



STATE OF VERMONT
OFFICE OF LEGISLATIVE
COUNCIL

Summary of Senate Proposal of Amendment to H.167

Adult Use; Legal Possession; Civil and Criminal Penalties

The act removes current civil penalties for possession of one ounce or less of marijuana and two mature marijuana plants and four immature marijuana plants by a person 21 years of age or older.

Criminal penalties remain for possession of over the allowed possession amounts and for dispensing or selling marijuana without a license.

Consuming marijuana in a public place is prohibited and violators are subject to a civil ticket.

Employers and landlords are not required to accommodate marijuana possession or use and the act does not make any changes to employment law or landlord-tenant law.

Unlicensed chemical extraction to produce marijuana concentrate is prohibited and violators are subject to criminal penalties.

Youths

Civil penalties remain for possession of marijuana by a person under 21 years of age. Youths are referred to Court Diversion and successful completion results in no record of the event.

Civil and criminal penalties are established for furnishing or selling marijuana to a person under 21 years of age.

Persons under 21 years of age are prohibited from being on the premises of a marijuana establishment.

Advertising and labeling of marijuana may not be designed to appeal to youths.

Marijuana establishments and outdoor advertising of such establishments are prohibited from being located within 1,000 feet of a school or child care center.

The Department of Health will monitor marijuana use by youths and collect data in a manner that enables future studies.

Prevention

Directs the Department of Health (DOH), in collaboration with the Department of Public Safety, the Agency of Education, and the Governor's Highway Safety Program, to develop and administer an education and prevention program focused on the use of marijuana by youths under 25 years of age. DOH must adopt rules on or before March 15, 2018 and implement the program on or before September 15, 2018.

\$350,000.00 is appropriated in FY18 to DOH for initial prevention, education, and countermarketing programs.

Marijuana Establishments

Marijuana establishments are regulated by the Agency of Agriculture, Food and Markets (Agency), which is primarily responsible for adopting rules to implement and enforce the provisions of the act. The Agency is required to work with the Department of Public Safety on issues such as seed-to-sale tracking of marijuana, facility security, criminal background checks for licensees and employees of marijuana establishments, and enforcement.

Three types of licenses are available—cultivator, retailer, and testing laboratory. A person may only hold one license, with the exception of an existing dispensary which may hold one of each.

Applicants and financiers must be Vermont residents and are subject to criminal background check.

Prior to July 1, 2019, provided applicants meet the requirements of this chapter, the Agency shall issue:

- An unlimited number of cultivator licenses of less than 500 square feet
- A maximum of 20 cultivator licenses of 501 to 1,000 square feet
- A maximum of 15 cultivator licenses of 1,001 to 2,500 square feet
- A maximum of 10 cultivator licenses of 2,501 to 5,000 square feet
- A maximum of five cultivator licenses of 5,001 to 10,000 square feet
- A maximum of five testing laboratory licenses
- A maximum of 42 retailer licenses

After July 1, 2019, the Agency will use its discretion to issue licenses in a number and size for the purpose of competing with and undercutting the illegal market based on available data and recommendations of the Marijuana Program Review Commission.

Only marijuana flowers may be sold to the public, and marijuana may not be packaged with other products for sale. A Vermont resident may purchase a maximum of one-half ounce in a

single daily transaction and a nonresident may purchase no more than one-quarter ounce in a single daily transaction.

Monies from license application fees, annual license fees, and civil penalties from marijuana establishments are allocated to the Department of Public Safety for implementation, administration, and enforcement of the provisions relating to marijuana establishments.

Retail marijuana is taxed at 25 percent. Medical marijuana continues to be untaxed. Dispensaries and marijuana establishments are permitted to deduct expenses at the State level that are currently prohibited by federal law.

Local Government

A municipality retains any current authority to issue a civil ordinance to provide additional penalties for marijuana in a public place.

Voters may prohibit the operation of a marijuana establishment within a municipality by majority vote at an annual or special meeting. The ban would stay in effect until repealed by the voters.

A municipality could establish a local board of marijuana control for the purpose of issuing permits to marijuana establishments located in the municipality.

A municipality could regulate marijuana establishments through local ordinances or land use bylaws or require a marijuana establishment to obtain a license or permit from the municipality prior to beginning operations.

Impaired Driving

Directs the Secretary of Transportation and the Commissioner of Public Safety to work collaboratively to ensure that funding is available, either through the Governor's Highway Safety Program's administration of National Highway Traffic Safety Administration funds or other State funding sources, for training the number of officers necessary to provide sufficient statewide coverage for the enforcement of impaired driving laws through Advanced Roadside Impaired Driving Enforcement (ARIDE) and Drug Recognition Expert (DRE) programs.

The Agency of Transportation, through its Vermont Governor's Highway Safety Program, is directed to expand its public education and prevention campaign on "drunk driving" to "impaired driving" which shall include "drugged driving."

Marijuana is added to Vermont's "open container" law that prohibits use or possession of an open container of alcohol in a motor vehicle.

Places a commercial motor vehicle driver on 24-hour hiatus if a law enforcement officer has reasonable grounds to believe the driver has a detectable amount of marijuana in his or her

system, authorizes the law enforcement officer to test the person for the presence of marijuana, and to advise the driver that he or she will be subject to a CDL suspension of one year if the driver refuses to submit to a test.

The Secretary of Transportation and the Commissioner of Public Safety are required to report annually to the committees of jurisdiction regarding the previous year's impaired driving data in Vermont, the latest information regarding best practices on prevention and enforcement, and their recommendations for legislative action.

Workforce Study Committee

There is created a Workforce Study Committee to examine the potential impacts of alcohol and drug use on the workplace.

The Committee is composed of the following five members:

- The Secretary of Commerce and Community Development or designee
- The Commissioner of Labor or designee
- The Commissioner of Health or designee
- One person representing the interests of employees appointed by the Governor
- One person representing the interests of employers appointed by the Governor

On or before December 1, 2017, the Committee must submit a written report to the House Committee on General, Housing and Military Affairs and the Senate Committee on Economic Development, Housing and General Affairs with its findings and any recommendations for legislative action.

Marijuana Program Review Commission

Established for the purpose of facilitating efficient and lawful implementation of the act and examination of issues important to the future of marijuana regulation in Vermont.

Composed of two members appointed by the Governor, two members of the Senate, two members of the House, and the Attorney General or designee, and operates until July 1, 2020.

Commission duties include:

- Collecting information about the implementation, operation, and effect of the act from members of the public, State agencies, and private and public sector businesses and organizations.
- Communicating with other states that have legalized marijuana and monitoring those states regarding their implementation of regulation, policies, and strategies that have been successful and problems that have arisen.

- Examining the issue of marijuana concentrates and edible marijuana products and whether Vermont safely can allow and regulate their manufacture and sale and, if so, how.
- Keeping updated on the latest information in Vermont and other jurisdictions regarding the prevention and detection of drugged driving as it relates to marijuana.
- Studying the opportunity for a cooperative agriculture business model and licensure and community supported agriculture.
- Examining whether Vermont should allow additional types of marijuana establishment licenses, including a processor license and a product manufacturer license.
- Reviewing the statutes and rules for the therapeutic marijuana programs and dispensaries and determining whether additional amendments are necessary to maintain patient access to marijuana and the viability of the dispensaries.
- Monitoring supply and demand of marijuana cultivated and sold pursuant to the act to assist with determining appropriate numbers of licenses and limitations on the amount of marijuana cultivated and offered for retail sale in Vermont so that the adult market is served without unnecessary surplus marijuana.
- Monitoring the extent to which marijuana is accessed through both the legal and illegal market by persons under 21 years of age.
- Identifying strategies for preventing youths from using marijuana.
- Identifying academic and scientific research, including longitudinal research questions, that when completed may assist policymakers in developing marijuana policy.
- Considering whether to create a local revenue stream which may include a local option excise tax on marijuana sales or municipally assessed fees.
- Recommending the appropriate maximum amount of marijuana sold by a retailer in a single transaction and whether there should be differing amounts for Vermonters and nonresidents.
- Reporting any recommendations to the General Assembly and the Governor, as needed.

The Commission is staffed by the Administration and the act creates a position of Commission Director.

Marijuana Regulation and Resource Fund; Appropriations; Positions

Creates the Marijuana Regulation and Resource Fund which is composed of all application fees, license fees, renewal fees, and civil penalties collected by agencies and departments pursuant to this chapter and all taxes collected pursuant to the act.

Appropriations made from the Fund are to be in addition to current funding of the identified priorities and not be used in place of existing State funding.

The Commissioner of Finance and Management shall anticipate receipts in accordance with current law and the Secretary of Administration shall report annually to the Joint Fiscal Committee on receipts and expenditures through the prior fiscal year on or before the Committee's regularly scheduled November meeting.

In fiscal year 2018, the follow amounts are appropriated from the Marijuana Regulation and Resource Fund:

- Department of Health: \$350,000.00 for initial prevention, education, and countermarketing programs.
- Tax Department: \$660,000.00 for the acquisition of an excise tax module and staffing expenses to administer the excise tax established in this act.
- Agency of Agriculture, Food and Markets:
 - \$112,500.00 for the Vermont Agriculture and Environmental Lab.
 - \$272,500.00 for staffing expenses related to rulemaking, program administration, and processing of applications and licenses.
- Agency of Administration: \$150,000.00 for expenses and staffing of the Marijuana Program Review Commission established in this act.

The establishment of the following new permanent classified positions is authorized in fiscal year 2018 as follows:

- In the Department of Health—one (1) Substance Abuse Program Manager.
- In the Department of Taxes—one (1) Business Analyst AC: Tax and one (1) Tax Policy Analyst.
- In the Agency of Agriculture, Food and Markets—one (1) Agriculture Chemist and two (2) Program Administrator.
- In the Marijuana Program Review Commission—one (1) exempt Commission Director.

Requires the Secretary of Administration to report annually through 2019 to the Joint Fiscal Committee on the following:

- An update of the Administration’s efforts concerning implementation, administration, and enforcement of the act.
- Any changes or updates to revenue expectations from fees and taxes based on changes in competitive pricing or other information.
- Projected budget adjustment needs for current year appropriations from the Marijuana Regulation and Resource Fund.
- A comprehensive spending plan with recommended appropriations from the Fund for the next fiscal year, by department, including an explanation and justification for the expenditures and how each recommendation meets the intent of the act.

Misdemeanor Drug Possession Study Committee

Directs the Attorney General, the Defender General, and the Executive Director of the Department of State's Attorneys and Sheriffs to work collaboratively to develop a specific legislative proposal to encourage persons cited or arrested for a misdemeanor drug possession charge to engage with pretrial services, and, if appropriate, enter treatment, and that, in turn, a person who complies with such conditions will be eligible for dismissal of the charge.

The proposal should have an implementation date of July 1, 2018 and report to the Senate and House Committees on Judiciary and on Appropriations, the Senate Committee on Health and Welfare, and the House Committee on Human Services on or before November 1, 2017.

General Timeline

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| Upon passage | Agency of Agriculture, Food and Markets (Agency) and Department of Health (DOH) begin rulemaking process |
| 8/1/17 | Marijuana Program Review Commission begins meeting |
| 3/15/18 | The Agency and DOH adopt final rules |
| 4/15/18–5/15/18 | Cultivator and testing laboratory application period |
| 5/15/18–6/15/18 | Retailer application period |
| 6/15/18 | The Agency issues cultivator and testing laboratory licenses |
| 9/15/18 | The Agency issues retailer licenses DOH implements education and prevention program |
| 1/2/19 | Licensed retail stores may sell marijuana to persons 21 years of age or older No civil or criminal penalties for possession of one ounce or less of marijuana by a person 21 years of age or older |