

Highlights of House Government Operations' Proposal of Amendment
to S.54, An Act Relating to the Regulation of Cannabis (12.1)

January 31, 2020

Regulatory Agency

The amendment creates an independent Executive Branch commission, the Cannabis Control Board, for the purpose of “safely, equitably, and effectively implementing and administering the laws enabling access to adult-use cannabis in Vermont.” The Board consists of five members who are appointed by the Governor.

The amendment establishes a nominating process for Board candidates that is similar to the one used for members of the Public Utility Commission. The Cannabis Control Board Nominating Committee is created and composed of three members from the Executive Branch appointed by the Governor, two members from the House of Representatives appointed by the Speaker, and two members from the Senate appointed by the Committee on Committees. When a vacancy on the Board occurs, the Governor is required to submit at least 10 names of potential nominees to the newly established Cannabis Control Board Nominating Committee for review. The Committee reviews the candidates to determine which candidates are well-qualified for appointment to the Board and recommends those candidates to the Governor.

The Chair and all members of the Board will be full-time State employees and exempt from the State classified system. The Chair’s compensation will be equal to two-thirds that of a Superior Court Judge (\$103,000) and other members compensation will be equal to one-half that of a Superior Court Judge (\$80,000).

The Board will appoint an Executive Director who must be an attorney with experience in legislative or regulatory matters. The Director will be a full-time, exempt State employee and will serve at the pleasure of the Board.

On or before January 15, 2021, the Board shall provide recommendations to the General Assembly on the resources necessary for implementation of the act for fiscal years 2022 and 2023, including positions and funding. The Board must consider utilization of current expertise and resources within State government and cooperation with other State departments and agencies where there may be an overlap in duties.

The Board is directed to consult with other State agencies and departments as necessary in the development and adoption of rules where there is shared expertise and duties.

An advisory committee is established within the Board composed of members with expertise and knowledge relevant to the Board’s mission. The advisory committee shall be composed of 12 members:

- one member with an expertise in public health, appointed by the Governor;
- the Secretary of the Agency of Agriculture, Food and Markets or designee;
- one member with an expertise in laboratory science or toxicology, appointed by the Governor;
- one member with an expertise in systemic social justice and equity issues, appointed by the Speaker of the House;
- one member with an expertise in women- and minority-owned business ownership, appointed by the Speaker of the House;
- one member with an expertise in substance misuse prevention, appointed by the Senate Committee on Committees;
- one member with an expertise in the cannabis industry, appointed by the Senate Committee on Committees;

- one member with an expertise in business management or regulatory compliance, appointed by the Treasurer;
- one member with an expertise in municipal issues, appointed by the Treasurer;
- one member with an expertise in public safety, appointed by the Attorney General;
- one member with an expertise in criminal justice reform, appointed by the Attorney General; and
- the Secretary of Natural Resources or designee.

On or before November 15, 2023, the Auditor of Accounts is required to report to the General Assembly regarding the organizational structure and membership of the Cannabis Control Board and whether the structure continues to be the most efficient for carrying out the statutory duties of the Board.

Cannabis Establishment Licenses

Any person who wishes to operate a commercial, adult-use cannabis business in Vermont must first obtain a license from the Board.

There are six types of licenses:

- Cultivator
- Product manufacturer
- Wholesaler
- Testing laboratory
- Retailer
- Integrated licensee

A person may hold a maximum of one cultivator, product manufacturer, wholesaler, testing laboratory, or retailer license.

An integrated license allows the licensee to engage in the activities of a cultivator, product manufacturer, wholesaler, testing laboratory, and retailer under one license. Integrated licenses are only available to the current five vertically integrated registered medical cannabis dispensaries in Vermont.

The Board is required to establish tiers for cultivator and retailer licenses and may develop tiers for other types of licenses to allow for entry into the market at various levels.

The Board must obtain a fingerprint-based Vermont criminal history record, an out-of-state criminal history record, a criminal history record from the Federal Bureau of Investigation, and any regulatory records relating to the operation of a business in this State or any other jurisdiction for: (1) the applicant; (2) each proposed principal; and (3) each individual who would control the business. A person who directly or beneficially owns 10 percent or more equity interest, or the equivalent thereof, of another person is deemed to control the business.

The Board is required to issue licenses as determined according to a system of priorities adopted by rule by the Board. The system of priorities requires consideration of criteria, including:

- whether the applicants have an existing medical cannabis dispensary license in good standing;
- whether the applicants would foster social justice and equity in the cannabis industry by being a minority- or women-owned business;
- whether the applicants propose specific plans to recruit, hire, and implement a development ladder for minorities, women, or individuals who have historically been disproportionately impacted by cannabis prohibition;
- whether applicants propose specific plans to pay employees a living wage and offer benefits;
- whether the project incorporates principles of environmental resiliency or sustainability, including energy efficiency; and
- the geographic distribution of cannabis establishments based on population and market needs.

Small Cultivators

The amendment states that it is the intent of the General Assembly to move as much of the illegal cannabis market as possible into the regulated market for the purposes of consumer protection and public safety. It is also the intent of the General Assembly to encourage participation in the regulated cannabis market by small, local farmers. In furtherance of these goals, the Board must consider policies to promote small cultivators.

For purposes of the amendment, “small cultivator” means a cultivator with a plant canopy or space for cultivating plants for breeding stock of not more than 500 square feet.

The Board shall consider the different needs and risks of small cultivators when adopting rules and shall make an exception or accommodation to such rules for cultivators of this size where appropriate.

The application for small cultivator licenses will be prioritized over larger cultivation licenses during the initial application period and small cultivators will be licensed at the same time as integrated licensees and testing labs.

Upon licensing, a small cultivator may sell cannabis to a licensed dispensary at any time, for sale to patients and caregivers pursuant to the dispensary license or to the public pursuant to an integrated license, including the time period before retail sales are permitted for licensed cannabis retailers.

Local Control

A licensed cannabis retailer may operate only in a municipality that has permitted the operation of such retailers by majority vote of those present and voting by Australian ballot at an annual or special meeting warned for that purpose. **This means that retail cannabis establishments are banned in a municipality unless the municipality takes affirmative action to allow such establishments.** Other types of licensees are not required to be voted on by the municipality, but must comply with any local bylaws, ordinances, or permits.

A vote to permit the operation of a licensed cannabis retailer within the municipality remains in effect until rescinded by majority vote of those present and voting by Australian ballot at a subsequent annual or special meeting warned for that purpose. A rescission of the permission to operate a licensed cannabis retailer within the municipality will not apply to a licensed cannabis retailer that is operating within the municipality at the time of the vote.

A municipality that hosts any type of licensed cannabis establishment may establish a cannabis control commission. The local cannabis control commission may issue and administer local control licenses (similar to the process for liquor licenses). The commissioners may condition the issuance of a local license upon compliance with any zoning bylaw or ordinances regulating signs or public nuisances adopted pursuant to State law. The commission may suspend or revoke a local control license for a violation of any condition placed upon the license.

An applicant for a State cannabis establishment license must obtain any required local control license prior to being issued a State license.

Advertising

All cannabis establishment advertisements must be approved by the Board prior to publication. When reviewing a proposed advertisement, the Board shall require any changes necessary to protect the public health, safety, and welfare or to be consistent with dispensing information for the product under review.

A cannabis establishment advertisement may not contain any statement or illustration that:

- is deceptive, false, or misleading;
- promotes overconsumption;
- represents that the use of cannabis has curative effects;
- offers a prize, award, or inducement for purchasing cannabis or a cannabis product, except that price discounts are allowed;
- offers free samples of cannabis or cannabis products;
- depicts a person under 21 years of age consuming cannabis or cannabis products; or
- is designed to be or has the effect of being particularly appealing to persons under 21 years of age.

A cannabis establishment may not advertise its products via any medium unless the licensee can show that not more than 15 percent of the audience is reasonably expected to be under 21 years of age.

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

“Advertisement” means any written or verbal statement, illustration, or depiction that is calculated to induce sales of cannabis or cannabis products, including any written, printed, graphic, or other material, billboard, sign, or other outdoor display, other periodical literature, publication, or in a radio or television broadcast, the Internet, or in any other media. The term does not include:

- any label affixed to any cannabis or cannabis product, or any individual covering, carton, or other wrapper of that container that constitutes a part of the labeling under provisions of these standards;
- any editorial or other reading material, such as a news release, in any periodical or publication or newspaper for the publication for which no money or valuable consideration is paid or promised, directly or indirectly, by any cannabis establishment and that is not written by or at the direction of the licensee;
- any educational, instructional, or otherwise noncommercial material that is not intended to induce sales and that does not propose an economic transaction, but which merely provides information to the public in an unbiased manner; or
- a sign attached to the premises of a cannabis establishment that merely identifies the location of the cannabis establishment.

Consumer Protection and Health

Cannabis and cannabis products intended for human consumption must be tested for contaminants, potency, and quality in accordance with rules adopted by the Board.

A licensee subject to testing requirements must have its cannabis and cannabis products tested by an independent licensed testing laboratory and not a licensed testing laboratory owned or controlled by the license holder of the cannabis establishment.

The Board will identify and restrict the use of pesticides that are injurious to public health.

All cannabis and cannabis products must display a standard symbol indicating that the product contains cannabis.

Cannabis products must be packaged in opaque, child-resistant packaging, and all cannabis and cannabis products sold by a retailer or integrated licensee must be in opaque, child-resistant packaging at point of sale to a customer.

Cannabis products must be labeled with the date the product was manufactured, the date the product is best used by, and the ingredients contained in the product, as well as information on the length of time it typically takes for products to take effect, and appropriate health warnings.

Health warnings for labeling cannabis and cannabis products and advertisements for cannabis establishments would be adopted by the Board through rulemaking. The warnings would be incorporated into flyers provided to customers at point of purchase.

A packaged cannabis product may not contain more than 100 mg of THC unless it is a topical preparation or other nonconsumable product. Products must be labeled in a manner that states the number of servings of tetrahydrocannabinol in the product, measured in servings of a maximum of 5 milligrams per serving.

The following products are prohibited from being produced or sold by a licensed cannabis establishment:

- cannabis flower with greater than 30 percent tetrahydrocannabinol;
- solid concentrate cannabis products with greater than 60 percent tetrahydrocannabinol;
- oil cannabis products except for those that are sold prepackaged for use with battery-powered devices;
- flavored oil cannabis products sold prepackaged for use with battery-powered devices and any cannabis flower that contains characterizing flavor that is not naturally occurring in the cannabis;
- cannabis products that contain nicotine or alcoholic beverages; and
- any cannabis or cannabis products that are designed to make the product more appealing to persons under 21 years of age.

The Board is required to adopt rules regulating any additives to cannabis and cannabis products, including those that are toxic or designed to make the product more addictive, more appealing to persons under 21 years of age, or to mislead consumers.

Consumer Protection and Health (continued)

The Board is required to adopt rules, in consultation with the Department of Health, to prohibit cannabis products or the packaging of such products that are designed to make the product more appealing to persons under 21 years of age; to require that cannabis products sold by licensed retailers and integrated licensees are contained in child-resistant packaging; and to require that cannabis and cannabis products sold by licensed retailers and integrated licensees are packaged with labels that clearly indicate that the contents of the package contains cannabis and should be kept away from persons under 21 years of age.

A retailer must display a safety information flyer at the point of purchase and offer a customer a copy of the flyer with each purchase. A retailer must inform the customer that if the customer elects not to receive the flyer, the information contained in the flyer is available on the website for the Board. The flyer shall be developed by the Board in consultation with the Department of Health, posted on the Board's website, and supplied to the retailer free of charge. At a minimum, the flyer or flyers shall contain information concerning the methods for administering cannabis, the amount of time it may take for cannabis products to take effect, the risks of driving under the influence of cannabis, the potential health risks of cannabis use, the symptoms of problematic usage, how to receive help for cannabis abuse, and a warning that cannabis possession is illegal under federal law.

Employees of a cannabis establishment who are directly involved in sales to the public must be trained on the health effects of cannabis and cannabis products.

The Cannabis Control Board's Advisory Committee includes a member with an expertise in public health appointed by the Governor and a member with an expertise in substance misuse prevention appointed by the Senate Committee on Committees.

On or before March 1, 2021, the Executive Director of the Cannabis Control Board must submit to the General Assembly the Board's recommendation whether a licensed cannabis product manufacturer should be considered a food manufacturing establishment or food processor pursuant to 18 V.S.A. § 4301(7) for the purpose of licensing and regulation by the Department of Health.

On or before November 15, 2021, the Executive Director of the Cannabis Control Board must submit to the General Assembly recommendations as to whether cannabis and cannabis products should have a minimum amount of cannabidiol to aid in the prevention of the cannabis-induced psychosis that occurs in some users of cannabis and cannabis products.

The amendment establishes the Substance Misuse Prevention Fund for the purpose of funding substance misuse prevention programming and for necessary costs incurred in administering the Fund. The Fund will be administered by the Commissioner of Health or designee.

30% of tax revenue is dedicated to the Substance Misuse Prevention Fund (not to exceed \$6 million a year) and remaining monies go to the General Fund.

Environmental Provisions

Cannabis establishments shall not be regulated as “farming” under the Required Agricultural Practices (RAPs) or other State law.

Cannabis produced from cultivation shall not be considered an agricultural product or agricultural crop for the purposes of Use Value Appraisal or any sales tax exemption.

The cultivation, processing, and manufacturing of cannabis shall comply with all applicable State, federal, and local, environmental, energy, or public health law, unless otherwise provided by statute or rule.

A cannabis establishment shall be subject to municipal regulation and zoning as authorized by the bill in 7 V.S.A. § 863 and elsewhere.

Although cannabis cultivation, processing, and manufacturing will not be considered “farming” under State law, sections of the RAPs related to operating standards for farming, groundwater quality, and subsurface tile drainage shall apply to cannabis cultivation, processing, and manufacturing.

- Application of or compliance with these RAPs, shall not be construed to provide a presumption of compliance with or exemptions to applicable law.

On or before January 15, 2021, the Executive Director of the Cannabis Control Board, after consultation with the Secretary of Natural Resources, the Chair of the Natural Resources Board, and the Secretary of Agriculture, Food and Markets, is required to recommend to the General Assembly exemptions, specific criteria, or additional requirements under State or local environmental or land use law for cannabis establishments in the State.

- The recommendations shall address whether additional groundwater quality requirements or regulations are required for cannabis cultivation.

On or before January 15, 2020, the Executive Director of the Cannabis Control Board, after consultation with the Commissioner of Public Service and the Chair of the Public Utility Commission, is required to recommend to the General Assembly energy or efficiency requirements or standards for the operation of cannabis establishments in the State including:

- recommended building energy standards for cannabis establishments if different from existing commercial building standards;
- recommended energy audits for cannabis establishments, including the recommended frequency of audits and who should perform the audits; and
- energy efficiency and conservation measures applicable to cannabis establishments.

In making the recommendations, the Executive Director of the Cannabis Control Board shall recommend the permits, licenses, or standards that a licensed cannabis cultivator or cannabis product manufacturer shall demonstrate as a condition of licensure or as a condition for licensure renewal if such standards are not established prior to initial licensure.

The rules for cannabis cultivation shall include pesticides or classes of pesticides that may not be used by cultivators and standards for indoor cultivation of cannabis.

Highway Safety

The amendment makes Advanced Roadside Impaired Driving Enforcement (ARIDE) training a part of basic law enforcement training and directs Training Council to provide 16 hours of training to all officers by the end of 2021.

Saliva is added to definition of evidentiary test for impaired driving.

The amendment codifies the presumptive admissibility of field sobriety test results and Driving Recognition Expert (DRE) evaluation results.

Evidentiary saliva tests are added to the implied consent statute in the same manner as blood tests. Drivers are deemed to have given consent to the evidentiary testing of their saliva if law enforcement has reason to believe they are operating under the influence. Law enforcement must obtain a warrant for the test, just as they must obtain a warrant for an evidentiary blood test. A refusal to submit to an evidentiary saliva test would be permitted to be introduced as evidence in a criminal proceeding (same is true for a blood sample).

The amendment adds EMTs and paramedics to the list of professionals authorized to take a blood sample and specifies that a blood sample shall not be withdrawn at roadside. Law enforcement certified by the Training Council would be permitted to obtain a saliva sample provided it is not taken roadside.

The amendment requires a person to make arrangements for his or her own independent chemical analysis of an evidentiary sample of blood or saliva.

The Department of Public Safety (DPS) is required to report to standing committees by January 2021 regarding a plan to establish geographic equity in distribution of DREs across the State and plan to expand the DRE program to the extent allowed by credentialing bodies.

If the National Highway and Transportation Safety Administration (NHTSA) approves a roadside chemical testing device and establishes a threshold level of THC metabolite concentration to demonstrate impairment, DPS must issue a report that sets out a plan for use of such a preliminary device.

Provides for primary enforcement of seat belt laws for persons 18 years of age and older.

Money Provisions

Seven positions are created in FY20, the first year of the Board's operation: five full-time, exempt members of the Board; one full-time, exempt Executive Director of the Board; and one full-time, classified Administrative Assistant. In January, 2021, the Board is required to provide recommendations to the General Assembly regarding resources necessary for implementation of the act for fiscal years 2022 and 2023, including positions and funding. The Board must consider utilization of current expertise and resources within State government and cooperation with other State departments and agencies where there may be an overlap in duties.

In FY20, \$810,000.00 is appropriated from the newly created Cannabis Regulation Fund to the Cannabis Control Board to cover salaries and benefits; operating costs for space, IT, supplies, etc.; and an allowance for consulting costs during the start-up phase of the program which entails extensive rulemaking, working with the General Assembly on the build-out of the program for FY21 and FY22, and development of the licensing structure in accordance with the act. This appropriation is made in anticipation of receipts in the Fund.

The Cannabis Regulation Fund is established and maintained by the Cannabis Control Board. The Fund will be composed of all license application fees, annual license fees, renewal fees, advertising review fees, and civil penalties collected by the Board. Monies from the Fund are designated for implementation, administration, and enforcement of the new licensing system.

The amendment does not establish the amount of the various fees. It requires the Board to report recommendations for the fees to the General Assembly no later than January 15, 2021, and the General Assembly will determine the fees during the 2021 legislative session for application in FY21. The Board must also report as to whether fees will be sufficient to cover the costs of the program, or whether any monies from tax revenue should be dedicated for such purposes.

A 16% retail tax is established on cannabis and cannabis products sold by retailers and integrated licensees.

The amendment establishes the Substance Misuse Prevention Fund for the purpose of funding substance misuse prevention programming and for necessary costs incurred in administering the Fund. The Fund will be administered by the Commissioner of Health or designee.

30% of tax revenue is dedicated to the Substance Misuse Prevention Fund (not to exceed \$6 million a year) and remaining monies go to the General Fund.

A municipality may collect a 2% local option tax on the sales price of cannabis and cannabis products sold by retailers and integrated licensees. The tax is remitted to the Tax Department and the Department will return the monies (minus administrative fees) to the municipality.

To the extent that the Cannabis Regulation Fund has a negative balance at the close of FY22, proceeds in that amount from the tax established in 32 V.S.A. § 7901 in fiscal year 2023 shall be deposited into the Cannabis Regulation Fund.