

1 S.188

2 Introduced by Senators Sears, Benning, Chittenden and Pollina

3 Referred to Committee on Agriculture

4 Date: January 4, 2022

5 Subject: Cannabis; cultivation; environmental and land use

6 Statement of purpose of bill as introduced: This bill proposes to regulate the
7 activities by a licensed small cannabis cultivator as “farming”; amend the
8 criteria regarding the area for cultivating cannabis commercially and for
9 personal cultivation; and allow licensed cultivators to purchase and sell seeds
10 and immature plants to one another and licensed wholesalers to sell such
11 products to licensed cultivators.

12 An act relating to regulating licensed small cannabis cultivation as farming

13 It is hereby enacted by the General Assembly of the State of Vermont:

14 ~~Sec. 1. 7 V.S.A. § 861(19) is amended to read:~~

15 ~~(19) “Enclosed locked facility” means a building, room, greenhouse,~~
16 ~~outdoor fenced-in area, or other location that is enclosed on all sides and~~
17 ~~prevents cannabis from easily being viewed by the public. The facility shall~~
18 ~~be equipped with locks or other security devices that permit access only by:~~

1 ~~(A) Employees, agents, or owners of the cultivator, all of whom shall~~
2 ~~be 21 years of age or older.~~

3 ~~(B) Government employees performing their official duties.~~

4 ~~(C) Contractors performing labor that does not include cannabis~~
5 ~~cultivation, packaging, or processing. Contractors shall be accompanied by an~~
6 ~~employee, agent, or owner of the cultivator when they are in areas where~~
7 ~~cannabis is being grown, processed, packaged, or stored.~~

8 ~~(D) Registered employees of other cultivators, members of the~~
9 ~~media, elected officials, and other individuals 21 years of age or older visiting~~
10 ~~the facility, provided they are accompanied by an employee, agent, or owner~~
11 ~~of the cultivator. [Repealed]~~

12 Sec. 2. 7 V.S.A. § 869 is amended to read:

13 § 869. CULTIVATION OF CANNABIS; ENVIRONMENTAL AND LAND
14 USE STANDARDS

15 (a)(1) A Unless otherwise provided in this chapter, a cannabis establishment
16 shall not be regulated as “farming” under the Required Agricultural Practices,
17 6 V.S.A. chapter 215, or other State law, and cannabis produced from
18 cultivation shall not be considered an agricultural product, farm crop, or
19 agricultural crop for the purposes of 32 V.S.A. chapter 124, 32 V.S.A. § 9741,
20 or other relevant State law.

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

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

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

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

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

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

18 (c) A cannabis establishment regulated under this chapter shall be subject
19 ~~to regulation under 24 V.S.A. Chapter 117 as authorized by this chapter.~~

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

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

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

8 (C) section 12, regarding subsurface tile drainage.

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

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

17 Sec. 3. 7 V.S.A. § 870 is added to read:

18 § 870. SMALL CULTIVATORS; REGULATED AS FARMING

19 The cultivation of cannabis by a small cultivator licensed under this chapter
20 shall be.

1 ~~(1) regulated as “farming” under the Required Agricultural Practices~~
2 ~~and 6 V.S.A. chapter 215;~~

3 ~~(2) exempt from regulation under 10 V.S.A. chapter 151 as “farming”;~~

4 ~~(3) considered the production of an agricultural product, farm crop, or~~
5 ~~agricultural crop for the purposes of 32 V.S.A. chapter 124 and 32 V.S.A.~~
6 ~~§ 9741, provided that the agricultural land or farm building was enrolled in the~~

7 ~~use value appraisal program at the time cannabis cultivation commenced; and~~

8 ~~(4) considered farming or production of agricultural products under all~~
9 ~~other State law.~~

10 Sec. 4. 7 V.S.A. § 904 is amended to read:

11 § 904. CULTIVATOR LICENSE

12 (a) A cultivator licensed under this chapter may cultivate, process,
13 package, label, transport, test, and sell cannabis to a licensed wholesaler,
14 product manufacturer, retailer, integrated licensee, and dispensary and may
15 purchase and sell cannabis seeds and immature cannabis plants to another
16 licensed cultivator.

17 (b) Cultivation of cannabis shall occur only ~~in an enclosed, locked facility:~~

18 (1) on property lawfully in possession of the cultivator or with the
19 ~~written consent of the person in lawful possession of the property, and~~

1 ~~(2) in an area that is screened from public view and access is limited to~~
2 the cultivator and persons 21 years of age or older who have permission from
3 the cultivator.

4 * * *

5 Sec. 5. 7 V.S.A. § 905 is amended to read:

6 § 905. WHOLESALER LICENSE

7 A wholesaler licensed under this chapter may:

8 (1) purchase cannabis from a licensed cultivator and integrated licensee,
9 and cannabis products from a licensed product manufacturer, integrated
10 licensee, and dispensary; ~~and~~

11 (2) transport, process, package, and sell cannabis and cannabis products
12 to a licensed product manufacturer, retailer, integrated licensee, and
13 dispensary; and

14 (3) purchase cannabis seeds or immature cannabis plants from a licensed
15 cultivator and sell cannabis seeds or immature cannabis plants to a licensed
16 cultivator.

17 Sec. 6. 18 V.S.A. § 4230e is amended to read:

18 § 4230e. CULTIVATION OF CANNABIS BY A PERSON 21 YEARS OF
19 AGE OR OLDER

20 (a)(1) Except as otherwise provided in this section, a person 21 years of
21 ~~age or older who cultivates no~~ not more than two mature cannabis plants and

1 ~~four immature cannabis plants shall not be penalized or sanctioned in any~~
2 manner by the State or any of its political subdivisions or denied any right or
3 privilege under State law.

4 (2) Each dwelling unit shall be limited to two mature cannabis plants
5 and four immature cannabis plants regardless of how many persons 21 years of
6 age or older reside in the dwelling unit. As used in this section, "dwelling
7 unit" means a building or the part of a building that is used as a primary home,
8 residence, or sleeping place by one or more persons who maintain a household.

9 (3) Any cannabis harvested from the plants allowed pursuant to this
10 subsection shall not count toward the one-ounce possession limit in section
11 4230a of this title, provided it is stored in an indoor facility on the property
12 where the cannabis was cultivated and reasonable precautions are taken to
13 prevent unauthorized access to the cannabis.

14 (4) Cultivation in excess of the limits provided in this subsection shall
15 be punished in accordance with section 4230 of this title.

16 (b)(1) Personal cultivation of cannabis only shall occur:

17 (A) on property lawfully in possession of the cultivator or with the
18 written consent of the person in lawful possession of the property; and

19 (B) in an enclosure area that is screened from public view and is
20 secure so that access is limited to the cultivator and persons 21 years of age or
21 older who have permission from the cultivator.

1 ~~(2) A person who violates this subsection shall be assessed a civil~~
2 ~~penalty as follows:~~

3 ~~(A) not more than \$100.00 for a first offense;~~

4 ~~(B) not more than \$200.00 for a second offense; and~~

5 ~~(C) not more than \$500.00 for a third or subsequent offense.~~

6 Sec. 7. EFFECTIVE DATE

7 ~~This act shall take effect on passage.~~

Sec. 1. 7 V.S.A. § 861(19) is amended to read:

(19) “~~Enclosed, locked facility~~” means a building, room, greenhouse, outdoor fenced-in area, or other location that is enclosed on all sides and prevents cannabis from easily being viewed by the public. The facility shall be equipped with locks or other security devices that permit access only by:

(A) ~~Employees, agents, or owners of the cultivator, all of whom shall be 21 years of age or older.~~

(B) ~~Government employees performing their official duties.~~

(C) ~~Contractors performing labor that does not include cannabis cultivation, packaging, or processing. Contractors shall be accompanied by an employee, agent, or owner of the cultivator when they are in areas where cannabis is being grown, processed, packaged, or stored.~~

(D) ~~Registered employees of other cultivators, members of the media, elected officials, and other individuals 21 years of age or older visiting the facility, provided they are accompanied by an employee, agent, or owner of the cultivator. [Repealed.]~~

Sec. 2. 7 V.S.A. § 869 is amended to read:

*§ 869. CULTIVATION OF CANNABIS; ENVIRONMENTAL AND LAND
USE STANDARDS; REGULATION OF SMALL CULTIVATORS*

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

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

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

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

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

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

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

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

~~(d)(1) The cultivation, processing, and manufacturing of cannabis by all cultivators regulated under this chapter shall comply with the following sections of the Required Agricultural Practices as administered and enforced by the Board:~~

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

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

~~(C) section 12, regarding subsurface tile drainage.~~

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

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

(f) Notwithstanding subsection (a) of this section, a small cultivator licensed under this chapter who initiates cultivation of cannabis outdoors on a parcel of land that was subject to the Required Agricultural Practices prior to licensed cultivation of cannabis shall:

(1) be regulated in the same manner as “farming” and not as “development” on the tract of land where cultivation occurs for the purposes of permitting under 10 V.S.A. chapter 151;

(2) not be regulated by a municipal bylaw adopted under 24 V.S.A. chapter 117 in the same manner that Required Agricultural Practices are not regulated by a municipal bylaw under 24 V.S.A. § 4413(d)(1)(A);

(3) be eligible to enroll in the Use Value Appraisal Program under 32 V.S.A. chapter 124 for the cultivation of cannabis, provided that the agricultural land or farm building on the parcel where cannabis cultivation occurs was enrolled in the Use Value Appraisal Program prior to commencement of licensed cannabis cultivation and the parcel continues to qualify for enrollment; and

(4) be exempt under 32 V.S.A. § 9741(3), (25) and (50) from the tax on retail sales imposed under 32 V.S.A. § 9771.

Sec. 3. 7 V.S.A. § 904 is amended to read:

§ 904. CULTIVATOR LICENSE

(a) A cultivator licensed under this chapter may cultivate, process, package, label, transport, test, and sell cannabis to a licensed wholesaler, product manufacturer, retailer, integrated licensee, and dispensary and may purchase and sell cannabis seeds and immature cannabis plants to another licensed cultivator.

(b) Cultivation of cannabis shall occur only ~~in an enclosed, locked facility:~~

(1) on property lawfully in possession of the cultivator or with the written consent of the person in lawful possession of the property; and

(2) in an area that is screened from public view and access is limited to the cultivator and persons 21 years of age or older who have permission from the cultivator.

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Sec. 4. 7 V.S.A. § 905 is amended to read:

§ 905. WHOLESALER LICENSE

A wholesaler licensed under this chapter may:

(1) purchase cannabis from a licensed cultivator and integrated licensee, and cannabis products from a licensed product manufacturer, integrated licensee, and dispensary; ~~and~~

(2) transport, process, package, and sell cannabis and cannabis products to a licensed product manufacturer, retailer, integrated licensee, and dispensary; and

(3) sell cannabis seeds or immature cannabis plants to a licensed cultivator.

Sec. 5. 18 V.S.A. § 4230e is amended to read:

§ 4230e. CULTIVATION OF CANNABIS BY A PERSON 21 YEARS OF AGE OR OLDER

(a)(1) Except as otherwise provided in this section, a person 21 years of age or older who cultivates ~~no~~ not more than two mature cannabis plants and four immature cannabis plants shall not be penalized or sanctioned in any manner by the State or any of its political subdivisions or denied any right or privilege under State law.

(2) Each dwelling unit shall be limited to two mature cannabis plants and four immature cannabis plants regardless of how many persons 21 years of age or older reside in the dwelling unit. As used in this section, “dwelling unit” means a building or the part of a building that is used as a primary home, residence, or sleeping place by one or more persons who maintain a household.

(3) Any cannabis harvested from the plants allowed pursuant to this subsection shall not count toward the one-ounce possession limit in section 4230a of this title, provided it is stored in an indoor facility on the property where the cannabis was cultivated and reasonable precautions are taken to prevent unauthorized access to the cannabis.

(4) Cultivation in excess of the limits provided in this subsection shall be punished in accordance with section 4230 of this title.

(b)(1) Personal cultivation of cannabis only shall occur:

(A) on property lawfully in possession of the cultivator or with the written consent of the person in lawful possession of the property; and

(B) in an ~~enclosure~~ area that is screened from public view and is ~~secure so that~~ access is limited to the cultivator and persons 21 years of age or older who have permission from the cultivator.

(2) A person who violates this subsection shall be assessed a civil penalty as follows:

- (A) not more than \$100.00 for a first offense;*
- (B) not more than \$200.00 for a second offense; and*
- (C) not more than \$500.00 for a third or subsequent offense.*

*Sec. 6. CANNABIS CONTROL BOARD; REPORT ON CANNABIS
CULTIVATION AS FARMING*

If the federal government removes “marihuana” from the Schedule I list of controlled substances set forth in 21 U.S.C. § 812, the Executive Director of the Cannabis Control Board shall, after consultation with the Secretary of Agriculture, Food and Markets submit to the Senate Committees on Judiciary and on Agriculture and the House Committees on Judiciary and on Agriculture and Forestry a recommendation as to whether the regulation of the cultivation of cannabis should be transferred from the jurisdiction of the Cannabis Control Board to the jurisdiction of the Agency of Agriculture, Food and Markets. The recommendation shall include whether cannabis cultivation should be regulated as “farming” and the estimated staff and budget necessary for the Secretary of Agriculture, Food and Markets to administer regulation.

Sec. 7. EFFECTIVE DATE

This act shall take effect on passage.