

Bill H.612 Recommendations

Vermont Cannabis Equity Coalition: VT Racial Justice Alliance, VT Growers Association, Rural VT, Northeast Organic Farming Association of VT, Green Mtn Patients' Alliance.

We are a coalition of organizations organizing, educating, and advocating for a cannabis economy and community in Vermont which is racially just, economically equitable, agriculturally accessible, and environmentally sound.

This document is a thorough breakdown and analysis of each section of Bill H.612, An act relating to miscellaneous cannabis amendments, with proposed legislative language, when available, as recommended by Vermont Cannabis Equity Coalition (VCEC). In addition to existing sections of the legislation, we also propose new policy sections that include public consumption, direct-sales allowances for small producers, and complete expungement of all cannabis-related charges all of which are of significant priority for the industry and communities across Vermont.

Section 1

This section brings hemp-derived products and hemp products under the jurisdiction of CCB by redefining them as cannabis products, which then allows the CCB to prohibit them using its already enacted 2.17 rule ([link](#)).

Analysis: We support this section, but suggest moving the language out of agency rules and into statute. Synthetic cannabinoids, including delta-8 and delta-10 tetrahydrocannabinol, should be prohibited in Vermont. While the state cannot interfere with interstate commerce, we should do what we can to prohibit out-of-state hemp from being converted or concentrated and allowed to enter the adult-use supply chain.

Proposed Language for Section 1 of H.612

Sec. 1. 6 V.S.A. § 562(4) is amended to read:

(4)(A) "Hemp products" or "hemp-infused products" means all products with the federally defined tetrahydrocannabinol concentration level for hemp derived from, or made by, processing hemp plants or plant parts, which are prepared in a form available for commercial sale, including cosmetics, personal care products, food intended for animal or human consumption, cloth, cordage, fiber, fuel, paint, paper, construction materials, plastics, and any product containing one or more hemp-derived cannabinoids, such as cannabidiol.

(B) Notwithstanding subdivision (A) of this subdivision (4), "hemp products" and "hemp-infused products" do not include any substance, manufacturing intermediary, or product that:

(i) is prohibited or deemed a regulated cannabis product by administrative rule of the Cannabis Control Board; or

(ii) contains more than 0.3 percent total isomers of tetrahydrocannabinol on a dry-weight basis; or

(iii) is an isomer, variant, analog, and mimetic of delta-9 tetrahydrocannabinol, including delta-8 and delta-10 tetrahydrocannabinol, created by chemical manipulation of

any part or derivative of the plant Cannabis sativa L., regardless of the delta-9 tetrahydrocannabinol concentration level of the source plant or plants and delta-9 tetrahydrocannabinol that has been chemically or mechanically concentrated from hemp, or otherwise derived from hemp and then sprayed, infused, or otherwise artificially introduced onto or into ~~any product~~, hemp or hemp products, so as to impart intoxicating properties mimicking those of cannabis and cannabis products.

(C) A consumable product that is not cannabis or a cannabis product is presumptively prohibited regardless of the delta-9 tetrahydrocannabinol concentration of any plant from which the product is sourced, if the product, in the form offered to consumers:

(i) contains total isomers of tetrahydrocannabinol in a concentration exceeding 0.3 percent on a dry weight basis; or

(ii) contains more than 1.5 mg tetrahydrocannabinol per serving, where “serving” is the amount reasonably ingested by a typical consumer in a single instance; or

(iii) contains more than 10 mg total tetrahydrocannabinol per package, unless the ratio of cannabidiol to tetrahydrocannabinol is at least 20:1; or

(iv) has the dominant market appeal of mimicking the intoxicating effects of tetrahydrocannabinol.

(D) A hemp-derived product or substance that is excluded from the definition of “hemp products” or “hemp-infused products” pursuant to subdivision (B) of this subdivision (4) shall be considered a cannabis product as defined by 7 V.S.A. § 831(3); provided, however, that a person duly licensed or registered by the Cannabis Control Board lawfully may possess such products in conformity with the person’s license or hemp processor registration.

Section 2

This section amounts to a minor technical change that redefines the definition of “Controls,” “is controlled by,” and “under common control” for a licensed business for the purposes of obtaining FBI National Crime Information Center (NCIC) federal background checks. The FBI had previously rejected Vermont’s request to use the NCIC for adult-use-related background checks. This legislative change is an attempt to fix that.

Analysis: We support this section. Third-party contractors have demonstrated to be cost-prohibitive, and the FBI background check would cost a licensee around \$50 and reduce the turnaround time for initial licensing and license renewals.

Section 3

This section is an amendment to prohibited products that would allow newly proposed medical-use-endorsed (MUE) retailer licensees to buy, possess, and sell cannabis and cannabis products otherwise prohibited under the THC caps. Only state-registered patients and caregivers would be allowed to purchase these products from MUE retailers. More on the new proposed medical-use-endorsed retailer in a later section.

Analysis: This section was introduced with language that lifted the ban on cannabis that tests over 30% THC and solid concentrates that test over 60% THC, which was then changed in the House Committee on Government Operations and Military Affairs to narrowly exempt MUEs from the THC caps. We propose a non-controversial technical change to the limitations as a compromise to lifting the ban.

Proposed Language for Section 3 of H.612

Sec. 3. 7 V.S.A. § 868 is amended to read:

§ 868. PROHIBITED PRODUCTS

(a) The Except as provided in section 907 of this title relating to a retailer with a medical endorsement, the following are prohibited products and may not be cultivated, produced, or sold pursuant to a license issued under this chapter:

- (1) cannabis flower with greater than ~~30~~ 40 percent tetrahydrocannabinol;
- (2) 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;
- (3) cannabis products that contain delta-9 tetrahydrocannabinol and nicotine or alcoholic beverages; and
- (4) any cannabis, cannabis products, or packaging of such items that are designed to make the product more appealing to persons under 21 years of age.

(b)(1) Except as provided by subdivision (2) of this subsection and in section 907 of this title relating to a retailer with a medical endorsement, solid and liquid concentrate cannabis products with greater than ~~60~~ 80 percent tetrahydrocannabinol may be produced by a licensee and sold to another licensee in accordance with subchapter 3 of this chapter but shall not be sold to the public by a licensed retailer or integrated licensee.

(2) Liquid concentrate cannabis products with greater than 60 percent tetrahydrocannabinol that are prepackaged for use with battery-powered devices shall be permitted to be sold to the public by a licensed retailer or integrated licensee

Section 4

This section includes three (3) different policies: adding new criteria to the Rules for Cultivators that would allow the CCB to use performance to determine if a grower is eligible to increase their tier size or decrease in size; adding new criteria to the Rules for Retailers that would allow the CCB to use geographical distribution, population; and market needs to determine initial retailer licensure and criteria for MUE retailers for serving to those under 21.

Analysis: The language in this section is the result of a discussion in the House Committee on Government Operations and Military Affairs, led by CCB Chair Pepper in response to language proposed by Rep. Matt Birong, which would have imposed a moratorium on new cannabis cultivation licenses, which we opposed, as a compromise to manage market production by allowing the agency to rollback growers that use a fraction of their allotted canopy, and begin to provide metrics for determining if an individual cultivator should be eligible to increase its

canopy size. We generally support this concept, such that fairly demonstrating the ability to grow and generate demand is a form of at-scale regulation.

We oppose giving the CCB further authority to limit retailer licensing three (3) years into this nascent market. There is an effort by a small number of retailers to further concentrate their market leverage by limiting retailer licensing, and we see that as unjust and a threat to market viability. Additionally, this policy would only serve to exacerbate the retail bottleneck, the symptoms of which are often falsely identified and discussed as “market saturation”, by further limiting the flow of products through the supply chain and into the hands of the public. Rather than limit retailer licensing, it would be better for the health of the market to expand and decentralize the points of access for the general public by replacing retail opt-in with opt-out and implementing direct sales for small producers.

Lastly, we support tasking the CCB to develop rules for this new MUE retailer idea for serving those under the age of 21.

Section 5

This section represents a significant new policy that proposes a new “medical-use endorsement” retailer license type that recreates the benefits medical dispensaries have for adult-use retailers, such as delivery, tax-free sales, greater possession and quantity limits, the allowance to sell products affected by the THC caps, curbside pickup, and more.

Analysis: We support decentralizing points of access for state-registered medical cannabis patients and caregivers, and this proposed concept would begin that transition away from the current market system that consists of five (5) medical dispensary locations statewide, though it is not without its shortcomings. We strongly encourage the committee to ensure that language protecting patient data and mandating education is included.

Section 6

This is a technical section and where the language resides that proposes creating a new annual licensing fee of \$10,250 for the newly proposed MUE retailer license type – that’s \$250 added onto the \$10,000 annual license fee for retailers.

Analysis: With only five (5) medical dispensaries statewide, decentralizing the retail experience and significantly increasing access is a top priority for patients and caregivers in the State Medical Cannabis Program. The State should incentivize adult-use retailers to participate in the program by keeping the license fee the same as retailers to encourage expanding access. Retailers making this shift will already be facing new costs related to education and training, facilities, and more.

Section 7

This small section seeks to include ulcerative colitis as an eligible medical condition for the medical cannabis program.

Analysis: We support expanding medical and therapeutic access to cannabis and suggest replacing ulcerative colitis with inflammatory bowel disease, which is the broad medical category that includes ulcerative colitis, Crohn's disease, and microscopic colitis, all of which would equally benefit from medical cannabis as singling out ulcerative colitis.

Proposed Language for Section 7 of H.612

Sec. 7. 7 V.S.A. § 951(8) is amended to read:

(8) "Qualifying medical condition" means:

(A) cancer, multiple sclerosis, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, glaucoma, Crohn's disease, Parkinson's disease, post-traumatic stress disorder, ~~ulcerative colitis~~ inflammatory bowel disease, or the treatment of these conditions, if the disease or the treatment results in severe, persistent, and intractable symptoms; or

(B) a disease or medical condition or its treatment that is chronic, debilitating, and produces one or more of the following intractable symptoms: cachexia or wasting syndrome, chronic pain, severe nausea, or seizures.

Section 8

Another medical cannabis program-related section, this short passage seeks to increase card renewals for all patients to three (3) years.

Analysis: Though some patients, such as those with life-long conditions, should not need to renew their cards, we support this section. To strengthen this section, we would include the formation of a new Medical Cannabis Program Fund to be supported by medical program-related fees and used for creating and increasing equity in the medical program.

Section 9

This section proposes to reduce the license fee for medical dispensaries from \$25,000 to \$5,000 and their one-time application fee from \$2,500 to \$1,000.

Analysis: We oppose this section. Medical dispensaries are vertically integrated businesses that can grow, manufacture, distribute, and sell products to state-registered medical cannabis patients and caregivers – their fee structure should have greater parity with the adult-use licensing structure and no less than \$10,000, the license fee of an adult-use retail license.

Section 10

This is a very short section that proposes striking the CCB's fee for reviewing advertising.

Analysis: In general, we believe the CCB should not be tasked with reviewing and approving advertising, and to that end, we support removing the fee for reviewing advertising.

Section 11

This is another short section, and it proposes replacing the Department of Public Safety (DPS) with the CCB for determining the weight methods of cannabis products.

Analysis: We support any change that moves regulation and administration of the adult-use and medical cannabis program away from law enforcement.

Section 12

This section proposes to exempt farm buildings used by licensed outdoor cannabis cultivators and the outdoor portion of mixed-use cultivators from the definition of “public building” subject to fire safety requirements.

Analysis: We support this section, it is a clear need that has been demonstrated and testified in relationship to by existing licensed producers. Vermont is one of the few states with any form of agricultural acknowledgment for cannabis; and our coalition, outdoor cultivators, farmers, the CCB, and the legislature have now worked over multiple years to support agricultural accessibility and status for outdoor cultivators in as much as the State can given federal law.

In addition, there are at least 3 other changes related to agricultural status and outdoor production which we propose, which have been testified to by producers before committee, and which are important to address in statute now:

- *Provide Outdoor Cultivators with Agricultural Wetlands Exemptions*
 - *Outdoor cultivators have encountered unreasonable and costly barriers which they otherwise would not have been subject to if they were growing any other agricultural crop regulated under the Required Agriculture Practices (RAPs). According to the Vermont DEC website, “The growing of food and crops is allowed under the Vermont Wetland Rules, provided it complies with other applicable laws and with the most recent Acceptable Agricultural Practices. The clearing of forested wetland for agricultural purposes requires a permit.”*
- *Allow Outdoor Cultivators to Produce on nonabutting Parcels or SPAN numbers:*
 - *Currently outdoor producers must produce their crops on only one identified nonabutting parcel or SPAN number. From an agricultural and horticultural perspective, this existing regulation is very limiting and inhibits appropriate design, decision making, and implementation related to access, production, construction of related structures and roads, etc.*
- *Tier 1 Employment Allowances:*
 - *Currently, Tier 1 Cultivators and Product Manufacturers are beholden to state home occupancy fire code regulations which limit their ability to hire more than one employee. The production of cannabis and cannabis products are especially labor-intensive agricultural practices and should be exempt from home occupancy fire code, as afforded to farms, and larger tiers of cultivation and manufacturing. The current employee limit presents unnecessary and unreasonable barriers and impacts for Tier 1 Cultivators and Product Manufacturers. Additionally, and importantly, the lack of consistency and continuity in statute related to aspects of agricultural status for outdoor producers is confusing for producers, regulators, technical service providers, and others.*

Section 13

This is a more technical section and where the language resides that exempts the newly proposed MUE retailers from paying the cannabis excise tax and mandates those businesses record those transactions and report them to the Department of Taxes.

Analysis: We support the state exempting retailers from paying the cannabis excise tax on transactions for state-registered medical cannabis patients and caregivers.

Section 14

This is another technical section and where the language resides that exempts the newly proposed MUE retailers from paying the state sales tax and mandates those businesses record those transactions and report them to the Department of Taxes.

Analysis: We support the state exempting retailers from paying the state sales tax on transactions for state-registered medical cannabis patients and caregivers.

Section 15

This section proposes a one time \$500,000 appropriation for the Cannabis Business Development Fund to be managed by the Agency of Commerce and Community Development.

Analysis: Equity and community reinvestment funding is a foundational component of a justly regulated cannabis market which we have seen little progress towards Vermont. By comparison, New York state devotes 40% of its cannabis excise tax to equity and community reinvestment in perpetuity in statute ([link](#)). Currently, the Cannabis Development Fund operates on yearly one-time appropriations; and there is no amount of the excise tax devoted to equity and reinvestment in communities. We seek 20% of tax revenue, not to exceed \$4,000,000 per fiscal year, to reinvest in marginalized communities affected by systemic racism and other forms of systemic oppression with a community reinvestment fund; and 10%, not to exceed \$2,000,000 per fiscal year, devoted to the Cannabis Business Development Fund. The existing fund is currently administered by the ACCD; but we believe it would be more appropriately and effectively administered by the CCB and a social equity advisory group formed within the CCB, and made up of SE stakeholders.

As a compromise, and in recognition for the time being of the political difficulty of our greater goals, we propose the following:

- *Legislatively mandating the creation of a Cannabis Social Equity Working group required to report back to the legislature by January 1, 2024. The report will provide recommendations related to the amount of money that is appropriate to commit on a yearly basis from the VT Cannabis Excise Tax towards marginalized and socially disadvantaged community investment, its administration, and more. Seats on the Working Group will be filled by representatives from organizations including, but not limited to: the VT Racial Justice Alliance, the Green Mountain Patients' Alliance, the Cannabis Control Board, the Land Access and Opportunity Board, the Office of Racial*

Equity, the Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel, the Health Equity Advisory Commission, and the Agency of Commerce and Community Development.

- *Making permanent the currently one-time appropriation of \$500,000 to the Cannabis Development Fund, and shifting its administration to the CCB as described above.*

Preferred Language for Section 15 of H.612 re: Cannabis Development Fund

Sec. 15. 7 V.S.A. § 987 is amended to read:

21 § 987. CANNABIS BUSINESS DEVELOPMENT FUND

(a) There is established the Cannabis Business Development Fund, which shall be managed ~~in accordance with 32 V.S.A. chapter 7, subchapter 5~~ by the Cannabis Control Board.

(b) The Fund shall comprise:

- (1) a one-time contribution of \$50,000.00 per integrated license to be made on or before October 15, 2022; and
- (2) monies allocated to the fund by the General Assembly; and
- (3) a portion of revenues raised by the cannabis excise tax imposed by 32 V.S.A. § 7902 and transferred pursuant to 32 V.S.A. 17 § 7910.

19 § 7910. CANNABIS BUSINESS DEVELOPMENT FUND

Ten percent of the revenues, not to exceed \$2,000,000 per fiscal year, raised by the cannabis excise tax imposed by section 7902 of this title is transferred to the Cannabis Business Development Fund established pursuant to 7 V.S.A. § 987.

Section 16 and 17

This section proposes restricting outdoor siting by local select boards by enabling local municipalities to create "preferred districts" for outdoor cultivation. The legislation then establishes maximum and minimum setback requirements and limitations based on whether or not the cultivation occurs within the "preferred" district. The setback is a maximum of 100 ft if outside the district, 25 ft if within the district, and 10 ft minimum if there is no zoning.

Analysis: We strongly oppose this section. This language was developed without any research about potential impacts on, or input from, the community of cultivators it would directly affect. It is regressive in the sense that it directly opposes legislative changes made last year which were made as a result of testimony provided by multiple producers and organizations supporting them related to extreme barriers and prejudice they were facing as a result of municipal oversight; and it directly opposes the intention and trend of treating the outdoor cultivation of cannabis in the same manner as agriculture. This language emerges as a result of one situation brought into the legislature related to a conflict between a single outdoor cultivator, his neighbors, and the municipality in which he resides. If this language goes into effect, the over 200 actively licensed outdoor and mixed-use cultivators in Vermont will be introduced to significant risk and uncertainty which could affect the viability of their businesses, and aspects of the entire marketplace.

The siting of cannabis cultivation in densely populated areas of Vermont and the role of municipal oversight is an important conversation to have, but there must be a reasonable process which directly and broadly engages stakeholders directly impacted, and which thoroughly assesses the impacts of any proposed restrictions on the siting of outdoor cultivation in dense areas in towns and cities before enacting into law. Dramatically changing existing law demands adequate engagement with communities and understanding of impacts – and that has not occurred with this proposed policy change.

Proposed Section 18

This section proposes public consumption limited to wherever lit tobacco is allowed, as is the law in the State of New York. Current consumption laws in VT are inherently inequitable, in effect allowing only people who own their own private land or residences to consume cannabis legally, as it otherwise prohibits consumption in public places, and owners of rentals determine policy for their tenants. This law creates unsafe conditions for consumption, and increases the likelihood of continuing inequitable and racialized enforcement of cannabis law.

law.Language for Proposed Section 18 of H.612

7 V.S.A. § 833 is amended to read:

§ 833. CONSUMPTION USE OF CANNABIS IN A PUBLIC PLACE

(a) No person shall ~~consume~~ possess lighted cannabis or use cannabis products a public place unless specifically authorized by law any place where the use or possession of a lighted tobacco product, tobacco product, or tobacco substitute is prohibited by law pursuant to 18 V.S.A. chapter 37. Violations shall be punished in accordance with 18 V.S.A. § 4230a.

Proposed Section 19

This section proposes allowing Tier 1 and 2 Cultivators to sell directly to the general public without a retailer license, and with rules to be determined by the CCB through its rulemaking process. One key indicator of VT's progress towards an equitable cannabis economy and community is breaking the monopoly on access to the consumer currently provided to Retail Licensees. The market is not "saturated", it is "bottlenecked" - we don't have too much product or too many producers, we have too few options for the sale of products for producers, and access to products for consumers. Small businesses - in particular farmers - rely upon direct sales of the products they produce and manufacture themselves in order to be viable; they rely upon direct relationships with the public; they rely upon the market leverage and empowerment and greater share of profit they are provided through this.

Language for Proposed Section 19 of H.612

Sec. 19. 7 V.S.A. § 904 is amended to read:

8 § 904. CULTIVATOR LICENSE

(a)(1) 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.

(2) In addition to the authorized conduct in subdivision (1) of this subsection, tier 1 and 2 cultivators may sell cannabis, cannabis products using cannabis produced by the licensee, immature cannabis plants, and cannabis seeds directly to consumers without a retailer license based on rules and regulations developed by the CCB through a public rulemaking process by January 1, 2025.

Proposed Section 20

This section proposes allowing Tier 1 and 2 Manufacturers to sell directly to the general public without a retailer license, and with rules to be determined by the CCB. This follows the same logic and reasoning as Section 19.

Language for Proposed Section 20 of H.612

Sec. 20. 7 V.S.A. § 906 is amended to read:

§ 906. Product manufacturer license

A product manufacturer licensed under this chapter may:

- (1) purchase cannabis and cannabis products from a licensed cannabis establishment;
- (2) use cannabis and cannabis products to produce cannabis products; and
- (3) transport, process, package, and sell cannabis products to a licensed cannabis establishment.

(4) In addition to the authorized conduct in subdivision (1) of this subsection, tier 1 and 2 product manufacturers may sell cannabis products directly to consumers without a retailer license based on rules and regulations developed by the CCB through a public rulemaking process by January 1, 2025.

Proposed Section 21

This section proposes the expungement of any and all cannabis-related charges cost-free and without the need for an individual to petition to courts for the clearing of their records. The burden for expungement should be on the entity complicit in the criminalization of cannabis and the enforcement of that criminalization; not on the individuals victimized by the criminalization of cannabis.

Language for Proposed Section 21 of H.612

Sec. 21. 13 V.S.A. § 7602 is amended to read:

§ 7602. EXPUNGEMENT AND SEALING OF RECORD,
POST CONVICTION; PROCEDURE

(a)(1) A person may file a petition with the court requesting expungement or sealing of the criminal history record related to the conviction if:

* * *

(B) the person was convicted of an offense for which the underlying conduct is no longer prohibited by law or designated as a criminal offense;

(C) pursuant to the conditions set forth in subsection (g) of this section, the person was convicted of a violation of 23 V.S.A. § 1201(a) or § 1091 related to operating under the influence of alcohol or other substance, excluding a violation of those sections resulting in serious bodily

injury or death to any person other than the operator, or related to operating a school bus with a blood alcohol concentration of 0.02 or more or operating a commercial vehicle with a blood alcohol concentration of 0.04 or more; ~~or~~

(D) pursuant to the conditions set forth in subsection (h) of this section, the person was convicted under 1201(c)(3)(A) of a violation of subdivision 1201(a) of this title related to burglary when the person was 25 years of age or younger, and the person did not carry a dangerous or deadly weapon during commission of the offense; or

(E) the person was convicted of dispensing or selling cannabis prior to March 1, 2022.

(e) For petitions filed pursuant to subdivision (a)(1)(B) of this section for a conviction for possession or dispensing of a regulated drug under 18 V.S.A. chapter 84, subchapter 1 in an amount that is no longer prohibited by law or for which criminal sanctions have been removed:

(1) The petitioner shall bear the burden of establishing that ~~his or her~~ the petitioner's conviction was based on possessing an amount of regulated drug that is no longer prohibited by law or for which criminal sanctions have been removed.

(2) There shall be a rebuttable presumption that the amount of the regulated drug specified in the affidavit of probable cause associated with the petitioner's conviction was the amount possessed or dispensed by the petitioner.