

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

January 10, 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:

- one member to serve as chair who shall be appointed by the Governor;
- one member who shall be appointed by the Senate Committee on Committees;
- one member who shall be appointed by the Speaker of the House;
- one member who shall be appointed by the Treasurer; and
- one member who shall be appointed by the Attorney General.

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.

An advisory committee is established within the Board comprised of members with expertise and knowledge relevant to the Board’s mission. The advisory committee shall include, at a minimum:

- one member with an expertise in public health appointed by the Governor;
- one member with an expertise in agriculture, horticulture, or plant science appointed by the Governor;
- 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; and
- one member with an expertise in criminal justice reform appointed by the Attorney General.

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 is required to give priority licensing to small cultivators (less than 500 sq. ft.) and consider policies to promote small cultivators to encourage participation in the regulated cannabis market by small, local farmers and move as much of the illegal cannabis market as possible into the regulated market for the purposes of consumer protection and public safety.

Applicants for a license must be 21 years of age or older and consent to the release of his or her criminal and administrative history records.

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.

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.

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

All advertisements shall contain the following warnings:

- For use only by adults 21 years of age or older. Keep out of the reach of children.
- Cannabis has intoxicating effects and may impair concentration, coordination, and judgment.
- Cannabis should not be used by women who are pregnant or breastfeeding.
- Use of cannabis may cause dependence in some individuals.

“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 which 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

Cannabis and cannabis products intended for human consumption must be tested for contaminants, potency, and quality control 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 warnings concerning the potential risks of consuming cannabis, on the need to keep the product away from persons under 21 years of age, that cannabis should not be used by women who are pregnant or breastfeeding, and that use of cannabis may cause dependence in some individuals.

A packaged cannabis product may not contain more than 100 mg of THC unless it is a topical preparation or other nonconsumable product.

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; and
- cannabis products that contain nicotine or alcoholic beverages.

A retailer or integrated licensee shall display a safety information flyer or flyers developed or approved by the Board and supplied to the licensee free of charge. 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 risks of cannabis use, the symptoms of problematic usage, and how to receive help for cannabis abuse.

Consumer Protection (continued)

On or before March 1, 2020, 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, 2020, 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.

Environmental Provisions

On or before January 15, 2020, 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 land use or environmental regulatory requirements or standards applicable to cannabis establishments addressing the following:

- the State and local land use requirements for cannabis establishments, including if and how cannabis establishments shall be regulated under 10 V.S.A. chapter 151 (State land use and development plans);
- whether certain cannabis establishments should be regulated by the Secretary of Agriculture as farming;
- the water quality requirements for cannabis establishments, including whether cannabis establishments shall be required to obtain, where applicable, direct discharge permits, indirect discharge permits, stormwater permits, groundwater withdrawal permits, or other relevant water quality permits;
- the solid waste and hazardous waste handling requirements for cannabis establishments, including any requirements for the management or reporting of the use of toxic substances; and
- any additional permitting or licensing recommendations.

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.

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 2020.

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 2020 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.

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, 2020, the Board is required to provide recommendations to the General Assembly regarding resources necessary for implementation of the act for fiscal years 2021 and 2022, 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, 2020, and the General Assembly will determine the fees during the 2020 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.