

Marijuana Legislation in 2018 Session

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OVERVIEW OF 2017 BILLS

H.511, S.22, H.167, H.170, H.490

Topics of 2017 Bills

H.511

- House passed: DUI; open container & consumption penalties
- Senate amended: allows home grow, includes public safety

S.22

- As passed both houses: no civil penalties for amounts under possession limit; allows home grow

H.167

- House passed: public health focus; legislative study
- Senate amended: home grow; recreational 25% retail sale tax

H.170

- House passed: home grow

H.490

- House as introduced: no home grow, but co-ops; adult use 15% wholesale tax; 10% retail sale tax; 2.5% local retail sale tax

Status of 2017 Bills

H.511

- House: passed.
- Senate: amended with S.22 language, messaged to House. No rules suspension by House for June's special veto session. Could be taken up by House at any time.

S.22

- Passed both bodies. Vetoed by Governor. On notice calendar in Senate. Could be taken up by Senate at any time.

H.167

- House: passed.
- Senate: amended, messaged to House; ordered to lie. Could be taken up by House at any time.

H.170

- House: passed after crossover deadline.
- Senate: referred to Committee on Rules; could be referred to Senate committee.

H.490

- House: referred to Committee on General, Housing & Military Affairs.

H.511 WALK-THROUGH

Definitions, possession, consumption, personal cultivation, under-age issues, offenses, Marijuana Regulatory Commission

H.511: Definitions

18 V.S.A. § 4201 (H.511 - new)

§ 4201. DEFINITIONS

As used in this chapter, unless the context otherwise requires:

* * *

(15)(A) "Marijuana" means all parts of the plant *Cannabis sativa* L., except as provided by subdivision (B) of this subdivision (15), 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.

(B) "Marijuana" does not include:

- (i) the mature stalks of the plant and fiber produced from the stalks;
- (ii) oil or cake made from the seeds of the plant;
- (iii) any compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, fiber, oil, or cake;
- (iv) the sterilized seed of the plant that is incapable of germination; or
- (v) hemp or hemp products, as defined in 6 V.S.A.

§ 562.

* * *

(43) "Immature marijuana plant" means a female marijuana plant that has not flowered and that does not have buds that may be observed by visual examination.

(44) "Mature marijuana plant" means a female marijuana plant that has flowered and that has buds that may be observed by visual examination.

18 V.S.A. § 4201 (current)

§ 4201. DEFINITIONS

As used in this chapter, unless the context otherwise requires:

* * *

(15) "Marijuana" means any plant material of the genus *cannabis* or any preparation, compound, or mixture thereof except:

(A) sterilized seeds of the plant;

(B) fiber produced from the stalks;

or

(C) hemp or hemp products, as defined in 6 V.S.A. § 562.

Other Bills: Definitions

S.22

- Same as H.511

H.167

- Same as H.511.
- Adds new definitions for marijuana establishments.

H.170

- Same as H.511

H.490

- Keeps current definition of “marijuana” in 18 V.S.A. § 4201.
- Adds new definitions for “marijuana-infused products” and marijuana establishments.

H.511: Possession; Criminal

18 V.S.A. § 4230

- **Current law**
 - already allows possession of up to one ounce of marijuana or 5 grams of hashish without criminal penalty; prohibits cultivation
- **H.511**
 - removes prohibition on cultivation, but limits permissible amount to 2 mature and 4 immature marijuana plants
 - does not count in possession limit the amounts of marijuana cultivated, harvested, and stored under new § 4230e
- **Criminal penalties**
 - depends on # of offenses and amount possessed or cultivated over possession limit.
 - **H.511 changes amounts allowed.**
 - range from \$500 fine and 6 months imprisonment to \$500,000 fine and 15 years imprisonment

Other Bills: Possession; Criminal

S.22

- Same as H.511.

H.167

- Same as H.511.

H.170

- Increases minimum possession amount before penalties apply. Reduces penalty amounts.

H.490

- Does not change current law, i.e., no personal cultivation allowed; only assignment of rights.

H.511: Possession; Civil Penalties

18 V.S.A. § 4230a

- **Current law**
 - imposes civil penalties for possession one ounce or less of marijuana or 5 grams or less of hashish
- **H.511**
 - removes civil penalties on possession under limit, allows cultivation of up to 2 mature and 4 immature marijuana plants
 - does not count in possession limit the amounts of marijuana cultivated, harvested, and stored under new § 4230e

Other Bills: Possession; Civil Penalties

S.22

- Mostly the same as H.511; only difference is whether marijuana is treated as contraband.

H.167

- Mostly the same as H.511; only difference is whether marijuana is treated as contraband.

H.170

- Retains and reduces current civil penalties for possession of marijuana.

H.490

- Retains current civil penalties for possession of marijuana.

H.511: Consumption

18 V.S.A. § 4230a

- **No consumption of marijuana in a public place**
 - “Public place” is defined as “any street, alley, park, sidewalk, public building other than individual dwellings, any place of public accommodation [...] and any place where the use or possession of a lighted tobacco product, tobacco product, or tobacco substitute [...] is prohibited by law.”
- **Civil penalties for public consumption**
 - 1st offense: up to \$100;
 - 2nd offense: up to \$200; and
 - 3rd or subsequent offense: up to \$500.

H.511: Consumption

18 V.S.A. § 4230a

What this section does NOT do:

- **Driving and marijuana**
 - No exemption from arrest, citation, or prosecution
 - No change to existing laws on driving under the influence or consuming marijuana while driving
- **Property issues**
 - Does not limit authority of schools to impose administrative penalties for possession on school property
 - Does not prohibit towns from adopting ordinances for additional public consumption penalties
 - Does not prohibit landlords from banning possession or use in a lease agreement
 - Does not allow possession or use by inmates or those under court order, parole, etc.

H.511: Consumption

18 V.S.A. § 4230a

- **Marijuana and Employment**
 - No requirement to allow use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana in workplace
 - Employers may adopt a policy prohibiting use in workplace
 - No cause of action created against employers who fire employees for violating a policy that restricts or prohibits use by employees
 - Employers may prohibit use, consumption, growing, etc., on employer's premises

Other Bills: Consumption

S.22

- Same as H.511

H.167

- Same as H.511

H.170

- Similar to H.511, but prohibits public consumption in different sections; different drafting.

H.490

- Prohibits public consumption with limited guidelines.

H.511: Personal Cultivation

18 V.S.A. § 4230e (new)

- **Cultivation limit:** 2 mature & 4 immature marijuana plants
 - Per dwelling limit regardless of how many 21+ year old persons reside in dwelling unit.
 - “Dwelling unit” defined as: “a building or the part of a building that is used as a primary home, residence, or sleeping place by one or more persons who maintain a household.”
 - Marijuana harvested from these plants does not count toward 1 ounce possession limit provided that:
 - it is stored in an indoor facility on the property where the marijuana was cultivated and
 - reasonable precautions are taken to prevent unauthorized access to the marijuana.
- **Minimum age:** 21

H.511: Personal Cultivation

18 V.S.A. § 4230e (new)

- **Location**
 - property lawfully in possession of cultivator or with consent of person in lawful possession of property;
 - in an enclosure screened from public view and secure so access is limited to cultivator and persons 21 years of age or older who have permission from cultivator.
- **Civil penalties for violations**
 - 1st offense: up to \$100;
 - 2nd offense: up to \$200; and
 - 3rd or subsequent offense: up to \$500.

Other Bills: Personal Cultivation

S.22

- Same as H.511

H.167

- Same as H.511

H.170

- Same as H.511, but different section numbering

H.490

- Allows assignation of cultivation rights (up to 2 mature & 4 immature plants) to another individual. Requires registration with AAFM.

H.511: Under-Age Issues

18 V.S.A. § 4230b

- Changes civil penalties for possession by person under 21 to include possessing 2 mature or 4 immature plants or fewer.

18 V.S.A. § 4230d

- Repeals delinquency offense of possession of marijuana by a person under 16.

18 V.S.A. § 4230f (new)

- Creates criminal offense of dispensing to persons under 21. Separate penalties for dispensation to persons under 21 by a person under 21.

18 V.S.A. § 4230g (new)

- Creates civil action for damages (in person, property, or means) for dispensing to persons under 21.

Other Bills: Under-Age Issues

S.22

- Mostly the same as H.511. Different drafting for furnishing marijuana to minors; different section numbering.

H.167

- Mostly the same as H.511, but does not repeal 18 V.S.A. § 4230d (delinquency offense of possession by person under 16). Different and section numbering.

H.170

- Higher possession amounts allowed for persons under 21 before considered a civil violation. Creates criminal offense and civil cause of action for damages.

H.490

- Does not change 18 V.S.A. § 4230b or repeal 18 V.S.A. § 4230d. Creates criminal offense and civil cause of action for damages.

H.511: Motor Vehicle-Related Offenses

23 V.S.A. §§ 1134, 1134a

- Prohibit consumption of marijuana while driving, including inhaling secondhand marijuana smoke
- Prohibit open containers of marijuana in passenger area of vehicle and impose \$200 penalty for violations

23 V.S.A. § 1134b

- Creates misdemeanor crime of using marijuana in a motor vehicle occupied by a child under 18. Violation results in:
 - Penalties from \$500-\$1,000 depending on # of offenses.
 - 2 points assessed on license

33 V.S.A. § 3504

- Creates misdemeanor crime of marijuana use or cultivation at child care facility. Violations subject to penalties from \$500-\$1,000 depending on # of offenses.

Other Bills: Motor Vehicle-Related Offenses

S.22

- Similar offenses as H.511, but much less severe penalties (or none).

H.167

- No new penalties. Requires: AOT Highway Safety Program to expand public education and report to Legislature. Requires data reporting on impaired driving. Requires law enforcement training.

H.170

- Similar offenses as H.511, but much less severe penalties (or none).

H.490

- None

H.511: Other Miscellaneous Offenses

18 V.S.A. § 4230h (new)

- Creates new offense of chemical extraction or chemical synthesis using butane or hexane unless authorized by DPS as a registered marijuana dispensary

18 V.S.A. § 4230i (new)

- Certain felony convictions also result in civil violation and/or misdemeanor, and will be assessed penalties or imprisoned

18 V.S.A. § 4476

- Amends criminal offense for selling drug paraphernalia to persons under 18

Other Bills: Other Miscellaneous Offenses

S.22

- Same as H.511. Different section numbering.

H.167

- Only includes offense of chemical extraction.

H.170

- Same as H.511. Different section numbering.

H.490

- Only includes offense of chemical extraction.

H.511: Marijuana Regulatory Commission

Creates a Marijuana Regulatory Commission tasked with similar duties to Governor's Marijuana Advisory Commission:

- issue a report of findings and recommendations, and
- develop legislation that
 - establishes a comprehensive regulatory and revenue system for an adult-use marijuana market that, when compared to the current illegal marijuana market,
 - increases public safety and reduces harm to public health, and
 - results in net revenue to the State.

Focus on remedying disparate impact of Vermont's drug laws on racial minorities

Other Bills: Commission

S.22

- Same as H.511: Marijuana Regulatory Commission

H.167

- Marijuana Program Review Commission; report 2020
 - 4 Legislators, 2 public members, Attorney General

H.170

- None

H.490

- Marijuana Program Review Commission; report 2020
 - 4 Legislators, 2 public members, Attorney General

FEES, TAXATION, AND REGULATION

H.167 and H.490

H.167: An act relating to alternative approaches to addressing low-level illicit drug use

Tax and Regulatory structure

- Regulated by AAFM:
 - cultivation, processing, packaging, transportation, testing, purchase, and sale of marijuana
- Administered by Dept. of Taxes:
 - 25% excise tax on retail sales
 - Marijuana excise tax license required to collect excise tax

H.167: An act relating to alternative approaches to addressing low-level illicit drug use

Fees

- Application, initial & annual renewal license fees (pro-rated if application submitted during transition period and applicant not selected):
 - Cultivator: \$1,000-\$30,000 based on sq. footage
 - Retailer: \$15,000
 - Testing Lab: \$500 application and \$2,500 initial & renewal
 - Change of Corporate Structure: \$1,000
 - Change of Name: \$1,000
 - Change of location: \$1,000
 - Modification of license premises: \$250
 - Addition of financier: \$250
 - Duplicate license: \$100
 - Background check fee: \$50

H.490: An act relating to the regulation of commercial cultivation and sale of marijuana

Tax and Regulatory structure

- Regulated by AAFM:
 - cultivators, wholesalers, product manufacturers, retailers, and testing laboratories.
- Individuals may assign their right to cultivate to another individual, who may hold rights from up to 10 other individuals.
- Taxes administered by Dept. of Taxes

H.490: An act relating to the regulation of commercial cultivation and sale of marijuana

Taxes

- 15% wholesale sales tax
 - paid by wholesaler, product manufacturer, or cultivator
- 10% retail sales tax
 - paid by buyer
 - based on retail sales price of marijuana or marijuana-infused products
 - floor prices based on quantity and form of product:
 - Min. \$12.00 per ounce of marijuana;
 - \$4.00 per quarter ounce of marijuana; or
 - \$2.00 per unit of marijuana-infused products
- 2.5% local tax on buyer based on retail sales price

H.490: An act relating to the regulation of commercial cultivation and sale of marijuana

Revenues

Tax revenue intended to cover expenses of regulating marijuana sales, allocated to General Fund and towns where sales are made.

H.490: An act relating to the regulation of commercial cultivation and sale of marijuana

License Fees

- Nonrefundable application fee (pro-rated if application submitted during transition period and applicant not selected): 25% of fee per license
- Initial application and annual renewal fees:
 - Cultivator license based on cultivation space
 - Up to 500 sq. feet: outdoor \$500; otherwise \$1,500
 - 500-10,000 sq. feet: outdoor \$1/sq. foot; indoor \$3/sq. foot
 - Wholesaler license: \$10,000
 - Product manufacturer license: \$2,500
 - Retailer license: \$10,000
 - Testing lab: \$500