

Licensing Working Group Suggestions for changes to Vermont H. 490

- **The licensing dates will need to change.**
 - Currently, the agency would begin accepting some applications by April 15, 2018, and must issue the first licenses by Sept. 15, 2018. (p. 26 line 3 – p. 27, line 17)
- **The licensing timeline should be longer.**
 - There are only 60 days from when applications are first accepted (and 30 from when they're due) until the first licenses must be issued. (p. 26 line 3 – p. 27, line 17)
 - Although the time frame was based on S. 241, it should probably be longer. A limited number of licenses will be issued, and they have complex and detailed application materials. However, some applications — such as existing medical and hemp providers — might be able to be processed more quickly.
- **Simplifying licensing.** It appears licensing would be conducted via a merit-based system. This method tends to involve a huge outlay of expenditures by applicants, a slow process, controversy and the possibility of litigation. If there will be a numerical limit on licenses, specifically for the larger tier licenses, it may make more sense to issue licenses by lottery to qualifying applicants. (p. 30, line 16 - p. 33, line 10) Assuming there were no other issues with the application, companies that are not awarded a larger tier license should automatically be granted a smaller tier license without having to reapply.
- **Consider modifying the square footage of canopy.** Currently, the state is required to issue a set number of licenses based on square footage — regardless of whether the cultivation is indoor or outdoor. However, outdoor grows typically harvest only once per year, meaning they produce far less per square foot of canopy. It may make sense to allow larger square feet for outdoor cultivation and consider it the same tier as indoor cultivation. (For example, Tier 1: 500 sq. feet of indoor canopy or 1,500 sq. feet of outdoor canopy, etc.) (p. 26 line 17 – p. 27, line 8) Based on testimony, the size of the smallest tier should be raised to 1000 square feet (of either flowering canopy or grow space, as long as we are consistent). Outdoor limits could be approximately 3x the indoor limits. Further consideration should be given as to how the limits would apply to growers that wanted an outdoor crop in the summer and an indoor crop in the winter.

- **More medium-to-large growers may be needed initially to meet demand.** To more quickly transition from the illicit market to regulated sales, and to ensure the viability of retailers that depend on adequate supply, it is important that enough cannabis is grown early on, so the amount licensed must be adequate. (p. 26 line 17 – p. 27, line 8). This issue might also be addressed by allowing the unlimited smallest tier licenses to be larger.
- **Language requiring dispensaries that operate adult use stores to have separate entrances for patients should be removed.** There is no similar requirement of pharmacies, which sell goods to non-patients. This provision is unnecessary and will drive up costs and thus patients' prices. (p. 29 lines 5-6)
 - Note, however, that this was also in S. 241.
- **Application requirements regarding issues such as details of labeling are best addressed by rule making rather than statute.** Retailers are required to submit applications that include description of packaging and labeling of products sold to customers. They also have to include their own name on the labels. However, it would likely make more sense for the products to be labeled and packaged before arriving at the retailer. The retailer could perhaps add a small tag or additional label, if needed. (p. 31, lines 15-16)
- **Employee ID cards should be issued by the business, not the state.** The bill is internally inconsistent, as p. 22 line 5 indicates the business — not the agency — will issue the photo ID card, but p. 34, lines 11-20 has the agency issuing them. The agency should not do so, as this would create a significant delay in hiring and the agency may not be able to keep up. Instead, the business should issue cards and the agency should be able to audit records. A program similar to what the Agency of Agriculture does for pesticide applicators or hemp growers should be considered (They maintain a working list of growers through which they can provide information about regulatory changes or other concerns. This helps to build a community around the regulated activity as well as maintaining the integrity of the Vermont brand.).
 - Note that S 241 had the state issue the ID cards, too, though.
- **Legal protections for businesses and staff should be more extensive.** (p. 39, line 3 to p. 40, line 16)
 - The bill currently says that marijuana businesses “may” take a number of actions involving marijuana, but it doesn't change existing criminal laws or spell out that the businesses, its staff and

agents, and the like are exempt from arrest, prosecution, and penalty for those actions. Such language is typical in adult use laws.

- Note, however, that S. 241 used the same language
- **Raise licensing fee for testing lab.** The fee for a testing lab is only \$500, which seems far too low to fund regulatory oversight for those entities. In comparison, the fee for retailers is \$10,000. Highly specialized equipment and staff is needed, so the fee can and should be reasonably high to deter frivolous applicants. (p. 45, lines 9-11)
 - Note that this fee was the same in S 241.
- **Cap regulatory costs.** If the fees are set appropriately, they can cover all costs of regulation/administration so that taxes are available for the state's other needs. The bill should mandate that the regulatory costs should be paid by the fees (although an initial loan might still be required), or at least to cap spending on regulatory costs to ensure they don't get out of hand, as happened with Colorado's medical program.
- **Fix inconsistencies.** A number of inconsistencies need to be fixed. For example:
 - As mentioned above, the bill is inconsistent regarding who issues ID cards to medical marijuana business staff — the state or the business (the latter is preferable).
 - Two sections — the cultivator license section and “youth restrictions” provide that only employees can access the areas with marijuana (and patients who are under 21). Meanwhile the definition of “enclosed, locked facility” allows contractors, government employees, and guests accompanied by staff to enter. The latter makes more sense, as regulators need to be allowed access, as may electricians, etc. (p. 13, lines 3- 17 vs p. 36, line 16-19)
 - “Cultivation space” is used in the implementation/ licensing section, but “Plant canopy” is the defined term, leading to confusion. The defined term should be used.