

Findings and Recommendations for Taxing and Regulating Adult- Use Marijuana in Vermont

**Subcommittee on Taxation and Regulation
Governor's Marijuana Advisory Commission**

Submitted to Co-Chairs, Governor's Marijuana Advisory Commission
Montpelier, Vermont
October 2018

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SUBCOMMITTEE ON TAXATION AND REGULATION

Purpose of Report

The Subcommittee on Taxation and Regulation is submitting to the Co-Chairs of the Governor's Marijuana Advisory Commission its findings and recommendations regarding the taxation and regulation of marijuana for recreational use in accordance with the Governor's Executive Order.¹ The Subcommittee respectfully requests that the Co-Chairs consider its recommendations when preparing the Commission's final report to the Governor on implementing and operating a comprehensive and self-funded regulatory and revenue system for an adult-use marijuana market.²

Subcommittee Role

The Subcommittee on Taxation and Regulation was charged under the Governor's Executive Order to examine and present findings regarding the sale and taxation of marijuana for recreational use. The Subcommittee was tasked with assessing structures for doing so which address areas such as: banking, landlord and tenant relationships, local zoning, insurance, host liability, economic sustainability, and reduction of the illegal marijuana market. The Subcommittee was also required to assist the Roadway Safety and Education and Prevention Subcommittees on identifying funding strategies and options for recommended resources and programming based on a taxed and regulated marijuana market, and other sources.

Subcommittee Membership

The Governor's Executive Order named the Commissioner of the Department of Taxes as the Chair of the Subcommittee on Taxation and Regulation. The other Subcommittee members were as follows:

- Secretary of Agency of Commerce and Community Development or designee,
- Commissioner of Department of Financial Regulation or designee,
- Chair of Liquor Control Board,
- 1 member designated by Vermont Bankers Association,
- 1 member designated by Association of Vermont Credit Unions,
- 1 member designated by Vermont League of Cities and Towns,
- 1 representative of business community, and
- 1 member with expertise in national tax and regulatory systems designated by the Vermont Coalition to Regulate Marijuana.

EXECUTIVE SUMMARY

If sales of marijuana for recreational use are legalized in Vermont, the Subcommittee on Taxation and Regulation recommends creating a regulatory structure that allows private industry to develop a viable market, while the State retains the crucial roles of gatekeeper and enforcer. This new structure would primarily be funded by taxing retail sales of recreational marijuana and charging fees to marijuana establishments for licensing and other necessary regulation. The underlying goals of creating a new regulatory structure are multifaceted: to protect consumers, to prevent the diversion of marijuana to under-age consumers and the black market, and to generate sufficient revenue to self-fund the administrative and public health and safety program costs resulting from marijuana use and sales in the state, all while fostering economic opportunities for Vermonters.

The Subcommittee recommends creating a tax structure that will, at a minimum, maintain a revenue-neutral balance sheet for the State. Retail sales of marijuana should be subject to a new 20% excise tax and the existing 6% sales tax. By imposing the State sales tax, the 1% local option sales tax will automatically apply in jurisdictions that have adopted such a tax. Municipal advocates voiced a strong preference to authorize a new local taxing authority specific to sales of marijuana that is separate and in addition to the existing local option sales tax. The Subcommittee does not recommend subjecting sales of edible marijuana products to the 9% meals tax to avoid unnecessary complication for both tax compliance and administrative reasons. The Subcommittee recommends following current law for the allocation of State sales tax and local option sales tax revenues. Regarding the new excise tax revenues, the Subcommittee recommends allocating a portion to every municipality in the State, regardless of whether they have opted out of allowing establishments to operate in their jurisdiction, with a greater portion going to municipalities who host marijuana establishments. Excise tax revenues could be allocated to fund the administrative and programmatic needs of the State agencies that would regulate marijuana establishments and respond to the impacts of marijuana use and sales. Regulatory agencies would also be able to fund their day-to-day operations through fees charged to all marijuana establishments for license applications and renewals.

The Subcommittee recommends creating five license categories: Cultivator, Processor, Retailer, Transporter, and Testing. Cultivator licenses should be structured on a tier basis according to plant canopy size, with the smallest tier being issued in an unlimited number. At the start of legalized sales, only the smallest tier would be available, so as to encourage small, local farmers to enter the market. Issuance of medium- and large-tier cultivator licenses would be phased-in over time. Statute should include the basic structure, and a maximum fee per tier, but the licensing authorities and the Board of Control would make final decisions about fee amounts and the number of licenses. License applicants would have to meet requirements such as background checks. Other restrictions such as Vermont residency or vertical integration would not apply, although in rating cultivator license applications, preference will be given to Vermont residents. Licensees would only be able to hold one license per category to avoid creating monopolies. Only licensed retailers would be permitted to sell to consumers. No consumption of marijuana products should be allowed on any licensed premises, including retail stores. Wholesale transactions would only be permitted between licensees, so that products can be tracked from seed to sale to prevent diversion and tax evasion, and to ensure quality control for consumers. The Subcommittee recommends enacting strong protections for consumers that include restricting the allowable forms of consumption, requiring clear labeling and packaging,

limiting dosage and potency per serving, and prohibiting certain types of advertising. Incorporated into the consumer protection recommendations are measures to prevent products that are enticing and accessible to children from entering the stream of commerce.

To centralize the administration of a new regulatory structure for recreational marijuana, and potentially for medical marijuana as well, the Subcommittee recommends creating a new Board of Control. A Board would regulate a marketplace run by private industry, so that the State would not own or possess a controlled substance that is still illegal under federal law at any point in the chain of production and sale. The State would therefore be able to retain control over the form and manner of sales of recreational marijuana, while avoiding the predicament of the State and State employees violating federal law. The Board would have certain specified administrative and quasi-judicial powers in relation to licensing and enforcement. The Subcommittee recommends creating a Board that is either an independent executive branch authority with access to the administrative resources of one or more agencies, or alternatively embedded within an executive branch entity such as the Department of Liquor and Lottery or the Agency of Agriculture, Food and Markets. The regulatory agencies should be statutorily named members either of the Board or its subcommittees with the primary authority to adopt rules on licensing requirements. Other crucial State agencies with a role on the Board or its subcommittees should include the Department of Health and the Department of Public Safety. The Vermont Marijuana Registry should also have an advisory role on the Board or be regulated by the Board. Public members and members with industry expertise should also be involved in the Board. The statute creating the Board should include conflict of interest provisions prohibiting members or members' immediate families from maintaining any financial interest in the marijuana industry, and from holding any elected or appointed political office.

As a Dillon's Rule state, Vermont's version of legalized recreational marijuana should include an express grant of legislative authority from the state legislature to municipalities, so that municipalities may regulate marijuana activities at the local level. This notably includes granting authority to towns to enact local zoning rules, bylaws, and ordinances that regulate the time, place, and manner of marijuana activities within town boundaries. This could also include granting authority to towns to raise revenue by a separate local tax on retail sales of marijuana, as recommended by town advocates. The Subcommittee additionally recommends authorizing municipalities to vote to opt out of allowing marijuana establishments to operate in their jurisdiction. Another important consideration is to ensure that any implementation deadlines take into account the statutory timing that towns need to follow to enact local decisions.

The Subcommittee makes many other crucial recommendations in this report regarding the impact of introducing a recreational market on the Vermont medical marijuana program, the status of hemp, the implications of marijuana use under employment and labor law, considerations for marijuana establishments seeking financial services and insurance coverage, and security concerns for a cash-based industry.

REVENUE AND BUDGET

Proposed Tax Structure

The Subcommittee recommends creating a new Vermont Marijuana Excise Tax at 20% of the retail price of marijuana as currently defined in statute.³ The existing Vermont Sales Tax and the associated local option sales tax, where applicable, should also apply. The Subcommittee recommends against subjecting sales of edible marijuana products to the Meals and Rooms Tax. The following chart summarizes the recommended tax types and rates. An in-depth discussion and analysis of the taxes follow below.

Proposed Taxes on Marijuana Retail Sales	
Tax Type	Rate
Marijuana Retail Excise Tax	20%
State Sales Tax	6%
Local Option Sales Tax (if imposed in municipality where sold)	1%
TOTAL EFFECTIVE TAX RATE IMPOSED	26% or 27%

Other States' Marijuana Tax Structures

The Subcommittee based its recommendations on the tax structures in states that have legalized recreational marijuana sales. The following charts on the eight legalized states outline the legal authority for imposing marijuana taxes, the dates when regulated sales began, the tax structures, and the revenues collected.

	Colorado	Washington	Oregon
Legalization	Constitutional Amendment 64 by ballot vote, November 2012	Initiative 502 November 2012	Measure 91 November 2014
Regulated Sales Begin	2014	July 2014	October 2015
Tax Rate & Base	<p>15% Retail Marijuana Excise Tax</p> <ul style="list-style-type: none"> on 1st sale or transfer from retail marijuana cultivation facility to retail marijuana store or product manufacturing facility. <p>15% Retail Marijuana Sales Tax</p> <p>Local Option Taxes: Up to 8%</p> <ul style="list-style-type: none"> optional local sales taxes (4.6% is average rate in CO) optional local excise marijuana taxes (e.g., 3.5% in Denver) 	<p>37% excise tax on retail sale to consumers</p> <p>6.5% state sales tax</p> <p>Local option tax</p>	<p>17% state sales tax</p> <p>Up to 3% optional local municipality tax</p>
Tax Revenues	FY2017: \$210.4 million ⁴	FY2017: \$314.8 million ⁵	FY2017: \$70.2 million ⁶

	Alaska	California	Nevada
Legalization	Ballot measure 2 November 2014	Proposition 64, Nov. 2016 Amended by SB 94, June 2017	Question 2 November 2016
Regulated Sales Begin	October 2016	January 1, 2018	July 1, 2017
Tax Rate & Base	Excise tax on marijuana cultivation facilities at time of sale to retail store: <ul style="list-style-type: none"> • \$50 per ounce of flowers • \$15 per ounce of stems/leaves 	15% gross receipts excise tax on retail sales <ul style="list-style-type: none"> • Collected from buyer by retailer, paid to distributor Weight-based cultivation tax to distributors or manufacturers when cannabis enters commercial market: <ul style="list-style-type: none"> • \$9.25 per ounce of flowers • \$2.75 per ounce of leaves Sales tax (gross receipts) <ul style="list-style-type: none"> • Statewide sales tax: 6% • Local sales tax: 1.25% • District sales tax: up to 1% (some areas have more than 1 district tax in effect) 	15% wholesale excise tax calculated on fair market value at wholesale 10% excise tax on retail sales General state and local retail sales tax
Tax Revenues	FY17: \$1.7 million ⁷	Calendar year 2018 1 st two quarters (until June 30): \$104.4 million <ul style="list-style-type: none"> • Weight-based cultivation tax: \$6.1 million • Excise tax on retail sales: \$44.8 million • Sales tax on gross receipts: \$53.5⁸ 	FY2018: \$69.8 million ⁹ Projected FY 2019: \$69.4 million <ul style="list-style-type: none"> • Wholesale Marijuana Tax: \$32.4 million • Retail Marijuana Tax: \$37 million

	Maine	Massachusetts
Legalization	Ballot initiative Question 1, November 2016	Ballot initiative Question 4, December 15, 2016 H.3818 signed by Governor July 2017
Regulated Sales Begin		July 1, 2018 (delayed)
Tax Rate & Base	<p>4 Excise Taxes on Wholesale paid by cultivators</p> <ol style="list-style-type: none"> 1. \$335 per pound of marijuana flower and mature marijuana plants 2. \$94 per pound of marijuana trim 3. \$1.50 per immature marijuana plant or seedling 4. \$0.30 per marijuana seed <p>10% State Retail Sales Tax imposed on the value of adult use marijuana and adult use marijuana products.</p>	<p>10.75% excise tax on retail sales</p> <p>State sales tax: 6.25%</p> <p>Local option municipality tax: Up to 3%</p>
Tax Revenues	<p>Estimates:</p> <ul style="list-style-type: none"> • FY18-FY19 \$2.65 million • FY19-FY20 \$8.91 million • FY20-FY21 \$9.3 million¹⁰ 	FY2019 estimated \$64 million

20% Marijuana Excise Tax

The Subcommittee recommends imposing a 20% excise tax on the retail sale price of any marijuana product with tetrahydrocannabinol (THC) concentration above the hemp limit.

Marijuana was redefined in Section 2 of Act 86 of 2018 to mean “all parts of the plant *Cannabis sativa* L. [...] whether growing or harvested, and includes: (i) the seeds of the plant; (ii) the resin extracted from any part of the plant; and (iii) any compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.”¹¹ This means that the sale of mature or immature marijuana plants, seeds, or resin would be subject to the excise tax, as well as any edibles or other derivatives from those plants, seeds, or resin. The statute goes on to exclude any hemp products and hemp derivatives, as well as the sterilized seeds of the plant from the definition of marijuana, which means that hemp and hemp plants would not be subject to the excise tax.¹² Additionally, setting the THC concentration threshold above the legal limit for hemp is consistent with the intent to exempt the sale of hemp from excise tax. The current legal limit for hemp is a delta-9 THC concentration of not more than 0.3% on a dry weight basis.¹³ A clone is currently defined as “a plant section from a female marijuana plant not yet root-bound, growing in a water solution, which is capable of developing into a new plant.”¹⁴ This definition should be used with slight modification, so as not to include the “growing in a water solution” limitation, which would be easy to avoid at the point of sale in order to make the transaction nontaxable. It also needs to be clear that the clones subject to the excise tax are only clones from marijuana plants, not from hemp plants, which should remain non-taxable.

With regard to the type of taxable transactions, the tax would only apply to retail sales, not to wholesale transactions between licensed establishments. This means that the tax would be borne by the final consumer. In the chain of custody, only licensed retailers would be allowed to sell to retail consumers; not cultivators, processors, transporters/distributors, or testing facilities. Given that retailers could purchase from other retailers and then resell the same product even in a different form such as an edible, a resale exemption should be created to avoid double taxation of the same product under the same tax type. A resale exemption exists under the existing sales tax that could be duplicated for the marijuana excise tax. The excise tax would therefore only apply to the final retail sale transaction when the final consumer purchases the product.

The type of tax that the Subcommittee recommends is called an “ad valorem tax,” which is defined as a “tax imposed proportionally on the value of something (especially real property), rather than on its quantity or some other measure.”¹⁵ Creating an ad valorem tax structure where tax is imposed on retail sales would be the simplest option to allow for a quick and streamlined rollout by the Department of Taxes. Imposing an ad valorem tax at the retail level has been shown by other states to generate reliable levels of revenue. The disadvantage of imposing an ad valorem tax is that price fluctuations in this new market can affect revenues. A forthcoming addendum to this report regarding revenue estimates and market performance will explain how the prices of legal marijuana products dropped precipitously in the first few years of legalized marijuana sales in other states. Despite the downward trend in prices in those new markets, however, revenues have continued to grow.

The Subcommittee also considered unit-based taxes, which could be imposed by amount, weight, or potency, but decided against those structures for the sake of administrative effectiveness and efficiency. While a potency-based tax (e.g., based on THC content) would operate as a deterrent to consumption of higher potency products, it would be complex and expensive to monitor and control. It could incentivize misrepresentation of THC content to evade

tax and gain a competitive advantage, which would endanger consumers. Imposing the correct tax rate would likely require expensive State testing infrastructure. Weight- and quantity-based taxes are also more complex to administer than ad valorem taxes, because they are not well adapted to the diverse forms of marijuana products, such as edibles. States that have weight-based taxes like Alaska and California impose tax on flowers, stems, and leaves by the ounce, with a higher tax on flowers. These are wholesale taxes imposed at the time of sale by the cultivator, so they do not apply to final products sold to consumers like edibles. California imposes additional ad valorem taxes at retail, but Alaska does not.

One of the fundamental goals of creating a regulatory system for recreational marijuana is to eradicate the black market to the greatest extent possible. An important way to achieve that goal is to ensure that the tax rate is set at the appropriate level to support a viable legal market. The tax rate will increase the final price that the consumer pays and can, in theory, impact the consumer's purchasing behavior. The price of regulated marijuana products should be competitive with black market prices to incentivize buyers to pay taxes and support licensed establishments and controlled products. The Subcommittee's recommendation is to impose both the new excise tax, the existing sales tax, and local option taxes. This means that the effective tax rate paid by the consumer on retail purchases of marijuana will be higher than the excise tax rate alone. The effective rate will depend on where the sale took place. If the sale took place in a municipality that had voted to impose a local option tax on sales, then the 1% local option tax will also apply. This is similar to the Vermont tax treatment of sales of alcohol and tobacco products. The Subcommittee reviewed those tax rates, which are presented in Appendix 1.

6% State Sales and Use Tax

The Subcommittee recommends imposing the existing 6% Vermont Sales and Use tax on all sales of marijuana in addition to the new 20% Marijuana Excise Tax. This would require a change to statute to exclude recreational marijuana products from the sales tax exemption for food or food ingredients. The sales tax rate would apply in addition to the proposed marijuana excise tax, as well as the 1% local option sales tax, where applicable, for a total effective tax rate of either 26% or 27%.

Under current law, the sale of tangible personal property in Vermont is subject to sales and use tax unless an exemption applies.¹⁶ Marijuana products are tangible personal property because they “may be seen, weighed, measured, felt, touched, or in any other manner perceived by the senses.”¹⁷ Vermont law exempts the sale of certain categories of property from tax, including drugs intended for human use and food and food ingredients.¹⁸ Recreational marijuana products would not qualify for the drug exemption because a prescription would not be required to purchase them, and they are not required to contain a label that identifies the product as a drug under federal regulation.¹⁹ Recreational marijuana products other than edibles would not be eligible for the food exemption, because they are not “consumed for their taste or nutritional value” and are not required to be labeled as a dietary supplement under federal regulation.²⁰ However, because marijuana products can be incorporated into an edible product that might be “consumed [at least in part] for its taste or nutritional value,” edibles can be categorized as food ingredients and be exempt from sales tax. Therefore, in order to subject all sales of marijuana products to sales tax, marijuana as defined under title 18 of the Vermont Statutes should be explicitly excluded from the food and food exemption from sales and use tax.²¹ This would be

consistent with the current treatment of sales of alcoholic beverages, tobacco, and soft drinks, thereby subjecting all sales of marijuana to the Vermont Sales Tax.

1% Local Option Tax

The Subcommittee recommends maintaining the current state of law on the local option tax, which will result in the existing 1% local option sales tax applying to retail sales of marijuana that are subject to the Vermont sales tax. The local option tax applies when sales are made in any municipality that has voted to impose a local option tax.²² The Department of Taxes typically administers local option taxes, with some exceptions. See the explanation below regarding the allocation of local option tax revenues in the section “Allocation and Proposed Budgets.”

The local option sales tax would be an important source of revenue for municipalities to absorb the costs of legalizing recreational marijuana. However, only those municipalities that already have a local option tax or complete the statutory process to adopt one will have access to this funding stream to cover their costs related to marijuana. For this reason, the Subcommittee recommends that municipalities receive a portion of marijuana tax revenues. Additionally, municipal advocates presented the option of authorizing towns to adopt a tax specific to sales of marijuana to help fund local costs related to marijuana legalization. Such a new local option tax would be separate and in addition to the current local option tax, and it would not impose the same requirements for voting, administration, and revenue allocation set out under 24 V.S.A. § 138. See the section “Municipalities: Revenue Allocation and Local Taxing Authority” below.

9% Meals and Rooms Tax

The Subcommittee considered imposing the 9% Meals Tax on edibles and, by extension, the 1% local option meals tax in those towns that have adopted one. The Subcommittee decided against adding complexity to the tax code and the regulation of a new industry. Imposing Meals Tax on edibles would require several amendments to the statute that would likely increase confusion and thus errors for retailers, and subsequently burden administrative and compliance efforts. Added complexity could create confusion for vendors and consumers concerning how to collect and report the tax properly, and it could add greater costs for the State to administer and enforce the tax code effectively.

Income Tax Deduction for Business-Related Expenses

The Subcommittee recommends authorizing a Vermont deduction against Vermont income tax for business-related expenses of marijuana establishments to balance the effect of federal income tax law. Federal law prevents marijuana dispensaries, cultivators, and retailers from deducting business expenses on their federal income tax returns.²³ U.S. Congress added Section 280E to the federal tax code in 1982 in response to federal tax court decisions allowing convicted drug dealers to deduct business expenses.²⁴ The types of business expenses that the regulations on Section 280E preclude for dispensaries, but allow other businesses to deduct, include marketing, research, and some administrative expenses.²⁵ The cost of goods sold is currently the only deductible business expense for marijuana establishments. The easiest approach to allow a Vermont deduction would be to enact language stating that for the purpose

of calculating Vermont net income, a licensed marijuana business shall be allowed any federal income tax deduction that is disallowed by Section 280E. This deduction would be available for both corporations, and individual filers, such as sole proprietors and pass-through entities like S Corporations and limited liability companies. The Department of Taxes would be able to accept a federal pro forma return that includes business expense deductions and calculate Vermont income tax liability using the pro forma return. See Appendix 2 for draft legislative language.

Revenue Estimates

Updated market analyses and revenue estimates for the Subcommittee's recommended tax structure will be forthcoming. The Department of Taxes is working closely with the Legislative Joint Fiscal Office and the State and Legislative Economists to prepare consensus estimates and present an overview of how legalized recreational markets in other states have performed. This document will provide an overview of: 1) the factors that influence legal recreational marijuana markets, 2) three-year estimates of a legalized market in Vermont, and 3) how other state markets and associated revenues have performed.

The Subcommittee heard from the Department of Taxes regarding previous fiscal analysis on legislation proposed by the Vermont General Assembly in 2015 and 2016. At that time, the Department of Taxes and the Joint Fiscal Office developed a model to estimate the size of a legal marijuana market in Vermont and the associated tax revenues such a market could generate. It was developed in consultation with the States of Colorado and Washington. Below are key findings from this model and other analyses used to inform the Subcommittee's recommendations. Estimates were derived from the data available in 2016, and they are currently being updated for the forthcoming report.

Estimated Vermont Taxable Marijuana Retail Sales			
Estimate	Low	Middle	High
Vermont Residents	\$45,231,523	\$55,233,221	\$67,054,080
Traveler	\$8,286,574	\$11,876,151	\$15,951,096
Total Sales	\$53,518,097	\$67,109,372	\$83,005,176

In 2016, the Vermont Senate passed S.241, a bill regarding the regulation of marijuana, which would have imposed a 25% excise tax at the retail point of sale.²⁶ No other tax, including sales tax, would have been imposed.²⁷ The following charts demonstrate the estimated tax revenues that the regulatory structure proposed under S.241 would have generated, as well as the revenues that Vermont would raise if it imposed the same tax structure, experience, and demographics as those imposed in other legalized states.

S.241 of 2016 Estimated Tax Revenues			
Estimate	Low	Middle	High
VT Resident Excise Tax Revenues	\$11,307,881	\$13,808,305	\$16,763,520
Traveler Excise Tax Revenues	\$2,071,644	\$2,969,038	\$3,987,774
Total Revenue Estimate	\$13,379,524	\$16,777,343	\$20,751,294

Allocation and Proposed Budgets

The administrative and programmatic costs across all State agencies that will have regulatory authority over the recreational marijuana system would need to be met through the tax and fee structure. The Subcommittee recommends dividing excise tax revenues to dedicated purposes such as public safety, prevention and education programs, and to State administrative agencies and municipalities. The division can be done by a percentage of revenues generated or a specific dollar amount. It is also possible to earmark certain percentages or dollar amounts of the revenues generated by the other state taxes (notably sales tax imposed on marijuana) for marijuana-related programs and administrative expenses.

Licensing agencies will also collect fee revenues. These include the Department of Liquor and Lottery, Agency of Agriculture, Food and Markets, and others. Some agencies, however, like the Department of Taxes, rely on the General Fund to fund their operating budget, and would not collect fees to pay for their costs related to administering recreational marijuana. In that case, operational funding for departments like the Department of Taxes could come from marijuana excise tax revenues or the General Fund. It would be critical to specify what special funds or enterprise funds would be used to deposit and make disbursements of specific tax and fee revenues.

The Subcommittee recommends retaining the allocation of sales tax and local option tax under current statute. As of July 1, 2018, all sales and use tax revenues are allocated to the Education Fund.²⁸ The current allocation of local option tax revenue is set out under statute s follows:

1. \$5.96 administrative fee per return (70% of which is paid by the town with the local option tax, and 30% of which is borne by the State Payment in Lieu of Taxes (PILOT) special fund);
2. 70% of remaining revenues go to the town with the local option tax; and
3. 30% of remaining revenues go to the State PILOT special fund.²⁹

Disbursements of local option tax revenues to towns are made quarterly. See Appendix 1 for a chart showing disbursements to towns in fiscal year 2018.

PILOT special fund disbursements are directed to municipalities that have reduced or foregone property tax revenues because of state-owned property located in their jurisdiction. State-owned property is exempt from property tax.³⁰ These programs are for state-owned buildings, Agency of Natural Resources' land, correctional facilities, and the City of Montpelier. The allocations from the PILOT fund are split based on appraised values, appropriations, and legislated mandates. The method of determining the payments is different for each type of program. The general PILOT special fund appropriation for fiscal year 2018 was \$7,600,000 and for fiscal year 2019 was \$7,866,000. These payments are made to the eligible towns once a year in October.

The Subcommittee recommends against setting different statutory allocations for the revenues that would be generated from the existing local option tax on sales of marijuana only, because that would create administrative complexity. More complexity could cause confusion for consumers and the retailers collecting the tax, who would have to report differently, which can result in erroneous tax collection. Bifurcating the existing allocation of local option tax revenues so that marijuana revenues would be divided differently from all other types of local option tax revenues would also be more expensive for the Department of Taxes to implement and administer.

Municipalities: Revenue Allocation and Local Taxing Authority

The Subcommittee recommends funding all Vermont municipalities by either a statutory percentage or dollar amount of the total marijuana tax revenue. This would avoid inequities amongst towns, since the impact of marijuana activities will be felt in every town, regardless of whether a town or city hosts any marijuana establishments. Communities without marijuana establishments, including those that opt out of hosting, should still receive funding to alleviate the effects of operations based in other municipalities, as well as local consequences that arise from personal use and cultivation, including highway safety, odor, zoning, etc. Towns that host marijuana establishments should be allocated a larger portion of the revenues. Revenue sharing would prevent municipalities from having to increase property taxes or cut local budgets for other services.

In addition to a general allocation of revenues for all towns, some members of the Subcommittee felt strongly that towns should be granted local taxing authority that is specific to sales of marijuana. Municipal advocates noted that most municipalities do not have a local option tax due to the time-consuming and onerous charter adoption process, which is the only means of adopting a local option tax for most cities and towns. Most communities are not delegated the power to adopt a local option tax under 24 V.S.A. § 138, and therefore must first adopt a charter to implement a local option tax. Both the charter adoption process and the local option tax adoption process require local voter approval and then approval from Vermont's General Assembly. Municipalities seeking to tax sales of marijuana, but not sales of other products, have no mechanism to do so under the current local option tax statute.

Authorizing municipalities to vote to impose a separate local tax on marijuana that is distinct from the current local option sales tax under 24 V.S.A. § 138, would give towns more control over their funding and expenditures and avoid administrative return fees and PILOT fund expenses, thereby capturing more revenues than the current local option tax structure allows. Currently, towns receive less than 0.7 of one-percent of the tax revenues collected on sales in their jurisdiction. See above for an explanation of the current allocation of local option tax revenue. New statutory authority would provide voters in cities and towns with the ability to adopt a local marijuana tax at an annual or special meeting, without the additional burden of adopting or amending a municipal charter that is codified by the State Legislature.

In other states that have legalized recreational marijuana, municipalities have local taxing authority beyond property taxation, and some degree of revenue-sharing from revenues generated by state-level taxes. In contrast, 95% of municipalities in Vermont are wholly reliant on local property taxes to generate revenues locally. Vermont municipalities that would share in the revenues generated at the state level would be better able to enforce new laws and mitigate any negative impacts.

Agency of Agriculture, Food and Markets

The Agency of Agriculture, Food and Markets provided the Subcommittee on Taxation and Regulation with a budget estimate. See below for a chart summarizing the costs, and the Agency's explanation of its estimated budgetary needs.

AAFM Staffing Needs				
	FY 2020	FY 2021	FY 2022	TOTAL
Program Lead	100,000			
Chemist	100,000			
Staff Attorney		120,000		
Field Inspector		100,000		
Program Admin		80,000		
Chemist			100,000	
Operating	20,000	170,000		
Analytical Equipment		350,000		
	\$220,000	\$820,000	\$100,000	\$1,140,000

- Program Lead
 - Writing rules and regulations
 - Compliance assistance, education and training
 - Assemble internal Cannabis Program Development team
 - Build stakeholder groups
- Laboratory Chemist
 - Method Development-
 - THC analysis methods development
 - Pesticide residue method development
 - Pathogen testing methods
 - Commercial Lab evaluation
- Operating
- Field Inspector
 - Sample Collection and Transportation
 - Site Inspection
- Admin
 - Registration of cultivators
 - Registration of Labs
 - Check Sample Program
- Staff Attorney
 - Program Enforcement
- Chemist
 - Additional capacity as samples increase
- Operating

- Outreach and Education
- Sample equipment
- Lab Supplies
- Equipment
 - Analytical Equipment

● High Performance Liquid Chromatograph (HPLC)	50
● Gas Chromatograph with Mass Spec. (GS/MS)	200 (shared 50:50)
● Laboratory Information Management Module (LIMS)	50
● Misc. Equipment, scales, secure sample storage, etc.	50

The Vermont Agency of Agriculture, Food & Markets proposes to establish a robust regulatory program to ensure marijuana grown in Vermont meets standards of product integrity, quality and safety and is grown in an environmentally responsible manner. See the chart below for the rollout plan.

Program - 2020	Laboratory - 2020
<ul style="list-style-type: none"> ○ Marijuana Cultivation Regulation <ul style="list-style-type: none"> ○ Develop rules ○ License cultivators <ul style="list-style-type: none"> ▪ Cultivation standards ▪ Pesticide use ▪ Nutrient management practices ▪ Record keeping requirements ▪ Genetic drift control ○ Commercial Laboratory Regulation <ul style="list-style-type: none"> ○ Develop rules and standards ○ License Commercial Laboratories ○ Establish statewide testing protocols and reporting requirements ○ Pesticide Use Regulation 	<ul style="list-style-type: none"> ○ Methods Development for Cannabinoid concentration validation <ul style="list-style-type: none"> ○ THC ○ CBD ○ <i>etc.</i> ○ Pesticide Residue Analysis <ul style="list-style-type: none"> ○ Insecticides ○ Fungicides ○ Adulterated products <ul style="list-style-type: none"> ○ Powdery Mildew ○ Pathogens (e-coli, salmonella)

Program - 2020
<ul style="list-style-type: none"> ○ Issue state registrations for approved pesticide products ○ Worker Protection Standard implementation ○ Pesticide use inspection and laboratory QA
Future
<ul style="list-style-type: none"> ○ Outreach and Education ○ Field Inspection ○ Program Administration ○ Analytical Equipment

Laboratory - 2020
Future
<ul style="list-style-type: none"> ○ Check sample program ○ Laboratory stakeholder collaboration ○ Additional laboratory chemist

Department of Taxes

The Department of Taxes based its estimated budgetary needs on the administration of a new 20% excise tax and imposing the existing 6% sales and 1% local option sales tax with no changes made to the relevant statute. **This budget also assumes that no tax payments will be made in cash. The Department does not currently have the infrastructure to collect large cash payments. If the Department were to collect cash, then its administrative budget would increase significantly to cover necessary security measures.** Substantial investments would need to be made to ensure accurate cash collections and protect State employees and taxpayers. Security equipment, new space, additional personnel, and armored vehicles to transport the cash would be necessary expenses. Previous budget estimates for cash collections were roughly \$1 million for start-up costs and more than \$300,000 for on-going yearly costs.

	FY20	FY21	FY22	Notes
Computer System				
Software	\$750,000	\$750,000		
Implementation Consulting	\$10,000			Costs for research, requirements development, or other research expenses
Vender Maintenance and Support		\$5,000	\$5,000	Ongoing Maintenance & Support
Subtotal	\$760,000	\$755,000	\$5,000	
Staffing Costs				
Business Analyst / Implementation Coordinator	\$80,000	\$80,000	\$80,000	1 staff - lead SME during project development

	FY20	FY21	FY22	Notes
Attorney / Policy Analyst	\$80,000	\$80,000	\$80,000	1 staff - legal support
Tax Examiners		\$160,000	\$160,000	2 staff - call center and front-end processing
Discovery		\$40,000	\$80,000	1 staff - data management for enforcement activities
Audit			\$80,000	1 staff - Audit activities
Collections			\$80,000	1 staff
Training		\$10,000	\$2,000	
Subtotal	\$160,000	\$370,000	\$562,000	7 staff
Total	\$920,000	\$1,125,000	\$567,000	
Total 3-year budget			\$2,082,000	

Assumptions

- Budget based on research and numbers from other states (Washington and Colorado).
- Enforcement structure similar to Colorado's with seed-to-sale tracking
- Ad valorem excise tax at the point of retail sale
- **No cash collection at the Vermont Department of Taxes.**

Software Module Implementation

- Module connects to a centralized enforcement system that monitors industry in real time. In Colorado this helped streamline compliance. Colorado warned that this is critical for tax and enforcement to work together to effectively regulate and tax marijuana.
- Upfront cost is offset over the aggregate by automating resource-intensive processes and better ensuring accurate tax collection

FTE Positions

The Department of Taxes anticipates a need for two full-time equivalent (FTE) positions in the initial fiscal year 2020 budget to begin building capacity for this new tax type. By contrast, Colorado added 22 FTEs to work on marijuana taxation in the industry's first two years. Washington and Alaska added more positions to deal with taxation over time.

- Business Analyst / Implementation Coordinator (approx. \$80,000; PG25)
 - Serve as subject-matter expert (SME) for implementation of excise tax and then SME for tax when it launches
 - 8 FTEs are currently in these roles who all have working knowledge of the tax types they will be implementing.
 - To ensure continued success, position will be SME for design sessions, testing scenarios, and outreach post-launch.

- Attorney / Policy Analyst (approx. \$80,000; PG26)
 - Colorado and Washington emphasized the increase in legal work during their implementation of a recreational marijuana
 - Legal work will entail issuing formal rulings, technical bulletins and fact sheets; communicating with other states; monitoring federal and state legal cases that would impact Vermont's marijuana industry
 - Currently there are three attorneys working as policy analysts in the Department who are already at capacity doing ongoing research, answering taxpayer questions, and promulgating rules for our existing tax types.

Department of Liquor and Lottery

The Department of Liquor and Lottery's estimated budget required for regulating marijuana activities will be forthcoming.

Education and Prevention Programs

The Education and Prevention Subcommittee provided the Taxation and Regulation Subcommittee with a preliminary estimated budget for a comprehensive education and prevention strategy, including both community- and school-based programs. The budgetary needs were estimated at \$8-\$12 million. A more in-depth analysis of the costs and timelines associated with implementing education and prevention programs will be forthcoming.

Department of Public Safety

The Department of Public Safety provided the Subcommittee on Taxation and Regulation with a comprehensive budget estimate. See the attached letter from the Department of Public Safety explaining its estimated budget in detail. See below for a chart summarizing the costs.

Department of Public Safety Estimated Budget		
Oral Fluid Testing	Start-up	\$290,500-\$393,800
	Recurring	\$60,000
Laboratory	Start-up	\$30,000
	Recurring	\$15,000-\$52,500
Law Enforcement	DRE Annual	\$330,000-\$370,000
	Annual Law Enforcement 1 st Year Start-up	\$2.2M
	Recurring Law Enforcement	\$1.3M (\$4.8M over 3 years)
	Annual Attorney	\$100,000
Data Collection and Analysis	CRG Contract	\$137,000-\$274,000
Total Estimated Start-Up Costs		\$2.5 - \$2.68 million
Total Estimated Recurring Costs		\$1.94 - \$2.16 million
Total Estimated Costs Over First 3 Years		\$4.44 - \$4.84 million

Vermont Marijuana Registry

The Vermont Marijuana Registry administers the medical marijuana program in Vermont for registered patients, caregivers, and dispensaries. The Registry reviews and processes applications, issuing registry identification cards to residents of Vermont with verified debilitating medical conditions, and evaluates registered dispensaries' compliance with state law. Its current annual operating budget of approximately \$320,000 relies solely on licensing fees. If licensing fees are reduced, then statutory requirements would need to be removed and staffing would need to be decreased. Subsequently, the Registry's operating budget and services would have to be reduced. Allowing other funding alternatives such as tax revenues would avoid the need for layoffs or a reduction in statutory requirements.

Self-Funded Regulatory Structure

The Governor's Executive Order requires the Commission to recommend "a business plan for a comprehensive regulatory and revenue system which completely self-funds the regulatory infrastructure at both the State and local level [...]"³¹ The following are possible approaches to creating a new regulatory structure that is entirely self-funded at the start of legal sales. These approaches could be combined or implemented exclusively for maximum effect.

1. Delay the start date for retail sales to begin 18-24 months after recreational marijuana sales are legalized.
2. Impose higher licensing fees for initial retail license applications, then lower fees for annual licensing renewal. Require application fees to be paid upfront, before retail sales begin. This proposal would create a lag of time between when the administrative agency would receive fees and when the retailer would actually start legal sales to consumers.
3. Stagger the number of licenses issued in the start-up phase (first one to three fiscal years) so that the administrative workload can be balanced with the hiring of new staff.
4. Create a one-time excise tax on the first sale by cultivators with an automatic sunset before retail sales begin. This would allow tax revenues to be collected before retail sales begin.
5. Devise a retail license auctioning system so that a limited number of retail licenses may be sold to the highest bidders.
6. Require licensees to provide upfront capital to the pay for the regulatory system, structuring the payments like a loan to the State that accrues interest.
7. Create a captive pool or marketplace where business buy and trade operating shares; similar to a carbon emissions trading model (marijuana market trading).
8. Create a fund similar to that in S.241 that could be drawn from early in the year, then is required to be balanced out by the end of the fiscal year. Similar to clean water fund.

CONTROL MODEL

History of Prohibition

Timeline

1906 Pure Food and Drug Act

- Prevents the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors

1915 Harrison Narcotics Tax Act

1919-1933 Prohibition

- 18th Amendment, Volstead Act, 21st Amendment
- 1933 Repeal of prohibition (21st amend.)
- National Prohibition Act, aka Volstead Act, enacted to carry out 18th Amendment, which established prohibition. Andrew Volstead was Chair of House Judiciary Committee
- 1930s Federal Bureau of Narcotics within Dept. of Treasury

1934 Uniform Narcotic Drug Act

- Uniform Law Commission model law for states

1937 Marihuana Tax Act

- Imposes a tax on the sale of cannabis, hemp, or marijuana
- Requires any person who sells, deals in, dispenses, or gives away to register with the Internal Revenue Service and pay a special occupational tax
- Overturned in 1969 in *Leary v. United States*, (1969) 395 U.S. 6 and repealed by Congress the next year

1951 The Boggs Act; 1956 Narcotics Control Act; 1970 Controlled Substances Act

- Mandatory minimum sentencing for drug-related offenses; 1st-time marijuana offense = 2-10 years in prison + fine of up to \$20,000
- Repealed in 1970 Controlled Substances Act

1970 Controlled Substances Act

- Creates Shafer Commission, which issued its report in 1972 finding that criminal penalties were too harsh.
- Creates five “schedules” or categories of regulated substances. 21 U.S.C. § 812
- Marijuana is designated as a “Schedule I” substance.
 - Schedule I substances:
 - (a) have a high potential for abuse;
 - (b) have no currently accepted medical uses; and
 - (c) lack accepted safety for use under medical supervision
- Other examples of Schedule I substances: Heroin, ecstasy, and LSD

- Examples of Schedule II substances: cocaine and methamphetamine

1986 Anti-Drug Abuse Act

- President Reagan brought back mandatory minimum sentencing for drug-related crimes; increased penalties & fines, based on amount of drug possessed

Cole Memo 2013-2018

The U.S. Department of Justice assumed that if state laws regulating marijuana were adequate, then they would not pose a threat to federal enforcement interests. “Adequate” meant that state laws created strong and effective regulatory and enforcement systems and dedicated enough resources to enforce laws effectively. Accordingly, the Department of Justice stated that it would exercise prosecutorial discretion and not investigate or prosecute marijuana-related incidents, except on a case-by-case basis. Cases would be reviewed where state laws pose a threat to public safety, public health, or other law enforcement interests (e.g., other states and federal priorities). Federal priorities were to prevent the following:

- Distribution of marijuana to minors
- Revenue from the sale of marijuana from going to criminal enterprises, gangs, drug cartels, etc.
- Diversion of marijuana from legal states to states where it is not legal in any form
- Using State-authorized marijuana activity used as a pretext for trafficking other drugs or engaging in other illegal activity
- Violence and the use of firearms in the cultivation and distribution of marijuana
- Drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use
- Growing marijuana on public lands, and the public safety and environmental dangers posed by marijuana production on public lands
- Marijuana use or possession on federal property

On Jan. 4, 2018, Attorney General Jefferson Sessions issued a memorandum rescinding the 2013 Cole Memo.³² In this memo, Session directed all U.S. Attorneys to enforce the laws enacted by Congress and to follow well-established principles when pursuing prosecutions related to marijuana activities. He made the following statement:

“It is the mission of the Department of Justice to enforce the laws of the United States, and the previous issuance of guidance undermines the rule of law and the ability of our local, state, tribal, and federal law enforcement partners to carry out this mission. Therefore, today's memo on federal marijuana enforcement simply directs all U.S. Attorneys to use previously established prosecutorial principles that provide them all the necessary tools to disrupt criminal organizations, tackle the growing drug crisis, and thwart violent crime across our country.”

Control Model

At the end of alcohol prohibition, all states instituted some form of three-tier system of producers, wholesale distributors, and retailers to promote moderation in consumption, prevent concentration of power, and raise revenues through taxes. Producers or manufacturers are

typically breweries, wineries, or distilleries. Distributors are companies designed to sell specific products to bars, stores, and restaurants, among others. Retailers are typically grocery and liquor stores, bars, and restaurants who sell directly to the consumer. Vermont, along with sixteen other states and two counties in Maryland, directly control the sale of liquor at the wholesale level and are considered “control states” or “control jurisdictions.”

The primary focus of a control model is social responsibility rather than profitability. In an open market, the goal is to increase sales and profits by encouraging use and pushing the product. Marketing often targets underage youth to encourage consumption, as well as heavy, frequent users by offering discounts on high volume sales. Sellers engage in price wars between outlets and increase availability with more locations and extended hours to attract customers. Sellers who are more willing to tolerate a certain level of black-market activity make diversion and tax evasion more likely.

Creating a control state model for adult-use marijuana would both promote the public good, and maximize revenue flowing to the State. This would be accomplished by making the State the sole distributor and the retailer, thereby cutting out the middleman. As the distributor, the State would encourage small local producers to enter the market, contributing to a more vibrant and diverse industry and creating additional employment opportunities spread throughout the state. As the retailer, the State would ensure uniform prices and selection across the state, limit access by controlling the number of retail locations and their hours of operation, and keep questionably sourced or dangerously high potency products out of the market.

Under a pure control state model, a fundamental goal would be the reduction or elimination of the black market. This would be accomplished through flexible pricing, ensuring the quality and potency of products sold in state stores. This would also ensure that the only products that can be sold in stores would be unadulterated without harmful chemicals, fungicides, or pesticides. Clear labeling would be required so that consumers know what they are purchasing. A control model could also be achieved by educating consumers that purchasing from the State supports local businesses and state government and not drug cartels and drug dealers.

A contract agency store model provides the State with greater control over seller conduct to enhance compliance. By limiting the number of retail locations it becomes easier to conduct frequent compliance checks. State control means enhancing affordability and availability. Licensing, education, and enforcement would also be paid for out of the revenue generated from the consumption of the product, not from either General Fund dollars or licensing fees alone. This is also known as a “pay to play” structure. Additionally, local control is built into the control model and would allow municipalities to prohibit sales in their town by opting out.

State Regulation; Private Businesses

The Subcommittee recommends creating a legal structure for the sale of recreational or adult-use marijuana where the State regulates an industry owned and operated by private entities. Under that model, the risk is borne by the private businesses, while the State still imposes regulations to protect and educate consumers, prevent diversion, and encourage local economic development. The State’s regulatory infrastructure would be entirely self-funded through licensing fees and tax revenues. Many of the suggested benefits of a pure control model can be achieved through regulation without incurring the risks associated with possessing or distributing a federally illegal substance. The important aspects to achieving that sort of regulatory control

are included in this report, such as advertising, packaging, dosage, and labeling restrictions, a large enforcement role for the Department of Liquor and Lottery, and a Board of Control with broad authority and ability to flexibly adapt to a changing market. These recommendations will help further the priorities of a control model without incurring a high level of risk. Creating a pure control model is therefore not recommended by the Subcommittee, although the possibility of a hybrid model is a potential avenue for greater exploration.

Federal Preemption

The adult-use marijuana laws adopted in eight states – along with the 30 state medical marijuana laws – all share the same approach: each law is designed to ensure that neither the State itself nor its employees are required to violate federal law. A control model law that involves the State and its employees directly in possessing and selling marijuana is likely preempted, or nullified, by federal law. It would place those who work for the state at risk of prosecution by federal law enforcement. Until federal law changes, the threat of federal prosecution must be left to individuals to decide for themselves, rather than imposed as a condition of their employment.

Possessing, distributing, and growing marijuana are federal crimes under the Comprehensive Drug Abuse Prevention and Control Act of 1970, (“Controlled Substances Act”), as is conspiring to do so.³³ A law that depends on state employees engaging in any of these actions or conspiring to do so by contracting with others on its behalf could put those workers at risk of federal prosecution. Now that Attorney General Jefferson Sessions has rescinded the 2013 Cole memo, there is no Department of Justice policy that prevents targeting people who distribute marijuana in compliance with state laws. The only legal obstacle to the Department of Justice enforcing the Controlled Substances Act against users and sellers of medical marijuana is a Congressional budgetary action known colloquially as the Rohrabacher Amendment. That protection was extended in the 2018 federal budget act and prevents the Department of Justice from spending federal funds to interfere with the implementation of state medical marijuana laws. The existing Vermont marijuana regulation and medical marijuana laws that remove state criminal penalties for certain conduct, and that implement rules and regulations are likely to be safe from federal preemption. However, that amendment only applies to medical marijuana; which means that there are no impediments to federal prosecution of recreational marijuana activities.

The question of federal preemption is a question of congressional intent. The federal Controlled Substances Act is clear that it only preempts state laws under very limited circumstances. The Controlled Substances Act states that it is not intended to preempt the state drug laws unless “there is a positive conflict” between state and federal law “so that the two cannot consistently stand together.”³⁴ When such an intent is expressed, courts have generally held that a state law is only preempted by the Controlled Substances Act if it is “physically impossible” to comply with both state and federal law or if the state law stands as an obstacle to the Controlled Substances Act. Those workers could also react by refusing to commit a federal felony.

Creation of Board of Control

To centralize the administration of a new regulatory structure for recreational marijuana, and potentially for medical marijuana as well, the Subcommittee recommends creating a new Board of Control. A Board would regulate a marketplace run by private industry, so that the State would not own or possess a controlled substance that is still illegal under federal law at any point in the chain of production and sale. The State would therefore be able to retain control over the form and manner of sales of recreational marijuana, while avoiding the predicament of the State and State employees violating federal law. The Board would have certain specified administrative and quasi-judicial powers in relation to licensing and enforcement. The Subcommittee recommends creating a Board that is either an independent executive branch authority with access to the administrative resources of one or more agencies, or alternatively embedded within an executive branch entity such as the Department of Liquor and Lottery or the Agency of Agriculture, Food and Markets. The regulatory agencies should be statutorily named members either of the Board or its subcommittees with the primary authority to adopt rules on licensing requirements. Other crucial State agencies with a role on the Board or its subcommittees should include the Department of Health and the Department of Public Safety. The Vermont Marijuana Registry should also have an advisory role on the Board or be regulated by the Board. Public members and members with industry expertise should also be involved in the Board. The statute creating the Board should include conflict of interest provisions prohibiting members or members' immediate families from maintaining any financial interest in the marijuana industry, and from holding any elected or appointed political office. For a summary of the boards of control and other regulatory agencies in legalized states, see the chart in Appendix 1.

DIVERSION PREVENTION

Preventing diversion is one of the primary concerns and overarching issues that the entire regulatory structure must work to achieve. Diversion occurs when marijuana products and revenues are produced and sold on the black and grey markets, including transport and sale into other jurisdictions where marijuana is illegal. A major concern about diversion is use by underage youth.³⁵

Prohibition on Gifting Marijuana for a Fee

The Subcommittee recommends expressly prohibiting gifting while charging for accessories, merchandise, delivery, etc. This recommendation coincides with the Office of the Vermont Attorney General's July 23, 2018 advisory regarding the illegality of selling marijuana under the current personal use law, where only limited cultivation, possession, and consumption of marijuana is permitted. The advisory reads as follows: "Any transfer of marijuana for money, barter, or other legal consideration remains illegal under Vermont law. This includes a commercial transaction (i.e., an exchange of goods or services for money) with a purported "gift" of marijuana. Examples include: selling an item or service, like a bracelet or t-shirt with the "gift" of marijuana. Charging someone for the purported "delivery" of a marijuana "gift" would also be considered a sale." The Subcommittee recommends including similar language

that prohibits commercial transactions of marijuana under the pretext of gifting. Such language could read: “Any transaction whereby goods or services are exchanged for consideration with a purported gift of marijuana shall be prohibited.”

To achieve the same end, the Subcommittee also recommends prohibiting sales of marijuana that are conditional on the purchase of other services or nonmarijuana products. Washington enacted the following prohibition: “Marijuana producers, processors, and retailers are prohibited from making sales of any marijuana or marijuana product, if the sale of the marijuana or marijuana product is conditioned upon the buyer's purchase of any service or nonmarijuana product. This subsection applies whether the buyer purchases such service or nonmarijuana product at the time of sale of the marijuana or marijuana product, or in a separate transaction.”³⁶ Including this sort of provision would preclude predatory practices by sellers.

Residential Delivery

The Subcommittee recommends further consideration of residential delivery of marijuana products. Delivery could be authorized either initially or within several years of implementation of a legalized recreational market. A State-regulated home delivery option could help all adult Vermonters to access marijuana through a regulated market, and reduce demand for illegal, unregulated sales, including unregulated delivery services. In keeping with one of the fundamental goals of the Commission to eradicate the black market to the greatest extent possible, the Subcommittee should consider recommending that the State regulate marijuana delivery from licensed retailers and/or separate delivery services. Three of the adult-use states, California, Oregon, and Nevada, have opted to allow regulated home delivery.³⁷ Where delivery is not provided for and regulated, such as in Colorado, the illicit market has filled the gaps, because demand for home delivery is strong. The Subcommittee acknowledges that a large difference exists between unregulated, gift-based delivery services and regulated delivery services, and that the latter idea is at least worthy of serious consideration.

The concerns that arise with regard to home delivery of marijuana products are also present in the regulation of alcoholic beverages. The most notable concern is age verification and ensuring that delivery is only made to consumers who are of legal age to consume the products. For comparison, Vermont does not authorize home delivery of alcoholic beverages, although the medical marijuana program authorizes dispensaries to make home deliveries to patients, some of whom have limited mobility due to chronic or terminal illnesses. Additional concerns over diversion to the black market and the security of payment transactions exist for any transactions involving marijuana products, whether they occur at a retail location or via delivery.

Seed-to-Sale Tracking

The Subcommittee recommends that all marijuana be tracked from its seed state until it is sold. There is a need for regulated a distribution system to avoid federal scrutiny, although following the rescission of the Cole Memo by the U.S. Department of Justice, little certainty remains about what will avoid or attract federal scrutiny. Based on the Cole Memo and the legalized states’ experience, a balance needs to be attempted between oversupply, which drives prices down, and then leads to diversion; and encouraging growers and sellers to leave the illicit market and join the legal market. A successful regulatory structure would have built-in flexibility to deal with oversupply, diversion, enforcement, and businesses’ need to adapt to a challenging

market. Although the tension may ultimately never fully be resolved, and the black market may never be eradicated completely, it can be reduced. An inventory tracking system can be developed to ensure that taxes are collected, and inventory does not migrate from or into the illegal market. A tracking system will allow for more effective audits and help to satisfy federal guidelines. A strong information system will also supplement limited staffing resources by automatically reporting on discrepancies and providing notice of potential tracking issues. This should track every plant and individual products and batches by bar code from seedling to final sale to consumer. This becomes especially important for any recalls when consumer safety issues are identified.

LICENSING

License types

The Subcommittee recommends creating five license categories: Cultivator, Processor, Retailer, Transporter, and Testing. Cultivator licenses should be structured on a tier basis according to plant canopy size, with the smallest tier being issued in an unlimited number. At the start of legalized sales, only the smallest tier would be available, so as to encourage small, local farmers to enter the market. Issuance of medium- and large-tier cultivator licenses would be phased-in over time. Statute should include the basic cultivator license structure, including the phase-in of larger-scale cultivator licenses, and a maximum fee per tier, but the licensing authorities should make the final decision about the fee amounts charged and the number of licenses issued through the rulemaking process. This will allow regulators to have the flexibility to respond to an evolving market. A Testing license category will be allowed for separate laboratories and research facilities. The Subcommittee does not recommend that licenses for Social Clubs or Lounges be authorized. Along the same lines, the Subcommittee recommends prohibiting the consumption of marijuana products on any licensee's premises. Creating Social Club licenses or allowing consumption on licensed premises in the initial stages of a recreational marijuana market would create many challenges that could be avoided by limiting consumption to private places only.

License applicants will have to meet requirements such as background checks. Other restrictions such as Vermont residency or vertical integration will not apply, although in rating cultivator license applications, preference will be given to Vermont residents. Licensees will only be able to hold one license per category to avoid creating monopolies. Only licensed retailers will be permitted to sell to consumers. Wholesale transactions will only be permitted between licensees, so that products sold from cultivators to processors, and from cultivators and processors to retailers can be tracked from seed to sale to prevent diversion, and to ensure tax compliance and quality control for consumers. Statute should include an explicit provision stating that all licensees and their employees who handle marijuana products in excess of the personal use amounts authorized under Act 86 of 2018,³⁸ and who are in compliance with Vermont's marijuana laws and regulations, are exempt from State prosecution for the relevant criminal or civil offenses.

For all license types, one of the primary concerns is preventing diversion. This aligns with the purposes set out under the current medical marijuana statute, whereby the Department of Public Safety is required to adopt rules with the goal of protecting against diversion and theft

without imposing an undue burden on registered dispensaries.³⁹ One means of preventing diversion is to provide adequate education and outreach from the regulatory agencies to applicants and approved licensees. Example training is currently provided by the Department of Liquor and Lottery to its alcohol licensees. Another means is deterrence. A zero-tolerance approach would send a strong signal that diversion is a serious offense with serious consequences. Taking the example of Oregon, authorizing the licensing authority to immediately suspend any license for diversion could help to achieve this goal. Any consequences would need to be paired with an appeal process to ensure that licensees are treated fairly. A further overarching concern is ensuring that small Vermont businesses and the Vermont ethos are encouraged and respected, while also not restricting larger market players from participating in the Vermont economy. This is particularly important from the perspective of the viability of a new market; whereby larger or out-of-state investors can provide important start-up capital for a nascent industry. For this reason, the Subcommittee did not recommend restricting licenses to Vermont residents, although Vermont residency will give an applicant for a cultivator license a preference in the application process.

Licensing Requirements

Vertical Integration Permitted

Vertical integration, whereby one natural or legal person is able to hold licenses for each stage of marijuana production and sale should be permitted. Vertical integration should not be either prohibited or required. This allows much-needed flexibility around creating a new business, so that businesses can adapt to and compete in a challenging and competitive market. Not allowing vertical integration would furthermore be challenging to enforce due to the complicated legal structures of entities.

Medical marijuana dispensaries should continue to be required to be vertically integrated while operating under medical licenses. This is particularly important to ensure expertise and quality control. However, if a dispensary is operating under a recreational market license, they will not be required to be vertically integrated. They may, like other recreational market licensees, hold not more than one license per license category.

Number of Licenses

Only the smallest tier of cultivator licenses should be allowed to be issued on an unlimited basis. This tier could be set at either 500 or 1,000 square feet of flowering plant canopy. Allowing an unlimited number of the smallest cultivator licenses is important to help bring current growers out of the black market and to integrate them into the legal market. This is also important to encourage small Vermont cultivators, which will help the local economy and employ Vermonters. By encouraging smaller-scale businesses, the hope is also to foster a similar focus on quality and specialization that has been demonstrated by the Vermont craft beer industry. This would also continue to advance the national image of Vermont products as being of the highest quality. The Subcommittee also recommends that a business only be able to obtain one license per category to help avoid creating monopolies.

The number of licenses issued should ultimately be determined by the Board, which would also have the authority to adjust that number in the future to respond to supply and

demand in the market. This is essential to address concerns about oversupply and its effect on the black market. When there is too much supply, prices drop, and legal growers or sellers find themselves with too much product on hand. This can incentivize sales to the grey and black market, which then takes marijuana products out of the stream of taxable commerce and can lead to greater access by underage consumers or consumers in states where sales are illegal. These are the sorts of consequences that could attract federal scrutiny.

Background Checks Required

Background checks should be required for all license applicants. For business entities, this will include the entity owners, directors, and executives, so as to target only the licensees with decision-making power. Prior non-violent drug convictions should not be considered disqualifying. This would include any prior convictions for marijuana use or possession. Felonies would be disqualifying crimes, whereas misdemeanors would not. Specific crimes like fraud, felony drug trafficking, or any financial-related crimes, would be disqualifying crimes. An appeal process would need to be instituted by the Board in case of a license being denied based on criminal records. This adjudication would be handled by the Board in its quasi-judicial capacity.

Preference for Vermont Residency

The Subcommittee does not recommend requiring Vermont residency for marijuana license applicants. However, the Subcommittee does recommend creating a residency *preference* for *cultivators*. This preference should be given in the application process to individuals who have been Vermont residents for a minimum period, either for 6 or 12 months preceding the application for a cultivator license. Washington requires applicants to have in the state of Washington for at least six months prior to application for a marijuana license, and Colorado requires at least one year. There is no need for retailers and other types of licenses to be Vermont residents. Investment from individuals in other states maybe a good source of initial capital for start-up costs. Moreover, the recommendation to initially allow only small cultivator licenses and then phase in cultivator licenses at the medium and large tiers, is more likely to achieve the aim of encourage small, local businesses than requiring residency.

Information Reporting and Sharing

The Subcommittee identified a need for data reporting and other key information to be shared amongst regulatory agencies on a need-to-know basis. For privacy reasons, records and other sensitive information will be strictly limited to those who have a legitimate need to know in administering marijuana laws and regulations. This would include regulatory agencies, law enforcement, disclosures authorized by the individual in writing, and disclosures for statistical or research purposes, including for the Legislature when the information disclosed is not personally identifiable. One suggestion is building upon the current medical marijuana regulatory structure, so that monthly financials, access to review the monthly sales returns filed with the Department of Taxes, information on beneficial ownership of each entity and person involved in the businesses be shared information. Another example, in order to attract more banks or credit unions to provide services to marijuana businesses, is to provide limited access to financial

information about licensees in a timely, reliable way to help to decrease banking unease about serving the industry. The way that information is collected will also be an important issue for the businesses subject to new reporting requirements. To create the most efficient and user-friendly structure possible, it is advisable to funnel the application and licensing process as well as ongoing reporting and compliance efforts all through the same entity, the Board of Control.

License Types

All license types will be specific to the person identified on the license and will be non-transferrable. Statute should include an explicit provision stating that all licensees and their employees who handle marijuana products in excess of the personal use amounts authorized under Act 86 of 2018,⁴⁰ and who are in compliance with Vermont's marijuana laws and regulations, are exempt from State prosecution for the relevant criminal or civil offenses. Imposing minimum buffer zones to respect federal and state drug-free zone laws are also an important consideration. The distance selected could have a considerable impact depending on the town, because a large buffer zone has the potential to exclude an entire downtown or commercial district from marijuana activities. Determining what is an appropriate distance for recreational marijuana activities (primarily retail, but potentially any type of marijuana establishment) could be the same as that currently set for medical marijuana dispensaries, which is not within 1,000 feet of the property line of a preexisting public or private school or licensed or regulated child care facility.⁴¹ Alternatively, it could be set at 500 feet of school property to align with the criminal offense of selling or dispensing a regulated drug on school grounds or property abutting school property within 500 feet of school property.⁴²

Cultivator

The Subcommittee recommends creating a tiered cultivator license structure based on plant canopy size, with an unlimited number of licenses available immediately following legalizing for the smallest tier of cultivators only. The issuance of medium- and large-sized cultivators should be phased in one or two years after legalized sales begin.

The Agency of Agriculture, Food and Markets will be the primary regulatory agency over cultivator licenses. Each cultivation area, which could include growing, drying, and storage areas, will need to be reported to AAFM with the E911 locations and GPS coordinates. Mapping of field locations and indoor grows will be required. Certain licensing information such as addresses should be made exempt from public records requests (specifically the location of production areas) so as to protect the security of the cultivators and their inventory and to avoid theft.

Licensees will have to report the name and legal business type of the licensee (individual, corporation, etc.), the name and contact information for the cultivation and production area manager, and the contact information of landowner if they are not the same as the licensee. Changes to licensee information, including land ownership and cultivation area managers will be strictly limited. Record keeping and tracking that follows harvest lots or batches to their destination at the next licensed facility or to a consumer will be required by using a unique identifier tied to each licensee. Cultivators will be required to maintain records of testing information and results. Temporary or permanent closures of facilities will have to be reported to AAFM within a specified timeframe, and licensees will be required to propose a plan for

disposal or dissolution of crop. If adulterants, which include pesticides, molds, mildews, heavy metals, and solvents, exceed levels determined by the AAFM to be deleterious to human health, then the cultivator must provide for a method of disposal.

Processor

The Agency of Agriculture, Food and Markets will also be the primary regulatory agency over processor licenses. Each processing facility will need to be reported to AAFM with the E911 locations and GPS coordinates for entrance to the facility. Certain licensing information such as addresses should be made exempt from public records requests (specifically the location of production areas) so as to protect the security of the processors, their equipment, and their inventory.

Licensees will have to report the name and legal business type of the licensee (individual, corporation, etc.), the name and contact information for the processing facility manager, and the contact information of landowner if they are not the same as the licensee. Changes to licensee information, including land ownership and processing facility managers will be strictly limited. Record keeping and tracking that follows lots or batches to their destination at the next licensed facility will be required by using a unique identifier tied to each licensee. This will include name of the individual(s) that transferred and/or transported the harvest lot to the processing facility. Processors will be required to maintain records of testing information and results. Processors will have to be in compliance with all applicable law and rules, including those adopted or enforced by the Division of Fire Safety, and the Department of Health's Good Manufacturing Practices, and Food and Lodging rules. Extraction methods will be limited to using either CO₂ or ethanol. Petroleum solvent extraction methods will be prohibited. If adulterants, which include pesticides, molds, mildews, heavy metals, and solvents, exceed levels determined by the AAFM to be deleterious to human health, then the processor must provide for a method of disposal.

Retailer

The Department of Liquor and Lottery will be the primary regulatory agency over retailer licenses. Numerous licensing requirements will be imposed on retailers because they will be the only licensees allowed to sell marijuana products to consumers. Retail sales will only be allowed at the retailer's licensed location. No mobile sales such as at farmers' markets or via food trucks will be permitted. The Subcommittee recommends considering whether residential deliveries should be prohibited to avoid tax evasion and under-age access, or whether regulating residential deliveries like for medical marijuana cardholders would help to eliminate the black market.

The Subcommittee recommends prohibiting any consumption on the premises of retailers, including free samples. No self-service should be allowed, including vending machines. Including this restriction also avoids a confusing taxation issue because vending machine sales are generally subject to meals tax, and meals tax will not apply to sales of marijuana products. The Subcommittee recommends considering a prohibition on drive-through sales like in Washington state.⁴³ Sales must always include age-verification of every customer. Retail sales will be restricted to certain hours, such as only between 7 a.m. and 10 p.m.

Discounts or gifts conditioned on the sale of other items should be prohibited. Other states prohibit these types of transactions (i.e. no "buy two joints, get the third half off") to

protect consumers. The Subcommittee recommends restricting or prohibiting the sale or gifting of materials used for home extraction.

Lastly, the Subcommittee recommends considering a separate “sales representative” license similar to the sales representative license for alcoholic beverages, that would only be available to the smallest tier of cultivators. This would allow small cultivators to sell their products directly to consumers at retail, for a lower fee than the retail license. Other than the lower fee, small cultivators would still be subject to the same requirements and restrictions as other retailers, such as no consumption or sampling on premises, no self-service, etc.

Transporter

The Department of Liquor and Lottery will also be the primary regulatory agency over transporter licenses. The Subcommittee recommends allowing the wholesale cultivator and processor licenses to include the authorization to transport products, but also recommends that a separate license should be available at a lower fee for transport or distribution services. It would be advisable to specify whether medical dispensaries would be allowed to use transport services for their medical products. Transporters would take on a crucial role as a gatekeeper in the scenario where residential delivery is authorized, and would need additional training regarding sales to consumers.

Testing by Laboratories and Other Research

The Agency of Agriculture, Food and Markets will be the primary regulatory agency over testing licenses. The Subcommittee recommends creating a testing license that will allow both in-state laboratory testing of products, and in-state research by public or private institutions. This sort of license would be important if any state funding is appropriated for public health research. Laboratories will provide important testing services potentially to licensees under both the recreational and medical markets, as well as hemp and individuals growing for their own personal use. These will be run by the private sector and regulated by the State. It may be advisable to limit laboratories to in-state testing, and to prohibit laboratories from accepting out-of-state samples or from sending samples out of state.

Setting Fees

Title 32 sets out the requirements for creating or changing fees.⁴⁴ Fee changes must be “reasonably related to the cost of providing the associated service or product or performing the regulatory function. “Cost” shall be narrowly construed but may include reasonable and directly related costs of administration, maintenance, and other expenses due to providing the service or product or performing the regulatory function.”⁴⁵ Setting a new fee rate or amount must be justified by the following factors:

- the relationship between the revenue to be raised by the fee or change in the fee and the cost of the service, product, or regulatory function supported by the fee, with costs construed narrowly;
- the existence of comparable fees in other jurisdictions; and
- policies that might affect the acceptance or the viability of the fee amount.⁴⁶

Setting fees in statute will subject the fees to a Legislative fee review every three years, where the administrative agency will have the opportunity to request any adjustments to the fee amounts. The Board or licensing agency should be explicitly authorized to request fee changes.

Other States' License Structure and Fees

The eight states that allow recreational marijuana use all allow medical marijuana. The fees charged depend on the types of licenses, certificates, or registration cards required for different products, services, or roles provided. These fees depend on the structural choices about how to regulate the cultivation of the plant, its processing, handling, transportation, testing, and its sale. The fees charged for medical marijuana licenses are less than the fees charged for recreational market licenses. Some states give different government bodies regulatory authority over medical marijuana (typically the department of health) than over recreational marijuana (a wide range from departments of tax and revenue to departments of liquor and cannabis control). Even within the two broad categories of medical versus recreational marijuana, other government entities often regulate a particular step in the chain of cultivation and sale, such as the department of agriculture at the cultivation and testing stages, and the department of liquor control at the retail and enforcement stages. Colorado's Department of Revenue regulated both medical and adult-use marijuana structures from the outset. Nevada is transitioning its medical marijuana regulation under the Department of Taxation. California and Massachusetts are fully combining all marijuana regulation (medical and recreational) into one regulatory body: the Bureau of Cannabis Control in California and the Cannabis Control Commission in Massachusetts.

If Vermont had the exact same experience and fee structure as Colorado, and Colorado's experience was scalable to Vermont based on population, Vermont could expect \$1.4 million to \$1.7 million in license and other fee revenue.⁴⁷ If Vermont had the same experience and provisions as Washington, and Washington's experience was scalable to Vermont based on population, Vermont could expect \$89,000 to \$337,000 in annual license and other fee revenue.⁴⁸ The tables below show the breakouts.

Colorado License and Other Fees Scaled to Vermont				
	FY15	FY16	FY17	FY18
License & Other Fee Revenue	\$14,155,854	\$15,414,075	\$13,047,255	\$12,801,350
% Change		9%	-15%	-2%
Vermont-Scaled Revenue	\$1,574,488	\$1,714,434	\$1,451,184	\$1,423,833

Washington License and Other Fees Scaled to Vermont				
	FY14	FY15	FY16	FY17
License & Other Fee Revenue	\$1,780,000	\$1,060,000	\$3,000,000	\$4,000,000
% Change		-40%	183%	33%
Vermont-Scaled Revenue	\$149,898	\$89,265	\$252,638	\$336,850

Refer to the chart in Appendix that summarizes the fees charged for both medical and recreational marijuana licenses and other marijuana-related services in the eight legalized states.

Advertising Restrictions

Similar to alcohol restrictions, the Subcommittee recommends putting restrictions on advertisements so that they cannot do any of the following:

Ads may not be enticing to minors

Advertisements may not use images of minors, cartoon characters, toys or items that are typically marketed to those under 21, candy-shaped edibles, etc.

Ads may not promote excessive use

Advertisements may not display consumption, encourage use because of intoxicating effects, or encourage excessive or rapid consumption.

Ads may not promote illegal activity

Advertisements may not promote illegal activity such as transporting over state lines.

Ads may not contain deceptive, false, or misleading statements

Advertisements may not assert that marijuana is safe because it is regulated and tested, because it has therapeutic or curative effects, or make claims to being “organic,” unless the plants used are produced, processed and certified according to national organic standards established by the United States Department of Agriculture under the Organic Foods Production Act of 1990.⁴⁹

Prohibited modes of advertising

Marijuana establishments may not advertise their products via flyers, television, radio, billboards, print or internet unless the licensee can show that no more than 30% of the audience is reasonably expected to be under 21. This form of advertising limitation exists in both Oregon and Colorado.

Edibles

Packaging and Labeling

The Subcommittee recommends that all packaging for products be child resistant and that it be in line with the federal regulations.⁵⁰ All labels should also include warnings of the products, especially edibles. These labels should be conspicuous and unobstructed and be in line with restrictions regarding advertising. The Subcommittee further recommends a universal THC symbol to alert consumers that the product contains marijuana. Colorado regulations could

provide example legislative language.⁵¹ Washington also has comprehensive regulations that address the restrictions placed on processors who manufacture edibles.⁵²

Potency and Dosage

The Subcommittee recommends that there be limitations on potency and dosages of marijuana and marijuana products. The Subcommittee recommends that products be not more potent than 10 milligrams of active THC per serving and that there be a maximum of 10 servings or 100 milligrams of THC per package. These dosage limits are consistent with what other states have imposed, notably Colorado and Washington, whose limit is 10 milligrams of THC per serving and 100 milligrams of THC per package. Oregon's and Massachusetts' limits are both 5 milligrams of THC per serving and 50 milligrams of THC per package. The Subcommittee recommends that these limitations not affect the limits imposed by the medical marijuana program. The dosage limits for the therapeutic use of marijuana should not be changed so as to allow for targeted and controlled medical use. This would allow medical marijuana potency to be greater than for the recreational market. However, potency labeling should be added as a requirement for medical marijuana. Additionally, 18 V.S.A. § 4474e(a)(1)(A) should be updated to reflect the same method of attributing marijuana infused products to the allowed dispensing limit.

Ban on Mixing THC with Other Products

The Subcommittee recommends prohibiting the sale of marijuana mixed with products containing caffeine, nicotine or tobacco, or alcohol, out of a concern for cross addition between products. This concern is especially great for youth use. Example legislative language can be found in H.490 of 2018, which prohibited mixing marijuana products with caffeine, nicotine, or alcohol.⁵³ It is important to note that tinctures made with alcohol would still need to be allowed, as these are used frequently for medicinal marijuana products. Although current law following the enactment of Act 86 of 2018 already defines marijuana under 18 V.S.A. § 4201(15) in a way that includes edibles, the H.490 definition of "marijuana-infused products" could be used to be more explicit about tinctures. This definition includes "tinctures, oils, solvents, and edible or potable goods."⁵⁴

Furthermore, the Subcommittee recommends the creation of a listing committee similar to the Board of Liquor and Lottery, established in 7 V.S.A. § 2. This committee could ensure that marijuana products are suited for the market through a vetting process. The Board should also be given rulemaking authority to set standards for products containing THC under a listing committee process.

Quality Control and Laboratory Testing

To verify cannabinoid label guarantees and quality control of marijuana products available on a recreational market, the Subcommittee recommends that there be testing through laboratories that are certified by the Agency of Agriculture, Food and Markets (AAFM). This recommendation aligns with Act 143 of 2018, which requires AAFM to establish a cannabis quality control program both as a means of regulating and enforcing THC content and adulterants (pesticides, solvents, heavy metals, mycotoxins, and bacterial and fungal

contaminants).⁵⁵ This means ensuring a level that AAFM determines is not deleterious to human health. This would extend to recreational marijuana as well. As recommended above, the Subcommittee suggests imposing a cap on THC content that mirrors Colorado and Washington's limits of 10 milligrams of active THC per serving, and 10 servings per package (100 milligrams of THC). The Subcommittee suggests considering a grading system similar to that used by the maple syrup industry. This sort of classification could be created by rule by the Board. Quality control would be aided by a robust seed-to-sale tracking system.

LOCAL CONTROL

Express Legislative Authority

Municipalities need a grant of express legislative authority to regulate marijuana, because Vermont is a Dillon's Rule State. This will require creating new uses that towns may regulate via zoning and bylaws. The Subcommittee recommends granting new enumerated powers to municipalities under 24 V.S.A. § 2291 to regulate the time, use, and manner of marijuana activities at local level. Under a tax and regulate regime, using the administrative and regulatory infrastructure in 7 V.S.A. chapter 7 as a model, local permitting for marijuana establishments could be overseen at the local level by control commissioners. Pursuant to 7 V.S.A. § 167, control commissioners administer the rules of the Liquor and Lottery Board and exercise the authority to license or permit establishments that furnish alcohol. The control commissioners are the select board and city councils of each town and city according to 7 V.S.A. § 166.

In Massachusetts, select boards and city councils have been authorized to negotiate “host community agreements” with marijuana operations that apply to be located within each municipality. For example, Massachusetts gaming operations and marijuana establishments are required to enter into agreements that set conditions for such a business to be located within a municipality. Agreements include community impact fees for the host community, stipulations of responsibilities between the host community and the applicant, and stipulations of known impacts from the development and operation of an establishment. However, the roll-out of legal sales in Massachusetts has been time-intensive and expensive for new marijuana establishments.

Opt-Out Model

The Subcommittee recommends following the liquor control model for local communities to opt out of allowing marijuana establishments to operate in their jurisdiction under 7 V.S.A. § 161. Voters in towns and cities need an opportunity to determine whether they will allow marijuana establishments to operate in their communities. Similar to municipalities' right to determine whether to be “dry” alcohol towns or not, towns should be able to determine whether to allow the sale of marijuana within their boundaries. This section could be modified to require local approval to host marijuana facilities. Adequate time must be provided at special or annual meetings for such votes to take place. While both opt-out and opt-in approaches create timing issues for local processes, an opt-out model is preferred because it authorizes marijuana activities by default, unless towns take action to prohibit. This creates more certainty for the market.

Timing

The timing and implementation of a new regulatory structure at the state level has implications for timing at the local level. Under current statutory timelines, some towns could take up to a year to enact zoning and ordinances, and then process new establishments' applications. Consequently, there needs to be enough time incorporated into statutory deadlines for giving notice, holding meetings and votes, and respecting appeal periods. Town-level process cannot begin until the State has set its own rules. This will require the relevant statutes for each agency with regulatory authority over licensing to be updated, notably title 7 for the Department of Liquor and Lottery, and title 6 for the Agency of Agriculture, Food and Markets.

Zoning

The zoning issues that arise with regard to a legal recreational marijuana market include siting of businesses, buffer zones from schools and daycares, and required signages. Municipalities will require statutory authority under 24 V.S.A. § 4414 to be able to adopt zoning for regarding marijuana activities. The question of a statewide buffer zone from schools and daycares should be considered carefully, because a large buffer zone in a small town could potentially exclude an entire downtown or commercial district from marijuana activities. Towns are concerned with signage, especially for retailers and other marijuana establishments, and having guidance about whether to have unified, State-mandated requirements, such as specified fonts, image and color restrictions or requirements, size, not being enticing to children, etc.

The question about whether minimum standards should be set in statute for all towns, even those who do not have zoning arose in Subcommittee discussions. Most towns and cities have zoning laws, but many lack code enforcement for issues like electrical, health, building, and plumbing standards. Towns and cities that have codes may experience an increased enforcement burden under a tax and regulate legalization framework if marijuana establishments are located in their jurisdiction. Additionally, the State may need to assume those responsibilities for municipalities that do not have code enforcement.

Bylaws and Ordinances

Municipalities need statutory authority under 24 V.S.A. § 2291 to enact freestanding time, use, and manner ordinances regulating or prohibiting nuisances like odor, noise, waste, etc., caused by marijuana activities. Such activities include use, cultivation, production, and sale, among others. Towns also need clear, standardized definitions on which to build their bylaws. Definitions are of particular concern for environmental litigation. Clear, standardized guidance is of particular concern.

Impacts on Local Public Safety, Law Enforcement, Public Health

In Vermont there are 246 municipalities, 56 local police departments, and 14 county sheriff departments. The State Police do not, and cannot cover every jurisdiction, so sheriff departments and local police agencies typically fill the gaps. State law enforcement agencies and officials should assess resource needs, including providing greater coverage in underserved

areas, and additionally providing towns the resources to staff, contract out, and bolster enforcement needs.

There are agencies and departments in Vermont that are currently underfunded or unfunded, often rely on volunteers, and are geographically scattered or limited throughout the state. Community public safety officials will be largely responsible for dealing with issues that arise as a consequence of legalization. Although it is difficult to anticipate and quantify the extent to which the effects of those issues will be felt, State agencies and officials will not likely absorb the entirety of any needed responses. Local officials and local budgets may be affected. Advocates of legalization contend to the contrary there will instead be resource saving implications for state and local budgets. This would occur in part because enforcement officials would no longer have to dedicate resources to enforcing the criminal offenses for any sales, including of small amounts, that exist under the current state of the law prohibiting all sales.

According to the RAND Report, in 2014 approximately 80,000 Vermonters used marijuana at least once in the previous month.⁵⁶ This level of existing use suggests that both State and local-level government already contribute resources to managing marijuana use in Vermont, and additional attention is warranted to the areas below. The exact amount of new public costs - and savings – that legalization could create remains unknown, but the potential for an increase exist. Based on the experience of other states, public safety officials may experience a variety of impacts and should assess resource prioritization in areas such as:

- Fire hazards from illegal grows, extraction, etc.
- Combating diversion of marijuana out of state
- EMT/Paramedic response to use and drugged driving
- Illegal grow operations (black and gray markets)
- Public use and odor complaints
- Marijuana tourism
- Highway safety (impaired driving)
- Regulating legal retail operations
- Need for training/education on new law and regulations (probable cause, search/seizure, etc.)
- Storage of evidence/contraband
- Complaints of use and/or growing in multi-family homes
- Thefts/burglaries (rural grows, home-grows, retail operations)
- Prioritization of enforcement with current resources
- Technology (tracking data)

MEDICAL MARIJUANA

The Subcommittee emphasizes that a major concern with the impact of legalizing recreational marijuana sales on the existing medical marijuana program in Vermont is ensuring that marijuana products remain a viable and affordable option for medical patients. In order to ensure the program's continued viability, the requirements imposed on dispensaries need to be made consistent with the recreational structure where appropriate, and under certain circumstances, the requirements should be customized to accommodate the medical program's particular aims. To achieve these ends, updates will need to be made to 18 V.S.A. ch. 86 in its

entirety. The following possible changes to the medical marijuana program should be taken into consideration when creating a regulatory structure for sales of recreational marijuana.

Licenses

Advocates for dispensaries have suggested that medical marijuana dispensaries that hold licenses in Vermont should automatically qualify for each type of license that is authorized for the recreational market, provided they meet the relevant licensing criteria. Such a provision was included in S.241, the adult use bill that passed the Vermont Senate in 2016. Medical marijuana dispensaries have the cultivation and retail expertise and have invested significant resources of time and money to establish a professional industry in Vermont. Some Vermont dispensaries are already processing and testing marijuana and hemp products, and conducting research related to the medical benefits of the cannabis plant and cannabinoids. Other legalized states such as Colorado allow licenses for dispensaries in the recreational market. The question of degree arises, whether dispensaries will automatically qualify for recreational licenses due to the requirements they currently meet, or whether they will need to reapply, and if so, whether they will be given any preference in the application process. If dispensaries qualify automatically, then the requirement for dispensaries, patients, and caregivers to destroy or dispose of marijuana products that are not usable for symptom relief or that are beyond possession limits must be amended.⁵⁷

Additional considerations are whether dispensaries will be allowed to purchase from the commercial market to supply patients, and if dispensaries will be allowed to sell their product to the commercial market if it meets the relevant retail standards. There could be restrictions on these types of transactions, such as only in the case of a shortage or surplus. The possession limits for dispensaries will also need to be amended to align with any possession limits imposed on recreational cultivators, or possibly to allow dispensaries to cultivate based on demand. Currently the number of plants and the amount of usable marijuana that a dispensary is allowed to possess is based on the number of designated patients.

Patient Access to Vermont Marijuana Registry

The Subcommittee recommends amending the current dispensing limit of two ounces per 30-day period per registered patient to align with Act 86 of 2018.⁵⁸ Additionally, the cultivation and possession limits for patients should be amended to align with Act 86 of 2018.⁵⁹ It would be advisable to remove the requirement that patients designate only one dispensary from which they may make purchases, given that patients could buy from any retail establishment without restriction.⁶⁰ It would be beneficial to broaden the definition of debilitating medical condition to allow more patients to register marijuana for symptom relief. Currently a health care professional verifies the medical condition. An alternative may be that instead of verifying the medical condition, the verification could be that (1) the provider has a bona fide relationship with the patient, (2) the provider has performed a medical evaluation, and (3) the provider has discussed the risks and potential benefits with the patient. Potential draft language for the criteria could be found in this Federation of State Medical Boards report.⁶¹

Advocates for dispensaries have suggested that advertising for the Medical Marijuana Program should be allowed because Vermont has a very low participation rate (0.3% of

population) for its medical marijuana program, and advertising is an important means for informing patients that the medical alternative exists.

Background Checks

The Subcommittee recommends that the Marijuana Registry background checks requirements be aligned with recreational background checks. This would be particularly important if a dispensary is applying for or renewing licenses under both the recreational and the medical program, so as not to have to duplicate background checks. Background checks for medical dispensaries are currently required for each owner, principal, financier, and employee of a dispensary, as well as for caregivers. Disqualifying criminal records are set out in statute as conviction for “a drug-related offense or a violent felony or [...] a pending charge for such an offense.”⁶² A “violent felony” is defined as “a listed crime as defined in 13 V.S.A. § 5301(7) or an offense involving sexual exploitation of children in violation of 13 V.S.A. chapter 64.” For caregivers only, additional disqualifying crimes are set out in 13 V.S.A. chapter 28 regarding abuse, neglect, and exploitation of vulnerable adults. In all cases, evidence of caregivers’ rehabilitation is taken into account. Identification cards should be revoked, or an application should be refused automatically if a background check returns records showing that an individual has been convicted of a disqualifying offence.

Labeling and Dosage

The means of measuring THC content in marijuana products should be aligned across the medical, retail, and any civil or criminal possession limits. The actual THC dosage limits for medical marijuana, however, should be higher than those allowed for recreational use. The current language in 18 V.S.A. ch. 86 states that “[o]nly the portion of any marijuana-infused product that is attributable to marijuana shall count toward the possession limits of the dispensary and the patient. The Department of Public Safety shall establish by rule the appropriate method to establish the weight of marijuana that is attributable to marijuana-infused products. A dispensary shall dispense marijuana-infused products in child-resistant packaging as defined in 7 V.S.A. § 1012.” The Subcommittee recommends that the child-resistant packaging requirements in Vermont statute should align with federal (FDA) requirements. It is also important to identify testing methods that will be required on products prior to sale, in order to ensure proper labeling. The Board should have flexibility to modify required testing methods based on changes in the industry.

Taxation, Fees, and Revenues

With regard to the new structure, statute should state explicitly that the excise tax on marijuana sales does not apply to sales through the medical program under 18 V.S.A. ch. 86. No changes to statute are necessary to continue the current sales tax treatment of tangible personal property sold by dispensaries (such as paraphernalia), which is subject to sales tax. Fees for medical licenses should be kept at the current level, or lower so as to incentivize patients to buy from dispensaries for medical purposes. There is a concern about sales decreasing when patients have easier access at retail than through dispensaries. One possibility is to consider waiving the patient registry card fee or imposing only a one-time fee instead of an annual fee. The budgetary

concern is that the Registry may need a set allocation in statute or a yearly budgetary appropriation of tax revenues in order to fund its operations if any licensing or card fees are reduced.

MARIJUANA IN THE WORKPLACE

The impact of marijuana use on employee rights, protections, and benefits, and on the employer-employee relationship is primarily regulated by federal law. Nevertheless, certain aspects of Vermont law could be clarified to make the legislative intent clearer, especially regarding use of medical marijuana outside of work hours and the resulting impact on employment rights. Marijuana in the workplace is therefore a field in which the Subcommittee recommends minimal state-level legislative action. The section that follows summarizes the Subcommittee's research, findings, and recommendations.

Drug-Free Workplace

Vermont law limits employers' authority to require applicants or employees to submit to drug tests. 21 V.S.A. ch. 5, subch. 11. A drug is defined as "a drug listed or classified by the U.S. Drug Enforcement Administration as a Schedule I drug, or its metabolites [...]." ⁶³ A drug test is defined as "the procedure of taking and analyzing body fluids or materials from the body for the purpose of detecting the presence of a regulated drug [...] or a drug [...]." In regards to testing applicants, pre-employment screening in conjunction with a contingent job offer is permissible, as long as the applicant received written notice of the drug testing procedure and a list of the drugs to be tested. ⁶⁴ For an employer to test current employees for the presence of drugs, certain conditions must first be met. ⁶⁵ These conditions are laid out as follows.

Employers must create and "provide all persons tested with a written policy that identifies the circumstances under which persons may be required to submit to drug tests, the particular test procedures, the drugs that will be screened, a statement that over-the-counter medications and other substances may result in a positive test and the consequences of a positive test result." ⁶⁶ Employers must establish a drug testing program and select a qualified testing entity. ⁶⁷ Employers must have an employee assistance program available that consists of a rehabilitation program for alcohol or drug abuse. ⁶⁸ Once these conditions are met, an employer must have probable cause to believe the employee is using or is under the influence of a drug on the job, in order to test the employee. Probable cause is shown through objective observation such as smells, slurred speech, or other erratic behavior. ⁶⁹

Even if an employee tests positive, he or she cannot be terminated if he or she "agrees to participate in and then successfully completes the employee assistance program." ⁷⁰ Employers may suspend the employee for the period of time necessary to complete the employee assistance rehabilitation program, "but in no event longer than three months." ⁷¹ An employer can terminate an employee "if, after completion of an employee assistance program, the employer subsequently administers a drug test [...] and the test result is positive." ⁷²

The exception is for employees in certain federally regulated occupations like commercial driving, who are subject to more stringent drug testing in the workplace. If a business has federal contracts, and is considered a federal contractor, then the federal Drug-Free

Workplace requirements apply.⁷³ As these requirements are federal, they are beyond the jurisdiction of the State to amend.

Disability Law (ADA)

Under the Americans with Disabilities Act (ADA), disability discrimination is prohibited, and employers must make reasonable employment accommodations for individuals with disabilities.⁷⁴ However, the reasonable accommodation requirement does not extend to individuals who use illegal drugs such as marijuana, which is classified as a Schedule I controlled substance.⁷⁵ This means that an employer does not have to accommodate an employee's marijuana use, even if that use is for pain relief, because marijuana use is illegal under federal law, and therefore not protected by the ADA.⁷⁶ However, an employer may have to accommodate the underlying medical condition being treated with marijuana.

Employment Practices

The Office of the Vermont Attorney General issued a comprehensive memo following the enactment of Act 86 of 2018 regarding this new personal use and possession law's impact on Vermont employers.⁷⁷ The new law does not "require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana in the workplace."⁷⁸ This same provision applies to medical marijuana employers, who are not required to permit or accommodate the use of marijuana in the workplace.⁷⁹ Employers may adopt a "policy that prohibits the use of marijuana in the workplace."⁸⁰ The law allows employers to "prohibit or otherwise regulate the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana on the employer's premises."⁸¹ Lastly, Act 86 explicitly did not create a "cause of action against an employer that discharges an employee for violating a policy that restricts or prohibits the use of marijuana by employees."⁸² In other words, if an employer did create and maintain a zero-tolerance policy on marijuana use, then an employee who is terminated for violating that policy could not sue their employer under Act 86.

Unemployment Insurance

Use of marijuana or intoxication outside of the workplace is generally not a bar to a former employee's access to unemployment insurance. However, if the individual prior to ceasing employment was proven to be intoxicated at work, then unemployment benefits would likely be unavailable. For example, if an employee fails mandated drug testing, such as for commercial drivers, and then the employee is terminated, the employee will likely be ineligible for unemployment insurance.

Worker's Compensation

Vermont's medical marijuana law states explicitly that coverage or reimbursement for the use of medical marijuana is not required to be provided by health insurance or any insurance company regulated under title 8 of the Vermont Statutes, Medicaid or any other public health care assistance program, an employer, or for purposes of workers' compensation, an employer as defined in 21 V.S.A. § 601(3).⁸³ This statute makes Vermont one of only six states to explicitly

exclude workers' compensation insurers. The other six states are: Arizona, Florida, Michigan, Montana, and Washington.⁸⁴ On its face, this law allows insurers to cover the costs of medical marijuana for a registered patient without violating Vermont law, but does not compel them to do so. This treatment is consistent with the drug's continued status as an illegal Schedule I controlled substance. Vermont law cannot compel insurers to violate this federal law. The Vermont Department of Labor has interpreted Vermont law to mean that even if an employee's use of marijuana is otherwise "medically appropriate, necessary and therefore reasonable under 21 V.S.A. § 640(a)," employers cannot be compelled under the Vermont Workers' Compensation Act to reimburse employees for their medical marijuana expenses.⁸⁵ This interpretation has been followed in other states, notably by the Maine Supreme Court.⁸⁶ Workers' Compensation coverage may also be refused in case of intoxication in the workplace, as long as a causal relationship between the intoxication and the injury can be demonstrated. Intoxication may be demonstrated through witness observation.

Dispensaries as employers are also subject to the same workplace laws. However, they also struggle to procure Workers' Compensation policies for their employees. This occurs because there are very few companies willing to provide coverage to dispensary employees at an affordable cost. It is possible that insurers' reticence to enter the marijuana market could change with a larger population of insured, in the case of a legalized, regulated recreational market in Vermont. Under a regulated market, the insurers' risk analysis might change, and the benefit could be perceived to outweigh the risk.

Occupational Safety and Health

Under the federal Occupational Safety and Health Act (OSHA) and the State's Occupational Safety and Health Act (VOSHA), employers have a general duty to keep employees safe.⁸⁷ Vermont law imposes a duty on each employer to provide employees with a place of employment that is "free from recognized hazards that are causing or are likely to cause death or significant physical harm to his or her employees [...]."⁸⁸ The Vermont Department of Labor has rulemaking authority to implement these duties and purposes. Both Washington⁸⁹ and Colorado⁹⁰ released guidance to help employers address occupational safety and health issues specific to the marijuana industry. These guides address both the federal and state legal requirements that are imposed on employers. The Subcommittee recommends following a similar education and outreach approach surrounding health and safety for the marijuana industry.

FINANCIAL INSTITUTIONS AND INSURANCE

Banking

The interaction of federal banking law with the continued status of marijuana as a prohibited Schedule I drug under the Controlled Substances Act causes strict financial reporting requirements to be imposed on financial institutions. As a result, the gridlocked state of federal law limits the extent to which banks and other financial institutions like credit unions can serve marijuana establishments. Although Congressional legislation is frequently proposed to amend these restrictions, no action has yet been taken to change the legal environment with which

financial institutions must contend if they choose to do business with marijuana establishments.⁹¹ In addition to the legal implications, there are reputational risks for financial institutions, which makes them very cautious about entering into contracts with businesses engaged in illegal marijuana activities. The relative newness of a regulated marijuana market also increases financial institutions' reticence about taking on the risk of providing financial services to marijuana establishments.

Currently only one credit union serves Vermont's five medical marijuana dispensaries on the principle that all legal entities formed under State statute should have access to financial products and services from a State-chartered financial institution. Changes at the Federal level and the evolving nature of banking marijuana establishments mean that this existing relationship may change at any time. This minimal access to financial services would be insufficient to maintain a viable recreational marijuana market. Under a regulated market, more financial institutions would have to provide financial services to meet the needs of new marijuana establishments. The need for more comprehensive financial services would be heightened by the Subcommittee's recommendation to require all licensees to attempt to obtain a depository account with a financial institution, and if unable to do so, to then develop and implement a comprehensive cash management and security plan. As seen in other jurisdictions that have legalized recreational marijuana, more financial institutions may judge that the benefits outweigh the risks, and consequently step forward to provide financial services to marijuana businesses. Nevertheless, the Subcommittee remains concerned that a licensed marijuana establishment's inability to obtain basic banking services will lead to large amounts of cash proceeds within the marketplace and used to pay for State services. If a licensee is unable to obtain a depository account with a financial institution, they should develop and implement a comprehensive cash management and security plan. Such a plan must address the increased security precautions necessary for the secure storage of large volumes of cash, and provide for secure means of paying service providers, taxing and other regulatory authorities, employees, and others.

The Subcommittee considered whether creating a Vermont State Bank would be a viable solution. It determined that it would not. A State-run bank would not solve any of the problems mentioned above, because a State Bank would still be subject to the same federal banking requirements as any other financial institution. Even a State bank would presumably be denied a Federal Reserve master account, therefore denying access to broader financial services networks and payment card transaction networks such as Visa or MasterCard. The concern over money crossing state lines would remain. For these reasons, the Subcommittee does not recommend creating a State Bank to provide financial services to marijuana businesses.

Insurance

The legalization of adult use marijuana under a tax and regulate scheme presents a number of implications for the insurance industry and marketplace. Since marijuana is a Schedule I drug under the federal Controlled Substances Act, the standard (admitted) insurance market is typically unavailable to cover state-legal marijuana activities. There are surplus lines insurers (non-admitted) willing to provide a full array of insurance products to marijuana businesses including General Liability, Products Liability, Auto Liability, Umbrella and Professional Liability to name a few. In addition to the legal implications, there are reputational risks for standard insurers, which causes them to be reticent to enter the marijuana insurance marketplace. Additionally, the marijuana insurance marketplace is a relatively new insurance

market, and insurers may need to evaluate the risks before entering the marketplace with standard insurance products. Nevertheless, as seen in other jurisdictions that have legalized, it is possible that more insurers may step forward to provide coverage to recreational marijuana establishments, if the market is firmly regulated.

The Surplus Lines market is the market of last resort in which insurance risks are placed because they are not reasonably procurable in the admitted market. Surplus Lines pricing and product offerings are determined by market forces and are not regulated at the state level like the admitted market. The availability of insurance products in the standard market is more likely to exist for personal cultivation because most standard homeowner policies are silent on marijuana and do not expressly exclude or include coverage for marijuana. Marijuana plants could be included as covered items under the \$500.00 limited coverage provided under a Homeowners policy for trees shrubs or bushes. In the auto insurance market, insurers could potentially be reluctant to provide auto liability coverage for insureds involved in an auto accident that is the result of driving under the influence of marijuana. Vermont insurance regulators at the Department of Financial Regulation have taken the approach that providing protection for innocent third parties injured by operators who are under the influence of alcohol is good public policy. A similar public-policy-based approach could be taken for accidents involving marijuana.

The impact that marijuana legalization has on the cost of insurance is difficult to anticipate. The future cost of insurance in the property and casualty insurance market is usually dependent on a variety of factors, including but not limited to, prior loss experience, the projection of future loss experience and potential increases in exposure due to changes in the legal landscape.

The Highway Loss Data Institute (HLDI) conducted a study of the frequency of crashes reported to insurers in the states of Oregon, Washington and Colorado where marijuana is legalized.⁹² The study found that the frequency of crashes increased 3% since marijuana was legalized in those states. It is difficult to attribute the increase in frequency solely to a change in the law, however, since other factors may be at play, including improving economic trends and relatively low gas prices in recent years which typically result in increased miles over the road for each driver. It would be advisable to continue to study the results in these states over time.

The impact that marijuana legalization may have on workers' compensation insurance costs is multifaceted. Insurers are likely considering a number of factors including: the federal Schedule I drug status of marijuana; whether states will require insurers to reimburse/pay for medical marijuana; whether medical marijuana is a viable alternative to opioids for pain management; whether marijuana helps to achieve better claim outcomes; and whether marijuana helps employees return to work sooner. At least five states (Connecticut, Maine, Minnesota, New Jersey, and New Mexico) have found that medical marijuana is a permissible workers' compensation treatment that requires insurer reimbursement.

It is important to note that where social hosts would likely be covered by insurance against most liability claims for third-party injury following use of marijuana in their home in a purely social context, this coverage would not extend to injuries that occur as a result of illicit sales or transactions.

SECURITY

Cash

The cash-based nature of the marijuana industry poses problems for State entities that will be receiving payments, such as for tax remittance or license fee payments. The security of State employees, the general public, and the marijuana licensees who will be transporting cash, needs to be taken into account in devising a regulatory structure for recreational marijuana. The respective State regulatory authorities could be given rulemaking authority for handling cash payments. A further concern is that equipping State buildings, notably the Department of Tax, for large cash payments, would come at a significant cost that would have to be accounted for in allocating revenue for the costs of administration. A potential means of addressing security concerns would be to follow the example of California, which required the Cannabis Bureau in coordination with the Department of General Services, to designate offices in specified counties to collect fees and taxes.⁹³

The Subcommittee considered requiring all licensees to obtain a depository account with a financial institution, in part to eliminate the need for the State to receive cash payments for fees, taxes, or other charges. Imposing such a requirement would reduce issues and costs to the State associated with large cash payments like the security of State buildings where payments are received and processed, as well as securing cash transport by the State to its own bank. Dealing only in cash also raises security concerns for the private premises of the licensees. However, requiring all marijuana establishments to obtain a bank account could prove to be impracticable and burdensome because financial institutions may balk at providing services due to federal law. Federal law places strict restrictions on financial institutions regarding proceeds from an illicit controlled substance. As a result, the Subcommittee recommends requiring that all marijuana licensees follow the best practice of first attempting to obtain a depository account with a financial institution, and if they are unable to do so, then they must develop and implement a comprehensive cash management and security plan. Such a plan must address the increased security precautions necessary for the secure storage of large volumes of cash, and provide for secure means of paying service providers, taxing and other regulatory authorities, employees, and others.

Building and Product Security

The Subcommittee recommends imposing similar statutory requirements on recreational marijuana establishments that are currently imposed on dispensaries, and providing for rulemaking authority over security requirements by the Board of Control. The Vermont Marijuana Registry under the Department of Public Safety has already adopted rules for building and product security with which dispensaries must comply. These include continuous video camera surveillance with onsite retention and offsite backup for specified periods of time, and the ability to monitor remotely. The State should have remote access to review video footage for investigative purposes. Specific recordkeeping requirements should be imposed to allow identification of why footage was accessed. The program should have the authority to require proper camera location, resolution, and number. Alarm systems and panic buttons or the equivalent should be required to allow establishments to call for emergency services and prevent intrusions. Such measures could include motion sensors, glass breaking sensors, etc. Locked

cultivation, processing, storage, and destruction facilities should also be required. Similar to the current rules, establishments should be required to retain an outside security company to professionally monitor the location, in order to avoid having monitoring be taken on by local law enforcement or an employee of the establishment. The burden placed on smaller cultivators should be taken into account to ensure that they are not cost-prohibitive.

HEMP

Taxation of Hemp as an Agricultural Product

Hemp is the *Cannabis sativa* L. plant including all parts of the plant, whether growing or not, with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent on a dry weight basis. In Vermont, hemp is considered an agricultural product when grown by an individual that is registered with Vermont Agency of Agriculture, Food and Markets as part of its pilot program. Given that hemp as raw plant material is an agricultural product under 6 V.S.A. § 563, it is not subject to sales tax under the agricultural exemption from sales tax.⁹⁴ Hemp as value-added product in finished form, however, is subject to sales tax as tangible personal property.⁹⁵ The Subcommittee recommends maintaining the current hemp statute so that hemp continues to be treated as an agricultural product under 6 V.S.A. § 563. Additionally, the new marijuana excise tax will only be imposed on marijuana, which is already defined in statute in a way that excludes hemp, so that hemp is not subject to the excise tax.

THC Content Threshold Imposed on Hemp

A crop or product confirmed by the Secretary of Agriculture, Food and Markets to meet the definition of hemp under State or federal law may be sold or transferred. A crop, hemp and hemp-infused products sold at retail must comply with the definition of hemp in order to be marketed and sold as hemp and be covered by Vermont's industrial hemp law. If a hemp crop tests above 0.3 percent on a dry weight basis, the person registered with the Secretary of AAFM has three options:

- (1) enter into an agreement with a dispensary registered under 18 V.S.A. chapter 86 for the separation of the delta-9 tetrahydrocannabinol from the hemp crop, return of the hemp crop to the person registered with the Secretary, and retention of the separated delta-9 tetrahydrocannabinol by the dispensary;
- (2) sell the hemp crop to a dispensary registered under 18 V.S.A. chapter 86; or
- (3) arrange for the Secretary to destroy or order the destruction of the hemp crop. A person registered with the Secretary as growing a hemp crop shall not be subject to civil, criminal, or administrative liability or penalty under 10 V.S.A. chapter 84 if the tested industrial hemp has a THC concentration of one percent or less on a dry weight basis.⁹⁶

The Subcommittee recommends not to make any changes to this existing law. AAFM indicated that it hopes to move towards a taxonomic determination of a *Cannabis sativa* L. crop, to simplify identification and verify the cultivated crop meet the definition of hemp at the time of planting rather than testing at harvest. This would be accomplished through certified seed or genetic testing.

DIVERSITY

The Subcommittee notes the findings from Act 86 of 2018 on the disparate impact of Vermont's drug laws on minorities, given the data showing that a disproportionate number of arrests of people of color are made for possession, or misdemeanor sales of marijuana. Act 86 of 2018 asserts that those laws can be ameliorated by enacting a strong, regulated market for marijuana sales. The relevant section of that Act is reproduced here: "By adopting a comprehensive regulatory structure for legalizing and licensing the marijuana market, Vermont can revise drug laws that have a disparate impact on racial minorities, help prevent access to marijuana by youths, better control the safety and quality of marijuana being consumed by Vermonters, substantially reduce the illegal marijuana market, and use revenues to support substance use prevention and education and enforcement of impaired driving laws. [...]"⁹⁷

APPENDIX 1: CHARTS

1.1. Vermont's Liquor and Tobacco Taxes

Vermont's Liquor and Tobacco Taxes ⁹⁸			
Product	Excise Tax Rate	State Sales Tax	Local Option Tax
Spirits & Fortified Wines (Liquor)	25% of gross receipts if over \$750,000. 7 V.S.A. § 422.	6% sales tax. 32 V.S.A. §§ 9701(23), 9741(10).	1% local option tax. 24 V.S.A. § 138.
Cigarettes, little cigars, and roll-your-own tobacco	Stamp Tax at 154 mills (\$0.154): 1. per cigarette or little cigar (\$3.08 per pack of 20 cigarettes); and 2. for each 0.0325 ounces of roll-your-own tobacco. (\$4.74 per ounce) 32 V.S.A. § 7771(d).	6% sales tax. 32 V.S.A. §§ 9701(31), 9771(1); Vt. Reg., § 1.9701(7) -1.	1% local option tax. 24 V.S.A. § 138.
Other tobacco products, snuff, and new smokeless tobacco	Tobacco products tax imposed at wholesale. <u>Snuff</u> \$2.57 per ounce <u>New smokeless tobacco</u> 1. Greater of \$2.57 per ounce, or 2. \$3.08 per package, if sold in a package with less than 1.2 ounces. <u>Cigars</u> 1. 92% of wholesale if \$2.17 or less. 2. \$2.00 per cigar if wholesale price is between \$2.18 and \$9.99. 3. \$4.00 per cigar if wholesale price is \$10.00 or more. <u>Other Tobacco Products</u> 92% of wholesale price <u>Timely Payment Discount</u> If tax is paid within 10 days, distributor or dealer may deduct 2% from tax due. 32 V.S.A. § 7811.	6% sales tax. 32 V.S.A. §§ 9701(31), 9771(1); Vt. Reg., § 1.9701(7) -1.	1% local option tax. 24 V.S.A. § 138.

1.2. Local Option Tax Disbursements to Towns

See the list below for the fiscal year 2018 disbursements of local option tax revenues to towns with one or more local option taxes. The disbursements are made quarterly by the State to towns.

Town	Type of Local Option Tax	FY18 LOT Disbursed
Brandon	Sales and Use	\$144,417
	Meals and Rooms	\$43,079
Brattleboro	Meals and Rooms	\$407,602
Burlington	Sales and Use	\$2,459,464
Colchester	Sales and Use	\$1,259,284
	Meals and Rooms	\$311,604
Dover	Sales and Use	\$335,820
	Meals and Rooms	\$201,173
Hartford	Meals and Rooms	\$112,560
Killington	Sales and Use	\$575,447
	Meals and Rooms	\$428,849
Manchester	Sales and Use	\$733,131
	Meals and Rooms	\$453,734
Middlebury	Sales and Use	\$753,218
	Meals and Rooms	\$242,528
Montpelier	Meals and Rooms	\$227,604
Rutland	Sales and Use	\$933,060
	Meals and Rooms	\$155,799
South Burlington	Sales and Use	\$2,693,908
	Meals and Rooms	\$991,212
St. Albans	Sales and Use	\$719,125
	Meals and Rooms	\$137,803
Stowe	Meals and Rooms	\$948,931
Stratton	Sales and Use	\$270,330
	Meals and Rooms	\$162,700
Williston	Sales and Use	\$2,737,269
	Meals and Rooms	\$374,637
Wilmington	Sales and Use	\$221,238
	Meals and Rooms	\$91,004
Winhall	Sales and Use	\$51,204
	Meals and Rooms	\$22,649
Woodstock	Meals and Rooms	\$263,118

1.3. Boards and Authorities in Other States

Name	Regulating Authority	Powers	Members &/or Staff
<p>Alaska</p> <p>Marijuana Control Board</p> <p>Department of Commerce, Community, and Economic Development</p> <p>17 AK ST, ch. 38.</p>	<p>Marijuana Control Board is established in Dept. of Commerce, Community, and Economic Development as a regulatory and quasi-judicial agency</p> <p>However, Board is within department for administrative purposes only.</p>	<p>Board is granted regulatory and quasi-judicial control over cultivation, manufacture and sale of marijuana in Alaska.</p> <ul style="list-style-type: none"> proposes & adopts regulations; establishes regs re: qualifications for licensure including fees and factors re: experience, criminal history, financial interests; reviews license applications & may order executive director to issue, renew, suspend, or revoke a license hears appeals from actions of director and officers and employees charged with enforcing law and regs. employ directly or through contracts with other Alaska departments & agencies, enforcement agents & staff 	<p>5 voting members appointed by Governor and confirmed by majority vote of both bodies of the legislature:</p> <ol style="list-style-type: none"> (1) 1 public safety sector; (2) 1 public health sector; (3) 1 currently residing in a rural area; (4) 1 actively engaged in marijuana industry; (5) 1 either from general public or actively engaged in marijuana industry. <p>Chair is selected from among members.</p> <p>Not more than 2 may be engaged in the same business, occupation, or profession.</p> <p>Conflicts of interest</p> <ul style="list-style-type: none"> No financial interest in marijuana industry allowed for members or a member's immediate family member when representing general public, public safety sector, public health sector, or a rural area. A member may not hold any other state or federal office, either elective or appointive. <p>Terms</p> <ul style="list-style-type: none"> Members serve staggered 3-year terms After 3 successive terms, may not be reappointed unless 3 years have elapsed since last serving.

Name	Regulating Authority	Powers	Members &/or Staff
<p>California</p> <p>Bureau of Cannabis Control</p> <p>Department of Consumer Affairs</p> <p>Cal.Bus. & Prof.Code § 26010.</p>	<p>Established within Dept. of Consumer Affairs, under supervision and control of director, who must administer and enforce cannabis provisions related to bureau.</p> <p>Every power granted to or duty imposed upon the Director of Consumer Affairs may be exercised or performed in by a deputy or assistant director or by Bureau chief</p>	<p>Regulates both commercial and medical cannabis activities. Cal.Bus. & Prof.Code § 26010.5.</p> <p>Licensing authorities shall make and prescribe rules and regulations to implement, administer and enforce their respective duties. Cal.Bus. & Prof.Code § 26013.</p> <ul style="list-style-type: none"> Bureau is required to convene an advisory committee to advise licensing authorities on development of standards and regulations, including best practices and guidelines. Cal.Bus. & Prof.Code § 26014. Licensing authority has quasi-judicial authority to suspend or revoke or review licenses. Cal.Bus. & Prof.Code §§ 26030-26031. Decisions have to be reported to the Bureau who then informs the other licensing authorities. Cal.Bus. & Prof.Code § 26033. <p>Conflict of interest provisions for members and chief of bureau. Cal.Bus. & Prof.Code § 26011.</p>	<p>Advisory Committee</p> <p>Advisory committee members determined by director and include, but are not limited to:</p> <ul style="list-style-type: none"> cannabis industry reps, including medicinal labor org reps appropriate state & local agencies persons who work directly with racially, ethnically, & economically diverse populations public health experts other subject matter experts, including Dept. of Alcoholic Beverage Control, with expertise in regulating commercial activity for adult-use intoxicating substances. <p>Starting Jan. 1, 2019, advisory committee will publish annual public report describing its activities including recommendations made to licensing authorities. Cal.Bus. & Prof.Code § 26014.</p> <p>Bureau Staff</p> <ul style="list-style-type: none"> Chief of Bureau: Governor appoints, subject to confirmation by Senate. Director of Consumer Affairs sets salary. Supervised by Director of Consumer Affairs. Deputy chief and an Assistant chief counsel: Governor appoints. Employees: hired by Director of Consumer Affairs. Cal.Bus. & Prof.Code § 26010.5.

Name	Regulating Authority	Powers	Members &/or Staff
Colorado Department of Revenue, Enforcement Division, Marijuana	State licensing authority is Executive Director of Dept. of Revenue or Deputy Director of Dept. of Revenue if designated by Executive Director. C.R.S.A. §§ 44-11-201, 44-12-201.	Regulating and controlling licensing of cultivation, manufacture, distribution, and sale of medical marijuana and retail marijuana in Colorado. C.R.S.A. § 44-11-201.	Executive Director of Dept. of Revenue is chief administrative officer of state licensing authority and may employ, officers and employees as necessary, who will be employees of Dept. of Revenue. Conflict of interest requirements apply during employment and 6 months after to any state licensing authority employee with regulatory oversight responsibilities. C.R.S.A. § 44-11-201.
Maine Department of Administrative and Financial Services Marijuana Advisory Commission, 5 M.R.S.A. § 12004-I-52-C; 28-B M.R.S.A. § 901.	Department of Administrative and Financial Services administers the adult-use laws. 28-B M.R.S.A. § 104.	Marijuana Advisory Commission conducts a continuing study & review of laws & rules re: adult-use and medical marijuana and reports its findings and recommendations to Legislature on annual basis. Laws & rules include those pertaining to: <ul style="list-style-type: none"> • public health • public safety • juvenile & adult criminal & civil offenses • workplace drug testing & workplace safety • motor vehicle safety • landlords & tenants • personal use of marijuana • taxes & fees paid by applicants & registered primary caregivers & registered dispensaries 	Marijuana Advisory Commission made up of 15 members: <ul style="list-style-type: none"> • 2 members of Senate, including members from each of 2 parties holding largest number of seats in Legislature, appointed by President of Senate; • 2 members of House of Representatives, including members from each of 2 parties holding largest number of seats in Legislature, appointed by Speaker of the House of Representatives • Commissioner of Administrative and Financial Services or designee • Commissioner of Agriculture, Conservation and Forestry or designee • Commissioner of Health and Human Services or designee;

Name	Regulating Authority	Powers	Members &/or Staff
			<ul style="list-style-type: none"> • Commissioner of Labor or designee • Commissioner of Public Safety or designee • 3 members, appointed by President of Senate: <ul style="list-style-type: none"> • (1) Rep. of a statewide association representing prosecutors • (2) Rep. of a statewide association representing medical marijuana industry • (3) A member of public • 3 members, appointed by Speaker of House of Representatives: <ul style="list-style-type: none"> • (1) rep. of a statewide association representing adult use marijuana industry • (2) member of public with demonstrated expertise and credentials in public health policy • (3) member of public <p>Chairs</p> <ul style="list-style-type: none"> • first-named legislative members are Senate & House chairs of commission. <p>Terms</p> <ul style="list-style-type: none"> • Legislators serve during term of office for which they were elected • Other members serve for 2 years & may be reappointed. <p>28-B M.R.S.A. § 903</p>

Name	Regulating Authority	Powers	Members &/or Staff
			<p>Staffed by Legislative Council, except when Legislature is in regular or special session. Commission may seek advice of consultants or experts, including reps. of legislative and executive branches of State Government. 28-B M.R.S.A. § 904.</p> <p>Members are compensated. 28-B M.R.S.A. § 905.</p>
<p>Massachusetts</p> <p>Cannabis Control Commission M.G.L.A. ch. 10 § 76</p> <p>Cannabis Advisory Board M.G.L.A. ch. 10 § 77</p>	<p>Commission operates as a state agency and is subject to laws applicable to executive branch agencies under Governor's control. M.G.L.A. ch. 10 § 76(m).</p>	<p>Cannabis Control Commission Regulating the adult use of marijuana industry in the Commonwealth</p> <ul style="list-style-type: none"> Commission hires executive director <p>Cannabis Advisory Board Charged with studying and making recommendations to Cannabis Control Commission on regulation & taxation of marijuana in Massachusetts.</p> <ul style="list-style-type: none"> (i) consider all matters submitted to it by commission (ii) on its own initiative, recommend to commission guidelines, rules and regulations and any changes to guidelines, rules and regulations that advisory board considers important or necessary for commission's review and consideration (iii) advise on preparation of regulations 	<p>Cannabis Control Commission 5 commissioners</p> <ul style="list-style-type: none"> 1 appointed by Governor with background in public health, mental health, substance use or toxicology 1 appointed by Attorney General with background in public safety 1 appointed by Treasurer & Receiver-General with experience in corporate management, finance or securities 2 members agreed upon by majority of Commission <ul style="list-style-type: none"> 1 with professional experience in oversight or industry management, including commodities, production or distribution in a regulated industry 1 with background in legal, policy or social justice issues related to a regulated industry

Name	Regulating Authority	Powers	Members &/or Staff
			<p>Chair of Commission is designated by Treasurer and Receiver-General</p> <p>Background checks required</p> <ul style="list-style-type: none"> • financial stability, integrity & responsibility of a candidate, including candidate's reputation for good character & honesty • Conviction for a felony is automatic ineligibility <p>Residency in Commonwealth required within 90 days of appointment</p> <p>Conflict of interest Commissioners may not</p> <ul style="list-style-type: none"> • (i) hold, or be a candidate for, federal, state or local elected office • (ii) hold an appointed office in a federal, state or local government • (iii) serve as an official in a political party. <ul style="list-style-type: none"> ○ Not more than 3 commissioners can be from same political party. <p>5-year terms; members serve for no more than 10 years</p> <p>Commissioners are full-time & are compensated</p> <p>Cannabis Advisory Board 25 members with expertise and knowledge relevant to Board's mission. M.G.L.A. ch. 10 § 77.</p>

Name	Regulating Authority	Powers	Members &/or Staff
			<ul style="list-style-type: none"> chaired by executive director of Commission state agency members: <p>2-year terms</p> <p>No compensation for Advisory Board members & serving does not make members state employees</p>
<p>Nevada</p> <p>Department of Taxation</p> <p>N.R.S. 453D.200</p>	Dept. of Taxation	<p>Regulation and taxation of marijuana, notably:</p> <ul style="list-style-type: none"> (a) licensing procedures (issuance, renewal, suspension, revocation) (b) licensure qualifications (c) security requirements (d) prevention of sale or diversion to persons under 21 (e) packaging (esp. child-resistant) requirements (f) testing & labeling, including potency based on ratio of THC to weight for edibles (g) record keeping (h) reasonable restrictions on signage, marketing, display, & advertising (i) tax, fee, & penalty collection procedures (j) license transfers & change of location (k) dual licensees (medical & retail at same location) (l) establishing fair market value of marijuana sold at wholesale (m) Civil penalties <p>N.R.S. 453D.200</p>	Dept. of Taxation
Oregon	Oregon Liquor Control Commission	Commission's jurisdiction, supervision, duties, functions & powers:	Oregon Liquor Control Commission

Name	Regulating Authority	Powers	Members &/or Staff
<p>Oregon Liquor Control Commission (adult use)</p> <p>O.R.S. §§ 471.705 475B.025</p> <p>Recreational Marijuana Rules Advisory Committee</p> <p>Oregon Cannabis Commission (medical)</p>	<p>Dept. of Revenue collects taxes</p> <p>Oregon Cannabis Commission is established within Oregon Health Authority</p>	<ul style="list-style-type: none"> • (a) regulate production, processing, transportation, delivery, sale & purchase • (b) issue, renew, suspend, revoke or refuse licenses & permit license transfers • (c) adopt, amend or repeal rules, including to protect public health & safety. • (d) exercise all powers to administer marijuana-related laws, including power to: <ul style="list-style-type: none"> ○ (A) Issue subpoenas ○ (B) Compel attendance of witnesses ○ (C) Administer oath ○ (D) Certify official act ○ (E) Take depositions ○ (F) Compel production of certain records ○ (G) Establish fees • (e) adopt rules prohibiting ads that: <ul style="list-style-type: none"> ○ (A) are appealing to minors ○ (B) promote excessive use ○ (C) promote illegal activity ○ (D) otherwise present a significant risk to public health and safety. • (f) regulate use of marijuana at commission's discretion. 	<p>7 commissioners appointed by Governor, subject to confirmation by Senate</p> <ul style="list-style-type: none"> • 1 commissioner from residents of each Oregon congressional district • 1 commissioner from eastern Oregon • 1 commissioner from western Oregon • 1 commissioner from food & alcoholic beverage retail industry • Not more than 4 commissioners from the same political party • Governor designates chairperson <p>Oregon residency required</p> <p>Must be an Oregon elector</p> <p>Must be at least 30 years old</p> <p>Term of office</p> <ul style="list-style-type: none"> • 4 years • terminates if commissioner ceases to possess residency or industry qualification. • terms commence April 1 • each commissioner can serve no more than 2 full terms. <p>Commissioners are entitled to compensation.</p> <p>O.R.S. § 471.705</p>

Name	Regulating Authority	Powers	Members &/or Staff
Washington Liquor and Cannabis Board 66 R.C.W.A., ch. 08.	Independent board Quasi-judicial body Delegates decisions (licensing, consumer protection) to divisions of Board or Agency Director	<ul style="list-style-type: none"> • Sets policy and budget • Adopts rules • Adjudicates contested license applications • Conducts licensee enforcement • Hires agency's Director & employees. 	<p>3 members appointed by Governor with consent of Senate, to 6-year terms.</p> <p>Governor may appoint chair.</p> <p>No member can hold any other public office.</p> <p>Before becoming a member, each member must enter into a \$50,000 surety bond. Bond premium is paid by the Board.</p>

1.4. Other States' Fees Imposed on Medical and Recreational Marijuana

Other States' Fees Imposed on Medical and Recreational Marijuana		
State	Medical Marijuana Fees	Recreational Marijuana Fees
Alaska	<p>7 AAC 34.080</p> <p>Registered patient ID card: \$25 initial; \$20 renewal.</p> <p>No "dispensaries" in Alaska. Only license for sale of marijuana are for "retail marijuana stores." See fees for recreational marijuana. 3 AAC 306.100.</p>	<p>Schedule of licensing fees (also application & renewal fees). 3 AAC 306.100.</p> <ul style="list-style-type: none"> • New marijuana establishment license or transfer \$1,000 • License renewal application \$600 • Late renewal \$1,000 • Change in name, premises, operating plan, or new product \$250 • Retail store license \$5,000 • Limited cultivation \$1,000 • Cultivation facility \$5,000 • Concentrate manufacturing facility \$1,000 • Product manufacturing facility \$5,000 • Testing facility \$1,000 • Handler permit card \$50 <p>Processing fees for late renewal after failure to pay taxes: \$200-\$10,000</p> <p>Marijuana Control Board is not limited in the number of marijuana licenses it can issue at the state level. However, AS 17.38.110(b) provides that local governments can restrict the time, place, manner and number of marijuana licenses.</p>
California	<p>Dept. of Public Health regulations. 17 CCR § 40150.</p> <p>Nonrefundable application processing fee for each new application. § 40150.</p> <ul style="list-style-type: none"> • \$1,000 for certain manufacturer license applications (Type 7, Type 6, Type N, or Type P) • \$500 for manufacturer license application for Type S <p>Annual license fee based on licensed premises' annual gross revenue (AGR)</p>	<p>Bureau of Cannabis Control regulations. 16 CCR § 5014.</p> <p>Application Fees. 16 CCR § 5014(a).</p> <ul style="list-style-type: none"> • All Licenses: \$1,000 • \$1,000 Cannabis Event Organizer License • \$1,000 Temporary Cannabis Event License • \$500 Physical Modification of Premises <p>Annual Fees. 16 CCR § 5014(b).</p>

Other States' Fees Imposed on Medical and Recreational Marijuana		
State	Medical Marijuana Fees	Recreational Marijuana Fees
	<ul style="list-style-type: none"> • \$2,000 for AGR up to \$100,000 (Tier I) • \$7,500 for AGR of \$100,001 to \$500,000 (Tier II) • \$15,000 for AGR of \$500,001 to \$1,500,000 (Tier III) • \$25,000 for AGR of \$1,500,001 to \$3,000,000 (Tier IV) • \$35,000 for AGR of \$3,000,001 to \$5,000,000 (Tier V) • \$50,000 for AGR of \$5,000,001 to \$10,000,000 (Tier VI) • \$75,000 for AGR over \$10,000,000 (Tier VII) <p>Change in operations conducted at licensed premises: \$1,000 on-refundable processing fee, except for Type S: \$500</p> <p>Background check fees</p> <p>Late fees</p>	<p>Based on estimated max dollar value of each applicant's/licensee's planned operation in terms of value of product expected to be tested, distributed, transported, retailed, cultivated and/or manufactured.</p> <p>Testing Laboratory</p> <ul style="list-style-type: none"> • \$12,500 for max operations value up to \$50M • \$45,000 greater than \$50M up to \$400M • \$90,000 greater than \$400M <p>Distributor</p> <ul style="list-style-type: none"> • \$1,200 for max operations value up to \$3M • \$10,000 for max operations value greater than \$3 M to \$12M • \$50,000 for max operations value greater than \$12M to \$60M • \$100,000 for max operations value greater than \$60M up to \$120M • \$200,000 for max operations value greater than \$120M <p>Distributor Transport Only Self-Distribution</p> <ul style="list-style-type: none"> • \$500 for max operations value up to \$3 million • \$1,500 for max operations value greater than 3 million to 12 million • \$4,000 for max operations value greater than 12 million <p>Distributor Transport Only</p> <ul style="list-style-type: none"> • \$1,000 for max operations value up to 3 million • \$2,800 for max operations value greater than 3 million to 12 million • \$6,000 for max operations value greater than 12 million <p>Retailer</p>

Other States' Fees Imposed on Medical and Recreational Marijuana		
State	Medical Marijuana Fees	Recreational Marijuana Fees
		<ul style="list-style-type: none"> • \$4,000 for max operations value up to 0.75 million • \$20,000 for max operations value greater than 0.75 million to 2.5 million • \$64,000 for max operations value greater than 2.5 million to 7.5 million • \$120,000 for max operations value greater than 7.5 million <p>Microbusiness</p> <ul style="list-style-type: none"> • \$10,000 for max operations value up to 0.75 million • \$30,000 for max operations value greater than 0.75 million to 2.5 million • \$100,000 for max operations value greater than 2.5 million to 7.5 million • \$180,000 for max operations value greater than 7.5 million <p>Cannabis Event Organizers</p> <ul style="list-style-type: none"> • \$5,000 for 1-10 planned events annually • \$15,000 for greater than 10 planned events annually <p>Dept. of Food and Agriculture regulations. 3 CCR § 8200.</p> <p>Annual fee due prior to issuance of a license or renewal license.</p> <p>(a) Specialty Cottage Outdoor \$1,205 (b) Specialty Cottage Indoor \$1,830 (c) Specialty Cottage Mixed-Light Tier 1 \$3,035 (d) Specialty Cottage Mixed-Light Tier 2 \$5,200 (e) Specialty Outdoor \$2,410 (f) Specialty Indoor \$19,540</p>

Other States' Fees Imposed on Medical and Recreational Marijuana		
State	Medical Marijuana Fees	Recreational Marijuana Fees
		<p>(g) Specialty Mixed-Light Tier 1 \$5,900</p> <p>(h) Specialty Mixed-Light Tier 2 \$10,120</p> <p>(i) Small Outdoor \$4,820</p> <p>(j) Small Indoor \$35,410</p> <p>(k) Small Mixed-Light Tier 1 \$11,800</p> <p>(l) Small Mixed-Light Tier 2 \$20,235</p> <p>(m) Medium Outdoor \$13,990</p> <p>(n) Medium Indoor \$77,905</p> <p>(o) Medium Mixed-Light Tier 1 \$25,970</p> <p>(p) Medium Mixed-Light Tier 2 \$44,517</p> <p>(q) Nursery \$4,685</p> <p>(r) Processor \$9,370</p> <p>No state limit to number of licenses. However local cities and counties may limit the number of businesses operating in their jurisdiction. When deciding whether to issue or deny a retail or microbusiness license, Bureau is required to consider whether license issuance would result in "excessive concentration" under Business and Professions Code section 26051(c).</p>
Colorado	<p>Local fees only. C.R.S. §§ 12-43.3-301, 12-43.3-301.</p> <p>Application fee \$500. C.R.S. § 12-43.3-.</p> <p>Late renewal fee \$500 for up to 90 days past expiration. C.R.S. § 12-43.3-311.</p>	<p>Both state and local fees. C.R.S. §§ 12-43.3-301; 44-12-501.</p> <p>Retail marijuana establishment application fee: \$5,000. C.R.S. § 12-43.4-501.</p> <p>Annual renewal fees and \$500 late renewal fee \$500 for up to 90 days past expiration. C.R.S. § 12-43.4-310.</p>
Maine	<p>No fees for registered patients.</p> <p>Caregiver fees</p> <ul style="list-style-type: none"> Application and annual renewal fee for primary caregiver who cultivates for patients \$300 per qualifying patient. Pro-rated for new patients. 	<p>Marijuana Legalization Act, 28-B M.R.S.A. § 207.</p> <p>Cultivation facility license Tier 1</p> <ul style="list-style-type: none"> \$100 application fee license fee: <ul style="list-style-type: none"> plant-count-based tier 1 license

Other States' Fees Imposed on Medical and Recreational Marijuana		
State	Medical Marijuana Fees	Recreational Marijuana Fees
	<p>If caregiver does not cultivate, then no fee is charged.</p> <ul style="list-style-type: none"> • Alternative caregiver fee \$1,500 allowing unlimited changes to patient list. • Caregiver background check fee \$31. • processing fee for changes or replacements to ID cards \$10 <p>Registered dispensary fees</p> <ul style="list-style-type: none"> • Certificate of registration application fee \$15,000 • for each principal officer, board member, and employee <ul style="list-style-type: none"> ○ \$25 initial and annual renewal fee for each registry ID card ○ \$31 background check fee • Change of physical or grow location fee \$5,000 • processing fee for changes or replacements to ID cards \$10 • Laboratory testing <p>10-144 CMR Ch. 122, § 7</p>	<ul style="list-style-type: none"> ▪ outdoor facility: not more than \$9 per mature marijuana plant ▪ indoor or both indoor and outdoor facility: not more than \$17 per mature marijuana plant ○ plant-canopy-based tier 1 license <ul style="list-style-type: none"> ▪ outdoor facility: not more than \$250 ▪ indoor or both indoor and outdoor facility: not more than \$500 <p>Tier 2</p> <ul style="list-style-type: none"> • \$500 application fee • license fee: <ul style="list-style-type: none"> ○ outdoor facility: not more than \$1,500 ○ indoor or both indoor and outdoor facility: not more than \$3,000 <p>Tier 3</p> <ul style="list-style-type: none"> • \$500 application fee • license fee <ul style="list-style-type: none"> ○ outdoor facility: not more than \$5,000 for an outdoor cultivation facility ○ indoor or both indoor and outdoor facility: not more than \$10,000 <p>Tier 4</p> <ul style="list-style-type: none"> • application fee of \$500 • license fee <ul style="list-style-type: none"> ○ outdoor facility: not more than \$15,000 ○ indoor or both indoor and outdoor facility: not more than \$30,000 <ul style="list-style-type: none"> ▪ exception: for each approved increase in the amount of licensed plant canopy, tier 4 license fee may be increased by: <ul style="list-style-type: none"> • outdoor facility: not more than \$5,000

Other States' Fees Imposed on Medical and Recreational Marijuana		
State	Medical Marijuana Fees	Recreational Marijuana Fees
		<ul style="list-style-type: none"> indoor or both indoor and outdoor facility: not more than \$10,000 <p>Nursery cultivation facility license</p> <ul style="list-style-type: none"> \$60 application fee \$350 license fee <p>Products manufacturing facilities and marijuana stores</p> <ul style="list-style-type: none"> \$250 application fee not more than \$2,500 license fee <p>Testing facilities</p> <ul style="list-style-type: none"> \$250 application fee not more than \$1,000 license fee <p>Late application fees to be established by rule. 28-B M.R.S.A. § 209(5).</p> <p>Criminal background check fees. 28-B M.R.S.A. § 204.</p>
Massachusetts	<p>Patients. 105 CMR 725.015, 725.035.</p> <ul style="list-style-type: none"> Registration \$50, annually (waiver for financial hardship) ID card replacement \$10 Hardship cultivation \$100 <p>Registered Marijuana Dispensaries. 105 CMR 725.030, 725.100.</p> <ul style="list-style-type: none"> Dispensary agent annual registration fee \$500 (includes all board members, directors, employees, executives, managers, and volunteers) Phase 1 application \$1,500 Phase 2 application \$30,000 Registration \$50,000, annually Location change \$10,000 Name change \$100 Architectural review \$8.25 per \$1,000 of construction costs, with a minimum fee of \$1,500 	<p>Cannabis Control Commission regulation. 935 CMR 500.000. No limit on the total number of licenses that Commission may issue.</p> <p>Application fees and annual license fees imposed on each type of license. 935 CMR 500.005.</p> <p>Cultivator (indoor / outdoor)</p> <p>Tier 1: up to 5,000 square feet</p> <ul style="list-style-type: none"> Application fee: \$200 (I)/\$100 (O) Annual fee: \$1,250 (I)/\$625 (O) <p>Tier 2: 5,001 to 10,000 sq. ft.</p> <ul style="list-style-type: none"> Application fee: \$400 (I)/\$200 (O) Annual fee: \$2,500 (I)/\$1,250 (O) <p>Tier 3: 10,001 to 20,000 sq. ft.</p> <ul style="list-style-type: none"> Application fee: \$600 (I)/\$300 (O) Annual fee: \$5,000 (I)/\$2,500 (O)

Other States' Fees Imposed on Medical and Recreational Marijuana		
State	Medical Marijuana Fees	Recreational Marijuana Fees
		<p>Tier 4: 20,001 to 30,000 sq. ft.</p> <ul style="list-style-type: none"> • Application fee: \$600 (I)/\$300 (O) • Annual fee: \$7,500 (I)/\$3,750 (O) <p>Tier 5: 30,001 to 40,000 sq. ft.</p> <ul style="list-style-type: none"> • Application fee: \$600 (I)/\$300 (O) • Annual fee: \$10,000 (I)/\$5,000 (O) <p>Tier 6: 40,001 to 50,000 sq. ft.</p> <ul style="list-style-type: none"> • Application fee: \$600 (I)/\$300 (O) • Annual fee: \$12,500 (I)/\$6,250 (O) <p>Tier 7: 50,001 to 60,000 sq. ft.</p> <ul style="list-style-type: none"> • Application fee: \$600 (I)/\$300 (O) • Annual fee: \$15,000 (I)/\$7,500 (O) <p>Tier 8: 60,001 to 70,000 sq. ft.</p> <ul style="list-style-type: none"> • Application fee: \$600 (I)/\$300 (O) • Annual fee: \$17,500 (I)/\$8,750 (O) <p>Tier 9: 70,001 to 80,000 sq. ft.</p> <ul style="list-style-type: none"> • Application fee: \$600 (I)/\$300 (O) • Annual fee: \$20,000 (I)/\$10,000 (O) <p>Tier 10: 80,001 to 90,000 sq. ft.</p> <ul style="list-style-type: none"> • Application fee: \$600 (I)/\$300 (O) • Annual fee: \$22,500 (I)/\$11,250 (O) <p>Tier 11: 90,001 to 100,000 sq. ft.</p> <ul style="list-style-type: none"> • Application fee: \$600 (I)/\$300 (O) • Annual fee: \$25,000 (I)/\$12,500 (O) <p>Craft Marijuana Cooperative</p> <ul style="list-style-type: none"> • Application fee: Total fees for its canopy. If more than six locations, add \$200 (I)/\$100(O) per additional location. • Annual fee: Total fees for its canopy. If more than six locations, add \$1,250(I)/\$625(O) per additional location. <p>Microbusiness</p> <ul style="list-style-type: none"> • Application fee: \$300

Other States' Fees Imposed on Medical and Recreational Marijuana		
State	Medical Marijuana Fees	Recreational Marijuana Fees
		<ul style="list-style-type: none"> Annual fee: 50% of all applicable fees <p>Manufacturing</p> <ul style="list-style-type: none"> Application fee: \$300 Annual fee: \$5,000 <p>Independent Testing Laboratory</p> <ul style="list-style-type: none"> Application fee: \$300 Annual fee: \$5,000 <p>Retail (brick and mortar)</p> <ul style="list-style-type: none"> Application fee: \$300 Annual fee: \$5,000 <p>Third-party Transporter and Existing Licensee Transporter</p> <ul style="list-style-type: none"> Application fee: \$300 Annual fee: \$5,000 <p>Research Laboratory</p> <ul style="list-style-type: none"> Application fee: \$300 Annual fee: \$1,000 <p>Other fees</p> <ul style="list-style-type: none"> Name Change: \$100 Location Change: 50% of applicable license fee Change in Building Structure: \$500 Change in Ownership or Control: \$500 Background check fees.
Nevada	<p>Max fees set in statute. N.R.S. 453A.344.</p> <p>Dispensary registration certificate</p> <ul style="list-style-type: none"> Initial application \$30,000 Renewal \$5,000 <p>Cultivation facility registration certificate</p> <ul style="list-style-type: none"> Initial application \$3,000 Renewal \$1,000 <p>Facility producing edible marijuana products or marijuana-infused products registration certificate</p>	<p>\$5,000 application fee for all licenses. N.R.S. 453D.230.</p> <p>Annual licensing fees. N.R.S. 453D.230.</p> <p>Retail Store</p> <ul style="list-style-type: none"> Initial issuance: \$20,000 Renewal: \$6,600 <p>Cultivation</p> <ul style="list-style-type: none"> Initial issuance: \$30,000 Renewal: \$10,000 <p>Manufacturing</p>

Other States' Fees Imposed on Medical and Recreational Marijuana		
State	Medical Marijuana Fees	Recreational Marijuana Fees
	<ul style="list-style-type: none"> Initial application \$3,000 Renewal \$1,000 <p>Testing laboratory registration certificate</p> <ul style="list-style-type: none"> Initial application \$5,000 Renewal \$3,000 <p>Medical marijuana establishment agent registration card application and renewal \$75/person</p> <p>Additional fees:</p> <ul style="list-style-type: none"> one-time application fee \$5,000 actual application processing, including background checks. <p>Limit on number of licenses by county, and restrictions on concentration of dispensaries in any one town (no more than 25% of total number of dispensaries in county may be in one town). N.R.S. §§ 453A.324, 453A.326.</p> <ul style="list-style-type: none"> 40 certificates for county whose population is 700,000 or more 10 certificates for county whose population is 100,000 or more but less than 700,000 2 certificates for county whose population is 55,000 or more but less than 100,000 1 certificate for each other county, one 1 certificate for each incorporated city in a county whose population is less than 100,000 	<ul style="list-style-type: none"> Initial issuance: \$10,000 Renewal: \$3,300 <p>Distribution</p> <ul style="list-style-type: none"> Initial issuance: \$15,000 Renewal: \$5,000 <p>Testing</p> <ul style="list-style-type: none"> Initial issuance: \$15,000 Renewal: \$5,000 <p>Criminal history record check fees</p> <p>For the first 18 months after applications began to be accepted (starting no later than Jan. 1, 2017), only medical marijuana establishments could apply for the following recreational marijuana licenses: retail stores, product manufacturers, and cultivators.</p> <p>Limit on number of retail licenses issued based on county size; although the county could request more licenses. N.R.S. 453D.210(5)(d).</p> <ul style="list-style-type: none"> 80 licenses per county with a population greater than 700,000; 20 licenses per county with a population that is less than 700,000 but more than 100,000; 4 licenses per county with a population that is less than 100,000 but more than 55,000; 2 licenses per county with a population that is less than 55,000.
Oregon	<p>Patient application fee \$200, except:</p> <ul style="list-style-type: none"> \$60 for SNAP participants \$50 for OR Health plan benefits \$20 SSI \$20 US Armed Forces service. <p>Replacement card fee \$100 (or \$20 if reduced application fee applies). OAR 333-008-0021.</p>	<p>\$250 non-refundable application fee.</p> <p>Annual license fees (prorated if initial license is issued for six months or less):</p> <ul style="list-style-type: none"> Producers: <ul style="list-style-type: none"> Micro Tier I \$1,000. Micro Tier II \$2,000. Tier I \$3,750. Tier II \$5,750.

Other States' Fees Imposed on Medical and Recreational Marijuana		
State	Medical Marijuana Fees	Recreational Marijuana Fees
	<p>\$200 grow site registration fee under certain conditions. No grow site registration fee for patients growing for themselves at their own residence. OAR 333-008-0021.</p> <p>Dispensary initial and annual renewal fees:</p> <ul style="list-style-type: none"> \$500 application \$3,500 registration. OAR 333-008-1030. <p>Processing site initial and annual renewal fees:</p> <ul style="list-style-type: none"> \$500 application \$3,500 registration. <p>Criminal background check fee \$35. OAR 333-008-1630.</p> <p>No limit on number of licenses issued.</p>	<ul style="list-style-type: none"> Processors: \$4,750. Wholesalers: \$4,750. <ul style="list-style-type: none"> Micro Wholesalers: \$1,000. Retailers: \$4,750. Laboratories: \$4,750. <ul style="list-style-type: none"> Sampling Laboratory: \$2,250. 3-year research certificate fee \$4,750 <p>License or certificate renewal application fee \$250</p> <p>Marijuana worker permit fee \$100</p> <p>Other fees</p> <ul style="list-style-type: none"> Criminal background checks: \$50 Transfer of location of premises review: \$1,000 per license. Packaging preapproval: \$100. Labeling preapproval: \$100. Change to previously approved package or label: \$25. <p>OAR 845-025-1060 (eff. 08/01/2017 expires 12/27/2017).</p> <p>No limit on number of licenses issued.</p>
Washington	<p>Medical cannabis. RCW ch. 69.51A.</p> <p>\$1 fee for each initial, replacement, and renewal recognition card for patients or designated provider</p> <p>Medical marijuana consultant certificate fees</p> <ul style="list-style-type: none"> Application for certificate \$95 Renewal of certificate \$90 Late renewal penalty \$50 Expired certificate reissuance \$50 Duplicate certificate \$10 Verification of credential \$15 <p>WAC 246-72-010.</p> <p>Before being authorized to sell medical marijuana, an applicant must already</p>	<p>Recreational marijuana. RCW ch. 69.50.</p> <p>All license types require payment of 2 fees. RCWA 69.50.325.</p> <ol style="list-style-type: none"> application fee \$250, and annual fee for license issuance and renewal \$1,381 <p>License types:</p> <ul style="list-style-type: none"> Producer. WAC 314-55-075. Retailer. WAC 314-55-079. Processor. WAC 314-55-077. Transporter. WAC 314-55-310. Research. RCWA 69.50.372. <p>Criminal history check fees apply to all license applicants.</p>

Other States' Fees Imposed on Medical and Recreational Marijuana		
State	Medical Marijuana Fees	Recreational Marijuana Fees
	hold a recreational marijuana retailer license and apply for a medical marijuana endorsement. WAC 314-55-080.	<p>Ownership change fee: \$75. WAC 314-55-120.</p> <p>Limit of 3 licenses per entity; except for retailers, who may have 5.</p> <p>No entity may hold all 3 license types. A licensee may hold both a producer and a processor license simultaneously. A producer and/or processor cannot also be a retailer.</p> <p>Washington is not currently accepting license applications for producers or processors. The current limit is 1200.</p>

APPENDIX 2: DEPARTMENT OF PUBLIC SAFETY



State of Vermont
Department of Public Safety
45 State Drive
Waterbury, Vermont 05671-1300

<http://dps.vermont.gov/>

September 21, 2018

Via Electronic Mail

Kaj Samson, Commissioner
Vermont Department of Taxes
133 State Street
Montpelier, VT 05633

Re: Tax and Regulate Marijuana System -- Public Safety and Other Costs

Dear Kaj,

I am writing in my capacity as Commissioner of Public Safety.

Among the "Powers and Duties" of the Governor's Marijuana Advisory Commission (MAC), the MAC is to "provide recommendations to the Governor on implementing and operating a comprehensive regulatory and revenue system for an adult marijuana market, and accompanying legislation if deemed necessary." Executive Order (EO) 15-17, Section III(3). The MAC is also mandated to recommend a business plan that, among other things, addresses:

1. "a comprehensive regulatory and revenue system which completely self-funds the regulatory infrastructure at both the State and local level";
2. "[r]equired equipment and/or staffing resources required to address impaired driving due to marijuana or marijuana and alcohol at both the State and local level"; and
3. "[o]ther miscellaneous matters as determined necessary and appropriate by the Commission."

In furtherance of these goals, the Taxation and Regulation Subcommittee, which you chair, is tasked with developing "structures" for the sale and taxation of marijuana for recreational uses to include "reduction of the illegal marijuana market." EO 15-17, Section I.

With respect to equipment and/or staffing required to address drug impaired driving, the Executive Order identifies these as the "[a]dequacy of and funding for drug recognition experts (DREs) and training," "an appropriate impairment testing mechanism," and the "[c]apacity for in-state testing and analysis of toxicology samples for DUIs related to drugs such as marijuana." EO 15-17, Section III(2).

In addition, based on the Commission's January 2018 recommendations, there may be other costs to consider, especially with respect to gathering baseline data and the need for performance benchmarks on the impacts of a tax and regulate system for recreational marijuana on the safety and wellbeing of Vermonters. Those potential costs, along with possible cost increases for DREs, the Vermont Forensic Laboratory, and enforcement efforts to reduce the illegal marijuana market also are addressed below.

Cost of Drug Recognition Experts

Currently, Vermont has 50 DREs statewide. As previously reported by the Roadway Safety Subcommittee, at this time and under current law, the number of DREs in the State is adequate. However, under any scheme permitting the recreational use of marijuana (i.e., under Act 86 of 2018 or any tax and regulate model), the number of available DREs would need to be closely monitored and evaluated to ensure resource capacity continues to be met across the state.

The cost of the DRE program in Vermont is approximately \$300,000 per year, which includes training, equipment, and overtime for call outs. Presently, the DRE program is funded through the National Highway Traffic Safety Administration (NHTSA) as part of the Vermont Governor's Highway Safety Program. However, this funding is not sufficient to cover all components of the DRE program. Specifically, State and local police agencies bear significant costs in certifying, maintaining, and deploying DREs (except when deployed on overtime). In addition, when a DRE is deployed, agencies incur additional costs in backfilling the position/shift vacated by the DRE. For the Vermont State Police, we have estimated these costs at approximately \$30,000 to \$70,000 per year. While it is difficult to estimate these costs across the State, the costs to the municipalities and counties as well as the State should be considered and accounted for in any financial model the Taxation and Regulation Subcommittee is developing.

The Taxation and Regulation Subcommittee should also review whether relying on any federal funding for this program is prudent. While NHTSA funding has been relatively stable, there is no guarantee this funding will continue indefinitely or at its current level. It is also reasonable to question whether the federal government will continue to fund a DRE program in a state that has legalized the possession, sale, and distribution of marijuana in violation of federal law.¹ At a minimum, the prudent working assumption should be that the federal government will not agree to fund any additional DRE costs caused by a state's decision to legalize the possession, sale, and distribution of marijuana. Therefore, if Vermont is going to approve a full tax and regulate recreational scheme for marijuana then it should fully fund the DRE program from the revenues generated under such a scheme as contemplated by the MAC.

Costs of In-State Testing and Analysis of Toxicology Samples

Institution of a tax and regulate system is not sensible or safe for Vermonters without a testing mechanism for impaired drivers like oral fluid collection. Simply put, Vermont must have an effective way to test drivers suspected of operating under the influence of drugs **before** it considers or approves a full tax and regulate recreational scheme for marijuana.

Assuming the Legislature enacts legislation permitting oral fluid collection and testing, the estimated start-up costs for roadside oral fluid testing and collection would be between \$290,500 and \$393,800 broken down as follows:

- 100 instruments @ \$2,655 - \$3,688 each = \$265,500 - \$368,800;
- 1,000 cartridges (6 drug panel) @ \$20 each = \$20,000; and

¹ This is more than a theoretical possibility. The federal government is currently withholding certain grant funds from DPS while it reviews whether the State is in compliance with certain federal immigration laws.

- Training materials = @\$5,000.

Annual reoccurring costs would be approximately \$60,000 and would include:

- Equipment service/extended warranty agreement cost (after 1st year) @ \$400 per unit (\$40,000 total);
- 500 replacement cartridges (6 drug panel) @\$20 each = \$10,000 per year; and
- Ongoing training materials, supplies = \$10,000 per year.

Based on the current number of analyses performed in suspected drugged driving cases annually, the increased costs to the Vermont Forensic Lab to analyze oral fluid samples (assuming legislative approval), would be approximately \$30,000 in startup costs and an additional \$15,000 in annual costs. If the number of oral fluid tests increases by up to 25% after legalization of marijuana and approval of oral fluid sample collection, it would result in an estimated annual cost of \$52,500 (startup costs would remain at \$30,000).

Costs to Reduce the Marijuana Black Market

Pro-marijuana legalization advocates claim that the legalization of marijuana through a tax and regulate system will eliminate the illicit or black market for marijuana. However, in states where recreational marijuana has been legalized, the black market for marijuana continues to thrive. See

<https://www.cbc.ca/news/world/colorado-marijuana-black-market-1.4647198> ; <https://www.npr.org/2018/05/16/610579599/despite-legalization-marijuana-black-market-hides-in-plain-sight>; <https://www.theatlantic.com/politics/archive/2016/05/legal-pot-and-the-black-market/481506/>. In Colorado, from 2016 through 2017, there were 480 felony arrests for illegal marijuana-related offenses, over ten tons of illegal marijuana was seized, and over 8,500 marijuana edibles were seized. In 2017, illegal Colorado marijuana was destined for 24 other states. *The Legalization of Marijuana in Colorado: The Impact, Volume 5*, Rocky Mountain HIDTA, September 2018 Update.

Thus, in order for a tax and regulate scheme to be effective, safe, and tax profitable, the black market will need to be eliminated or its effects reduced to a negligible degree. This can be accomplished, at least in theory, through market forces (i.e., through lower prices and/or better product quality in the legal arena), through imposing significant negative consequences for those who engage in the cultivation and sale of marijuana outside of the regulated market, or a combination of both. With respect to market forces successfully eliminating the black market that appears not to have been the outcome in states that have a regulated market for marijuana (see above).

As to affirmative measures to eliminate the black market, these could include criminal investigations and prosecution, civil penalties, regulatory penalties, barring violators from the legal participation in the market, and/or forfeiture of property used or intended to be used to facilitate a violation of the law. Without robust enforcement, Vermont, like other states that have legalized marijuana, likely will have two markets: a legal market and a black market.

Presently, law enforcement in Vermont, including the Vermont State Police, do not have sufficient investigative resources to combat the illegal opioid market, which poses a far greater danger to Vermonters than a black marijuana market may pose under a tax and regulate system for recreational marijuana. Marijuana, like alcohol, has been identified as a so-called "gateway" drug and is often used

before a person progresses to other more harmful substances, like cocaine and opioids. See, [Is Marijuana a Gateway Drug](#), National Institute on Drug Abuse (Updated June 2018). Indeed, a 2017 study of the connection between cannabis use and prescription opioid abuse published in the American Journal of Psychiatry concluded that “cannabis use appears to increase rather than decrease the risk of developing nonmedical prescription opioid use and opioid use disorder.” [Cannabis Use and Risk of Prescription Opioid Use Disorder in the United States](#), American Journal of Psychiatry (Sept. 26, 2017). Thus, a tax and regulate system for recreational marijuana together with the concomitant increased usage of marijuana could have the unintended consequences of aggravating the State’s opioid crisis.

Accordingly, the MAC should seriously consider recommending that some tax funds anticipated from a tax and regulate system for recreational marijuana be earmarked to enhance law enforcement’s ability to combat illegal drug trafficking in Vermont, including the trafficking of illegal opioids, which may be exacerbated should marijuana use increase under a tax and regulate system for marijuana.

For the more limited purposes of the MAC’s report, in order to reduce or eliminate the illegal marijuana market, consideration should be given to creating a division or unit that is solely responsible for investigating violations of the laws and regulations related to the illegal cultivation and sale of marijuana. This might be similar to the Enforcement Section of the Division of Liquor Control, which is “charged with investigating possible violations of liquor laws and regulations,” and carrying out law enforcement activities in connection with such violations. See Division of Liquor Control, <http://liquorcontrol.vermont.gov/enforcement>. The size of this unit and where it would reside, e.g., the Department of Public Safety (DPS) or the Department of Liquor and Lottery, would need careful consideration. However, there are currently twelve (12) inspectors/investigators in the Enforcement Section of the Division of Liquor Control Division. It is reasonable to conclude that under a tax and regulate system for marijuana that the number of inspectors/investigator would need to be at least doubled. Should this unit become part of DPS, the cost of hiring 12 new sworn members would be approximately \$2.2 million in year one with a total three-year cost of approximately \$4.8 million. I also recommend you consult with the Deputy Commissioner for the Division of Liquor Control to obtain an estimated cost of hiring 12 additional investigators. In addition, I recommend the hiring and assignment of an Assistant Attorney General to this unit to provide legal advice and guidance, and to pursue affirmative enforcement actions/prosecutions. The estimated initial cost of this resource could be \$100,000, which would escalate annually. But I suggest you consult with Attorney General’s Office on this estimated cost.

Cost of Establishing and Analyzing Performance Benchmarks

Section III(2)(x) of Executive Order 15-17 required the MAC, as part of its January 2018 report, to make a recommendation regarding the need for performance benchmarks on the impacts of a tax and regulate system for recreational marijuana on the safety and wellbeing of Vermonters, including Vermont’s youth, **before** the establishment of such a system. The MAC concluded in its January report that “[t]here is no reliable way to determine the specific impact of legalization or decriminalization on drug use or the impact of educational programs or prevention efforts in curbing misuse and abuse without first obtaining baseline information.” *Governor’s Marijuana Advisory Commission, January 16, 2018, Report and Recommendations to the Governor at 16*. The Roadway Safety Subcommittee, and the MAC, has therefore recommended that the State gather baseline data in order to measure the impact of

marijuana legalization in Vermont in the coming years. Specifically, the Subcommittee and the MAC recommended Vermont start collecting data in the following categories:

- Cannabis-related crimes and quality-of-life complaints;
- Cannabis arrests, including amounts;
- Cannabis-related traffic accidents and impaired driving generally;
- Out-of-state diversion of marijuana;
- Postal service use for cannabis diversion and transfer;
- Data related to Vermont's youth to include:
 - School data, i.e., "expulsions/suspensions/etc. related to cannabis on school premises or during school activities, etc.";
 - Cannabis diversion or sales to minors;
 - Data related to "drug endangered children"; and
 - Trends in youth usage of drugs, including marijuana.

Id. at 17–18. As the MAC observed in its January 2018 report, it is only after "Vermont has more baseline data in these areas—both for time periods before and after any changes to its cannabis laws—[that] the state can formulate and assess crucial benchmarks." *Id.* at 18.

In order to collect this critical data over multiple agencies and departments, and conduct statistically significant studies on the overall impact that a tax and regulate system for recreational marijuana may have on the wellbeing and safety of Vermonters, this collection and analysis will require multiple years to develop, implement, and evaluate. *See id.* at 18.

By Executive Order, DPS is designated as the Vermont Statistical Analysis Center (SAC) and is responsible for collecting, analyzing, and distributing criminal justice data and conducting policy-relevant research and analysis. *See* Executive Order 13-7. Therefore, it likely will fall to DPS to collect the data and perform the statistical analysis identified by the MAC and the Roadway Safety Subcommittee.

Currently, DPS contracts with the Crime Research Group (CRG) to provide the necessary professional research and statistical analysis as required by the Executive Order, and DPS would anticipate expanding this contract to include the data collection and statistical studies identified by the Roadway Safety Subcommittee and MAC. While difficult to estimate, it is likely that there would be a significant increase in the cost of the CRG contract and that it could potentially double from \$137,000 to \$274,000.

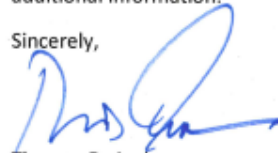
Summary of Estimated Costs

- Oral Fluid Testing:
 - Startup Costs: \$290,500 to \$393,800
 - Annual Recurring Costs: \$60,000
- Laboratory Costs:
 - Startup costs: \$30,000
 - Annual Recurring Costs: \$15,000 to 52,500
- Law Enforcement Costs:
 - DRE Annual Costs: \$330,000 to \$370,000
 - Black Market Reduction Costs:

- Annual Law enforcement: \$2.2 million (year one); \$4.8 million (total three-year cost)
- Annual Attorney: \$100,000 (year one)
- Data Collection and Analysis Costs:
 - CRG Contract Costs: \$137,000

Thank you for considering these important public safety and other cost implications in connection with a tax and regulate system for recreational marijuana. Please contact me if have any questions or need additional information.

Sincerely,



Thomas D. Anderson
Commissioner

cc: Jake Perkinson (via email)
Thomas Little (vial email)

APPENDIX 3: DRAFT LEGISLATIVE LANGUAGE

Taxation

Marijuana Excise Tax

Impose a marijuana excise tax on the retail sale of marijuana in Vermont. Impose typical tax administrative provisions including liability, enforcement, collection, penalties and interest, and refunds. Impose excise tax on bundled transactions.

Sec. X. 32 V.S.A. chapter 207 is added to read:

CHAPTER 207. MARIJUANA TAXES

§ 7901. MARIJUANA EXCISE TAX

(a)(1) There is imposed a marijuana excise tax equal to twenty percent of the sales price of each retail sale in this State of a product that contains marijuana as defined under 18 V.S.A. § 4201(15)(A).

(2) As used in this section:

(i) "Marijuana" includes a plant section from a female marijuana plant that is not yet root-bound and is capable of developing into a new marijuana plant.

(ii) "Sales price" has the same meaning as 32 V.S.A. § 9701(4).

(b) The tax imposed by this section shall be paid by the purchaser to the retailer. Each retailer shall collect from the purchaser the full amount of the tax payable on each taxable sale.

(c) The tax imposed by this section is separate from and in addition to the general sales and use tax imposed by chapter 233 of this title and the local option tax authorized under 24 V.S.A. § 138. The tax imposed by this section shall not be part of the sales price to which sales and use and local option taxes apply. The marijuana excise tax shall be separately itemized from the sales and use and local option taxes on the receipt provided to the purchaser.

(d) The following sales shall be exempt from the tax imposed under this section:

(1) sales under any circumstances in which the State is without power to impose the tax;

(2) sales made by any dispensary as authorized under 18 V.S.A. chapter 86, provided that the marijuana is sold only to registered qualifying patients directly or through their registered caregivers;

(3) sales for resale;

(4) sales that are exempt under section 9742 of this title; and

(5) sales to organizations that are exempt under section 9743 of this title.

§ 7902. PERSONAL LIABILITY; REFUNDS; ADMINISTRATION OF TAX

(a) Any sum or sums collected in accordance with this chapter shall be deemed to be held by the retailer in trust for the State of Vermont. Such sums shall be recorded by the retailer in a ledger account so as clearly to indicate the amount of tax collected and that the same are the property of the State of Vermont.

(b) Every retailer required to collect or remit tax under this chapter to the Commissioner shall be personally and individually liable for the amount of such tax together with such interest and penalty as has accrued under the provisions of section 3202 of this title; and if the retailer is a corporation or other entity, the personal liability shall extend and be applicable to any officer or

agent of the corporation or entity who as an officer or agent of the same is under a duty to collect the tax and transmit the tax to the Commissioner as required under this chapter.

(c) A retailer shall have the same rights in collecting the tax from his or her purchaser or regarding nonpayment of the tax by the purchaser as if the tax were a part of the purchase price of the marijuana and payable at the same time; provided, however, if the retailer required to collect the tax has failed to remit any portion of the tax to the Commissioner of Taxes, the Commissioner of Taxes shall be notified of any action or proceeding brought by the retailer to collect the tax and shall have the right to intervene in such action or proceeding.

(d) A retailer required to collect the tax may also refund or credit to the purchaser any tax erroneously, illegally, or unconstitutionally collected. No cause of action that may exist under State law shall accrue against the retailer for the tax collected unless the purchaser has provided written notice to a retailer, and the retailer has had 60 days to respond.

(e) To the extent not inconsistent with this chapter, the provisions for the assessment, collection, enforcement, and appeals of the sales and use tax in chapter 233 of this title shall apply to the tax imposed by this chapter.

§ 7903. RETURNS; RECORDS

(a) Any retailer liable for the tax imposed by this chapter shall, on or before the 25th day of every month, return to the Department of Taxes, under oath of a person with legal authority to bind the retailer, a statement containing its name and place of business, the amount of marijuana subject to the excise tax imposed by this chapter sold in the preceding month, and any information required by the Department of Taxes, along with the tax due. The Commissioner of Taxes may require that returns required by this section be submitted electronically.

(b) Every retailer shall maintain, for not less than three years, accurate records showing all transactions subject to tax liability under this chapter. The records shall contain the itemization required under 32 V.S.A. § 7901(c). The records are subject to inspection by the Department of Taxes at all reasonable times during normal business hours.

§ 7904. BUNDLED TRANSACTIONS

(a) Except as provided in subsection (b) of this section, a retail sale of a bundled transaction that includes marijuana is subject to the marijuana excise tax imposed by this chapter on the entire selling price of the bundled transaction.

(b) If the selling price is attributable to products that are taxable and products that are not taxable under this chapter, the portion of the price attributable to the products that are nontaxable are subject to the tax imposed by this chapter unless the retailer can identify by reasonable and verifiable standards the portion that is not subject to tax from its books and records that are kept in the regular course of business.

(c) As used in this section, “bundled transaction” means the retail sale of two or more products where the products are otherwise distinct and identifiable, are sold for one nonitemized price, and at least one of the products includes marijuana subject to the tax under this chapter.

§ 7905. TAX REGISTRATION AND LICENSE

(a) Every retailer prior to commencing business shall register with the Commissioner each place of business within the State where he or she sells marijuana. Upon receipt of an application in the form and manner prescribed by the Commissioner, the Commissioner shall

issue without charge a license empowering him or her to collect the marijuana excise tax. No retailer shall engage in selling marijuana without the tax license provided in this section.

(b) Each tax license shall state the place of business to which it is applicable. The tax license shall be prominently displayed in the place of business of the retailer. The license shall be nonassignable and nontransferable and shall be surrendered to the Commissioner immediately upon the retailer's ceasing to do business at the place named. A license to collect the marijuana excise tax shall be separate and in addition to the licenses required by sections 9271 (meals and rooms tax) and 9707 (sales and use tax) of this title.

(c) The Board of Control may require the Commissioner of Taxes to suspend or revoke the tax license issued under this section for any retailer who fails to comply with [XX] V.S.A. chapter [XX] or any rules adopted by the Board.

Sales Tax

Explicitly exclude marijuana as defined under title 18 of the Vermont Statutes from the food and food exemption from sales and use tax so that all sales of marijuana products are subject to sales tax. Explicitly exempt marijuana sold by a dispensary through the medical marijuana program from sales and use tax to codify the current interpretation of the Department of Taxes.

Sec. X. 32 V.S.A. § 9701(31) is amended to read:

(31) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include alcoholic beverages, tobacco, marijuana as defined under 18 V.S.A. § 4201(15), or soft drinks.

Sec. X. 32 V.S.A. § 9741(53) is added to read:

(51) Marijuana sold by a dispensary as authorized under 18 V.S.A. chapter 86.

Income Tax Deduction; I.R.C. § 280E

Allow marijuana businesses to take a deduction against their Vermont income tax liability for business expenses that are disallowed under federal law. This deduction would be available both to corporations and to other business structures such as S Corporations, LLCs, and partnerships.

Sec. X. 32 V.S.A. § 5811 is amended to read:

§ 5811. DEFINITIONS

The following definitions shall apply throughout this chapter unless the context requires otherwise:

* * *

(18) "Vermont net income" means, for any taxable year and for any corporate taxpayer:

* * *

(A) the taxable income of the taxpayer for that taxable year under the laws of the United States, without regard to 26 U.S.C. § 168(k) of the Internal Revenue Code, and excluding income which under the laws of the United States is exempt from taxation by the states:

* * *

(ii) decreased by:

(I) the “gross-up of dividends” required by the federal Internal Revenue Code to be taken into taxable income in connection with the taxpayer's election of the foreign tax credit; ~~and~~

(II) the amount of income which results from the required reduction in salaries and wages expense for corporations claiming the Targeted Job or WIN credits; and

(III) any federal deduction that the taxpayer would have been allowed for the cultivation, testing, processing, or sale of marijuana as authorized under 18 V.S.A. chapter 86 or [XX], but for 26 U.S.C. § 280E.

* * *

(21) “Taxable income” means, in the case of an individual, federal adjusted gross income determined without regard to 26 U.S.C. § 168(k) and:

* * *

(C) Decreased by the following exemptions and deductions:

* * *

(iii) an additional deduction of \$1,000.00 for each federal deduction under 26 U.S.C. § 63(f) that the taxpayer qualified for and received; ~~and~~

(iv) the dollar amounts of the personal exemption allowed under subdivision (i) of this subdivision (21)(C), the standard deduction allowed under subdivision (ii) of this subdivision (21)(C), and the additional deduction allowed under subdivision (iii) of this subdivision (21)(C) shall be adjusted annually for inflation by the Commissioner of Taxes beginning with taxable year 2018 by using the Consumer Price Index and the same methodology as used for adjustments under 26 U.S.C. § 1(f)(3); provided, however, that as used in this subdivision, “consumer price index” means the last Consumer Price Index for All Urban Consumers published by the U.S. Department of Labor; and

(v) any federal deduction that the taxpayer would have been allowed for the cultivation, testing, processing, or sale of marijuana as authorized under 18 V.S.A. chapter 86 or [XX], but for 26 U.S.C. § 280E.

* * *

Therapeutic Use of Cannabis

Chapter 86 of Title 18 of the Vermont Statutes Annotated should be thoroughly and concurrently reviewed when drafting legislation relating to the taxation and regulation of marijuana. Special attention should be paid to definitions that will be shared between a recreational structure and the medical marijuana program. Avoiding duplicate definitions will be especially important. The following list sets out the sections of statute and the issues that need to be addressed.

- 1) Remove or update subchapter 1
- 2) Definitions
 - Bona fide health care professional-patient relationship
 - Clone
 - Mental Health Provider
 - Owner
 - Possession limit
 - Principal
 - Secure indoor facility
 - Transport
- 3) 18 V.S.A. §4473(b)
 - Procedures for reviewing patient applications.
- 4) 18 V.S.A. §4474(c)(2)
- 5) 18 V.S.A. §4474b
 - Update to reflect changes passed in 2018 and revise accordingly to changes in 2019.
 - Remove subsection (e).
- 6) 18 V.S.A. §4474c(a)(2)
 - Update to reflect changes passed in 2018 and revise accordingly to changes in 2019.
- 7) 18 V.S.A. §4474c(c)
 - Update to reflect changes passed in 2018.
- 8) 18 V.S.A. §4474c(e)
 - Update to reflect changes passed in 2018.
- 9) 18 V.S.A. §4474d(a)-(c)
 - Update to reflect changes passed in 2018 and revise accordingly to changes in 2019.
- 10) 18 V.S.A. §4474e and 4474f
 - Update accordingly related to tax and regulation changes in 2019.
 - 18 V.S.A. §4474e(a)(1)(A) should align with how tax and regulate with count marijuana-infused products sold towards the possession limit and labeling milligrams of THC.
 - 18 V.S.A. §4474e(a)(3)(A) and (B) will require updating, if patients are not required to designate a dispensary.
 - 18 V.S.A. §4474e(d)(5) will require updating, if patients are not required to designate a dispensary.
 - 18 V.S.A. §4474e(k)(1) will require updating with a tax and regulatory program.

11) 18 V.S.A. §4474g

- Update to be consistent with amendments related to tax and regulation changes in 2019.

12) 18 V.S.A. §4474h

- Update if amendments are made for a tax and regulation market.

13) 18 V.S.A. §4474j

- Update recommendation requirements.

14) 18 V.S.A. §4474k

- Update, if there are changes to the special fund.

DRAFT

ENDNOTES

- ¹ State of Vermont, Executive Department, Executive Order No. 15-17, *Governor's Marijuana Advisory Commission*, Sec. I(3), available online: <http://governor.vermont.gov/sites/scott/files/documents/EO%2015-17%20-%20Governors%20Marijuana%20Advisory%20Commission.pdf>.
- ² *Id.*, EO No. 15-17, Section III(3).
- ³ 18 V.S.A. § 4201(15)(A).
- ⁴ Colorado Marijuana Taxes: <https://www.colorado.gov/pacific/tax/marijuana-taxes-file>; CO monthly marijuana tax data: <https://www.colorado.gov/pacific/revenue/colorado-marijuana-tax-data>; CO end FY17 data: <https://www.colorado.gov/pacific/sites/default/files/0617%20Marijuana%20Tax%2C%20License%2C%20and%20Fees%20Report%20PUBLISH.xlsx>.
- ⁵ Washington Dept. of Revenue: <https://dor.wa.gov/find-taxes-rates/taxes-due-marijuana>; WA Marijuana Tax Report: <https://lcb.wa.gov/marj/marijuana-2017>.
- ⁶ Oregon Marijuana Tax Program: <http://www.oregon.gov/DOR/programs/businesses/Pages/marijuana.aspx>; OR Marijuana Tax Statistics: <http://www.oregon.gov/dor/programs/gov-research/Pages/research-marijuana.aspx>; FY17 Tax receipts: <http://www.oregon.gov/DOR/programs/gov-research/Documents/monthly-marijuana-tax-receipts.xlsx>.
- ⁷ Alaska's Dept. of Revenue – Tax Division: <http://tax.alaska.gov/programs/programs/index.aspx?60000>; AS FY17 Annual Report: <http://tax.alaska.gov/programs/programs/reports/annual/Marijuana.aspx?FiscalYear=2017>.
- ⁸ California Department of Tax and Fee Administration, “Cannabis Tax Revenue Increases In 2nd Quarter of 2018” News Release 18-41 (Aug. 15, 2018) available online: <https://www.cdtfa.ca.gov/news/18-41.htm>.
- ⁹ State of Nevada, Department of Taxation, “July Marijuana Revenue Statistics News Release” (Oct. 9, 2018), available online: <https://tax.nv.gov/uploadedFiles/taxnv.gov/Content/TaxLibrary/News-Release-July-2018-Marijuana.pdf>.
- ¹⁰ Fiscal Note for LD 1719: http://www.mainelegislature.org/legis/bills/bills_128th/fiscalpdfs/FN171902.pdf.
- ¹¹ 18 V.S.A. § 4201(15)(A).
- ¹² 18 V.S.A. § 4201(15)(B).
- ¹³ 6 V.S.A. § 562(3).
- ¹⁴ 18 V.S.A. § 4472(2).
- ¹⁵ Black's Law Dictionary (10th ed. 2014). *See also*: 71 Am. Jur. 2d State and Local Taxation § 20, at 355 (1973): “[A]n ad valorem tax is a tax of a fixed proportion of the value of the property with respect to which the tax is assessed, and requires the intervention of assessors or appraisers to estimate the value of such property before the amount due from each taxpayer can be determined.”
- ¹⁶ 32 V.S.A. § 9771(1).
- ¹⁷ 32 V.S.A. § 9701(7).
- ¹⁸ 32 V.S.A. § 9741(2), (3), and (13).
- ¹⁹ 21 C.F.R. § 201.66; 32 V.S.A. § 9741(2); Vt. Reg. § 1.9741(2)(A)(1), (2).
- ²⁰ 21 C.F.R. § 101.36; 32 V.S.A. §§ 9701(31), 9741(13); Vt. Reg. § 1.9741(2)(C).
- ²¹ 18 V.S.A. § 4201(15). This definition of marijuana already excludes hemp, so hemp and hemp plants would not be subject to sales tax, although products derived from hemp would be taxable as tangible personal property. *See* the section titled “Hemp” for more information.
- ²² *See*, Vermont Department of Taxes, “Local Option Tax: What Is It and When Does It Apply?” (Rev. 06/2018), available online: https://tax.vermont.gov/sites/tax/files/documents/LocalOptionTaxFS_0.pdf.
- ²³ 26 U.S.C. 280E reads: “No deduction or credit shall be allowed for any amount paid or incurred during the taxable year in carrying on any trade or business if such trade or business (or the activities which comprise such trade or business) consists of trafficking in controlled substances (within the meaning of schedule I and II of the Controlled Substances Act) which is prohibited by Federal law or the law of any State in which such trade or business is conducted.” *See, Californians Helping to Alleviate Medical Problems, Inc. v. C.I.R.*, U.S. Tax Ct. 2007, 128 T.C. 173, 2007 WL 1424620, unreported; *Olive v. C.I.R.*, C.A.9 2015, 792 F.3d 1146.
- ²⁴ Pub. L. 97-248, Title III, § 351(a), Sept. 3, 1982, 96 Stat. 640.
- ²⁵ 26 C.F.R. § 1.471-11(c); 26 U.S.C. § 471.
- ²⁶ Vermont General Assembly, 2016 Session, S.241, As Passed Senate, available online: <https://legislature.vermont.gov/assets/Documents/2016/Docs/BILLS/S-0241/S-0241%20As%20Passed%20by%20the%20Senate%20Unofficial.pdf>.
- ²⁷ *Id.*, S.241, Sec. 12c.

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- ²⁸ 16 V.S.A. § 4025(a)(6).
- ²⁹ 24 V.S.A. § 138.
- ³⁰ 32 V.S.A. § 3802(1).
- ³¹ EO No. 15-17, Sec. III(3)(ii).
- ³² Office of the Attorney General, Jefferson B. Sessions, III, “Memorandum for all United States Attorneys” (Jan. 4, 2018), available online: <https://www.justice.gov/opa/press-release/file/1022196/download>.
- ³³ 21 U.S.C. § 801–971.
- ³⁴ 21 U.S.C. § 903.
- ³⁵ Example legislative language could be taken from Section 8 of H.490, As Introduced adding 18 V.S.A. § 4506.
- ³⁶ R.C.W.A. 69.50.380(1).
- ³⁷ 16 C.C.R. § 5415; O.A.R. 845-025-2880; NAC 453D.xxx(20)(1)(d) [Nevada Tax Commission emergency rule, E005-17, adopted Oct. 26, 2017 but not yet codified].
- ³⁸ 18 V.S.A. ch. 84, subch. 1.
- ³⁹ 18 V.S.A. § 4474f(a)(2).
- ⁴⁰ 18 V.S.A. ch. 84, subch. 1.
- ⁴¹ 18 V.S.A. § 4474e(c).
- ⁴² 18 V.S.A. § 4237.
- ⁴³ R.C.W.A. 69.50.390.
- ⁴⁴ 32 V.S.A §§ 601-606.
- ⁴⁵ 32 V.S.A. § 603(2).
- ⁴⁶ 32 V.S.A. § 605(d)(2).
- ⁴⁷ Colorado Detail Monthly Summary, available online: <https://www.colorado.gov/pacific/revenue/colorado-marijuana-tax-data>.
- ⁴⁸ Washington Annual Reports, available online: <https://lcb.wa.gov/about/annual-report>
- ⁴⁹ See, e.g., N.A.C. 453A.504.
- ⁵⁰ 16 C.F.R. 16, Ch. II, Subch. E, Pt. 1700.
- ⁵¹ See, 1 C.C.R. 212-2.1005
- ⁵² W.A.C. 314-55-077.
- ⁵³ See, H.490 of 2018, As Introduced, Sec. 8, adding 18 V.S.A. § 4512(a)(3)(I).
- ⁵⁴ H.490, Sec. 8, adding 18 V.S.A. § 4501(15); see also, C.R.S. 12-43.4-202; CO HB 16-1436 (2016).
- ⁵⁵ Vermont Acts and Resolves of 2018, No. 143, Secs. 5-8, available online: <https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT143/ACT143%20As%20Enacted.pdf>.
- ⁵⁶ Jonathan P. Caulkins, et. al., “Considering Marijuana Legalization: Insights for Vermont and Other Jurisdictions” Santa Monica, CA: RAND Corporation (2015), available online: https://www.rand.org/pubs/research_reports/RR864.html.
- ⁵⁷ 18 V.S.A. § 4474e(d)(5).
- ⁵⁸ 18 V.S.A. § 4474e(k)(1)(C).
- ⁵⁹ 18 V.S.A. § 4472(14).
- ⁶⁰ 18 V.S.A. § 4474h.
- ⁶¹ Federation of State Medical Boards, FSMB Workgroup on Marijuana and Medical Regulation, “Model Guidelines for the Recommendation of Marijuana in Patient Care” (April 2016), available online: <http://www.fsmb.org/globalassets/advocacy/policies/model-guidelines-for-the-recommendation-of-marijuana-in-patient-care.pdf>. See, also: 18 V.S.A. §§ 4472(4), 4473.
- ⁶² 18 V.S.A. § 4474g(e).
- ⁶³ 21 V.S.A. § 511(3).
- ⁶⁴ 21 V.S.A. § 512(b).
- ⁶⁵ 21 V.S.A. § 513(c).
- ⁶⁶ 21 V.S.A. § 514.
- ⁶⁷ *Id.*
- ⁶⁸ 21 V.S.A. § 513(c)(2).
- ⁶⁹ 21 V.S.A. § 513(c)(1).
- ⁷⁰ 21 V.S.A. § 513(c)(3).
- ⁷¹ *Id.*
- ⁷² *Id.*
- ⁷³ 41 U.S.C. subtit. IV, ch. 81.
- ⁷⁴ 42 U.S.C. § 12112(a)-(b).

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- ⁷⁵ 21 U.S.C. § 812; 42 U.S.C. § 12114.
- ⁷⁶ 42 U.S.C. § 12114; *James v. City of Costa Mesa*, 700 F. 3d 394, 397-98 (9th Cir. 2012).
- ⁷⁷ Vermont Office of the Attorney General, Civil Rights Unit, “Guide to Vermont’s Laws on Marijuana in the Workplace” (June 2018), available online: <http://ago.vermont.gov/wp-content/uploads/2018/06/Employer-MJ-Guidance-TOC.pdf>; Vermont Acts and Resolves of 2018, No. 86, available online: <https://legislature.vermont.gov/assets/Documents/2018/Docs/ACTS/ACT086/ACT086%20As%20Enacted.pdf>.
- ⁷⁸ 18 V.S.A. § 4230a(e)(1).
- ⁷⁹ 18 V.S.A. § 4474c(a).
- ⁸⁰ 18 V.S.A. § 4230a(e)(2).
- ⁸¹ 18 V.S.A. § 4230a(e)(4).
- ⁸² 18 V.S.A. § 4230a(e)(3).
- ⁸³ 18 V.S.A. § 4474c(b).
- ⁸⁴ A.R.S. § 36-2814; Fla. Stat. § 381.986(15); M.C.L.A. § 418.315a; M.C.A. § 50-46-320(4)(a); W.A.C. 296-20-03010.
- ⁸⁵ *Hall v. Safelite*, Opinion No. 06-18 (March 28, 2018), available online: <http://labor.vermont.gov/wordpress/wp-content/uploads/HallMM.Decision.pdf>.
- ⁸⁶ *Bourgoin v. Twin Rivers Paper Company, LLC, et. al.*, 187 A.3d 10, 2018 ME 77, (June 14, 2018), available online: http://www.courts.maine.gov/opinions_orders/supreme/lawcourt/2018/18me077.pdf. [Where an employer is subject to an order that would require it to pay for an employee’s workers’ compensation claim for medical marijuana expenses, there is a positive conflict between federal and state law, and as a result, the Controlled Substances Act preempts the Maine Medical Use of Marijuana Act, and an employer is not compelled to reimburse an employee for medical marijuana expenses.]
- ⁸⁷ 29 U.S.C. ch. 15; 21 V.S.A. ch. 3.
- ⁸⁸ 21 V.S.A. § 223(a).
- ⁸⁹ Interagency Resource for Achieving Cooperation, “Regulatory Guidance for Cannabis Operations, Version 3.0” (April 2016), available online: <https://fortress.wa.gov/ecy/wrdocs/WaterRights/wrwebpdf/Guidance4CannabisOperations.pdf>.
- ⁹⁰ Marijuana Occupational Health and Safety Work Group, Colorado Department of Public Health and Environment, “Guide to Worker Safety and Health in the Marijuana Industry” (Jan. 2017), available online: <https://www.colorado.gov/pacific/cdphe/marijuana-occupational-safety-and-health>.
- ⁹¹ See, e.g., S.3032 of 2018, introduced by Senators Elizabeth Warren (D-MA) and Corey Gardner (R-CO), which would exempt most marijuana-related activities from the Control Substances Act when those activities are allowed under state or tribal law.
- ⁹² Insurance Institute for Highway Safety, Highway Loss Data Institute, “Status Report: High Claims; Legalizing recreational marijuana use is linked to increase in crashes” Vol. 52, No. 4 (June 22, 2017), available online: <https://www.iihs.org/externaldata/srdata/docs/sr5204.pdf>.
- ⁹³ Cal.Bus. & Prof.Code § 26210.5.
- ⁹⁴ 32 V.S.A. § 9741(3).
- ⁹⁵ 32 V.S.A. §§ 9701(7), 9771(1).
- ⁹⁶ 6 V.S.A. § 568 (a).
- ⁹⁷ Vermont Acts and Resolves of 2018, No. 86, Sec. 17(6).
- ⁹⁸ http://tax.vermont.gov/sites/tax/files/documents/Tobacco%20Rate%20Tables%20FS_2015.pdf;
<http://tax.vermont.gov/business-and-corp/miscellaneous-taxes/cigarette-and-tobacco-tax/rates>.