American Bar Association

2019 Annual Meeting

CLE Materials

Smoking Out the Issues and Challenges in the Legalization of Cannabis

Friday, August 9, 2019

Hotel Nikko
222 Mason Street
San Francisco, CA

Room: Nikko Ballroom 1, 3rd Floor

1:45 p.m. – 3:15 p.m.

Sponsored by

ABA
American Bar Association
Judicial Division
National Conference of the Administrative Law Judiciary
Biographies

**Alan Alvord**
Alan Alvord is Presiding Judge at the California Office of Administrative Hearings (San Diego), with responsibility for hearing cases on licensing of medical and recreational cannabis vendors throughout the state.

**Axel Bernabe**
Axel Bernabe is Assistant Counsel for Health for Governor Andrew M. Cuomo (New York), with oversight of the state’s health portfolio, legislation on health-related laws and policies, the State’s annual Budget, and is counsel to teams responsible for operations, public relations and budget with the Executive branch and the state Department of Health. As part of his responsibilities, Axel oversees the development and implementation of all legal and policy initiatives related to medical, hemp, and adult-use cannabis for the State, and has directed the expansion of the state’s medical cannabis program, including the creation of a new Office of Cannabis Management.

**Rick Garza**
Rick Garza is the Director of the Washington State Liquor and Cannabis Board. Washington was the first state to establish a system for legally producing, processing and retailing cannabis.

**Harinder Kapur**
Harinder Kapur is the Senior Assistant Attorney General (California) in Cannabis Control Section in the Office of the Attorney General. The Section represents the Bureau of Cannabis Control, the Department of Food and Agriculture, and the Department of Public Health in licensing matters, handles cannabis-related civil-litigation matters, and also coordinates with law enforcement agencies throughout the state to protect consumers through regulating the cannabis industry. Ms. Kapur is a member of the California Highway Patrol’s Impaired Driving Taskforce and involved in statewide cannabis enforcement. She has litigated cases with the Office of the Attorney General for over 13 years.

**Rebecca Stamey-White**
Rebecca Stamey-White is a partner and the firm’s cannabis practice leader at Hinman & Carmichael LLP (San Francisco), a nationally-recognized
boutique law firm representing the alcoholic beverage, hospitality and cannabis industries and their service providers. Rebecca helps her clients secure and maintain their required alcohol and/or cannabis licenses by providing licensing, production, distribution, sales, and marketing legal counsel and by defending clients before alcohol regulatory bodies when their licenses are at risk.

**Patricia Miles – Moderator**
Patricia Miles is an ALJ at the California Public Utilities Commission (San Francisco) and was a member of the Executive Committee of the National Conference of Administrative Law Judiciary (NCALJ) August 2014 – August 2018. She currently serves on the ABA Coalition on Racial and Ethnic Justice (COREJ) and was appointed Vice Chair of the Judicial Division membership committee in August 2018 with the goal of encouraging participation in the ABA by judges within various national minority bar associations.
DEPARTMENT-CONDUCTED RESEARCH PARTNER AGREEMENT
INDUSTRIAL HEMP PROCESSOR (CBD)

This Department-Conducted Research Partner Agreement ("Research Agreement"), dated __________, between the State of New York, acting by and through the New York State Department of Agriculture and Markets, or another agency, department or authority of New York State subsequently designated by the State (the "Department") and __________ (the "Research Partner").

WHEREAS, pursuant to Title 7 U.S.C. § 5940 and New York State Agriculture and Markets Law § 505, et seq., the Commissioner of the New York State Department of Agriculture and Markets has been granted the authority to approve sites for the study of the growth and cultivation, sale, distribution, transportation and processing of hemp and products derived from such hemp as part of an agricultural pilot program conducted by the Department; and

WHEREAS, the Department has decided to undertake an agricultural research pilot program with respect to industrial hemp as provided for in 7 U.S.C § 5940 (the "Research Pilot Program"); and

WHEREAS, pursuant to Agriculture and Markets Law § 506, et seq., the Department has the authority to partner with individuals, businesses and institutions of higher education in connection with its Research Pilot Program;

WHEREAS, the Research Partner has submitted an application to engage in research with respect to cannabidiol and other cannabinoids exclusive of tetrahydrocannabinol (collectively, "CBD") in connection with products to be used for human or animal consumption or topical application;

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, the parties do hereby agree as follows:

SCOPE OF RESEARCH

1. The Research Partner shall act as a researcher in connection with the Research Pilot Program.

2. The Research Partner’s authority to study industrial hemp in the manner set forth on its “Application to become a Research Partner in the Department’s Industrial Hemp Research Pilot Program” (attached as Exhibit 1, and herein referred to as the “Scope of Work”) shall commence upon the execution of this agreement by both parties and shall continue unless suspended or terminated, as set forth below.
3. The Research Partner’s authority to research industrial hemp is limited to the research set forth in the Scope of Work and the Research Partner shall strictly adhere to the Scope of Work, except as otherwise authorized pursuant to Paragraph 4, herein. The Department will monitor the Research Partner’s compliance with the research focus, scope, locations and size as set forth in the Scope of Work and shall have the right to monitor compliance by, among other things, having the right to: access the registered premises, engage in periodic, unannounced inspections, conduct sampling and regulatory testing, inspect the books and records of the Research Partner, and to promptly receive information reasonably requested of the Research Partner with respect to the research project and/or its operations.

4. The Research Partner shall obtain prior written approval from the Department before implementing any modifications to the Scope of Work, including, without limitation, any modification of the research focus, scope, processes, locations or size described in the Scope of Work, and making any changes to any site at which the research is being conducted.

5. Should the Research Partner seek to conduct additional industrial hemp research separate and distinct from that which is described in the Scope of Work, the Research Partner shall make new application for such other research pilot and must be approved by the Department prior to conducting the proposed research. Should the Research Partner desire to grow or cultivate industrial hemp, the Research partner must make application to the Department to become an industrial hemp grower.

PARTIES CONDUCTING RESEARCH

6. At all times during the term of this Research Agreement, and with respect to the obligations surviving the expiration, suspension or termination of the Research Agreement as set forth in Paragraph 73 herein, the Research Partner shall remain responsible for the performance under this Research Agreement. If requested by the Department, the Research Partner shall present evidence of its continuing legal authority to do business in New York State, integrity, experience, satisfactory performance, ability and/or organizational and financial capacity to perform the Scope of Work.

7. The Research Partner shall disclose any felony or drug-related misdemeanor conviction within the last ten years and, upon the Department’s request, agree to provide fingerprints and all necessary consents for the Department to obtain a criminal background check on the Research Partner, if an individual. In the event the Research Partner is not an individual, the Research Partner shall identify (a) the individual(s) in control of the Research Partner; and (b) whether such individuals have been convicted of any felony or drug-related misdemeanor within the last ten years. The Research Partner, upon the Department’s request, shall provide fingerprints and deliver all necessary consents for the Department to obtain a criminal background check on the individuals listed on Exhibit 2. The felony or drug-related misdemeanor conviction of the Research Partner or any of the individuals
listed on Exhibit 2 and may result in the suspension or termination of the Research Agreement. During the term of this Research Agreement, in the event there is a change to the information provided under this paragraph, the Research Partner shall update that information within ten days of its occurrence.

8. The Research Partner shall: (a) provide a list of other persons (including all subcontractors, agents, independent contractors) who will provide material assistance of any kind to the Research Partner’s research described in the Scope of Work; and (b) upon the Department’s request, provide fingerprints and obtain all necessary consents for background checks for any such persons. During the term of this Research Agreement, in the event there is a change to the information provided under this paragraph, the Research Partner shall update that information within ten days of its occurrence.

9. The Research Partner shall notify the Department of any felony or drug-related misdemeanor conviction rendered against or plea of guilty entered by any individual performing services in connection with the Scope of Work during the term of this Research Agreement, within ten days of its occurrence. Such conviction may result in the disqualification of that person or entity from continued performance of the Scope of Work and/or may result in the suspension or termination of the Research Agreement.

10. The Research Partner’s engagement of any subcontractor to perform any work described in the Scope of Work shall be approved in advance by the Department. The Research Partner shall require any subcontractor to provide information requested by the Department to determine whether the proposed subcontractor is a responsible service provider.

11. The Research Partner, notwithstanding any subcontracting, shall remain responsible and liable for all work performed by a subcontractor or under any subcontract with respect to the Scope of Work.

12. Upon execution of a subcontract, the Research Partner shall provide detailed subcontract information, and/or a copy of the subcontract, within fifteen (15) calendar days after execution. In the event the Research Partner chooses to provide only detailed subcontract information, upon the Department’s request, the Research Partner shall provide copies of all contracts or subcontracts relating to the work described in the Scope of Work.

13. The Department, during the course of the pilot, retains the discretion to, among other things: (a) determine what persons, entities, and sites may continue to participate in the Research Pilot Program; and (b) de-certify and de-register a site used to process industrial hemp at any time, following an opportunity to be heard.

14. It is understood and agreed that the legal status of the Research Partner, its employees, agents, partners, or subcontractors is that of an independent contractor and in no manner, shall they be deemed employees or agents of the State of New York and, therefore, are not entitled to any of the benefits associated with such employment or designation.
REPORTS, PUBLICATION AND INTELLECTUAL PROPERTY

15. The Research Partner shall file an annual report summarizing the results of the research described in the Scope of Work and share any data related to the sale, distribution, transportation and processing of hemp and products derived from hemp during the course of that research, including without limitation the variety used in the processing, the amount of industrial hemp acquired and processed, the disposition and/or use of the industrial hemp crop and the economic viability of the project. Annual reports shall be submitted to the Department, with the first report due one year following the Department’s approval of the project, and continuing each year thereafter, until this Research Partner Agreement expires or is otherwise terminated.

16. The State shall have a perpetual royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, data and materials required to be reported to the Department with respect to the Research Partner’s agricultural research pilot or the results and accomplishments achieved.

17. All rights and title to intellectual property created, invented or discovered exclusively by the Research Partner in connection with the Research Pilot Program shall vest in the Research Partner. All rights and title to intellectual property created, invented or discovered exclusively by one or more New York State employees without the use of the Research Partner’s resources shall vest in New York State. All rights and title to intellectual property created, invented or discovered jointly by one or more employees of the Research Partner and one or more employees of New York State with the use of Research Partner resources shall be jointly owned by the Research Partner and New York State.

CONFIDENTIALITY

18. Any data or records marked as confidential may be used or maintained only for the limited purposes of the Research Pilot Program. The parties agree that (a) the Department’s obligation under this section may be limited by the requirements of the Freedom of Information Law or other applicable provisions of State and federal law and (b) the parties shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa; State Technology Law § 208).

19. The Research Partner consents to: (a) the Department providing information to law enforcement agencies about the industrial hemp research activities taking place at the agricultural pilot program sites; (b) entry onto all premises where hemp plants, product or materials are located by the Department, with or without cause, with or without advance notice, for inspection, sampling, testing or any other purpose relating to the research being conducted.
RISKS OF INDUSTRIAL HEMP RESEARCH

20. Pursuant to Title 7 U.S.C. § 5940 and New York State Agriculture and Markets Law § 505, et seq., the Department has been granted the authority and has decided to undertake an agricultural research pilot program with respect to industrial hemp as provided for under Federal and state law. The Research Partner acknowledges that absent participation in the Department’s Research Pilot Program, the conduct of the research described herein might constitute a violation of both federal and state law.

21. The Research Partner is aware that: the federal and state regulatory environment surrounding industrial hemp is in transition; certain aspects of the law relating to industrial hemp are subject to differing interpretations; and the possession of industrial hemp outside the terms of this Research Agreement or the Scope of Work may constitute a violation of state and/or federal law.

22. The Research Partner is aware that the adoption of the Agricultural Improvement Act of 2018 (the "2018 Farm Bill") materially changes the federal and state regulatory approach to industrial hemp.

23. Section 7605(b) of the 2018 Farm Bill provides for the repeal of 7 U.S.C. § 5940 (Legitimacy of Industrial Hemp Research) one year after the date on which the Secretary of Agriculture establishes a plan under § 297C of the Agriculture Marketing Act of 1946. On or prior to that time, the Research Pilot Program will be terminated, and the Research Partner, should it intend to continue the research set forth in the Scope of Work or such other activities with respect to industrial hemp, the Research partner shall be required to qualify for and obtain all state and/or federal licenses required for its operation.

24. The Research Partner is aware that there is currently proposed legislation, the adoption of which would require licensing by the State, may impose additional requirements or restrictions with respect to the Scope of Work and/or the Research Partner’s operation and impose, additional fees and may authorize broader activities with respect to industrial hemp than permitted under the Research Partner Agreement.

25. The Research Partner is aware that the United States Food and Drug Administration has taken the position that CBD products are excluded from the dietary supplement definition under § 201(ff)(3)(B)(ii) of the Act [21 U.S.C. § 321(ff)(3)(B)(ii)] because: (1) CBD has been authorized for investigation as a new drug for which substantial clinical investigations have been instituted and for which the existence of such investigations has been made public; and (2) CBD does not fall within the exception for substances either marketed as a dietary supplement or as a conventional food before the new drug investigations were authorized. The FDA has stated that while it is not aware of evidence calling into question its conclusion that CBD products are excluded from the dietary supplement definition, it has indicated that a producer may present the agency with any evidence that has bearing on its conclusion.
26. The Research Partner has made and shall continue to make its own independent determination with respect to its legal obligations under federal and state law with respect to any product it produces under this Research Agreement; nothing in this Research Agreement shall be construed as the Department’s position or determination as to how any product produced hereunder should be categorized and/or regulated under federal law.

27. The Research Partner is responsible for the routine testing of the industrial hemp it uses to ensure that the delta-9 THC content does not exceed 0.3 percent, on a dry weight basis. The Research Partner consents to the forfeiture or destruction, without compensation, of hemp material found by the Department to have a measured delta-9 THC content of more than 0.3 percent on a dry weight basis. The Research Partner consents to the Department’s sampling, testing and inspection, without compensation, of any hemp material identified by the Department at the location described in the Scope of Work for the purpose of verifying the THC content of the hemp material in the possession of the Research Partner.

28. The Research Partner represents that it is aware of the federal and state statutes relating to the proposed research project, including the applicable guidance.

29. The Research Partner represents that it is aware of its obligation to comply with all current and future local, state, and federal laws and regulations applicable to, among other things, the processing or manufacture of industrial hemp into products, its distribution and/or transportation with respect to, among other things, food, dietary supplements, cosmetics and/or drugs.

30. The Research Partner acknowledges the inherent risk associated with participation in a research program focusing on a new crop. By entering this Research Agreement and agreeing to perform the Scope of Work, the Research Partner assumes and bears sole responsibility for financial or other losses that may result from the Research Partner’s choice to participate as a researcher under the Research Pilot Program to study industrial hemp.

31. The Research Partner represents that it has sought whatever legal or other advice it believes to be appropriate and is not relying upon the Department’s approval of its research proposal or any other statement or conduct by the Department in connection with the Research Partner’s evaluation of any legal or other risk to which the Research Partner may be exposed in undertaking the project, including, without limitation, the FDA’s position with respect to CBD and dietary supplements.

32. The Research Partner acknowledges that: (a) the Research Partner is responsible for its research, product testing and product safety; (b) the Department’s approval of the Research Partner’s application does not constitute an endorsement, approval or warranty, express or implied, as to the safety or effectiveness of any product developed, produced or sold pursuant to this Research Agreement; and (c) the Department expressly disclaims any warranty of merchantability or fitness for a particular purpose for any product developed, produced or sold pursuant to this Research Agreement.
33. The Research Partner agrees that the Department is not responsible for reimbursing or compensating it for any actual loss and/or loss of anticipated profits resulting from the Research Partner’s involvement with or participation in the Research Pilot Program.

LEGAL STANDARDS/PROCESSING/PRODUCTION REQUIREMENTS

34. The Research Partner acknowledges that the state of the law with respect to industrial hemp is in flux, at both the federal and state level, and that the Department expressly reserves the right, at its sole discretion, to eliminate, modify and/or add requirements concerning the research project, including any process used and/or product produced by the Research Partner, or end the research pilot program, upon 60-days written notice.

35. The Research Partner shall immediately make available to the Department such records relating to sampled specimens having a concentration of more than 0.3 percent of delta-9 tetrahydrocannabinol on a dry weight basis, in a form and at a location satisfactory to the Department.

36. The Research Partner shall promptly dispose of all industrial hemp in its possession reasonably believed, based upon the results of regulatory or other sampling, to have a concentration of more than 0.3 percent of delta-9 tetrahydrocannabinol, on a dry weight basis.

37. It is the responsibility of the Research Partner to ensure that any product produced pursuant to this Research Agreement is safe.

38. The Research Partner is solely responsible for any product, its content, any statements made with respect to the product and its safety.

39. CBD product developed and/or produced under this Research Agreement (whether an ingredient, an intermediate, or a final product), to the extent it is or will be a component of a dietary supplement (i.e., a product intended to supplement the diet, containing a vitamin, mineral, herb, botanical, amino acid, and/or dietary substance used to supplement a person’s diet by increasing the total dietary intake and as further specified in § 201(ff) of the Food Drug and Cosmetic Act) or a component of a dietary supplement, shall satisfy the requirements of this Research Agreement if manufactured, tested and labeled in accordance with this agreement and FDA law and regulations concerning dietary supplements, including, without limitation, 21 CFR 111.403(L) and 21 CFR 101.

40. For CBD or other cannabinoid product developed and/or produced under this Research Agreement, to the extent it introduces cannabinoids into or onto the human body or the body of an animal through topical application or other method for purposes other than as a dietary supplement, the Research Partner shall satisfy the requirements of this Research Agreement if the product is manufactured and labeled in accordance with 21 CFR 111 and 21 CFR 201 and complies with the provisions set forth herein.
41. No Research Partner: (a) shall add any cannabinoid extract to food, supplement any food with any cannabinoid, use any additive that increases the cannabinoid content of the food and/or process a food containing any part of the industrial hemp plant in a way that materially increases the food product’s level of cannabinoids to one higher than the level found in the source industrial hemp prior to its processing; and (b) sell that product as food.

42. To the extent a Research Partner intends to sell or distribute to the public CBD dietary supplements in other than pill, capsule, caplet, tablet, tinctures, droplets or elixir, chewable, or isolate form, the Research Partner must obtain the Department’s prior written approval for each such product it proposes to sell or distribute.

43. For the purposes of this Research Agreement, products and production methods used shall comply with FDA law, regulation and guidance concerning dietary supplements with respect to the standards for: personnel, facilities, production, process control systems, quality control measures, record retention, packaging, holding and distribution, supply chain management, recalls, returns, complaints and training associated with dietary supplements. Nothing in this paragraph is intended to circumscribe or otherwise limit the Research Partner’s compliance with the federal law, as interpreted by the agency or agencies responsible for the administration and/or enforcement any applicable federal law, except to the extent expressly provided otherwise herein.

44. In addition to any other testing requirements established by law to ensure the product is manufactured in a consistent manner and safe for human or animal consumption/use, the Research Partner shall obtain confirmation of any self-testing for, among other things, THC content from a laboratory acceptable to the Department to perform such testing. The Research Partner acknowledges that Department anticipates the development of a guidance document in connection with testing requirements relating to CBD product and agrees to promptly adhere to any additional testing set forth in such guidance following its publication.

45. Any CBD product that is intended for human consumption or absorption by the human body shall be tested in the same manner as required by the New York State Medical Marijuana program, 10 NYCRR Part 1004.14 with respect to cannabinoid profile, solvents, pesticides, heavy metals, bacteria and molds.

46. Any testing required under the Research Partner Agreement is the responsibility of the Research Partner and shall be performed at a lab acceptable to the Department to perform such testing. The Research Partner shall deliver the results of all such testing to the Department within seven days of receipt.

47. Should the testing results for the tested product exceed the limits set forth in the 10 NYCRR Part 1004.14 testing protocol, the Research Partner shall destroy all such product from the tested lot and not use it in any product.
48. The Research Partner is required to obtain third-party certification to confirm that the Research Partner’s manufacturing processes conform to applicable government regulations set forth in this agreement from an individual or entity qualified to provide such certification, on an annual basis.

49. Before the Research Partner makes any sale of any product produced under this Research Agreement or otherwise distributes the product to the public, the Research Partner shall deliver to the Department a certification from a third-party individual or entity qualified to certify that the Research Partner’s manufacturing processes conform to the standards and requirements set forth in this Research Partner Agreement. No sale or other distribution of this product to the public by the Research Partner shall be permitted, unless and until the Research Partner has received written notification from the Department that it has received a third-party certification of compliance that is acceptable to the Department.

50. Notwithstanding anything in this Research Agreement, no vaping product or product introducing CBD through inhalation or a suppository is authorized or permitted by this Research Agreement, except upon further written application to the Department and its written approval.

51. Research Partners planning to extract CBD from industrial hemp shall use only CO2 or human grade ethanol extraction. No Research Partner may use extraction methods other than CO2 or human grade ethanol unless the Department provides its express written consent for the proposed processing method.

52. The Research Partner shall report to the Department its sales or transfers for further processing of any product or material derived from industrial hemp, to the extent that the product or material is a controlled substance. The Research Partner shall keep records of all such transfers or sales.

53. To permit greater oversight of the CBD dietary supplement market, the Department may require businesses that sell CBD product to register with the Department. The Department further reserves the right to limit the locations where the Research Partner may sell its CBD products or to restrict the Research Partner’s distribution of product to certain types of retail establishments. Should the Department elect to exercise this authority, it shall provide the Research Partner with written notice of such limitation at least 90 days prior to the time the limitation on distribution will go into effect.

54. The industrial hemp used in this research project shall be sourced from authorized New York State industrial hemp producers. The Research Partner may obtain an exemption from this requirement upon a satisfactory showing to the Department that a suitable variety of industrial hemp for the research project is not grown in New York and/or the use of New York sourced hemp is not practicable for the project.
55. In addition to all other disclosure requirements of law, the Research Partner shall set forth the serving size (or, as applicable, the amount of product to be used per application or use) and the total daily amount recommended for consumption use per day. Research Partners shall also evaluate the possible risks of the use of their CBD products, if any, and shall provide appropriate label warnings to address any such risk. The Research Partner acknowledges that the Department anticipates the development of a guidance document in connection with labeling requirements relating to CBD products.

56. In addition to all existing labeling requirements required under applicable law, the CBD product shall also include the following information:
   
a. The list of all pharmacological active ingredients, including and not limited to THC, CBD, and other cannabinoid content over .05%;
   b. CBD product must set forth the servings per bottle/package or applications/uses per package the amount of CBD in milligrams per serving/use, the total CBD content, in milligrams per package and the maximum recommended daily amount;
   c. The list of all solvents (pesticides) used in the cultivation/extraction process;
   d. Manufacture date and source;
   e. Batch number; and
   f. Expiration date of product.

57. The Research Partner shall promptly comply with any additional labeling and disclosure requirements set forth in Departmental guidance following its publication.

58. The Research Partner shall also provide the following notices on its product labels:
   
a. “This product is neither reviewed nor approved by the State of New York; and has not been analyzed by the FDA. There is limited information on the effects of using this product.”
   b. “Keep out of reach of children.”
   c. Provide product appropriate warning to consult a physician concerning product use.

59. The Department shall have full access to all premises, buildings, factories, farms, vehicles, cars, boats, airplanes, vessels, containers, packages, barrels, boxes, and/or cans for the purpose of enforcing the provisions of this article. Department representatives may, at such locations, examine industrial hemp and hemp products and may open any package and/or container reasonably believed to contain industrial hemp or hemp products, to determine whether such industrial hemp or hemp products follow applicable law or regulation.

60. The Department may quarantine industrial hemp when it has reason to believe that such commodity does not meet the definition thereof, set forth in subdivision (1) of § 505 of the Agriculture and Markets Law, or is otherwise in violation of or does not meet a standard set forth in, applicable law, regulation or the Research Partner Agreement. The quarantine may
be put into effect by: (1) delivering written notice directing the owner or custodian of industrial hemp not to distribute, dispose of, or move that commodity without the written permission of the Department or (2) by placing a tag or other appropriate marking on the product or commodity or adjacent thereto that provides and requires that such product must not be distributed, disposed of, or moved without the Department’s written permission, or (3) by otherwise informing the owner or custodian thereof that such condition must be complied with, followed by written notice of the quarantine.

61. The Department may seize industrial hemp by taking physical possession of industrial hemp when it has substantial evidence to believe that that commodity does not meet the definition thereof, set forth in subdivision (1) of § 505 of Agriculture and Markets Law, or is otherwise in violation of, or does not meet a standard set forth in, applicable law, or this Research Partner Agreement.

62. Subsequent to quarantining or seizing industrial hemp, as authorized in subdivisions (2) and (3) of this section, the Department shall promptly give the owner or custodian thereof an opportunity to be heard to show cause why such industrial hemp should not be ordered destroyed. The Department shall, thereafter, consider all the relevant evidence and information presented and shall decide whether such industrial hemp should be ordered to be destroyed; that determination may be reviewed as provided for in article seventy-eight of the civil practice law and rules.

SUSPENSION AND TERMINATION

63. The Department, in its sole discretion, reserves the right to suspend any or all activities under this Research Agreement if it discovers information and has reasonable cause to believe that the Research Partner has failed to abide by any of the terms of this Research Agreement, or if the Research Pilot Program is altered or terminated by legislative, judicial or executive action. In the event of such suspension, the Research Partner shall be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Research Partner shall comply with the terms of the suspension order. Activity under this Research Agreement may resume at such time as the Commissioner or his or her designee issues a written notice authorizing a resumption of performance under the Research Agreement.

64. This Agreement may be terminated by either party without cause upon ninety (90) days prior written notice. In no event shall any suspension or termination by the Department constitute or be deemed a breach of contract, and, therefore, no liability shall be incurred by or arise against the State, its officers or employees for actual losses, anticipated lost profits and/or any other damages.

65. When it is determined that the Research Partner has failed to abide by any of the terms of this Research Agreement, upon written notice and following a reasonable opportunity to be heard, the Commissioner or his or her designee may terminate this Research Agreement,
without any payment or compensation due to any party.

LIABILITY

66. The Research Partner shall be fully liable for the actions of its employees, agents, partners, or subcontractors and shall fully defend, indemnify, and hold harmless the State, its officers, and employees from suits, actions, proceedings, claims, losses, damages, and costs of every name and description relating to any and all accidents, personal injury and damage to real or personal tangible property caused by any intentional act or negligence of the Research Partner, or its employees acting within the scope of their employment, agents, partners and/or subcontractors in connection with this Research Agreement, without limitation; provided, however, that the Research Partner shall not be obligated to indemnify the State, its officers, or employees for any claim, loss, damage, or cost arising from this Research Agreement to the extent caused by the negligent act, failure to act, gross negligence, or willful misconduct of the State, its officers, or employees.

67. The State shall not be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from this Research Agreement.

TAXES

68. In the performance of any work under the Research Agreement, the Research Partner will be responsible for all applicable federal, State, and local taxes and for all FICA contributions that the Research Partner may be required to make on its own behalf or on behalf of its employees, agents, partners, or subcontractor.

FORCE MAJEURE

69. Neither party hereto will be liable for losses, defaults, or damages under this Research Agreement that result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this agreement, due to or because of acts of God, a public enemy, acts of government, earthquakes, floods, strikes, civil strife, terrorism, fire or any other cause beyond the reasonable control of the party that was so delayed in performing or so unable to perform, provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party will resume full performance of such obligations and responsibilities promptly upon removal of any such cause. Notwithstanding the occurrence of any event described above, the Department’s right of access to the Registered Premises shall not be denied.

ASSIGNMENT /CHANGE OF CONTROL

70. This Research Agreement is not assignable or transferrable by the Research Partner. Any
change of control or ownership of the Research Partner or of the individuals doing research pursuant to this Research is subject to and permitted only upon the prior written approval of the Department, which approval may be granted or withheld, in the Department’s sole discretion. The Department may assign, transfer and/or delegate the administration of this Research Partner Agreement to another agency or department of the State of New York. The Department shall provide written notice of any assignment, transfer or delegation at least 15 days prior to its effective date.

NOTICES

71. Any notice or communication by any party to the other required or permitted hereunder shall be in writing and shall be deemed duly served as of: (a) the date it is delivered by hand; (b) three business days after having been mailed by certified mail, postage prepaid, return receipt requested, or (c) the next business day after having been sent for delivery on the next business day, shipping prepaid, by a nationally recognized overnight courier, in each case to the receiving party at the address set forth on the signature page of this Research Agreement, or at such other address as a party may designate by written notice to the other party sent in the manner set forth herein.

SEVERABILITY

72. In the event that any one or more of the provisions of this Research Agreement shall for any reason be declared unenforceable under the laws or regulations in force, such provision will have no effect on the validity of the remainder of this agreement, which shall then be construed as if such unenforceable provision had never been written or was never contained in this Research Agreement.

SURVIVAL

73. The provisions of Section 16 (Publication/Publicity), Section 17 (Intellectual Property), Sections 18, 19 (Confidentiality), Sections 66, 67 (Liability) and Section 68 (Taxes) of this Research Agreement shall survive its suspension or termination.

ENTIRE AGREEMENT

74. This Research Agreement and any referenced exhibits constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings of the parties, whether written or oral, with respect to the subject matter hereof. No statement, promise, condition, understanding, inducement or representation, oral or written, express or implied that is not contained herein shall be binding or valid. This Research Agreement may not be changed, modified or altered in any manner except by an instrument in writing executed by the Department and the Research Partner.
IN WITNESS WHEREOF, the parties hereto have executed this Research Agreement as of the day and year first written above, and the persons signing this agreement represent and warrant that they are duly authorized to sign on behalf of the respective parties.

THE STATE OF NEW YORK,
acting by and through the Commissioner of the Department of Agriculture and Markets

By: ____________________________   By: ____________________________
Name: ____________________________   Name: ____________________________
Title: ____________________________   Title: ____________________________
Date: ____________________________   Date: ____________________________
ACKNOWLEDGEMENT FOR CORPORATIONS OR OTHER ENTITIES

STATE OF NEW YORK   )
   ss.:                        
COUNTY OF ________   )

On the ____ day of _____________, 20__, before me personally appeared
___________________, to me known, who being by me duly sworn, did depose and say
that he/she resides at ______________________________________________________, and is
the _________________________________ of the Research Partner described herein, which
executed the foregoing Research Agreement; and that he/she signed his/her name with
authorization of the Research Partner.

Notary _______________________

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ACKNOWLEDGEMENT FOR INDIVIDUALS

STATE OF NEW YORK  
COUNTY OF _________  

On the ___ day of ____________, 20__, before me personally appeared __________________, to me known, who being by me duly sworn, did depose and say that he/she resides at ______________________________________________________, and is the Research Partner described herein, who executed the foregoing Research Agreement.

Notary ______________________
ASSESSMENT OF THE POTENTIAL IMPACT OF REGULATED MARIJUANA IN NEW YORK STATE

July 2018
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Charge

In his January 2018 budget address, Governor Andrew M. Cuomo called for an assessment of the possible impact of regulating marijuana in New York State (NYS). The Governor directed NYS agencies to evaluate the health, public safety, and economic impact of legalizing marijuana. The experience of legalized marijuana in surrounding states was identified as an important issue to consider in the impact assessment.

Review Process

Pursuant to the Governor’s charge, a thorough review was conducted of the health, criminal justice and public safety, economic, and educational impacts of a regulated marijuana program in NYS. The assessment included an examination of the implications of marijuana legalization that has recently occurred in surrounding jurisdictions. This is particularly important because the status quo in NYS is changing as the State shares borders with some jurisdictions that have legalized marijuana and some that are likely to legalize soon.

This impact assessment involved a public health approach to examining the benefits and risks associated with legalizing marijuana in NYS as compared to maintaining the status quo. In developing the impact assessment, an extensive analysis of peer-reviewed literature was conducted, and information was obtained from jurisdictions that have legalized marijuana. In addition, experts in State agencies were consulted, including the Department of Health (DOH), the Office of Mental Health, the Office of Alcoholism and Substance Abuse Services, the NYS Police, the Office of Children and Family Services, the Department of Taxation and Finance, and the Department of Transportation.

Notably, some issues associated with regulating marijuana have been studied more thoroughly than others. In addition, relevant stakeholders with differing viewpoints have weighed in on the potential impact of legalizing marijuana. To ensure a comprehensive assessment, data from a variety of sources were acquired. Given the variety of sources utilized and the breadth of information contained in this report, some areas of potential impact contain discordant findings or viewpoints.

Introduction

Marijuana can be consumed by inhalation (smoking and vaporizing1), oral consumption and topicals. It contains a mix of THC2, cannabidiol (CBD)3, terpenes4, and other compounds. Marijuana is easily accessible in the unregulated market. A 2017 Marist Poll showed that 52 percent of Americans 18 years of age or older have tried marijuana at some point in their lives, and 44 percent of these individuals currently use it.1 Estimates from the National Survey on Drug Use and Health (NSDUH) indicate that one in ten New Yorkers used marijuana in the last month.2 The status quo (i.e., criminalization of marijuana) has not curbed marijuana use and has, in fact, led to unintended consequences, such as the disproportionate criminalization and incarceration of certain racial and ethnic groups that has a negative impact on families and communities.

From the late 1800s until the 1930s, marijuana was generally considered a benign, medically efficacious substance that was sold in pharmacies and doctors’ offices throughout the United States to treat various ailments. During the “reefer madness” era

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1 Vaporizing is the process of heating dried marijuana to a temperature just below its combustion point of 392°F. Vaporizers, devices used to use marijuana this way, consist of a heating source and a delivery system.
2 Tetrahydrocannabinol (THC) is the primary psychoactive component in marijuana which binds to the cannabinoid receptors primarily in the brain.
3 Cannabidiol (CBD) is a marijuana compound that has medical benefits but is not psychoactive. CBD is one of approximately 113 cannabinoids identified in cannabis.
4 Terpenes are a diverse class of hydrocarbons that are responsible for the aroma of the marijuana plant.
of the 1930s, there was a concerted effort to convince the country that marijuana posed such a danger to society, only prohibition could save it, and the risks continued to be exaggerated for many years through propaganda.³

In 1999 the Institute of Medicine (IOM) found a base of evidence to support the benefits of marijuana for medical purposes.⁴ There is a growing body of evidence that marijuana has health benefits. Peer-reviewed literature, news reports, and anecdotal evidence demonstrate that marijuana is beneficial for the treatment of pain, epilepsy, nausea, and other health conditions. Twenty-nine states and Washington, DC, have established medical marijuana programs that benefit patients with numerous conditions. Success with medical programs across the country has led some jurisdictions to legalize marijuana for regulated adult use⁵ (eight states and Washington, DC). Low THC/high CBD⁶ products are approved in 17 additional states (See Appendix A Figure 1).⁶

In addition, studies have found notable associations of reductions in opioid prescribing and opioid deaths with the availability of marijuana products. States with medical marijuana programs have been found to have lower rates of opioid overdose deaths than other states.

In 2014, Governor Cuomo signed the Compassionate Care Act into law, establishing New York State’s Medical Marijuana Program. Since the program was established, continued improvements have been made to better serve patients. To improve patient access, nurse practitioners and physician assistants were approved to certify patients for medical marijuana, and the number of organizations approved to manufacture and dispense medical marijuana was increased. In addition, the list of qualifying conditions was expanded to include chronic pain and post-traumatic stress disorder. Most recently, in response to the unprecedented opioid epidemic, it was announced that opioid use will be added as a qualifying condition to ensure that providers have as many options as possible to treat patients. Other program enhancements include extending the variety of medical marijuana products, improving the dispensing facility experience, and streamlining program requirements. The State’s Medical Marijuana Program is a national model, with almost 1,700 registered providers and 59,653 certified patients.

In addition to health impacts, the prohibition of marijuana has had significant impacts on criminal justice. The Marijuana Reform Act of 1977 decriminalized private possession of a small amount of marijuana, punishable by a maximum fine of $100. However, possession of marijuana in public view remains a misdemeanor. Over the past 20 years, there have been more than 800,000 arrests for marijuana possession, and the increasing emphasis on minor marijuana arrests has had a disproportionate impact on communities of color.⁷ The over-prosecution of marijuana has had significant negative economic, health, and safety impacts that have disproportionately affected low-income communities of color. In 2012, the Governor introduced legislation to ensure that possession of a small amount of marijuana, whether public or private, is treated as a violation and not as a misdemeanor. The legislature failed to adopt the proposal. Because of the over-prosecution of marijuana, a regulated program in NYS should include provisions to address the collateral consequences of prior criminal convictions for marijuana possession or use, such as barriers to housing and education. As the Governor has stated, the impact of legalization in surrounding states has accelerated the need for NYS to address legalization. It has become less a question of whether to legalize but how to do so responsibly.

A regulated marijuana program would have health social justice and economic benefits. However, risks products can be legal in states that do not have a medical marijuana program.

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³ Low THC/high CBD products do not have psychoactive components and are used for medicinal purposes through oral ingestion or topical application. These...
associated with marijuana have been identified, although research for some of those risks is divided. For example, research has demonstrated an association between maternal marijuana smoking and lower birth weight of newborns. Marijuana use may be harmful to the lungs if a combustible form is smoked. For individuals who are susceptible to psychosis, regular use lowers age of onset of psychosis.\(^8\) In addition, there are valid concerns about traffic safety. Risks can be monitored and reduced in a regulated marijuana environment with the establishment of regulations that enhance State control. Regulating marijuana enables public health officials to minimize the potential risks of marijuana use through outreach, education, quantity limits at point of sale, quality control, and consumer protection.

The positive effects of regulating an adult (21 and over) marijuana market in NYS outweigh the potential negative impacts. Harm reduction principles can and should be incorporated into a regulated marijuana program to help ensure consumer and industry safety. Legalizing marijuana could remove research restrictions in NYS, which will enable the State to add to the knowledge of both the benefits and risks. In addition, NYS would be one of the largest regulated marijuana markets. As such, there is potential for substantial tax revenue in NYS, which can be used to help support program initiatives in areas such as public health, education, transportation, research, law enforcement and workforce development. Tax revenues can also support health care and employment. Finally, legalization of marijuana will address an important social justice issue by reducing disproportionate criminalization and incarceration of certain racial and ethnic minority communities.

Findings

### 1. Health

**Regulating marijuana reduces risks and improves quality control and consumer protection.**

The organization *Doctors for Cannabis Regulation* states that regulation benefits public health by enabling government oversight of the production, testing, labeling, distribution, and sale of marijuana.\(^9\) Potency can vary widely based on the strain of marijuana, the way the plant is grown, the part of the plant that is used, how it is stored, and how it is consumed.\(^10\) Consumers purchasing marijuana on the unregulated market are at a severe disadvantage for understanding the nature (e.g., potency and safety) of the product they are acquiring. In an unregulated market where there is no standardization or quality control, there are many opportunities for unsafe contaminants to be introduced, such as fungi spores, mold, bacteria, heavy metals, pesticides, and growth enhancers. As such, regulated marijuana introduces an opportunity to reduce harm for consumers through the requirement of laboratory testing and product labeling.\(^11\) Similar protections are in place for the alcohol and tobacco industries. In a regulated environment, individuals know what they are consuming and can choose a product accordingly. Trained employees can provide guidance and education at point of sale.

➢ *Subject matter experts* noted that a regulated environment will support consumer choice of content, because education about THC and CBD levels can be made available. Consumers can be given information about the experience they can expect based on the product they purchase and the method of ingestion. Comparisons were made to New York’s Medical Marijuana Program, in which pharmacists and patient counseling are available in dispensaries. People are advised to ‘start low and go slow’ and find the right fit for them.
Research in Colorado found after medical marijuana legalization, there was a significant increase in the number of children under age 12 admitted to emergency rooms due to unintentional marijuana ingestion (over half the cases involved medical marijuana “edibles”).

A regulated marijuana program should create guidelines to ensure packaging is not attractive to children. Packaging should be child proof and opaque and contain a visible warning label to avoid accidental ingestion and deter minors from using the products. Testing and labeling products will ensure quality and protect public health. A harm reduction approach will ensure consumers are informed about their choices and understand the chemical make-up and potency of the products they purchase.

**Marijuana may reduce opioid deaths and opioid prescribing.**

Research indicates that regulating marijuana can reduce opioid use (legal and illegal). Medical marijuana has added another option for pain relief which may reduce initial prescribing of opioids and assist individuals who currently use opioids to reduce or stop use. Legalization may ease access to marijuana for pain management. The opioid epidemic in NYS is an unprecedented crisis. Diagnoses of opioid use disorder are on the rise. Besides the dramatic increase in the number of deaths in the past few years, this epidemic has devastated the lives of those with opioid use disorder, along with their families and friends. Those with opioid use disorder are at higher risk for HIV, Hepatitis C, and chronic diseases.

In NYS, overdose deaths involving opioids increased by about 180 percent from 2010 (over 1,000 deaths) to 2016 (over 3,000 deaths). Opioid overdose is now commonplace throughout NYS. Marijuana is an effective treatment for pain, greatly reduces the chance of dependence, and eliminates the risk of fatal overdose compared to most opioid-based medications. Studies of some states with medical marijuana programs and/or regulated adult-use have found notable associations of reductions in opioid deaths and opioid prescribing with the availability of marijuana products. States with medical marijuana programs have been found to have lower rates of opioid overdose deaths than other states, perhaps lower by as much as 25 percent. Studies on opioid prescribing in some states with medical marijuana laws have noted a lower rate of opioid prescribing, and the implementation of adult-use marijuana laws (which all occurred in states with existing medical marijuana laws) was associated with a lower rate of opioid prescribing. Following legalization of adult-use marijuana in Colorado, the State saw a short-term reversal of the upward trend in opioid-related deaths.

A regulated marijuana program should promote awareness of marijuana as an effective pain treatment and an alternative to opioids. A regulated marijuana program should coordinate with the State’s Medical Marijuana Program and provide education on the assistance that is available through the Medical Marijuana Program.

**Marijuana has intrinsic health benefits and risks.**

Evidence supports the efficacy of marijuana’s therapeutic benefits. Growing research has demonstrated that marijuana is beneficial for the treatment of pain, epilepsy, nausea, and other health conditions. The medicinal benefits of marijuana have been acknowledged. The negative health consequences of marijuana have been found to be lower than those associated with alcohol, tobacco and illicit drugs including heroin and cocaine.

There is an association between marijuana use and impairment in the cognitive domains of learning, memory, and attention (due to acute marijuana use).

Amotivational syndrome is anecdotally reported to be associated with chronic marijuana use. This is not supported in the literature. One study found that while cannabis was associated with a transient amotivational state, dependence was not associated with amotivation. Another study, using
a survey to compare daily users to never-users found no difference in motivation as measured by an Apathy Scale.\textsuperscript{28}

Marijuana may be harmful to the lungs if a combustible form is smoked. However, alternatives can be used (e.g., vaping, edibles). Regulating marijuana will provide an opportunity to furnish information regarding the various methods of consumption.

Most women who use marijuana stop or reduce their use during pregnancy.\textsuperscript{29} There is research that demonstrates an association between maternal marijuana smoking and lower birth weight of the newborn. Data have not identified any long-term or long-lasting meaningful differences between children exposed to marijuana in utero and those not exposed.\textsuperscript{30} There are insufficient data to evaluate the effects of marijuana use on infants during lactation and breastfeeding, and in the absence of such data, marijuana use is discouraged. The American College of Obstetrics and Gynecology (ACOG) recommends that women who are pregnant should be discouraged from using marijuana due to concerns regarding impaired neuro-development as well as maternal and fetal exposure to the adverse effects of smoking. The ACOG recommends seeking alternative therapies for which there are better pregnancy-specific safety data.\textsuperscript{31}

A regulated marijuana program should furnish education about the health benefits and risks of marijuana and provide guidelines to reduce potential harms of marijuana use.

**Marijuana can have effects on mental health.**

There is little evidence that marijuana use is significantly or causally associated with more common mental illnesses (such as mild-to-moderate depression or anxiety) or other adverse outcomes (such as suicide) in the general population. Regular marijuana use in youth is associated with lower academic achievement,\textsuperscript{32} but causation is unclear (e.g., cognitive vs. motivation vs. other factors).\textsuperscript{33}

There is strong evidence that individuals with serious mental illnesses (SMI) in general, including psychotic disorders, bipolar disorders, and serious depression, use marijuana at high rates, and those who continue using marijuana have worse outcomes and functioning.\textsuperscript{34}

Adolescents who use marijuana regularly have an increased risk of developing psychosis.\textsuperscript{35} Additionally, for individuals who are susceptible to psychosis, regular use of marijuana lowers the age of onset of psychotic disorders.\textsuperscript{36} People with psychotic disorders who use marijuana regularly have worse symptoms, functioning, and health outcomes, and stopping marijuana use improves mental health outcomes.\textsuperscript{37,38}

In individuals diagnosed with bipolar disorder, there is evidence of an association between regular marijuana use and increased symptoms of mania and hypomania.\textsuperscript{39,40}

It is important to note that there is some evidence that CBD can reduce the effect of THC on psychosis, and using marijuana with lower levels of THC may be less likely to be associated with the development of psychosis.\textsuperscript{41} In addition, research has shown that genetics and other environmental factors also have significant effects on the course of SMI.\textsuperscript{42}

Subject matter experts noted that there are many possible confounding factors when examining the relationship between marijuana use and various health outcomes, and we should, therefore, be careful about stating as fact that one thing causes another. Others noted there is substantial evidence of the effects of marijuana use on persons at risk for psychotic illnesses, and there is controversy about its effects on people with less serious mental illnesses such as milder depression and anxiety.

Public health surveillance and education officials will need to conduct surveillance on youth marijuana use and any possible impacts on the onset and incidence of psychosis, as well as effects on academic achievement. Mental health professionals will need to monitor the effects of
marijuana legalization on the population with SMI, and resources will need to be directed to prevention, harm reduction and treatment efforts for individuals with SMI.

**Changes in overall patterns of use are not likely to be significant.**
It is likely that some people who have never used marijuana before due to fear of legal repercussions may try marijuana once legal sanctions are lifted. Some states that have a regulated marijuana program have seen a slight increase in adult use, while other states have seen no increase at all. This does not mean that those individuals will become regular or even semi-regular marijuana users.

It is important to note that reported increases in the number of people who use marijuana can be partially attributed to under-reporting prior to legalization, when there is reluctance to report illegal drug use due to fear of legal repercussions and stigma. Decreasing social stigma surrounding marijuana and no longer having to fear legal repercussions can lead to accurate reporting on use in surveys after legalization.

**Subject matter experts** noted that there is no conclusive evidence about whether legalizing marijuana increases use. It was pointed out that as with alcohol, use varies. Subject matter experts noted that brief increases in use in Colorado and Washington leveled out. They noted that such increases are, at least in part, the result of tourism. People in states without legal access are willing to travel to states where marijuana is legal. As more of the country legalizes, these increases will fade.

A regulated marijuana program should monitor and document patterns of use to evaluate the impact of legalization on use.

**The majority of credible evidence suggests legalization of marijuana has no or minimal impact on use by youth.**
Criminalization in the U.S. has not curbed teen use. Marijuana is the most commonly used illicit substance by adolescents. Eighty to ninety percent of American eighteen-year-olds have consistently reported that marijuana is “very easy” or “fairly easy” to obtain since the 1970s. Research regarding tobacco demonstrates that establishing a suitable minimum legal age can have a dramatic impact on youth access. Research has identified a variety of mechanisms by which youth obtain tobacco, one of which is social sources. Friends who are 18 years of age or over are a major source of tobacco for older adolescents.

Data provides a strong reason to believe that increasing the minimum legal age to 21 will contribute to reductions in youth tobacco use. Drawing parallels from tobacco research, regulating marijuana would enable the State to establish controls over marijuana use, including setting legal age limits, which will reduce youth access to marijuana. In addition, the creation of a regulated marijuana program would establish a legal distinction between underage and adult marijuana use.

**Subject matter experts** noted that marijuana will be more difficult for youth to obtain in a regulated marijuana environment. They stated it is easier for teens to get marijuana than alcohol because alcohol is regulated and marijuana is not. They asserted that the illicit economy operates now with no rules or regulations, youth know how to obtain marijuana, and the notion that regulation will foster greater demand is unfounded.

Law enforcement raised a concern about a report from the Rocky Mountain High Intensity Drug Trafficking Area (RMHIDTA), which tracked the impact of marijuana legalization in the State of Colorado and found that youth past-month marijuana use increased 20 percent in the two-year average (2013-14) since Colorado legalized regulated marijuana compared to the two-year average prior to legalization.

However, other studies have shown little or no change in adolescent marijuana use following legalization. Data from multiple sources indicate that legalization in Colorado had no substantive impact on youth marijuana use. Marijuana use rates, both lifetime use and current use, among
high school students in Colorado did not change significantly following legalization. Similarly, past 30-day use among persons 12-17 years old in Colorado did not change significantly following legalization. A 2017 study of adolescent marijuana use before and after regulated marijuana implementation in Colorado found there was little change in adolescent marijuana use but a significant increase in perception of ease of access. Moreover, post legalization rates in Colorado were not significantly different from usage rates nationally.

Meta-analysis of existing literature does not support the hypothesis that recent changes to marijuana laws have led to an increase in marijuana use prevalence in adolescents. According to the 2016 U.S. Substance Abuse and Mental Health Services Administration National Survey on Drug Use and Health, rates of marijuana use among the nation's 12- to 17-year-olds dropped to their lowest level in more than two decades. According to a 2016 report from the State of Oregon, recent trends in youth use have been stable during the period following the enactment of adult-use regulations. A Washington State evaluation report states that across grades 6, 8, 10, and 12, marijuana use indicators have been stable or fallen slightly since legalization. The Monitoring the Future Survey conducted by the National Institute on Drug Abuse (NIDA) found that lifetime and current marijuana use among 8th and 10th graders fell substantially between 1996 and 2016 and remained stable among 12th graders nationally.

Subject matter experts stated there are concerns about the effects of marijuana use on the developing brain. They also noted that there is no convincing evidence about whether legalizing marijuana increases use, and increasing use among youth has not been observed. There is more open discussion now, and the perception is that marijuana is less dangerous. Subject matter experts note that the perception is that the credibility of authority figures is weak because historically, young people have received improper messaging about the dangers of marijuana use. Legalization will allow for a more honest and trustworthy discussion.

An adult-use regulated marijuana program should prohibit use by youth (individuals under 21). At the same time, there should be an emphasis on education that addresses adolescents’ perceptions of the risks, benefits, social norms, and peer influences surrounding marijuana and highlights safety and harm reduction. A regulated marijuana program should implement strategies to reduce youth use of marijuana.

Since marijuana is the most commonly used illegal substance, people who have tried other substances also are likely to have tried marijuana and alcohol. The majority of individuals who use marijuana do not try other illicit drugs. Additionally, an individual’s environment, genetics and social context are important in understanding an individual’s propensity to use substances and develop a substance use disorder. In a study of initiation into marijuana use which utilized twins to control for genetic factors, researchers found that causal conclusions cannot be drawn related to initiation into marijuana use. This study also found that early regular use of tobacco and alcohol were the two factors most consistently associated with later illicit drug use.

Subject matter experts stated that the research community generally does not recognize the premise that marijuana leads to the use of other substances as a legitimate or plausible assertion.

Legalizing marijuana results in a reduction in the use of synthetic cannabinoids/novel psychoactive substances.

The Global Drug Survey indicated that countries that decriminalize marijuana have lower prevalence rates of synthetic marijuana use. Synthetic cannabinoids are compounds that are sprayed on plant material and purchased for smoking as a “legal high.” THC is a partial agonist at the cannabinoid receptor, while these
compounds are full agonists and more potent. Therefore, while the effects are often somewhat like marijuana, the adverse effects can be far more severe, including delirium, lethargy and coma, seizures and hallucinations. Other compounds may also be in the mix. For example, in April, there were deaths from these products. There is disagreement between some experts about the effect legalization will have on synthetic cannabinoid use. However, it is clear that it is often chosen to avoid detection in urine testing. One survey found that most users prefer natural cannabis. The synthetic cannabinoid market should be eliminated. A reduction in synthetic cannabinoid availability and use would have particular benefits for individuals with SMI.

A regulated marijuana program should include among its goals reducing the use of synthetic cannabinoids/novel psychoactive substances and ultimately eliminating the synthetic cannabinoid market.

**Problematic marijuana use includes Cannabis Use Disorder and Cannabinoid Hyperemesis Syndrome.**

There is a lack of consensus as to what percentage of individuals who use marijuana develop some form of dependence, but estimates range from 8.9 percent to 30 percent of the population who uses marijuana. The risk factors for a poor outcome are unclear. However, it will be important to ensure access to treatment, support and care when necessary.

The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), includes criteria to diagnose Cannabis Use Disorder. Cannabis Use Disorder is problematic marijuana use that impedes an individual’s quality of life and tolerance to marijuana, and use of marijuana continues despite awareness of physical or psychological problems attributed to use. Estimates of Cannabis Use Disorder prevalence vary from 2.5 percent to 6.3 percent, and most cases are not treated. Data indicates that Cannabis Use Disorder is more common among people diagnosed with and treated for mental illnesses. Psychotherapy can be used to treat Cannabis Use Disorder, and marijuana legalization across the country has led to more dialogue and research around the efficacy and availability of such treatment.

It is important to ensure that experts in the field of substance use disorder do not conflate the treatment of Cannabis Use Disorder with other substance use disorders. Every effort should be made in a regulated marijuana program to avoid tobacco and alcohol industry participation.

Cannabinoid Hyperemesis Syndrome can also occur due to heavy use of marijuana and presents with episodes of severe nausea and cyclical vomiting. Symptoms dissipate when marijuana use is stopped. More research is required to better understand why marijuana has antiemetic properties, yet it can elicit this response. An analysis of the medical records of 1,571 patients with the characteristic cyclical vomiting of the syndrome indicated that approximately 98 (6 percent) had Cannabinoid Hyperemesis. Further research is needed to truly identify prevalence of the syndrome.

➢ **Subject matter experts** noted that a framework of regulation could support a more appropriate level of treatment for marijuana use that focuses on harm reduction. Legalization could result in more effective partnerships in communities throughout the State. Subject matter experts in substance use services provided data on marijuana treatment admissions from two states that have legalized marijuana. According to the Colorado Department of Human Services, Office of Behavioral Health, marijuana treatment admission rates in Colorado increased each year between 2011 and 2015 but declined significantly during 2016. According to the Washington State Department of Social and Health Services, Division of Behavioral Health and Recovery, marijuana treatment admissions in Washington State declined each year between 2012 and 2015.

The expertise of substance use specialists will be critical in addressing the issues associated with problematic marijuana use, and resources must be directed to treatment, support and care when
needed. The identification of persons who might need assistance with their marijuana consumption and referral to treatment centers or other supportive services should be a component of a regulated marijuana program. In addition, education and labeling would allow individuals to self-select lower potency items/products with higher CBD/lower THC. Education and labeling should be used to support consumer choice and reduce harm.

The NYS Medical Marijuana Program would adapt to coordinate with a regulated marijuana market.

New York State’s Medical Marijuana Program has almost 1,700 registered providers and serves 59,653 certified patients. In the two years since the Medical Marijuana Program was implemented, there have been 27 reported adverse events out of about 300,000 transactions. None resulted in death, and most persons changed to another product without further incident.

As part of the planning for the potential regulation of marijuana, it will be important to re-examine the State’s Medical Marijuana Program to ensure access for anyone in need and determine the changes necessary to ensure both programs address their defined objectives. In addition, the State will evaluate information from the eight states (and Washington, D.C.) that currently operate both medical and recreational marijuana programs to determine how they assure patient safety. Individuals who could benefit from medical marijuana should work with a provider to determine if they should utilize the Medical Marijuana Program.

➢ Subject matter experts noted that regulated marijuana program participants who would benefit from medical advice and support can be transitioned to the Medical Marijuana Program. A 2018 study of health conditions and motivations for marijuana use among young adult medical marijuana patients and non-patient marijuana users in Los Angeles found that a notable proportion of non-patients reported health problems that might qualify them for the medical marijuana program.24

A regulated marijuana program must provide education on the assistance that is available in the Medical Marijuana Program to ensure populations that need medical guidance and support have the information necessary to access the program. Growing the medical program while implementing a regulated marijuana program will reduce the risks of legalizing marijuana for individuals who require medical guidance.

II. Criminal Justice and Public Safety

Criminalization of marijuana has not curbed marijuana use despite the commitment of significant law enforcement resources.

Marijuana use has remained relatively stable nationally since 2002, with minor changes.

Criminal records impede New Yorkers’ lives.

Statewide, New York’s marijuana arrest rate of 535 arrests per 100,000 people was the highest of any state in 2010 and double the national average. That year, there were 103,698 marijuana-possession arrests in NYS – 29,000 more than Texas, the state with the next highest total.25 The impact of low level marijuana offenses extends beyond utilization of law enforcement and criminal justice resources. Individuals who have a criminal record often face challenges throughout their lives accessing gainful employment and qualifying for federal housing.26 Marijuana-related convictions have a lasting impact on the lives of individuals and their families.

Marijuana prohibition results in disproportionate criminalization of certain racial and ethnic groups.

Across the country, individuals who are Black are nearly four times more likely than individuals who are White to be arrested for marijuana possession, despite data showing equal use among racial
Stop and Frisk data from NYC presented in a 2013 report from the NYS Office of the Attorney General demonstrated that there were racial disparities in case outcomes among those stopped and arrested. Individuals who are White who were identified by Stop and Frisk were almost 50 percent more likely than individuals who are Black to have an arrest end in an Adjournment in Contemplation of Dismissal, meaning they avoided a conviction.\textsuperscript{78}

While marijuana arrests have dropped significantly in New York City since 2014, NYS Division of Criminal Justice Services data demonstrate that 86 percent of the people arrested for marijuana possession in the fifth degree in 2017 were people of color; 48 percent were Black, and 38 percent were Hispanic. Only nine percent were White.\textsuperscript{79}

- **Subject matter experts** noted one of the biggest drivers of racial disparities in criminalization and incarceration rates is marijuana, and the best way to address it is to legalize marijuana. A great majority of arrests are for violations or misdemeanors that most people no longer view as criminal behavior. It is rare that these arrests lead to the discovery of guns or violent crimes. Subject matter experts also noted that continued prohibition of public consumption will reduce the impact of regulated marijuana on arrests. They highlighted a recent media report that described an analysis of NYC police data which found that while marijuana-related arrests have dropped, across NYC, individuals who are Black were arrested on low-level marijuana charges at eight times the rate of White, non-Hispanic people over the past three years. Individuals who are Hispanic were arrested at five times the rate of individuals who are White.

**Incarceration has a negative impact on families and communities.**

Arrests and incarceration negatively impact the health of communities and individuals by destabilizing families, hindering access to education and health care, lowering employment opportunities, increasing poverty, and limiting access to housing, particularly in low-income communities of color where arrests are concentrated despite equivalent rates of marijuana use across racial groups. Incarceration of family members destabilizes families and is considered an adverse childhood experience (ACE),\textsuperscript{77} which is associated with decreased health-related quality of life (HRQOL) into adulthood.\textsuperscript{80} Research indicates that incarceration also has an impact on community health in many areas (including teenage pregnancies and sexually transmitted infections).\textsuperscript{81}

- **Subject matter experts** emphasized the need to address the economy of the unregulated market. Regulating marijuana would provide an opportunity to direct resources to workforce development and job creation. Subject matter experts representing law enforcement said that rather than spending time on marijuana arrests, police could devote more time to other aspects of their work, such as community policing and building trust.

\textsuperscript{77} Persons are guilty of criminal possession of marijuana in the fifth degree when they knowingly and unlawfully possess: 1. marijuana in a public place and such marijuana is burning or open to public view; or 2. one or more preparations, compounds, mixtures or substances containing marijuana and the preparations, compounds, mixtures or substances are of an aggregate weight of more than twenty-five grams. Criminal possession of marijuana in the fifth degree is a class B misdemeanor. (New York Penal Law §221.10)

\textsuperscript{78} Adverse childhood experiences (ACEs), according to the Substance Abuse and Mental Health Services Administration (SAMHSA), are stressful or traumatic events, including abuse and neglect. They may also include household dysfunction such as witnessing domestic violence or growing up with family members who have substance use disorders. ACEs are strongly related to the development and prevalence of a wide range of health problems throughout a person’s lifespan, including those associated with substance misuse.
Resources should be directed to community reinvestment in health care, education and workforce development.

**There has been no increase in violent crime or property crime rates around medical marijuana dispensaries.**\(^{VIII,82}\)

Concerns exist around the possibility that there could be an increase in crime, specifically robberies and burglaries, because sale of marijuana is a cash business. However, a representative of the State’s Medical Marijuana Program, which is a cash-only business, stated that there have been no robberies or adverse impact in communities where dispensaries are located.

- Subject matter experts emphasized the possibility of a reduction in violent crime due to the substantial reduction in the unregulated market, which would lead to a decline in home invasions associated with illegal marijuana and the associated violence. Law enforcement subject matter experts noted that inhabitants of homes involved in the unregulated market install barricades and traps, which present a danger to law enforcement. In addition, some marijuana is still sold by gangs, and that business model is toxic to neighborhoods.

A regulated marijuana program should monitor crime rates around dispensaries and address instances that may arise.

**Marijuana possession is the fourth most common cause of deportation nationally.**\(^{83}\)

Federal law holds jurisdiction over the possession of marijuana for immigrants, even in states that have legalized. Furthermore, a non-citizen who admits to an immigration official that they possess marijuana can be denied entry into the United States, or their application for lawful status or naturalization may be denied. Depending on the circumstances, it can make a lawful permanent resident deportable. This is true even if the conduct was permitted under state law, the person never was convicted of a crime, and the conduct took place in their own home.\(^{84}\)

**Conclusions cannot be drawn from the existing research on the impact of marijuana use on motor vehicle traffic crashes (MVTC).**

A primary concern of law enforcement is the possibility of increased impaired driving and car crashes in a regulated marijuana environment. In the last 40 years, law enforcement has made great strides in making highways safe. According to law enforcement representatives, in 1973, 35 percent of motorists who were stopped had alcohol in their blood, and 7.5 percent exceeded the legal limit. Today, only eight percent of motorists who are stopped have alcohol in their blood, and only 1.5 percent exceed the legal limit.

- Subject matter experts corroborated the concern that marijuana can lead to impairment and discussed the effective anti-DWI efforts that can be expanded to include education about driving while under the influence of marijuana. Law enforcement has changed the cultural dialog on drinking and driving, and their expertise will be critical in effectively addressing the issues of driving while impaired from marijuana. There was consensus that resources must be made available to support education and address law enforcement budgetary needs with the establishment of a regulated marijuana program.

Research indicates that marijuana use by drivers is associated with impaired judgment, motor coordination and reaction time.\(^{85}\) A meta-analysis suggests that marijuana use by drivers is associated with an increased risk of involvement in motor vehicle crashes.\(^{86}\) However, three years after the legalization of regulated marijuana in Colorado, motor vehicle crash rates overall were not statistically different, although this evidence is still preliminary.\(^{87}\)

\(^{VIII}\) Dispensaries are stores from which marijuana is sold to consumers. Individuals who work at these stores are able to advise customers on the strain or type of marijuana best suited for their needs.
Few states collected pre-legalization baseline data to use as a comparator for evaluation purposes. States that have regulated marijuana have an inability to conclusively state the role that marijuana has played in traffic safety. Data from the National Highway Transportation Administration's Fatality Analysis Reporting System on crashes contain the caveats that they cannot be reliably compared across or within jurisdictions or across years.\textsuperscript{88}

The number of drivers using marijuana has been increasing. The National Roadside Survey conducted at 60 sites around the country found that THC was by far the most prevalent drug detected in their sample of drivers. In 2007, 8.6 percent of drivers tested positive for THC. This increased to 12.6 percent in 2013-14, representing a 48 percent increase in the prevalence of drivers testing positive for THC. Fortunately, the percentage of drivers testing positive for alcohol declined from 12.4 percent in 2007 to 8.3 percent.\textsuperscript{89} There is no further funding for these studies, and they cannot be used to produce state-specific data.

Studies of the contribution of marijuana to MVTC have had varied results. Two meta-analyses reported near doubling of the risk of fatal crash regardless of the presence of alcohol or other drugs.\textsuperscript{90,91} Another study examining similar data found a non-significant contribution of marijuana to crash risk when the model also accounted for the presence of other drugs.\textsuperscript{92} Unfortunately, available data is flawed by inconsistencies in both collection and analyses of body fluid samples and descriptions of demographics and crash types.\textsuperscript{93}

There are questions about whether presence of THC in an individual’s blood stream is an indicator of impairment. The National Highway Traffic Safety Administration\textsuperscript{94} and the AAA Foundation for Traffic Safety\textsuperscript{95} have both made the distinction that unlike alcohol, presence of THC in an individual’s blood stream does not equate to impairment. Peer-reviewed literature and major national organizations refute the fact that THC in the bloodstream detects impairment.

In testing for impairment by alcohol, there is a strong correlation between breath/blood levels and impairment, allowing for laws to be set according to these measurements. Testing for marijuana use is more complicated. There is currently no breathalyzer for roadside testing for marijuana use.\textsuperscript{ix} Urine testing can only detect an inactive metabolite which may be present for days or weeks after use. Blood levels are more accurate. However, this is an invasive test requiring several legal steps. The THC levels drop in the time it takes to go from the roadside to the blood draw. Furthermore, there is no clear correlation between the level of THC in the blood and impairment. Due to the lipid-solubility of THC, a frequent marijuana user may have measurable THC in their blood, even if they have not used in several days and are not necessarily impaired.\textsuperscript{96} The Joint Guidance Statement of the American Association of Occupational Health Nurses and the American College of Occupational and Environmental Medicine\textsuperscript{97} reviewed the evidence and suggested that a limit of 5 ng/mL of THC measured in serum or plasma would allow employers to identify potentially impaired employees yet also notes a medical examination focused on identifying impairment is always recommended.

Data on the impact of legalization in states that have passed laws is useful, but it must be noted...
that not all drivers arrested or in fatal crashes are tested for alcohol and/or drugs. The selection bias may lead to over- or under-estimating the impact.

A study comparing motor vehicle-related fatalities in Washington and Colorado to eight similar states found that three years after marijuana legalization, changes in motor vehicle fatality rates were not statistically different from those in similar states without regulated marijuana.

Medical marijuana has been increasing in availability since 1996 when California passed the first law. The number of California drivers killed in crashes that tested positive for drug involvement decreased nine percentage points, from the 2009-2013 average of 28 percent to 19 percent in 2015 (THC is not broken out). 98

While existing information suggests a lower impact than might have been expected, legalization of adult use of marijuana raises valid concerns about traffic safety.

Representatives of law enforcement provided a December 2017 study conducted by the State University of New York, Rockefeller College of Public Affairs and Policy, Institute for Traffic Safety Management and Research, on drug involvement in fatal and personal injury (F&PI) crashes on NYS roadways from 2012 to 2016. The analysis found that although less than one percent of all F&PI crashes each year were drug related, the number of drug-related F&PI crashes increased 20 percent over the five years from 2012 to 2016, and 26 percent of all fatalities in 2016 were drug related, up from 18 percent in 2012-2014. While the study examined the extent to which crashes on New York State’s roadways involve drugs, it did not examine the extent to which drug-related crashes involved marijuana use.

Representatives of law enforcement indicated that in Washington State, six months prior to the legalization of marijuana, 14.6 percent of arrests for driving while intoxicated were the result of marijuana-impaired driving vs. 21.4 percent after legalization. 99 They noted that in the last 40 years, law enforcement has worked to remove intoxicated drivers from our roadways and has made great strides in making highways safe. They are concerned that legalizing marijuana will increase impaired driving and car crashes, and there could be loss of progress.

Subject matter experts noted that the dangers of driving under the influence of alcohol are worse than the dangers of driving under the influence of marijuana. However, there have been mixed reports regarding the impact of regulated use on the increase of traffic accidents and fatalities.

There will be a budget and workload impact on law enforcement related to determining impairment. Currently, Drug Recognition Experts (DREs) are used to measure roadside impairment. DREs are certified law enforcement officers with experience in DUII/drug enforcement who go through extensive training and a certification process. The evaluation the DRE uses to measure impairment is standardized and considers the subject’s mental and physical condition to determine if their impairment is due to drug use (or perhaps an underlying medical condition). 100 This method of measuring impairment is resource intensive, and there are few of them. There will be substantial expense associated with increasing the number of DREs. DREs are trained outside of NYS at the expense of NYS law enforcement. While a breathalyzer for THC may be in development, there is currently no technology for determining impairment. Law enforcement expressed concern about launching a legal program hoping that technology will catch up. They noted that developing and validating a screening tool for purposes of establishing an enforcement paradigm is a lengthy and expensive process involving legal challenges, court rulings, and judicial notice.

Driving under the influence of intoxicants (DUII) can also be referred to as Driving While Intoxicated (DWI).
Advanced Roadside Impaired Driving Enforcement (ARIDE) training is provided to law enforcement personnel as a pre-requisite to DRE training. ARIDE training may be needed for all law enforcement personnel should the decision be made to legalize marijuana use.

Law enforcement raised a concern about drug detection canine units trained to find marijuana. The legalization of marijuana will result in the loss of these dogs, whose training involved significant time and expense. Other states have faced the same situation and have re-assigned their canine units.

There will be budgetary implications for law enforcement associated with training personnel (e.g., ARIDE training), training and certification of a significant number of personnel as DREs, and the impact on canine programs.

Subject matter experts urged State representatives not to view the difficulties in measuring impairment as a barrier to legalization when solutions can be found. They suggested that mechanisms should be sought to reduce the cost of DRE training and improve access, such as conducting training in NYS. Also noted was that most drugged driving is due to the use of opioids and prescription drugs.

While existing information suggests a lower impact than might have been expected, legalization of adult use of marijuana raises valid concerns about traffic safety. Efforts are in place to expand the monitoring of this risk in NYS. An expansion of education to the public, along with the development of laws and procedures, can assist in reducing the negative impacts.

In conclusion, it will be essential to ensure public safety and the integrity of the program by, among other things:

- Enforcing the under-21 purchasing ban;
- Reducing the illegal market and preventing diversion;
- Ensuring adequate security at cultivation and dispensing facilities;
- Employing a robust monitoring and oversight system with the ability to issue fines for violations and revoke licenses as needed;
- Promoting further study of methods of detecting impaired driving and the impact of legalization of marijuana on the safety of the State’s roadways;
- Enhancing the State’s successful anti-DWI efforts to include impaired driving;
- Educating the public as to the potential risks of excessive use;
- Imposing fines for providing false identification;
- Determining hours of operation restrictions for retail establishments; and
- Imposing a tracking, reporting and compliance system for the regulated marijuana program.

### III. Economic Estimates

The marijuana industry is expanding. As more states develop a regulated marijuana market, the industry is growing substantially, more licenses are issued for dispensaries, and more consumers exit from the unregulated market. Regulating marijuana will create jobs. Industry sources estimate that there are between 165,000 to 230,000 full- and part-time workers in the United States marijuana industry.¹⁰¹

Marijuana regulation could generate long-term cost savings. Legalizing marijuana is anticipated to lead to a reduction in costs associated with illegal marijuana, including police time, court costs, prison costs and administrative fees.¹⁰² There will be costs associated with the implementation of a regulated marijuana program; however, the revenue generated is likely to sustain the program after the first year.

**Regulated marijuana generates tax revenue.**

For purposes of this impact assessment, the following analysis of potential tax revenues was
conducted by the DOH and the Department of Taxation and Finance and reviewed by subject matter experts in economic evaluations. It is important to note, however, that the analyses presented here are for illustration purposes, and policymakers may want to consider other approaches.

Estimates of the size of the current illegal market for marijuana in NYS range from $1.74 billion to $3.5 billion annually, including sales to NYS residents and tourists. These amounts and the inputs used to derive them provide the basis on which to estimate the potential tax revenues the State may realize from taxing regulated marijuana sales. The methodology incorporates certain economic parameters that illustrate some of the demand- and price-related uncertainties that may be encountered given the presence of the current unregulated market as well as decriminalization and other factors. This analysis is limited to potential State and local tax revenues and does not consider any licensing fees or registration fees that may be imposed on retail sellers.

**Methodology**

The potential size of the NYS marijuana market was projected by combining estimates of the State’s adult residents (age 21 or older) and visitors that use marijuana, the average amount they use annually, and recently reported market prices. Other factors that might affect the estimated price and demand for legal marijuana, including consumers’ behavior in the presence of the current illegal market and behavioral changes that could unfold over time as individuals become accustomed to a regulated marijuana marketplace, are also considered. The following estimates of the number of consumers, their marijuana use, and the current reported price are used as the basis for this approach to estimate potential revenues for NYS.

**Consumers**

The US Census Bureau estimates that the State’s population in 2017 was 19.85 million, of which 14.9 million (74.9 percent) are aged 21 or older.\(^{103}\) Using NYS-specific data on marijuana use as reported in the 2016 National Survey on Drug Use and Health,\(^{104}\) the proportion of NYS residents who are marijuana users is estimated to be 8.5 percent, resulting in an estimate of approximately 1.27 million NYS residents who are marijuana consumers.

In addition, tourists and other visitors to the State may purchase marijuana after regulated use is legalized. According to the American Hotel and Lodging Association, there are over 234,000 hotel rooms in the State.\(^{105}\) Assuming 80 percent occupancy with 1.5 adults per occupied room yields almost 281,000 visitors and other overnight travelers to the State. It is assumed that half of these visitors are international travelers and half are domestic, though it is assumed that 75 percent of the latter are from outside NYS.\(^{106}\) Further, the proportion of domestic marijuana users is assumed to be the same as the national average (7.6 percent), but a lower proportion (6.7 percent) is applied to derive the number of international users. As a result, it is estimated that there are an additional 20,000 marijuana consumers.

Given that marijuana has been legalized in neighboring states such as Massachusetts and Vermont and is under consideration in New Jersey, this analysis did not include any additional consumers to the calculation of the market.

In total, it is estimated that 1,290,000 consumers would access the legal market the first year after legalization of marijuana.\(^{10}\)

**Consumption**

Fiscal analysis conducted by Washington and Colorado estimates that the average marijuana user consumes five ounces of marijuana per year, while

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\(^{10}\) It is possible that persons may come from other states to NYS to purchase legal marijuana, but that additional demand is not estimated.
the Department of Taxation and Finance used data from the National Survey on Drug Use and Health to estimate that the average marijuana user consumes almost 7.9 ounces of marijuana per year. Both estimates are used in this analysis as a high and low estimate.

**Price**
The average retail price of marijuana in NYS has been reported as $270 per ounce for medium quality strains and $340 per ounce for high quality strains. For this analysis, to derive potential ranges of tax revenues, $270 per ounce was used as a low end of the illegal market price range and $340 as the high end of the illegal market price range.

**Market Size**
Based on inputs and assumptions, purchases of illegal marijuana in NYS are estimated to be about 6.5 to 10.2 million ounces annually. At an average retail price of $270 per ounce, the market for marijuana is estimated to be approximately $1.7 billion; at $340 per ounce, the market is estimated to be approximately $3.5 billion.

**Potential State Tax Revenues**
To estimate potential tax revenues, a methodology used by the State Department of Taxation and Finance was followed using $270 and $340 prices per ounce. Moreover, noting that usage can change and has changed over time, for low-estimate scenarios, an annual average consumption of 5 ounces per user was used, while 7.9 ounces was used for high-estimate scenarios. As previously noted, this analysis makes certain adjustments to account for changes in demand, including the effect of the illegal market and other non-price effects. These adjustments include:

Legal Market Price: This is the price that the product sells for at retail to the consumer. This price includes production costs and applicable taxes. For this analysis, an increase of 10 percent is used in these calculations.

Non-price effect: RAND researchers note that non-price effects on demand, which arise from reduced risk of arrest, reduced social stigma, lower risk of contaminants or mislabeling, and greater product variety and marketing, can range from 5 percent to 50 percent. Five percent was used in these calculations.

Tax rate: The higher the tax rate imposed, the higher the legal market price will be. In turn, a higher legal market price will have a greater price effect, which will result in users less likely to exit the unregulated market. The Tax Foundation recommends that the tax rate not be so high as to prevent elimination of the illegal market. As of August 2017, marijuana tax rates range from 3.75 percent in Massachusetts to 37 percent in Washington State of the retail price. For purposes of this analysis, ranges of potential revenues are presented assuming: 1) imposing the 7 percent retail tax rate currently assessed on medical marijuana as well as a 15 percent marijuana tax rate, and 2) a combined State and local sales tax rate of 8.5 percent for sales outside the Metropolitan Commuter Transportation District (MCTD) and 8.875 percent for sales inside the MCTD. Given these adjustments and the baseline prices and consumption figures that were determined, the chart below summarizes the inputs used to derive the ranges of the first year’s potential tax revenues (see Table 1 below).

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XIII: RAND researchers assume a price elasticity of marijuana consumption or demand of between -0.4 and -1.2, with a point estimate of -0.54. For this analysis, a value of -0.8 was used, which was the midpoint of the range cited by the RAND researchers and others. Non-price effect: RAND researchers note that non-price effects on demand, which arise from reduced risk of arrest, reduced social stigma, lower risk of contaminants or mislabeling, and greater product variety and marketing, can range from 5 percent to 50 percent. Five percent was used in these calculations. Tax rate: The higher the tax rate imposed, the higher the legal market price will be. In turn, a higher legal market price will have a greater price effect, which will result in users less likely to exit the unregulated market. The Tax Foundation recommends that the tax rate not be so high as to prevent elimination of the illegal market. As of August 2017, marijuana tax rates range from 3.75 percent in Massachusetts to 37 percent in Washington State of the retail price. For purposes of this analysis, ranges of potential revenues are presented assuming: 1) imposing the 7 percent retail tax rate currently assessed on medical marijuana as well as a 15 percent marijuana tax rate, and 2) a combined State and local sales tax rate of 8.5 percent for sales outside the Metropolitan Commuter Transportation District (MCTD) and 8.875 percent for sales inside the MCTD. Given these adjustments and the baseline prices and consumption figures that were determined, the chart below summarizes the inputs used to derive the ranges of the first year’s potential tax revenues (see Table 1 below).
Based on this analysis, the estimated potential total tax revenue in the first year with a price of $297 and illegal market consumption of 6.5 million ounces ranges from $248.1 million (with a 7% tax rate) to $340.6 million (with a 15% tax rate). The estimated potential total tax revenue with a price of $374 and illegal market consumption of 10.2 million ounces ranges from $493.7 million (with a 7% tax rate) to $677.7 million (with a 15% tax rate). The table below shows the results of applying these inputs and adjustments (see Table 2 below).

### Table 1: Summary of Assumptions & Adjustments for Calculation of First Year Potential Tax Revenues

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<table>
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<tbody>
<tr>
<td>Illegal market price (estimated average)</td>
<td>$270 and $340 per ounce</td>
</tr>
<tr>
<td>Illegal market sales (estimated)</td>
<td>6.5 -10.2 million ounces</td>
</tr>
<tr>
<td>Estimated illegal market size</td>
<td>$1.7 billion - $3.5 billion</td>
</tr>
<tr>
<td>Estimated legal market price (excluding taxes)</td>
<td>$297 and $374 per ounce</td>
</tr>
<tr>
<td>Price elasticity of demand</td>
<td>-0.8</td>
</tr>
<tr>
<td>Non-price effect of legalization</td>
<td>+5 percent</td>
</tr>
<tr>
<td>Marijuana retail tax rate</td>
<td>7 percent and 15 percent</td>
</tr>
</tbody>
</table>

Based on this analysis, the estimated potential total tax revenue in the first year with a price of $297 and illegal market consumption of 6.5 million ounces ranges from $248.1 million (with a 7% tax rate) to $340.6 million (with a 15% tax rate). The estimated potential total tax revenue with a price of $374 and illegal market consumption of 10.2 million ounces ranges from $493.7 million (with a 7% tax rate) to $677.7 million (with a 15% tax rate). The table below shows the results of applying these inputs and adjustments (see Table 2 below).

### Table 2: Retail Price/Retail Tax

<table>
<thead>
<tr>
<th>Sales and Tax Revenues</th>
<th>$297 per ounce</th>
<th>$374 per ounce</th>
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<tbody>
<tr>
<td></td>
<td>7%</td>
<td>15%</td>
</tr>
<tr>
<td>Retail Sales</td>
<td>$1.6 billion</td>
<td>$1.4 billion</td>
</tr>
<tr>
<td>Marijuana Retail Tax</td>
<td>$110.3 million</td>
<td>$215.2 million</td>
</tr>
<tr>
<td>State and Local Sales Tax</td>
<td>$137.8 million</td>
<td>$125.4 million</td>
</tr>
<tr>
<td>Total Tax revenues</td>
<td>$248.1 million</td>
<td>$340.6 million</td>
</tr>
</tbody>
</table>

*This analysis assumes that a portion of sales remain in the illegal market. Over time, the number of users remaining in the illegal market may decline.*
Tax revenue can support State program initiatives.

According to the Colorado Department of Revenue, marijuana sales generated nearly $200 million in State tax revenue and license fees in 2016. Colorado’s Marijuana Tax Cash Fund is used for school construction, expanded education, drug prevention efforts and law enforcement. Since municipalities have the choice to participate in the legal market, only participating local governments receive money from the Fund. Washington State uses the funds generated from marijuana sales to aid administrative costs, research projects, substance abuse programs, marijuana programs, health care, and the State’s general fund. Appendix A, Figure 5 illustrates the use of revenue from regulated marijuana and the employment that resulted from legalized marijuana in the State of Colorado.

Subject matter experts agreed that there is potential for substantial tax revenue in NYS, which can be used for the greater good, such as public health, education, transportation, addressing the needs of a changing workforce, and addressing the changing budgetary needs of law enforcement. Subject matter experts identified evaluation as a priority, stating that it would be irresponsible if NYS does not add to the knowledge around regulated marijuana programming. The availability of State funding for research would remove some of the limitations associated with research using federal dollars.

NYS should follow certain best practices based on lessons learned in other states in implementing a tax on regulated marijuana use and the differing taxing options. Some states had to lower their initial tax rate since a higher price did not incentivize consumers to move from the unregulated to the legal market. If a significant price difference exists between recreational and medical marijuana, consumers will likely prefer the lower price product which is why the ability to adjust or index tax rates to address realities in the market has proven beneficial. For example, a bill put forward in New Jersey proposes a graduated marijuana retail tax. The retail tax begins at a rate of 7 percent in the first year to encourage consumers to transition from the unregulated market. Over the course of five years, in conjunction with a maturing industry, the tax rate increases to 25 percent. Some states overestimated revenue initially, as they did not account for the length of time it takes for a recreational marijuana market to become established, leading to fewer than expected sales.

The three main ways of taxing marijuana are weight-based, price-based and potency-based. A weight-based tax is best to be implemented at the producer level and has the advantages of reducing product leakage into the untaxed market, creating a price floor, and allowing for a more stable revenue stream. However, it also incentivizes higher potencies and is more difficult to administer. A retail price-based tax has proven most effective as it is easier to administer and less problematic than a producer or wholesale level tax, but it is a more unstable revenue source. A potency-based tax system best correlates to the level of intoxication (similar to alcohol taxation), yet current testing methods may be inadequate for taxation purposes.
Tax revenue from regulated marijuana can be used to support program initiatives in areas such as public health education, transportation, research, law enforcement, workforce development and community reinvestment.

IV. Education

Public safety messaging is needed to ensure individuals know about the potential harms of drugged driving. Individuals who consume marijuana are more likely to perceive the risks of marijuana intoxication while driving as lower than individuals who do not consume marijuana. Public safety messaging and ongoing monitoring are required to educate the public.

Marijuana messaging should be tailored to the needs of different key populations including youth/adolescents/young adults and pregnant women.

Prioritization should be given to an educational approach that emphasizes safety, mitigates potential harm, and suggests that youth delay use. Evidence suggests that prevention strategies targeting youth can be most effective if they provide honest, science-based information in a non-judgmental and non-punitive manner. Enhancing youth skills such as personal responsibility and knowledge is essential. While abstinence must be encouraged, youth should be taught to understand that moderation and self-regulation can mitigate potential harms if they do not abstain.

Research indicates that states need to address adolescents’ perceptions of the risks, benefits, social norms, and peer influences surrounding marijuana use as they implement strategies to reduce youth use of marijuana. In Washington State, surveys of 8th and 10th graders indicated that they perceived marijuana as being less harmful after legalization. The same was not true in Colorado, where there was no change in adolescent perception of harmfulness post legalization.

Regulating marijuana enables public health officials to share messages regarding lower risk cannabis use guidelines (LRCUG) to help reduce the potential harms of marijuana consumption.

In a regulated marijuana program, products can be labeled to indicate the percentages of the various chemical compounds they contain (e.g., CBD vs. THC content) to maximize consumer awareness of potency. Research indicates that issuing guidelines on the following can help ameliorate the potential harms of marijuana use: avoiding combustible use, avoiding use when pregnant, making products with lower potency available, prohibiting youth use, and avoiding consumption of marijuana and tobacco in tandem. Further messaging should be provided to ensure that individuals know about the differences between marijuana use, tobacco use and alcohol use, as well as to ensure that...
individuals exercise caution not to consume multiple substances at once.

**States with legalized marijuana have conducted extensive educational campaigns as their programs were implemented.**

Concerns have been raised by government representatives about the impact of legalized marijuana on the workforce and the need for workforce training. For example, Child Protective Services workers would require training on the appropriate response to a positive screen for marijuana in newborns and mothers if it is no longer illegal. There will be implications for substance use treatment providers. A strategy will be needed for providers who will be required to treat substance use in an environment where marijuana is legal. There is likely to be a need for education for the judiciary and treatment courts.

- **Subject matter experts** noted the need for training for public housing and substance use treatment workers, since marijuana use is punished in a criminalized environment. There would need to be education on dismantling punitive measures.

Legalization provides an opportunity to educate consumers on what their options are and encourage the use of products with lower doses of THC.

*People will be empowered to take more control over their mental and physical health if they are given counsel and guidance. There are opportunities to provide such guidance in a regulated market.*

V. Impact of Legalization on Other States

The legalization of marijuana in neighboring jurisdictions raises concerns about both marijuana diversion to NYS from states that have legalized and revenue diversion from NYS to states that have legalized. Several neighboring jurisdictions have legalized marijuana or are likely to legalize soon. Massachusetts, Vermont, Maine and Canada have legalized marijuana. Legalization is under discussion in New Jersey as well.

Regarding diversion of marijuana from states with legal markets, a University of Oregon study demonstrates that areas legalizing marijuana will likely sell sizable quantities of marijuana to individuals from neighboring regions. Oregon opened a regulated market on October 1, 2015, next to Washington State’s existing market. The study found that Washington retailers along the Oregon border experienced a 41 percent decline in sales following Oregon’s legal market opening. The study found evidence that prior to legalization in Oregon, consumers on the Oregon side of the border were crossing state lines to obtain marijuana in Washington rather than purchase marijuana in Oregon through the unregulated market. This is particularly striking given the fact that obtaining marijuana illegally in Oregon resulted in only a civil fine, whereas crossing state lines to obtain legal marijuana in Washington risked federal felony prosecution. The study suggests that consumers prefer legal, regulated products, perhaps due to the variety of products offered, the presence of safety regulations, and the additional product attribute information stemming from THC and CBD testing.

Legalization in surrounding jurisdictions could lead to an increase in marijuana possession arrests in border counties in NYS. A Washington State University study examined the “spillover” effects of regulated marijuana legalization in Colorado and Washington on neighboring states without
legalization and found that legalization causes a sharp increase in marijuana possession arrests in border counties of neighboring states relative to non-border counties in these states. Regulating marijuana has no impact on juvenile marijuana possession arrests but is rather fully concentrated among adults.\textsuperscript{124}

Notably, unlike other states that shared one border with a state that legalized, New York shares multiple borders with states that have or are considering legalized marijuana (i.e., Massachusetts, Vermont and New Jersey) and one international border (New York shares a border with two Canadian provinces). If marijuana is not legalized, the cross-border effects in NYS are likely to be substantial, involving numerous counties and municipalities.

Legalization in neighboring jurisdictions raises the likelihood of revenue flowing from New York into those jurisdictions. The methodology used in a joint New Jersey Policy Perspective/New Jersey United for Marijuana Reform analysis of revenue implications of legalized marijuana in New Jersey includes estimates associated with non-New Jersey participants, specifically residents of New York and Pennsylvania, in their marijuana marketplace. The projected annual expenditures of New York and Pennsylvania consumers in New Jersey’s market is estimated at $108.7 million.\textsuperscript{125}

\textbf{Subject matter experts noted that failure to legal in NYS could increase unregulated market sales if persons buy marijuana legally in surrounding jurisdictions to re-sell it illegally in NYS.}

\textbf{VI. Implementation}

The overarching goal of regulating marijuana in NYS must be the incorporation of harm reduction strategies. Implementation of a regulated marijuana program will require considerable planning as to the regulatory mechanisms needed to protect public health, provide consumer protection, and ensure public safety. At the same time, a well thought out program should address the social justice issues associated with criminalization, provide opportunity for community revitalization, and establish a system to capture and invest tax revenue. Ultimately, the system should be designed to reduce the utilization of the unregulated market. Implementation of a regulated marijuana program will require legislative and regulatory approaches that address the diverse needs of the State and the differing needs of a regulated marijuana program in rural regions compared to those in urban areas.

A key substantive policy area is the determination of the types of licenses to be granted in a regulated marijuana program. Other states have various sub-classifications of licenses, but they generally fall within classifications such as: cultivation/producer, manufacturing/processor, testing, retail, and distribution. California has 13 types of cultivation licenses alone, varying based on size, indoor, outdoor, nursery, microbusiness, etc.\textsuperscript{126} Massachusetts is prioritizing applicants for licensure to ensure equal opportunities in the regulated market for individuals who meet certain criteria, including ownership by or the provision of services to persons who live in areas of disproportionate impact, employment of residents of areas of disproportionate impact, employment of people with drug-related criminal offender record information who are otherwise employable, and ownership by persons of color.\textsuperscript{127} Many states offer producer licenses at different tiers based on the
canopy of their potential cultivation. Fee structures for the applications of these licenses and the licenses themselves will also need to be determined. Further consideration is needed to determine who will review and issue licenses and how often they will need to be updated. We recommend that NYS limit the number of licenses initially available and adopt a model of licensure prioritization similar to the Massachusetts model.

In addition to licensure regulations, the State will need to establish further requirements for each step of the supply chain. It is imperative to decouple the regulated marijuana program from both the alcohol and tobacco industries, thus ensuring that they are not involved in any step along the supply chain. With respect to cultivation and production, regulations will be required to control the amount and location of production (e.g., indoors or outdoors). With respect to testing, guidance will be needed for laboratories to ascertain the breakdown of THC and CBD content and to test for mold and other contaminants. Regulations will also be required to address how marijuana will be retailed, including the types of products that can be sold in the market and locations of sales dispensaries (e.g., distance from schools, churches, etc.). Alaska, Massachusetts, and Nevada have established regulations to ensure that substances would not be plainly visible to the public from outside retail establishments.

Additionally, regulations will be required to determine what will be permitted for specific products. This includes detailed discussion regarding the appropriate amount of THC per serving size and what types of products would be permitted (flower, vaporization, edibles, tinctures, topicals, etc.). We recommend that NYS place limits on the amount of THC and the types of products offered for sale. We recommend that the amount of marijuana that may be purchased be limited to a one-ounce maximum. Other states, such as Oregon, have conducted focus groups and established guidance solely regarding the specifics of product packaging. Requirements regarding child proofing and tamper proofing will also need to be determined. To ensure packaging is not attractive to minors, we recommend that the program include guidelines to standardize the industry (such as avoiding cartoon-like imagery or requiring that any products that may look like candy be contained in opaque packaging). We also recommend that processes be established to approve packaging for marijuana products, and guidelines will be required to set forth specific packaging parameters.

Another key substantive policy area is the taxation of regulated marijuana products, which has many implications as taxation dictates the price of the products in the regulated market, influencing consumer behavior. As discussed in the Economic Estimates section of this report, price point is crucial because if it is too high, consumers will not transition from the unregulated market to the regulated market. Decisions will need to be made about where in the production chain excise taxes are placed and to what extent each level of production should be taxed. We recommend that the state begin with low taxation (e.g. between 7 and 10 percent.) NYS will need to determine if vertical integration will be permitted. NYS should consider lessons learned in other states.

Washington State initially had higher tax rates and restructured their taxation after the realization that the taxes were cost prohibitive. Colorado, Washington, and Oregon have all taken steps to reduce their marijuana tax rates. Ensuring that NYS has adequate pricing will require careful and intentional deliberations with numerous stakeholders. The economic estimates in this assessment are based on numerous assumptions and are intended to provide a framework for further discussion.

A regulated marijuana program should ensure that workforce needs are met. Safe working environments should be established for individuals canopy does not include areas such as space used for the storage of fertilizers, pesticides, or other products, quarantine, office space, etc. 

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xiii Washington State defines canopy as the square footage dedicated to live plant production, such as maintaining mother plants, propagating plants from seed to plant tissue, clones, vegetative or flowering area. Plant
in the new regulated market. Labor protections will need to address both cultivation and retail and include special considerations for indoor and outdoor cultivation. Businesses in Colorado’s marijuana industry must comply with the regulations and recordkeeping requirements of the Occupational Safety and Health Administration (OSHA). Colorado’s Guide to Worker Safety and Health in the Marijuana Industry: 2017 delineates the federal OSHA requirements, state regulations, and a best practice guide to ensure worker safety. Specific protections apply to different classifications of occupations including cultivators, trimmers, technicians, administrators, edible producers, and transporters. Colorado outlined protections against biological hazards (i.e., mold and allergens) and chemical hazards (i.e., pesticides, nutrients, and disinfectants) and laid out specific workers’ rights for individuals working in any component of the marijuana industry. We recommend that NYS similarly adopt regulations regarding training for individuals working in the industry.

A regulated marijuana program should consider mandating data collection and evaluation of its impact. Information obtained from ongoing studies should be used to further refine the State’s regulatory approach and inform program design so NYS can respond to needs as they arise. NYS has an opportunity to be a leader in monitoring the use of marijuana and gathering information about benefits and potential harm to inform the implementation of harm reduction strategies. We recommend that NYS establish a comprehensive system of data collection at point-of-sale.

A regulated marijuana program will require detailed guidance in the areas of public safety and education. Enforcement regulations will need to be created for general oversight, inspection, and penalties for participants who engage in unregulated sale or use. We recommend that NYS create statewide educational campaigns to continue ensuring the safety of the State’s roads and public safety messaging that is targeted to specific populations. Peer education will be essential, and it will be important to develop tools to assist parents in communicating with their children. Other states with regulated marijuana programs have established educational campaigns to notify the public of the details of the legislative change and educate them about marijuana use. NYS should consider creating statewide educational campaigns to prepare the public and inform consumers before dispensaries are operational. As noted in the Education section of this report, educational campaigns should consider key populations, such as individuals with or at risk for severe mental illness, youth, and pregnant and breastfeeding women.

We recommend NYS address prior criminal convictions for marijuana possession. Some jurisdictions are working toward expunging previous drug-related offenses, such as San Francisco and San Diego, where district attorneys announced that they will review, recall, resentence, potentially dismiss, and seal misdemeanor and felony marijuana convictions. Seattle’s district attorney made a similar announcement. This will have lasting social justice implications, as there has been disproportionate criminalization of certain racial and ethnic groups. We recommend NYS expunge the criminal records of individuals with marijuana-related offenses.

All states that have legalized have had to address specific and important issues when implementing a regulated marijuana program. An analysis of each state’s decisions with respect to the detailed regulations they have issued may be found in Appendix C. Similar regulations and guidance will need to be created in NYS through careful planning with policy makers and subject matter experts if NYS moves toward implementation.

It is important to understand that effective implementation and regulation will be an ongoing process that will take continued work from State and local officials. Every step of a regulated marijuana program will require planning and regulation. Thoughtful input will be required on the development of legislation, regulations, policies, and implementation strategies. In addition, precise technical guidelines will need to be developed in public health, public safety, and consumer protection to ultimately ensure the program is established with a harm reduction approach.
Participation of stakeholders in developing the parameters of a regulated marijuana program is important. Such stakeholders could include subject matter experts from throughout the State and government representatives of public health, mental health, substance use, taxation and finance, law enforcement, and public safety. Moving forward, it is recommended that NYS form a workgroup of subject matter experts with relevant public health expertise to consider the nuances of a regulated marijuana program, review existing legislation, and make recommendations to the State that address each of these areas in a manner that is consistent with the harm reduction goal.

The process of legalization and regulation will be dynamic. Legalization efforts should be clear on the goals they are setting out to achieve for the people of NYS. Policymakers will need to balance competing priorities in a way that maximizes program effectiveness. Policymakers can learn lessons from approaches taken by other states and study what has worked and what has not.

There are tradeoffs inherent to the transition from an unregulated to a regulated market. It is imperative that a regulated marijuana program contain all necessary safeguards and measures to limit access for individuals under 21, minimize impaired driving, provide education and tailored messaging to different populations, and connect people to treatment if needed. During this transition, the purpose of public policy will be to reduce the harms associated with marijuana criminalization, minimize the harms associated with a regulated marijuana program, and maximize the benefits of regulation.
VI. Conclusion

The positive effects of a regulated marijuana market in NYS outweigh the potential negative impacts. Areas that may be a cause for concern can be mitigated with regulation and proper use of public education that is tailored to address key populations. Incorporating proper metrics and indicators will ensure rigorous and ongoing evaluation.

- Numerous NYS agencies and subject matter experts in the fields of public health, mental health, substance use, public safety, transportation, and economics worked in developing this assessment. No insurmountable obstacles to regulation of marijuana were raised.

- Regulation of marijuana benefits public health by enabling government oversight of the production, testing, labeling, distribution, and sale of marijuana. The creation of a regulated marijuana program would enable NYS to better control licensing, ensure quality control and consumer protection, and set age and quantity restrictions.

- NYS would be one of the largest potential regulated marijuana markets in the United States. As such, there is potential for substantial tax revenue in NYS, which can be used to help support program initiatives in areas such as public health, education, transportation, research, law enforcement and workforce development. Tax revenues can also support community reinvestment in health care and employment.

- Historically, marijuana criminalization has had a profound impact on communities of color and has led to disproportionate targeting of certain populations for arrest and prosecution. The over-prosecution of marijuana has significant negative economic, health, and safety impacts that have disproportionately affected low-income communities of color. Legalization of marijuana will address this important social justice issue.

- The development of this assessment involved discussions of numerous issues that relate to implementation of a legalized marijuana program, rather than the impact. Much of the impact of a regulated marijuana program is contingent on program implementation. While some implementation issues have been described in this assessment, further exploration will be required should NYS move toward legalization.
Appendix A: Figures, Graphs and Charts

Figure 1: Map of State Marijuana Policies

Nine States and the District of Columbia allow recreational sales of marijuana as well as medical; an additional 19 allow only medical use. Others allow on for the sale of CBD, and extract that is non-psychoactive.

Source: “U.S. Legalized Cannabis Map.” Cannabis Compliance, tgunthergroup.com/2017-cannabis-map/.
Figure 2: Past Month Marijuana Use, Aged 12-17, New York


Figure 3: Past Month Marijuana Use, Aged 18+, New York

Figure 4: Colorado Economic Development and Job Creation

<table>
<thead>
<tr>
<th>Year</th>
<th>Direct (FTE) employment created</th>
<th>Indirect employment created</th>
<th>Induced employment created</th>
<th>Statewide employment created</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>9,936 jobs</td>
<td>2,285 jobs</td>
<td>1,987 jobs</td>
<td>14,209 jobs</td>
</tr>
<tr>
<td>2015</td>
<td>12,591 jobs</td>
<td>2,896 jobs</td>
<td>2,518 jobs</td>
<td>18,005 jobs</td>
</tr>
</tbody>
</table>

Number of direct employees by industry segment (FTE):
- Retail operations: 4,407
- Administration: 2,770
- Manufacturing: 2,015
- Management: 1,889
- Agriculture specialists: 1,511

Source: Marijuana Policy Group.
Figure 5: Marijuana Tax Revenue Usage in Colorado

- Medical Marijuana: 2.9% Sales Tax
  - General Fund (90%): $83.6M
  - Local Governments w/ Retail MJ (10%): $14.8M
- Retail Marijuana Special Sales Tax (up to 15%): $98.3M
- Retail Marijuana 15% Excise Tax: $71.9M

- Marijuana Cash Fund: 71.8%
- State Public School Fund: $30M
- Public School Permanent Fund: $31.9M
- BEST Fund School Construction (First $40M)


- Education & Public Health - $41M
  - School Health Professional Grant, Good to Know Campaign, Healthy Kids Colorado Survey, Substance Abuse Prevention
- Department of Human Services - $32M
  - Substance Abuse, Mental Health, Youth Prevention & Treatment Services
- Construction/Local - $16.5M
  - Affordable Housing, Local Construction, Local Gov't Retail MJ Impact Grant Programs
- Law Enforcement, Public Safety, Transportation - $2.7M
  - Including Marijuana Impaired Driving Prevention
- Local Law Enforcement - $5.9M
  - Local affairs for enforcement of illegal markets

- State Budget Gaps

Retail marijuana was taxed at 2.9%, but is not currently taxed at the state sales tax, due to a special sales tax increase from 10% to 15% effective July 1, 2017. This number includes Retail sales tax.

Source: Colorado Legislative Staff Colorado Economic Forecast 2017
Appendix B: Annotated Bibliography

Introduction

The annotated bibliography that follows contains a select group of journal articles related to marijuana use and the impact of legalization. This bibliography was developed by conducting an extensive search of English-language literature indexed in PubMed (http://pubmed.gov), an online database of biomedical journal citations and abstracts created by the U.S. National Library of Medicine and Google Scholar, an online search engine that provides journal articles and research from academic publishers, professional societies, universities, and other websites.

Many of the articles selected contain overlapping information touching on some or all of the following focus areas: Health, Criminal Justice and Public Safety, Economic, and Education.

Health


Background: Abusive alcohol use has well-established health risks including causing liver disease (ALD) characterized by alcoholic steatosis (AS), steatohepatitis (AH), fibrosis, cirrhosis (AC) and hepatocellular carcinoma (HCC). Strikingly, a significant number of individuals who abuse alcohol also use Cannabis, which has seen increased legalization globally. While cannabis has demonstrated anti-inflammatory properties, its combined use with alcohol and the development of liver disease remain unclear. Aim: The aim of this study was to determine the effects of cannabis use on the incidence of liver disease in individuals who abuse alcohol. Methods: We analysed the 2014 Healthcare Cost and Utilization Project-Nationwide Inpatient Sample (NIS) discharge records of patients 18 years and older, who had a past or current history of abusive alcohol use (n = 319 514). Using the International Classification of Disease, Ninth Edition codes, we studied the four distinct phases of progressive ALD with respect to three cannabis exposure groups: non-cannabis users (90.39%), non-dependent cannabis users (8.26%) and dependent cannabis users (1.36%). We accounted for the complex survey sampling methodology and estimated the adjusted odds ratio (AOR) for developing AS, AH, AC and HCC with respect to cannabis use (SAS 9.4). Results: Our study revealed that among alcohol users, individuals who additionally use cannabis (dependent and non-dependent cannabis use) showed significantly lower odds of developing AS, AH, AC and HCC (AOR: 0.55 [0.48-0.64], 0.57 [0.53-0.61], 0.45 [0.43-0.48] and 0.62 [0.51-0.76]). Furthermore, dependent users had significantly lower odds than non-dependent users for developing liver disease. Conclusions: Our findings suggest that cannabis use is associated with a reduced incidence of liver disease in alcoholics.


Importance: Opioid analgesic overdose mortality continues to rise in the United States, driven by increases in prescribing for chronic pain. Because chronic pain is a major indication for medical cannabis, laws that establish access to medical cannabis may change overdose mortality related to opioid analgesics in states that have
enacted them. **Objective:** To determine the association between the presence of state medical cannabis laws and opioid analgesic overdose mortality. **Design, Setting, and Participants:** A time-series analysis was conducted of medical cannabis laws and state-level death certificate data in the United States from 1999 to 2010; all 50 states were included. **Exposures:** Presence of a law establishing a medical cannabis program in the state. **Main Outcomes and Measures:** Age-adjusted opioid analgesic overdose death rate per 100,000 population in each state. Regression models were developed including state and year fixed effects, the presence of 3 different policies regarding opioid analgesics, and the state-specific unemployment rate. **Results:** Three states (California, Oregon, and Washington) had medical cannabis laws effective prior to 1999. Ten states (Alaska, Colorado, Hawaii, Maine, Michigan, Montana, Nevada, New Mexico, Rhode Island, and Vermont) enacted medical cannabis laws between 1999 and 2010. States with medical cannabis laws had a 24.8% lower mean annual opioid overdose mortality rate (95% CI, −37.5% to −9.5%; P = .003) compared with states without medical cannabis laws. Examination of the association between medical cannabis laws and opioid analgesic overdose mortality in each year after implementation of the law showed that such laws were associated with a lower rate of overdose mortality that generally strengthened over time: year 1 (−19.9%; 95% CI, −30.6% to −7.7%; P = .002), year 2 (−25.2%; 95% CI, −40.6% to −5.9%; P = .01), year 3 (−23.6%; 95% CI, −41.1% to −1.0%; P = .04), year 4 (−20.2%; 95% CI, −33.6% to −4.0%; P = .02), year 5 (−33.7%; 95% CI, −50.9% to −10.4%; P = .008), and year 6 (−33.3%; 95% CI, −44.7% to −19.6%; P < .001). In secondary analyses, the findings remained similar. **Conclusions and Relevance:** Medical cannabis laws are associated with significantly lower state-level opioid overdose mortality rates. Further investigation is required to determine how medical cannabis laws may interact with policies aimed at preventing opioid analgesic overdose.


**Abstract:** Opioids are commonly used to treat patients with chronic pain (CP), though there is little evidence that they are effective for long term CP treatment. Previous studies reported strong associations between passage of medical cannabis laws and decrease in opioid overdose statewide. Our aim was to examine whether using medical cannabis for CP changed individual patterns of opioid use. Using an online questionnaire, we conducted a cross-sectional retrospective survey of 244 medical cannabis patients with CP who patronized a medical cannabis dispensary in Michigan between November 2013 and February 2015. Data collected included demographic information, changes in opioid use, quality of life, medication classes used, and medication side effects before and after initiation of cannabis usage. Among study participants, medical cannabis use was associated with a 64% decrease in opioid use (n = 118), decreased number and side effects of medications, and an improved quality of life (45%). This study suggests that many CP patients are essentially substituting medical cannabis for opioids and other medications for CP treatment, and finding the benefit and side effect profile of cannabis to be greater than these other classes of medications. More research is needed to validate this finding. **Perspective:** This article suggests that using medical cannabis for CP treatment may benefit some CP patients. The reported improvement in quality of life, better side effect profile, and decreased opioid use should be confirmed by rigorous, longitudinal studies that also assess how CP patients use medical cannabis for pain management.


**Background:** Increasing rates of cannabis use among emerging adults is a growing public health problem. Intensive longitudinal data can provide information on proximal motives for cannabis use, which can inform
interventions to reduce use among emerging adults. **Method:** As part of a larger longitudinal study, patients aged 18-25 years (N=95) recruited from an urban Emergency Department completed daily text message assessments of risk behaviors for 28 days, including daily cannabis quantity and motives. Using a mixed effects linear regression model, we examined the relationships between daily quantity of cannabis consumed and motives (i.e., enhancement, social, conformity, coping, and expansion). **Results:** Participants were, on average, 22.0 years old (SD=2.2); 48.4% were male, 45.3% were African American, and 56.8% received public assistance. Results from the multi-level analysis (clustering day within individual), controlling for gender, race, and receipt of public assistance, indicated daily use of cannabis use for enhancement ($\beta=0.27$), coping ($\beta=0.15$), and/or social motives ($\beta=0.34$) was significantly associated with higher quantities of daily cannabis use; whereas expansion and conformity motives were not. **Conclusions:** Daily data show that emerging adults who use cannabis for enhancement, social, and coping motives reported using greater quantities of cannabis. Future research should examine more comprehensive cannabis motives (e.g., boredom, social anxiety, sleep) and test tailored interventions focusing on alternative cognitive/behavioral strategies to address cannabis motives.


**Abstract:** Legalization of medical marijuana has been one of the most controversial areas of state policy change over the past twenty years. However, little is known about whether medical marijuana is being used clinically to any significant degree. Using data on all prescriptions filled by Medicare Part D enrollees from 2010 to 2013, we found that the use of prescription drugs for which marijuana could serve as a clinical alternative fell significantly, once a medical marijuana law was implemented. National overall reductions in Medicare program and enrollee spending when states implemented medical marijuana laws were estimated to be $165.2 million per year in 2013. The availability of medical marijuana has a significant effect on prescribing patterns and spending in Medicare Part D.


**Importance:** Opioid-related mortality increased by 15.6% from 2014 to 2015 and increased almost 320% between 2000 and 2015. Recent research finds that the use of all pain medications (opioid and nonopioid collectively) decreases in Medicare Part D and Medicaid populations when states approve medical cannabis laws (MCLs). The association between MCLs and opioid prescriptions is not well understood. **Objective:** To examine the association between prescribing patterns for opioids in Medicare Part D and the implementation of state MCLs. **Design, Setting, and Participants:** Longitudinal analysis of the daily doses of opioids filled in Medicare Part D for all opioids as a group and for categories of opioids by state and state-level MCLs from 2010 through 2015. Separate models were estimated first for whether the state had implemented any MCL and second for whether a state had implemented either a dispensary-based or a home cultivation only-based MCL. **Main Outcomes and Measures:** The primary outcome measure was the total number of daily opioid doses prescribed (in millions) in each US state for all opioids. The secondary analysis examined the association between MCLs separately by opioid class. **Results:** From 2010 to 2015 there were 23.08 million daily doses of any opioid dispensed per year in the average state under Medicare Part D. Multiple regression analysis results found that patients filled fewer daily doses of any opioid in states with an MCL. The associations between MCLs and any opioid prescribing were statistically significant when we took the type of MCL into account: states with active dispensaries saw 3.742 million fewer daily doses filled (95% CI, -6.289 to -1.194); states with home cultivation only MCLs saw 1.792 million fewer filled daily doses (95% CI, -3.532 to -0.052). Results varied by type of opioid, with statistically significant estimated negative associations observed for hydrocodone and morphine.
Hydrocodone use decreased by 2.320 million daily doses (or 17.4%) filled with dispensary-based MCLs (95% CI, -3.782 to -0.859; P = .002) and decreased by 1.256 million daily doses (or 9.4%) filled with home-cultivation-only-based MCLs (95% CI, -2.319 to -0.193; P = .02). Morphine use decreased by 0.361 million daily doses (or 20.7%) filled with dispensary-based MCLs (95% CI, -0.718 to -0.005; P = .047).

Conclusions and Relevance: Medical cannabis laws are associated with significant reductions in opioid prescribing in the Medicare Part D population. This finding was particularly strong in states that permit dispensaries, and for reductions in hydrocodone and morphine prescriptions.


Abstract: This article delineates the current efforts of the Vermont Department of Health (VDH) to address the potential health impact of legalization and regulation of recreational marijuana for use by adults at least 21 years of age. To this end, VDH and key stakeholders developed and published a Health Impact Assessment with specific recommendations should legislation that legalized and regulated marijuana be passed into law. Although the legalization legislation failed in 2016 and was vetoed by the Governor in 2017, it is unclear what will happen in the future.


Objective: To assess the effects of use of cannabis during pregnancy on maternal and fetal outcomes. Data Sources: 7 electronic databases were searched from inception to 1 April 2014. Studies that investigated the effects of use of cannabis during pregnancy on maternal and fetal outcomes were included. Study Selection: Case-control studies, cross-sectional and cohort studies were included. Data Extraction and Synthesis: Data synthesis was undertaken via systematic review and meta-analysis of available evidence. All review stages were conducted independently by 2 reviewers. Main Outcomes and Measures: Maternal, fetal and neonatal outcomes up to 6 weeks postpartum after exposure to cannabis. Meta-analyses were conducted on variables that had 3 or more studies that measured an outcome in a consistent manner. Outcomes for which meta-analyses were conducted included: anemia, birth weight, low birth weight, neonatal length, placement in the neonatal intensive care unit, gestational age, head circumference and preterm birth. Results: 24 studies were included in the review. Results of the meta-analysis demonstrated that women who used cannabis during pregnancy had an increase in the odds of anemia (pooled OR (pOR)=1.36: 95% CI 1.10 to 1.69) compared with women who did not use cannabis during pregnancy. Infants exposed to cannabis in utero had a decrease in birth weight (low birth weight pOR=1.77: 95% CI 1.04 to 3.01; pooled mean difference (pMD) for birth weight=109.42 g: 38.72 to 180.12) compared with infants whose mothers did not use cannabis during pregnancy. Infants exposed to cannabis in utero were also more likely to need placement in the neonatal intensive care unit compared with infants whose mothers did not use cannabis during pregnancy (pOR=2.02: 1.27 to 3.21). Conclusions: Use of cannabis during pregnancy may increase adverse outcomes for women and their neonates. As use of cannabis gains social acceptance, pregnant women and their medical providers could benefit from health education on potential adverse effects of use of cannabis during pregnancy.


Abstract: The claim that the adverse health effects of cannabis are much less serious than those of alcohol has been central to the case for cannabis legalisation. Regulators in US states that have legalised cannabis have
adopted regulatory models based on alcohol. This paper critically examines the claim about adverse health effects and the wisdom of regulating cannabis like alcohol. First, it compares what we know about the adverse health effects of alcohol and cannabis. Second, it discusses the uncertainties about the long-term health effects of sustained daily cannabis use. Third, it speculates about how the adverse health effects of cannabis may change after legalisation. Fourth, it questions the assumption that alcohol provides the best regulatory model for a legal cannabis market. Fifth, it outlines the major challenges in regulating cannabis under the liberal alcohol-like regulatory regimes now being introduced.


A major challenge in assessing the public health impact of legalizing cannabis use in Colorado and Washington State is the absence of any experience with legal cannabis markets. The Netherlands created a *de facto* legalized cannabis market for recreational use, but policy analysts disagree about how it has affected rates of cannabis use. Some US states have created *de facto* legal supply of cannabis for medical use. So far this policy does not appear to have increased cannabis use or cannabis-related harm. Given experience with more liberal alcohol policies, the legalisation of recreational cannabis use is likely to increase use among current users. It is also likely that legalization will increase the number of new users among young adults but it remains uncertain how many may be recruited, within what timeframe, among which groups within the population, and how many of these new users will become regular users.


**Importance:** Laws and attitudes toward marijuana in the United States are becoming more permissive but little is known about whether the prevalence rates of marijuana use and marijuana use disorders have changed in the 21st century. **Objective:** To present nationally representative information on the past-year prevalence rates of marijuana use, marijuana use disorder, and marijuana use disorder among marijuana users in the US adult general population and whether this has changed between 2001-2002 and 2012-2013. **Design, Setting, and Participants:** Face-to-face interviews conducted in surveys of 2 nationally representative samples of US adults: the National Epidemiologic Survey on Alcohol and Related Conditions (data collected April 2001-April 2002; N = 43,093) and the National Epidemiologic Survey on Alcohol and Related Conditions-III (data collected April 2012-June 2013; N = 36,309). Data were analyzed March through May 2015. **Main Outcomes and Measures:** Past-year marijuana use and DSM-IV marijuana use disorder (abuse or dependence). **Results:** The past-year prevalence of marijuana use was 4.1% (SE, 0.15) in 2001-2002 and 9.5% (SE, 0.27) in 2012-2013, a significant increase (P < .05). Significant increases were also found across demographic subgroups (sex, age, race/ethnicity, education, marital status, income, urban/rural, and region). The past-year prevalence of DSM-IV marijuana use disorder was 1.5% (0.08) in 2001-2002 and 2.9% (SE, 0.13) in 2012-2013 (P < .05). With few exceptions, increases in the prevalence of marijuana use disorder between 2001-2002 and 2012-2013 were also statistically significant (P < .05) across demographic subgroups. However, the prevalence of marijuana use disorder among marijuana users decreased significantly from 2001-2002 (35.6%; SE, 1.37) to 2012-2013 (30.6%; SE, 1.04). **Conclusions:** The prevalence of marijuana use more than doubled between 2001-2002 and 2012-2013, and there was a large increase in marijuana use disorders during that time. While not all marijuana users experience problems, nearly 3 of 10 marijuana users manifested a marijuana use disorder in 2012-2013. Because the risk for marijuana use disorder did not increase among users, the increase in prevalence of marijuana use disorder is owing to an increase in prevalence of users in the US adult population. Given changing laws and attitudes toward marijuana, a balanced presentation of the likelihood of adverse consequences of marijuana use to policy makers, professionals, and the public is needed.

Introduction: Recent years have witnessed increased attention to how cannabis use impacts the use of other psychoactive substances. The present study examines the use of cannabis as a substitute for alcohol, illicit substances and prescription drugs among 473 adults who use cannabis for therapeutic purposes.

Design and Methods: The Cannabis Access for Medical Purposes Survey is a 414-question cross-sectional survey that was available to Canadian medical cannabis patients online and by hard copy in 2011 and 2012 to gather information on patient demographics, medical conditions and symptoms, patterns of medical cannabis use, cannabis substitution and barriers to access to medical cannabis.

Results: Substituting cannabis for one or more of alcohol, illicit drugs or prescription drugs was reported by 87% (n = 410) of respondents, with 80.3% reporting substitution for prescription drugs, 51.7% for alcohol, and 32.6% for illicit substances. Respondents who reported substituting cannabis for prescription drugs were more likely to report difficulty affording sufficient quantities of cannabis, and patients under 40 years of age were more likely to substitute cannabis for all three classes of substance than older patients.

Conclusions: The finding that cannabis was substituted for all three classes of substances suggests that the medical use of cannabis may play a harm reduction role in the context of use of these substances, and may have implications for abstinence-based substance use treatment approaches. Further research should seek to differentiate between biomedical substitution for prescription pharmaceuticals and psychoactive drug substitution, and to elucidate the mechanisms behind both.


Abstract: Cannabis use is common and increasing among women in the United States. State policies are changing with a movement towards decriminalization and legalization. We explore the implications of cannabis liberalization for maternal and child health. Most women who use cannabis quit or cut back during pregnancy. Although women are concerned about the possible health effects of cannabis, providers do a poor job of counseling. There is a theoretical potential for cannabis to interfere with neurodevelopment, however human data have not identified any long-term or long lasting meaningful differences between children exposed in utero to cannabis and those not. Scientifically accurate dissemination of cannabis outcomes data is necessary. Risks should be neither overstated nor minimized, and the legal status of a substance should not be equated with safety. Decreasing or stopping use of all recreational drugs should be encouraged during pregnancy. Providers must recognize that even in environments where cannabis is legal, pregnant women may end up involved with Child Protective Services. In states where substance use is considered child abuse this may be especially catastrophic. Above all, care for pregnant women who use cannabis should be non-punitive and grounded in respect for patient autonomy.


Background: Marijuana is often smoked via a filterless cigarette and contains similar chemical makeup as smoked tobacco. There are few publications describing usage patterns and respiratory risks in older adults or in those with chronic obstructive pulmonary disease (COPD). Methods: A cross-sectional analysis of current and
former tobacco smokers from the Subpopulations and Intermediate Outcome Measures in COPD Study (SPIROMICS) study assessed associations between marijuana use and pulmonary outcomes. Marijuana use was defined as never, former (use over 30 days ago), or current (use within 30 days). Respiratory health was assessed using quantitative high-resolution computed tomography (HRCT) scans, pulmonary function tests and questionnaire responses about respiratory symptoms. 

**Results:** Of the total 2304 participants, 1130 (49%) never, 982 (43%) former, and 192 (8%) current marijuana users were included. Neither current nor former marijuana use was associated with increased odds of wheeze (odds ratio [OR] 0.87, OR 0.97), cough (OR 1.22; OR 0.93) or chronic bronchitis (OR 0.87; OR 1.00) when compared to never users. Current and former marijuana users had lower quantitative emphysema ($P=0.004$, $P=0.03$), higher percent predicted forced expiratory volume in 1 second (FEV$_1$%) ($P<0.001$, $P<0.001$), and percent predicted forced vital capacity (FVC%) ($p<0.001$, $P<0.001$). Current marijuana users exhibited higher total tissue volume ($P=0.003$) while former users had higher air trapping ($P<0.001$) when compared to never marijuana users. 

**Conclusions:** Marijuana use was found to have little to no association with poor pulmonary health in older current and former tobacco smokers after adjusting for covariates. Higher forced expiratory volume in 1 second (FEV$_1$) and forced vital capacity (FVC) was observed among current marijuana users. However, higher joint years was associated with more chronic bronchitis symptoms (e.g., wheeze), and this study cannot determine if long-term heavy marijuana smoking in the absence of tobacco smoking is associated with lung symptoms, airflow obstruction, or emphysema, particularly in those who have never smoked tobacco cigarettes.


**Abstract:** Marijuana smoke contains many of the same constituents as tobacco smoke, but whether it has similar adverse effects on pulmonary function is unclear. **Objective:** To analyze associations between marijuana (both current and lifetime exposure) and pulmonary function. **Design:** The Coronary Artery Risk Development in Young Adults (CARDIA) study, a longitudinal study collecting repeated measurements of pulmonary function and smoking over 20 years (March 26, 1985-August 19, 2006) in a cohort of 5115 men and women in 4 US cities. Mixed linear modeling was used to account for individual age-based trajectories of pulmonary function and other covariates including tobacco use, which was analyzed in parallel as a positive control. Lifetime exposure to marijuana joints was expressed in joint-years, with 1 joint-year of exposure equivalent to smoking 365 joints or filled pipe bowls. 

**Main Outcome:** Forced expiratory volume in the first second of expiration (FEV$_1$) and forced vital capacity (FVC). 

**Results:** Marijuana exposure was nearly as common as tobacco exposure but was mostly light (median, 2-3 episodes per month). Tobacco exposure, both current and lifetime, was linearly associated with lower FEV$_1$ and FVC. In contrast, the association between marijuana exposure and pulmonary function was nonlinear ($P<.001$): at low levels of exposure, FEV$_1$ increased by 13 mL/joint-year (95% CI, 6.4 to 20; $P<.001$) and FVC by 20 mL/joint-year (95% CI, 12 to 27; $P<.001$), but at higher levels of exposure, these associations leveled or even reversed. The slope for FEV$_1$ was -2.2 mL/joint-year (95% CI, -4.6 to 0.3; $P=.08$) at more than 10 joint-years and -3.2 mL per marijuana smoking episode/mo (95% CI, -5.8 to -0.6; $P=.02$) at more than 20 episodes/mo. With very heavy marijuana use, the net association with FEV$_1$ was not significantly different from baseline, and the net association with FVC remained significantly greater than baseline (eg, at 20 joint-years, 76 mL [95% CI, 34 to 117]; $P<.001$). 

**Conclusion:** Occasional and low cumulative marijuana use was not associated with adverse effects on pulmonary function.

**Abstract:** Recent work finds that medical marijuana laws reduce the daily doses filled for opioid analgesics among Medicare Part-D and Medicaid enrollees, as well as population-wide opioid overdose deaths. We replicate the result for opioid overdose deaths and explore the potential mechanism. The key feature of a medical marijuana law that facilitates a reduction in overdose death rates is a relatively liberal allowance for dispensaries. As states have become more stringent in their regulation of dispensaries, the protective value generally has fallen. These findings suggest that broader access to medical marijuana facilitates substitution of marijuana for powerful and addictive opioids.


**Background:** Cannabis use is common, and associated with adverse health outcomes. 'Routes of administration' (ROAs) for cannabis use have increasingly diversified, in part influenced by developments towards legalization. This paper sought to review data on prevalence and health outcomes associated with different ROAs. **Methods:** This scoping review followed a structured approach. Electronic searches for English-language peer-reviewed publications were conducted in primary databases (i.e., MEDLINE, EMBASE, PsycINFO, Google Scholar) based on pertinent keywords. Studies were included if they contained information on prevalence and/or health outcomes related to cannabis use ROAs. Relevant data were screened, extracted and narratively summarized under distinct ROA categories. **Results:** Overall, there is a paucity of rigorous and high-quality data on health outcomes from cannabis ROAs, especially in direct and quantifiable comparison. Most data exist on smoking combusted cannabis, which is associated with various adverse respiratory system outcomes (e.g., bronchitis, lung function). Vaporizing natural cannabis and ingesting edibles appear to reduce respiratory system problems, but may come with other risks (e.g., delayed impairment, use ‘normalization’). Vaporizing cannabis concentrates can result in distinct acute risks (e.g., excessive impairment, injuries). Other ROAs are uncommon and under-researched. **Conclusions:** ROAs appear to distinctly influence health outcomes from cannabis use, yet systematic data for comparative assessments are largely lacking; these evidence gaps require filling. Especially in emerging legalization regimes, ROAs should be subject to evidence-based regulation towards improved public health outcomes. Concretely, vaporizers and edibles may offer potential for reduced health risks, especially concerning respiratory problems. Adequate cannabis product regulation (e.g., purity, labeling, THC-restrictions) is required to complement ROA-based effects.


**Background:** The Canadian federal government has committed to legalize, regulate, and restrict non-medical cannabis use by adults in 2018. To prepare for monitoring the health, social and economic impacts of this policy change, a greater understanding of the long-term trends in the prevalence of cannabis use in Canada is needed. **Methods:** Nine national surveys of the household population collected information about cannabis use during the period from 1985 through 2015. These surveys are examined for comparability. The data are used to estimate past-year (current) cannabis use (total, and by sex and age). Based on the most comparable data, trends in use from 2004 through 2015 are estimated. **Results:** From 1985 through 2015, past-year cannabis use increased overall. Analysis of comparable data from the Canadian Tobacco Use Monitoring Survey and the Canadian Tobacco, Alchohol and Drugs Survey for the 2004-2015 period suggests that use was stable among 15- to 17-year-old males, decreased among 15- to 17-year-old females and among 18- to 24-year-olds (both sexes), and increased among people aged 25 or older. **Discussion:** According to data from national population surveys, since 2004, cannabis use was stable or decreased among youth, and rose among adults. Results highlight the importance of consistent monitoring of use in the pre-and post-legalization periods.

**Background:** Chronic pain is common in the United States and prescribed opioid analgesics use for noncancer pain has increased dramatically in the past two decades, possibly accounting for the current opioid addiction epidemic. Co-morbid drug use in those prescribed opioid analgesics is common, but there are few data on polysubstance use patterns. **Objective:** We explored patterns of use of cigarette, alcohol, and illicit drugs in HIV-infected people with chronic pain who were prescribed opioid analgesics. **Methods:** We conducted a secondary data analysis of screening interviews conducted as part of a parent randomized trial of financial incentives to improve HIV outcomes among drug users. In a convenience sample of people with HIV and chronic pain, we collected self-report data on demographic characteristics; pain; patterns of opioid analgesic use (both prescribed and illicit); cigarette, alcohol, and illicit drug use (including cannabis, heroin, and cocaine) within the past 30 days; and current treatment for drug use and HIV. **Results:** Almost half of the sample of people with HIV and chronic pain reported current prescribed opioid analgesic use (N = 372, 47.1%). Illicit drug use was common (N = 505, 63.9%), and cannabis was the most commonly used illicit substance (N = 311, 39.4%). In multivariate analyses, only cannabis use was significantly associated with lower odds of prescribed opioid analgesic use (adjusted odds ratio = 0.57; 95% confidence interval: 0.38-0.87). **Conclusions/Importance:** Our data suggest that new medical cannabis legislation might reduce the need for opioid analgesics for pain management, which could help to address adverse events associated with opioid analgesic use.


The practice now known as “dabbing” appears to be quickly proliferating as a fashionable way to use marijuana in the United States. Dabbing is the inhalation of a concentrated tetrahydrocannabinol (THC) product created through butane extraction. The use of butane hash oil (BHO) products and the modification of cannabis more generally are not new phenomena, but dabbing has recently moved from relative obscurity to the headlines, leaving cannabis aficionados, adolescents, and parents curious about its effects. Physicians and other health care professionals need to be prepared for discussions about the effects of dabbing to minimize potential harms, particularly because recent marijuana policy changes likely have facilitated youth access to “dabs”.


**Objective:** The authors investigated whether the transition from licit drug use to marijuana use is determined by particular risk factors, as specified by the gateway hypothesis. They also evaluated the accuracy of the "gateway sequence" (illicit drug use following licit drugs) for predicting a diagnosis of substance use disorder. **Method:** Boys who consumed licit drugs only (N=99), boys who consumed licit drugs and then transitioned to marijuana use (gateway sequence) (N=97), and boys who used marijuana before using licit substances (alternative sequence) (N=28) were prospectively studied from ages 10-12 years through 22 years to determine whether specific factors were associated with each drug use pattern. The groups were compared on 35 variables measuring psychological, family, peer, school, and neighborhood characteristics. In addition, the utility of the gateway and alternative sequences in predicting substance use disorder was compared to assess their clinical informativeness. **Results:** Twenty-eight (22.4%) of the participants who used marijuana did not exhibit the gateway sequence, thereby demonstrating that this pattern is not invariant in drug-using youths. Among youths who did exhibit the gateway pattern, only delinquency was more strongly related to marijuana use than licit drug use. Specific risk factors associated with transition from licit to illicit drugs were not revealed. The
alternative sequence had the same accuracy for predicting substance use disorder as the gateway sequence. **Conclusions:** Proneness to deviancy and drug availability in the neighborhood promote marijuana use. These findings support the common liability model of substance use behavior and substance use disorder.


In light of the rapidly shifting landscape regarding the legalization of marijuana for medical and recreational purposes, patients may be more likely to ask physicians about its potential adverse and beneficial effects on health. The popular notion seems to be that marijuana is a harmless pleasure, access to which should not be regulated or considered illegal. Currently, marijuana is the most commonly used “illicit” drug in the United States, with about 12% of people 12 years of age or older reporting use in the past year and particularly high rates of use among young people. The most common route of administration is inhalation. The greenish-gray shredded leaves and flowers of the Cannabis sativa plant are smoked (along with stems and seeds) in cigarettes, cigars, pipes, water pipes, or “blunts” (marijuana rolled in the tobacco-leaf wrapper from a cigar). Hashish is a related product created from the resin of marijuana flowers and is usually smoked (by itself or in a mixture with tobacco) but can be ingested orally. Marijuana can also be used to brew tea, and its oil-based extract can be mixed into food products.


**Background:** A staggering number of Americans are dying from overdoses attributed to prescription opioid medications (POMs). In response, states are creating policies related to POM harm reduction strategies, overdose prevention, and alternative therapies for pain management, such as cannabis (medical marijuana). However, little is known about how the use of cannabis for pain management may be associated with POM use. **Purpose:** The purpose of this article is to examine state medical cannabis (MC) use laws and policies and their potential association with POM use and related harms. **Methods:** A systematic literature review was conducted to explore United States policies related to MC use and the association with POM use and related harms. Medline, PubMed, CINAHL, and Cochrane databases were searched to identify peer-reviewed articles published between 2010 and 2017. Using the search criteria, 11,513 records were identified, with 789 abstracts reviewed, and then 134 full-text articles screened for eligibility. **Findings:** Of 134 articles, 10 articles met inclusion criteria. Four articles were cross-sectional online survey studies of MC substitution for POM, six were secondary data analyses exploring state-level POM overdose fatalities, hospitalizations related to MC or POM harms, opioid use disorder admissions, motor vehicle fatalities, and Medicare and Medicaid prescription cost analyses. The literature suggests MC laws could be associated with decreased POM use, fewer POM-related hospitalizations, lower rates of opioid overdose, and reduced national health care expenditures related to POM overdose and misuse. However, available literature on the topic is sparse and has notable limitations. **Conclusions:** Review of the current literature suggests states that implement MC policies could reduce POM-associated mortality, improve pain management, and significantly reduce health care costs. However, MC research is constrained by federal policy restrictions, and more research related to MC as a potential alternative to POM for pain management, MC harms, and its impact on POM-related harms and health care costs should be a priority of public health, medical, and nursing research.

Abstract: Over 22 million Americans are current users of marijuana; half of US states allow medical marijuana, and several allow recreational marijuana. The objective of this study was to evaluate the impact marijuana has on hospitalizations, emergency department (ED) visits, and regional poison center (RPC) calls in Colorado, a medical and recreational marijuana state. This is a retrospective review using Colorado Hospital Association hospitalizations and ED visits with marijuana-related billing codes, and RPC marijuana exposure calls. Legalization of marijuana in Colorado has been associated with an increase in hospitalizations, ED visits, and RPC calls linked with marijuana exposure. From 2000 to 2015, hospitalization rates with marijuana-related billing codes increased from 274 to 593 per 100,000 hospitalizations in 2015. Overall, the prevalence of mental illness among ED visits with marijuana-related codes was five-fold higher (5.07, 95% CI: 5.0, 5.1) than the prevalence of mental illness without marijuana-related codes. RPC calls remained constant from 2000 through 2009. However, in 2010, after local medical marijuana policy liberalization, the number of marijuana exposure calls significantly increased from 42 to 93; in 2014, after recreational legalization, calls significantly increased by 79.7%, from 123 to 221 (p<0.0001). The age group <17 years old also had an increase in calls after 2014. As more states legalize marijuana, it is important to address public education and youth prevention, and understand the impact on mental health disorders. Improvements in data collection and surveillance methods are needed to more accurately evaluate the public health impact of marijuana legalization.


Objective: We compare state trends in unintentional pediatric marijuana exposures, as measured by call volume to US poison centers, by state marijuana legislation status. Methods: A retrospective review of the American Association of Poison Control Centers National Poison Data System was performed from January 1, 2005, to December 31, 2011. States were classified as nonlegal if they have not passed legislation, transitional if they enacted legislation between 2005 and 2011, and decriminalized if laws passed before 2005. Our hypotheses were that decriminalized and transitional states would experience a significant increase in call volume, with more symptomatic exposures and more health care admissions than nonlegal states. Results: There were 985 unintentional marijuana exposures reported from 2005 through 2011 in children aged 9 years and younger: 496 in nonlegal states, 93 in transitional states, and 396 in decriminalized states. There was a slight male predominance, and the median age ranged from 1.5 to 2.0 years. Clinical effects varied, with neurologic effects the most frequent. More exposures in decriminalized states required health care evaluation and had moderate to major clinical effects and critical care admissions compared with exposures from nonlegal states. The call rate in nonlegal states to poison centers did not change from 2005 to 2011. The call rate in decriminalized states increased by 30.3% calls per year, and transitional states had a trend toward an increase of 11.5% per year. Conclusion: Although the number of pediatric exposures to marijuana reported to the National Poison Data System was low, the rate of exposure increased from 2005 to 2011 in states that had passed marijuana legislation.


Importance: Overprescribing of opioids is considered a major driving force behind the opioid epidemic in the United States. Marijuana is one of the potential nonopioid alternatives that can relieve pain at a relatively lower risk of addiction and virtually no risk of overdose. Marijuana liberalization, including medical and adult-use marijuana laws, has made marijuana available to more Americans. Objective: To examine the association of state implementation of medical and adult-use marijuana laws with opioid prescribing rates and spending among Medicaid enrollees. Design, Setting, and Participants: This cross-sectional study used a quasi-
experimental difference-in-differences design comparing opioid prescribing trends between states that started to implement medical and adult-use marijuana laws between 2011 and 2016 and the remaining states. This population-based study across the United States included all Medicaid fee-for-service and managed care enrollees, a high-risk population for chronic pain, opioid use disorder, and opioid overdose. **Exposures:** State implementation of medical and adult-use marijuana laws from 2011 to 2016. **Main Outcomes and Measures:** Opioid prescribing rate, measured as the number of opioid prescriptions covered by Medicaid on a quarterly, per-1000-Medicaid-enrollee basis. **Results:** State implementation of medical marijuana laws was associated with a 5.88% lower rate of opioid prescribing (95% CI, -11.55% to approximately -0.21%). Moreover, the implementation of adult-use marijuana laws, which all occurred in states with existing medical marijuana laws, was associated with a 6.38% lower rate of opioid prescribing (95% CI, -12.20% to approximately -0.56%). **Conclusions and Relevance:** The potential of marijuana liberalization to reduce the use and consequences of prescription opioids among Medicaid enrollees deserves consideration during the policy discussions about marijuana reform and the opioid epidemic.


**Objectives:** The study examined sex differences in trend and clinical characteristics of cannabis use disorder (CUD) diagnosis involved hospitalizations among adult patients. **Methods:** We analyzed hospitalization data from the 2007-2011 Nationwide Inpatient Samples for patients aged 18-64 years (N = 15,114,930). Descriptive statistics were used to characterize demographic variables and to compare the proportions of CUD diagnosis and comorbid patterns between male and female hospitalizations. Logistic regressions were performed to examine the association of sex and other demographic variables with CUD diagnosis. **Results:** During the study period, 3.3% of male and 1.5% of female hospitalizations had any-listed CUD diagnoses, and both sexes presented an upward trend in the number, rate, and proportion of CUD diagnosis. Among hospitalizations for patients aged 18-25 years, about 1 in 10 males and 1 in 20 females included a CUD diagnosis, and this proportion decreased with age strata. Mental disorders accounted for the highest proportion of CUD involved inpatient hospitalizations, and female CUD involved hospitalizations included a higher proportion of mental disorders that required hospitalized care compared with male hospitalizations (41% vs 36%). In each sex group, younger age, black race, lower household income, large metropolitan residence, non-private insurance, substance use diagnosis, and mental disorders were associated with elevated odds of having CUD diagnosis. **Conclusion:** The large sample of clinical hospitalization data suggest an increased trend in CUD diagnosis and sex differences in several comorbidities with CUD-involved hospital admissions. Prevention and treatment for CUD should consider sex differences in clinical comorbidities.

**Criminal Justice and Public Safety**


**Objective:** Use of marijuana before or while driving significantly contributes to driving impairment and elevated risk of motor vehicle accidents; however, this risk behavior is common among users. Little is known about the etiology of driving while under the influence of marijuana. **Method:** Guided by social learning theory, this study examined marijuana outcome expectancies and other driving-related cognitions as predictors of the frequency of driving after smoking marijuana (DASM) and smoking marijuana while driving (SMWD). A community sample of 151 (64% male) non-treatment-seeking frequent marijuana users completed questionnaires on variables of interest. **Results:** Perceived driving-related peer norms (i.e., perception that fewer friends disapprove of DASM
and SMWD and of riding with a driver under the influence of marijuana) were associated with lower frequency of both DASM and SMWD. Perceived dangerousness of DASM was also associated with decreased frequency of DASM. **Conclusions:** Our findings suggest a range of potentially important targets for interventions intended to reduce the likelihood and frequency of driving while under the influence of marijuana.


**Objectives:** To evaluate motor vehicle crash fatality rates in the first 2 states with recreational marijuana legalization and compare them with motor vehicle crash fatality rates in similar states without recreational marijuana legalization. **Methods:** We used the US Fatality Analysis Reporting System to determine the annual numbers of motor vehicle crash fatalities between 2009 and 2015 in Washington, Colorado, and 8 control states. We compared year-over-year changes in motor vehicle crash fatality rates (per billion vehicle miles traveled) before and after recreational marijuana legalization with a difference-in-differences approach that controlled for underlying time trends and state-specific population, economic, and traffic characteristics. **RESULTS:** Pre-recreational marijuana legalization annual changes in motor vehicle crash fatality rates for Washington and Colorado were similar to those for the control states. Post-recreational marijuana legalization changes in motor vehicle crash fatality rates for Washington and Colorado also did not significantly differ from those for the control states (adjusted difference-in-differences coefficient = +0.2 fatalities/billion vehicle miles traveled; 95% confidence interval = -0.4, +0.9). **Conclusions:** Three years after recreational marijuana legalization, changes in motor vehicle crash fatality rates for Washington and Colorado were not statistically different from those in similar states without recreational marijuana legalization. Future studies over a longer time remain warranted.


**Abstract:** Reducing marijuana-impaired driving is an important part of any strategy to prevent motor vehicle traffic injuries. In Colorado, the first of eight US states and the District of Columbia to legalise marijuana for recreational use, drivers with positive tests for the presence of marijuana accounted for a larger proportion of fatal MVCs after marijuana commercialisation. The use of blood tests to screen for marijuana intoxication, in Colorado and elsewhere in the USA, poses a number of challenges. Many high-income countries use oral fluid drug testing (OF) to provide roadside evidence of marijuana intoxication. A 2009 Belgium policy implementing OF roadside testing increased true positives and decreased false positives of suspected marijuana-related driving under the influence (DUI) arrests. US policy-makers should consider using roadside OF to increase objectivity and reliability for tests used in marijuana-related DUI arrests.


**Abstract:** A movement from medical to recreational marijuana use allows for a larger base of potential users who have easier access to marijuana, because they do not have to visit a physician before using marijuana. This study examines whether changes in the density of marijuana outlets were related to violent, property, and marijuana-specific crimes in Denver, CO during a time in which marijuana outlets began selling marijuana for recreational, and not just medical, use. We collected data on locations of crimes, marijuana outlets and covariates for 481 Census block groups over 34 months (N = 16,354 space-time units). A Bayesian Poisson space-time model assessed statistical relationships between independent measures and crime counts within "local"
Census block groups. We examined spatial "lag" effects to assess whether crimes in Census block groups adjacent to locations of outlets were also affected. Independent of the effects of covariates, densities of marijuana outlets were unrelated to property and violent crimes in local areas. However, the density of marijuana outlets in spatially adjacent areas was positively related to property crime in spatially adjacent areas over time. Further, the density of marijuana outlets in local and spatially adjacent blocks groups was related to higher rates of marijuana-specific crime. This study suggests that the effects of the availability of marijuana outlets on crime do not necessarily occur within the specific areas within which these outlets are located, but may occur in adjacent areas. Thus studies assessing the effects of these outlets in local areas alone may risk underestimating their true effects.


**Background:** Driving under the influence of marijuana is a serious traffic safety concern in the United States. Delta 9-tetrahydrocannabinol (THC) is the main active compound in marijuana. Although blood THC testing is a more accurate measure of THC-induced impairment, measuring THC in oral fluid is a less intrusive and less costly method of testing. **Methods:** We examined whether the oral fluid THC test can be used as a valid alternative to the blood THC test using a sensitivity and specificity analysis and a logistic regression, and estimate the quantitative relationship between oral fluid THC concentration and blood THC concentration using a correlation analysis and a linear regression on the log-transformed THC concentrations. We used data from 4596 drivers who participated in the 2013 National Roadside Survey of Alcohol and Drug Use by Drivers and for whom THC testing results from both oral fluid and whole blood samples were available. **Results:** Overall, 8.9% and 9.4% of the participants tested positive for THC in oral fluid and whole blood samples, respectively. Using blood test as the reference criterion, oral fluid test for THC positivity showed a sensitivity of 79.4% (95% CI: 75.2%, 83.1%) and a specificity of 98.3% (95% CI: 97.9%, 98.7%). The log-transformed oral fluid THC concentration accounted for about 29% of the variation in the log-transformed blood THC concentration. That is, there is still 71% of the variation in the log-transformed blood THC concentration unexplained by the log-transformed oral fluid THC concentration. Back-transforming to the original scale, we estimated that each 10% increase in the oral fluid THC concentration was associated with a 2.4% (95% CI: 2.1%, 2.8%) increase in the blood THC concentration. **Conclusions:** The oral fluid test is a highly valid method for detecting the presence of THC in the blood but cannot be used to accurately measure the blood THC concentration.


**Abstract:** This paper shows that active police enforcement of civic norms against marijuana smoking in public settings has influenced the locations where marijuana is smoked. It has subtly influenced the various marijuana etiquettes observed in both public and private settings. The ethnographic data reveal the importance of informal sanctions; most marijuana consumers report compliance with etiquettes mainly to avoid stigma from nonusing family, friends, and associates-they express limited concern about police and arrest.

Abstract: Driving under the influence (DUI) and DUI drugs (DUID) law enforcement (LE) cases (n = 12,082) where whole blood samples were submitted to ChemaTox Laboratory, Inc. in Boulder, CO, for testing were examined. Of these 12,082 cases, there were 4,235 cannabinoid screens (CS) requested. Samples that yielded a positive CS (n = 2,621) were further analyzed. A total of 1,848 samples were confirmed for Δ9-tetrahydrocannabinol (THC) after a positive CS. Due to a decrease in the confirmation limit of detection (LOD) for THC from 2 to 1 ng/mL, samples that were confirmed for THC and quantitated below 2 ng/mL (n = 250) were considered negative. After this normalization, there were 1,598 samples that were confirmed positive for THC and included in the analysis. The percentage of LE cases with requests for CS for all years was 35%, increasing from 28% in 2011 to 37% in 2013. The positivity rate of CS overall was 62% (range: 59-68% by year) with no significant change over the time frame examined. The percentage of positive CS in which THC was confirmed positive at or above 2 ng/mL (n = 1,598) increased significantly from 28% in 2011 to 65% in 2013. The mean and median THC concentrations were 8.1 and 6.3 ng/mL, respectively (range: 2-192 ng/mL, n = 1,367). The data presented illustrate a statistically significant increase in CS that result in positive THC confirmations. Although the specific cause of this increase is not known at this time, possible ties to ongoing developments in Colorado's marijuana legislation merit further analysis.


Abstract: Marijuana has become the most commonly detected non-alcohol substance among drivers in the United States and Europe. Use of marijuana has been shown to impair driving performance and increase crash risk. Due to the lack of standardization in assessing marijuana-induced impairment and limitations of zero tolerance legislation, more jurisdictions are adopting per se laws by specifying a legal limit of Δ9-tetrahydrocannabinol (THC) at or above which drivers are prosecuted for driving under the influence of marijuana. This review examines major considerations when developing these threshold THC concentrations and specifics of legal THC limits for drivers adopted by different jurisdictions in the United States and other countries.

Economic


Background: A valid measure of the relative economic value of marijuana is needed to characterize individual variation in the drug's reinforcing value and inform evolving national marijuana policy. Relative drug value (demand) can be measured via purchase tasks, and demand for alcohol and cigarettes has been associated with craving, dependence, and treatment response. This study examined marijuana demand with a marijuana purchase task (MPT). Methods: The 22-item self-report MPT was administered to 99 frequent marijuana users (37.4% female, 71.5% marijuana use days, 15.2% cannabis dependent). Results: Pearson correlations indicated a negative relationship between intensity (free consumption) and age of initiation of regular use (r=-0.34, p<0.001), and positive associations with use days (r=0.26, p<0.05) and subjective craving (r=0.43, p<0.001). Omax (maximum expenditure) was positively associated with use days (r=0.29, p<0.01) and subjective craving (r=0.27, p<0.01). Income was not associated with demand. An exponential demand model provided an excellent fit to the data across users (R(2)=0.99). Group comparisons based on presence or absence of DSM-IV cannabis dependence symptoms revealed that users with any dependence symptoms showed significantly higher intensity of demand and more inelastic demand, reflecting greater insensitivity to price increases. Conclusions: These results provide support for construct validity of the MPT, indicating its sensitivity to marijuana demand as
a function of increasing cost, and its ability to differentiate between users with and without dependence symptoms. The MPT may denote abuse liability and is a valuable addition to the behavioral economic literature. Potential applications to marijuana pricing and tax policy are discussed.


Background: Obtaining or purchasing marijuana in the U.S. can be done only in certain states via a lawful market for medical or non-medical (recreational) purposes, or via an unlawful market (“black market”) by home cultivation and unlicensed vendors and individuals. Given the evolving U.S. state marijuana legislation landscape, the objective of this study is to describe individuals who report buying marijuana in the past year by selected characteristics and U.S. geographical location. Methods: Using data from the 2010-2014 National Survey on Drug Use and Health (NSDUH), we conducted bivariate chi-square tests to examine sociodemographic and selected behavioral indicators associated with buying marijuana and analyzed these factors in a multivariable logistic regression model. NSDUH participants were the noninstitutionalized civilian population aged 12+ (approximately 62,100 individuals per year) who reported using marijuana in the past year (approximately 12,400 annual average). Results: A weighted estimate of approximately 18.5 million individuals aged 12+ reported buying marijuana in the past year (59% of marijuana users). Overall, buyers of marijuana were more likely to be male, report using marijuana for a greater number of days, and to meet the criteria for substance use disorder and marijuana dependence. Data showed differences of proportion of marijuana buyers by state of residence. Conclusions: Given recent changes in state laws and policies and the increased demand for marijuana products, continued monitoring of the U.S. marijuana market in coming years is important in order to understand consumption and buying patterns among at-risk segments of the population, especially youth.


Abstract: Following the legalization and regulation of marijuana for recreational purposes in states with medical markets, policymakers and researchers seek empirical evidence on how, and how fast, supply and demand changed over time. Prices are an indication of how suppliers and consumers respond to policy changes, so this study uses a difference-in-difference approach to exploit the timing of policy implementation and identify the impacts on marijuana prices 4-5 months after markets opened. This study uses unique longitudinal survey data of prices paid by consumers and a web-scrapped dataset of dispensary prices advertised online for three U.S. medical marijuana states that all eventually legalized recreational marijuana. Results indicate there were no impacts on the prices paid for medical or recreational marijuana by state-representative residents within the short 4- to 5-months window following legalization. However, there were differences in how much people paid if they obtained marijuana for recreational purposes from a recreational store. Further analysis of advertised prices confirms this result, but further demonstrates heterogeneous responses in prices across types of commonly advertised strains; prices either did not change or increased depending on the strain type. A key implication of our findings is that there are both supply and demand responses at work in the opening of legalized markets, suggesting that evaluations of immediate effects may not accurately reflect the long run impact of legalization on consumption.


Background: Washington State legalized the sale of recreational cannabis in 2012. This paper describes the unfolding of the market regulatory regime in an eastern portion of the state, including field descriptions to
illustrate the setting. **Methods:** We made observations and conducted interviews of the local supply chain comprising a producer/processor, analytic facility, and retail establishments as well as querying the state director of the regulatory board. **Results:** Interviews and observations of facilities suggest an overwhelming concern for black market diversion drives state regulatory efforts. The ongoing dialogue between market actors and the state has resulted in a more equitable distribution of profits at different stages in the process. State safety regulations have thus far been shifted to independent laboratories. Banks and insurance companies have slowly begun making inroads into the industry, despite federal prohibition. **Conclusion:** The law was conceived as a social justice remedy, but the bulk of the legal and regulatory activity surrounds cannabis marketplace management. This has been characterized by concerns for black market diversion, producer/processor profits, and a hands-off approach to safety regulation. Minor cannabis violations as a pathway to criminal justice system involvement have been reduced substantially but disproportionate enforcement upon racial/ethnic minorities continues.


**Aims:** To date there has been limited analysis of the economic costs and benefits associated with cannabis legalisation. This study redresses this gap. A cost benefit analysis of two cannabis policy options the status quo (where cannabis use is illegal) and a legalised–regulated option was conducted. **Method:** A cost benefit analysis was used to value the costs and benefits of the two policies in monetary terms. Costs and benefits of each policy option were classified into five categories (direct intervention costs, costs or cost savings to other agencies, benefits or lost benefits to the individual or the family, other impacts on third parties, and adverse or spill over events). The results are expressed as a net social benefit (NSB). **Findings:** The mean NSB per annum from Monte Carlo simulations (with the 5 and 95 percentiles) for the status quo was $294.6 million AUD ($201.1 to $392.7 million) not substantially different from the $234.2 million AUD ($136.4 to $331.1 million) for the legalised–regulated model which excludes government revenue as a benefit. When government revenue is included, the NSB for legalised–regulated is higher than for status quo. Sensitivity analyses demonstrate the significant impact of educational attainment and wellbeing as drivers for the NSB result. **Conclusion:** Examining the percentiles around the two policy options, there appears to be no difference between the NSB for these two policy options. Economic analyses are essential for good public policy, providing information about the extent to which one policy is substantially economically favourable over another. In cannabis policy, for these two options this does not appear to be the case.


**Background:** Given the growing legalization of recreational marijuana use and related increase in its prevalence in the United States, it is important to understand marijuana’s appeal. We used a behavioral economic (BE) approach to examine whether the reinforcing properties of marijuana, including “demand” for marijuana, varied as a function of its perceived quality. **Methods:** Using an innovative, Web-based marijuana purchase task (MPT), a sample of 683 young-adult recreational marijuana users made hypothetical purchases of marijuana across three qualities (low, mid and high grade) at nine escalating prices per joint, ranging from $0/free to $20. **Results:** We used nonlinear mixed effects modeling to conduct demand curve analyses, which produced separate demand indices (e.g., P_{max}, elasticity) for each grade of marijuana. Consistent with previous research, as the price of marijuana increased, marijuana users reduced their purchasing. Demand also was sensitive to quality, with users willing to pay more for higher quality/grade marijuana. In regression analyses, demand indices accounted for significant variance in typical marijuana use. **Conclusions:** This study illustrates the value of applying BE
theory to young adult marijuana use. It extends past research by examining how perceived quality affects demand for marijuana and provides support for the validity of a Web-based MPT to examine the appeal of marijuana. Our results have implications for policies to regulate marijuana use, including taxation based on the quality of different marijuana products.

**Education**


**Importance:** Historical shifts are occurring in marijuana policy. The effect of legalizing marijuana for recreational use on rates of adolescent marijuana use is a topic of considerable debate. **Objective:** To examine the association between the legalization of recreational marijuana use in Washington and Colorado in 2012 and the subsequent perceived harmfulness and use of marijuana by adolescents. **Design:** We used data of 253,902 students in eighth, 10th, and 12th grades from 2010 to 2015 from Monitoring the Future, a national, annual, cross-sectional survey of students in secondary schools in the contiguous United States. Difference-in-difference estimates compared changes in perceived harmfulness of marijuana use and in past-month marijuana use in Washington and Colorado prior to recreational marijuana legalization (2010-2012) with post legalization (2013-2015) vs the contemporaneous trends in other states that did not legalize recreational marijuana use in this period. **Main Outcomes:** Perceived harmfulness of marijuana use (great or moderate risk to health from smoking marijuana occasionally) and marijuana use (past 30 days). **Results:** Of the 253,902 participants, 120,590 of 245,065 (49.2%) were male, and the mean (SD) age was 15.6 (1.7) years. In Washington, perceived harmfulness declined 14.2% and 16.1% among eighth and 10th graders, respectively, while marijuana use increased 2.0% and 4.1% from 2010-2012 to 2013-2015. In contrast, among states that did not legalize recreational marijuana use, perceived harmfulness decreased by 4.9% and 7.2% among eighth and 10th graders, respectively, and marijuana use decreased by 1.3% and 0.9% over the same period. Difference-in-difference estimates comparing Washington vs states that did not legalize recreational drug use indicated that these differences were significant for perceived harmfulness (eighth graders: % [SD], -9.3 [3.5]; P = .01; 10th graders: % [SD], -9.0 [3.8]; P = .02) and marijuana use (eighth graders: % [SD], 5.0 [1.9]; P = .03; 10th graders: % [SD], 3.2 [1.5]; P = .007). No significant differences were found in perceived harmfulness or marijuana use among 12th graders in Washington or for any of the 3 grades in Colorado. **Conclusions:** Among eighth and 10th graders in Washington, perceived harmfulness of marijuana use decreased and marijuana use increased following legalization of recreational marijuana use. In contrast, Colorado did not exhibit any differential change in perceived harmfulness or past-month adolescent marijuana use following legalization. A cautious interpretation of the findings suggests investment in evidence-based adolescent substance use prevention programs in any additional states that may legalize recreational marijuana use.


**Background:** Cannabis use is common in North America, especially among young people, and is associated with a risk of various acute and chronic adverse health outcomes. Cannabis control regimes are evolving, for example toward a national legalization policy in Canada, with the aim to improve public health, and thus require evidence-based interventions. As cannabis-related health outcomes may be influenced by behaviors that are modifiable by the user, evidence-based Lower-Risk Cannabis Use Guidelines (LRCUG) — a kin to similar
models or national guidance to follow, Colorado public health officials have turned to lessons from medical
2014, Colorado became the first U.S. state to allow sales of recreational, or retail, marijuana. With no state
2008 to 115,467 in December 2014
medical marijuana. The number of registrants (both adults and children) grew rapidly
relatively small. But in 20
plants grown in noncommercial, home settings, and the number of medical users or registrants remained
medical conditions such as glaucoma, HIV/AIDS, cancer, seizures, and severe pain. From 2000 to 2009, medical marijuana was available in Colorado only from
health problems should avoid use altogether, and (10) avoid combining previously mentioned risk behaviors
tetrahydrocannabinol (THC) or balanced THC-to-cannabidiol (CBD)-ratio cannabis products, (4) abstain from
using synthetic cannabinoids, (5) avoid combusted cannabis inhalation and give preference to nonsmoking use
methods, (6) avoid deep or other risky inhalation practices, (7) avoid high-frequency (e.g., daily or near-daily)
cannabis use, (8) abstain from cannabis-impaired driving, (9) populations at higher risk for cannabis use-related
health problems should avoid use altogether, and (10) avoid combining previously mentioned risk behaviors
(e.g., early initiation and high-frequency use). Conclusions: Evidence indicates that a substantial extent of the
risk of adverse health outcomes from cannabis use may be reduced by informed behavioral choices among
users. The evidence-based LRCUG serve as a population-level education and intervention tool to inform such
cannabis use (i.e., definitively before the age of 16 years), (3) choose low-potency
- tetrahydrocannabinol (THC) or balanced THC-to-cannabidiol (CBD)-ratio cannabis products, (4) abstain from
using synthetic cannabinoids, (5) avoid combusted cannabis inhalation and give preference to nonsmoking use
methods, (6) avoid deep or other risky inhalation practices, (7) avoid high-frequency (e.g., daily or near-daily)
cannabis use, (8) abstain from cannabis-impaired driving, (9) populations at higher risk for cannabis use-related
health problems should avoid use altogether, and (10) avoid combining previously mentioned risk behaviors
(e.g., early initiation and high-frequency use). Conclusions: Evidence indicates that a substantial extent of the
risk of adverse health outcomes from cannabis use may be reduced by informed behavioral choices among
users. The evidence-based LRCUG serve as a population-level education and intervention tool to inform such
user choices toward improved public health outcomes. However, the LRCUG ought to be systematically
communicated and supported by key regulation measures (e.g., cannabis product labeling, content regulation)
to be effective. All of these measures are concretely possible under emerging legalization regimes, and should be actively implemented by regulatory authorities. The population-level impact of the LRCUG toward reducing cannabis use-related health risks should be evaluated. Public health implications: Cannabis control regimes are evolving, including legalization in North America, with uncertain impacts on public health. Evidence-based LRCUG offer a potentially valuable population-level tool to reduce the risk of adverse health outcomes from cannabis use among (especially young) users in legalization contexts, and hence to contribute to improved public health outcomes.


In 2000, Colorado residents voted to legalize marijuana use for medical conditions such as glaucoma, HIV/AIDS, cancer, seizures, and severe pain. From 2000 to 2009, medical marijuana was available in Colorado only from plants grown in noncommercial, home settings, and the number of medical users or registrants remained relatively small. But in 2010, state law was changed to permit commercial production and distribution of medical marijuana. The number of registrants (both adults and children) grew rapidly – from 4819 in December 2008 to 115,467 in December 2014 – and medical marijuana dispensaries proliferated. Then, on January 1, 2014, Colorado became the first U.S. state to allow sales of recreational, or retail, marijuana. With no state models or national guidance to follow, Colorado public health officials have turned to lessons from medical
marijuana to prepare for the potential public health implications of more widely available recreational marijuana.


On January 1, 2014, Colorado became the first state in the nation to sell legal recreational marijuana for adult use. As a result, Colorado has had to carefully examine potential population health and safety impacts as well as the role of public health in response to legalization. We have discussed an emerging public health framework for legalized recreational marijuana. We have outlined this framework according to the core public health functions of assessment, policy development, and assurance. In addition, we have discussed challenges to implement this framework that other states considering legalization may face.


**Abstract:** In November 2012, Colorado voters approved legalized recreational marijuana. On January 1, 2014, Colorado became the first state to allow legal sales of non-medical marijuana for adults over the age of 21. Since that time, the state has been monitoring potential impacts on population health. In this paper, we present lessons learned in the first three years following legal sales of recreational marijuana. These lessons pertain to health behaviors and health outcomes, as well as to health policy issues. Our intent is to share these lessons with other states as they face the prospect of recreational marijuana legalization.


**Objective:** As legalization of nonmedical retail marijuana increases, states are implementing public health campaigns designed to prevent increases in youth marijuana use. This study investigated which types of marijuana-related messages were rated most highly by parents and their teens and whether these preferences differed by age and marijuana use. **Method:** Nine marijuana-focused messages were developed as potential radio, newspaper, or television announcements. The messages fell into four categories: information about the law, general advice/conversation starters, consequences of marijuana use/positive alternatives, and information on potential harmful effects of teen marijuana use. The messages were presented through an online survey to 282 parents (84% female) and 283 teen (54% female) participants in an ongoing study in Washington State. **Results:** Both parents and youth rated messages containing information about the law higher than other types of messages. Messages about potential harms of marijuana use were rated lower than other messages by both generations. Parents who had used marijuana within the past year (n = 80) rated consequence/positive alternative messages lower than parent nonusers (n = 199). Youth marijuana users (n = 77) and nonusers (n = 202) both rated messages containing information about the law higher than other types of messages. Youth users and nonusers were less likely than parents to believe messages on the harmful effects of marijuana. **Conclusions:** The high ratings for messages based on information about the marijuana law highlight the need for informational health campaigns to be established as a first step in the marijuana legalization process.
Background: As of January 1, 2017, eight states have approved laws for recreational marijuana use. While the social impacts of these changes remain under debate, the influence on adolescent marijuana use is a key policy and health issue across the U.S. Objective: To examine changes in adolescent marijuana-use behaviors in the first year after recreational marijuana implementation in Colorado, and to analyze the effect of retail marijuana store proximity on youth use and perceptions. Method: Secondary analysis of Healthy Kids Colorado Survey data from 40 schools surveyed before and after recreational marijuana sales were implemented (2013 student n = 12,240; 2014 student n = 11,931). Self-reported marijuana use, ease of access, and perceived harms were compared between years and by proximity of recreational marijuana stores to surveyed schools. Results: Adolescent marijuana use behaviors, wrongness of use, and perceptions of risk of harm were unchanged from baseline to one-year follow-up. Perceived ease of access to marijuana increased (from 46% to 52%). Proximity of recreational marijuana stores was not significantly associated with perceived ease of access to marijuana. Conclusions/Importance: In the first study of adolescent marijuana use and perceptions after state retail implementation of recreational marijuana, there was little change in adolescent marijuana use but a significant change in perception of ease of access. Public health workers and policymakers should continue to monitor these changes as essential for evaluating the impact of liberalization of marijuana policies.


Abstract: This review provides an overview of the changing US epidemiology of cannabis use and associated problems. Adults and adolescents increasingly view cannabis as harmless, and some can use cannabis without harm. However, potential problems include harms from prenatal exposure and unintentional childhood exposure; decline in educational or occupational functioning after early adolescent use, and in adulthood, impaired driving and vehicle crashes; cannabis use disorders (CUD), cannabis withdrawal, and psychiatric comorbidity. Evidence suggests national increases in cannabis potency, prenatal and unintentional childhood exposure; and in adults, increased use, CUD, cannabis-related emergency room visits, and fatal vehicle crashes. Twenty-nine states have medical marijuana laws (MMLs) and of these, 8 have recreational marijuana laws (RMLs). Many studies indicate that MMLs or their specific provisions did not increase adolescent cannabis use. However, the more limited literature suggests that MMLs have led to increased cannabis potency, unintentional childhood exposures, adult cannabis use, and adult CUD. Ecological-level studies suggest that MMLs have led to substitution of cannabis for opioids, and also possibly for psychiatric medications. Much remains to be determined about cannabis trends and the role of MMLs and RMLs in these trends. The public, health professionals, and policy makers would benefit from education about the risks of cannabis use, the increases in such risks, and the role of marijuana laws in these increases.


Purpose: The purpose of this study was to assess whether infrequent and frequent marijuana use at age 19/20 years predicts receipt of educational degrees by the mid-20s, independent of confounding age 18 adolescent risk factors. Methods: Data were from the Monitoring the Future study, an annual nationally representative survey of high school seniors followed into adulthood. Thirteen cohorts (1990-2002) of high school seniors were followed longitudinally to their mid-20s (n = 4,925; 54% female). We used logistic regression and propensity
score matching with successive inclusion of age 18 risk factors and substance use to compare age 19/20 frequent marijuana users (six or more occasions in past 30 days) to nonusers, frequent users to infrequent users (1-6 occasions), and infrequent users to nonusers on their likelihood of degree attainment by the mid-20s. **Results:** Frequent marijuana users were less likely than infrequent users and nonusers to earn bachelor's degrees, even after controlling for a host of age 18 risk factors (e.g., family socioeconomic background, academic performance, educational expectations, truancy). However, these differences were reduced in magnitude to statistical nonsignificance when we controlled for age 18 substance use. Across analyses, the proportion reaching this educational milestone did not differ significantly between infrequent users and nonusers. **Conclusions:** Results support a growing body of work suggesting that frequent marijuana use predicts a lower likelihood of postsecondary educational attainment, and this difference may originate during secondary school.


**Abstract:** Harm reduction policies and attitudes in the United States have advanced substantially in recent years but still lag behind more advanced jurisdictions in Europe and elsewhere. The Obama administration, particularly in its last years, embraced some harm reduction policies that had been rejected by previous administrations but shied away from more cutting edge interventions like supervised consumption sites and heroin-assisted treatment. The Trump administration will undermine some of the progress made to date but significant state and local control over drug policies in the US, as well as growing Republican support for pragmatic drug policies, motivated in part by the opioid crisis, ensures continuing progress for harm reduction.


**Abstract:** Until November 2012, no modern jurisdiction had removed the prohibition on the commercial production, distribution, and sale of marijuana for nonmedical purposes – not even the Netherlands. Government agencies in Colorado and Washington are now charged with granting production and processing licenses and developing regulations for legal marijuana, and other states and countries may follow. Our goal is not to address whether marijuana legalization is a good or bad idea but, rather, to help policymakers understand the decisions they face and some lessons learned from research on public health approaches to regulating alcohol and tobacco over the past century.


**Background:** Support for cannabis ("marijuana") legalization is increasing in the United States (US). Use was recently legalized in two states and in Uruguay, and other states and countries are expected to follow suit. This study examined intentions to use among US high school seniors if cannabis were to become legally available.

**Methods:** Data from the last five cohorts (2007-2011) of high school seniors in Monitoring the Future, an annual nationally representative survey of students in the US were utilized. Data were analyzed separately for the 6116 seniors who reported no lifetime use of cannabis and the 3829 seniors who reported lifetime use (weighted Ns). We examined whether demographic characteristics, substance use and perceived friend disapproval towards cannabis use were associated with (1) intention to try cannabis among non-lifetime users, and (2) intention to use cannabis as often or more often among lifetime users, if cannabis was legal to use. **Results:** Ten percent of
non-cannabis-using students reported intent to initiate use if legal and this would be consistent with a 5.6% absolute increase in lifetime prevalence of cannabis use in this age group from 45.6% (95% CI=44.6, 46.6) to 51.2% (95% CI=50.2, 52.2). Eighteen percent of lifetime users reported intent to use cannabis more often if it was legal. Odds for intention to use outcomes increased among groups already at high risk for use (e.g., males, whites, cigarette smokers) and odds were reduced when friends disapproved of use. However, large proportions of subgroups of students normally at low risk for use (e.g., non-cigarette-smokers, religious students, those with friends who disapprove of use) reported intention to use if legal. Recent use was also a risk factor for reporting intention to use as often or more often. **Conclusion:** Prevalence of cannabis use is expected to increase if cannabis is legal to use and legally available.


**Abstract:** This commentary to the editorial of Hajizadeh argues that the economic, social and health consequences of legalizing cannabis in Canada will depend in large part on the exact stipulations (mainly from the federal government) and on the implementation, regulation and practice of the legalization act (on provincial and municipal levels). A strict regulatory framework is necessary to minimize the health burden attributable to cannabis use. This includes prominently control of production and sale of the legal cannabis including control of price and content with ban of marketing and advertisement. Regulation of medical marijuana should be part of such a framework as well.


**Abstract:** Cannabis is the most prevalently used drug globally, with many jurisdictions considering varying reform options to current policies to deal with this substance and associated harm. Three policy options are available: prohibition, decriminalization, and legalization, with prohibition currently the dominant model globally. This contribution gives reasons why legalization with strict regulation should be considered superior to other options with respect to public health in high income countries in North America.


**Abstract:** The effects of marijuana use on workplace safety are of concern for public health and workplace safety professionals. Twenty-nine states and the District of Columbia have enacted laws legalizing marijuana at the state level for recreational and/or medical purposes. Employers and safety professionals in states where marijuana use is legal have expressed concerns about potential increases in occupational injuries, such as on-the-job motor vehicle crashes, related to employee impairment. Data published in 2017 by the Colorado Department of Public Health and Environment (CDPHE) showed that more than one in eight adult state residents aged ≥18 years currently used marijuana in 2014 (13.6%) and 2015 (13.4%) (1). To examine current marijuana use by working adults and the industries and occupations in which they are employed, CDPHE analyzed data from the state’s Behavioral Risk Factor Surveillance System (BRFSS) regarding current marijuana use (at least 1 day during the preceding 30 days) among 10,169 persons who responded to the current marijuana use question. During 2014 and 2015, 14.6% of these 10,169 Colorado workers reported current marijuana use, with the highest reported prevalence among workers in the Accommodation and Food Services
industry (30.1%) and Food Preparation and Serving (32.2%) occupations. Understanding the industries and occupations of adults with reported marijuana use can help direct and maximize impact of public health messaging and potential safety interventions for adults.


**Abstract:** Adolescence and young adulthood is a critical stage when the economic foundations for life-long health are established. To date, there is little consensus as to whether marijuana use is associated with poor educational and occupational success in adulthood. We investigated associations between trajectories of marijuana use from ages 15 to 28 and multiple indicators of economic well-being in young adulthood including achievement levels (i.e., educational attainment and occupational prestige), work characteristics (i.e., full vs part-time employment, hours worked, annual income), financial strain (i.e., debt, trouble paying for necessities, delaying medical attention), and perceived workplace stress. Data were from the Victoria Healthy Youth Survey, a 10-year prospective study of a randomly recruited community sample of 662 youth (48% male; M age = 15.5), followed biennially for six assessments. Models adjusted for baseline age, sex, SES, high school grades, heavy drinking, smoking, and internalizing and oppositional defiant disorder symptoms. Chronic users (our highest risk class) reported lower levels of educational attainment, lower occupational prestige, lower income, greater debt, and more difficulty paying for medical necessities in young adulthood compared to abstainers. Similarly, increasers also reported lower educational attainment, occupational prestige, and income. Decreasers, who had high early use but quit over time, showed resilience in economic well-being, performing similar to abstainers. Groups did not differ on employment status or perceived workplace stress. The findings indicate that early onset and persistent high or increasingly frequent use of marijuana in the transition from adolescent to young adulthood is associated with risks for achieving educational and occupational success, and subsequently health, in young adulthood.
Appendix C: Comparative Review of State Laws Legalizing Regulated Marijuana Use

Comparative Review of State Laws Legalizing Recreational Marijuana Use

The information in this grid was adapted from the National Alliance for Model State Drug Laws (NAMSDL) document titled *Marijuana: Comparison of State Laws Legalizing Personal, Non-Medical Use*. The National Alliance for Model State Drug Laws is funded by congressional appropriations and is the non-profit successor to The President’s Commission on Model State Drug Laws. In coordination with the Office of National Drug Control Policy, the NAMSDL drafts model drug and alcohol laws, policies and regulations, and analyzes existing state statutes.

Regulations corresponding with the states of Alaska, California, Colorado, Massachusetts, Nevada, Oregon and Washington were cross-referenced against each state government website and updated accordingly. These states, which have legalized regulated marijuana use and set forth regulations on state government websites, are outlined in this document. Washington D.C., which permits home cultivation only, has been excluded. It should be noted that efforts to legalize marijuana production and use continue in many states, including in Maine, where a ballot initiative legalized marijuana possession but regulations for the retail market have not yet been established.

Note: Information corresponding to a particular state/regulation may have not been available at the time this document was developed. Such instances are indicated with ‘NA’.
## Comparative Review of State Laws Legalizing Regulated Marijuana Use

<table>
<thead>
<tr>
<th>Overview</th>
<th>Alaska</th>
<th>California</th>
<th>Colorado</th>
<th>Massachusetts</th>
<th>Nevada</th>
<th>Oregon</th>
<th>Washington</th>
<th>Shared Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td>Effective Date</td>
<td>02/24/2015</td>
<td>11/09/2016</td>
<td>12/10/2012</td>
<td>12/15/2016</td>
<td>01/01/2017</td>
<td>07/01/2015</td>
<td>12/06/2012</td>
<td></td>
</tr>
<tr>
<td>Regulating authority</td>
<td>Marijuana Control Board</td>
<td>Bureau of Marijuana Control; Department of Consumer Affairs; Department of Food and Agriculture; Department of Public Health</td>
<td>Marijuana Enforcement Division; Department of Revenue</td>
<td>Cannabis Control Commission</td>
<td>Nevada Department of Taxation</td>
<td>Oregon Liquor Control Commission; Oregon Health Authority; Oregon Department of Revenue</td>
<td>Washington Liquor and Cannabis Control Board</td>
<td></td>
</tr>
<tr>
<td>Studies required of or requested by regulating authority</td>
<td>NA</td>
<td>Research/evaluation of implementation and effect of the law, including determination of impairment by use of marijuana while driving</td>
<td>Examination of law enforcement activity and costs related to marijuana use in 2006-2007 compared to 2014-2015</td>
<td>Cannabis Advisory Board responsible for examining regulation of marijuana/marijuana products</td>
<td>NA</td>
<td>Investigate influence of marijuana on driving ability</td>
<td>NA</td>
<td></td>
</tr>
</tbody>
</table>

All information contained in this document is current as of April 30, 2018.
<table>
<thead>
<tr>
<th>Supply Chain</th>
<th>Alaska</th>
<th>California</th>
<th>Colorado</th>
<th>Massachusetts</th>
<th>Nevada</th>
<th>Oregon</th>
<th>Washington</th>
<th>Shared Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retail</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Cultivation</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Manufacturers/Processors</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Testing</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>NA</td>
<td>Micro-businesses</td>
<td>Transporters</td>
<td>NA</td>
<td>Distributors</td>
<td>Wholesalers</td>
<td>Transporters</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Home Cultivation</th>
<th>Alaska</th>
<th>California</th>
<th>Colorado</th>
<th>Massachusetts</th>
<th>Nevada</th>
<th>Oregon</th>
<th>Washington</th>
<th>Shared Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td>Home cultivation permitted</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
</tbody>
</table>
| Maximum number of plants/mature per individual | 6/3 | 6/NA | 6/3 | 6/NA | 6/NA | 4/NA | | Home cultivation is allowed in all states except Washington. In states where home cultivation is allowed, plants and marijuana cannot be visible from public places with unaided vision and must be visible from public places with unaided vision and must be locked up within the home. Failure to keep marijuana > 1 oz. locked up within the home is punishable by a $100 fine/forfeiture of marijuana. Unless an agent of a cultivation facility, not allowed to cultivate within 25 miles of a licensed.
| Maximum number of plants/mature per household | 12/6 | 6/NA | 12/NA | 12/NA | 12/NA | 12/4 (or 10 seeds) | | Not permitted |
| Noncommercial transfer limit | 1 oz. or 6 plants | 1 oz. | 1 oz. | 1 oz. | NA | NA | | | | |

Excess limits and repercussions: NA

Plants and marijuana produced >28.5 oz. must be secured by a lock; not visible by normal.

Failure to keep marijuana > 1 oz. locked up within the home is punishable by a $100 fine/forfeiture of marijuana. Unless an agent of a cultivation facility, not allowed to cultivate within 25 miles of a licensed.

Homemade.
<table>
<thead>
<tr>
<th>Current State of Market</th>
<th>Alaska</th>
<th>California</th>
<th>Colorado</th>
<th>Massachusetts</th>
<th>Nevada</th>
<th>Oregon</th>
<th>Washington</th>
<th>Shared Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retail licenses</td>
<td>59</td>
<td>NA</td>
<td>529</td>
<td></td>
<td>NA</td>
<td>345</td>
<td>756</td>
<td>The number of licenses granted may be restricted by municipalities.</td>
</tr>
<tr>
<td>Cultivation/producer licenses</td>
<td>128 (includes “standard” and “limited” cultivation facilities)</td>
<td>NA</td>
<td>735</td>
<td>Retail market was not operational at the time this document was produced.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Manufacturing/processers</td>
<td>11</td>
<td>NA</td>
<td>284</td>
<td></td>
<td>NA</td>
<td>23</td>
<td>1,465</td>
<td></td>
</tr>
<tr>
<td>Testing licenses</td>
<td>3</td>
<td>NA</td>
<td>12</td>
<td></td>
<td>NA</td>
<td>19</td>
<td>1,572</td>
<td></td>
</tr>
<tr>
<td>Other licenses</td>
<td>201 are currently operational. 508 additional applications are at various stages of the review process.</td>
<td>NA</td>
<td>8 operators; 9 transporters</td>
<td>917 producers/processors; 37 transporters</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Maximum amount of residential possession
Possession of marijuana produced by the plants on premises where the plants were grown is permitted.

unaided vision from a public space.

retailer. 1st violation misdemeanor fines up to $600.

10 oz. of home cultivated marijuana; > 1 oz. of marijuana must be secured by a lock

8 oz. useable marijuana

products may be transferred (not sold) to another person age 21 or older in some states.
<table>
<thead>
<tr>
<th>Amount of Marijuana Permitted for Personal Use</th>
<th>Alaska</th>
<th>California</th>
<th>Colorado</th>
<th>Massachusetts</th>
<th>Nevada</th>
<th>Oregon</th>
<th>Washington</th>
<th>Shared Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flower</td>
<td>1 oz.</td>
<td>28.5 gr.</td>
<td>1 oz.</td>
<td>1 oz.</td>
<td>1 oz.</td>
<td>1 oz.</td>
<td>1 oz.</td>
<td>Must be 21 years or older to possess, purchase or consume marijuana.</td>
</tr>
<tr>
<td>Concentrated</td>
<td>7 gr.</td>
<td>8 gr.</td>
<td>8 gr.</td>
<td>5 gr.</td>
<td>12.5% of 1 oz.</td>
<td>5 gr.</td>
<td>7 gr.</td>
<td>Products permitted: herbal, edible, infused products, tinctures, concentrates.</td>
</tr>
<tr>
<td>Liquid</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>72 oz.</td>
<td></td>
</tr>
<tr>
<td>Solid</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>16 oz.</td>
<td></td>
</tr>
<tr>
<td>Maximum amount in one transaction</td>
<td>5,600 mg. of THC</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td>Maximum amount for non-commercial transfer</td>
<td>NA</td>
<td>NA</td>
<td>1 oz.</td>
<td>NA</td>
<td>1 oz., or 1/8 oz. if concentrate</td>
<td>NA</td>
<td>NA</td>
<td></td>
</tr>
</tbody>
</table>
## Restrictions on Marijuana Consumption/Personal Use Regulations

### Overview of general restrictions
- **Alaska**: Up to $400 for providing false ID, $100 for public consumption; consumption permitted on premises of licensed retailer designated for onsite consumption.
- **California**: Cannot possess or smoke within 1,000 feet of a school, day care or youth center while children are present; on the grounds of, or within, any correctional facility.
- **Colorado**: Class 2 misdemeanor for an underage person to buy or possess retail marijuana.
- **Massachusetts**: Cannot possess or smoke within a public or private school or any correctional facility.
- **Nevada**: Cannot possess or smoke within a public or private school or any correctional facility.
- **Oregon**: Cannot give marijuana to anyone who is visibly intoxicated.
- **Washington**: Must be 21 years or older to possess, purchase or consume marijuana; not permitted in public; cannot possess or consume on federal property.

### Local control
Local government entities (city/town, county) may prohibit the operation of marijuana establishments or impose restrictions on operations as a result of voter initiatives or local ordinances. The restrictions may impact retailers, manufacturers, and cultivators. This includes limits to the number of establishments permitted and establishment of civil penalties for violations.

### Employer restrictions
Employers may restrict or prohibit use, consumption, possession, and transfer of marijuana in the workplace.

### Driving During/After Use

<table>
<thead>
<tr>
<th>Specified THC level in blood</th>
<th>Alaska</th>
<th>California</th>
<th>Colorado</th>
<th>Massachusetts</th>
<th>Nevada</th>
<th>Oregon</th>
<th>Washington</th>
</tr>
</thead>
<tbody>
<tr>
<td>NA</td>
<td>NA</td>
<td>&gt;=5.0 ng/ml</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>&gt;=5.0 ng/ml</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Specified THC level in urine</th>
<th>NA</th>
<th>NA</th>
<th>NA</th>
<th>NA</th>
<th>NA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Possession of marijuana while operating</td>
<td>NA</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>NA</td>
</tr>
</tbody>
</table>

### Driving During/After Use

<table>
<thead>
<tr>
<th>Specified THC level in blood</th>
<th>Alaska</th>
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<th>Massachusetts</th>
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<th>Oregon</th>
<th>Washington</th>
</tr>
</thead>
<tbody>
<tr>
<td>NA</td>
<td>NA</td>
<td>&gt;=5.0 ng/ml</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>&gt;=5.0 ng/ml</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Specified THC level in urine</th>
<th>NA</th>
<th>NA</th>
<th>NA</th>
<th>NA</th>
<th>NA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Possession of marijuana while operating</td>
<td>NA</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>NA</td>
</tr>
</tbody>
</table>

In all listed states, it is illegal to operate a motor vehicle under the influence of any controlled substance.
Law enforcement officers may base DUI arrest on observed impairment.

Marijuana and marijuana products possessed and used in accordance with state laws are not subject to seizure and may not be the basis for arrest.

<table>
<thead>
<tr>
<th>Marijuana Establishments</th>
<th>Alaska</th>
<th>California</th>
<th>Colorado</th>
<th>Massachusetts</th>
<th>Nevada</th>
<th>Oregon</th>
<th>Washington</th>
<th>Shared Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application Process</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Background check</td>
<td>NA</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>NA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>90-day turnaround on applications</td>
<td>✓</td>
<td>NA</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Priority to existing medical marijuana establishments</td>
<td>NA</td>
<td>✓</td>
<td>NA</td>
<td>✓</td>
<td>✓</td>
<td>NA</td>
<td></td>
<td>Washington State Liquor and Cannabis Board have no plan to open the window for new retail or producer licenses as of 4/30/18.</td>
</tr>
<tr>
<td>Application Fees</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>New/Initial</td>
<td>$1,000</td>
<td>$1,000</td>
<td>$500</td>
<td>Cannot exceed $3,000</td>
<td>$5,000</td>
<td>$250</td>
<td>$250</td>
<td></td>
</tr>
<tr>
<td>Renewal</td>
<td>$600</td>
<td>NA</td>
<td>$300</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td>Handler/agent permit</td>
<td>$50</td>
<td>NA</td>
<td>$75-$250</td>
<td>NA</td>
<td>$75</td>
<td>$100</td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td>Marijuana Establishments</td>
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<td>-------------------------</td>
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<td>---------------</td>
<td>--------</td>
<td>--------</td>
<td>------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>Retail</td>
<td>$5000</td>
<td></td>
<td></td>
<td>Cannot exceed $15,000</td>
<td></td>
<td>$4,750</td>
<td>$1,480</td>
<td>Licenses valid for 1 year.</td>
</tr>
<tr>
<td>Cultivation/producer</td>
<td>$1,000 - $5,000</td>
<td>Licensing and renewal fees based upon size of business, $4,000-$72,000; $5,000 surety bond</td>
<td>Up to $4,900</td>
<td>Cannot exceed $15,000</td>
<td>$1,000-$5,750 based on size of production</td>
<td></td>
<td>$1,480</td>
<td>Massachusetts began accepting applications from subgroups of prospective licensees on April 17, 2018. All other license types may start the application process between May 1, 2018 and June 1, 2018.</td>
</tr>
<tr>
<td>Manufacturing/Processor</td>
<td>$1,000 - $5,000</td>
<td>$1,000 - $5,000</td>
<td>$1,480</td>
<td>Cannot exceed $15,000</td>
<td>Initial, max fee $10,000; renewal, max fee $3,300</td>
<td>$4,750</td>
<td>$1,480</td>
<td></td>
</tr>
<tr>
<td>Testing</td>
<td>$1,000</td>
<td></td>
<td></td>
<td>Cannot exceed $10,000</td>
<td>Initial, max fee $15,000; renewal, max fee $5,000</td>
<td></td>
<td>$4,750</td>
<td>NA</td>
</tr>
<tr>
<td>Distributor</td>
<td>NA</td>
<td></td>
<td></td>
<td>NA</td>
<td>Initial, max fee $15,000; renewal, max fee $5,000</td>
<td>NA</td>
<td>NA</td>
<td></td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
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<th>Washington</th>
<th>Shared Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Licensee should be 21 years or older</strong></td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>All states require conduct fingerprint-based background checks prior to granting a license. Most states prohibit previous substance-related commercial convictions with the exception of Massachusetts. Oregon evaluates the relevance of prior criminal records case by case. Some states are working toward expunging previous drug related offenses.</td>
</tr>
<tr>
<td><strong>Joint medical/retail marijuana establishment allowed</strong></td>
<td>NA</td>
<td>NA</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td><strong>Criminal conviction restrictions</strong></td>
<td>Convicted of a felony and either (1) less than 5 years have elapsed since conviction or (2) person is on probation or parole for that felony</td>
<td>No prior record of felony/no substance related misdemeanor.</td>
<td>No prior record of controlled substance-related felony in the past 10 years/no felony in the past 5 years.</td>
<td>No prior record of felony (unless it solely involved the distribution of marijuana to adults).</td>
<td>No conviction of any &quot;excluded felony offense&quot;, no previous license revocation.</td>
<td>No conviction to state or federal law violations relevant to the business. No specifically set criteria.</td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td><strong>No record of alcohol sales</strong></td>
<td>✓</td>
<td>✓</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td><strong>No record of unauthorized substance sales</strong></td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>NA</td>
<td>✓</td>
<td>NA</td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td><strong>Other</strong></td>
<td>No alcohol sales within the last 5 years</td>
<td>Cannot be a licensed retailer of alcohol or tobacco</td>
<td>License cannot be granted to law enforcement</td>
<td>NA</td>
<td>NA</td>
<td>License cannot be granted to habitual users of excess alcohol or other drugs</td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td>Marijuana Establishments: Operational Restrictions and Requirements for Retail Establishments</td>
<td>Alaska</td>
<td>California</td>
<td>Colorado</td>
<td>Massachusetts</td>
<td>Nevada</td>
<td>Oregon</td>
<td>Washington</td>
<td>Shared Rationale</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Distance requirements</td>
<td>School: 500 ft.</td>
<td>School: 600 ft.</td>
<td>School: 1000 ft.</td>
<td>School: 500 ft.</td>
<td>School: 1,000 ft.; community facility 300 ft.</td>
<td>School: 1,000 ft.</td>
<td>School and other community facilities that are not excluded for adults: 1,000 ft.</td>
<td></td>
</tr>
<tr>
<td>Hours of operation</td>
<td>Sales prohibited between 5:00 am and 8:00 am</td>
<td>Sales prohibited between 10pm and 6am</td>
<td>Varies by municipality</td>
<td>NA</td>
<td>Varies by municipality</td>
<td>Sales allowed between 7:00 am and 10:00 pm</td>
<td>Sales allowed between 8:00 am and 12:00 am</td>
<td></td>
</tr>
<tr>
<td>Customer must show ID</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>NA</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Insurance</td>
<td>NA</td>
<td>May be available but not required, varies by municipality</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>Licensee may require an affordable general liability insurance.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Store shall not be located in an establishment with liquor license</td>
<td>✓</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>✓</td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td>Substance shall not be visible to the public</td>
<td>✓</td>
<td>NA</td>
<td>NA</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>NA</td>
<td></td>
</tr>
</tbody>
</table>
## Marijuana Establishments

### Operational restrictions and requirements

<table>
<thead>
<tr>
<th></th>
<th>Alaska</th>
<th>California</th>
<th>Colorado</th>
<th>Massachusetts</th>
<th>Nevada</th>
<th>Oregon</th>
<th>Washington</th>
<th>Shared Rationale</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maximum amount of THC per serving size</td>
<td>≤ 5 mg THC</td>
<td>&lt; 10 mg THC</td>
<td>&lt; 10 mg THC</td>
<td>NA</td>
<td>&lt; 10 mg THC</td>
<td>≤ 5 mg THC</td>
<td>&lt; 10 mg THC</td>
<td></td>
</tr>
<tr>
<td>Maximum Servings per package</td>
<td>50 mg THC</td>
<td>NA</td>
<td>100 mg THC</td>
<td>NA</td>
<td>NA</td>
<td>50 mg THC</td>
<td>100 mg THC</td>
<td></td>
</tr>
<tr>
<td>Other regulations</td>
<td>Handlers must complete an education course and pass a written test; liquid and solid edibles must be homogenized to ensure uniform disbursement of cannabinoids</td>
<td>NA</td>
<td>All employees shall be residents of Colorado. Online sales not allowed.</td>
<td>NA</td>
<td>Number of retailers is limited by population of county. A county may file a request for additional stores.</td>
<td>May not be located in residential areas; delivery allowed in certain circumstances but only between 8 am and 9pm.</td>
<td>Maximum amount of inventory for retail: up to four months of their average supplies. No vending machine or drive through. Food requiring temperature control shall not be infused with marijuana.</td>
<td></td>
</tr>
<tr>
<td>Marijuana Establishments</td>
<td>Alaska</td>
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<td>Colorado</td>
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<td>--------------------------</td>
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<td>------------</td>
<td>----------</td>
<td>---------------</td>
<td>--------</td>
<td>--------</td>
<td>------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>Cannot label products to be appealing to minors</td>
<td>✓</td>
<td>✓</td>
<td>NA</td>
<td>NA</td>
<td>✓</td>
<td>✓</td>
<td>NA</td>
<td>General consensus on labeling: Identification of the marijuana cultivator/manufacturer; amount of THC per serving/packaging; name and logo of cultivator; keep out of reach of children. Some states require disclosure of all pesticides applied during production and processing. Packaging should be certified to be child resistant by a third-party</td>
</tr>
<tr>
<td>Third-party-certified child-resistant packaging required</td>
<td>✓</td>
<td>✓</td>
<td>NA</td>
<td>NA</td>
<td>✓</td>
<td>✓</td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td>‘Contains marijuana’ symbol/text required on packaging</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>NA</td>
<td>NA</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Explanation of warnings required on packaging</td>
<td>✓</td>
<td>NA</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>1) This product has intoxicating effects and may be habit forming. Smoking is hazardous to your health. 2) There may be health risks associated with the consumption of this product. 3) Should not be used by women who are pregnant or breast feeding. 4) For use only by adults 21 and older. 5) Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug.</td>
</tr>
<tr>
<td>May not contain false or misleading information</td>
<td>✓</td>
<td>NA</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>May not promote excessive consumption</td>
<td>✓</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>May not depict someone under 21 consuming marijuana</td>
<td>✓</td>
<td>NA</td>
<td>NA</td>
<td>✓</td>
<td>NA</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Requirement</td>
<td>% Audience 21+</td>
<td>Outdoor Advertising Prohibited</td>
<td>% Audience 21+</td>
<td>Advertising Prohibited</td>
<td>% Audience 21+</td>
<td>Online Marketing Prohibited</td>
<td>% Audience 21+</td>
<td>Online Marketing Prohibited</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------------</td>
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<td>-------------------------------</td>
<td>----------------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>May not promote transport across state lines/target out of state consumers</td>
<td>NA</td>
<td>70% of audience is 21 or older</td>
<td>NA</td>
<td>70% of audience is 21 or older</td>
<td>NA</td>
<td>85% of audience is 21 or older</td>
<td>NA</td>
<td>70% of audience is 21 or older</td>
</tr>
<tr>
<td>Cannot advertise on TV/radio/print unless...</td>
<td>NA</td>
<td>71.6% of audience is expected to be 21 or older</td>
<td>NA</td>
<td>70% of audience is 21 or older; outdoor advertising generally prohibited</td>
<td>NA</td>
<td>85% of audience is 21 or older</td>
<td>NA</td>
<td>70% of audience is 21 or older</td>
</tr>
<tr>
<td>May not claim curative or therapeutic benefits</td>
<td>✓</td>
<td></td>
<td>✓</td>
<td></td>
<td>✓</td>
<td></td>
<td>✓</td>
<td></td>
</tr>
</tbody>
</table>

firm. Package should be resealable in case it includes multiple servings. Packaging should be opaque. Advertising restrictions vary, but many states ban advertising within a certain distance of schools, limit the amount of signage outside an establishment and restrict online marketing and/or marketing to a mobile device.
<table>
<thead>
<tr>
<th>Marijuana Establishments</th>
<th>Alaska</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Monitoring/inspections</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inspection of physical premises/establishment</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Inspection by local fire department/code inspector</td>
<td>NA</td>
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<td>Examination of business and financial records</td>
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<td>Confirmation of qualifications of personnel</td>
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<td>Testing</td>
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<td>Tracking System: Marijuana Enforcement Tracking Reporting &amp; Compliance (METRC)</td>
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<td>✓</td>
<td>✓</td>
<td>NA</td>
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<td>NA</td>
<td>The (METRC) System is used as a means to record inventory and movement of marijuana through the supply chain.</td>
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<td>Other “Seed to Sale” databases may be used</td>
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<td>Secret shopper program</td>
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<td>NA</td>
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References

12. Grant 5.20.16 Alcohol and Drug Abuse Institute/University of Washington Marijuana Research Symposium


30 Mark & Terplan


36 Drug Policy Alliance.


44 Johnson, Ream, Dunlap & Sifaneck.


46 Johnson, Ream, Dunlap & Sifaneck.


50 Nathan, Murareasu, Aggarwal, Beck, Burnett, Holland, ... Sisley.


Li, Brady, DiMaggio, Lusardi, Tzong & Li.


Compton.


Li, Brady, DiMaggio, Lusardi, Tzong & Li.


Compton.


The New York State Department of Financial Services (the "Department") issued a Guidance memorandum on July 3, 2018 (the "2018 Department Guidance") in response to inquiries received from financial institutions regarding the provision of financial services to both medical marijuana-related businesses licensed by New York State, as well as businesses participating as research partners in the New York State Industrial Hemp Research Program. The 2018 Department Guidance, among other things, included matters relating to the growth or cultivation of industrial hemp for research purposes, as authorized by the Agriculture Act of 2014 (the "2014 Farm Bill"), and as allowed under New York State law.

The Department is issuing this Guidance to update the 2018 Department Guidance solely with respect to hemp in light of the enactment of the Agriculture Improvement Act of 2018 (the "2018 Farm Bill") on December 20, 2018. The 2018 Department Guidance with respect to medical marijuana-related businesses is not affected by the 2018 Farm Bill and remains fully applicable.

The 2018 Farm Bill addresses the production and sale of hemp and hemp-related products. As relevant here, until the passage of the 2018 Farm Bill, virtually all parts of the cannabis plant, and anything containing a compound derived from the plant, were deemed marijuana under the Controlled Substances Act (the "Act"). The 2018 Farm Bill changes this by removing hemp, defined as the cannabis plant and any part of the plant with a delta-9 tetrahydrocannabinol ("THC") of not more than 0.3 percent on a dry weight basis, from the Schedule I status under the Act. The 2018 Farm Bill authorizes cannabidiol ("CBD") to the extent that it is contained in hemp produced in a manner consistent with the 2018 Farm Bill and other federal and state regulations.

The 2018 Farm Bill allows states to become the primary regulators with authority to regulate and limit production and sale of hemp and hemp-related products within their borders. States are required to submit a plan to the U.S. Department of Agriculture for monitoring and regulating the production of hemp in their states, including a procedure for testing THC.
concentration levels of hemp, maintenance of relevant information regarding land on which hemp is produced, and procedures for conducting annual inspections.

However, the 2018 Farm Bill does not affect the authority of the U.S. Food and Drug Administration ("the "FDA") to regulate hemp or hemp products, or change the regulatory requirements for such materials in FDA-regulated products like food, dietary supplements, cosmetics, or drugs. In fact, Congress has explicitly preserved the FDA's current authority to regulate products containing cannabis or cannabis-derived compounds under the Food, Drug and Cosmetic Act, and Section 351 of the Public Health Service Act.¹

In light of the passage of the 2018 Farm Bill, the Department updates its 2018 Department Guidance to inform New York State chartered banks and credit unions of this new legislation relating to hemp, as defined above, that removes hemp from Schedule I under the Act, which means that it will no longer be considered by the federal government to be an illegal substance under the Act.

The Department continues to support responsible and legitimate businesses, including those relating to hemp and hemp-related products, and is issuing this updated Guidance to encourage all New York State chartered banks and credit unions to provide access to financial services and products to hemp-related businesses that operate in New York in full compliance with federal and New York State laws and regulations, as described above.

/s/ Maria T. Vullo
Superintendent of Financial Services

¹ See "Statement from the FDA Commissioner Scott Gottlieb, M.D., on Signing of the Agriculture Improvement Act and the agency's regulation of products containing cannabis and cannabis-derived components" dated December 20, 2018.
MEMORANDUM

TO: Chief Executive Officers or Equivalents of New York State-Chartered Banks & Credit Unions

FROM: Maria T. Vullo, New York State Superintendent of Financial Services

DATE: July 3, 2018

RE: GUIDANCE ON PROVISION OF FINANCIAL SERVICES TO MEDICAL MARIJUANA & INDUSTRIAL HEMP-RELATED BUSINESSES IN NEW YORK STATE

The New York State Department of Financial Services (the “Department”) is issuing this guidance in response to inquiries received from financial institutions regarding provision of financial services to medical marijuana related businesses licensed by New York State and those participating as research partners in the New York State Industrial Hemp Research Pilot Program.

New York has made significant progress in creating a supportive economic development and regulatory landscape for companies interested in commencing medical marijuana and individuals or entities interested in conducting industrial hemp research. New York State statutes passed in 2015, 2016 and 2017 have created a legal framework for registered organizations producing and dispensing medical marijuana and for pilot projects conducting industrial hemp research in the State of New York. The 2017-2018 State budget made available up to $10 million in grants for research and capital investments in industrial hemp growing and processing.¹ The current 2018-2019 budget provides $650,000 for a brand-new $3.2 million industrial hemp processing facility in the Southern Tier, and New York State will invest an additional $2 million in a seed certification and breeding program, to begin producing unique New York seed.²

The Department of Financial Services is aware, however, that the unsettled legal environment at the Federal level has discouraged institutions from providing financial services to companies with medical marijuana or industrial hemp operations. This guidance is intended to clarify the regulatory landscape and encourage New York State-chartered banks and credit unions to offer banking services to these New York businesses. Institutions prepared to apply sound practices of customer due diligence and transaction monitoring, in accordance with established principles and


procedures, should consider to commence providing financial services. The Department stands ready to work with our chartered institutions to assist them in moving forward towards commencing operations in a safe and sound manner.

BACKGROUND

**Lack of Access to Regulated Financial Services**

Because marijuana currently is still listed on Schedule I under the Federal Controlled Substances Act, medical marijuana and industrial hemp-related businesses operating in accordance with New York State laws and regulations continue to have difficulty establishing banking relationships at regulated financial institutions. The ability to establish a banking relationship is an urgent issue today for the legal cannabis industry. So long as it remains difficult to open and maintain bank accounts, the industry will largely rely on cash to conduct business and operate.

These limitations create unique burdens for legal marijuana businesses. For example, companies pay employees with envelopes of cash, carry bags containing thousands of dollars to purchase money orders, and some pay taxes in cash. It also has been reported that some businesses have opened bank accounts through holding companies or use of personal bank accounts. Forcing medical marijuana and industrial hemp businesses to operate solely with cash creates a public safety issue, as cash intensive businesses and their suppliers, employees and customers become targets for criminals. Large amounts of cash distributed outside the regulated banking system is unacceptable and creates risks to the companies, and their employees and business partners. Further, large scale cash operations impede tracking funds for tax and anti-money laundering purposes. None of this is necessary. Positions taken by the federal government are only exacerbating these problems, rather than remedying them. New York must act.

**New York Laws and Regulations Relating to Medical Marijuana and Industrial Hemp**

1. Medical Marijuana

In recognition of the demonstrable medical benefits of marijuana, New York State has taken a compassionate approach to patient care by considering the findings of respected medical practitioners and researchers, as well as the reports of patients in need of medical marijuana’s unique properties, in enacting legislation that allows treatment options to seriously ill individuals. New York State has been careful in precisely delineating the conditions that warrant permitting registered medical practitioners making medical marijuana available to certified patients. The New York medical marijuana program created by the Compassionate Care Act (N.Y. Pub.Health L.

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3 There were 1629 Registered Practitioners and 55,136 Certified Patients (as of May 15, 2018).
https://www.health.ny.gov/regulations/medical_marijuana/
§3360(1), provides for medical marijuana “for use as part of the treatment of the patient's serious condition.”

New York’s medical marijuana program allows patients who suffer from specific serious conditions who also have a condition clinically associated with, or a complication of, the serious condition to be certified by a practitioner to receive medical marijuana products for medical use. Practitioners must complete a four-hour New York State Department of Health (“NYDOH”)-approved course and register with NYDOH to certify patients. Patients who are certified by their practitioners must apply to NYDOH to obtain a registry identification card. During the patient registration process, certified patients may designate up to two caregivers to obtain and possess medical marijuana products on their behalf. Caregivers who are designated during the patient registration process must also separately register with NYDOH in order to obtain a registry identification card.

Certified patients and designated caregivers who have been issued a registry identification card may visit one of the Registered Organizations' dispensing facilities in New York State to purchase approved medical marijuana products. Registered Organizations are responsible for manufacturing and dispensing medical marijuana in New York State. There are currently ten Registered Organizations in New York. The organizations were selected by NYDOH after a rigorous application process. Applicants were required to submit extensive operating plans, certified financial statements, architectural drawings, security plans, and were subject to criminal history background checks. Out of the 43 applications received, NYDOH has registered ten Registered Organizations. Each Registered Organization is permitted by statute to have up to four dispensing facilities. To protect the public's health and safety, Registered Organizations must meet high product quality standards in New York State. New York State's medical marijuana program includes detailed product and dispensing label requirements, which can be found in the regulations at 10 NYCRR § 1004.11(k) and 1004.12(h). Registered Organizations are required to report all dispensing data to the New York State Prescription Monitoring Program Registry within 24 hours of dispensing, and are required to consult the Registry prior to all dispensing transactions.

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4 (a) "Serious condition” means:

(i) having one of the following severe debilitating or life-threatening conditions: cancer, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, amyotrophic lateral sclerosis, Parkinson's disease, multiple sclerosis, damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity, epilepsy, inflammatory bowel disease, neuropathies, Huntington's disease, post-traumatic stress disorder, or as added by the commissioner; and

(ii) any of the following conditions where it is clinically associated with, or a complication of, a condition under this paragraph or its treatment: cachexia or wasting syndrome; severe or chronic pain; severe nausea; seizures; severe or persistent muscle spasms; or such conditions as are added by the commissioner.
Registered Organizations are required to track and trace all medical marijuana manufactured and
sold, from seed to sale. NYDOH has full access to these data and frequently audits such data to
ensure strict compliance with all New York applicable laws and regulations. NYDOH retains the
authority to revoke a Registered Organization’s registration at any time for failure to meet New
York State's regulatory requirements.

2. Industrial Hemp

Following the passage by Congress of the Agricultural Act of 2014 (the “Farm Bill”),
which, among other things, permitted industrial hemp research authorized pursuant to state law,
New York authorized the cultivation of industrial hemp pursuant to the New York Agriculture and
Markets Law Sections 505 to 508 (McKinney 2016). Section 506 of the New York Agriculture and
Markets Law provides that “Notwithstanding any provision of law to the contrary, industrial hemp
and products derived from such hemp are agricultural products which may be grown, produced
and possessed in the State, and sold, distributed, transported or processed either in or out of State as part
of agricultural pilot programs pursuant to authorization under federal law and the provisions of this
article.” On July 12, 2017, Governor Andrew Cuomo signed legislation to amend the New York
Agriculture and Markets Law to ensure that industrial hemp will be considered an agricultural
product and that it will be treated the same way as other crops and seed. The continued production
of industrial hemp is an economic development opportunity for farmers and businesses across New
York State.

To date, the New York State Department of Agriculture and Markets (“NYDAM”) has issued
123 permits to individuals and entities researching industrial hemp and products derived from
industrial hemp. The projects, which are regulated through agreements with NYDAM, engage in
research concerning the cultivation, the many uses and marketing of industrial hemp and hemp
products, including food, fiber, construction materials, energy storage, nutritional supplements, and
personal care and wellness products.

Federal Law and Guidance Relating to Marijuana and Industrial Hemp
1. Marijuana

Federal law does not specifically address medical marijuana, or its benefits. The federal
Controlled Substances Act (the “CSA”) makes it unlawful to manufacture, distribute, or dispense,
or possess with intent to manufacture, distribute or dispense a controlled substance. Marijuana is
listed on Schedule I of Section 812 of the CSA as a controlled substance.

5 21 U.S.C. Section 841.
In recognition of the on-going expansion of legalization of marijuana in many States, both the U.S. Department of Justice (the “DOJ”), and the Financial Crimes Enforcement Network (“FinCen”) had issued guidance to assist financial institutions in providing services to marijuana-related businesses. However, DOJ’s 2013 memorandum from Deputy Attorney General James M. Cole (the “Cole Memo”) 6, which had provided detailed guidance to law enforcement and federal prosecutors to focus enforcement resources on conduct that raised threats of criminal harm over and above merely operating in accordance with State law, was recently withdrawn by U.S. Attorney General Sessions. The Cole Memo had concluded that “Outside of [specified] enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws.”

Notably, the FinCen guidance, issued in 2014, has remained in effect. That guidance clarifies Bank Secrecy Act (“BSA”) expectations for financial institutions that provide financial services to marijuana-related businesses, and details how to provide services consistent with BSA obligations. These principles are the same principles applicable to all banking relationships. In issuing the guidance, FinCen sought to enhance the availability of financial services for, and the financial transparency of, legal marijuana-related businesses.

The FinCen guidance instructs that in assessing whether to engage in a banking relationship with a marijuana-related business, required due diligence includes:

(i) verifying with the appropriate State authorities whether the business is duly licensed and registered;

(ii) reviewing the license application (and related documentation) submitted by the business for obtaining a State license to operate its marijuana-related business;

(iii) requesting from State licensing and enforcement authorities available information about the business and related parties;

(iv) developing an understanding of the normal and expected activity of the business, including the types of products to be sold and the type of customers to be served (e.g., medical versus recreational customers);

(v) ongoing monitoring of publicly available sources for adverse information about the business and related parties;

(vi) ongoing monitoring for suspicious activity, including for any of the red flags described in the FinCen guidance; and

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(vii) refreshing information obtained as part of customer due diligence on a periodic basis and commensurate with the risk.

The guidance further provides that financial institutions considering providing financial services to marijuana-related businesses should consider whether it implicates one of the Cole Memo priorities or violates State law. The guidance also provides instructions concerning the filing of suspicious activity reports (“SARs”). A financial institution that provides financial services to a marijuana-related business that it reasonably believes, based on its customer due diligence, (i) does not implicate one of the Cole Memo priorities and does not violate State law, should file a “Marijuana Limited” SAR; or (ii) implicates one of the Cole Memo priorities or violates State law, should file a “Marijuana Priority” SAR. If a financial institution deems it necessary to terminate a relationship with a marijuana-related business in order to maintain an effective anti-money laundering compliance program, the institution should file a SAR and note in the narrative the basis for termination.

On January 4, 2018, Attorney General Jeff Sessions issued a memorandum to all U.S. attorneys rescinding the various memoranda related to enforcement of federal marijuana laws, including the Cole Memo. As noted, the FinCen guidance remains in effect. Indeed, in the wake of the General Sessions’ rescission of the Cole Memo, members of Congress have advocated for retaining the FinCen guidance. A bipartisan group of 31 members of the House of Representatives and a bipartisan group of 15 Senators have sent letters to FinCen encouraging FinCen to continue following its 2014 guidance and to continue supporting banking infrastructure and access to financial institutions for businesses that are operating in accordance with State and local law and abiding by the stated factors in the FinCen guidance. These letters note that FinCen’s stated priorities have allowed legal marijuana-related businesses to conduct commerce more safely through financial institutions which reduces the use of cash, improves public safety, reduces fraud, and provides for regulatory oversight through suspicious activity reports. The Congressional letters further indicate that rescinding the FinCen guidance will inject uncertainty in the financial markets, and that any attempt to disrupt this market is dangerous and imprudent. The Treasury Department has responded by stating that the Treasury is reviewing the FinCen guidance in consultation with law enforcement, and the guidance remains in effect in the meantime.

2. Industrial Hemp

Section 7606 of the Farm Bill, provides that “Notwithstanding the Controlled Substances Act (21 U.S.C. 801 et seq.), the Safe and Drug Free Schools and Communities Act (20 U.S.C. 7101 et seq.), chapter 81 of title 41, United States Code, or any other Federal law, an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) or a State department of agriculture may grow or cultivate industrial hemp if –
(1) The industrial hemp is grown or cultivated for purposes of research conducted under an agricultural pilot program or other agricultural or academic research; and
(2) The growing or cultivating of industrial hemp is allowed under the laws of the State in which such institution of higher education or State department of agriculture is located and such research occurs.

Industrial hemp is defined under the Farm Act as “the plant cannabis sativa L. and any part of such plant whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 per cent on a dry weight basis.”

In 2016, the U.S. Department of Agriculture, in consultation with the U.S. Drug Enforcement Administration and the U.S. Food and Drug Administration, issued a Statement of Principles on Industrial Hemp (the “Statement of Principles”) to inform the public how federal law applies to activities associated with industrial hemp that is grown, cultivated, and marketed in accordance with Section 7606 of the Farm Act. The Statement of Principles states as follows:

Section 7606 of the Agriculture Act of 2014 legalized the growing and cultivating of industrial hemp for research purposes in States where such growth and cultivation is legal under State law, notwithstanding existing Federal statutes that would otherwise criminalize such conduct.

The guidance document further states that “…Federal law continues to restrict hemp-related activities, to the extent that those activities have not been legalized under section 7606.”

In 2018, Congress, expanding on language contained in Section 763 of the Omnibus Budget Bill of 2016, further supported the implementation of the provisions of Section 7606 of the Farm Bill thorough Section 537 of the Consolidated Appropriations Act of 2018, providing that no funds made available by the Appropriations Act may be used to “prohibit the transportation, processing, sale, or use of industrial hemp, or seeds of such plant, that is grown or cultivated in accordance with subsection 7606 of the Agricultural Act of 2014, within or outside the State in which the industrial hemp is grown or cultivated.”

GUIDANCE FROM THE DEPARTMENT OF FINANCIAL SERVICES

1. Medical Marijuana

As described above, the New York Compassionate Care Act allows patients suffering debilitating symptoms and diseases access to medical marijuana. Healthcare and patientcare are fields that States have traditionally regulated. Congress has specifically left a significant role for
States in regulating controlled substances like marijuana. Indeed, the Cole Memo had specifically recognized States’ roles by stating that outside of certain listed enforcement priorities, “the federal government has traditionally relied on state and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws.” New York State’s legalization of medical marijuana has provided important services for New Yorkers in need.

Many States, including New York, have passed laws creating legal access to medical marijuana for seriously ill patients. According to a statement by New York Physicians for Compassionate Care, a growing body of scientific evidence, including gold-standard randomized, double-blinded, placebo-controlled trials, have made it clear that medical marijuana can be effective in controlling chronic pain, alleviating certain side effects associated with chemotherapy, treating wasting syndrome associated with HIV/AIDS, controlling muscle spasms due to multiple sclerosis, and managing epilepsy, and that there is an emerging evidence that suggests that medical marijuana may help patients living with cancer and other chronic and debilitating illnesses.

As described above, the New York Compassionate Care Act has careful and strict controls that are intended to assure access to patients who could truly benefit from medical marijuana, while preventing diversion and misuse. Denying patients access to a medication that can relieve their suffering is neither warranted nor compassionate.

As mentioned above, lack of access to regulated financial services compels legitimate marijuana-related businesses, that are operating in full compliance with New York State laws and regulations, to conduct their operations using cash. There is an increasing level of concern from many stakeholders, including members of Congress, numerous State law enforcement and other State officials, that limiting legal medical marijuana businesses to operating with cash, and preventing them from establishing and maintaining relationships with regulated financial service providers, is not in the public interest. Being forced to handle large amounts of cash can make these businesses, their employees and their customers, targets for violent crime. Providing access to regulated banking services is an essential part of taking the legal cannabis industry out of the shadows and establishing it as a transparent, regulated, tax-paying part of our economy, and a necessary part of fulfilling the goal of relieving the suffering of seriously ill patients.

While the rescission of the Cole Memo may indicate the viewpoint of federal government officials, the Department is not aware of any actual changes in the priorities of the four U.S. Attorneys serving in the State of New York. Nor does it change the fact that many States, including New York, have legalized medical marijuana. And it does not change the position of banking

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7 21 U.S.C. Section 903- Chapter 13- Drug Abuse Prevention and Control: “No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together”.

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regulatory agencies that, generally, the decision to open, close, or decline a particular account or relationship is made by a bank or credit union based on its particular business objectives, its evaluation of the risks associated with offering products and services, and its ability to manage such risks.

In light of the above, the Department encourages New York State chartered banks and credit unions to consider establishing banking relationships with medical marijuana-related businesses that are operating in New York in full compliance with all applicable New York State laws and regulations, including the New York Compassionate Care Act, and the applicable regulations and requirements of NYDOH. The Department further provides guidance that it will not impose any regulatory action on any New York State chartered bank or credit union solely for establishing a banking relationship with a medical marijuana-related business that operates a compliant business in New York, as long as the New York State chartered bank or credit union complies with the requirements of the 2014 FinCen guidance, the guidance and priorities set forth in the Cole Memo, and subject to the institution’s own evaluation of the risks associated with offering products and services and its ability and systems to effectively manage those risks – as our institutions do with regard to all their banking relationships.

2. Industrial Hemp

Both Federal and New York State law expressly authorizes the growth, cultivation, marketing and sale of industrial hemp and products derived from industrial hemp for research purposes under a licensing system which requires the submission of information concerning the applicant, the proposed research, the facilities and security measures to be employed. Projects are controlled under a research agreement that, among other things, establishes the scope of the research, conditions under which the research may be performed, requires reporting, record keeping and regulatory testing, as well as provides established procedures for termination of the research.

Accordingly, New York State chartered banks and credit unions are encouraged to support this development in the State of New York. An institution that seeks to provide financial services to entities that are or wish to be engaged in the growing or cultivation of industrial hemp should assess and verify the eligibility and authority of the entity for participation in a research program, as authorized under the New York Agriculture and Markets Law. As with any other lending activity, banking institutions should establish and conduct appropriate underwriting and customer due diligence, including verification of eligibility of a research program and other requirements of Section 7606 and New York State law.
Conclusion

New York State’s efforts to promote responsible businesses, including businesses engaged in the business of industrial hemp and medical marijuana, promote sustainable economic development and provide needed services to New Yorkers. The banking industry is a vibrant part of New York’s economy, where businesses cannot flourish without appropriate banking relationships. Accordingly, the Department encourages all New York State chartered banks and credit unions to further support New York’s economy, and strengthen these legal businesses by providing safe and sound access to financial services provided in a rigorous regulatory environment.

Maria T. Vullo,
Superintendent of Financial Services
Part 1004 - Medical Use of Marihuana

Effective Date:
Tuesday, June 4, 2019
Doc Status:
Complete
Statutory Authority:
Public Health Law, Section 3369-a

Section 1004.1 - Practitioner registration

1004.1 Practitioner registration.

(a) No practitioner shall be authorized to issue a patient certification as set forth in section 1004.2 unless the practitioner:

(1) is qualified to treat patients with one or more of the serious conditions set forth in subdivision 1004.2(a)(8) of this Part;

(2) is licensed, in good standing as a physician and practicing medicine, as defined in article 131 of the Education Law, in New York State, or is certified, in good standing as a nurse practitioner and practicing, as defined in article 139 of the Education Law, in New York State, or is licensed, in good standing as a physician assistant and practicing in New York State, as defined in article 131-B of the Education Law, under the supervision of a physician registered under this Part;

(3) has completed a two to four hour course approved by the commissioner as set forth in subdivision (b) of this section;

(4) has applied to the department for a registration or a renewal of registration to issue patient certifications in a manner and format determined by the commissioner; and

(5) has been granted such registration by the department.

(b) The commissioner shall approve at least one, if not more, courses for practitioners seeking to become registered, which shall be two to four hours in duration. The educational content of such course shall include: the pharmacology of marihuana; contraindications; side effects; adverse reactions; overdose prevention; drug interactions; dosing; routes of administration; risks and benefits; warnings and precautions; abuse and dependence; and such other components as determined by the commissioner.

Effective Date:
Wednesday, December 27, 2017
Doc Status:
Complete
Statutory Authority:
Public Health Law, Section 3369-a
Section 1004.2 - Practitioner issuance of certification

1004.2 Practitioner issuance of certification.

(a) Requirements for Patient Certification. A practitioner who is registered pursuant to 1004.1 of this part may issue a certification for the use of an approved medical marihuana product by a qualifying patient subject to completion of subdivision (e) of this section. Such certification shall contain:

(1) the practitioner’s name, business address, telephone number and email address;

(2) the practitioner’s license number as issued by the New York State Department of Education;

(3) the practitioner’s Drug Enforcement Administration registration number;

(4) a statement that the practitioner is licensed and in good standing in New York State and possesses an active registration with the Drug Enforcement Administration;

(5) a statement that the practitioner is registered with the department to issue the certification;

(6) a statement that the practitioner is caring for the patient in relation to the patient’s serious condition;

(7) the patient’s name, date of birth, address, telephone number and email address if available;

(8) the patient’s diagnosis, limited solely to the specific severe debilitating or life-threatening condition(s) listed below;

(i) cancer;

(ii) positive status for human immunodeficiency virus or acquired immune deficiency syndrome, provided that the practitioner has obtained from the patient consent for disclosure of this information that meets the requirements set forth in sections twenty-seven hundred eighty and twenty-seven hundred eighty-two of the public health law;

(iii) amyotrophic lateral sclerosis;

(iv) Parkinson’s disease;

(v) multiple sclerosis;

(vi) damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity;

(vii) epilepsy;

(viii) inflammatory bowel disease;

(ix) neuropathies;
(x) Huntington’s disease;

(xi) any severe debilitating pain that the practitioner determines degrades health and functional capability; where the patient has contraindications, has experienced intolerable side effects, or has experienced failure of one or more previously tried therapeutic options; and where there is documented medical evidence of such pain having lasted three months or more beyond onset, or the practitioner reasonably anticipates such pain to last three months or more beyond onset;

(xii) post-traumatic stress disorder;

(xiii) pain that degrades health and functional capability where the use of medical marihuana is an alternative to opioid use, provided that the precise underlying condition is expressly stated on the patient’s certification; or

(xiv) substance use disorder; or

(xv) any other condition added by the commissioner.

(9) The condition or symptom that is clinically associated with, or is a complication of the severe debilitating or life-threatening condition listed in paragraph (8) of this subdivision. Clinically associated conditions, symptoms or complications, as defined in subdivision 7 of section 3360 of the public health law are limited solely to:

(i) cachexia or wasting syndrome;

(ii) severe or chronic pain resulting in substantial limitation of function;

(iii) severe nausea;

(iv) seizures;

(v) severe or persistent muscle spasms;

(vi) post-traumatic stress disorder;

(vii) opioid use disorder; or

(viii) such other conditions, symptoms or complications as added by the commissioner.

(10) A statement that by training or experience, the practitioner is qualified to treat the serious condition, which encompasses the severe debilitating or life-threatening condition listed pursuant to paragraph (8) of this subdivision and the clinically associated condition, symptom or complication listed pursuant to paragraph (9) of this subdivision;

(i) for purposes of this subdivision, a practitioner must hold a federal Drug Addiction Treatment Act of 2000 (DATA 2000) waiver to be qualified to treat patients with substance use disorder or opioid use disorder.

(11) A statement that in the practitioner’s professional opinion and review of past treatments, the patient is likely to receive therapeutic or palliative benefit from the primary or adjunctive treatment with medical marihuana for the serious condition;
(12) any recommendations or limitations the practitioner makes to the certified patient and/or the
patient’s designated caregiver concerning:

(i) the authorized brand, authorized form, administration method, dosage and any limitations in the
use of the approved medical marihuana product; and

(ii) the total amount of usable approved medical marihuana product that may be dispensed to the
patient, in measurable controlled doses, which shall not exceed a thirty (30) day supply, if used as
directed;

(13) a statement that the practitioner has explained the potential risks and benefits of the use of
medical marihuana to the qualifying patient and has documented in the patient’s medical record that
such explanation has been provided to the patient.

(14) to the extent that a practitioner is seeking to authorize the use of an approved medical marihuana
product by a patient who is under the age of eighteen or a person who is otherwise incapable of
consenting to medical treatment, the practitioner shall explain the potential risks and benefits of
medical marihuana to the patient’s parent or legal guardian, and if appropriate, to the minor patient.
The practitioner shall document in the patient’s medical record that such explanation has been
provided as required herein; and

(15) a statement that the patient, or the patient’s parent or legal guardian if applicable, has provided
informed consent; and

(16) to the extent that a practitioner seeks to authorize the use of an approved medical marihuana
product by a patient who temporarily resides in New York State for the purpose of receiving care and
treatment from the practitioner, the practitioner shall state on the patient’s certification.

(b) Expiration of Certification.

(1) The certification shall state the date upon which the certification shall expire, which shall be no
longer than one year after the date it was issued, unless the patient is terminally ill.

(2) If the practitioner issues a certification to a patient who is terminally ill, the certification shall not
expire until the patient’s death or the practitioner revokes the certification.

(3) If the practitioner issues a certification to a patient who is not a resident of New York but is
receiving care and treatment in this state, the certification shall be valid for a period of time which is
no longer than the applicant is reasonably anticipated to be residing in New York State for the
purposes of care and treatment, but in no event shall it be valid for more than one year after the date it
was issued.

(c) Submission of Certification to the Department. Practitioners shall utilize a form, which may be in
an electronic format, developed by the department for the certification required in subdivision (a) of
this section. The practitioner shall submit to the department, the information required by subdivision
(a) of this section, in a manner determined by the department, including by electronic transmission
through a secure website. In the instance that a practitioner submits this information to the department
electronically, the practitioner shall retain, for a period of 5 years, a printed copy of the electronic
certification that shall contain the information required in subdivision (a).
(d) Medical Record Retention. The practitioner shall date and place his or her handwritten signature upon the printed certification, and provide the printed certification to the patient. The practitioner shall also maintain a copy of the signed certification in the patient’s medical record.

(e) Consultation of Prescription Monitoring Program Registry. Prior to issuing, modifying or renewing a certification, the practitioner shall consult the prescription monitoring program registry pursuant to section 3343-a of the Public Health Law for the purpose of reviewing a patient’s controlled substance history. Practitioners may authorize a designee to consult the prescription monitoring program registry on their behalf, provided that such designation is in accordance with section 3343-a of the Public Health Law.

Effective Date:
Tuesday, June 4, 2019
Doc Status:
Complete
Statutory Authority:
Public Health Law, Sections 3360 and 3369-a

Section 1004.3 - Application for registration as a certified patient

1004.3 Application for registration as a certified patient.

(a) A person applying for issuance or renewal of a registration as a certified patient shall:

(1) be a resident of New York State, or be receiving care and treatment in New York State; and

(2) possess a certification issued by a registered practitioner.

(b) New York State residents. An applicant shall demonstrate his or her New York State residency by submitting to the department a copy of information concerning his or her New York State Driver’s License or New York State Identification Card. If the applicant does not possess or cannot obtain a valid New York State Driver’s License or New York State Identification Card, the applicant shall submit a copy of one or more of the following forms of documentation to establish that he or she is a New York resident:

(1) a copy of a government-issued identification card that contains the applicant’s name and New York State address. If the applicant is under the age of eighteen, the parent or legal guardian applying on behalf of the applicant shall submit a copy of the parent or legal guardian’s state or government issued identification and a copy of the applicant’s birth certificate;

(2) a copy of a utility bill or other document indicating an applicant’s residency issued within the previous two months that contains the applicant’s name and address;

(3) a copy of a current lease or similar document indicating an applicant’s residency within New York State; or
(4) such other documentation as approved by the department containing sufficient information to show proof of residency in New York State.

(c) Non-New York State Residents. An applicant applying for registration who is not a resident of New York State but is receiving care and treatment in this state, may qualify for registration as a certified patient if the applicant otherwise meets the requirements of article thirty-three of the public health law and this part, and is temporarily residing in New York State for the purpose of receiving care and treatment from a practitioner registered with the department.

(1) The applicant shall submit a copy of the following forms of documentation along with the application for registration:

(i) a copy of a state or government issued identification card that contains the applicant’s name and permanent address. If the applicant is under the age of eighteen, the parent or legal guardian applying on behalf of the applicant shall submit a copy of the parent or legal guardian’s state or government issued identification and a copy of the applicant’s birth certificate;

(ii) proof of temporary residence in New York State, including, but not limited to a copy of a lease, utility bill, hospital bill, or such other documentation as approved by the department containing sufficient information to show proof of temporary residency in New York State. If the applicant is under the age of eighteen, the parent or legal guardian applying on behalf of the applicant shall submit a copy of such documentation to show sufficient proof of the applicant’s temporary residency in New York State.

(2) Nothing in this part shall be construed to grant to the applicant authorization to transport approved medical marihuana products outside of New York State.

(d) Application for a registry identification card. To obtain, amend or renew a registry identification card, a certified patient shall file a registry application with the department, on a form or in a manner determined by the department, which shall include:

(1) the documentation required in subdivisions (b) and (c) of this section, as applicable;

(2) the information required in section thirty-three hundred sixty-three of the public health law;

(3) for new applicants, if the applicant does not have a current valid New York State Driver’s license, New York State Identification Card, or government issued identification containing a photograph, the applicant shall provide a recent passport-style color photograph of the applicant’s face, taken against a white background or backdrop. The photograph shall be a true likeness of the applicant’s actual appearance on the date the photograph was taken and shall not be altered to change any aspect of the applicant’s physical appearance. The photograph shall have been taken not more than thirty (30) days prior to the date of the application. The photograph shall be submitted in a form and manner described by the department, including as a digital file (.jpeg) when appropriate, provided, however, the department may waive the requirements of this paragraph upon good cause shown. For amendments and renewal applications, the department may utilize a previously submitted photograph if the applicant attests it is a true likeness of the applicant on the date the amendment or renewal application is submitted;

(4) a nonrefundable application fee of fifty dollars; provided, however, that the department may waive or reduce the fee in cases of financial hardship as determined by the department; and
(5) acknowledgement that a false statement in the application is punishable under section 210.45 of the penal law;

(e) If the applicant for a registry identification card is under the age of eighteen or a person who is otherwise incapable of consenting to medical treatment, the application shall be made by an appropriate person over twenty-one years of age. In preparing the application, the applicant may designate up to two proposed designated caregivers who shall be either: (i) a parent or legal guardian of the certified patient; (ii) a person designated by a parent or legal guardian, or (iii) an appropriate person approved by the department upon a sufficient showing that no parent or legal guardian is appropriate or available.

(1) As a condition of registration of a certified patient who is a minor or is incapable of medical decision-making, the applicant shall consent, in a manner determined by the department, to the certified patient’s use of an approved medical marihuana product, and shall acknowledge that the parent, legal guardian or other appropriate person, as applicable, will control the acquisition and possession of the medical marihuana and any device used for its administration.

(2) Once the certified patient who is a minor or is incapable of medical decision-making is registered, the proposed designated caregiver(s) may apply for and, if approved, receive a designated caregiver registration in accordance with the requirements of section thirty-three hundred sixty-three of the public health law and section 1004.4 of this part.

(f) Prior to issuing or renewing a registry identification card, the department may verify the information submitted by the applicant. The applicant shall provide, at the department’s request, such information and documentation, including any consents or authorizations to contact treating practitioners that may be necessary for the department to verify the information.

(g) The department shall approve, deny, or determine incomplete or inaccurate an application to issue or renew a registry identification card within thirty (30) days of receipt of the application. If the application is approved within the 30 day period, the department shall issue a registry identification card as soon as is reasonably practicable.

(h) The department shall notify the applicant in writing, by email, by telephone, or in another manner as determined appropriate by the department, if an application is incomplete or factually inaccurate, and shall explain what documents or information is necessary for the department to consider the application complete and accurate.

(i) An applicant shall have thirty (30) days from the date of a notification of an incomplete or factually inaccurate application to submit the materials required to complete, revise, or substantiate information in the application. If the applicant fails to submit the required materials within such thirty day time period, the application shall be denied by the department.

(j) Applicants whose applications are denied may submit a new application for an initial or renewal of a registry identification card, together with the applicable fee as set forth herein.

(k) A certified patient may designate up to two designated caregivers either on the application for issuance or renewal of a registry identification card or in another manner determined by the department. A designated caregiver may be either a natural person or a facility. For purposes of this section, a “facility” shall mean: a general hospital or residential health care facility operating pursuant to Article 28 of the Public Health Law; an adult care facility operating pursuant to Title 2 of Article 7
of the Social Services Law; a community mental health residence established pursuant to section 41.44 of the Mental Hygiene Law; a hospital operating pursuant to section 7.17 of the Mental Hygiene Law; a mental hygiene facility operating pursuant to Article 31 of the Mental Hygiene Law; an inpatient or residential treatment program certified pursuant to Article 32 of the Mental Hygiene Law; a residential facility for the care and treatment of persons with developmental disabilities operating pursuant to Article 16 of the Mental Hygiene Law; a residential treatment facility for children and youth operating pursuant to Article 31 of the Mental Hygiene Law; or a private or public school. Further, within each of the facilities listed above, each division, department, component, floor or other unit of such facility shall be entitled to be considered to be a “facility” for purposes of this section. The application for issuance or renewal of a registry identification card shall include the following information:

(1) name of the proposed designated caregiver(s);

(2) address of the proposed designated caregiver(s);

(3) date of birth of the proposed designated caregiver(s), unless the proposed designated caregiver is not a natural person;

(4) any other individual identifying information concerning the proposed designated caregiver(s) required by the department.

Effective Date:
Wednesday, June 6, 2018
Doc Status:
Complete
Statutory Authority:
Public Health Law, Section 3369-a

Section 1004.4 - Designated caregiver registration

1004.4 Designated caregiver registration.

(a) A certified patient’s designation of a designated caregiver shall not be valid unless and until the proposed designated caregiver successfully applies for and receives a designated caregiver registry identification card.

(b) A facility or natural person selected by a certified patient as a designated caregiver may apply to the department for a registry identification card or renewal of such card on a form or in a manner determined by the department. The proposed designated caregiver shall submit an application to the department which shall contain the following information and documentation:

(1) For a proposed designated caregiver that is a natural person, the individual shall submit:

(i) the applicant’s full name, address, date of birth, telephone number, email address if available, and signature;
(ii) if the applicant has a registry identification card, the registry identification number;

(iii) a nonrefundable application fee of fifty ($50) dollars, provided, however that the department may waive or reduce the fee in cases of financial hardship as determined by the department;

(iv) a statement that the applicant is not the certified patient's practitioner;

(v) a statement that the applicant agrees to secure and ensure proper handling of all approved medical marihuana products;

(vi) acknowledgement that a false statement in the application is punishable under section 210.45 of the penal law;

(vii) proof that the applicant is a New York State resident, consisting of a copy of either:

(a) a New York State issued driver's license; or

(b) a New York State non-driver identification card;

(viii) If the documentation submitted by the applicant in accordance with paragraph (vii) of this subdivision does not contain a photograph of the applicant or the photograph on the documentation is not a true likeness of the applicant, the applicant shall provide one recent passport-style color photograph of the applicant's face taken against a white background or backdrop. The photograph shall be a true likeness of the applicant's appearance on the date the photograph was taken and shall not be altered to change any aspect of the applicant's physical appearance. The photograph shall have been taken not more than thirty (30) days prior to the date of the application. The photograph shall be submitted in a form and manner as directed by the department, including as a digital file (.jpeg).

(ix) Identification of all certified patients for which the applicant serves, has served or has an application pending to serve as a designated caregiver and a statement that the applicant is not currently a designated caregiver for five current certified patients, and that he/she has not submitted an application which is pending and, if approved, would cause the applicant to be a designated caregiver for a total of five current certified patients;

(2) For a proposed designated caregiver that is an entire facility that is licensed or operated pursuant to an authority set forth in subdivision (k) of section 1004.3 of this Part, the designated caregiver shall submit:

(i) the facility's full name, address, operating certificate or license number where appropriate, email address, and printed name, title, and signature of an authorized facility representative;

(ii) if the facility has a registry identification card, the registry identification number;

(iii) a statement that the facility agrees to secure and ensure proper handling of all approved medical marihuana products; and

(iv) an acknowledgement that a false statement in the application is punishable under section 210.45 of the penal law;

(3) For a proposed designated caregiver that is a division, department, component, floor or other unit pursuant to subdivision (k) of section 1004.3 of this Part, the designated caregiver shall submit:
(i) the parent facility’s full name, address, operating certificate or license number where appropriate, email address, and printed name, title and signature of an authorized representative of the parent facility and of an authorized representative of the division, department, component, floor or other unit;

(ii) if the parent facility, division, department, component, floor or other unit has a registry identification card, the registry identification number;

(iii) a statement that the parent facility, and the division, department, component, floor or other unit, agree to secure and ensure proper handling of all approved medical marihuana products; and

(iv) an acknowledgement that a false statement in the application is punishable under section 210.45 of the penal law.

(c) Prior to issuing or renewing a registry identification card, the department may verify the information submitted by the applicant. The applicant shall provide, at the department’s request, such information and documentation, including any consents or authorizations that may be necessary for the department to verify the information.

(d) The department shall approve, deny or determine incomplete or inaccurate an initial or renewal application within thirty (30) days of receipt of the application. If the application is approved within the 30 day period, the department shall issue a registry identification card as soon as is reasonably practicable.

(e) The department shall notify the applicant in writing, by email, by telephone, or in another manner as determined appropriate by the department if an application is incomplete or factually inaccurate, and shall explain what documents or information is necessary for the department to consider the application complete and accurate.

(f) An applicant shall have thirty (30) days from the date of a notification of an incomplete or factually inaccurate application to submit the materials required to complete, revise or substantiate information in the application. If the applicant fails to submit the required materials within such thirty day time period, the application shall be denied by the department.

(g) Applicants whose applications are denied pursuant to subdivision (f) of this section may submit a new initial or renewal application for a registry identification card, together with the applicable fee as set forth herein.

(h) The department shall deny a registry identification card for an applicant who:

(1) is already a designated caregiver for five currently certified patients or has an application pending that, if approved, would cause the proposed designated caregiver to be a designated caregiver for more than five currently certified patients; or

(2) in accordance with subdivision (e) of this section, fails to provide complete or factually accurate information in support of his or her initial or renewal application.

Effective Date:
Wednesday, June 6, 2018
Doc Status:
Complete
Section 1004.5 - Application for initial registration as a registered organization

1004.5 Application for initial registration as a registered organization.

(a) No person or entity shall produce, grow or sell medical marihuana or hold itself out as a New York State registered organization unless it has complied with article 33 of the public health law and this part and is registered by the department.

(b) In order to operate as a registered organization, an entity shall file an application on forms or in a manner prescribed by the commissioner. The application shall be signed by the chief executive officer duly authorized by the board of a corporate applicant, or a general partner or owner of a proprietary applicant. The application shall set forth or be accompanied by the following:

(1) the name, address, phone and email address of the applicant;

(2) identification of all real property, buildings and facilities that will be used in manufacturing, as defined in Section 1004.11 of this part, and dispensing of the medical marihuana products;

(3) identification of all equipment that will be used to carry out the manufacturing, processing, transportation, distributing, sale and dispensing activities described in the application and operating plan;

(4) an operating plan that includes a detailed description of the applicant’s manufacturing processes, transporting, distributing, sale and dispensing policies or procedures. The operating plan shall also include:

(i) a detailed description of any devices used with approved medical marihuana products to be offered or sold by the registered organization;

(ii) policies and procedures related to security and control measures that will be in place to prevent diversion, abuse, and other illegal or unauthorized conduct relating to medical marihuana and are consistent with provisions set forth in this part;

(iii) a standard operating procedure manual for all methods used from cultivation of the medical marihuana through packaging, sealing and labeling of each lot of medical marihuana product. The procedures shall include use of good agricultural practices (GAPs) and must conform to all applicable laws and rules of New York State. Standard operating procedures shall be able to be validated to demonstrate that the applicant will be able to produce and dispense consistent and reproducible medical marihuana product such that, for each form of each brand produced, there is homogeneity, absence of contamination and reproducibility of the brand profile in each lot as defined in section 1004.11 of this part.

(iv) quality assurance plans, including but not limited to plans to detect, identify and prevent dispensing errors;
(v) policies and procedures to document and investigate approved medical marihuana product returns, complaints and adverse events, and to provide for rapid voluntary or involuntary recalls of any lot of medical marihuana product. Such policies and procedures shall include a plan for any retesting of returned approved medical marihuana products, storage and disposal of marihuana and any manufactured medical marihuana products not passing requirements, and a requirement that adverse events and total recalls are reported to the department within twenty-four hours of their occurrence;

(vi) a quality assurance program to track contamination incidents and document the investigated source of such incidents, and the appropriate corrective action(s) taken.

(vii) detailed description of plans, procedures and systems adopted and maintained for tracking, record keeping, record retention and surveillance systems, relating to all medical marihuana at every stage including cultivating, possessing of marihuana, and manufacturing, delivery, transporting, distributing, sale and dispensing by the proposed registered organization.

(viii) proposed hours of operation for the manufacturing and dispensing facilities;

(5) copies of the organizational and operational documents of the applicant, including but not limited to, as applicable: the certificate of incorporation, bylaws, articles of organization, partnership agreement, operating agreement and other applicable documents and agreements, and all amendments thereto;

(6) the name, residence address and title of each of the board members, officers, managers, owners, partners, principal stakeholders, directors and any person or entity that is a member of the applicant. Each such person (if an individual, or lawful representative, if a legal entity) shall submit an affidavit with the application setting forth: (i) any position of management or ownership during the preceding ten years of a ten percent or greater interest in any other business, located in or outside New York State, manufacturing or distributing drugs; and (ii) whether such person or any such business has been convicted of a felony or had a registration or license suspended or revoked in any administrative or judicial proceeding. In addition, any managers who may come in contact with or handle medical marihuana, including medical marihuana products, shall be subject to a fingerprinting process as part of a criminal history background check in compliance with the procedures established by Division of Criminal Justice Services and submission of the applicable fee;

(7) documentation that the applicant has entered into a labor peace agreement, as required by subdivision one of section thirty-three hundred sixty five of the public health law, with a bona-fide labor organization that is actively engaged in representing or attempting to represent the applicant's employees. The maintenance of such a labor peace agreement shall be an ongoing material condition of registration;

(8) a statement that the applicant is able to comply with all applicable state and local laws and regulations relating to the activities in which it intends to engage under the registration;

(9) copies of all applicable executed and proposed deeds, leases, and rental agreements or executed option contracts related to the organization's real property interests, that shows that the applicant possesses or has the right to use sufficient land, buildings, and other premises as specified in the application and equipment to properly carry on the activities for which registration is sought. In the alternative, the applicant shall post a bond of not less than two million dollars; provided, however, that if the applicant posts a bond in lieu of providing the documentation requested herein, the applicant's submission of the applicable executed deeds, leases and rental agreements shall be
required prior to the issuance of a registration to the applicant, if selected; and, provided further that whenever any applicant proposes to lease premises for the activities described in its operating plan, the lease agreement shall clearly set forth as a purpose the manufacturing and/or dispensing of medical marijuana, as applicable, and include the following language: "The landlord acknowledges that its rights of reentry into the premises set forth in this lease do not confer on it the authority to manufacture and/or dispense on the premises medical marijuana in accordance with article 33 of the Public Health Law and agrees to provide the New York State Department of Health, Mayor Erastus Corning 2nd Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, N.Y. 12237, with notification by certified mail of its intent to reenter the premises or to initiate dispossess proceedings or that the lease is due to expire, at least 30 days prior to the date on which the landlord intends to exercise a right of reentry or to initiate such proceedings or at least 60 days before expiration of the lease." 

(10) a financial statement setting forth all elements and details of any business transactions connected with the application, including but not limited to all agreements and contracts for consultation and/or arranging for the assistance in preparing the application;

(11) architectural program and sketches of the applicant’s proposed manufacturing and dispensing facility(ies) including the following:

(i) site plans;

(ii) schematic architectural and engineering design drawings and single line sketches in an appropriate scale showing the relationship of various buildings to each other, room configurations, major exit corridors, exit stair locations, and circulation along with existing buildings if additions or alterations are part of the project;

(iii) outline specifications for the type of construction proposed including a description of energy sources, type and location of engineering systems proposed for heating, cooling, ventilation and electrical distribution, water supply and sewage;

(iv) a security plan indicating how the applicant will comply with the requirements of article 33 of the Public Health Law, this part and any other applicable law, rule, or regulation; and

(v) the registered organization shall submit detailed floor plans indicating the activities performed in each area and security plans (physical and cyber) consistent with the requirements of section 1004.13 of this part.

(12) a construction timetable;

(13) a statement as to whether the applicant, any controlling person of the applicant, any manager, any sole proprietor applicant, any general partner of a partnership applicant, any officer and member of the board of directors of a corporate applicant, and corporate general partner had a prior discharge in bankruptcy or was found insolvent in any court action;
(14) if any controlling person of the applicant, any manager, any sole proprietor applicant, any general partner of a partnership applicant, any officer and member of the board of directors of a corporate applicant, or corporate general partner or a combination of such persons collectively, maintains a ten percent interest or greater in any firm, association, foundation, trust, partnership, corporation, or other entity or if such entity maintains a ten percent interest or greater in the applicant, and such entity will or may provide goods, leases, or services to the registered organization, the value of which is or would be five hundred dollars or more within any one year, the name and address of the entity shall be disclosed together with a description of the goods, leases or services and the probable or anticipated cost to the registered organization;

(15) if the applicant is a corporate subsidiary or affiliate of another corporation, disclosure of the parent or affiliate corporation including the name and address of the parent or affiliate, the primary activities of the parent or affiliate, the interest in the applicant held by the parent or affiliate and the extent to which the parent will be responsible for the financial and contractual obligations of the subsidiary;

(16) the most recent certified financial statement of the applicant, audited by an independent certified public accountant and prepared in accordance with generally accepted accounting principles (GAAP) applied on a consistent basis, including a balance sheet as of the end of the applicant's last fiscal year and income statements for the past two fiscal years, or such shorter period of time as the applicant has been in operation;

(17) if construction, lease, rental or purchase of the manufacturing or dispensing facility has not been completed, a statement indicating the anticipated source and application of the funds to be used in such purchase, lease, rental or construction;

(18) a staffing plan for staff involved in activities related to the cultivation of marihuana, the manufacturing and/or dispensing of approved medical marihuana products and/or staff with oversight responsibilities for such activities, which shall include:

(i) a senior staff member with a minimum of one (1) year experience in good agricultural practices (GAP);

(ii) a quality assurance officer who shall exercise oversight of the organization's practices and procedures and who has documented training and experience in quality assurance and quality control procedures;

(iii) a requirement that all staff be twenty-one (21) years of age or older;

(iv) a requirement that all staff involved in the manufacturing be trained in and conform to general sanitary practices; and

(v) policies and procedures to ensure that the proposed registered organization shall not employ anyone who would come in contact with or handle medical marihuana who has been convicted of any felony of sale or possession of drugs, narcotics, or controlled substances in accordance with the requirements of section thirty-three hundred sixty-four of the public health law.

(19) any other information as may be required by the commissioner.

(c) An application under this section may be amended while the matter is pending before the commissioner, if approved by the commissioner upon good cause shown.
(d) The applicant shall verify the truth and accuracy of the information contained in the application. The department, in its discretion, may reject an application if it determines that information contained therein is not true and accurate.

Effective Date:
Wednesday, December 27, 2017
Doc Status:
Complete

Section 1004.6 - Consideration of registered organization applications

1004.6 Consideration of registered organization applications.

(a) Applicants for approval to operate as registered organizations shall submit an application to the department, containing the information required in section 1004.5, in a manner and format determined by the department.

(1) Applications shall be accompanied by a non-refundable application fee in the amount of $10,000.

(2) The registration fee for the registration period shall be $200,000. Applicants shall submit the registration fee by certified check, or another method approved by the Department, at the time of submission of the application. The registration fee shall be returned to the applicant if the applicant is not granted a registration under this part.

(3) Only applications completed in accordance with this part as determined by the department and for which the application and registration fees have been submitted shall be considered if submitted in a timely manner. The department shall return the fee for $200,000 to all applicants who are not granted a registration.

(b) The department shall initially register up to five applicants as registered organizations. In deciding whether to grant an application, or amendment to a registration, the department shall consider whether:

(1) the applicant will be able to manufacture approved medical marihuana products, each with a consistent cannabinoid profile (the concentration of total tetrahydrocannabinol (THC) and total cannabidiol (CBD) will define the brand) and each able to pass the required quality control testing;

(2) the applicant will produce sufficient quantities of approved medical marihuana products as necessary to meet the needs of certified patients;

(3) the applicant will be able to maintain effective control against diversion of marihuana and medical marihuana products;

(4) the applicant will be able to comply with all applicable state and local laws and regulations;

(5) the applicant is ready, willing and able to properly carry on the activities set forth in this part;
(6) the applicant possesses or has the right to use sufficient real property, buildings and equipment to properly carry on the activity described in its operating plan;

(7) it is in the public interest that such registration be granted;

(8) the number of registered organizations in an area will be adequate or excessive to reasonably serve the area, including whether there is sufficient geographic distribution across the state;

(9) the moral character and competence of board members, officers, managers, owners, partners, principal stakeholders, directors, and members of the applicant’s organization;

(10) the applicant has entered into a labor peace agreement with a bona-fide labor organization, as defined in section thirty-three hundred sixty of the public health law, that is actively engaged in representing or attempting to represent the applicant’s employees; and

(11) evaluation of the applicant’s proposed operating plan and suitability of the proposed manufacturing and dispensing facilities, including but not limited to the suitability of the location and architectural and engineering design of the proposed facilities. Department approval of the applicant’s operating plan and architectural and engineering design of the proposed facilities shall be required for issuance of a registration.

(c) The applicant shall allow reasonable access to the department and/or its authorized representatives for the purpose of conducting an on-site survey or inspection of the applicant’s proposed manufacturing and/or dispensing facilities.

(d) If the commissioner is not satisfied that the applicant should be issued a registration, he or she shall notify the applicant in writing of those factors upon which further evidence is required. Within 30 days of the receipt of such notification, the applicant may submit additional material to the commissioner or demand a hearing, or both.

(e) Upon application to the department, a registered organization’s registration may be amended to allow the registered organization to relocate within the state or to add or delete permitted registered organization activities or facilities. The department shall consider whether to grant or deny the application for amendment of the registration utilizing the criteria set forth in subdivision (b) of this section. The fee for such amendment shall be $250.

(f) Registrations issued shall be valid for two years from the date of issuance. To facilitate renewals of registrations, the commissioner may upon the initial application for a registration, issue some registrations which may remain valid for a period of time greater than two years, but not exceeding an additional eleven months. The registration fee will be prorated for the additional time exceeding two years.

Effective Date:
Wednesday, December 27, 2017
Doc Status:
Complete
Section 1004.7 - Applications for renewal of registration as registered organization

1004.7 Applications for renewal of registration as registered organization

(a) An application to renew any registration issued under this part shall be filed with the department not more than six months nor less than four months prior to the expiration thereof. If a renewal application is not filed at least four months prior to the expiration thereof, the department may determine that the registration shall have expired and become void on such expiration date.

(b) Applications shall be accompanied by a non-refundable application fee in the amount of $10,000. Applications shall also be accompanied by a registration fee in the amount of $200,000 made by certified check. Only applications completed in accordance with this part as determined by the department and for which the application and registration fees have been submitted shall be considered if submitted in a timely manner. The registration fee shall be returned to the applicant if the applicant is not granted a renewal registration under this section.

(c) The application for renewal shall include such information prepared in the manner and detail as the commissioner may require, including but not limited to:

(1) any material change as determined by the department in the information, circumstances or factors listed in section 1004.5 of this part;

(2) every known complaint, charge or investigation, pending or concluded during the period of the registration, by any governmental or administrative agency with respect to:

(i) each incident or alleged incidence involving the theft, loss, or possible diversion of medical marihuana manufactured, distributed, or dispensed by the registered organization; and

(ii) compliance by the applicant with local or state laws, or regulations of the department, including but not limited to, with respect to any substance listed in section thirty-three hundred sixty-five of the public health law;

(3) information concerning the applicant’s ability to carry on the manufacturing and distributing activity for which it is registered, including but not limited to approved medical marihuana product shortages or wait lists occurring during the registration period; and

(4) a summary of quality assurance testing for all medical marihuana products produced in the prior year including but not limited to the percentage of lots of each brand and form passing all required testing, the percentage of lots failing contaminant testing, the percentage of lots failing brand requirements, all recalls of product lots and all adverse events reported.

(d) The department shall consider applications for renewal in accordance with the criteria set forth in section thirty-three hundred sixty-five of the public health law.

(e) If the department determines that the applicant’s registration should not be renewed, the department shall serve upon the applicant or his or her attorney of record, in person or by registered or certified mail, an order directing the applicant to show cause why his or her application for renewal
should not be denied. The order shall specify in detail the respects in which the applicant has not satisfied the department that the registration should be renewed.

(1) within ten (10) business days of receipt of such an order, the applicant may submit additional material to the department or demand a hearing, or both. If a hearing is demanded, the commissioner shall fix a date as soon as reasonably practicable.

(2) If the applicant fails to submit additional material to the department within ten (10) business days as requested, and the applicant does not demand a hearing within such time period, the application for renewal of registration shall be denied.

Effective Date:
Wednesday, April 15, 2015
Doc Status:
Complete

Section 1004.8 - Registrations non-transferable

1004.8 Registrations non-transferable.

(a) Registrations issued under this part shall be effective only for the registered organization and shall specify:

(1) the name and address of the registered organization;

(2) name of the contact person for the registered organization;

(3) the activities the registered organization is permitted to perform under the registration for each approved location; and

(4) the real property, buildings and facilities that may be used for the permitted activities of the registered organization.

(b) Registrations are not transferable or assignable, including, without limitation, to another registered organization.

Effective Date:
Wednesday, April 15, 2015
Doc Status:
Complete

Section 1004.9 - Failure to operate

1004.9 Failure to operate.

(a) A registration shall be surrendered to the department upon written notice and demand if the registered organization fails to begin operations, to the satisfaction of the department, of a manufacturing and/or dispensing facility within six months of the date of issuance of the registration.
Section 1004.10 - Registered organizations; general requirements

1004.10 Registered organizations; general requirements

(a) In addition to the requirements in public health law and as otherwise set forth in this part, a registered organization shall:

(1) make its books, records and manufacturing and dispensing facilities available to the department or its authorized representatives for monitoring, on-site inspection, and audit purposes, including but not limited to periodic inspections and/or evaluations of facilities, methods, procedures, materials, staff and equipment to assess compliance with requirements set forth in article 33 of the public health law and this part;

(i) Any deficiencies documented in a statement of findings by the department shall require that the registered organization submit a written plan of correction in a format acceptable to the department within 15 calendar days of the issue date of the statement of findings. A plan of correction shall address all deficiencies or areas of noncompliance cited in the statement of findings and shall:

(a) contain an assessment and analysis of the events and/or circumstances that led to the noncompliance;

(b) contain a procedure addressing how the registered organization intends to correct each area of noncompliance;

(c) contain an explanation of how proposed corrective actions will be implemented and maintained to ensure noncompliance does not recur;

(d) contain the proposed date by which each area of noncompliance shall be corrected;

(e) address any inspection finding which the department determines jeopardizes the immediate health, safety, or well-being of certified patients, designated caregivers or the public. Such a finding shall be deemed a critical deficiency and shall require immediate corrective action to remove the immediate risk, followed by the submission of a corrective action plan within 24 hours of notification by the department of the critical deficiency. The department will acknowledge receipt within 24 hours and respond as soon as practicable to notify if the plan is accepted or needs modification. If the corrective action plan needs modification, the registered organization shall modify the plan until it is accepted by the department.
(ii) Upon written approval of the department, the registered organization shall implement the plan of correction.

(2) only manufacture and dispense approved medical marihuana products in New York State in accordance with article 33 of the public health law and this part;

(3) only manufacture and dispense approved medical marihuana products in an indoor, enclosed, secure facility located in New York State which may include greenhouses;

(4) submit approved medical marihuana product samples and manufacturing materials to the department upon request, for but not limited to, quality assurance testing or investigation of an adverse event. A subset of each lot of medical marihuana product shall be retained by the registered organization to allow for testing in the future if requested by the department and shall be stored unopened as indicated on the label and in the original packaging. This subset of medical marihuana product must be readily identifiable as belonging to its specific lot. The quantity retained shall be a statistically representative number of samples to allow for complete testing of the product at least two times and shall be retained by the registered organization for at least thirty days following the date of expiration.

(5) implement policies and procedures to notify the department within 24 hours of the following:

(i) any adverse events;

(ii) any incident involving theft, loss or possible diversion of medical marihuana products;

(iii) any suspected or known security breach or other facility event that may compromise public health and/or safety, or which requires response by public safety personnel or law enforcement; and

(iv) any vehicle accidents or incidents occurring during transport of medical marihuana products.

(6) Within ten days of the occurrence of one of the above events, the registered organization shall submit a complete written incident report to the department detailing the circumstances of the event, any corrective actions taken, and where applicable, confirmation that appropriate law enforcement authorities were notified.

(7) quarantine any lot of medical marihuana product as directed by the department, and not transport, distribute or dispense such lot unless prior approval is obtained from the department;

(8) dispose of unusable medical marihuana products that have failed laboratory testing or any marihuana used in the manufacturing process pursuant to section 1004.24 of this Part;

(9) maintain records required by article 33 of the public health law and this part for a period of five (5) years, unless otherwise stated, and make such records available to the department upon request. Such records shall include:

(i) documentation, including lot numbers where applicable, of all materials used in the manufacturing of the approved medical marihuana product to allow tracking of the materials including but not limited to soil, soil amendment, nutrients, hydroponic materials, fertilizers, growth promoters, pesticides, fungicides, and herbicides;

(ii) cultivation, manufacturing, packaging and labeling production records; and
(iii) laboratory testing results.

(10) post the certificate of registration issued by the department in a conspicuous location on the premises of each manufacturing facility and dispensing facility.

(b) Registered organizations shall not:

(1) dispense approved medical marihuana products from the same location where the marihuana is grown or manufactured;

(2) grow marihuana or produce medical marihuana at any site other than a facility or site approved by the department and set forth in the registered organization’s registration;

(3) distribute products or samples at no cost except as may be allowed by the commissioner;

(4) make substantial alterations to the structure or architectural design of a manufacturing or dispensing facility without prior written approval of the department;

(5) change the composition of the entity which is the registered organization, including but not limited to, a change in sole proprietor, partner, director, stockholder, member or membership interest of the registered organization without the prior written approval of the department;

(6) materially modify or revise its operating plan, including its policies and procedures related to cultivation, processing, manufacturing, distributing or dispensing policies or procedures, without prior written approval of the department.

(7) locate a dispensing facility on the same street or avenue and within one thousand feet of a building occupied exclusively as a school, church, synagogue or other place of worship. The measurements in this paragraph of this subdivision are to be taken in straight lines from the center of the nearest entrance of the premises sought to be used as a dispensing facility to the center of the nearest entrance of such school, church, synagogue or other place of worship; or

(8) be managed by or employ anyone who has been convicted of any felony of sale or possession of drugs, narcotics, or controlled substances provided that this provision only applies to:

(i) managers or employees who come into contact with or handle medical marihuana; and

(ii) a conviction less than ten years (not counting time spent in incarceration) prior to being employed, for which the person has not received a certificate of relief from disabilities or a certificate of good conduct under article 23 of the correction law.

(c) In the event that a registered organization elects to cease operation of all permitted activities and to surrender its registration, the following provisions shall apply:

(1) The registered organization shall notify the department in writing at least 120 days prior to the anticipated date of closure of the manufacturing and each dispensing facility.

(2) Such written notice shall include a proposed plan for closure. The plan shall be subject to department approval in accordance with department protocols, and shall include timetables and describe the procedures and actions the registered organization shall take to:
(i) notify affected certified patients and designated caregivers of the closure;

(ii) properly destroy, transfer or otherwise dispose of all the registered organization’s supply of medical marihuana and medical marihuana products;

(iii) maintain and make available to the department all records required to be maintained under this part for a period of five years; and

(iv) maintain compliance with these regulations and any other conditions required by the commissioner until the approved closure date.

(3) A registered organization shall take no action to close a manufacturing and dispensing facility prior to department approval of the plan for closure.

(4) A registered organization’s failure to notify the department of intent to cease any operations, failure to submit an approvable plan, and/or to execute the approved plan may result in the imposition of civil penalties, not to exceed $2,000, and shall be a basis for the department to revoke the registration of the registered organization under such terms as the department determines is appropriate based on public health and safety considerations. In addition, the department reserves the right to exercise any other remedies available to it.

(d) If a registered organization’s application for renewal of registration is denied, the registered organization shall submit a proposed plan for closure in accordance with this section.

Effective Date:
Wednesday, December 27, 2017
Doc Status:
Complete

Section 1004.11 - Manufacturing requirements for approved medical marihuana products

1004.11 Manufacturing requirements for approved medical marihuana products

(a) Definitions. Wherever used in this part, the following terms shall have the following meanings:

(1) “Approved medical marihuana product” is the final manufactured product delivered to the patient that represents a specific brand with a defined cannabinoid content and active and inactive ingredients, prepared in a specific dosage and form, to be administered as recommended by the practitioner.

(2) “Brand” means a defined medical marihuana product that has a homogenous and uniform cannabinoid concentration (total THC and total CBD) and product quality, produced according to an approved and stable processing protocol and shall have the same inactive ingredients as that defined for that form of the brand.

(3) “Form” of medical marihuana shall be a type of a medical marihuana product approved by the commissioner and shall refer to the final preparation of an approved medical marihuana brand; for
example, an extract in oil for sublingual administration, an extract for vaporization or an extract in a capsule for ingestion.

(4) "Lot" means a quantity of a medical marihuana extraction product that has a homogenous and uniform cannabinoid concentration and product quality, produced according to an approved and stable processing protocol specific to that brand and form of medical marihuana product, during the same cycle of manufacture.

(5) "Lot unique identifier (Lot number or bar code)" means any distinctive combination of letters, numbers, or symbols, or any combination of them, from which the complete history of manufacturing, testing, holding, distribution or recall of a lot of medical marihuana product can be determined.

(6) "Manufacturing" shall include, but not be limited to cultivation, harvesting, extraction (or other processing), packaging and labeling.

(b) A registered organization shall use either carbon dioxide (CO2, super-critical) or alcohol for cannabinoid extraction and shall only perform extraction of the leaves and flowers of female marihuana plants. A registered organization shall only use carbon dioxide that is of a supply equivalent to food or beverage grade of at least 99.5% purity; and alcohol used shall be of a grade that meets or exceeds specifications of official compendiums as defined in section 321 of Title 21 of the United States Code (USC). 21 USC §321 is available for copying and inspection at the Regulatory Affairs Unit, New York State Department of Health, Corning Tower, Empire State Plaza, Albany, New York 12237. A registered organization shall obtain prior written approval from the department if it seeks to use other extraction methods.

(c) A registered organization shall only produce such forms of medical marihuana as approved by the department according to the following requirements:

(1) Each registered organization may initially produce up to five brands of medical marihuana product with prior approval of the department. These brands may be produced in multiple forms as approved by the commissioner. Thereafter, additional brands may be approved by the department.

(2) Each medical marihuana product brand, in its final form, shall be defined as having a specific concentration of total Tetrahydrocannabinol (THC) and total Cannabidiol (CBD) and shall have a consistent cannabinoid profile. The concentration of the following cannabinoids, at a minimum, must be reported:

(i) Tetrahydrocannabinol (THC)
(ii) Tetrahydrocannabinol acid (THCA)
(iii) Tetrahydrocannabivarin (THCV)
(iv) Cannabidiol (CBD)
(v) Cannabinadiolic acid (CBDA)
(vi) Cannabidivarine (CBDV)
(vii) Cannabinol (CBN)
(viii) Cannabigerol (CBG)

(ix) Cannabichromene (CBC)

(x) Any other cannabinoid component at > 0.2 percent, for which there is a certified standard available at a customary cost.

(3) The final medical marihuana product shall not contain less than 90 percent or more than 110 percent of the concentration of total THC or total CBD indicated on the label for this brand and shall have no more than 10mg total THC per dose. However:

(i) Where the total THC concentration is less than 5 milligrams per dose, the concentration of total THC shall be within 0.5 milligrams per dose;

(ii) Where the total CBD concentration is less than 5 milligrams per dose, the concentration of total CBD shall be within 0.5 milligrams per dose; and

(iii) the concentration of total THC and CBD in milligrams per single dose for each sample of a brand lot submitted for testing must be within 25 percent of the mean concentration of total THC and CBD in milligrams per single dose for that submitted lot with the exception that, for brands with a specified total THC and CBD concentration less than 2 milligrams per single dose, the concentration of each sample for that low concentration cannabinoid shall be within 0.5 milligrams per dose of the mean concentration.

(4) The registered organization shall offer and make available to patients at least one brand that has a low THC and a high CBD content (e.g., a 1:20 ratio of THC to CBD).

(5) The registered organization shall offer and make available at least one brand that has approximately equal amounts of THC and CBD.

(6) For each brand offered, the registered organization shall only utilize a distinct name which has been approved by the department, consisting of only letters and/or numbers. The name shall not be coined or fanciful, and may not include any “street”, slang or other name. No reference shall be made to any specific medical condition.

(7) Each registered organization shall ensure the availability of at least a one year supply of any offered brand unless otherwise allowed by the department.

(d) The registered organization shall not add any additional active ingredients or materials to any approved medical marihuana product that alters the color, appearance, smell, taste, effect or weight of the product unless it has first obtained prior written approval of the department. Excipients must be pharmaceutical grade and approved by the department.

(e) A registered organization shall:

(1) use good agricultural practices (GAPs) and must conform to all applicable laws and rules of New York State;

(2) use water from a public water supply or present a plan, approved by the department, which demonstrates the ability to obtain sufficient quantities of water of equal or greater quality as that from a public water supply and to monitor the quality of such water on an ongoing basis;
(3) upon prior written notice to the department, only use pesticides that are registered by the New York State Department of Environmental Conservation or that specifically meet the United States Environmental Protection Agency registration exemption criteria for Minimum Risk Pesticides, and only in accordance with section 325.2(b) of title 6 of the NYCRR;

(4) process the leaves and flowers of the female plant only, in a safe and sanitary manner;

(5) perform visual inspection of the harvested plant material to ensure there is no mold, mildew, pests, rot or gray or black plant material;

(6) have a separate secure area for temporary storage of any medical marihuana or medical marihuana product that needs to be destroyed; and

(7) provide continual environmental monitoring for temperature, ventilation and humidity at all locations in the manufacturing facility where unprocessed leaf and flower material is stored, until further extraction or other processing is completed.

(f) Production of any approved medical marihuana product shall be in accordance with general sanitary conditions. Poisonous or toxic materials, including but not limited to insecticides, rodenticides, detergents, sanitizers, caustics, acids and related cleaning compounds must be stored in a separate area from the marihuana and medical marihuana products in prominently and distinctly labeled containers, except that nothing herein precludes the convenient availability of detergents or sanitizers to areas where equipment, containers and utensils are washed and sanitized.

(g) Approved medical marihuana products shall be limited to the forms of administration approved by the Department, including but not limited to:

(1) metered liquid or oil preparations;

(2) solid and semisolid preparations (e.g. capsules, chewable and effervescent tablets, lozenges);

(3) metered ground plant preparations; and

(4) topical forms and transdermal patches.

(5) medical marihuana may not be incorporated into food products by the registered organization, unless approved by the commissioner.

(6) Smoking is not an approved route of administration.

(h) The registered organization shall package the final form of the approved medical marihuana product at the manufacturing site. The original seal shall not be broken except for quality testing at an approved laboratory, for adverse event investigations, by the department, by the certified patient or designated caregiver, or by the registered organization for internal quality control testing or disposal.

(i) The registered organization shall package the approved medical marihuana product such that it is child-resistant, tamper-proof/tamper-evident, light-resistant, and in a resealable package that minimizes oxygen exposure.

(j) The registered organization shall identify each lot of approved medical marihuana product with a lot unique identifier.
(k) Each approved medical marihuana product shall be affixed with a product label. Medical marihuana product labels shall be approved by the department prior to use. Each product label shall be applied at the manufacturing facility, be easily readable, firmly affixed and include:

(1) the name, address and registration number of the registered organization;
(2) the medical marihuana product form and brand designation;
(3) the single dose THC and CBD content for the product set forth in milligrams (mg);
(4) the medical marihuana product lot unique identifier (lot number or bar code);
(5) the quantity included in the package;
(6) the date packaged;
(7) the date of expiration of the unopened product, based on stability studies in accordance with section 1004.11(m)(2) of this title, or a tentative expiration date approved by the department;
(8) the proper storage conditions;
(9) language stating:
(i) “Medical marihuana products must be kept in the original container in which they were dispensed and removed from the original container only when ready for use by the certified patient”;
(ii) “Keep secured at all times”;
(iii) “May not be resold or transferred to another person”;
(iv) “This product might impair the ability to drive”;
(v) “KEEP THIS PRODUCT AWAY FROM CHILDREN (unless medical marihuana product is being given to the child under a practitioner’s care)”;
and
(vi) “This product is for medicinal use only. Women should not consume during pregnancy or while breastfeeding except on the advice of the certifying practitioner, and in the case of breastfeeding mothers, including the infant’s pediatrician.”

(l) For each lot of medical marihuana product produced, the registered organization shall submit a predetermined number of final medical marihuana products (e.g., sealed vials or capsules; with the number of samples submitted, based on statistical analysis, determined to be representative of the lot) to an independent laboratory/laboratories approved by the department. The laboratory verifying the cannabinoid content shall be approved for the analysis of medical marihuana product by the department in accordance with section five hundred two of the public health law and subpart 55-2 of this title. Such laboratory, or approved laboratories cumulatively, shall certify the medical marihuana product lot as passing all contaminant testing and verify that the content is consistent with the brand prior to the medical marihuana product being released from the manufacturer to any dispensing facility.
(1) Any lot not meeting the minimum standards or specifications for safety shall be rejected and destroyed by the registered organization in accordance with section 1004.24 of this Part.

(2) Any lot not meeting the minimum standards or specifications for brand consistency shall be reported to the department and not dispensed by a registered organization without prior written approval from the department.

(3) The registered organization shall keep and maintain records documenting submission of medical marihuana products to approved laboratories as required herein, and the results of the laboratory testing. The registered organization shall provide the department with such records upon request.

(m) The registered organization shall demonstrate the stability of each approved medical marihuana product produced (each brand in each form) by testing both the unopened and opened product at an approved laboratory in accordance with section 1004.14(h) of this title:

(1) the stability of opened products shall be validated under the conditions (light, temperature and humidity), specified for storage of the product and an expiration date for opened product shall be determined;

(2) the stability of unopened products (e.g., sealed packages or vials) shall be validated by ongoing stability testing and an expiration date for unopened products shall be determined.

(3) specifications regarding storage conditions must address storage at the manufacturing facility once the package is sealed, during transport, at the dispensing facility, in the patient’s home and for samples retained for future testing.

(n) No synthetic marihuana additives nor any cannabinoid preparation not produced by a registered organization in an approved manufacturing facility shall be used in the production of any medical marihuana product.

(o) The registered organization’s approved standard operating procedure for the aforementioned activities must be followed, unless otherwise approved by the department.

Effective Date:
Wednesday, December 27, 2017
Doc Status:
Complete

**Section 1004.12 - Requirements for dispensing facilities**

1004.12 Requirements for dispensing facilities

(a) Medical marihuana products shall not be dispensed or handled unless an individual with an active New York State pharmacist license, as defined in article 137 of the Education Law, who has completed a four-hour course pursuant to section 1004.1 of this part, is on the premises and supervising the activity within the facility.
(b) Dispensing facilities shall only sell approved medical marihuana products, related products necessary for the approved forms of administration of medical marihuana, and items that promote health and well-being subject to disapproval of the department and only in such a manner as does not increase risks of diversion, theft or loss of approved medical marihuana products or risk physical, chemical or microbial contamination or deterioration of approved medical marihuana products.

(c) No approved medical marihuana products shall be vaporized or consumed on the premises of a dispensing facility.

(d) Dispensing facilities shall not dispense approved medical marihuana products to anyone other than a certified patient or designated caregiver.

(e) When dispensing approved medical marihuana products, the dispensing facility shall:

1. not dispense an amount greater than a thirty (30) day supply to a certified patient, and not until the patient has exhausted all but a seven day supply provided pursuant to any previously dispensed medical marihuana product by any registered organization;

2. ensure that medical marihuana product packaging shall not be opened by dispensing facility staff;

3. provide a patient specific log of medical marihuana products (brand, administration form, and dosage, and dates dispensed and any return of product) to the patient, the patient’s designated caregiver, if applicable, or the patient’s practitioner upon request;

4. ensure the prescription monitoring program registry is consulted pursuant to 3343-a and section 3364 of the Public Health Law, prior to any sales transactions and dispensing of any approved medical marihuana products by the facility.

(f) The registered organization shall be responsible for maintaining the confidentiality of patients and the integrity of the security of the facility at all times. Access to medical marihuana storage areas and areas within the dispensing facility where security equipment and recordings are stored shall be restricted to:

1. registered organization employees;

2. employees of the department or its authorized representatives;

3. emergency personnel responding to an emergency, and;

4. other persons authorized by a manager of the registered organization for the sole purpose of maintaining the operations of the facility.

(i) The dispensing facility shall maintain a visitor log of all persons, other than registered organization employees or emergency personnel responding to an emergency, that access these secured areas, which shall include the name of the visitor, date, time and purpose of the visit. The visitor log shall be available to the department at all times during operating hours and upon request.

(g) the dispensing facility shall affix to the approved medical marihuana product package a patient specific dispensing label approved by the department, that is easily readable, and firmly affixed and includes:
(1) the name and registry identification number of the certified patient and designated caregiver, if any;

(2) the certifying practitioner’s name;

(3) the dispensing facility name, address and phone number;

(4) the dosing and administration instructions;

(5) the quantity and date dispensed;

(6) any recommendation or limitation by the practitioner as to the use of medical marihuana; and

(7) the expiration date of the product once opened pursuant to section 1004.11(m)(1) of this Part.

(h) the dispensing facility shall place the approved medical marihuana product in a plain outer package when dispensing to the patient or designated caregiver.

(i) The dispensing facility shall ensure that each patient receives approved medical marihuana product from no more than two distinct lots for any 30-day supply dispensed.

(j) The dispensing facility shall include with each product package dispensed to a patient, a department approved package safety insert. Information provided shall include but not be limited to:

(1) the medical marihuana product and brand;

(2) a list of any excipients used;

(3) a warning if there is any potential for allergens in the medical marihuana product;

(4) contraindications;

(5) more specific dosage directions and instructions for administration;

(6) warning of adverse effects and/or any potential dangers stemming from the use of medical marihuana;

(7) instructions for reporting adverse effects as may be determined by the department;

(8) a warning about driving, operation of mechanical equipment, child care or making important decisions while under the influence of medical marihuana;

(9) information on tolerance, dependence and withdrawal and substance abuse, how to recognize what may be problematic usage of medical marihuana and obtain appropriate services or treatment;

(10) advice on how to keep the medical marihuana product secure;

(11) language stating that the certified patient may not distribute any medical marihuana product to anyone else;

(12) language stating that unwanted, excess, or contaminated medical marihuana product must be disposed of according to section 1004.20 of this part; and
(13) language stating that “this product has not been analyzed by the FDA. There is limited information on the side effects of using this product and there may be associated health risks.”

(k) The dispensing facility shall store the medical marihuana product in a manner to ensure that there is no contamination or deterioration of the medical marihuana product or its packaging.

(l) If an approved medical marihuana product is returned to the dispensing facility, the dispensing facility shall:

(1) dispose of such product pursuant to section 1004.24 of this part;

(2) provide the following information to the department:

(i) the name and registry identification number of the certified patient for whom the product was dispensed;

(ii) the date of the return;

(iii) the brand and form being returned;

(iv) the quantity and/or weight being returned;

(v) the reason for the return;

(vi) the name of the dispensing facility employee accepting the return; and

(vii) any other information required by the department;

(3) ensure the returned marihuana product is securely stored, separate from working inventory while awaiting disposal.

Effective Date:
Wednesday, December 27, 2017
Doc Status:
Complete

Section 1004.13 - Security requirements for manufacturing and dispensing facilities

1004.13 Security requirements for manufacturing and dispensing facilities.

(a) All facilities operated by a registered organization, including any manufacturing facility and dispensing facility, shall have a security system to prevent and detect diversion, theft or loss of marihuana and/or medical marihuana products, utilizing commercial grade equipment, which shall, at a minimum, include:

(1) a perimeter alarm;

(2) motion detectors;
(3) video cameras in all areas that may contain marihuana and at all points of entry and exit, which shall be appropriate for the normal lighting conditions of the area under surveillance. The manufacturing facility or dispensing facility shall direct cameras at all approved safes, approved vaults, dispensing areas, marihuana sales areas and any other area where marihuana is being manufactured, stored, handled, dispensed or disposed of. At entry and exit points, the manufacturing facility or dispensing facility shall angle cameras so as to allow for the capture of clear and certain identification of any person entering or exiting the facility;

(4) twenty-four hour recordings from all video cameras, which the manufacturing facility or dispensing facility shall make available for immediate viewing by the department or the department’s authorized representative upon request and shall be retained for at least 90 days. The registered organization shall provide the department with an unaltered copy of such recording upon request. If a registered organization is aware of a pending criminal, civil or administrative investigation or legal proceeding for which a recording may contain relevant information, the registered organization shall retain an unaltered copy of the recording until the investigation or proceeding is closed or the entity conducting the investigation or proceeding notifies the registered organization that it is not necessary to retain the recording;

(5) a duress alarm, which for purposes of this section means a silent security alarm system signal generated by the entry of a designated code into an arming station in order to signal that the alarm user is being forced to turn off the system;

(6) a panic alarm, which for purposes of this section, means an audible security alarm system signal generated by the manual activation of a device intended to signal a life threatening or emergency situation requiring a law enforcement response;

(7) a holdup alarm, which for purposes of this section, means a silent alarm signal generated by the manual activation of a device intended to signal a robbery in progress;

(8) an automatic voice dialer or digital dialer, which for purposes of this section, means any electrical, electronic, mechanical, or other device capable of being programmed to send a prerecorded voice message, when activated, over a telephone line, radio or other communication system, to a law enforcement, public safety or emergency services agency requesting dispatch, or other department approved industry standard equivalent;

(9) a failure notification system that provides an audible, text or visual notification of any failure in the surveillance system. The failure notification system shall provide an alert to the manufacturing facility or dispensing facility within five minutes of the failure, either by telephone, email, or text message;

(10) the ability to immediately produce a clear color still photo that is a minimum of 9600 dpi from any camera image (live or recorded);

(11) a date and time stamp embedded on all recordings. The date and time shall be synchronized and set correctly and shall not significantly obscure the picture; and

(12) the ability to remain operational during a power outage.
(b) A registered organization shall ensure that any manufacturing facility and dispensing facility maintains all security system equipment and recordings in a secure location so as to prevent theft, loss, destruction or alterations.

(c) In addition to the requirements listed in subdivision (a) of this section, each manufacturing facility and dispensing facility shall have a back-up alarm system approved by the department that shall detect unauthorized entry during times when no employees are present at the facility and that shall be provided by a company supplying commercial grade equipment.

(d) A registered organization shall limit access to any surveillance areas solely to persons that are essential to surveillance operations, law enforcement agencies, security system service employees, the department or the department’s authorized representative, and others when approved by the department. A registered organization shall make available to the department or the department’s authorized representative, upon request, a current list of authorized employees and service employees who have access to any surveillance room. A manufacturing facility and dispensing facility shall keep all on-site surveillance rooms locked and shall not use such rooms for any other function.

(e) A registered organization shall keep illuminated the outside perimeter of any manufacturing facility and dispensing facility that is operated under the registered organization’s license.

(f) All video recordings shall allow for the exporting of still images in an industry standard image format (including .jpeg, .bmp, and .gif). Exported video shall have the ability to be archived in a proprietary format that ensures authentication of the video and guarantees that no alteration of the recorded image has taken place. Exported video shall also have the ability to be saved in an industry standard file format that can be played on a standard computer operating system. A registered organization shall erase all recordings prior to disposal or sale of the facility.

(g) A registered organization shall keep all security equipment in full operating order and shall test such equipment no less than semi-annually at each manufacturing facility and dispensing facility that is operated under the registered organization’s registration. Records of security tests must be maintained for five years and made available to the department upon request.

(h) The manufacturing facility of the registered organization must be securely locked and protected from unauthorized entry at all times.

(1) The registered organization shall be responsible for ensuring the integrity of the security of the manufacturing facility and the maintenance of sanitary operations when permitting access to the facility.

(2) The manufacturing facility shall maintain a visitor log of all persons other than registered organization employees or emergency personnel responding to an emergency that access any secured areas, which shall include the name of the visitor, date, time and purpose of the visit. The visitor log shall be available to the department at all times during operating hours and upon request.

(i) All marihuana must be stored in a secure area or location within the registered organization accessible to the minimum number of employees essential for efficient operation and in such a manner as approved by the department in advance, to prevent diversion, theft or loss.

(1) Registered organizations shall return marihuana to its secure location immediately after completion of manufacture, distribution, transfer or analysis.
(j) All medical marihuana must be stored in such a manner as to protect against physical, chemical and microbial contamination and deterioration of the product.

(k) All approved safes, vaults or any other approved equipment or areas used for the manufacturing or storage of marihuana and approved medical marihuana products must be securely locked or protected from entry, except for the actual time required to remove or replace marihuana or approved medical marihuana products.

(l) Keys shall not be left in the locks or stored or placed in a location accessible to individuals who are not authorized access to marihuana or manufactured medical marihuana products.

(m) Security measures, such as combination numbers, passwords or biometric security systems, shall not be accessible to individuals other than those specifically authorized to access marihuana or manufactured medical marihuana products.

(n) Prior to transporting any medical marihuana, a registered organization shall complete a shipping manifest using a form determined by the department.

(1) A copy of the shipping manifest must be transmitted to the destination that will receive the products and to the department at least two business days prior to transport unless otherwise expressly approved by the department.

(2) The registered organization shall maintain all shipping manifests and make them available to the department for inspection upon request, for a period of 5 years.

(o) Approved medical marihuana products must be transported in a locked storage compartment that is part of the vehicle transporting the marihuana and in a storage compartment that is not visible from outside the vehicle.

(p) An employee of a registered organization; when transporting approved medical marihuana products, shall travel directly to his or her destination(s) and shall not make any unnecessary stops in between.

(q) A registered organization shall ensure that all approved medical marihuana product delivery times are randomized.

(r) A registered organization shall staff all transport vehicles with a minimum of two employees. At least one transport team member shall remain with the vehicle at all times that the vehicle contains approved medical marihuana products.

(s) A transport team member shall have access to a secure form of communication with employees at the registered organization’s manufacturing facility at all times that the vehicle contains approved medical marihuana products.

(t) A transport team member shall possess a copy of the shipping manifest at all times when transporting or delivering approved medical marihuana products and shall produce it to the commissioner, the commissioner’s authorized representative or law enforcement official upon request.

Effective Date:
Wednesday, December 27, 2017
Section 1004.14 - Laboratory testing requirements for medical marihuana

1004.14 Laboratory testing requirements for medical marihuana.

(a) Medical marihuana products produced by a registered organization shall be examined in a laboratory located in New York State that is licensed by the department's Bureau of Narcotic Enforcement and approved for the analysis of medical marihuana by the department in accordance with article 5 of the public health law and subpart 55-2 of this title.

(b) No board member, officer, manager, owner, partner, principal stakeholder or member of a registered organization, or such persons' immediate family member, shall have an interest or voting rights in the laboratory performing medical marihuana testing.

(c) For final product testing, the registered organization shall submit to the laboratory a statistically significant number of samples containing the final medical marihuana product equivalent to the sealed medical marihuana product dispensed to the patient (e.g., liquid extract in a sealed bottle or intact sealed bottle of capsules). Upon prior written approval of the department, a registered organization may submit to the laboratory the final medical marihuana product sample packaged in a quantity less than that which would be provided to the patient if the sample is prepared and packaged in the identical manner as the product provided to the patient.

(d) Testing of the final medical marihuana product is mandatory. However, at the option of the registered organization, testing may be performed on components used for the production of the final medical marihuana product including but not limited to water or growing materials. Testing may also be performed on the final marihuana extract e.g. for cannabinoid profile verification or contaminant testing.

(e) Sampling and testing of each lot of final medical marihuana product shall be conducted with a statistically significant number of samples and with acceptable methodologies, approved by the department, such that there is assurance that all lots of each medical marihuana product are adequately assessed for contaminants and the cannabinoid profile is consistent throughout.

(f) Testing of the cannabinoid profile shall include, at a minimum, those analytes specified in section 1004.11(c)(2) of this part.

(g) Testing for contaminants in the final medical marihuana product shall include but shall not be limited to those analytes listed below. The department shall make available a list of required analytes and their acceptable limits as determined by the commissioner.

Analyte:

E. coli

Pseudomonas (for products to be vaporized)
Salmonella species
Enterococcus species
Bile tolerant gram negative bacteria, specifically including Klebsiella species
Clostridium botulinum
Aspergillus species
Mucor species
Penicillium species
Thermophilic Actinomycetes species
Aflatoxins B1, B2, G1, G2
Ochratoxin A
Antimony
Arsenic
Cadmium
Chromium
Copper
Lead
Nickel
Zinc
Mercury
Any pesticide used during production of the medical marihuana product
Any growth regulator used during production of the medical marihuana product
Any other analyte as required by the commissioner

(h) laboratories performing final product testing pursuant to this section must report all results to the department, in a manner and timeframe prescribed by the department.

(i) Stability testing shall be performed on each brand and form of medical marihuana product as follows:
(1) For testing of open products, stability testing shall be performed for each extract lot, at time zero when opened and then, at a minimum, at 60 days from the date of first analysis. This shall establish use of the product lot within a specified time once opened.

(2) For testing of unopened products, until stability studies have been completed, a registered organization may assign a tentative expiration date based on available stability information. The registered organization must concurrently have stability studies conducted by an approved laboratory to determine the actual expiration date of an unopened product.

(3) For stability testing of both opened and unopened products, each brand shall retain a total THC and total CBD concentration in milligrams per single dose that is consistent with section 1004.11(c) (3). If stability testing demonstrates that a product no longer retains a consistent concentration of THC and CBD pursuant to section 1004.11(a)(2), the product shall be deemed no longer suitable for dispensing or consumption. The department may request further stability testing of a brand to demonstrate the ongoing stability of the product produced over time.

(4) The department may waive any of the requirements of this subsection upon good cause shown.

(j) The laboratory shall track and use an approved method to dispose of any quantity of medical marihuana product that is not consumed in samples used for testing. Disposal of medical marihuana shall mean that the medical marihuana has been rendered unrecoverable and beyond reclamation.

(k) Any submitted medical marihuana products that are deemed unsuitable for testing shall be returned to the registered organization under chain of custody.

Effective Date:
Thursday, April 4, 2019
Doc Status:
Complete

Section 1004.15 - Pricing

1004.15 Pricing.

(a) Definitions. For purposes of this section, the following terms have the following meanings:

(1) “Cost analysis” shall mean the review and evaluation of the separate cost elements and profit of a proposed price and the application of judgment to determine how well the proposed costs represent what the price per unit for approved medical marihuana products should be, assuming reasonable economy and efficiency.

(2) “Price” shall mean the cost to manufacture, market and distribute approved medical marihuana products plus a reasonable profit.

(b) Department Approval Required. A registered organization shall only charge a price for an approved medical marihuana product that has been approved by the department.

(c) Determination of Price. The department shall set the per unit price of each form of approved medical marihuana product sold by any registered organization, as follows:
(1) Registered organizations shall submit a proposed price per unit for each form of medical marihuana indicated in its registration. Registered organizations shall submit such information and documentation, in a manner and format determined by the department, sufficient for the department to perform a cost analysis of the proposed price. In particular, the registered organization shall, in a manner and format determined by the department, provide a detailed breakdown of; and submit information and documentation concerning, all costs it factored to arrive at its proposed price, including but not limited to its fixed and variable costs such as materials and services; direct labor; and indirect costs.

(2) The registered organization shall provide cost or pricing data that is accurate and reliable, and shall certify, at the time of submission of its price proposal, that to the best of its knowledge and belief, the cost or pricing data were accurate, complete, and current as of the date of submission.

(3) The department shall determine the reasonableness of the proposed costs. In making this determination, the department may consider whether the costs represent inefficient and uneconomical practices; are not costs appropriately attributable to the price; and/or are costs unsupported by sufficient documentation or information to justify their inclusion in the proposed price. If the registered organization has been granted a renewal of its registration, any relevant historical price, cost and/or sales data of the registered organization; and any other information the commissioner deems appropriate.

(4) The department may approve the proposed price, refuse approval of a proposed price, or modify or reduce the proposed price.

(d) Examination of Records for Determination of Price. The registered organization shall grant the department or the department’s authorized representative the right to examine records that formed the basis for the proposed price, including the registered organization’s books, records, documents and other types of factual information that will permit an adequate evaluation of the proposed price.

(e) Correction of Insufficient Price Data. If the registered organization or department determines that the cost or pricing data submitted is inaccurate, incomplete or noncurrent prior to the department’s approval of the price, the registered organization shall submit new data to correct the deficiency, or consider the inaccuracy, incompleteness, or noncurrency of the data.

(f) Duration of Price Determination. The department’s approved price shall be in effect for the entire period of the registered organization’s registration; provided, however, that at the conclusion of the first year of the registration period, or prior to that time based upon documented exceptional circumstances, the registered organization may request that the price be modified based upon a material change in the registered organization’s costs. The registered organization shall fully support its request with sufficient information and documentation, in a manner and format determined by the department, to justify its request. If the department denies such request, the registered organization shall only charge prices previously approved by the department.

(g) Adjustments to determined price. If the department has approved a price, the registered organization shall immediately notify the department of any cost or pricing data submitted that it determines was inaccurate, incomplete, or noncurrent as of the date of the department’s approval of the price. If the registered organization provides such notice, or if the department independently learns of such inaccurate, incomplete or noncurrent data, the department may require the registered organization to provide new data to correct the deficiency, or consider the inaccuracy,
incompleteness, or noncurrency of the data. The department may adjust the price per dose if the defective data significantly increased the price approved by the department.

(h) Audits. The department may perform audits, which may include site visits. The registered organization shall provide reasonable access to the department of its facilities, books and records.

Effective Date:
Wednesday, April 15, 2015
Doc Status:
Complete

Section 1004.16 - Medical marihuana marketing and advertising by registered organizations

1004.16 Medical marihuana marketing and advertising by registered organizations

(a) All physical structures owned, leased or otherwise utilized by a registered organization, including any dispensing facility, shall:

(1) Not advertise medical marihuana brand names or utilize graphics related to marihuana or paraphernalia on the exterior of the physical structures; and

(2) Not display medical marihuana products and paraphernalia so as to be clearly visible from the exterior of a physical structure.

(b) All restrictions listed in subdivision (a) of this section shall apply to any item located on any real property on which a registered organization’s physical structures is located.

(c) All restrictions listed in subdivision (a) of this section shall apply to all vehicles owned, leased or utilized by a registered organization.

(d) All advertisements, regardless of form, for approved medical marihuana products that make a statement relating to effectiveness, side effects, consequences or contraindications shall present a true and accurate statement of such information.

(e) An advertisement does not satisfy the requirement that it presents a “true and accurate statement” of information relating to effectiveness, side effects, consequences, and contraindications if it fails to present a fair balance between information relating to effectiveness, side effects, consequences, and contraindications in that the information relating to effectiveness is presented in greater scope, depth, or detail than is the information relating to side effects, consequences and contraindications, taking into account all implementing factors such as typography, layout, contrast, headlines, paragraphing, white space, and any other techniques apt to achieve emphasis.

(f) An advertisement is false, lacking in fair balance, or otherwise misleading if it:
(1) contains a representation or suggestion that one marihuana brand or form is better, more effective, useful in a broader range of conditions or patients or safer than other drugs or treatments including other marihuana brands or forms, unless such a claim has been demonstrated by substantial scientific or clinical experience;

(2) Contains favorable information or opinions about a marihuana product previously regarded as valid but which have been rendered invalid by contrary and more credible recent information;

(3) Uses a quote or paraphrase out of context or without citing conflicting information from the same source, to convey a false or misleading idea;

(4) Uses a study on persons without a debilitating medical condition without disclosing that the subjects were not suffering from a debilitating medical condition;

(5) Uses data favorable to a marihuana product derived from patients treated with a different product or dosages different from those recommended in New York State;

(6) Contains favorable information or conclusions from a study that is inadequate in design, scope, or conduct to furnish significant support for such information or conclusions; or

(7) Fails to provide adequate emphasis for the fact that two or more facing pages are part of the same advertisement when only one page contains information relating to side effects, consequences and contraindications.

(g) False or misleading information in any part of the advertisement shall not be corrected by the inclusion of a true statement in another distinct part of the advertisement.

(h) An advertisement for any approved medical marihuana product shall not contain:

(1) any statement that is false or misleading;

(2) any statement that falsely disparages a competitor’s products;

(3) any statement, design, or representation, picture or illustration that is obscene or indecent;

(4) any statement, design, representation, picture or illustration that encourages or represents the use of marihuana for a condition other than a serious condition as defined in subdivision seven of section thirty-three hundred sixty of the public health law;

(5) any statement, design, representation, picture or illustration that encourages or represents the recreational use of marihuana;

(6) any statement, design, representation, picture or illustration related to the safety or efficacy of marihuana, unless supported by substantial evidence or substantial clinical data;

(7) any statement, design, representation, picture or illustration portraying anyone under the age of 18, objects suggestive of the presence of anyone under the age of 18, or containing the use of a figure, symbol or language that is customarily associated with anyone under the age of 18;

(8) any offer of a prize, award or inducement to a certified patient, designated caregiver or practitioner related to the purchase of marihuana or a certification for the use of marihuana; or
(9) any statement that indicates or implies that the product or entity in the advertisement has been approved or endorsed by the commissioner, department, New York State or any person or entity associated with New York State provided that this shall not preclude a factual statement that an entity is a registered organization.

(i) Any advertisement for an approved medical marihuana product, which makes any claims or statements regarding efficacy, shall be submitted to the department at least 10 business days prior to the public dissemination of the advertisement.

(j) The submitter of the advertisement shall provide the following information to the department in addition to the advertisement itself:

(1) A cover letter that:

(i) provides the following subject line: Medical marihuana advertisement review package for a proposed advertisement;

(ii) provides a brief description of the format and expected distribution of the proposed advertisement; and

(iii) provides the submitter’s name, title, address, telephone number, fax number, and email address;

(2) an annotated summary of the proposed advertisement showing every claim being made in the advertisement and which references support for each claim;

(3) verification that a person identified in an advertisement as an actual patient or health care practitioner is an actual patient or health care practitioner and not a model or actor;

(4) verification that a spokesperson who is represented as an actual patient is indeed an actual patient;

(5) verification that an official translation of a foreign language advertisement is accurate;

(6) annotated references to support disease or epidemiology information, cross-referenced to the advertisement summary; and

(7) a final copy of the advertisement, including a video where applicable, in a format acceptable to the department.

(k) Advertising packages that are missing any of the elements in subdivision (j) of this section, or that fail to follow the specific instructions for submissions, shall be considered incomplete. If the department receives an incomplete package, it shall so notify the submitter.

(l) No advertisement may be disseminated if the submitter of the advertisement has received information that has not been widely publicized in medical literature that the use of any approved medical marihuana product may cause fatalities or serious damage to a patient.

(m) A registered organization, its officers, managers and employees shall not cooperate, directly or indirectly, in any advertising if such advertising has the purpose or effect of steering or influencing patient or caregiver choice with regard to the selection of a practitioner. Nothing contained within this section prevents a registered organization from educating practitioners about approved medical marihuana products offered by the registered organization.
(n) The department may:

(1) require a specific disclosure be made in the advertisement in a clear and conspicuous manner if the department determines that the advertisement would be false or misleading without such a disclosure; or

(2) require that changes be made to the advertisement that are:

(i) necessary to protect the public health, safety and welfare; or

(ii) consistent with dispensing information for the product under review.

Effective Date:
Wednesday, December 27, 2017
Doc Status:
Complete

Section 1004.17 - Reporting dispensed medical marihuana products

1004.17 Reporting dispensed medical marihuana products.

(a) A record of all approved medical marihuana products that have been dispensed shall be filed electronically with the department, utilizing a transmission format acceptable to the department, not later than 24 hours after the marihuana was dispensed to the certified patient or designated caregiver.

(b) The information filed with the department for each approved medical marihuana product dispensed shall include but not be limited to:

(1) a serial number that will be generated by the dispensing facility for each approved medical marihuana product dispensed to the certified patient or designated caregiver;

(2) an identification number which shall be populated by a number provided by the department, to identify the registered organization’s dispensing facility;

(3) the patient name, date of birth and sex;

(4) the patient address, including street, city, state, zip code;

(5) the patient’s registry identification card number;

(6) if applicable, designated caregiver’s name and registry identification card number;

(7) the date the approved medical marihuana product was filled by the dispensing facility;

(8) the metric quantity for the approved medical marihuana product;
(9) the medical marihuana product drug code number, which shall be populated by a number provided by the department, to represent the approved medical marihuana brand that was dispensed to the certified patient or designated caregiver, as applicable;

(10) the number of days supply dispensed;

(11) the registered practitioner’s Drug Enforcement Administration number;

(12) the date the written certification was issued by the registered practitioner; and

(13) the payment method.

(c) When applicable, a registered organization shall file a zero report with the department, in a format acceptable to the department. For the purposes of this section, a zero report shall mean a report that no approved medical marihuana product was dispensed by a registered organization during the relevant period of time. A zero report shall be submitted no later than 14 days following the most recent previously reported dispensing of an approved medical marihuana product or the submission of a prior zero report.

Effective Date:
Wednesday, April 15, 2015
Doc Status:
Complete

Section 1004.18 - Prohibition the use of approved medical marihuana products in certain places

1004.18 Prohibition the use of approved medical marihuana products in certain places.

(a) Approved medical marihuana products shall not be vaporized in a public place. In no event shall approved medical marihuana products be consumed through vaporization in any location in which smoking is prohibited under section thirteen hundred ninety-nine of the public health law, including

(1) places of employment;

(2) bars;

(3) food service establishments, except as provided in subdivision six of section thirteen hundred ninety-nine-q of the public health law;

(4) enclosed indoor areas open to the public containing a swimming pool;

(5) public means of mass transportation, including subways, underground subway stations, and when occupied by passengers, buses, vans, taxicabs and limousines;

(6) ticketing, boarding and waiting areas in public transportation terminals;
(7) youth centers and facilities for detention as defined in sections five hundred twenty-seven-a and five hundred three of the executive law;

(8) any facility that provides child care services as defined in section four hundred ten-p of the social services law, provided that such services provided in a private home are excluded from this subdivision when children enrolled in such day care are not present;

(9) child day care centers as defined in section three hundred ninety of the social services law and child day care centers licensed by the city of New York;

(10) group homes for children as defined in section three hundred seventy-one of the social services law;

(11) public institutions for children as defined in section three hundred seventy-one of the social services law;

(12) residential treatment facilities for children and youth as defined in section 1.03 of the mental hygiene law;

(13) all public and private colleges, universities and other educational and vocational institutions, including dormitories, residence halls, and other group residential facilities that are owned or operated by such colleges, universities and other educational and vocational institutions;

(14) general hospitals and residential health care facilities as defined in article twenty-eight of the public health law, and other health care facilities licensed by the state in which persons reside; provided, however, that the provisions of this subdivision shall not prohibit vaporization by patients in separate enclosed rooms of hospitals, residential health care facilities, and adult care facilities established or certified under title two of article seven of the social services law, community mental health residences established under section 41.44 of the mental hygiene law, or facilities where day treatment programs are provided, which are designated as smoking rooms for patients of such facilities or programs;

(15) commercial establishments used for the purpose of carrying on or exercising any trade, profession, vocation or charitable activity;

(16) indoor arenas;

(17) zoos;

(18) bingo facilities

(b) Vaporization of approved medical marihuana products shall not be permitted and no person shall vaporize an approved medical marihuana product within one hundred feet of the entrances, exits or outdoor areas of any public or private elementary or secondary schools; however, that the provisions of this subdivision shall not apply to vaporization in a residence, or within real property boundary lines of such residential real property.

(c) Consumption of approved medical marihuana product shall not be permitted in any motor vehicle, either public or private, that is located upon public highways, private roads open to motor vehicle traffic, parking area of a shopping center or any parking lot, as defined in section 129 of the Vehicle and Traffic Law.
Section 1004.19 - Reporting requirements for registered practitioners, certified patients and designated caregivers

1004.19 Reporting requirements for registered practitioners, certified patients and designated caregivers.

(a) A practitioner shall report to the department, in a manner determined by the department, the death of a certified patient or change in status of a serious condition involving a certified patient for whom the practitioner has issued a certification if such change may affect the patient’s continued eligibility for certification for use of approved medical marihuana product. A practitioner shall report such death or change of status not more than five (5) business days after the practitioner becomes aware of such fact.

(b) If a practitioner re-issues a patient’s certification to terminate the certification on an earlier date, then the registry identification card shall expire on such earlier date and shall be promptly returned to the department by the certified patient or designated caregiver.

(c) A practitioner shall report patient adverse events to the department, in a manner determined by the department, not more than five business days after the practitioner becomes aware of such adverse event, except that serious adverse events shall be reported not more than one business day after the practitioner becomes aware of such adverse event.

(d) A certified patient or designated caregiver, who has been issued a registry identification card, shall notify the department of any change in the information provided to the department not later than ten (10) business days after such change. A certified patient or designated caregiver shall report changes that include, but are not limited to, a change in the certified patient’s name, address, contact information, medical status. A certified patient or designated caregiver shall report such changes on a form, and in a manner, determined by the department. Should a certified patient cease to have the serious condition noted on his or her certification, the certified patient or designated caregiver shall notify the department of such within 10 days and the certified patient’s and designated caregiver’s registry identification cards shall be considered void and shall be returned promptly to the department.

(e) If a certified patient’s or designated caregiver’s appearance has substantially changed such that the photograph submitted to the department does not accurately resemble such certified patient or designated caregiver, such person shall submit, in a timely manner, an updated photograph that meets the requirements set forth by the department.

(f) If a certified patient has a designated caregiver, that designated caregiver may notify the department of any changes on behalf of the certified patient using the same forms and process prescribed for certified patients.
(g) If a certified patient or designated caregiver notifies the department of any change that results in information on the registry identification card being inaccurate or the photograph needing to be replaced, the certified patient or designated caregiver shall obtain a replacement registry identification card. The department shall thereafter issue the certified patient or designated caregiver a new registry identification card. Upon receipt of a new registry identification card, the certified patient or designated caregiver shall destroy in a non-recoverable manner the registry identification card that was replaced.

(h) If a certified patient or designated caregiver becomes aware of the loss, theft or destruction of the registry identification card of such certified patient or designated caregiver, the certified patient or designated caregiver shall notify the department, on a form and in a manner prescribed by the department, not later than ten days of becoming aware of the loss, theft or destruction. The department shall inactivate the initial registry identification card upon receiving such notice and issue a replacement registry identification card upon receiving the applicable fee provided the applicant continues to satisfy the requirements of section thirty-three hundred sixty-one of the public health law and section 1004.3 of this part. Prior to issuance of the first replacement registry identification card, a certified patient or designated caregiver shall submit to the department a fee of $25, transmitted in a fashion as determined by the department. For each subsequent replacement registry identification card a certified patient or designated caregiver shall submit to the department a fee of $50, transmitted in a fashion as determined by the department.

(i) If a certified patient wishes to change or terminate his or her designated caregiver, the certified patient shall notify the department, in a manner determined by the department, and shall notify his or her designated caregiver as soon as practicable.

1) The department shall issue a notification, in a format determined by the department, to the designated caregiver and the certified patient that the designated caregiver’s registration card is invalid.

2) In the event that the designated caregiver has no other active certified patients, the designated caregiver’s registration card must be returned to the department within 10 business days.

3) In the event that the certified patient has selected another designated caregiver, the proposed designated caregiver must register with the department as defined in section 1004.4 of this part.

(j) If a designated caregiver wishes to terminate his or her relationship with a certified patient, the designated caregiver shall notify the department, in a manner determined by the department, and shall notify the certified patient, as soon as practicable.

1) the department shall issue a notification, in a format determined by the department, to the certified patient and the designated caregiver that the designated caregiver has terminated his or her relationship with the certified patient.

2) in the event that the designated caregiver has no other active certified patients, the designated caregiver’s registration card must be returned to the department within ten business days.

Effective Date:
Wednesday, April 15, 2015
Doc Status:
Complete
Section 1004.20 - Proper disposal of medical marihuana products by certified patients or designated caregivers

1004.20 Proper disposal of medical marihuana products by certified patients or designated caregivers

(a) A certified patient or designated caregiver shall dispose of all approved medical marihuana product in the certified patient’s or designated caregiver’s possession no later than ten calendar days after the expiration of the patient’s certification, if such certification is not renewed, or sooner should the patient no longer wish to possess medical marihuana.

(b) A certified patient or designated caregiver shall complete disposal of approved medical marihuana products by one of the following methods:

(1) rendering the approved medical marihuana product non-recoverable beyond reclamation in accordance with the Department of Environmental Conservation’s guidance; or;

(2) returning the approved medical marihuana product to the dispensing facility from which it was purchased or any dispensing facility associated with the registered organization which manufactured the approved medical marihuana product, to the extent that the registered organization accepts product returns.

Effective Date:
Wednesday, December 27, 2017
Doc Status:
Complete

Section 1004.21 - General Prohibitions

1004.21 General Prohibitions.

(a) No person, except for a certified patient or designated caregiver, or an approved laboratorian shall open or break the seal placed on an approved medical marihuana product packaged by a registered organization and provided to the certified patient.

(b) No person associated with a registered organization shall enter into any agreement with a registered practitioner or health care facility concerning the provision of services or equipment that may adversely affect any person’s freedom to choose the dispensing facility at which the certified patient or designated caregiver will purchase approved medical marihuana products.

(c) No approved medical marihuana product shall be sold, dispensed or distributed via a delivery service without prior written approval to the registered organization by the department, except that a designated caregiver may deliver the approved medical marihuana product to the designated caregiver’s certified patient.
(d) No employee of a registered organization shall counsel a certified patient or designated caregiver on the use, administration of, and the risks associated with approved medical marihuana products, unless the employee is a physician, nurse practitioner, physician assistant or pharmacist with an active New York State license who has completed a four hour course pursuant to section 1004.1 of this part, or the employee is under the direct supervision of, and in consultation with, such physician, nurse practitioner, physician assistant, or the pharmacist on-site in the dispensing facility.

(e) No certified patient or designated caregiver shall be in possession of approved medical marihuana products without having in his or her possession his or her registry identification card. The certified patient or designated caregiver, upon request by the department or law enforcement, shall present such card to verify that the certified patient or designated caregiver is authorized to possess approved medical marihuana products.

Effective Date:
Wednesday, December 27, 2017
Doc Status:
Complete

**Section 1004.22 - Practitioner prohibitions**

1004.22 Practitioner prohibitions

(a) A practitioner that is registered with the department shall not:

(1) directly or indirectly accept, solicit, or receive any item of value from a registered organization;

(2) offer a discount or any other item of value to a certified patient based on the patient’s agreement or decision to use a particular practitioner, registered organization, brand or specific form of approved medical marihuana product produced by a registered organization;

(3) examine a qualifying patient for purposes of diagnosing a debilitating medical condition at any location owned or operated by a registered organization, or where medical marihuana products or related products necessary for the approved forms of administration of medical marihuana are acquired, distributed, dispensed, manufactured, sold, or produced; or

(4) directly or indirectly benefit from a patient obtaining a written certification. Such prohibition shall not prohibit a practitioner from charging an appropriate fee for the patient visit.

(b) A practitioner that issues written certifications, and such practitioner’s co-worker, employee, spouse, parent, child, or sibling shall not have a direct or indirect financial interest in a registered organization or any other entity that may benefit from a certified patient’s or designated caregiver’s acquisition, purchase or use of approved medical marihuana products, including any formal or informal agreement whereby a registered organization provides compensation if the practitioner issues a written certification for a certified patient or steers a certified patient to a specific dispensing facility.

(c) A practitioner shall not issue a certification for himself/herself or for the practitioner’s family members, employees or co-workers.
(d) A practitioner shall not receive or provide product samples containing marihuana.

(e) A practitioner shall not be a designated caregiver for any patients that he or she has certified under section 1004.2 of this Part. However, this shall not prohibit a facility, or a division, department, component, floor or other unit from being a designated caregiver pursuant to section 1004.4 of this Part.

Effective Date:
Wednesday, June 6, 2018
Doc Status:
Complete
Statutory Authority:
Public Health Law, Section 3369-a

Section 1004.23 - Designated Caregiver Prohibitions and Protections

1004.23 Designated Caregiver Prohibitions and Protections

(a) An individual shall not serve as a designated caregiver for more than five certified patients at any given time.

(b) A designated caregiver may only obtain payment from the certified patient to be used for the cost of the approved medical marihuana product purchased for the certified patient in the actual amount charged by the registered organization; provided, however, that a designated caregiver may charge the certified patient for reasonable costs incurred in the transportation, delivery, storage and administration of approved medical marihuana products.

(c) Designated caregivers, including employees of facilities registered as designated caregivers and acting within their scope of employment, shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, solely for an action or conduct in accordance with this Part.

Effective Date:
Wednesday, June 6, 2018
Doc Status:
Complete
Statutory Authority:
Public Health Law, Section 3369-a
Section 1004.24 - Registered organizations; disposal of medical marihuana

1004.24 Registered organizations; disposal of medical marihuana

(a) The disposal of medical marihuana shall mean that the medical marihuana has been rendered unrecoverable and beyond reclamation.

(b) Registered organizations shall dispose of any medical marihuana that is outdated, damaged, deteriorated, contaminated or otherwise deemed not appropriate for manufacturing or dispensing, or any plant-based waste created as a by-product of the manufacturing processes. Registered organizations shall:

(1) obtain department approval of disposal methods; and

(2) dispose of liquid and chemical waste in accordance with applicable federal, state and local laws and regulations.

(c) Registered organizations shall maintain records of disposal, which shall include:

(1) the type of plant material being disposed, if the material is a by-product of the manufacturing process;

(2) the brand and form of approved medical marihuana product being disposed, if a finished product;

(3) the weight of the disposed material, the number of plants, or in the case of a finished product, the quantity of the disposed product; and

(4) the signatures of at least two registered organization staff members who witnessed the disposal.

(d) All records of disposal shall be retained for at least five years and be made available for inspection by the department.

Effective Date:
Wednesday, December 27, 2017
AN ACT in relation to constituting chapter 7-A of the consolidated laws, in relation to the creation of a new office of cannabis management, as an independent entity within the division of alcoholic beverage control, providing for the licensure of persons authorized to cultivate, process, distribute and sell cannabis and the use of cannabis by persons aged twenty-one or older; to amend the public health law, in relation to the description of cannabis; to amend the penal law, in relation to the growing and use of cannabis by persons twenty-one years of age or older; to amend the tax law, in relation to providing for the levying of taxes on cannabis; to amend the criminal procedure law, the civil practice law and rules, the general business law, the state finance law, the executive law, the penal law, the alcoholic beverage control law, the general obligations law, the social services law, the agriculture and markets law and the vehicle and traffic law, in relation to making conforming changes; to amend the public health law, in relation to the definition of smoking; to amend the state finance law, in relation to establishing the New York state cannabis revenue fund, the New York state drug treatment and public education fund and the New York state community grants reinvestment fund; to amend chapter 90 of the laws of 2014 amending the public health law, the tax law, the state finance law, the general business law, the penal law and the criminal procedure law relating to medical use of marihuana, in relation to the effectiveness thereof; to repeal certain provisions of the public health law relating to growing of cannabis and medical use of marihuana; to repeal article 221 of the penal law relating to offenses involving marihuana; to repeal paragraph (f) of

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [ ] is old law to be omitted.
subdivision 2 of section 850 of the general business law relating to
drug related paraphernalia; to repeal certain provisions of the crim-
nal procedure law relating to certain criminal actions; and to repeal
certain provisions of the agriculture and markets law relating to
industrial hemp.

The People of the State of New York, represented in Senate and Assem-
ibly, do enact as follows:

Section 1. This act shall be known and may be cited as the "marihuana
regulation and taxation act".

§ 2. Chapter 7-A of the consolidated laws is enacted, to read as
follows:

CHAPTER 7-A OF THE CONSOLIDATED LAWS
CANNABIS LAW
ARTICLE 1
SHORT TITLE; LEGISLATIVE FINDINGS AND INTENT;
DEFINITIONS

Section 1. Short title. This chapter shall be known and may be cited
and referred to as the "cannabis law".

§ 2. Legislative findings and intent. The legislature finds that
existing marihuana laws have not been beneficial to the welfare of the
general public. Existing laws have been ineffective in reducing or curb-
ing marihuana use and have instead resulted in devastating collateral
consequences that inhibit an otherwise law-abiding citizen's ability to
access housing, employment opportunities, and other vital services.
Existing laws have also created an illicit market which represents a
threat to public health and reduces the ability of the legislature to
deter the accessing of marihuana by minors. Existing marihuana laws have
also disproportionately impacted African-American and Latino communi-
ties.

The intent of this act is to regulate, control, and tax marihuana,
heretofore known as cannabis, generate millions of dollars in new reven-
ue, prevent access to cannabis by those under the age of twenty-one
years, reduce the illegal drug market and reduce violent crime, reduce
participation of otherwise law-abiding citizens in the illicit market,
end the racially disparate impact of existing cannabis laws and create
new industries and increase employment.

Nothing in this act is intended to limit the authority of any district
government agency or office or employers to enact and enforce policies
pertaining to cannabis in the workplace, to allow driving under the
influence of cannabis, to allow individuals to engage in conduct that
dangers others, to allow smoking cannabis in any location where smok-
ing tobacco is prohibited, or to require any individual to engage in any
conduct that violates federal law or to exempt anyone from any require-
ment of federal law or pose any obstacle to the federal enforcement of
federal law.

It is the intent of this act that no child shall be the subject of a
child neglect or abuse investigation or proceeding based solely on a
parent's alleged cannabis use, or activity made lawful by this act. A
newborn child's positive toxicology result for cannabis, is not suffi-
cient on its own to support a finding of child neglect or abuse. Enact-
ment of this act shall provide sufficient basis for New York state to
favorably resolve open investigations and to amend and seal individuals'
family court records and records of indicated child abuse or neglect
reports currently in the statewide central register of child abuse and
maltreatment based solely on the use of cannabis or where the reporter
of suspected abuse or neglect was a law enforcement agency or staff
person and the report was based solely upon the presence of a child
during a cannabis-related arrest.
The legislature further finds and declares that it is in the best
interest of the state to regulate medical cannabis, adult-use cannabis,
and hemp extracts under one independent agency, known as the office of
cannabis management.
§ 3. Definitions. Whenever used in this chapter, unless otherwise
expressly stated or unless the context or subject matter requires a
different meaning, the following terms shall have the representative
meanings hereinafter set forth or indicated:
1. "Applicant" means a resident of New York state aged twenty-one
years or older applying for any cannabis or hemp license or special use
permit issued by the office of cannabis management.
2. "Cannabinoid extractor" means a person licensed by the office to
acquire, possess, extract and manufacture hemp extract from licensed
cannabinoid growers for the manufacture and sale of hemp extract
products marketed for cannabinoid content and used or intended for human
or animal consumption or use.
3. "Cannabinoid grower" means a person licensed by the office, and in
compliance with article twenty-nine of the agriculture and markets law,
to acquire, possess, cultivate, and sell hemp extract for its cannabi-
roid content.
4. "Cannabis" means all parts of the plant of the genus Cannabis,
whether growing or not; the seeds thereof; the resin extracted from any
part of the plant; and every compound, manufacture, salt, derivative,
mixture, or preparation of the plant, its seeds or resin. It does not
include the mature stalks of the plant, fiber produced from the stalks,
oil or cake made from the seeds of the plant, any other compound, manu-
facture, salt, derivative, mixture, or preparation of the mature stalks
(except the resin extracted therefrom), fiber, oil, or cake, or the
sterilized seed of the plant which is incapable of germination. It does
not include hemp extract as defined by this section.
5. "Cannabis consumer" means a person twenty-one years of age or older
acting in accordance with any provision of this chapter.
6. "Cannabis flower" means the flower of a plant of the genus Cannabis
that has been harvested, dried, and cured, and prior to any processing
whereby the plant material is transformed into a concentrate, including,
but not limited to, concentrated cannabis, or an edible or topical prod-
uct containing cannabis or concentrated cannabis and other ingredients.
Cannabis flower excludes leaves and stem.
7. "Cannabis product" or "adult-use cannabis" means cannabis, concen-
trated cannabis, and cannabis-infused products for use by a cannabis
consumer.
8. "Cannabis-infused products" means products that have been manufac-
tured and contain either cannabis or concentrated cannabis and other
ingredients that are intended for use or consumption.
9. "Cannabis trim" means all parts of the plant of the genus Cannabis other than cannabis flower that have been harvested, dried, and cured, but prior to any further processing.

10. "Caring for" means treating a patient, in the course of which the practitioner has completed a full assessment of the patient's medical history and current medical condition.

11. "Certification" means a certification made under this chapter.

12. "Certified medical use" includes the acquisition, administration, cultivation, manufacture, delivery, harvest, possession, preparation, transfer, transportation, or use of cannabis or paraphernalia relating to the administration of cannabis to treat or alleviate a certified patient's medical condition or symptoms associated with the patient's medical condition.

13. "Certified patient" means a patient who is a resident of New York state or receiving care and treatment in New York state as determined by the executive director in regulation, and is certified under this chapter.

14. "Commercial cannabis activity" means the production, cultivation, manufacturing, processing, possession, storing, laboratory testing, packaging, labeling, transportation, delivery, or sale of cannabis and cannabis products as provided for in this chapter.

15. "Concentrated cannabis" means: (a) the separated resin, whether crude or purified, obtained from a plant of the genus Cannabis; or (b) a material, preparation, mixture, compound or other substance which contains more than three percent by weight of delta-9 tetrahydrocannabinol, or its isomer, delta-8 dibenzopyran numbering system, or delta-1 tetrahydrocannabinol or its isomer, delta 1 (6) monoterpene numbering system.

16. "Condition" means having one of the following conditions: cancer, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, amyotrophic lateral sclerosis, Parkinson's disease, multiple sclerosis, damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity, epilepsy, inflammatory bowel disease, neuropathies, Huntington's disease, post-traumatic stress disorder, pain that degrades health and functional capability where the use of medical cannabis is an alternative to opioid use, substance use disorder, Alzheimer's, muscular dystrophy, dystonia, rheumatoid arthritis, autism or any other condition certified by the practitioner.

17. "Cultivation" means growing, cloning, harvesting, drying, curing, grading, and trimming of cannabis plants for sale to certain other categories of cannabis license- and permit-holders.

18. "Delivery" means the direct delivery of cannabis products by a retail licensee, microbusiness licensee, or delivery license holder to a cannabis consumer.

19. "Designated caregiver facility" means a general hospital or residential health care facility operating pursuant to article twenty-eight of the public health law; an adult care facility operating pursuant to title two of article seven of the social services law; a community mental health residence established pursuant to section 41.44 of the mental hygiene law; a hospital operating pursuant to section 7.17 of the mental hygiene law; a mental hygiene facility operating pursuant to article thirty-one of the mental hygiene law; an inpatient or residential treatment program certified pursuant to article thirty-two of the mental hygiene law; a residential facility for the care and treatment of persons with developmental disabilities operating pursuant to article
sixteen of the mental hygiene law; a residential treatment facility for children and youth operating pursuant to article thirty-one of the mental hygiene law; a private or public school; research institution with an internal review board; or any other facility as determined by the executive director in regulation; that registers with the office to assist one or more certified patients with the acquisition, possession, delivery, transportation or administration of medical cannabis.

20. "Designated caregiver" means an individual designated by a certified patient in a registry application. A certified patient may designate up to five designated caregivers not counting designated caregiver facilities or designated caregiver facilities' employees.


22. "Distributor" means any person who sells at wholesale any cannabis product, except medical cannabis, for the sale of which a license is required under the provisions of this chapter.

23. "Executive director" means the executive director of the office of cannabis management.

24. "Form of medical cannabis" means characteristics of the medical cannabis recommended or limited for a particular certified patient, including the method of consumption and any particular strain, variety, and quantity or percentage of cannabis or particular active ingredient.

25. "Hemp extract" means any product made or derived from industrial hemp, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than an amount determined by the office in regulation, used or intended for human or animal consumption or use for its cannabinoid content, as determined by the executive director in regulation. Hemp extract excludes industrial hemp used or intended exclusively for an industrial purpose.

26. "Industrial hemp" means the plant Cannabis sativa L. and any part of such plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis, used or intended for an industrial purpose.

27. "Labor peace agreement" means an agreement between an entity and a labor organization that, at a minimum, protects the state's proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the entity.

28. "Laboratory testing facility" means any independent laboratory capable of testing cannabis and cannabis products for adult-use and medical-use; hemp extract; or for all categories of cannabis and cannabis products as per regulations set forth by the office.

29. "License" means a written authorization issued by the office of cannabis management permitting persons to engage in a specified activity with respect to cannabis or cannabis products.

30. "Medical cannabis" means cannabis as defined in this section, intended for a certified medical use, as determined by the executive director in consultation with the commissioner of health.

31. "Microbusiness" means a licensee that may act as a cannabis producer for the cultivation of cannabis, a cannabis processor, and a cannabis retailer under this article; provided such licensee complies with all requirements imposed by this article on licensed producers,
processors, and retailers to the extent the licensee engages in such
activities. A "microbusiness" may distribute its cannabis and cannabis
products to other licensed cannabis businesses and may deliver cannabis
and cannabis products to customers.
32. "Nursery" means a licensee that produces only clones, immature
plants, seeds, and other agricultural products used specifically for the
planting, propagation, and cultivation of cannabis.
33. "Office" or "office of cannabis management" means the New York
state office of cannabis management.
34. "On-site consumption" means the consumption of cannabis in an area
licensed for such activity by the office.
35. "Owner" means an individual with an aggregate ownership interest
of twenty percent or more in a cannabis business licensed pursuant to
this chapter, unless such interest is solely a security, lien, or encum-
brance, or an individual that will be participating in the direction,
control, or management of the licensed cannabis business.
36. "Package" means any container or receptacle used for holding
cannabis or cannabis products.
37. "Permit" means a permit issued pursuant to this chapter.
38. "Permittee" means any person to whom a permit has been issued
pursuant to this chapter.
39. "Practitioner" means a practitioner who: (i) is authorized to
prescribe controlled substances within the state, (ii) by training or
experience is qualified to treat patients; and (iii) completes, at a
minimum, a two-hour course as determined by the executive director in
regulation. A person's status as a practitioner under this chapter is
deemed to be a "license" for purposes of section thirty-three hundred
ninety of the public health law and shall be subject to the same revoca-
tion process.
40. "Processor" means a licensee that extracts concentrated cannabis
and/or compounds, blends, extracts, infuses, or otherwise manufactures
concentrated cannabis or cannabis products, but not the cultivation of
the cannabis contained in the cannabis product.
41. "Registered organization" means an organization registered under
article three of this chapter.
42. "Registry application" means an application properly completed and
filed with the office of cannabis management by a certified patient
under article three of this chapter.
43. "Registry identification card" means a document that identifies a
certified patient or designated caregiver, as provided under this chap-
ter.
44. "Retail sale" means to solicit or receive an order for, to keep or
expose for sale, and to keep with intent to sell, made by any person,
whether principal, proprietor, agent, or employee, of any cannabis,
cannabis product, or hemp extract product to a cannabis consumer for any
purpose other than resale.
45. "Retailer" means any person who sells at retail any cannabis prod-
uct, the sale of which a license is required under the provisions of
this chapter.
46. "Smoking" means the burning of a lighted cigar, cigarette, pipe or
any other matter or substance which contains tobacco or cannabis
provided that it does not include the use of an electronic smoking
device that creates an aerosol or vapor, unless local laws or ordinances
or state statutes extend prohibitions on smoking to electronic smoking
devices.
"Terminally ill" means an individual has a medical prognosis that the individual's life expectancy is approximately one year or less if the illness runs its normal course.

"Warehouse" means and includes a place in which cannabis products are housed or stored.

"Wholesale" means to solicit or receive an order for, to keep or expose for sale, and to keep with intent to sell, made by any person, whether principal, proprietor, agent, or employee of any adult-use, medical-use, or hemp extract product for purposes of resale.

ARTICLE 2
NEW YORK STATE OFFICE OF CANNABIS MANAGEMENT

Section 9. Establishment of an office of cannabis management.

10. Executive director.

11. Functions, powers and duties of the office and executive director.

12. Rulemaking authority.

13. State cannabis advisory board.

14. Disposition of moneys received for license fees.

15. Legal presumptions.

16. Violations of cannabis laws or regulations; penalties and injunctions.

17. Formal hearings; notice and procedure.

18. Ethics, transparency and accountability.

§ 9. Establishment of an office of cannabis management. There is hereby established, within the division of alcoholic beverage control, an independent office of cannabis management, which shall have exclusive jurisdiction to exercise the powers and duties provided by this chapter. The office shall exercise its authority by and through an executive director.

§ 10. Executive director. The executive director shall be appointed by the governor and confirmed by the senate. The executive director of the state office of cannabis management shall receive an annual salary not to exceed an amount appropriated therefor by the legislature and his or her expenses actually and necessarily incurred in the performance of official duties, unless otherwise provided by the legislature.

§ 11. Functions, powers and duties of the office and executive director. The office of cannabis management, by and through its executive director, shall have the following powers and duties:

1. To issue or refuse to issue any registration, license or permit provided for in this chapter, and to issue temporary or provisional licenses.

2. To issue or refuse to issue registrations, licenses, permits, and temporary or provisional licenses in a manner that prioritizes social equity applicants, and small business opportunities and concerns, avoids market dominance in sectors of the industry, and reflects the demographics of the state.

3. To limit, or not to limit, in the executive director's discretion, the number of registrations, licenses and permits of each class to be issued within the state or any political subdivision thereof, and in connection therewith to prohibit the acceptance of applications for such classes which have been so limited. Such limitations shall consider consumer access, market demand, and geographic diversity.

4. To develop testing standards and certify testing laboratories in the state.
5. To regulate advertising, marketing, branding, packaging, and labeling, including regulating the accuracy of information about cannabis and cannabis products and restricting marketing and advertising to youth.

6. To revoke, cancel or suspend for cause any registration, license, or permit issued under this chapter and/or to impose a civil penalty for cause against any holder of a registration, license, or permit issued pursuant to this chapter.

7. To fix by rule the standards of cultivation and processing of medical cannabis, adult use cannabis and hemp extract, including but not limited to, the ability to regulate potency and the types of products which may be manufactured and/or processed, in order to ensure the health and safety of the public and the use of proper ingredients and methods in the manufacture of all medical cannabis, adult use cannabis, and hemp extract to be sold or consumed in the state.

8. To hold hearings, subpoena witnesses, compel their attendance, administer oaths, to examine any person under oath and in connection therewith to require the production of any books or records relative to the inquiry. A subpoena issued under this section shall be regulated by the civil practice law and rules.

9. To appoint any necessary directors, deputies, counsels, assistants, investigators, and other employees within the limits provided by appropriation. Investigators so employed by the office shall be deemed to be peace officers for the purpose of enforcing the provisions of the cannabis control law or judgements or orders obtained for violation thereof, with all the powers set forth in section 2.20 of the criminal procedure law. Directors, deputies, and counsels shall be in the exempt class of the civil service. The other assistants, investigators and employees of the office shall all be in the competitive class of the civil service.

Employees transferred to the office shall be transferred without further examination or qualification to the same or similar titles and shall remain in the same collective bargaining units and shall retain their respective civil service classifications, status and rights pursuant to their collective bargaining units and collective bargaining agreements. Employees serving in positions in newly created titles shall be assigned to the appropriate collective bargaining unit.

10. To remove any employee of the office for cause, after giving such employee a copy of the charges against him or her in writing, and an opportunity to be heard thereon. Any action taken under this subdivision shall be subject to and in accordance with the civil service law.

11. To inspect or provide for the inspection at any time of any premises where medical cannabis, adult use cannabis, or hemp extract is cultivated, processed, stored, distributed or sold.

12. To prescribe forms of applications for registrations, licenses and permits under this chapter and of all reports deemed necessary by the office.

13. To delegate the powers provided in this section to such other officers or employees of other state agencies as may be deemed appropriate by the executive director.

14. To appoint such advisory groups and committees as the executive director deems necessary to provide assistance to the office to carry out the purposes and objectives of this chapter.

15. To exercise the powers and perform the duties in relation to the administration of the office as are necessary but not specifically vested by this chapter, including but not limited to budgetary and fiscal matters in consultation with the cannabis advisory board.
16. To develop and establish minimum criteria for certifying employees
to work in the cannabis industry, including the establishment of a
cannabis workers certification program.
17. To enter into contracts, memoranda of understanding, and agree-
ments as deemed appropriate by the executive director to effectuate the
policy and purpose of this chapter.
18. To issue and administer low interest or zero-interest loans and
other assistance to qualified social equity applicants.
19. If the executive director finds that public health, safety, or
welfare imperatively requires emergency action, and incorporates a find-
ing to that effect in an order, summary suspension of a license may be
ordered, effective on the date specified in such order or upon service
of a certified copy of such order on the licensee, whichever shall be
later, pending proceedings for revocation or other action. These
proceedings shall be promptly instituted and determined. In addition,
the executive director may order the administrative seizure of product,
issue a stop order, or take any other action necessary to effectuate and
enforce the policy and purpose of this chapter.
20. To issue regulations, declaratory rulings, guidance and industry
advisories.

§ 12. Rulemaking authority. 1. The office shall perform such acts,
prescribe such forms and propose such rules, regulations and orders as
it may deem necessary or proper to fully effectuate the provisions of
this chapter.
2. The office shall have the power to promulgate any and all necessary
rules and regulations governing the cultivation, manufacture, process-
ing, transportation, distribution, testing, delivery, and sale of
medical cannabis, adult-use cannabis, and hemp extract, including but
not limited to the registration of organizations authorized to sell
medical cannabis, the licensing and/or permitting of adult-use cannabis
cultivators, processors, cooperatives, distributors, laboratories, and
retailers, and the licensing of hemp extract producers and processors
pursuant to this chapter, including, but not limited to:
(a) prescribing forms and establishing application, reinstatement, and
renewal fees;
(b) the qualifications and selection criteria for registration,
licensing, or permitting;
(c) the books and records to be created and maintained by registered
organizations, licensees, and permittees, including the reports to be
made thereon to the office, and inspection of any and all books and
records maintained by any registered organization, licensee, or permittee
and on the premise of any registered organization, licensee, or permit-
tee;
(d) methods of producing, processing, and packaging cannabis, medical
cannabis, cannabis-infused products, concentrated cannabis, and hemp
extract; conditions of sanitation, and standards of ingredients, quali-
ity, and identity of cannabis products cultivated, processed, packaged,
or sold by registered organizations and licensees;
(e) security requirements for adult-use cannabis retail dispensaries
and premises where cannabis products, medical cannabis, and hemp
extract, are cultivated, produced, processed, or stored, and safety
protocols for registered organizations, licensees and their employees;
and
(f) hearing procedures and additional causes for cancellation, revoca-
tion, and/or civil penalties against any person registered, licensed, or
permitted by the authority.
3. The office shall promulgate rules and regulations that are designed to:
   (a) prevent the distribution of adult-use cannabis to persons under twenty-one years of age;
   (b) prevent the revenue from the sale of cannabis from going to criminal enterprises, gangs, and cartels;
   (c) prevent the diversion of cannabis from this state to other states;
   (d) prevent cannabis activity that is legal under state law from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
   (e) prevent drugged driving and the exacerbation of other adverse public health consequences associated with the use of cannabis;
   (f) prevent the growing of cannabis on public lands; and
   (g) prevent the possession and use of cannabis on federal property.

4. The office, in consultation with the department of agriculture and markets and the department of environmental conservation, shall promulgate necessary rules and regulations governing the safe production of cannabis, including environmental and energy standards and restrictions on the use of pesticides.

§ 13. State cannabis advisory board. 1. The executive director shall establish within the office a state cannabis advisory board prior to engaging in rulemaking, which may consider all matters submitted to it by the executive director, and advise the office and the legislature on cannabis cultivation, processing, distribution, transport, equity in the cannabis industry, public health concerns related to cannabis, and on the testing and sale of cannabis and cannabis products.

2. The executive director of the office shall serve as the chairperson of the board. The vice chairperson shall be elected from among the members of the board by the members of such board, and shall represent the board in the absence of the chairperson at all official board functions.

3. The members of the board shall be appointed by the temporary president of the senate and the speaker of the assembly and shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their duties as board members.

4. The executive director shall promulgate regulations establishing the number of members on the board, the term of the board members and any other terms or conditions regarding the state cannabis advisory board, including that such board shall include members from the geographic regions of the state.

5. Every effort shall be made to ensure a balanced and diverse board, which shall have expertise in public and behavioral health, substance use disorder treatment, effective rehabilitative treatment for adults and juveniles, economic development, environmental conservation, job training and placement, criminal justice, and drug policy. Further, the board shall include residents from communities most impacted by cannabis prohibition, people with prior drug convictions, the formerly incarcerated, and representatives of organizations serving communities impacted by past federal and state drug policies.

§ 14. Disposition of moneys received for license fees. The office shall establish a scale of application, licensing, and renewal fees, based upon the cost of enforcing this chapter and the size of the cannabis business being licensed, as follows:

1. The office shall charge each registered organization, licensee and permittee a registration, licensure or permit fee, and renewal fee, as
applicable. The fees may vary depending upon the nature and scope of
the different registration, licensure and permit activities.
2. The total fees assessed pursuant to this chapter shall be set at an
amount that will generate sufficient total revenue to, at a minimum,
fully cover the total costs of administering this chapter.
3. All registration and licensure fees shall be set on a scaled basis
by the office, dependent on the size and capacity of the business.
4. The office shall deposit all fees collected in the New York state
cannabis revenue fund established pursuant to section ninety-nine-hh of
the state finance law.

§ 15. Legal presumptions. The action, proceedings, authority, and
orders of the office in enforcing the provisions of the cannabis law and
applying them to specific cases shall at all times be regarded as in
their nature judicial, and shall be treated as prima facie just and
legal.

§ 16. Violations of cannabis laws or regulations; penalties and
injunctions. 1. A person who willfully violates any provision of this
chapter, or any regulation lawfully made or established by any public
officer under authority of this chapter, the punishment for violating
which is not otherwise prescribed by this chapter or any other law, is
punishable by imprisonment not exceeding one year, or by a fine not
exceeding five thousand dollars or by both.
2. Any person who violates, disobeys or disregards any term or
provision of this chapter or of any lawful notice, order or regulation
pursuant thereto for which a civil or criminal penalty is not otherwise
expressly prescribed by law, shall be liable to the people of the state
for a civil penalty of not to exceed five thousand dollars for every
such violation.
3. The penalty provided for in subdivision one of this section may be
recovered by an action brought by the executive director in any court of
competent jurisdiction.
4. Such civil penalty may be released or compromised by the executive
director before the matter has been referred to the attorney general,
and where such matter has been referred to the attorney general, any
such penalty may be released or compromised and any action commenced to
recover the same may be settled and discontinued by the attorney general
with the consent of the executive director.
5. It shall be the duty of the attorney general upon the request of
the executive director to bring an action for an injunction against any
person who violates, disobeys or disregards any term or provision of
this chapter or of any lawful notice, order or regulation pursuant thereto;
provided, however, that the executive director shall furnish the
attorney general with such material, evidentiary matter or proof as may
be requested by the attorney general for the prosecution of such an
action.
6. It is the purpose of this section to provide additional and cumula-
tive remedies, and nothing herein contained shall abridge or alter
rights of action or remedies now or hereafter existing, nor shall any
provision of this section, nor any action done by virtue of this
section, be construed as estopping the state, persons or municipalities
in the exercising of their respective rights.

§ 17. Formal hearings; notice and procedure. 1. The executive direc-
tor, or any person designated by him or her for this purpose, may issue
subpoenas and administer oaths in connection with any hearing or inves-
tigation under or pursuant to this chapter, and it shall be the duty of
the executive director and any persons designated by him or her for such
1 purpose to issue subpoenas at the request of and upon behalf of the
2 respondent.
3 2. The executive director and those designated by him or her shall not
4 be bound by the laws of evidence in the conduct of hearing proceedings,
5 but the determination shall be founded upon sufficient evidence to
6 sustain it.
7 3. Notice of hearing shall be served at least fifteen days prior to
8 the date of the hearing, provided that, whenever because of danger to
9 the public health, safety or welfare it appears prejudicial to the
10 interests of the people of the state to delay action for fifteen days,
11 the executive director may serve the respondent with an order requiring
12 certain action or the cessation of certain activities immediately or
13 within a specified period of less than fifteen days.
14 4. Service of notice of hearing or order shall be made by personal
15 service or by registered or certified mail. Where service, whether by
16 personal service or by registered or certified mail, is made upon an
17 incompetent, partnership, or corporation, it shall be made upon the
18 person or persons designated to receive personal service by article
19 three of the civil practice law and rules.
20 5. At a hearing, the respondent may appear personally, shall have the
21 right of counsel, and may cross-examine witnesses against him or her and
22 produce evidence and witnesses in his or her behalf.
23 6. Following a hearing, the executive director may make appropriate
24 determinations and issue a final order in accordance therewith.
25 7. The executive director may adopt, amend and repeal administrative
26 rules and regulations governing the procedures to be followed with
27 respect to hearings, such rules to be consistent with the policy and
28 purpose of this chapter and the effective and fair enforcement of its
29 provisions.
30 8. The provisions of this section shall be applicable to all hearings
31 held pursuant to this chapter, except where other provisions of this
32 chapter applicable thereto are inconsistent therewith, in which event
33 such other provisions shall apply.
34 § 18. Ethics, transparency and accountability. No member of the
35 office or any officer, deputy, assistant, inspector or employee thereof
36 shall have any interest, direct or indirect, either proprietary or by
37 means of any loan, mortgage or lien, or in any other manner, in or on
38 any premises where adult use cannabis, medical cannabis or hemp extract
39 is cultivated, processed, distributed or sold; nor shall he or she have
40 any interest, direct or indirect, in any business wholly or partially
41 devoted to the cultivation, processing, distribution, sale, transportation
42 or storage of adult use cannabis, medical cannabis or hemp extract,
43 or own any stock in any corporation which has any interest, proprietary
44 or otherwise, direct or indirect, in any premises where adult use canna-
45 bis, medical cannabis or hemp extract is cultivated, processed, distrib-
46 uted or sold, or in any business wholly or partially devoted to the
47 cultivation, processing, distribution, sale, transportation or storage
48 of adult use cannabis, medical cannabis or hemp extract, or receive any
49 commission or profit whatsoever, direct or indirect, from any person
50 applying for or receiving any license or permit provided for in this
51 chapter, or hold any other elected or appointed public office in the
52 state or in any political subdivision. Anyone who violates any of the
53 provisions of this section shall be removed and shall divulge themselves
54 of such direct or indirect interests, in addition to any other penalty
55 provided by law.
ARTICLE 3
MEDICAL CANNABIS

Section 30. Certification of patients.

1. A patient certification may only be issued if:
   (a) the patient has a condition, which shall be specified in the patient's health care record;
   (b) the practitioner by training or experience is qualified to treat the condition;
   (c) the patient is under the practitioner's continuing care for the condition; and
   (d) in the practitioner's professional opinion and review of past treatments, the patient is likely to receive therapeutic or palliative benefit from the primary or adjunctive treatment with medical use of cannabis for the condition.

2. The certification shall include: (a) the name, date of birth and address of the patient; (b) a statement that the patient has a condition and the patient is under the practitioner's care for the condition; (c) a statement attesting that all requirements of subdivision one of this section have been satisfied; (d) the date; and (e) the name, address, telephone number, and the signature of the certifying practitioner. The executive director may require by regulation that the certification shall be on a form provided by the office. The practitioner may state in the certification that, in the practitioner's professional opinion, the patient would benefit from medical cannabis only until a specified date. The practitioner may state in the certification that, in the practitioner's professional opinion, the patient is terminally ill and that the certification shall not expire until the patient dies.

3. In making a certification, the practitioner may consider the form of medical cannabis the patient should consume, including the method of consumption and any particular strain, variety, and quantity or percentage of cannabis or particular active ingredient, and appropriate dosage. The practitioner may state in the certification any recommendation or limitation the practitioner makes, in his or her professional opinion, concerning the appropriate form or forms of medical cannabis and dosage.

4. Every practitioner shall consult the prescription monitoring program registry prior to making or issuing a certification, for the purpose of reviewing a patient's controlled substance history. For purposes of this section, a practitioner may authorize a designee to consult the prescription monitoring program registry on his or her
behalf, provided that such designation is in accordance with section thirty-three hundred forty-three-a of the public health law.

5. The practitioner shall give the certification to the certified patient, and place a copy in the patient's health care record.

6. No practitioner shall issue a certification under this section for themselves.

7. A registry identification card based on a certification shall expire one year after the date the certification is signed by the practitioner.

8. (a) If the practitioner states in the certification that, in the practitioner's professional opinion, the patient would benefit from medical cannabis only until a specified earlier date, then the registry identification card shall expire on that date; (b) if the practitioner states in the certification that in the practitioner's professional opinion the patient is terminally ill and that the certification shall not expire until the patient dies, then the registry identification card shall state that the patient is terminally ill and that the registration card shall not expire until the patient dies; (c) if the practitioner re-issues the certification to terminate the certification on an earlier date, then the registry identification card shall expire on that date and shall be promptly destroyed by the certified patient; (d) if the certification so provides, the registry identification card shall state any recommendation or limitation by the practitioner as to the form or forms of medical cannabis or dosage for the certified patient; and (e) the executive director shall make regulations to implement this subdivision.

§ 31. Lawful medical use. The possession, acquisition, use, delivery, transfer, transportation, or administration of medical cannabis by a certified patient, designated caregiver or the employees of a designated caregiver facility, for certified medical use, shall be lawful under this article provided that:

1. the cannabis that may be possessed by a certified patient shall not exceed a sixty-day supply of the dosage if determined by the practitioner, consistent with any guidance and regulations issued by the executive director, provided that during the last seven days of any sixty-day period, the certified patient may also possess up to such amount for the next sixty-day period;

2. the cannabis that may be possessed by designated caregivers does not exceed the quantities referred to in subdivision one of this section for each certified patient for whom the caregiver possesses a valid registry identification card, up to five certified patients;

3. the cannabis that may be possessed by designated caregiver facilities does not exceed the quantities referred to in subdivision one of this section for each certified patient under the care or treatment of the facility;

4. the form or forms of medical cannabis that may be possessed by the certified patient, designated caregiver or designated caregiver facility pursuant to a certification shall be in compliance with any recommendation or limitation by the practitioner as to the form or forms of medical cannabis or dosage for the certified patient in the certification;

5. the medical cannabis shall be kept in the original package in which it was dispensed under this article, except for the portion removed for immediate consumption for certified medical use by the certified patient; and
in the case of a designated caregiver facility, the employee assisting the patient has been designated as such by the designated caregiver facility.

§ 32. Registry identification cards. 1. Upon approval of the certification, the office shall issue registry identification cards for certified patients and designated caregivers. A registry identification card shall expire as provided in this article or as otherwise provided in this section. The office shall begin issuing registry identification cards as soon as practicable after the certifications required by this chapter are granted. The office may specify a form for a registry application, in which case the office shall provide the form on request, reproductions of the form may be used, and the form shall be available for downloading from the office's website.

2. To obtain, amend or renew a registry identification card, a certified patient or designated caregiver shall file a registry application with the office, unless otherwise exempted by the executive director in regulation. The registry application or renewal application shall include:

(a) in the case of a certified patient:
   (i) the patient's certification, a new written certification shall be provided with a renewal application;
   (ii) the name, address, and date of birth of the patient;
   (iii) the date of the certification;
   (iv) if the patient has a registry identification card based on a current valid certification, the registry identification number and expiration date of that registry identification card;
   (v) the specified date until which the patient would benefit from medical cannabis, if the certification states such a date;
   (vi) the name, address, and telephone number of the certifying practitioner;
   (vii) any recommendation or limitation by the practitioner as to the form or forms of medical cannabis or dosage for the certified patient;
   (viii) if the certified patient designates a designated caregiver, the name, address, and date of birth of the designated caregiver, and other individual identifying information required by the office;
   (ix) if the designated caregiver is a cannabis research license holder under this chapter, the name of the organization conducting the research, the address, phone number, name of the individual leading the research or appropriate designee, and other identifying information required by the executive director; and
   (x) other individual identifying information required by the office;
   (b) in the case of a designated caregiver:
      (i) the name, address, and date of birth of the designated caregiver;
      (ii) if the designated caregiver has a registry identification card, the registry identification number and expiration date of that registry identification card; and
      (iii) other individual identifying information required by the office;
   (c) a statement that a false statement made in the application is punishable under section 210.45 of the penal law;
   (d) the date of the application and the signature of the certified patient or designated caregiver, as the case may be;
   (e) any other requirements determined by the executive director.

3. Where a certified patient is under the age of eighteen or otherwise incapable of consent:
(a) The application for a registry identification card shall be made by the person responsible for making health care decisions for the patient.

(b) The designated caregiver shall be: (i) a parent or legal guardian of the certified patient; (ii) a person designated by a parent or legal guardian; (iii) an employee of a designated caregiver facility, including a cannabis research license holder; or (iv) an appropriate person approved by the office upon a sufficient showing that no parent or legal guardian is appropriate or available.

4. No person may be a designated caregiver if the person is under twenty-one years of age unless a sufficient showing is made to the office that the person should be permitted to serve as a designated caregiver. The requirements for such a showing shall be determined by the executive director.

5. No person may be a designated caregiver for more than five certified patients at one time; provided, however, that this limitation shall not apply to a designated caregiver facility, or cannabis research license holder as defined by this chapter.

6. If a certified patient wishes to change or terminate his or her designated caregiver, for whatever reason, the certified patient shall notify the office as soon as practicable. The office shall issue a notification to the designated caregiver that their registration card is invalid and must be promptly destroyed. The newly designated caregiver must comply with all requirements set forth in this section.

7. If the certification so provides, the registry identification card shall contain any recommendation or limitation by the practitioner as to the form or forms of medical cannabis or dosage for the certified patient.

8. The office shall issue separate registry identification cards for certified patients and designated caregivers as soon as reasonably practicable after receiving a complete application under this section, unless it determines that the application is incomplete or factually inaccurate, in which case it shall promptly notify the applicant.

9. If the application of a certified patient designates an individual as a designated caregiver who is not authorized to be a designated caregiver, that portion of the application shall be denied by the office but that shall not affect the approval of the balance of the application.

10. A registry identification card shall:
   (a) contain the name of the certified patient or the designated caregiver as the case may be;
   (b) contain the date of issuance and expiration date of the registry identification card;
   (c) contain a registry identification number for the certified patient or designated caregiver, as the case may be and a registry identification number;
   (d) contain a photograph of the individual to whom the registry identification card is being issued, which shall be obtained by the office in a manner specified by the executive director in regulations; provided, however, that if the office requires certified patients to submit photographs for this purpose, there shall be a reasonable accommodation of certified patients who are confined to their homes due to their medical conditions and may therefore have difficulty procuring photographs;
   (e) be a secure document as determined by the office;
(f) plainly state any recommendation or limitation by the practitioner as to the form or forms of medical cannabis or dosage for the certified patient; and
(g) any other requirements determined by the executive director.

11. A certified patient or designated caregiver who has been issued a registry identification card shall notify the office of any change in his or her name or address or, with respect to the patient, if he or she ceases to have the condition noted on the certification within ten days of such change. The certified patient's or designated caregiver's registry identification card shall be deemed invalid and shall be promptly destroyed.

12. If a certified patient or designated caregiver loses his or her registry identification card, he or she shall notify the office within ten days of losing the card. The office shall issue a new registry identification card as soon as practicable, which may contain a new registry identification number, to the certified patient or designated caregiver, as the case may be.

13. The office shall maintain a confidential list of the persons to whom it has issued registry identification cards. Individual identifying information obtained by the office under this article shall be confidential and exempt from disclosure under article six of the public officers law. Notwithstanding this subdivision, the office may notify any appropriate law enforcement agency of information relating to any violation or suspected violation of this article.

14. The office shall verify to law enforcement personnel in an appropriate case whether a registry identification card is valid.

15. If a certified patient or designated caregiver willfully violates any provision of this article as determined by the executive director, his or her certification and registry identification card may be suspended or revoked. This is in addition to any other penalty that may apply.

§ 33. Registration as a designated caregiver facility. 1. To obtain, amend or renew a registration as a designated caregiver facility, the facility shall file a registry application with the office. The registry application or renewal application shall include:
(a) the facility's full name and address;
(b) operating certificate or license number where appropriate;
(c) printed name, title, and signature of an authorized facility representative;
(d) a statement that the facility agrees to secure and ensure proper handling of all medical cannabis products;
(e) an acknowledgement that a false statement in the application is punishable under section 210.45 of the penal law; and
(f) any other information that may be required by the executive director.

2. Prior to issuing or renewing a designated caregiver facility registration, the office may verify the information submitted by the applicant. The applicant shall provide, at the office's request, such information and documentation, including any consents or authorizations that may be necessary for the office to verify the information.

3. The office shall approve, deny or determine incomplete or inaccurate an initial or renewal application within thirty days of receipt of the application. If the application is approved within the thirty-day period, the office shall issue a registration as soon as is reasonably practicable.
4. An applicant shall have thirty days from the date of a notification of an incomplete or factually inaccurate application to submit the materials required to complete, revise or substantiate information in the application. If the applicant fails to submit the required materials within such thirty-day time period, the application shall be denied by the office.

5. Registrations issued under this section shall remain valid for two years from the date of issuance.

§ 34. Registered organizations. 1. A registered organization shall be a for-profit business entity or not-for-profit corporation organized for the purpose of acquiring, possessing, manufacturing, selling, delivering, transporting, distributing or dispensing cannabis for certified medical use.

2. The acquiring, possession, manufacture, sale, delivery, transporting, distributing or dispensing of medical cannabis by a registered organization under this article in accordance with its registration under this article or a renewal thereof shall be lawful under this chapter.

3. Each registered organization shall contract with an independent laboratory permitted by the office to test the medical cannabis produced by the registered organization. The executive director shall approve the laboratory used by the registered organization and may require that the registered organization use a particular testing laboratory. The executive director is authorized to issue regulations requiring the laboratory to perform certain tests and services.

4. (a) A registered organization may lawfully, in good faith, sell, deliver, distribute or dispense medical cannabis to a certified patient or designated caregiver upon presentation to the registered organization of a valid registry identification card for that certified patient or designated caregiver. When presented with the registry identification card, the registered organization shall provide to the certified patient or designated caregiver a receipt, which shall state: the name, address, and registry identification number of the registered organization; the name and registry identification number of the certified patient and the designated caregiver, if any; the date the cannabis was sold; any recommendation or limitation by the practitioner as to the form or forms of medical cannabis or dosage for the certified patient; and the form and the quantity of medical cannabis sold. The registered organization shall retain a copy of the registry identification card and the receipt for six years.

(b) The proprietor of a registered organization shall file or cause to be filed any receipt and certification information with the office by electronic means on a real-time basis as the executive director shall require by regulation. When filing receipt and certification information electronically pursuant to this paragraph, the proprietor of the registered organization shall dispose of any electronically recorded prescription information in such manner as the executive director shall by regulation require.

5. (a) No registered organization may sell, deliver, distribute or dispense to any certified patient or designated caregiver a quantity of medical cannabis larger than that individual would be allowed to possess under this chapter.

(b) When dispensing medical cannabis to a certified patient or designated caregiver, the registered organization: (i) shall not dispense an amount greater than a sixty-day supply to a certified patient until the certified patient has exhausted all but a seven day supply provided
pursuant to a previously issued certification; and (ii) shall verify the
information in subparagraph (i) of this paragraph by consulting the
prescription monitoring program registry under this article.
(c) Medical cannabis dispensed to a certified patient or designated
caregiver by a registered organization shall conform to any recommenda-
tion or limitation by the practitioner as to the form or forms of
medical cannabis or dosage for the certified patient.
6. When a registered organization sells, delivers, distributes or
dispenses medical cannabis to a certified patient or designated caregiv-
er, it shall provide to that individual a safety insert, which will be
developed by the registered organization and approved by the executive
director and include, but not be limited to, information on:
(a) methods for administering medical cannabis,
(b) any potential dangers stemming from the use of medical cannabis,
(c) how to recognize what may be problematic usage of medical cannabis
and obtain appropriate services or treatment for problematic usage, and
(d) other information as determined by the executive director.
7. Registered organizations shall not be managed by or employ anyone
who has been convicted within three years of the date of hire, of any
felony related to the functions or duties of operating a business,
except that if the executive director determines that the manager or
employee is otherwise suitable to be hired, and hiring the manager or
employee would not compromise public safety, the executive director
shall conduct a thorough review of the nature of the crime, conviction,
circumstances, and evidence of rehabilitation of the manager or employ-
ee, and shall evaluate the suitability of the manager or employee based
on the evidence found through the review. In determining which offenses
are substantially related to the functions or duties of operating a
business, the executive director shall include, but not be limited to,
the following:
(a) a felony conviction involving fraud, money laundering, forgery and
other unlawful conduct related to owning and operating a business; and
(b) a felony conviction for hiring, employing or using a minor in
transporting, carrying, selling, giving away, preparing for sale, or
peddling, any controlled substance, or selling, offering to sell,
furnishing, offering to furnish, administering, or giving any controlled
substance to a minor.
A felony conviction for the sale or possession of drugs, narcotics, or
controlled substances is not substantially related. This subdivision
shall only apply to managers or employees who come into contact with or
handle medical cannabis.
8. Manufacturing of medical cannabis by a registered organization
shall only be done in an indoor, enclosed, secure facility located in
New York state, which may include a greenhouse. The executive director
shall promulgate regulations establishing requirements for such facili-
ties.
9. Dispensing of medical cannabis by a registered organization shall
only be done in an indoor, enclosed, secure facility located in New York
state, which may include a greenhouse. The executive director shall
promulgate regulations establishing requirements for such facilities.
10. A registered organization may contract with a person or entity to
provide facilities, equipment or services that are ancillary to the
registered organization's functions or activities under this article
including, but not limited to, shipping, maintenance, construction,
repair, and security, provided that the person or entity shall not
perform any function or activity directly involving the planting, grow-
ing, tending, harvesting, processing, or packaging of cannabis plants, medical cannabis, or medical cannabis products being produced by the registered organization; or any other function directly involving manufacturing or retailing of medical cannabis. All laws and regulations applicable to such facilities, equipment, or services shall apply to the contract. The registered organization and other parties to the contract shall each be responsible for compliance with such laws and regulations under the contract. The executive director may make regulations consistent with this article relating to contracts and parties to contracts under this subdivision.

11. A registered organization shall, based on the findings of an independent laboratory, provide documentation of the quality, safety and clinical strength of the medical cannabis manufactured or dispensed by the registered organization to the office and to any person or entity to which the medical cannabis is sold or dispensed.

12. A registered organization shall be deemed to be a "health care provider" for the purposes of title two-D of article two of the public health law.

13. Medical cannabis shall be dispensed to a certified patient or designated caregiver in a sealed and properly labeled package. The labeling shall contain: (a) the information required to be included in the receipt provided to the certified patient or designated caregiver by the registered organization; (b) the packaging date; (c) any applicable date by which the medical cannabis should be used; (d) a warning stating, "This product is for medicinal use only. Women should not consume during pregnancy or while breastfeeding except on the advice of the certifying health care practitioner, and in the case of breastfeeding mothers, including the infant's pediatrician. This product might impair the ability to drive. Keep out of reach of children."); (e) the amount of individual doses contained within; and (f) a warning that the medical cannabis must be kept in the original container in which it was dispensed.

14. The executive director is authorized to make rules and regulations restricting the advertising and marketing of medical cannabis.

§ 35. Registering of registered organizations. 1. (a) An applicant for registration as a registered organization under section thirty-four of this article shall include such information prepared in such manner and detail as the executive director may require, including but not limited to:

(i) a description of the activities in which it intends to engage as a registered organization;

(ii) that the applicant:

(A) is of good moral character;

(B) possesses or has the right to use sufficient land, buildings, and other premises, which shall be specified in the application, and equipment to properly carry on the activity described in the application, or in the alternative posts a bond of not less than two million dollars;

(C) is able to maintain effective security and control to prevent diversion, abuse, and other illegal conduct relating to the cannabis;

and

(D) is able to comply with all applicable state laws and regulations relating to the activities in which it intends to engage under the registration;

(iii) that the applicant has entered into a labor peace agreement with a bona fide labor organization that is actively engaged in representing or attempting to represent the applicant's employees and the maintenance
of such a labor peace agreement shall be an ongoing material condition
of certification;
(iv) the applicant's status as a for-profit business entity or not-
for-profit corporation; and
(v) the application shall include the name, residence address and
title of each of the officers and directors and the name and residence
address of any person or entity that is a member of the applicant. Each
such person, if an individual, or lawful representative if a legal enti-
ty, shall submit an affidavit with the application setting forth:
(A) any position of management or ownership during the preceding ten
years of a twenty per centum or greater interest in any other business,
located in or outside this state, manufacturing or distributing drugs;
(B) whether such person or any such business has been convicted of a
felony or had a registration or license suspended or revoked in any
administrative or judicial proceeding; and
(C) such other information as the executive director may reasonably
require.
2. The applicant shall be under a continuing duty to report to the
office any change in facts or circumstances reflected in the application
or any newly discovered or occurring fact or circumstance which is
required to be included in the application.
3. (a) The executive director shall grant a registration or amendment
to a registration under this section if he or she is satisfied that:
(i) the applicant will be able to maintain effective control against
diversion of cannabis;
(ii) the applicant will be able to comply with all applicable state
laws;
(iii) the applicant and its officers are ready, willing and able to
properly carry on the manufacturing or distributing activity for which a
registration is sought;
(iv) the applicant possesses or has the right to use sufficient land,
buildings and equipment to properly carry on the activity described in
the application;
(v) it is in the public interest that such registration be granted,
including but not limited to:
(A) whether the number of registered organizations in an area will be
adequate or excessive to reasonably serve the area;
(B) whether the registered organization is a minority and/or woman
owned business enterprise or a service-disabled veteran-owned business;
(C) whether the registered organization provides education and
outreach to practitioners;
(D) whether the registered organization promotes the research and
development of medical cannabis and patient outreach; and
(E) the affordability of medical cannabis products offered by the
registered organization;
(vi) the applicant and its managing officers are of good moral charac-
ter;
(vii) the applicant has entered into a labor peace agreement with a
bona fide labor organization that is actively engaged in representing or
attempting to represent the applicant's employees; and the maintenance
of such a labor peace agreement shall be an ongoing material condition
of registration; and
(viii) the applicant satisfies any other conditions as determined by
the executive director.
(b) If the executive director is not satisfied that the applicant
should be issued a registration, he or she shall notify the applicant in
writing of those factors upon which the denial is based. Within thirty
days of the receipt of such notification, the applicant may submit a
written request to the executive director to appeal the decision.
(c) The fee for a registration under this section shall be an amount
determined by the office in regulations; provided, however, if the
registration is issued for a period greater than two years the fee shall
be increased, pro rata, for each additional month of validity.
(d) Registrations issued under this section shall be effective only
for the registered organization and shall specify:
(i) the name and address of the registered organization;
(ii) which activities of a registered organization are permitted by
the registration;
(iii) the land, buildings and facilities that may be used for the
permitted activities of the registered organization; and
(iv) such other information as the executive director shall reasonably
provide to assure compliance with this article.
(e) Upon application of a registered organization, a registration may
be amended to allow the registered organization to relocate within the
state or to add or delete permitted registered organization activities
or facilities. The fee for such amendment shall be two hundred fifty
dollars.
4. A registration issued under this section shall be valid for two
years from the date of issue, except that in order to facilitate the
renewals of such registrations, the executive director may upon the
initial application for a registration, issue some registrations which
may remain valid for a period of time greater than two years but not
exceeding an additional eleven months.
5. (a) An application for the renewal of any registration issued
under this section shall be filed with the office not more than six
months nor less than four months prior to the expiration thereof. A
late-filed application for the renewal of a registration may, in the
discretion of the executive director, be treated as an application for
an initial license.
(b) The application for renewal shall include such information
prepared in the manner and detail as the executive director may require,
including but not limited to:
(i) any material change in the circumstances or factors listed in
subdivision one of this section; and
(ii) every known charge or investigation, pending or concluded during
the period of the registration, by any governmental or administrative
agency with respect to:
(A) each incident or alleged incident involving the theft, loss, or
possible diversion of medical cannabis manufactured or distributed by
the applicant; and
(B) compliance by the applicant with the laws of the state with
respect to any substance listed in section thirty-three hundred six of
the public health law.
(c) An applicant for renewal shall be under a continuing duty to
report to the office any change in facts or circumstances reflected in
the application or any newly discovered or occurring fact or circum-
stance which is required to be included in the application.
(d) If the executive director is not satisfied that the registered
organization applicant is entitled to a renewal of the registration, he
or she shall within a reasonably practicable time as determined by the
executive director, serve upon the registered organization or its attor-
ney of record in person or by registered or certified mail an order
directing the registered organization to show cause why its application for renewal should not be denied. The order shall specify in detail the respects in which the applicant has not satisfied the executive director that the registration should be renewed.

6. (a) The executive director shall renew a registration unless he or she determines and finds that:
   (i) the applicant is unlikely to maintain or be able to maintain effective control against diversion;
   (ii) the applicant is unlikely to comply with all state laws applicable to the activities in which it may engage under the registration;
   (iii) it is not in the public interest to renew the registration because the number of registered organizations in an area is excessive to reasonably serve the area; or
   (iv) the applicant has either violated or terminated its labor peace agreement.

   (b) For purposes of this section, proof that a registered organization, during the period of its registration, has failed to maintain effective control against diversion, violates any provision of this article, or has knowingly or negligently failed to comply with applicable state laws relating to the activities in which it engages under the registration, shall constitute grounds for suspension, termination or limitation of the registered organization’s registration or as determined by the executive director. The registered organization shall also be under a continuing duty to report to the authority any material change or fact or circumstance to the information provided in the registered organization’s application.

7. The office may suspend or terminate the registration of a registered organization, on grounds and using procedures under this article relating to a license, to the extent consistent with this article. The authority shall suspend or terminate the registration in the event that a registered organization violates or terminates the applicable labor peace agreement. Conduct in compliance with this article which may violate conflicting federal law, shall not be grounds to suspend or terminate a registration.

8. A registered organization that manufactures medical cannabis may have no more than four dispensing sites wholly owned and operated by such registered organization. The executive director shall ensure that such registered organizations and dispensing sites are geographically distributed across the state and that their ownership reflects the demographics of the state. The executive director shall register additional registered organizations reflecting the demographics of the state.

§ 36. Reports of registered organizations. 1. The executive director shall, by regulation, require each registered organization to file reports by the registered organization during a particular period. The executive director shall determine the information to be reported and the forms, time, and manner of the reporting.

2. The executive director shall, by regulation, require each registered organization to adopt and maintain security, tracking, record keeping, record retention and surveillance systems, relating to all medical cannabis at every stage of acquiring, possession, manufacture, sale, delivery, transporting, distributing, or dispensing by the registered organization, subject to regulations of the executive director.

§ 37. Evaluation; research programs; report by office. 1. The executive director may provide for the analysis and evaluation of the operation of this article. The executive director may enter into agreements with one or more persons, not-for-profit corporations or other organiza-
tions, for the performance of an evaluation of the implementation and effectiveness of this article.
2. The office may develop, seek any necessary federal approval for, and carry out research programs relating to medical use of cannabis. Participation in any such research program shall be voluntary on the part of practitioners, patients, and designated caregivers.
3. The office shall report every two years, beginning two years after the effective date of this chapter, to the governor and the legislature on the medical use of cannabis under this article and make appropriate recommendations.

§ 38. Cannabis research license. 1. The executive director shall establish a cannabis research license that permits a licensee to produce, process, purchase and possess cannabis for the following limited research purposes:
   (a) to test chemical potency and composition levels;
   (b) to conduct clinical investigations of cannabis-derived drug products;
   (c) to conduct research on the efficacy and safety of administering cannabis as part of medical treatment; and
   (d) to conduct genomic or agricultural research.
2. As part of the application process for a cannabis research license, an applicant must submit to the office a description of the research that is intended to be conducted as well as the amount of cannabis to be grown or purchased. The office shall review an applicant's research project and determine whether it meets the requirements of subdivision one of this section. In addition, the office shall assess the application based on the following criteria:
   (a) project quality, study design, value, and impact;
   (b) whether the applicant has the appropriate personnel, expertise, facilities and infrastructure, funding, and human, animal, or other approvals in place to successfully conduct the project; and
   (c) whether the amount of cannabis to be grown or purchased by the applicant is consistent with the project's scope and goals. If the office determines that the research project does not meet the requirements of subdivision one of this section, the application must be denied.
3. A cannabis research licensee may only sell cannabis grown or within its operation to other cannabis research licensees. The office may revoke a cannabis research license for violations of this subsection.
4. A cannabis research licensee may contract with the higher education institutions to perform research in conjunction with the university. All research projects, entered into under this section must be approved by the office and meet the requirements of subdivision one of this section.
5. In establishing a cannabis research license, the executive director may adopt regulations on the following:
   (a) application requirements;
   (b) cannabis research license renewal requirements, including whether additional research projects may be added or considered;
   (c) conditions for license revocation;
   (d) security measures to ensure cannabis is not diverted to purposes other than research;
   (e) amount of plants, useable cannabis, cannabis concentrates, or cannabis-infused products a licensee may have on its premises;
   (f) licensee reporting requirements;
(g) conditions under which cannabis grown by licensed cannabis producers and other product types from licensed cannabis processors may be donated to cannabis research licensees; and
(h) any additional requirements deemed necessary by the office.

6. A cannabis research license issued pursuant to this section must be issued in the name of the applicant and specify the location at which the cannabis researcher intends to operate, which must be within the state of New York.

7. The application fee for a cannabis research license shall be determined by the executive director on an annual basis.

8. Each cannabis research licensee shall issue an annual report to the office. The office shall review such report and make a determination as to whether the research project continues to meet the research qualifications under this section.

§ 39. Registered organizations and adult-use cannabis. 1. The executive director shall have the authority to grant some or all of the registered organizations registered with the department of health and currently registered and in good standing with the office, the ability to be licensed to cultivate, process, or sell adult-use cannabis and cannabis products, pursuant to any fees, rules or conditions prescribed by the executive director in regulation and subject to the restrictions on licensed adult-use cultivators and processors on having any ownership interest in a licensed adult-use retail dispensary pursuant to this chapter.

2. Prior to granting the licenses provided by subdivision one of this section, the office shall assess a registered organization registered prior to the enactment of this chapter with a one-time special licensing fee so that they may become authorized to bypass the restrictions on having any ownership interest in a licensed adult-use retail dispensary, provided that the fees generated from such assessment shall be used to administer incubators and low or zero-interest loans and other assistance to qualified social equity applicants. The timing and manner in which registered organizations may be granted such authority shall be determined by the executive director in regulation.

§ 40. Relation to other laws. 1. The provisions of this article shall apply, except that where a provision of this article conflicts with another provision of this chapter, this article shall apply.

2. Medical cannabis shall not be deemed to be a "drug" for purposes of article one hundred thirty-seven of the education law.

§ 41. Protections for the medical use of cannabis. 1. Certified patients, designated caregivers, designated caregiver facilities, practitioners, registered organizations and the employees of registered organizations, and cannabis researchers shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, solely for the certified medical use or manufacture of cannabis, or for any other action or conduct in accordance with this article.

2. Being a certified patient shall be deemed to be having a "disability" under article fifteen of the executive law, section forty-c of the civil rights law, sections 240.00, 485.00, and 485.05 of the penal law, and section 200.50 of the criminal procedure law. This subdivision shall not bar the enforcement of a policy prohibiting an employee from performing his or her employment duties while impaired by a controlled substance. This subdivision shall not require any person or entity to do
any act that would put the person or entity in direct violation of federal law or cause it to lose a federal contract or funding.

3. The fact that a person is a certified patient and/or acting in accordance with this article, shall not be a consideration in a proceeding pursuant to applicable sections of the domestic relations law, the social services law and the family court act.

4. (a) Certification applications, certification forms, any certified patient information contained within a database, and copies of registry identification cards shall be deemed exempt from public disclosure under sections eighty-seven and eighty-nine of the public officers law.

(b) The name, contact information, and other information relating to practitioners registered with the office under this article shall be public information and shall be maintained by the executive director on the office's website accessible to the public in searchable form. However, if a practitioner notifies the office in writing that he or she does not want his or her name and other information disclosed, that practitioner's name and other information shall thereafter not be public information or maintained on the office's website, unless the practitioner cancels the request.

§ 42. Regulations. The executive director shall promulgate regulations in consultation with the cannabis advisory board to implement this article.

§ 43. Suspend; terminate. Based upon the recommendation of the executive director and/or the superintendent of state police that there is a risk to the public health or safety, the governor may immediately terminate all licenses issued to registered organizations.

§ 44. Pricing. Registered organizations shall submit documentation to the executive director of any change in pricing per dose for any medical cannabis product within fifteen days of such change. Prior approval by the executive director shall not be required for any such change; provided however that the executive director is authorized to modify the price per dose for any medical cannabis product if necessary to maintain public access to appropriate medication.

ARTICLE 4
ADULT-USE CANNABIS

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§ 60. Licenses issued. The following kinds of licenses shall be
issued by the executive director for the cultivation, processing,
distribution and sale of cannabis, cannabis producers, and concentrated

cannabis to cannabis consumers:
1. Adult-use cultivator license;
2. Adult-use processor license;
3. Adult-use cooperative license;
4. Adult-use distributor license;
5. Adult-use retail dispensary license;
6. On-site consumption license;
7. Microbusiness license;
8. Delivery license;
9. Nursery license; and
10. Any other type of license as prescribed by the executive director
in regulation.

§ 61. License Application. 1. Any person may apply to the office for
a license to cultivate, process, distribute or dispense cannabis within
this state for sale. Such application shall be in writing and verified
and shall contain such information as the office shall require. Such
application shall be accompanied by a check or draft for the amount
required by this article for such license. If the office shall approve
the application, it shall issue a license in such form as shall be
determined by its rules. Such license shall contain a description of the
licensed premises and in form and in substance shall be a license to the
person therein specifically designated to cultivate, process, distribute
or dispense cannabis in the premises therein specifically licensed.
2. Except as otherwise provided in this article, a separate license
shall be required for each facility at which cultivation, processing,
distribution or retail dispensing is conducted.
3. An applicant shall not be denied a license under this article based
solely on a conviction for a violation of article two hundred twenty or
section 240.36 of the penal law, prior to the date article two hundred
twenty-two of the penal law took effect, or a conviction for a violation
of article two hundred twenty-two of the penal law after the effective
date of this chapter.

§ 62. Information to be requested in applications for licenses. 1. The
office shall have the authority to prescribe the manner and form in
which an application must be submitted to the office for licensure under
this article.
2. The executive director is authorized to adopt regulations, includ-
ing by emergency rule, establishing information which must be included
on an application for licensure under this article. Such information may
include, but is not limited to: information about the applicant's iden-
tity, including racial and ethnic diversity; ownership and investment
information, including the corporate structure; evidence of good moral
character, including the submission of fingerprints by the applicant to
the division of criminal justice services; information about the prem-
ises to be licensed; financial statements; and any other information
prescribed by regulation.
3. All license applications shall be signed by the applicant (if an
individual), by a managing member (if a limited liability company), by
an officer (if a corporation), or by all partners (if a partnership).
Each person signing such application shall verify it or affirm it as
true under the penalties of perjury.
4. All license or permit applications shall be accompanied by a check,
draft or other forms of payment as the office may require or authorize
in the amount required by this article for such license or permit.
5. If there be any change, after the filing of the application or the
granting of a license, in any of the facts required to be set forth in
such application, a supplemental statement giving notice of such change,
cost and source of money involved in the change, duly verified, shall be
filed with the office within ten days after such change. Failure to do
so shall, if willful and deliberate, be cause for denial or revocation
of the license.
6. In giving any notice, or taking any action in reference to a regis-
tered organization or licensee of a licensed premises, the office may
rely upon the information furnished in such application and in any
supplemental statement connected therewith, and such information may be
presumed to be correct, and shall be binding upon a registered organiza-
tions, licensee or licensed premises as if correct. All information
required to be furnished in such application or supplemental statements
shall be deemed material in any prosecution for perjury, any proceeding
to revoke, cancel or suspend any license, and in the office's determi-
ation to approve or deny the license.
§ 63. Fees. 1. The office shall have the authority to charge appli-
cants for licensure under this article a non-refundable application fee.
Such fee may be based on the type of licensure sought, cultivation
and/or production volume, or any other factors deemed reasonable and
appropriate by the office to achieve the policy and purpose of this
chapter.
2. The office shall have the authority to charge licensees a biennial
license fee. Such fee shall be based on the amount of cannabis to be
cultivated, processed, distributed and/or dispensed by the licensee or
the gross annual receipts of the licensee for the previous license peri-
od, and any other factors deemed reasonable and appropriate by the
office.
3. The office shall have the authority to waive or reduce fees for
social and economic equity applicants.
§ 64. Selection criteria. 1. The executive director shall develop
regulations for determining whether or not an applicant should be grant-
ed the privilege of an adult-use cannabis license, based on, but not
limited to, the following criteria:
(a) the applicant will be able to maintain effective control against
the illegal diversion of cannabis;
(b) the applicant will be able to comply with all applicable state
laws and regulations;
(c) the applicant and its officers are ready, willing, and able to
properly carry on the activities for which a license is sought;
(d) the applicant possesses or has the right to use sufficient land, buildings, and equipment to properly carry on the activity described in the application;
(e) the applicant qualifies as a social equity applicant or sets out a plan for benefiting communities and people disproportionately impacted by cannabis law enforcement;
(f) it is in the public interest that such license be granted, taking into consideration, but not limited to, the following criteria:
   (i) that it is a privilege, and not a right, to cultivate, process, distribute, and sell cannabis;
   (ii) the number, classes, and character of other licenses in proximity to the location and in the particular municipality or subdivision thereof;
   (iii) evidence that all necessary licenses and permits have been obtained from the state and all other governing bodies;
   (iv) effect of the grant of the license on pedestrian or vehicular traffic, and parking, in proximity to the location;
   (v) the existing noise level at the location and any increase in noise level that would be generated by the proposed premises;
   (vi) the ability to mitigate adverse environmental impacts, including but not limited to energy usage and carbon emissions;
   (vii) the effect on the production and availability of cannabis and cannabis products; and
   (viii) any other factors specified by law or regulation that are relevant to determine that granting a license would promote public convenience and advantage and the public interest of the community;
(g) the applicant and its managing officers are of good moral character and do not have an ownership or controlling interest in more licenses or permits than allowed by this chapter;
(h) the applicant has entered into a labor peace agreement with a bona-fide labor organization that is actively engaged in representing or attempting to represent the applicant's employees, and the maintenance of such a labor peace agreement shall be an ongoing material condition of licensure. In evaluating applications from entities with twenty-five or more employees, the office shall give priority to applicants that are a party to a collective bargaining agreement with a bona-fide labor organization in New York or in another state, and uses union labor to construct its licensed facility;
(i) the applicant will contribute to communities and people disproportionately harmed by cannabis law enforcement and report these contributions to the office;
(j) if the application is for an adult-use cultivator or processor license, the environmental impact of the facility to be licensed; and
(k) the applicant satisfies any other conditions as determined by the executive director.

2. If the executive director is not satisfied that the applicant should be issued a license, the executive director shall notify the applicant in writing of the specific reason or reasons for denial.

3. The executive director shall have the authority to, in consultation with the cannabis advisory board, determine the number of licenses issued pursuant to this article.

§ 65. Limitations of licensure; duration. 1. No license of any kind may be issued to a person under the age of twenty-one years, nor shall any licensee employ anyone under the age of twenty-one years.

2. No licensee shall sell, deliver, or give away or cause or permit or procure to be sold, delivered or given away any cannabis to any person,
actually or apparently, under the age of twenty-one years unless the
person under twenty-one is also a certified patient and the licensee is
appropriately licensed under article three of this chapter.
3. The office shall have the authority to limit, by canopy, plant
count, square footage or other means, the amount of cannabis allowed to
be grown, processed, distributed or sold by a licensee.
4. All licenses under this article shall expire two years after the
date of issue.
§ 66. License renewal. 1. Each license, issued pursuant to this arti-
cle, may be renewed upon application therefore by the licensee and the
payment of the fee for such license as prescribed by this article. In
the case of applications for renewals, the office may dispense with the
requirements of such statements as it deems unnecessary in view of those
contained in the application made for the original license, but in any
event the submission of photographs of the licensed premises shall be
dispensed with, provided the applicant for such renewal shall file a
statement with the office to the effect that there has been no alter-
ation of such premises since the original license was issued. The office
may make such rules as it deems necessary, not inconsistent with this
chapter, regarding applications for renewals of licenses and permits and
the time for making the same.
2. Each applicant must submit to the office documentation of the
racial, ethnic, and gender diversity of the applicant's employees and
owners prior to a license being renewed. In addition, the office may
create a social responsibility framework agreement and make the adher-
ence to such agreement a conditional requirement of license renewal.
3. The office shall provide an application for renewal of a license
issued under this article not less than ninety days prior to the expira-
tion of the current license.
4. The office may only issue a renewal license upon receipt of the
prescribed renewal application and renewal fee from a licensee if, in
addition to the criteria in this section, the licensee's license is not
under suspension and has not been revoked.
5. Each applicant must maintain a labor peace agreement with a bona-
fide labor organization that is actively engaged in representing or
attempting to represent the applicant's employees and the maintenance of
such a labor peace agreement shall be an ongoing material condition of
licensure. Each applicant must provide evidence of the execution of
their plan for benefitting communities and people required for initial
licensing pursuant to section sixty-four of this article.
§ 67. Amendments; changes in ownership and organizational structure.
1. Licenses issued pursuant to this article shall specify:
   (a) the name and address of the licensee;
   (b) the activities permitted by the license;
   (c) the land, buildings and facilities that may be used for the
       licensed activities of the licensee;
   (d) a unique license number issued by the office to the licensee; and
   (e) such other information as the executive director shall deem neces-
       sary to assure compliance with this chapter.
2. Upon application of a licensee to the office, a license may be
amended to allow the licensee to relocate within the state, to add or
delete licensed activities or facilities, or to amend the ownership or
organizational structure of the entity that is the licensee. The execu-
tive director shall establish a fee for such amendments.
3. A license shall become void by a change in ownership, substantial
corporate change or location without prior written approval of the exec-
utive director. The executive director may promulgate regulations allowing for certain types of changes in ownership without the need for prior written approval.

4. For purposes of this section, "substantial corporate change" shall mean:
   (a) for a corporation, a change of eighty percent or more of the officers and/or directors, or a transfer of eighty percent or more of stock of such corporation, or an existing stockholder obtaining eighty percent or more of the stock of such corporation; or
   (b) for a limited liability company, a change of eighty percent or more of the managing members of the company, or a transfer of eighty percent or more of ownership interest in said company, or an existing member obtaining a cumulative of eighty percent or more of the ownership interest in said company.

§ 68. Adult-use cultivator license. 1. An adult-use cultivator's license shall authorize the acquisition, possession, cultivation and sale of cannabis from the licensed premises of the adult-use cultivator by such licensee to duly licensed processors in this state. The executive director may establish regulations allowing licensed adult-use cultivators to perform certain types of minimal processing without the need for an adult-use processor license.

2. For purposes of this section, cultivation shall include, but not be limited to, the planting, growing, cloning, harvesting, drying, curing, grading and trimming of cannabis.

3. A person holding an adult-use cultivator's license may apply for, and obtain, one processor's license and one distributor's license that may only be used to distribute their own cannabis and cannabis products.

4. A person holding an adult-use cultivator's license may not also hold a retail dispensary license pursuant to this article and no adult-use cannabis cultivator shall have a direct or indirect interest, including by stock ownership, interlocking directors, mortgage or lien, personal or real property, or any other means, in any premises licensed as an adult-use cannabis retail dispensary or in any business licensed as an adult-use cannabis retail dispensary pursuant to this article.

5. A person holding an adult-use cultivator's license may not hold a license to distribute cannabis under this article unless the licensed cultivator is also licensed as a processor under this article.

6. No person may have a direct or indirect financial or controlling interest in more than one adult-use cultivator license issued pursuant to this chapter.

§ 69. Adult-use processor license. 1. A processor's license shall authorize the acquisition, possession, processing and sale of cannabis from the licensed premises of the adult-use cultivator by such licensee to duly licensed distributors.

2. For purposes of this section, processing shall include, but not be limited to, blending, extracting, infusing, packaging, labeling, branding and otherwise making or preparing cannabis products. Processing shall not include the cultivation of cannabis.

3. No processor shall be engaged in any other business on the premises to be licensed; except that nothing contained in this chapter shall prevent a cannabis cultivator, cannabis processor, and cannabis distributor from operating on the same premises and from a person holding all three licenses.

4. No cannabis processor licensee may hold more than three cannabis processor licenses.
5. No adult-use cannabis processor shall have a direct or indirect interest, including by stock ownership, interlocking directors, mortgage or lien, personal or real property, or any other means, in any premises licensed as an adult-use cannabis retail dispensary or in any business licensed as an adult-use cannabis retail dispensary pursuant to this article.

§ 70. Adult-use cooperative license. 1. A cooperative license shall authorize the acquisition, possession, cultivation, processing and sale from the licensed premises of the adult-use cooperative by such licensee to duly licensed distributors, on-site consumption sites, and/or retail dispensaries; but not directly to cannabis consumers.

2. To be licensed as an adult-use cooperative, the cooperative must:
   (i) be comprised of residents of the state of New York as a limited liability company or limited liability partnership under the laws of the state, or an appropriate business structure as determined by the executive director;
   (ii) subordinate capital, both as regards control over the cooperative undertaking, and as regards the ownership of the pecuniary benefits arising therefrom;
   (iii) be democratically controlled by the members themselves on the basis of one vote per member;
   (iv) vest in and allocate with priority to and among the members of all increases arising from their cooperative endeavor in proportion to the members' active participation in the cooperative endeavor; and
   (v) the cooperative must operate according to the seven cooperative principles published by the International Cooperative Alliance in nineteen hundred ninety-five.

3. No natural person shall be a member of more than one adult-use cooperative licensed pursuant to this section.

4. No natural person or member of an adult-use cooperative license may have a direct or indirect financial or controlling interest in any other adult-use cannabis license issued pursuant to this chapter.

5. No adult-use cannabis cooperative shall have a direct or indirect interest, including by stock ownership, interlocking directors, mortgage or lien, personal or real property, or any other means, in any premises licensed as an adult-use cannabis retail dispensary or in any business licensed as an adult-use cannabis retail dispensary pursuant to this chapter.

6. The executive director shall promulgate regulations governing cooperative licenses, including, but not limited to, the establishment of canopy limits on the size and scope of cooperative licensees, and other measures designed to incentivize the use and licensure of cooperatives.

§ 71. Adult-use distributor license. 1. A distributor's license shall authorize the acquisition, possession, distribution and sale of cannabis from the licensed premises of a licensed adult-use processor, microbusiness or registered organization authorized pursuant to this chapter to sell adult-use cannabis, to duly licensed retail dispensaries.

2. No distributor shall have a direct or indirect economic interest in any adult-use retail dispensary licensed pursuant to this article, or in any registered organization registered pursuant to article three of this chapter. This restriction shall not prohibit a registered organization authorized pursuant to section thirty-nine of this chapter, from being granted licensure by the office to distribute adult-use cannabis products cultivated and processed by the registered organization only to the registered organization's own licensed adult-use retail dispensaries.
3. Nothing in subdivision two of this section shall prevent a distributor from charging an appropriate fee for the distribution of cannabis, including based on the volume of cannabis distributed.

§ 72. Adult-use retail dispensary license. 1. A retail dispensary license shall authorize the acquisition, possession and sale of cannabis from the licensed premises of the retail dispensary by such licensee to cannabis consumers.

2. No person may have a direct or indirect financial or controlling interest in more than three retail dispensary licenses issued pursuant to this chapter.

3. No person holding a retail dispensary license may also hold an adult-use cultivation, processor, microbusiness, cooperative or distributor license pursuant to this article.

4. No retail license shall be granted for any premises, unless the applicant shall be the owner thereof, or shall be able to demonstrate possession of the premises within thirty days of initial approval of the license through a lease, management agreement or other agreement giving the applicant control over the premises, in writing, for a term not less than the license period.

5. With the exception of microbusiness licensees, no premises shall be licensed to sell cannabis products, unless said premises shall be located in a store, the principal entrance to which shall be from the street level and located on a public thoroughfare in premises which may be occupied, operated or conducted for business, trade or industry or on an arcade or sub-surface thoroughfare leading to a railroad terminal.

6. No cannabis retail license shall be granted for any premises within two hundred feet of a school grounds as such term is defined in the education law.

§ 73. Microbusiness license. 1. A microbusiness license shall authorize the limited cultivation, processing, distribution and dispensing of adult use cannabis and cannabis products.

2. A microbusiness licensee may not hold interest in any other license and may only distribute its own cannabis and cannabis products to dispensaries.

3. The size and scope of a microbusiness shall be determined by regulation by the executive director in consultation with the cannabis advisory board.

§ 74. Notification to municipalities of adult-use retail dispensary. 1. Not less than thirty days nor more than two hundred seventy days before filing an application for licensure as an adult-use cannabis retail dispensary, an applicant shall notify the municipality in which the premises is located of such applicant's intent to file such an application.

2. Such notification shall be made to the clerk of the village, town or city, as the case may be, wherein the premises is located. For purposes of this section:

(a) notification need only be given to the clerk of a village when the premises is located within the boundaries of the village; and

(b) in the city of New York, the community board established pursuant to section twenty-eight hundred of the New York city charter with jurisdiction over the area in which the premises is located shall be considered the appropriate public body to which notification shall be given.

3. Such notification shall be made in such form as shall be prescribed by the rules of the office.

4. A municipality may express an opinion for or against the granting of such application. Any such opinion shall be deemed part of the record.
upon which the office makes its determination to grant or deny the
application.
5. Such notification shall be made by: (a) certified mail, return
receipt requested; (b) overnight delivery service with proof of mailing;
or (c) personal service upon the offices of the clerk or community
board.
6. The office shall require such notification to be on a standardized
form that can be obtained on the internet or from the office and such
notification to include:
(a) the trade name or "doing business as" name, if any, of the estab-
lishment;
(b) the full name of the applicant;
(c) the street address of the establishment, including the floor
location or room number, if applicable;
(d) the mailing address of the establishment, if different than the
street address;
(e) the name, address and telephone number of the attorney or repre-
sentative of the applicant, if any;
(f) a statement indicating whether the application is for:
(i) a new establishment;
(ii) a transfer of an existing licensed business;
(iii) a renewal of an existing license; or
(iv) an alteration of an existing licensed premises;
(g) if the establishment is a transfer or previously licensed prem-
ises, the name of the old establishment and such establishment's regis-
tration or license number;
(h) in the case of a renewal or alteration application, the registra-
tion or license number of the applicant; and
(i) the type of license.
§ 75. On-site consumption license; provisions governing on-site
consumption licenses. 1. No licensed adult-use cannabis retail dispen-
sary shall be granted a cannabis on-site consumption license for any
premises, unless the applicant shall be the owner thereof, or shall be
in possession of said premises under a lease, in writing, for a term not
less than the license period except, however, that such license may
thereafter be renewed without the requirement of a lease as provided in
this section. This subdivision shall not apply to premises leased from
government agencies; provided, however, that the appropriate administra-
tor of such government agency provides some form of written documenta-
tion regarding the terms of occupancy under which the applicant is leas-
ing said premises from the government agency for presentation to the
office at the time of the license application. Such documentation shall
include the terms of occupancy between the applicant and the government
agency, including, but not limited to, any short-term leasing agreements
or written occupancy agreements.
2. No adult-use cannabis retail dispensary shall be granted a cannabis
on-site consumption license for any premises within two hundred feet of
school grounds as such term is defined in the education law.
3. The office may consider any or all of the following in determining
whether public convenience and advantage and the public interest will be
promoted by the granting of a license for an on-site cannabis consump-
tion at a particular location:
(a) that it is a privilege, and not a right, to cultivate, process,
distribute, and sell cannabis;
(b) the number, classes, and character of other licenses in proximity to the location and in the particular municipality or subdivision thereof;

(c) evidence that all necessary licenses and permits have been obtained from the state and all other governing bodies;

(d) whether there is a demonstrated need for spaces to consume cannabis;

(e) effect of the grant of the license on pedestrian or vehicular traffic, and parking, in proximity to the location;

(f) the existing noise level at the location and any increase in noise level that would be generated by the proposed premises; and

(g) any other factors specified by law or regulation that are relevant to determine that granting a license would promote public convenience and advantage and the public interest of the community.

4. If the office shall disapprove an application for an on-site consumption license, it shall state and file in its offices the reasons therefor and shall notify the applicant thereof. Such applicant may thereupon apply to the office for a review of such action in a manner to be prescribed by the rules of the office.

5. No adult-use cannabis on-site consumption licensee shall keep upon the licensed premises any adult-use cannabis products except those purchased from a licensed distributor, adult-use cooperative, or micro-business authorized to sell adult-use cannabis, and only in containers approved by the office. Such containers shall have affixed thereto such labels as may be required by the rules of the office. No cannabis retail licensee for on-site consumption shall reuse, refill, tamper with, adulterate, dilute or fortify the contents of any container of cannabis products as received from the manufacturer or distributor.

6. No cannabis on-site consumption licensee shall sell, deliver or give away, or cause or permit or procure to be sold, delivered or given away any cannabis for consumption on the premises where sold in a container or package containing more than one gram of cannabis flower or one serving of cannabis infused product.

7. Except where a permit to do so is obtained pursuant to section 405.10 of the penal law, no cannabis on-site consumption licensee shall suffer, permit, or promote an event on its premises wherein any person shall use, explode, or cause to explode, any fireworks or other pyrotechnics in a building as defined in paragraph e of subdivision one of section 405.10 of the penal law, that is covered by such license or possess such fireworks or pyrotechnics for such purpose. In addition to any other penalty provided by law, a violation of this subdivision shall constitute an adequate ground for instituting a proceeding to suspend, cancel, or revoke the license of the violator in accordance with the applicable procedures specified in this chapter; provided however, if more than one licensee is participating in a single event, upon approval by the office, only one licensee must obtain such permit.

8. No premises licensed to sell adult-use cannabis for on-site consumption under this chapter shall be permitted to have any opening or means of entrance or passageway for persons or things between the licensed premises and any other room or place in the building containing the licensed premises, or any adjoining or abutting premises, unless ingress and egress is restricted by an employee, agent of the licensee, or other method approved by the office of controlling access to the facility.

9. Each cannabis on-site consumption licensee shall keep and maintain upon the licensed premises, adequate records of all transactions involv-
ing the business transacted by such licensee which shall show the amount
of cannabis products, in an applicable metric measurement, purchased by
such licensee together with the names, license numbers and places of
business of the persons from whom the same were purchased, the amount
involved in such purchases, as well as the sales of cannabis products
made by such licensee. The office is hereby authorized to promulgate
rules and regulations permitting an on-site licensee operating two or
more premises separately licensed to sell cannabis products for on-site
consumption to inaugurate or retain in this state methods or practices
of centralized accounting, bookkeeping, control records, reporting,
billing, invoicing or payment respecting purchases, sales or deliveries
of cannabis products, or methods and practices of centralized receipt or
storage of cannabis products within this state without segregation or
earmarking for any such separately licensed premises, wherever such
methods and practices assure the availability, at such licensee's
central or main office in this state, of data reasonably needed for the
enforcement of this chapter. Such records shall be available for
inspection by any authorized representative of the office.
10. All retail licensed premises shall be subject to inspection by any
peace officer, acting pursuant to his or her special duties, or police
officer and by the duly authorized representatives of the office, during
the hours when the said premises are open for the transaction of busi-
ness.
11. A cannabis on-site consumption licensee shall not provide cannabis
products to any person under the age of twenty-one.
§ 76. Record keeping and tracking. 1. The executive director shall, by
regulation, require each licensee pursuant to this article to adopt and
maintain security, tracking, record keeping, record retention and
surveillance systems, relating to all cannabis at every stage of acquir-
ing, possession, manufacture, sale, delivery, transporting, testing or
distributing by the licensee, subject to regulations of the executive
director.
2. Every licensee shall keep and maintain upon the licensed premises
adequate books and records of all transactions involving the licensee
and sale of its products, which shall include, but is not limited to,
all information required by any rules promulgated by the office.
3. Each sale shall be recorded separately on a numbered invoice, which
shall have printed thereon the number, the name of the licensee, the
address of the licensed premises, and the current license number.
Licensed producers shall deliver to the licensed distributor a true
duplicate invoice stating the name and address of the purchaser, the
quantity purchased, description and the price of the product, and a
true, accurate and complete statement of the terms and conditions on
which such sale is made.
4. Such books, records and invoices shall be kept for a period of five
years and shall be available for inspection by any authorized represen-
tative of the office.
5. Each adult-use cannabis retail dispensary, microbusiness, and
on-site consumption licensee shall keep and maintain upon the licensed
premises, adequate records of all transactions involving the business
transacted by such licensee which shall show the amount of cannabis, in
weight, purchased by such licensee together with the names, license
numbers and places of business of the persons from whom the same were
purchased, the amount involved in such purchases, as well as the sales
of cannabis made by such licensee.
§ 77. Inspections and ongoing requirements. All licensed or permitted premises, regardless of the type of premises, shall be subject to inspection by the office, by the duly authorized representatives of the office, by any peace officer acting pursuant to his or her special duties, or by a police officer, during the hours when the said premises are open for the transaction of business. The office shall make reasonable accommodations so that ordinary business is not interrupted and safety and security procedures are not compromised by the inspection. A person who holds a license or permit must make himself or herself, or an agent thereof, available and present for any inspection required by the office. Such inspection may include, but is not limited to, ensuring compliance by the licensee or permittee with all other applicable building codes, fire, health, safety, and governmental regulations, including at the municipal, county, and state level.

§ 78. Adult-use cultivators, processors or distributors not to be interested in retail dispensaries. 1. It shall be unlawful for a cultivator, processor, cooperative or distributor licensed under this article to:
   (a) be interested directly or indirectly in any premises where any cannabis product is sold at retail; or in any business devoted wholly or partially to the sale of any cannabis product at retail by stock ownership, interlocking directors, mortgage or lien or any personal or real property, or by any other means.
   (b) make, or cause to be made, any loan to any person engaged in the manufacture or sale of any cannabis product at wholesale or retail.
   (c) make any gift or render any service of any kind whatsoever, directly or indirectly, to any person licensed under this chapter which in the judgment of the office may tend to influence such licensee to purchase the product of such cultivator or processor or distributor.
   (d) enter into any contract with any retail licensee whereby such licensee agrees to confine his sales to cannabis products manufactured or sold by one or more such cultivator or processors or distributors. Any such contract shall be void and subject the licenses of all parties concerned to revocation for cause.

2. The provisions of this section shall not prohibit a registered organization authorized pursuant to section thirty-nine of this chapter, from cultivating, processing, or selling adult-use cannabis under this article, at facilities wholly owned and operated by such registered organization, subject to any conditions, limitations or restrictions established by the office and this chapter.

3. The office shall have the power to create rules and regulations in regard to this section.

§ 79. Packaging and labeling of adult-use cannabis products. 1. The office is hereby authorized to promulgate rules and regulations governing the advertising, branding, marketing, packaging and labeling of cannabis products, sold or possessed for sale in New York state, including rules pertaining to the accuracy of information and rules restricting marketing and advertising to youth.

2. Such regulations shall include, but not be limited to, requiring that:
   (a) packaging meets requirements similar to the federal "poison prevention packaging act of 1970," 15 U.S.C. Sec 1471 et seq.;
   (b) all cannabis-infused products shall have a separate packaging for each serving;
(c) prior to delivery or sale at a retailer, cannabis and cannabis products shall be labeled and placed in a resealable, child-resistant package; and
(d) packages and labels shall not be made to be attractive to minors.
3. Such regulations shall include requiring labels warning consumers of any potential impact on human health resulting from the consumption of cannabis products that shall be affixed to those products when sold, if such labels are deemed warranted by the office.
4. Such rules and regulations shall establish methods and procedures for determining serving sizes for cannabis-infused products and active cannabis concentration per serving size. Such regulations shall also require a nutritional fact panel that incorporates data regarding serving sizes and potency thereof.
5. The packaging, sale, marketing, branding, advertising, labeling or possession by any licensee of any cannabis product not labeled or offered in conformity with rules and regulations promulgated in accordance with this section shall be grounds for the imposition of a fine, and/or the suspension, revocation or cancellation of a license.

§ 80. Laboratory testing. 1. Every processor of adult-use cannabis shall contract with an independent laboratory permitted pursuant to section one hundred twenty-nine of this chapter, to test the cannabis products it produces pursuant to rules and regulations prescribed by the office. The executive director may assign an approved testing laboratory, which the processor of adult-use cannabis must use.
2. Adult-use cannabis processors shall make laboratory test reports available to licensed distributors and retail dispensaries for all cannabis products manufactured by the processor.
3. Licensed retail dispensaries shall maintain accurate documentation of laboratory test reports for each cannabis product offered for sale to cannabis consumers. Such documentation shall be made publicly available by the licensed retail dispensary.
4. Onsite laboratory testing by licensees is permissible; however, such testing shall not be certified by the office and does not exempt the licensee from the requirements of quality assurance testing at a testing laboratory pursuant to this section.
5. An owner of a cannabis laboratory testing permit shall not hold a license in any other category within this article and shall not own or have ownership interest in a registered organization registered pursuant to article three of this chapter.
6. The office shall have the authority to require any licensee under this article to submit cannabis or cannabis products to one or more independent laboratories for testing.

§ 81. Provisions governing the cultivation and processing of adult-use cannabis. 1. Cultivation of cannabis must not be visible from a public place by normal unaided vision.
2. No cultivator or processor of adult-use cannabis shall sell, or agree to sell or deliver in the state any cannabis products, as the case may be, except in sealed containers containing quantities in accordance with size standards pursuant to rules adopted by the office. Such containers shall have affixed thereto such labels as may be required by the rules of the office.
3. No cultivator or processor of adult-use cannabis shall furnish or cause to be furnished to any licensee, any exterior or interior sign, printed, painted, electric or otherwise, except as authorized by the office. The office may make such rules as it deems necessary to carry out the purpose and intent of this subdivision.
4. Cultivators of adult-use cannabis shall comply with plant cultivation regulations, standards, and guidelines issued by the office, in consultation with the department of environmental conservation. Such regulations, standards, and guidelines shall be guided by sustainable farming principles and practices such as organic, regenerative, and integrated pest management models, and shall restrict whenever possible, the use of pesticides, herbicides, and fungicides to those which are botanical and/or biological.

5. No cultivator or processor of adult-use cannabis, including an adult-use cannabis cooperative or microbusiness may offer any incentive, payment or other benefit to a licensed cannabis retail dispensary in return for carrying the cultivator, processor, cooperative or microbusiness products, or preferential shelf placement.

6. All cannabis products shall be processed in accordance with good manufacturing processes, pursuant to Part 111 of Title 21 of the Code of Federal Regulations, as may be modified by the executive director in regulation.

7. No processor of adult-use cannabis shall produce any product which, in the discretion of the office, is designed to appeal to anyone under the age of twenty-one years.

8. The use or integration of alcohol or nicotine in cannabis products is strictly prohibited.

§ 82. Provisions governing the distribution of adult-use cannabis. 1. No distributor shall sell, or agree to sell or deliver any cannabis products, as the case may be, in any container, except in a sealed package. Such containers shall have affixed thereto such labels as may be required by the rules of the office.

2. No distributor shall deliver any cannabis products, except in vehicles owned and operated by such distributor, or hired and operated by such distributor from a trucking or transportation company registered with the office, and shall only make deliveries at the licensed premises of the purchaser.

3. Each distributor shall keep and maintain upon the licensed premises, adequate books and records of all transactions involving the business transacted by such distributor, which shall show the amount of cannabis products purchased by such distributor together with the names, license numbers and places of business of the persons from whom the same was purchased and the amount involved in such purchases, as well as the amount of cannabis products sold by such distributor together with the names, addresses, and license numbers of such purchasers. Each sale shall be recorded separately on a numbered invoice, which shall have printed thereon the number, the name of the licensee, the address of the licensed premises, and the current license number. Such distributor shall deliver to the purchaser a true duplicate invoice stating the name and address of the purchaser, the quantity of cannabis products, description by brands and the price of such cannabis products, and a true, accurate and complete statement of the terms and conditions on which such sale is made. Such books, records and invoices shall be kept for a period of five years and shall be available for inspection by any authorized representative of the office.

4. No distributor shall furnish or cause to be furnished to any licensee, any exterior or interior sign, printed, painted, electric or otherwise, unless authorized by the office.

5. No distributor shall provide any discount, rebate or customer loyalty program to any licensed retailer, except as otherwise allowed by the office.
6. The executive director is authorized to promulgate regulations establishing a maximum margin for which a distributor may mark up a cannabis product for sale to a retail dispensary. Any adult-use cannabis product sold by a distributor for more than the maximum markup allowed in regulation, shall be unlawful.

7. Each distributor shall keep and maintain upon the licensed premises, adequate books and records to demonstrate the distributor's actual cost of doing business, using accounting standards and methods regularly employed in the determination of costs for the purpose of federal income tax reporting, for the total operation of the licensee. Such books, records and invoices shall be kept for a period of five years and shall be available for inspection by any authorized representative of the office for use in determining the maximum markup allowed in regulation pursuant to subdivision six of this section.

§ 83. Provisions governing adult-use cannabis retail dispensaries. 1. No cannabis retail licensee shall sell, deliver, or give away or cause or permit or procure to be sold, delivered or given away any cannabis to any person, actually or apparently, under the age of twenty-one years.

2. No cannabis retail licensee shall sell alcoholic beverages, nor have or possess a license or permit to sell alcoholic beverages, on the same premises where cannabis products are sold.

3. No sign of any kind printed, painted or electric, advertising any brand shall be permitted on the exterior or interior of such premises, except by permission of the office.

4. No cannabis retail licensee shall sell or deliver any cannabis products to any person with knowledge of, or with reasonable cause to believe, that the person to whom such cannabis products are being sold, has acquired the same for the purpose of selling or giving them away in violation of the provisions of this chapter or in violation of the rules and regulations of the office.

5. All premises licensed under this section shall be subject to inspection by any peace officer described in subdivision four of section 2.10 of the criminal procedure law acting pursuant to his or her special duties, or police officer or any duly authorized representative of the office, during the hours when the said premises are open for the transaction of business.

6. No cannabis retail licensee shall be interested, directly or indirectly, in any cultivator, processor, distributor or microbusiness operator licensed pursuant to this article, by stock ownership, interlocking directors, mortgage or lien on any personal or real property or by any other means. Any lien, mortgage or other interest or estate, however, now held by such retailer on or in the personal or real property of such manufacturer or distributor, which mortgage, lien, interest or estate was acquired on or before December thirty-first, two thousand eighteen, shall not be included within the provisions of this subdivision; provided, however, the burden of establishing the time of the accrual of the interest comprehended by this subdivision, shall be upon the person who claims to be entitled to the protection and exemption afforded hereby.

7. No cannabis retail licensee shall make or cause to be made any loan to any person engaged in the cultivation, processing or distribution of cannabis pursuant to this article.

8. Each cannabis retail licensee shall designate the price of each item of cannabis by attaching to or otherwise displaying immediately adjacent to each such item displayed in the interior of the licensed
1 premises where sales are made a price tag, sign or placard setting forth
2 the price at which each such item is offered for sale therein.
3 9. No person licensed to sell cannabis products at retail, shall allow
4 or permit any gambling, or offer any gambling on the licensed premises,
5 or allow or permit illicit drug activity on the licensed premises. The
6 use of the licensed premises or any part thereof for the sale of lottery
7 tickets, when duly authorized and lawfully conducted thereon, shall not
8 constitute gambling within the meaning of this subdivision.
9 10. If an employee of a cannabis retail licensee suspects that a
10 cannabis consumer may be abusing cannabis, such an employee shall
11 encourage such cannabis consumer to seek help from a substance use
12 disorder program or harm reduction services. Cannabis retail licensees
13 shall develop standard operating procedures and written materials for
14 employees to utilize when consulting consumers for purposes of this
15 subdivision.
16 11. The executive director is authorized to promulgate regulations
17 governing licensed adult-use dispensing facilities, including but not
18 limited to, the hours of operation, size and location of the licensed
19 facility, potency and types of products offered and establishing a mini-
20 mum margin for which a retail dispensary must markup a cannabis product
21 or products before selling to a cannabis consumer. Any adult-use canna-
22 bis product sold by a retail dispensary for less than the minimum markup
23 allowed in regulation, shall be unlawful.
24 § 84. Adult-use cannabis advertising. 1. The office is hereby author-
25 ized to promulgate rules and regulations governing the advertising and
26 marketing of licensed cannabis and any cannabis products or services.
27 2. The office shall promulgate explicit rules prohibiting advertising
28 that:
29 (a) is false, deceptive, or misleading;
30 (b) promotes overconsumption;
31 (c) depicts consumption by children or other minors;
32 (d) is designed in any way to appeal to children or other minors;
33 (e) is within two hundred feet of the perimeter of a school grounds,
34 playground, child care center, public park, or library;
35 (f) is within two hundred feet of school grounds as such term is
36 defined in section 220.00 of the penal law;
37 (g) is in public transit vehicles and stations;
38 (h) is in the form of an unsolicited internet pop-up;
39 (i) is on publicly owned or operated property; or
40 (j) makes medical claims or promotes adult-use cannabis for a medical
41 or wellness purpose.
42 3. The office shall promulgate explicit rules prohibiting all market-
43 ing strategies and implementation including, but not limited to, brand-
44 ing, packaging, labeling, location of cannabis retailers, and advertise-
45 ments that are designed to:
46 (a) appeal to persons less than twenty-one years of age; or
47 (b) disseminate false or misleading information to customers.
48 4. The office shall promulgate explicit rules requiring that:
49 (a) all advertisements and marketing accurately and legibly identify
50 the licensee or other business responsible for its content; and
51 (b) any broadcast, cable, radio, print and digital communications
52 advertisements only be placed where the audience is reasonably expected
53 to be twenty-one years of age or older, as determined by reliable,
54 up-to-date audience composition data.
55 § 85. Social and economic equity, minority and women-owned businesses,
56 and disadvantaged farmers; incubator program. 1. The office shall
implement a social and economic equity plan and actively promote applicants from communities disproportionately impacted by cannabis prohibition, and promote racial, ethnic, and gender diversity when issuing licenses for adult-use cannabis related activities, including by prioritizing consideration of applications by applicants who are from communities disproportionately impacted by the enforcement of cannabis prohibition or who qualify as a minority or women-owned business, or disadvantaged farmers. Such qualifications shall be determined by the office in regulation.

2. The office shall create a social and economic equity plan to promote diversity in ownership and employment, and opportunities for social and economic equity in the adult-use cannabis industry and ensure inclusion of:
   (a) individuals from communities disproportionately impacted by the enforcement of cannabis prohibition;
   (b) minority-owned businesses;
   (c) women-owned businesses;
   (d) minority and women-owned businesses, as defined in paragraph (d) of subdivision five of this section; and
   (e) disadvantaged farmers, as defined in subdivision five of this section.

3. The social and economic equity plan shall consider additional criteria in its licensing determinations. Under the social and economic equity plan, extra weight shall be given to applications that demonstrate that an applicant:
   (a) is a member of a community disproportionately impacted by the enforcement of cannabis prohibition;
   (b) has an income lower than eighty percent of the median income of the county in which the applicant resides; and
   (c) was convicted of a cannabis-related offense prior to the effective date of this chapter, or had a parent, guardian, child, spouse, or dependent, or was a dependent of an individual who, prior to the effective date of this chapter, was convicted of a cannabis-related offense.

4. The office shall also create an incubator program to provide direct support to social and economic equity applicants to achieve and upon having been granted licenses. The program shall provide direct support in the form of counseling services, education, small business coaching, and compliance assistance.

5. For the purposes of this section, the following definitions shall apply:
   (a) "minority-owned business" shall mean a business enterprise, including a sole proprietorship, partnership, limited liability company or corporation that is:
      (i) at least fifty-one percent owned by one or more minority group members;
      (ii) an enterprise in which such minority ownership is real, substantial and continuing;
      (iii) an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise;
      (iv) an enterprise authorized to do business in this state and independently owned and operated; and
      (v) an enterprise that is a small business.
   (b) "minority group member" shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups:
(i) black persons having origins in any of the black African racial
groups;
(ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban,
Central or South American of either Indian or Hispanic origin, regard-
less of race;
(iii) Native American or Alaskan native persons having origins in any
of the original peoples of North America; or
(iv) Asian and Pacific Islander persons having origins in any of the
far east countries, south east Asia, the Indian subcontinent or the
Pacific islands.
(c) "women-owned business" shall mean a business enterprise, including
a sole proprietorship, partnership, limited liability company or corpo-
ration that is:
(i) at least fifty-one percent owned by one or more United States
citizens or permanent resident aliens who are women;
(ii) an enterprise in which the ownership interest of such women is
real, substantial and continuing;
(iii) an enterprise in which such women ownership has and exercises
the authority to control independently the day-to-day business decisions
of the enterprise;
(iv) an enterprise authorized to do business in this state and inde-
dependently owned and operated; and
(v) an enterprise that is a small business.
(d) a firm owned by a minority group member who is also a woman may be
defined as a minority-owned business, a women-owned business, or both.
(e) "disadvantaged farmer" shall mean a New York state resident or
business enterprise, including a sole proprietorship, partnership,
limited liability company or corporation, that has reported at least
two-thirds of its federal gross income as income from farming, in at
least one of the past five preceding tax years, and who:
(i) farms in a county that has greater than ten percent rate of poverty
according to the latest U.S. Census Bureau's American Communities
Survey;
(ii) has been disproportionately impacted by low commodity prices or
faces the loss of farmland through development or suburban sprawl; and
(iii) meets any other qualifications as defined in regulation by the
office.
(f) "communities disproportionately impacted" shall mean, but not be
limited to, a history of arrests, convictions, and other law enforcement
practices in a certain geographic area, such as, but not limited to,
precincts, zip codes, neighborhoods, and political subdivisions,
reflecting a disparate enforcement of cannabis prohibition during a
certain time period, when compared to the rest of the state. The office
shall, in consultation with the cannabis advisory board, issue guide-
lines to determine how to assess which communities have been dispropor-
ionately impacted and how to assess if someone is a member of a commu-
nity disproportionately impacted.
6. The office shall actively promote applicants that foster racial,
ethnic, and gender diversity in their workforce.
7. Licenses issued under the social and economic equity plan shall not
be transferable except to qualified social and economic equity appli-
cants and only upon prior written approval of the executive director.
8. The office shall collect demographic data on owners and employees
in the adult-use cannabis industry and shall annually publish such data.
§ 86. Regulations. The executive director shall promulgate regulations in consultation with the cannabis advisory board to implement this article.

ARTICLE 5
HEMP EXTRACT

Section 90. Definitions.

1. "Applicant" means a for-profit entity or not-for-profit corporation and includes board members who submit an application to become a licensee.

2. "Hemp extract" means any product made or derived from industrial hemp, including the seeds thereof and all derivatives whether growing or not, with a delta-9-tetrahydrocannabinol concentration of not more than an amount determined by the office in regulation, used or intended for human or animal consumption or use for its cannabinoid content, as determined by the office in regulation. Hemp extract excludes industrial hemp used or intended exclusively for an industrial purpose and those food and/or food ingredients that are generally recognized as safe by the department of agriculture and markets, and shall not be regulated as hemp extract within the meaning of this article.
"Cannabinoid grower" means a person licensed by the office, and in compliance with this article to acquire, possess, cultivate, and sell hemp extract for its cannabinoid content.

"Cannabinoid manufacturer" means a person licensed by the office to acquire, possess, and manufacture hemp extract from licensed cannabinoid growers or cannabinoid extractors for the manufacture and sale of hemp extract products marketed for cannabinoid content and used or intended for human or animal consumption or use.

"Cannabinoid extractor" means a person licensed by the office to acquire, possess, extract and manufacture hemp extract from licensed cannabinoid growers for the manufacture and sale of hemp extract products marketed for cannabinoid content and used or intended for human or animal consumption or use.

"License" means a license issued pursuant to this article.

"Industrial hemp" means the plant Cannabis sativa L. and any part of such plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

§ 91. Rulemaking authority. 1. The office shall perform such acts, prescribe such forms and propose such rules, regulations and orders as it may deem necessary or proper to fully effectuate the provisions of this article.

2. In consultation with the cannabis advisory board and the hemp workgroup, the office shall have the power to promulgate any and all necessary rules and regulations governing the production, processing, transportation, distribution, and sale of hemp extract, including but not limited to the licensing of cannabinoid growers, manufacturers, extractors and retailers, including, but not limited to:

(a) prescribing forms and establishing application, reinstatement, and renewal fees;
(b) the qualifications and selection criteria for licensing, or permitting;
(c) limitations on the number of licenses to be awarded;
(d) the books and records to be created and maintained by licensees, and permittees, including the reports to be made thereon to the office, and inspection of any and all books and records maintained by any licensee, or permittee, and on the premises of any licensee or permittee;
(e) methods of producing, processing, and packaging hemp extract; conditions of sanitation, and standards of ingredients, quality, and identity of hemp extract products cultivated, processed, packaged, or sold by licensees; and
(f) hearing procedures and additional causes for cancellation, revocation, and/or civil penalties against any person licensed, or permitted by the office.

3. The office, in consultation with the department of environmental conservation and the New York state energy research and development agency, shall promulgate necessary rules and regulations governing the safe production of hemp extract, including environmental and energy standards.

§ 92. Cannabinoid related hemp extract licensing. 1. Persons growing, processing, extracting, and/or manufacturing hemp extract or producing hemp extract products distributed, sold or marketed for cannabinoid content and used or intended for human or animal consumption or use, shall be required to obtain the following license or licenses from the office, depending upon the operation:
(a) cannabinoid grower license;
(b) cannabinoid manufacturer license;
(c) cannabinoid extractor license.

2. Notwithstanding subdivision one of this section, those persons growing, processing or manufacturing food or food ingredients from industrial hemp pursuant to article twenty-nine of the agriculture and markets law which food or food ingredients are generally recognized as safe, shall be subject to regulation and/or licensing by the office.

§ 93. Cannabinoid grower licenses. 1. A cannabinoid grower's license authorizes the acquisition, possession, cultivation and sale of hemp extract grown or used for its cannabinoid content on the licensed premises of the grower.

2. A person holding a cannabinoid grower's license shall not sell hemp extract products marketed, distributed or sold for its cannabinoid content and intended for human consumption or use without also being licensed as a manufacturer or extractor pursuant to this article or otherwise permitted pursuant to section ninety-two of this article.

3. Persons growing industrial hemp pursuant to article twenty-nine of the agriculture and markets law are not authorized to and shall not sell hemp extract for human or animal consumption or use, other than as food or a food ingredient that has been generally recognized as safe in accordance with the office and determined by the state to be safe for human consumption as food or a food ingredient without also being licensed as a manufacturer or extractor pursuant to this article or otherwise permitted pursuant to section ninety-two of this article.

4. A person authorized under article twenty-nine of the agriculture and markets law as an industrial hemp grower may apply for a cannabinoid grower license provided he or she can demonstrate to the office that its cultivation of industrial hemp meets all the requirements for hemp extract cultivated under a cannabinoid grower license.

§ 94. Cannabinoid manufacturer license. 1. A cannabinoid manufacturer license authorizes the licensee's acquisition, possession, and manufacture of hemp extract from a licensed cannabinoid grower or cannabinoid extractor for the processing of hemp extract or the production of hemp extract products marketed, distributed or sold for cannabinoid content and used or intended for human or animal consumption or use.

2. Notwithstanding subdivision one of this section, nothing shall prevent a cannabinoid manufacturer from manufacturing industrial hemp products not used or intended for human or animal consumption or use.

§ 95. Cannabinoid extractor license. 1. A cannabinoid extractor license authorizes the licensee's acquisition, possession, extraction and manufacture of hemp extract from a licensed cannabinoid grower for the processing of hemp extract or the production of hemp extract products marketed, distributed or sold for cannabinoid content and used or intended for human or animal consumption or use.

2. No cannabinoid extractor licensee shall engage in any other business on the licensed premises; except that nothing contained in this article shall prevent a cannabinoid extractor licensee from also being licensed as a cannabinoid grower on the same premises.

3. Notwithstanding subdivisions one and two of this section, nothing shall prevent a cannabinoid extractor from manufacturing industrial hemp products not used or intended for human or animal consumption or use.

4. A person authorized under article twenty-nine of the agriculture and markets law as an industrial hemp processor shall qualify for a cannabinoid extractor license provided it can demonstrate to the office
that its extraction of industrial hemp meets all the requirements for
hemp extract under a cannabinoid extractor license.

§ 96. Cannabinoid license applications. 1. Persons shall apply for a
cannabinoid grower license, cannabinoid manufacturer license and/or a
cannabinoid extractor license by submitting an application upon a form
supplied by the office, providing all the requested information, veri-
fied by the applicant or an authorized representative of the applicant.
2. A separate license shall be required for each facility at which
growing, manufacturing and/or extracting is conducted.
3. Each applicant shall remit with its application the fee for each
office requested license.

§ 97. Information to be requested in applications for licenses. 1. The
office shall have the authority to prescribe the manner and form in
which an application must be submitted to the office for licensure under
this article.
2. The executive director is authorized to adopt regulations pursuant
to the state administrative procedure act establishing information which
must be included on an application for licensure under this article.
Such information may include, but is not limited to: information about
the applicant's identity, including racial and ethnic diversity; infor-
mation about prior use of farmland; ownership and investment informa-
tion, including the corporate structure; evidence of good moral charac-
ter, including the submission of fingerprints by the applicant to the
division of criminal justice services; information about the premises to
be licensed; financial statements; and any other information prescribed
in regulation.
3. All license applications shall be signed by the applicant (if an
individual), by a managing partner (if a limited liability corporation),
by an officer (if a corporation), or by all partners (if a partnership).
Each person signing such application shall verify it as true under the
penalties of perjury.
4. All license or permit applications shall be accompanied by a check,
draft or other forms of payment as the office may require or authorize
in the amount required by this article for such license or permit.
5. If there be any change, after the filing of the application or the
granting of a license, in any of the facts required to be set forth in
such application, a supplemental statement giving notice of such change,
cost and source of money involved in the change, duly verified, shall be
filed with the office within ten days after such change. Failure to do
so shall, if willful and deliberate, be cause for revocation of the
license.
6. In giving any notice, or taking any action in reference to a licen-
see of a licensed premises, the office may rely upon the information
furnished in such application and in any supplemental statement
connected therewith, and such information may be presumed to be correct,
and shall be binding upon a licensee or licensed premises as if correct.
All information required to be furnished in such application or supple-
mental statements shall be deemed material in any prosecution for perju-
ry, any proceeding to revoke, cancel or suspend any license, and in the
office's determination to approve or deny the license.
7. The office may, upon documentation therefor, waive the submission
of any category of information described in this section for any catego-
ry of license or permit, provided that it shall not be permitted to
waive the requirement for submission of any such category of information
solely for an individual applicant or applicants.
§ 98. Fees. The office shall have the authority to charge licensees a biennial license fee. Such fee may be based on the amount of hemp extract to be grown, processed, manufactured or extracted by the licensee, the gross annual receipts of the licensee for the previous license period, or any other factors deemed appropriate by the office.

§ 99. Selection criteria. 1. An applicant shall furnish evidence:
   (a) its ability to effectively maintain a delta-9-tetrahydrocannabinol concentration that does not exceed a percentage of delta-9-tetrahydrocannabinol cannabis set by the executive director on a dry weight basis of combined leaves and flowers of the plant of the genus cannabis, or per volume or weight of cannabis product;
   (b) its ability to comply with all applicable state laws and regulations;
   (c) that the applicant is ready, willing and able to properly carry on the activities for which a license is sought; and
   (d) that the applicant is in possession of or has the right to use land, buildings and equipment sufficient to properly carry on the activity described in the application.

2. The office, in considering whether to grant the license application, shall consider whether:
   (a) it is in the public interest that such license be granted, taking into consideration whether the number of licenses will be adequate or excessive to reasonably serve demand;
   (b) the applicant and its managing officers are of good moral character and do not have an ownership or controlling interest in more licenses or permits than allowed by this chapter;
   (c) preference shall be given to applicants that are currently farming in the state and are eligible or currently receiving an agricultural assessment pursuant to article twenty-five-AA of the agriculture and markets law; and
   (d) the applicant satisfies any other conditions as determined by the office.

3. If the executive director is not satisfied that the applicant should be issued a license, the executive director shall notify the applicant in writing of the specific reason or reasons for denial.

4. The executive director shall have authority and sole discretion to determine the number of licenses issued pursuant to this article.

§ 100. Limitations of licensure; duration. 1. No license pursuant to this article may be issued to a person under the age of eighteen years.

2. The office shall have the authority to limit, by canopy, plant count or other means, the amount of hemp extract allowed to be cultivated, processed, extracted or sold by a licensee.

3. All licenses under this article shall expire two years after the date of issue and be subject to any rules or limitations prescribed by the executive director in regulation.

§ 101. License renewal. 1. Each license, issued pursuant to this article, may be renewed upon application therefor by the licensee and the payment of the fee for such license as prescribed by this article.

2. In the case of applications for renewals, the office may dispense with the requirements of such statements as it deems unnecessary in view of those contained in the application made for the original license, but in any event the submission of photographs of the licensed premises shall be dispensed with, provided the applicant for such renewal shall file a statement with the office to the effect that there has been no alteration of such premises since the original license was issued.
3. The office may make such rules as may be necessary, not inconsistent with this chapter, regarding applications for renewals of licenses and permits and the time for making the same.
4. The office shall provide an application for renewal of a license issued under this article not less than ninety days prior to the expiration of the current license.
5. The office may only issue a renewal license upon receipt of the prescribed renewal application and renewal fee from a licensee if, in addition to the criteria in section ninety-seven of this article, the licensee's license is not under suspension and has not been revoked.
6. The office shall have the authority to charge applicants for licensure under this article a non-refundable application fee. Such fee may be based on the type of licensure sought, cultivation and/or production volume, or any other factors deemed reasonable and appropriate by the office to achieve the policy and purpose of this chapter.

§ 102. Form of license. Licenses issued pursuant to this article shall specify:
1. the name and address of the licensee;
2. the activities permitted by the license;
3. the land, buildings and facilities that may be used for the licensed activities of the licensee;
4. a unique license number issued by the department to the licensee; and
5. such other information as the executive director shall deem necessary to assure compliance with this chapter.

§ 103. Amendments to license and duty to update information submitted for licensing. 1. Upon application of a licensee to the office, a license may be amended to allow the licensee to relocate within the state, to add or delete licensed activities or facilities, or to amend the ownership or organizational structure of the entity that is the licensee. The fee for such amendment shall be two hundred fifty dollars.
2. In the event that any of the information provided by the applicant changes either while the application is pending or after the license is granted, within ten days of any such change, the applicant or licensee shall submit to the office a verified statement setting forth the change in circumstances of facts set forth in the application. Failure to do so shall, if willful and deliberate, be cause for revocation of the license.
3. A license shall become void by a change in ownership, substantial corporate change or location without prior written approval of the executive director. The executive director may promulgate regulations allowing for certain types of changes in ownership without the need for prior written approval.
4. For purposes of this section, "substantial corporate change" shall mean:
   (a) for a corporation, a change of eighty percent or more of the officers and/or directors, or a transfer of eighty percent or more of stock of such corporation, or an existing stockholder obtaining eighty percent or more of the stock of such corporation; and
   (b) for a limited liability company, a change of eighty percent or more of the managing members of the company, or a transfer of eighty percent or more of ownership interest in said company, or an existing member obtaining a cumulative of eighty percent or more of the ownership interest in said company.

§ 104. Record keeping and tracking. 1. The executive director shall, by regulation, require each licensee pursuant to this article to adopt
and maintain security, tracking, record keeping, record retention and surveillance systems, relating to all hemp extract at every stage of acquiring, possession, manufacture, transport, sale, or delivery, or distribution by the licensee, subject to regulations of the executive director.

2. Every licensee shall keep and maintain upon the licensed premises, adequate books and records of all transactions involving the licensee and sale of its products, which shall include all information required by rules promulgated by the office.

3. Each sale shall be recorded separately on a numbered invoice, which shall have printed thereon the number, the name of the licensee, the address of the licensed premises, and the current license number.

4. Such books, records and invoices shall be kept for a period of five years and shall be available for inspection by any authorized representative of the office.

§ 105. Inspections and ongoing requirements. All licensees shall be subject to reasonable inspection by the office, in consultation with the department of health, and a person who holds a license must make himself or herself, or an agent thereof, available and present for any inspection required by the office. The office shall make reasonable accommodations so that ordinary business is not interrupted and safety and security procedures are not compromised by the inspection.

§ 106. Packaging and labeling of hemp extract. 1. The office, in consultation with the department of health, is authorized to promulgate rules and regulations governing the packaging and labeling of hemp extract products, sold or possessed for sale in New York state.

2. Such regulations shall include, but not be limited to, requiring labels warning consumers of any potential impact on human health resulting from the consumption of hemp extract products that shall be affixed to those products when sold, if such labels are deemed warranted by the office. No label may state that hemp extract can treat, cure or prevent any disease without approval pursuant to federal law.

3. Such rules and regulations shall establish a QR code which may be used in conjunction with similar technology for labels and establish methods and procedures for determining, among other things, serving sizes for hemp extract products, active cannabinoid concentration per serving size, number of servings per container, and the growing region, state or country of origin if not from the United States. Such regulations shall also require a supplement fact panel that incorporates data regarding serving sizes and potency thereof.

4. The packaging, sale, or possession by any licensee of any hemp product intended for human or animal consumption or use not labeled or offered in conformity with rules and regulations promulgated in accordance with this section shall be grounds for the imposition of a fine, and/or the suspension, revocation or cancellation of a license.

§ 107. Provisions governing the growing, manufacturing and extracting of hemp extract. 1. No licensed cannabinoid grower, manufacturer or extractor shall sell, or agree to sell or deliver in the state any hemp extract products, as the case may be, except in sealed containers containing quantities in accordance with size standards pursuant to rules adopted by the office. Such containers shall have affixed thereto such labels as may be required by the rules of the office.

2. Licensed cannabinoid growers shall be prohibited from using pesticides.

3. All hemp extract products shall be extracted and manufactured in accordance with good manufacturing processes, pursuant to Part 111 or
117 of Title 21 of the Code of Federal Regulations as may be modified and decided upon by the executive director in regulation.

4. Within thirty days of the effective date of this article, the office shall approve the manufacture, distribution, and sale of beverages containing no more than twenty milligrams of cannabidiol per twelve ounce beverage. The hemp extract used in such beverages shall be grown, extracted and manufactured in the state of New York. The office shall issue guidance on the label, warning, point of sale, and advertising for such beverages.

5. Terpenes derived from the hemp plant are generally recognized as safe.

6. Those persons growing, processing or manufacturing food or food ingredients from hemp extracts, which food or food ingredients are generally recognized as safe, shall be subject to regulation and/or licensing under this article.

7. Notwithstanding any other provision of law to the contrary, prepackaged beverages that contain hemp or any part of the hemp plant, including the seeds and all naturally occurring cannabinoids, compounds, concentrates, extracts, isolates, terpenes, resins, isomers, acids, salts, salts of isomers or cannabidiol derivatives, are not considered to be adulterated or misbranded under this article based solely on the inclusion of hemp or any part of the hemp plant as long as the amount of cannabidiol is limited to twenty milligrams per serving. The office shall allow cannabidiol in food products and have the power to alter amounts in beverages on the basis of scientific evidence connected with health effects.

8. The nonpharmaceutical or nonmedical production, marketing, sale or distribution of beverages, food or food products within the state that contain hemp or any part of the hemp plant may not be restricted or prohibited within the state based solely on the inclusion of hemp or any part of the hemp plant.

9. A beverage and/or food producer may not make any claims that a beverage, food or food product that contains hemp can treat, cure or prevent any disease without approval pursuant to federal law.

§ 108. Laboratory testing. 1. Every cannabinoid manufacturer and cannabinoid extractor shall contract with an independent laboratory to test the hemp extract products produced by the licensed manufacturer or extractor. The executive director, in consultation with the commissioner of health, shall approve the laboratory and require that the laboratory report testing results in a manner determined by the executive director. The executive director is authorized to issue regulations requiring the laboratory to perform certain tests and services.

2. Cannabinoid manufacturers and cannabinoid extractors shall make laboratory test reports available to persons holding a cannabinoid permit pursuant to section one hundred twelve of this article for all cannabis products manufactured by the licensee.

3. On-site laboratory testing by licensees is permissible; however, such testing shall not be certified by the office and does not exempt the licensee from the requirements of quality assurance testing at a testing laboratory pursuant to this section.

§ 109. Advertising. The office shall promulgate rules and regulations governing the advertising of hemp extract and any other related products or services as determined by the executive director.

§ 110. Research. 1. The office shall promote research and development through public-private partnerships to bring new hemp extract and industrial hemp derived products to market within the state.
2. The executive director may develop and carry out research programs which may include programs at the New York state college of agriculture and life sciences, pursuant to section fifty-seven hundred twelve of the education law and/or New York state university research institutions relating to industrial hemp and hemp extract.

§ 111. Regulations. The executive director shall in consultation with the cannabis advisory board and the hemp workgroup promulgate regulations pursuant to the state administrative procedure act to implement this article.

§ 112. Cannabinoid permit. The office is hereby authorized to issue cannabinoid permits to retailers, wholesalers, and distributors authorizing them to sell cannabis products derived from hemp extract. The executive director shall have the authority to set fees for such permit, to establish the period during which such permit is authorized, and to make rules and regulations, including emergency regulations, to implement this section.

§ 113. New York hemp product. The executive director may establish and adopt official grades and standards for hemp extract and hemp extract products as he or she may deem advisable, which are produced for sale in this state and, from time to time, may amend or modify such grades and standards.

§ 114. Penalties and violations of this article. Notwithstanding the provision of any law to the contrary, the failure to comply with the requirements of this article, the rules and regulations promulgated thereunder, may be punishable by a fine of not more than one thousand dollars for a first violation; not more than five thousand dollars for a second violation; and not more than ten thousand dollars for a third violation and each subsequent violation thereafter.

§ 115. Hemp workgroup. The executive director shall appoint a New York state industrial hemp and hemp extract workgroup, composed of researchers, producers, processors, manufacturers and trade associations, to make recommendations for the industrial hemp and hemp extract programs, state and federal policies and policy initiatives, and opportunities for the promotion and marketing of industrial hemp and hemp extract as consistent with federal and state laws, rules and regulations, which workgroup shall continue for such time as the executive director deems appropriate.

§ 116. Prohibitions. Except as authorized in this article, the manufacturing of hemp extract for human or animal consumption and the distribution and/or sale thereof is prohibited in this state unless the manufacturer is licensed under this article. Hemp extract and products derived therefrom for human and animal consumption produced outside the state shall not be distributed or sold in this state unless they meet all standards and requirements established for such product manufactured in the state under this article and its rules and regulations as determined by the office.

ARTICLE 6
GENERAL PROVISIONS

Section 125. General prohibitions and restrictions.

126. License to be confined to premises licensed; premises for which no license shall be granted; transporting cannabis.

127. Protections for the use of cannabis; unlawful discriminations prohibited.

128. Registrations and licenses.
129. Laboratory testing permits.
130. Special use permits.
131. Professional and medical record keeping.
132. Local opt-out; municipal control and preemption.
133. Personal cultivation.
134. Executive director to be necessary party to certain proceedings.
135. Penalties for violation of this chapter.
136. Revocation of registrations, licenses and permits for cause; procedure for revocation or cancellation.
137. Lawful actions pursuant to this chapter.
138. Review by courts.
139. Illicit cannabis.
140. Persons forbidden to traffic cannabis; certain officials not to be interested in manufacture or sale of cannabis products.
141. Access to criminal history information through the division of criminal justice services.
142. Severability.
§ 125. General prohibitions and restrictions. 1. No person shall cultivate, process, or distribute for sale or sell at wholesale or retail any cannabis, cannabis product, medical cannabis or hemp extract product within the state without obtaining the appropriate registration, license, or permit therefor required by this chapter.
2. No registered organization, licensee, or permittee shall sell, or agree to sell or deliver in this state any cannabis or hemp extract for the purposes of resale to any person who is not duly registered, licensed or permitted pursuant to this chapter to sell such product, at wholesale or retail, as the case may be, at the time of such agreement and sale.
3. No registered organization, licensee, or permittee shall employ, or permit to be employed, or shall allow to work, on any premises registered or licensed for retail sale hereunder, any person under the age of twenty-one years in any capacity where the duties of such person require or permit such person to sell, dispense or handle cannabis.
4. No registered organization, licensee, or permittee shall sell, deliver or give away, or cause, permit or procure to be sold, delivered or given away any cannabis, cannabis product, or medical cannabis on credit; except that a registered organization, licensee or permittee may accept third party credit cards for the sale of any cannabis, cannabis product, or medical cannabis for which it is registered, licensed or permitted to dispense or sell to patients or cannabis consumers. This includes, but is not limited to, any consignment sale of any kind.
5. No registered organization, licensee, or permittee shall cease to be operated as a bona fide or legitimate premises within the contemplation of the registration, license, or permit issued for such premises, as determined within the judgment of the office.
6. No registered organization, licensee, or permittee shall refuse, nor any person holding a registration, license, or permit refuse, nor any officer or director of any corporation or organization holding a registration, license, or permit refuse, to appear and/or testify under oath at an inquiry or hearing held by the office, with respect to any matter bearing upon the registration, license, or permit, the conduct of any people at the licensed premises, or bearing upon the character or fitness of such registrant, licensee, or permittee to continue to hold
any registration, license, or permit. Nor shall any of the above offer false testimony under oath at such inquiry or hearing.

7. No registered organization, licensee, or permittee shall engage, participate in, or aid or abet any violation or provision of this chapter, or the rules or regulations of the office.

8. The proper conduct of registered, licensed, or permitted premises is essential to the public interest. Failure of a registered organization, licensee, or permittee to exercise adequate supervision over the registered, licensed, or permitted location poses a substantial risk not only to the objectives of this chapter but imperils the health, safety, and welfare of the people of this state. It shall be the obligation of each person registered, licensed, or permitted under this chapter to ensure that a high degree of supervision is exercised over any and all conduct at any registered, licensed, or permitted location at any and all times in order to safeguard against abuses of the privilege of being registered, licensed, or permitted, as well as other violations of law, statute, rule, or regulation. Persons registered, licensed, or permitted shall be held strictly accountable for any and all violations that occur upon any registered, licensed, or permitted premises, and for any and all violations committed by or permitted by any manager, agent or employee of such registered, licensed, or permitted person.

9. It shall be unlawful for any person, partnership or corporation operating a place for profit or pecuniary gain, with a capacity for the assemblage of twenty or more persons to permit a person or persons to come to the place of assembly for the purpose of cultivating, processing, distributing, or retail distribution or sale of cannabis on said premises. This includes, but is not limited, to, cannabis that is either provided by the operator of the place of assembly, his agents, servants or employees, or cannabis that is brought onto said premises by the person or persons assembling at such place, unless an appropriate registration, license, or permit has first been obtained from the office of cannabis management by the operator of said place of assembly.

10. As it is a privilege under the law to be registered, licensed, or permitted to cultivate, process, distribute, or sell cannabis, the office may impose any such further restrictions upon any registrant, licensee, or permittee in particular instances as it deems necessary to further state policy and best serve the public interest. A violation or failure of any person registered, licensed, or permitted to comply with any condition, stipulation, or agreement, upon which any registration, license, or permit was issued or renewed by the office shall subject the registrant, licensee, or permittee to suspension, cancellation, revocation, and/or civil penalties as determined by the office.

11. No adult-use cannabis or medical cannabis may be imported to, or exported out of, New York state by a registered organization, licensee or person holding a license and/or permit pursuant to this chapter, until such time as it may become legal to do so under federal law. Should it become legal to do so under federal law, the office is granted the power to promulgate such rules and regulations as it deems necessary to protect the public and the policy of the state.

12. No registered organization, licensee or any of its agents, servants or employees shall sell any cannabis product, or medical cannabis from house to house by means of a truck or otherwise, where the sale is consummated and delivery made concurrently at the residence or place of business of a cannabis consumer. This subdivision shall not prohibit the delivery by a registered organization to certified patients or their designated caregivers, pursuant to article three of this chapter.
13. No licensee shall employ any canvasser or solicitor for the purpose of receiving an order from a certified patient, designated caregiver or cannabis consumer for any cannabis product, or medical cannabis at the residence or place of business of such patient, caregiver or consumer, nor shall any licensee receive or accept any order, for the sale of any cannabis product, or medical cannabis which shall be solicited at the residence or place of business of a patient, caregiver or consumer. This subdivision shall not prohibit the solicitation by a distributor of an order from any licensee at the licensed premises of such licensee.

§ 126. License to be confined to premises licensed; premises for which no license shall be granted; transporting cannabis. 1. A registration, license, or permit issued to any person, pursuant to this chapter, for any registered, licensed, or permitted premises shall not be transferable to any other person, to any other location or premises, or to any other building or part of the building containing the licensed premises except in the discretion of the office. All privileges granted by any registration, license, or permit shall be available only to the person therein specified, and only for the premises licensed and no other except if authorized by the office. Provided, however, that the provisions of this section shall not be deemed to prohibit the amendment of a registration or license as provided for in this chapter. A violation of this section shall subject the registration, license, or permit to revocation for cause.

2. Where a registration or license for premises has been revoked, the office in its discretion may refuse to issue a registration, license, or permit under this chapter, for a period of up to five years after such revocation, for such premises or for any part of the building containing such premises and connected therewith.

3. In determining whether to issue such a proscription against granting any registration, license, or permit for such five-year period, in addition to any other factors deemed relevant to the office, the office shall, in the case of a license revoked due to the illegal sale of cannabis to a minor, determine whether the proposed subsequent licensee has obtained such premises through an arm's length transaction, and, if such transaction is not found to be an arm's length transaction, the office shall deny the issuance of such license.

4. For purposes of this section, "arm's length transaction" shall mean a sale of a fee of all undivided interests in real property, lease, management agreement, or other agreement giving the applicant control over the cannabis at the premises, or any part thereof, in the open market, between an informed and willing buyer and seller where neither is under any compulsion to participate in the transaction, unaffected by any unusual conditions indicating a reasonable possibility that the sale was made for the purpose of permitting the original licensee to avoid the effect of the revocation. The following sales shall be presumed not to be arm's length transactions unless adequate documentation is provided demonstrating that the sale, lease, management agreement, or other agreement giving the applicant control over the cannabis at the premises, was not conducted, in whole or in part, for the purpose of permitting the original licensee to avoid the effect of the revocation:

(a) a sale between relatives;
(b) a sale between related companies or partners in a business; or
(c) a sale, lease, management agreement, or other agreement giving the applicant control over the cannabis at the premises, affected by other facts or circumstances that would indicate that the sale, lease, manage-
ment agreement, or other agreement giving the applicant control over the
cannabis at the premises, is entered into for the primary purpose of
permitting the original licensee to avoid the effect of the revocation.
5. No registered organization, licensee or permittee shall transport
cannabis products or medical cannabis except in vehicles owned and oper-
ated by such registered organization, licensee or permittee, or hired
and operated by such registered organization, licensee or permittee from
a trucking or transportation company permitted and registered with the
office.
6. No common carrier or person operating a transportation facility in
this state, other than the United States government, shall receive for
transportation or delivery within the state any cannabis products or
medical cannabis unless the shipment is accompanied by copy of a bill of
lading, or other document, showing the name and address of the consig-
nor, the name and address of the consignee, the date of the shipment,
and the quantity and kind of cannabis products or medical cannabis
contained therein.
§ 127. Protections for the use of cannabis; unlawful discriminations
prohibited. 1. No person, registered organization, licensee or permit-
tee, employees, or their agents shall be subject to arrest, prosecution,
or penalty in any manner, or denied any right or privilege, including
but not limited to civil liability or disciplinary action by a business
or occupational or professional licensing board or office, solely for
conduct permitted under this chapter. For the avoidance of doubt, the
appellate division of the supreme court of the state of New York, and
any disciplinary or character and fitness committees established by them
are occupational and professional licensing boards within the meaning of
this section. State or local law enforcement agencies shall not cooper-
ate with or provide assistance to the government of the United States or
any agency thereof in enforcing the federal controlled substances act
solely for actions consistent with this chapter, except as pursuant to a
valid court order.
2. No school or landlord may refuse to enroll or lease to and may not
otherwise penalize a person solely for conduct allowed under this chap-
ter, except as exempted:
(a) if failing to do so would cause the school or landlord to lose a
monetary or licensing related benefit under federal law or regulations;
(b) if the institution has adopted a code of conduct prohibiting
cannabis use on the basis of religious belief; or
(c) if a property is registered with the New York smoke-free housing
registry, it is not required to permit the smoking of cannabis products
on its premises.
3. For the purposes of medical care, including organ transplants, a
certified patient's authorized use of medical cannabis must be consid-
ered the equivalent of the use of any other medication under the direc-
tion of a practitioner and does not constitute the use of an illicit
substance or otherwise disqualify a registered qualifying patient from
medical care.
4. It is the public policy of the state of New York to prohibit
employers from discriminating against employees for legal activities
occurring outside of the workplace. Nothing in this section shall inter-
fere with an employer's obligation to provide a safe and healthy work
place, free from recognized hazards, as required by state and federal
occupation safety and health law or require an employer to commit any
act that would cause the employer to be in violation of any other feder-
al law, or that would result in the loss of a federal contract or federal funding.

5. For the purposes of this section, an employer may consider an employee’s ability to perform the employee’s job responsibilities to be impaired when the employee manifests specific articulable symptoms while working that decrease or lessen the employee’s performance of the duties or tasks of the employee’s job position.

6. Nothing in this section shall restrict an employer’s ability to prohibit or take adverse employment action for the possession or use of intoxicating substances during work hours, or require an employer to commit any act that would cause the employer to be in violation of federal law, or that would result in the loss of a federal contract or federal funding.

7. As used in this section, "adverse employment action" means refusing to hire or employ, barring or discharging from employment, requiring a person to retire from employment, or discriminating against in compensation or in terms, conditions, or privileges of employment.

8. A person currently under parole, probation or other state supervision, or released on bail awaiting trial may not be punished or otherwise penalized for conduct allowed under this chapter.

9. No person may be denied custody of or visitation or parenting time with a minor, and there is no presumption of neglect or child endangerment for conduct allowed under section 222.05 of the penal law, unless the person’s behavior creates an unreasonable danger to the safety of the minor as established by clear and convincing evidence. For the purposes of this section, an "unreasonable danger" determination cannot be based solely on whether, when, and how often a person uses cannabis without separate evidence of harm.

§ 128. Registrations and licenses. 1. No registration or license shall be transferable or assignable except that notwithstanding any other provision of law, the registration or license of a sole proprietor converting to corporate form, where such proprietor becomes the sole stockholder and only officer and director of such new corporation, may be transferred to the subject corporation if all requirements of this chapter remain the same with respect to such registration or license as transferred and, further, the registered organization or licensee shall transmit to the office, within ten days of the transfer of license allowable under this subdivision, on a form prescribed by the office, notification of the transfer of such license.

2. No registration or license shall be pledged or deposited as collateral security for any loan or upon any other condition; and any such pledge or deposit, and any contract providing therefor, shall be void.

3. Licenses issued under this chapter shall contain, in addition to any further information or material to be prescribed by the rules of the office, the following information:
   (a) name of the person to whom the license is issued;
   (b) type of license and what type of cannabis commerce is thereby permitted;
   (c) description by street and number, or otherwise, of licensed premises; and
   (d) a statement in substance that such license shall not be deemed a property or vested right, and that it may be revoked at any time pursuant to law.

§ 129. Laboratory testing permits. 1. The executive director shall approve and permit one or more independent cannabis testing laboratories to test medical cannabis, adult-use cannabis and/or hemp extract.
2. To be permitted as an independent cannabis laboratory, a laboratory must apply to the office, on a form and in a manner prescribed by the office, and must demonstrate the following to the satisfaction of the executive director:

(a) the owners and directors of the laboratory are of good moral character;
(b) the laboratory and its staff has the skills, resources and expertise needed to accurately and consistently perform all of the testing required for adult-use cannabis, medical cannabis and/or hemp extract;
(c) the laboratory has in place and will maintain adequate policies, procedures, and facility security to ensure proper: collection, labeling, accessioning, preparation, analysis, result reporting, disposal and storage of adult-use cannabis, and/or medical cannabis;
(d) the laboratory is physically located in New York state;
(e) the laboratory has been approved by the department of health pursuant to Part 55-2 of Title 10 of the New York Codes, Rules and Regulations, pertaining to laboratories performing environmental analysis; and
(f) the laboratory meets any and all requirements prescribed by this chapter and by the executive director in regulation.

3. The owner of a laboratory testing permit under this section shall not hold a registration or license in any category of this chapter and shall not have any direct or indirect ownership interest in such registered organization or licensee. No board member, officer, manager, owner, partner, principal stakeholder or member of a registered organization or licensee under this chapter, or such person's immediate family member, shall have an interest or voting rights in any laboratory testing permittee.

4. The executive director shall require that the permitted laboratory report testing results to the office in a manner, form and timeframe as determined by the executive director.

5. The executive director is authorized to promulgate regulations, requiring permitted laboratories to perform certain tests and services.

6. A laboratory granted a laboratory testing permit under this chapter shall not required to be licensed by the federal drug enforcement agency.

§ 130. Special use permits. The office is hereby authorized to issue the following kinds of permits for carrying on activities consistent with the policy and purpose of this chapter with respect to cannabis. The executive director has the authority to set fees for all permits issued pursuant to this section, to establish the periods during which permits are authorized, and to make rules and regulations, including emergency regulations, to implement this section.

1. Industrial cannabis permit - to purchase cannabis from one of the entities licensed by the office for use in the manufacture and sale of any of the following, when such cannabis is not otherwise suitable for consumption purposes, namely: (a) apparel, energy, paper, and tools; (b) scientific, chemical, mechanical and industrial products; or (c) any other industrial use as determined by the executive director in regulation.

2. Trucking permit - to allow for the trucking or transportation of cannabis products, or medical cannabis by a person other than a registered organization or licensee under this chapter.

3. Warehouse permit - to allow for the storage of cannabis, cannabis products, or medical cannabis at a location not otherwise registered or licensed by the office.
4. Cannabinoid permit - to sell cannabinoid products for off-premises consumption.

5. Temporary retail cannabis permit - to authorize the retail sale of adult-use cannabis to cannabis consumers, for a limited purpose or duration.

6. Caterer's permit - to authorize the service of cannabis products at a function, occasion or event in a hotel, restaurant, club, ballroom or other premises, which shall authorize within the hours fixed by the office, during which cannabis may lawfully be sold or served on the premises in which such function, occasion or event is held.

7. Packaging permit - to authorize a licensed cannabis distributor to sort, package, label and bundle cannabis products from one or more registered organizations or licensed processors, on the premises of the licensed cannabis distributor or at a warehouse for which a permit has been issued under this section.

8. Miscellaneous permits - to purchase, receive or sell cannabis, cannabis products or medical cannabis, or receipts, certificates, contracts or other documents pertaining to cannabis, cannabis products, or medical cannabis, in cases not expressly provided for by this chapter, when in the judgment of the office it would be appropriate and consistent with the policy and purpose of this chapter.

§ 131. Professional and medical record keeping. Any professional providing services in connection with a licensed or potentially licensed business under this chapter, or in connection with other conduct permitted under this chapter, and any medical professional providing medical care to a patient, other than a certified patient, may agree with their client or patient to maintain no record, or any reduced level of record keeping that professional and client or patient may agree. In case of such agreement, the professional's only obligation shall be to keep such records as agreed, and to keep a record of the agreement. Such reduced record keeping is conduct permitted under this chapter.

§ 132. Local opt-out; municipal control and preemption. 1. The provisions of article four of this chapter, authorizing the cultivation, processing, distribution and sale of adult-use cannabis to cannabis consumers, shall not be applicable to a town, city or village which, after a mandatory referendum held pursuant to section twenty-three of the municipal home rule law, adopts a local law to prohibit the establishment or operation of one or more types of licenses contained in article four of this chapter, within the jurisdiction of the town, city or village. Provided, however, that any town law shall apply to the area of the town outside of any village within such town.

2. Except as provided for in subdivision one of this section, all county, town, city and village governing bodies are hereby preempted from adopting any rule, ordinance, regulation or prohibition pertaining to the operation or licensure of registered organizations, adult-use cannabis licenses or hemp licenses. However, municipalities may pass local laws and ordinances governing the time, place and manner of licensed adult-use cannabis retail dispensaries, provided such ordinance or regulation does not make the operation of such licensed retail dispensaries unreasonably impracticable as determined by the executive director in consultation with the cannabis advisory board.

§ 133. Personal cultivation. 1. Notwithstanding any provision of law to the contrary, a person over the age of twenty-one shall be able to plant, cultivate, harvest, dry or process cannabis for personal use subject to the following restrictions:
(a) all cultivation and processing shall be done in accordance with local ordinances; and
(b) the living plants and any cannabis produced by the plants in excess of three ounces must be kept within the person's private residence, or upon the grounds of that private residence (e.g., in an outdoor garden area), in a locked space, and not visible by normal unaided vision from a public place; and
(c) not more than six living plants may be planted, cultivated, harvested, dried or processed within a single private residence, or upon the grounds of that private residence, at one time.

2. A town, city or village may enact and enforce regulations to reasonably regulate the actions and conduct under this section. Regulations may not completely prohibit persons engaging in conduct made lawful under subdivision one of this section.

3. A violation of subdivision one of this section is a misdemeanor, punishable under section 222.10 of the penal law and subject to a local fine of not more than one hundred dollars.

§ 134. Executive director to be necessary party to certain proceedings. The executive director shall be made a party to all actions and proceedings affecting in any manner the ability of a registered organization or licensee to operate within a municipality, or the result of any vote thereupon; to all actions and proceedings relative to issuance or revocation of registrations, licenses or permits; to all injunction proceedings, and to all other civil actions or proceedings which in any manner affect the enjoyment of the privileges or the operation of the restrictions provided for in this chapter.

§ 135. Penalties for violation of this chapter. 1. Any person who cultivates for sale or sells cannabis, cannabis products, or medical cannabis without having an appropriate registration, license or permit therefor, or whose registration, license, or permit has been revoked, surrendered or cancelled, shall be subject to conviction as provided by article two hundred twenty-two of the penal law.

2. Any registered organization or licensee, whose registration or license has been suspended pursuant to the provisions of this chapter, who sells cannabis, cannabis products, medical cannabis or hemp extract during the suspension period, shall be subject to conviction as provided by article two hundred twenty-two of the penal law, and upon conviction thereof shall be punished by a fine of not more than five thousand dollars per instance.

3. Any person who shall make any false statement in the application for a registration, license or a permit under this chapter shall be subject to a fine of not more than five thousand dollars.

4. Any violation by any person of any provision of this chapter for which no punishment or penalty is otherwise provided shall be a misdemeanor.

5. Any person under the age of twenty-one found to be in possession of cannabis or cannabis products that is not a patient registered pursuant to article three of this chapter shall be in violation of this chapter and shall be subject to the following penalty:

(a) (i) The person shall be subject to a fine of not more than twenty-five dollars. The fine shall be payable to the office of cannabis management.

(ii) Any identifying information provided by the enforcement agency for the purpose of facilitating payment of the fine shall not be shared or disclosed under any circumstances with any other agency or law enforcement division.
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(b) The person shall, upon payment of the required fine, be provided with information related to the dangers of underage use of cannabis and information related to cannabis use disorder by the office of cannabis management.

c) The issuance and subsequent payment of such fine shall in no way qualify as a criminal accusation, admission of guilt, or a criminal conviction and shall in no way operate as a disqualification of any such person from holding public office, attaining public employment, or as a forfeiture of any right or privilege.

6. Cannabis recovered from individuals who are found to be in violation of this chapter shall be considered a nuisance and shall be disposed of or destroyed.

§ 136. Revocation of registrations, licenses and permits for cause; procedure for revocation or cancellation. 1. Any registration, license or permit issued pursuant to this chapter may be revoked, cancelled, suspended and/or subjected to the imposition of a civil penalty for cause, and must be revoked for the following causes:

(a) conviction of the registered organization, licensee, permittee or his or her agent or employee for selling any illegal cannabis on the premises registered, licensed or permitted; or

(b) for transferring, assigning or hypothecating a registration, license or permit without prior written approval of the office.

2. Notwithstanding the issuance of a registration, license or permit by way of renewal, the office may revoke, cancel or suspend such registration, license or permit and/or may impose a civil penalty against any holder of such registration, license or permit, as prescribed by this section, for causes or violations occurring during the license period immediately preceding the issuance of such registration, license or permit.

3. (a) As used in this section, the term "for cause" shall also include the existence of a sustained and continuing pattern of misconduct, failure to adequately prevent diversion or disorder on or about the registered, licensed or permitted premises, or in the area in front of or adjacent to the registered or licensed premises, or in any parking lot provided by the registered organization or licensee for use by registered organization or licensee's patrons, which, in the judgment of the office, adversely affects or tends to affect the protection, health, welfare, safety, or repose of the inhabitants of the area in which the registered or licensed premises is located, or results in the licensed premises becoming a focal point for police attention, or is offensive to public decency.

(b) (i) As used in this subdivision, the term "for cause" shall also include deliberately misleading the authority:

(A) as to the nature and character of the business to be operated by the registered organization, licensee or permittee; or

(B) by substantially altering the nature or character of such business during the registration or licensing period without seeking appropriate approvals from the office.

(ii) As used in this subdivision, the term "substantially altering the nature or character" of such business shall mean any significant alteration in the scope of business activities conducted by a registered organization, licensee or permittee that would require obtaining an alternate form of registration, license or permit.

4. As used in this chapter, the existence of a sustained and continuing pattern of misconduct, failure to adequately prevent diversion or disorder on or about the premises may be presumed upon the sixth inci-
dent reported to the office by a law enforcement agency, or discovered
by the office during the course of any investigation, of misconduct,
diversion or disorder on or about the premises or related to the opera-
tion of the premises, absent clear and convincing evidence of either
fraudulent intent on the part of any complainant or a factual error with
respect to the content of any report concerning such complaint relied
upon by the office.

5. Notwithstanding any other provision of this chapter to the contra-
ry, a suspension imposed under this section against the holder of a
registration issued pursuant to article three of this chapter, shall
only suspend the licensed activities related to the type of cannabis,
medical cannabis or adult-use cannabis involved in the violation result-
ing in the suspension.

6. Any registration, license or permit issued by the office pursuant
to this chapter may be revoked, cancelled or suspended and/or be
subjected to the imposition of a monetary penalty in the manner
prescribed by this section and by the executive director in regulation.

7. The office may on its own initiative, or on complaint of any
person, institute proceedings to revoke, cancel or suspend any adult-use
cannabis retail dispensary license or adult-use cannabis on-site
consumption license and may impose a civil penalty against the licensee
after a hearing at which the licensee shall be given an opportunity to
be heard. Such hearing shall be held in such manner and upon such notice
as may be prescribed in regulation by the executive director.

8. All other registrations, licenses or permits issued under this
chapter may be revoked, cancelled, suspended and/or made subject to the
imposition of a civil penalty by the office after a hearing to be held
in such manner and upon such notice as may be prescribed in regulation
by the executive director.

9. Where a licensee or permittee is convicted of two or more qualify-
ing offenses within a five-year period, the office, upon receipt of
notification of such second or subsequent conviction, shall, in addition
to any other sanction or civil or criminal penalty imposed pursuant to
this chapter, impose on such licensee a civil penalty not to exceed ten
thousand dollars. For purposes of this subdivision, a qualifying
offense shall mean the unlawful sale of cannabis to a person under the
age of twenty-one. For purposes of this subdivision, a conviction of a
licensee or an employee or agent of such licensee shall constitute a
conviction of such licensee.

§ 137. Lawful actions pursuant to this chapter. 1. Contracts related
to the operation of registered organizations, licenses and permits under
this chapter shall be lawful and shall not be deemed unenforceable on
the basis that the actions permitted pursuant to the registration,
license or permit are prohibited by federal law.

2. The following actions are not unlawful as provided under this chap-
ter, shall not be an offense under any state or local law, and shall not
result in any civil fine, seizure, or forfeiture of assets, or be the
basis for detention or search against any person acting in accordance
with this chapter:
(a) Actions of a registered organization, licensee, or permittee, or
the employees or agents of such registered organization, licensee or
permittee, as permitted by this chapter and consistent with rules and
regulations of the office, pursuant to a valid registration, license or
permit issued by the office.
(b) Actions of those who allow property to be used by a registered
organization, licensee, or permittee, or the employees or agents of such
registered organization, licensee or permittee, as permitted by this chapter and consistent with rules and regulations of the office, pursuant to a valid registration, license or permit issued by the office.

(c) Actions of any person or entity, their employees, or their agents providing a service to a registered organization, licensee, permittee or a potential registered organization, licensee, or permittee, as permitted by this chapter and consistent with rules and regulations of the office, relating to the formation of a business.

(d) The purchase, possession, or consumption of cannabis, and medical cannabis, as permitted by law, and consistent with rules and regulations of the office.

§ 138. Review by courts. 1. The following actions by the office, and only the following actions by the office, shall be subject to review by the supreme court in the manner provided in article seventy-eight of the civil practice law and rules:

(a) Refusal by the office to issue a registration, license, or a permit.

(b) The revocation, cancellation or suspension of a registration, license, or permit by the office.

(c) The failure or refusal by the office to render a decision upon any application or hearing submitted to or held by the office within sixty days after such submission or hearing.

(d) The transfer by the office of a registration, license, or permit to any other entity or premises, or the failure or refusal by the office to approve such a transfer.

(e) Refusal to approve alteration of premises.

(f) Refusal to approve a corporate change in stockholders, stockholders, officers or directors.

2. No stay shall be granted pending the determination of such matter except on notice to the office and only for a period of less than thirty days. In no instance shall a stay be granted where the office has issued a summary suspension of a registration, license, or permit for the protection of the public health, safety, and welfare.

§ 139. Illicit cannabis. 1. "Illicit cannabis" means and includes any cannabis product, or medical cannabis owned, cultivated, distributed, bought, sold, packaged, rectified, blended, treated, fortified, mixed, processed, warehoused, possessed or transported, or on which any tax required to have been paid under any applicable state law has not been paid.

2. Any person who shall knowingly possess or have under his or her control any cannabis known by the person to be illicit cannabis is guilty of a misdemeanor.

3. Any person who shall knowingly barter or exchange with, or sell, give or offer to sell or to give another any cannabis known by the person to be illicit cannabis is guilty of a misdemeanor.

4. Any person who shall possess or have under his or her control or transport any cannabis known by the person to be illicit cannabis with intent to barter or exchange with, or to sell or give to another the same or any part thereof is guilty of a misdemeanor. Such intent is presumptively established by proof that the person knowingly possessed or had under his or her control one or more ounces of illicit cannabis. This presumption may be rebutted.

5. Any person who, being the owner, lessee, or occupant of any room, shed, tenement, booth or building, float or vessel, or part thereof, knowingly permits the same to be used for the cultivation, processing,
distribution, purchase, sale, warehousing, transportation, or storage of any illicit cannabis, is guilty of a misdemeanor.

§ 140. Persons forbidden to traffic cannabis; certain officials not to be interested in manufacture or sale of cannabis products. 1. The following are forbidden to traffic in cannabis:

(a) An individual who has been convicted of an offense related to the functions or duties of owning and operating a business within three years of the application date, except that if the office determines that the owner or licensee is otherwise suitable to be issued a license, and granting the license would not compromise public safety, the office shall conduct a thorough review of the nature of the crime, conviction, circumstances and evidence of rehabilitation of the owner, and shall evaluate the suitability of the owner or licensee to be issued a license based on the evidence found through the review. In determining which offenses are substantially related to the functions or duties of owning and operating a business, the office shall include, but not be limited to, the following:

(i) a felony conviction involving fraud, money laundering, forgery and other unlawful conduct related to owning and operating a business; and
(ii) a felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor.

(b) A person under the age of twenty-one years;

(c) A person who is not a citizen of the United States or an alien lawfully admitted for permanent residence in the United States;

(d) A partnership or a corporation, unless each member of the partnership, or each of the principal officers and directors of the corporation, is a citizen of the United States or an alien lawfully admitted for permanent residence in the United States, not less than twenty-one years of age; provided however that a corporation which otherwise conforms to the requirements of this section and chapter may be licensed if each of its principal officers and more than one-half of its directors are citizens of the United States or aliens lawfully admitted for permanent residence in the United States; and provided further that a corporation organized under the not-for-profit corporation law or the education law which otherwise conforms to the requirements of this section and chapter may be licensed if each of its principal officers and directors are not less than twenty-one years of age; and provided, further, that a corporation organized under the not-for-profit corporation law or the education law and located on the premises of a college as defined by section two of the education law which otherwise conforms to the requirements of this section and chapter may be licensed if each of its principal officers and directors are not less than twenty-one years of age;

(e) A person who shall have had any registration or license issued under this chapter revoked for cause, until the expiration of two years from the date of such revocation;

(f) A person not registered or licensed under the provisions of this chapter, who has been convicted of a violation of this chapter, until the expiration of two years from the date of such conviction; or

(g) A corporation or partnership, if any officer and director or any partner, while not licensed under the provisions of this chapter, has been convicted of a violation of this chapter, or has had a registration
or license issued under this chapter revoked for cause, until the ex-
   piration of two years from the date of such conviction or revocation.

2. Except as may otherwise be provided for in regulation, it shall be
   unlawful for any police commissioner, police inspector, captain,
   sergeant, roundsman, patrolman or other police official or subordinate
   of any police department in the state, to be either directly or indi-
   rectly interested in the cultivation, processing, distribution, or sale
   of cannabis products or to offer for sale, or recommend to any regis-
   tered organization or licensee any cannabis products. A person may not
   be denied any registration or license granted under the provisions of
   this chapter solely on the grounds of being the spouse of a public serv-
   ant described in this section. The solicitation or recommendation made
   to any registered organization or licensee, to purchase any cannabis
   products by any police official or subordinate as hereinabove described,
   shall be presumptive evidence of the interest of such official or subor-
   dinate in the cultivation, processing, distribution, or sale of cannabis
   products.

3. No elective village officer shall be subject to the limitations set
   forth in subdivision two of this section unless such elective village
   officer shall be assigned duties directly relating to the operation or
   management of the police department.

§ 141. Access to criminal history information through the division of
criminal justice services. In connection with the administration of
this chapter, the executive director is authorized to request, receive
and review criminal history information through the division of criminal
justice services with respect to any person seeking a registration,
license, permit or authorization to cultivate, process, distribute or
sell medical cannabis, adult use cannabis or hemp extract. At the execu-
tive director's request, each person, member, principal and/or officer
of the applicant shall submit to the office his or her fingerprints in
such form and in such manner as specified by the division, for the
purpose of conducting a criminal history search and returning a report
thereon in accordance with the procedures and requirements established
by the division pursuant to the provisions of article thirty-five of the
executive law, which shall include the payment of the prescribed proc-
essing fees for the cost of the division's full search and retain proce-
dures and a national criminal history record check. The executive direc-
tor, or his or her designee, shall submit such fingerprints and the
processing fee to the division. The division shall forward to the execu-
tive director a report with respect to the applicant's previous criminal
history, if any, or a statement that the applicant has no previous crim-
inal history according to its files. Fingerprints submitted to the divi-
sion pursuant to this subdivision may also be submitted to the federal
bureau of investigation for a national criminal history record check. If
additional copies of fingerprints are required, the applicant shall
furnish them upon request.

§ 142. Severability. If any provision of this chapter or application
thereof to any person or circumstances is held invalid, such invalidity
shall not affect other provisions or applications of this chapter that
can be given effect without the invalid provision or application, and to
this end the provisions of this chapter are declared severable.

§ 3. Section 3302 of the public health law, as added by chapter 878 of
the laws of 1972, subdivisions 1, 14, 16, 17 and 27 as amended and
subdivisions 4, 5, 6, 7, 8, 11, 12, 13, 15, 18, 19, 20, 21, 22, 23, 24,
25, 26, 28, 29 and 30 as renumbered by chapter 537 of the laws of 1998,
subdivisions 9 and 10 as amended and subdivisions 34, 35, 36, 37, 38, 39
and as added by chapter 178 of the laws of 2010, paragraph (a) of subdivision 20, the opening paragraph of subdivision 22 and subdivision 29 as amended by chapter 163 of the laws of 1973, subdivision 31 as amended by section 4 of part A of chapter 58 of the laws of 2004, subdivision 41 as added by section 6 of part A of chapter 447 of the laws of 2012, and subdivisions 42 and 43 as added by section 13 of part D of chapter 60 of the laws of 2014, is amended to read as follows:

§ 3302. Definitions of terms of general use in this article. Except where different meanings are expressly specified in subsequent provisions of this article, the following terms have the following meanings:

1. "Addict" means a person who habitually uses a controlled substance for a non-legitimate or unlawful use, and who by reason of such use is dependent thereon.

2. "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject.

3. "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. No person may be authorized to so act if under title VIII of the education law such person would not be permitted to engage in such conduct. It does not include a common or contract carrier, public warehouser, or employee of the carrier or warehouser when acting in the usual and lawful course of the carrier's or warehouser's business.

4. "Concentrated Cannabis" means (a) the separated resin, whether crude or purified, obtained from a plant of the genus Cannabis; or

(b) a material, preparation, mixture, compound or other substance which contains more than two and one-half percent by weight of delta-9 tetrahydrocannabinol, or its isomer, delta-8 dibenzopyran numbering system, or delta-1 tetrahydrocannabinol or its isomer, delta 1 (6) monoterpen numbering system.

5. "Controlled substance" means a substance or substances listed in section thirty-three hundred six of this chapter.


7. "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.

8. "Department" means the department of health of the state of New York.

9. "Dispense" means to deliver a controlled substance to an ultimate user or research subject by lawful means, including by means of the internet, and includes the packaging, labeling, or compounding necessary to prepare the substance for such delivery.

10. "Distribute" means to deliver a controlled substance, including by means of the internet, other than by administering or dispensing.

11. "Distributor" means a person who distributes a controlled substance.

12. "Diversion" means manufacture, possession, delivery or use of a controlled substance by a person or in a manner not specifically authorized by law.

13. "Drug" means (a) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;
[2b] substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; and
[2c] substances (other than food) intended to affect the structure or a function of the body of man or animal. It does not include devices or their components, parts, or accessories.

[14.] 13. "Federal agency" means the Drug Enforcement Administration, United States Department of Justice, or its successor agency.


[16.] 15. "Federal registration number" means such number assigned by the Federal agency to any person authorized to manufacture, distribute, sell, dispense or administer controlled substances.

[17.] 16. "Habitual user" means any person who is, or by reason of repeated use of any controlled substance for non-legitimate or unlawful use is in danger of becoming, dependent upon such substance.

[18.] 17. "Institutional dispenser" means a hospital, veterinary hospital, clinic, dispensary, maternity home, nursing home, mental hospital or similar facility approved and certified by the department as authorized to obtain controlled substances by distribution and to dispense and administer such substances pursuant to the order of a practitioner.

[19.] 18. "License" means a written authorization issued by the department or the New York state department of education permitting persons to engage in a specified activity with respect to controlled substances.

[20.] 19. "Manufacture" means the production, preparation, propagation, compounding, cultivation, conversion or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation, compounding, packaging or labeling of a controlled substance:

(a) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(b) by a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or

(c) by a pharmacist as an incident to his dispensing of a controlled substance in the course of his professional practice.

[21.] "Marihuana" means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

[22.] 20. "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable
origin, or independently by means of chemical synthesis, or by a combi-
 nation of extraction and chemical synthesis:
(a) opium and opiate, and any salt, compound, derivative, or prepara-
tion of opium or opiate;
(b) any salt, compound, isomer, derivative, or preparation thereof
which is chemically equivalent or identical with any of the substances
referred to in subdivision paragraph (a) of this subdivision, but not
including the isoquinoline alkaloids of opium;
(c) opium poppy and poppy straw.
[23.] 21. "Opiate" means any substance having an addiction-forming or
addiction-sustaining liability similar to morphine or being capable of
conversion into a drug having addiction-forming or addiction-sustaining
liability. It does not include, unless specifically designated as
controlled under section thirty-three hundred six of this title, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and
its salts (dextromethorphan). It does include its racemic and levorota-
tory forms.
[24.] 22. "Opium poppy" means the plant of the species Papaver
somniferum L., except its seeds.
[25.] 23. "Person" means individual, institution, corporation, govern-
ment or governmental subdivision or agency, business trust, estate,
trust, partnership or association, or any other legal entity.
[26.] 24. "Pharmacist" means any person licensed by the state depart-
ment of education to practice pharmacy.
[27.] 25. "Pharmacy" means any place registered as such by the New
York state board of pharmacy and registered with the Federal agency
pursuant to the federal controlled substances act.
[28.] 26. "Poppy straw" means all parts, except the seeds, of the
opium poppy, after mowing.
[29.] 27. "Practitioner" means:
A physician, dentist, podiatrist, veterinarian, scientific investi-
gator, or other person licensed, or otherwise permitted to dispense,
administer or conduct research with respect to a controlled substance in
the course of a licensed professional practice or research licensed
pursuant to this article. Such person shall be deemed a "practitioner"
only as to such substances, or conduct relating to such substances, as
is permitted by his license, permit or otherwise permitted by law.
[30.] 28. "Prescribe" means a direction or authorization, by
prescription, permitting an ultimate user lawfully to obtain controlled
substances from any person authorized by law to dispense such
substances.
[31.] 29. "Prescription" shall mean an official New York state
prescription, an electronic prescription, an oral prescription[, or an
out-of-state prescription[ or any one].
[32.] 30. "Sell" means to sell, exchange, give or dispose of to anoth-
er, or offer or agree to do the same.
[33.] 31. "Ultimate user" means a person who lawfully obtains and
possesses a controlled substance for his own use or the use by a member
of his household or for an animal owned by him or in his custody. It
shall also mean and include a person designated, by a practitioner on a
prescription, to obtain such substance on behalf of the patient for whom
such substance is intended.
[34.] 32. "Internet" means collectively computer and telecommu-
nications facilities which comprise the worldwide network of networks that
employ a set of industry standards and protocols, or any predecessor or
successor protocol to such protocol, to exchange information of all
kinds. "Internet," as used in this article, also includes other networks, whether private or public, used to transmit information by electronic means.

35. "By means of the internet" means any sale, delivery, distribution, or dispensing of a controlled substance that uses the internet, is initiated by use of the internet or causes the internet to be used.

36. "Online dispenser" means a practitioner, pharmacy, or person in the United States that sells, delivers or dispenses, or offers to sell, deliver, or dispense, a controlled substance by means of the internet.

37. "Electronic prescription" means a prescription issued with an electronic signature and transmitted by electronic means in accordance with regulations of the commissioner and the commissioner of education and consistent with federal requirements. A prescription generated on an electronic system that is printed out or transmitted via facsimile is not considered an electronic prescription and must be manually signed.

38. "Electronic" means of or relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities. "Electronic" shall not include facsimile.

39. "Electronic record" means a paperless record that is created, generated, transmitted, communicated, received or stored by means of electronic equipment and includes the preservation, retrieval, use and disposition in accordance with regulations of the commissioner and the commissioner of education and in compliance with federal law and regulations.

40. "Electronic signature" means an electronic sound, symbol, or process, attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the record, in accordance with regulations of the commissioner and the commissioner of education.

41. "Registry" or "prescription monitoring program registry" means the prescription monitoring program registry established pursuant to section thirty-three hundred forty-three-a of this article.

42. "Compounding" means the combining, admixing, mixing, diluting, pooling, reconstituting, or otherwise altering of a drug or bulk drug substance to create a drug with respect to an outsourcing facility under section 503B of the federal Food, Drug and Cosmetic Act and further defined in this section.

43. "Outsourcing facility" means a facility that: (a) is engaged in the compounding of sterile drugs as defined in section sixty-eight hundred two of the education law; (b) is currently registered as an outsourcing facility pursuant to article one hundred thirty-seven of the education law; and (c) complies with all applicable requirements of federal and state law, including the Federal Food, Drug and Cosmetic Act.

Notwithstanding any other provision of law to the contrary, when an outsourcing facility distributes or dispenses any drug to any person pursuant to a prescription, such outsourcing facility shall be deemed to be providing pharmacy services and shall be subject to all laws, rules and regulations governing pharmacies and pharmacy services.

§ 4. Paragraphs 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32 of subdivision (d) of schedule I of section 3306 of the public health law, paragraphs 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 as added by chapter 664 of the laws of
the laws of 1996 and paragraphs 31 and 32 as added by chapter 457 of the laws of 2006, are amended to read as follows:

(13) [Marihuana.
(14)] Mescaline.

(15) Parahexyl. Some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo{b,d} pyran.

(16) Peyote. Meaning all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds or extracts.

(17) Ethylamine analog of phencyclidine. Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine cyclohexamine, PCE.

(18) Pyrrolidine analog of phencyclidine. Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine; PCPy, PHP.

(19) Thiophene analog of phencyclidine. Some trade or other names: 1-{1-(2-thienyl)-cyclohexyl}-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP.

(20) 3,4-methylenedioxyxymethamphetamine (MDMA).

(21) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4 (methylenedioxy) phenethylamine, N-ethyl MDA, MDE, MDEA.

(22) 1-{1- (2-thienyl) cyclohexyl} pyrrolidine. Some other names: TCPY.

(23) Alpha-ethyltryptamine. Some trade or other names: etryptamine; Monase; Alpha-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; Alpha-ET or AET.

(24) 2,5-dimethoxy-4-ethylamphetamine. Some trade or other names: DOET.

(25) 4-Bromo-2,5-dimethoxyphenethylamine. Some trade or other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B, Nexus.

(26) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), its optical isomers, salts and salts of isomers.
§ 5. Section 3382 of the public health law is REPEALED.

§ 6. Title 5-A of article 33 of the public health law is REPEALED.

§ 7. Paragraph (d) of subdivision 3, subdivision 3-a and paragraphs (a) and (b) of subdivision 11 of section 1311 of the civil practice law and rules, paragraph (d) of subdivision 3 and subdivision 3-a as added by chapter 655 of the laws of 1990 and paragraphs (a) and (b) of subdivision 11 as amended by section 47 of part A1 of chapter 56 of the laws of 2010, are amended to read as follows:

(d) In a forfeiture action commenced by a claiming authority against a defendant, the following rebuttable presumption shall apply: all currency or negotiable instruments payable to the bearer shall be presumed to be the proceeds of a pre-conviction forfeiture crime when such currency or negotiable instruments are (i) found in close proximity to a controlled substance unlawfully possessed by the defendant in an amount sufficient to constitute a violation of section 220.18 or 220.21 of the penal law, or (ii) found in close proximity to any quantity of a controlled substance [or marihuana] unlawfully possessed by such defendant in a room, other than a public place, under circumstances evincing an intent to unlawfully mix, compound, distribute, package or otherwise prepare for sale such controlled substance [or marihuana].

3-a. Conviction of a person in a criminal action upon an accusatory instrument which includes one or more of the felonies specified in subdivision four-b of section thirteen hundred ten of this article, of any felony other than such felonies, shall not preclude a defendant, in any subsequent proceeding under this article where that conviction is at issue, from adducing evidence that the conduct underlying the conviction would not establish the elements of any of the felonies specified in such subdivision other than the one to which the criminal defendant pled guilty. If the defendant does adduce such evidence, the burden shall be upon the claiming authority to prove, by clear and convincing evidence, that the conduct underlying the criminal conviction would establish the elements of the felony specified in such subdivision. Nothing contained in this subdivision shall affect the validity of a settlement of any forfeiture action negotiated between the claiming authority and a criminal defendant contemporaneously with the taking of a plea of guilty in a criminal action to any felony defined in article two hundred twenty [or section 221.30 or 221.55] of the penal law, or to a felony conspiracy to commit the same.

(a) Any stipulation or settlement agreement between the parties to a forfeiture action shall be filed with the clerk of the court in which the forfeiture action is pending. No stipulation or settlement agreement shall be accepted for filing unless it is accompanied by an affidavit from the claiming authority that written notice of the stipulation or settlement agreement, including the terms of such, has been given to the office of victim services, the state division of criminal justice services[, and in the case of a forfeiture based on a felony defined in article two hundred twenty or section 221.30 or 221.55 of the penal law, to the state division of substance abuse services].

(b) No judgment or order of forfeiture shall be accepted for filing unless it is accompanied by an affidavit from the claiming authority that written notice of judgment or order, including the terms of such, has been given to the office of victim services, the state division of criminal justice services[, and in the case of a forfeiture based on a felony defined in article two hundred twenty or section 221.30 or 221.55 of the penal law, to the state division of substance abuse services].
§ 8. Subdivision 1 of section 3397-b of the public health law, as added by chapter 810 of the laws of 1980, is amended to read as follows:

1. ["Marijuana"] "Cannabis" means [marijuana] cannabis as defined in section thirty-three hundred two of this chapter, subdivision six of section 220.00 of the penal law and shall also include tetrahydrocannabinols or a chemical derivative of tetrahydrocannabinol.

§ 9. Section 114-a of the vehicle and traffic law, as added by chapter 163 of the laws of 1973, is amended to read as follows:

§ 114-a. Drug. The term "drug" when used in this chapter, means and includes any substance listed in section thirty-three hundred six of the public health law and any substance or combination of substances that impair physical and mental abilities.

§ 10. Subdivisions 5, 6 and 9 of section 220.00 of the penal law, subdivision 5 as amended by chapter 537 of the laws of 1998, subdivision 6 as amended by chapter 1051 of the laws of 1973 and subdivision 9 as amended by chapter 664 of the laws of 1985, are amended and two new subdivisions 21 and 22 are added to read as follows:

5. "Controlled substance" means any substance listed in schedule I, II, III, IV or V of section thirty-three hundred six of the public health law other than [marihuana] cannabis, but including concentrated cannabis as defined in [paragraph (a) of subdivision four of section thirty-three hundred two of such law] subdivision twenty-one of this section.

6. ["Marihuana"] "Cannabis" means [marihuana] or "concentrated cannabis" as those terms are defined in section thirty-three hundred two of the public health law, all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. It does not include all parts of the plant Cannabis sativa L., whether growing or not, having no more than three-tenths of one percent tetrahydrocannabinol (THC).

9. "Hallucinogen" means any controlled substance listed in [schedule I(d) paragraphs (5), (18), (19), (20), (21) and (22)] (17), (18), (19), (20) and (21) of subdivision (d) of schedule I of section thirty-three hundred six of the public health law.

21. "Concentrated cannabis" means:

(a) the separated resin, whether crude or purified, obtained from a plant of the genus Cannabis; or
(b) a material, preparation, mixture, compound or other substance which contains more than three percent by weight of delta-9 tetrahydrocannabinol, or its isomer, delta-8 dibenzopyran numbering system, or delta-1 tetrahydrocannabinol or its isomer, delta 1 (6) monoterpen numbering system.

22. "Cannabis products" means cannabis, concentrated cannabis, and cannabis-infused products containing concentrated cannabis and other ingredients.

§ 11. Subdivision 4 of section 220.06 of the penal law, as amended by chapter 537 of the laws of 1998, is amended to read as follows:

4. one or more preparations, compounds, mixtures or substances containing concentrated cannabis as defined in [paragraph (a) of subdi-
vision four of section thirty-three hundred two of the public health law subdivision twenty-one of section 220.00 of this article and said preparations, compounds, mixtures or substances are of an aggregate weight of one-fourth ounce or more; or

§ 12. Subdivision 10 of section 220.09 of the penal law, as amended by chapter 537 of the laws of 1998, is amended to read as follows:

10. one or more preparations, compounds, mixtures or substances containing concentrated cannabis as defined in [paragraph (a) of subdivision four of section thirty-three hundred two of the public health law subdivision twenty-one of section 220.00 of this article and said preparations, compounds, mixtures or substances are of an aggregate weight of one ounce or more; or

§ 13. Subdivision 3 of section 220.34 of the penal law, as amended by chapter 537 of the laws of 1998, is amended to read as follows:

3. concentrated cannabis as defined in [paragraph (a) of subdivision four of section thirty-three hundred two of the public health law subdivision twenty-one of section 220.00 of this article; or

§ 14. Section 220.50 of the penal law, as amended by chapter 627 of the laws of 1990, is amended to read as follows:

§ 220.50 Criminally using drug paraphernalia in the second degree.

A person is guilty of criminally using drug paraphernalia in the second degree when he knowingly possesses or sells:

1. Diluents, dilutants or adulterants, including but not limited to, any of the following: quinine hydrochloride, mannitol, mannite, lactose or dextrose, adapted for the dilution of narcotic drugs or stimulants under circumstances evincing an intent to use, or under circumstances evincing knowledge that some person intends to use, the same for purposes of unlawfully mixing, compounding, or otherwise preparing any narcotic drug or stimulant, other than cannabis or concentrated cannabis; or

2. Gelatine capsules, glassine envelopes, vials, capsules or any other material suitable for the packaging of individual quantities of narcotic drugs or stimulants under circumstances evincing an intent to use, or under circumstances evincing knowledge that some person intends to use, the same for the purpose of unlawfully manufacturing, packaging or dispensing of any narcotic drug or stimulant, other than cannabis or concentrated cannabis; or

3. Scales and balances used or designed for the purpose of weighing or measuring controlled substances, under circumstances evincing an intent to use, or under circumstances evincing knowledge that some person intends to use, the same for purpose of unlawfully manufacturing, packaging or dispensing of any narcotic drug or stimulant, other than cannabis or concentrated cannabis.

Criminally using drug paraphernalia in the second degree is a class A misdemeanor.

§ 15. Article 221 of the penal law is REPEALED.

§ 16. The penal law is amended by adding a new article 222 to read as follows:

ARTICLE 222

CANNABIS

Section 222.00 Cannabis; definitions.

222.05 Personal use of cannabis.

222.10 Unlawful cultivation of cannabis.

222.15 Licensing of cannabis production and distribution.

222.20 Unlawful possession of cannabis.

222.25 Unlicensed sale of cannabis in the second degree.
§ 222.00 Cannabis; definitions.
1. "Cannabis" means all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. It does not include all parts of the plant Cannabis sativa L., whether growing or not, having no more than three-tenths of one percent tetrahydrocannabinol (THC).
2. "Concentrated cannabis" means:
   (a) the separated resin, whether crude or purified, obtained from a plant of the genus Cannabis; or
   (b) a material, preparation, mixture, compound or other substance which contains more than three percent by weight of delta-9 tetrahydrocannabinol, or its isomer, delta-8 dibenzopyran numbering system, or delta-1 tetrahydrocannabinol or its isomer, delta-1 (6) monoterpene numbering system.
3. "Cannabis-infused products" means products that have been manufactured and contain either cannabis or concentrated cannabis and other ingredients that are intended for use or consumption.
4. "Mature cannabis plant" means a cannabis plant with observable flowers or buds.
5. For the purposes of this article, "sale" shall mean to sell, exchange or dispose of for compensation. "Sale" shall not include the transfer of cannabis, concentrated cannabis or cannabis-infused product between persons twenty-one years of age or older without compensation in the quantities authorized in paragraph (b) of subdivision one of section 222.05 of this article.
§ 222.05 Personal use of cannabis.
Notwithstanding any other provision of law to the contrary:
1. The following acts are lawful for persons twenty-one years of age or older: (a) possessing, displaying, purchasing, obtaining, or transporting up to three ounces of cannabis and up to twenty-four grams of concentrated cannabis, or equivalent amount of cannabis-infused products;
   (b) transferring, without compensation, to a person twenty-one years of age or older, up to three ounces of cannabis and up to twenty-four grams of concentrated cannabis, or equivalent amount of cannabis-infused products;
   (c) using, smoking, ingesting, or consuming cannabis, concentrated cannabis or cannabis-infused products unless otherwise prohibited by state law or regulation;
   (d) possessing, using, displaying, purchasing, obtaining, manufacturing, transporting or giving to any person twenty-one years of age or older cannabis paraphernalia or concentrated cannabis paraphernalia; and
(e) assisting another person who is twenty-one years of age or older, or allowing property to be used, in any of the acts described in paragraphs (a) through (d) of this subdivision.

2. Cannabis, concentrated cannabis, cannabis-infused products, cannabis paraphernalia or concentrated cannabis paraphernalia involved in any way with conduct deemed lawful by this section are not contraband nor subject to seizure or forfeiture of assets under article four hundred eighty of this chapter, section thirteen hundred eleven of the civil practice law and rules, or other applicable law, and no conduct deemed lawful by this section shall constitute the basis for approach, search, seizure, arrest or detention.

3. Except as provided in subdivision four of this section, none of the following shall, individually or in combination with each other, constitute reasonable suspicion of a crime or be used as evidence of probable cause in any criminal proceeding against a defendant twenty-one years of age or older:
   (a) the odor of cannabis or of burnt cannabis;
   (b) the possession of or the suspicion of possession of cannabis, concentrated cannabis or cannabis-infused products in the amounts authorized in this section;
   (c) the possession of multiple containers of cannabis without evidence of possession of more than three ounces of cannabis, twenty-four grams of concentrated cannabis or the equivalent amount of cannabis-infused products; or
   (d) the presence of cash or currency in proximity to cannabis, concentrated cannabis or cannabis-infused products.

4. Subdivision three of this section shall not apply when a law enforcement officer is investigating: (a) an alleged offense pursuant to section 222.20, 222.25, 222.30, 222.35 or 222.40 of this article; or (b) whether a person is operating or in physical control of a vehicle or watercraft while intoxicated, under the influence of, or impaired by alcohol or a drug or any combination thereof in violation of article thirty-one of the vehicle and traffic law.

5. (a) Nothing in this section shall be construed to permit any person to:
   (i) smoke cannabis in public;
   (ii) smoke cannabis products in a location where smoking tobacco is prohibited pursuant to section thirteen hundred ninety-nine-o of the public health law;
   (iii) possess, smoke or ingest cannabis products in or upon the grounds of any school property used for school purposes which is owned by or leased to any elementary or secondary school or school board while children are present; or
   (iv) smoke or ingest cannabis products while driving, operating a motor vehicle, boat, vessel, aircraft, or other vehicle used for transportation.

   (b) For purposes of this section:
   (i) "Smoke" means to inhale, exhale, burn, or carry any lighted or heated device or pipe, or any other lighted or heated cannabis or concentrated cannabis product intended for inhalation, whether natural or synthetic, in any manner or in any form.
   (ii) "Smoke" does not include the use of an electronic smoking device that creates an aerosol or vapor, unless local or state statutes extend prohibitions on smoking to electronic smoking devices.
(c) Violations of the restrictions under this subdivision are subject to a fine not exceeding twenty-five dollars or an appropriate amount of community service not to exceed twenty hours.

§ 222.10 Unlawful cultivation of cannabis.
A person is guilty of unlawful cultivation of cannabis when he or she knowingly and unlawfully plants, cultivates, harvests, dries, or processes cannabis on public lands or otherwise in violation of article six of the cannabis law.

Unlawful cultivation of cannabis is a class B misdemeanor.

§ 222.15 Licensing of cannabis production and distribution.
The criminal penalties pursuant to the provisions of this article for possessing, manufacturing, transporting, distributing, selling or transferring cannabis, concentrated cannabis or cannabis-infused products shall not apply to any person engaged in such activity in compliance with the cannabis law.

§ 222.20 Unlawful possession of cannabis.
A person is guilty of unlawful possession of cannabis when he or she knowingly and unlawfully possesses:
1. cannabis and such cannabis weighs more than three ounces; or
2. concentrated cannabis and such concentrated cannabis weighs more than twenty-four grams; or
3. equivalent amount of cannabis-infused products.
Unlawful possession of cannabis is a violation punishable by a fine of not more than one hundred twenty-five dollars.

§ 222.25 Unlicensed sale of cannabis in the second degree.
1. A person is guilty of unlicensed sale of cannabis in the second degree when he or she knowingly and unlawfully sells up to three ounces of cannabis, or twenty-four grams of concentrated cannabis or equivalent amount of cannabis-infused products.
2. A violation of this section is subject to the following penalties, as applicable:
   (a) violation punishable by a fine of not more than one hundred twenty-five dollars;
   (b) if, within the previous five years, the defendant was convicted of the crime of unlicensed sale of cannabis in the first degree, sale of cannabis to a person less than twenty-one years of age in the second degree, sale of cannabis to a person less than twenty-one years of age in the first degree or this section, then a violation punishable by a fine of not more than two hundred fifty dollars for a second such offense; or
   (c) if, within the previous five years, the defendant was convicted of the crime of unlicensed sale of cannabis in the first degree, sale of cannabis to a person less than twenty-one years of age in the second degree, sale of cannabis to a person less than twenty-one years of age in the first degree or this section, then a class B misdemeanor for such third or subsequent offense.

§ 222.30 Unlicensed sale of cannabis in the first degree.
1. A person is guilty of unlicensed sale of cannabis in the first degree when he or she knowingly and unlawfully sells more than three ounces of cannabis, more than twenty-four grams of concentrated cannabis or the equivalent amount of cannabis-infused products.
2. A violation of this section is subject to the following penalties, as applicable:
   (a) a violation punishable by a fine of not more than two hundred fifty dollars;
§ 222.35 Sale of cannabis to a person less than twenty-one years of age in the second degree.

A person twenty-one years of age or older is guilty of the sale of cannabis to a person less than twenty-one years of age in the second degree when, being twenty-one years of age or older, he or she knowingly and unlawfully sells cannabis, concentrated cannabis or cannabis-infused products to a person less than twenty-one years of age.

Sale of cannabis to a person under twenty-one years of age in the second degree is a class A misdemeanor.

§ 222.40 Sale of cannabis to a person less than twenty-one years of age in the first degree.

A person twenty-one years of age and older is guilty of the sale of cannabis to a person under twenty-one years of age in the first degree when, being twenty-one years of age or older, he or she knowingly and unlawfully sells more than three ounces of cannabis, more than twenty-four grams of concentrated cannabis or the equivalent amount of cannabis-infused products.

Sale of cannabis to a person less than twenty-one years of age in the first degree is a class E felony.

§ 17. Subdivision 8 of section 1399-n of the public health law, as amended by chapter 13 of the laws of 2003, is amended to read as follows:

8. "Smoking" means the burning of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco or cannabis; provided that it does not include the use of an electronic smoking device that creates an aerosol or vapor, unless local or state statutes extend prohibitions on smoking to electronic smoking devices.

§ 18. Section 1.20 of the criminal procedure law is amended by adding a new subdivision 45 to read as follows:

45. "Expunge" means, where an arrest and any enforcement activity connected with that arrest, including prosecution and any disposition in any New York state court, is deemed a nullity and the accused is restored, in contemplation of the law, to the status such individual occupied before the arrest and/or prosecution; that records of such arrest, prosecution and/or disposition shall be marked as expunged or shall be destroyed as set forth in section 160.50 of this chapter. Neither the arrest nor prosecution and/or disposition, if any, of a matter deemed a nullity shall operate as a disqualification of any person so accused to pursue or engage in any lawful activity, occupation, profession or calling. Except where specifically required or permitted by statute or upon specific authorization of a superior court, no such person shall be required to divulge information pertaining to the arrest, prosecution and/or disposition of such a matter.
§ 19. Subdivision 1 of section 160.50 of the criminal procedure law, as amended by chapter 169 of the laws of 1994, paragraph (d) as amended by chapter 449 of the laws of 2015, is amended and a new subdivision 1-a is added to read as follows:

1. Upon the termination of a criminal action or proceeding against a person in favor of such person, as defined in subdivision three of this section, unless the district attorney upon motion with not less than five days notice to such person or his or her attorney demonstrates to the satisfaction of the court that the interests of justice require otherwise, or the court on its own motion with not less than five days notice to such person or his or her attorney determines that the interests of justice require otherwise and states the reasons for such determination on the record, [the record of such action or proceeding shall be sealed and the clerk of the court wherein such criminal action or proceeding was terminated shall immediately notify the commissioner of the division of criminal justice services and the heads of all appropriate police departments and other law enforcement agencies that the action has been terminated in favor of the accused, and unless the court has directed otherwise, that the record of such action or proceeding shall be sealed. Upon receipt of notification of such termination and sealing] such action or proceeding shall be deemed a nullity and records of such action or proceeding expunged, and the clerk of the court wherein such criminal action or proceeding was terminated shall immediately notify the commissioner of the division of criminal justice services and the heads of all appropriate police departments and other law enforcement agencies that the action has been terminated in favor of the accused and deemed a nullity, and unless the court has directed otherwise, that the record of or relating to such action or proceeding shall be immediately expunged as follows:

(a) every photograph of such person and photographic plate or proof, and all palmprints and fingerprints, retina scans or DNA material taken or made of such person pursuant to the provisions of this article in regard to the action or proceeding terminated, [except a dismissal pursuant to section 170.56 or 210.46 of this chapter,] and all duplicates and copies thereof, except a digital fingerprint image where authorized pursuant to paragraph (e) of this subdivision, shall forthwith be[, at the discretion of the recipient agency, either] destroyed [or returned to such person, or to the attorney who represented such person] at the time of the termination of the action or proceeding[, at the address given by such person or attorney during the action or proceeding,] by the division of criminal justice services and by any police department or law enforcement agency having any such photograph, photographic plate or proof, palmprint [or], fingerprints, retina scans or DNA material in its possession or under its control;

(b) any police department or law enforcement agency, including the division of criminal justice services, which transmitted or otherwise forwarded to any agency of the United States or of any other state or of any other jurisdiction outside the state of New York copies of any such photographs, photographic plates or proofs, palmprints [and] fingerprints, retina scans or DNA material, including those relating to actions or proceedings which were dismissed pursuant to section 170.56 or 210.46 of this [chapter] part, shall forthwith formally [request in] inform them in writing that [all such copies be destroyed or returned to the police department or law enforcement agency which transmitted or forwarded them, and, if returned, such department or agency shall, at its discretion, either destroy or return them as provided herein, except
that those relating to dismissals pursuant to section 170.56 or 210.46 of this chapter shall not be destroyed or returned by such department or agency; the matter has been expunged and request in writing that all such copies be destroyed;

(c) all official records and papers, including judgments and orders of a court but not including published court decisions or opinions or records and briefs on appeal, relating to the arrest or prosecution, including all duplicates and copies thereof, on file with the division of criminal justice services, any court, police agency, or prosecutor's office shall be [sealed and not made available to any person or public or private agency] marked as expunged by conspicuously indicating on the face of the record or at the beginning of the digitized file of the record that the record has been designated as expunged. Such records and papers shall be sealed and not be made available to any person, except the individual whose case has been deemed a nullity or their designated agent as set forth in paragraph (d) of this subdivision, or to any public or private agency;

(d) [such] records set forth in paragraph (c) of this subdivision shall be made available to the person accused or to such person's designated agent, and shall be made available to (i) a prosecutor in any proceeding in which the accused has moved for an order pursuant to section 170.56 or 210.46 of this [chapter] part, or (ii) a law enforcement agency upon ex parte motion in any superior court, or in any district court, city court or the criminal court of the city of New York provided that such court originally sealed or expunged the record, if such agency demonstrates to the satisfaction of the court that justice requires that such records be made available to it, or (iii) any state or local officer or agency with responsibility for the issuance of licenses to possess guns, when the accused has made application for such a license, or (iv) the New York state department of corrections and community supervision when the accused is on parole supervision as a result of conditional release or a parole release granted by the New York state board of parole, and the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision, or (v) any prospective employer of a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of this chapter, in relation to an application for employment as a police officer or peace officer; provided, however, that every person who is an applicant for the position of police officer or peace officer shall be furnished with a copy of all records obtained under this paragraph and afforded an opportunity to make an explanation thereto, or (vi) the probation department responsible for supervision of the accused when the arrest which is the subject of the inquiry is one which occurred while the accused was under such supervision; and

(e) where fingerprints subject to the provisions of this section have been received by the division of criminal justice services and have been filed by the division as digital images, such images may be retained, provided that a fingerprint card of the individual is on file with the division which was not [sealed] destroyed pursuant to this section or section 160.55 of this article.

(1-a) Cases previously sealed pursuant to this section shall be deemed expunged, and digital records shall be so marked.

§ 20. Paragraphs (i), (j) and (k) of subdivision 3 of section 160.50 of the criminal procedure law, paragraphs (i) and (j) as added by chapter 905 of the laws of 1977, paragraph (k) as added by chapter 835 of
the laws of 1977 and as relettered by chapter 192 of the laws of 1980
and such subdivision as renumbered by chapter 142 of the laws of 1991,
are amended to read as follows:

(i) prior to the filing of an accusatory instrument in a local crimi-
nal court against such person, the prosecutor elects not to prosecute
such person. In such event, the prosecutor shall serve a certification
of such disposition upon the division of criminal justice services and
upon the appropriate police department or law enforcement agency which,
on receipt thereof, shall comply with the provisions of paragraphs
(a), (b), (c) and (d) of subdivision one of this section in the same
manner as is required thereunder with respect to an order of a court
entered pursuant to said subdivision one[.]; or

(j) following the arrest of such person, the arresting police agency,
prior to the filing of an accusatory instrument in a local criminal
court but subsequent to the forwarding of a copy of the fingerprints of
such person to the division of criminal justice services, elects not to
proceed further. In such event, the head of the arresting police agency
shall serve a certification of such disposition upon the division of
criminal justice services which, upon receipt thereof, shall comply with
the provisions of paragraphs (a), (b), (c) and (d) of subdivision one of
this section in the same manner as is required thereunder with respect
to an order of a court entered pursuant to said subdivision one[.]; or

(k) (i) The accusatory instrument alleged a violation of article two
hundred twenty or section 240.36 of the penal law, prior to the taking
effect of article two hundred twenty-one of the penal law, or by the
conviction of such person of a violation of [article two hundred twen-
ty-one] section 221.45 of the Penal Law on or after the effective date
of the chapter of the laws of two thousand nineteen that amended this
paragraph or a violation of section 221.05, 221.10, 221.15, 221.20,
221.25, 221.30, 221.35 or 221.40 of the penal law prior to the effective
date of the chapter of the laws of two thousand nineteen that amended
this paragraph; and (ii) the controlled substance involved is
marijuana. No defendant shall be required or permitted to waive eligi-
bility for sealing pursuant to this paragraph as part of a plea of guil-
ty, sentence or any agreement related to a conviction for a violation of
section 221.45 of the penal law. Any such waiver shall be deemed void
and wholly unenforceable.

§ 21. Subdivision 4 of section 160.50 of the criminal procedure law is
REPEALED, and three new subdivisions 4, 5, and 6 are added to read as
follows:

4. Where a criminal action or proceeding was terminated, as defined in
paragraph (k) of subdivision three of this section, prior to the effec-
tive date of this subdivision, such criminal action or proceeding shall
be automatically vacated and dismissed, and all records of such action
or proceeding expunged as set forth in subdivision one of this section,
and the matter terminated in favor of the accused and deemed a nullity,
because the prior conviction is now legally invalid. OCA shall automat-
ically notify the commissioner of the division of criminal justice
services and the heads of all appropriate police departments and other
law enforcement agencies that the prior conviction is now legally inval-
oid and that the action has been vacated, dismissed and expunged and thus
terminated in favor of the accused. Upon receipt of notification of such
vacatur, termination and expungement, all records relating to the crimi-
Section 1. Upon or after arraignment in a local criminal court upon an information, a prosecutor's information or a misdemeanor complaint, where the sole remaining count or counts charge a violation or violations of section 221.05, 221.10, 221.15, 221.35 or 221.40 of the penal law, or upon summons for a nuisance offense under section sixty-five-c of the alcoholic beverage control law and before the entry of a plea of guilty thereto or commencement of a trial thereof, the court, upon motion of a defendant, may order that all proceedings be suspended and the action adjourned in contemplation of dismissal, or upon a finding that adjournment would not be necessary or appropriate and the setting forth in the record of the reasons for such findings, may dismiss in furtherance of justice the accusatory instrument; provided, however, that the court may not order such adjournment in contemplation of dismissal or dismiss the accusatory instrument if: (a) the defendant has previously been granted such adjournment in contemplation of dismissal, or (b) the defendant has previously been granted a dismissal under this section, or (c) the defendant has previously been convicted of any offense involving controlled substances, or (d) the defendant has previously been convicted of a crime and the district attorney does not consent or (e) the defendant has previously been adjudicated a youthful offender on the basis of any act or acts involving controlled substances and the district attorney does not consent. Notwithstanding the limitations set forth in this subdivision, the court may order that all proceedings be suspended and the action adjourned in contemplation of dismissal based upon a finding of exceptional circumstances. For purposes of this subdivision, exceptional circumstances exist when, regardless of the ultimate disposition of the case, the entry of a plea of guilty is likely to result in severe or ongoing consequences, including, but not limited to, potential or actual immigration consequences.

§ 22. Subdivision 1 of section 170.56 of the criminal procedure law, as amended by chapter 360 of the laws of 1977, is amended to read as follows:

1. Upon or after arraignment in a local criminal court upon an information, a prosecutor's information or a misdemeanor complaint, where the sole remaining count or counts charge a violation or violations of section [221.05, 221.10, 221.15, 221.35 or 221.40] 221.45 of the penal law, or upon summons for a nuisance offense under section sixty-five-c of the alcoholic beverage control law and before the entry of a plea of guilty thereto or commencement of a trial thereof, the court, upon motion of a defendant, may order that all proceedings be suspended and the action adjourned in contemplation of dismissal, or upon a finding that adjournment would not be necessary or appropriate and the setting forth in the record of the reasons for such findings, may dismiss in furtherance of justice the accusatory instrument; provided, however, that the court may not order such adjournment in contemplation of dismissal or dismiss the accusatory instrument if: (a) the defendant has previously been granted such adjournment in contemplation of dismissal, or (b) the defendant has previously been granted a dismissal under this section, or (c) the defendant has previously been convicted of any offense involving controlled substances, or (d) the defendant has previously been convicted of a crime and the district attorney does not consent or (e) the defendant has previously been adjudicated a youthful offender on the basis of any act or acts involving controlled substances and the district attorney does not consent. Notwithstanding the limitations set forth in this subdivision, the court may order that all proceedings be suspended and the action adjourned in contemplation of dismissal based upon a finding of exceptional circumstances. For purposes of this subdivision, exceptional circumstances exist when, regardless of the ultimate disposition of the case, the entry of a plea of guilty is likely to result in severe or ongoing consequences, including, but not limited to, potential or actual immigration consequences.

§ 23. Paragraph (j) of subdivision 1 of section 440.10 of the criminal procedure law, as amended by section 2 of part MMM of chapter 59 of the laws of 2019, is amended and a new paragraph (k) is added to read as follows:
(j) The judgment is a conviction for a class A or unclassified misdemeanor entered prior to the effective date of this paragraph and satisfies the ground prescribed in paragraph (h) of this subdivision. There shall be a rebuttable presumption that a conviction by plea to such an offense was not knowing, voluntary and intelligent, based on ongoing collateral consequences, including potential or actual immigration consequences, and there shall be a rebuttable presumption that a conviction by verdict constitutes cruel and unusual punishment under section five of article one of the state constitution based on such consequences[.]; or

(k) if pertinent, such relief is available notwithstanding that the judgment was for a violation of section 221.05, 221.10, 221.15, 221.20, 221.25, 221.30, 221.35, or 221.40 of the penal law in effect prior to the effective date of this paragraph and that the underlying action or proceeding has already been vacated, dismissed and expunged pursuant to subdivision four or subdivision five of section 160.50 of this chapter in which case the court shall presume that a conviction by plea for a violation of the aforementioned sections of the then penal law was not knowing, voluntary and intelligent, if it has ongoing consequences, including but not limited to, potential or actual immigration consequences, and shall presume that a conviction by verdict of the aforementioned sections of the then penal law constitutes cruel and unusual punishment under the state constitution, based on those consequences. The prosecution may rebut these presumptions.

§ 24. The criminal procedure law is amended by adding a new section 440.46-a to read as follows:

§ 440.46-a Motion for resentencing; persons convicted of certain marihuana offenses.

1. Where a person is currently serving a sentence for a conviction, whether by verdict or by open or negotiated plea, who would not have been guilty of an offense after the effective date of this section had this section been in effect at the time of their conviction, the office of court administration shall automatically vacate, dismiss and expunge such conviction pursuant to subdivision four of section 160.50 of this part and immediately notify the New York state department of corrections and community supervision and local jails, which entities shall immediately effectuate the appropriate relief. The office of court administration shall likewise automatically notify the division of criminal justice services and any police department and law enforcement agency, which division, department or agency must immediately destroy appurtenant records as set forth in subdivision four of section 160.50 of this part.

2. (a) A person currently serving a sentence for a conviction, whether by verdict or by open or negotiated plea, who would have been guilty of a lesser offense after the effective date of this section had this section been in effect at the time of their conviction may petition for a recall of sentence before the trial court that entered the judgment of conviction in their case to request resentencing in accordance with article two hundred twenty-two of the penal law.

(b) Upon receiving a motion under paragraph (a) of this subdivision, the court shall presume the movant satisfies the criteria in such paragraph (a) unless the party opposing the motion proves by clear and convincing evidence that the movant does not satisfy the criteria. If the movant satisfies the criteria in paragraph (a) of this subdivision, the court shall grant the motion to resentence.
3. Under no circumstances may resentencing under this section result in the imposition of a term longer than the original sentence, or the reinstatement of charges dismissed pursuant to a negotiated plea agreement.

4. (a) A person who has completed his or her sentence for a conviction under the former article two hundred twenty-one of the penal law, whether by trial or open or negotiated plea, who would have been guilty of a lesser offense on and after the effective date of this section had this section been in effect at the time of his or her conviction, may file an application before the trial court that entered the judgment of conviction in his or her case to have the conviction redesignated (or "reclassified"), in accordance with article two hundred twenty-two of the penal law.

(b) Upon receiving a motion under paragraph (a) of this subdivision, the court shall presume the movant satisfies the criteria in paragraph (a) of this subdivision unless the party opposing the motion proves by clear and convincing evidence that the movant does not satisfy the criteria. If the movant satisfies the criteria in paragraph (a) of this subdivision, the court shall grant the motion to redesignate (or "reclassify") the conviction.

5. (a) If the court that originally sentenced the movant is not available, the presiding judge shall designate another judge to rule on the petition or application.

(b) Unless requested by the movant, no hearing is necessary to grant an application filed under subdivision two or four of this section.

(c) Any felony conviction that is vacated and resentenced under subdivision two of this section or designated as a misdemeanor or violation under subdivision four of this section shall be considered a misdemeanor or violation for all purposes. Any misdemeanor conviction that is vacated and resentenced under subdivision two of this section or designated as a violation under subdivision four of this section shall be considered a violation for all purposes.

(d) Nothing in this section is intended to diminish or abrogate any rights or remedies otherwise available to the petitioner or applicant.

(e) Nothing in this and related sections is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this section.

(f) The provisions of this section shall apply equally to juvenile delinquency adjudications and dispositions under section five hundred one-e of the executive law if the juvenile would not have been guilty of an offense or would have been guilty of a lesser offense under this section had this section been in effect at the time of his or her conviction.

(g) The office of court administration shall promulgate and make available all necessary forms to enable the filing of the petitions and applications provided in this section no later than sixty days following the effective date of this section.

§ 25. Paragraph (c) of subdivision 8 of section 700.05 of the criminal procedure law, as amended by chapter 37 of the laws of 2014, is amended to read as follows:

(c) Criminal possession of a controlled substance in the seventh degree as defined in section 220.03 of the penal law, criminal possession of a controlled substance in the fifth degree as defined in section 220.06 of the penal law, criminal possession of a controlled substance in the fourth degree as defined in section 220.09 of the penal law, criminal possession of a controlled substance in the third degree.
as defined in section 220.16 of the penal law, criminal possession of a controlled substance in the second degree as defined in section 220.18 of the penal law, criminal possession of a controlled substance in the first degree as defined in section 220.21 of the penal law, criminal sale of a controlled substance in the fifth degree as defined in section 220.31 of the penal law, criminal sale of a controlled substance in the fourth degree as defined in section 220.34 of the penal law, criminal sale of a controlled substance in the third degree as defined in section 220.39 of the penal law, criminal sale of a controlled substance in the second degree as defined in section 220.41 of the penal law, criminal sale of a controlled substance in the first degree as defined in section 220.43 of the penal law, criminally possessing a hypodermic instrument as defined in section 220.45 of the penal law, criminal sale of a prescription for a controlled substance or a controlled substance by a practitioner or pharmacist as defined in section 220.65 of the penal law, criminal possession of methamphetamine manufacturing material in the second degree as defined in section 220.70 of the penal law, criminal possession of methamphetamine manufacturing material in the first degree as defined in section 220.71 of the penal law, criminal possession of precursors of methamphetamine as defined in section 220.72 of the penal law, unlawful manufacture of methamphetamine in the third degree as defined in section 220.73 of the penal law, unlawful manufacture of methamphetamine in the second degree as defined in section 220.74 of the penal law, unlawful manufacture of methamphetamine in the first degree as defined in section 220.75 of the penal law, unlawful disposal of methamphetamine laboratory material as defined in section 220.76 of the penal law, operating as a major trafficker as defined in section 220.77 of the penal law, [criminal possession of marihuana in the first degree as defined in section 221.30 of the penal law, criminal sale of marihuana in the first degree as defined in section 221.55 of the penal law,] promoting gambling in the second degree as defined in section 225.05 of the penal law, promoting gambling in the first degree as defined in section 225.10 of the penal law, possession of gambling records in the second degree as defined in section 225.15 of the penal law, possession of gambling records in the first degree as defined in section 225.20 of the penal law, and possession of a gambling device as defined in section 225.30 of the penal law;

§ 26. Paragraphs (b) and (c) of subdivision 4-b and subdivisions 6 and 9 of section 1310 of the civil practice law and rules, paragraphs (b) and (c) of subdivision 4-b as added by chapter 655 of the laws of 1990 and subdivisions 6 and 9 as added by chapter 669 of the laws of 1984, are amended to read as follows:

(b) on three or more occasions, engaging in conduct constituting a violation of any of the felonies defined in section 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41[, or 220.43 [or 221.55] of the penal law, which violations do not constitute a single criminal offense as defined in subdivision one of section 40.10 of the criminal procedure law, or a single criminal transaction, as defined in paragraph (a) of subdivision two of section 40.10 of the criminal procedure law, and at least one of which resulted in a conviction of such offense, or where the accusatory instrument charges one or more of such felonies, conviction upon a plea of guilty to a felony for which such plea is otherwise authorized by law; or

(c) a conviction of a person for a violation of section 220.09, 220.16, 220.34 or 220.39 of the penal law, [or a conviction of a criminal defendant for a violation of section 221.30 of the penal law,] or
where the accusatory instrument charges any such felony, conviction upon
a plea of guilty to a felony for which the plea is otherwise authorized
by law, together with evidence which: (i) provides substantial indicia
that the defendant used the real property to engage in a continual,
ongoing course of conduct involving the unlawful mixing, compounding,
manufacturing, warehousing, or packaging of controlled substances [or
where the conviction is for a violation of section 221.30 of the penal
law, marijuana,] as part of an illegal trade or business for gain; and
(ii) establishes, where the conviction is for possession of a controlled
substance [or where the conviction is for a violation of section 221.30
of the penal law, marijuana], that such possession was with the intent
to sell it.

[6. "Pre-conviction forfeiture crime" means only a felony defined in
article two hundred twenty or section 221.30 or 221.55 of the penal
law.]

9. "Criminal defendant" means a person who has criminal liability for
a crime defined in [subdivisions] subdivision five [and six hereof] of
this section. For purposes of this article, a person has criminal
liability when [(a)] he has been convicted of a post-conviction forfei-
ture crime, or (b) the claiming authority proves by clear and convinc-
ing evidence that such person has committed an act in violation of arti-
cle two hundred twenty or section 221.30 or 221.55 of the penal law.

§ 27. Subdivision 13 of section 89-f of the general business law, as
added by chapter 336 of the laws of 1992, is amended to read as follows:
13. "Serious offense" shall mean any felony involving the offenses
enumerated in the closing paragraph of this subdivision; a criminal
solicitation of or a conspiracy to commit or an attempt to commit or a
criminal facilitation of a felony involving the offenses enumerated in
the closing paragraph of this subdivision, which criminal solicitation,
conspiracy, attempt or criminal facilitation itself constitutes a felony
or any offense in any other jurisdiction which if committed in this
state would constitute a felony; any offense in any other jurisdiction
which if committed in this state would constitute a felony provided that
for the purposes of this article, none of the following shall be consid-
ered criminal convictions or reported as such: (i) a conviction for
which an executive pardon has been issued pursuant to the executive law;
(ii) a conviction which has been vacated and replaced by a youthful
offender finding pursuant to article seven hundred twenty of the crim-
al procedure law, or the applicable provisions of law of any other
jurisdiction; or (iii) a conviction the records of which have been
sealed pursuant to the applicable provisions of the laws of this state
or of any other jurisdiction; and (iv) a conviction for which other
evidence of successful rehabilitation to remove the disability has been
issued.

Felonies involving: assault, aggravated assault and reckless endan-
germent pursuant to article one hundred twenty; vehicular manslaughter,
manslaughter and murder pursuant to article one hundred twenty-five; sex
offenses pursuant to article one hundred thirty; unlawful imprisonment,
kidnapping or coercion pursuant to article one hundred thirty-five;
criminal trespass and burglary pursuant to article one hundred forty;
criminal mischief, criminal tampering and tampering with a consumer
product pursuant to article one hundred forty-five; arson pursuant to
article one hundred fifty; larceny and offenses involving theft pursuant
to article one hundred fifty-five; offenses involving computers pursuant
to article one hundred fifty-six; robbery pursuant to article one
hundred sixty; criminal possession of stolen property pursuant to arti-
icle one hundred sixty-five; forgery and related offenses pursuant to article one hundred seventy; involving false written statements pursuant to article one hundred seventy-five; commercial bribery and commercial bribery receiving pursuant to article one hundred eighty; criminal impersonation and scheme to defraud pursuant to article one hundred ninety; bribery involving public servants and related offenses pursuant to article two hundred; perjury and related offenses pursuant to article two hundred ten; tampering with a witness, intimidating a victim or witness and tampering with physical evidence pursuant to article two hundred fifteen; criminal possession of a controlled substance pursuant to sections 220.06, 220.09, 220.16, 220.18 and 220.21; criminal sale of a controlled substance pursuant to sections 220.31, 220.34, 220.39, 220.41, 220.43 and 220.44; [criminal unlicensed sale of marijuana] cannabis in the first degree pursuant to [sections 221.45, 221.50 and 221.55] section 222.30; riot in the first degree, aggravated harassment in the first degree, criminal nuisance in the first degree and falsely reporting an incident in the second or first degree pursuant to article two hundred forty; and crimes against public safety pursuant to article two hundred sixty-five of the penal law.

§ 28. Paragraph (f) of subdivision 2 of section 850 of the general business law is REPEALED.

§ 29. Paragraph (h) of subdivision 2 of section 850 of the general business law, as amended by chapter 812 of the laws of 1980, is amended to read as follows:

(h) Objects, used or designed for the purpose of ingesting, inhaling, or otherwise introducing [marihuana,] cocaine[, hashish, or hashish oil] into the human body.

§ 30. Subdivision 7 of section 995 of the executive law, as amended by chapter 19 of the laws of 2012, is amended to read as follows:

7. "Designated offender" means a person convicted of any felony defined in any chapter of the laws of the state or any misdemeanor defined in the penal law [except that where the person is convicted under section 221.10 of the penal law, only a person convicted under subdivision two of such section, or a person convicted under subdivision one of such section who stands previously convicted of any crime as defined in subdivision six of section 10.00 of the penal law].

§ 31. Paragraphs (b) and (c) of subdivision 7 of section 480.00 of the penal law, paragraph (b) as amended by section 31 of part AAA of chapter 56 of the laws of 2009 and paragraph (c) as added by chapter 655 of the laws of 1990, are amended to read as follows:

(b) three or more violations of any of the felonies defined in section 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41, 220.43[,] or 220.77[,] or 221.55 of this chapter, which violations do not constitute a single criminal offense as defined in subdivision one of section 40.10 of the criminal procedure law, or a single criminal transaction, as defined in paragraph (a) of subdivision two of section 40.10 of the criminal procedure law, and at least one of which resulted in a conviction of such offense, or where the accusatory instrument charges one or more of such felonies, conviction upon a plea of guilty to a felony for which such plea is otherwise authorized by law; or

(c) a conviction of a person for a violation of section 220.09, 220.16, 220.34[,] or 220.39[,] or 221.30 of this chapter, or where the accusatory instrument charges any such felony, conviction upon a plea of guilty to a felony for which the plea is otherwise authorized by law, together with evidence which: (i) provides substantial indicia that the defendant used the real property to engage in a continual, ongoing
course of conduct involving the unlawful mixing, compounding, manufac-
turing, warehousing, or packaging of controlled substances [or where the
conviction is for a violation of section 221.30 of this chapter, mari-
juana] as part of an illegal trade or business for gain; and (ii) estab-
ishes, where the conviction is for possession of a controlled substance
[or where the conviction is for a violation of section 221.30 of this
chapter, marijuana], that such possession was with the intent to sell
it.

§ 32. Paragraph (c) of subdivision 4 of section 509-cc of the vehicle
and traffic law, as amended by chapter 368 of the laws of 2015, is
amended to read as follows:
(c) The offenses referred to in subparagraph (i) of paragraph (b) of
subdivision one and subparagraph (i) of paragraph (c) of subdivision two
of this section that result in disqualification for a period of five
years shall include a conviction under sections 100.10, 105.13, 115.05,
120.03, 120.04, 120.04-a, 120.05, 120.10, 120.25, 121.12, 121.13,
125.40, 125.45, 130.20, 130.25, 130.52, 130.55, 135.10, 135.55, 140.17,
140.25, 140.30, 150.12, 150.15, 160.05, 160.10, 220.06, 220.09,
220.16, 220.31, 220.34, 220.60, 220.65, [221.30, 221.50, 221.55,]
230.00, 230.05, 230.06, 230.11, 230.12, 230.13, 230.19, 230.20, 235.05,
235.06, 235.07, 235.21, 240.06, 245.00, 260.10, subdivision two of
section 260.20 and sections 260.25, 265.02, 265.03, 265.08, 265.09,
265.10, 265.12, 265.35 of the penal law or an attempt to commit any of
the aforesaid offenses under section 110.00 of the penal law, or any
similar offenses committed under a former section of the penal law, or
any offenses committed under a former section of the penal law which
would constitute violations of the aforesaid sections of the penal law,
or any offenses committed outside this state which would constitute
violations of the aforesaid sections of the penal law.

§ 33. The opening paragraph of paragraph (a) of subdivision 2 of
section 1194 of the vehicle and traffic law, as amended by chapter 196
of the laws of 1996, is amended to read as follows:
When authorized. Any person who operates a motor vehicle in this state
shall be deemed to have given consent to a chemical test of one or more
of the following: breath, blood[,] or urine[, or saliva,] for the
purpose of determining the alcoholic and/or drug content, other than
cannabis content including but not limited to tetrahydrocannabinol
content, of the blood provided that such test is administered by or at
the direction of a police officer with respect to a chemical test of
breath, urine [or saliva] or, with respect to a chemical test of blood,
at the direction of a police officer:

§ 34. The article heading of article 20-B of the tax law, as added by
chapter 90 of the laws of 2014, is amended to read as follows:
ARTICLE 20-B
EXCISE TAX ON MEDICAL [MARIHUANA] CANNABIS

§ 35. Subdivision 1 of section 171-a of the tax law, as amended by
section 3 of part XX of chapter 59 of the laws of 2019, is amended to
read as follows:
1. All taxes, interest, penalties and fees collected or received by
the commissioner or the commissioner's duly authorized agent under arti-
cles nine (except section one hundred eighty-two-a thereof and except as
otherwise provided in section two hundred five thereof), nine-A,
twelve-A (except as otherwise provided in section two hundred eighty-
four-d thereof), thirteen, thirteen-A (except as otherwise provided in
section three hundred twelve thereof), eighteen, nineteen, twenty
(except as otherwise provided in section four hundred eighty-two there-
of), twenty-B, twenty-C, twenty-D, twenty-one, twenty-two, twenty-four,
twenty-six, twenty-eight (except as otherwise provided in section eleven
hundred two or eleven hundred three thereof), twenty-eight-A, twenty-
nine-B, thirty-one (except as otherwise provided in section fourteen
hundred twenty-one thereof), thirty-three and thirty-three-A of this
chapter shall be deposited daily in one account with such responsible
banks, banking houses or trust companies as may be designated by the
comptroller, to the credit of the comptroller. Such an account may be
established in one or more of such depositories. Such deposits shall be
kept separate and apart from all other money in the possession of the
comptroller. The comptroller shall require adequate security from all
such depositories. Of the total revenue collected or received under such
articles of this chapter, the comptroller shall retain in the comp-
troller's hands such amount as the commissioner may determine to be
necessary for refunds or reimbursements under such articles of this
chapter out of which amount the comptroller shall pay any refunds or
reimbursements to which taxpayers shall be entitled under the provisions
of such articles of this chapter. The commissioner and the comptroller
shall maintain a system of accounts showing the amount of revenue
collected or received from each of the taxes imposed by such articles.
The comptroller, after reserving the amount to pay such refunds or
reimbursements, shall, on or before the tenth day of each month, pay
into the state treasury to the credit of the general fund all revenue
deposited under this section during the preceding calendar month and
remaining to the comptroller's credit on the last day of such preceding
month, (i) except that the comptroller shall pay to the state department
of social services that amount of overpayments of tax imposed by article
twenty-two of this chapter and the interest on such amount which is
certified to the comptroller by the commissioner as the amount to be
credited against past-due support pursuant to subdivision six of section
one hundred seventy-one-c of this article, (ii) and except that the
comptroller shall pay to the New York state higher education services
corporation and the state university of New York or the city university
of New York respectively that amount of overpayments of tax imposed by
article twenty-two of this chapter and the interest on such amount which
is certified to the comptroller by the commissioner as the amount to be
credited against the amount of defaults in repayment of guaranteed
student loans and state university loans or city university loans pursu-
ant to subdivision five of section one hundred seventy-one-d and subdi-
vision six of section one hundred seventy-one-e of this article, (iii)
and except further that, notwithstanding any law, the comptroller shall
credit to the revenue arrearage account, pursuant to section
ninety-one-a of the state finance law, that amount of overpayment of tax
imposed by article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B
or thirty-three of this chapter, and any interest thereon, which is
certified to the comptroller by the commissioner as the amount to be
credited against a past-due legally enforceable debt owed to a state
agency pursuant to paragraph (a) of subdivision six of section one
hundred seventy-one-f of this article, provided, however, he shall cred-
it to the special offset fiduciary account, pursuant to section ninety-
one-c of the state finance law, any such amount creditable as a liabil-
ity as set forth in paragraph (b) of subdivision six of section one
hundred seventy-one-f of this article, (iv) and except further that the
comptroller shall pay to the city of New York that amount of overpayment
of tax imposed by article nine, nine-A, twenty-two, thirty, thirty-A,
 thirty-B or thirty-three of this chapter and any interest thereon that
is certified to the comptroller by the commissioner as the amount to be credited against city of New York tax warrant judgment debt pursuant to section one hundred seventy-one-l of this article, (v) and except further that the comptroller shall pay to a non-obligated spouse that amount of overpayment of tax imposed by article twenty-two of this chapter and the interest on such amount which has been credited pursuant to section one hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f or one hundred seventy-one-l of this article and which is certified to the comptroller by the commissioner as the amount due such non-obligated spouse pursuant to paragraph six of subsection (b) of section six hundred fifty-one of this chapter; and (vi) the comptroller shall deduct a like amount which the comptroller shall pay into the treasury to the credit of the general fund from amounts subsequently payable to the department of social services, the state university of New York, the city university of New York, or the higher education services corporation, or the revenue arrearage account or special offset fiduciary account pursuant to section ninety-one-a or ninety-one-c of the state finance law, as the case may be, whichever had been credited the amount originally withheld from such overpayment, and (vii) with respect to amounts originally withheld from such overpayment pursuant to section one hundred seventy-one-l of this article and paid to the city of New York, the comptroller shall collect a like amount from the city of New York.

§ 36. Subdivision 1 of section 171-a of the tax law, as amended by section 4 of part XX of chapter 59 of the laws of 2019, is amended to read as follows:

1. All taxes, interest, penalties and fees collected or received by the commissioner or the commissioner's duly authorized agent under articles nine (except section one hundred eighty-two-a thereof and except as otherwise provided in section two hundred five thereof), nine-A, twelve-A (except as otherwise provided in section two hundred eighty-four-d thereof), thirteen, thirteen-A (except as otherwise provided in section three hundred twelve thereof), eighteen, nineteen, twenty (except as otherwise provided in section four hundred eighty-two thereof), twenty-one, twenty-two, twenty-four, twenty-six, twenty-eight (except as otherwise provided in section eleven hundred two or eleven hundred three thereof), twenty-eight-A, twenty-nine-B, thirty-one (except as otherwise provided in section fourteen hundred twenty-one thereof), thirty-three and thirty-three-A of this chapter shall be deposited daily in one account with such responsible banks, banking houses or trust companies as may be designated by the comptroller, to the credit of the comptroller. Such an account may be established in one or more of such depositories. Such deposits shall be kept separate and apart from all other money in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected or received under such articles of this chapter, the comptroller shall retain in the comptroller's hands such amount as the commissioner may determine to be necessary for refunds or reimbursements under such articles of this chapter out of which amount the comptroller shall pay any refunds or reimbursements to which taxpayers shall be entitled under the provisions of such articles of this chapter. The commissioner and the comptroller shall maintain a system of accounts showing the amount of revenue collected or received from each of the taxes imposed by such articles. The comptroller, after reserving the amount to pay such refunds or reimbursements, shall, on or before the tenth day of each month, pay
into the state treasury to the credit of the general fund all revenue
deposited under this section during the preceding calendar month and
remaining to the comptroller's credit on the last day of such preceding
month, (i) except that the comptroller shall pay to the state department
of social services that amount of overpayments of tax imposed by article
twenty-two of this chapter and the interest on such amount which is
certified to the comptroller by the commissioner as the amount to be
credited against past-due support pursuant to subdivision six of section
one hundred seventy-one-c of this article, (ii) and except that the
comptroller shall pay to the New York state higher education services
corporation and the state university of New York or the city university
of New York respectively that amount of overpayments of tax imposed by
article twenty-two of this chapter and the interest on such amount which
is certified to the comptroller by the commissioner as the amount to be
credited against the amount of defaults in repayment of guaranteed
student loans and state university loans or city university loans pursu-
ant to subdivision five of section one hundred seventy-one-d and subdi-
vision six of section one hundred seventy-one-e of this article, (iii)
and except further that, notwithstanding any law, the comptroller shall
credit to the revenue arrearage account, pursuant to section
ninety-one-a of the state finance law, that amount of overpayment of tax
imposed by article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B
or thirty-three of this chapter, and any interest thereon, which is
certified to the comptroller by the commissioner as the amount to be
credited against a past-due legally enforceable debt owed to a state
agency pursuant to paragraph (a) of subdivision six of section one
hundred seventy-one-f of this article, provided, however, he shall cred-
it to the special offset fiduciary account, pursuant to section ninety-
one-c of the state finance law, any such amount creditable as a liabil-
ity as set forth in paragraph (b) of subdivision six of section one
hundred seventy-one-f of this article, (iv) and except further that the
comptroller shall pay to the city of New York that amount of overpayment
of tax imposed by article nine, nine-A, twenty-two, thirty, thirty-A,
thirty-B or thirty-three of this chapter and any interest thereon that
is certified to the comptroller by the commissioner as the amount to be
credited against city of New York tax warrant judgment debt pursuant to
section one hundred seventy-one-l of this article, (v) and except
further that the comptroller shall pay to a non-obligated spouse that
amount of overpayment of tax imposed by article twenty-two of this chap-
ter and the interest on such amount which has been credited pursuant to
section one hundred seventy-one-c, one hundred seventy-one-d, one
hundred seventy-one-e, one hundred seventy-one-f or one hundred seven-
ty-one-l of this article and which is certified to the comptroller by
the commissioner as the amount due such non-obligated spouse pursuant to
paragraph six of subsection (b) of section six hundred fifty-one of this
chapter; and (vi) the comptroller shall deduct a like amount which the
comptroller shall pay into the treasury to the credit of the general
fund from amounts subsequently payable to the department of social
services, the state university of New York, the city university of New
York, or the higher education services corporation, or the revenue
arrearage account or special offset fiduciary account pursuant to
section ninety-one-a or ninety-one-c of the state finance law, as the case
may be, whichever had been credited the amount originally withheld
from such overpayment, and (vii) with respect to amounts originally
withheld from such overpayment pursuant to section one hundred seventy-
one of this article and paid to the city of New York, the comptroller
shall collect a like amount from the city of New York.

§ 37. Section 490 of the tax law, as added by chapter 90 of the laws
of 2014, is amended to read as follows:

§ 490. [Definitions] Excise tax on medical cannabis. 1. (a) [All
definitions of terms applicable to title five-A of article thirty-three
of the public health law shall apply to this article.] For purposes of
this article, the terms "medical cannabis," "registered organization,
"certified patient," and "designated caregiver" shall have the same
definitions as in section three of the cannabis law.

(b) As used in this section, where not otherwise specifically defined
and unless a different meaning is clearly required "gross receipt" means
the amount received in or by reason of any sale, conditional or other-
wise, of medical [marihuana] cannabis or in or by reason of the furnish-
ing of medical [marihuana] cannabis from the sale of medical [marihuana]
cannabis provided by a registered organization to a certified patient or
designated caregiver. Gross receipt is expressed in money, whether paid
in cash, credit or property of any kind or nature, and shall be deter-
mined without any deduction therefrom on account of the cost of the
service sold or the cost of materials, labor or services used or other
costs, interest or discount paid, or any other expenses whatsoever.
"Amount received" for the purpose of the definition of gross receipt, as
the term gross receipt is used throughout this article, means the amount
charged for the provision of medical [marihuana] cannabis.

2. There is hereby imposed an excise tax on the gross receipts from
the sale of medical [marihuana] cannabis by a registered organization to
a certified patient or designated caregiver, to be paid by the regis-
tered organization, at the rate of seven percent. The tax imposed by
this article shall be charged against and be paid by the registered
organization and shall not be added as a separate charge or line item on
any sales slip, invoice, receipt or other statement or memorandum of the
price given to the retail customer.

3. The commissioner may make, adopt and amend rules, regulations,
procedures and forms necessary for the proper administration of this
article.

4. Every registered organization that makes sales of medical [marihu-
a] cannabis subject to the tax imposed by this article shall, on or
before the twentieth date of each month, file with the commissioner a
return on forms to be prescribed by the commissioner, showing its
receipts from the retail sale of medical [marihuana] cannabis during the
preceding calendar month and the amount of tax due thereon. Such returns
shall contain such further information as the commissioner may require.
Every registered organization required to file a return under this
section shall, at the time of filing such return, pay to the commissio-
er the total amount of tax due on its retail sales of medical [marihuana] cannabis for the period covered by such return. If a return is not
filed when due, the tax shall be due on the day on which the return is
required to be filed.

5. Whenever the commissioner shall determine that any moneys received
under the provisions of this article were paid in error, he may cause
the same to be refunded, with interest, in accordance with such rules
and regulations as he may prescribe, except that no interest shall be
allowed or paid if the amount thereof would be less than one dollar.
Such interest shall be at the overpayment rate set by the commissioner
pursuant to subdivision twenty-sixth of section one hundred seventy-one
of this chapter, or if no rate is set, at the rate of six percent per
annum, from the date when the tax, penalty or interest to be refunded was paid to a date preceding the date of the refund check by not more than thirty days. Provided, however, that for the purposes of this subdivision, any tax paid before the last day prescribed for its payment shall be deemed to have been paid on such last day. Such moneys received under the provisions of this article which the commissioner shall determine were paid in error, may be refunded out of funds in the custody of the comptroller to the credit of such taxes provided an application therefor is filed with the commissioner within two years from the time the erroneous payment was made.

6. The provisions of article twenty-seven of this chapter shall apply to the tax imposed by this article in the same manner and with the same force and effect as if the language of such article had been incorporated in full into this section and had expressly referred to the tax imposed by this article, except to the extent that any provision of such article is either inconsistent with a provision of this article or is not relevant to this article.

7. All taxes, interest and penalties collected or received by the commissioner under this article shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter, provided that an amount equal to one hundred percent collected under this article less any amount determined by the commissioner to be reserved by the comptroller for refunds or reimbursements shall be paid by the comptroller to the credit of the medical [marihuana] cannabis trust fund established by section eighty-nine-h of the state finance law.

8. A registered organization that dispenses medical [marihuana] cannabis shall provide to the department information on where the medical [marihuana] cannabis was dispensed and where the medical [marihuana] cannabis was manufactured. A registered organization that obtains [marihuana] cannabis from another registered organization shall obtain from such registered organization information on where the medical [marihuana] cannabis was manufactured.

§ 38. Section 491 of the tax law, as added by chapter 90 of the laws of 2014, subdivision 1 as amended by section 1 of part II of chapter 60 of the laws of 2016, is amended to read as follows:

§ 491. Returns to be secret. 1. Except in accordance with proper judicial order or as in this section or otherwise provided by law, it shall be unlawful for the commissioner, any officer or employee of the department, or any officer or person who, pursuant to this section, is permitted to inspect any return or report or to whom a copy, an abstract or a portion of any return or report is furnished, or to whom any information contained in any return or report is furnished, or any person engaged or retained by such department on an independent contract basis or any person who in any manner may acquire knowledge of the contents of a return or report filed pursuant to this article to divulge or make known in any manner the contents or any other information relating to the business of a distributor, owner or other person contained in any return or report required under this article. The officers charged with the custody of such returns or reports shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the state, [the state department of health] office of cannabis management, or the commissioner in an action or proceeding under the provisions of this chapter or on behalf of the state or the commissioner in any other action or proceeding involving the collection of a tax due under this chapter to which

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the state or the commissioner is a party or a claimant or on behalf of any party to any action or proceeding under the provisions of this article, when the returns or the reports or the facts shown thereby are directly involved in such action or proceeding, or in an action or proceeding relating to the regulation or taxation of medical [marihuana] cannabis on behalf of officers to whom information shall have been supplied as provided in subdivision two of this section, in any of which events the court may require the production of, and may admit in evidence so much of said returns or reports or of the facts shown there- by as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the commissioner, in his or her discretion, from allowing the inspection or delivery of a certified copy of any return or report filed under this article or of any information contained in any such return or report by or to a duly authorized officer or employee of the [state department of health] office of cannabis management; or by or to the attorney general or other legal representa- tives of the state when an action shall have been recommended or commenced pursuant to this chapter in which such returns or reports or the facts shown thereby are directly involved; or the inspection of the returns or reports required under this article by the comptroller or duly designated officer or employee of the state department of audit and control, for purposes of the audit of a refund of any tax paid by a registered organization or other person under this article; nor to prohibit the delivery to a registered organization, or a duly authorized representative of such registered organization, a certified copy of any return or report filed by such registered organization pursuant to this article, nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns or reports and the items thereof. This section shall also not be construed to prohibit the disclosure, for tax administration purposes, to the division of the budget and the office of the state comptroller, of information aggre- gated from the returns filed by all the registered organizations making sales of, or manufacturing, medical [marihuana] cannabis in a specified county, whether the number of such registered organizations is one or more. Provided further that, notwithstanding the provisions of this subdivision, the commissioner may, in his or her discretion, permit the proper officer of any county entitled to receive an allocation, follow- ing appropriation by the legislature, pursuant to this article and section eighty-nine-h of the state finance law, or the authorized repre- sentative of such officer, to inspect any return filed under this article, or may furnish to such officer or the officer's authorized repre- sentative an abstract of any such return or supply such officer or such representative with information concerning an item contained in any such return, or disclosed by any investigation of tax liability under this article.

2. The commissioner, in his or her discretion and pursuant to such rules and regulations as he or she may adopt, may permit [the commis- sioner of internal revenue of the United States, or] the appropriate officers of any other state which regulates or taxes medical [marihuana] cannabis, or the duly authorized representatives of such [commissioner or of any such] officers, to inspect returns or reports made pursuant to this article, or may furnish to such [commissioner or] other officers, or duly authorized representatives, a copy of any such return or report or an abstract of the information therein contained, or any portion thereof, or may supply [such commissioner or] any such officers or such representatives with information relating to the business of a regis-
tered organization making returns or reports hereunder. The commissioner may refuse to supply information pursuant to this subdivision [to the commissioner of internal revenue of the United States or] to the officers of any other state if the statutes [of the United States, or] of the state represented by such officers, do not grant substantially similar privileges to the commissioner, but such refusal shall not be mandatory. Information shall not be supplied to [the commissioner of internal revenue of the United States or] the appropriate officers of any other state which regulates or taxes medical [marihuana] cannabis, or the duly authorized representatives [of such commissioner or] of any of such officers, unless such [commissioner, officer or other representatives shall agree not to divulge or make known in any manner the information so supplied, but such officers may transmit such information to their employees or legal representatives when necessary, who in turn shall be subject to the same restrictions as those hereby imposed upon such [commissioner, officer or other representatives.

3. (a) Any officer or employee of the state who willfully violates the provisions of subdivision one or two of this section shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

(b) Cross-reference: For criminal penalties, see article thirty-seven of this chapter.

§ 39. The tax law is amended by adding a new article 20-C to read as follows:

ARTICLE 20-C
TAX ON ADULT-USE CANNABIS PRODUCTS

Section 492. Definitions.

493. Tax on cannabis.
494. Registration and renewal.
495. Returns and payment of tax.
496. Returns to be kept secret.

§ 492. Definitions. For purposes of this article, the following definitions shall apply:

(a) "Cannabis" means all parts of a plant of the genus cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. For purposes of this article, cannabis does not include medical cannabis or hemp extract as defined in section three of the cannabis law.

(b) "Cannabis flower" means the flower of a plant of the genus cannabis, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients. Cannabis flower excludes leaves and stem.

(c) "Cannabis trim" means all parts of a plant of the genus cannabis other than cannabis flowers that have been harvested, dried, and cured, and prior to any processing whereby the plant material is transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis and other ingredients.

(d) "Cannabis product" or "adult use cannabis" means a cannabis product as defined in section three of the cannabis law. For purposes of this article, under no circumstances shall adult-use cannabis product
include medical cannabis or hemp extract as defined in section three of the cannabis law.

(e) "Person" means every individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee, and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of the foregoing.

(f) "Wholesaler" means any person that sells or transfers adult-use cannabis products to a retail dispensary licensed pursuant to section seventy-two of the cannabis law. Where the cultivator or processor is also the retail dispensary, the retail dispensary shall be the wholesaler for purposes of this article.

(g) "Cultivation" has the same meaning as described in subdivision two of section sixty-eight of the cannabis law.

(h) "Retail dispensary" means a dispensary licensed to sell adult-use cannabis products pursuant to section seventy-two of the cannabis law.

(i) "Transfer" means to grant, convey, hand over, assign, sell, exchange or barter, in any manner or by any means, with or without consideration.

(j) "Sale" means any transfer of title, possession or both, exchange or barter, rental, lease or license to use or consume, conditional or otherwise, in any manner or by any means whatsoever for a consideration or any agreement therefor.

(k) "Processor" has the same meaning as described in subdivision two of section sixty-nine of the cannabis law.

§ 493. Tax on cannabis. (a) There is hereby imposed and shall be paid a tax on the cultivation of cannabis flower and cannabis trim at the rate of one dollar per dry-weight gram of cannabis flower and twenty-five cents per dry-weight gram of cannabis trim. Where the wholesaler is not the cultivator, such tax shall be collected from the cultivator by the wholesaler at the time such flower or trim is transferred to the wholesaler. Where the wholesaler is the cultivator, such tax shall be paid by the wholesaler and shall accrue at the time of sale or transfer to a retail dispensary. Where the cultivator is also the retail dispensary, such tax shall accrue at the time of the sale to the retail customer.

(b) In addition to the tax imposed by subdivision (a) of this section, there is hereby imposed a tax on the sale or transfer by a wholesaler to a retail dispensary of adult-use cannabis products, to be paid by such wholesaler. Where the wholesaler is not the retail dispensary, such tax shall be at the rate of eighteen percent of the invoice price charged by the wholesaler to a retail dispensary, and shall accrue at the time of such sale. Where the wholesaler is the retail dispensary, such tax shall be at the rate of eighteen percent of the price charged to the retail customer.

(c) In addition to the taxes imposed by subdivisions (a) and (b) of this section, there is hereby imposed a tax on the sale or transfer by a wholesaler to a retail dispensary of adult-use cannabis products, in trust for and on account of the county in which the retail dispensary is located. Such tax shall be paid by the wholesaler and shall accrue at the time of such sale. Where the wholesaler is not the retail dispensary, such tax shall be at the rate of four percent of the invoice price charged by the wholesaler to a retail dispensary. Where the wholesaler is the retail dispensary, such tax shall be at the rate of four percent of the price charged to the retail customer.
(d) Notwithstanding any other provision of law to the contrary, the
taxes imposed by article twenty of this chapter shall not apply to any
product subject to tax under this article.
§ 494. Registration and renewal. (a) Every wholesaler must file with
the commissioner a properly completed application for a certificate of
registration before engaging in business. In order to apply for such
certificate of registration, such person must first be in possession of
a valid license from the office of cannabis management. An application
for a certificate of registration must be submitted electronically, on a
form prescribed by the commissioner, and must be accompanied by a non-
refundable application fee of six hundred dollars. A certificate of
registration shall not be assignable or transferable and shall be
destroyed immediately upon such person ceasing to do business as speci-
fied in such certificate, or in the event that such business never
commenced.
(b) The commissioner shall refuse to issue a certificate of registra-
tion to any applicant and shall revoke the certificate of registration
of any such person who does not possess a valid license from the office
of cannabis management. The commissioner may refuse to issue a certif-
icate of registration to any applicant where such applicant: (1) has a
past-due liability as that term is defined in section one hundred seven-
ty-one of this chapter; (2) has had a certificate of registration
under this article, a license from the office of cannabis management, or
any license or registration provided for in this chapter revoked within
one year from the date on which such application was filed; (3) has been
convicted of a crime provided for in this chapter within one year from
the date on which such application was filed of the certificate's issu-
ance; (4) willfully fails to file a report or return required by this
article; (5) willfully files, causes to be filed, gives or causes to be
given a report, return, certificate or affidavit required by this article
which is false; or (6) willfully fails to account for or pay over any tax imposed by this article.
(c) A certificate of registration shall be valid for the period speci-
fied thereon, unless earlier suspended or revoked. Upon the expiration
of the term stated on a certificate of registration, such certificate
shall be null and void.
(d) Every holder of a certificate of registration must notify the
commissioner of changes to any of the information stated on the certif-
icate, or of changes to any information contained in the application for
the certificate of registration. Such notification must be made on or
before the last day of the month in which a change occurs and must be
made electronically on a form prescribed by the commissioner.
(e) Every holder of a certificate of registration under this article
shall be required to reapply prior to such certificate's expiration,
during a reapplication period established by the commissioner. Such
reapplication period shall not occur more frequently than every two
years. Such reapplication shall be subject to the same requirements and
conditions, including grounds for refusal, as an initial application,
including the payment of the application fee.
(f) Penalties. A person to whom adult-use cannabis products have been
transferred or who sells adult-use cannabis products without a valid
certificate of registration pursuant to subdivision (a) of this section
shall be subject to a penalty of five hundred dollars for each month or
part thereof during which such person continues to possess adult-use
cannabis products that have been transferred to such person or who sells
such products after the expiration of the first month after which such
person operates without a valid certificate of registration, not to exceed ten thousand dollars in the aggregate.

§ 495. Returns and payment of tax. (a) 1. Every wholesaler shall, on or before the twentieth day of the month, file with the commissioner a return on forms to be prescribed by the commissioner, showing the total weight of cannabis flower and cannabis trim subject to tax pursuant to subdivision (a) of section four hundred ninety-three of this article and the total amount of tax due thereon in the preceding calendar month, and the total amount of tax due under subdivisions (b) and (c) of such section on its sales to a retail dispensary during the preceding calendar month, along with such other information as the commissioner may require. Every person required to file a return under this section shall, at the time of filing such return, pay to the commissioner the total amount of tax due for the period covered by such return. If a return is not filed when due, the tax shall be due on the day on which the return is required to be filed.

2. The wholesaler shall maintain such records in such form as the commissioner may require regarding such items as: where the wholesaler is not the cultivator, the weight of the cannabis flower and cannabis trim transferred to it by a cultivator or, where the wholesaler is the cultivator, the weight of such flower and trim produced by it; the geographic location of every retail dispensary to which it sold adult-use cannabis products; and any other record or information required by the commissioner. This information must be kept by such person for a period of three years after the return was filed.

(b) The provisions of article twenty-seven of this chapter shall apply to the tax imposed by this article in the same manner and with the same force and effect as if the language of such article had been incorporated in full into this section and had expressly referred to the tax imposed by this article, except to the extent that any provision of such article is either inconsistent with a provision of this article or is not relevant to this article.

(c) 1. All taxes, interest, and penalties collected or received by the commissioner under this article shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter, provided that an amount equal to one hundred percent collected under this article less any amount determined by the commissioner to be reserved by the comptroller for refunds or reimbursements shall be paid by the comptroller to the credit of the cannabis revenue fund established by section ninety-nine-hh of the state finance law. Of the total revenue collected or received under this article, the comptroller shall retain such amount as the commissioner may determine to be necessary for refunds. The commissioner is authorized and directed to deduct from the registration fees under subdivision (a) of section four hundred ninety-four of this article, before deposit into the cannabis revenue fund designated by the comptroller, a reasonable amount necessary to effectuate refunds of appropriations of the department to reimburse the department for the costs incurred to administer, collect, and distribute the taxes imposed by this article.

2. Notwithstanding the foregoing, the commissioner shall certify to the comptroller the total amount of tax, penalty and interest received by him or her on account of the tax imposed by subdivision (c) of section four hundred ninety-three of this article in trust for and on account of each county in which a retail dispensary is located. On or before the twelfth day of each month, the comptroller, after reserving such refund fund, shall pay to the appropriate fiscal officer of each
such county the taxes, penalties and interest received and certified by
the commissioner for the preceding calendar month.
§ 496. Returns to be kept secret. (a) Except in accordance with proper
judicial order or as in this section or otherwise provided by law, it
shall be unlawful for the commissioner, any officer or employee of the
department, or any officer or person who, pursuant to this section, is
permitted to inspect any return or report or to whom a copy, an abstract
or a portion of any return or report is furnished, or to whom any infor-
mation contained in any return or report is furnished, or any person who
in any manner may acquire knowledge of the contents of a return or
report filed pursuant to this article to divulge or make known in any
manner the content or any other information related to the business of
the wholesaler contained in any return or report required under this
article. The officers charged with the custody of such returns or
reports shall not be required to produce any of them or evidence of
anything contained in them in any action or proceeding in any court,
except on behalf of the state, the office of cannabis management, or the
commissioner in an action or proceeding involving the collection of tax
due under this chapter to which the state or the commissioner is a party
or a claimant or on behalf of any party to any action or proceeding
under the provisions of this article, when the returns or the reports or
the facts shown thereby are directly involved in such action or proceed-
ing, or in an action or proceeding related to the regulation or taxation
of adult-use cannabis products on behalf of officers to whom information
shall have been supplied as provided in this section, in any of which
events the courts may require the production of, and may admit in
evidence so much of said returns or reports or of the facts shown there-
by as are pertinent to the action or proceeding and no more. Nothing
herein shall be construed to prohibit the commissioner, in his or her
discretion, from allowing the inspection or delivery of a certified copy
of any return or report filed under this article or of any information
contained in any such return or report by or to a duly authorized offi-
cer or employee of the office of cannabis management or by or to the
attorney general or other legal representatives of the state when an
action shall have been recommended or commenced pursuant to this chapter
in which such returns or reports or the facts shown thereby are directly
involved; or the inspection of the returns or reports required under
this article by the comptroller or duly designated officer or employee
of the state department of audit and control, for purposes of the audit
of a refund of any tax paid by the wholesaler under this article; nor to
prohibit the delivery to such person or a duly authorized representative
of such person, a certified copy of any return or report filed by such
person pursuant to this article, nor to prohibit the publication of
statistics so classified as to prevent the identification of particular
returns or reports and the items thereof. This section shall also not be
construed to prohibit the disclosure, for tax administration purposes,
to the division of the budget and the office of the state comptroller,
of information aggregated from the returns filed by all wholesalers
purchasing and selling such products in the state, whether the number of
such persons is one or more. Provided further that, notwithstanding the
provisions of this subdivision, the commissioner may in his or her
discretion, permit the proper officer of any county entitled to receive
any distribution of the monies received on account of the tax imposed by
subdivision (c) of section four hundred ninety-three of this article, or
the authorized representative of such officer, to inspect any return
filed under this article, or may furnish to such officer or the offi-

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cer's authorized representative an abstract of any such return or supply
such officer or representative with information concerning an item
contained in any such return, or disclosed by any investigation of tax
liability under this article.
(b) The commissioner, in his or her discretion, may permit the appro-
priate officers of any other state that regulates or taxes cannabis or
the duly authorized representatives of such commissioner or of any such
officers, to inspect returns or reports made pursuant to this article,
or may furnish to the commissioner or other officer, or duly authorized
representatives, a copy of any such return or report or an abstract of
the information therein contained, or any portion thereof, or may supply
such commissioner or any such officers or such representatives with
information relating to the business of a wholesaler making returns or
reports hereunder solely for purposes of tax administration. The commis-
sioner may refuse to supply information pursuant to this subdivision to
the officers of any other state if the statutes of the state represented
by such officers do not grant substantially similar privileges to the
commissioner, but such refusal shall not be mandatory. Information shall
not be supplied to the appropriate officers of any state that regulates
or taxes cannabis, or the duly authorized representatives of such
commissioner or of any such officers, unless such commissioner, officer,
or other representatives shall agree not to divulge or make known in any
manner the information so supplied, but such officers may transmit such
information to their employees or legal representatives when necessary.
who in turn shall be subject to the same restrictions as those hereby
imposed upon such commissioner, officer or other representatives.
(c) 1. Any officer or employee of the state who willfully violates the
provisions of subdivision (a) or (b) of this section shall be dismissed
from office and be incapable of holding any public office in the state
for a period of five years thereafter.
2. For criminal penalties, see article thirty-seven of this chapter.
§ 40. Subdivision (a) of section 1115 of the tax law is amended by
adding a new paragraph 3-b to read as follows:
(3-b) Adult-use cannabis products as defined by article twenty-C of
this chapter.
§ 41. Section 12 of chapter 90 of the laws of 2014 amending the public
health law, the tax law, the state finance law, the general business
law, the penal law and the criminal procedure law relating to medical
use of marihuana, is amended to read as follows:
§ 12. This act shall take effect immediately [and]; provided, however
that sections one, three, five, six, seven-a, eight, nine, ten and elev-
en of this act shall expire and be deemed repealed seven years after
such date; provided that the amendments to section 171-a of the tax law
made by section seven of this act shall take effect on the same date and
in the same manner as section 54 of part A of chapter 59 of the laws of
2014 takes effect and shall not expire and be deemed repealed; and
provided, further, that the amendments to subdivision 5 of section
410.91 of the criminal procedure law made by section eleven of this act
shall not affect the expiration and repeal of such section and shall
expire and be deemed repealed therewith.
§ 42. The office of cannabis management, in consultation with the
division of the budget, the department of taxation and finance, the
department of health, office of alcoholism and substance abuse services,
ofice of mental health, New York state police and the division of crim-
inal justice services, shall conduct a study of the effectiveness of
this act. Such study shall examine all aspects of this act, including
economic and fiscal impacts, the impact on the public health and safety of New York residents and the progress made in achieving social justice goals and toward eliminating the illegal market for cannabis products in New York. The office shall make recommendations regarding the appropriate level of taxation of adult-use cannabis, as well as changes, if any, necessary to improve and protect the public health and safety of New Yorkers. Such study shall be conducted two years after the effective date of this act and shall be presented to the governor, the majority leader of the senate and the speaker of the assembly, no later than October 1, 2022.

§ 43. Section 102 of the alcoholic beverage control law is amended by adding a new subdivision 8 to read as follows:

8. No alcoholic beverage retail licensee shall sell cannabis, nor have or possess a license or permit to sell cannabis, on the same premises where alcoholic beverages are sold.

§ 44. Subdivisions 1, 4, 5, 6, 7 and 13 of section 12-102 of the general obligations law, as added by chapter 406 of the laws of 2000, are amended to read as follows:

1. "Illegal drug" means any controlled substance [or marijuana] the possession of which is an offense under the public health law or the penal law.
4. "Grade one violation" means possession of one-quarter ounce or more, but less than four ounces, or distribution of less than one ounce of an illegal drug [other than marijuana, or possession of one pound or twenty-five plants or more, but less than four pounds or fifty plants, or distribution of less than one pound of marijuana].
5. "Grade two violation" means possession of four ounces or more, but less than eight ounces, or distribution of one ounce or more, but less than two ounces, of an illegal drug [other than marijuana, or possession of four pounds or more or fifty plants or distribution of more than one pound but less than ten pounds of marijuana].
6. "Grade three violation" means possession of eight ounces or more, but less than sixteen ounces, or distribution of two ounces or more, but less than four ounces, of a specified illegal drug [or possession of eight pounds or more or seventy-five plants or more, but less than sixteen pounds or one hundred plants, or distribution of more than five pounds but less than ten pounds of marijuana].
7. "Grade four violation" means possession of sixteen ounces or more or distribution of four ounces or more of a specified illegal drug [or possession of sixteen pounds or more or one hundred plants or more or distribution of ten pounds or more of marijuana].
13. "Drug trafficker" means a person convicted of a class A or class B felony controlled substance [or marijuana offense] who, in connection with the criminal conduct for which he or she stands convicted, possessed, distributed, sold or conspired to sell a controlled substance [or marijuana] which, by virtue of its quantity, the person's prominent role in the enterprise responsible for the sale or distribution of such controlled substance and other circumstances related to such criminal conduct indicate that such person's criminal possession, sale or conspiracy to sell such substance was not an isolated occurrence and was part of an ongoing pattern of criminal activity from which such person derived substantial income or resources and in which such person played a leadership role.

§ 45. Paragraph (g) of subdivision 1 of section 488 of the social services law, as added by section 1 of part B of chapter 501 of the laws of 2012, is amended to read as follows:
shall mean any administration by a custodian to a service recipient of:
unlawfully using or distributing a controlled substance as defined by article thirty-three of the public
health law, without a prescription; or other medication not approved for
administration of medical cannabis when such administration is in
accordance with article three of the cannabis law and any regulations
promulgated thereunder as well as the rules, regulations, policies, or
procedures of the state oversight agency or agencies governing such
custodians. It also shall include a custodian unlawfully using or
distributing a controlled substance as defined by article thirty-three
of the public health law, at the workplace or while on duty.
§ 46. Paragraphs (e) and (f) of subdivision 1 of section 490 of the
social services law, as added by section 1 of part B of chapter 501 of
the laws of 2012, are amended and a new paragraph (g) is added to read
as follows:
(e) information regarding individual reportable incidents, incident
patterns and trends, and patterns and trends in the reporting and
response to reportable incidents is shared, consistent with applicable
law, with the justice center, in the form and manner required by the
justice center and, for facilities or provider agencies that are not
state operated, with the applicable state oversight agency which shall
provide such information to the justice center; [and]
(f) incident review committees are established; provided, however,
that the regulations may authorize an exemption from this requirement,
when appropriate, based on the size of the facility or provider agency
or other relevant factors. Such committees shall be composed of members
of the governing body of the facility or provider agency and other
persons identified by the director of the facility or provider agency,
including some members of the following: direct support staff, licensed
health care practitioners, service recipients and representatives of
family, consumer and other advocacy organizations, but not the director
of the facility or provider agency. Such committee shall meet regularly
to: (i) review the timeliness, thoroughness and appropriateness of the
facility or provider agency's responses to reportable incidents; (ii)
recommend additional opportunities for improvement to the director of
the facility or provider agency, if appropriate; (iii) review incident
trends and patterns concerning reportable incidents; and (iv) make
recommendations to the director of the facility or provider agency to
assist in reducing reportable incidents. Members of the committee shall
be trained in confidentiality laws and regulations, and shall comply
with section seventy-four of the public officers law[.]; and
(g) safe storage, administration, and diversion prevention policies
regarding controlled substances and medical cannabis.
§ 47. Subdivision 1 of section 505 of the agriculture and markets law,
as added by chapter 524 of the laws of 2014, is amended to read as
follows:
1. "Industrial hemp" means the plant Cannabis sativa L. and any part
of such plant, including the seeds thereof and all derivatives,
extracts, cannabinoids, isomers, acids, salts, and salts of isomers,
whether growing or not, with a delta-9 tetrahydrocannabinol concen-
tration of not more than 0.3 percent on a dry weight basis.
§ 48. Section 506 of the agriculture and markets law, as amended by
section 1 of part OO of chapter 58 of the laws of 2017, is amended to
read as follows:
§ 506. Growth, sale, distribution, transportation and processing of
industrial hemp and products derived from such hemp permitted. [Notwithstanding any provision of law to the contrary, industrial] 1.
Industrial hemp and products derived from such hemp are agricultural
products which may be grown, produced [and], possessed [in the state, and], sold, distributed, transported [or] and/or processed [either] in
[or out of] state [as part of agricultural pilot programs pursuant to
authorization under federal law and the provisions of this article
pursuant to authorization under federal law and/or the provisions of
this article.
[Notwithstanding any provision of law to the contrary restricting the
growing or cultivating, sale, distribution, transportation or processing
of industrial hemp and products derived from such hemp, and subject to
authorization under federal law, the] 2.
The commissioner may authorize the growing or cultivating of indus-
trial hemp as part of agricultural pilot programs conducted by the
department and/or an institution of higher education to study the growth
and cultivation, sale, distribution, transportation and processing of
such hemp and products derived from such hemp provided that the sites
and programs used for growing or cultivating industrial hemp are certi-
fied by, and registered with, the department.
3. The industrial hemp used for research pursuant to this section
shall be sourced from authorized New York state industrial hemp produc-
ers. The research partner may obtain an exemption for only grain or
fiber from this requirement upon a satisfactory showing to the depart-
ment that a suitable variety of industrial hemp for the research project
is not grown in New York and/or the use of New York sourced hemp is not
practicable for the project. Hemp for extracts can only be sourced from
authorized New York state industrial hemp producers.
4. Nothing in this section shall limit the jurisdiction of the depart-
ment under any other article of this chapter.
§ 49. Section 507 of the agriculture and markets law is REPEALED and a
new section 507 is added to read as follows:
§ 507. Licensing; fees. 1. No person shall grow, process, produce,
distribute and/or sell industrial hemp or products derived from indus-
trial hemp in the state unless (a) licensed biennially by the commis-
sioner or (b) authorized by the commissioner as part of an agricultural
research pilot program established under this article.
2. Application for a license to grow industrial hemp shall be made
upon a form prescribed by the commissioner, accompanied by a per-acre
license fee and a non-refundable application fee of five hundred
dollars.
3. The applicant shall furnish evidence of his or her good character,
experience and competency, that the applicant has adequate facilities,
equipment, process controls, testing capability and security to grow
hemp.
4. Growers who intend to cultivate hemp for cannabinoids shall be
required to obtain licensure from the department pursuant to article
twenty-nine-A of this chapter.
5. A renewal application shall be submitted to the commissioner at
least sixty days prior to the commencement of the next license period.
§ 50. Section 508 of the agriculture and markets law is REPEALED and a
new section 508 is added to read as follows:
§ 508. Compliance action plan. If the commissioner determines, after
notice and an opportunity for hearing, that a licensee has negligently
violated a provision of and/or a regulation promulgated pursuant to this
§ 51. Section 510 of the agriculture and markets law is REPEALED and a new section 510 is added to read as follows:

§ 509. Granting, suspending or revoking licenses. The commissioner may decline to grant a new license, may decline to renew a license, may suspend or revoke a license already granted after due notice and opportunity for hearing whenever he or she finds that:

1. any statement contained in an application for an applicant or licensee is or was false or misleading;
2. the applicant or licensee does not have good character, the required experience and/or competency, adequate facilities, equipment, process controls, testing capability and/or security to produce hemp or products derived from hemp;
3. the applicant or licensee has failed or refused to produce any records or provide any information demanded by the commissioner reasonably related to the administration and enforcement of this article; or
4. the applicant or licensee, or any officer, director, partner, holder of ten percent of the voting stock, or any other person exercising any position of management or control has failed to comply with any of the provisions of this article or rules and regulations promulgated pursuant thereto.

§ 52. Section 510 of the agriculture and markets law is REPEALED and a new section 510 is added to read as follows:

§ 510. Regulations. The commissioner may develop regulations consistent with the provisions of this article for the growing and cultivation, sale, distribution, and transportation of industrial hemp grown in the state, including:

1. the authorization or licensing of any person who may: acquire or possess industrial hemp plants or seeds; grow or cultivate industrial hemp plants; and/or sell, purchase, distribute, or transport such industrial hemp plants, plant parts, or seeds;
2. maintaining relevant information regarding land on which industrial hemp is produced within the state, including the legal description of the land, for a period of not less than three calendar years;
3. the procedure for testing of industrial hemp produced in the state for delta-9-tetrahydrocannabinol levels, using a representative non-decarboxylated sample of flowers and leaves from the whole plant or other similarly reliable methods;
4. the procedure for effective disposal of industrial hemp plants or products derived from hemp that are produced in violation of this article;
5. a procedure for conducting at least a random sample of industrial hemp producers to verify that hemp is not produced in violation of this article;
6. any required security measures; and
7. such other and further regulation as the commissioner deems appropriate or necessary.

§ 53. Section 511 of the agriculture and markets law is REPEALED and a new section 511 is added to read as follows:
§ 511. Prohibitions. Except as authorized by state law, and regulations promulgated thereunder, the growth, cultivation, processing, sale, and/or distribution of industrial hemp is prohibited.

§ 54. Section 512 of the agriculture and markets law is REPEALED and a new section 512 is added to read as follows:

§ 512. Industrial hemp data collection and best farming practices. The commissioner shall have the power to collect and publish data and research concerning, among other things, the growth, cultivation, production and processing methods of industrial hemp and products derived from industrial hemp and work with the New York state college of agriculture and life science at Cornell pursuant to section fifty-seven hundred twelve of the education law and the Cornell cooperative extension pursuant to section two hundred twenty-four of the county law to promote best farming practices for industrial hemp which are compatible with state water quality and other environmental objectives.

§ 55. Sections 513 and 514 of the agriculture and markets law are REPEALED and two new sections 513 and 514 are added to read as follows:

§ 513. Access to criminal history information through the division of criminal justice services. In connection with the administration of this article, the commissioner is authorized to request, receive and review criminal history information through the division of criminal justice services (division) with respect to any person seeking a license or authorization to undertake a hemp pilot project. At the commissioner's request, each researcher, principal and/or officer of the applicant shall submit to the department his or her fingerprints in such form and in such manner as specified by the division, for the purpose of conducting a criminal history search and returning a report thereon in accordance with the procedures and requirements established by the division pursuant to the provisions of article thirty-five of the executive law, which shall include the payment of the prescribed processing fees for the cost of the division's full search and retain procedures and a national criminal history record check. The commissioner, or his or her designee, shall submit such fingerprints and the processing fee to the division. The division shall forward to the commissioner a report with respect to the applicant's previous criminal history, if any, or a statement that the applicant has no previous criminal history according to its files. Fingerprints submitted to the division of criminal justice services pursuant to this section may also be submitted to the federal bureau of investigation for a national criminal history record check. If additional copies of fingerprints are required, the applicant shall furnish them upon request.

§ 514. Aids to enforcement. 1. The commissioner shall have full access to all premises, buildings, factories, farms, vehicles, cars, boats, airplanes, vessels, containers, packages, barrels, boxes, and/or cans for the purpose of enforcing the provisions of this article. The commissioner may, at such locations, examine industrial hemp and hemp products and may open any package and/or container reasonably believed to contain industrial hemp or hemp products, to determine whether such industrial hemp or hemp products follow applicable law or regulation.

2. A search warrant shall be issued by any court to which application is made therefor, whenever it shall be made to appear to such court that a licensee has: refused to permit any industrial hemp to be inspected or samples taken therefrom; refused to permit access to any premises, or place where licensed activities are conducted; and/or refused or prevented access thereto by any inspector of the department and that such inspector has reasonable grounds to believe that such person has
any industrial hemp in his or her possession, or under his or her control, and/or is in violation of the provisions or regulations of this article. In such a case, a warrant shall be issued in the name of the people, directed to a police officer, commanding him or her to: (a) search any place of business, factory, building, premises, or farm where licensed activities have occurred and any vehicle, boat, vessel, container, package, barrel, box, tub or can, containing, or believed to contain industrial hemp in the possession or under the control of any person who shall refuse to allow access to such hemp for inspection or sampling, (b) permit the inspection and sampling of any industrial hemp found in the execution of the warrant, as the officer applying for the search warrant shall designate when the same is found, by an inspector or a department official authorized by the commissioner or by this chapter, and/or (c) permit access to any place where access is refused or prevented, and to allow and enable a department inspector or other department official to conduct an inspection of the place. The provisions of article six hundred ninety of the criminal procedure law shall apply to such warrant as far as applicable thereto. The officer to whom the warrant is delivered shall make a return in writing of his or her proceedings thereunto to the court which issued the same.

3. The commissioner may quarantine industrial hemp when he or she has reason to believe that such commodity does not meet the definition thereof, set forth in subdivision one of section five hundred five of this article, or is otherwise in violation of or does not meet a standard set forth in, applicable law or regulation. The quarantine may be by the issuance of an order directing the owner or custodian of industrial hemp not to distribute, dispose of, or move that commodity without the written permission of the commissioner. The commissioner may also quarantine a product by placing a tag or other appropriate marking thereon or adjacent thereto that provides and requires that such product must not be distributed, disposed of, or moved without his or her written permission, or may quarantine a product by otherwise informing the owner or custodian thereof that such condition must be complied with.

4. The commissioner may seize industrial hemp by taking physical possession of industrial hemp when he or she has substantial evidence to believe that such commodity does not meet the definition thereof, set forth in subdivision one of section five hundred five of this article, or is otherwise in violation of, or does not meet a standard set forth in, applicable law or regulation.

5. Subsequent to quarantining or seizing industrial hemp, as authorized in subdivisions three and four of this section, the commissioner shall promptly give the owner or custodian thereof an opportunity to be heard to show cause why such industrial hemp should not be ordered destroyed. The commissioner shall, thereafter, consider all the relevant evidence and information presented and shall make a determination whether such industrial hemp should be ordered to be destroyed; that determination may be reviewed as provided for in article seventy-eight of the civil practice law and rules.

§ 56. Sections 179.00, 179.05, 179.10, 179.11 and 179.15 of the penal law, as added by chapter 90 of the laws of 2014, are amended to read as follows:

§ 179.00 Criminal diversion of medical [marihuana] cannabis; definitions.

The following definitions are applicable to this article:
2. "Certification" means a certification, made under section [thirty-three hundred sixty-one of the public health law] thirty of the cannabis law.

§ 179.05 Criminal diversion of medical [marihuana] cannabis; limitations.

The provisions of this article shall not apply to:
1. a practitioner authorized to issue a certification who acted in good faith in the lawful course of his or her profession; or
2. a registered organization as that term is defined in [subdivision nine of section thirty-three hundred sixty of the public health law] section thirty-four of the cannabis law who acted in good faith in the lawful course of the practice of pharmacy; or
3. a person who acted in good faith seeking treatment for a medical condition or assisting another person to obtain treatment for a medical condition.

§ 179.10 Criminal diversion of medical [marihuana] cannabis in the first degree.

A person is guilty of criminal diversion of medical [marihuana] cannabis in the first degree when he or she is a practitioner, as that term is defined in subdivision twelve of section thirty-three hundred sixty of the public health law section three of the cannabis law, who issues a certification with knowledge of reasonable grounds to know that (i) the recipient has no medical need for it, or (ii) it is for a purpose other than to treat a [serious] condition as defined in subdivision seven of section thirty-three hundred sixty of the public health law section three of the cannabis law.

Criminal diversion of medical [marihuana] cannabis in the first degree is a class E felony.

§ 179.11 Criminal diversion of medical [marihuana] cannabis in the second degree.

A person is guilty of criminal diversion of medical [marihuana] cannabis in the second degree when he or she sells, trades, delivers, or otherwise provides medical [marihuana] cannabis to another with knowledge or reasonable grounds to know that the recipient is not registered under [title five-A of article thirty-three of the public health law] article three of the cannabis law.

Criminal diversion of medical [marihuana] cannabis in the second degree is a class B misdemeanor.

§ 179.15 Criminal retention of medical [marihuana] cannabis.

A person is guilty of criminal retention of medical [marihuana] cannabis when, being a certified patient or designated caregiver, as those terms are defined in [subdivisions three and five of section thirty-three hundred sixty of the public health law, respectively] section three of the cannabis law, he or she knowingly obtains, possesses, stores or maintains an amount of [marihuana] cannabis in excess of the amount he or she is authorized to possess under the provisions of [title five-A of article thirty-three of the public health law] article three of the cannabis law.

Criminal retention of medical [marihuana] cannabis is a class A misdemeanor.

§ 57. Section 220.78 of the penal law, as added by chapter 154 of the laws of 2011, is amended to read as follows:

§ 220.78 Witness or victim of drug or alcohol overdose.
1. A person who, in good faith, seeks health care for someone who is
experiencing a drug or alcohol overdose or other life threatening
medical emergency shall not be charged or prosecuted for a controlled
substance offense under this article [two hundred twenty] or a [marihu-
ana] cannabis offense under article two hundred [twenty-one] twenty-two
of this title, other than an offense involving sale for consideration or
other benefit or gain, or charged or prosecuted for possession of alco-
hol by a person under age twenty-one years under section sixty-five-c of
the alcoholic beverage control law, or for possession of drug parapher-
nalia under article thirty-nine of the general business law, with
respect to any controlled substance, [marihuana] cannabis, alcohol or
paraphernalia that was obtained as a result of such seeking or receiving
of health care.

2. A person who is experiencing a drug or alcohol overdose or other
life threatening medical emergency and, in good faith, seeks health care
for himself or herself or is the subject of such a good faith request
for health care, shall not be charged or prosecuted for a controlled
substance offense under this article or a [marihuana] cannabis offense
under article two hundred [twenty-one] twenty-two of this title, other
than an offense involving sale for consideration or other benefit or
gain, or charged or prosecuted for possession of alcohol by a person
under age twenty-one years under section sixty-five-c of the alcoholic
beverage control law, or for possession of drug paraphernalia under
article thirty-nine of the general business law, with respect to any
substance, [marihuana] cannabis, alcohol or paraphernalia that was
obtained as a result of such seeking or receiving of health care.

3. Definitions. As used in this section the following terms shall have
the following meanings:

(a) "Drug or alcohol overdose" or "overdose" means an acute condition
including, but not limited to, physical illness, coma, mania, hysteria
or death, which is the result of consumption or use of a controlled
substance or alcohol and relates to an adverse reaction to or the quan-
tity of the controlled substance or alcohol or a substance with which
the controlled substance or alcohol was combined; provided that a
patient's condition shall be deemed to be a drug or alcohol overdose if
a prudent layperson, possessing an average knowledge of medicine and
health, could reasonably believe that the condition is in fact a drug or
alcohol overdose and (except as to death) requires health care.

(b) "Health care" means the professional services provided to a person
experiencing a drug or alcohol overdose by a health care professional
licensed, registered or certified under title eight of the education law
or article thirty of the public health law who, acting within his or her
lawful scope of practice, may provide diagnosis, treatment or emergency
services for a person experiencing a drug or alcohol overdose.

4. It shall be an affirmative defense to a criminal sale controlled
substance offense under this article or a criminal sale of [marihuana]
cannabis offense under article two hundred [twenty-one] twenty-two of
this title, not covered by subdivision one or two of this section, with
respect to any controlled substance or [marihuana] cannabis which was
obtained as a result of such seeking or receiving of health care, that:

(a) the defendant, in good faith, seeks health care for someone or for
him or herself who is experiencing a drug or alcohol overdose or other
life threatening medical emergency; and

(b) the defendant has no prior conviction for the commission or
attempted commission of a class A-I, A-II or B felony under this arti-
cle.
5. Nothing in this section shall be construed to bar the admissibility
of any evidence in connection with the investigation and prosecution of
a crime with regard to another defendant who does not independently
qualify for the bar to prosecution or for the affirmative defense; nor
with regard to other crimes committed by a person who otherwise quali-
fies under this section; nor shall anything in this section be construed
to bar any seizure pursuant to law, including but not limited to pursu-
ant to section thirty-three hundred eighty-seven of the public health
law.

6. The bar to prosecution described in subdivisions one and two of
this section shall not apply to the prosecution of a class A-I felony
under this article, and the affirmative defense described in subdivision
four of this section shall not apply to the prosecution of a class A-I
or A-II felony under this article.

§ 58. Subdivision 1 of section 260.20 of the penal law, as amended by
chapter 362 of the laws of 1992, is amended as follows:

1. He knowingly permits a child less than eighteen years old to enter
or remain in or upon a place, premises or establishment where sexual
activity as defined by article one hundred thirty, two hundred thirty or
two hundred sixty-three of this [chapter] part or activity involving
controlled substances as defined by article two hundred twenty of this
[chapter or involving marihuana as defined by article two hundred twen-
ty-one of this chapter] part is maintained or conducted, and he knows or
has reason to know that such activity is being maintained or conducted;
or

§ 59. Section 89-h of the state finance law, as added by chapter 90 of
the laws of 2014, is amended to read as follows:

§ 89-h. Medical [marihuana] cannabis trust fund. 1. There is hereby
established in the joint custody of the state comptroller and the
commissioner of taxation and finance a special fund to be known as the
"medical [marihuana] cannabis trust fund."

2. The medical [marihuana] cannabis trust fund shall consist of all
moneys required to be deposited in the medical [marihuana] cannabis
trust fund pursuant to the provisions of section four hundred ninety of
the tax law.

3. The moneys in the medical [marihuana] cannabis trust fund shall be
kept separate and shall not be commingled with any other moneys in the
custody of the commissioner of taxation and finance and the state comp-
troller.

4. The moneys of the medical [marihuana] cannabis trust fund, follow-
ing appropriation by the legislature, shall be allocated upon a certif-
icate of approval of availability by the director of the budget as
follows: (a) Twenty-two and five-tenths percent of the monies shall be
transferred to the counties in New York state in which the medical
[marihuana] cannabis was manufactured and allocated in proportion to the
gross sales originating from medical [marihuana] cannabis manufactured
in each such county; (b) twenty-two and five-tenths percent of the
moneys shall be transferred to the counties in New York state in which
the medical [marihuana] cannabis was dispensed and allocated in propor-
tion to the gross sales occurring in each such county; (c) five percent
of the monies shall be transferred to the office of alcoholism and
substance abuse services, which shall use that revenue for additional
drug abuse prevention, counseling and treatment services; and (d) five
percent of the revenue received by the department shall be transferred
to the division of criminal justice services, which shall use that
revenue for a program of discretionary grants to state and local law
enforcement agencies that demonstrate a need relating to [title five-A
of article thirty-three of the public health law] article three of the
cannabis law; said grants could be used for personnel costs of state and
local law enforcement agencies. For purposes of this subdivision, the
city of New York shall be deemed to be a county.
§ 60. The state finance law is amended by adding three new sections
99-hh, 99-ii and 99-jj to read as follows:
§ 99-hh. New York state cannabis revenue fund. 1. There is hereby
established in the joint custody of the state comptroller and the
commissioner of taxation and finance a special fund to be known as the
"New York state cannabis revenue fund".
2. Such fund shall consist of all revenues received by the department
of taxation and finance, pursuant to the provisions of article eigh-
ten-A of the tax law and all other moneys appropriated thereto from any
other fund or source pursuant to law. Nothing contained in this section
shall prevent the state from receiving grants, gifts or bequests for the
purposes of the fund as defined in this section and depositing them into
the fund according to law.
3. The moneys in such fund shall be expended for the following
purposes:
   (a) Reasonable costs incurred by the department of taxation and
finance for administering and collecting the taxes imposed by this part;
provided, however, such costs shall not exceed four percent of tax
revenues received.
   (b) Reasonable costs incurred by the office of cannabis management for
implementing, administering, and enforcing the marhuana regulation and
taxation act to the extent those costs are not reimbursed pursuant to
the cannabis law. This paragraph shall remain operative through the two
thousand twenty-four--two thousand twenty-five fiscal year.
   (c) Beginning with the two thousand twenty-one--two thousand twenty-
two fiscal year and continuing through the two thousand thirty-one fiscal year, the commissioner of taxation and
finance shall annually disburse the following sums for the purposes of
data collection and reporting:
   (i) Seven hundred fifty thousand dollars to the office of cannabis
management policy to track and report data related to the licensing of
cannabis businesses, including the geographic location, structure, and
function of licensed cannabis businesses, and demographic data, includ-
ing race, ethnicity, and gender, of license holders. The office of
cannabis management shall publish reports on its findings annually and
shall make the reports available to the public.
   (ii) Seven hundred fifty thousand dollars to the department of crimi-
    nal justice services to track and report data related to any infrac-
    tions, violations, or criminal convictions that occur under any of the
    remaining cannabis statutes. The department of criminal justice
    services shall publish reports on its findings annually and shall make
    the reports available to the public.
   (iii) One million dollars to the state university of New York to
research and evaluate the implementation and effect of the marhuana
regulation and taxation act. No more than four percent of these monies
may be used for expenses related to administrative costs of conducting
such research, and to, if appropriate, make recommendations to the
legislature and governor regarding possible amendments to the marhuana
regulation and taxation act. The recipients of these funds shall publish
reports on their findings at a minimum of every two years and shall make
the reports available to the public. The research funded pursuant to this subdivision shall include but not necessarily be limited to:

(A) the impact on public health, including health costs associated with cannabis use, as well as whether cannabis use is associated with an increase or decrease in use of alcohol or other drugs;

(B) the impact of treatment for cannabis use disorder and the effectiveness of different treatment programs;

(C) public safety issues related to cannabis use, including studying the effectiveness of the packaging and labeling requirements and advertising and marketing restrictions contained in the act at preventing underage access to and use of cannabis and cannabis products, and studying the health-related effects among users of varying potency levels of cannabis and cannabis products;

(D) cannabis use rates, maladaptive use rates for adults and youth, and diagnosis rates of cannabis-related substance use disorders;

(E) cannabis market prices, illicit market prices, tax structures and rates, including an evaluation of how to best tax cannabis based on potency, and the structure and function of licensed cannabis businesses;

(F) whether additional protections are needed to prevent unlawful monopolies or anti-competitive behavior from occurring in the cannabis industry and, if so, recommendations as to the most effective measures for preventing such behavior;

(G) the economic impacts in the private and public sectors, including but not necessarily limited to, job creation, workplace safety, revenues, taxes generated for state and local budgets, and criminal justice impacts, including, but not necessarily limited to, impacts on law enforcement and public resources, short and long term consequences of involvement in the criminal justice system, and state and local government agency administrative costs and revenue;

(H) whether the regulatory agencies tasked with implementing and enforcing the marihuana regulation and taxation act are doing so consistent with the purposes of the act, and whether different agencies might do so more effectively; and

(I) any environmental issues related to cannabis production and the criminal prohibition of cannabis production.

(d) One million dollars annually, for a period of three years after the effective date of this section, to the state police to expand and enhance the drug recognition expert training program and technologies utilized in the process of maintaining road safety.

(i) The state police, in association with the office of cannabis management, are authorized to establish a pilot program for the testing and development of new technologies to detect drivers who are driving under the influence of cannabis.

(ii) Pursuant to such pilot program, a law enforcement officer, who upon reasonable suspicion and belief, identifies an individual who appears to be driving under the influence of a drug as defined by section one hundred fourteen-a of the vehicle and traffic law, may, with the knowing and intelligent permission of the driver, utilize developing technologies for the purpose of identifying said drug within the system of the driver.

(iii) The objection to, compliance with, or results of the administration of said developing technologies may not be used against any driver for the purpose of advancing a criminal action. Additionally, saliva, or other biological material obtained from the driver shall not be admissible against the driver in any criminal proceeding, or retained for any reason.
(iv) The driver shall be notified of the results of any administration of said developing technologies and provided with documentation of said results.

(v) The pilot program established by subparagraph (i) of this paragraph shall be in effect for one year after the effective date of this section.

4. After the dispersal of moneys pursuant to subdivision three of this section, the remaining moneys in the fund deposited during the prior fiscal year shall be disbursed into the state lottery fund and two additional sub-funds created within the cannabis revenue fund known as the drug treatment and public education fund and the community grants reinvestment fund, as follows:

(a) twenty-five percent shall be deposited in the state lottery fund established by section ninety-two-c of this article; provided that such moneys shall be distributed to the department of education in accordance with subsections two and four of section ninety-two-c of this article and shall not be utilized for the purposes of subdivision three of such section. Monies allocated by this article may enhance, but shall not supplant, existing dedicated funds to the department of education;

(b) twenty-five percent shall be deposited in the drug treatment and public education fund established by section ninety-nine-ii of this article; and

(c) fifty percent shall be deposited in the community grants reinvestment fund established by section ninety-nine-ij of this article.

5. On or before the first day of February each year, the commissioner of taxation and finance shall provide a written report to the temporary finance committee, chair of the assembly ways and means committee, the state comptroller and the public. Such report shall detail how the moneys of the fund were utilized during the preceding calendar year, and shall include:

(a) the amount of money dispersed from the fund and the process used for such disbursements;

(b) recipients of awards from the fund;

(c) the amount awarded to each recipient of an award from the fund;

(d) the purposes for which such awards were granted; and

(e) a summary financial plan for such monies which shall include estimates of all receipts and all disbursements for the current and succeeding fiscal years, along with the actual results from the prior fiscal year.

6. Moneys shall be payable directly from the cannabis revenue fund to the department of education.

§ 99-ii. New York state drug treatment and public education fund. 1. There is hereby established in the joint custody of the state comptroller and the commissioner of taxation and finance a special fund to be known as the "New York state drug treatment public education fund".

2. Such fund shall consist of revenues received pursuant to the provisions of section ninety-nine-hh of this article and all other moneys appropriated thereto from any other fund or source pursuant to law. Nothing contained in this section shall prevent the state from receiving grants, gifts or bequests for the purposes of the fund as defined in this section and depositing them into the fund according to law.

3. The moneys in such fund shall be expended to the commissioner of the office of alcoholism and substance abuse and disbursed in consultation with the commissioner of health for the following purposes:
(a) To develop and implement a youth-focused public health education and prevention campaign, including school-based prevention, early intervention, and health care services and programs to reduce the risk of cannabis and other substance use by school-aged children;

(b) To develop and implement a statewide public health campaign focused on the health effects of cannabis and legal use, including an ongoing education and prevention campaign that educates the general public, including parents, consumers and retailers, on the legal use of cannabis, the importance of preventing youth access, the importance of safe storage and preventing secondhand cannabis smoke exposure, information for pregnant or breastfeeding women, and the overconsumption of edibles;

(c) To provide substance use disorder treatment programs for youth and adults, with an emphasis on programs that are culturally and gender competent, trauma-informed, evidence-based and provide a continuum of care that includes screening and assessment (substance use disorder as well as mental health), early intervention, active treatment, family involvement, case management, overdose prevention, prevention of communicable diseases related to substance use, relapse management for substance use and other co-occurring behavioral health disorders, vocational services, literacy services, parenting classes, family therapy and counseling services, medication-assisted treatments, psychiatric medication and psychotherapy; and

(d) To evaluate the programs being funded to determine their effectiveness.

4. On or before the first day of February each year, the commissioner of the office of alcoholism and substance abuse services shall provide a written report to the temporary president of the senate, speaker of the assembly, chair of the senate finance committee, chair of the assembly ways and means committee, chair of the senate committee on alcoholism and drug abuse, chair of the assembly alcoholism and drug abuse committee, the state comptroller and the public. Such report shall detail how the moneys of the fund were utilized during the preceding calendar year, and shall include:

(a) the amount of money dispersed from the fund and the award process used for such disbursements;

(b) recipients of awards from the fund;

(c) the amount awarded to each recipient of an award from the fund;

(d) the purposes for which such awards were granted; and

(e) a summary financial plan for such monies which shall include estimates of all receipts and all disbursements for the current and succeeding fiscal years, along with the actual results from the prior fiscal year.

5. Moneys shall be payable from the fund on the audit and warrant of the comptroller on vouchers approved and certified by the commissioner of education.

§ 99-jj. New York state community grants reinvestment fund. 1. There is hereby established in the joint custody of the state comptroller and the commissioner of taxation and finance a special fund to be known as the "New York state community grants reinvestment fund".

2. Such fund shall consist of all revenues received pursuant to the provisions of section ninety-nine-hh of this article and all other moneys appropriated thereto from any other fund or source pursuant to law. Nothing contained in this section shall prevent the state from receiving grants, gifts or bequests for the purposes of the fund as
3. The fund shall be governed and administered by an executive steering committee of thirteen members, including a representative from the office of children and family services, the labor department, and the health department appointed by the governor, and a representative of the education department appointed by the board of regents. In addition, the majority and minority leaders of the Senate and Assembly shall each appoint one member to the executive steering committee, the comptroller shall appoint three additional members, and the attorney general shall appoint two additional members from relevant local government entities and community-based organizations. Every effort shall be made to ensure a balanced and diverse committee representing the regions and demographics of the state, which shall have expertise in job placement, homelessness and housing, behavioral health and substance use disorder treatment, and effective rehabilitative treatment for adults and juveniles, and shall include representatives of organizations serving communities impacted by past federal and state drug policies.

4. The moneys in such fund shall be expended by the executive steering committee to qualified community-based nonprofit organizations and approved local government entities for the purpose of reinvesting in communities disproportionately affected by past federal and state drug policies. The grants from this program shall be used, including but not limited to, to support job placement, job skills services, adult education, mental health treatment, substance use disorder treatment, housing, community banking, nutrition services, afterschool and child care services, system navigation services, legal services to address barriers to reentry, and linkages to medical care, women's health services and other community-based supportive services. The grants from this program may also be used to further support the social and economic equity program created by Article four of the cannabis law and distributed through the office of cannabis management.

5. On or before the first day of February each year, the commissioner of the office of children and family services shall provide a written report to the temporary president of the Senate, speaker of the Assembly, chair of the Senate finance committee, chair of the Assembly Ways and Means committee, chair of the Senate Committee on Children and Families, chair of the Assembly Children and Families Committee, chair of the Senate Committee on Labor, chair of the Assembly Labor Committee, chair of the Senate Committee on Health, chair of the Assembly Health Committee, chair of the Senate Committee on Education, chair of the Assembly Education Committee, the state comptroller and the public. Such report shall detail how the monies of the fund were utilized during the preceding calendar year, and shall include:
   (a) the amount of money dispersed from the fund and the award process used for such disbursements;
   (b) recipients of awards from the fund;
   (c) the amount awarded to each recipient of an award from the fund;
   (d) the purposes for which such awards were granted; and
   (e) a summary financial plan for such monies which shall include estimates of all receipts and all disbursements for the current and succeeding fiscal years, along with the actual results from the prior fiscal year.

6. Moneys shall be payable from the fund on the audit and warrant of the comptroller on vouchers approved and certified by the executive steering committee.
§ 61. Severability. If any provision or term of this act is for any
reason declared unconstitutional or invalid or ineffective by any compe-
tent jurisdiction, such decision shall not affect the validity of the
effectiveness of the remaining portions of this act or any part thereof.
§ 62. This act shall take effect immediately; provided, however that
if section 3 of part XX of chapter 59 of the laws of 2019 shall not have
taken effect on or before such date then section thirty-five of this act
shall take effect on the same date and in the same manner as such chap-
ter of the laws of 2019 takes effect; provided, further, that sections
thirty-nine and forty of this act shall take effect April 1, 2020, and
shall apply on and after such date: (a) to the cultivation of cannabis
flower and cannabis trim transferred by a cultivator who is not a whole-
saler; (b) to the cultivation of cannabis flower and cannabis trim sold
or transferred to a retail dispensary by a cultivator who is a whole-
saler; and (c) to the sale or transfer of adult use cannabis products to
a retail dispensary; provided, further, that the amendments to article
179 of the penal law made by section fifty-six of this act shall not
affect the repeal of such article and shall be deemed to be repealed
therewith; provided, further, that the amendments to section 89-h of the
state finance law made by section fifty-nine of this act shall not
affect the repeal of such section and shall be deemed repealed there-
with; and provided, further, that the amendments to subdivision 1 of
section 171-a of the tax law made by section thirty-five of this act
shall not affect the expiration of such subdivision and shall expire
therewith, when upon such date the provisions of section thirty-six of
this act shall take effect.
AN ACT to amend the agriculture and markets law, in relation to the
growth of industrial hemp and the regulation of hemp extract; and to
repeal certain provisions of such law relating thereto

The People of the State of New York, represented in Senate and Assembly,
do enact as follows:

1 Section 1. Subdivision 1 of section 505 of the agriculture and markets
2 law, as added by chapter 524 of the laws of 2014, is amended to read as
3 follows:
4 1. "Industrial hemp" means the plant Cannabis sativa L. and any part
5 of such plant, including the seeds thereof and all derivatives,
6 extracts, cannabinoids, isomers, acids, salts, and salts of isomers,
7 whether growing or not, with a delta-9 tetrahydrocannabinol concen-
8 tration of not more than 0.3 percent on a dry weight basis.
9 § 2. Section 506 of the agriculture and markets law, as amended by
10 section 1 of part OO of chapter 58 of the laws of 2017, is amended to
11 read as follows:
12 § 506. Growth, sale, distribution, transportation and processing of
13 industrial hemp and products derived from such hemp permitted. [Notwith-
14 standing any provision of law to the contrary, industrial] 1. Industrial
15 hemp and products derived from such hemp are agricultural products which
16 may be grown, produced [and], possessed [in the state, and], sold,
17 distributed, transported [or] and/or processed [either] in [or out of]
18 state [as part of agricultural pilot programs pursuant to authorization
19 under federal law and the provisions of this article] pursuant to

EXPLANATION.--Matter in italics (underscored) is new; matter in brackets
[ ] is old law to be omitted.
authorization under federal law and/or the provisions of this article.
Notwithstanding any provision of law to the contrary restricting the
growing or cultivating, sale, distribution, transportation or processing
of industrial hemp and products derived from such hemp, and subject to
authorization under federal law, the]
2. The commissioner may authorize the growing or cultivating of indus-
trial hemp as part of agricultural pilot programs conducted by the
department and/or an institution of higher education to study the growth
and cultivation, sale, distribution, transportation and processing of
such hemp and products derived from such hemp provided that the sites
and programs used for growing or cultivating industrial hemp are certi-
fied by, and registered with, the department.
3. The industrial hemp used for research pursuant to this section
shall be sourced from authorized New York state industrial hemp produc-
ers. The research partner may obtain an exemption for only grain or
fiber from this requirement upon a satisfactory showing to the depart-
ment that a suitable variety of industrial hemp for the research project
is not grown in New York and/or the use of New York sourced hemp is not
practicable for the project. Hemp for extracts can only be sourced from
authorized New York state industrial hemp producers.
4. Nothing in this section shall limit the jurisdiction of the depart-
ment under any other article of this chapter.
§ 3. Section 507 of the agriculture and markets law is REPEALED and a
new section 507 is added to read as follows:
§ 507. Licensing; fees. 1. No person shall grow, process, produce,
distribute and/or sell industrial hemp or products derived from indus-
trial hemp in the state unless (a) licensed biennially by the commis-
sioner or (b) authorized by the commissioner as part of an agricultural
research pilot program established under this article.
2. Application for a license to grow industrial hemp shall be made
upon a form prescribed by the commissioner, accompanied by a per-acre
license fee and a non-refundable application fee of five hundred
dollars.
3. The applicant shall furnish evidence of his or her good character,
experience and competency, that the applicant has adequate facilities,
equipment, process controls, testing capability and security to grow
hemp.
4. Growers who intend to cultivate hemp for cannabinoids shall be
required to obtain licensure from the department pursuant to article
twenty-nine-A of this chapter.
5. A renewal application shall be submitted to the commissioner at
least sixty days prior to the commencement of the next license period.
§ 4. Section 508 of the agriculture and markets law is REPEALED and a
new section 508 is added to read as follows:
§ 508. Compliance action plan. If the commissioner determines, after
notice and an opportunity for hearing, that a licensee has negligently
violated a provision of and/or a regulation promulgated pursuant to this
article, that licensee shall be required to comply with a corrective
action plan established by the commissioner to correct the violation by
a reasonable date and to periodically report to the commissioner with
respect to the licensee's compliance with this article for a period of
no less than the next two calendar years following the commencement date
of the compliance action plan. The provisions of this section shall not
be applicable to research partners conducting hemp research pursuant to
a research partner agreement, the terms of which shall control.
§ 5. Section 509 of the agriculture and markets law is REPEALED and a new section 509 is added to read as follows:

§ 509. Granting, suspending or revoking licenses. The commissioner may decline to grant a new license, may decline to renew a license, may suspend or revoke a license already granted after due notice and opportunity for hearing whenever he or she finds that:

1. any statement contained in an application for an applicant or licensee is or was false or misleading;

2. the applicant or licensee does not have good character, the required experience and/or competency, adequate facilities, equipment, process controls, testing capability and/or security to produce hemp or products derived from hemp;

3. the applicant or licensee has failed or refused to produce any records or provide any information demanded by the commissioner reasonably related to the administration and enforcement of this article; or

4. the applicant or licensee, or any officer, director, partner, holder of ten percent of the voting stock, or any other person exercising any position of management or control has failed to comply with any of the provisions of this article or rules and regulations promulgated pursuant thereto.

§ 6. Section 510 of the agriculture and markets law is REPEALED and a new section 510 is added to read as follows:

§ 510. Regulations. The commissioner may develop regulations consistent with the provisions of this article for the growing and cultivation, sale, distribution, and transportation of industrial hemp grown in the state, including:

1. the authorization or licensing of any person who may: acquire or possess industrial hemp plants or seeds; grow or cultivate industrial hemp plants; and/or sell, purchase, distribute, or transport such industrial hemp plants, plant parts, or seeds;

2. maintaining relevant information regarding land on which industrial hemp is produced within the state, including the legal description of the land, for a period of not less than three calendar years;

3. the procedure for testing of industrial hemp produced in the state for delta-9-tetrahydrocannabinol levels, using a representative non-decarboxylated sample of flowers and leaves from the whole plant or other similarly reliable methods;

4. the procedure for effective disposal of industrial hemp plants or products derived from hemp that are produced in violation of this article;

5. a procedure for conducting at least a random sample of industrial hemp producers to verify that hemp is not produced in violation of this article;

6. any required security measures; and

7. such other and further regulation as the commissioner deems appropriate or necessary.

§ 7. Section 511 of the agriculture and markets law is REPEALED and a new section 511 is added to read as follows:

§ 511. Prohibitions. Except as authorized by state law, and regulations promulgated thereunder, the growth, cultivation, processing, sale, and/or distribution of industrial hemp is prohibited.

§ 8. Section 512 of the agriculture and markets law is REPEALED and a new section 512 is added to read as follows:

§ 512. Industrial hemp data collection and best farming practices. The commissioner shall have the power to collect and publish data and research concerning, among other things, the growth, cultivation,
production and processing methods of industrial hemp and products derived from industrial hemp and work with the New York state college of agriculture and life science at Cornell pursuant to section fifty-seven hundred twelve of the education law and the Cornell cooperative extension pursuant to section two hundred twenty-four of the county law to promote best farming practices for industrial hemp which are compatible with state water quality and other environmental objectives.

§ 9. Sections 513 and 514 of the agriculture and markets law are REPEALED and two new sections 513 and 514 are added to read as follows:

§ 513. Access to criminal history information through the division of criminal justice services. In connection with the administration of this article, the commissioner is authorized to request, receive and review criminal history information through the division of criminal justice services (division) with respect to any person seeking a license or authorization to undertake a hemp pilot project. At the commis-
er's request, each researcher, principal and/or officer of the applicant shall submit to the department his or her fingerprints in such form and in such manner as specified by the division, for the purpose of conduct-
ing a criminal history search and returning a report thereon in accord-
ance with the procedures and requirements established by the division pursuant to the provisions of article thirty-five of the executive law, which shall include the payment of the prescribed processing fees for the cost of the division's full search and retain procedures and a national criminal history record check. The commissioner, or his or her designee, shall submit such fingerprints and the processing fee to the division. The division shall forward to the commissioner a report with respect to the applicant's previous criminal history, if any, or a statement that the applicant has no previous criminal history according to its files. Fingerprints submitted to the division of criminal justice services pursuant to this section may also be submitted to the federal bureau of investigation for a national criminal history record check. If additional copies of fingerprints are required, the applicant shall furnish them upon request.

§ 514. Aids to enforcement. 1. The commissioner shall have full access to all premises, buildings, factories, farms, vehicles, cars, boats, airplanes, vessels, containers, packages, barrels, boxes, and/or cans for the purpose of enforcing the provisions of this article. The commis-
sioner may, at such locations, examine industrial hemp and hemp products and may open any package and/or container reasonably believed to contain industrial hemp or hemp products, to determine whether such industrial hemp or hemp products follow applicable law or regulation.

2. A search warrant shall be issued by any court to which application is made therefor, whenever it shall be made to appear to such court that a licensee has: refused to permit any industrial hemp to be inspected or samples taken therefrom; refused to permit access to any premises, or place where licensed activities are conducted; and/or refused or prevented access thereto by any inspector of the department and that such inspector has reasonable grounds to believe that such person has any industrial hemp in his or her possession, or under his or her control and/or is in violation of the provisions or regulations of this article. In such a case, a warrant shall be issued in the name of the people, directed to a police officer, commanding him or her to: (a) search any place of business, factory, building, premises, or farm where licensed activities have occurred and any vehicle, boat, vessel, container, package, barrel, box, tub or can, containing, or believed to contain industrial hemp in the possession or under the control of any
person who shall refuse to allow access to such hemp for inspection or sampling, (b) permit the inspection and sampling of any industrial hemp found in the execution of the warrant, as the officer applying for the search warrant shall designate when the same is found, by an inspector or a department official authorized by the commissioner or by this chapter, and/or (c) permit access to any place where access is refused or prevented, and to allow and enable a department inspector or other department official to conduct an inspection of the place. The provisions of article six hundred ninety of the criminal procedure law shall apply to such warrant as far as applicable thereto. The officer to whom the warrant is delivered shall make a return in writing of his or her proceedings thereunto to the court which issued the same.

3. The commissioner may quarantine industrial hemp when he or she has reason to believe that such commodity does not meet the definition thereof, set forth in subdivision one of section five hundred five of this article, or is otherwise in violation of or does not meet a standard set forth in applicable law or regulation. The quarantine may be by the issuance of an order directing the owner or custodian of industrial hemp not to distribute, dispose of, or move that commodity without the written permission of the commissioner. The commissioner may also quarantine a product by placing a tag or other appropriate marking thereon or adjacent thereto that provides and requires that such product must not be distributed, disposed of, or moved without his or her written permission, or may quarantine a product by otherwise informing the owner or custodian thereof that such condition must be complied with.

4. The commissioner may seize industrial hemp by taking physical possession of industrial hemp when he or she has substantial evidence to believe that such commodity does not meet the definition thereof, set forth in subdivision one of section five hundred five of this article, or is otherwise in violation of, or does not meet a standard set forth in, applicable law or regulation.

5. Subsequent to quarantining or seizing industrial hemp, as authorized in subdivisions three and four of this section, the commissioner shall promptly give the owner or custodian thereof an opportunity to be heard to show cause why such industrial hemp should not be ordered destroyed. The commissioner shall, thereafter, consider all the relevant evidence and information presented and shall make a determination whether such industrial hemp should be ordered to be destroyed; that determination may be reviewed as provided for in article seventy-eight of the civil practice law and rules.

§ 10. The agriculture and markets law is amended by adding a new article 29-A to read as follows:

ARTICLE 29-A
REGULATION OF HEMP EXTRACT

Section 520. Definitions.

521. Rulemaking authority.
522. Cannabinoid related hemp extract licensing.
523. Cannabinoid grower licenses.
524. Cannabinoid manufacturer license.
525. Cannabinoid extractor license.
526. Cannabinoid license applications.
527. Information to be requested in applications for licenses.
528. Fees.
529. Selection criteria.
530. Limitations of licensure; duration.
531. License renewal.
§ 520. Definitions. Wherever used in this article unless otherwise expressly stated or unless the context or subject matter requires a different meaning, the following terms shall have the representative meanings hereinafter set forth or indicated:

1. "Applicant" means a for-profit entity or not-for-profit corporation and includes board members who submit an application to become a licensee.

2. "Hemp extract" means any product made or derived from industrial hemp, including the seeds thereof and all derivatives whether growing or not, with a delta-9-tetrahydrocannabinol concentration of not more than an amount of the plant Cannabis sativa L. and any part of such plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9-tetrahydrocannabinol concentration of not more than an amount determined by the department in regulation, used or intended for human or animal consumption or use for its cannabinoid content, as determined by the commissioner in regulation. Hemp extract excludes industrial hemp used or intended exclusively for an industrial purpose and those food and/or food ingredients that are generally recognized as safe by the department, and shall not be regulated as hemp extract within the meaning of this article.

3. "Cannabinoid grower" means a person licensed by the department and in compliance with article twenty-nine of this chapter, to acquire, possess, cultivate, and sell hemp extract for its cannabinoid content.

4. "Cannabinoid manufacturer" means a person licensed by the department to acquire, possess, and manufacture hemp extract from licensed cannabinoid growers or cannabinoid extractors for the manufacture and sale of hemp extract products marketed for cannabinoid content and used or intended for human or animal consumption or use.

5. "Cannabinoid extractor" means a person licensed by the department to acquire, possess, extract and manufacture hemp extract from licensed cannabinoid growers for the manufacture and sale of hemp extract products marketed for cannabinoid content and used or intended for human or animal consumption or use.

6. "License" means a license issued pursuant to this article.

7. "Industrial hemp" means the plant Cannabis sativa L. and any part of such plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers.
whether growing or not, with a delta-9-tetrahydrocannabinol concentra-
tion of not more than 0.3 percent on a dry weight basis.

§ 521. Rulemaking authority. 1. The department shall perform such
acts, prescribe such forms and propose such rules, regulations and
orders as it may deem necessary or proper to fully effectuate the
provisions of this article.
2. The department shall have the power to promulgate any and all
necessary rules and regulations governing the production, processing,
transportation, distribution, and sale of hemp extract, including but
not limited to the licensing of cannabinoid growers, manufacturers,
extractors and retailers, including, but not limited to:
(a) prescribing forms and establishing application, reinstatement, and
renewal fees;
(b) the qualifications and selection criteria for licensing, or
permitting;
(c) limitations on the number of licenses to be awarded;
(d) the books and records to be created and maintained by licensees,
and permittees, including the reports to be made thereon to the depart-
ment, and inspection of any and all books and records maintained by any
licensee, or permittee, and on the premises of any licensee or permit-
tee;
(e) methods of producing, processing, and packaging hemp extract;
conditions of sanitation, and standards of ingredients, quality, and
identity of hemp extract products cultivated, processed, packaged, or
sold by licensees; and
(f) hearing procedures and additional causes for cancellation, revoca-
tion, and/or civil penalties against any person licensed, or permitted
by the department.
3. The department, in consultation with the department of environ-
mental conservation and the New York state energy research and develop-
ment agency, shall promulgate necessary rules and regulations governing
the safe production of hemp extract, including environmental and energy
standards.

§ 522. Cannabinoid related hemp extract licensing. 1. Persons grow-
ing, processing, extracting, and/or manufacturing hemp extract or
producing hemp extract products distributed, sold or marketed for canna-
bainoid content and used or intended for human or animal consumption or
use, shall be required to obtain the following license or licenses from
the department, depending upon the operation:
(a) cannabinoid grower license;
(b) cannabinoid manufacturer license;
(c) cannabinoid extractor license.
2. Notwithstanding subdivision one of this section, those persons
growing, processing or manufacturing food or food ingredients from
industrial hemp pursuant to article twenty-nine of this chapter, which
food or food ingredients are generally recognized as safe, shall be
subject to regulation and/or licensing by the department.

§ 523. Cannabinoid grower licenses. 1. A cannabinoid grower's license
authorizes the acquisition, possession, cultivation and sale of hemp
extract grown or used for its cannabinoid content on the licensed prem-
ises of the grower.
2. A person holding a cannabinoid grower's license shall not sell hemp
extract products marketed, distributed or sold for its cannabinoid
content and intended for human consumption or use without also being
licensed as a manufacturer or extractor pursuant to this article or
§ 526. Cannabinoid license applications. 1. Persons shall apply for a cannabinoid grower license provided it can demonstrate to the department that its cultivation of industrial hemp meets all the requirements for hemp extract cultivated under a cannabinoid grower license.

2. Notwithstanding subdivision one of this section, nothing shall prevent a cannabinoid extractor from manufacturing industrial hemp products not used or intended for human or animal consumption or use.

§ 525. Cannabinoid extractor license. 1. A cannabinoid extractor license authorizes the licensee's acquisition, possession, and manufacture of hemp extract from a licensed cannabinoid grower or cannabinoid extractor for the processing of hemp extract or the production of hemp extract products marketed, distributed or sold for cannabinoid content and used or intended for human or animal consumption or use.

2. No cannabinoid extractor licensee shall engage in any other business on the licensed premises; except that nothing contained in this article shall prevent a cannabinoid extractor licensee from also being licensed as a cannabinoid grower on the same premises.

3. Notwithstanding subdivisions one and two of this section, nothing shall prevent a cannabinoid extractor from manufacturing industrial hemp products not used or intended for human or animal consumption or use.

4. A person authorized under article twenty-nine of this chapter as an industrial hemp grower shall apply for a cannabinoid grower license provided it can demonstrate to the department that its extraction of industrial hemp meets all the requirements for hemp extract under a cannabinoid extractor license.

§ 524. Cannabinoid manufacturer license. 1. A cannabinoid manufacturer license authorizes the licensee's acquisition, possession, and manufacture of hemp extract or the processing of hemp extract or the production of hemp extract products marketed, distributed or sold for cannabinoid content and used or intended for human or animal consumption or use.

2. Notwithstanding subdivision one of this section, nothing shall prevent a cannabinoid manufacturer from manufacturing industrial hemp products not used or intended for human or animal consumption or use.

§ 523. Cannabinoid extractor for the processing of hemp extract or the production of hemp extract products marketed, distributed or sold for cannabinoid content and used or intended for human or animal consumption or use.

4. A person authorized under article twenty-nine of this chapter as an industrial hemp grower shall apply for a cannabinoid grower license provided it can demonstrate to the department that its cultivation of industrial hemp meets all the requirements for hemp extract cultivated under a cannabinoid grower license.

5. Persons growing industrial hemp pursuant to article twenty-nine of this chapter are not authorized to and shall not sell hemp extract for human or animal consumption or use, other than as food or a food ingredient that has been generally recognized as safe in accordance with the department or determined by the state to be safe for human consumption as food or a food ingredient without also being licensed as a manufacturer or extractor pursuant to this article or otherwise permitted pursuant to section five hundred forty-two of this article.

4. A person authorized under article twenty-nine of this chapter as an industrial hemp grower shall apply for a cannabinoid grower license provided it can demonstrate to the department that its cultivation of industrial hemp meets all the requirements for hemp extract cultivated under a cannabinoid grower license.

§ 522. Information to be requested in applications for licenses. 1. The department shall have the authority to prescribe the manner and form in which an application must be submitted to the department for licensure under this article.
2. The commissioner is authorized to adopt regulations, including by emergency rule, establishing information which must be included on an application for licensure under this article. Such information may include, but is not limited to: information about the applicant's identity, including racial and ethnic diversity; information about prior use of farmland; ownership and investment information, including the corporate structure; evidence of good moral character, including the submission of fingerprints by the applicant to the division of criminal justice services; information about the premises to be licensed; financial statements; and any other information prescribed in regulation.

3. All license applications shall be signed by the applicant (if an individual), by a managing partner (if a limited liability corporation), by an officer (if a corporation), or by all partners (if a partnership). Each person signing such application shall verify it as true under the penalties of perjury.

4. All license or permit applications shall be accompanied by a check, draft or other forms of payment as the department may require or authorize in the amount required by this article for such license or permit.

5. If there be any change, after the filing of the application or the granting of a license, in any of the facts required to be set forth in such application, a supplemental statement giving notice of such change, cost and source of money involved in the change, duly verified, shall be filed with the department within ten days after such change. Failure to do so shall, if willful and deliberate, be cause for revocation of the license.

6. In giving any notice, or taking any action in reference to a licensee of a licensed premises, the department may rely upon the information furnished in such application and in any supplemental statement connected therewith, and such information may be presumed to be correct, and shall be binding upon a licensee or licensed premises as if correct. All information required to be furnished in such application or supplemental statements shall be deemed material in any prosecution for perjury, any proceeding to revoke, cancel or suspend any license, and in the department's determination to approve or deny the license.

7. The department may, in its discretion, waive the submission of any category of information described in this section for any category of license or permit, provided that it shall not be permitted to waive the requirement for submission of any such category of information solely for an individual applicant or applicants.

§ 528. Fees. The department shall have the authority to charge licensee a biennial license fee. Such fee may be based on the amount of hemp extract to be grown, processed, manufactured or extracted by the licensee, the gross annual receipts of the licensee for the previous license period, or any other factors deemed appropriate by the department.

§ 529. Selection criteria. 1. An applicant shall furnish evidence:
(a) its ability to effectively maintain a delta-9-tetrahydrocannabinol concentration that does not exceed a percentage of delta-9-tetrahydrocannabinol cannabis set by the commissioner on a dry weight basis of combined leaves and flowers of the plant of the genus cannabis, or per volume or weight of cannabis product;
(b) its ability to comply with all applicable state laws and regulations;
(c) that the applicant is ready, willing and able to properly carry on the activities for which a license is sought; and
(d) that the applicant is in possession of or has the right to use land, buildings and equipment sufficient to properly carry on the activity described in the application.

2. The department, in considering whether to grant the license application, shall consider whether:
   (a) it is in the public interest that such license be granted, taking into consideration whether the number of licenses will be adequate or excessive to reasonably serve demand;
   (b) the applicant and its managing officers are of good moral character and do not have an ownership or controlling interest in more licenses or permits than allowed by this chapter;
   (c) preference shall be given to applicants that are currently farming in the state and are eligible or currently receiving an agricultural assessment pursuant to article twenty-five-AA of this chapter; and
   (d) the applicant satisfies any other conditions as determined by the department.

3. If the commissioner is not satisfied that the applicant should be issued a license, the commissioner shall notify the applicant in writing of the specific reason or reasons for denial.

4. The commissioner shall have authority and sole discretion to determine the number of licenses issued pursuant to this article.

§ 530. Limitations of licensure; duration. 1. No license pursuant to this article may be issued to a person under the age of eighteen years.
2. The department shall have the authority to limit, by canopy, plant count or other means, the amount of hemp extract allowed to be cultivated, processed, extracted or sold by a licensee.

3. All licenses under this article shall expire two years after the date of issue and be subject to any rules or limitations prescribed by the commissioner in regulation.

§ 531. License renewal. 1. Each license, issued pursuant to this article, may be renewed upon application therefor by the licensee and the payment of the fee for such license as prescribed by this article.

2. In the case of applications for renewals, the department may dispense with the requirements of such statements as it deems unnecessary in view of those contained in the application made for the original license, but in any event the submission of photographs of the licensed premises shall be dispensed with, provided the applicant for such renewal shall file a statement with the department to the effect that there has been no alteration of such premises since the original license was issued.

3. The department may make such rules as may be necessary, not inconsistent with this chapter, regarding applications for renewals of licenses and permits and the time for making the same.

4. The department shall provide an application for renewal of a license issued under this article not less than ninety days prior to the expiration of the current license.

5. The department may only issue a renewal license upon receipt of the prescribed renewal application and renewal fee from a licensee if, in addition to the criteria in section five hundred twenty-seven of this article, the licensee's license is not under suspension and has not been revoked.

6. The department shall have the authority to charge applicants for licensure under this article a non-refundable application fee. Such fee may be based on the type of licensure sought, cultivation and/or production volume, or any other factors deemed reasonable and appropriate by the department to achieve the policy and purpose of this chapter.
§ 532. Form of license. Licenses issued pursuant to this article shall specify:

1. the name and address of the licensee;
2. the activities permitted by the license;
3. the land, buildings and facilities that may be used for the licensed activities of the licensee;
4. a unique license number issued by the department to the licensee; and
5. such other information as the commissioner shall deem necessary to assure compliance with this chapter.

§ 533. Amendments to license and duty to update information submitted for licensing. 1. Upon application of a licensee to the department, a license may be amended to allow the licensee to relocate within the state, to add or delete licensed activities or facilities, or to amend the ownership or organizational structure of the entity that is the licensee. The fee for such amendment shall be two hundred fifty dollars.

2. In the event that any of the information provided by the applicant changes either while the application is pending or after the license is granted, within ten days of any such change, the applicant or licensee shall submit to the department a verified statement setting forth the change in circumstances of facts set forth in the application. Failure to do so shall, if willful and deliberate, be cause for revocation of the license.

3. A license shall become void by a change in ownership, substantial corporate change or location without prior written approval of the commissioner. The commissioner may promulgate regulations allowing for certain types of changes in ownership without the need for prior written approval.

4. For purposes of this section, "substantial corporate change" shall mean:

(a) for a corporation, a change of eighty percent or more of the officers and/or directors, or a transfer of eighty percent or more of stock of such corporation, or an existing stockholder obtaining eighty percent or more of the stock of such corporation; and

(b) for a limited liability company, a change of eighty percent or more of the managing members of the company, or a transfer of eighty percent or more of ownership interest in said company, or an existing member obtaining a cumulative of eighty percent or more of the ownership interest in said company.

§ 534. Record keeping and tracking. 1. The commissioner shall, by regulation, require each licensee pursuant to this article to adopt and maintain security, tracking, record keeping, record retention and surveillance systems, relating to all hemp extract at every stage of acquiring, possession, manufacture, transport, sale, or delivery, or distribution by the licensee, subject to regulations of the commissioner.

2. Every licensee shall keep and maintain upon the licensed premises, adequate books and records of all transactions involving the licensee and sale of its products, which shall include all information required by rules promulgated by the department.

3. Each sale shall be recorded separately on a numbered invoice, which shall have printed thereon the number, the name of the licensee, the address of the licensed premises, and the current license number.

4. Such books, records and invoices shall be kept for a period of five years and shall be available for inspection by any authorized representative of the department.
§ 535. Inspections and ongoing requirements. All licensees shall be subject to reasonable inspection by the department, in consultation with the department of health, and a person who holds a license shall make himself or herself, or an agent thereof, available and present for any inspection required by the department. The department shall make reasonable accommodations so that ordinary business is not interrupted and safety and security procedures are not compromised by the inspection.

§ 536. Packaging and labeling of hemp extract. 1. The department, in consultation with the department of health, is hereby authorized to promulgate rules and regulations governing the packaging and labeling of hemp extract products, sold or possessed for sale in New York state.

2. Such regulations shall include, but not be limited to, requiring labels warning consumers of any potential impact on human health resulting from the consumption of hemp extract products that shall be affixed to those products when sold, if such labels are deemed warranted by the department. No label may state that hemp extract can treat, cure or prevent any disease without approval pursuant to federal law.

3. Such rules and regulations shall establish a QR code which may be used in conjunction with similar technology for labels and establish methods and procedures for determining, among other things, serving sizes for hemp extract products, active cannabinoid concentration per serving size, number of servings per container, and the growing region, state or country of origin if not from the United States. Such regulations shall also require a supplement fact panel that incorporates data regarding serving sizes and potency thereof.

4. The packaging, sale, or possession by any licensee of any hemp product intended for human or animal consumption or use not labeled or offered in conformity with rules and regulations promulgated in accordance with this section shall be grounds for the imposition of a fine, and/or the suspension, revocation or cancellation of a license.

§ 537. Provisions governing the growing, manufacturing and extracting of hemp extract. 1. No licensed cannabinoid grower, manufacturer or extractor shall sell, or agree to sell or deliver in the state any hemp extract products, as the case may be, except in sealed containers containing quantities in accordance with size standards pursuant to rules adopted by the department. Such containers shall have affixed thereto such labels as may be required by the rules of the department.

2. Licensed cannabinoid growers shall be prohibited from using pesticides.

3. All hemp extract products shall be extracted and manufactured in accordance with good manufacturing processes, pursuant to Part 111 or 117 of Title 21 of the Code of Federal Regulations as may be modified and decided upon by the commissioner in regulation.

4. Within thirty days of the effective date of this article, the department shall approve the manufacture, distribution, and sale of beverages containing no more than twenty milligrams of cannabidiol per twelve ounce beverage. The hemp extract used in such beverages shall be grown, extracted and manufactured in the state of New York. The department shall issue guidance on the label, warning, point of sale, and advertising for such beverages.

5. Terpenes derived from the hemp plant are generally recognized as safe.

§ 538. Laboratory testing. 1. Every cannabinoid manufacturer and cannabinoid extractor shall contract with an independent laboratory to test the hemp extract products produced by the licensed manufacturer or extractor. The commissioner, in consultation with the commissioner of
health, shall approve the laboratory and require that the laboratory report testing results in a manner determined by the commissioner. The commissioner is authorized to issue regulations requiring the laboratory to perform certain tests and services.

2. Cannabinoid manufacturers and cannabinoid extractors shall make laboratory test reports available to persons holding a cannabinoid permit pursuant to section five hundred forty-two of this article for all cannabis products manufactured by the licensee.

3. On-site laboratory testing by licensees is permissible; however, such testing shall not be certified by the department and does not exempt the licensee from the requirements of quality assurance testing at a testing laboratory pursuant to this section.

§ 539. Advertising. The department shall promulgate rules and regulations governing the advertising of hemp extract and any other related products or services as determined by the commissioner.

§ 540. Research. 1. The department shall promote research and development through public-private partnerships to bring new hemp extract and industrial hemp derived products to market within the state.

2. The commissioner may develop and carry out research programs which may include programs at the New York state college of agriculture and life sciences, pursuant to section fifty-seven hundred twelve of the education law and/or New York state university research institutions relating to industrial hemp and hemp extract.

§ 541. Regulations. The commissioner shall make regulations to implement this article.

§ 542. Cannabinoid permit. The department is hereby authorized to issue cannabinoid permits to retailers, wholesalers, and distributors authorizing them to sell cannabis products derived from hemp extract. The commissioner shall have the authority to set fees for such permit, to establish the period during which such permit is authorized, and to make rules and regulations, including emergency regulations, to implement this section.

§ 543. New York hemp product. The commissioner may establish and adopt official grades and standards for hemp extract and hemp extract products as he or she may deem advisable, which are produced for sale in this state and, from time to time, may amend or modify such grades and standards.

§ 544. Penalties and violations of this article. Notwithstanding the provision of any law to the contrary, the failure to comply with the requirements of this article, the rules and regulations promulgated thereunder, may be punishable by a fine of not more than one thousand dollars for a first violation; not more than five thousand dollars for a second violation; and not more than ten thousand dollars for a third violation and each subsequent violation thereafter.

§ 545. Hemp workgroup. The commissioner shall appoint a New York state industrial hemp and hemp extract workgroup, composed of researchers, producers, processors, manufacturers and trade associations, to make recommendations for the industrial hemp and hemp extract programs, state and federal policies and policy initiatives, and opportunities for the promotion and marketing of industrial hemp and hemp extract as consistent with federal and state laws, rules and regulations, which workgroup shall continue for such time as the commissioner deems appropriate.

§ 546. Prohibitions. Except as authorized in this article, the manufacturing of hemp extract for human or animal consumption and the distribution and/or sale thereof is prohibited in this state unless the manufacturer is licensed under this article. Hemp extract and products...
derived therefrom for human and animal consumption produced outside the
state shall not be distributed or sold in this state unless they meet
all standards and requirements established for such product manufactured
in the state under this article and its rules and regulations as deter-
mained by the department.

§ 547. Severability. If any provision of this article or the applica-
tion thereof to any person or circumstances is held invalid, such inva-
lidity shall not affect other provisions or applications of the article
which can be given effect without the invalid provision or application.
and to this end the provisions of this article are declared to be sever-
able.

§ 11. This act shall take effect on the ninetieth day after it shall
have become a law.
AN ACT to amend the public health law, the tax law, the state finance law, the general business law, the penal law and the criminal procedure law, in relation to medical use of marihuana; and providing for the repeal of such provisions upon expiration thereof

EXPLANATION.--Matter in italics (underscored) is new; matter in brackets [ ] is old law to be omitted.
Section 1. Article 33 of the public health law is amended by adding a
new title 5-A to read as follows:

TITLE V-A
MEDICAL USE OF MARIHUANA

Section 3360. Definitions.
3361. Certification of patients.
3362. Lawful medical use.
3363. Registry identification cards.
3364. Registered organizations.
3365. Registering of registered organizations.
3366. Reports by registered organizations.
3367. Evaluation; research programs; report by department.
3368. Relation to other laws.
3369. Protections for the medical use of marihuana.
3369-a. Regulations.
3369-b. Effective date.
3369-c. Suspend; terminate.
3369-d. Pricing.
3369-e. Severability.

§ 3360. Definitions. As used in this title, the following terms shall
have the following meanings, unless the context clearly requires other-
wise:
1. "Certified medical use" means the acquisition, possession, use, or,
transportation of medical marihuana by a certified patient, or the
acquisition, possession, delivery, transportation or administration of
medical marihuana by a designated caregiver, for use as part of the
treatment of the patient's serious condition, as authorized in a certif-
ication under this title including enabling the patient to tolerate
treatment for the serious condition. A certified medical use does not
include smoking.
2. "Caring for" means treating a patient, in the course of which the
practitioner has completed a full assessment of the patient's medical
history and current medical condition.
3. "Certified patient" means a patient who is a resident of New York
state or receiving care and treatment in New York state as determined by
the commissioner in regulation, and is certified under section thirty-
three hundred sixty-one of this title.
4. "Certification" means a certification, made under section thirty-
three hundred sixty-one of this title.
5. "Designated caregiver" means the individual designated by a certi-
ified patient in a registry application. A certified patient may desig-
nate up to two designated caregivers.
6. "Public place" means a public place as defined in regulation by the
commissioner.
7. (a) "Serious condition" means:
(i) having one of the following severe debilitating or life-threaten-
ing conditions: cancer, positive status for human immunodeficiency
virus or acquired immune deficiency syndrome, amyotrophic lateral scler-
osis, Parkinson's disease, multiple sclerosis, damage to the nervous
tissue of the spinal cord with objective neurological indication of
intractable spasticity, epilepsy, inflammatory bowel disease, neuropa-
thies, Huntington's disease, or as added by the commissioner; and
1. "Medical marihuana" means marihuana as defined in subdivision twenty-one of section thirty-three hundred sixty-four of this article, intended for a certified medical use, as determined by the commissioner in his or her sole discretion. Any form of medical marihuana not approved by the commissioner is expressly prohibited.

2. "Labor peace agreement" means an agreement between an entity and a labor organization that, at a minimum, protects the state's proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the registered organization's business.

3. "Individual dose" means a single measure of raw medical marihuana or non-infused concentrates to be determined and clearly identified by a patient's practitioner for the patient's specific certified condition. For ingestible or sub-lingual medical marihuana products, no individual dose may contain more than ten milligrams of tetrahydrocannabinol.

4. "Form of medical marihuana" means characteristics of the medical marihuana recommended or limited for a particular certified patient, including the method of consumption and any particular strain, variety, and quantity or percentage of marihuana or particular active ingredient.

5. "Registry identification card" means a document that identifies a certified patient or designated caregiver, as provided under section thirty-three hundred sixty-three of this title.

6. "Registry application" means an application properly completed and filed with the department by a certified patient under section thirty-three hundred sixty-three of this title.

7. "Practitioner" means a practitioner who (i) is a physician licensed by New York state and practicing within the state, (ii) who by training or experience is qualified to treat a serious condition as defined in subdivision seven of this section; and (iii) has completed a two to four hour course as determined by the commissioner in regulation and registered with the department; provided however, a registration shall not be denied without cause. Such course may count toward board certification requirements. The commissioner shall consider the inclusion of nurse practitioners under this title based upon considerations including access and availability. After such consideration the commissioner is authorized to deem nurse practitioners as practitioners under this title.

8. "Labor organization" means a registered organization under sections thirty-three hundred sixty-four and thirty-three hundred sixty-five of this title.

9. "Registry application" means an application properly completed and filed with the department by a certified patient under section thirty-three hundred sixty-three of this title.

10. "Registry identification card" means a document that identifies a certified patient or designated caregiver, as provided under section thirty-three hundred sixty-three of this title.

11. "Registry identification card" means a document that identifies a certified patient or designated caregiver, as provided under section thirty-three hundred sixty-three of this title.

12. "Practitioner" means a practitioner who (i) is a physician licensed by New York state and practicing within the state, (ii) who by training or experience is qualified to treat a serious condition as defined in subdivision seven of this section; and (iii) has completed a two to four hour course as determined by the commissioner in regulation and registered with the department; provided however, a registration shall not be denied without cause. Such course may count toward board certification requirements. The commissioner shall consider the inclusion of nurse practitioners under this title based upon considerations including access and availability. After such consideration the commissioner is authorized to deem nurse practitioners as practitioners under this title.

13. "Terminally ill" means an individual has a medical prognosis that the individual's life expectancy is approximately one year or less if the illness runs its normal course.

14. "Labor peace agreement" means an agreement between an entity and a labor organization that, at a minimum, protects the state's proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the registered organization's business.

15. "Individual dose" means a single measure of raw medical marihuana or non-infused concentrates to be determined and clearly identified by a patient's practitioner for the patient's specific certified condition. For ingestible or sub-lingual medical marihuana products, no individual dose may contain more than ten milligrams of tetrahydrocannabinol.

16. "Form of medical marihuana" means characteristics of the medical marihuana recommended or limited for a particular certified patient, including the method of consumption and any particular strain, variety, and quantity or percentage of marihuana or particular active ingredient.

17. "Applicant" means a for-profit entity or not-for-profit corporation and includes: board members, officers, managers, owners, partners, principal stakeholders and members who submit an application to become a registered organization.
§ 3361. Certification of patients. 1. A patient certification may only be issued if: (a) a practitioner has been registered with the department to issue a certification as determined by the commissioner; (b) the patient has a serious condition, which shall be specified in the patient's health care record; (c) the practitioner by training or experience is qualified to treat the serious condition; (d) the patient is under the practitioner's continuing care for the serious condition; and (e) in the practitioner's professional opinion and review of past treatments, the patient is likely to receive therapeutic or palliative benefit from the primary or adjunctive treatment with medical use of marihuana for the serious condition.

2. The certification shall include (a) the name, date of birth and address of the patient; (b) a statement that the patient has a serious condition and the patient is under the practitioner's care for the serious condition; (c) a statement attesting that all requirements of subdivision one of this section have been satisfied; (d) the date; and (e) the name, address, federal registration number, telephone number, and the handwritten signature of the certifying practitioner. The commissioner may require by regulation that the certification shall be on a form provided by the department. The practitioner may state in the certification that, in the practitioner's professional opinion, the patient would benefit from medical marihuana only until a specified date. The practitioner may state in the certification that, in the practitioner's professional opinion, the patient is terminally ill and that the certification shall not expire until the patient dies.

3. In making a certification, the practitioner shall consider the form of medical marihuana the patient should consume, including the method of consumption and any particular strain, variety, and quantity or percentage of marihuana or particular active ingredient, and appropriate dosage. The practitioner shall state in the certification any recommendation or limitation the practitioner makes, in his or her professional opinion, concerning the appropriate form or forms of medical marihuana and dosage.

4. Every practitioner shall consult the prescription monitoring program registry prior to making or issuing a certification, for the purpose of reviewing a patient's controlled substance history. For purposes of this section, a practitioner may authorize a designee to consult the prescription monitoring program registry on his or her behalf, provided that such designation is in accordance with section thirty-three hundred forty-three-a of this article.

5. The practitioner shall give the certification to the certified patient, and place a copy in the patient's health care record.

6. No practitioner shall issue a certification under this section for himself or herself.

7. A registry identification card based on a certification shall expire one year after the date the certification is signed by the practitioner.

8. (a) If the practitioner states in the certification that, in the practitioner's professional opinion, the patient would benefit from medical marihuana only until a specified earlier date, then the registry identification card shall expire on that date;

(b) If the practitioner states in the certification that in the practitioner's professional opinion the patient is terminally ill and that the certification shall not expire until the patient dies, then the registry identification card shall state that the patient is terminally ill.
ill and that the registration card shall not expire until the patient dies;

(c) If the practitioner re-issues the certification to terminate the certification on an earlier date, then the registry identification card shall expire on that date and shall be promptly returned by the certified patient to the department;

(d) If the certification so provides, the registry identification card shall state any recommendation or limitation by the practitioner as to the form or forms of medical marihuana or dosage for the certified patient; and

(e) The commissioner shall make regulations to implement this subdivision.

§ 3362. Lawful medical use. 1. The possession, acquisition, use, delivery, transfer, transportation, or administration of medical marihuana by a certified patient or designated caregiver possessing a valid registry identification card, for certified medical use, shall be lawful under this title; provided that:

(a) the marihuana that may be possessed by a certified patient shall not exceed a thirty day supply of the dosage as determined by the practitioner, consistent with any guidance and regulations issued by the commissioner, provided that during the last seven days of any thirty day period, the certified patient may also possess up to such amount for the next thirty day period;

(b) the marihuana that may be possessed by designated caregivers does not exceed the quantities referred to in paragraph (a) of this subdivision for each certified patient for whom the caregiver possesses a valid registry identification card, up to five certified patients;

(c) the form or forms of medical marihuana that may be possessed by the certified patient or designated caregiver pursuant to a certification shall be in compliance with any recommendation or limitation by the practitioner as to the form or forms of medical marihuana or dosage for the certified patient in the certification; and

(d) the medical marihuana shall be kept in the original package in which it was dispensed under subdivision twelve of section thirty-three hundred sixty-four of this title, except for the portion removed for immediate consumption for certified medical use by the certified patient.

2. Notwithstanding subdivision one of this section:

(a) possession of medical marihuana shall not be lawful under this title if it is smoked, consumed, vaporized, or grown in a public place, regardless of the form of medical marihuana stated in the patient's certification.

(b) a person possessing medical marihuana under this title shall possess his or her registry identification card at all times when in immediate possession of medical marihuana.

§ 3363. Registry identification cards. 1. Upon approval of the certification, the department shall issue registry identification cards for certified patients and designated caregivers. A registry identification card shall expire as provided in section thirty-three hundred sixty-one of this title or as otherwise provided in this section. The department shall begin issuing registry identification cards as soon as practicable after the certifications required by section thirty-three hundred sixty-nine-b are granted. The department may specify a form for a registry application, in which case the department shall provide the form on request, reproductions of the form may be used, and the form shall be available for downloading from the department's website.
2. To obtain, amend or renew a registry identification card, a certified patient or designated caregiver shall file a registry application with the department. The registry application or renewal application shall include:
(a) in the case of a certified patient:
   (i) the patient’s certification (a new written certification shall be provided with a renewal application);
   (ii) the name, address, and date of birth of the patient;
   (iii) the date of the certification;
   (iv) if the patient has a registry identification card based on a current valid certification, the registry identification number and expiration date of that registry identification card;
   (v) the specified date until which the patient would benefit from medical marihuana, if the certification states such a date;
   (vi) the name, address, federal registration number, and telephone number of the certifying practitioner;
   (vii) any recommendation or limitation by the practitioner as to the form or forms of medical marihuana or dosage for the certified patient; and
   (viii) other individual identifying information required by the department;
(b) in the case of a certified patient, if the patient designates a designated caregiver, the name, address, and date of birth of the designated caregiver, and other individual identifying information required by the department;
(c) in the case of a designated caregiver:
   (i) the name, address, and date of birth of the designated caregiver;
   (ii) if the designated caregiver has a registry identification card, the registry identification number and expiration date of that registry identification card; and
   (iii) other individual identifying information required by the department;
(d) a statement that a false statement made in the application is punishable under section 210.45 of the penal law;
(e) the date of the application and the signature of the certified patient or designated caregiver, as the case may be;
(f) a fifty dollar application fee, provided, that the department may waive or reduce the fee in cases of financial hardship; and
(g) any other requirements determined by the commissioner.
3. Where a certified patient is under the age of eighteen:
(a) The application for a registry identification card shall be made by an appropriate person over twenty-one years of age. The application shall state facts demonstrating that the person is appropriate.
(b) The designated caregiver shall be (i) a parent or legal guardian of the certified patient, (ii) a person designated by a parent or legal guardian, or (iii) an appropriate person approved by the department upon a sufficient showing that no parent or legal guardian is appropriate or available.
4. No person may be a designated caregiver if the person is under twenty-one years of age unless a sufficient showing is made to the department that the person should be permitted to serve as a designated caregiver. The requirements for such a showing shall be determined by the commissioner.
5. No person may be a designated caregiver for more than five certified patients at one time.
6. If a certified patient wishes to change or terminate his or her designated caregiver, for whatever reason, the certified patient shall notify the department as soon as practicable. The department shall issue a notification to the designated caregiver that their registration card is invalid and must be promptly returned to the department. The newly designated caregiver must comply with all requirements set forth in this section.

7. If the certification so provides, the registry identification card shall contain any recommendation or limitation by the practitioner as to the form or forms of medical marijuana or dosage for the certified patient.

8. The department shall issue separate registry identification cards for certified patients and designated caregivers as soon as reasonably practicable after receiving a complete application under this section, unless it determines that the application is incomplete or factually inaccurate, in which case it shall promptly notify the applicant.

9. If the application of a certified patient designates an individual as a designated caregiver who is not authorized to be a designated caregiver, that portion of the application shall be denied by the department but that shall not affect the approval of the balance of the application.

10. A registry identification card shall:
(a) contain the name of the certified patient or the designated caregiver as the case may be;
(b) contain the date of issuance and expiration date of the registry identification card;
(c) contain a registry identification number for the certified patient or designated caregiver, as the case may be and a registry identification number;
(d) contain a photograph of the individual to whom the registry identification card is being issued, which shall be obtained by the department in a manner specified by the commissioner in regulations; provided, however, that if the department requires certified patients to submit photographs for this purpose, there shall be a reasonable accommodation of certified patients who are confined to their homes due to their medical conditions and may therefore have difficulty procuring photographs;
(e) be a secure document as determined by the department;
(f) plainly state any recommendation or limitation by the practitioner as to the form or forms of medical marijuana or dosage for the certified patient; and
(g) any other requirements determined by the commissioner.

11. A certified patient or designated caregiver who has been issued a registry identification card shall notify the department of any change in his or her name or address or, with respect to the patient, if he or she ceases to have the serious condition noted on the certification within ten days of such change. The certified patient's or designated caregiver's registry identification card shall be deemed invalid and shall be returned promptly to the department.

12. If a certified patient or designated caregiver loses his or her registry identification card, he or she shall notify the department and submit a twenty-five dollar fee within ten days of losing the card to maintain the registration. The department may establish higher fees for issuing a new registry identification card for second and subsequent replacements for a lost card, provided, that the department may waive or reduce the fee in cases of financial hardship. The department shall
issue a new registry identification card as soon as practicable, which may contain a new registry identification number, to the certified patient or designated caregiver, as the case may be. The certified patient or designated caregiver shall not be able to obtain medical marijuana until the certified patient receives a new card.

13. The department shall maintain a confidential list of all persons to whom it has issued registry identification cards. Individual identifying information obtained by the department under this title shall be confidential and exempt from disclosure under article six of the public officers law. Notwithstanding this subdivision, the department may notify any appropriate law enforcement agency of information relating to any violation or suspected violation of this title.

14. The department shall verify to law enforcement personnel in an appropriate case whether a registry identification card is valid.

15. If a certified patient or designated caregiver willfully violates any provision of this title as determined by the department, his or her registry identification card may be suspended or revoked. This is in addition to any other penalty that may apply.

§ 3364. Registered organizations. 1. A registered organization shall be a for-profit business entity or not-for-profit corporation organized for the purpose of acquiring, possessing, manufacturing, selling, delivering, transporting, distributing or dispensing marijuana for certified medical use.

2. The acquiring, possession, manufacture, sale, delivery, transporting, distributing or dispensing of marijuana by a registered organization under this title in accordance with its registration under section thirty-three hundred sixty-five of this title or a renewal thereof shall be lawful under this title.

3. Each registered organization shall contract with an independent laboratory to test the medical marijuana produced by the registered organization. The commissioner shall approve the laboratory and require that the laboratory report testing results in a manner determined by the commissioner. The commissioner is authorized to issue regulation requiring the laboratory to perform certain tests and services.

4. (a) A registered organization may lawfully, in good faith, sell, deliver, distribute or dispense medical marijuana to a certified patient or designated caregiver upon presentation to the registered organization of a valid registry identification card for that certified patient or designated caregiver. When presented with the registry identification card, the registered organization shall provide to the certified patient or designated caregiver a receipt, which shall state: the name, address, and registry identification number of the registered organization; the name and registry identification number of the certified patient and the designated caregiver (if any); the date the marijuana was sold; any recommendation or limitation by the practitioner as to the form or forms of medical marijuana or dosage for the certified patient; and the form and the quantity of medical marijuana sold. The registered organization shall retain a copy of the registry identification card and the receipt for six years.

(b) The proprietor of a registered organization shall file or cause to be filed any receipt and certification information with the department by electronic means on a real time basis as the commissioner shall require by regulation. When filing receipt and certification information electronically pursuant to this paragraph, the proprietor of the registered organization shall dispose of any electronically recorded
prescription information in such manner as the commissioner shall by
regulation require.
5. (a) No registered organization may sell, deliver, distribute or
dispense to any certified patient or designated caregiver a quantity of
medical marihuana larger than that individual would be allowed to
possess under this title.
(b) When dispensing medical marihuana to a certified patient or desig-
nated caregiver, the registered organization (i) shall not dispense an
amount greater than a thirty day supply to a certified patient until the
certified patient has exhausted all but a seven day supply provided
pursuant to a previously issued certification, and (ii) shall verify the
information in subparagraph (i) of this paragraph by consulting the
prescription monitoring program registry under section thirty-three
hundred forty-three-a of this article.
(c) Medical marihuana dispensed to a certified patient or designated
caregiver by a registered organization shall conform to any recommenda-
tion or limitation by the practitioner as to the form or forms of
medical marihuana or dosage for the certified patient.
6. When a registered organization sells, delivers, distributes or
dispenses medical marihuana to a certified patient or designated care-
giver, it shall provide to that individual a safety insert, which will
be developed and approved by the commissioner and include, but not be
limited to, information on:
(a) methods for administering medical marihuana in individual doses,
(b) any potential dangers stemming from the use of medical marihuana,
(c) how to recognize what may be problematic usage of medical marihu-
na and obtain appropriate services or treatment for problematic usage,
and
(d) other information as determined by the commissioner.
7. Registered organizations shall not be managed by or employ anyone
who has been convicted of any felony of sale or possession of drugs,
narcotics, or controlled substances provided that this subdivision only
applies to (a) managers or employees who come into contact with or
handle medical marihuana, and (b) a conviction less than ten years (not
counting time spent in incarceration) prior to being employed, for which
the person has not received a certificate of relief from disabilities or
a certificate of good conduct under article twenty-three of the
crime law.
8. Manufacturing of medical marihuana by a registered organization
shall only be done in an indoor, enclosed, secure facility located in
New York state, which may include a greenhouse. The commissioner shall
promulgate regulations establishing requirements for such facilities.
9. Dispensing of medical marihuana by a registered organization shall
only be done in an indoor, enclosed, secure facility located in New York
state, which may include a greenhouse. The commissioner shall promul-
gate regulations establishing requirements for such facilities.
10. A registered organization shall determine the quality, safety, and
clinical strength of medical marihuana manufactured or dispensed by the
registered organization, and shall provide documentation of that quali-
ty, safety and clinical strength to the department and to any person or
entity to which the medical marihuana is sold or dispensed.
11. A registered organization shall be deemed to be a "health care
provider" for the purposes of title two-D of article two of this chap-
ter.
12. Medical marihuana shall be dispensed to a certified patient or
designated caregiver in a sealed and properly labeled package. The
labeling shall contain: (a) the information required to be included in
the receipt provided to the certified patient or designated caregiver by
the registered organization; (b) the packaging date; (c) any applicable
date by which the medical marihuana should be used; (d) a warning stat-
ing, "This product is for medicinal use only. Women should not consume
during pregnancy or while breastfeeding except on the advice of the
certifying health care practitioner, and in the case of breastfeeding
mothers, including the infant's pediatrician. This product might impair
the ability to drive. Keep out of reach of children."; (e) the amount of
individual doses contained within; and (f) a warning that the medical
marihuana must be kept in the original container in which it was
dispensed.

13. The commissioner is authorized to make rules and regulations
restricting the advertising and marketing of medical marihuana, which
shall be consistent with the federal regulations governing prescription
drug advertising and marketing.

§ 3365. Registering of registered organizations. 1. Application for
initial registration. (a) An applicant for registration as a registered
organization under section thirty-three hundred sixty-four of this title
shall include such information prepared in such manner and detail as the
commissioner may require, including but not limited to:
(i) a description of the activities in which it intends to engage as a
registered organization;
(ii) the applicant:
(A) is of good moral character;
(B) possesses or has the right to use sufficient land, buildings, and
other premises (which shall be specified in the application) and equip-
ment to properly carry on the activity described in the application, or
in the alternative posts a bond of not less than two million dollars;
(C) is able to maintain effective security and control to prevent
diversion, abuse, and other illegal conduct relating to the marihuana;
(D) is able to comply with all applicable state laws and regulations
relating to the activities in which it intends to engage under the
registration;
(iii) that the applicant has entered into a labor peace agreement with
a bona-fide labor organization that is actively engaged in representing
or attempting to represent the applicant's employees. The maintenance of
such a labor peace agreement shall be an ongoing material condition of
certification.
(iv) the applicant's status under subdivision one of section thirty-
three hundred sixty-four of this title; and
(v) the application shall include the name, residence address and
title of each of the officers and directors and the name and residence
address of any person or entity that is a member of the applicant. Each
such person, if an individual, or lawful representative if a legal enti-
ty, shall submit an affidavit with the application setting forth:
(A) any position of management or ownership during the preceding ten
years of a ten per centum or greater interest in any other business,
located in or outside this state, manufacturing or distributing drugs;
(B) whether such person or any such business has been convicted of a
felony or had a registration or license suspended or revoked in any
administrative or judicial proceeding; and
(C) such other information as the commissioner may reasonably require.

2. Duty to report. The applicant shall be under a continuing duty to
report to the department any change in facts or circumstances reflected
in the application or any newly discovered or occurring fact or circum-
stance which is required to be included in the application.

3. Granting of registration. (a) The commissioner shall grant a regis-
tration or amendment to a registration under this section if he or she
is satisfied that:
   (i) the applicant will be able to maintain effective control against
diversion of marihuana;
   (ii) the applicant will be able to comply with all applicable state
laws;
   (iii) the applicant and its officers are ready, willing and able to
properly carry on the manufacturing or distributing activity for which a
registration is sought;
   (iv) the applicant possesses or has the right to use sufficient land,
buildings and equipment to properly carry on the activity described in
the application;
   (v) it is in the public interest that such registration be granted;
the commissioner may consider whether the number of registered organiza-
tions in an area will be adequate or excessive to reasonably serve the
area;
   (vi) the applicant and its managing officers are of good moral charac-
ter;
   (vii) the applicant has entered into a labor peace agreement with a
bona-fide labor organization that is actively engaged in representing or
attempting to represent the applicant's employees; and
   (viii) the applicant satisfies any other conditions as determined by
the commissioner.
   (b) If the commissioner is not satisfied that the applicant should be
issued a registration, he or she shall notify the applicant in writing
of those factors upon which further evidence is required. Within thirty
days of the receipt of such notification, the applicant may submit addi-
tional material to the commissioner or demand a hearing, or both.
   (c) The fee for a registration under this section shall be a reason-
able amount determined by the department in regulations; provided,
however, if the registration is issued for a period greater than two
years the fee shall be increased, pro rata, for each additional month of
validity.
   (d) Registrations issued under this section shall be effective only
for the registered organization and shall specify:
   (i) the name and address of the registered organization;
   (ii) which activities of a registered organization are permitted by
the registration;
   (iii) the land, buildings and facilities that may be used for the
permitted activities of the registered organization; and
   (iv) such other information as the commissioner shall reasonably
provide to assure compliance with this title.
   (e) Upon application of a registered organization, a registration may
be amended to allow the registered organization to relocate within the
state or to add or delete permitted registered organization activities
or facilities. The fee for such amendment shall be two hundred fifty
dollars.

4. A registration issued under this section shall be valid for two
years from the date of issue, except that in order to facilitate the
renewals of such registrations, the commissioner may upon the initial
application for a registration, issue some registrations which may
remain valid for a period of time greater than two years but not exceed-
ing an additional eleven months.
5. Applications for renewal of registrations. (a) An application for the renewal of any registration issued under this section shall be filed with the department not more than six months nor less than four months prior to the expiration thereof. A late-filed application for the renewal of a registration may, in the discretion of the commissioner, be treated as an application for an initial license.
(b) The application for renewal shall include such information prepared in the manner and detail as the commissioner may require, including but not limited to:
   (i) any material change in the circumstances or factors listed in subdivision one of this section; and
   (ii) every known charge or investigation, pending or concluded during the period of the registration, by any governmental or administrative agency with respect to:
      (A) each incident or alleged incident involving the theft, loss, or possible diversion of marihuana manufactured or distributed by the applicant; and
      (B) compliance by the applicant with the laws of the state with respect to any substance listed in section thirty-three hundred six of this article.
(c) An applicant for renewal shall be under a continuing duty to report to the department any change in facts or circumstances reflected in the application or any newly discovered or occurring fact or circumstance which is required to be included in the application.
(d) If the commissioner is not satisfied that the applicant is entitled to a renewal of the registration, he or she shall within a reasonably practicable time as determined by the commissioner, serve upon the applicant or his or her attorney of record in person or by registered or certified mail an order directing the applicant to show cause why his or her application for renewal should not be denied. The order shall specify in detail the respects in which the applicant has not satisfied the commissioner that the registration should be renewed.
(e) Within a reasonably practicable time as determined by the commissioner of such order, the applicant may submit additional material to the commissioner or demand a hearing or both. If a hearing is demanded the commissioner shall fix a date as soon as reasonably practicable.
6. Granting of renewal of registrations. (a) The commissioner shall renew a registration unless he or she determines and finds that:
   (i) the applicant is unlikely to maintain or be able to maintain effective control against diversion; or
   (ii) the applicant is unlikely to comply with all state laws applicable to the activities in which it may engage under the registration; or
   (iii) it is not in the public interest to renew the registration because the number of registered organizations in an area is excessive to reasonably serve the area; or
   (iv) the applicant has either violated or terminated its labor peace agreement.
(b) For purposes of this section, proof that a registered organization, during the period of its registration, has failed to maintain effective control against diversion, violates any provision of this article, or has knowingly or negligently failed to comply with applicable state laws relating to the activities in which it engages under the registration, shall constitute grounds for suspension or termination of the registered organization's registration as determined by the commissioner. The registered organization shall also be under a continuing duty to report to the department any material change or fact or circumstance.
stance to the information provided in the registered organization's application.

7. The department may suspend or terminate the registration of a registered organization, on grounds and using procedures under this article relating to a license, to the extent consistent with this title. The department shall suspend or terminate the registration in the event that a registered organization violates or terminates the applicable labor peace agreement. Conduct in compliance with this title which may violate conflicting federal law, shall not be grounds to suspend or terminate a registration.

8. The department shall begin issuing registrations for registered organizations as soon as practicable after the certifications required by section thirty-three hundred sixty-nine-b of this title are given.

9. The commissioner shall register no more than five registered organizations that manufacture medical marijuana with no more than four dispensing sites wholly owned and operated by such registered organization. The commissioner shall ensure that such registered organizations and dispensing sites are geographically distributed across the state. The commission may register additional registered organizations.

§ 3366. Reports by registered organizations. 1. The commissioner shall, by regulation, require each registered organization to file reports by the registered organization during a particular period. The commissioner shall determine the information to be reported and the forms, time, and manner of the reporting.

2. The commissioner shall, by regulation, require each registered organization to adopt and maintain security, tracking, record keeping, record retention and surveillance systems, relating to all medical marijuana at every stage of acquiring, possession, manufacture, sale, delivery, transporting, distributing, or dispensing by the registered organization, subject to regulations of the commissioner.

§ 3367. Evaluation; research programs; report by department. 1. The commissioner may provide for the analysis and evaluation of the operation of this title. The commissioner may enter into agreements with one or more persons, not-for-profit corporations or other organizations, for the performance of an evaluation of the implementation and effectiveness of this title.

2. The department may develop, seek any necessary federal approval for, and carry out research programs relating to medical use of marijuana. Participation in any such research program shall be voluntary on the part of practitioners, patients, and designated caregivers.

3. The department shall report every two years, beginning two years after the effective date of this title, to the governor and the legislature on the medical use of marijuana under this title and make appropriate recommendations.

§ 3368. Relation to other laws. 1. (a) The provisions of this article shall apply to this title, except that where a provision of this title conflicts with another provision of this article, this title shall apply.

(b) Medical marijuana shall not be deemed to be a "drug" for purposes of article one hundred thirty-seven of the education law.

2. Nothing in this title shall be construed to require an insurer or health plan under this chapter or the insurance law to provide coverage for medical marijuana. Nothing in this title shall be construed to require coverage for medical marijuana under article twenty-five of this chapter or article five of the social services law.
§ 3369. Protections for the medical use of marihuana. 1. Certified patients, designated caregivers, practitioners, registered organizations and their employees of registered organizations shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, solely for the certified medical use or manufacture of marihuana, or for any other action or conduct in accordance with this title.

2. Non-discrimination. Being a certified patient shall be deemed to be having a "disability" under article fifteen of the executive law (human rights law), section forty-c of the civil rights law, sections 240.00, 485.00, and 485.05 of the penal law, and section 200.50 of the criminal procedure law. This subdivision shall not bar the enforcement of a policy prohibiting an employee from performing his or her employment duties while impaired by a controlled substance. This subdivision shall not require any person or entity to do any act that would put the person or entity in violation of federal law or cause it to lose a federal contract or funding.

3. The fact that a person is a certified patient and/or acting in accordance with this title, shall not be a consideration in a proceeding pursuant to applicable sections of the domestic relations law, the social services law and the family court act.

4. Certification applications, certification forms, any certified patient information contained within a database, and copies of registry identification cards shall be deemed exempt from public disclosure under sections eighty-seven and eighty-nine of the public officers law.

§ 3369-a. Regulations. The commissioner shall make regulations to implement this title.

§ 3369-b. Effective date. Registry identification cards or registered organization registrations shall be issued or become effective no later than eighteen months from signing or until such time as the commissioner and the superintendent of state police certify that this title can be implemented in accordance with public health and safety interests, whichever event comes later.

§ 3369-c. Suspend; terminate. Based upon the recommendation of the commissioner and/or the superintendent of state police that there is a risk to the public health or safety, the governor may immediately terminate all licenses issued to registered organizations.

§ 3369-d. Pricing. 1. Every sale of medical marihuana shall be at the price determined by the commissioner. Every charge made or demanded for medical marihuana not in accordance with the price determined by the commissioner, is prohibited.

2. The commissioner is hereby authorized to set the per dose price of each form of medical marihuana sold by any registered organization. In setting the per dose price of each form of medical marihuana, the commissioner shall consider the fixed and variable costs of producing the form of marihuana and any other factor the commissioner, in his or her discretion, deems relevant to determining the per dose price of each form of medical marihuana.

§ 3369-e. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which the judgment shall have been rendered.
§ 3. Subdivision 2 of section 3371 of the public health law, as added by section 5 of part A of chapter 447 of the laws of 2012, is amended to read as follows:

2. The prescription monitoring program registry may be accessed, under such terms and conditions as are established by the department for purposes of maintaining the security and confidentiality of the information contained in the registry, by:

(a) a practitioner, or a designee authorized by such practitioner pursuant to paragraph (b) of subdivision two of section thirty-three hundred forty-three-a or section thirty-three hundred sixty-one of this article, for the purposes of: (i) informing the practitioner that a patient may be under treatment with a controlled substance by another practitioner; (ii) providing the practitioner with notifications of controlled substance activity as deemed relevant by the department, including but not limited to a notification made available on a monthly or other periodic basis through the registry of controlled substances activity pertaining to his or her patient; (iii) allowing the practitioner, through consultation of the prescription monitoring program registry, to review his or her patient's controlled substances history as required by section thirty-three hundred forty-three-a or section thirty-three hundred sixty-one of this article; and (iv) providing to his or her patient, or person authorized pursuant to paragraph (j) of subdivision one of this section, upon request, a copy of such patient's controlled substance history as is available to the practitioner through the prescription monitoring program registry; or

(b) a pharmacist, pharmacy intern or other designee authorized by the pharmacist pursuant to paragraph (b) of subdivision three of section thirty-three hundred forty-three-a of this article, for the purposes of: (i) consulting the prescription monitoring program registry to review the controlled substances history of an individual for whom one or more prescriptions for controlled substances or certifications for marihuana is presented to the pharmacist, pursuant to section thirty-three hundred forty-three-a of this article; and (ii) receiving from the department such notifications of controlled substance activity as are made available by the department[

(c) an individual employed by a registered organization for the purpose of consulting the prescription monitoring program registry to review the controlled substances history of an individual for whom one or more certifications for marihuana is presented to that registered organization, pursuant to section thirty-three hundred sixty-four of this article. Unless otherwise authorized by this article, an individual employed by a registered organization will be provided access to the prescription monitoring program in the sole discretion of the commissioner.

§ 4. The tax law is amended by adding a new article 20-B to read as follows:

ARTICLE 20-B

EXCISE TAX ON MEDICAL MARIHUANA

Section 490. Definitions.

491. Returns to be secret.

§ 490. Definitions. 1. (a) All definitions of terms applicable to title five-A of article thirty-three of the public health law shall apply to this article.

(b) As used in this section, where not otherwise specifically defined and unless a different meaning is clearly required "gross receipt" means the amount received in or by reason of any sale, conditional or other...
wise, of medical marihuana or in or by reason of the furnishing of
medical marihuana from the sale of medical marihuana provided by a
registered organization to a certified patient or designated caregiver.

Gross receipt is expressed in money, whether paid in cash, credit or
property of any kind or nature, and shall be determined without any
deduction therefrom on account of the cost of the service sold or the
cost of materials, labor or services used or other costs, interest or
discount paid, or any other expenses whatsoever. "Amount received" for
the purpose of the definition of gross receipt, as the term gross
receipt is used throughout this article, means the amount charged for
the provision of medical marihuana.

2. There is hereby imposed an excise tax on the gross receipts from
the sale of medical marihuana by a registered organization to a certi-
fied patient or designated caregiver, to be paid by the registered
organization, at the rate of seven percent. The tax imposed by this
article shall be charged against and be paid by the registered organiza-
tion and shall not be added as a separate charge or line item on any
sales slip, invoice, receipt or other statement or memorandum of the
price given to the retail customer.

3. The commissioner may make, adopt and amend rules, regulations,
procedures and forms necessary for the proper administration of this
article.

4. Every registered organization that makes sales of medical marihuana
subject to the tax imposed by this article shall, on or before the twen-
tieth day of each month, file with the commissioner a return on forms
to be prescribed by the commissioner, showing its receipts from the
retail sale of medical marihuana during the preceding calendar month and
the amount of tax due thereon. Such returns shall contain such further
information as the commissioner may require. Every registered organiza-
tion required to file a return under this section shall, at the time of
filing such return, pay to the commissioner the total amount of tax due
on its retail sales of medical marihuana for the period covered by such
return. If a return is not filed when due, the tax shall be due on the
day on which the return is required to be filed.

5. Whenever the commissioner shall determine that any moneys received
under the provisions of this article were paid in error, he may cause
the same to be refunded, with interest, in accordance with such rules
and regulations as he may prescribe, except that no interest shall be
allowed or paid if the amount thereof would be less than one dollar.
Such interest shall be at the overpayment rate set by the commissioner
pursuant to subdivision twenty-sixth of section one hundred seventy-
one of this chapter, or if no rate is set, at the rate of six percent per
annum, from the date when the tax, penalty or interest to be refunded
was paid to a date preceding the date of the refund check by not more
than thirty days. Provided, however, that for the purposes of this
subdivision, any tax paid before the last day prescribed for its payment
shall be deemed to have been paid on such last day. Such moneys received
under the provisions of this article which the commissioner shall deter-
mine were paid in error, may be refunded out of funds in the custody of
the comptroller to the credit of such taxes provided an application
therefor is filed with the commissioner within two years from the time
the erroneous payment was made.

6. The provisions of article twenty-seven of this chapter shall apply
to the tax imposed by this article in the same manner and with the same
force and effect as if the language of such article had been incorpo-
rated in full into this section and had expressly referred to the tax
imposed by this article, except to the extent that any provision of such article is either inconsistent with a provision of this article or is not relevant to this article.

7. All taxes, interest and penalties collected or received by the commissioner under this article shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter, provided that an amount equal to one hundred percent collected under this article less any amount determined by the commissioner to be reserved by the comptroller for refunds or reimbursements shall be paid by the comptroller to the credit of the medical marihuana trust fund established by section eighty-nine-h of the state finance law.

8. A registered organization that dispenses medical marihuana shall provide to the department information on where the medical marihuana was dispensed and where the medical marihuana was manufactured. A registered organization that obtains marihuana from another registered organization shall obtain from such registered organization information on where the medical marihuana was manufactured.

§ 491. Returns to be secret. 1. Except in accordance with proper judicial order or as in this section or otherwise provided by law, it shall be unlawful for the commissioner, any officer or employee of the department, or any officer or person who, pursuant to this section, is permitted to inspect any return or report or to whom a copy, an abstract or a portion of any return or report is furnished, or to whom any information contained in any return or report is furnished, or any person engaged or retained by such department on an independent contract basis or any person who in any manner may acquire knowledge of the contents of a return or report filed pursuant to this article to divulge or make known in any manner the contents or any other information relating to the business of a distributor, owner or other person contained in any return or report required under this article. The officers charged with the custody of such returns or reports shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the state, the state department of health, or the commissioner in an action or proceeding under the provisions of this chapter or on behalf of the state or the commissioner in any other action or proceeding involving the collection of a tax due under this chapter to which the state or the commissioner is a party or a claimant or on behalf of any party to any action or proceeding under the provisions of this article, when the returns or the reports or the facts shown thereby are directly involved in such action or proceeding, or in an action or proceeding relating to the regulation or taxation of medical marihuana on behalf of officers to whom information shall have been supplied as provided in subdivision two of this section, in any of which events the court may require the production of, and may admit in evidence so much of said returns or reports or of the facts shown thereby as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the commissioner, in his or her discretion, from allowing the inspection or delivery of a certified copy of any return or report filed under this article or of any information contained in any such return or report by or to a duly authorized officer or employee of the state department of health; or by or to the attorney general or other legal representatives of the state when an action shall have been recommended or commenced pursuant to this chapter in which such returns or reports or the facts shown thereby are directly involved; or the inspection of the returns or reports required under this article by the comptroller or duly designated officer or
employee of the state department of audit and control, for purposes of
the audit of a refund of any tax paid by a registered organization or
other person under this article; nor to prohibit the delivery to a
registered organization, or a duly authorized representative of such
registered organization, a certified copy of any return or report filed
by such registered organization pursuant to this article, nor to prohib-
it the publication of statistics so classified as to prevent the iden-
tification of particular returns or reports and the items thereof.

2. The commissioner, in his or her discretion and pursuant to such
rules and regulations as he or she may adopt, may permit the commis-
er of internal revenue of the United States, or the appropriate officers
of any other state which regulates or taxes medical marihuana, or the
duly authorized representatives of such commissioner or of any such
officers, to inspect returns or reports made pursuant to this article,
or may furnish to such commissioner or other officers, or duly author-
ized representatives, a copy of any such return or report or an abstract
of the information therein contained, or any portion thereof, or may
supply such commissioner or any such officers or such representatives
with information relating to the business of a registered organization
making returns or reports hereunder. The commissioner may refuse to
supply information pursuant to this subdivision to the commissioner of
internal revenue of the United States or to the officers of any other
state if the statutes of the United States, or of the state represented
by such officers, do not grant substantially similar privileges to the
commissioner, but such refusal shall not be mandatory. Information shall
not be supplied to the commissioner of internal revenue of the United
States or the appropriate officers of any other state which regulates or
taxes medical marihuana, or the duly authorized representatives of such
commissioner or of any of such officers, unless such commissioner, offi-
cer or other representatives shall agree not to divulge or make known in
any manner the information so supplied, but such officers may transmit
such information to their employees or legal representatives when neces-
sary, who in turn shall be subject to the same restrictions as those
hereby imposed upon such commissioner, officer or other representatives.

3. (a) Any officer or employee of the state who willfully violates the
provisions of subdivision one or two of this section shall be dismissed
from office and be incapable of holding any public office in this state
for a period of five years thereafter.

(b) Cross-reference: For criminal penalties, see article thirty-seven
of this chapter.

§ 5. The state finance law is amended by adding a new section 89-h to
read as follows:

§ 89-h. Medical marihuana trust fund. 1. There is hereby established
in the joint custody of the state comptroller and the commissioner of
taxation and finance a special fund to be known as the "medical marihu-
a trust fund."

2. The medical marihuana trust fund shall consist of all moneys
required to be deposited in the medical marihuana trust fund pursuant to
the provisions of section four hundred ninety of the tax law.

3. The moneys in the medical marihuana trust fund shall be kept sepa-
rate and shall not be commingled with any other moneys in the custody of
the commissioner of taxation and finance and the state comptroller.

4. The moneys of the medical marihuana trust fund, following appropri-
ation by the legislature, shall be allocated upon a certificate of
approval of availability by the director of the budget as follows: (a)
the counties in New York state in which the medical marihuana was manu-
factured and allocated in proportion to the gross sales originating from
medical marihuana manufactured in each such county; (b) twenty-two and
five-tenths percent of the moneys shall be transferred to the counties
in New York state in which the medical marihuana was dispensed and allo-
cated in proportion to the gross sales occurring in each such county;
(c) five percent of the monies shall be transferred to the office of
alcoholism and substance abuse services, which shall use that revenue
for additional drug abuse prevention, counseling and treatment services;
and (d) five percent of the revenue received by the department shall be
transferred to the division of criminal justice services, which shall
use that revenue for a program of discretionary grants to state and
local law enforcement agencies that demonstrate a need relating to title
five-A of article thirty-three of the public health law; said grants
could be used for personnel costs of state and local law enforcement
agencies. For purposes of this subdivision, the city of New York shall
be deemed to be a county.

§ 6. Subdivision 1 of section 171-a of the tax law, as amended by
section 1 of part R of chapter 60 of the laws of 2004, is amended to
read as follows:

1. All taxes, interest, penalties and fees collected or received by
the commissioner or the commissioner's duly authorized agent under arti-
cles nine (except section one hundred eighty-two-a thereof and except as
otherwise provided in section two hundred five thereof), nine-A,
twelve-A (except as otherwise provided in section two hundred eighty-
four-d thereof), thirteen, thirteen-A (except as otherwise provided in
section three hundred twelve thereof), eighteen, nineteen, twenty
(except as otherwise provided in section four hundred eighty-two there-
of), twenty twenty-one, twenty-two, twenty-six, twenty-six-B, twenty-
eight (except as otherwise provided in section eleven hundred two or
eleven hundred three thereof), twenty-eight-A, thirty-one (except as
otherwise provided in section fourteen hundred twenty-one thereof),
forty-two, thirty-three and thirty-three-A of this chapter shall be
deposited daily in one account with such responsible banks, banking
houses or trust companies as may be designated by the comptroller, to
the credit of the comptroller. Such an account may be established in one
or more of such depositories. Such deposits shall be kept separate and
apart from all other money in the possession of the comptroller. The
comptroller shall require adequate security from all such depositories.
Of the total revenue collected or received under such articles of this
chapter, the comptroller shall retain in the comptroller's hands such
amount as the commissioner may determine to be necessary for refunds or
reimbursements under such articles of this chapter and article ten ther-
 eof out of which amount the comptroller shall pay any refunds or
reimbursements to which taxpayers shall be entitled under the provisions
of such articles of this chapter and article ten thereof. The commis-
sioner and the comptroller shall maintain a system of accounts showing
the amount of revenue collected or received from each of the taxes
imposed by such articles. The comptroller, after reserving the amount to
pay such refunds or reimbursements, shall, on or before the tenth day of
each month, pay into the state treasury to the credit of the general
fund all revenue deposited under this section during the preceding
calendar month and remaining to the comptroller's credit on the last day
of such preceding month, (i) except that the comptroller shall pay to
the state department of social services that amount of overpayments of
tax imposed by article twenty-two of this chapter and the interest on
such amount which is certified to the comptroller by the commissioner as
the amount to be credited against past-due support pursuant to subdivi-
sion six of section one hundred seventy-one-c of this chapter, (ii) and
except that the comptroller shall pay to the New York state higher
education services corporation and the state university of New York or
the city university of New York respectively that amount of overpayments
of tax imposed by article twenty-two of this chapter and the interest on
such amount which is certified to the comptroller by the commissioner as
the amount to be credited against the amount of defaults in repayment of
guaranteed student loans and state university loans or city university
loans pursuant to subdivision five of section one hundred seventy-one-d
and subdivision six of section one hundred seventy-one-e of this chap-
ter, (iii) and except further that, notwithstanding any law, the comp-
troller shall credit to the revenue arrearage account, pursuant to
section ninety-one-a of the state finance law, that amount of overpay-
ment of tax imposed by article nine, nine-A, twenty-two, thirty, thir-
ty-A, thirty-B, thirty-two or thirty-three of this chapter, and any
interest thereon, which is certified to the comptroller by the commis-
sioner as the amount to be credited against a past-due legally enforcea-
ble debt owed to a state agency pursuant to paragraph (a) of subdivision
six of section one hundred seventy-one-f of this article, provided,
however, he shall credit to the special offset fiduciary account, pursu-
ant to section ninety-one-c of the state finance law, any such amount
creditable as a liability as set forth in paragraph (b) of subdivision
six of section one hundred seventy-one-f of this article, (iv) and
except further that the comptroller shall pay to the city of New York
that amount of overpayment of tax imposed by article nine, nine-A, twen-
ty-two, thirty, thirty-A, thirty-B, thirty-two, or thirty-three of this
chapter and any interest thereon that is certified to the comptroller by
the commissioner as the amount to be credited against city of New York
tax warrant judgment debt pursuant to section one hundred seventy-one-l
of this article, (v) and except further that the comptroller shall pay
to a non-obligated spouse that amount of overpayment of tax imposed by
article twenty-two of this chapter and the interest on such amount which
has been credited pursuant to section one hundred seventy-one-c, one
hundred seventy-one-d, one hundred seventy-one-e, one hundred seventy-
one-f or one hundred seventy-one-l of this article and which is certi-
fied to the comptroller by the commissioner as the amount due such non-
obligated spouse pursuant to paragraph six of subsection (b) of section
six hundred fifty-one of this chapter; and (vi) the comptroller shall
deduct a like amount which the comptroller shall pay into the treasury
to the credit of the general fund from amounts subsequently payable to
the department of social services, the state university of New York, the
city university of New York, or the higher education services corpo-
racion, or the revenue arrearage account or special offset fiduciary
account pursuant to section ninety-one-a or ninety-one-c of the state
finance law, as the case may be, whichever had been credited the amount
originally withheld from such overpayment, and (vii) with respect to
amounts originally withheld from such overpayment pursuant to section
one hundred seventy-one-l of this article and paid to the city of New
York, the comptroller shall collect a like amount from the city of New
York.
§ 7. Subdivision 1 of section 171-a of the tax law, as amended by
section 54 of part A of chapter 59 of the laws of 2014, is amended to
read as follows:
1. All taxes, interest, penalties and fees collected or received by
the commissioner or the commissioner's duly authorized agent under arti-
cles nine (except section one hundred eighty-two-a thereof and except as
otherwise provided in section two hundred five thereof), nine-A,
twelve-A (except as otherwise provided in section two hundred eighty-
four-d thereof), thirteen, thirteen-A (except as otherwise provided in
section three hundred twelve thereof), eighteen, nineteen, twenty
(except as otherwise provided in section four hundred eighty-two there-
of), twenty-B, twenty-one, twenty-two, twenty-six, twenty-six-B, twen-
ty-eight (except as otherwise provided in section eleven hundred two or
eleven hundred three thereof), twenty-eight-A, thirty-one (except as
otherwise provided in section fourteen hundred twenty-one thereof),
three hundred twelve thereof), twenty-eight-a, thirty-three and thirty-three-A of this chapter shall be deposited daily
in one account with such responsible banks, banking houses or trust
companies as may be designated by the comptroller, to the credit of the
comptroller. Such an account may be established in one or more of such
depositories. Such deposits shall be kept separate and apart from all
other money in the possession of the comptroller. The comptroller shall
require adequate security from all such depositories. Of the total
revenue collected or received under such articles of this chapter, the
comptroller shall retain in the comptroller's hands such amount as the
commissioner may determine to be necessary for refunds or reimbursements
under such articles of this chapter out of which amount the comptroller
shall pay any refunds or reimbursements to which taxpayers shall be
entitled under the provisions of such articles of this chapter. The
commissioner and the comptroller shall maintain a system of accounts
showing the amount of revenue collected or received from each of the
taxes imposed by such articles. The comptroller, after reserving the
amount to pay such refunds or reimbursements, shall, on or before the
tenth day of each month, pay into the state treasury to the credit of
the general fund all revenue deposited under this section during the
preceding calendar month and remaining to the comptroller's credit on
the last day of such preceding month, (i) except that the comptroller
shall pay to the state department of social services that amount of
overpayments of tax imposed by article twenty-two of this chapter and
the interest on such amount which is certified to the comptroller by the
commissioner as the amount to be credited against past-due support
pursuant to subdivision six of section one hundred seventy-one-c of this
article, (ii) and except that the comptroller shall pay to the New York
state higher education services corporation and the state university of
New York or the city university of New York respectively that amount of
overpayments of tax imposed by article twenty-two of this chapter and
the interest on such amount which is certified to the comptroller by the
commissioner as the amount to be credited against the amount of defaults
in repayment of guaranteed student loans and state university loans or
city university loans pursuant to subdivision five of section one
hundred seventy-one-d and subdivision six of section one hundred seventy-one-e of this article, (iii) and except further that, notwithstanding
any law, the comptroller shall credit to the revenue arrearage account,
pursuant to section ninety-one-a of the state finance law, that amount
of overpayment of tax imposed by article nine, nine-A, twenty-two, thir-
ty, thirty-A, thirty-B or thirty-three of this chapter, and any interest
thereon, which is certified to the comptroller by the commissioner as
the amount to be credited against a past-due legally enforceable debt
owed to a state agency pursuant to paragraph (a) of subdivision six of
section one hundred seventy-one-f of this article, provided, however, he
shall credit to the special offset fiduciary account, pursuant to section ninety-one-c of the state finance law, any such amount creditable as a liability as set forth in paragraph (b) of subdivision six of section one hundred seventy-one-f of this article, (iv) and except further that the comptroller shall pay to the city of New York that amount of overpayment of tax imposed by article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B or thirty-three of this chapter and any interest thereon that is certified to the comptroller by the commissioner as the amount to be credited against city of New York tax warrant judgment debt pursuant to section one hundred seventy-one-l of this article, (v) and except further that the comptroller shall pay to a non-obligated spouse that amount of overpayment of tax imposed by article twenty-two of this chapter and the interest on such amount which has been credited pursuant to section one hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f or one hundred seventy-one-l of this article and which is certified to the comptroller by the commissioner as the amount due such non-obligated spouse pursuant to paragraph six of subsection (b) of section six hundred fifty-one of this chapter; and (vi) the comptroller shall deduct a like amount which the comptroller shall pay into the treasury to the credit of the general fund from amounts subsequently payable to the department of social services, the state university of New York, the city university of New York, or the higher education services corporation, or the revenue arrearage account or special offset fiduciary account pursuant to section ninety-one-a or ninety-one-c of the state finance law, as the case may be, whichever had been credited the amount originally withheld from such overpayment, and (vii) with respect to amounts originally withheld from such overpayment pursuant to section one hundred seventy-one-l of this article and paid to the city of New York, the comptroller shall collect a like amount from the city of New York.

§ 7-a. Section 853 of the general business law is amended by adding a new subdivision 3 to read as follows:

3. This article shall not apply to any sale, furnishing or possession which is for a lawful purpose under title five-A of article thirty-three of the public health law.

§ 8. Section 221.00 of the penal law, as added by chapter 360 of the laws of 1977, is amended to read as follows:

§ 221.00 Marihuana; definitions.

Unless the context in which they are used clearly otherwise requires, the terms occurring in this article shall have the same meaning ascribed to them in article two hundred twenty of this chapter. Any act that is lawful under title five-A of article thirty-three of the public health law is not a violation of this article.

§ 9. The penal law is amended by adding a new article 179 to read as follows:

ARTICLE 179

CRIMINAL DIVERSION OF MEDICAL MARIHUANA

Section 179.00 Criminal diversion of medical marihuana; definitions.

179.05 Criminal diversion of medical marihuana; limitations.

179.10 Criminal diversion of medical marihuana in the first degree.

179.11 Criminal diversion of medical marihuana in the second degree.

179.15 Criminal retention of medical marihuana.
§ 179.00 Criminal diversion of medical marihuana; definitions.
The following definitions are applicable to this article:
1. "Medical marihuana" means medical marihuana as defined in subdivision eight of section thirty-three hundred sixty of the public health law.
2. "Certification" means a certification, made under section thirty-three hundred sixty-one of the public health law.

§ 179.05 Criminal diversion of medical marihuana; limitations.
The provisions of this article shall not apply to:
1. A practitioner authorized to issue a certification who acted in good faith in the lawful course of his or her profession; or
2. A registered organization as that term is defined in subdivision nine of section thirty-three hundred sixty of the public health law who acted in good faith in the lawful course of the practice of pharmacy; or
3. A person who acted in good faith seeking treatment for medical condition or assisting another person to obtain treatment for a medical condition.

§ 179.10 Criminal diversion of medical marihuana in the first degree.
A person is guilty of criminal diversion of medical marihuana in the first degree when he or she is a practitioner, as that term is defined in subdivision twelve of section thirty-three hundred sixty of the public health law, who issues a certification with knowledge of reasonable grounds to know that (i) the recipient has no medical need for it, or (ii) it is for a purpose other than to treat a serious condition as defined in subdivision seven of section thirty-three hundred sixty of the public health law.
Criminal diversion of medical marihuana in the first degree is a class E felony.

§ 179.11 Criminal diversion of medical marihuana in the second degree.
A person is guilty of criminal diversion of medical marihuana in the second degree when he or she sells, trades, delivers, or otherwise provides medical marihuana to another with knowledge or reasonable grounds to know that the recipient is not registered under title five-A of article thirty-three of the public health law.
Criminal diversion of medical marihuana in the second degree is a class B misdemeanor.

§ 179.15 Criminal retention of medical marihuana.
A person is guilty of criminal retention of medical marihuana when, being a certified patient or designated caregiver, as those terms are defined in subdivisions three and five of section thirty-three hundred sixty of the public health law, respectively, he or she knowingly obtains, possesses, stores or maintains an amount of marihuana in excess of the amount he or she is authorized to possess under the provisions of title five-A of article thirty-three of the public health law.
Criminal retention of medical marihuana is a class A misdemeanor.

§ 10. The opening paragraph of subdivision 1 of section 216.00 of the criminal procedure law, as added by section 4 of part AAA of chapter 56 of the laws of 2009, is amended to read as follows:
"Eligible defendant" means any person who stands charged in an indictment or a superior court information with a class B, C, D or E felony offense defined in article one hundred seventy-nine, two hundred twenty or two hundred twenty-one of the penal law or any other specified offense as defined in subdivision four of section 410.91 of this chapter, provided, however, a defendant is not an "eligible defendant" if he or she:
§ 11. Subdivision 5 of section 410.91 of the criminal procedure law, as amended by section 8 of part AAA of chapter 56 of the laws of 2009, is amended to read as follows:

5. For the purposes of this section, a "specified offense" is an offense defined by any of the following provisions of the penal law: burglary in the third degree as defined in section 140.20, criminal mischief in the third degree as defined in section 145.05, criminal mischief in the second degree as defined in section 145.10, grand larceny in the fourth degree as defined in subdivision one, two, three, four, five, six, eight, nine or ten of section 155.30, grand larceny in the third degree as defined in section 155.35 (except where the property consists of one or more firearms, rifles or shotguns), unauthorized use of a vehicle in the second degree as defined in section 165.06, criminal possession of stolen property in the fourth degree as defined in subdivision one, two, three, five or six of section 165.45, criminal possession of stolen property in the third degree as defined in section 165.50 (except where the property consists of one or more firearms, rifles or shotguns), forgery in the second degree as defined in section 170.10, criminal possession of a forged instrument in the second degree as defined in section 170.25, unlawfully using slugs in the first degree as defined in section 170.60, criminal diversion of medical marihuana in the first degree as defined in section 179.10 or an attempt to commit any of the aforementioned offenses if such attempt constitutes a felony offense; or a class B felony offense defined in article two hundred twenty where a sentence is imposed pursuant to paragraph (a) of subdivision two of section 70.70 of the penal law; or any class C, class D or class E controlled substance or marihuana felony offense as defined in article two hundred twenty or two hundred twenty-one.

§ 12. This act shall take effect immediately and shall expire and be deemed repealed seven years after such date; provided that the amendments to section 171-a of the tax law made by section seven of this act shall take effect on the same date and in the same manner as section 54 of part A of chapter 59 of the laws of 2014 takes effect; and provided, further, that the amendments to subdivision 5 of section 410.91 of the criminal procedure law made by section eleven of this act shall not affect the expiration and repeal of such section and shall expire and be deemed repealed therewith.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

NEW YORK MEDICAL CANNABIS INDUSTRY
ASSOCIATION, INC.,

-against-

NEW YORK STATE DEPARTMENT OF HEALTH, and
HOWARD A. ZUCKER, M.D., J.D., in his official capacity
as the Commissioner of the New York State Department of
Health,

-and-

Citiva Medical LLC, Fiorello Pharmaceuticals, Inc., NYCANNA,
LLC, Palliatech NY, LLC, and Valley Agriceuticals,

Intervenors.

(Supreme Court, Albany County, Article 78 Term)

APPEARANCES:

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1 Mr. Khoury’s motion seeking admission of Mr. Hagan pro hac vice was granted at the commencement of the proceedings on this matter on September 12, 2017.
In 2014, the Legislature enacted the Compassionate Care Act (CCA), which legalized the medical use of marihuana in New York under a highly regulated scheme that involves the certification of patients, the training and registration of physicians, and the registration of entities, known as registered organizations (ROs), that are “organized for the purpose of acquiring, possessing, manufacturing, selling, delivering, transporting, distributing or dispensing marihuana for certified medical use” within the state (Public Health Law § 3364[1]). Plaintiff/Petitioner is an association of five for-profit entities that are ROs authorized by defendants/respondents (hereinafter “the DOH” or “the commissioner”) pursuant to provisions of the CCA to manufacture and dispense medical marihuana. Following an application process in 2015 that included 43 applicants, a weighted scoring process resulted in plaintiff/petitioner’s members being ranked numbers one through five out of the 43 applicants and they were subsequently registered as ROs authorized to manufacture and dispense medical marihuana subject to regulation by defendants/respondents (see Public Health Law §§ 3364, 3365). Each of plaintiff/petitioner’s five members thus held a 20% share of the medical marihuana market in New York. In 2016 and 2017, defendants/respondents took certain steps toward the registration of five more ROs, and five more ROs were registered during the pendency of this litigation. Plaintiff/Petitioner argues that the CCA limits the number of
ROs that can manufacture medical marihuana, and that any ROs over the asserted statutory cap of five must be non-manufacturing ROs whose authority to participate in the medical marihuana market is limited to aspects of the supply chain other than manufacturing of medical marijuana. Prior motion practice on this matter resulted in a decision that, among other things, granted intervenor status to the five entities that were registered during the pendency of this matter, and dismissed all causes of action in the complaint/petition except for the first cause of action which asserts that defendants/respondents acted in excess of the authority delegated to them by the Legislature in PHL § 3365 (9) by increasing the number of ROs to ten, notwithstanding the asserted statutory cap of five (see NY Medical Cannabis Ind. Assn, Inc. v New York State Dept. of Health, Sup Ct, Albany County, Oct. 2, 2017, DeBow, AJSC, Index No. 2848-17). In accordance with the Court’s prior decision, intervenors have filed verified answers and objections in point of law, to which plaintiff/petitioner has replied. For the reasons that follow, the Court concludes that plaintiff/petitioner has not demonstrated that defendants/respondents’ issuance of five additional ROs that allow manufacturing was an ultra vires act, and thus, the complaint/petition will be denied.

The parties do not dispute that Public Health Law § 3365 (9) limits the number of manufacturing ROs to five. As framed by the parties, the issue to be decided on the sole remaining cause of action in this combined hybrid declaratory judgment/article 78 proceeding is whether that statutory cap of five ROs is a permanent or temporary restriction of the commissioner’s discretion to register ROs. The dispute in statutory interpretation arises from clearly contradictory language as between the first and third sentences of the relevant provision of the Public Health Law:

"The commissioner shall register not more than five registered organizations that manufacture medical marihuana with no more than
four dispensing sites wholly owned and operated by such registered organization. The commissioner shall ensure that such registered organizations and dispensing sites are geographically distributed across the state. The commission may register additional registered organizations.”

(PHL § 3365 [9] [emphasis added]). The provision contains no express temporal limitation, nor does the third sentence authorizing the commissioner to register additional ROs express any distinction between types of ROs (i.e., manufacturing or dispensing ROs) that may be registered, and the absence of any such definitive text has created the instant dispute. Neither party points to any other express language in the CCA that clears up the obvious ambiguity created by the inclusion of both an express mandatory limitation of five ROs and an express grant of discretion to register additional ROs.

The parties both argue that the facial language of the statute is an unambiguous statement of legislative intent in support of their interpretation. On the one hand, plaintiff/petitioner contends that the first sentence of Public Health Law § 3365 (9), in which the Commissioner is limited to registration of “not more than five registered organizations that manufacture medical marihuana” controls, and that the phrase “additional registered organizations” in the third sentence is limited to the registration of additional manufacturing ROs in the event that the Commissioner registers less than five, or registration of “replacement” ROs if one or more of the manufacturing ROs ceases to operate, or registration of additional ROs that are “non-manufacturing” (see Public Health Law § 3364 [1] [defining registered organizations’ purposes as “acquiring, possessing, manufacturing, selling, delivering, transporting, distributing or dispensing marijuana” (emphasis added)]). On the other hand, defendants/respondents contend that the third sentence of Public Health Law § 3365 (9) by which the commissioner is authorized to register “additional” – or more than five – ROs without
limitation plainly controls because the cap of five is addressed to only the “initial” five ROs. Both parties’ arguments are unpersuasive for the reasons that follow.

While each of these interpretations and arguments is reasonable, each is also flawed because plaintiff/petitioner’s position would require the Court to conclude that the Legislature meant to include the word “non-manufacturing” in the third sentence, while defendants/respondents’ position would require the Court to include the word “initial” in the first sentence. Thus, a facial or plain reading of the statute to determine legislative intent is not possible. To be sure, the use of the word “additional” in the third sentence implies that there could be more than five new ROs not limited to replacement of manufacturing ROs that ceased to operate or whose registrations were terminated, but that implication is insufficient to resolve the ambiguity. While the first sentence specifically addresses “manufacturing” ROs, the third sentence is more general because it does not identify the scope of the activities the additional ROs would be authorized to engage in, and thus, it is unclear from the text whether it authorized the commissioner to register additional ROs for any purpose.

Accordingly, the Court must look beyond the text of Public Health Law § 3365 (9) to determine the Legislature’s intention as to whether the cap on the number of ROs was intended to be permanent or temporary.

The parties contend that the statute when read as a whole with its pertinent provisions harmonized supports their statutory construction. Plaintiff/Petitioner contends that the legislation must be interpreted to give effect to every provision and to avoid rendering superfluous another provision, and it asserts that the broad reading of the third sentence renders the statutory cap superfluous. Defendants/respondents argue that the three sentences in Public Health Law § 3365 (9) should be read in sequence to mean that the commissioner shall initially register five ROs, then
ensure that the initial five ROs are adequately geographically distributed throughout the state, and then register additional ROs as needed. Defendants/Respondents further argue that other provisions in the CCA grant the commissioner considerable discretion, and that interpreting Public Health Law § 3365 (9) to give the commissioner discretion to add five more ROs without limitation is consistent with the overall statutory scheme. However, the Court finds unpersuasive the parties arguments for the following reasons.

Plaintiff/Petitioner’s argument that the third sentence in Public Health Law § 3365 (9) would render the statutory cap superfluous is unconvincing because it is certainly reasonable to conclude that the Legislature intended merely for the first five ROs to be the initial entrants in the medical marihuana market followed by additional manufacturing ROs in the event that supply did not meet demand. Conversely, defendant/respondent’s argument that the three sentences in Public Health Law § 3365 (9) should be read in progression is similarly unpersuasive because it is also reasonable to conclude that the statute meant to provide for a permanent cap on manufacturing ROs that could be increased only by further legislative action, and that after a review of the geographic distribution of the ROs and dispensaries, the commissioner’s authority was limited to registration of only non-manufacturing ROs to address unmet demand in underserved areas. Further, the fact that the Legislature gave the commissioner broad discretion with respect to other matters in administration of the CCA does not ipso facto establish that it intended to do so here. Nor is the ambiguity in Public Health Law § 3365 (9) resolved by intervenors’ reference to the laws of 2015, which, they assert, envisioned a two step phase-in of an initial “emergency program” involving expedited RO registration followed by a “full medical marihuana program” (see Joint Intervenors’ Memorandum of Law, at 17, quoting L.2015 c. 416, § 1; see also Public Health Law § 3365-a). First, this statement
of legislative intent post-dated the 2014 enactment of the CCA, and second, its references to two phases of registration for ROs does not address the temporal scope of the statutory cap.

Defendants/Respondents further argue that plaintiff/petitioner's asserted permanent cap of five ROs would allow a five-member monopoly of the marihuana marketplace, which is inconsistent with the CCA, would defy common sense and the public interest, and would lead to an absurd and unreasonable result. The Court does not agree because the medical marihuana industry, although potentially large, is highly regulated and there may be good reason to limit competition, as is done in other highly regulated industries. Thus, imposition of a permanent cap of five manufacturing ROs is not necessarily inconsistent with the overall purpose of the CCA, common sense or the public interest. On the other hand, both a free market and potentially large demand for medical marihuana may inform the need for a greater number of manufacturing ROs than the five originally registered, and it is similarly not inconsistent with the CCA (which was intended to supply a potentially large market of certified patients), or common sense or the public interest to authorize the commissioner to register additional ROs to manufacture medical marihuana.

Finally, looking to the legislative history of the CCA as documented in the sponsors' memoranda and prior and post-enactment iterations of Public Health Law § 3365 (9) provide little guidance. The Assembly sponsor's memorandum in support of the CCA provides, in relevant part that: "The Commissioner would be able to register up to five organizations that each operate four dispensaries, and would be able to allow additional registered organizations and dispensaries" (Dague Affirmation, Exhibit 2, at 16). This statement offers no clarity as to whether the statutory cap of five manufacturing ROs was intended to be permanent or temporary. Similarly silent on that question is the joint letter in support of the CCA from the Assembly and Senate sponsors to the
Governor's Counsel (see id., Exhibit 3). While proposed bills – both before and after the passage of the CCA – included varying limitations on the number of ROs to be registered both as a matter of discretion and as a matter of statutory mandate, the progression of these proposed bills does not, without more, clarify the Legislature's intent as to the permanency of the cap of five, nor does it necessarily signify that the enacted version was intended to impose a permanent cap.

The only mention in the documents that have been submitted by the parties that potentially speaks to the legislative intent regarding the statutory cap of five ROs is found in the transcript of the Assembly floor debate on June 19, 2014, in the colloquy between Assemblymember Walter and Assemblymember Gottfried, the sponsor of the bill:

"MR. WALTER: Is there any provisions [sic] in here to expand the number of registered organizations from the initial five?

"MR. GOTTFRIED: Yes. The Commissioner of Health would have authority to increase the number of registered organizations if he find[s] that there's a need for that.

"MR. WALTER: Is there any sort of a time limit on that or if the demand is overwhelming within the first couple of years, can he just go ahead and do that?

"MR. GOTTFRIED: He could do that whenever he wants." (id., Exhibit 4, at 314 [emphasis added]). In this colloquy, the sponsor of the bill acknowledged that the commissioner had unbridled discretion to register additional ROs in the event the market for medical marihuana demanded more product, which could be done by increasing supply through additional manufacturer Ros. However, even this colloquy is not a conclusive demonstration of
legislative intent, as increased demand could potentially be met without an increase in the number of manufacturing ROs, but rather by an increase in dispensaries where demand was not being met.

In sum, despite the clearly inconsistent provisions in Public Health Law § 3365 (9), plaintiff/petitioner has not demonstrated that the plain language of that provision or the provisions of the CCA as a whole, or other legislative history demonstrates a legislative intent to permanently cap the number of medical marihuana ROs at five. Thus, plaintiff/petitioner has not demonstrated that the conduct of defendants/respondents in registering more than five ROs was an ultra vires act. Accordingly, it is

ORDERED and ADJUDGED, that the complaint/petition bearing Albany County Index Number 2848-2017 is DENIED.

This constitutes the decision, order and judgment of the Court. The original decision, order and judgment is being sent to the attorney for defendants/respondents. A copy of the decision, order and judgment and the supporting motion papers have been delivered to the County Clerk for placement in the file. The signing of this decision and order, and delivery of a copy of it, shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provisions of that rule respecting filing, entry and notice of entry.

ENTER.

Dated: Saratoga Springs, New York
December 28, 2017
Papers Considered:

(1) Summons and Verified Complaint and Article 78 Petition, dated and verified April 27, 2017, with Exhibit A;
(2) Memorandum of Law in Support of Petitioner’s Request for a Temporary Restraining Order, dated April 27, 2017;
(3) Affidavit of Amy Peckham, sworn to April 26, 2017, with Exhibit 1;
(4) Affidavit of Joseph Stevens, sworn to April 26, 2017, with Exhibits 1-3;
(5) Affirmation of Karl Sleight, Esq., dated April 27, 2017, with Exhibits 1-33;
(6) Verified Answer, dated May 26, 2017;
(7) Affirmation of C. Harris Dague, Special Counsel, signed May 26, 2017, with Exhibits 1-4;
(8) Affidavit of Nicole Quackenbush, sworn to May 26, 2017, with Exhibits 1-6;
(9) Memorandum of Law in Opposition to the Article 78 Petition and in Support of Respondents’ Motion for Summary Judgment on the Declaratory Judgment Claims, dated May 26, 2017;
(10) Plaintiff-Petitioner’s Memorandum of Law in Opposition to Defendants-Respondents’ Motion for Summary Judgment, dated June 12, 2017;
(11) Supplemental Affidavit of Nicole Quackenbush in further Support of Respondents’ Answer and in Opposition to the Verified Petition and Complaint, sworn to June 15, 2017, with Exhibit 7;
(12) Supplemental Affidavit of C. Harris Dague, Special Counsel, in further Support of Respondents’ Return in Opposition to the Petition and in Support of Respondents’ Motion for Summary Judgment Pursuant to CPLR § 3212, dated June 15, 2017, with Exhibits 1-3;
(13) Reply Memorandum of Law in Further Support of Respondents’ Motion for Summary Judgment on the Declaratory Judgment Claims, dated June 15, 2017, with Appendix 1;
(14) Verified Reply of Plaintiff-Petitioner, signed June 15, 2017;
(15) Attorney Affirmation of Jennifer Kavney Harvey, Esq., dated June 15, 2017, with Exhibits A-I;
(16) Plaintiff-Petitioner’s Reply Memorandum of Law in Further Support of Plaintiff-Petitioner’s Article 78 Proceeding and Request for Corollary Injunctive Relief, dated June 15, 2017;
(17) Notice of Cross-Motion, dated August 28, 2017;
(18) Intervenors’ Joint Memorandum of Law in Support of Their Cross-Motion to Dismiss and Respondents’ Opposition to Petitioner’s Article 78 Petition, and in Opposition to Petitioner’s Motion for a Preliminary Injunction, dated August 28, 2017;
(19) Affirmation of Brian Butler, Esq., dated August 28, 2017, with Exhibits A-K;
(20) Attorney Affirmation of Jennifer Kavney Harvey, Esq., dated September 11, 2017, with Exhibit A (including sub-exhibits) and Exhibits B-J;
(21) Verified Answer and Objections in Point of Law of Intervenor NYCANNA, LLC, dated and verified October 11, 2017;
(22) Verified Answer and Objections in Point of Law of Intervenor Fiorello Pharmaceuticals, Inc., dated and verified October 11, 2017;
(23) Verified Answer and Objections in Point of Law of Intervenor Palliatech NY, LLC, dated and verified October 11, 2017;
(24) Verified Answer and Objections in Point of Law of Intervenor Citiva Medical, LLC, dated and verified October 11, 2017;

(25) Verified Answer and Objections in Point of Law of Intervenor Valley Agriceuticals, dated and verified October 20, 2017;

(26) Verified Reply to Verified Answer of Intervenor NYCANNA, LLC, dated and verified October 20, 2017;

(27) Verified Reply to Verified Answer of Intervenor Fiorello Pharmaceuticals, Inc., dated and verified October 20, 2017;

(28) Verified Reply to Verified Answer of Intervenor Palliatech NY, LLC, dated and verified October 20, 2017;

(29) Verified Reply to Verified Answer of Intervenor Citiva Medical, LLC, dated and verified October 20, 2017;

(30) Verified Reply to Verified Answer of Intervenor Valley Agriceuticals, dated and verified October 20, 2017;

(31) Attorney Affirmation of Jennifer Kavney Harvey, Esq., dated October 20, 2017, with Exhibit A;

ALL BUREAU LICENSES

**Temporary License – Allows for Operations while Annual License Application is Pending**
- A temporary license allows a business to engage in commercial cannabis activity for a period of 120 days.
- The Bureau can only issue a temporary license if the applicant has a valid license, permit, or other authorization issued by the local jurisdiction in which the applicant is operating.

**Annual Licenses**
- All commercial cannabis activity shall be conducted between licensees.
- There is no specific number limit to the licenses that may be held by an applicant. There is no restriction on the types of cannabis licenses a person can hold, except a person who holds a testing laboratory license is prohibited from licensure for any other commercial activity.

**Local Compliance Verification**
- If the applicant provides a local license, permit, or other authorization, the Bureau will contact the local jurisdiction to verify the information and will allow at least 10 days for the jurisdiction to respond before issuing the license, unless a response is received from the local jurisdiction sooner.
- If an applicant for an annual license does not provide a local license, permit, or other authorization, the Bureau will contact the local jurisdiction to verify that issuing the license would not violate a local ordinance or regulation. After 60 days, if there is no acknowledgement by the local jurisdiction, the Bureau shall presume the applicant is in compliance and may issue a license.

An annual license issued by the Bureau is valid for 12 months from the date of issuance and may be renewed annually.
License Type Designation

- Licensees must hold an A-license to engage in adult use commercial cannabis activity and an M-license to engage in medicinal commercial cannabis activity. The exception is testing laboratories, which may test cannabis goods for both license types.

Ownership

- An owner is a person who: holds at least 20 percent aggregate ownership interest in a commercial cannabis business; is a chief executive officer or member of the board of directors of a non-profit; or will be participating in the direction, control, or management of the entity applying for licensure.
- Owners must submit fingerprints, information regarding any criminal convictions, and disclose whether they have a financial interest in any other commercial cannabis business licensed under MAUCRSA.

Priority Licensing

- Priority application review will be provided for annual licenses only.
- To be eligible for priority licensing, an applicant must be able to demonstrate that the business was in operation and in good standing with the local jurisdiction by September 1, 2016.

Premises Requirements

- Applicants must identify the designated structure(s) and real property under the control of the applicant or licensee where commercial cannabis activity will take place.
- Each license must have a separate licensed premises, unless all of the following requirements are met:
  - A licensee holds both an M-license and A-license for the identical type of commercial cannabis activity;
  - The licensee holding both licenses is identical in name, business formation, and ownership;
  - The licensee only conducts one type of commercial cannabis activity on the premises;
  - All cannabis and cannabis products are clearly marked with an “M” or “A”; and
  - Records are kept separately for each license and clearly indicate the records are related to the M-license or A-license.
- Security measures are required at licensed premises. Measures include:
  - Employee badges, designated limited-access areas, and security personnel.
BUREAU OF CANNABIS CONTROL

MEDICINAL AND ADULT-USE CANNABIS REGULATION AND SAFETY ACT REGULATIONS OVERVIEW

- 24-hour video surveillance for areas containing cannabis and cannabis products as well as all entryways and exits. Retailers must also have video surveillance in point-of-sale areas and security personnel.
- Alarm systems, commercial grade locks, and secure storage of cannabis and cannabis products.
- All employees of the licensee must be at least 21 years old.

Cannabis Waste
- Cannabis waste must be contained in a secured waste receptacle or secured area on the licensed premises.
- Licensees may not sell cannabis waste and must comply with all applicable waste management laws.

Labor Peace Agreement
- Applicants for a license with more than 20 employees must either: (1) attest that they have entered into a labor peace agreement and that they will abide by the terms of the agreement, and provide a copy of the agreement to the Bureau, or (2) provide a notarized statement indicating the applicant will enter into and abide by the terms of the labor peace agreement.

ADDITIONAL REQUIREMENTS BY LICENSE TYPE

Distributor License – Arrange for testing, check for appropriate packaging and labeling, collect taxes, transport cannabis and cannabis products, and may act as a wholesaler. All transportation shall be conducted by distributor licensees and their direct employees.

- Cannabis and cannabis products must pass through a distributor prior to being sold to customers at a retail establishment.
- Distributors must arrange for the laboratory testing and quality assurance for cannabis and cannabis products.
- Distributors may package and label cannabis (dried flower) but may not package cannabis products pursuant to the distributor license.

Distributor Transport-Only License – A distributor can choose to be a Transport Only Distributor, which transports only its own cannabis and cannabis products, or transports for other licensees, but does not perform any of the other functions of a distributor. Transportation to retail licensees is prohibited by this type of license, unless the licensees are transporting immature plants and seeds from a nursery to a retailer.
Additional Transport Requirements for All Distributors

- Cannabis goods may only be transported in a vehicle or trailer, must not be visible from outside of the vehicle, and must be kept in a locked box, container, or cage that is secured to the commercial vehicle or trailer.
- Transport vehicles must be equipped with alarm systems and remain secure at all times.
- Packages or containers holding cannabis goods may not be tampered with, or opened during transport.
- No vehicle or trailer containing cannabis goods shall be left unattended in a residential area or parked overnight in a residential area.
- All transports must have a shipping manifest with specific information about the cannabis and cannabis products being transported. The shipping manifest must identify the licensee shipping, the licensee transporting, and the licensee receiving the shipment.

Retailer License – Sell cannabis and cannabis products to customers, often referred to as dispensaries.

- Retailers are not allowed to package or label cannabis or cannabis products on the premises. All cannabis or cannabis products sold at a retailer must be packaged and labeled before arriving at the retail premises, except during the transition period.
- Retailers may only sell and deliver cannabis goods between the hours of 6 a.m. and 10 p.m.
- Before leaving the retail premises, cannabis purchases must be placed in an opaque exit package.
- Deliveries must be made in person by a direct employee of the licensee to a physical address within the State of California.
- Delivery vehicles may not contain more than $3,000 of cannabis product at any time. The retailer must be able to immediately locate all delivery vehicles.

Microbusinesses License – Microbusiness licensees must engage in at least three of the following commercial cannabis activities: cultivation (less than 10,000 square feet), manufacturing (Level 1, Type 6), distribution, and retail.

- A holder of a microbusiness license may only engage in the commercial cannabis activity requested in the license application and approved by the Bureau. If a microbusiness licensee wants to engage in additional commercial cannabis activity after the license is issued, the licensee shall submit an application to the Bureau identifying the requested changes and providing all information required for an application for the commercial cannabis activity the licensee wants to conduct.
• Licensees will be required to comply with the rules and regulations applicable to the commercial cannabis activities the microbusiness is conducting.

Testing Laboratory License – Test cannabis and cannabis products.

Provisional Testing Laboratory License
• Testing laboratories that meet all other requirements, but are awaiting ISO (the joint technical committee of the International Organization for Standardization and the International Electrotechnical Commission) 17025 accreditation may obtain a provisional license.

• Provisional licenses expire 12 months after issuance.

• The Bureau may renew the provisional license for an additional 12 months if the laboratory’s ISO 17025 accreditation application is still pending.

Sampling
• Laboratory personnel will take samples from harvest batches and cannabis product batches to be tested. Harvest batches may not exceed 50 pounds. Samples collected from batches weighing more than 50 pounds will be deemed invalid.

• Samplers must follow requirements pertaining to minimum sample sizes, minimum sample increments, transportation and storage of samples, and documentation of all sampling activity.

• Samples received by a laboratory that do not adhere to the requirements will be rejected.

Tests Performed
• Testing laboratories will be required to perform testing on cannabis goods to measure the following:
  - Cannabinoids;
  - Foreign material;
  - Heavy metals;
  - Microbial impurities;
  - Mycotoxins;
  - Moisture content and water activity;
  - Residual pesticides;
  - Residual solvents and processing chemicals; and
  - Terpenoids.

• Edible cannabis products that contain more than one serving per unit will be tested for homogeneity to ensure consistent concentrations of tetrahydrocannabinol (THC) or cannabidiol (CBD).

Certificate of Analysis
• After testing is completed, the laboratory will generate a certificate of analysis that contains the results of the testing and whether the tested batch passed or failed.
BUREAU OF CANNABIS CONTROL
MEDICINAL AND ADULT-USE CANNABIS
REGULATION AND SAFETY ACT
REGULATIONS OVERVIEW

• Batches that pass testing may be sold to customers via retailers.
• Harvest batches or cannabis product batches that fail testing may be additionally processed for remediation, with the exception of edibles. A batch may only be remediated twice. If the batch fails after a second remediation attempt and second retesting, the entire batch shall be destroyed.

Quality Assurance and Quality Control
• Testing laboratories are required to develop and implement a quality assurance program that is sufficient to ensure the reliability and validity of the analytical data produced by the laboratory.

Phase-In of Required Types of Testing
• The required tests for cannabis will be phased in throughout 2018.
• Cannabis harvested on or after January 1, 2018, and cannabis products manufactured on or after January 1, 2018, will be tested for potency, contaminants with a high public health risk, and contaminants that the industry is largely already testing for.
• Cannabis harvested on or after July 1, 2018, and cannabis products manufactured on or after July 1, 2018, will be tested for moderate relative health risks compared to the group above and contaminants that are currently largely not tested for.
• Cannabis harvested on or after December 31, 2018, and cannabis products manufactured on or after December 31, 2018, minor relative health risks compared to the group above and contaminants that are seldom or not tested for.

TRANSITION PERIOD
• To support a smooth transition of businesses into a newly regulated market, beginning January 1, 2018 and before July 1, 2018, licensees may do the following:
  • Conduct business with other licensees irrespective of the M or A designation on their licenses.
  • Transport cannabis goods that do not meet the labeling requirements (prescribed by MAUCRSA or the California Department of Public Health) if a sticker with the appropriate warning statement is affixed.
  • Sell cannabis goods held in inventory that are not in child-resistant packaging if they are placed into child-resistant packaging by the retailer at the time of sale.
  • Sell cannabis products that do not meet the THC limits per package established by the State Department of Public Health.
Bureau of Cannabis Control

Medicinal and Adult-Use Cannabis Regulation and Safety Act Regulations Overview

- Sell and transport cannabis goods that have not undergone laboratory testing if a label stating that they have not been tested is affixed to each package containing the goods prior to transport by a distributor or prior to sale if held by a retailer.
- Individually package and sell dried flower held in inventory by a retailer at the time of licensure.
- Cannabis products held in inventory by a retailer that do not meet the requirements set by the State Department of Public Health for ingredients or appearance may be sold by a retailer.

Beginning January 1, 2018, licensees shall not transport or sell any edible cannabis product that exceeds 10 milligrams per serving. Adult-use products may not exceed 100 milligrams per package; however, medicinal cannabis products may exceed 100 milligrams per package.

Enforcement

Right of Access
- Licensees shall provide the Bureau’s investigators, compliance monitors, agents, or employees full access to enter licensed premises; and inspect cannabis or cannabis products in the licensee’s possession.

Review and copy any materials, books, or records in the licensee’s possession.

Failure to cooperate and participate in the Bureau’s investigation may result in a licensing violation subject to discipline.

Prior notice of investigation, inspection, or audit is not required.

Notice to Comply
- The Bureau may issue a written notice to comply to a licensee for minor violations of MAUCRSA or its implementing regulations, observed during an inspection.
- The notice to comply will describe the nature and facts of the violation, including a reference to the statute or regulation violated, and may indicate the manner in which the licensee must correct the violation to achieve compliance.
- Within 15 calendar days, the licensee may sign and return the notice to comply, declaring under penalty of perjury that the violation was corrected and describing how compliance was achieved. Failure to do so may result in a disciplinary action.

Minor Decoys
- Peace officers may use a person under 21 years of age to attempt to purchase cannabis goods to ensure that licensees and their employees are not selling cannabis goods to minors.
Disciplinary Actions

- The Bureau may take disciplinary action against any license by way of revocation, suspension, fine, restrictions upon any licensee, or any combination thereof.

- The assessed penalty shall take into consideration: the nature and severity of the violation; evidence that the violation was willful; history of violations of the same nature; the extent to which the person or entity has cooperated with the Bureau; the extent to which the person or entity has mitigated or attempted to mitigate any damage or injury caused by the violation; and the extent to which the conduct is a public nuisance or danger to public safety.

- An accusation may be terminated by written stipulation at any time prior to the conclusion of the hearing on the accusation.

Citations and Notices to Comply

- The Bureau may issue citations containing orders of abatement and fines to a licensee or unlicensed person in writing.

- The Bureau may issue a notice to comply to a licensee for violations of the act or regulations observed during an inspection. The licensee may within 15 calendar days return the notice indicating the violation was corrected and how compliance was achieved.

- Any Bureau accusation recommending disciplinary action will be served on the licensee and a hearing will be conducted to determine if cause exists to take action against the licensee.
New Cannabis Taxes Begin January 1, 2018

If you sell cannabis or cannabis products, you must register with the California Department of Tax and Fee Administration (CDTFA) for a seller’s permit. Cannabis cultivators, processors, manufacturers, retailers, microbusinesses, and distributors making sales are required to obtain and maintain a seller’s permit as a prerequisite for applying for a license with the California Department of Food and Agriculture, the California Department of Consumer Affairs, or the California Department of Public Health.

Distributors of cannabis and cannabis products must also register with the CDTFA for a cannabis tax permit to report and pay the two new cannabis taxes to the CDTFA. The cannabis tax permit is in addition to your seller’s permit.

Beginning January 1, 2018, two new cannabis taxes are in effect:
• A 15 percent excise tax is imposed upon purchasers of cannabis and cannabis products. Retailers are required to collect the excise tax from the purchaser and pay it to the cannabis distributor.

• A tax on the cultivation of cannabis that enters the commercial market is imposed upon cultivators. Cultivators are required to pay the cultivation tax to either a distributor or a manufacturer depending upon the nature of the transaction. The cultivation tax rates are:
  • $9.25 per dry-weight ounce of cannabis flowers, and
  • $2.75 per dry-weight ounce of cannabis leaves.

  Additional categories and rates may be specified at a later date.

All cannabis businesses making sales are required to:
• Register online with the CDTFA for a seller’s permit.

• File sales and use tax returns electronically and pay any sales and use tax to the CDTFA. Even if none of your sales are subject to sales tax, you are still required to file a return and report your activities on your return to the CDTFA.

In addition, if you are a cannabis distributor, the following requirements apply to you:
• Prior to January 1, 2018, register online with the CDTFA for a cannabis tax permit. (Registration will be available in November 2017.)

• Beginning January 1, 2018, collect the excise tax from retailers you supply.

• Beginning January 1, 2018, collect the cultivation tax from cultivators or manufacturers that send or transfer cannabis and cannabis products to you.

• File both your cannabis tax and sales and use tax returns electronically and pay any tax amounts due to the CDTFA.

For more information:
Read our online Tax Guide for Cannabis Businesses at www.cdtfa.ca.gov/industry/cannabis.htm. We will continually update the guide as we receive more information about taxes impacting the cannabis industry.

If you have additional questions, you may call our Customer Service Center at 1-800-400-7115 (TTY:711) Monday through Friday, 8:00 a.m. to 5:00 p.m. (Pacific time), except state holidays.
California Cannabis Legal Framework Outline

(As of June 25, 2019)

By Rebecca Stamey-White
Cannabis Practice Leader, Hinman & Carmichael LLP
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I. **Overview**
   A. The Compassionate Use Act of 1996 (Proposition 215) legalized medical marijuana, providing protection for doctors, patients and their caregivers, later expanded to include non-profit collective and cooperative patient model
   B. In the years following, some local jurisdictions established permitting, but the vast majority did not and the state had no permitting process or regulatory structure until the legislature passed the Medical Marijuana Regulation and Safety Act (MMRSA) (2015)
   C. In 2016, California voters approved Proposition 64, the Adult Use of Marijuana Act (AUMA), legalizing adult use, and the governor instructed the legislature to combine MMRSA and AUMA in 2017 as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). Final regulations went into effect in January 2019.
   D. Licensing began in 2018 with temporary licensing to get current operators into the new licensed system, with annual (permanent) licensing still being fully implemented. Temporary licenses were not issued past December 31, 2018, but many licensee annual applications have not been processed by the state. As an emergency measure, the legislature authorized provisional licenses, which serve to bridge the gap between temporary licenses and annual licenses.
   E. California also adopted a track and trace system to track cannabis that is part of the legal market, which is also still not fully implemented because it can only be used by annual licensees.

II. **Regulatory Framework**
   A. There is dual jurisdiction and licensing between state and local jurisdictions, such that operators need local approval/permitting/licensing and state licensing to operate
   B. There are three primary state cannabis licensing agencies:
      a. **Bureau of Cannabis Control** (part of the Department of Consumer Affairs), which regulates retailers, distributors, testing laboratories, microbusinesses, and temporary cannabis event licensees
      b. **CalCannabis Cultivation Licensing** (part of the Department of Food and Agriculture), which regulates cultivators, and
      c. **Manufactured Cannabis Safety Branch** (part of the Department of Public Health), which regulates manufacturers.
d. Each agency has its own regulations that govern its activities. Many other agencies have varied jurisdiction over cannabis businesses (labor, tax, environmental, etc.)

C. Licensing fees are based on gross revenue and range from $200 for a self-distribution transport only license with less than $1,000 in gross revenue to $300,000 for microbusiness licensees with more than $80 million in gross revenue.

D. Taxes: There are cultivation taxes based on the category and weight of cannabis that enters the commercial market, cannabis excise tax of 15% of the average market price of the retail sale, sales and use tax, and local taxes.

III. Regulatory System Highlights

A. Basics
1. Many local jurisdictions in California have banned commercial cannabis activity and do not permit cannabis businesses in their jurisdiction.
2. There are no residency requirements for licensees, they may be any type of entity (and now may operate on a for-profit basis), and licensees may hold multiple licenses across different tiers of the industry, except that testing laboratories may not hold other licenses.
3. Products derived from hemp cannot be sold by cannabis retailers and cannabis products may not contain hemp-based CBD or other cannabinoids.
4. MAUCRSA explicitly authorizes deliveries facilitated by technology platforms, provided these platforms do not touch cannabis and do not share in the profits from the sale of cannabis.
5. Local jurisdictions may permit on-site consumption on retail premises and there are cannabis event licenses that permit retailers to sell cannabis at locally-permitted events.

B. Medical Cannabis:
1. Licensees may hold both adult use and medical permits and produce/distribute/sell both products.
2. Medical patients must have a doctor’s recommendation to buy medical products and do not pay sales and use tax. The medical market has been severely diminished since the adoption of adult use.

C. Primary License Types:
1. Cultivators may grow cannabis indoor, mixed light, or outdoor up to one-acre canopy, but there are no restrictions from the state on the number of licenses that may be held by a single operator. Local jurisdictions may impose further limitations. Appellations of origin and organic certifications are in the process of being developed and implemented.
2. Manufacturers may produce their products under either volatile or non-volatile licenses and methods (subject to local approval) and may produce edible products with up to 10mg THC per serving and 100mg THC per
package (with limited exceptions to exceed those limits for orally-dissolving medical products)

3. Distributors are responsible for tax collection, facilitating batch testing to testing laboratories, performing quality assurance reviews, and transportation. There are also distributor transport only licenses that permit transportation between premises.

4. Testing Facilities are responsible for testing batches of cannabis flower and manufactured products for cannabinoids, terpenoids, pesticides, solvents, microbial impurities, moisture content, foreign materials, heavy metals, mycotoxins and water activity

5. Retailers may be storefront retailers or non-storefront (delivery-only) subject to local authorization, but local jurisdictions may not prevent the delivery of cannabis to consumers within their jurisdiction (but they can tax those businesses and do)

6. Microbusinesses may conduct three of the four licensed activities (cultivation, manufacturing, distribution or retail) under one license

D. Social Equity Programs

1. Local jurisdictions (Oakland, Los Angeles, San Francisco, and others) have adopted programs to provide licensing support and priority for applicants disproportionately affected by the Drug War (through drug convictions, residency in heavily policed areas, lower incomes, housing insecurity, etc.)

2. California adopted the California Cannabis Equity Act, which provides for technical assistance to local equity programs through grant applications

Disclaimer: The information provided in these materials is not, and is not intended to constitute, legal advice; instead, it is provided for general informational purposes only. Please contact your attorney for specific legal advice.
FAQ – Industrial Hemp and Cannabidiol (CBD) in Food Products

California Department of Public Health (CDPH), Food and Drug Branch (FDB) has received numerous inquiries from food processors and retailers who are interested in using industrial hemp-derived cannabidiol (CBD) oil or CBD products in food since the legalization of medicinal and adult-use marijuana (cannabis) in California.

In California, the CDPH Manufactured Cannabis Safety Branch (MCSB) regulates medicinal and adult-use manufactured cannabis products. However, food products derived from industrial hemp are not covered by MCSB regulations. Instead, these products fall under the jurisdiction of CDPH-FDB.

California defines “food” as follows:

(a) Any article used or intended for use for food, drink, confection, condiment, or chewing gum by man or other animal.
(b) Any article used or intended for use as a component of any article designated in subdivision (a).1

The definition of food includes pet food, but does not include products containing cannabis (which are, instead, cannabis edibles). Meat, dairy, poultry or eggs are regulated by the California Department of Food and Agriculture (CDFA).

The federal Agricultural Act of 2014, also known as the Farm Bill, only legalized the growing or cultivating of industrial hemp by state departments of agriculture and institutions of higher education (as defined in Title 20 of the United States Code section 1001) for purposes of research under a state pilot program or other agricultural or academic research. In addition, growing or cultivation is only permitted under the Farm Bill if growing or cultivating is allowed under the laws of the State in which such state department or institution is located and such research occurs. In California, the cultivation of industrial hemp is regulated by the CDFA.

“Industrial Hemp” is defined as follows:

“a fiber or oilseed crop, or both, that is limited to types of the plant Cannabis sativa L. having no more than three-tenths of 1 percent tetrahydrocannabinol (THC) contained in the dried flowering tops, whether growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin produced therefrom.”2

Please refer to the CDFA for further questions about state requirements for cultivation of industrial hemp in California in accordance with the California’s Industrial Hemp Law (Division 24 of the Food and Agricultural Code).

California incorporates federal law regarding food additives, dietary use products, food labeling, and good manufacturing practices for food. The Controlled Substances Act of 1970 classified all forms of cannabis as a Schedule I drug, making it illegal to grow it in the United States.3 Currently, the United
States Food and Drug Administration (FDA) has concluded that it is a prohibited act to introduce or deliver for introduction into interstate commerce any food (including any animal food or feed) to which tetrahydrocannabinol (THC) or CBD has been added. This is regardless of the source of the CBD – derived from industrial hemp or cannabis.

Therefore, although California currently allows the manufacturing and sales of cannabis products (including edibles), the use of industrial hemp as the source of CBD to be added to food products is prohibited. Until the FDA rules that industrial hemp-derived CBD oil and CBD products can be used as a food or California makes a determination that they are safe to use for human and animal consumption, CBD products are not an approved food, food ingredient, food additive, or dietary supplement.

1 California Health & Safety Code section 109935.
2 California Food and Agriculture Code section 81000(d) which references California Health and Safety Code (HSC) section 11018.5.
3 21 United States Code section 802(16) “The term “marihuana” means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.”

Frequently Asked Questions

1. What forms of Industrial hemp derived products will and will NOT be allowed in food in California?

   **Will be allowed in food (without any claim for health benefits):**
   - Seeds derived from Industrial hemp
   - Industrial hemp seed oil or hemp seed oil derived from industrial hemp

   **Will NOT be allowed in food:**
   - Any CBD products derived from cannabis
   - Any CBD products including CBD oil derived from industrial hemp
   - Hemp oil that is not derived from industrial hemp seeds
   - Industrial hemp seed oil enhanced with CBD or other cannabinoids

2. Is hemp seed oil the same as CBD oil?

   *Industrial hemp seed oil and hemp-derived CBD oil are two different products. Industrial hemp seed oil is derived from the seeds limited to types of the Cannabis sativa L. plant and may contain trace amounts of CBD (naturally occurring) and other cannabinoids. Food grade Industrial hemp seed oil is available from a variety of approved sources.*
However, CBD or CBD oil derived from industrial hemp is NOT approved for human and animal consumption by the FDA as food and therefore cannot be used as food ingredient, food additive, or dietary supplement.

3. What is the difference between industrial hemp and cannabis (marijuana) derived cannabidiol (CBD/CBD oil)?

- CBD can be derived from both hemp and cannabis. CBD derived from hemp and cannabis is a federally-regulated controlled substance. CBD derived from cannabis is regulated within California as a cannabis product and may only be sourced from, produced, and sold by those with commercial cannabis licenses. CBD derived from industrial hemp is not an approved food additive, and therefore it cannot be added to human or animal foods in California.
- CBD derived from cannabis is a prohibited food additive. Cannabis cannot be sold in food retail.
- CBD derived from a licensed cannabis cultivator, per MCSB regulations, is an allowed additive in cannabis products only.

4. Does California consider food products that contain CBD or CBD oil from Industrial hemp a cannabis product?

Although in California, foods containing industrial hemp are not considered cannabis products (products that are subject to Proposition 64), CBD is an unapproved food additive and NOT allowed for use in human and animal foods per the FDA, and thus it is not approved in California.

5. Can industrial hemp-derived CBD oils be approved as a food ingredient, food additive or dietary supplement to be added in food?

Currently Industrial hemp derived CBD Oil and CBD products are NOT an approved food, food ingredient, food additive or dietary supplement and therefore cannot be used in any human and animal food.

6. If CDPH, MCSB regulates and licenses cannabis (marijuana) derived product manufacturers, which agency oversees CBD oil produced from industrial hemp?

There is currently no regulatory agency that provides oversight over the production of CBD oil from industrial hemp. However, CDPH-FDB has authority oversight over food additives, dietary use products, food labeling, and good manufacturing practices for food. Industrial hemp used as a food additive or dietary supplement falls under the authority of CDPH-FDB.

7. Can industrial hemp derived CBD products be allowed for sale in California if they come from other States? For example, if industrial hemp derived CBD oil is manufactured in another state and sold to customers in California via distributors and retailers?
No, CBD is an unapproved food additive and NOT allowed for use in human and animal foods in California regardless of where the CBD products originate.
The Mission of the CPUC:
California’s economy depends on the infrastructure the California Public Utilities Commission (CPUC) and utilities provide. For more than 100 years, the CPUC has worked to protect consumers and ensure the provision of safe, reliable utility service and infrastructure at reasonable rates, with a commitment to environmental enhancement and a healthy California economy. This includes essential services such as electric, natural gas, water, and telecommunications infrastructure; railroads, rail crossings, and light rail transit systems; passenger carriers, such as limousines, charter buses, and ferries; and household moving companies.

The CPUC’s vast responsibilities include:
- Ensuring that regulated services are delivered in a safe, reliable manner, including conducting investigations, inspections, and audits.
- Implementing aggressive renewable energy and energy efficiency goals and advancing climate strategies.
- Developing and implementing policies for the rapidly changing communications and broadband markets, including ensuring fair, affordable universal access to necessary services, protecting against fraud, and removing barriers that prevent a fully competitive market.
- Safety jurisdiction over the rail system, including freight railroads, inter-city passenger railroads, commuter railroads, and rail transit systems.
- Licensing, insurance, and consumer protection oversight of moving companies and passenger carriers.
- Ensuring that California’s investor-owned water utilities deliver clean, safe, and reliable water to their customers at reasonable rates.

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Contact the CPUC’s Consumer Affairs Branch, which assists consumers who have questions about rates or services regarding electric, gas, telephone, or water utilities, and assists consumers who are unable to resolve an issue with their utility company. Call: 800-649-7570
Visit: www.cpuc.ca.gov/PUC/CEC/e_complaint/
Write: CPUC Consumer Affairs Branch, 505 Van Ness Ave., San Francisco, CA 94102

**File a Complaint about a Limo, Airport Shuttle Bus, or a Moving Company**

Contact the CPUC’s Transportation Enforcement Section to file a complaint about passenger carriers or household moving companies. Passenger carriers: 1-800-894-9444; Household moving companies: 1-800-366-4782
Email: ciu_intake@cpuc.ca.gov
Write: CPUC Complaint Intake Unit – Transportation Enforcement Section, Safety and Enforcement Division, 505 Van Ness Ave., San Francisco, CA 94102

**Comment on CPUC Proceedings or Policy Issues**

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Email: public.advisor@cpuc.ca.gov
Write: CPUC Public Advisor’s Office, 505 Van Ness Ave., Room 2103, San Francisco, CA 94102
Visit: www.cpuc.ca.gov/PPH

**Work for You: Commissioners & Staff**

The Governor appoints five Commissioners for six-year terms to the CPUC and designates one as President. Commissioners make all policy decisions, usually meeting twice a month to vote on issues noted on a public agenda. In order to fulfill its role in overseeing services that are essential to the lives of Californians, the CPUC employs a dedicated staff of analysts, economists, engineers, Administrative Law Judges, accountants, lawyers, safety experts, transportation specialists, and other professionals. It also has a Division of Ratepayer Advocates, an independent entity that represents consumers in CPUC proceedings.

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**Railroad Safety:**

- 10,385 miles of main/branch tracks
- 16,016 pieces of railroad equipment
- Several thousand HAZMAT facilities
- 10,000 public railroad crossings
- 3,250 private railroad crossings
- 12 rail transit agencies

**Natural Gas:**

- 10.7 million customers
- 103,000 miles of pipelines
- $7.7 billion in revenue

**Telecommunications:**

- 82.7 million numbers assigned with 34 million assigned to wireless devices
- 2.2 million VoIP lines
- 2.1 million DSL lines
- 10.5 million residential broadband connections
- 1,030 certified carriers
- $23.9 billion in revenue

**Electricity:**

- 11.5 million customers
- 32.698 miles of transmission lines
- 239,112 miles of distribution lines and more than 200 electric generation units
- $23.7 billion in revenue

**Water:**

- 127 water and 13 sewer utilities serving about 18% of California’s population
- $1.2 billion in revenue

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MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Enforcement

In October 2009 and June 2011, the Department issued guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). This memorandum updates that guidance in light of state ballot initiatives that legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale. The guidance set forth herein applies to all federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

As the Department noted in its previous guidance, Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Department of Justice is committed to enforcement of the CSA consistent with those determinations. The Department is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, as several states enacted laws relating to the use of marijuana for medical purposes, the Department in recent years has focused its efforts on certain enforcement priorities that are particularly important to the federal government:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
• Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
• Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
• Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
• Preventing marijuana possession or use on federal property.

These priorities will continue to guide the Department’s enforcement of the CSA against marijuana-related conduct. Thus, this memorandum serves as guidance to Department attorneys and law enforcement to focus their enforcement resources and efforts, including prosecution, on persons or organizations whose conduct interferes with any one or more of these priorities, regardless of state law.¹

Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws. For example, the Department of Justice has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property. Instead, the Department has left such lower-level or localized activity to state and local authorities and has stepped in to enforce the CSA only when the use, possession, cultivation, or distribution of marijuana has threatened to cause one of the harms identified above.

The enactment of state laws that endeavor to authorize marijuana production, distribution, and possession by establishing a regulatory scheme for these purposes affects this traditional joint federal-state approach to narcotics enforcement. The Department’s guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice. Jurisdictions that have implemented systems that provide for regulation of marijuana activity

¹ These enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA. By way of example only, the Department’s interest in preventing the distribution of marijuana to minors would call for enforcement not just when an individual or entity sells or transfers marijuana to a minor, but also when marijuana trafficking takes place near an area associated with minors; when marijuana or marijuana-infused products are marketed in a manner to appeal to minors; or when marijuana is being diverted, directly or indirectly, and purposefully or otherwise, to minors.
must provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner that ensures they do not undermine federal enforcement priorities.

In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.

The Department’s previous memoranda specifically addressed the exercise of prosecutorial discretion in states with laws authorizing marijuana cultivation and distribution for medical use. In those contexts, the Department advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals, or on their individual caregivers. In doing so, the previous guidance drew a distinction between the seriously ill and their caregivers, on the one hand, and large-scale, for-profit commercial enterprises, on the other, and advised that the latter continued to be appropriate targets for federal enforcement and prosecution. In drawing this distinction, the Department relied on the common-sense judgment that the size of a marijuana operation was a reasonable proxy for assessing whether marijuana trafficking implicates the federal enforcement priorities set forth above.

As explained above, however, both the existence of a strong and effective state regulatory system, and an operation’s compliance with such a system, may allay the threat that an operation’s size poses to federal enforcement interests. Accordingly, in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department’s enforcement priorities listed above. Rather, prosecutors should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong and effective state regulatory system. A marijuana operation’s large scale or for-profit nature may be a relevant consideration for assessing the extent to which it undermines a particular federal enforcement priority. The primary question in all cases – and in all jurisdictions – should be whether the conduct at issue implicates one or more of the enforcement priorities listed above.
As with the Department’s previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department’s authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

cc: Mythili Raman
Acting Assistant Attorney General, Criminal Division

Loretta E. Lynch
United States Attorney
Eastern District of New York
Chair, Attorney General’s Advisory Committee

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Drug Enforcement Administration

H. Marshall Jarrett
Director
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Ronald T. Hosko
Assistant Director
Criminal Investigative Division
Federal Bureau of Investigation
MEMORANDUM FOR UNITED STATES ATTORNEYS

FROM: James M. Cole
Deputy Attorney General

SUBJECT: Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use

Over the last several months some of you have requested the Department’s assistance in responding to inquiries from State and local governments seeking guidance about the Department’s position on enforcement of the Controlled Substances Act (CSA) in jurisdictions that have under consideration, or have implemented, legislation that would sanction and regulate the commercial cultivation and distribution of marijuana purportedly for medical use. Some of these jurisdictions have considered approving the cultivation of large quantities of marijuana, or broadening the regulation and taxation of the substance. You may have seen letters responding to these inquiries by several United States Attorneys. Those letters are entirely consistent with the October 2009 memorandum issued by Deputy Attorney General David Ogden to federal prosecutors in States that have enacted laws authorizing the medical use of marijuana (the “Ogden Memo”).

The Department of Justice is committed to the enforcement of the Controlled Substances Act in all States. Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large scale criminal enterprises, gangs, and cartels. The Ogden Memorandum provides guidance to you in deploying your resources to enforce the CSA as part of the exercise of the broad discretion you are given to address federal criminal matters within your districts.

A number of states have enacted some form of legislation relating to the medical use of marijuana. Accordingly, the Ogden Memo reiterated to you that prosecution of significant traffickers of illegal drugs, including marijuana, remains a core priority, but advised that it is likely not an efficient use of federal resources to focus enforcement efforts on individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regimen consistent with applicable state law, or their caregivers. The term “caregiver” as used in the memorandum meant just that: individuals providing care to individuals with cancer or other serious illnesses, not commercial operations cultivating, selling or distributing marijuana.

The Department’s view of the efficient use of limited federal resources as articulated in the Ogden Memorandum has not changed. There has, however, been an increase in the scope of
commercial cultivation, sale, distribution and use of marijuana for purported medical purposes. For example, within the past 12 months, several jurisdictions have considered or enacted legislation to authorize multiple large-scale, privately-operated industrial marijuana cultivation centers. Some of these planned facilities have revenue projections of millions of dollars based on the planned cultivation of tens of thousands of cannabis plants.

The Ogden Memorandum was never intended to shield such activities from federal enforcement action and prosecution, even where those activities purport to comply with state law. Persons who are in the business of cultivating, selling or distributing marijuana, and those who knowingly facilitate such activities, are in violation of the Controlled Substances Act, regardless of state law. Consistent with resource constraints and the discretion you may exercise in your district, such persons are subject to federal enforcement action, including potential prosecution. State laws or local ordinances are not a defense to civil or criminal enforcement of federal law with respect to such conduct, including enforcement of the CSA. Those who engage in transactions involving the proceeds of such activity may also be in violation of federal money laundering statutes and other federal financial laws.

The Department of Justice is tasked with enforcing existing federal criminal laws in all states, and enforcement of the CSA has long been and remains a core priority.

cc: Lanny A. Breuer
Assistant Attorney General, Criminal Division

B. Todd Jones
United States Attorney
District of Minnesota
Chair, AGAC

Michele M. Leonhart
Administrator
Drug Enforcement Administration

H. Marshall Jarrett
Director
Executive Office for United States Attorneys

Kevin L. Perkins
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Federal Bureau of Investigations
Energy Impacts of Cannabis Cultivation
Workshop Report and Staff Recommendations

California Public Utilities Commission
Policy and Planning Division

April Mulqueen
Rebecca Lee
Marzia Zafar
April 20, 2017
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Energy Impacts of Cannabis Cultivation

Workshop Report

I. Executive Summary

Cannabis is an energy-intensive crop when grown indoors. According to a 2012 study, conducted when medical cannabis was legal in California but recreational cannabis was still prohibited, indoor cannabis cultivation is responsible for about 3% of California’s electricity consumption, which is equivalent to the electricity consumption of one million California homes.\(^1\)

On November 9, 2016, California voters approved Proposition 64, which legalized the recreational use of cannabis by adults. Other states have experienced an increase in electricity demand after legalizing recreational cannabis; for example, half of load growth in Colorado is now attributable to new cannabis cultivation.\(^2\) Given the electricity use attributable to cannabis cultivation, an increase in cannabis cultivation associated with recreational legalization may be a significant driver of electricity consumption in California.

On February 28, 2017, the California Public Utilities Commission (Commission) held a workshop designed to explore opportunities for ensuring that any load growth associated with cannabis cultivation in California is consistent with California’s clean energy goals. During the workshop, panelists from utility companies, cannabis growers and industry groups, regulators, and energy efficiency and standards-setting organizations discussed the cannabis-related energy impacts in states that have already legalized recreational cannabis, and the challenges and opportunities for making cannabis cultivation in California more energy efficient.

Key takeaways from the workshop include:

- States that have legalized recreational cannabis have not necessarily seen an increase in energy consumption attributable to cannabis cultivation;
- With respect to indoor cannabis cultivation, state building and/or energy codes sometimes result in cultivation operations that are less energy efficient than they could be, without any concomitant gains in safety;

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What is energy efficient for one industry may not be energy efficient for another industry. For indoor cannabis cultivation, for example, insulation requirements may increase cooling needs, and HVAC economizers may increase the need for dehumidification and air filtration;

Indoor cultivation is generally accepted as the most energy intensive cultivation method, but is also potentially the most water-efficient method;

California’s cannabis exports exceed in-state consumption by a factor as high as four-to-one. The looming market uncertainty from a reversal in federal policy on prosecution may result in a market demand reduction and negatively impact in-state production as export falls; and

The cannabis industry has not benefitted from publicly funded agricultural research on how to best optimize production across a variety of cultivation methods, unlike other valuable agricultural commodities in the state.

Staff concludes that the available data are not sufficiently robust to support specific policy recommendations. However, staff recommends engagement with the cannabis industry, California regulators, utility companies, local jurisdictions, and other stakeholders to explore options for ensuring that California cannabis cultivation is energy efficient. Staff are assembling a Cannabis Working Group to consider policy responses, up to and including the possibility of a specific energy tariff for cannabis cultivation.

The workshop is summarized in additional detail below.

II. Introductory Remarks

Michael Picker, President, California Public Utilities Commission

This workshop is part of the Commission’s ongoing effort to understand new developments and consider changes as the world changes around us.

The fast growth in the cannabis industry presents a challenge and an opportunity to ensure that the choices made by the cannabis industry reflect California’s climate goals. Commission staff convened this workshop in order to help understand what steps the Commission should take in order to ensure that California cannabis is the greenest in the nation. Specific questions include:

Should the Commission institute a distinct set of higher energy rates for cannabis cultivation?
How can the Commission ensure the most effective use of energy efficiency in the cannabis industry, and avoid over-procurement?

How can the Commission help cities and counties where cannabis is grown meet their sustainability and clean energy goals?

III. Panel One: Energy Impacts in Other States after Recreational Legalization

Voters in Washington and Colorado legalized recreational cannabis in 2012, and Oregon voters legalized recreational cannabis in 2014. Stakeholders discussed the experience in their respective states concerning the increase in cannabis cultivation, the increase in electricity consumption associated with cannabis cultivation, and energy efficiency measures that have been proposed and adopted.

John C. Morris, Vice President for Market Development at D+R International, and Co-Founder and Board Secretary of the Resource Innovation Institute, spoke about the benefits of stakeholder cooperation and ongoing challenges concerning access to data in Oregon; Alex Cooley, Co-Founder of Solstice, and National Cannabis Industry Board Member, offered his perspective as a cannabis cultivator in Washington; David Montgomery, Consulting Energy Management Engineer at Puget Sound Energy, provided a utility perspective on the challenges and opportunities for making cannabis cultivation in Washington more energy efficient; Jacob Policzer, President of the Cannabis Conservancy in Colorado, discussed recent trends in energy consumption and cannabis cultivation in Colorado, as well as his experience with cannabis cultivation sustainability certification and standards development; and Adam D. White, P.E., Team Lead Energy Efficiency Engineer at Xcel Energy, provided a utility perspective concerning energy consumption and adoption of energy efficiency measures by cannabis cultivators in Colorado.

During the panel discussion, certain major themes emerged: limitations on available data concerning energy consumption; stakeholder cooperation; challenges concerning access to information; and existing energy efficiency measures. The Panel One discussion is summarized by major theme, below, and the audience Q&A is presented separately.

Hard Data on Energy Usage Associated with Cannabis Cultivation

According to John Morris, there are 449 permitted recreational cultivators in Oregon; the Oregon Liquor Control Commission does not distinguish between indoor and outdoor cultivation facilities when reporting the number of permitted facilities. In addition, there are no studies concerning energy consumption associated with cannabis cultivation in Oregon. The lack of baseline data reflecting energy consumption for indoor cannabis cultivation represents a
significant challenge to efforts to make the cannabis industry more energy efficient; as a consequence, California recreational cannabis licensing authorities should require energy and water forecasting and reporting by cannabis cultivators.

Alex Cooley reports that it is difficult to find data concerning cannabis cultivators’ energy usage in Washington. State agencies have some information, but cultivators and associations have had limited success getting data from state agencies. Agencies such as the Commission might have an easier time getting information from sister state agencies.

In Washington, of the entire licensed cannabis cultivation canopy, 60% is indoor, less than 10% is greenhouse, and the balance is outdoor cultivation. According to the latest public data, indoor cultivators operating year-round were consuming about 150 W/sq. ft. of active canopy, greenhouses operating 30%-50% of the year were consuming about 60 W/sq. ft. of active canopy, and greenhouses operating 15% of the year were consuming <5 W/sq. ft. of active canopy. Cooley believes it is fair to assume that California will see similar percentages of indoor, outdoor, and greenhouse cultivation. The largest cannabis cultivation operation Cooley ever toured was an outdoor cultivation in California.

According to David Montgomery, Washington’s Puget Sound Energy (PSE) is not tracking whether cannabis cultivation is affecting load growth, or how many cannabis cultivators there are. In addition, PSE has not seen a spike in demand attributable to recreational legalization. New cultivators have been coming on steadily and slowly for two years, starting small at 10,000 square feet of canopy and then expanding. PSE’s service territory is cool and cloudy, and most cultivation is indoors.

Jacob Policzer notes that quality data concerning the energy consumption associated with cannabis cultivation in Colorado are scarce. According to Xcel Energy, between 2012 and 2013, Denver’s electrical consumption increased by 1.2%, 50% of which is attributed to new cannabis cultivation. 2% of Denver’s electric consumption is due to cannabis cultivation. The majority of cultivation operations in Colorado are indoor, largely a function of local rules, and 60% of Colorado’s cannabis cultivation takes place in Denver.

In 2016, Colorado’s recreational cannabis market saw a large increase in demand for edibles, currently 75% of the recreational market. In addition, 57% of caregivers requested an increase in the number of cannabis plants permitted for residential cultivation. Per the Cannabis Conservancy’s research, daily/near daily users are those most likely to engage in home cultivation. In California, that amounts to about 265,000 individuals.

Xcel Energy’s Adam White has seen a wide range in the size and capacity of cannabis cultivation in Colorado, ranging in size from the square footage of a big box retailer, to as small as a conference room.
A large percentage of total service requests made by cannabis cultivators in Xcel’s territory have not come to fruition, and there is no clear explanation why. Many cultivators moved into one area of Denver, necessitating a new feeder in 2015, although some cultivators have succeeded in rotating their operations on 12 hour cycles. Of the requests that have been completed, cultivators tend to over-estimate their capacity needs. Among cannabis cultivators, Xcel has seen power load estimates of 200 W/sq. ft., and the actual is closer to 35 W/sq. ft. 68 W/sq. ft. is about the highest density of lighting they see, and that is for flower areas. Flower areas require more lighting than other cultivation areas, such as the veg and clone areas, so the average is 35 W/sq. ft.

**Stakeholder Cooperation**

John Morris reports that there are many organizations and agencies in Oregon that are actively pursuing efforts to increase the energy efficiency of the cannabis industry, including, e.g.:

- The Energy Trust of Oregon, which offers information and incentives for residential and commercial customers, including agriculture, and is actively recruiting cannabis cultivators;

- The Northwest Energy Efficiency Alliance, which tracks the cannabis sector but has no specific offerings to its members yet;

- The Northwest Power and Conservation Council, whose Seventh Power Plan accounts for the growth in indoor agriculture, and which conducts an annual cultivator survey to try to understand cultivators’ energy usage;

- Oregon DOE, which developed a lighting calculator to help cultivators forecast their electricity needs;

- Oregon Liquor and Control Board, the cannabis licensing authority, which requires cultivators to forecast their energy and water needs and file annual usage reports;

- The HB 3400 Task Force, convened to examine at environmental best practices for cannabis cultivators. Among its other recommendations, it supports a voluntary market based certification standard; and

- The Resource Innovation Institute, which endeavors to establish best practices for energy and water use in cannabis facilities, using an open source data-sharing approach and collaboration with cultivators, builders, agencies, and other stakeholders.

In contrast, the Bonneville Power Administration provides power to a number of utility companies in the Pacific Northwest, but, as a federal agency, will not provide incentives for cannabis cultivators because federal law prohibits the cultivation and consumption of cannabis.
Jacob Policzer has observed a limited amount of interagency cooperation in Colorado. The Denver Department of Environmental Health has a working group developing best practices for indoor cultivation; the Colorado Energy Office has sponsored a cannabis industry energy use report, the results of which are not yet public.

**Challenges and Opportunities Regarding Access to Information**

John Morris reports that Oregon cultivators are not familiar with utility hook up process, and may underestimate their energy and water needs in order to start growing as quickly and inexpensively as possible, or may overestimate their needs because they contemplate becoming the “Budweiser of cannabis.” Morris recommends that California utilities need to take a consistent approach to California cultivators, and both the energy efficiency and new connects departments need to coordinate their outreach to cultivators.

Alex Cooley states that the majority of cultivators in Washington care about energy efficiency, but their behaviors are inconsistent with environmental stewardship. Why? Because there is a steep learning curve for cultivators, and many cultivators are not aware that there are gaps in their knowledge, much less where to go for information. For example, cultivators might not be aware that they need to develop a working knowledge of Energy Code, or how to do so. In response, and in order to address the information deficit and help cultivators operate in a more energy efficient manner, it is crucial that utilities and other stakeholders meet the cultivators where they are. Hand out quick briefings on what cultivators need to know (e.g., permitting, code compliance) wherever the cultivators happen to be. Don’t just make information available; physically hand the information to the cultivators, emphasizing that this is something they need to know.

**Energy Efficiency Measures**

Alex Cooley observed that some energy efficiency measures are inappropriate for cannabis cultivators. One practical example air conditioning economizers, which reduce air conditioning load by drawing in cool outside air. Some cultivators weld the vents shut because they do not want the humidity and potential contaminants such as mold associated with outside air, although this decreases the energy efficiency of the air conditioning system. Cooley argues that rebates are key in order to encourage cultivators to adopt efficiency measures. Encourage rebates per fixture, and encourage solar providers to offer incentives and flexible payment plans to cannabis cultivators.

David Montgomery notes that there is tremendous variability in the design of cannabis cultivation operations in Washington, anything from a few lights in a barn to cultivation approaching clean room environments. PSE has done over 70 energy efficiency projects for cannabis cultivators so far, all focused on lighting. PSE does not have a special energy
efficiency program for cannabis; everything fits into PSE’s existing lighting/custom retrofit/new construction programs.

Most of PSE’s energy efficiency projects for cannabis cultivation are new construction rather than retrofits, as it is much more cost effective to install efficient lighting in the design phase rather than as a retrofit. PSE is still, however, struggling to understand what a baseline cannabis cultivation operation looks like from an HVAC standpoint. PSE asks cultivators for a baseline low cost design compliant with code, as well as a more efficient design; cultivators don’t have the money for more efficient designs up front, so all PSE’s incentives have been paid in lighting.

In the past 2+ years, PSE has completed about 70 energy efficiency projects with cannabis cultivators, which have saved between 35 and 40 million kWh, just from energy efficient lighting. When a cultivator installs more energy efficient lighting, the cultivator reduces the need for cooling and dehumidification. Despite the number of projects PSE has completed for the cannabis industry, Montgomery still meets cultivators who say they had no idea PSE could offer incentives.

Montgomery adds that cultivators have been reluctant to adopt LED lighting (especially in the flowering cycle) based on their experience with LEDs that were on the market ten years ago, but there have been advancements in LED technology. Cultivators report that they do lose some productivity with newer LEDs, but get higher THC concentrations in the finished crop.

Jacob Policzer points out that, in cannabis cultivation, upgrading to more energy efficient LEDs is not simply a case of swapping bulbs. The different bulbs require a different style of cultivation, which requires cultivator education and buy-in. Some Colorado cultivators are staggering grow rooms and trying to shift their usage to off peak hours, but these cultivators then experience labor issues, as it is more difficult to find labor at off peak hours.

Boulder County created an Energy Impact Offset Fund for cannabis cultivation, and assesses two cents per kWh. The fund pays for meter installation and analysis, and has the goal of ultimately supporting offset schemes. However, due to the lack of production data, it is not possible to evaluate how efficient these cultivation operations are.

Adam White reports that, in Colorado, upfront cost has been the main consideration of Xcel Energy’s cultivator customers. These customers want to begin growing as quickly as possible and want a two or three year payback on investments in energy efficiency measures, so energy efficiency rebates have been critical.

Concerning industry trends, LED manufacturers are meeting cultivator preferences with respect to wavelength of delivered lighting. In the past year, several Colorado cultivators have switched to LED even in the flowering cycle, because LED manufacturers are changing the wavelength provided during the flower cycle in response to customer demand. In addition,
some cannabis cultivators are going vertical: imagine a big box store style with stacked pallets, and “green walls” that can be moved back and forth with grow lights projected horizontally.

Panel One Q&A

Question: Does variation in cultivator size complicate the ability to provide them with the necessary information?

Cooley: Play to the lowest common denominator, and “help outlaws become compliant with building code.” Well capitalized cultivators have an easier time securing professionals to assist them with information and design, but people who started growing cannabis in their closets need information too. One way is via attention-getting fact sheets; simple, fun, engaging, one page per topic or a bound booklet, and physically hand the documents to the cultivators when they go to a government office or to a hydro shop.

Policzer: in California, many cultivator groups and collectives have formed, making it easier to meet them where they are. It is tougher to reach smaller cultivators, although cultivators are eager for the info. Go to cultivator groups and share information.

Question: Farmers still use pen and paper to collect data. What about metering and submetering for reliable data collection?

Montgomery: Very few cultivators have the money up front, making it difficult to get a baseline understanding. Some new cultivators are teachers growing in a shed behind their house, with no business plan.

Policzer: The Cannabis Conservancy requires metering and monitoring for their certification, energy and water audits are the first step. Because warehouses can vary widely in structure, many different types of meters are necessary. Getting cultivators to adopt monitoring can be challenging; they try not to make cultivators spend more than 15 minutes per day on energy data analysis.

Question: SMUD has experienced challenges getting the word out to cannabis cultivators about their incentive programs. Will that trend change?

Cooley: Cultivators have been breaking federal law. Be accommodating and understanding; the cultivators you are trying to reach have probably watched friends go to federal prison. Go to cultivator groups and ask for 5 minutes to speak about your programs. Go to the hydro store and to supply stores and say you want to offer incentives to their customers. Cultivators will be willing to talk about incentives if you meet them where they are.
**Morris**: Superbly well capitalized and sophisticated cultivators still don’t understand how utility programs work. Work through efficiency programs AND hookup programs.

**Montgomery**: Establish relationships via information sharing. Once a couple of cultivators and lighting contractors get on board, they will all want to participate.

**Policzer**: The cannabis industry is legitimate and legal on paper, but still often not treated with respect as business owners. Approach your efficiency programs as a partnership and word will get around.

**Question**: Please clarify what you mean when you say your customers are growing.

**White**: Business acumen is improving, facilities are getting larger, projects are getting larger.

**Policzer**: In Colorado, licenses are being consolidated by a handful of companies. Cultivation operations are getting bigger, with economies of scale and uniformity. In Colorado, there used to be a deadline by which cultivators had to have product on the shelves after licensing, so cultivators were in a rush, although this pressure is easing.

**Question**: Are cannabis cultivation operations candidates for real time or time of use pricing? We found that cultivators had zero interest in this, they wanted to be in charge of when the lights are on.

**Cooley**: There is some interest, because the industry is maturing and normalizing. It will take time. Without measurement, cultivators don’t see how significant the changes can be. Also, cultivators went from two month returns to two year returns, and the market price for cannabis is falling, increasing the interest in obtaining cost savings through energy efficiency.

**Morris**: In Washington, a small muni has a time of use rate for cannabis cultivators. They worked with their cultivators to help them understand the time of use rate, but there are no results available yet.

**Question**: Does hesitancy from federally chartered banks have any impact on program design or incentives?

**White**: Cannabis is legal in Colorado, we have a duty to serve our customers.

**Cooley**: Echo that with respect to Seattle utilities. The Seattle utility program is an indoor agriculture program, not a cannabis-specific program. The cannabis industry is seeing statements from federal agencies and programs, but not seeing engagement or enforcement per se.
Montgomery: Some public utilities have a problem because they get money from Bonneville Power Administration, so they create separate funds. This has not been a problem for PSE.

Question: Are there any building efficiency measures that work well in a general sense but pose a unique challenge for cannabis cultivators?

Cooley: Economizers pose a unique issue because indoor cultivators operate on a closed system, and economizers draw in outside air. In Washington’s rainy climate, drawing in damp air created dehumidification problems and so the economizer ended up not saving any energy overall. Helping people with water side economizers, on the other hand, is helpful. Washington state challenges include building code occupancy standards; some municipalities say all cannabis greenhouses are F1 (factory) when under the building code they should be classified as U (miscellaneous, including agricultural). Solstice has appealed this classification to Washington State Building Council. F1 classification requires, e.g., sprinklers and 3 hour firewalls, but “the plants aren’t flammable until after we dry them.” Look at occupancy load and hazard load.

Question: California building code operates on a 3 year cyclical update. What is the best way to encourage participation by cultivators?

Cooley: Engage them where they are. The only way code improves is with involvement, get engineers and cultivators involved the process of updating the code.

Morris: A Portland medical cultivator was trying to comply with city building code, but the insulation requirements in the walls ended up increasing the cultivator’s cooling needs. Sometimes when you think you’re getting efficiency, you aren’t.

White: Colorado is considering new lighting fixture baselines as part of its Energy Code; but the industry is already making these changes, and may get there before the Energy Code is updated.

Montgomery: Treat lighting like it is part of the growing process, not just as space lighting.

Policzer: Sometimes it is more energy efficient to design a system in a manner other than what the building code requires, and cultivators are seeking exemptions. When updating code, put proposals out there and seek input from cultivators.

Question: What incentive programs have worked to get cultivators to do the right thing?

White: The incentive for agriculture is part of the lighting program. Xcel tried a kWh per pound production efficiency approach, but it became too difficult and expensive to run because of too many variables -- strains, nutrients, water, and people—to control. The
new incentive program is based on equivalent photosynthetic photon flux density, plant-food-light at the canopy. Micromoles per joule as a measurement does not work because it does not allow for the directional nature of light fixtures, and some lights are better at pointing light at the canopy. Xcel uses quantum sensors to measure light at the canopy, and that’s how they quantify the basis for the incentives they offer. Cultivators have not proven interested in hearing about HVAC incentives, because the payback period is too long.

Montgomery: We push new construction approach before they start installing less efficient lighting, using what they want to install as a baseline. 20 cents per annual kWh saved in new construction lighting is the incentive offered; PSE has not had any cultivator take non-lighting incentives, currently offered at 30 cents per annual kWh saved.

Cooley: Solstice took advantage of a mechanical watts-in, watts-out incentive, but very few cultivators do because it is very expensive and has a ten year return on investment. Consider rebates by fixture, not by kWh saved, because there can be less energy savings realized in different parts of a grow, i.e., flowering and veg and transitioning spaces.

Question: What tools do we need to give you to encourage compliance, participation in reporting, energy efficiency measures, and changes to rules and standards?

Cooley: If I’m bound by law I’m going to comply, but it would be even easier if someone could do it for me. Be cooperative, collaborative, and do the work for the cultivators by automating as much as possible.

Morris: Many cultivators are not willing to share energy data, they regard energy usage as part of their proprietary technique. Market transformation is rooted in education and outreach, every cultivator is different in their willingness and ability to engage.

Policzer: Not an easy process in Boulder, had to learn how to approach cultivators via stakeholder engagement. We have experts on our sustainability committee in Denver.

Key Takeaways from Panel One Presentations and Q&A

States that have legalized recreational cannabis have not necessarily seen an increase in energy consumption attributable to cannabis cultivation.

With respect to indoor cannabis cultivation, state building and/or energy codes sometimes result in cultivation operations that are less energy efficient than they could be, without any concomitant gains in safety.
What is energy efficient for one industry may not be energy efficient for another industry. For indoor cannabis cultivation, for example, insulation requirements may increase cooling needs, and HVAC economizers may increase the need for dehumidification and air filtration.

Market participants and third party organizations are already reducing the energy footprint of cannabis cultivation without government mandate. For example, in Colorado, utilities and cultivators have already adopted more efficient lighting technologies that are only currently being considered for inclusion in the Energy Code.

Information on the energy consumption associated with cannabis cultivation is scarce. The dearth of information creates difficulties for: cultivators trying to anticipate their energy needs and understand the benefits of conservation; utilities trying to plan for infrastructure and energy procurement needs associated with new cannabis cultivation; cities and towns trying to meet their sustainability and clean energy goals while accommodating cannabis cultivation; and regulators trying to ensure compliance with statewide climate goals.

To date, cannabis cultivators have been significantly more receptive to lighting efficiency incentives than HVAC efficiency incentives due to upfront cost and length of payback period.

For cannabis cultivation, adopting more efficient lighting such as LEDs necessitates a change in cultivation techniques, and therefore will require education and buy-in.

The wide variety in the size of cannabis cultivation operations and the sophistication of the cultivators will create challenges for education and outreach concerning energy efficiency measures, and for cultivator engagement with mandatory reporting and other forms of data sharing.

IV. Panel Two: Cannabis Cultivation in California, Challenges and Opportunities

California cannabis stakeholders have been working toward a statewide regulatory framework for many years. Since the passage of Proposition 215 in 1996, which legalized medical cannabis use, in-state cannabis stakeholders have worked toward the passage of the Medical Cannabis Regulation and Safety Act of 2014, and the Adult Use of Marijuana Act of 2016 (Proposition 64). Representatives of key stakeholder groups discussed their experience, insights, and tasks underway to meet new legislative requirements.

California panelists included Hezekiah Allen, the Executive Director for the California Cultivators Association; Kristin Nevedal, Program Director for Americans for Safe Access and Board Member of the California Cannabis Industry Association; Nick Caston of CannaCraft, a cannabis product manufacturer and distribution company; Amber Morris, Branch Chief of CalCannabis Cultivation Licensing at the California Department of Food and Agriculture; Cody
Coeckelenbergh, Director of Program Services at Lincus Energy, an energy efficiency service provider; and Jesse Emge, Supervisor of Evaluation, Measurement, and Verification at San Diego Gas and Electric.

The Q&A session of the second panel benefitted from participation from various individual cultivators, engineering consulting firms, representatives of key organizations such as Sacramento Municipal Utility District, Pacific Gas & Electric, California Energy Commission, energy policy professionals from the energy efficiency and renewable energy industry.

Panelists spoke to key California-specific attributes that set the state apart from Washington, Oregon, and Colorado. Because Panel Two was limited to an examination of the California experience, a number of major themes emerged during the panel discussion, and therefore the synopsis is presented by theme rather than by individual panelist.

**California Market Trends**

Cannabis is currently grown across California at varying levels of energy use for both in-state consumption and export, constituting a multi-billion market. Hezekiah Allen estimates California’s cannabis exports exceed in-state consumption by a factor as high as four-to-one. The looming market uncertainty from a reversal in federal policy on prosecution may result in a market demand reduction and negatively impact in-state production as export falls.

Kristin Nevedal and Hezekiah Allen both pointed out that from a horticultural perspective, cannabis can be grown in a variety of settings in California, ranging from open field, to greenhouses, to a completely indoor setting using a number of different irrigation methods (e.g., dry farming, drip irrigation, flood irrigation, and hydroponics). The combinations of different cultivation methods using varying lighting and irrigation techniques are numerous. When asked whether cultivators across the state have a preference for a particular style of cultivation, Hezekiah Allen responded by observing that whatever method of cultivation is currently preferred by an existing cultivator may likely be that cultivator’s preference in the future, but added the caveat that California’s higher electricity rates will pose a constraint on the expansion of indoor cultivation.

Kristin Nevedal pointed out that decades of prohibition have reinforced the adoption of indoor cultivation methods, where cultivators are forced to hide their cultivation, even when California’s natural climate is conducive for open field cultivation. Members of the audience highlighted that indoor cultivation practices also resulted from a preference for higher yield potential and industrialized quality control offered by indoor facilities. Nadia Sabeh, an agricultural facilities engineer from the audience, pointed out that unlike other high-value California crops such as almonds and wine grapes, the cannabis industry has not benefitted from publicly funded agricultural research on how to better optimize production in a variety of
cultivation settings. Other members of the audience affirmed that existing industry practice on energy and water use has emerged solely based on information sharing between cultivators.

**Metrics of Energy Intensity for Cannabis Cultivation**

There was no disagreement among panelists and the audience that indoor cultivation is indeed more energy intensive. However, Hezekiah Allen and Cody Coeckelenbergh stated that indoor cultivation is less water intensive. Indoor cultivation methods benefit from reduced evaporation that would otherwise occur in an outdoor environment. Using artificial lighting to support plant growth and HVAC equipment to control temperature, air flow, and humidity require a significant amount of electricity, and Cody Coeckelenbergh presented a breakdown of such indoor energy demand sourced from the 2012 Evan Mills study. Both Kristin Nevedal and Nick Caston spoke to the hybrid approach of using a mix of sunlight and artificial lighting in a greenhouse setting as an ideal environmentally sustainable middle ground to boost yield without sharply increasing electricity consumption.

Kristin Nevedal further elaborated that California’s agricultural environment, rich sun exposure, and temperate climate provide an ideal setting to shift toward less energy intensive open field or mixed-light cultivation. She also added, however, she had observed a higher sales volume of indoor cultivation equipment, as cultivators may be shifting from lower-yield outdoor cultivation to higher-yield indoor cultivation in order to increase revenue to either offset or avoid regulatory compliance costs.

There are differences of opinion on how exactly to measure the energy intensity of cannabis cultivation. Cody Coeckelenbergh presented a per-plant metric in his presentation based on the approach taken in the 2012 Evan Mills study. However, both Hezekiah Allen and Kristin Nevedal rebutted that the energy and water intensity for cultivation actually depends on plant size, plant density, and crop yield. High-density planting for any cultivation method would significantly change the energy or water intensity calculation. A more accurate metric for
energy or water intensity, Allen and Nevedal explain, would be one that measures yield per square footage per flowering cycle, similar to how other crop productions are measured.

According to an internal cost study based on 2016 data, Nick Caston estimated that the energy cost differential between indoor versus greenhouse versus outdoor cultivation to be 78 to 1 to 0.

**Status of State Regulatory Implementation**

The CalCannabis Cultivation Licensing Office (CalCannabis) at the Department of Food and Agriculture is (CDFA) is currently developing regulations to license the cultivation of medical and adult-use recreational cannabis to comply with Proposition 64 and recent medical cannabis legislation. As Amber Morris explained, CalCannabis is developing a track-and-trace technology platform to prevent the comingling of legally-grown and illegally-grown cannabis products in the marketplace, such that legally-grown cannabis is not spread into the black market, and that illegally grown cannabis products will not be legally sold. Beginning January 1, 2018, CDFA will accept applications for cultivation licenses in three tiers differentiated by square footage and cultivation methods:

<table>
<thead>
<tr>
<th><strong>California Cannabis License Tiers</strong></th>
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</thead>
<tbody>
<tr>
<td><strong>Outdoor</strong> <em>(no artificial light)</em></td>
</tr>
<tr>
<td>Special Cultivator</td>
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<td></td>
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<tr>
<td>Small Cultivator</td>
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<td>Medium Cultivator</td>
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<td>Nursery</td>
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Source: CalCannabis at California Department of Food & Agriculture

In August 2016, CalCannabis conducted a month-long statewide industry survey on the location and type of licenses cannabis cultivators plan to seek. The survey result is available by county, and reflects business development interest in cultivation across all counties of the state. Amber Morris summarizes that about 45 percent of respondents indicated preference for indoor cultivation.

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3 CalCannabis August 16 survey results available at [https://www.cdfa.ca.gov/is/mccp/news/36](https://www.cdfa.ca.gov/is/mccp/news/36)
Due to the correlation between license type and on-site energy use, the availability of indoor and mixed-light licenses across localities could provide utility planners with valuable information on load growth potentials attributable to commercial cannabis cultivation. Hezekiah Allen emphasized that, unlike other states that have legalized commercial cannabis cultivation, California utilities and regulators will have better data access to ascertain and respond to any potential energy impact of cannabis cultivation due to the inherent structure of the state’s regulatory framework. He further emphasized that the electricity demand spikes experienced by states such as Washington and Colorado are not likely be replicated in California due to limited license availability and California’s higher electricity rates. “California is not a cheap electricity market. California is not going to cost competitive at a large scale with indoor cultivation only,” Allen said. “Impacts can be allocated based on the [cannabis] regulatory structure.”

Amber Morris explained that CalCannabis is currently conducting a statewide programmatic environmental impact report (PEIR) under California Environmental Quality Act (CEQA) to understand and mitigate the statewide effects of cannabis cultivation. The goal of CalCannabis is to certify this environmental review by the end of 2017, and the department is working in consultation with other state agencies tasked with other responsibilities under Proposition 64. This environmental assessment will differentiate the impact and potential mitigation by license type, thus setting a baseline for cultivation site-specific CEQA assessment. Local government will then determine whether the PIER analysis is sufficient for adopting local land-use policy or conducting site-specific CEQA review.

**Impacts of Local Land Use Policy**

Nick Caston points out that local land use decisions predominantly determine the method of cultivation within a municipal jurisdiction. Currently only a handful of California counties allow cannabis cultivation within unincorporated areas. Citing experience with Sonoma County, Nick Caston stated that local authorities often cite aesthetic concerns and ignore the environmental impact of indoor cultivation when passing local ordinances prohibiting outdoor and mixed-light commercial cultivation facilities.

Proposition 64 does not allow local government to ban cultivation for personal use, but local government may restrict the method by which these personal plants are cultivated. The City of Sacramento recently approved a city ordinance to allow only indoor cultivation for personal use. A representative from SMUD in the audience cited concerns with assessing and identifying the location and magnitude of residential energy load as a result of this local ordinance. Hezekiah Allen responded by stating there may already be existing load to grow cannabis indoors for personal use, so it may not be additive load. “Six plants are not going to be an obvious load to detect,” he said.
Most California cities and county governments have either prohibited cultivation, or are still in the process of developing land use requirements for cannabis. In agriculture-rich counties such as Sonoma, cannabis cultivation permits for both personal and commercial purposes are authorized on the condition that the cultivation is indoors. All three cannabis industry representatives on the panel expressed similar frustration on the lack of environmental consideration when local authorities prohibit outdoor or greenhouse cultivation outright. “Whose job is it to watchdog these local agencies?” asked Hezekiah Allen. In response, Nick Caston cited a precedent with state-level enforcement during Jerry Brown’s term as Attorney General in litigating against local authorities for noncompliance with SB 375 on sustainable land use.

Amber Morris, in discussions pertaining to the impact of land use policy, repeatedly stressed that current state legislation allows for local control in determining how cultivation sites are permitted. While CalCannabis will produce a CEQA analysis by license type, it is ultimately up to local government to determine the conditions by which local permits are granted.

**California Utility Experience and Energy Programs**

With regards to the variety of energy management incentive programs in California, Nick Caston stated that while incentives programs may work for the cannabis sector, the bigger barrier is the inability for the industry to obtain financing due to federal banking and lending constraints. Financing tools such as the Property Assessment Clean Energy (PACE) program would be a welcome approach.

Utility representatives of SDG&E, PG&E, and SMUD all echoed the common theme of the need for more data. Joe Horak from PG&E announced that PG&E is actively recruiting cannabis cultivators to sign up for the agricultural rate schedule, rather than the commercial rate schedule, through an informal customer working group. This announcement was met with positive response from cultivators in the audience. When inquired on the difference between cannabis and other agricultural energy use patterns, Joe Horak stated that PG&E currently does not have enough data to make that determination. Jesse Emge of SDG&E explained that while internal stakeholders within his company know the energy impacts of cannabis cultivation should not be ignored, there is simply not a lot of data to determine what to do next.

**Key Takeaways from Panel Two Presentations and Q&A**

California cannabis cultivators have developed diverging preferences on pursuing indoor, mixed-light versus outdoor cultivation. Optimizing between increased crop yield and increased energy costs is a business decision affected by revenue potential and other costs of doing business.
The cannabis industry has not benefitted from publicly funded agricultural research on how to best optimize production across a variety of cultivation methods, unlike other valuable agricultural commodities in the state.

Indoor cultivation is generally accepted as the most energy intensive cultivation method, but is also potentially the most water-efficient method.

California’s high energy rates may pose a constraint on the expansion of indoor cultivation.

When calculating the resource impact of cannabis cultivation, a per-plant metric does not account for planting density, yield potential, or growing cycle.

California’s statewide licensing tiers are differentiated by square footage and cultivation setting (indoor, outdoor mixed-light), leading to potentially easier access to locational data on where increased energy load might occur.

California Department of Food and Agriculture is conducting a statewide programmatic environmental impact review by license type. Local government entities will determine whether this assessment is sufficient for adopting local land-use policies or site-specific CEQA review.

Local land-use permits, when granted, often require a specific type of cultivation setting. Many local jurisdictions have banned outdoor or greenhouse commercial cultivation, or banned commercial cultivation completely. It is unclear whether local jurisdictions are aware of the energy consequences of mandating indoor cannabis cultivation.

Local government entities cannot prohibit cultivation for personal use under Proposition 64. They can, however, place restrictions on outdoor or greenhouse personal cultivation. Sacramento is one city which allows residents to grow cannabis for personal use, but only when grown indoors.

California’s cannabis exports exceed in-state consumption by a factor as high as four-to-one. The looming market uncertainty from a reversal in federal policy on prosecution may result in a market demand reduction and negatively impact in-state production as export falls.

California utilities do not currently have sufficient data to identify new load patterns attributable to cannabis cultivation.

V. Staff Recommendations

Staff concludes that the available data are not sufficiently robust to support recommending a special cannabis tariff. In the near term, staff recommends increased data collection.
Oregon requires licensed cannabis cultivators to forecast their energy needs before commencing operation, and to submit annual reports of energy usage. It may be helpful for the Commission to engage the CDFA in consultation with CEC and ARB concerning whether a similar reporting requirement would be beneficial in California.

Commission staff should consult with cultivators and other industry stakeholders concerning the availability and development of informational materials for cultivators.

Commission staff should facilitate constructive engagement between cannabis cultivators and the CEC concerning California’s Building Code and Energy Code in order to determine whether particular provisions enhance or diminish the energy efficiency and safety of cannabis cultivation.

Because some local jurisdictions require that cannabis cultivation take place indoors, it may be beneficial for the Commission to engage with local jurisdictions to share information on the energy intensity of different means of cannabis cultivation and to discuss means of balancing public safety, aesthetics, and climate policy.

Commission staff should conduct a review of available energy efficiency/demand-side management programs and make program information available to cultivators, CDFA, and other stakeholders.

Commission staff should study the most appropriate energy efficiency metrics applicable to cannabis cultivation. Should efficiency be measured by plant, by square foot of canopy, by annual kWh saved, or by some other measure?

Commission staff can work to make data concerning embedded carbon intensity of electricity more easily accessible by local government entities for the purpose of local CEQA review.

Commission staff should assemble a Cannabis Working Group to consider options for ensuring that California cannabis cultivation is energy efficient, up to and including the possibility of a specific energy tariff for cannabis cultivation.

After the release of this Staff Workshop Report, Commission staff should attend a cultivator’s association meeting and/or utility working group and discuss the results.
FACT SHEET

Highlights of the New California Cannabis Cultivation Regulations

The Regulations Went Into Effect on January 16, 2019

The California Department of Food and Agriculture (CDFA) adopted final regulations for state cannabis cultivation licensing on January 16, 2019, and these regulations went into effect immediately. Outlined below are some of the key regulatory changes, although this is not an all-inclusive list; to review all the final regulations, please visit CDFA's CalCannabis Cultivation Licensing website at calcannabis.cdfa.ca.gov. The references below refer to the final regulations in Title 3 of the California Code of Regulations.

DEFINITIONS

▪ Modifies the terms “immature plant” or “immature” to include specific measurements for leaves or roots of plants to facilitate clear and consistent tagging/labeling requirements for seed and/or vegetatively propagated plants. Section 8000(m)

▪ Clarifies “mixed-light cultivation” by specifying different lighting combinations, including light deprivation, that a cultivator may use to achieve more than one harvest without being considered an indoor cultivator. Section 8000(t)

▪ Clarifies that “outdoor cultivation” prohibits the use of light deprivation in the canopy area. Section 8000(x)

▪ Clarifies “nonmanufactured cannabis product” by explaining how kief is aggregated. Section 8000(v)

▪ Modifies “pre-roll” to specify its contents as a nonmanufactured cannabis product. Section 8000(aa)

APPLICATIONS

▪ Clarifies that CDFA shall not issue any temporary licenses or extensions of temporary licenses after December 31, 2018. Temporary licenses with an expiration date after December 31, 2018, will be valid until expiration, but will not be extended beyond the expiration date. Section 8100(e)

▪ Clarifies what is acceptable evidence of exemption from, or compliance with, the California Environmental Quality Act (CEQA), which is required for annual license applications. Section 8102(r)

▪ Requires that an applicant with more than one employee will employ one supervisor and one employee who have completed successfully an appropriate Cal-OSHA 30-hour general-industry outreach course within one year of receiving a license. Section 8102(bb)

For more information, please visit: calcannabis.cdfa.ca.gov
• Requires water sources to be identified and labeled for beneficial-use type on property diagrams. *Section 8105(d)*

• Requires a cultivation plan to have a designated area(s) to physically segregate cannabis, or nonmanufactured cannabis products, subject to an administrative hold.  
*Section 8106(a)(1)(l)*

• Clarifies shareable and non-shareable areas between licenses held by one licensee.  
*Section 8106(a)(1)(J)*

• Clarifies shareable common-use areas between multiple licensees. *Section 8106(a)(1)(K)*

• Requires a pest-management plan to include a signed attestation that the applicant shall contact the appropriate County Agricultural Commissioner prior to using the pesticides listed in the pest-management plan. *Sections 8106(a)(3)(C) and 8106(b)(3)(C)*

• Clarifies the required supplemental water-source information. *Section 8107*

• Adds two additional options for cannabis waste-management plans: (1) deliver to recycling centers that meet specified requirements, and (2) reintroduce cannabis waste into the agricultural operation. *Section 8108*

• Requires the applicant to designate an owner to be the licensee’s California Cannabis Track-and-Trace (CCTT) system account manager, and to register for CCTT system training within 10 business days of receiving a CDFA notice stating his or her application is complete. Completion of the CCTT training is required to access the CCTT system. *Section 8109*

### CULTIVATION LICENSE FEES AND REQUIREMENTS

• Clarifies the timeframes for applying for a license renewal. If applicable, the licensee may request a license-designation change from an A-License to an M-License, or an M-License to an A-License. *Section 8203*

• Clarifies the meaning of “disaster” for the purposes of disaster relief. *Section 8207(f)*

• Requires child-resistant packaging as of January 1, 2020. *Section 8212(a)(4)*

### CULTIVATION-SITE REQUIREMENTS

• Modifies the types of carbon-offset sources available to the licensee to cover excess emissions from the previous annual-license period. *Section 8305(a)*

• Clarifies generator requirements and adds a requirement for an after-market non-resettable hour-meter if the generator is not equipped with one. *Section 8306*

### CALIFORNIA CANNABIS TRACK-AND-TRACE (CCTT) SYSTEM

• Clarifies that immature plants in a “lot” shall be uniform in strain. *Section 8403(b)(1)*

For more information, please visit: calcannabis.cdfa.ca.gov
- Clarifies which activities are required to be entered into the CCTT system, including the planting of immature lots, tagging of immature plants, and specified harvest information. 
  *Section 8405(c)*

- Requires that any commercial cannabis activity conducted between a temporary licensee and an annual licensee shall be input into the CCTT system by the annual licensee. 
  *Section 8405(f)*

**ENFORCEMENT**

- Clarifies that for other state law violations, including state labor laws and related regulations, CDFA will use the violation categories of Serious, Moderate, and Minor. 
  *Section 8601(c)*

- Adds circumstances and notice and hearing procedures that require CDFA to issue an emergency decision and order a temporary suspension or an administrative hold to prevent or avoid immediate danger to public health, safety, or welfare. *Section 8604*

- Clarifies that an informal-hearing notice will provide specific information to a respondent, including that he or she may be represented by legal counsel at any or all stages of the proceedings. *Section 8606(b)(2)*

- Clarifies that a respondent may appeal a CDFA informal-hearing decision with the Cannabis Control Appeals Panel. *Section 8607(f)*
The Financial Crimes Enforcement Network (“FinCEN”) is issuing guidance to clarify Bank Secrecy Act (“BSA”) expectations for financial institutions seeking to provide services to marijuana-related businesses. FinCEN is issuing this guidance in light of recent state initiatives to legalize certain marijuana-related activity and related guidance by the U.S. Department of Justice (“DOJ”) concerning marijuana-related enforcement priorities. This FinCEN guidance clarifies how financial institutions can provide services to marijuana-related businesses consistent with their BSA obligations, and aligns the information provided by financial institutions in BSA reports with federal and state law enforcement priorities. This FinCEN guidance should enhance the availability of financial services for, and the financial transparency of, marijuana-related businesses.

Marijuana Laws and Law Enforcement Priorities

The Controlled Substances Act (“CSA”) makes it illegal under federal law to manufacture, distribute, or dispense marijuana.1 Many states impose and enforce similar prohibitions. Notwithstanding the federal ban, as of the date of this guidance, 20 states and the District of Columbia have legalized certain marijuana-related activity. In light of these developments, U.S. Department of Justice Deputy Attorney General James M. Cole issued a memorandum (the “Cole Memo”) to all United States Attorneys providing updated guidance to federal prosecutors concerning marijuana enforcement under the CSA.2 The Cole Memo guidance applies to all of DOJ’s federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

The Cole Memo reiterates Congress’s determination that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Cole Memo notes that DOJ is committed to enforcement of the CSA consistent with those determinations. It also notes that DOJ is committed to using its investigative and prosecutorial resources to address the most

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significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, the Cole Memo provides guidance to DOJ attorneys and law enforcement to focus their enforcement resources on persons or organizations whose conduct interferes with any one or more of the following important priorities (the “Cole Memo priorities”):³

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

Concurrently with this FinCEN guidance, Deputy Attorney General Cole is issuing supplemental guidance directing that prosecutors also consider these enforcement priorities with respect to federal money laundering, unlicensed money transmitter, and BSA offenses predicated on marijuana-related violations of the CSA.⁴

Providing Financial Services to Marijuana-Related Businesses

This FinCEN guidance clarifies how financial institutions can provide services to marijuana-related businesses consistent with their BSA obligations. In general, the decision to open, close, or refuse any particular account or relationship should be made by each financial institution based on a number of factors specific to that institution. These factors may include its particular business objectives, an evaluation of the risks associated with offering a particular product or service, and its capacity to manage those risks effectively. Thorough customer due diligence is a critical aspect of making this assessment.

In assessing the risk of providing services to a marijuana-related business, a financial institution should conduct customer due diligence that includes: (i) verifying with the appropriate state authorities whether the business is duly licensed and registered; (ii) reviewing the license application (and related documentation) submitted by the business for obtaining a state license to operate its marijuana-related business; (iii) requesting from state licensing and enforcement authorities available information about the business and related parties; (iv) developing an understanding of the normal and expected activity for the business, including the types of

³ The Cole Memo notes that these enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA.
products to be sold and the type of customers to be served (e.g., medical versus recreational customers); (v) ongoing monitoring of publicly available sources for adverse information about the business and related parties; (vi) ongoing monitoring for suspicious activity, including for any of the red flags described in this guidance; and (vii) refreshing information obtained as part of customer due diligence on a periodic basis and commensurate with the risk. With respect to information regarding state licensure obtained in connection with such customer due diligence, a financial institution may reasonably rely on the accuracy of information provided by state licensing authorities, where states make such information available.

As part of its customer due diligence, a financial institution should consider whether a marijuana-related business implicates one of the Cole Memo priorities or violates state law. This is a particularly important factor for a financial institution to consider when assessing the risk of providing financial services to a marijuana-related business. Considering this factor also enables the financial institution to provide information in BSA reports pertinent to law enforcement’s priorities. A financial institution that decides to provide financial services to a marijuana-related business would be required to file suspicious activity reports (“SARs”) as described below.

**Filing Suspicious Activity Reports on Marijuana-Related Businesses**

The obligation to file a SAR is unaffected by any state law that legalizes marijuana-related activity. A financial institution is required to file a SAR if, consistent with FinCEN regulations, the financial institution knows, suspects, or has reason to suspect that a transaction conducted or attempted by, at, or through the financial institution: (i) involves funds derived from illegal activity or is an attempt to disguise funds derived from illegal activity; (ii) is designed to evade regulations promulgated under the BSA, or (iii) lacks a business or apparent lawful purpose. Because federal law prohibits the distribution and sale of marijuana, financial transactions involving a marijuana-related business would generally involve funds derived from illegal activity. Therefore, a financial institution is required to file a SAR on activity involving a marijuana-related business (including those duly licensed under state law), in accordance with this guidance and FinCEN’s suspicious activity reporting requirements and related thresholds.

One of the BSA’s purposes is to require financial institutions to file reports that are highly useful in criminal investigations and proceedings. The guidance below furthers this objective by assisting financial institutions in determining how to file a SAR that facilitates law enforcement’s access to information pertinent to a priority.

**“Marijuana Limited” SAR Filings**

A financial institution providing financial services to a marijuana-related business that it reasonably believes, based on its customer due diligence, does not implicate one of the Cole Memo priorities or violate state law should file a “Marijuana Limited” SAR. The content of this

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5 See, e.g., 31 CFR § 1020.320. Financial institutions shall file with FinCEN, to the extent and in the manner required, a report of any suspicious transaction relevant to a possible violation of law or regulation. A financial institution may also file with FinCEN a SAR with respect to any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by FinCEN regulations.
SAR should be limited to the following information: (i) identifying information of the subject and related parties; (ii) addresses of the subject and related parties; (iii) the fact that the filing institution is filing the SAR solely because the subject is engaged in a marijuana-related business; and (iv) the fact that no additional suspicious activity has been identified. Financial institutions should use the term “MARIJUANA LIMITED” in the narrative section.

A financial institution should follow FinCEN’s existing guidance on the timing of filing continuing activity reports for the same activity initially reported on a “Marijuana Limited” SAR. The continuing activity report may contain the same limited content as the initial SAR, plus details about the amount of deposits, withdrawals, and transfers in the account since the last SAR. However, if, in the course of conducting customer due diligence (including ongoing monitoring for red flags), the financial institution detects changes in activity that potentially implicate one of the Cole Memo priorities or violate state law, the financial institution should file a “Marijuana Priority” SAR.

“Marijuana Priority” SAR Filings

A financial institution filing a SAR on a marijuana-related business that it reasonably believes, based on its customer due diligence, implicates one of the Cole Memo priorities or violates state law should file a “Marijuana Priority” SAR. The content of this SAR should include comprehensive detail in accordance with existing regulations and guidance. Details particularly relevant to law enforcement in this context include: (i) identifying information of the subject and related parties; (ii) addresses of the subject and related parties; (iii) details regarding the enforcement priorities the financial institution believes have been implicated; and (iv) dates, amounts, and other relevant details of financial transactions involved in the suspicious activity. Financial institutions should use the term “MARIJUANA PRIORITY” in the narrative section to help law enforcement distinguish these SARs.

“Marijuana Termination” SAR Filings

If a financial institution deems it necessary to terminate a relationship with a marijuana-related business in order to maintain an effective anti-money laundering compliance program, it should

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7 FinCEN recognizes that a financial institution filing a SAR on a marijuana-related business may not always be well-positioned to determine whether the business implicates one of the Cole Memo priorities or violates state law, and thus which terms would be most appropriate to include (i.e., “Marijuana Limited” or “Marijuana Priority”). For example, a financial institution could be providing services to another domestic financial institution that, in turn, provides financial services to a marijuana-related business. Similarly, a financial institution could be providing services to a non-financial customer that provides goods or services to a marijuana-related business (e.g., a commercial landlord that leases property to a marijuana-related business). In such circumstances where services are being provided indirectly, the financial institution may file SARs based on existing regulations and guidance without distinguishing between “Marijuana Limited” and “Marijuana Priority.” Whether the financial institution decides to provide indirect services to a marijuana-related business is a risk-based decision that depends on a number of factors specific to that institution and the relevant circumstances. In making this decision, the institution should consider the Cole Memo priorities, to the extent applicable.
file a SAR and note in the narrative the basis for the termination. Financial institutions should use the term “MARIJUANA TERMINATION” in the narrative section. To the extent the financial institution becomes aware that the marijuana-related business seeks to move to a second financial institution, FinCEN urges the first institution to use Section 314(b) voluntary information sharing (if it qualifies) to alert the second financial institution of potential illegal activity. See Section 314(b) Fact Sheet for more information.8

Red Flags to Distinguish Priority SARs

The following red flags indicate that a marijuana-related business may be engaged in activity that implicates one of the Cole Memo priorities or violates state law. These red flags indicate only possible signs of such activity, and also do not constitute an exhaustive list. It is thus important to view any red flag(s) in the context of other indicators and facts, such as the financial institution’s knowledge about the underlying parties obtained through its customer due diligence. Further, the presence of any of these red flags in a given transaction or business arrangement may indicate a need for additional due diligence, which could include seeking information from other involved financial institutions under Section 314(b). These red flags are based primarily upon schemes and typologies described in SARs or identified by our law enforcement and regulatory partners, and may be updated in future guidance.

- A customer appears to be using a state-licensed marijuana-related business as a front or pretext to launder money derived from other criminal activity (i.e., not related to marijuana) or derived from marijuana-related activity not permitted under state law. Relevant indicia could include:
  - The business receives substantially more revenue than may reasonably be expected given the relevant limitations imposed by the state in which it operates.
  - The business receives substantially more revenue than its local competitors or than might be expected given the population demographics.
  - The business is depositing more cash than is commensurate with the amount of marijuana-related revenue it is reporting for federal and state tax purposes.
  - The business is unable to demonstrate that its revenue is derived exclusively from the sale of marijuana in compliance with state law, as opposed to revenue derived from (i) the sale of other illicit drugs, (ii) the sale of marijuana not in compliance with state law, or (iii) other illegal activity.
  - The business makes cash deposits or withdrawals over a short period of time that are excessive relative to local competitors or the expected activity of the business.

- Deposits apparently structured to avoid Currency Transaction Report ("CTR") requirements.

- Rapid movement of funds, such as cash deposits followed by immediate cash withdrawals.

- Deposits by third parties with no apparent connection to the accountholder.

- Excessive commingling of funds with the personal account of the business’s owner(s) or manager(s), or with accounts of seemingly unrelated businesses.

- Individuals conducting transactions for the business appear to be acting on behalf of other, undisclosed parties of interest.

- Financial statements provided by the business to the financial institution are inconsistent with actual account activity.

- A surge in activity by third parties offering goods or services to marijuana-related businesses, such as equipment suppliers or shipping sericers.

- The business is unable to produce satisfactory documentation or evidence to demonstrate that it is duly licensed and operating consistently with state law.

- The business is unable to demonstrate the legitimate source of significant outside investments.

- A customer seeks to conceal or disguise involvement in marijuana-related business activity. For example, the customer may be using a business with a non-descript name (e.g., a “consulting,” “holding,” or “management” company) that purports to engage in commercial activity unrelated to marijuana, but is depositing cash that smells like marijuana.

- Review of publicly available sources and databases about the business, its owner(s), manager(s), or other related parties, reveal negative information, such as a criminal record, involvement in the illegal purchase or sale of drugs, violence, or other potential connections to illicit activity.

- The business, its owner(s), manager(s), or other related parties are, or have been, subject to an enforcement action by the state or local authorities responsible for administering or enforcing marijuana-related laws or regulations.

- A marijuana-related business engages in international or interstate activity, including by receiving cash deposits from locations outside the state in which the business operates, making or receiving frequent or large interstate transfers, or otherwise transacting with persons or entities located in different states or countries.
• The owner(s) or manager(s) of a marijuana-related business reside outside the state in which the business is located.

• A marijuana-related business is located on federal property or the marijuana sold by the business was grown on federal property.

• A marijuana-related business’s proximity to a school is not compliant with state law.

• A marijuana-related business purporting to be a “non-profit” is engaged in commercial activity inconsistent with that classification, or is making excessive payments to its manager(s) or employee(s).

**Currency Transaction Reports and Form 8300’s**

Financial institutions and other persons subject to FinCEN’s regulations must report currency transactions in connection with marijuana-related businesses the same as they would in any other context, consistent with existing regulations and with the same thresholds that apply. For example, banks and money services businesses would need to file CTRs on the receipt or withdrawal by any person of more than $10,000 in cash per day. Similarly, any person or entity engaged in a non-financial trade or business would need to report transactions in which they receive more than $10,000 in cash and other monetary instruments for the purchase of goods or services on FinCEN Form 8300 (Report of Cash Payments Over $10,000 Received in a Trade or Business). A business engaged in marijuana-related activity may not be treated as a non-listed business under 31 C.F.R. § 1020.315(e)(8), and therefore, is not eligible for consideration for an exemption with respect to a bank’s CTR obligations under 31 C.F.R. § 1020.315(b)(6).

* * * * *

FinCEN’s enforcement priorities in connection with this guidance will focus on matters of systemic or significant failures, and not isolated lapses in technical compliance. Financial institutions with questions about this guidance are encouraged to contact FinCEN’s Resource Center at (800) 767-2825, where industry questions can be addressed and monitored for the purpose of providing any necessary additional guidance.
Marijuana Legalization in Washington State

February 2018
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February 2018

On November 12, 2012, Washington State voters enacted Initiative 502 regarding “marijuana reform” by a margin of 56 percent to 44 percent. By doing so, Washington and Colorado became the nation’s first two states to decriminalize the possession of limited amounts of marijuana and establishing a system for legally producing, processing, and retailing marijuana.

I-502 tasked the then-named Washington State Liquor Control Board to be the primary agency for creating the regulatory framework that would govern Washington’s system. The agency was chosen by the initiative drafters because it was based on Washington’s alcohol regulatory structure, a system the agency has regulated for over 80 years. While the agency’s experience with alcohol proved critical over time, there was no blueprint for creating a regulatory system that was federally illegal and subsequently lacking research and resources.

Washington’s system is centrally based on the guidance provided by a federal Department of Justice memo issued in August 2013. The “Cole Memo” outlined eight enforcement guidelines that specified the federal government’s interest in states that have legalized marijuana. Those eight guidelines could be further narrowed to three public safety themes: preventing youth access to marijuana, preventing the criminal element from participation in the system, and preventing diversion of product out of state.

In January 2018, the Department of Justice issued a new memo on federal marijuana enforcement policy announcing a “return to the rule of law and the rescission of previous guidance documents.” In the memorandum, United States Attorney General Jeff Sessions 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.”

Despite the rescission of the guidance memos, Washington State continues to carry out the public safety themes of the original Cole Memo. Despite tightly regulating a marketplace and generating needed revenue for the state, challenges remain. Most importantly, marijuana remains a Schedule 1 controlled substance by the federal government. The determination affects all aspects of state systems from banking to research to consumer safety.

Washington’s system continues to evolve and mature since the passage of I-502. State laws have reigned in the unregulated medical marijuana marketplace to align with the tightly regulated recreational market, new restrictions on advertising will lessen youth exposure, and the former Liquor Control Board is now named the Liquor and Cannabis Board to better represent the breadth of products under our purview. And, in April 2017, regulators from states that have legalized recreational marijuana – Washington, Oregon, Alaska, and Colorado – met for the first time to discuss common issues and to make plans for collaboration in the future.

It is our hope that this publication will provide an informative snapshot of Washington’s system today. Washington is a pioneer and national leader in many industry sectors, the marijuana sector is among the latest where our state can be an example.

Sincerely,

Rick Garza
Director

Jane Rushford
Board Chair

Ollie Garrett
Board Member

Russ Hauge
Board Member
Washington State Marijuana Legalization Timeline

Medical Marijuana Initiative (I-692)

- Initiative 692: Created an affirmative defense to the violation of state laws relating to marijuana usage and possession for medicinal purposes.
- Qualifying patients or their designated primary caregivers may establish the defense if they possess only the amount of marijuana necessary for their personal use, up to a 60-day supply, and if they present valid documentation from a physician to law enforcement officers.

Senate Bill 5073

- Senate Bill 5073: Established a regulatory system to license the production and distribution of marijuana intended for medicinal use.
- Many portions of the bill were vetoed because of concerns regarding potential federal prosecution of state employees involved with the system.
- The authorization for patient home grows and collective gardens was not vetoed, and that provision gave rise to the statewide expansion of an unregulated gray market.

Initiative 502

- Established a comprehensive regulatory structure for the licensing and taxation of marijuana production, processing and retail access.
- Authorized possession of marijuana for personal use for persons age 21 and older:
  - 1 ounce of useable marijuana;
  - 16 ounces of marijuana in solid form;
  - 72 ounces in liquid form;
  - 7 grams of marijuana concentrate.

Alignment of Medical and Recreational Markets

- Per the 2015 Cannabis Patient Protection Act (SB 5052), the largely unregulated medical marijuana system (gray market) aligns with the tightly regulated, state-licensed recreational market on July 1, 2016.
- Medical patients access the products that they want through multiple channels
  - Medically endorsed retail stores
  - Four-member co-ops registered with the WSLCB
  - Homegrown (Authorized patients may grow a limited number of plants at home)
Federal Enforcement Guidelines

Washington’s system is centrally based on the guidance provided by a United States Department of Justice memo issued in August 2013. The “Cole Memo” outlined eight enforcement guidelines that specifies the federal government’s interest in states that have legalized marijuana. Those eight guidelines could be further narrowed to three public safety themes: preventing youth access to marijuana, preventing the criminal element from participation in the system, and preventing diversion of product out of state.

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Despite the rescission of the guidance memos, Washington State continues to carry out the public safety themes of the original Cole Memo.

Eight Guidelines:

1. Preventing distribution to minors;
2. Preventing the revenue from going to criminal enterprises, gangs and cartels;
3. Preventing the diversion of marijuana from states where it is legal to other states;
4. Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
5. Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
6. Preventing drugged driving and other adverse public health consequences associated with marijuana use;
7. Preventing the growing of marijuana on public lands and the environmental dangers posed by marijuana production on public lands;
8. Preventing marijuana possession or use on federal property.
Elements of I-502

Initiative 502 was written to reduce the amount of law enforcement resources used on adults who use marijuana and redirect them towards bigger threats facing Washington’s communities. To achieve this, a tightly regulated system was created to reduce the illicit market, take money away from criminal enterprises and generate tax revenue for state and local governments.

Agency Objective

- Create a tightly controlled and regulated marijuana market that reduces youth access and limits the black market.

Key Elements of the Initiative

- Establish a legalized system of producing, processing and retailing marijuana for adults age 21 and older.

- Decriminalizes possession of one ounce of marijuana:
  - One ounce of useable marijuana (flower);
  - Seven ounces marijuana concentrate/extract for inhalation;
  - 16 ounces in solid form; and
  - 72 ounces in liquid form.

- Creates three-tier system of licensing, regulation and taxation similar to alcohol:
  - Producer license (grower);
  - Processor license (prepares for retail); and
  - Retail license (marijuana only stores).

- Taxation:
  - Imposes excise tax rate of 37 percent on final marijuana sales.

- Public Safety and Education:
  - Establishes a THC bloodstream threshold for marijuana DUI’s:
    - 21 and older – 5.0 nanograms;
    - Under 21 – 0.0 nanograms;
  - Limits on store locations, advertising and number of outlets to reduce exposure;
  - Prohibits public display/consumption of marijuana;
  - Prohibits home growing marijuana for recreational consumers; and
  - Earmarks revenue for healthcare, research and education.
State Government Funding

I-502 earmarked revenue for health and education resources. In 2016 the law was amended to allow the legislature to direct distribution amounts and recipients (recipients remain unchanged).

Key WSLCB Regulations

While the law itself provides the framework for Washington’s system, the details are found in the regulations. The state’s rules are crafted to meet the terms of the Cole Memo. They are constantly being modified to strike the balance between public safety and business needs of a maturing industry sector.

 Licensing Regulations

- All licensees must meet strictly controlled on-site security requirements:
  - Strict surveillance and transportation requirements; and
  - Robust traceability software system that tracks inventory from start to sale.
 - Criminal history investigation:
  - All parties, including spouses; and
  - FBI background checks.
 - Financial background check on all licensees:
  - Identifies source of funds.
 - Residency investigation:
  - Applicants must be state residents for at least six months.
 - Tough penalty guidelines for public safety violations including loss of license.
 - Restricting certain advertising that may be targeted at children.
 - Property must be more than 1,000 feet from: schools, child care centers, transit centers, game arcades, libraries, playgrounds, public parks:
  - With the exception of elementary and secondary schools and playgrounds, local jurisdictions may allow by ordinance a reduction in the 1000-foot buffer zone to a minimum 100 feet.

Consumer Safety Regulations

WSLCB regulations provide a heightened level of consumer safety than has previously existed.

- Packaging and label requirements including serving size and warnings;
- Child-resistant packaging for marijuana in solid and liquid forms;
- All products lab tested;
- Defined serving sizes and package limits;
- Store signage requirements to educate customers; and
- Partnered with the Washington State Department of Agriculture to establish a lab dedicated to WSLCB testing priorities.
Retail Marijuana Packaging, Labeling and Advertising Requirements

- All marijuana-infused products must be approved by a panel of WSLCB staff to determine if the product and/or packaging is especially appealing to children;

- Processors are limited in the types of food or drinks they may infuse with marijuana to create an infused edible product;

- Any food that requires refrigeration, freezing, or a hot holding unit to keep it safe for human consumption may not be infused with marijuana;

- All commercial kitchens for edible products must first be approved by the Washington State Department of Agriculture;

- Marijuana-infused products that are especially appealing to children, such as, but not limited to, gummy candies, lollipops, cotton candy, or brightly colored products, are prohibited.

Pesticide Testing Lab

Testing for pesticides is complex and costly. Laboratories need specialized equipment and highly-trained scientific staff to perform the tests. In 2016, the WSLCB partnered with the Washington State Department of Agriculture (WSDA) to test for illegal pesticides on marijuana.

The WSLCB purchased the specialized equipment for WSDA to test for pesticides and provided initial and ongoing funds for two WSDA employees and costs of operations. WSDA’s lab will be dedicated to pesticide testing for the WSLCB.

Marijuana Servings and Transaction Limits

- 10 milligrams of active THC, or Delta 9, equals a single serving of a marijuana-infused product.

- The maximum number of servings in any one single unit of marijuana-infused product is 10 servings or 100 milligrams of active THC, or Delta 9.

Not for Kids Warning Symbol

The “Not for Kids” warning symbol was developed by the Washington Poison Center as a deterrent for children who may access adult-only products, such as edible marijuana products, purchased by adults in their home. The WSLCB requires all edible products carry the symbol on the main display area of the package.
Public Safety

Public safety is the agency’s number one priority when it comes to marijuana regulation. The Board utilizes a variety of tactics to ensure public safety, including compliance checks, unannounced premise checks, robust traceability system to monitor products and a tight regulatory structure.

Compliance Checks

The WSLCB conducts compliance checks, using an underage investigative aide to attempt purchase of marijuana retailers. Compliance checks are a proven tool to reduce underage access.

Marijuana retailers have a 91 percent compliance rate, which compares favorably to the 83 percent compliance rate in the alcohol industry.

Total Compliance Check Results (since July 2015)

Marijuana Compliance Check - No Sale
Marijuana Compliance check - Sale

MARIJUANA COMPLIANCE RATE

Marijuana Retailer Compliance Check Pass Rate by Month

Total Marijuana Violations by Type (since July 2015)

Other
Failure to utilize and/or maintain traceability (producer)
Failure to maintain security alarm and surveillance (producer)
Sale or service to minor
Allowing a minor to frequent a restricted area
Failure to utilize and/or maintain traceability (processor/retail)
Advertising: violation (statements/illustrations)
Operating plan: violation of a board-approved operating plan
Failure to maintain required security alarm and surveillance (processor/retail)
Failure to submit monthly tax reports and/or payments
Records: Improper recordkeeping (producer)
True party of interest violation
Advertising: sign exceeding 1600 square inches
Public Safety Partnerships

The WSLCB’s number one priority is public safety. In addition to enforcing marijuana laws and regulations at licensed businesses, the agency works closely with local law enforcement agencies to illegal grow operations.

Prior to the July 1, 2016 alignment of the tightly regulated recreational market with the unregulated medical market, the WSLCB teamed with county prosecutors, local law enforcement and other state agencies to ensure a smooth transition.

Preparations in place for July 1 alignment of medical and recreational marijuana systems

*State and local government communicating in advance of deadline*

OLYMPIA – Preparations made by state agencies, local government, law enforcement and prosecutors will help further a smooth merger of the unregulated medical marijuana market with the tightly regulated recreational system on July 1, 2016.

Representatives from the state Department of Health (Health), the state Liquor and Cannabis Board (WSLCB), the state Departments of Revenue, Agriculture, Financial Institutions as well as the state Attorney General’s Office, state Treasurer, and Washington State Patrol have met regularly to communicate and prepare. In addition, representatives of the Washington State Association of Sheriffs and Police Chiefs, the Association of Washington Cities, and the Washington State Association of Prosecutors recently joined the conversations about coordinating plans before and after July 1.

Liquor and Cannabis Board Enforcement Officers seize marijuana from illegal grow in Tacoma

OLYMPIA – Washington State Liquor and Cannabis Board officers served a search warrant April 14, 2017 on a Tacoma residence that was growing marijuana without a license. The illegal grow was located at 5018 North 9th Street, Tacoma WA, less than three blocks from Wilson High School.

LCB Enforcement officers identified and seized 438 plants, nearly half of which were within days of harvest, dried flower, approximately five pounds of bubble hash, and other marijuana products being processed for sale. In addition to the marijuana products officers seized clones, grow lights, ballasts, fans, and a firearm with the serial number filed off.
System Today

Washington’s tightly regulated marijuana market is a billion dollar industry that generates hundreds of millions of dollars in revenue for the state. Sales, revenue and access to continue to increase, exceeding economic forecast projections. Revenue is distributed to a variety of places including health and prevention efforts; Washington has not seen an increase in the rate of youth consumption despite the increased availability of marijuana.

Sales

All retail licensees are required to remit an excise tax of 37 percent on all taxable sales of marijuana, non-retail sales are not taxed. Excise tax generated is distributed to public health, education and regulation efforts.

Marijuana Sales and Excise Tax (FY2014-2018)

_Fiscal Years Run from July 1 to June 30_

<table>
<thead>
<tr>
<th>FY</th>
<th>Total Sales</th>
<th>Excise Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>6300</td>
<td>1,575</td>
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<tr>
<td>2015</td>
<td>259,524,430.41</td>
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<tr>
<td>2016</td>
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<td>2017</td>
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<tr>
<td>2018</td>
<td>534,064,362.85</td>
<td>120,615,211.27</td>
</tr>
</tbody>
</table>

(Figures are current through Oct. 2017)
525 Retail locations (as of 2/21/18)

1377 Producers and Processors (as of 2/21/18)

Retail Marijuana Sales and Excise Tax (over last 12 months)

- Monthly Sales
- Excise Tax
Healthy Youth Survey: Youth Marijuana Use

The Healthy Youth Survey is taken every two years by students in grades 6, 8, 10, and 12 in almost 1,000 public schools in Washington. More than 200,000 youth took part in the most recent survey by answering a wide variety of questions about their health and health behaviors.

- Based on the WA State Healthy Youth Survey, rates of youth marijuana use have remained mostly steady since legalization in 2012.

- Perception that regular use of marijuana has “no risk” or “slight risk” increased. (WA State Healthy Youth Survey).

Prevention

Prevention and education efforts are very important to keep youth use rates low while access and exposure to advertising increases where marijuana is legal. At the same time, promoting responsible adult use aids in preventing other adverse health effects such as drugged driving, poisonings, etc.

Marijuana excise tax revenues have contributed to the ability to expand resources for both the Departments of Health and Social Health Services, including:

- Increased support for and expansion of community- and school-based services for youth prevention and education;

- Training in research-based prevention and treatment programs;

- Prevention and treatment grants to Tribes;

- Media-based educational campaigns;

- Drugged driving prevention media campaigns;

- Increase in youth treatment services;

- Expansion of a substance abuse hotline; and

- Development of resource materials for distribution.
Native American Tribes and Marijuana

When the United States Department of Justice rescinded the Cole Memo and previously issued guidance documents in January 2018, among those rescinded was “the Wilkinson Memo” that stated the federal government reserved the same enforcement priorities found in the Cole memo, within Indian Country. Washington State licensees and compacted tribes continue to operate under the principles of the former Cole Memo.

In 2015, a new state law authorized the Governor to enter into agreements with federally recognized Indian tribes concerning marijuana. The WSLCB was delegated the power to negotiate these agreements. Any marijuana agreement relating to the production, processing, and sale of marijuana on tribal lands, whether for recreational or medical purposes, must address the following issues:

- Preservation of health and safety;
- Ensuring the security of production, processing, retail and research facilities; and
- Cross-border commerce in marijuana.

All compacting agreements must include a tribal marijuana tax equal to 100 percent of state and local taxes on sales of marijuana to any non-tribal persons or entities.

Since the authorizing legislation nine compacts have been reached between the state and tribes: the Suquamish Tribe, the Squaxin Island Tribe, the Puyallup Tribe, the Muckleshoot Tribe, the Port Gamble S’Klallam Tribe, Samish Tribe, the Swinomish Tribe, the Stillaguamish Tribe, and the Tulalip Tribe. As of February 2018, five additional tribes are negotiating for compacts.

Current Challenges

Washington State navigated uncharted territory in developing its marijuana regulation system. Despite the many challenges it faced, the system today is working.

Two goals of Initiative 502 were to bring tight regulation to the illicit marijuana market and generate needed revenue for the state. At last estimate, the marijuana industry has largely transformed from an illicit market enterprise to a legal functioning industry that has generated over $730 million in revenue since July 2014. Over 30 states and nations have visited Washington to learn about our system as well as learn from our experience.

While Washington has been largely successful, challenges remain. Looking ahead, the below challenges present obstacles to public safety, youth exposure and continued inroads into eliminating the illicit market.
Federal Law

Marijuana remains a Schedule 1 controlled substance at the federal level. Its designation as Schedule 1 restricts or prohibits many important services that are available to other industries.

For example:

- Federal banking laws prevent marijuana businesses from opening accounts. Without access to banks, many businesses must operate on a cash-only basis.

- Many federal agencies provide research and guidance to agriculture sectors. There is virtually no federally-funded research on marijuana crops and the use of pesticides due to the Schedule 1 designation.

- Further, with the rescinding of the federal guidance memos, without a change in law there is significant uncertainty surrounding federal enforcement priorities. I-502 created the opportunity for marijuana businesses to operate within a tightly regulated system, pay taxes, and conduct business with transparency. Yet, the industry faces the threat of federal prosecution at any time.

Advertising

The number one complaint to the WSLCB regards advertising violations. Despite steady communication with industry members, enforcement officers spend an inordinate amount of time addressing advertising violations. A new advertising law was enacted by 2017 legislation further clarifying restrictions but it is still too early to determine its effect.

Bans and Moratoria

In 2015 Washington State Attorney General Robert Ferguson issued an official Attorney General’s Opinion that because I-502 was silent on bans and moratoria of marijuana businesses, local governments have the option of banning marijuana businesses within their jurisdiction. Later, the courts agreed and upheld local bans. Today there are roughly 59 bans and 17 moratoria statewide. This patchwork of bans and moratoria furthers the ability of the illicit market to continue in places where legal avenues are not available.
Washington State Liquor and Cannabis Board

Mission
Promote public safety and trust through fair administration and enforcement of liquor, cannabis, tobacco, and vapor laws.
lcb.wa.gov
Marijuana Litigation in Washington
ABA Annual Meeting
“Smoking Out the Issues and Challenges in the Legalization of Cannabis”
August 9, 2019

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Advertising

_Havsy v. Dep’t of Health_, Pierce County Super. Ct., # 14-2-0893-7 (2015).

Plaintiff, an osteopath, challenged RCW 69.51A.030(2)(b)(v), a blanket prohibition against any advertising related to medical marijuana by any health care provider. The trial court denied a motion for a preliminary injunction, but granted Plaintiff’s motion for summary judgment, finding the statute violated the free speech guarantees of the state and federal constitutions, and the state had not met its burden of establishing all four factors under the _Central Hudson_ test to justify the restriction on commercial speech.


Plaintiffs, a five-year-old medical marijuana patient and her mother/designated provider, challenged a Washington State Liquor and Cannabis Board (WSLCB) rule that prohibits advertising of giveaways. They claimed she needs a particular type of marijuana to reduce the effects of her medical condition, but because licensees cannot advertise giveaways, she cannot figure out if the product is available and if they can get it free. The state filed a motion to dismiss for failure to state a claim, and a hearing is pending.

_Seattle Events v. State_, Thurston County Super. Ct., # 19-2-02827-34 (pending).

Plaintiffs, Seattle Hempfest and licensed marijuana retailers, challenged WSLCB enforcement policy regarding the display of business trade names on booths at an event held in a public park under permit from the City of Seattle. RCW 69.50.369(1) prohibits signs or other advertising within 1000’ of public parks, schools, and other restricted entities. Plaintiffs filed a motion for preliminary injunction, and a hearing is pending.

DUI


Cobb was convicted of driving with over 5.0 nanograms per milliliter THC in his blood, a _per se_ DUI under Washington’s marijuana legalization initiative. He appealed, alleging the _per se_ THC standard violates due process. The AGO filed an amicus brief in support of the City. The Court of Appeals affirmed Cobb’s conviction in an unpublished opinion holding the _per se_ THC standard is not impermissibly vague. The state Supreme Court denied Cobb’s petition for discretionary review.
**West v. State, Thurston County Super. Ct., # 12-2-02340-6 (2013).**

In the first challenge to Initiative 502 legalizing marijuana in Washington, Plaintiff, pro se, sought a preliminary injunction against the DUI provisions of I-502. The day before the initiative was effective, the court denied the injunction and held I-502 did not change the legal standards for a traffic stop and blood test. The court later granted the state’s motion for summary judgment and dismissed the case on justiciability and standing grounds. Plaintiff appealed then settled before the appeal was resolved.

**Federal Preemption**

**Nebraska and Oklahoma v. Colorado, 136 S.Ct. 1034 (2016).**

Nebraska & Oklahoma attempted to file suit against Colorado in the Supreme court, claiming federal law preempted Colorado’s recreational marijuana law. The Plaintiff states’ alleged harm was marijuana transported across state lines. Washington filed an amicus brief supporting Colorado’s opposition to the Court assuming original jurisdiction. The Supreme Court called for the view of the US Solicitor General whether to accept certiorari, and the U.S. Solicitor General opposed the Court accepting the case. The Supreme Court declined to accept the case. Justice Thomas dissented, joined by Justice Alito.

**Safe Streets Alliance v. Hickenlooper, 859 F.3d 865 (10th Cir. 2017).**

Plaintiffs were a District of Columbia advocacy organization and private landowners adjacent to a licensed marijuana producer. On appeal, the case was consolidated with Smith v. Hickenlooper, where Plaintiffs were sheriffs and prosecutors from Colorado and sheriffs from Nebraska and Oklahoma. Plaintiffs alleged federal law preempted Colorado’s recreational marijuana law. The federal district court granted Colorado’s motions to dismiss both cases.

Plaintiffs appealed to the 10th Circuit. Washington, joined by Oregon, filed an amicus brief in support of Colorado, arguing (1) state regulation furthers federal objectives, (2) Plaintiffs have no private right of action to enforce the controlled substances act, and (3) Colorado law is not federally preempted because it does not require violations of federal law—the state seeks not to encourage marijuana but to regulate it.

Nebraska and Oklahoma, following their unsuccessful attempt in Nebraska and Oklahoma v. Colorado, moved to intervene. The Court ultimately denied their request to intervene, holding it did not have jurisdiction to hear the claims of two states against another state.

The Court issued a 90-page opinion, with a concurrence, holding there is no private substantive right of action to enforce the controlled substances act against a state. The Court did not address the preemption argument on the merits. It allowed the landowners to proceed to trial on the RICO claim that their property was damaged by the grow operation (alleged causes of injury: smell, diminution in value, and federally illegal activity).

**Intellectual Property**

**Headspace v Podworks, 5 Wn. App. 2d 883, 428 P.3d 1260 (2018).**
This was a trademark infringement action against a Washington marijuana licensee. The state was not involved in the lawsuit. Headspace, a California marijuana business, owned a trademark, “THE CLEAR,” and licensed the mark to X-Tracted Labs, a Washington licensee. Headspace alleged in this lawsuit that Podworks, another Washington licensee, infringed by using its mark. The trademark was registered under state law. The trial court dismissed, holding Headspace had not alleged lawful use of the mark in Washington, a prerequisite for trademark protection.

The Court of Appeals reversed, finding that by licensing the mark to X-Tracted Labs, Headspace had sufficiently alleged lawful use of the mark in Washington. The Court made three holdings: (1) By licensing its mark to X-Tracted Labs, Headspace did not violate the state’s requirement to be licensed to engage in marijuana business or the state prohibition against licensing nonresidents to engage in marijuana business. (2) RCW 69.50.395, which provided trademark-licensing agreements were lawful, did not retroactively make licensing agreements entered into before the amendment unlawful. (3) Headspace could exercise sufficient control to protect its trademark without necessarily requiring licensure of itself as a true-party-of-interest in X-Tracted Labs under state rules.

*Mt. Calvary Christian Center and Respect the Central District v. Liquor Control Bd., City of Seattle, and Uncle Ike’s Pot Shop, King County Super. Ct., # 14-2-29177-9 (2015).*

This was a third-party challenge to the licensing of the second marijuana retail store in Seattle amid controversy over gentrification in Seattle’s Central District. Plaintiff church sued the store, which was adjacent to it, and WSLCB and the City of Seattle for licensing the store. It sought revocation of the license, claiming the store was within 1000 feet of a teen center, the minimum buffer under state law. The court denied Plaintiff’s requests for a temporary restraining order and preliminary injunction on grounds the facility did not meet the WSLCB’s definition of a teen center. Plaintiffs voluntarily dismissed the lawsuit.


WSLCB denied a retail marijuana license based on a spouse’s criminal conviction. Plaintiff license applicant filed a petition for judicial review. The trial court affirmed the license denial. Plaintiff appealed to the Court of Appeals, alleging violation of a constitutional right to pursue an occupation and right to contract and marital discrimination under state law. The Court issued a published opinion affirming the license denial. Plaintiff filed a petition for discretionary review to the state Supreme Court, and the Court denied review. Plaintiff filed a petition for certiorari to the U.S. Supreme Court, which the Court denied.

**Local Bans / Zoning**

*Emerald Enterprises v. Clark County, 2 Wn. App. 2d 794, 413 P.3d 92 (2018), review denied, 190 Wn. 2d 1030 (2018).*

Initiative 502 did not address the authority of local jurisdictions in Washington to ban marijuana businesses within their jurisdictions. A formal AG Opinion, 2014 No. 2, concluded I-502 did not preempt the plenary police powers of local jurisdictions to ban marijuana businesses. Several applicants and licensees sued local jurisdictions over bans.
Some local jurisdictions made backup arguments that federal law preempted the state’s marijuana law, and the Attorney General’s Office intervened in a half dozen cases. Local governments won all of these lawsuits with their authority to enact bans upheld, and no court reached the federal preemption argument.

In the Emerald Enterprises case, Plaintiff, a licensed store, filed a complaint challenging the County’s ban on marijuana businesses. It also opened a store in defiance of the ban, which resulted in a separate lawsuit later consolidated with this one. The County, in defense, asserted that federal law preempted the state’s marijuana law. The Attorney General’s Office intervened. The trial court granted the County’s motion for summary judgment, upholding the ban, and did not reach the federal preemption argument.

The Court of Appeals issued a published opinion holding that a local ban does not irreconcilably conflict with state law, and state law does not preempt local government authority to enact a ban. Licensee filed a petition for discretionary review with the state Supreme Court, and the Court denied review.

**Kittitas County v. Liquor and Cannabis Bd., ___ Wn. App. 2d __, 438 P.3d 1199 (2019), pet. for review filed.**

Kittitas County petitioned WSLCB for a declaratory order that the state Growth Management Act (GMA) requires WSLCB to comply with local zoning and thereby issue marijuana business licenses only when the licensee’s location complies with zoning. WSLCB issued a declaratory order finding it not required to determine whether applicants comply with local zoning before issuing licenses.

The County petitioned for judicial review. The trial court ruled in favor of the County, requiring LCB to approve only marijuana licenses and renewals that comply with local zoning. The Court of Appeals issued a published opinion reversing the trial court, holding the GMA does not require WSLCB to comply with local zoning in issuing marijuana licenses. The County petitioned the state Supreme Court for discretionary review, and the Court’s decision on acceptance of review is pending.

**Sarich v. City of Kent, 183 Wn. 2d 219, 351 P.3d 151 (2015).**

Plaintiff challenged the City’s zoning ordinance prohibiting medical marijuana collective gardens within city limits. The City asserted as a defense that federal law preempted the state’s medical marijuana law. The Court of Appeals upheld the City’s ban. The Attorney General’s Office filed an amicus brief in the state Supreme Court. The Supreme Court, in an 8-1 opinion, held the Medical Use of Cannabis Act did not preempt the City’s ordinance, which was a valid exercise of its zoning authority. A dissent argued the City could not completely ban what state law permitted, where the state allowed an affirmative defense to prosecution for collective gardens, and the City imposed criminal penalties for the same conduct.

**Medical Marijuana Merger**

**Carter v. Inslee, U.S. District Court, W.D. Wa., # C16-0809 (2016).**

Plaintiffs, a doctor and patient, alleged that state law merging unregulated medical marijuana with the regulated system for recreational marijuana violated the 1st, 4th, and 5th Amendments. They also argued the federal controlled substances act preempted state law.
The federal district court denied Plaintiffs’ motion for a preliminary injunction, stating “SB 5052 [state medical marijuana merger law] advances the public interest.” The court then granted the state’s motion to dismiss on standing grounds, because Plaintiffs failed to state an injury with any certainty. It also held that it would be improper for the court to exercise equitable jurisdiction over the allegation that the controlled substances act preempted state law. Plaintiffs appealed to the 9th Circuit Court of Appeals, but entered a voluntarily dismissal before the appeal was resolved.

RICO


Plaintiff, a business associate of a licensed marijuana producer, alleged the commission of federal RICO violations and torts by the licensed producer, WSLCB, and the Attorney General. The federal district court granted the state’s motion to dismiss the state defendants and partially granted the private defendants’ motion to dismiss claims against them. The private defendants then settled the matter.

Taxes


Plaintiff, operator of a discontinued medical marijuana collective garden, sought refund of sales taxes, claiming the prescription drug exemption from sales taxes. The trial court reversed a Board of Tax Appeals decision and concluded that Plaintiff was entitled to the refund. The Court of Appeals issued an unpublished opinion reversing the trial court, holding medical marijuana is not entitled to the prescription drug exemption. Plaintiff petitioned for review by the state Supreme Court, and the Court denied review.


Plaintiff, a medical marijuana collective garden, claimed payment of sales taxes violated his constitutional right against self-incrimination. He also asserted that federal law preempted state taxation of marijuana. The trial court granted the state’s motion to dismiss, ruling the controlled substances act did not preempt the state’s ability to impose general sales taxes on marijuana, and payment of the broad-based tax did not violate Plaintiff’s 5th amendment rights. The Court of Appeals affirmed in an unpublished decision, stating:

We hold that (1) the CSA does not preempt DOR’s collection of retail and B&O taxes for medical marijuana sales because such tax collection does not create a positive conflict with the purpose of the CSA as required for preemption under 21 U.S.C. § 903, and (2) filing tax returns and paying retail sales and B&O taxes does not violate Nickerson’s Fifth Amendment right against self-incrimination because those actions do not require Nickerson to divulge any incriminating information.
Plaintiff petitioned for review to state Supreme Court, and the Court denied review. Plaintiff petitioned for writ of certiorari to the U.S. Supreme Court, and the Court denied his petition.


Plaintiff, operator of a medical marijuana collective garden, sought refund of sales taxes on the basis it was exempt under the prescription drug exemption and the exemption for medicines of botanical origin used in treatment by a naturopath. The case was consolidated with the *Green Collar* and *Triple C Collective* cases. The trial court granted summary judgment for the state. Plaintiffs sought direct review by the state Supreme Court, which denied review. The Court of Appeals then issued a published opinion holding that Plaintiffs engaged in retail sales that were not tax exempt.
How the State of Washington’s Robust Regulatory System for Marijuana Furthers Federal Enforcement Priorities

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How the State of Washington’s Robust Regulatory System for Marijuana Furthers Federal Enforcement Priorities

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How the State of Washington’s Robust Regulatory System for Marijuana Furthers Federal Enforcement Priorities

I. Introduction
Washington, in response to a citizen initiative, established the world’s first government-regulated, recreational marijuana industry from scratch. The voters chose to limit access to marijuana not through total prohibition but through a regulated system of licensed producers, processors, and retailers, thus exercising the state’s independent judgment within our federal system. Washington now regulates commercial marijuana through systems of control that pursue the same objectives as stated federal enforcement priorities but through means that are calculated to be more effective than blunt prohibition. Robust state licensing and regulatory systems, such as Washington’s, limit production, sales, and possession. They displace criminal markets without encouraging proliferation in use.

II. Initiative 502
Washington Initiative Measure No. 502 (I-502), approved by Washington’s voters on November 6, 2012, legalized the possession and recreational use of small quantities of marijuana and marijuana-infused products for persons twenty-one years of age or older and established a strict regulatory system for intra-state commercial marijuana businesses. Laws of 2013 ch. 3, §§20(3) and 4, codified at Wash. Rev. Code §§69.50.4013(3) and 69.50.325.

The initiative established a detailed licensing program for three categories of marijuana businesses: production, processing, and retail sales. Wash. Rev. Code §69.50.325. Initiative 502 legalized these activities if done in compliance with the regulatory and licensing system established under state rules, although they remain criminal outside the regulated system. Wash. Rev. Code §69.50.401(3).

Regulatory authority was vested in the Washington State Liquor and Cannabis Board (WSLCB). Wash. Rev. Code §69.50.101.n. As required by I-502, the WSLCB conducted studies and promulgated rules, adopted a regulatory system, and began issuing licenses to producers, processors, and retail stores. Under state licenses, the production and processing of recreational marijuana has been on-going since 2013, and retail sales began in 2014.

Washington law limits the number of retail outlets and production capacity of marijuana in order to provide sufficient access to displace the illegal market without encouraging marijuana proliferation. Wash. Rev. Code §69.50.345(2), (4); Wash. Admin. Code §314-55-075(6)-(8) (providing for limitation on allowed plant canopy).

III. Federal Response
Under the previous administration, on August 29, 2013, the U.S. Department of Justice (DOJ) issued guidance to federal prosecutors concerning marijuana enforcement in light of Washington’s and Colorado’s ballot initiatives that legalized limited possession of marijuana and provided for regulation of production, processing, and sale. James M. Cole, Memorandum for U.S. Att’ys, Guidance Regarding Marijuana Enforcement, at 2 (Aug. 29, 2013) (DOJ Guidance).

The DOJ Guidance stated that eight federal enforcement priorities should serve as the focus of federal investigative and prosecutorial efforts. The eight priorities are discussed in detail below. The DOJ Guidance stated that state and local law enforcement should remain the primary means of addressing marijuana-related
activity in states that have enacted laws authorizing marijuana-related conduct, so long as the state has implemented strong and effective regulatory and enforcement systems that address federal enforcement priorities. However, it also noted that conduct occurring anywhere that threatens federal priorities may be subject to federal enforcement action.

The DOJ Guidance also provided the DOJ would not seek to intervene or challenge the voter initiatives that legalized marijuana for recreational use so long as the states maintained a system of strict regulation that observed the eight federal enforcement priorities detailed in the written guidance. As of April 27, 2017, the date this monograph was submitted, the DOJ has not taken any steps to stop or interfere with the implementation of Washington’s voter initiative legalizing marijuana.

IV. The Purpose of Washington’s Initiative Is Consistent with Federal Priorities

As stated, Washington state and the federal government share the same interests with regard to marijuana. Initiative 502’s stated purpose is to “[t]ake marijuana out of the hands of illegal drug organizations and [bring] it under a tightly regulated, state-licensed system similar to that for controlling hard alcohol. This measure authorizes the state liquor control board to regulate and tax marijuana for persons twenty-one years of age and older . . . .” Laws of 2013 ch. 3, §1, codified at Wash. Rev. Code §69.50.101.n (intent) (emphasis added).

The federal government has stated the following enforcement priorities:

1. Preventing the distribution of marijuana to minors;
2. Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
3. Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
4. Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
5. Preventing violence and the use of firearms in the cultivation and distribution of marijuana
6. Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
7. Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
8. Preventing marijuana possession or use on federal property.

DOJ Guidance at 1-2.

The purpose of Washington’s initiative, to take marijuana out of the hands of illegal drug organizations and tightly regulate and control its production, sale, and use, furthers all of the above-stated priorities of the federal government relating to marijuana.

If the state-regulated system is allowed to displace the illegal market, federal priorities 2 (revenue to criminal enterprises), 3 (diversion), 4 (cover for other drugs), 5 (violence), and 7 (growing on public lands) are furthered.

A tightly-regulated system also furthers federal priorities 1 (minors), 6 (drugged driving and public health), and 7 (federal property). It prevents minors from access to purchase marijuana, specifically addresses
drugged driving,6 protects the public health with potency limitations, testing for contaminants, child-safe packaging, warning labels, and a myriad of other public health safeguards,7 and, finally, proscribes marijuana-related activities on federal property.

V. Implementation of Washington’s Regulatory System Furthers the Priorities Set Forth by DOJ

The DOJ, in its guidance memo, provided the contours of state regulatory systems that would be consistent with federal interests:

The Department’s guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice. Jurisdictions that have implemented systems that provide for regulation of marijuana activity must provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner that ensures they do not undermine federal enforcement priorities.

DOJ Guidance 2-3 (emphasis added).

The DOJ also stated that robust state regulatory systems may advance federal interests:

[C]onduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for.

Id. at 3 (emphasis added).

Finally, the DOJ reserved the right to challenge state regulatory systems that are not sufficiently robust to meet federal enforcement priorities, and it has not done so.

If state enforcement efforts are not sufficiently robust to protect against the harms [related to the eight federal enforcement priorities], the federal government may seek to challenge the regulatory structure itself, including criminal prosecutions, focused on those harms.

Id. (emphasis added)

The WSLCB has addressed these areas of mutual state and federal concern to the fullest extent of its authority, where not already addressed in statute, and the agency continues to promulgate rule revisions to strengthen the state’s regulatory system. Washington has robust, strong, and effective regulation of marijuana that it continues to enhance to meet the initiative’s ultimate goal of displacing the illegal market.

VI. The State Regulatory System Prevents Diversion of Marijuana by Limiting Production and Sales

Washington’s rules work to prevent diversion of marijuana by placing limits on quantities that may be purchased and possessed, capping how much marijuana is produced in the state, and limiting the quanti-
ties of marijuana that licensed businesses may have on hand. These provisions are enforced by a mandated traceability system that ensures all licensed marijuana is tracked from seed to sale.

A. WSLCB Rules Monitor Production and Limit Retail Stores


Initiative 502 directed WSLCB to limit the number of retail stores. Wash. Rev. Code §69.50.345(2). It prohibits any marijuana businesses from locating within one thousand feet of locations frequented by minors, for example schools, playgrounds, and youth centers. Wash. Rev. Code §69.50.331(8). All marijuana packaging for consumers must include a warning reading, “This product may be unlawful outside of Washington state.” Wash. Admin. Code §314-55-105(12)(g).

Finally, WSLCB rules limit how much marijuana licensed businesses can have on hand. Wash. Admin. Code §§314-55-075(9) (producers), 314-55-077(15) (processors), 314-55-079(7) (retail stores); see Wash. Rev. Code §69.50.345(3)-(5).

B. I-502 Set Strict Limits on Consumer Purchases, Possession, and Use


C. Licensing and Regulatory Systems Such as Washington’s Displace the Illegal Market

Washington’s rules work to prevent the involvement of the illegal market and displace it by ensuring a tightly-regulated, licensed system that is subject to enforcement visits and monitoring. A study commissioned by WSLCB determined that Washington’s regulated market captured between 28 percent and 43 percent of the marijuana market in the barely two-year period since state-licensed stores began operating. Total retail sales, including tax, for the first full fiscal year of legalized sales, July 1, 2015-June 30, 2016, were over $972 million. WSLCB Weekly Marijuana Report, available at http://lcb.wa.gov/marj/dashboard (last visited April 18, 2017).

The rules prevent the involvement of criminal organizations by requiring criminal background checks for all members of business entities applying for licenses, their spouses, and all of their financiers. Wash. Admin. Code §§314-55-020, 314-55-035, and 314-55-040; see also Wash. Rev. Code §69.50.331. They

The WSLCB will not license any location where law enforcement access is limited. Wash. Admin. Code §314-55-015(5). WSLCB enforcement officers have access to the premises and books of licensed businesses to ensure they are not acting as covers for other activities. Wash. Admin. Code §§314-55-185 and 314-55-087. Each licensed store is subject to unannounced visits by WSLCB enforcement officers. Undercover compliance checks to ensure against sales to minors are conducted periodically, as with alcohol and tobacco sellers. WSLCB Weekly Marijuana Report, supra. WSLCB enforcement officers assist local law enforcement with enforcing marijuana laws and assist in interdiction and prosecution of illegal grows conducted outside the state licensing system.

Finally, Washington’s excise tax is calculated to discourage proliferation but displace the illegal market. A thirty-seven percent excise tax is collected on each retail sale in addition to state sales tax. Wash. Rev. Code §69.50.535.

Washington’s system seeks to achieve the initiative’s goal of displacing the illegal market by price competition with illegal sales, while at the same time using an appropriate level of taxation to discourage proliferation, overconsumption, and use by minors. See J. Caulkins, A. Hawken, B. Kilmer, and M. Kleiman, Marijuana Legalization, ch. 11 (2012).

VII. Conclusion

Washington State has a robust regulatory scheme for marijuana. The state has chosen to regulate marijuana directly rather than through prohibition. Its laws and rules further enforcement priorities that it shares with the federal government. In the relatively short time since Initiative 502 passed, Washington is well on its way to meeting the initiative’s goal of taking marijuana out of the hands of illegal drug organizations and bringing it under a tightly regulated, state-licensed system similar to that for controlling alcohol.
THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DR. GREGORY CARTER, M.D. and
ERIC JERVIS,

Plaintiffs,

v.

GOVERNOR JAY INSLEE, et al.,

Defendants.

ORDER DENYING PLAINTIFFS’ MOTION FOR A PRELIMINARY INJUNCTION

This matter comes before the Court on Plaintiffs’ Motion for a Preliminary Injunction (Dkt. No. 7), Defendants’ Response (Dkt. No. 18), and Plaintiffs’ Reply (Dkt. No. 21). The Court has also reviewed the Complaint (Dkt. No. 1). Having thoroughly considered the parties’ briefing and the relevant record, the Court finds oral argument unnecessary and hereby DENIES the motion for the reasons explained herein.

I. BACKGROUND

Plaintiffs move the Court to enjoin a piece of Washington State legislation from taking effect on July 1, 2016. (Dkt. No. 7.) The legislation in question, the Cannabis Patient Protection Act (“CPPA”) deals with access to medical marijuana.

A. History of Marijuana Laws in Washington State

In November 1998, Washington voters passed Washington Initiative 692 (“I-692”), a law authorizing medicinal marijuana use for qualifying persons suffering from terminal or...
debilitating conditions. (See Dkt. No. 18-1.) As codified, I-692 is also known as the Washington State Medical Use of Marijuana Act (“MUMA”), Rev. Code Wash. § 69.51A. While the use and possession of marijuana was still considered criminal under the federal Controlled Substances Act (“CSA”), 21 U.S.C. § 801, et seq., and the Washington Uniform Controlled Substances Act, Rev. Code Wash. § 69.50, et seq., the MUMA provided doctors, patients, and primary caregivers with an affirmative defense to a criminal prosecution under state law. (Dkt. No. 18-1 at 3; see also Rev. Code Wash. § 69.51A.005.) The MUMA was silent with respect to how patients might obtain medical marijuana, and did not provide a regulatory structure. (Dkt. No. 18-1.)


Washington’s legalization of recreational marijuana has been broadly recognized as experimental. Marijuana remains a controlled substance under federal law. 21 U.S.C. §§ 841, 844. Since the passage of I-502, the United States Department of Justice issued a policy statement, known as the “Cole memo,” with respect to states that had legalized marijuana. (Dkt. No. 18-2 at 2–5.) The Justice Department articulated its priorities for federal marijuana enforcement and in so doing indicated that it did not intend to interfere with state laws such as I-502. (Id.) The Cole memo acknowledged that “the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws.” (Id. at 3.) Far from providing the states carte blanche with respect to marijuana regulation, the federal government indicated that it may intervene if jurisdictions fail to implement effective regulatory schemes. (Id. at 4.) “The Department’s guidance in this memorandum rests on its expectation that states and local governments that have enacted laws...
authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests.” (Id. at 3.) No steps have been taken by the federal government to stop the implementation of I-502. (Dkt. No. 18 at 2.)

During the 2015 legislative session, the Washington Legislature adopted Senate Bill 5052 (“SB 5052”), also known as the Cannabis Patient Protection Act (“CPPA”). LAWS of 2015 SB 5052, c 70, available at http://lawfilesext.leg.wa.gov/biennium/2015-16/Pdf/Bills/Senate%20Passed%20Legislature/5052-S2.PL.pdf. SB 5052 serves as an amendment to the MUMA, and aims to integrate the medical and recreational marijuana markets and for the first time establish regulatory oversight for medical marijuana in Washington State. Id. at § 2. (“[T]he state now has a system of safe, consistent, and adequate access to marijuana; the marketplace is not the same marketplace envisioned by the voters in 1998.”) The present lawsuit seeks to enjoin the implementation of SB 5052, which is set to take effect July 1, 2016.

B. The Present Litigation

Plaintiff Eric Mevis is a medical marijuana patient who suffers from a rare, terminal neurodegenerative disorder and experiences extreme pain, muscle spasms, an inability to speak or swallow, and wasting. (Dkt. No. 1 at 3–4.) The use of medical marijuana has been essential to managing his symptoms. (Id. at 4.) Plaintiff Dr. Gregory Carter is a physician with twenty-five years’ experience who “treats numerous patients for whom he believes marijuana is a medically appropriate form of treatment.” (Id. at 3.)

Plaintiffs oppose the implementation of SB 5052 and object to some of its regulations including (1) the use of mandatory forms in prescribing medical marijuana in specific doses, and (2) a requirement that physicians divulge patients’ medical conditions to third-parties on a form that patients take to marijuana retailers. Ostensibly, Plaintiffs are concerned with the risk of federal criminal prosecution under the medical marijuana regime suggested by SB 5052. (Dkt. No. 7 at 7) (“Doctors and patients are now being required to participate in a system that puts both
at risk by violating federal law with no defense available in federal court”). Associated with that fear of prosecution, Plaintiffs suggest that SB 5052 threatens the protected doctor-patient relationship, as doctors will not speak with their clients about medical marijuana use or fill out the forms established under the new regulatory system out of fear of incriminating themselves or their clients. (Dkt. No. 7 at 15.) Plaintiffs bring this action against Defendants, Washington State officials in their official capacity, seeking “a declaration that physicians and patients have the right, protected by the First Amendment to the U.S. Constitution, to communicate in the context of a bona fide physician-patient relationship, without intervention by the Defendants, about the issue of marijuana as medicine.” (Dkt. No. 1 at 2.)

Plaintiffs now move for a preliminary injunction to either “stop SB 5052 from taking effect on July 1, 2016 or an order striking I-502.” (Dkt. No. 7 at 8.) In so moving, Plaintiffs rely on the same legal claims that form the core of their complaint: (1) that SB 5052 is preempted by the federal CSA, and (2) that SB 5052 impermissibly infringes on the doctor-patient relationship protected by the First Amendment. (Id. at 14–15; Dkt. No. 1 at 17–18.)

II. DISCUSSION

A. Standard of Review


B. Winter Factors

1. Likelihood of Success on the Merits

Plaintiffs argue that they demonstrate a high likelihood of success on the merits of their
underlying case due to the illegality of SB 5052 under the federal CSA. (Dkt. No. 7 at 14.) In large part, Plaintiffs rest this argument on the understanding that both I-502 and SB 5052, if properly challenged, would be considered preempted by federal law. (Dkt. No. 7 at 12) (“It was widely conceded . . . by the proponents of I-502 that it was entirely pre-emptible under federal preemption analysis . . . Then US Attorney for the Western district of Washington, Jenny Durkan, was quoted in the paper as saying she did not know a single lawyer who thought otherwise.”) However, as Defendants point out, Plaintiffs must first demonstrate that they are authorized to bring a private suit under the causes of action they allege: the First Amendment, the Supremacy Clause, and the CSA. (Dkt. No. 18 at 6.)

a. Potential Lack of Jurisdiction for Failure to Bring a Cause of Action


The CSA also does not confer a right of action for citizen suits. “Like substantive federal law itself, private rights of action to enforce federal law must be created by Congress.”
In response, Plaintiffs assert that the First, Fourth, and Fifth Amendments “give rise to a cause of action” under equity principles. (Dkt. No. 21 at 2.) Setting aside the fact that Plaintiffs do not bring a cause of action under either the Fourth or Fifth Amendments, it is true that federal courts “have long entertained suits in which a party seeks prospective equitable protection from an injurious and preempted state law without regard to whether the federal statute at issue itself provided a right to bring an action” under the doctrine established in Ex Parte Young, 209 U.S. 123 (1908). Armstrong, 135 S. Ct. at 1391 (citing cases). With respect to a cause of action under the CSA, this argument was squarely dismissed by the United States Supreme Court in Armstrong: “[R]espondents cannot, by invoking our equitable powers, circumvent Congress’s exclusion of private enforcement.” 135 S. Ct. at 1385.

In summary, the legal authorities under which Plaintiffs bring the above-captioned matter, the Supremacy Clause, the CSA, and the First Amendment, do not confer a private cause of action for citizens to bring suit. This substantially mitigates the likelihood that Plaintiffs will prevail on the merits of this case, though under the doctrine established by Ex Parte Young, it is possible that Plaintiffs may proceed under an equity theory for their First Amendment claim. See Armstrong, 135 S. Ct. at 1391. The Court notes that in forming this initial glimpse into the jurisdictional issues of this case, it does not reach the merits of Defendants’ pending motion to dismiss. (Dkt. No. 20.) Further review may demonstrate whether this suit, under either legal theory, should proceed under an equity theory.

b. Further Issues with the Merits of Plaintiffs’ Case
In addition to potential jurisdictional issues, Plaintiffs’ likelihood of success on the merits is weakened by a lack of clarity regarding the allegedly injurious nature of SB 5052.

As Defendants argue in their response, SB 5052 was passed in order to afford further protections to medical marijuana patients: by establishing oversight over the previously unregulated medical marijuana market, by ensuring laboratory analysis of products sold to qualifying medical patients, by requiring that those who produce and distribute medical marijuana are licensed, and providing access to tax-exempt medical marijuana in higher quantities—as prescribed by a physician—than that available to medical marijuana patients under either the MUMA or I-502. (Dkt. No. 18 at 3–4.) SB 5052 establishes a medical marijuana database that will be maintained by the Department of Health and subject to strict confidentiality limitations; for example, persons who disclose information in the database or access information to which they are not entitled are subject to prosecution for a Class C felony. (Dkt. No. 15 at 8–9.) And, contrary to Plaintiffs’ assertion that “[t]he legislature is turning thousands of patients into felons overnight,” SB 5052 provides affirmative defenses to both doctors and patients for criminal prosecution. (Dkt. No. 18-1 at 3.)

The Court understands Plaintiffs as seeking a declaration that SB 5052 unconstitutionally (1) infringes on the rights of patients and doctors to communicate about marijuana as medicine and (2) exposes doctors and patients to criminal prosecution. (Dkt. Nos. 1 and 7.) However, the Court’s initial review of SB 5052 and the current record does not establish a strong likelihood of Plaintiffs’ success on this theory: SB 5052 appears to protect both patients and doctors, contains provisions similar to those in the MUMA to allay fear of criminal prosecution, and sets forth protections to ensure that patient information—even entered into a database—is subject to strict confidentiality. (Dkt. No. 18-1.)

In summary, consideration of the likelihood of Plaintiffs’ success on the merits weighs against the entry of a preliminary injunction.

2. **Likelihood of Irreparable Harm**
Next, the Court turns to the likelihood of irreparable harm. Plaintiffs must demonstrate that an irreparable injury is not merely possible, but likely, absent injunctive relief. *Winter*, 555 U.S. at 22. As discussed above, Plaintiffs assert they will suffer two key injuries if SB 5052 takes effect: (1) a restraint on doctor-patient candor in discussions regarding medical marijuana usage, presumably out of fear of prosecution and invasion of privacy interests, and (2) criminal prosecution itself. (Dkt. Nos. 1 and 7.) Both potential injuries are speculative.

First, Plaintiffs seem to misconstrue SB 5052’s likely effect on doctor-patient communication. While, to purchase marijuana in medical quantities will require the use of authorization forms, Plaintiffs ignore the privacy protections SB 5052 provides in terms of limiting access to patient information such as strict penalties for any misuse of the medical marijuana patient database. And, as Defendants point out, in many instances the availability of medical marijuana authorization forms may actually facilitate, rather than dissuade, doctor-patient discussions about medical marijuana.

Second, the likelihood that Plaintiffs will face criminal prosecution is not substantially increased by the passage of SB 5052. While subject to additional state regulations, the regime under SB 5052 provides for affirmative defenses to state prosecution. And marijuana use is treated no differently under federal law with the passage of SB 5052: it was illegal under the MUMA, illegal under I-502, and remains illegal now. To suggest an imminence of federal criminal prosecution under the medical marijuana system set forth by SB 5052 ignores the policies expressed by the United States Department of Justice in the Cole memo. In fact, as the Cole memo explains, the federal government may be more likely to intervene in instances where a state or jurisdiction fails to “implement strong and effective regulatory and enforcement systems.” (Dkt. No. 18-2 at 3.) SB 5052 offers a stronger regulatory system than that previously presented under the MUMA. While a change in DOJ priorities could affect the likelihood that Plaintiffs and those in similar circumstances would face federal prosecution, the named Defendants are powerless over any such change.
Consideration of the likelihood of irreparable harm factor similarly weighs against entry of a preliminary injunction.

3. Balance of Equities and Public Interest

Next, the Court assesses whether the balance of equities tips in Plaintiffs’ favor and the injunction is in the public interest. Winter, 555 U.S. at 20. These factors may be considered together. A.H.R. v. Wash. State Health Care Auth., 2016 WL 98513, at *17 (W.D. Wash. Jan. 7, 2016).

Plaintiffs focus on the confusion doctors and patients face due to the “interrelationship, in this state, between the 502 recreational scheme and medical marijuana.” (Dkt. No. 7 at 19.) Without citation or support, Plaintiffs argue that “[t]here are well over a hundred thousand patients with authorizations and scores of doctors [who] have no idea how their rights and responsibilities are changing.” (Id. at 20.)

The Court certainly appreciates the confusion that many Washington citizens may feel with respect to the relationship between medical marijuana, recreational marijuana, and federal law. Additionally, the Court does not take lightly the discussion of how crucial medical marijuana is to relieving Plaintiff Mevis’s painful symptoms. However, an injunction halting implementation of SB 5052 does not further either of those interests.

Contrary to Plaintiffs’ assertions, SB 5052 advances the public interest by establishing protections for medical marijuana patients, both legally and with respect to the safety of the products they use. Furthermore, the structure established by SB 5052 may alleviate the confusion regarding medical and recreational marijuana, through public education and the requirement that marijuana retail stores have a medical marijuana consultant on staff. See WAC 314-55-080 (proposed).

Finally, the implementation of SB 5052 need not halt Plaintiff Mevis’s access to the medical marijuana he so desperately needs. Though the procedures will change, SB 5052 exists to enable qualifying patients to gain access to medical marijuana.
Consideration of both the balance of equities and the public interest weighs against a preliminary injunction.

III. CONCLUSION

For the foregoing reasons, considering the factors established in Winter, 555 U.S. 7 (2008), Plaintiffs’ motion for a preliminary injunction (Dkt. No. 7) is DENIED.

DATED this 30th day of June 2016.

John C. Coughenour
UNITED STATES DISTRICT JUDGE
Endnotes

1 Colorado's Amendment 64 passed at the same time, although Colorado, unlike Washington, already had a licensing system for medical marijuana in place. In Washington, medical marijuana was not regulated by any state agency until after recreational businesses were established. See Laws of 2015 ch. 70.

2 The remainder of this monograph will dispense with parallel citations to I-502 in most instances and cite to the Revised Code of Washington, where the initiative and its subsequent amendments are codified.


4 The name of the responsible state agency was changed in subsequent legislation to "Washington state liquor and cannabis board." Laws of 2015, ch. 70, § 3, codified at RCW 66.08.012.

5 The full intent section of I-502 reads:

   The people intend to stop treating adult marijuana use as a crime and try a new approach that:
   (1) Allows law enforcement resources to be focused on violent and property crimes;
   (2) Generates new state and local tax revenue for education, health care, research, and substance abuse prevention; and
   (3) Takes marijuana out of the hands of illegal drug organizations and brings it under a tightly regulated, state-licensed system similar to that for controlling hard alcohol.

   This measure authorizes the state liquor control board to regulate and tax marijuana for persons twenty-one years of age and older, and add a new threshold for driving under the influence of marijuana.


6 Initiative 502 also established a new per se criminal violation for drivers having 5.0 nanograms or more of active THC per milliliter in the bloodstream. Wash. Rev. Code § 46.61.504.


8 Washington's rule, promulgated the year after I-502 passed, provided for a square footage cap on production. The cap was lifted to allow for the integration of previously-unlicensed medical marijuana into the regulated system and will be re-imposed by WSLCB. Compare Wash. Admin. Code § 314-55-075(6) (2013) with Wash. Admin. Code § 314-55-075(6) (as amended effective June 18, 2016).

The California Department of Public Health’s Manufactured Cannabis Safety Branch (MCSB) is one of three state licensing authorities charged with oversight of commercial cannabis activity in California. MCSB is responsible for licensing and regulating cannabis manufacturers and for establishing statewide standards for packaging and labeling of cannabis and cannabis products.

**WHO WE ARE**
MCSB strives to protect public health and safety by ensuring commercial cannabis manufacturers operate safe, sanitary workplaces and follow good manufacturing practices to produce products that are free of contaminants, meet product guidelines and are properly packaged and labeled.

**WHAT WE DO**

**LICENSING**
- Application Processing
- Review of Qualifications for Licensure
- Follow-Up on Application Deficiencies
- Issuance of Licenses and Payment Processing

**INSPECTION & COMPLIANCE**
- Assessment of Compliance
- Coordination with Local Jurisdictions
- Notices for Correction of Deficiencies
- Inspections and Investigations

**SCIENCE**
- Application Assessment for Manufacturing Procedures and Technical Assistance
- Remediation Plan Review
- Complaint Review and Response
- Track-and-Trace Monitoring

**POLICY**
- Regulation Research and Development
- Packaging and Labeling Standards
- Policy Clarification for Licensees

**OUTREACH AND EDUCATION**
- Digital Outreach and Stakeholder Engagement
- Handouts and Guidance Documents
- Licensee Support by Email and Phone
- Presentations, Panels and Other Events

**OUR MISSION**
Through team excellence, we develop and execute carefully considered policy that protects communities, promotes public safety and supports businesses to be successful.

**AVAILABLE RESOURCES FOR LICENSEES, APPLICANTS AND THE GENERAL PUBLIC**

Handouts, checklists and guidance materials are available online:
www.cdph.ca.gov/mcsb

For licensing, packaging/labeling, and manufacturing-related questions:
mcsb@cdph.ca.gov
855-421-7887

**MCSB INSPECTION DISTRICTS**

- Northern California
  - Bay Area/North Coastal
  - Central Valley & Coast
  - Los Angeles/San Bernardino
  - San Diego/Riverside

**CANNABIS LICENSE TYPES**

<table>
<thead>
<tr>
<th>TYPE</th>
<th>Description</th>
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<tbody>
<tr>
<td>TYPE 7</td>
<td>Volatile solvent extraction</td>
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<tr>
<td>TYPE 6</td>
<td>Non-volatile solvent and mechanical extraction</td>
</tr>
<tr>
<td>TYPE N</td>
<td>Infusion</td>
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<tr>
<td>TYPE P</td>
<td>Packaging and labeling</td>
</tr>
<tr>
<td>TYPE S</td>
<td>Manufacturers operating within a shared-use facility</td>
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</table>
The Office of Administrative Hearings
State of California

OAH’s Mission

To provide a neutral forum for fair and independent resolution of matters in a professional, effective and innovative way, ensuring due process and respecting the dignity of all.

The Office of Administrative Hearings

- Central Administrative Hearing Panel of California
- Two Divisions
  - General Jurisdiction Division
  - Special Education Division
- Established in 1945 as the first central panel administrative hearing agency in the U.S.
- The California Administrative Procedure Act was the first of its kind in the U.S.
General Jurisdiction Division

- ALJs conduct hearings, settlement conferences, mediations, and arbitrations
- State Agencies Required to Use the APA
  - Administrative Procedure Act (APA) (Gov. Code, § 11400 et seq.), and particularly the formal hearing process (Gov. Code, § 11500 et seq.)
  - Other statutory and regulatory processes
- Local Agencies
  - Local government code enforcement, personnel actions, retirement disputes, ethics commissions, etc.
- Other Agencies
  - Department of Developmental Services
  - Department of Rehabilitation

General Jurisdiction Division

- Four regional offices: Sacramento, Los Angeles, Oakland and San Diego
- Over 60 administrative law judges
- Conduct hearings for approximately 1,600 state and local government agencies
- Approximately 8,000 General Jurisdiction cases filed per year

Special Education Division

- Hearings and mediations for Special Education cases throughout the state
- 30 ALJs in five regional offices
- Approximately 5,000 Special Education cases filed per year
OAH Website

- OAH Website - www.dgs.ca.gov/oah
  - Links to statutes and regulations, including an online version of the APA
  - Calendar information
  - Case lookup
  - Forms, including continuance requests and subpoenas
  - Practice guides for self-represented parties
  - ALJ Biographical Information

Three Functions of Administrative Agencies

- Rule Making Function
  - The process of creating administrative rules (regulations) of general application

- Enforcement Function
  - Investigating potential violations of laws or regulations
  - Determining appropriate charges for alleged for violations
  - Prosecuting alleged violations

- Adjudication
  - Administrative hearing to make factual findings, legal conclusions and disciplinary remedies on a specific set of circumstances

Agency Separation of Functions

- Agencies are required to separate the functions of investigation/prosecution/advocacy from adjudication
  - Gov. Code § 11425.30
- Agency staff attorney or Attorney General acts as prosecutor.
- Board or Agency head (or delegee) is decision-maker
- Ex Parte communication between prosecutor and decision-maker are prohibited
  - Gov. Code § 11430.10 et seq.
Categories of Administrative Adjudication

• Public Licensing Hearings
  • Citizen is a licensee or permittee (or applicant) with an agency responsible for regulating an activity, business, occupation or profession.

• Public Benefit Hearings
  • Citizen is (or claims to be) in a special class of persons potentially entitled to a certain government benefit.

• Code Enforcement Hearings
  • Agency is authorized to use administrative process instead of (or in addition to) civil or criminal process to enforce violations of state or local law.

Categories, Focus and Remedies

• Public Licensing Cases
  • **Focus** is on public safety and discipline (not punishment).
  • **Remedies**: License/permit denial, probation (restriction), suspension, revocation. May also include civil penalties, corrective actions or restitution.

• Public Benefit Cases
  • **Focus** on qualification for or right to receive benefits.
  • **Remedies**: Grant, denial or modification of benefits.

• Code Enforcement Cases
  • **Focus** is on existence of violation; obtaining compliance
  • **Remedies**: Civil penalties, corrective actions, restitution

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Administrative Adjudication Categories - Examples

<table>
<thead>
<tr>
<th>Public Licensing</th>
<th>Public Benefit</th>
<th>Code Enforcement</th>
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<tr>
<td>Medical Professions</td>
<td>Developmental Disabilities</td>
<td>Unlicensed Contractors</td>
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<td>Real Estate &amp; Insurance</td>
<td>Special Education</td>
<td>Cannabis unlicensed businesses</td>
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<tr>
<td>Construction &amp; Engineering</td>
<td>Public Employee Retirement</td>
<td>Parking Citations</td>
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<tr>
<td>Cannabis Business Licenses</td>
<td>Workers Compensation (not OAH)</td>
<td>Environmental Administrative Actions</td>
</tr>
<tr>
<td>Teachers</td>
<td>Social Security Reform</td>
<td>Zoning, Land Use Administrative Actions</td>
</tr>
</tbody>
</table>
Agencies May Adopt Precedent Decisions

- Gov. Code sec. 11425.60
- Decisions not precedential unless agency adopts
- Agency required to keep an index
- Check agency website for precedent decisions

Hearings Before OAH

- Hearings conducted under the APA, unless another statute or regulation governs (Gov. Code, §§ 11340-11529)
- When a regulating board or agency:
  - Refuses to issue a license
  - Disciplines a license
  - Takes other actions relating to a license
  - Refuses to grant or seek to alter disability or other retirement benefits
  - Initiates administrative enforcement action
- Examples include:
  - Discipline of a physician’s license to practice medicine
  - Employment termination hearings for public school teachers
  - Government employee applications for disability retirement benefits
  - Administrative citation against unlicensed cannabis business

Types of Pleadings/Actions

- Accusation
  - To discipline (suspend, revoke, probation) an existing license.
- Statement of Issues
  - To review qualifications for issuance of a license or permit; statement of Agency position concerning denial of a benefit.
- Citation
  - May be issued to licensees or non-licensed people. More minor violations. A civil penalty and/or corrective action may be asserted.
- Petition for Interim Suspension
  - To suspend a license or permit pending a full hearing where risk of immediate harm to the public is alleged.
- Exclusion Action
  - To exclude certain individuals from facilities (usually serving vulnerable populations).
Burden of Proof

• On agency when taking action:
  • Discipline of a license (Accusation)
  • Citation
  • Interim Suspension or Revoke Probation
  • Removal or change to existing government benefit

• On citizen when seeking action:
  • Issuance of a license (Statement of Issues)
  • Petitions for Reinstatement or Termination or Modification of Probation
  • Right to government benefits

Standard of Proof

• Clear and Convincing (Ettinger v. BMQA (1982) 135 Cal.App.3d 853)
  • Accusation involving a professional license

• Preponderance of the Evidence
  • Accusations not involving professional license
  • Statement of Issues
  • Citations
  • Petitions for Interim Suspension
  • Petition to Revoke Probation

How an Agency Discovers Potential Action

• Consumer complaint
• Regular criminal record reviews
• Mandatory (self or other) report
• Routine inspection
• Undercover operation
• Application for licensure
Agency Enforcement Steps

- Agency investigates & gathers information
- Agency makes charging decision
- Pleading prepared (Accusation, Statement of Issues, Citation)
  - Agency Counsel or Attorney General
- Pleading Filed with Agency
  - Becomes a public document

After Pleading Filed with Agency

- Pleading served on Respondent
- Respondent has 30 days to file a Notice of Defense with Agency
- If Notice of Defense NOT filed
  - Agency takes default action internally
- If Notice of Defense filed
  - Action filed with OAH for hearing

Filing with OAH

- Pleading + Notice of Defense
- Case is “ripe” for filing with OAH
- Agency Attorney or Attorney General Files Documents with OAH
  - Request to Set Form
  - Charging pleading (Accusation, Statement of Issues or Citation)
  - Notice of Defense
Hearing Scheduling - Meet and Confer Requirement

- Agency attorney meet and confer with Respondent or counsel concerning available and unavailable dates for hearing.
- If Agency attorney unable to meet & confer, submits a statement of reasonable efforts with initial filing.

Process Flow (through Notice of Hearing)

Contents of Request to Set Form

- OAH's cover sheet to establish new case
- Names and contact info for parties and attorneys
- Available and unavailable dates for hearing
- Estimated length of hearing
- Any statutory requirements for timing of hearing
- Election of Court Reporter or Recorded Hearing
Filings at OAH

• Request to Set forms on OAH’s website
• Electronic or Hard Copy Filings Accepted
• Security Requests
• Web Calendars
  • Show when each OAH office is calendaring

After OAH Sets Hearing Dates

• OAH Issues & Serves
  • Notice of Assigned Hearing Dates, or
  • Trial Setting Orders
• Agency Counsel Issues & Serves
  • Formal Notice of Hearing

Time & Place of Hearing

• Hearing location selected by the Agency (Gov. Code, § 11508, subd. (a))
  • Generally at the OAH office closest to where respondent resides or transaction occurred
• Motion for Change of Venue (Gov. Code, § 11508, subd. (c))
  • Required to be filed within 10 days of service of the Notice of Hearing
Setting Other Pre-hearing Events

- In some cases, OAH sets other pre-hearing events.
  - Prehearing conference
  - Settlement conference
- Parties may also request PHC and/or Settlement Conference

Protecting Confidential Information

- Hearings Generally Open to the Public (Gov. Code, § 11425.20)
- ALJ may issue protective order to close all or part of hearing (1 CCR § 1030)
- Documents submitted to OAH are subject to the Public Records Act (Gov. Code, § 6250-6270)
- The burden falls upon parties appearing before OAH to maintain the confidentiality of private information
  - Redactions, confidential names lists, sealing evidence or testimony

Prehearing Conference

- Requirements in (Gov. Code, § 11511.5; 1 CCR § 1026)
- Typically scheduled in cases set for 4 or more hearing days, or upon request.
- Scheduled at least a month prior to the hearing date
- Sometimes conducted by the trial judge
- PHC Statements and Motions filed prior to PHC
Settlement Conferences

• Authorized under Gov. Code, § 11511.7; 1 CCR § 1028
• May be set in conjunction with PHC, or may be set separately
• Settlement ALJ will not conduct the hearing
• Settlement conference statements/briefs not required but welcome

Disqualification of ALJ

• Rules for disqualification, recusal and disclosure apply to OAH Administrative Law Judges
• Disqualification for cause (Gov. Code, §§ 11425.40; 11512, subd. (c))
• Peremptory challenges (Gov. Code, § 11425.40, subd. (d); 1 CCR 1034)
  • One peremptory challenge per side
  • Must be made within time limits
    • Commencement of PHC
    • 2 business days before hearing if at OAH office
    • Noon on Friday before, if at another site

Discovery

(Gov. Code, §§ 11507.5-11507.7)

• Discovery is limited in APA cases:
  • Names and addresses of witnesses
  • Inspect and copy certain documents in the possession or custody or under the control of the other party (Gov. Code, 11507.6, subd. (2)(a) – (f))
• No depositions
  • Except ordered by OAH (Gov. Code, § 11511)
    • Witness unavailable or can’t be compelled to testify
• Motion to compel discovery (Gov. Code, § 11507.7)
Subpoenas

- Before hearing, attorneys may issue subpoenas for documents and/or testimony at hearing
- Also may be issued by OAH for a self-represented party (Gov. Code, § 11450.20, subd. (a))
  - Forms available on OAH website
- Motion to quash (Gov. Code, § 11450.30)

Record of Hearing

- Court reporter
- Recorded by Consent (Gov. Code, § 11512, subd. (d))

Telephone or Electronic Hearings

- Hearings conducted by telephone or other electronic means (Gov. Code, § 11440.30)
- Only if all parties agree
- But ALJ may conduct PHCs (Gov. Code, § 11511.5, subd. (c)) and Settlement Conferences (Gov. Code, § 11511.7, subd. (b)) by telephone
Declarations as Direct Evidence

• Use of declarations/affidavits as direct evidence (Gov. Code, § 11514)
  • Notice of Intent by party offering declaration.
  • If timely request to cross-examine received, declaration is administrative hearsay

Disclosure of Witnesses

• Gov. Code sec. 11507.6 requires disclosure of name and address of witnesses intended to be called to testify
  • Special rule in Medical Board cases for disclosure of expert witnesses and opinions
    • Business and Professions Code section 2334

Ex Parte Communication Prohibited

• No Ex Parte Communications (Gov. Code, § 11430.10 et seq.)
  • Exceptions for purely procedural matters
  • Disclosure requirements if ex parte received
    • Opportunity to comment
    • Ex parte made a part of the record
Language Interpreters
- Interpreters (Gov. Code, § 11435.05 et seq.)
- Generally ordered by the agency bringing the case
- Make request early

ADA Accommodations
- ADA request process on OAH Website
- ADA coordinator engages in interactive process

Motions for Continuance
(Gov. Code, § 11524; 1 CCR § 1020)
- Good cause requirement
- Must be Timely – within 10 working days
- Forms available on OAH website
- Meet and confer with other side
- Provide Available and Unavailable New Dates
Other Motions (1 CCR 1022)

- Motions filed 15 days before the hearing
- Decided without oral argument, unless ordered
- Responses due 3 days before motion is scheduled to be heard
- If a PHC has been scheduled, motions filed 15 days before PHC; responses filed 3 business days before PHC; and motions heard at PHC (1 CCR §1026, subd. (b))

Rules of Evidence

- Hearings need not be conducted according to the technical rules of evidence (Gov. Code, § 11513, subd. (c))
  - Any relevant evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of the evidence over objection in civil actions.

Administrative Hearsay Rule

(Gov. Code § 11513)

- Hearsay is admissible and may support a factual finding if it would be admissible in a civil case.
- Even if not admissible in a civil case, hearsay evidence may supplement or explain other evidence (Gov. Code, § 11513, subd. (d))
- Referred to as “Administrative Hearsay”
Administrative Hearsay-Official Reports

- Public Official Reports
  - Lake v. Reed (1997) 16 Cal.4th 448
    - Direct observations of official may be received as testimony and support a finding
    - Other content of report may be Administrative Hearsay and supplement or explain other evidence

Credibility Determinations

- Gov. Code, § 11425.50
  - If a decision includes a determination based substantially on credibility of a witness
  - Decision must identify specific evidence of observed demeanor, manner or attitude
  - Decision with this specificity entitled to “great weight” on judicial review.

Protecting Personal Private Information

- All documents submitted to OAH are potential public records
- A party or attorney submitting a document is responsible for redacting personal private information
- Or requesting that the document be sealed
- Applies to pleadings and hearing exhibits
- Form for requesting a sealing order on OAH Website
- OAH must balance public right to know vs. individual privacy interests
Role of the Administrative Law Judge (ALJ)

• Preside at hearings
• Make factual findings and legal conclusions
• Ensure a complete record
• Issue appropriate orders sealing the record
• Issue final, proposed agency decisions
• Conduct oral argument on select motions
• Conduct prehearing and settlement Conferences

Types of OAH Decisions

› Proposed Decision (Gov. Code, § 11517, subd. (c))
  › Prepare within 30 days after case is submitted
  › Submitted to Agency decision maker for adoption
  › If agency rejects PD, may remand back to ALJ, or decide the case upon the record
› Final Decision
› Board Decision (OAH ALJ may draft for Agency Decision Maker)

Contempt and Sanctions
• Record certified to Superior Court (Gov. Code, §§ 11455.10-11455.20)
• Bad faith actions/monetary sanctions (Gov. Code, § 11455.30; 1 CCR § 1040)
Other Orders/Decisions

- Interim Suspension Order (ISO)
  - Medical Board (Gov. Code, § 11529)
  - Other Licensing Agencies (Bus. & Prof. Code, § 494)
  - OAH procedures for ex-parte petitions (1 CCR § 1012)

- Reinstatement or Reduction of Penalty
  - ALJ presides at Board/Agency hearing
  - ALJ prepares decision for the agency

Cannabis Cases Before OAH

- State or local level license application denials
- State or local level license suspension/revocations
- State or level unlicensed business citations
Smoking Out the Issues and Challenges in the Legalization of Cannabis

Presented by the National Conference of Administrative Law Judiciary

Wednesday, August 9
1:45-3:15
Smoking Out the Issues and Challenges in the Legalization of Cannabis

• PANELISTS

• OVERVIEW
  • Legislative Framework
  • Regulatory Framework

• ENFORCEMENT
  • Adjudication
  • Financial Challenges
  • Ethical Challenges

• SOCIAL/COMMUNITY IMPACT

• QUESTIONS
Smoking Out the Issues and Challenges in the Legalization of Cannabis

PANELISTS
Alan Alvord, Administrative Law Judge
State of California

• Alan Alvord is Division Presiding Administrative Law Judge at the California Office of Administrative Hearings (San Diego), which adjudicates licensing cases for the State of California. The Office’s administrative law judges are responsible for hearing cases involving business licensing for medical and recreational cannabis throughout the state.
Axel Bernabe, Esq. - New York State

- **Axel Bernabe** is Assistant Counsel for Health for Governor Andrew M. Cuomo. In this role, Axel is responsible for overseeing all legal and policy deliberations in the health portfolio, including drafting legislation, implementing health related laws and policies, negotiating the annual State Budget, and providing strategic counsel to the operations, public relations, and budget teams in the Executive Chamber and the State Department of Health.

- As part of his responsibilities, Axel oversees the development and implementation of all legal and policy initiatives related to medical, hemp, and adult-use cannabis for the State. Over the past four years he has directed and supervised the expansion of the medical cannabis program and the launch of the State's hemp program. Axel is also responsible for driving the administration's proposal for a comprehensive regulation of all segments of the cannabis economy, including the creation of a new Office of Cannabis Management that would permit the implementation of an adult-use program.

- Prior to joining the Cuomo administration, Axel was a partner at the law firm of Constantine Cannon, where he was a nationally recognized legal expert in the healthcare sector, particularly on antitrust matters.
• Rick Garza is the Director of the Washington State Liquor and Cannabis Board. Washington was one of the first states to establish a system for legally producing, processing and retailing cannabis. In that capacity, he has provided agency leadership that has helped oversee an industry approaching $1.5 billion in sales and generating annual taxes and fees of nearly $400 million. In addition, his emphasis on ensuring that Washington State meets the tenets of the Cole Memo has resulted in a 95 percent no-sales-to-minors compliance rate and other public safety achievements.
Harinder Kapur, Esq.
State of California

• **Harinder Kapur** is the Senior Assistant Attorney General of the Cannabis Control Section in the California Office of the Attorney General. The Cannabis Control Section protects consumers through regulating the cannabis industry. The Section represents the Bureau of Cannabis Control, the Department of Food and Agriculture, and the Department of Public Health in licensing matters, handles cannabis-related civil-litigation matters, and also coordinates with law enforcement agencies throughout the state.

• Ms. Kapur is a member of the California Highway Patrol’s Impaired Driving Taskforce and involved in statewide cannabis enforcement. Ms. Kapur has served as a lead prosecutor overseeing investigations and prosecutions of licensed professionals. She has litigated cases involving fraud, corporate unlicensed practice, quality of care, and sexual abuse/misconduct. She has been with the Office of the Attorney General for over 13 years.

• Previously, Ms. Kapur was with the California Department of Corrections and Rehabilitation handling employment and labor issues related to discipline, discrimination, harassment, retaliation, and denial of reasonable accommodation.
Rebecca Stamey-White, Partner
Hinman & Carmichael LLP (San Francisco)

• Rebecca Stamey-White is the Partner leading her firm’s cannabis practice.
• Hinman & Carmichael LLP (San Francisco), is a nationally-recognized boutique law firm representing the alcoholic beverage, hospitality and cannabis industries and their service providers.
• Rebecca helps her clients secure and maintain their required alcohol and/or cannabis licenses by providing licensing, production, distribution, sales, and marketing legal counsel and by defending clients before alcohol regulatory bodies when their licenses are at risk.
Patricia Miles, Administrative Law Judge Moderator

- Patricia Miles is an ALJ at the California Public Utilities Commission (CPUC). The CPUC has hosted workshops and symposiums about the impact of cannabis legalization on water and energy resources.

- Patricia has served on the Judicial Division’s Executive Committee of the National Conference of Administrative Law Judiciary (NCALJ) since August 2004. She is Vice Chair of the JD’s Membership Committee and serves on the ABA’s Coalition on Racial and Ethnic Justice (COREJ). She is also active in the California Association of Black Lawyers (CABL) and Charles Houston Bar Association (CHBA).
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