

Adult-Use Marijuana Regulatory Structure

Category	Issue	Recommendation	Legislative Proposals
Licensing	General licensing concerns	<p>Licensee Requirements & Limitations</p> <p>(1) Vertical integration should be permitted: neither prohibited nor required</p> <ul style="list-style-type: none"> -Need flexibility for different business types so that new businesses can adapt to market. Prohibition is challenging to enforce due to complicated legal structures of entities. -Medical marijuana dispensaries should continue to be required to be vertically integrated. <p>(2) Background checks are required</p> <ul style="list-style-type: none"> -For owners (H.490 sets min. ownership at 10%; amount could be set higher, i.e., 25%), directors, executives and employees. -Prior non-violent drug convictions are not disqualifying. No to felonies; misdemeanors OK -Need for an appeal process in case denial of license based on background checks. <p>(3) Number of licensees should be determined by a board with authority to adjust number in the future</p> <ul style="list-style-type: none"> -Create a board capable of responding to market demands to address concern about oversupply (and effect on black market) vs concern about keeping establishments small and local. -Include H.490 restriction that a business may only have one license per category. This allows vertical integration, but not horizontal monopolies. <p>Setting fees</p> <ul style="list-style-type: none"> -Higher upfront licensing fees to mitigate initial costs? Create a lag between receiving fees and allowing production and sale (and thus creating need for enforcement and administration that will require employees on payroll) -Align fees with medical marijuana program? -Fees in statute = fees subject to statutorily required fee review every 3 years. Allows for adapting fees to changing costs of regulation. Would potential Board or Agencies responsible for administering fees be required to propose changes to fees? 	<p>Vertical integration: H.490, Sec. 8, adding new 18 V.S.A. § 4521(d).</p> <p>See licensing working group suggestions: http://marijuanacommission.vermont.gov/sites/mc/files/doc_library/DRAFT%20Licensing%20Working%20Group%20Suggested%20Changes%20to%20H.490.pdf Dates, application timelines, simplification of application criteria, broader and more explicit legal protections for businesses & staff, raise license fee for labs, etc.</p>
	Cultivator		
	Processor/Manufacturer	<p>Regulatory Agencies</p> <ul style="list-style-type: none"> -Agency of Agriculture: primary responsibility for licensing and oversight of cultivation and manufacturing. 	
	Sales Representative	<ul style="list-style-type: none"> -Department of Liquor and Lottery: primary responsibility for licensing and oversight of retail stores. -VT Marijuana Registry: continued administration of medical, but still under Department of Public Safety? -Department of Taxes: primary responsibility for administering tax 	
	Retailer		
	Social Club/Lounge	<p>Types of establishments</p> <ul style="list-style-type: none"> -Unlikely to allow social clubs/bars/lounges. -Expect private sector to provide lab testing; not required to be state-run, just state-licensed. 	
	Transporter/Distributor	<ul style="list-style-type: none"> -Note that cultivator and processor licenses would include authorization to transport, but also offer separate license for transport/distribution only. -Prohibit residential deliveries -Consider a separate "sales representative" license similar to alcoholic beverage license. 	
	Laboratory Testing		
Consumer Protection	Advertisements	Restrictions, especially re: targeting under-21	H.490, Sec. 8, adding 18 V.S.A. §§ 4506, 4507, 4512.
	Packaging & Labeling	Child-resistant packaging; make explicit that VT law follows federal requirements Labeling/warning of products, especially edibles. -Require imprinting on edibles.	
	Potency & Dosage	Milligram limits: 10 mg of active THC/serving; max 10 servings per package	

Adult-Use Marijuana Regulatory Structure

Category	Issue	Recommendation	Legislative Proposals
	Private cause of action	Authorize consumer's right to sue in case of harm.	
	Quality control/lab testing	Ensuring products are what they claim to be; avoiding adulteration.	
Alternative Forms of Use	Edibles	<p>Allowing edibles to regulate them and eliminate black market. Impose limits, such as in CO, which bans human- or animal-shaped edibles (e.g., gummy bears) because they are considering enticing to children. Require imprinting on edibles.</p> <p>Subject edibles to meals tax.</p>	<p>Allowing edibles: Act 86 (H.511) already defines marijuana under 18 V.S.A. § 4201(15) in a way that includes edibles. To be more explicit, use the H.490 definition of "marijuana-infused products," which include "tinctures, oils, solvents, and edible or potable goods." 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).</p>
	Vaping	<p>Ban THC mixed with other products.</p> <p>Concern over cross addiction when THC products are mixed with other addictive substances, especially tobacco and alcohol. Concern over youth use. H.490 prohibited mixing marijuana products with caffeine, nicotine, or alcohol.</p>	<p>Meals tax:</p> <ul style="list-style-type: none"> -Impose meals tax on edibles. -H.490 requires licenses for marijuana retail tax in addition to meals tax and sales tax licenses. H.490, Sec. 9, 32 V.S.A. §§ 7925, 7945.
	General regulatory concerns	<p>Following the lead of other states:</p> <ul style="list-style-type: none"> -different agencies administer different issues. -setting potency and dosage limits. -restrict types of packaging and ads for consumer protection and in particular ensuring product isn't enticing to children. -imprinting on individual doses. <p>Recommend creating a listing committee based on the example of the Board of Liquor and Lottery, to be sure that specific products are appropriate for the market.</p>	<p>If banning mixed substances: use similar language to H.490, Sec. 8, adding 18 V.S.A. § 4512(a)(3)(I). Ban mixture with addictive substances, but allow tinctures to be mixed with THC. Also give rulemaking authority to the Board.</p>
Marijuana in the Workplace	Workplace Safety (OSHA)	Under Occupational Safety and Health Act (OSHA), employers have general duty to keep employees safe.	
	Worker's Compensation	<p>Worker's Comp coverage may be refused for intoxication in workplace (based on witness observation only; no reliable test)</p> <ul style="list-style-type: none"> -Insurers are not required to pay for employee's use of medical marijuana under title 18, Vermont Statutes -Maine's Supreme Court recently cited a VT Worker's Comp ruling to this effect <p>Dispensaries: although dispensary employees have Worker's Comp, employers do not have many options because very few insurance companies will provide coverage</p> <ul style="list-style-type: none"> -insurers' reticence to enter market could change with larger population of insured if recreational market (risk analysis would change) 	
	Drug testing Federal Drug-Free Workplace	<p>Vermont law: employers have limited authority to require applicants or employees to take drug tests. 21 V.S.A. §§ 512, 513.</p> <p>Federal law: 41 U.S.C. subtit. IV, ch. 81, Drug-Free Workplace requirements for Federal contractors; zero tolerance.</p>	
	Disability accommodation	Disability law, Americans with Disabilities Act (ADA): no accommodation required by employers for employees who use marijuana, even if for medical/pain relief	
	Employment practices (hiring, firing, disciplinary action)	<p>Act 86 (H.511) did not create a private cause of action (right to sue) for employees against employers</p> <ul style="list-style-type: none"> -Use of marijuana or intoxication is not a bar to former employee's access to unemployment insurance 	

Adult-Use Marijuana Regulatory Structure

Category	Issue	Recommendation	Legislative Proposals
Financial and Third-Party Liability	Banking	<p>Schedule I drug under federal controlled substances law & federal banking law requirements limit what banks are willing to serve marijuana businesses.</p> <p>-Current situation: only one credit union serving Vermont's 5 dispensaries would be untenable in case of recreational market. More financial institutions would need to provide services.</p> <p>Vermont State bank would not be a viable solution</p> <p>-would not solve any problems since, as a bank, would still be subject to federal requirements.</p>	To be determined via administrative or rulemaking authority of regulatory agency; not necessary to include in statute.
	Insurance	<p>Schedule I drug under federal controlled substances law</p> <p>-Standard (admitted) insurance market is typically unavailable</p> <p>-Surplus lines insurers (non-admitted) are willing to insure marijuana businesses for General Liability, Products Liability, Auto Liability, Umbrella and Professional Liability</p>	
	Security	<p>Reputational risk + New market risk</p> <p>Cash</p> <p>-No payments to State agencies in cash.</p> <p>-No required payment system.</p> <p>Product</p> <p>-Ensuring secure product storage and destruction.</p> <p>Customers</p> <p>-Intoxicated customers.</p>	
Business Legal Structures	Preferred or required legal structures VT residency requirements, especially for cultivators	<p>No VT residency requirement; only a preference; cf. other states (1 year in CO). H.490 required a 6-month residency period immediately prior to application.</p> <p>- H.490 requires:</p> <ul style="list-style-type: none"> o Majority in-state ownership o Majority in-state board of directors o Top executive officers in-state <p>Control Model</p> <p>-allowing a State authority?</p> <p>-hybrid public-private control model?</p> <p>-benefit: State would get all proceeds, but risk (however unlikely): State employees could be prosecuted under federal law.</p>	
Diversion Prevention	To other nonlegal states	Need for strong seed-to-sale and financial tracking, as well as enforcement mechanisms	H.490, Sec. 8 adding 18 V.S.A. § 4506.
	To black market, youth, etc.	Overarching issues that entire regulatory structure must work to prevent	
	<p>Gifting for a fee</p> <p>Residential Delivery</p>	Prohibit	Draft language prohibiting residential deliveries and gifting while charging for accessories, merchandise, delivery, etc.
Diversity	Diversity	Disparate impact on minorities of disproportionate number of arrests of people of color for possession, or misdemeanor sales. Enactment of Act 86 (H.511) legalizing possession and personal use should already address this issue.	Finding or statement of purpose? See Act 86 (H.511) of 2018, Sec. 17.

Adult-Use Marijuana Regulatory Structure

Category	Issue	Recommendation	Legislative Proposals
Medical Marijuana	Administration	<p>Primary concern: continued viability of medical marijuana</p> <p>Purchases -Will dispensaries be allowed to purchase from the commercial market to supply patients, if needed? Would there be restrictions on these types of transactions, such as only in the case of a shortage?</p> <p>Retail Sales -Will dispensaries be allowed to obtain recreational licenses and sell at retail? If so, need to amend requirement for dispensaries to destroy or dispose of marijuana product that are not usable for symptom relief or are beyond possession limits. 32 V.S.A. § 4474e(d)(5). -Will dispensaries have any preference in new retail structure?</p> <p>Vermont Marijuana Registry -Amend current dispensing limit of 2 oz per 30-day period for registered patients to align with Act 86. 18 V.S.A. § 4474e(k)(1)(C). -Remove requirement that patients designate only one dispensary from which they may make purchases under 18 V.S.A. § 4474h. -Amend cultivation and possession limits for patients to align with Act 86. 18 V.S.A. § 4472(14). -Broaden definition of debilitating medical condition for more patients to buy through the medical program and for doctors to more readily recommend use. 18 V.S.A. §§ 4472(4), 4473. -Loosen registry eligibility requirements for dispensaries -A complete review of Title 18 Chapter 86 will be needed.</p>	<p>Updates required to entire 18 V.S.A., ch. 86.</p> <p>Make it explicit that recreational marijuana statute does not apply to activities regulated by 18 V.S.A. chapter 86 (therapeutic use of cannabis).</p>
	Labelling & Dosage	<p>Means of MEASURING THC content in products should be aligned with retail and any civil/criminal possession limits.</p> <p>Actual THC dosage LIMITS for medical should be higher than those allowed for recreational use.</p>	
	Taxation and fees	<p>Tax -Make explicit that medical marijuana sales are exempt from both state sales tax and new marijuana excise tax. -Note that currently any tangible personal property sold by dispensaries (such as paraphernalia) is subject to sales tax. Recommend that this treatment continue.</p> <p>Fees -Keep low to incentivize patients to buy from dispensaries for medical purposes. Concern about sales drying up when patients have easier access at retail than thru dispensaries. -Align licensing structure, eligibility requirements, and application process with retail licensing, however, consider lower licensing fees for medical. -Consider waiving patient registry card fee. Perhaps a one-time fee instead of an annual fee, or no fee.</p> <p>Revenues -Will the Registry be given a set allocation in statute or a yearly budgetary appropriation of tax revenues in order to fund its operations? Particularly if sales drop, AND if any licensing or registry card fees are reduced.</p>	
Public Education	Public Education, especially youth	Needs to be determined	
Public Safety	Impairment Testing	Needs to be determined	

Adult-Use Marijuana Regulatory Structure

Category	Issue	Recommendation	Legislative Proposals
Revenue	Tax Structure	<p>New Marijuana Excise Tax Impose a 10-25% excise tax at the point of retail sale. -Do not authorize towns to vote an additional marijuana excise local option tax. This would create inequities amongst towns, since some towns would get more revenue than others, even though the impacts of marijuana activities will be felt in every town.</p> <p>Existing State Sales Tax and Local Option Sales Tax Impose 6% state sales tax on retail sales of marijuana. All sales tax revenues go to the Education Fund. -Under current statute, a 1% local option sales tax would apply to any retail sales subject to the state sales tax when made or delivered in any town that has voted to impose one. The Dept. of Taxes typically administers local option taxes, with the exception of Burlington and Rutland City. -Current statutory allocation of local option tax revenues under 24 V.S.A. § 138: -(1) \$5.96 administrative fee per return (70% of fee paid by town; 30% paid by State PILOT fund) -(2) 70% of remaining revenues go to the town with the local option tax -(3) 30% of remaining revenues go to the State PILOT fund</p> <p>Meals and Rooms Tax and Local Option Meals Tax Impose 9% meals tax if marijuana products are sold as part of a taxable meal. If the state meals tax applies, then in towns that have a local option meals tax, that 1% local option meals tax will apply.</p> <p>Deduction for business-related expenses Authorize a VT deduction for business-related expenses of marijuana establishments in order to offset federal income tax law. Under 26 U.S.C. § 280E, the cost of goods sold is currently the only deductible business expense for marijuana establishments.</p>	
	Tax Revenue Allocation	<p>Divide up all excise tax revenues to dedicated funds or agencies by percentage or \$ amount. Precise amounts to be determined.</p> <p>How much funding will regulatory agencies need? Intersection with fee revenue for fee-collecting licensing agencies. Other agencies are general fund-reliant (Taxes). - Dept. of Liquor and Lottery, Public Safety, Dept. of Health, Agency of Agriculture, Dept. of Taxes, and others.</p> <p>How much funding will municipalities need? How will municipalities be funded: special voted local option tax, yearly appropriation, etc.?</p>	
	Funds	<p>What (special or enterprise) funds will be used to deposit and make disbursements of tax and fee revenues?</p>	