

To: Vermont House Committee on Government Operations
 From: Brynn Hare, Executive Director, Cannabis Control Board
 Date: February 15, 2022
 Subject: H.548 – miscellaneous cannabis procedure bill

This memo serves to summarize H.548, an act relating to miscellaneous cannabis establishment procedures, and the policy rationale behind the proposed changes.

	Bill Language	Policy rationale
Sec. 1	<p>§ 868. PROHIBITED PRODUCTS</p> <p>(a) The following are prohibited products and may not be cultivated, produced, or sold pursuant to a license issued under this chapter:</p> <p>(1) cannabis flower with greater than 30 percent tetrahydrocannabinol;</p> <p>(2) solid concentrate cannabis products with greater than 60 percent tetrahydrocannabinol;</p> <p>(3) oil cannabis products except for those that are sold prepackaged for use with battery powered devices;</p>	<p>This section would remove two types of products from the prohibited cannabis products list: 1) solid concentrates above 60% THC and 2) oil cannabis products.</p> <p>When THC is extracted from the cannabis plant, the resulting solid or liquid concentrate will, by nature, be above 60% THC.</p> <p>One of the most common ways to formulate a cannabis product is by using a distillate, isolate, or other concentrate. Using a full concentration extraction allows product manufacturers to precisely calibrate how much THC is going into a product.</p> <ul style="list-style-type: none"> • These products are widely used in Vermont, and widely available in out-of-state markets. Prohibiting these products allows the unregulated market for them to thrive. • Leaving the manufacture and sale of these products outside of the CCB's control could be dangerous or harmful for both the manufacturers and users. • Concentrates from the unregulated market are made with various solvents, some of which could pose health risks if used improperly or consumed at high levels.

		<ul style="list-style-type: none"> • Consumers may be unaware of the potential risks involved in consuming products with a high concentration of THC. • Unregulated market facilities that are not inspected and permitted operate at an increased risk, including posing potential harm to first responders. • If extractions above 60% concentration are prohibited at any point in the supply chain, licensees will need to adulterate them with an additive to dilute the THC concentration before the extraction can be added to a cannabis product. Cutting a natural concentrate with an adulterant could make the end-product more dangerous, as additives can be potentially harmful to consumers. • Under the CCB's authority, the manufacture and sale of these products would be subject to standards regarding facility inspection, fire and building safety code, solvent usage in extraction, presence of residual solvents, consumer education, and additional health warnings, resulting in a safer process for manufacturers and cleaner and safer products for Vermonters. <p>7 V.S.A. § 904a(a) sets forth 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. As a result, the Board recommends regulating these products instead of prohibiting them. In its Nov. 1, 2021 report to the legislature, the Board recommended that products containing 60% or greater THC remain prohibited for use by individuals under 25 years of age.</p>
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<p>Sec. 2.</p>	<p>§ 881. RULEMAKING; CANNABIS ESTABLISHMENTS</p> <p>(a) The Board shall adopt rules to implement and administer this chapter in accordance with subdivisions (1)–(7) of this subsection.</p> <p>(1) Rules concerning any cannabis establishment shall include:</p> <p style="text-align: center;">* * *</p> <p>(I) regulation of additives to cannabis and cannabis products, including those <u>cannabidiol derived from hemp and substances</u> that are toxic or designed to make the product more addictive, more appealing to persons under 21 years of age, or to mislead consumers;</p> <p style="text-align: center;">* * *</p> <p>(3) Rules concerning product manufacturers shall include:</p> <p>(A) requirements that a single package of a cannabis product shall not contain more than 50 milligrams of THC, except in the case of:</p> <p>(i) cannabis products that are not consumable, including topical preparations; and</p> <p>(ii) <u>solid concentrates, oils, and tinctures; and</u></p> <p>(iii) cannabis products sold to a dispensary pursuant to 18 V.S.A. chapter 86 and regulations issued pursuant to that chapter;</p> <p style="text-align: center;">* * *</p> <p>(5) Rules concerning retailers shall include:</p> <p style="text-align: center;">* * *</p> <p>(C) requirements that if the retailer sells hemp or hemp products, the hemp and hemp products are clearly labeled as such and displayed separately from cannabis and cannabis products;</p>	<p>Adding this language to the rulemaking statute clarifies that products on the adult-use market may contain both CBD and THC.</p> <p>If the legislature removes solid concentrate products with 60% or greater THC, this language should be added to ensure that these products can be appropriately packaged and are not subject to the 50mg THC per package limit.</p> <p>This language is struck to clarify that products containing both CBD and THC are allowed.</p>
<p>Sec. 3</p>	<p>§ 884. CANNABIS ESTABLISHMENT IDENTIFICATION CARD</p> <p>(a) Every owner, principal, and employee of a cannabis establishment shall obtain an identification card issued by the Board. <u>A person may apply for an identification card prior to obtaining employment with a licensee. An employee identification card</u></p>	<p>This section would de-couple an employee ID card from a cannabis establishment license. This would allow the flexibility for potential employees in the adult-use cannabis industry to travel among establishments or work for multiple cannabis establishments.</p>



	<p>shall authorize the person to work for any licensee.</p> <p style="text-align: center;">* * *</p> <p>(d) An identification card shall expire one year after its issuance or, <u>in the case of owners and principals</u>, upon the expiration of the cannabis establishment’s license, whichever occurs first.</p>	<p>Applicants for an ID card will still be subject to the Board’s screening process to obtain a card and will be bound by the regulatory and training requirements associated with an employee ID Card.</p>
Sec. 4	<p>7 V.S.A. § 901(d)(3) is amended to read:</p> <p>(3)(A) Except as provided in subdivision <u>subdivisions (B) and (C)</u> of this subdivision (3), an applicant and its affiliates may obtain a maximum of one type of each type of license as provided in subdivisions (1)(A)–(E) of this subsection (d). Each license shall permit only one location of the establishment.</p> <p style="text-align: center;">* * *</p> <p><u>(C) An applicant and its affiliates may obtain multiple testing laboratory licenses.</u></p>	<p>This section would exempt testing laboratories from the one license rule. All cannabis and cannabis products will be subject to testing requirements, so these licensees will play a critical role in the supply chain. It will be essential to the functioning of the market to have easy access to testing facilities. These licensees may have particularly high start-up costs, given the expense associated with lab equipment. Testing labs may be able to achieve some efficiencies of scale by obtaining additional licenses and operating multiple locations.</p>
Sec. 5	<p>7 V.S.A. § 909(c) is added to read:</p> <p><u>(c) An integrated licensee shall comply with the provisions of subsection 908(f) of this title and have its cannabis or cannabis products tested by an independent licensed testing laboratory.</u></p>	<p>This language provides clarity that integrated licensees must have their products tested independently, just like any other licensee, and not by their own testing facility.</p>
Sec. 6	<p>§ 4230h. CHEMICAL EXTRACTION VIA BUTANE OR HEXANE PROHIBITED</p> <p>(a) No person shall manufacture concentrated cannabis by chemical extraction or chemical synthesis using butane or hexane unless authorized as a dispensary pursuant to a registration issued by the Department of Public Safety pursuant to chapter 86 of this title.</p> <p>(b) A person who violates subsection (a) of this section shall be imprisoned not more than two years or fined not more than \$2,000.00, or both. A person who violates</p>	<p>Current law criminalizes the use of chemical extraction using butane or hexane unless the extraction is done by a dispensary under the authority of the Department of Public Safety. DPS no longer registers dispensaries, and butane and hexane are hazardous solvents that, when used for extractions, can leave residual solvents in the resulting products that can be harmful if consumed.</p>



	subsection (a) of this section and causes serious bodily injury to another person shall be imprisoned not more than five years or fined not more than \$5,000.00, or both.	
Sec. 7	Sec. 7. 2019 Acts and Resolves No. 164, Sec. 8(a)(1) is amended to read: (a)(1) The cannabis plant, cannabis product, and useable cannabis possession limits for a registered dispensary set forth in 18 V.S.A. chapter 86 shall no longer apply on and after February 1, 2022. A dispensary shall be permitted to cultivate cannabis and manufacture cannabis products for the purpose of transferring or selling such products to an integrated licensee on or after April 1, 2022 <u>until October 1, 2022</u> and engaging in the activities permitted by 7 V.S.A. chapter 33.	This change sunsets an advantage that the integrated licensees have to grow unlimited canopy beginning on April 1. This language was originally included in recognition that the integrated licensees are permitted to operate 5 months before other retailers and would be the only entities able to sell legally grown cannabis during that window. Therefore, they were authorized as of Feb 1, 2022 to grow an unlimited amount of cannabis to supply as much of the market as possible. If that was the intention, it would be appropriate for the advantage to sunset once other cultivators and retailers are licensed.

The Board has three additional requests for the committee to consider adding to H.548 that will limit the amount of consumer packaging waste generated by the cannabis industry.

1. **Allow retailers the authority to package cannabis products.** Under current law, licensed cultivators, product manufacturers, and wholesalers may package cannabis, but not retailers. Allowing retailers to package products would reduce the amount of wasteful packaging used in the supply chain and would allow the Board to support retailers in reducing plastics used in product packaging.
2. **Carve out flower from the child-resistant packaging requirement.** Cannabis flower must be decarboxylized in order to get high from it. Decarboxylation is the heating process that activates the psychoactive compounds in the plant so the consumer experiences the psychoactive effects of the cannabis. Eating raw cannabis flower will not produce a psychoactive effect. Child-resistant packaging generally requires the use of significant amounts of plastic material, so the Board recommends removing this requirement for cannabis flower only, which 1) is unlikely to appeal to small children and 2) has no psychoactive effect if eaten.
3. **Increase the milligrams of THC allowable per single package of cannabis product.** Current law provides that a single package of cannabis product contain a maximum of 50 milligrams of THC. Given that the required serving size is 5 milligrams, this allows for a maximum of 10 servings per single package. Most other states limit package size to 100 milligrams of THC, which in Vermont would equate to 20 servings per package. This would significantly reduce the amount of consumer packaging generated by the industry.

