

VCAF

VERMONT CANNABIS ACTION FUND

Thank you for inviting me here today.

My name is Dave Silberman, I am an attorney specializing in cannabis law, I operate FLŌRA Cannabis in Middlebury, and I direct the Vermont Cannabis Action Fund, or VCAF.

VCAF is a coalition of over 50 retailers, manufacturers, and cultivators focused on improving Vermont's cannabis market with actionable, concrete solutions that support the market as a whole, rather than further dividing the market up and pitting one type of licensee against another.

One Technical Fix

Before I dive into the substance of S.278 on behalf of VCAF, on a personal level, I want to alert you of an important technical issue that has recently come up.

The bedrock of Vermont's cannabis market structure is the so-called One License Rule – a single sentence in 7 VSA 901 that prohibits a person from directly or indirectly controlling more than one retail license. Without this rule, local operators with limited access to capital would quickly be swallowed up by large out-of-state chains – a common occurrence in other markets that the Legislature wisely chose from the very start to prevent here.

Over the past 5 years, there have been many attempts to circumvent this rule, and both the Legislature and the CCB have done a very good job of stopping them. Another such end-run is being attempted currently, trying to leverage a perceived loophole they see as somehow allowing “group” control of multiple dispensaries.

I have identified a simple change to the definitions of “control” and “affiliate” that would serve to support the CCB's correct interpretation

of existing law in the current case, and help keep our market small and local. I've shared this language with the chair, and I hope you will take that up.

Now back to S.278...

The CCB's New Market Analysis is a Roadmap for Responsible Market Growth

At the joint hearing in February, you heard me describe a cannabis market suffering from oversupply, retail oversaturation, collapsing prices, and unfair competition from both out-of-state stores and unlicensed sellers.

Since then, the CCB released an updated Market Supply and Demand Analysis, backing up our concerns with hard data, and providing a detailed analysis of what exactly is driving consumer behavior and how to win illicit market customers to the regulated market. The upshot of the report is this:

1. Only 68% of cannabis being purchased by Vermonters today is coming through the regulated market. That means nearly a third of total demand is being satisfied by other channels -- channels that do not provide the public safety benefits of regulation, nor collect taxes for the state. We should focus our efforts on this relatively low hanging fruit.
2. The report found that the existing retail footprint is sufficient to support local purchasing behavior statewide. Consumers are not choosing the illicit market because stores are too far away or there aren't enough of them.
3. The single most influential factor driving consumers to the unregulated market is Vermont's artificial legal limit on product potency.

4. The report found broad interest in purchasing cannabis through alternative settings such as cannabis cafes, special events, and farmer's markets. On the other hand, delivery did not make the list as an important driver of consumer choice.

VCAF's Priorities for Responsible Market Growth

Bringing more consumers into the regulated market is good for public health, good for public safety, good for the state budget, and good for cannabis consumer safety. At this late point in the session, we recommend two big-impact policy changes:

1. 10mg Edibles.

Vermont is an *extreme outlier* on edibles potency. Only two other states – Massachusetts and Connecticut – limit edibles to 5mg per serving like we do, instead of the national consensus of 10mg. And Connecticut appears poised to go to 10mg this summer.

10mg is not “high potency”, it is the national standard. If you ask any retailer in this state, they will tell you that customers come in every day asking for 10mg edibles, and take their business elsewhere.

The cannabis industry is fully united in favor of 10mg edibles.

I want to address the public health concerns that have been raised by some advocates around changing potency limits. First, it's important to reiterate that Vermont is an extreme outlier on edibles potency. If our 5mg limit was actually delivering any tangible public health benefits, we would be seeing it in measurements like lower rates of ER visits than in the 23 states with a 10mg limit.

But we aren't seeing any evidence at all that the 5mg limit has extra public health benefits *when compared to states that follow the national standard* of 10mg. All we see is people who want 10mg edibles buying their edibles elsewhere.

Second, it's important to separate the discussion of edibles from the discussions around concentrates potency. The concerns you've heard around cannabis hyperemesis syndrome and things like that, stem from consumption of high-potency concentrates, not standard potency 10mg edibles, and the different risks relating to these two very different product types should not be conflated. Talking about these two things as if they're the same only serves to confuse rather than clarify, and we should demand better.

2. Events and Cafes

As the CCB's report makes clear, we need new ways to reach customers where they're at, including outside of dispensaries.

The cannabis industry is, once again, fully united in favor of creating new licenses allowing sales at events like concerts and festivals -- the cannabis equivalent of a beer tent -- as well as cannabis farmer markets.

We at VCAF agree that any license type should be able to obtain a permit to organize an event. But, to uphold the integrity of the regulatory oversight system, we believe that any non-retailer who hosts an event should be required to contract with a licensed retailer to effectuate the actual final sale to the consumer, with appropriate security and training, and through an industry-standard automated inventory management system that is integrated for real-time communication with the CCB's track-and-trace system.

We also want Vermont to join 12 other states – including Massachusetts and New York – in licensing cannabis cafes and lounges; third places where responsible adults can safely enjoy infused foods and beverages in a social atmosphere. The CCB’s report showed 63% support among cannabis consumers for this type of license, more support even than for events.

Delivery, on the other hand, has very low consumer demand according to the CCB report, and sharply splits the industry. The delivery model currently envisioned by S.278 is opposed by a majority of my coalition’s members – with many of the same concerns raised by the CCB yesterday. As drafted, this proposal threatens to do more harm than good, sharpening already-intense competition for that 68% of the market that is already being served by licensed stores, instead of stabilizing the market and helping us bring consumers in from the illicit market.

Quickly turning to other aspects of S.278...

VCAF supports the purchase limit increases in Sections 2 through 4 of S.278. We do want to note that the hash equivalent of 2 ounces of flower is 16 grams, not 10 as currently drafted, and urge that the math be fixed in that regard.

With respect to product equivalencies more broadly, as mentioned by the CCB yesterday, we believe the CCB got equivalencies right for the first 3 ½ years of the market. Last fall, they tried to solve a problem that didn’t actually exist, and kicked a hornet’s nest in the process. We urge both this committee and the CCB to maintain the *status quo* ounce-to-milligrams conversion rate, which has been working well without problems since we opened this market in 2022.

VCAF supports the fee reductions in Section 10a of the bill, and would support reducing fees for other license types as well, especially the wholesale license fee, which at \$4,000 per year is too large a burden for cultivators to form distribution cooperatives which have proven very useful in other agricultural sectors.

We oppose Section 11 of the bill as currently drafted, and urge you to either mandate or create a positive incentive for towns to actually hold retail opt-in votes. The fact that only 1/3 of towns have ever held a vote has led to an unnatural clustering of retailers. We propose that towns be given a deadline by which a vote must be held.

We also would like to see the municipal ordinance authority language clarified to require towns to treat cannabis businesses the same way as they treat similarly-situated non-cannabis businesses, and not allow towns to single us out unfairly due to any persistent anti-cannabis bias.

Thank you for your time. I welcome any questions you may have.