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February 15, 2022

House Committee on Government Operations
Rep. Sarah Copeland Hanzas, Chair
Vermont General Assembly
115 State Street
Montpelier, VT 05633

Re: Miscellaneous Cannabis Establishment Procedures Bill (H.548)

Dear Chair Copeland Hanzas, and Honorable Members of the House Committee on Government Operations:

I write to support the Miscellaneous Cannabis Establishment Procedures bill (H.548) pending before your committee, and offer suggestions for improvements intended to ensure that Vermont's nascent cannabis market operates efficiently.

After devoting many years to *pro bono* advocacy for fair and equitable cannabis laws, I launched Silberman PLC's professional cannabis law practice in 2020. I currently represent multiple clients intending to apply for cultivation, manufacturing, wholesale, testing laboratory, and retail licenses pursuant to 7 V.S.A. Chapter 33. While this letter is informed by conversations with these clients as to their needs, plans, and concerns, it does not represent the views of, and is not being provided on behalf of, any particular client, and I do not engage in lobbying on behalf of any person or entity.

Prohibited Products

I strongly support the changes proposed to 7 V.S.A. §868, as drafted. Without these changes, these already-widely available products would only be found on the parallel unregulated market, which would weaken the relative strength of the regulated market by driving consumers to unregulated sellers. Additionally, shifting these products to the regulated market will promote consumer health and safety. Of the 18 states which have legalized adult-use cannabis, Vermont stands alone in relegating this subset of cannabis products to the unregulated market.

Packaging Limits

While I support the change proposed to 7 V.S.A. §881(a)(3), I believe it is too narrowly drafted. The 50mg per package limit found in §881(a)(3) originated in this Committee, following my testimony in April 2019. At the end of my presentation, I provided members of the Committee with samples of several different forms of edible cannabis products acquired from stores in Massachusetts. In the ensuing discussion, Rep. Harrison noted that Massachusetts limited edibles to 5mg per serving, rather than the 10mg per serving allowed by S.54 as passed by the Senate. The Committee then amended the bill to reduce the serving size from 10mg to 5mg, and a commensurate change was made to §881 to reduce the per-package limit from 100mg to 50mg – in effect, to maintain a maximum of 10 servings per package.

Based on this legislative history, I believe this 50mg limit was only intended to apply to *edible* products, but was inadvertently drafted overbroadly to apply to “consumable” products. While eliminating the limit for “solid concentrates, oils, and tinctures” does begin to address the problem, this still leaves certain common cannabis products outside of the regulated market. For example, a pre-rolled joint that is composed of flower and THC wax-infused rolling paper would likely run afoul of the 50mg limit unless the joint was exceedingly small.¹

Thus, I urge the Judiciary Committees to further amend §881(a)(3)(A)(i) as follows:

“(i) cannabis products that are not intended to be consumed via eating consumable, including topical preparations;”

Additionally, I urge the Judiciary Committees to raise the per-package limit for edible products from 50mg to 100mg. Limiting edible packaging to 10 individual servings does not promote either public or consumer health or safety, but instead requires the use of more wasteful and environmentally destructive packaging than would otherwise be necessary. Further, a 100mg per-package limit would be consistent with the vast majority of jurisdictions that have per-package limits.²

Retailer Packaging

As currently in effect, 7 V.S.A. §907 requires licensed retailers to adhere to strict packaging rules (good!), but inadvertently fails to give those retailers the actual authority to

¹ A typical pre-rolled joint in regulated markets across the county will contain either one gram or half a gram of cannabis flower; even with moderate 15% potency flower, a half-gram joint would contain 75mg of THC from the flower alone, without accounting for the THC wax-infused paper.

² Alaska, Arizona, California, Illinois, Maine, Nevada, New Jersey, and Washington all have a 100mg per package limit on edibles. Michigan allows 500mg per package. Only Oregon and Virginia limit edible packaging to 50mg. The other legal states do not presently have per-package limits.

package the products being sold. Only licensed cultivators, wholesalers, and product manufacturers are empowered to “package” cannabis and cannabis products.³ Several of my prospective retailer clients are considering obtaining a manufacturing or wholesaling license solely to circumvent this flaw in Act 164.

Thus, I urge the Judiciary Committees to amend 7 V.S.A. §907(a)(2) as follows:

(2) transport, possess, package, and sell cannabis and cannabis products to the public for consumption off the registered premises.”

Wholesaler Sales to Licensed Cultivators

Current law⁴ defines “cannabis” to include cannabis seeds, clones, and plant starts⁵. As a result, cannabis seeds, clones, and starts may only be legally sold by licensed retailers. This creates a substantial risk of a supply chain bottleneck, as licensed cultivators will not be able to legally acquire these critical inputs until October 1, 2022 at the earliest – a full five months after the first cultivator licenses are to be issued. Even after October, requiring cultivators to acquire seeds and clones from retailers imposes substantial unnecessary costs on cultivators, as they will have to pay not only the retailer’s markup, but the 14% excise tax, on seed, clone, and start purchases. An efficient market requires that cultivators be able to acquire seeds, clones, and starts on the wholesale market – whether from licensed wholesalers or from other licensed cultivators.

The House of Representatives has already voted, in passing H.701, to allow licensed cultivators to sell seeds and clones to other licensed cultivators. The Senate Committee on Agriculture is currently considering a proposal⁶ to allow both cultivators and wholesalers to sell seeds, clones, and starts. I urge you to use H.548 as a vehicle for allowing both cultivators and wholesalers to sell seeds, clones, and starts to licensed cultivators, and to give the Control Board regulatory authority to distinguish between plant canopy grown by licensed cultivators to grow cannabis for harvest, and plant canopy grown by licensed wholesalers⁷ for propagation of seeds, clones, and starts.

³ See 7 V.S.A. §§904, 905, and 906

⁴ 7 V.S.A. §831(2)

⁵ I consider “clones” to be cuttings of a (mother) plant which are not yet root-bound, and “plant starts” to be root-bound plants in a non-flowering immature state.

⁶ Contained within S.188 (concerning the regulation of small cannabis cultivators as farming)

⁷ I propose that cultivators who wish to both cultivate cannabis for harvest *and* propagate cannabis for cross-licensee seed, clone, and start sales should be steered towards obtaining a wholesale license alongside their cultivation license, so as to avoid muddying the waters around canopy-based cultivation license tiers and the substantial regulatory preference afforded to small cultivators under 7 VSA §904a.

Testing Laboratories

I support the proposed change allowing affiliated ownership and control of more than one testing laboratory license, while maintaining Vermont's strictest-in-the-nation law against corporate consolidation of the cannabis industry. While the proposed amendment to subsection (C) of 7 V.S.A. §903(d)(3) would permit an applicant to obtain multiple testing laboratory licenses, I urge the Committee to also amend subsection (A) of such section to permit more than one testing laboratory location under a single testing laboratory license. Allowing multiple locations under a single license would allow for more efficient business operation by testing laboratory scientists than requiring them to apply for multiple single-location licenses (although the option of obtaining multiple licenses will likely be appealing to some applicants).

Employee Identification Cards

I applaud the change proposed to 7 V.S.A. §884 to allow employee portability of their work authorization cards. This pro-labor policy change will empower employees to obtain better wages, benefits, and working conditions by eliminating an artificial and unnecessary barrier to job-switching.

Medical Dispensary Parity

I also applaud the proposed changes related to medical dispensary and integrated licensees. Ensuring that these licensees abide by the same rules and limitations applicable to other licensees in the regulated cannabis market is a matter of fundamental fairness, and closing these apparent loopholes is sound public policy.

* * *

Thank you for your continued efforts to ensure a an equitable and efficient regulated cannabis market for our state. I am available to the Committees and each of their members to answer any questions regarding the above.

Very truly yours,

A handwritten signature in black ink, appearing to read "Dave Silberman", written over the typed name below.

Dave Silberman

Cc: Brynn Hare, Executive Director, Cannabis Control Board