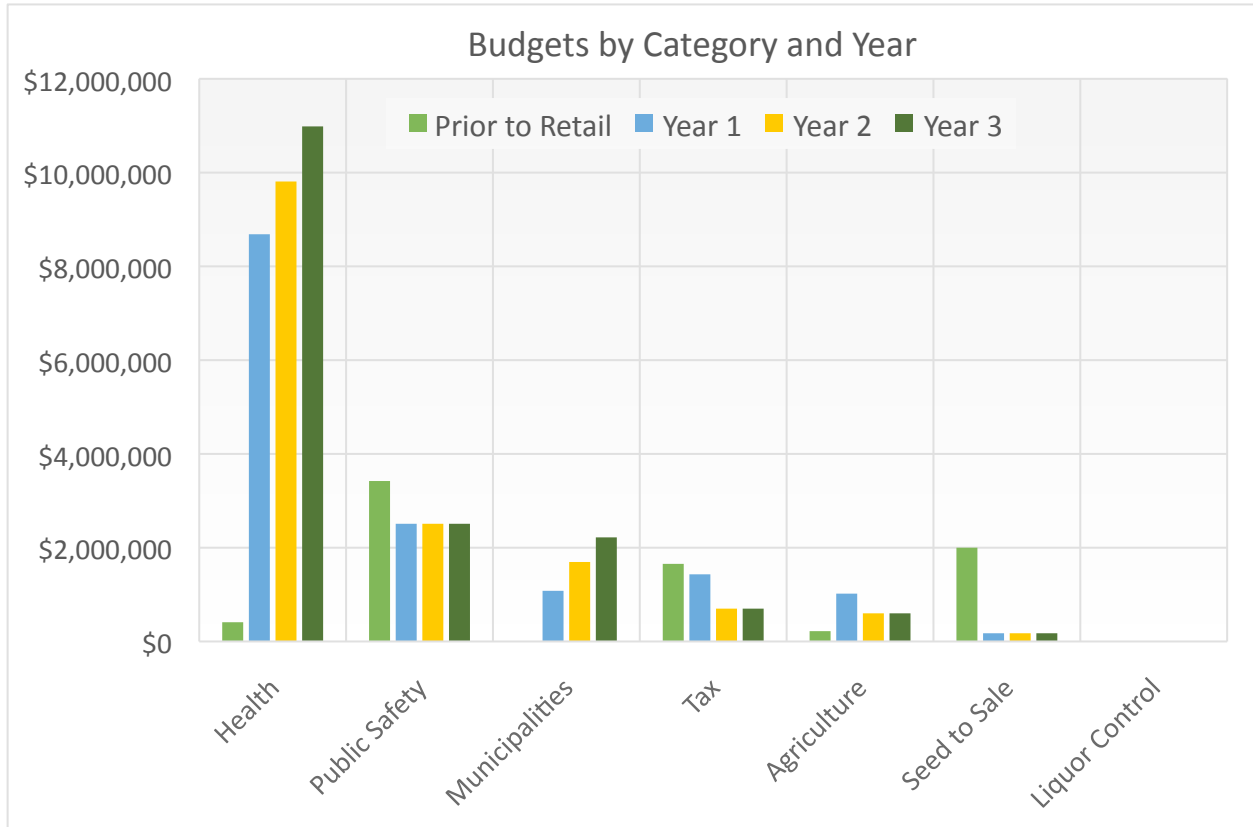
The Commission adopts the Subcommittee recommendation to provide funding to all Vermont municipalities by either a statutory percentage or dollar amount of the total cannabis excise tax revenue. This will help level the playing field amongst towns, since the impact of cannabis activities will be felt everywhere, regardless of whether a town or city hosts any cannabis establishments. Communities without cannabis establishments, including those that opt out of hosting, should still receive some funding to alleviate the effects of operations based in nearby municipalities, as well as local consequences that arise from personal use and cultivation, including highway safety, zoning, etc. Towns that host cannabis establishments should be allocated a larger portion of the revenues. Revenue sharing would prevent municipalities from having to increase property taxes or cut local budgets for other services.

For purposes of budgeting, the Commission assumed a revenue sharing structure where 5% of all excise tax revenue is distributed amongst Vermont towns, and an additional 10% of all excise tax revenue is distributed amongst Vermont towns with retail cannabis establishments. There are also opportunities to divide this 10% amongst towns based on production and retail establishments, but more administration and complexity in this process could lead to less revenue reaching municipalities.

<b>Municipal Disbursements</b>				
<b>Budget Items</b>	<b>Prior to Retail</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>
<b>5% to All Municipalities</b>	\$0	\$360,000	\$565,000	\$740,000
<b>10% to Munis w/ Retailers</b>	\$0	\$720,000	\$1,130,000	\$1,480,000
<b>Total</b>	<b>\$0</b>	<b>\$1,080,000</b>	<b>\$1,695,000</b>	<b>\$2,220,000</b>

### Aggregated Revenues and Budgets

Comparing the aggregated budget estimates with the consensus revenue forecasts presented in this report illuminate several considerations for the potential legalization of a cannabis market.

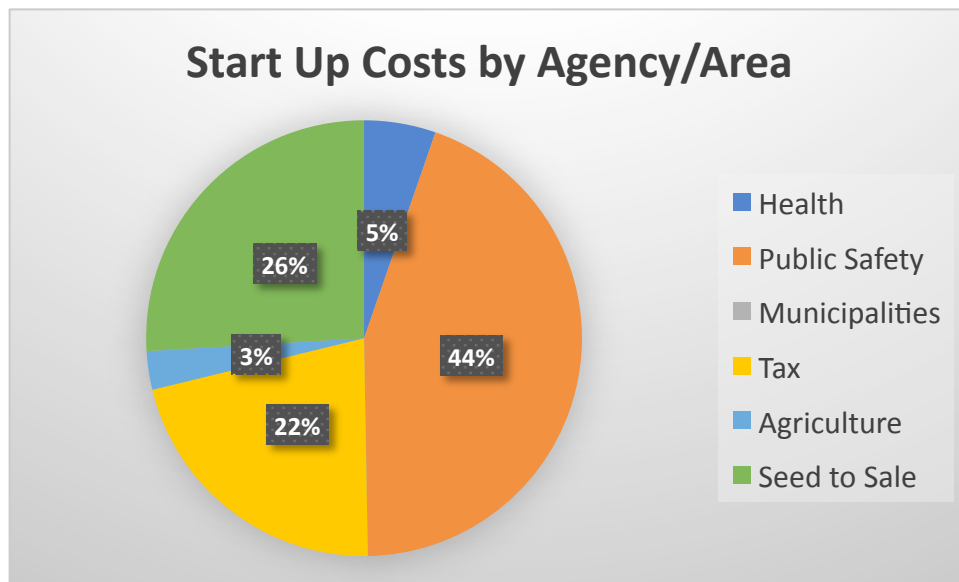


MAC Expense Summary				
Budget Category	Prior to Retail	Year 1	Year 2	Year 3
Health	\$410,000	\$8,685,000	\$9,810,000	\$10,985,000
Public Safety	\$3,422,000	\$2,510,000	\$2,510,000	\$2,510,000
Municipalities	\$0	\$1,080,000	\$1,695,000	\$2,220,000
Tax	\$1,655,000	\$1,432,000	\$700,000	\$700,000
Agriculture	\$220,000	\$1,020,000	\$600,000	\$600,000
Seed to Sale	\$2,000,000	\$175,000	\$175,000	\$175,000
Liquor Control				
<b>Total</b>	<b>\$7,707,000</b>	<b>\$14,902,000</b>	<b>\$15,490,000</b>	<b>\$17,190,000</b>

## Self-Funded Regulatory Model

### Start-Up Costs Are a Challenge

Much of the infrastructure needed to administer a recreational cannabis market must be established before any retail tax revenue is received. For instance, the State needs to implement seed-to-sale tracking software, and agencies need to hire and train staff that will be responsible for administering and enforcing the rules of the market.



The Commission considered a variety of options offered by the Subcommittee to mitigate the challenge of funding start-up costs. They are listed below in no particular order.

1. Impose higher licensing fees for initial retail applications, then lower fees for annual licensing renewal. Require application fees to be paid upfront before retail sales begin. This proposal would create a time lag between when the administrative agency would receive fees and when the retailer would start selling to consumers.
2. Stagger the number of licenses issued over the first three fiscal years so that the administrative workload could be balanced with the hiring of new staff.
3. Create a one-time excise tax on the first sale by cultivators with an automatic sunset before retail sales begin. This would allow tax revenues to be collected before retail sales begin.
4. Devise a retail license auctioning system so that a limited number of retail licenses may be sold to the highest bidders.
5. Require licensees to provide upfront capital to pay for the regulatory system, structuring the payments like a loan to the State that accrues interest.
6. Create a captive pool or marketplace where businesses buy and trade operating shares, similar to a carbon emissions trading model (cannabis market trading).

7. Create a fund like that in S.241 of 2016 that could be drawn from early in the year, then is required to be balanced out by the end of the fiscal year (like the Clean Water Fund).

In order to meet the goal of eliminating any impact on the State's budget, the Commission recommends following a combination of approaches to meet the challenges of funding a new regulatory structure. The greatest obstacle to self-funding is that significant costs will be incurred upfront, long before any tax revenues from retail sales are collected. Although licensing fees are another source of revenue and may be collected prior to the start of retail sales, fee revenues alone are insufficient to cover all implementation costs. Setting initial license application fees at an amount that would cover implementation costs would be prohibitively expensive for all but the largest businesses. For this reason, the Commission recommends keeping licensing fees reasonable to allow small entrepreneurs to enter the market. To address the need for funding before retail sales begin, licensing fees should be due as early as possible following legalization. This could be six to twelve months before retail sales may begin. Additionally, the number of licenses initially issued should be limited for certain types and categories of licenses. This will help to control the administrative burden of starting up a new structure, including hiring and training new staff.

Another option to cover the initial start-up costs would be to authorize the State to bond against future excise tax revenue. This proposal could be challenging to implement in practice, however, given the Schedule I illegal status of cannabis at the federal level, which might make underwriting and selling the debt difficult or impossible. A further option is to borrow from licensees in the form of a loan repaid with interest. This option also has a disadvantage, in that it creates an automatic barrier to entry for smaller establishments who lack access to capital.

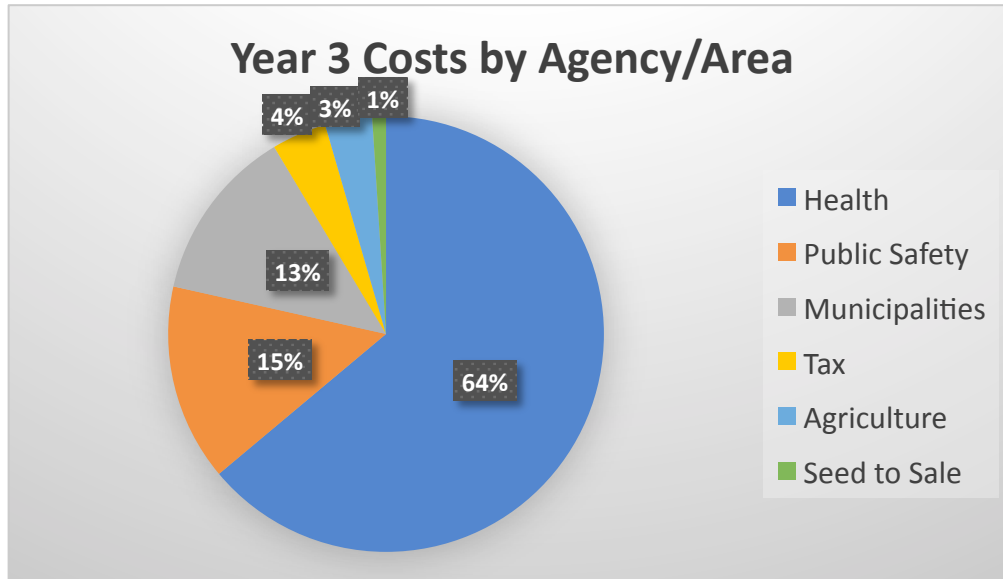
At the final Commission meeting, public comments were submitted by the Vermont Cannabis Trades Association (VCTA) suggesting that existing dispensaries operating in Vermont under the medical cannabis program could provide a valuable, early source of tax revenue if they were authorized to begin retail sales of cannabis under the current medical program requirements, with a grace period to come into compliance with the new recreational program laws. VCTA stated that they would be capable of operating in a retail market within six months of legalization. This possibility intersects with the idea of borrowing from a statutorily created fund, then repaying it at the end of the fiscal year. This is similar to the fund proposed in S.241 of 2016. The fund could be drawn down early in the year, then would be required to be balanced out by the end of the fiscal year, much like the clean water fund. A pitfall of this option is the time pressure to make repayments within the fiscal year to balance out the fund, especially in the first year of implementation when unforeseen delays are more likely and should be expected.

Along the same lines, an additional source of start-up revenue could be borrowed from the medical program's registration fee fund established under 18 V.S.A. § 4474a to offset the costs of processing applications. This would have nexus to the adult-use structure if dispensaries were the first establishments to begin retail sales. The funds would have to be reimbursed in order to fund the Vermont Marijuana Registry's operating budget, which is completely reliant on registration fees. Repayment could be made from adult-use tax revenues.

### Funding Needs Evolve Over the First Few Years

The budgeting needs and requests in Year 3 of retail sales are projected to be very different than those prior to retail or in Year 1. Budgets for Tax and Agriculture Food and

Markets decrease after their IT systems are completed in Year 1. Meanwhile, expenses ramp up over time for the Department of Health’s education and prevention programs. Since municipal disbursements would depend on a percentage of retail tax revenue, and since retail tax revenue is expected to increase over the first three years of a legal market, disbursements to municipalities would also increase over the first three years of retail sales. Recognizing these shifts over time is important to ensure funding for critical programs.



## CONTROL MODEL

At the end of alcohol prohibition, all states instituted some form of three-tiered system of producers, wholesale distributors, and retailers to promote moderation in consumption, prevent concentration of power, and raise revenues through taxes. Producers or manufacturers are typically breweries, wineries, or distilleries. Distributors are companies designed to sell specific products to bars, stores, and restaurants, among others. Retailers are typically grocery and liquor stores, bars, and restaurants who sell directly to the consumer. Vermont, along with sixteen other states and two counties in Maryland, directly control the sale of liquor at the wholesale level and are considered “control states” or “control jurisdictions.”

The primary focus of a control model is social responsibility rather than profitability. In an open market, the goal is to increase sales and profits by encouraging use and pushing the product. Marketing often targets underage youth to encourage consumption, as well as heavy, frequent users by offering discounts on high volume sales. Sellers engage in price wars between outlets and increase availability with more locations and extended hours to attract customers. Sellers who are more willing to tolerate a certain level of black-market activity make diversion and tax evasion more likely.

Were the State to decide to establish licensed retail sales here, creating a control state model would both promote the public good, and maximize revenue flowing to the State. This would be accomplished by making the State the sole distributor and the retailer, thereby cutting out the middleman. As the distributor, the State would encourage small local producers to enter the market, contributing to a more vibrant and diverse industry and creating additional employment opportunities spread throughout the state. As the retailer, the State would ensure uniform prices and selection across the state, limit access by controlling the number of retail locations and their hours of operation, and keep questionably sourced or dangerously high potency products out of the market.

Under a pure control state model, a fundamental goal would be the reduction or elimination of the black market. This would be accomplished through flexible pricing, ensuring the quality and potency of products sold in state stores. This would also ensure that the only products that can be sold in stores would be unadulterated without harmful chemicals, fungicides, or pesticides. Clear labeling would be required so that consumers know what they are purchasing. A control model could also be achieved by educating consumers that purchasing from the State supports local businesses and state government and not drug cartels and drug dealers.

A contract agency store model provides the State with greater control over seller conduct to enhance compliance. By limiting the number of retail locations it becomes easier to conduct frequent compliance checks. State control means enhancing affordability and availability. Licensing, education, and enforcement would also be paid for out of the revenue generated from the consumption of the product, not from either General Fund dollars or licensing fees alone. This is also known as a “pay to play” structure. Additionally, local control is built into the control model and would allow municipalities to prohibit sales in their town by opting out.

### *Federal Preemption*

The biggest challenge in instituting a control model is that involving the State and its



employees directly in possessing and selling cannabis is potentially preempted, or nullified, by federal law. Possessing, distributing, and growing cannabis are federal crimes under the Comprehensive Drug Abuse Prevention and Control Act of 1970, (“Controlled Substances Act”), as is conspiring to do so.<sup>xxxiv</sup> A law that depends on state employees engaging in any of these actions or conspiring to do so by contracting with others on its behalf could put those workers at risk of federal prosecution.

### *State Regulation; Private Businesses*

The Commission adopts the Subcommittee’s recommendation to create a legal structure for the sale of recreational or adult-use cannabis where the State regulates an industry owned and operated by private entities. Under that model, the risk is borne by the private businesses, while the State still imposes regulations to protect and educate consumers, prevent diversion, and encourage local economic development. The State’s regulatory infrastructure would be entirely self-funded through licensing fees and tax revenues. Many of the suggested benefits of a pure control model can be achieved through regulation without incurring the risks associated with possessing or distributing a federally illegal substance. The important aspects to achieving that sort of regulatory control are included in this report, such as advertising, packaging, dosage, and labeling restrictions, a large enforcement role for the Department of Liquor and Lottery, and a Board of Control with broad authority and ability to flexibly adapt to a changing market. These recommendations will help further the priorities of a control model without incurring a high level of risk. While the Subcommittee did not recommend creating a pure control model it did note the possibility of considering a hybrid model where the state could empower a single private entity that operates under a similar pricing control and distribution structure like a pure control model. The Commission believes this approach is worthy of further exploration as it could potentially alleviate costs to the state and generate additional revenue.

### **Creation of Board of Control**

In order to efficiently centralize the administration of a new regulatory structure for recreational cannabis, and potentially for medical cannabis as well, the Commission adopts the Subcommittee’s recommendation to create a new Cannabis Board of Control. The Board would have certain specified administrative and quasi-judicial powers in relation to licensing and enforcement. The Commission considered whether the Board should be an independent executive branch entity or embedded in an existing entity such as the Department of Liquor and Lottery or the Agency of Agriculture, Food and Markets. The Commission decided that embedding the Board within the Department of Liquor and Lottery was the most advantageous option to leverage the budgetary resources and expertise of DLL and the Liquor Control Board. However, other stakeholders and regulators in addition to DLL should have a presence on the Board. The regulatory agencies should be statutorily named members either of the Board or its subcommittees with the primary authority to adopt rules on licensing requirements. Other crucial State agencies with a role on the Board or its subcommittees should include the Department of Health and the Department of Public Safety. The Vermont Marijuana Registry should also have an advisory role on the Board or be regulated by the Board. Public members and members with industry expertise should also be involved in the Board in an advisory capacity. The statute

creating the Board should include conflict of interest provisions prohibiting members or members' immediate families from maintaining any financial interest in the cannabis industry.

The Commission envisions numerous duties for the Board of Control as follows.

### **Licensing**

The Board should determine the number of licenses for each category based on the interests of the State. The Board should be provided some level of control over the fee amounts, so that the fees more dynamically reflect true agency administration costs. The mechanics of the fee-setting, including the Board's authority to change fees, would need to be approved by the Legislature.

### **Adjudication**

The Commission proposes to empower the Board to make quasi-judicial determinations regarding licensing decisions and appeals of licensing decisions, including those based on background check records. Unfavorable background check results would be handled on a case-by-case basis, allowing the State to respond to circumstances that may have been unforeseen at the time of legislation.

### **Information**

The Board should be the primary clearing house for information from businesses, including the operation and maintenance of seed to sale tracking systems. This would be an important structure for setting up IT projects and streamlining reporting and data collection. The Board would then facilitate the necessary interagency data communications, with the appropriate safeguards in place to transfer information only to those with a legitimate need to know.

### **Medical**

The Commission recommends that the Board should either regulate the medical cannabis registry or that the registry should be a member of the Board to ensure consistency between the medical and recreational markets.

### **Product Content and Quality Standards**

The Board should have the authority to act like the Liquor Control Board's listing committee to determine which new products are allowed into the market and which should be removed. The Board should also have rulemaking authority to set the standards for products that contain THC from a quality control and consumer protection standpoint. A grading system like maple syrup products could be adopted. The Board should also set rules for testing standards in consultation with the appropriate state agencies. Empowering a Board with this authority protects the State's interests by giving the Board the flexibility and agility to respond to an ever-changing market. The Board would be able both to make rules to fill gaps in silent or unspecific statute, and to make rapid decisions about products entering the market. The listing committee function in

particular would keep problematic products away from consumers without having to engage in a lengthy process to update statutes or regulations.

For a summary of the boards of control and other regulatory agencies in legalized states, see the chart in Appendix 1.

## **DIVERSION PREVENTION**

Preventing diversion is one of the primary concerns and overarching issues that the entire regulatory structure must work to achieve. Diversion occurs when cannabis products and revenues are produced and sold on the black and grey markets, including transport and sale into other jurisdictions where cannabis is illegal. A major concern about diversion is use by underage youth.<sup>xxxv</sup>

### **Prohibition on Gifting Cannabis for a Fee**

The Commission adopts the Subcommittee’s recommendation to expressly prohibit gifting of cannabis while charging for accessories, merchandise, delivery, etc. This recommendation coincides with the Office of the Vermont Attorney General’s July 23, 2018 advisory regarding the illegality of selling cannabis under the current personal use law, where only limited cultivation, possession, and consumption of cannabis is permitted. The advisory reads as follows: “Any transfer of cannabis for money, barter, or other legal consideration remains illegal under Vermont law. This includes a commercial transaction (i.e., an exchange of goods or services for money) with a purported “gift” of cannabis. Examples include: selling an item or service, like a bracelet or t-shirt with the “gift” of cannabis. Charging someone for the purported “delivery” of a cannabis “gift” would also be considered a sale.” The Subcommittee recommends including similar language that prohibits commercial transactions of cannabis under the pretext of gifting. Such language could read: “Any transaction whereby goods or services are exchanged for consideration with a purported gift of cannabis shall be prohibited.”

To achieve the same end, the Commission adopts the Subcommittee’s recommendation to prohibit sales of cannabis that are conditional on the purchase of other services or noncannabis products. Washington enacted the following prohibition: “Marijuana producers, processors, and retailers are prohibited from making sales of any marijuana or marijuana product, if the sale of the marijuana or marijuana product is conditioned upon the buyer's purchase of any service or nonmarijuana product. This subsection applies whether the buyer purchases such service or nonmarijuana product at the time of sale of the marijuana or marijuana product, or in a separate transaction.”<sup>xxxvi</sup> Including this sort of provision would preclude predatory practices by sellers.

### **Residential Delivery**

The Commission does not recommend allowing for home delivery of recreational cannabis. The consensus of the Commission is that cannabis sales should be no less restrictive than alcohol for which home delivery is not permitted.

## Seed-to-Sale Tracking

The Commission adopts the Subcommittee's recommendation that all cannabis be tracked from its seed state until it is sold. There is a need for a regulated distribution system to avoid federal scrutiny, although following the rescission of the Cole Memo by the U.S. Department of Justice, little certainty remains about what will avoid or attract federal scrutiny. Based on the Cole Memo and the legalized states' experience, a balance needs to be attempted between oversupply, which drives prices down, and then leads to diversion; and encouraging growers and sellers to leave the illicit market and join the legal market. A successful regulatory structure would have built-in flexibility to deal with oversupply, diversion, enforcement, and businesses' need to adapt to a challenging market. Although the tension may ultimately never fully be resolved, and the illicit market may never be eradicated completely, it can be reduced. An inventory tracking system can be developed to ensure that taxes are collected, and inventory does not migrate from or into the illegal market. A tracking system will allow for more effective audits and help to satisfy federal guidelines. A strong information system will also supplement limited staffing resources by automatically reporting on discrepancies and providing notice of potential tracking issues. This should track every plant and individual products and batches by bar code from seedling to final sale to consumer. This becomes especially important for any recalls when consumer safety issues are identified.

## LICENSING

### Licensing Overview

The Commission adopts the Subcommittee's recommendation to create five license categories: Cultivator, Processor, Retailer, Transporter, and Testing. Cultivator licenses should be structured on a tiered basis according to plant canopy size, with the smallest tier being issued in an unlimited number at the discretion of the Board of Control. At the start of legalized sales, only the smallest tier would be available, so as to encourage small, local farmers to enter the market. Issuance of medium- and large-tier cultivator licenses would be phased-in over time. If the State decides to take advantage of the funding opportunities offered by allowing existing medical dispensaries to provide initial services in the adult-use market as a solution to startup funding challenges for the state, a limited accommodation for those entities could be made. Any statute should include the basic cultivator license structure, including the phase-in of larger-scale cultivator licenses, and a maximum fee per tier, but the licensing authorities should make the final decision about the fee amounts charged and the number of licenses issued through the rulemaking process. This will allow regulators to have the flexibility to respond to an evolving market. A Testing license category will be allowed for separate laboratories and research facilities. The Subcommittee does not recommend that licenses for social clubs or lounges be authorized. Along the same lines, the Subcommittee recommends prohibiting the consumption of cannabis products on any licensee's premises. Creating social club licenses or allowing consumption on licensed premises in the initial stages of a recreational cannabis market would create many challenges that could be avoided by limiting consumption to private places only.

Under the regulatory structure envisioned by the Subcommittee, license applicants would have to meet requirements such as background checks. Other restrictions such as Vermont

residency or limits on vertical integration would not apply, although in rating cultivator license applications, preference would be given to Vermont residents. Licensees would only be able to hold one license per category to avoid creating monopolies. Only licensed retailers would be permitted to sell to consumers. Wholesale transactions would only be permitted between licensees, so that products sold from cultivators to processors, and from cultivators and processors to retailers can be tracked from seed to sale to prevent diversion, and to ensure tax compliance and quality control for consumers. The enabling statute would need an explicit provision stating that all licensees and their employees who handle cannabis products in excess of the personal use amounts authorized under Act 86 of 2018,<sup>xxxvii</sup> and who are in compliance with Vermont's cannabis laws and regulations, are exempt from State prosecution for the relevant criminal or civil offenses.

For all license types, one of the primary concerns is preventing diversion. This aligns with the purposes set out under the current medical cannabis statute, whereby the Department of Public Safety is required to adopt rules with the goal of protecting against diversion and theft without imposing an undue burden on registered dispensaries.<sup>xxxviii</sup> One means of preventing diversion is to provide adequate education and outreach from the regulatory agencies to applicants and approved licensees. Example training is currently provided by the Department of Liquor and Lottery to its alcohol licensees. Another means is deterrence. A zero-tolerance approach would send a strong signal that diversion is a serious offense with serious consequences.

Taking the example of Oregon, authorizing the licensing authority to immediately suspend any license for diversion would help to achieve this goal. Any consequences would need to be paired with an appeal process to ensure that licensees are treated fairly. A further overarching concern is ensuring that small Vermont businesses and the Vermont ethos are encouraged and respected, while also not restricting larger market players from participating in the Vermont economy. This is particularly important from the perspective of the viability of a new market; whereby larger or out-of-state investors can provide important start-up capital for a nascent industry. For this reason, the Commission concurs with the Subcommittee's decision not to recommend restricting licenses to Vermont residents, although Vermont residency will give an applicant for a cultivator license a preference in the application process.

## **Licensing Requirements**

### *Vertical Integration Permitted*

Vertical integration, whereby one natural or legal person is able to hold licenses for each stage of cannabis production and sale should be permitted. Vertical integration should not be either prohibited or required. This allows much-needed flexibility around creating a new business, so that businesses can adapt to and compete in a challenging and competitive market. Not allowing vertical integration would furthermore be challenging to enforce due to the complicated legal structures of entities.

Medical cannabis dispensaries should continue to be required to be vertically integrated while operating under medical licenses. This is particularly important to ensure expertise and quality control. However, if a dispensary is operating under a recreational market license, they will not be required to be vertically integrated. They may, like other recreational market licensees, hold not more than one license per license category.

### *Number of Licenses*

Only the smallest tier of cultivator licenses should be allowed to be issued on an unlimited basis at the discretion of the Board of Control. This tier could be set at either 500 or 1,000 square feet of flowering plant canopy. The Subcommittee has suggested that allowing an unlimited number of the smallest cultivator licenses is important to help bring current growers out of the black market and to integrate them into the legal market. This is also important to encourage small Vermont cultivators, which will help the local economy and employ Vermonters. By encouraging smaller-scale businesses, the hope is also to foster a similar focus on quality and specialization that has been demonstrated by the Vermont craft beer industry. This would also continue to advance the national image of Vermont products as being of the highest quality. The Subcommittee also recommends that a business only be able to obtain one license per category to help avoid creating monopolies.

The number of licenses issued should ultimately be determined by the Board, which would also have the authority to adjust that number in the future to respond to supply and demand in the market. This is essential to address concerns about oversupply and its effect on the black market. When there is too much supply, prices drop, and legal growers or sellers find themselves with too much product on hand. This can incentivize sales to the grey and black market, which then takes cannabis products out of the stream of taxable commerce and can lead to greater access by underage consumers or consumers in states where sales are illegal. These are the sorts of consequences that could attract federal scrutiny.

### *Background Checks Required*

Background checks should be required for all license applicants. For business entities, this will include the entity owners, directors, and executives, so as to target only the licensees with decision-making power. Prior non-violent cannabis-related drug convictions should not be considered disqualifying. Felonies would be disqualifying crimes, whereas misdemeanors would not. Specific crimes like fraud, felony drug trafficking, or any financial-related crimes, would be disqualifying crimes. These standards should be made to apply universally to both the medical program and to the recreational use industry to create uniformity, particularly for dispensaries operating in both structures. An appeal process would need to be instituted by the Board in case of a license being denied based on criminal records. This adjudication would be handled by the Board in its quasi-judicial capacity.

### *Preference for Vermont Residency*

The Subcommittee did not recommend requiring Vermont residency for cannabis license applicants. However, the Subcommittee did recommend creating a residency *preference* for *cultivators*. The Commission adopts this recommendation. This preference should be given in the application process to individuals who have been Vermont residents for a minimum period, either for 6 or 12 months preceding the application for a cultivator license. Washington requires applicants to have in the state of Washington for at least six months prior to application for a cannabis license, and Colorado requires at least one year. Investment from individuals in other states maybe a good source of initial capital for start-up costs. Moreover, the recommendation to initially allow only small cultivator licenses and then phase in cultivator licenses at the medium

and large tiers, is more likely to achieve the aim of encouraging small, local businesses than requiring residency.

### *Information Reporting and Sharing*

Creating a new regulatory structure will raise issues around data, notably security for information collection, storage, and access, but also relating to efficiency and ease of access for users. The Subcommittee identified a need for data reporting and other key information to be shared amongst regulatory agencies on a need-to-know basis. To comply with federal and state laws that protect personal information reported to government entities, access to records and other sensitive information must be strictly limited to those who have a legitimate need to know in administering cannabis laws and regulations. This would include regulatory agencies, law enforcement, disclosures authorized by the individual in writing, and disclosures for statistical or research purposes, including for the Legislature when the information disclosed is not personally identifiable. Not all regulatory agencies will need access to the same information, such as tax returns, which are automatically protected under statute. For tax return information, explicit statutory exemptions would need to be created to allow the Department of Taxes to disclose specified information to designated agencies.

The way that information is collected will also be an important issue for the businesses subject to new reporting requirements. The Subcommittee recommends creating the most efficient and user-friendly structure possible. Ideally, the application and licensing process would be funneled through the Board, and the Board could be given access to data from entities collecting it on an ongoing basis such as Tax. The Commission concurs with this recommendation.

One suggestion is building upon the current medical cannabis regulatory structure, so that monthly financials, access to review the monthly sales returns filed with the Department of Taxes, information on beneficial ownership of each entity and person involved in the businesses be shared information. Another example, in order to attract more banks or credit unions to provide services to cannabis businesses, is to provide limited access to financial information about licensees in a timely, reliable way to help to decrease banking unease about serving the industry.

### **License Types**

All license types will be specific to the person identified on the license and will be non-transferrable. Any statute should include an explicit provision stating that all licensees and their employees who handle cannabis products in excess of the personal use amounts authorized under Act 86 of 2018,<sup>xxxix</sup> and who are in compliance with Vermont's cannabis laws and regulations, are exempt from State prosecution for the relevant criminal or civil offenses. Imposing minimum buffer zones to respect federal and state drug-free zone laws are also an important consideration. The distance selected could have a considerable impact depending on the town, because a large buffer zone has the potential to exclude an entire downtown or commercial district from cannabis activities. Determining what is an appropriate distance for recreational cannabis activities (primarily retail, but potentially any type of cannabis establishment) could be the same as that currently set for medical cannabis dispensaries, which is not within 1,000 feet of the property line of a preexisting public or private school or licensed or regulated child care facility.<sup>xl</sup>

Alternatively, it could be set at 500 feet of school property to align with the criminal offense of selling or dispensing a regulated drug on school grounds or property abutting school property within 500 feet of school property.<sup>xli</sup>

### *Cultivator*

The Commission adopts the Subcommittee's recommendation to create a tiered cultivator license structure based on plant canopy size, with an unlimited number of licenses available immediately following legalizing for the smallest tier of cultivators only at the discretion of the Board. The issuance of medium- and large-sized cultivators should be phased in one or two years after legalized sales begin with potential exceptions for existing medical dispensaries entering the recreational market.

The Agency of Agriculture, Food and Markets will be the primary regulatory agency over cultivator licenses. Each cultivation area, which could include growing, drying, and storage areas, will need to be reported to AAFM with the E911 locations and GPS coordinates. Mapping of field locations and indoor grows will be required. Certain licensing information such as addresses should be made exempt from public records requests (specifically the location of production areas) so as to protect the security of the cultivators and their inventory and to avoid theft.

Licensees will have to report the name and legal business type of the licensee (individual, corporation, etc.), the name and contact information for the cultivation and production area manager, and the contact information of landowner if they are not the same as the licensee. Changes to licensee information, including land ownership and cultivation area managers will be strictly limited. Record keeping and tracking that follows harvest lots or batches to their destination at the next licensed facility or to a consumer will be required by using a unique identifier tied to each licensee. Cultivators will be required to maintain records of testing information and results. Temporary or permanent closures of facilities will have to be reported to AAFM within a specified timeframe, and licensees will be required to propose a plan for disposal or dissolution of crop. If adulterants, which include pesticides, molds, mildews, heavy metals, and solvents, exceed levels determined by the AAFM to be deleterious to human health, then the cultivator must provide for a method of disposal.

### *Processor*

The Commission recommends that the Agency of Agriculture, Food and Markets be the primary regulatory agency over processor licenses. Each processing facility will need to be reported to AAFM with the E911 locations and GPS coordinates for entrance to the facility. Certain licensing information such as addresses should be made exempt from public records requests (specifically the location of production areas) so as to protect the security of the processors, their equipment, and their inventory.

Licensees will have to report the name and legal business type of the licensee (individual, corporation, etc.), the name and contact information for the processing facility manager, and the contact information of landowner if they are not the same as the licensee. Changes to licensee information, including land ownership and processing facility managers will be strictly limited. Record keeping and tracking that follows lots or batches to their destination at the next licensed facility will be required by using a unique identifier tied to each licensee. This will include name



of the individual(s) that transferred and/or transported the harvest lot to the processing facility. Processors will be required to maintain records of testing information and results. Processors will have to be in compliance with all applicable law and rules, including those adopted or enforced by the Division of Fire Safety, and the Department of Health's Good Manufacturing Practices, and Food and Lodging rules. Extraction methods will be limited to using either CO<sub>2</sub> or ethanol. Petroleum solvent extraction methods will be prohibited. If adulterants, which include pesticides, molds, mildews, heavy metals, and solvents, exceed levels determined by the AAFM to be deleterious to human health, then the processor must provide for a method of disposal.

### *Retailer*

The Commission recommends that the Department of Liquor and Lottery be the primary regulatory agency over retailer licenses. Numerous licensing requirements will be imposed on retailers because they will be the only licensees allowed to sell cannabis products to consumers. Retail sales will only be allowed at the retailer's licensed location. No mobile sales such as at farmers' markets or via food trucks will be permitted.

The Commission adopts the Subcommittee's recommendation to prohibit any consumption on the premises of retailers, including free samples. No self-service should be allowed, including vending machines. Including this restriction also avoids a confusing taxation issue because vending machine sales are generally subject to meals tax, and meals tax will not apply to sales of cannabis products. The Commission recommends a prohibition on drive-through sales like in Washington state.<sup>xliii</sup> Sales must always include age-verification of every customer. Retail sales will be restricted to certain hours, such as only between 7 a.m. and 10 p.m.

Discounts or gifts conditioned on the sale of other items should be prohibited. Other states prohibit these types of transactions (i.e. no "buy two joints, get the third half off") to protect consumers. The Commission adopts the Subcommittee's recommendation to prohibit the sale or gifting of materials used for home extraction.

Lastly, the Subcommittee recommended considering a separate "sales representative" license similar to the sales representative license for alcoholic beverages, that would only be available to the smallest tier of cultivators. This would allow small cultivators to sell their products directly to consumers at retail, for a lower fee than the retail license. Other than the lower fee, small cultivators would still be subject to the same requirements and restrictions as other retailers, such as no consumption or sampling on premises, no self-service, etc.

### *Transporter*

The Commission recommends that the Department of Liquor and Lottery be the primary regulatory agency over transporter licenses. The Commission adopts the Subcommittee's recommendation to allow the wholesale cultivator and processor licenses to include the authorization to transport products, but also recommends that a separate license should be available at a lower fee for transport or distribution services. It would be advisable to specify whether medical dispensaries would be allowed to use transport services for their medical products. Transporters would take on a crucial role as a gatekeeper in the scenario where residential delivery is authorized, and would need additional training regarding sales to consumers.

### *Testing by Laboratories and Other Research*

The Commission recommends that the Agency of Agriculture, Food and Markets be the primary regulatory agency over testing licenses. The Commission adopts the Subcommittee's recommendation to create a testing license that will allow both in-state laboratory testing of products, and in-state research by public or private institutions. This sort of license would be important if any state funding is appropriated for public health research. Laboratories will provide important testing services potentially to licensees under both the recreational and medical markets, as well as hemp and individuals growing for their own personal use. These will be run by the private sector and regulated by the State.

### **Setting Fees**

Title 32 sets out the requirements for creating or changing fees.<sup>xliii</sup> Fee changes must be "reasonably related to the cost of providing the associated service or product or performing the regulatory function. "Cost" shall be narrowly construed but may include reasonable and directly related costs of administration, maintenance, and other expenses due to providing the service or product or performing the regulatory function."<sup>xliv</sup> Setting a new fee rate or amount must be justified by the following factors:

- the relationship between the revenue to be raised by the fee or change in the fee and the cost of the service, product, or regulatory function supported by the fee, with costs construed narrowly;
- the existence of comparable fees in other jurisdictions; and
- policies that might affect the acceptance or the viability of the fee amount.<sup>xlv</sup>

Setting fees in statute will subject the fees to a Legislative fee review every three years, where the administrative agency will have the opportunity to request any adjustments to the fee amounts. The Commission recommends that the Board or licensing agency be explicitly authorized to request fee changes.

### *Other States' License Structure and Fees*

The eight states that allow recreational cannabis use all allow medical cannabis. The fees charged depend on the types of licenses, certificates, or registration cards required for different products, services, or roles provided. These fees depend on the structural choices about how to regulate the cultivation of the plant, its processing, handling, transportation, testing, and its sale. The fees charged for medical cannabis licenses are less than the fees charged for recreational market licenses. Some states give different government bodies regulatory authority over medical cannabis (typically the department of health) than over recreational cannabis (a wide range from departments of tax and revenue to departments of liquor and cannabis control). Even within the two broad categories of medical versus recreational cannabis, other government entities often regulate a particular step in the chain of cultivation and sale, such as the department of agriculture at the cultivation and testing stages, and the department of liquor control at the retail and enforcement stages. Colorado's Department of Revenue regulated both medical and adult-use cannabis structures from the outset. Nevada is transitioning its medical cannabis regulation under the Department of Taxation. California and Massachusetts are fully combining all

cannabis regulation (medical and recreational) into one regulatory body: the Bureau of Cannabis Control in California and the Cannabis Control Commission in Massachusetts.

If Vermont had the exact same experience and fee structure as Colorado, and Colorado’s experience was scalable to Vermont based on population, Vermont could expect \$1.4 million to \$1.7 million in license and other fee revenue.<sup>xlvi</sup> If Vermont had the same experience and provisions as Washington, and Washington’s experience was scalable to Vermont based on population, Vermont could expect \$89,000 to \$337,000 in annual license and other fee revenue.<sup>xlvii</sup> The tables below show the breakouts:

<b>Colorado License and Other Fees Scaled to Vermont</b>				
	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>
<b>License &amp; Other Fee Revenue</b>	\$14,155,854	\$15,414,075	\$13,047,255	\$12,801,350
<b>% Change</b>		9%	-15%	-2%
<b>Vermont-Scaled Revenue</b>	<b>\$1,574,488</b>	<b>\$1,714,434</b>	<b>\$1,451,184</b>	<b>\$1,423,833</b>

<b>Washington License and Other Fees Scaled to Vermont</b>				
	<b>FY14</b>	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>
<b>License &amp; Other Fee Revenue</b>	\$1,780,000	\$1,060,000	\$3,000,000	\$4,000,000
<b>% Change</b>		-40%	183%	33%
<b>Vermont-Scaled Revenue</b>	<b>\$149,898</b>	<b>\$89,265</b>	<b>\$252,638</b>	<b>\$336,850</b>

Refer to the chart in Appendix that summarizes the fees charged for both medical and recreational cannabis licenses and other cannabis-related services in the eight legalized states.

## CONSUMER PROTECTION AND FORMS OF USE

### Advertising Restrictions

The Commission recommends that, similar to alcohol restrictions, restrictions be placed on advertisements so that they cannot do any of the following:

*Ads may not be enticing to minors*

Advertisements may not use images of minors, cartoon characters, toys or items that are typically marketed to those under 21, candy-shaped edibles, etc.

*Ads may not promote excessive use*

Advertisements may not display consumption, encourage use because of intoxicating effects, or encourage excessive or rapid consumption.

### *Ads may not promote illegal activity*

Advertisements may not promote illegal activity such as transporting over state lines.

### *Ads may not contain deceptive, false, or misleading statements*

Advertisements may not assert that cannabis is safe because it is regulated and tested, because it has therapeutic or curative effects, or make claims to being “organic,” unless the plants used are produced, processed and certified according to national organic standards established by the United States Department of Agriculture under the Organic Foods Production Act of 1990.<sup>xlviii</sup>

### *Prohibited modes of advertising*

Cannabis establishments may not advertise their products via flyers, television, radio, billboards, print or internet unless the licensee can show that no more than 30% of the audience is reasonably expected to be under 21. This form of advertising limitation exists in both Oregon and Colorado.

## **Edibles**

### *Packaging and Labeling*

The Commission was unable to reach consensus on whether to allow the sale of edible or infused products.

If a statutory scheme is enacted that allows for the sales of edibles and infused products, the Commission adopts the Subcommittee’s recommendation that all packaging for products be child resistant and that it be in line with the federal regulations.<sup>xlix</sup> All labels should also include warnings of the products, especially edibles. These labels should be conspicuous and unobstructed and be in line with restrictions regarding advertising. The Subcommittee further recommends a universal THC symbol to alert consumers that the product contains cannabis. Colorado regulations could provide example legislative language.<sup>1</sup> Washington also has comprehensive regulations that address the restrictions placed on processors who manufacture edibles.<sup>li</sup>

### *Potency and Dosage*

The Commission adopts the Subcommittee’s recommendation that, if edible products are permitted, there be limitations on potency and dosages of cannabis and cannabis products. The Commission adopts the Subcommittee’s recommendation that products be not more potent than 10 milligrams of active THC per serving and that there be a maximum of 10 servings or 100 milligrams of THC per package. These dosage limits are consistent with what other states have imposed, notably Colorado and Washington, whose limit is 10 milligrams of THC per serving and 100 milligrams of THC per package. Oregon’s and Massachusetts’ limits are both 5 milligrams of THC per serving and 50 milligrams of THC per package. The Commission adopts

the Subcommittee's recommendation that these limitations not affect the limits imposed by the medical cannabis program. The dosage limits for the therapeutic use of cannabis should not be changed so as to allow for targeted and controlled medical use. This would allow medical cannabis potency to be greater than for the recreational market. However, potency labeling should be added as a requirement for medical cannabis. Additionally, 18 V.S.A. § 4474e(a)(1)(A) should be updated to reflect the same method of attributing cannabis infused products to the allowed dispensing limit.

### *Ban on Mixing THC with Other Products*

The Commission adopts the Subcommittee's recommendation to prohibit the sale of cannabis mixed with products containing caffeine, nicotine, tobacco, or alcohol, out of a concern for cross addiction between products. This concern is especially great for youth use. Example legislative language can be found in H.490 of 2018, which prohibited mixing cannabis products with caffeine, nicotine, or alcohol.<sup>lii</sup> It is important to note that tinctures made with alcohol would still need to be allowed, as these are used frequently for medicinal cannabis products. Although current law following the enactment of Act 86 of 2018 already defines cannabis under 18 V.S.A. § 4201(15) in a way that includes edibles, the H.490 definition of "marijuana-infused products" could be used to be more explicit about tinctures. This definition includes "tinctures, oils, solvents, and edible or potable goods."<sup>liii</sup>

Furthermore, the Commission adopts the Subcommittee's recommendation to create a listing committee similar to the Board of Liquor and Lottery, established in 7 V.S.A. § 2. This committee would ensure that cannabis products are suited for the market through a vetting process. The Board should also be given rulemaking authority to set standards for products containing THC under a listing committee process.

### **Quality Control and Laboratory Testing**

To verify cannabinoid label guarantees and quality control of cannabis products available on a recreational market, the Commission adopts the Subcommittee's recommendation that there be testing through laboratories that are certified by the Agency of Agriculture, Food and Markets (AAFM). This recommendation aligns with Act 143 of 2018, which requires AAFM to establish a cannabis quality control program both as a means of regulating and enforcing THC content and adulterants (pesticides, solvents, heavy metals, mycotoxins, and bacterial and fungal contaminants).<sup>liv</sup> This means ensuring a level that AAFM determines is not deleterious to human health. This would extend to recreational cannabis as well. As recommended above, the Subcommittee suggests imposing a cap on THC content that mirrors Colorado and Washington's limits of 10 milligrams of active THC per serving, and 10 servings per package (100 milligrams of THC). The Commission adopts the Subcommittee's recommendation to devise a grading system similar to that used by the maple syrup industry. This sort of classification could be created by rule by the Board. Quality control would be aided by a robust seed-to-sale tracking system.

## **LOCAL CONTROL**

### **Express Legislative Authority**

Municipalities need a grant of express legislative authority to regulate cannabis, because Vermont is a Dillon's Rule state. This will require creating new uses that towns may regulate via zoning and planning ordinances and bylaws. The Commission adopts the Subcommittee's recommendation to grant new enumerated powers to municipalities under 24 V.S.A. § 2291 to regulate the time, use, and manner of cannabis activities at local level. Under a tax and regulate regime, using the administrative and regulatory infrastructure in 7 V.S.A. chapter 7 as a model, local permitting for cannabis establishments could be overseen at the local level by control commissioners. Pursuant to 7 V.S.A. § 167, control commissioners administer the rules of the Liquor and Lottery Board and exercise the authority to license or permit establishments that furnish alcohol. The control commissioners are the select board and city councils of each town and city according to 7 V.S.A. § 166.

### **Opt-Out Model**

The Commission did not reach consensus on whether communities should be required to opt-out from, or permitted to opt-in to, allowing commercial cannabis activities in their jurisdictions.

The Subcommittee recommended following the existing model for liquor control under 7 V.S.A. § 161, so that local communities could opt out of allowing cannabis establishments to operate in their jurisdiction. Voters in towns and cities would then have the opportunity to decide whether to allow cannabis establishments to operate in their communities. Similar to municipalities' right to determine whether to be "dry" alcohol towns or not, towns should be able to determine whether to allow the sale of cannabis within their boundaries. This section could be modified to require local approval to host cannabis facilities. Adequate time must be provided at special or annual meetings for such votes to take place. Both opt-out and opt-in approaches create timing issues for local processes.

### **Timing**

The timing and implementation of a new regulatory structure at the state level has implications for timing at the local level. Under current statutory timelines, some towns could take up to a year to enact zoning and ordinances, and then process new establishments' applications. Consequently, there needs to be enough time incorporated into statutory deadlines for giving notice, holding meetings and votes, and respecting appeal periods. Town-level process cannot begin until the State has set its own rules. This will require the relevant statutes for each agency with regulatory authority over licensing to be updated, notably title 7 for the Department of Liquor and Lottery, and title 6 for the Agency of Agriculture, Food and Markets.

### **Zoning**

The zoning issues that arise with regard to a legal recreational cannabis market include siting of businesses, buffer zones from schools and daycares, and required signages.

Municipalities will require statutory authority under 24 V.S.A. § 4414 to be able to adopt zoning for regarding cannabis activities. The question of a statewide buffer zone from schools and daycares should be considered carefully, because a large buffer zone in a small town could potentially exclude an entire downtown or commercial district from cannabis activities. Towns are concerned with signage, especially for retailers and other cannabis establishments, and with having guidance. Towns expressed a desire to have unified, State-mandated requirements for signage, such as specified fonts, image and color restrictions or requirements, size, not being enticing to children, etc.

The question about whether minimum standards should be set in statute for all towns, even those who do not have zoning arose in Subcommittee discussions. Most towns and cities have zoning laws, but many lack code enforcement for issues like electrical, health, building, and plumbing standards. Towns and cities that have codes may experience an increased enforcement burden under a tax and regulate legalization framework if cannabis establishments are located in their jurisdiction. Additionally, the State may need to assume those responsibilities for municipalities that do not have code enforcement.

### **Bylaws and Ordinances**

Municipalities need statutory authority under 24 V.S.A. § 2291 to enact freestanding time, use, and manner ordinances regulating or prohibiting nuisances like odor, noise, waste, etc., caused by cannabis activities. Such activities include use, cultivation, production, and sale, among others. Towns also need clear, standardized definitions on which to build their bylaws. Definitions are of particular concern for environmental litigation. Clear, standardized guidance is of particular concern.

### **Impacts on Local Public Safety, Law Enforcement, Public Health**

In Vermont there are 246 municipalities, 56 local police departments, and 14 county sheriff departments. The State Police do not, and cannot cover every jurisdiction, so sheriff departments and local police agencies typically fill the gaps. State law enforcement agencies and officials should assess resource needs, including providing greater coverage in underserved areas, and additionally providing towns the resources to staff, contract out, and bolster enforcement needs.

There are agencies and departments in Vermont that are currently underfunded or unfunded, often rely on volunteers, and are geographically scattered or limited throughout the state. Community public safety officials will be largely responsible for dealing with issues that arise as a consequence of legalization. Although it is difficult to anticipate and quantify the extent to which the effects of those issues will be felt, State agencies and officials will not likely absorb the entirety of any needed responses. Local officials and local budgets may be affected. Advocates of legalization contend to the contrary there will instead be resource saving implications for state and local budgets. This would occur in part because enforcement officials would no longer have to dedicate resources to enforcing the criminal offenses for any sales, including of small amounts, that exist under the current state of the law prohibiting all sales.

According to the RAND Report, in 2014 approximately 80,000 Vermonters used cannabis at least once in the previous month.<sup>lv</sup> This level of existing use suggests that both State and local-level government already contribute resources to managing cannabis use in Vermont,

and additional attention is warranted to the areas below. The exact amount of new public costs - and savings – that legalization could create remains unknown, but the potential for an increase exist. Based on the experience of other states, public safety officials may experience a variety of impacts and should assess resource prioritization in areas such as:

- Fire hazards from illegal grows, extraction, etc.
- Combating diversion of cannabis out of state
- EMT/Paramedic response to use and drugged driving
- Illegal grow operations (black and gray markets)
- Public use and odor complaints
- Cannabis tourism
- Highway safety (impaired driving)
- Regulating legal retail operations
- Need for training/education on new law and regulations (probable cause, search/seizure, etc.)
- Storage of evidence/contraband
- Complaints of use and/or growing in multi-family homes
- Thefts/burglaries (rural grows, home-grows, retail operations)
- Prioritization of enforcement with current resources
- Technology (tracking data)

## **MEDICAL CANNABIS**

The Subcommittee emphasized that a major concern with the impact of legalizing recreational cannabis sales on the existing medical cannabis program in Vermont is ensuring that cannabis products remain a viable and affordable option for medical patients. In order to ensure the program’s continued viability, the requirements imposed on dispensaries need to be made consistent with the recreational structure where appropriate, and under certain circumstances, the requirements should be customized to accommodate the medical program’s particular aims. To achieve these ends, updates will need to be made to 18 V.S.A. ch. 86 in its entirety. The following possible changes to the medical cannabis program should be taken into consideration when creating a regulatory structure for sales of recreational cannabis.

### **Licenses**

Advocates for dispensaries have suggested that medical cannabis dispensaries that hold licenses in Vermont should automatically qualify for each type of license that is authorized for the recreational market, provided they meet the relevant licensing criteria. Such a provision was included in S.241, the adult use bill that passed the Vermont Senate in 2016. Medical cannabis dispensaries have the cultivation and retail expertise and have invested significant resources of time and money to establish a professional industry in Vermont. Some Vermont dispensaries are already processing and testing cannabis and hemp products, and conducting research related to the medical benefits of the cannabis plant and cannabinoids. Other legalized states such as Colorado allow licenses for dispensaries in the recreational market. The question of degree arises, whether dispensaries will automatically qualify for recreational licenses due to the requirements they currently meet, or whether they will need to reapply, and if so, whether they



will be given any preference in the application process. If dispensaries qualify automatically, then the requirement for dispensaries, patients, and caregivers to destroy or dispose of cannabis products that are not usable for symptom relief or that are beyond possession limits must be amended.<sup>lvi</sup>

Additional considerations are whether dispensaries will be allowed to purchase from the commercial market to supply patients, and if dispensaries will be allowed to sell their product to the commercial market if it meets the relevant retail standards. There could be restrictions on these types of transactions, such as only in the case of a shortage or surplus. The possession limits for dispensaries will also need to be amended to align with any possession limits imposed on recreational cultivators, or possibly to allow dispensaries to cultivate based on demand. Currently the number of plants and the amount of usable cannabis that a dispensary is allowed to possess is based on the number of designated patients.

### **Patient Access to Vermont Marijuana Registry**

The Commission adopts the Subcommittee’s recommendation to amend the current dispensing limit of two ounces per 30-day period per registered patient to align with Act 86 of 2018.<sup>lvii</sup> Additionally, the cultivation and possession limits for patients should be amended to align with Act 86.<sup>lviii</sup> It would be advisable to remove the requirement that patients designate only one dispensary from which they may make purchases, given that patients could buy from any retail establishment without restriction.<sup>lix</sup> It would be beneficial to broaden the definition of debilitating medical condition to allow more patients to register cannabis for symptom relief. Currently a health care professional verifies the medical condition. An alternative may be that instead of verifying the medical condition, the verification could be that (1) the provider has a bona fide relationship with the patient, (2) the provider has performed a medical evaluation, and (3) the provider has discussed the risks and potential benefits with the patient. Potential draft language for the criteria could be found in this Federation of State Medical Boards report.<sup>lx</sup>

Advocates for dispensaries have suggested that advertising for the Medical Marijuana Program should be allowed because Vermont has a very low participation rate (0.3% of population) for its medical cannabis program, and advertising is an important means for informing patients that the medical alternative exists.

### **Background Checks**

The Commission adopts the Subcommittee’s recommendation that the Marijuana Registry background checks requirements be aligned with recreational background checks, so that the same requirements are imposed on licensees, regardless of the regulatory structure under which they are operating. This would be particularly important if a dispensary is applying for or renewing licenses under both the recreational and the medical program, so as not to have to duplicate background checks. Background checks for medical dispensaries are currently required for each owner, principal, financier, and employee of a dispensary, as well as for caregivers. Disqualifying criminal records are set out in statute as conviction for “a drug-related offense or a violent felony or [...] a pending charge for such an offense.”<sup>lxi</sup> A “violent felony” is defined as “a listed crime as defined in 13 V.S.A. § 5301(7) or an offense involving sexual exploitation of children in violation of 13 V.S.A. chapter 64.” For caregivers only, additional disqualifying crimes are set out in 13 V.S.A. chapter 28 regarding abuse, neglect, and exploitation of

vulnerable adults. In all cases, evidence of caregivers' rehabilitation is taken into account. Identification cards should be revoked, or an application should be refused automatically if a background check returns records showing that an individual has been convicted of a disqualifying offence. The recommendation for licensees of the recreational use structure, is that non-violent cannabis-related drug offenses will not be disqualifying background check records. The Board of Control would have discretionary authority to make case-by-case decisions relating to background check records.

### **Labeling and Dosage**

The means of measuring THC content in cannabis products should be aligned across the medical, retail, and any civil or criminal possession limits. The actual THC dosage limits for medical cannabis, however, should be higher than those allowed for recreational use. The current language in 18 V.S.A. ch. 86 states that “[o]nly the portion of any marijuana-infused product that is attributable to marijuana shall count toward the possession limits of the dispensary and the patient. The Department of Public Safety shall establish by rule the appropriate method to establish the weight of marijuana that is attributable to marijuana-infused products. A dispensary shall dispense marijuana-infused products in child-resistant packaging as defined in 7 V.S.A. § 1012.” The Subcommittee recommends that the child-resistant packaging requirements in Vermont statute should align with federal (FDA) requirements. It is also important to identify testing methods that will be required on products prior to sale, in order to ensure proper labeling. The Board should have flexibility to modify required testing methods based on changes in the industry.

### **Taxation, Fees, and Revenues**

With regard to the new structure, statute should state explicitly that the excise tax on cannabis sales does not apply to sales through the medical program under 18 V.S.A. ch. 86. No changes to statute are necessary to continue the current sales tax treatment of tangible personal property sold by dispensaries (such as paraphernalia), which is subject to sales tax. Fees for medical licenses should be kept at the current level, or lowered so as to incentivize patients to buy from dispensaries for medical purposes. There is a concern about sales decreasing when patients have easier access at retail than through dispensaries. One possibility is to consider waiving the patient registry card fee or imposing only a one-time fee instead of an annual fee. The budgetary concern is that the Registry may need a set allocation in statute or a yearly budgetary appropriation of tax revenues in order to fund its operations if any licensing or card fees are reduced.

## **CANNABIS IN THE WORKPLACE**

The impact of cannabis use on employee rights, protections, and benefits, and on the employer-employee relationship is primarily regulated by federal law. Nevertheless, certain aspects of Vermont law could be clarified to make the legislative intent clearer, especially regarding use of medical cannabis outside of work hours and the resulting impact on employment rights. Cannabis in the workplace is therefore a field in which the Subcommittee

recommends minimal state-level legislative action. The section that follows summarizes the Subcommittee’s research, findings, and recommendations.

## **Drug-Free Workplace**

Vermont law limits employers’ authority to require applicants or employees to submit to drug tests. 21 V.S.A. ch. 5, subch. 11. A drug is defined as “a drug listed or classified by the U.S. Drug Enforcement Administration as a Schedule I drug, or its metabolites [...]”<sup>lxii</sup> A drug test is defined as “the procedure of taking and analyzing body fluids or materials from the body for the purpose of detecting the presence of a regulated drug [...] or a drug [...]” In regards to testing applicants, pre-employment screening in conjunction with a contingent job offer is permissible, as long as the applicant received written notice of the drug testing procedure and a list of the drugs to be tested.<sup>lxiii</sup> For an employer to test current employees for the presence of drugs, certain conditions must first be met.<sup>lxiv</sup> These conditions are laid out as follows.

Employers must create and “provide all persons tested with a written policy that identifies the circumstances under which persons may be required to submit to drug tests, the particular test procedures, the drugs that will be screened, a statement that over-the-counter medications and other substances may result in a positive test and the consequences of a positive test result.”<sup>lxv</sup> Employers must establish a drug testing program and select a qualified testing entity.<sup>lxvi</sup> Employers must have an employee assistance program available that consists of a rehabilitation program for alcohol or drug abuse.<sup>lxvii</sup> Once these conditions are met, an employer must have probable cause to believe the employee is using or is under the influence of a drug on the job, in order to test the employee. Probable cause is shown through objective observation such as smells, slurred speech, or other erratic behavior.<sup>lxviii</sup>

Even if an employee tests positive, he or she cannot be terminated if he or she “agrees to participate in and then successfully completes the employee assistance program.”<sup>lxix</sup> Employers may suspend the employee for the period of time necessary to complete the employee assistance rehabilitation program, “but in no event longer than three months.”<sup>lxx</sup> An employer can terminate an employee “if, after completion of an employee assistance program, the employer subsequently administers a drug test [...] and the test result is positive.”<sup>lxxi</sup>

The exception is for employees in certain federally regulated occupations like commercial driving, who are subject to more stringent drug testing in the workplace. If a business has federal contracts, and is considered a federal contractor, then the federal Drug-Free Workplace requirements apply.<sup>lxxii</sup> As these requirements are federal, they are beyond the jurisdiction of the State to amend.

## **Disability Law (ADA)**

Under the Americans with Disabilities Act (ADA), disability discrimination is prohibited, and employers must make reasonable employment accommodations for individuals with disabilities.<sup>lxxiii</sup> However, the reasonable accommodation requirement does not extend to individuals who use illegal drugs such as cannabis, which is classified as a Schedule I controlled substance.<sup>lxxiv</sup> This means that an employer does not have to accommodate an employee’s cannabis use, even if that use is for pain relief, because cannabis use is illegal under federal law, and therefore not protected by the ADA.<sup>lxxv</sup> However, an employer may have to accommodate the underlying medical condition being treated with cannabis.

## **Employment Practices**

The Office of the Vermont Attorney General issued a comprehensive memo following the enactment of Act 86 of 2018 regarding this new personal use and possession law's impact on Vermont employers.<sup>lxxvi</sup> The new law does not “require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana in the workplace.”<sup>lxxvii</sup> This same provision applies to medical cannabis employers, who are not required to permit or accommodate the use of cannabis in the workplace.<sup>lxxviii</sup> Employers may adopt a “policy that prohibits the use of marijuana in the workplace.”<sup>lxxix</sup> The law allows employers to “prohibit or otherwise regulate the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana on the employer’s premises.”<sup>lxxx</sup> Lastly, Act 86 explicitly did not create a “cause of action against an employer that discharges an employee for violating a policy that restricts or prohibits the use of marijuana by employees.”<sup>lxxxi</sup> In other words, if an employer did create and maintain a zero-tolerance policy on marijuana use, then an employee who is terminated for violating that policy could not sue their employer under Act 86.

## **Unemployment Insurance**

Use of cannabis or intoxication outside of the workplace is generally not a bar to a former employee’s access to unemployment insurance. However, if the individual prior to ceasing employment was proven to be intoxicated at work, then unemployment benefits would likely be unavailable. For example, if an employee fails mandated drug testing, such as for commercial drivers, and then the employee is terminated, the employee will likely be ineligible for unemployment insurance.

## **Worker’s Compensation**

Vermont’s medical cannabis law states explicitly that coverage or reimbursement for the use of medical cannabis is not required to be provided by health insurance or any insurance company regulated under title 8 of the Vermont Statutes, Medicaid or any other public health care assistance program, an employer, or for purposes of workers' compensation, an employer as defined in 21 V.S.A. § 601(3).<sup>lxxxii</sup> This statute makes Vermont one of only six states to explicitly exclude workers’ compensation insurers. The other six states are: Arizona, Florida, Michigan, Montana, and Washington.<sup>lxxxiii</sup> On its face, this law allows insurers to cover the costs of medical cannabis for a registered patient without violating Vermont law, but does not compel them to do so. This treatment is consistent with the drug’s continued status as an illegal Schedule I controlled substance. Vermont law cannot compel insurers to violate this federal law. The Vermont Department of Labor has interpreted Vermont law to mean that even if an employee’s use of cannabis is otherwise “medically appropriate, necessary and therefore reasonable under 21 V.S.A. § 640(a),” employers cannot be compelled under the Vermont Workers’ Compensation Act to reimburse employees for their medical marijuana expenses.<sup>lxxxiv</sup> This interpretation has been followed in other states, notably by the Maine Supreme Court.<sup>lxxxv</sup> Workers’ Compensation coverage may also be refused in case of intoxication in the workplace, as long as a causal relationship between the intoxication and the injury can be demonstrated. Intoxication may be demonstrated through witness observation.

Dispensaries as employers are also subject to the same workplace laws. However, they also struggle to procure Workers' Compensation policies for their employees. This occurs because there are very few companies willing to provide coverage to dispensary employees at an affordable cost. It is possible that insurers' reticence to enter the cannabis market could change with a larger population of insured, in the case of a legalized, regulated recreational market in Vermont. Insurers will likely consider a number of factors including: the federal Schedule I drug status of cannabis; whether states will require insurers to reimburse or pay for medical cannabis; whether medical cannabis is a viable alternative to opioids for pain management; whether cannabis helps to achieve better claim outcomes; and whether cannabis helps employees return to work sooner. Under a regulated market, the insurers' risk analysis might change, and the benefit could be perceived to outweigh the risk.

## **Occupational Safety and Health**

Under the federal Occupational Safety and Health Act (OSHA) and the State's Occupational Safety and Health Act (VOSHA), employers have a general duty to keep employees safe.<sup>lxxxvi</sup> Vermont law imposes a duty on each employer to provide employees with a place of employment that is "free from recognized hazards that are causing or are likely to cause death or significant physical harm to his or her employees [...]."<sup>lxxxvii</sup> The Vermont Department of Labor has rulemaking authority to implement these duties and purposes. Both Washington<sup>lxxxviii</sup> and Colorado<sup>lxxxix</sup> released guidance to help employers address occupational safety and health issues specific to the cannabis industry. These guides address both the federal and state legal requirements that are imposed on employers. The Subcommittee recommends following a similar education and outreach approach surrounding health and safety for the cannabis industry.

## **FINANCIAL INSTITUTIONS AND INSURANCE**

### **Banking**

The interaction of federal banking law with the continued status of cannabis as a prohibited Schedule I drug under the Controlled Substances Act causes strict financial reporting requirements to be imposed on financial institutions. As a result, the gridlocked state of federal law limits the extent to which banks and other financial institutions like credit unions can serve cannabis establishments. Although Congressional legislation is frequently proposed to amend these restrictions, no action has yet been taken to change the legal environment with which financial institutions must contend if they choose to do business with cannabis establishments.<sup>xc</sup> In addition to the legal implications, there are reputational risks for financial institutions, which makes them very cautious about entering into contracts with businesses engaged in illegal cannabis activities. The relative newness of a regulated cannabis market also increases financial institutions' reticence about taking on the risk of providing financial services to cannabis establishments.

Currently only one credit union serves Vermont's five medical cannabis dispensaries on the principle that all legal entities formed under State statute should have access to financial products and services from a State-chartered financial institution. Changes at the Federal level

and the evolving nature of providing banking services to cannabis establishments mean that this existing relationship may change at any time. This minimal access to financial services would be insufficient to maintain a viable recreational cannabis market. Under a regulated market, more financial institutions would have to provide financial services to meet the needs of new cannabis establishments. The need for more comprehensive financial services would be heightened by the Subcommittee's recommendation to require all licensees to attempt to obtain a depository account with a financial institution, and if unable to do so, to then develop and implement a comprehensive cash management and security plan. As seen in other jurisdictions that have legalized recreational cannabis, more financial institutions may judge that the benefits outweigh the risks, and consequently step forward to provide financial services to cannabis businesses. Nevertheless, the Subcommittee remains concerned that a licensed cannabis establishment's inability to obtain basic banking services will lead to large amounts of cash proceeds within the marketplace and used to pay for State services. If a licensee is unable to obtain a depository account with a financial institution, they should develop and implement a comprehensive cash management and security plan. Such a plan must address the increased security precautions necessary for the secure storage of large volumes of cash, and provide for secure means of paying service providers, taxing and other regulatory authorities, employees, and others.

The Subcommittee considered whether creating a Vermont State Bank would be a viable solution. It determined that it would not. A State-run bank would not solve any of the problems mentioned above, because a State Bank would still be subject to the same federal banking requirements as any other financial institution. Even a State bank would presumably be denied a Federal Reserve master account, therefore denying access to broader financial services networks and payment card transaction networks such as Visa or MasterCard. The concern over money crossing state lines would remain. For these reasons, the Subcommittee does not recommend creating a State Bank to provide financial services to cannabis businesses.

## **Insurance**

The legalization of adult use cannabis under a tax and regulate scheme presents a number of implications for the insurance industry and marketplace. Since cannabis is a Schedule I drug under the federal Controlled Substances Act, the standard (admitted) insurance market is typically unavailable to cover state-legal cannabis activities. There are surplus lines insurers (non-admitted) willing to provide a full array of insurance products to cannabis businesses including General Liability, Products Liability, Auto Liability, Umbrella and Professional Liability to name a few. In addition to the legal implications, there are reputational risks for standard insurers, which causes them to be reticent to enter the cannabis insurance marketplace. Additionally, the cannabis insurance marketplace is a relatively new insurance market, and insurers may need to evaluate the risks before entering the marketplace with standard insurance products. Nevertheless, as seen in other jurisdictions that have legalized, it is possible that more insurers may step forward to provide coverage to recreational cannabis establishments, if the market is firmly regulated.

The Surplus Lines market is the market of last resort in which insurance risks are placed because they are not reasonably procurable in the admitted market. Surplus Lines pricing and product offerings are determined by market forces and are not regulated at the state level like the admitted market. The availability of insurance products in the standard market is more likely to exist for personal cultivation because most standard homeowner policies are silent on cannabis

and do not expressly exclude or include coverage for cannabis. Cannabis plants could be included as covered items under the \$500.00 limited coverage provided under a Homeowners policy for trees shrubs or bushes. In the auto insurance market, insurers could potentially be reluctant to provide auto liability coverage for insureds involved in an auto accident that is the result of driving under the influence of cannabis. Vermont insurance regulators at the Department of Financial Regulation have taken the approach that providing protection for innocent third parties injured by operators who are under the influence of alcohol is good public policy. A similar public-policy-based approach could be taken for accidents involving cannabis.

The impact that cannabis legalization has on the cost of insurance is difficult to anticipate. The future cost of insurance in the property and casualty insurance market is usually dependent on a variety of factors, including but not limited to, prior loss experience, the projection of future loss experience and potential increases in exposure due to changes in the legal landscape.

The Highway Loss Data Institute (HLDI) conducted a study of the frequency of crashes reported to insurers in the states of Oregon, Washington and Colorado where cannabis is legalized.<sup>xci</sup> The study found that the frequency of crashes increased 3% since cannabis was legalized in those states. It is difficult to attribute the increase in frequency solely to a change in the law, however, since other factors may be at play, including improving economic trends and relatively low gas prices in recent years which typically result in increased miles over the road for each driver. It would be advisable to continue to study the results in these states over time.

It is important to note that where social hosts would likely be covered by insurance against most liability claims for third-party injury following use of cannabis in their home in a purely social context, this coverage would not extend to injuries that occur as a result of illicit sales or transactions.

For worker's compensation insurance, see the discussion above in the section on "Cannabis in the Workplace."

## SECURITY

### Cash

The cash-based nature of the cannabis industry poses problems for State entities that will be receiving payments, such as for tax remittance or license fee payments. The security of State employees, the general public, and the cannabis licensees who will be transporting cash, needs to be taken into account in devising a regulatory structure for recreational cannabis. The respective State regulatory authorities could be given rulemaking authority for handling cash payments. A further concern is that equipping State buildings, notably the Department of Taxes, for large cash payments, would come at a significant cost that would have to be accounted for in allocating revenue for the costs of administration. A potential means of addressing security concerns would be to follow the example of California, which required the Cannabis Bureau in coordination with the Department of General Services, to designate offices in specified counties to collect fees and taxes.<sup>xcii</sup>

The Subcommittee considered requiring all licensees to obtain a depository account with a financial institution, in part to eliminate the need for the State to receive cash payments for fees, taxes, or other charges. Imposing such a requirement would reduce issues and costs to the

State associated with large cash payments like the security of State buildings where payments are received and processed, as well as securing cash transport by the State to its own bank. Dealing only in cash also raises security concerns for the private premises of the licensees. However, requiring all cannabis establishments to obtain a bank account could prove to be impracticable and burdensome because financial institutions may balk at providing services due to federal law. Federal law places strict restrictions on financial institutions regarding proceeds from an illicit controlled substance. The Commission adopts the Subcommittee's recommendation requiring that all cannabis licensees follow the best practice of first attempting to obtain a depository account with a financial institution, and if they are unable to do so, then they must develop and implement a comprehensive cash management and security plan. Such a plan must address the increased security precautions necessary for the secure storage of large volumes of cash, and provide for secure means of paying service providers, taxing and other regulatory authorities, employees, and others.

### **Building and Product Security**

The Commission adopts the Subcommittee's recommendation to impose similar statutory requirements on recreational cannabis establishments that are currently imposed on dispensaries, and providing for rulemaking authority over security requirements by the Board of Control. The Vermont Marijuana Registry under the Department of Public Safety has already adopted rules for building and product security with which dispensaries must comply. These include continuous video camera surveillance with onsite retention and offsite backup for specified periods of time, and the ability to monitor remotely. The State should have remote access to review video footage for investigative purposes. Specific recordkeeping requirements should be imposed to allow identification of why footage was accessed. The program should have the authority to require proper camera location, resolution, and number. Alarm systems and panic buttons or the equivalent should be required to allow establishments to call for emergency services and prevent intrusions. Such measures could include motion sensors, glass breaking sensors, etc. Locked cultivation, processing, storage, and destruction facilities should also be required. Similar to the current rules, establishments should be required to retain an outside security company to professionally monitor the location, in order to avoid having monitoring be taken on by local law enforcement or an employee of the establishment. The burden placed on smaller cultivators should be taken into account to ensure that they are not cost-prohibitive.

## **HEMP**

### **Taxation of Hemp as an Agricultural Product**

Hemp is the *Cannabis sativa* L. plant including all parts of the plant, whether growing or not, with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis. In Vermont, hemp is considered an agricultural product when grown by an individual that is registered with Vermont Agency of Agriculture, Food and Markets as part of its pilot program. Given that hemp as raw plant material is an agricultural product under 6 V.S.A. § 563, it is not subject to sales tax under the agricultural exemption from sales tax.<sup>xciii</sup> Hemp as value-added product in finished form, however, is subject to sales tax as tangible personal



property.<sup>xciv</sup> The Commission adopts the Subcommittee's recommendation to maintain the current hemp statute so that hemp continues to be treated as an agricultural product under 6 V.S.A. § 563. Additionally, the new cannabis excise tax will only be imposed on cannabis, which is already defined in statute in a way that excludes hemp, so that hemp would not be subject to the excise tax.

### **THC Content Threshold Imposed on Hemp**

A crop or product confirmed by the Secretary of Agriculture, Food and Markets to meet the definition of hemp under State or federal law may be sold or transferred. A crop, hemp and hemp-infused products sold at retail must comply with the definition of hemp in order to be marketed and sold as hemp and be covered by Vermont's industrial hemp law. If a hemp crop tests above 0.3 percent on a dry weight basis, the person registered with the Secretary of AAFM has three options:

- (1) enter into an agreement with a dispensary registered under 18 V.S.A. chapter 86 for the separation of the delta-9 tetrahydrocannabinol from the hemp crop, return of the hemp crop to the person registered with the Secretary, and retention of the separated delta-9 tetrahydrocannabinol by the dispensary;
- (2) sell the hemp crop to a dispensary registered under 18 V.S.A. chapter 86; or
- (3) arrange for the Secretary to destroy or order the destruction of the hemp crop. A person registered with the Secretary as growing a hemp crop shall not be subject to civil, criminal, or administrative liability or penalty under 10 V.S.A. chapter 84 if the tested industrial hemp has a THC concentration of one percent or less on a dry weight basis.<sup>xcv</sup>

The Subcommittee recommends not to make any changes to this existing law. AAFM indicated that it hopes to move towards a taxonomic determination of a *Cannabis sativa* L. crop, to simplify identification and verify that the cultivated crop meets the definition of hemp at the time of planting rather than testing at harvest. This would be accomplished through certified seed or genetic testing.

**APPENDIX 1: CHARTS**

**1.1. Vermont’s Liquor and Tobacco Taxes**

Vermont’s Liquor and Tobacco Taxes <sup>xvii</sup>			
Product	Excise Tax Rate	State Sales Tax	Local Option Tax
<b>Spirits &amp; Fortified Wines (Liquor)</b>	25% of gross receipts if over \$750,000. 7 V.S.A. § 422.	6% sales tax. 32 V.S.A. §§ 9701(23), 9741(10).	1% local option tax. 24 V.S.A. § 138.
<b>Cigarettes, little cigars, and roll-your-own tobacco</b>	Stamp Tax at 154 mills (\$0.154): 1. per cigarette or little cigar (\$3.08 per pack of 20 cigarettes); and 2. for each 0.0325 ounces of roll-your-own tobacco. (\$4.74 per ounce)  32 V.S.A. § 7771(d). Tobacco products tax imposed at wholesale.  <u>Snuff</u> \$2.57 per ounce  <u>New smokeless tobacco</u> 1. Greater of \$2.57 per ounce, or 2. \$3.08 per package, if sold in a package with less than 1.2 ounces.	6% sales tax. 32 V.S.A. §§ 9701(31), 9771(1); Vt. Reg., § 1.9701(7) -1.	1% local option tax. 24 V.S.A. § 138.
<b>Other tobacco products, snuff, and new smokeless tobacco</b>	<u>Cigars</u> 1. 92% of wholesale if \$2.17 or less. 2. \$2.00 per cigar if wholesale price is between \$2.18 and \$9.99. 3. \$4.00 per cigar if wholesale price is \$10.00 or more.  <u>Other Tobacco Products</u> 92% of wholesale price  <u>Timely Payment Discount</u> If tax is paid within 10 days, distributor or dealer may deduct 2% from tax due.	6% sales tax. 32 V.S.A. §§ 9701(31), 9771(1); Vt. Reg., § 1.9701(7) -1.	1% local option tax. 24 V.S.A. § 138.

**Vermont's Liquor and Tobacco Taxes<sup>xcvi</sup>**

Product	Excise Tax Rate	State Sales Tax	Local Option Tax
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32 V.S.A. § 7811.

**1.2. Local Option Tax Disbursements to Towns**

See the list below for the fiscal year 2018 disbursements of local option tax revenues to towns with one or more local option taxes. The disbursements are made quarterly by the State to towns.

Town	Type of Local Option Tax	FY18 LOT Disbursed
Brandon	Sales and Use	\$144,417
	Meals and Rooms	\$43,079
Brattleboro	Meals and Rooms	\$407,602
Burlington	Sales and Use	\$2,459,464
Colchester	Sales and Use	\$1,259,284
	Meals and Rooms	\$311,604
Dover	Sales and Use	\$335,820
	Meals and Rooms	\$201,173
Hartford	Meals and Rooms	\$112,560
Killington	Sales and Use	\$575,447
	Meals and Rooms	\$428,849
Manchester	Sales and Use	\$733,131
	Meals and Rooms	\$453,734
Middlebury	Sales and Use	\$753,218
	Meals and Rooms	\$242,528
Montpelier	Meals and Rooms	\$227,604
Rutland	Sales and Use	\$933,060
	Meals and Rooms	\$155,799
South Burlington	Sales and Use	\$2,693,908
	Meals and Rooms	\$991,212
St. Albans	Sales and Use	\$719,125
	Meals and Rooms	\$137,803
Stowe	Meals and Rooms	\$948,931
Stratton	Sales and Use	\$270,330
	Meals and Rooms	\$162,700
Williston	Sales and Use	\$2,737,269
	Meals and Rooms	\$374,637
Wilmington	Sales and Use	\$221,238
	Meals and Rooms	\$91,004
Winhall	Sales and Use	\$51,204
	Meals and Rooms	\$22,649

<b>Town</b>	<b>Type of Local Option Tax</b>	<b>FY18 LOT Disbursed</b>
Woodstock	Meals and Rooms	\$263,118

### 1.3. Boards and Authorities in Other States

Name	Regulating Authority	Powers	Members &/or Staff
Alaska  Marijuana Control Board  Department of Commerce, Community, and Economic Development  17 AK ST, ch. 38.	Marijuana Control Board is established in Dept. of Commerce, Community, and Economic Development as a regulatory and quasi- judicial agency  However, Board is within department for administrative purposes only.	Board is granted regulatory and quasi-judicial control over cultivation, manufacture and sale of cannabis in Alaska.  <ul style="list-style-type: none"> <li>• proposes &amp; adopts regulations;</li> <li>• establishes regs re: qualifications for licensure including fees and factors re: experience, criminal history, financial interests;</li> <li>• reviews license applications &amp; may order executive director to issue, renew, suspend, or revoke a license</li> <li>• hears appeals from actions of director and officers and employees charged with enforcing law and regs.</li> <li>• employ directly or through contracts with other Alaska departments &amp; agencies, enforcement agents &amp; staff</li> </ul>	5 voting members appointed by Governor and confirmed by majority vote of both bodies of the legislature: (1) 1 public safety sector; (2) 1 public health sector; (3) 1 currently residing in a rural area; (4) 1 actively engaged in marijuana industry; (5) 1 either from general public or actively engaged in marijuana industry.  Chair is selected from among members.  Not more than 2 may be engaged in the same business, occupation, or profession.  Conflicts of interest <ul style="list-style-type: none"> <li>• No financial interest in marijuana industry allowed for members or a member's immediate family member when representing general public, public safety sector, public health sector, or a rural area.</li> <li>• A member may not hold any other state or federal office, either elective or appointive.</li> </ul> Terms <ul style="list-style-type: none"> <li>• Members serve staggered 3-year terms</li> <li>• After 3 successive</li> </ul>

Name	Regulating Authority	Powers	Members &/or Staff
<p>California Bureau of Cannabis Control  Department of Consumer Affairs  Cal.Bus. &amp; Prof.Code § 26010.</p>	<p>Established within Dept. of Consumer Affairs, under supervision and control of director, who must administer and enforce cannabis provisions related to bureau.</p> <p>Every power granted to or duty imposed upon the Director of Consumer Affairs may be exercised or performed in by a deputy or assistant director or by Bureau chief</p>	<p>Regulates both commercial and medical cannabis activities. Cal.Bus. &amp; Prof.Code § 26010.5.</p> <p>Licensing authorities shall make and prescribe rules and regulations to implement, administer and enforce their respective duties. Cal.Bus. &amp; Prof.Code § 26013.</p> <ul style="list-style-type: none"> <li>Bureau is required to convene an advisory committee to advise licensing authorities on development of standards and regulations, including best practices and guidelines. Cal.Bus. &amp; Prof.Code § 26014.</li> <li>Licensing authority has quasi-judicial authority to suspend or revoke or review licenses. Cal.Bus. &amp; Prof.Code §§ 26030-26031.</li> <li>Decisions have to be reported to the Bureau who then informs the other licensing authorities. Cal.Bus. &amp; Prof.Code § 26033.</li> </ul> <p>Conflict of interest provisions for members and chief of bureau. Cal.Bus. &amp; Prof.Code § 26011.</p>	<p>terms, may not be reappointed unless 3 years have elapsed since last serving.</p> <p><b>Advisory Committee</b> Advisory committee members determined by director and include, but are not limited to:</p> <ul style="list-style-type: none"> <li>cannabis industry reps, including medicinal</li> <li>labor org reps</li> <li>appropriate state &amp; local agencies</li> <li>persons who work directly with racially, ethnically, &amp; economically diverse populations</li> <li>public health experts</li> <li>other subject matter experts, including Dept. of Alcoholic Beverage Control, with expertise in regulating commercial activity for adult-use intoxicating substances.</li> </ul> <p>Starting Jan. 1, 2019, advisory committee will publish annual public report describing its activities including recommendations made to licensing authorities. Cal.Bus. &amp; Prof.Code § 26014.</p> <p><b>Bureau Staff</b></p> <ul style="list-style-type: none"> <li>Chief of Bureau: Governor appoints, subject to confirmation by Senate. Director of</li> </ul>

Name	Regulating Authority	Powers	Members &/or Staff
Colorado Department of Revenue, Enforcement Division, Marijuana	State licensing authority is Executive Director of Dept. of Revenue or Deputy Director of Dept. of Revenue if designated by Executive Director. C.R.S.A. §§ 44-11-201, 44-12-201.	Regulating and controlling licensing of cultivation, manufacture, distribution, and sale of medical marijuana and retail marijuana in Colorado. C.R.S.A. § 44-11-201.	Consumer Affairs sets salary. Supervised by Director of Consumer Affairs. <ul style="list-style-type: none"> <li>Deputy chief and an Assistant chief counsel: Governor appoints.</li> <li>Employees: hired by Director of Consumer Affairs. Cal.Bus. &amp; Prof.Code § 26010.5.</li> </ul> Executive Director of Dept. of Revenue is chief administrative officer of state licensing authority and may employ, officers and employees as necessary, who will be employees of Dept. of Revenue.
Maine Department of Administrative and Financial Services Marijuana Advisory Commission, 5 M.R.S.A. § 12004-I-52-C; 28-B M.R.S.A. § 901.	Department of Administrative and Financial Services administers the adult-use laws. 28-B M.R.S.A. § 104.	Marijuana Advisory Commission conducts a continuing study & review of laws & rules re: adult-use and medical marijuana and reports its findings and recommendations to Legislature on annual basis. Laws & rules include those pertaining to: <ul style="list-style-type: none"> <li>public health</li> <li>public safety</li> <li>juvenile &amp; adult criminal &amp; civil offenses</li> <li>workplace drug testing</li> </ul>	Conflict of interest requirements apply during employment and 6 months after to any state licensing authority employee with regulatory oversight responsibilities. C.R.S.A. § 44-11-201. Marijuana Advisory Commission made up of 15 members: <ul style="list-style-type: none"> <li>2 members of Senate, including members from each of 2 parties holding largest number of seats in Legislature, appointed by President of Senate;</li> <li>2 members of House of Representatives, including members from each of 2 parties holding largest number of seats in Legislature, appointed by Speaker of the House</li> </ul>

Name	Regulating Authority	Powers	Members &/or Staff
		<ul style="list-style-type: none"> <li>&amp; workplace safety</li> <li>• motor vehicle safety</li> <li>• landlords &amp; tenants</li> <li>• personal use of marijuana</li> <li>• taxes &amp; fees paid by applicants &amp; registered primary caregivers &amp; registered dispensaries</li> </ul>	<ul style="list-style-type: none"> <li>of Representatives</li> <li>• Commissioner of Administrative and Financial Services or designee</li> <li>• Commissioner of Agriculture, Conservation and Forestry or designee</li> <li>• Commissioner of Health and Human Services or designee;</li> <li>• Commissioner of Labor or designee</li> <li>• Commissioner of Public Safety or designee</li> <li>• 3 members, appointed by President of Senate: <ul style="list-style-type: none"> <li>• (1) Rep. of a statewide association representing prosecutors</li> <li>• (2) Rep. of a statewide association representing medical marijuana industry</li> <li>• (3) A member of public</li> </ul> </li> <li>• 3 members, appointed by Speaker of House of Representatives: <ul style="list-style-type: none"> <li>• (1) rep. of a statewide association representing adult use marijuana industry</li> <li>• (2) member of public with demonstrated expertise and credentials in public health policy</li> <li>• (3) member of public</li> </ul> </li> </ul>



Name	Regulating Authority	Powers	Members &/or Staff
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Chairs

- first-named legislative members are Senate & House chairs of commission.

Terms

- Legislators serve during term of office for which they were elected
- Other members serve for 2 years & may be reappointed.

28-B M.R.S.A. § 903  
Staffed by Legislative Council, except when Legislature is in regular or special session.

Commission may seek advice of consultants or experts, including reps. of legislative and executive branches of State Government. 28-B M.R.S.A. § 904.

Members are compensated. 28-B M.R.S.A. § 905.

Massachusetts  
Cannabis Control Commission  
M.G.L.A. ch. 10 § 76

Commission operates as a state agency and is subject to laws applicable to executive branch

**Cannabis Control Commission**

Regulating the adult use of marijuana industry in the Commonwealth

- Commission hires executive director

Cannabis Advisory Board  
M.G.L.A. ch. 10 § 77

agencies under Governor's control.  
M.G.L.A. ch. 10 § 76(m).

**Cannabis Advisory Board**

Charged with studying and making recommendations to Cannabis Control Commission on regulation & taxation of marijuana in

**Cannabis Control Commission**

- 5 commissioners
- 1 appointed by Governor with background in public health, mental health, substance use or toxicology
  - 1 appointed by Attorney General with background in public safety
  - 1 appointed by

Name	Regulating Authority	Powers	Members &/or Staff
		<p>Massachusetts.</p> <ul style="list-style-type: none"> <li>• (i) consider all matters submitted to it by commission</li> <li>• (ii) on its own initiative, recommend to commission guidelines, rules and regulations and any changes to guidelines, rules and regulations that advisory board considers important or necessary for commission’s review and consideration</li> <li>• (iii) advise on preparation of regulations</li> </ul>	<p>Treasurer &amp; and Receiver-General with experience in corporate management, finance or securities</p> <ul style="list-style-type: none"> <li>• 2 members agreed upon by majority of Commission <ul style="list-style-type: none"> <li>○ 1 with professional experience in oversight or industry management, including commodities, production or distribution in a regulated industry</li> <li>○ 1 with background in legal, policy or social justice issues related to a regulated industry</li> </ul> </li> </ul> <p>Chair of Commission is designated by Treasurer and Receiver-General</p> <p>Background checks required</p> <ul style="list-style-type: none"> <li>• financial stability, integrity &amp; responsibility of a candidate, including candidate’s reputation for good character &amp; honesty</li> <li>• Conviction for a felony is automatic ineligibility</li> </ul> <p>Residency in</p>

Name	Regulating Authority	Powers	Members &/or Staff
Nevada	Dept. of	Regulation and taxation of	<p>Commonwealth required within 90 days of appointment</p> <p>Conflict of interest Commissioners may not</p> <ul style="list-style-type: none"> <li>• (i) hold, or be a candidate for, federal, state or local elected office</li> <li>• (ii) hold an appointed office in a federal, state or local government</li> <li>• (iii) serve as an official in a political party. <ul style="list-style-type: none"> <li>○ Not more than 3 commissioners can be from same political party.</li> </ul> </li> </ul> <p>5-year terms; members serve for no more than 10 years</p> <p>Commissioners are full-time &amp; are compensated</p> <p><b>Cannabis Advisory Board</b> 25 members with expertise and knowledge relevant to Board’s mission. M.G.L.A. ch. 10 § 77.</p> <ul style="list-style-type: none"> <li>• chaired by executive director of Commission</li> <li>• state agency members:</li> </ul> <p>2-year terms</p> <p>No compensation for Advisory Board members &amp; serving does not make members state employees Dept. of Taxation</p>

Name	Regulating Authority	Powers	Members &/or Staff
Department of Taxation  N.R.S. 453D.200	Taxation	marijuana, notably: <ul style="list-style-type: none"> <li>• (a) licensing procedures (issuance, renewal, suspension, revocation)</li> <li>• (b) licensure qualifications</li> <li>• (c) security requirements</li> <li>• (d) prevention of sale or diversion to persons under 21</li> <li>• (e) packaging (esp. child-resistant) requirements</li> <li>• (f) testing &amp; labeling, including potency based on ratio of THC to weight for edibles</li> <li>• (g) record keeping</li> <li>• (h) reasonable restrictions on signage, marketing, display, &amp; advertising</li> <li>• (i) tax, fee, &amp; penalty collection procedures</li> <li>• (j) license transfers &amp; change of location</li> <li>• (k) dual licensees (medical &amp; retail at same location)</li> <li>• (l) establishing fair market value of marijuana sold at wholesale</li> <li>• (m) Civil penalties</li> </ul>	
Oregon  Oregon Liquor Control Commission (adult use)	Oregon Liquor Control Commission  Dept. of Revenue collects taxes	N.R.S. 453D.200 Commission's jurisdiction, supervision, duties, functions & powers: <ul style="list-style-type: none"> <li>• (a) regulate production, processing, transportation, delivery, sale &amp; purchase</li> </ul>	<b>Oregon Liquor Control Commission</b> 7 commissioners appointed by Governor, subject to confirmation by Senate <ul style="list-style-type: none"> <li>• 1 commissioner from residents of each Oregon</li> </ul>

Name	Regulating Authority	Powers	Members &/or Staff
<p>O.R.S. §§ 471.705 475B.025</p> <p>Recreational Marijuana Rules Advisory Committee</p>	<p>Oregon Cannabis Commission is established within Oregon Health Authority</p>	<ul style="list-style-type: none"> <li>• (b) issue, renew, suspend, revoke or refuse licenses &amp; permit license transfers</li> <li>• (c) adopt, amend or repeal rules, including to protect public health &amp; safety.</li> <li>• (d) exercise all powers to administer marijuana-related laws, including power to: <ul style="list-style-type: none"> <li>○ (A) Issue subpoenas</li> <li>○ (B) Compel attendance of witnesses</li> <li>○ (C) Administer oath</li> <li>○ (D) Certify official act</li> <li>○ (E) Take depositions</li> <li>○ (F) Compel production of certain records</li> <li>○ (G) Establish fees</li> </ul> </li> <li>• (e) adopt rules prohibiting ads that: <ul style="list-style-type: none"> <li>○ (A) are appealing to minors</li> <li>○ (B) promote excessive use</li> <li>○ (C) promote illegal activity</li> <li>○ (D) otherwise present a significant risk to public health and safety.</li> </ul> </li> <li>• (f) regulate use of marijuana at</li> </ul>	<p>congressional district</p> <ul style="list-style-type: none"> <li>• 1 commissioner from eastern Oregon</li> <li>• 1 commissioner from western Oregon</li> <li>• 1 commissioner from food &amp; alcoholic beverage retail industry</li> <li>• Not more than 4 commissioners from the same political party</li> <li>• Governor designates chairperson</li> </ul> <p>Oregon residency required</p> <p>Must be an Oregon elector</p> <p>Must be at least 30 years old</p> <p>Term of office</p> <ul style="list-style-type: none"> <li>• 4 years</li> <li>• terminates if commissioner ceases to possess residency or industry qualification.</li> <li>• terms commence April 1</li> <li>• each commissioner can serve no more than 2 full terms.</li> </ul> <p>Commissioners are entitled to compensation.</p> <p>O.R.S. § 471.705</p>

Name	Regulating Authority	Powers	Members &/or Staff
Washington Liquor and Cannabis Board	Independent board Quasi-judicial body	<p>commission's discretion.</p> <ul style="list-style-type: none"> <li>• Sets policy and budget</li> <li>• Adopts rules</li> <li>• Adjudicates contested license applications</li> <li>• Conducts licensee enforcement</li> </ul>	<p>3 members appointed by Governor with consent of Senate, to 6-year terms.</p> <p>Governor may appoint chair.</p>
66 R.C.W.A., ch. 08.	Delegates decisions (licensing, consumer protection) to divisions of Board or Agency Director	<ul style="list-style-type: none"> <li>• Hires agency's Director &amp; employees.</li> </ul>	<p>No member can hold any other public office.</p> <p>Before becoming a member, each member must enter into a \$50,000 surety bond. Bond premium is paid by the Board.</p>

## 1.4. Other States' Fees Imposed on Medical and Recreational Marijuana

Other States' Fees Imposed on Medical and Recreational Cannabis		
State	Medical Cannabis Fees	Recreational Cannabis Fees
Alaska	<p>7 AAC 34.080</p> <p>Registered patient ID card: \$25 initial; \$20 renewal.</p> <p>No “dispensaries” in Alaska. Only license for sale of marijuana are for “retail marijuana stores.” See fees for recreational marijuana. 3 AAC 306.100.</p>	<p>Schedule of licensing fees (also application &amp; renewal fees). 3 AAC 306.100.</p> <ul style="list-style-type: none"> <li>• New marijuana establishment license or transfer \$1,000</li> <li>• License renewal application \$600</li> <li>• Late renewal \$1,000</li> <li>• Change in name, premises, operating plan, or new product \$250</li> <li>• Retail store license \$5,000</li> <li>• Limited cultivation \$1,000</li> <li>• Cultivation facility \$5,000</li> <li>• Concentrate manufacturing facility \$1,000</li> <li>• Product manufacturing facility \$5,000</li> <li>• Testing facility \$1,000</li> <li>• Handler permit card \$50</li> </ul> <p>Processing fees for late renewal after failure to pay taxes: \$200-\$10,000</p> <p>Marijuana Control Board is not limited in the number of marijuana licenses it can issue at the state level. However, AS 17.38.110(b) provides that local governments can restrict the time, place, manner and number of marijuana licenses.</p> <p>Bureau of Cannabis Control regulations. 16 CCR § 5014.</p>
California	<p>Dept. of Public Health regulations. 17 CCR § 40150.</p> <p>Nonrefundable application processing fee for each new application. § 40150.</p> <ul style="list-style-type: none"> <li>• \$1,000 for certain manufacturer license applications (Type 7, Type 6, Type N, or Type P)</li> <li>• \$500 for manufacturer license application for Type S</li> </ul>	<p>Application Fees. 16 CCR § 5014(a).</p> <ul style="list-style-type: none"> <li>• All Licenses: \$1,000</li> <li>• \$1,000 Cannabis Event Organizer License</li> <li>• \$1,000 Temporary Cannabis Event License</li> <li>• \$500 Physical Modification of Premises</li> </ul>

**Other States' Fees Imposed on Medical and Recreational Cannabis**

<b>State</b>	<b>Medical Cannabis Fees</b>	<b>Recreational Cannabis Fees</b>
	<p>Annual license fee based on licensed premises' annual gross revenue (AGR)</p> <ul style="list-style-type: none"> <li>• \$2,000 for AGR up to \$100,000 (Tier I)</li> <li>• \$7,500 for AGR of \$100,001 to \$500,000 (Tier II)</li> <li>• \$15,000 for AGR of \$500,001 to \$1,500,000 (Tier III)</li> <li>• \$25,000 for AGR of \$1,500,001 to \$3,000,000 (Tier IV)</li> <li>• \$35,000 for AGR of \$3,000,001 to \$5,000,000 (Tier V)</li> <li>• \$50,000 for AGR of \$5,000,001 to \$10,000,000 (Tier VI)</li> <li>• \$75,000 for AGR over \$10,000,000 (Tier VII)</li> </ul>	<p>Annual Fees. 16 CCR § 5014(b). Based on estimated max dollar value of each applicant's/licensee's planned operation in terms of value of product expected to be tested, distributed, transported, retailed, cultivated and/or manufactured.</p>
	<p>Change in operations conducted at licensed premises: \$1,000 on-refundable processing fee, except for Type S: \$500</p>	<p>Testing Laboratory</p> <ul style="list-style-type: none"> <li>• \$12,500 for max operations value up to \$50M</li> <li>• \$45,000 greater than \$50M up to \$400M</li> <li>• \$90,000 greater than \$400M</li> </ul>
	<p>Background check fees</p>	<p>Distributor</p> <ul style="list-style-type: none"> <li>• \$1,200 for max operations value up to \$3M</li> <li>• \$10,000 for max operations value greater than \$3 M to \$12M</li> <li>• \$50,000 for max operations value greater than \$12M to \$60M</li> <li>• \$100,000 for max operations value greater than \$60M up to \$120M</li> <li>• \$200,000 for max operations value greater than \$120M</li> </ul>
	<p>Late fees</p>	<p>Distributor Transport Only Self-Distribution</p> <ul style="list-style-type: none"> <li>• \$500 for max operations value up to \$3 million</li> <li>• \$1,500 for max operations value greater than 3 million to 12 million</li> <li>• \$4,000 for max operations value greater than 12 million</li> </ul>
		<p>Distributor Transport Only</p> <ul style="list-style-type: none"> <li>• \$1,000 for max operations value up to 3 million</li> <li>• \$2,800 for max operations value greater than 3 million to 12 million</li> <li>• \$6,000 for max operations value</li> </ul>



**Other States' Fees Imposed on Medical and Recreational Cannabis**

<b>State</b>	<b>Medical Cannabis Fees</b>	<b>Recreational Cannabis Fees</b>
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greater than 12 million

Retailer

- \$4,000 for max operations value up to 0.75 million
- \$20,000 for max operations value greater than 0.75 million to 2.5 million
- \$64,000 for max operations value greater than 2.5 million to 7.5 million
- \$120,000 for max operations value greater than 7.5 million

Microbusiness

- \$10,000 for max operations value up to 0.75 million
- \$30,000 for max operations value greater than 0.75 million to 2.5 million
- \$100,000 for max operations value greater than 2.5 million to 7.5 million
- \$180,000 for max operations value greater than 7.5 million

Cannabis Event Organizers

- \$5,000 for 1-10 planned events annually
- \$15,000 for greater than 10 planned events annually

Dept. of Food and Agriculture regulations. 3 CCR § 8200.

Annual fee due prior to issuance of a license or renewal license.

- (a) Specialty Cottage Outdoor \$1,205
- (b) Specialty Cottage Indoor \$1,830
- (c) Specialty Cottage Mixed-Light Tier 1 \$3,035

**Other States' Fees Imposed on Medical and Recreational Cannabis**

<b>State</b>	<b>Medical Cannabis Fees</b>	<b>Recreational Cannabis Fees</b>
		(d) Specialty Cottage Mixed-Light Tier 2 \$5,200 (e) Specialty Outdoor \$2,410 (f) Specialty Indoor \$19,540 (g) Specialty Mixed-Light Tier 1 \$5,900 (h) Specialty Mixed-Light Tier 2 \$10,120 (i) Small Outdoor \$4,820 (j) Small Indoor \$35,410 (k) Small Mixed-Light Tier 1 \$11,800 (l) Small Mixed-Light Tier 2 \$20,235 (m) Medium Outdoor \$13,990 (n) Medium Indoor \$77,905 (o) Medium Mixed-Light Tier 1 \$25,970 (p) Medium Mixed-Light Tier 2 \$44,517 (q) Nursery \$4,685 (r) Processor \$9,370
		No state limit to number of licenses. However local cities and counties may limit the number of businesses operating in their jurisdiction. When deciding whether to issue or deny a retail or microbusiness license, Bureau is required to consider whether license issuance would result in “excessive concentration” under Business and Professions Code section 26051(c).
	Local fees only. C.R.S. §§ 12-43.3-301, 12-43.3-301.	Both state and local fees. C.R.S. §§ 12-43.3-301; 44-12-501.
Colorado	Application fee \$500. C.R.S. § 12-43.3-	Retail marijuana establishment application fee: \$5,000. C.R.S. § 12-43.4-501.
	Late renewal fee \$500 for up to 90 days past expiration. C.R.S. § 12-43.3-311.	Annual renewal fees and \$500 late renewal fee \$500 for up to 90 days past expiration. C.R.S. § 12-43.4-310.
Maine	No fees for registered patients.	Marijuana Legalization Act, 28-B

**Other States' Fees Imposed on Medical and Recreational Cannabis**

State	Medical Cannabis Fees	Recreational Cannabis Fees
	<p>Caregiver fees</p> <ul style="list-style-type: none"> <li>• Application and annual renewal fee for primary caregiver who cultivates for patients \$300 per qualifying patient. Pro-rated for new patients. If caregiver does not cultivate, then no fee is charged.</li> <li>• Alternative caregiver fee \$1,500 allowing unlimited changes to patient list.</li> <li>• Caregiver background check fee \$31.</li> <li>• processing fee for changes or replacements to ID cards \$10</li> </ul> <p>Registered dispensary fees</p> <ul style="list-style-type: none"> <li>• Certificate of registration application fee \$15,000</li> <li>• for each principal officer, board member, and employee               <ul style="list-style-type: none"> <li>○ \$25 initial and annual renewal fee for each registry ID card</li> <li>○ \$31 background check fee</li> </ul> </li> <li>• Change of physical or grow location fee \$5,000</li> <li>• processing fee for changes or replacements to ID cards \$10</li> <li>• Laboratory testing</li> </ul>	<p>M.R.S.A. § 207.</p> <p>Cultivation facility license</p> <p>Tier 1</p> <ul style="list-style-type: none"> <li>• \$100 application fee</li> <li>• license fee:           <ul style="list-style-type: none"> <li>○ plant-count-based tier 1 license               <ul style="list-style-type: none"> <li>▪ outdoor facility: not more than \$9 per mature marijuana plant</li> <li>▪ indoor or both indoor and outdoor facility: not more than \$17 per mature marijuana plant</li> </ul> </li> <li>○ plant-canopy-based tier 1 license               <ul style="list-style-type: none"> <li>▪ outdoor facility: not more than \$250</li> <li>▪ indoor or both indoor and outdoor facility: not more than \$500</li> </ul> </li> </ul> </li> </ul> <p>Tier 2</p> <ul style="list-style-type: none"> <li>• \$500 application fee</li> <li>• license fee:           <ul style="list-style-type: none"> <li>○ outdoor facility: not more than \$1,500</li> <li>○ indoor or both indoor and outdoor facility: not more than \$3,000</li> </ul> </li> </ul> <p>Tier 3</p> <ul style="list-style-type: none"> <li>• \$500 application fee</li> <li>• license fee           <ul style="list-style-type: none"> <li>○ outdoor facility: not more than \$5,000 for an outdoor cultivation facility</li> <li>○ indoor or both indoor and outdoor facility: not more than \$10,000</li> </ul> </li> </ul> <p>Tier 4</p> <ul style="list-style-type: none"> <li>• application fee of \$500</li> <li>• license fee           <ul style="list-style-type: none"> <li>○ outdoor facility: not more than \$15,000</li> </ul> </li> </ul>
<p>10-144 CMR Ch. 122, § 7</p>		

**Other States' Fees Imposed on Medical and Recreational Cannabis**

State	Medical Cannabis Fees	Recreational Cannabis Fees
Massachusetts	<p>Patients. 105 CMR 725.015, 725.035.</p> <ul style="list-style-type: none"> <li>• Registration \$50, annually (waiver for financial hardship)</li> <li>• ID card replacement \$10</li> <li>• Hardship cultivation \$100</li> </ul> <p>Registered Marijuana Dispensaries. 105 CMR 725.030, 725.100.</p> <ul style="list-style-type: none"> <li>• Dispensary agent annual registration fee \$500 (includes all</li> </ul>	<ul style="list-style-type: none"> <li>○ indoor or both indoor and outdoor facility: not more than \$30,000</li> <li>▪ exception: for each approved increase in the amount of licensed plant canopy, tier 4 license fee may be increased by:               <ul style="list-style-type: none"> <li>• outdoor facility: not more than \$5,000</li> <li>• indoor or both indoor and outdoor facility: not more than \$10,000</li> </ul> </li> </ul> <p>Nursery cultivation facility license</p> <ul style="list-style-type: none"> <li>• \$60 application fee</li> <li>• \$350 license fee</li> </ul> <p>Products manufacturing facilities and marijuana stores</p> <ul style="list-style-type: none"> <li>• \$250 application fee</li> <li>• not more than \$2,500 license fee</li> <li>•</li> </ul> <p>Testing facilities</p> <ul style="list-style-type: none"> <li>• \$250 application fee</li> <li>• not more than \$1,000 license fee</li> </ul> <p>Late application fees to be established by rule. 28-B M.R.S.A. § 209(5).</p> <p>Criminal background check fees. 28-B M.R.S.A. § 204.</p> <p>Cannabis Control Commission regulation. 935 CMR 500.000. No limit on the total number of licenses that Commission may issue.</p> <p>Application fees and annual license fees imposed on each type of license. 935 CMR 500.005.</p> <p>Cultivator (indoor / outdoor)</p>

**Other States' Fees Imposed on Medical and Recreational Cannabis**

<b>State</b>	<b>Medical Cannabis Fees</b>	<b>Recreational Cannabis Fees</b>
	board members, directors, employees, executives, managers, and volunteers) <ul style="list-style-type: none"> <li>• Phase 1 application \$1,500</li> <li>• Phase 2 application \$30,000</li> <li>• Registration \$50,000, annually</li> <li>• Location change \$10,000</li> <li>• Name change \$100</li> <li>• Architectural review \$8.25 per \$1,000 of construction costs, with a minimum fee of \$1,500</li> </ul>	Tier 1: up to 5,000 square feet <ul style="list-style-type: none"> <li>• Application fee: \$200 (I)/\$100 (O)</li> <li>• Annual fee: \$1,250 (I)/\$625 (O)</li> </ul> Tier 2: 5,001 to 10,000 sq. ft. <ul style="list-style-type: none"> <li>• Application fee: \$400 (I)/\$200 (O)</li> <li>• Annual fee: \$2,500 (I)/\$1,250 (O)</li> </ul> Tier 3: 10,001 to 20,000 sq. ft. <ul style="list-style-type: none"> <li>• Application fee: \$600 (I)/\$300 (O)</li> <li>• Annual fee: \$5,000 (I)/\$2,500 (O)</li> </ul> Tier 4: 20,001 to 30,000 sq. ft. <ul style="list-style-type: none"> <li>• Application fee: \$600 (I)/\$300 (O)</li> <li>• Annual fee: \$7,500 (I)/\$3,750 (O)</li> </ul> Tier 5: 30,001 to 40,000 sq. ft. <ul style="list-style-type: none"> <li>• Application fee: \$600 (I)/\$300 (O)</li> <li>• Annual fee: \$10,000 (I)/\$5,000 (O)</li> </ul> Tier 6: 40,001 to 50,000 sq. ft. <ul style="list-style-type: none"> <li>• Application fee: \$600 (I)/\$300 (O)</li> <li>• Annual fee: \$12,500 (I)/\$6,250 (O)</li> </ul> Tier 7: 50,001 to 60,000 sq. ft. <ul style="list-style-type: none"> <li>• Application fee: \$600 (I)/\$300 (O)</li> <li>• Annual fee: \$15,000 (I)/\$7,500 (O)</li> </ul> Tier 8: 60,001 to 70,000 sq. ft. <ul style="list-style-type: none"> <li>• Application fee: \$600 (I)/\$300 (O)</li> <li>• Annual fee: \$17,500 (I)/\$8,750 (O)</li> </ul> Tier 9: 70,001 to 80,000 sq. ft. <ul style="list-style-type: none"> <li>• Application fee: \$600 (I)/\$300 (O)</li> <li>• Annual fee: \$20,000 (I)/\$10,000 (O)</li> </ul> Tier 10: 80,001 to 90,000 sq. ft. <ul style="list-style-type: none"> <li>• Application fee: \$600 (I)/\$300 (O)</li> <li>• Annual fee: \$22,500 (I)/\$11,250 (O)</li> </ul> Tier 11: 90,001 to 100,000 sq. ft. <ul style="list-style-type: none"> <li>• Application fee: \$600 (I)/\$300 (O)</li> </ul>

## Other States' Fees Imposed on Medical and Recreational Cannabis

State	Medical Cannabis Fees	Recreational Cannabis Fees
		<ul style="list-style-type: none"> <li>Annual fee: \$25,000 (I)/\$12,500 (O)</li> </ul>
		<p>Craft Marijuana Cooperative</p> <ul style="list-style-type: none"> <li>Application fee: Total fees for its canopy. If more than six locations, add \$200 (I)/\$100(O) per additional location.</li> <li>Annual fee: Total fees for its canopy. If more than six locations, add \$1,250(I)/\$625(O) per additional location.</li> </ul>
		<p>Microbusiness</p> <ul style="list-style-type: none"> <li>Application fee: \$300</li> <li>Annual fee: 50% of all applicable fees</li> </ul>
		<p>Manufacturing</p> <ul style="list-style-type: none"> <li>Application fee: \$300</li> <li>Annual fee: \$5,000</li> </ul>
		<p>Independent Testing Laboratory</p> <ul style="list-style-type: none"> <li>Application fee: \$300</li> <li>Annual fee: \$5,000</li> </ul>
		<p>Retail (brick and mortar)</p> <ul style="list-style-type: none"> <li>Application fee: \$300</li> <li>Annual fee: \$5,000</li> </ul>
		<p>Third-party Transporter and Existing Licensee Transporter</p> <ul style="list-style-type: none"> <li>Application fee: \$300</li> <li>Annual fee: \$5,000</li> </ul>
		<p>Research Laboratory</p> <ul style="list-style-type: none"> <li>Application fee: \$300</li> <li>Annual fee: \$1,000</li> </ul>
		<p>Other fees</p> <ul style="list-style-type: none"> <li>Name Change: \$100</li> <li>Location Change: 50% of applicable license fee</li> <li>Change in Building Structure:</li> </ul>

**Other States' Fees Imposed on Medical and Recreational Cannabis**

State	Medical Cannabis Fees	Recreational Cannabis Fees
Nevada	<p>Max fees set in statute. N.R.S. 453A.344.</p>	<p>\$500</p> <ul style="list-style-type: none"> <li>• Change in Ownership or Control: \$500</li> <li>• Background check fees.</li> </ul> <p>\$5,000 application fee for all licenses. N.R.S. 453D.230.</p>
	<p>Dispensary registration certificate</p> <ul style="list-style-type: none"> <li>• Initial application \$30,000</li> <li>• Renewal \$5,000</li> </ul>	<p>Annual licensing fees. N.R.S. 453D.230.</p> <p>Retail Store</p> <ul style="list-style-type: none"> <li>• Initial issuance: \$20,000</li> <li>• Renewal: \$6,600</li> </ul>
	<p>Cultivation facility registration certificate</p> <ul style="list-style-type: none"> <li>• Initial application \$3,000</li> <li>• Renewal \$1,000</li> </ul>	<p>Cultivation</p> <ul style="list-style-type: none"> <li>• Initial issuance: \$30,000</li> <li>• Renewal: \$10,000</li> </ul>
	<p>Facility producing edible marijuana products or marijuana-infused products registration certificate</p> <ul style="list-style-type: none"> <li>• Initial application \$3,000</li> <li>• Renewal \$1,000</li> </ul>	<p>Manufacturing</p> <ul style="list-style-type: none"> <li>• Initial issuance: \$10,000</li> <li>• Renewal: \$3,300</li> </ul>
	<p>Testing laboratory registration certificate</p> <ul style="list-style-type: none"> <li>• Initial application \$5,000</li> <li>• Renewal \$3,000</li> </ul>	<p>Distribution</p> <ul style="list-style-type: none"> <li>• Initial issuance: \$15,000</li> <li>• Renewal: \$5,000</li> </ul>
	<p>Medical marijuana establishment agent registration card application and renewal \$75/person</p>	<p>Testing</p> <ul style="list-style-type: none"> <li>• Initial issuance: \$15,000</li> <li>• Renewal: \$5,000</li> </ul>
	<p>Additional fees:</p> <ul style="list-style-type: none"> <li>• one-time application fee \$5,000 actual application processing, including background checks.</li> </ul>	<p>Criminal history record check fees</p> <p>For the first 18 months after applications began to be accepted (starting no later than Jan. 1, 2017), only medical marijuana establishments could apply for the following recreational marijuana licenses: retail stores, product manufacturers, and cultivators.</p>
	<p>Limit on number of licenses by county, and restrictions on concentration of dispensaries in any one town (no more than 25% of total number of dispensaries in county may be in one town). N.R.S. §§ 453A.324, 453A.326.</p> <ul style="list-style-type: none"> <li>• 40 certificates for county whose</li> </ul>	<p>Limit on number of retail licenses issued based on county size; although the county could request more licenses. N.R.S. 453D.210(5)(d).</p>

**Other States' Fees Imposed on Medical and Recreational Cannabis**

State	Medical Cannabis Fees	Recreational Cannabis Fees
Oregon	<p>population is 700,000 or more</p> <ul style="list-style-type: none"> <li>• 10 certificates for county whose population is 100,000 or more but less than 700,000</li> <li>• 2 certificates for county whose population is 55,000 or more but less than 100,000</li> <li>• 1 certificate for each other county, one</li> <li>• 1 certificate for each incorporated city in a county whose population is less than 100,000</li> </ul> <p>Patient application fee \$200, except:</p> <ul style="list-style-type: none"> <li>• \$60 for SNAP participants</li> <li>• \$50 for OR Health plan benefits</li> <li>• \$20 SSI</li> <li>• \$20 US Armed Forces service.</li> </ul> <p>Replacement card fee \$100 (or \$20 if reduced application fee applies). OAR 333-008-0021.</p> <p>\$200 grow site registration fee under certain conditions. No grow site registration fee for patients growing for themselves at their own residence. OAR 333-008-0021.</p> <p>Dispensary initial and annual renewal fees:</p> <ul style="list-style-type: none"> <li>• \$500 application</li> <li>• \$3,500 registration. OAR 333-008-1030.</li> </ul> <p>Processing site initial and annual renewal fees:</p> <ul style="list-style-type: none"> <li>• \$500 application</li> <li>• \$3,500 registration.</li> </ul> <p>Criminal background check fee \$35. OAR 333-008-1630.</p> <p>No limit on number of licenses issued.</p>	<ul style="list-style-type: none"> <li>• 80 licenses per county with a population greater than 700,000;</li> <li>• 20 licenses per county with a population that is less than 700,000 but more than 100,000;</li> <li>• 4 licenses per county with a population that is less than 100,000 but more than 55,000;</li> <li>• 2 licenses per county with a population that is less than 55,000.</li> </ul> <p>\$250 non-refundable application fee.</p> <p>Annual license fees (prorated if initial license is issued for six months or less):</p> <ul style="list-style-type: none"> <li>• Producers: <ul style="list-style-type: none"> <li>○ Micro Tier I \$1,000.</li> <li>○ Micro Tier II \$2,000.</li> <li>○ Tier I \$3,750.</li> <li>○ Tier II \$5,750.</li> </ul> </li> <li>• Processors: \$4,750.</li> <li>• Wholesalers: \$4,750. <ul style="list-style-type: none"> <li>○ Micro Wholesalers: \$1,000.</li> </ul> </li> <li>• Retailers: \$4,750.</li> <li>• Laboratories: \$4,750. <ul style="list-style-type: none"> <li>○ Sampling Laboratory: \$2,250.</li> </ul> </li> <li>• 3-year research certificate fee \$4,750</li> </ul> <p>License or certificate renewal application fee \$250</p> <p>Marijuana worker permit fee \$100</p> <p>Other fees</p> <ul style="list-style-type: none"> <li>• Criminal background checks: \$50</li> <li>• Transfer of location of premises review: \$1,000 per license.</li> <li>• Packaging preapproval: \$100.</li> <li>• Labeling preapproval: \$100.</li> </ul>



**Other States' Fees Imposed on Medical and Recreational Cannabis**

State	Medical Cannabis Fees	Recreational Cannabis Fees
Washington	<p>Medical cannabis. RCW ch. 69.51A.</p> <p>\$1 fee for each initial, replacement, and renewal recognition card for patients or designated provider</p> <p>Medical marijuana consultant certificate fees</p> <ul style="list-style-type: none"> <li>• Application for certificate \$95</li> <li>• Renewal of certificate \$90</li> <li>• Late renewal penalty \$50</li> <li>• Expired certificate reissuance \$50</li> <li>• Duplicate certificate \$10</li> <li>• Verification of credential \$15</li> </ul> <p>WAC 246-72-010.</p> <p>Before being authorized to sell medical marijuana, an applicant must already hold a recreational marijuana retailer license and apply for a medical marijuana endorsement. WAC 314-55-080.</p>	<ul style="list-style-type: none"> <li>• Change to previously approved package or label: \$25.</li> </ul> <p>OAR 845-025-1060 (eff. 08/01/2017 expires 12/27/2017).</p> <p>No limit on number of licenses issued. Recreational marijuana. RCW ch. 69.50.</p> <p>All license types require payment of 2 fees. RCWA 69.50.325.</p> <ol style="list-style-type: none"> <li>1. application fee \$250, and</li> <li>2. annual fee for license issuance and renewal \$1,381</li> </ol> <p>License types:</p> <ul style="list-style-type: none"> <li>• Producer. WAC 314-55-075.</li> <li>• Retailer. WAC 314-55-079.</li> <li>• Processor. WAC 314-55-077.</li> <li>• Transporter. WAC 314-55-310.</li> <li>• Research. RCWA 69.50.372.</li> </ul> <p>Criminal history check fees apply to all license applicants.</p> <p>Ownership change fee: \$75. WAC 314-55-120.</p> <p>Limit of 3 licenses per entity; except for retailers, who may have 5.</p> <p>No entity may hold all 3 license types. A licensee may hold both a producer and a processor license simultaneously. A producer and/or processor cannot also be a retailer.</p> <p>Washington is not currently accepting license applications for producers or processors. The current limit is 1200.</p>

## APPENDIX 2: DEPARTMENT OF PUBLIC SAFETY



State of Vermont  
Department of Public Safety  
45 State Drive  
Waterbury, Vermont 05671-1300

<http://dps.vermont.gov/>

September 21, 2018

**Via Electronic Mail**

Kaj Samson, Commissioner  
Vermont Department of Taxes  
133 State Street  
Montpelier, VT 05633

Re: Tax and Regulate Marijuana System -- Public Safety and Other Costs

Dear Kaj,

I am writing in my capacity as Commissioner of Public Safety.

Among the "Powers and Duties" of the Governor's Marijuana Advisory Commission (MAC), the MAC is to "provide recommendations to the Governor on implementing and operating a comprehensive regulatory and revenue system for an adult marijuana market, and accompanying legislation if deemed necessary." Executive Order (EO) 15-17, Section III(3). The MAC is also mandated to recommend a business plan that, among other things, addresses:

1. "a comprehensive regulatory and revenue system which completely self-funds the regulatory infrastructure at both the State and local level";
2. "[r]equired equipment and/or staffing resources required to address impaired driving due to marijuana or marijuana and alcohol at both the State and local level"; and
3. "[o]ther miscellaneous matters as determined necessary and appropriate by the Commission."

In furtherance of these goals, the Taxation and Regulation Subcommittee, which you chair, is tasked with developing "structures" for the sale and taxation of marijuana for recreational uses to include "reduction of the illegal marijuana market." EO 15-17, Section I.

With respect to equipment and/or staffing required to address drug impaired driving, the Executive Order identifies these as the "[a]dequacy of and funding for drug recognition experts (DREs) and training," "an appropriate impairment testing mechanism," and the "[c]apacity for in-state testing and analysis of toxicology samples for DUIs related to drugs such as marijuana." EO 15-17, Section III(2).

In addition, based on the Commission's January 2018 recommendations, there may be other costs to consider, especially with respect to gathering baseline data and the need for performance benchmarks on the impacts of a tax and regulate system for recreational marijuana on the safety and wellbeing of Vermonters. Those potential costs, along with possible cost increases for DREs, the Vermont Forensic Laboratory, and enforcement efforts to reduce the illegal marijuana market also are addressed below.

### **Cost of Drug Recognition Experts**

Currently, Vermont has 50 DREs statewide. As previously reported by the Roadway Safety Subcommittee, at this time and under current law, the number of DREs in the State is adequate. However, under any scheme permitting the recreational use of marijuana (i.e., under Act 86 of 2018 or any tax and regulate model), the number of available DREs would need to be closely monitored and evaluated to ensure resource capacity continues to be met across the state.

The cost of the DRE program in Vermont is approximately \$300,000 per year, which includes training, equipment, and overtime for call outs. Presently, the DRE program is funded through the National Highway Traffic Safety Administration (NHTSA) as part of the Vermont Governor's Highway Safety Program. However, this funding is not sufficient to cover all components of the DRE program. Specifically, State and local police agencies bear significant costs in certifying, maintaining, and deploying DREs (except when deployed on overtime). In addition, when a DRE is deployed, agencies incur additional costs in backfilling the position/shift vacated by the DRE. For the Vermont State Police, we have estimated these costs at approximately \$30,000 to \$70,000 per year. While it is difficult to estimate these costs across the State, the costs to the municipalities and counties as well as the State should be considered and accounted for in any financial model the Taxation and Regulation Subcommittee is developing.

The Taxation and Regulation Subcommittee should also review whether relying on any federal funding for this program is prudent. While NHTSA funding has been relatively stable, there is no guarantee this funding will continue indefinitely or at its current level. It is also reasonable to question whether the federal government will continue to fund a DRE program in a state that has legalized the possession, sale, and distribution of marijuana in violation of federal law.<sup>1</sup> At a minimum, the prudent working assumption should be that the federal government will not agree to fund any additional DRE costs caused by a state's decision to legalize the possession, sale, and distribution of marijuana. Therefore, if Vermont is going to approve a full tax and regulate recreational scheme for marijuana then it should fully fund the DRE program from the revenues generated under such a scheme as contemplated by the MAC.

### **Costs of In-State Testing and Analysis of Toxicology Samples**

Institution of a tax and regulate system is not sensible or safe for Vermonters without a testing mechanism for impaired drivers like oral fluid collection. Simply put, Vermont must have an effective way to test drivers suspected of operating under the influence of drugs **before** it considers or approves a full tax and regulate recreational scheme for marijuana.

Assuming the Legislature enacts legislation permitting oral fluid collection and testing, the estimated start-up costs for roadside oral fluid testing and collection would be between \$290,500 and \$393,800 broken down as follows:

- 100 instruments @ \$2,655 - \$3,688 each = \$265,500 - \$368,800;
- 1,000 cartridges (6 drug panel) @ \$20 each = \$20,000; and

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<sup>1</sup> This is more than a theoretical possibility. The federal government is currently withholding certain grant funds from DPS while it reviews whether the State is in compliance with certain federal immigration laws.

- Training materials = @\$5,000.

Annual reoccurring costs would be approximately \$60,000 and would include:

- Equipment service/extended warranty agreement cost (after 1st year) @ \$400 per unit (\$40,000 total);
- 500 replacement cartridges (6 drug panel) @\$20 each = \$10,000 per year; and
- Ongoing training materials, supplies = \$10,000 per year.

Based on the current number of analyses performed in suspected drugged driving cases annually, the increased costs to the Vermont Forensic Lab to analyze oral fluid samples (assuming legislative approval), would be approximately \$30,000 in startup costs and an additional \$15,000 in annual costs. If the number of oral fluid tests increases by up to 25% after legalization of marijuana and approval of oral fluid sample collection, it would result in an estimated annual cost of \$52,500 (startup costs would remain at \$30,000).

#### **Costs to Reduce the Marijuana Black Market**

Pro-marijuana legalization advocates claim that the legalization of marijuana through a tax and regulate system will eliminate the illicit or black market for marijuana. However, in states where recreational marijuana has been legalized, the black market for marijuana continues to thrive. See <https://www.cbc.ca/news/world/colorado-marijuana-black-market-1.4647198> ; <https://www.npr.org/2018/05/16/610579599/despote-legalization-marijuana-black-market-hides-in-plain-sight>; <https://www.theatlantic.com/politics/archive/2016/05/legal-pot-and-the-black-market/481506/>. In Colorado, from 2016 through 2017, there were 480 felony arrests for illegal marijuana-related offenses, over ten tons of illegal marijuana was seized, and over 8,500 marijuana edibles were seized. In 2017, illegal Colorado marijuana was destined for 24 other states. [\*The Legalization of Marijuana in Colorado: The Impact, Volume 5\*](#), Rocky Mountain HIDTA, September 2018 Update.

Thus, in order for a tax and regulate scheme to be effective, safe, and tax profitable, the black market will need to be eliminated or its effects reduced to a negligible degree. This can be accomplished, at least in theory, through market forces (i.e., through lower prices and/or better product quality in the legal arena), through imposing significant negative consequences for those who engage in the cultivation and sale of marijuana outside of the regulated market, or a combination of both. With respect to market forces successfully eliminating the black market that appears not to have been the outcome in states that have a regulated market for marijuana (see above).

As to affirmative measures to eliminate the black market, these could include criminal investigations and prosecution, civil penalties, regulatory penalties, barring violators from the legal participation in the market, and/or forfeiture of property used or intended to be used to facilitate a violation of the law. Without robust enforcement, Vermont, like other states that have legalized marijuana, likely will have two markets: a legal market and a black market.

Presently, law enforcement in Vermont, including the Vermont State Police, do not have sufficient investigative resources to combat the illegal opioid market, which poses a far greater danger to Vermonters than a black marijuana market may pose under a tax and regulate system for recreational marijuana. Marijuana, like alcohol, has been identified as a so-called "gateway" drug and is often used

before a person progresses to other more harmful substances, like cocaine and opioids. See, [Is Marijuana a Gateway Drug](#), National Institute on Drug Abuse (Updated June 2018). Indeed, a 2017 study of the connection between cannabis use and prescription opioid abuse published in the American Journal of Psychiatry concluded that “cannabis use appears to increase rather than decrease the risk of developing nonmedical prescription opioid use and opioid use disorder.” [Cannabis Use and Risk of Prescription Opioid Use Disorder in the United States](#), American Journal of Psychiatry (Sept. 26, 2017). Thus, a tax and regulate system for recreational marijuana together with the concomitant increased usage of marijuana could have the unintended consequences of aggravating the State’s opioid crisis.

Accordingly, the MAC should seriously consider recommending that some tax funds anticipated from a tax and regulate system for recreational marijuana be earmarked to enhance law enforcement’s ability to combat illegal drug trafficking in Vermont, including the trafficking of illegal opioids, which may be exacerbated should marijuana use increase under a tax and regulate system for marijuana.

For the more limited purposes of the MAC’s report, in order to reduce or eliminate the illegal marijuana market, consideration should be given to creating a division or unit that is solely responsible for investigating violations of the laws and regulations related to the illegal cultivation and sale of marijuana. This might be similar to the Enforcement Section of the Division of Liquor Control, which is “charged with investigating possible violations of liquor laws and regulations,” and carrying out law enforcement activities in connection with such violations. See Division of Liquor Control, <http://liquorcontrol.vermont.gov/enforcement>. The size of this unit and where it would reside, e.g., the Department of Public Safety (DPS) or the Department of Liquor and Lottery, would need careful consideration. However, there are currently twelve (12) inspectors/investigators in the Enforcement Section of the Division of Liquor Control Division. It is reasonable to conclude that under a tax and regulate system for marijuana that the number of inspectors/investigator would need to be at least doubled. Should this unit become part of DPS, the cost of hiring 12 new sworn members would be approximately \$2.2 million in year one with a total three-year cost of approximately \$4.8 million. I also recommend you consult with the Deputy Commissioner for the Division of Liquor Control to obtain an estimated cost of hiring 12 additional investigators. In addition, I recommend the hiring and assignment of an Assistant Attorney General to this unit to provide legal advice and guidance, and to pursue affirmative enforcement actions/prosecutions. The estimated initial cost of this resource could be \$100,000, which would escalate annually. But I suggest you consult with Attorney General’s Office on this estimated cost.

#### **Cost of Establishing and Analyzing Performance Benchmarks**

Section III(2)(x) of Executive Order 15-17 required the MAC, as part of its January 2018 report, to make a recommendation regarding the need for performance benchmarks on the impacts of a tax and regulate system for recreational marijuana on the safety and wellbeing of Vermonters, including Vermont’s youth, **before** the establishment of such a system. The MAC concluded in its January report that “[t]here is no reliable way to determine the specific impact of legalization or decriminalization on drug use or the impact of educational programs or prevention efforts in curbing misuse and abuse without first obtaining baseline information.” *Governor’s Marijuana Advisory Commission, January 16, 2018, Report and Recommendations to the Governor at 16*. The Roadway Safety Subcommittee, and the MAC, has therefore recommended that the State gather baseline data in order to measure the impact of

marijuana legalization in Vermont in the coming years. Specifically, the Subcommittee and the MAC recommended Vermont start collecting data in the following categories:

- Cannabis-related crimes and quality-of-life complaints;
- Cannabis arrests, including amounts;
- Cannabis-related traffic accidents and impaired driving generally;
- Out-of-state diversion of marijuana;
- Postal service use for cannabis diversion and transfer;
- Data related to Vermont's youth to include:
  - School data, i.e., "expulsions/suspensions/etc. related to cannabis on school premises or during school activities, etc.";
  - Cannabis diversion or sales to minors;
  - Data related to "drug endangered children"; and
  - Trends in youth usage of drugs, including marijuana.

*id.* at 17–18. As the MAC observed in its January 2018 report, it is only after "Vermont has more baseline data in these areas—both for time periods before and after any changes to its cannabis laws—[that] the state can formulate and assess crucial benchmarks." *id.* at 18.

In order to collect this critical data over multiple agencies and departments, and conduct statistically significant studies on the overall impact that a tax and regulate system for recreational marijuana may have on the wellbeing and safety of Vermonters, this collection and analysis will require multiple years to develop, implement, and evaluate. *See id.* at 18.

By Executive Order, DPS is designated as the Vermont Statistical Analysis Center (SAC) and is responsible for collecting, analyzing, and distributing criminal justice data and conducting policy-relevant research and analysis. *See* Executive Order 13-7. Therefore, it likely will fall to DPS to collect the data and perform the statistical analysis identified by the MAC and the Roadway Safety Subcommittee.

Currently, DPS contracts with the Crime Research Group (CRG) to provide the necessary professional research and statistical analysis as required by the Executive Order, and DPS would anticipate expanding this contract to include the data collection and statistical studies identified by the Roadway Safety Subcommittee and MAC. While difficult to estimate, it is likely that there would be a significant increase in the cost of the CRG contract and that it could potentially double from \$137,000 to \$274,000.

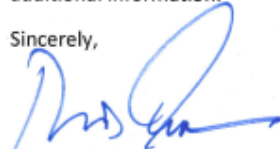
#### **Summary of Estimated Costs**

- Oral Fluid Testing:
  - Startup Costs: \$290,500 to \$393,800
  - Annual Recurring Costs: \$60,000
- Laboratory Costs:
  - Startup costs: \$30,000
  - Annual Recurring Costs: \$15,000 to 52,500
- Law Enforcement Costs:
  - DRE Annual Costs: \$330,000 to \$370,000
  - Black Market Reduction Costs:

- Annual Law enforcement: \$2.2 million (year one); \$4.8 million (total three-year cost)
- Annual Attorney: \$100,000 (year one)
- Data Collection and Analysis Costs:
  - CRG Contract Costs: \$137,000

Thank you for considering these important public safety and other cost implications in connection with a tax and regulate system for recreational marijuana. Please contact me if have any questions or need additional information.

Sincerely,



Thomas D. Anderson  
Commissioner

cc: Jake Perkinson (via email)  
Thomas Little (vial email)

## APPENDIX 3: DRAFT LEGISLATIVE LANGUAGE

### Taxation

#### *Marijuana Excise Tax*

Impose a cannabis excise tax on the retail sale of cannabis in Vermont. Impose typical tax administrative provisions including liability, enforcement, collection, penalties and interest, and refunds. Impose excise tax on bundled transactions.

Sec. X. 32 V.S.A. chapter 207 is added to read:

#### CHAPTER 207. CANNABIS TAXES

##### § 7901. CANNABIS EXCISE TAX

(a)(1) There is imposed a cannabis excise tax equal to twenty percent of the sales price of each retail sale in this State of a product that contains cannabis.

(2) As used in this section:

(i) “Cannabis” shall have the same meaning as in 18 V.S.A. § 4201(15)(A), and includes a plant section from a female cannabis plant that is not yet root-bound and is capable of developing into a new cannabis plant.

(ii) “Sales price” has the same meaning as 32 V.S.A. § 9701(4).

(b) The tax imposed by this section shall be paid by the purchaser to the retailer. Each retailer shall collect from the purchaser the full amount of the tax payable on each taxable sale.

(c) The tax imposed by this section is separate from and in addition to the general sales and use tax imposed by chapter 233 of this title and the local option tax authorized under 24 V.S.A. § 138. The tax imposed by this section shall not be part of the sales price to which sales and use and local option taxes apply. The cannabis excise tax shall be separately itemized from the sales and use and local option taxes on the receipt provided to the purchaser.

(d) The following sales shall be exempt from the tax imposed under this section:

(1) sales under any circumstances in which the State is without power to impose the tax;

(2) sales made by any dispensary as authorized under 18 V.S.A. chapter 86, provided that the cannabis is sold only to registered qualifying patients directly or through their registered caregivers;

(3) sales for resale;

(4) sales that are exempt under section 9742 of this title; and

(5) sales to organizations that are exempt under section 9743 of this title.

##### § 7902. PERSONAL LIABILITY; REFUNDS; ADMINISTRATION OF TAX

(a) Any sum or sums collected in accordance with this chapter shall be deemed to be held by the retailer in trust for the State of Vermont. Such sums shall be recorded by the retailer in a ledger account so as clearly to indicate the amount of tax collected and that the same are the property of the State of Vermont.

(b) Every retailer required to collect or remit tax under this chapter to the Commissioner shall be personally and individually liable for the amount of such tax together with such interest and penalty as has accrued under the provisions of section 3202 of this title; and if the retailer is



a corporation or other entity, the personal liability shall extend and be applicable to any officer or agent of the corporation or entity who as an officer or agent of the same is under a duty to collect the tax and transmit the tax to the Commissioner as required under this chapter.

(c) A retailer shall have the same rights in collecting the tax from his or her purchaser or regarding nonpayment of the tax by the purchaser as if the tax were a part of the purchase price of the cannabis and payable at the same time; provided, however, if the retailer required to collect the tax has failed to remit any portion of the tax to the Commissioner of Taxes, the Commissioner of Taxes shall be notified of any action or proceeding brought by the retailer to collect the tax and shall have the right to intervene in such action or proceeding.

(d) A retailer required to collect the tax may also refund or credit to the purchaser any tax erroneously, illegally, or unconstitutionally collected. No cause of action that may exist under State law shall accrue against the retailer for the tax collected unless the purchaser has provided written notice to a retailer, and the retailer has had 60 days to respond.

(e) To the extent not inconsistent with this chapter, the provisions for the assessment, collection, enforcement, and appeals of the sales and use tax in chapter 233 of this title shall apply to the tax imposed by this chapter.

#### § 7903. RETURNS; RECORDS

(a) Any retailer liable for the tax imposed by this chapter shall, on or before the 25th day of every month, return to the Department of Taxes, under oath of a person with legal authority to bind the retailer, a statement containing its name and place of business, the amount of cannabis subject to the excise tax imposed by this chapter sold in the preceding month, and any information required by the Department of Taxes, along with the tax due. The Commissioner of Taxes may require that returns required by this section be submitted electronically.

(b) Every retailer shall maintain, for not less than three years, accurate records showing all transactions subject to tax liability under this chapter. The records shall contain the itemization required under 32 V.S.A. § 7901(c). The records are subject to inspection by the Department of Taxes at all reasonable times during normal business hours.

#### § 7904. BUNDLED TRANSACTIONS

(a) Except as provided in subsection (b) of this section, a retail sale of a bundled transaction that includes cannabis is subject to the cannabis excise tax imposed by this chapter on the entire selling price of the bundled transaction.

(b) If the selling price is attributable to products that are taxable and products that are not taxable under this chapter, the portion of the price attributable to the products that are nontaxable are subject to the tax imposed by this chapter unless the retailer can identify by reasonable and verifiable standards the portion that is not subject to tax from its books and records that are kept in the regular course of business.

(c) As used in this section, “bundled transaction” means the retail sale of two or more products where the products are otherwise distinct and identifiable, are sold for one nonitemized price, and at least one of the products includes cannabis subject to the tax under this chapter.

#### § 7905. TAX REGISTRATION AND LICENSE

(a) Every retailer prior to commencing business shall register with the Commissioner each place of business within the State where he or she sells cannabis. Upon receipt of an application in the form and manner prescribed by the Commissioner, the Commissioner shall

issue without charge a license empowering him or her to collect the cannabis excise tax. No retailer shall engage in selling cannabis without the tax license provided in this section.

(b) Each tax license shall state the place of business to which it is applicable. The tax license shall be prominently displayed in the place of business of the retailer. The license shall be nonassignable and nontransferable and shall be surrendered to the Commissioner immediately upon the retailer’s ceasing to do business at the place named. A license to collect the cannabis excise tax shall be separate and in addition to the licenses required by sections 9271 (meals and rooms tax) and 9707 (sales and use tax) of this title.

(c) The Board of Control may require the Commissioner of Taxes to suspend or revoke the tax license issued under this section for any retailer who fails to comply with [XX] V.S.A. chapter [XX] or any rules adopted by the Board.

### *Sales Tax*

Explicitly exclude cannabis as defined under title 18 of the Vermont Statutes from the food and food exemption from sales and use tax so that all sales of cannabis products are subject to sales tax. Explicitly exempt cannabis sold by a dispensary through the medical cannabis program from sales and use tax to codify the current interpretation of the Department of Taxes.

Sec. X. 32 V.S.A. § 9701(31) is amended to read:

(31) “Food and food ingredients” means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. “Food and food ingredients” does not include alcoholic beverages, tobacco, cannabis as defined under 18 V.S.A. § 4201(15), or soft drinks.

Sec. X. 32 V.S.A. § 9741(53) is added to read:

(51) Cannabis sold by a dispensary as authorized under 18 V.S.A. chapter 86.

### *Income Tax Deduction; I.R.C. § 280E*

Allow cannabis businesses to take a deduction against their Vermont income tax liability for business expenses that are disallowed under federal law. This deduction would be available both to corporations and to other business structures such as S Corporations, LLCs, and partnerships.

Sec. X. 32 V.S.A. § 5811 is amended to read:

§ 5811. DEFINITIONS

The following definitions shall apply throughout this chapter unless the context requires otherwise:

\* \* \*

(18) “Vermont net income” means, for any taxable year and for any corporate taxpayer:

\* \* \*

(A) the taxable income of the taxpayer for that taxable year under the laws of the United States, without regard to 26 U.S.C. § 168(k) of the Internal Revenue Code, and excluding income which under the laws of the United States is exempt from taxation by the states:

\* \* \*

(ii) decreased by:

(I) the “gross-up of dividends” required by the federal Internal Revenue Code to be taken into taxable income in connection with the taxpayer's election of the foreign tax credit; ~~and~~

(II) the amount of income which results from the required reduction in salaries and wages expense for corporations claiming the Targeted Job or WIN credits; and

(III) any federal deduction that the taxpayer would have been allowed for the cultivation, testing, processing, or sale of cannabis as authorized under 18 V.S.A. chapter 86 or [XX], but for 26 U.S.C. § 280E.

\* \* \*

(21) “Taxable income” means, in the case of an individual, federal adjusted gross income determined without regard to 26 U.S.C. § 168(k) and:

\* \* \*

(C) Decreased by the following exemptions and deductions:

\* \* \*

(iii) an additional deduction of \$1,000.00 for each federal deduction under 26 U.S.C. § 63(f) that the taxpayer qualified for and received; ~~and~~

(iv) the dollar amounts of the personal exemption allowed under subdivision (i) of this subdivision (21)(C), the standard deduction allowed under subdivision (ii) of this subdivision (21)(C), and the additional deduction allowed under subdivision (iii) of this subdivision (21)(C) shall be adjusted annually for inflation by the Commissioner of Taxes beginning with taxable year 2018 by using the Consumer Price Index and the same methodology as used for adjustments under 26 U.S.C. § 1(f)(3); provided, however, that as used in this subdivision, “consumer price index” means the last Consumer Price Index for All Urban Consumers published by the U.S. Department of Labor; and

(v) any federal deduction that the taxpayer would have been allowed for the cultivation, testing, processing, or sale of cannabis as authorized under 18 V.S.A. chapter 86 or [XX], but for 26 U.S.C. § 280E.

\* \* \*

## Therapeutic Use of Cannabis

Chapter 86 of Title 18 of the Vermont Statutes Annotated should be thoroughly and concurrently reviewed when drafting legislation relating to the taxation and regulation of cannabis. Special attention should be paid to definitions that will be shared between a recreational structure and the medical cannabis program. Avoiding duplicate definitions will be especially important. The following list sets out the sections of statute and the issues that need to be addressed.

- 1) Remove or update subchapter 1
- 2) Definitions
  - Bona fide health care professional-patient relationship
  - Clone
  - Mental Health Provider
  - Owner
  - Possession limit
  - Principal
  - Secure indoor facility
  - Transport
- 3) 18 V.S.A. §4473(b)
  - Procedures for reviewing patient applications.
- 4) 18 V.S.A. §4474(c)(2)
- 5) 18 V.S.A. §4474b
  - Update to reflect changes passed in 2018 and revise accordingly to changes in 2019.
  - Remove subsection (e).
- 6) 18 V.S.A. §4474c(a)(2)
  - Update to reflect changes passed in 2018 and revise accordingly to changes in 2019.
- 7) 18 V.S.A. §4474c(c)
  - Update to reflect changes passed in 2018.
- 8) 18 V.S.A. §4474c(e)
  - Update to reflect changes passed in 2018.
- 9) 18 V.S.A. §4474d(a)-(c)
  - Update to reflect changes passed in 2018 and revise accordingly to changes in 2019.
- 10) 18 V.S.A. §4474e and 4474f
  - Update accordingly related to tax and regulation changes in 2019.
  - 18 V.S.A. §4474e(a)(1)(A) should align with how tax and regulate with count cannabis-infused products sold towards the possession limit and labeling milligrams of THC.
  - 18 V.S.A. §4474e(a)(3)(A) and (B) will require updating, if patients are not required to designate a dispensary.
  - 18 V.S.A. §4474e(d)(5) will require updating, if patients are not required to designate a dispensary.
  - 18 V.S.A. §4474e(k)(1) will require updating with a tax and regulatory program.

11) 18 V.S.A. §4474g

- Update to be consistent with amendments related to tax and regulation changes in 2019.

12) 18 V.S.A. §4474h

- Update if amendments are made for a tax and regulation market.

13) 18 V.S.A. §4474j

- Update recommendation requirements.

14) 18 V.S.A. §4474k

- Update, if there are changes to the special fund.

## ENDNOTES

- <sup>i</sup> State of Vermont, Executive Department, Executive Order No. 15-17, *Governor’s Marijuana Advisory Commission*, Sec. I(3), available online: <http://governor.vermont.gov/sites/scott/files/documents/EO%2015-17%20-%20Governors%20Marijuana%20Advisory%20Commission.pdf>.
- <sup>ii</sup> 18 V.S.A. § 4201(15)(A).
- <sup>iii</sup> Colorado Marijuana Taxes: <https://www.colorado.gov/pacific/tax/marijuana-taxes-file>; CO monthly marijuana tax data: <https://www.colorado.gov/pacific/revenue/colorado-marijuana-tax-data>; CO end FY17 data: <https://www.colorado.gov/pacific/sites/default/files/0617%20Marijuana%20Tax%2C%20License%2C%20and%20Fees%20Report%20PUBLISH.xlsx>.
- <sup>iv</sup> Washington Dept. of Revenue: <https://dor.wa.gov/find-taxes-rates/taxes-due-marijuana>; WA Marijuana Tax Report: <https://lcb.wa.gov/marj/marijuana-2017>.
- <sup>v</sup> Oregon Marijuana Tax Program: <http://www.oregon.gov/DOR/programs/businesses/Pages/marijuana.aspx>; OR Marijuana Tax Statistics: <http://www.oregon.gov/dor/programs/gov-research/Pages/research-marijuana.aspx>; FY17 Tax receipts: <http://www.oregon.gov/DOR/programs/gov-research/Documents/monthly-marijuana-tax-receipts.xlsx>.
- <sup>vi</sup> Alaska’s Dept. of Revenue – Tax Division: <http://tax.alaska.gov/programs/programs/index.aspx?60000>; AS FY17 Annual Report: <http://tax.alaska.gov/programs/programs/reports/annual/Marijuana.aspx?FiscalYear=2017>.
- <sup>vii</sup> California Department of Tax and Fee Administration, “Cannabis Tax Revenue Increases In 2nd Quarter of 2018” News Release 18-41 (Aug. 15, 2018) available online: <https://www.cdtfa.ca.gov/news/18-41.htm>.
- <sup>viii</sup> State of Nevada, Department of Taxation, “July Marijuana Revenue Statistics News Release” (Oct. 9, 2018), available online: <https://tax.nv.gov/uploadedFiles/taxnvgov/Content/TaxLibrary/News-Release-July-2018-Marijuana.pdf>.
- <sup>ix</sup> Fiscal Note for LD 1719: [http://www.mainelegislature.org/legis/bills/bills\\_128th/fiscalpdfs/FN171902.pdf](http://www.mainelegislature.org/legis/bills/bills_128th/fiscalpdfs/FN171902.pdf).
- <sup>x</sup> 18 V.S.A. § 4201(15)(A).
- <sup>xi</sup> 18 V.S.A. § 4201(15)(B).
- <sup>xii</sup> 6 V.S.A. § 562(3).
- <sup>xiii</sup> 18 V.S.A. § 4472(2).
- <sup>xiv</sup> Black’s Law Dictionary (10th ed. 2014). *See also*: 71 Am. Jur. 2d State and Local Taxation § 20, at 355 (1973): “[A]n ad valorem tax is a tax of a fixed proportion of the value of the property with respect to which the tax is assessed, and requires the intervention of assessors or appraisers to estimate the value of such property before the amount due from each taxpayer can be determined.”
- <sup>xv</sup> 32 V.S.A. § 9771(1).
- <sup>xvi</sup> 32 V.S.A. § 9701(7).
- <sup>xvii</sup> 32 V.S.A. § 9741(2), (3), and (13).
- <sup>xviii</sup> 21 C.F.R. § 201.66; 32 V.S.A. § 9741(2); Vt. Reg. § 1.9741(2)(A)(1), (2).
- <sup>xix</sup> 21 C.F.R. § 101.36; 32 V.S.A. §§ 9701(31), 9741(13); Vt. Reg. § 1.9741(2)(C).
- <sup>xx</sup> 18 V.S.A. § 4201(15). This definition of marijuana already excludes hemp, so hemp and hemp plants would not be subject to sales tax, although products derived from hemp would be taxable as tangible personal property. See the section titled “Hemp” for more information.
- <sup>xxi</sup> See, Vermont Department of Taxes, “Local Option Tax: What Is It and When Does It Apply?” (Rev. 06/2018), available online: [https://tax.vermont.gov/sites/tax/files/documents/LocalOptionTaxFS\\_0.pdf](https://tax.vermont.gov/sites/tax/files/documents/LocalOptionTaxFS_0.pdf).
- <sup>xxii</sup> 26 U.S.C. 280E reads: “No deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by Federal law or the law of any State in which such trade or business is conducted.” *See, Californians Helping to Alleviate Medical Problems, Inc. v. C.I.R.*, U.S. Tax Ct. 2007, 128 T.C. 173, 2007 WL 1424620, unreported; *Olive v. C.I.R.*, C.A.9 2015, 792 F.3d 1146.
- <sup>xxiii</sup> Pub. L. 97-248, Title III, § 351(a), Sept. 3, 1982, 96 Stat. 640.
- <sup>xxiv</sup> 26 C.F.R. § 1.471-11(c); 26 U.S.C. § 471.
- <sup>xxv</sup> Oregon Legislative Revenue Office, Mazen Malik, “Legal Marijuana in Oregon Taxation and Revenue” (Oct. 11, 2018), NCSL Presentation.

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- <sup>xxvi</sup> Marijuana Policy Group and University of Colorado Boulder Leeds School of Business, “Market Size and Demand for Marijuana in Colorado 2017 Market Update” (Aug. 2018), available online: <https://www.colorado.gov/pacific/sites/default/files/MED%20Demand%20and%20Market%20%20Study%20%2082018.pdf>
- <sup>xxvii</sup> Washington State Economic and Revenue Forecast Council, Steve Lerch, “Cannabis Forecasting in Washington State Presented to National Committee on State Legislatures” (Oct. 11, 2018).
- <sup>xxviii</sup> For revenue and/or sales data from these states, see:
- Colorado: <https://www.colorado.gov/pacific/revenue/colorado-marijuana-tax-data>
  - Oregon: <https://www.oregon.gov/DOR/programs/gov-research/Pages/research-marijuana.aspx>
  - Washington: <https://dor.wa.gov/about/statistics-reports/recreational-and-medical-marijuana-taxes>
- <sup>xxix</sup> Oregon sales were estimated based on revenue figures. While this methodology isn’t a perfect representation of sales data, in aggregate it appears to be representative of Oregon’s market.
- <sup>xxx</sup> 16 V.S.A. § 4025(a)(6).
- <sup>xxxi</sup> 24 V.S.A. § 138.
- <sup>xxxii</sup> 32 V.S.A. § 3802(1).
- <sup>xxxiii</sup> Marijuana Advisory Commission Recommendations, Subcommittee on Education and Prevention (Nov. 14, 2018), available online: [https://marijuanacommission.vermont.gov/sites/mc/files/doc\\_library/2018\\_11\\_14\\_MJ%20Prevention%20Report%20DRAFT%20FINAL.pdf](https://marijuanacommission.vermont.gov/sites/mc/files/doc_library/2018_11_14_MJ%20Prevention%20Report%20DRAFT%20FINAL.pdf).
- <sup>xxxiv</sup> 21 U.S.C. § 801–971.
- <sup>xxxv</sup> Example legislative language could be taken from Section 8 of H.490, As Introduced adding 18 V.S.A. § 4506.
- <sup>xxxvi</sup> R.C.W.A. 69.50.380(1).
- <sup>xxxvii</sup> 18 V.S.A. ch. 84, subch. 1.
- <sup>xxxviii</sup> 18 V.S.A. § 4474f(a)(2).
- <sup>xxxix</sup> 18 V.S.A. ch. 84, subch. 1.
- <sup>xl</sup> 18 V.S.A. § 4474e(c).
- <sup>xli</sup> 18 V.S.A. § 4237.
- <sup>xlii</sup> R.C.W.A. 69.50.390.
- <sup>xliiii</sup> 32 V.S.A §§ 601-606.
- <sup>xliv</sup> 32 V.S.A. § 603(2).
- <sup>xlv</sup> 32 V.S.A. § 605(d)(2).
- <sup>xlvi</sup> Colorado Detail Monthly Summary, available online: <https://www.colorado.gov/pacific/revenue/colorado-marijuana-tax-data>.
- <sup>xlvii</sup> Washington Annual Reports, available online: <https://lcb.wa.gov/about/annual-report>
- <sup>xlviii</sup> *See*, e.g., N.A.C. 453A.504.
- <sup>xlix</sup> 16 C.F.R. 16, Ch. II, Subch. E, Pt. 1700.
- <sup>l</sup> *See*, 1 C.C.R. 212-2.1005
- <sup>li</sup> W.A.C. 314-55-077.
- <sup>lii</sup> *See*, H.490 of 2018, As Introduced, Sec. 8, adding 18 V.S.A. § 4512(a)(3)(I).
- <sup>liii</sup> H.490, Sec. 8, adding 18 V.S.A. § 4501(15); *see also*, C.R.S. 12-43.4-202; CO HB 16-1436 (2016).
- <sup>liv</sup> Vermont Acts and Resolves of 2018, No. 143, Secs. 5-8, available online: <https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT143/ACT143%20As%20Enacted.pdf>.
- <sup>lv</sup> Jonathan P. Caulkins, et. al., “Considering Marijuana Legalization: Insights for Vermont and Other Jurisdictions” Santa Monica, CA: RAND Corporation (2015), available online: [https://www.rand.org/pubs/research\\_reports/RR864.html](https://www.rand.org/pubs/research_reports/RR864.html).
- <sup>lvi</sup> 18 V.S.A. § 4474e(d)(5).
- <sup>lvii</sup> 18 V.S.A. § 4474e(k)(1)(C).
- <sup>lviii</sup> 18 V.S.A. § 4472(14).
- <sup>lix</sup> 18 V.S.A. § 4474h.
- <sup>lx</sup> Federation of State Medical Boards, FSMB Workgroup on Marijuana and Medical Regulation, “Model Guidelines for the Recommendation of Marijuana in Patient Care” (April 2016), available online: <http://www.fsmb.org/globalassets/advocacy/policies/model-guidelines-for-the-recommendation-of-marijuana-in-patient-care.pdf>. *See*, also: 18 V.S.A. §§ 4472(4), 4473.
- <sup>lxi</sup> 18 V.S.A. § 4474g(e).
- <sup>lxii</sup> 21 V.S.A. § 511(3).

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- lxiii 21 V.S.A. § 512(b).
- lxiv 21 V.S.A. § 513(c).
- lxv 21 V.S.A. § 514.
- lxvi *Id.*
- lxvii 21 V.S.A. § 513(c)(2).
- lxviii 21 V.S.A. § 513(c)(1).
- lxix 21 V.S.A. § 513(c)(3).
- lxx *Id.*
- lxxi *Id.*
- lxxii 41 U.S.C. subtit. IV, ch. 81.
- lxxiii 42 U.S.C. § 12112(a)-(b).
- lxxiv 21 U.S.C. § 812; 42 U.S.C. § 12114.
- lxxv 42 U.S.C. § 12114; *James v. City of Costa Mesa*, 700 F. 3d 394, 397-98 (9th Cir. 2012).
- lxxvi Vermont Office of the Attorney General, Civil Rights Unit, “Guide to Vermont’s Laws on Marijuana in the Workplace” (June 2018), available online: <http://ago.vermont.gov/wp-content/uploads/2018/06/Employer-MJ-Guidance-TOC.pdf>; Vermont Acts and Resolves of 2018, No. 86, available online: <https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT086/ACT086%20As%20Enacted.pdf>.
- lxxvii 18 V.S.A. § 4230a(e)(1).
- lxxviii 18 V.S.A. § 4474c(a).
- lxxix 18 V.S.A. § 4230a(e)(2).
- lxxx 18 V.S.A. § 4230a(e)(4).
- lxxxi 18 V.S.A. § 4230a(e)(3).
- lxxxii 18 V.S.A. § 4474c(b).
- lxxxiii A.R.S. § 36-2814; Fla. Stat. § 381.986(15); M.C.L.A. § 418.315a; M.C.A. § 50-46-320(4)(a); W.A.C. 296-20-03010.
- lxxxiv *Hall v. Safelite*, Opinion No. 06-18 (March 28, 2018), available online: <http://labor.vermont.gov/wordpress/wp-content/uploads/HallMM.Decision.pdf>.
- lxxxv *Bourgoin v. Twin Rivers Paper Company, LLC, et. al.*, 187 A.3d 10, 2018 ME 77, (June 14, 2018), available online: [http://www.courts.maine.gov/opinions\\_orders/supreme/lawcourt/2018/18me077.pdf](http://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2018/18me077.pdf). [Where an employer is subject to an order that would require it to pay for an employee’s workers’ compensation claim for medical marijuana expenses, there is a positive conflict between federal and state law, and as a result, the Controlled Substances Act preempts the Maine Medical Use of Marijuana Act, and an employer is not compelled to reimburse an employee for medical marijuana expenses.]
- lxxxvi 29 U.S.C. ch. 15; 21 V.S.A. ch. 3.
- lxxxvii 21 V.S.A. § 223(a).
- lxxxviii Interagency Resource for Achieving Cooperation, “Regulatory Guidance for Cannabis Operations, Version 3.0” (April 2016), available online: <https://fortress.wa.gov/ecy/wrdocs/WaterRights/wrwebpdf/Guidance4CannabisOperations.pdf>.
- lxxxix Marijuana Occupational Health and Safety Work Group, Colorado Department of Public Health and Environment, “Guide to Worker Safety and Health in the Marijuana Industry” (Jan. 2017), available online: <https://www.colorado.gov/pacific/cdphe/marijuana-occupational-safety-and-health>.
- xc *See*, e.g., S.3032 of 2018, introduced by Senators Elizabeth Warren (D-MA) and Corey Gardner (R-CO), which would exempt most marijuana-related activities from the Control Substances Act when those activities are allowed under state or tribal law.
- lxxci Insurance Institute for Highway Safety, Highway Loss Data Institute, “Status Report: High Claims; Legalizing recreational marijuana use is linked to increase in crashes” Vol. 52, No. 4 (June 22, 2017), available online: <https://www.iihs.org/externaldata/srdata/docs/sr5204.pdf>.
- lxxcii Cal.Bus. & Prof.Code § 26210.5.
- lxxciii 32 V.S.A. § 9741(3).
- lxxciv 32 V.S.A. §§ 9701(7), 9771(1).
- lxxcv 6 V.S.A. § 568 (a).
- lxxcvi [http://tax.vermont.gov/sites/tax/files/documents/Tobacco%20Rate%20Tables%20FS\\_2015.pdf](http://tax.vermont.gov/sites/tax/files/documents/Tobacco%20Rate%20Tables%20FS_2015.pdf);  
<http://tax.vermont.gov/business-and-corp/miscellaneous-taxes/cigarette-and-tobacco-tax/rates>.