

Marijuana Legalization Workgroup Minutes
October 28, 2020
9:30 AM
Virtually via WebEx

Video can be found at: <https://www.youtube.com/watch?v=qzrEEpCETyU>

Attendees

Secretary of Agriculture and Forestry Bettina Ring
Secretary of Health and Human Resources Daniel Carey
Secretary of Public Safety and Homeland Security Brian Moran
Deputy Secretary of Finance Joe Flores
Holli Wood (Representing Attorney General Mark Herring)
Kristin Collins (Representing Tax Commissioner Craig Burns)
Colby Ferguson (Representing DMV Commissioner Rick Holcomb)
Charles Green (Representing VDACS Commissioner Jewel Bronaugh)
Caroline Juran (Board of Pharmacy)
Mike MacKenzie (VCU Wilder School)
Kristen Howard (Virginia State Crime Commission)
Nathan Green (Williamsburg-James City County Commonwealth's Attorney)
Jenn Michelle Pedini (Virginia NORML)
Travis Hill (Virginia ABC)
Ngiste Abebe (Columbia Care)
Dr. Sam Caughron (Charlottesville Family Wellness Practice)
Michael Carter (VSU Small Farm Outreach Program and small farmer)
Nour Alamiri (Community Coalitions of Virginia)
Richard Boyd (Virginia State Police)
Linda Jackson (Virginia Department of Forensic Science)
Heather Martinsen (Rep. Jennifer Faison, of the Va Association of Community Svcs Boards)

Secretary Ring called the meeting to order at 9:35 AM.

Brad Copenhaver called the roll.

Approval of Subgroup Meeting Minutes

Secretary Ring stated the minutes have been edited to identify staff with their titles and which secretariat they are with.

Minutes were approved by unanimous vote

Secretary Ring thanked everyone for their collaborative work and turned it over to Secretary Moran and Secretary Carey to add a few words.

Secretary Moran stated this has been an excellent experience in such a short time frame and during a pandemic. He looks forward to hearing the recommendations. This is a long term process but the amount of work that has been doing in such a short time frame is remarkable.

Secretary Daniel Carey thanked Secretary Ring and Secretary Moran for their leadership. He stated that, as they work through this issue, it is key that all points of view are considered, there is thorough analysis and we keep our eyes wide open of what we are sure about and what we are unsure about. Continues to appreciate the relative certainty we have in the whole issue of legalizations. The work has been reflective of that complexity and nuance. This is not a simple topic and he looks forward to the recommendations.

Fiscal and Structural Subgroup Recommendations

Secretary Ring called on Charles Green, representing Dr. Jewel Bronaugh, and Travis Hill to give a report on the recommendations from fiscal and structural subgroup.

Green stated that the main item the subgroup looked at was the suggested regulatory structure. There seemed to be a general consensus that oversight and regulation of an adult use and medical marijuana program should be under one agency or an umbrella agency that covered both subject matters.

There was discussion about where other cannabis, such as industrial hemp, may fit in. At the last meeting he noted that the cultivation of industrial hemp is regulated by state departments of agriculture or USDA. However, the regulation of production and consumable products varies by state. It varies who regulates the manufacturing of food and beverage or dietary supplements of those states. There was discussion about oversight of those products from a consumer safety and knowledge standpoint.

They discussed the industry structure as related to the possibility of vertical integration. There were positive feeling towards the possible benefits of that structure, such as efficiencies that can be created. There are benefits of allowing but not requiring vertical integrations. It eliminates barriers to entry and possibly encourage participation of a more diverse set of stakeholders.

The next topic they discussed was licensing structure. They looked at examples from other states. Some states have an extensive list of available licenses while others have a more condensed license structure. Within the license categories many states segregate for example, in the grower category different sizes are licensed at different fee levels. Options like micro grower or craft cultivation licenses.

During their last meeting Travis Hill discussed ABC's challenges with having too many license categories. It can get confusing as to which activities are allowed. They also discussed options for blanket licenses.

It is important to have a clear and transparent license structure and it needs to consider social equity. There needs to be a measured approach to the initial licenses. It's easier to expand later than having it open ended and putting restrictions on later. There needs to be periodic evaluations of the program, so adjustments can be made.

Mr. Green moved on to discussing taxation issues. In most states that have adult use program, the regulatory agency that runs the program is responsible for collection. In Virginia, where we have specialty taxes for very specific sectors, it is often the regulator of that sector that collects and taxation audits on a risk and random system. In a system like this, forward looking enforcement makes sure entities that are paying the taxes and primary regulator would conduct the collection and day to day.

There was discussion on program funding based on license fee and tax collected and what would be the best structure for funding operations of the program. They also noted the tax rate should be set so that the program is supported without encouraging an illicit market.

They discussed the possible agency organization for the responsible agency. The agency needs to be robust, well thought-out and have a strong management structure. They have examples and organizational charts from other states. There are a number of agencies that are complementary or continue to provide a support function. Care should be taken to make sure that expertise is not stripped out and given to primary regulator. Michael Carter made the point that social equity and inclusiveness and diversity should be a part of the hiring and staffing. The regulator should reflect values of social equity in industry.

Even with a primary regulator, support services from existing agencies and interagency coordination will be necessary. They recommended the consideration of a cannabis cabinet with agencies that will be affected as the program develops. It would form a formal or semi-formal structure of coming together to address issues and try to be as proactive as possible. The funding and startup of any regulator is going to need resources on the front end and not reliant on waiting for fees or tax revenue

He opened for questions.

Secretary Moran: To the taxation question, the workgroup recommends taxation at retail level. Is taxation exclusively at the retail level or is it intentionally left vague? Clearly, we will tax at retail level but recognizing there is growing and cultivation.

Green: From our research, the most prevalent tax was at retail level and there were fees collected for license at various stages. The fees were often used to run or fund the program. Taxes at the retail level were used for a variety of functions.

Ngiste Abebe: Another thing that came up was ease of collection, especially with the prospect of co-located medical and adult use. It gets more complicated when you collect taxes along the ways. At the plant stage you don't know if it is a medical and adult use plant.

Travis Hill: I would add, in the alcohol industry we tend to collect taxes primarily at wholesale level. It reduces tax payers and simplifies the approach. Where you put a tax in the system impacts how it gets passed on, who ultimately has to pay it and we have to be conscious of that. And the ease of collection.

Brad Copenhaver: There is still some ongoing work that is taking place to do some more economic modeling estimates of this potential industry. Mike Mckenize from VCU and the tax

department work is doing some work with VEDP. That work is ongoing and is not ready to be presented but will be a part of the final report.

Legal and Regulatory Subgroup Recommendations

Jenn Michelle Pedini begin the presentation by stating that Virginia must allow for vertical integration. That is the only model we currently have and will have to be careful not to dismantle the only structure already in place when we add adult use.

The cannabis industry across the nation struggles with banking. States have to create patchwork solutions via in state banking options. That is something we will have to look closely at. That will be tantamount to success.

Equity is a popular topic now in the cannabis space and often looked at solely through the lens of licensing, as we discussed in great detail. Individuals who have been impacted by prohibition don't necessarily want to work in cannabis industry. Undoing the harms of prohibition is the priority. That will include efforts like expungement or further sealing of records, and could mean going further than the sealing associated with decriminalization legislation. Absent an expungement bill passed by the legislature, we will have to be creative with the solutions we are able to provide.

A social equity license is a component as well as providing access to resources for those communities historically impacted by marijuana prohibition. Providing reinvestment funds to those communities and monitoring the outcomes.

Local control is something that was of interest to the group. We've seen this play out in different ways across the country. More often than not there is the ability for local opt out. The group reviewed the provision currently in place for alcohol. In the case of alcohol, local opt requires a voter referendum. That is something we may want to emulate. We also don't want to allow businesses be relegated to certain communities.

We've seen where industrial area is where you see all the cultivation being done and we wouldn't want to have clusters burdening communities in Virginia.

This is touched on in health impacts as well but, we want to consider how products are regulated to ensure consumer safety. This means what is in the product and adopting industry standards for total content and serving sizes of an individual product and the total amount that may be dispense. As with the medical program, we'll want to apply the same safety standards for pesticide residues and other adulterants. We will want tamper evident packing and packaging that provides child safety mechanisms. QR codes are a great way for customers to see the retail establishment they are shopping in is legalized and regulated by the state. And, as with alcohol and tobacco, we want to make sure they are not marketed or appealing to children.

Personal cultivation is something we hear a lot about in Virginia since we have a rural area. Some states allow, some prohibit. Given the feedback we've heard, this is an important element for a program explored in VA. There is potential for issues related to cultivation, but this is

typically something we would see in large scale operations for gray market sales. Adopting common sense standards that limit what can be cultivated for personal use would be ideal.

They moved on to discuss impaired driving. There is no science that supports a threshold for marijuana impaired driving. There is no a recognized per se limit because of the way THC is metabolized in the body. There are technologies being used to measure impairment as opposed to consumption. Staff heard from a company that specialized in that product. It provides an opportunity for VA to look holistically at impairment as opposed to new prosecutorial tools. Virginia should very quickly begin to collect more robust data about impaired driving as it relates to marijuana. If it is not done now, we will be a state that reports a drastic increase because we were not aggregating the data prior.

Impairment related to employment is critical. We need to look provide protection to employees who will potentially consume a product that is legal. This isn't a new topic and the state needs to consider what protections and rights we'd like to specify for employees and employers.

Health Impacts Subgroup Recommendations

Dr. Samuel Caughron reported that the subgroup has come up with a robust evaluation of the systems as they currently exist. There is really no consensus as the impact of public health and public safety in other states but there were a lot of recommendation. One of them is we need to be robust in our data collection to be able to get the data we need before we have legislation in place in order to realistically look at what the impacts are going to be.

Consumer safety is critical. Understanding and preventing harms and understanding what is responsible for use. The target is to prevent development of major substance issues and that directs itself to the 13-17 age group. They will be more impacted by potential advertising etc. Suggestions have been:

Require childproof and tamper-evident packaging whenever possible.

Consumer education at the point of sale.

Clear and standardized packaging with insert signage or QR codes.

Having trained people selling the products.

Using medical cannabis program as framework.

Making sure what you are getting what you think you are getting. Being able to test and make sure labs doing testing are consistent in what they are reporting is also key. To some extent we could also consider looking at the illicit market and diversions that may occur. Within the illegal market is where health issues will be present.

The amount of THC that an individual buy can vary by how it is given. We need to understand, to some extent, what people are getting. They may not know when they are buying. A per dose per serving per packaging or per sale limit is a consideration. The group strongly considered a tiered tax to disincentive high potency products—but potency caps can result in unhealthy additives which has been found in other substances.

Cannabis use disorder is real and legalization will likely increase the demand for Substance Use Disorder treatment. We would like to see this added into the legislation to fund the kinds of support necessary for it. The behavioral health safety net is necessary to think about. It is already an issue. Illegal marijuana is already rampant but using tax revenue to invest in substance recovery is something that needs to be considered. Focus on behavioral health treatment and to invest in VA's Medicaid Addiction and Recovery Treatment Services and community service boards. Support training for substance abuse identification for counselors, etc.

Nour Alamiri continued that while we are talking about legalization of adult use, we want to pay close attention to the potential impact on increased youth access. Early initiation of use increases the likelihood of problem use. One proven effective method is mandatory ID check at point of sale. Another is youth prevention efforts in community and school. This has been done with other substances through age appropriate SOL requirements.

We can also invest in support and education for those ages 21-26. We chose this age range because the national standard for age requirements is 21, however the ages between 21 and 26 is a vulnerable population. The brain is still developing and they are at high risk for use and misuse. We also want to limit proximity of dispensaries to schools and other youth focused places.

We want to minimize marketing to youth. One example could be not making it attractive with cartoons or leaf emblem. Marketing plays a big role in access. The common standard is that the audience for social media and billboards is 71% adults. However youth are still seeing it. All labeling should be standardized. Advertisements should be placed 1000 feet from schools and community centers.

The group wants to emphasize prevention and education; implementing public health campaigns to highlight negative implications for adult use and youth access. Increasing awareness that anyone can be victim of SUD or cannabis use disorder. Include risks for medical conditions, pregnancy and breast-feeding. Address potential interactions with other medications. We should invest in education of healthcare professionals and seniors. We want to identify vulnerable populations and tailoring it to the audience. Invest in holistic community supports and coalitions. As mentioned earlier, the group wants to emphasize the importance of data collection and emerging research.

Following up on what was touched on earlier regarding undoing the harms of criminalization. We want to ensure the benefits are equitable. We appreciated the importance of undoing past wrongs, but we also want to emphasize importance of making sure systems do not continue to be disproportionate. Recommendations include:

- Density caps to avoid over concentration of dispensaries in low income neighborhoods. Wealthier communities can be better to navigate zoning and other rules.
- Consider impact on evictions when setting policies.
- Target investments from taxation to those who are experiencing inequities of past criminalization of marijuana.

We learned from Illinois that we should be including communities as part of the conversation so we are not creating for them but with them. Invest in diversion programs for justice involved population. We believe this will prevent cycle of recidivism. Monitor police activity data to be aware of disproportionate enforcement.

The group recommends maintaining VA's Indoor Clean Air Policy and include signage for designated areas of use and best practices like with tobacco use.

Catie Finley continued the workgroup presentation with a snapshot of presentations the group heard from data experts. As Gillian Schauer said, "there is a lot more that we don't know than what we know." In some areas there are not clear and comprehensive data on impact of legalization in other states.

What was agreed upon is the Cannabis Use Disorder is real and Dr. Thompson presented SUD impacts approximately 8.5 million Americans and a WHO reports says 10-25% of regular cannabis users may be susceptible to SUD. Early initiation of use is going to increase that.

Looking at data from SAMSA at HHS, approx. 1 in 10 will be addicted but if they starts before 18 it rises to 1 in 6. For reference, SAMSA data shows even greater percentage of alcohol abuse.

There are indications that adult use of the substance increases after legalization. In states that have legalized they have seen an uptick in young adults of daily or near daily uses---which can be important to look at. Dr. Thompson pulled a JAMA study from December 2018 that cited a moderate increase in use among youth in states that have legalized. We saw some general national data from 2002 – 2017, seeing uptick in adults and young adults in all states.

Another point of consensus with the workgroup was the benefits of bringing use into the light. There is some research that points to decreasing stigma under legalization could mean folks more likely come forward for treatment. Another consensus in the group, is that the public health costs of over criminalization and incarceration in Black and brown communities is a public health concern. Michael Carter cited that 53% of marijuana arrests are for Black and African Americans.

Data is not always what we want it to be in this area but those were some common themes.

She highlighted the more nuanced data they were presented:

When it comes to youth use, many presenters agreed prevalence stayed steady after legalization. However, nationwide a lot of other substance use is going down for that demographic. One presenter said there was an increase in teen use but overall, youth use consensus is prevalence stays the same but there are other factors that we need to look into.

We had a presenter for American College of Occupational and Environmental Medicine. They released a statement that said:

"States with legal recreational or medical marijuana are reporting an increase in fatal motor vehicle crashes involving THC."

That statement is echoed in a Colorado report released in 2018. However, we also saw presenters who say when you look at correlations there is not a strong signal that there are increases with traffic fatalities involving marijuana.

Other areas where there seemed to be evidence in both directions is with opioids. There is some evidence and literature that folks are substituting marijuana for opioid use. They were not full randomized trials that confirmed that and looking back there are conflicting things if legalization reduces opioid use. Similarly, with gateway, we heard different statements about whether marijuana is a gateway drug. Dr. Schauer did say she did not find science behind it but there is science to support increased SUD if folks who use marijuana use other substances.

There is a need for data collection because we don't have clear consensus data on everything.

Discussion on Fiscal and Structural Subgroup

Dr. Caughron: If we consider letting individuals have a certain number of plants, how does that work?

Pedini: A number of states allow personal cultivation. Typically a number is set and it is for personal use only and not for retail.

Secretary Carey: One of the key points I took away was the importance of investing in making sure the infrastructure is there on the regulatory, monitoring and health side before the program goes live. I think as we enter this we want to do it very well and Virginia has been very thoughtful as it has embarked on new initiatives. I think not doing it well from the start and waiting until revenue comes in to then build structure is an important point the subgroup emphasized. I just wanted to applaud that. Perfection is not the goal but I think having robust resources and building infrastructure will be key.

Ring: That is true. We want to make sure it is done the Virginia way and done well. This will not be perfect from the start and will evolve if we do move forward. Appreciate the group being clear about having capacity building in place.

Pedini: Like to provide some context. As you may recall, the state did not afford us any resources to start our medical cannabis program and Board of Pharmacy did a wonderful job navigating that difficulty. With the expansion and adult use model we want to make sure we do have the resources from the beginning as opposed to working retroactively to support the program.

Secretary Ring: That can be challenging. Often our state agencies are called on to do that for various reasons. We want to make sure that we do our best to ensure the resources and expertise is in place.

Caroline Juran: I saw a recommendation to combine medical and recreational adult use program into a single or umbrella agency. I did see later some acknowledgement that expertise from other entities may be necessary to help ensure that the structure is being built appropriately. I want to note that, because we do have pharmacist, we will need to flush that out from a legal structure as to what is the role of Board of Pharmacy in a future regulatory oversight. While

license the individual I'm not sure the Board of Pharmacy can uphold a pharmacist to a regulation we are not enforcing. We may not be able to have sanctioning or enforcement action. It is just as note as we work through any possible transitions or future regulatory structures. I am interested from a legal standpoint to make sure everyone has what they need legally to get their jobs done.

Ring: We know there are many nuances and discussions taken along the way. That will be captured in minutes and notes. That is an important piece to capture now so we don't lose that as we move forward.

Abebe: We have examples where, for example at a pharmacy inside of Kroger, The Board of Pharmacy can still monitor the pharmacist. We have precedent in other industries we can use to model for the future of Virginia's cannabis industry.

Brad Copenhaver asked if Mike Mackenzie or Kristin Collins would like to talk briefly about the process that we are looking at for economic modeling.

Mackenzie: We are working with VEDP and Department of Taxation. We are looking at estimates in other states where legalization or adult use has happened and the way those sales have broken down and estimating what we think sales might look like in Virginia and then tracing it backwards in supply chain that currently doesn't exist. It's important to note there are a lot of assumptions, in particular right now because we don't know exactly how the industry is going to look or how licenses will be limited or expanded. We are trying to come up with an understanding of sale estimates between 660 million to 2.5 Billion. What those impacts might look like or what the range might be. That is where we are with economic impact. The fiscal impact is a different calculation.

Kristin Collins: I can talk about the revenue impact. It's really difficult when we don't have specific data. What we have been doing is looking at a couple of other states that have more recently adopted of legalization and used population data and survey data on the number of users in state, even where it is illegal We've used that data to ratio. Two of the more recent states are Illinois and Michigan that we've been looking at. If Virginia were to adapt tax structure similar to these, here is a range of revenue in both an excise tax and the retail sales and use tax that would be collected. JLARC is going very specific detailed estimates and they have a consultants who has done this modeling in other states and has a very specific demand model built. The intent is we provide a more general detail estimate.

Caughron: Do we know how much the illegal market gets from sale of marijuana in VA?

Collins: No. that is part of the challenge. JLARC has been looking up information on that. Our estimate would not be able to be that specific because we do not have that information.

Abebe: On a quick search, Virginia counts for about 3% of the 60 billion illicit cannabis market in the US--about 1.8 billion in illicit cannabis sales in the Commonwealth of VA.

Brad Copenhaver asked Travis Hill to speak on ABC's experience with licenses as the decision making process may be similar.

Hill: ABC started in 1934 we had 5 licenses and we got up to 170-180 different combinations from different business models and legislators passing bills to address specific business models. We created this market where very closely placed business in terms of structure had to obtain different licenses and it created confusion. We ended up reducing the number of licenses this past legislative session to try broaden the categories of what folks could do. For example, if a grocery store wanted to delivery and sell kegs they needed to get two piece of papers from the state. Instead we created one license that provides both services. As we approach licensing structure for cannabis we need to keep that in mind. Depending on how much you restrain activity under a license you will create need for multiple license and will create confusion. What you want to do is issue license to allow business to operate and provide services they feel they need to provide.

Secretary Moran: Jenn Michelle, you talked about the zoning and the avoidance of locating facilities in certain areas of the community. I'd like elaboration on that. Typically, it's a matter of local zoning, so what is state's role with respect to where you would site these locations? Is a retail selling marijuana similar to other retail or do they create a different zoning? In terms if cultivation, I've visited Colorado and seen a large grower and it was in an otherwise industrial area, and so if you could tease out the point you made.

Pedini: When we talk about concentration of cannabis retail and potentially even cultivation a good analogy would be a liquor store. We have communities that have a high concentration of liquor stores and then we don't see that in other communities. We would want to avoid replicating such a model that could ultimately be burdensome to those communities.

Moran: I agree. Not sure how the state does that versus local zoning. In terms of growers and cultivators, is it typically located in industrial zoning?

Pedini: Yes. Virginia has ample agricultural areas, rural areas where these cultivation facilities could potentially be located, but, of course, it's necessary they are accessible to trafficable areas for transport. To your question about different zoning, we already stepped in this with medical cannabis facilities. There are specific restrictions in place for those processors as it relates to locations near schools and clearly we would echo the same for any facility producing cannabis for adult or medical use. Ngiste may have more thoughts but other than providing that guidance in a regulatory capacity there were no specific zoning classifications.

Abebe: I'm not aware of a cannabis specific use permit. I think there have been instance based on localities, but we exist in pre-existing classes. For cultivation, those are typically in industrial area, which is better for cultivation zoning but trickier for patient access which is why we are excited about 5 additional locations. Instead of having patient come to a warehouse district.

What we have seen to help break apart our proximity restriction is a new retail site has to be x amount of feet from another existing cannabis site and it helps breaks up concentration.

One of the things I think is important—because we are talking about equity; we know when it comes to NIMBY-ism and the ability for a local community to organize to speak up, the ability is

disproportionally in wealthier areas. And we want to make sure whatever standards are put in place are consistent so we are not unintentionally exacerbating disparities that already exist.

Moran: Another question for Jenn Michelle: You were involved in decriminalization bill last year. Do we have any data yet or did you all look for any data with respect to decriminalizations? That was supposed to bring an end to the incarceration and arrests and the disproportionate impact on the Black and brown population. Also the sealing of records. We are supposed to seal marijuana convictions. Was your group able to obtain any up to date information? And maybe Nate has anecdotal information.

Pedini: Are you asking about reduction in arrests and incarcerations?

Moran: Yes. Have we seen that? It is supposed to be eliminated.

Pedini: I'm sure we can submit FOIAs to request that information. It's worth noting that we have had follow up questions regarding incarceration. The decriminalization legislation did not provide direction on currently incarcerated individuals. We've received feedback from those involved cases prior to July 1 as to how it would be treated after July 1. There seems to be some confusion at the municipal level as to what the offense should be.

Moran: I think my office will have to work to get some of that data into this report to reflect the changes as of July 1. We were excited about that and hopeful it would eliminate the arrest, decrease incarceration and seal records.

Nathan Green: To answer the original question, no we don't have data. I can provide data for Williamsburg-James County and can talk anecdotally. Most offices started implementing the General Assembly's intentions well before July 1. Williamsburg was one of those places. All of pending marijuana cases between December 2019 and May 2020 were handled differently than they have been in the past. We found a code section that we felt did two things; modeled the idea of a civil penalty and it was a code section our clerk's office system recognized. When regular session ended we started amending all marijuana cases to smoking in car w/ a minor. That is a code section that carries a \$50 civil penalty. We started making those amendments, making individuals aware of the amendments and making defense attorneys aware that was out plan.

Starting in May, marijuana cases in our jurisdiction were handled in that way. My understanding is every commonwealth attorney's office may have done something differently with how they amended it but everyone started address cases differently prior to July 1 so someone from July 2 isn't treated differently than someone on June 30.

Anecdotally, I started to go to arraignments dates because as the summer went on we still had people charged with possession they were eligible for...but we were going to be making this amendment. Absolutely no one is being arrested for it. Anecdotally, I would say that no one is being charged. We have stopped seeing anyone come in on a summons for a possession of marijuana. Usually there are 4 or 5 on a docket and we are down to one every other week.

Pedini: Record sealing did eventually begin. It was a little later than we intended and that process is still being executed by VSP and typically we only get marijuana arrest numbers once a year on the Crime in Virginia report but happy to work with your office to collect prior to that.

Moran: We'll look into that. That is something we will follow up on if we have time.

Nathan Green: There are people who are charged with new offenses since the General Assembly made their intentions clear but we also have a number of people that were charged and found guilty of marijuana possession within the past year and a large percentage are given 1st offender status; they can avoid a conviction by doing well on probation and doing education program and have the charge dismissed.

There are a number of people in that category where something went wrong, such as they had a probation violation and tested positive. Our office has started treating those individuals similarly to individuals charged presently. Have a number of people who were under first offender who were on probation when law change that are also getting the benefit of not being charged if they test positive but getting the civil penalty. And my understanding is most offices are handling it similarly. I've also been informed probation departments are no longer testing for marijuana use unless being specific ordered to by court.

Moran: The sealing delay was another victim of COVID pandemic and has been reinstated and we will promise to get as much information as possible to this group.

Jenn Michelle Pedini inquired about when they moved to the \$25 penalty, Nathan Green stated that they had already as of July 1. Pedini added that they are still getting reports that there is still testing being done weekly, and Green clarified he can only speak for it not happening in district 34.

Pedini: Brad and Catie, something we touched on early is distances. Should the state allow outdoor cultivation? There can be extraordinary difficulties when cannabis crops are located too close to each other. That has been handled differently from state to state but it's something that the state should consider; whether or not it chooses to provide guidance on proximity of cannabis crops.

Copenhaver: Yes, that is a concern and something we've dealt with on the hemp side. There is not an easy solution because the question becomes 'how do you take into account property rights and what someone can do on their own property'. What we have heard from ag stakeholders is that in most ag communities, communication between farmers happens pretty naturally. We'll have to look at this going forward. What are ways we can help increase the communication and make sure we know where these crops are and if there is going to be any cross pollination? It's a complicated issue that we've talked about and don't have an answer.

Charles Green: On the hemp side of things we like to follow the laws and other issues to prevent the state from coming in and setting restriction....in other states it's not just the across pollination issue. Land owners are aware of those issues...watching how other states handle this and adjudicate those type of issues.

Caughron: When you say distance between providers, are you are talking about distance between plants?

Pedini: I was referring to distance between fields of cannabis plants that are being cultivated outdoors and the potential for cross pollinations.

Nathan Green: All the reports talk about youth and the delineation at that 21 year age mark. There was nothing in the report about what prosecutors are supposed to do with individuals possessing under the age of 21. In my mind I think there is a tobacco, alcohol and marijuana. There should be some consistencies and distinctions with these. Right now a 20-year-old in possession of alcohol, tobacco and marijuana has three different criminal sanctions and I ask us to consider some consistency there.

Pedini: The General Assembly has already reached consensus on this issue. 18-21 is the decimalization measure. If they purchase in retail that is an infraction at the retail level but possession is possession and the legislature is clear, so we aren't looking to increase criminalization.

Nathan Green: To be clear, I am not suggesting increasing criminalization. Tobacco is treated differently than marijuana and tobacco is treated different than alcohol. Should marijuana be treated more like alcohol or more like tobacco? I don't know if we recognized the difference between possession of alcohol between someone who is 18 and someone who is 21. Are we making the same distinction with marijuana

Pedini: We will. Possession of marijuana up to 1 oz is a \$25 civil penalty and after 21 it would be legal and they would not have a penalty.

Alamiri: Question for Nathan Green. You all mentioned 18-21. What would happen to under 18 youth population? What would happen to them? I'm concerned about incarceration and potential impacts as they get older.

Nathan Green: At this point possession of marijuana under 18 is act of delinquency. The amount of remedies or steps the judge has to correct delinquency is fairly vast. A judge could issue detention order. I have not seen that. The judge could order community service, substance abuse treatment, or suspend a license.

Pedini: The legislature was presented with a comparative chart of a Child In Need of Services petition and delinquency. Delinquency affords more options than a CHINS petition.

Caughron: Is that record expunged at the legal age?

Nathan Green: Yes. They do it on calendar based on the birthdate. All of their juvenile record is expunged.

Health Impacts Subgroup Discussion

Alamiri: We had mentioned earlier making sure the policies instituted in terms of policing and law enforcement measures, remain consistent on the ground level and making sure there is no discrepancy between practices between municipalities.

Specifically, this means making sure enforcement does not continue to be disproportionate. From a public health lens there can be unintended consequences on mental health for those Black and brown communities where, as the data shows, are being disproportionately being targeted. Making sure those practices stay consistent and patrolling measures are not disproportionate.

In our subgroup we discussed the important of ensuring mental health resources and support is affordable and accessible. Going into a legalized state, there is still opportunity for growth even before we get to that point. Making an investment in community boards, community coalitions and making sure those support resources are accessible to all.

Our concern was that marijuana legalization can't be a cure all, however this is an opportunity for us to be a leading force across the nation. Making sure our measures are thoughtful and our policies are comprehensive. If we can utilize tax revenue to reinvest in those communities, that would be an effective and sustainable measure to consider. We mentioned community reinvestment. What does that actually look like? It can seem 30,000 foot level but that investment would pay off in the long run in terms of substance abuse prevention. Investing money in education and housing. Having the community stakeholders at the table; we don't need to reinvent the wheel. There are community coalitions who have perfected their craft and investing in those organizations to support those communities would pay off in the long run.

Brian Moran: Bernie Cohen was my predecessor was a champion of the Clean Air Act. I tried to amend it myself when I was a legislature and things have changed around tobacco. Many of the reasons why we were successful in passing the Virginia Indoor Clean Air Act is because the dangers of second hand smoke dangers were science based. Other than the pungent order, what are its impacts? Can you speak to the dangers of second hand smoke?

Dr. Caughron: There is not that much information for second hand marijuana smoke, the biggest thing is potential bronchospasm associated with people who have asthma and lung problems. We don't have enough data to clarify if there is a lot of cancer associated with second hand marijuana smoke. The data simply isn't there.

Alamiri: I would add to that, on an environmental health level, having measures in place to designate areas where smoking is not acceptable or tolerated normalizes behavior. Without these measures people get sense they can smoke wherever and whenever. As it relates to youth seeing and being able to understand and access and normalize behavior can have unintended consequences. Making sure policies are clear and limits are put in place of distance from entrances or designated space would really help on the environmental health level.

Dr. Caughron: I think if we treat it the same way we do tobacco and there is no smoking in restaurants, etc, it doesn't take much for you to know marijuana is around as long as it being smoked. It doesn't mention it being eaten or other methods of consumption.

Ngiste Abebe: I think rules needs to account for patients who have medication on them, especially non smokeable formats, and the ability to take and maintain doses on a reliable schedule.

We have a process for hookah lounges and cigar shops to facilitate responsible tobacco consumption in a social space. We have existing models that can be added to cannabis with the added factor for some folks, even patients, could be risking conviction if they have a cannabis tablet for pain management because of the nature of federal housing subsidies. There is a gap between state and federal policies.

Pedini: I agree with Dr. Caughron, it should be consistent with tobacco use. There should be a consideration for social consumption places or we will criminalize individuals who do not have access to an area where they can legally consume. Virginia will likely experience heavy travel related to cannabis as it would be novel in this area and we're a lot larger than DC--which does not provide for social consumption. We need to be able to provide solutions to mitigate what would be continued criminalization.

Secretary Carey: There is often a paralysis unless you have more and more data. Is there a top 5 data types the subgroup is looking for? I think about ER visits for intoxication secondary to cannabis use or DUI with cannabis.

Pedini: There are some bullet points in presentation but typically we'd look at ER visits, calls to poison control, DUID related to cannabis, and motor vehicle fatalities.

Secretary Carey: And that should be readily available to get baseline data.

Pedini: That is if we are applying the standard of testing universally, where that may be imposed post legalization and then you have that disparities data that isn't looking at reality

Carey: Maybe have data standards as we enter the program?

Pedini: Yes. We see in other states, they say post legalization cannabis related fatalities tripled but they didn't test data prior.

Finley: What we pulled for recommendation is from a presentation by the Prevention Council in Roanoke and they've been looking at this issue of data. The other thing include in our recommendation is good baseline data use rate and treatment data by drug.

Pedini: There was language that identified 'psychoactive cannabinoids', which was meant to include intoxicating cannabinoids. What we care about from a consumer stand point and already require in medical regulations is the ID of all primary cannabinoids. The concern is what is in there and what may or may not cause intoxication.

Secretary Ring turned it over to Brad to discuss next steps.

Copenhaver stated that staff will take all the recommendations and combine them with presentations, data and the conversations that they've had in minutes and videos and put together for a final report. They will work at secretariat level on drafting final report which is due Nov. 30. They will call or e-mail for clarification and additional information as they get into the drafting of the report.

Final Consideration of Recommendations

Red: uncomfortable

Yellow: comfortable with some recommendations

Green: totally comfortable

Travis Hill: Would they need to state reason for concern if they say yellow?

Copenhaver: It would be helpful to express what the concern is so we can go back and make sure we reflect that in the final report.

Roll Call

Ring: Green

Joe Flores: Yellow. Would like to see it all in writing.

Carey: Green

Moran: Green

Holli Wood: Green

Kristin Collins: Green

Ferguson: Green

C. Green: Green

Juran: Green

Mike Mckeenzie: Green

Howard: Abstain. Want to have crime commission input before making vote.

N. Green: Yellow with regards to the inconsistent treatment of individuals 18-21. Green to everything else.

Pedini: Yellow. Pending final report.

Hill: Green. Only call out is where the taxes are collected needs to be sorted out and examined.

Ngiste: Yellow, pending final report.

Caughon: Green

Carter: Did not answer roll call.

Alamiri: Between green and yellow, pending final report. Would like to read thoroughly how investment how in public health, education and prevention measures will be taken. From the presentation there seems to be emphasis on importance of but I'd like to see more specifics.

Martinson: Yellow, because of unknowns around revenue and where it would be going. Prevention and education needs to be tagged. Really focus on time between any legislation that passes and implementation. States that have done this well have given sectors time to prepare.

Boyd: Yellow, pending final report.

Jackson: Green. The only place I'm yellow is the discussions around drunk driving that have been had.

Public Comment

Megan Dolecki

I am just hoping to speak on pre-employment drug testing. I am a registered cannabis patient and I was let out of my job due to.... I am fortunate to receive unemployment, Medicaid and other social services... prescription put my dream job out of reach....not pass pre-employment drug screening. But it's not just my dream job that is...when I submit for unemployment benefits I must certify that....despite my prescription being medically sanctioned I'd lose unemployment benefits.

My auto loan is covered by unemployment insurance and my benefits from the VEC are a requirement for that insurance to cover payment I am unable to make and without those benefits, my loan falls to collection, my vehicle would be repossessed and my credit would be garbage. The monetary determination letter is also food assistance and subsidized childcare so I can go to medical appointments interviews. I wish my only concern was not getting hired back into the career path I perused prior to the pandemic. I fear the loss of our only vehicle in a city without robust public transit, I'm concerned about food security and all because of medication I was prescribed I'd like to see employment protection for medical cannabis patients just like me. And I know I'm not the only one.

Elly Tucker

I would like to thank panelist and participants for all the work you've done these past 4 months, it's been so interesting as a Virginia medical cannabis patient to learn about the process of having this possibly going for legalization and I would like to encourage you to keep working towards this, even with all the yellows because it is worth it. It has brought so much relief already to the Virginia medical cannabis community and now the next step needs to be the legalization. You are going a great job of finding all the issues that other states have found out and we can benefit from them going before us. I also wanted to push for botanical cannabis because I know in the medical program we do not have access to that and that has been something a lot of have asked for because of the reliability, they know the dosage. Also we need more dispensaries; we drove from Charlottesville to Bristol, a 4 hour drive, for a one appointment and I know there will be more dispensaries and I do encourage you to keep dispensaries coming.

Paul McLean

I want to commend everyone involved in this process, it's been eye opening and educational. I am founder of Virginia Minority Cannabis Coalition and it has been eye opening to see how Virginia is looking to not just create a new industry but build a new industry that has the ability and opportunity to grow organically within state policy. Mainly, I've commented at other meeting to let you know our organization has written serval papers in regards to several topics that have been discussed. I have one paper I'd like to submit to be included in public comment section because it covers several components of what has been discussed in regards to creating a new industry that has entry points for social equity application to grow and expand outside their community in regards to funding, marketing experience. All those will all be instrumental in business thriving.

Brad, am I able to submit that to you through e-mail?

Brad confirmed it can be submitted he will include it as part of record. Anyone who would like to submit anything can submit using contact info on website.

Secretary Ring adjourned the meeting at 12:10 PM.



Virginia Marijuana Legalization Work Group

As required by
2020 Acts of Assembly Chapters 1285 & 1286

Third Meeting
October 28, 2020

AGENDA



Call Roll

1

5

Legal and Regulatory Subgroup
Report

Approve Minutes of 9/16 Meeting

2

6

Health Impacts Subgroup Report

Approve Subgroup Minutes

3

7

Group Discussion

Fiscal and Structural Subgroup
Report

4

8

Finalize Recommendations

Public Comment

9



Approval of Minutes

9/16/2020 Full Group Meeting

10/15/2020 Fiscal/Structural

10/20/2020 Health Impacts

10/20/2020 Joint Subgroup

10/21/2020 Legal/Regulatory

10/26/2020 Fiscal/Structural

Fiscal and Structural Subgroup Recommendations

Regulatory Structure

- Virginia should consider either putting its cannabis regulatory structure under one agency or an umbrella agency to cover both adult use and medical marijuana
- There has also been discussion about including regulation of industrial hemp and/or hemp-derived products intended for human consumption under this agency
- It was pointed out to the group that other states either regulate hemp cultivation via their department of agriculture or let USDA regulate it. There was some agreement that there is additional oversight needed on hemp derived products from a consumer safety standpoint.

Fiscal and Structural Subgroup Recommendations

Industry structure

- Virginia should consider allowing but not requiring vertical integration within the industry

Fiscal and Structural Subgroup Recommendations

Licensing Structure

- Virginia should consider a license structure that includes various steps of the industry supply chain, including but not limited to:
 - Grower
 - Processor
 - Distributer/Transporter
 - Wholesaler
 - Retailer
 - Delivery
 - Social Consumption/Hospitality

Fiscal and Structural Subgroup Recommendations

Licensing Structure

- Virginia should consider a social equity license category as other states, such as Illinois and Massachusetts have done
- Virginia should be very thoughtful about how to set up this license structure and should consider what will work best for businesses and be the easiest to understand
- Virginia should consider a measured approach for the number of licenses in each category at first and evaluate the program on an annual basis
- License fees should not be an insurmountable barrier to entry, especially with social equity licenses, but Virginia should consider what license fees would cover versus what a cannabis-specific excise tax would cover
- Virginia should consider the best way to have transparency in the licensing process

Fiscal and Structural Subgroup Recommendations

Taxation

- Virginia should consider taxation of product at the retail level, and the cannabis primary regulatory agency would likely be best positioned to collect this tax
- Taxation could include different levels based on the type of product
- A tax rate should be high enough to cover costs of the program to provide consumers with certainty that products are regulated and safe (e.g. free from adulterants) to consume and to cover any other revenue goals Virginia has—however, the tax rate should not be so high that it encourages a thriving illicit market

Fiscal and Structural Subgroup Recommendations

Agency Organization

- Virginia should build a robust agency structure with various functions to regulate a new legal adult use marijuana industry. This could include:
 - Licensing and registration staff
 - Auditing and Investigation Staff (law enforcement background)
 - Financial Analysts/Financial Processing
 - Data Analysts
 - Software provider: Seed to Sale Tracking System
 - Scientific or laboratory
 - Internal Support positions – (i.e. Human Resources, FOIA)
 - Areas to address outside of the primary regulator:
 - Tax Revenue Collections
 - Other Law Enforcement
 - Liaison Positions: pesticides, food safety, weights and measures

Fiscal and Structural Subgroup Recommendations

Agency Organization

- Virginia should look to other agencies, such as the Board of Pharmacy and Alcoholic Beverage Control, for guidance on how to best organize
- Virginia should create regulatory authority for the agency to establish a program and appropriate funding, as opposed to developing the program based on tax revenue and fees.
 - Recognition that up-front funding and established FTEs will be critical to start a program before license fees and tax revenues materialize
 - Consideration of a Cannabis Cabinet of agencies or Secretariats mandated to come together on a regular basis for updates and address challenges of program start-up to alleviate the potential “red tape” that could be experienced bringing multiple state agencies together working with different regulatory authority.
- The report should work with staff to develop cost estimates for establishing new agency structure, including relevant timelines

Legal and Regulatory Subgroup Recommendations

Regulatory Structure

- Virginia should consider either putting its cannabis regulatory structure under one agency or an umbrella agency to cover both adult use and medical marijuana
- Virginia should consider allowing but not requiring vertical integration within the industry

Legal and Regulatory Subgroup Recommendations

Banking

- Banking is a critical component of having a successful industry, from access to capital standpoint to banking services.
- Virginia should explore options to allow the marijuana industry to conduct business with financial institutions, including state-chartered banks and credit unions.

Legal and Regulatory Subgroup Recommendations

Social Equity

- Undoing the harms of criminalization should include expungement or sealing of criminal records
- Social equity licenses
- Assistance with access to capital and business planning
- How the entire regulatory scheme could affect barriers to entry into the industry
- Community reinvestment and monitoring with a disparity report

Legal and Regulatory Subgroup Recommendations

Local Control

- When possible, local input should be considered regarding where marijuana retailers and social consumption sites can operate.
- Virginia should also consider how businesses could cluster in certain areas or neighborhoods and potential externalities of zoning for these businesses.

Legal and Regulatory Subgroup Recommendations

Product Issues and Composition

- Virginia should consider regulating the composition of products, in addition to cannabinoid limits for serving sizes and whole products. This could include product composition safety measures, such as pesticide residues and other adulterants.
- Packaging requirements—tamper evident, with a way to verify they are consuming a legal and regulated product (e.g. QR codes), and educating consumers on using those codes.
- Prohibit marketing to children.

Legal and Regulatory Subgroup Recommendations

Personal Cultivation

- Some states allow personal cultivation, and there are substantial pros and cons. We should consider that this product is much more valuable than other controlled products, such as beer, that are allowed to be produced in home settings. There is also an element of personal danger and risk because of the electrical and insulation needs for indoor growing.

Legal and Regulatory Subgroup Recommendations

Impaired Driving

- There is not yet a simple, straightforward answer on how to deal with impaired driving. Some states use per se limits, and some use other methods to determine impairment. Virginia should continue to explore new technologies and methods in this space.
- Virginia could also work to collect more robust data about marijuana-related impaired driving on the roads of the Commonwealth.

Legal and Regulatory Subgroup Recommendations

Impairment related to employment

- This is also a complex question, but Virginia should consider the rights of both employers and employees when crafting policy around being impaired at work. Workplace safety is paramount, but Virginia should consider how policies could affect adults who are using a legal product.

Health Impacts Subgroup Recommendations

There is a lack of consensus on how marijuana legalization has impacted public health and public safety in other states. Additionally, information on the health benefits and risks of marijuana use is emerging.

- Begin collecting baseline data before the legal market opens (e.g. poison control center, emergency room visits, driving impairment, youth use rates, treatment data by drug.)
- Invest in both data collection and research.

Health Impacts Subgroup Recommendations

Consumer Education is Safety is critical for preventing harms and encouraging “responsible” use.

- Require child-proof, tamper-evident packaging. Include single serving packages whenever possible, as well as child-resistant packaging for multi-use products.
- Require consumer education at point of sale,
 - Includes clear and standardized packaging, inserts, signage, and a QR code.
 - Required training for retail associates.
- Using medical cannabis program as a framework, require third-party lab testing and consider reference lab (best practice learned from other states).
- To the extent possible, track movement into the licit market and diversion through a robust seed-to-sale system

Health Impacts Subgroup Recommendations

High amounts of THC may make individuals more susceptible to substance use disorder and individuals should have a clear understanding of THC amounts.

- Adopt per-dose/per-serving/per-package THC limits, as well as per-sale limits, being mindful of practical consideration for certain products.
- Strongly consider a tiered tax system, similar to Illinois, to disincentivize use of high potency products.
- Potency “caps” may result in higher levels of unhealthy additives in certain products.
- Make sure regulations are inclusive of all psychoactive cannabinoids (e.g. both THC-9 and THC-8).

Health Impacts Subgroup Recommendations

Cannabis Use Disorder is real, and legalization will likely increase and change the demand for substance use disorder treatment.

- Assess marijuana-related services in the current safety behavioral health safety net project and prepare for impact of legalization.
- Tax revenue should be used to invest in substance use disorder treatment and recovery services.
 - Focus on behavioral health treatment programs for justice-involved population.
 - Invest in Virginia Medicaid's Addiction and Recovery Treatment Services (ARTS) and the community services boards (CSBs).
 - Support training for SUD identification and intervention for touch points (e.g. counselors, primary care physicians).

Health Impacts Subgroup Recommendations

Early initiation of use increases the likelihood of problem use, so we should focus on addressing youth impacts

- Require mandatory ID checks (most states have done).
- Increase youth-focused prevention efforts, both in communities and schools.
 - o Build off current behavioral health SOL requirement and include age-appropriate marijuana education.
- Invest in supports and education for individuals 21-26. The subgroup recognizes that the national standard for age requirements is 21, but also notes that of individuals 21-26 are vulnerable to both use and abuse (due to life stage, developing brain).
- Limit proximity of dispensaries to schools and other youth-focused places.

Continued on next slide

Health Impacts Subgroup Recommendations

Early initiation of use increases the likelihood of problem use, so we should focus on addressing youth impacts

- Minimize marketing to youth.
 - o Common standard is that audiences of billboards, social media, etc. must reasonably be expected to be 71% adults.
 - o Products not attractive to youth, e.g. no cartoons, leaf emblem on certain items.
 - o Standard packaging/labeling/THC symbol (see consumer safety above); packaging and products not attractive to youth.
 - o Advertisements must be a certain distance (e.g. 1,000 feet) from schools and community centers.

Health Impacts Subgroup Recommendations

Prevention and Education is critical.

- Implement public health campaigns to highlight negative implications.
 - Include awareness that anyone could be at-risk for substance use disorder.
 - Include risks for those who have certain mental health conditions and those who are pregnant or breastfeeding.
 - Address workplace and driving impairments and interactions with other medications.
- Invest in education that includes youth (see above), but should also include healthcare professionals and seniors.
- Invest in holistic community supports and coalitions that address both economic supports and social determinants of health.
- Regularly review and update information given emerging research.

Health Impacts Subgroup Recommendations

Reform should address and, where possible, “undo” harms of criminalization

- Ensure benefits of legalization are equitable.
- Include density caps or similar mechanisms to avoid an over concentration of dispensaries in low-income neighborhoods, recognizing that wealthier communities are better equipped to navigate zoning and other rules.
- Consider impact on evictions when setting policies, especially for those in government housing. Social consumption sites provide everyone with a legal place to consumer marijuana.
- Target investments to those who are experiencing the inequities of past criminalization of marijuana.
 - o Could use an model similar to Illinois grants – should include community stakeholder engagement, including minority institutions.
 - o Could invest in diversion programs and services for justice-involved population, especially upon re-entry.
- Monitor police activity data to be aware of disproportionate enforcement.

Health Impacts Subgroup Recommendations

We should maintain Virginia's Indoor Clean Air Policy.

- Marijuana laws should be consistent with Virginia's Indoor Clean Air policies for tobacco.
- Similar to tobacco, identify distance from building and include signage for designated areas for use.



Group Discussion



Public Comment

2 Minutes for Each Commenter

Pre-registered Commenters First

**Additional Public Comment After if Time Allows
Use "Raise Hand" Feature to get into the Queue
Or if Calling in, Press *3**

**Please Begin by Stating Your Full Name and
Organization**



Virginia Marijuana Legalization Work Group

Public Comment

October 28, 2020

2:00



Adjournment



The Honorable Bettina K. Ring
Secretary of Agriculture and Forestry
Patrick Henry Building
1111 East Broad Street
Richmond, Virginia 23219

October 13, 2020

Dear Secretary Ring,

Thank you for the opportunity to provide input as Virginia evaluates legalization of adult use cannabis, implementing major criminal justice reform, and the development of a regulated and taxed system of cultivation and sale. The products we design and sell have one thing in common, they help people express themselves by gardening and growing plants. As the leading provider of nutrients, plant supplements, growing media, air filtration and lighting used for hydroponic and indoor growing, our company is unique in its ability to help people who choose to produce cannabis authorized under state-law.

With the legalization of hemp almost every state in the nations has elected to end prohibition of cannabis and adopt alternative means of regulating its production and distribution within their jurisdiction. Their ultimate objective is responsible production, distribution and consumption of cannabis and combating illegal drug abuse. There are now roughly 15,000 licensed cannabis businesses in the United States, 200,000 people employed in the industry, and more than 2 million medical cannabis patients served under these state laws.

Assuming the cannabis industry continues along its current growth trajectory, the total number of people employed in the field will reach 300,000 by next year, which matches the number of people employed by data processing and hosting companies, medical and diagnostic laboratories and ambulatory health care services.

Cannabis is creating a legitimate income stream for state and local governments. According to New Frontier Data, medical and adult-use cannabis sales generated \$745 million in tax revenue in 2017. By 2020, tax revenues from cannabis could grow to \$2.3 billion in legalized states. This past Spring Colorado officials celebrated tax revenues surpassing \$1billion since the start of the regulated and tax adult use system.

At the state level we have an opportunity to learn from the successes and challenges of the states that have implemented adult use and medical cannabis programs. In states that allow for cannabis production, we support thoughtful regulatory programs that enhance the availability of cannabis, create stable economies and work to eradicate the illegal market for the product. This means setting up markets with fair licensing systems that provide opportunities for communities



historically impacted by criminalization of marijuana, are demand based and provide opportunities for large and small businesses alike. States should also honor the ability of consumers to participate in the industry by growing a limited number of plants annually for their own personal use and employing a sensible approach to taxation and regulation.

We would like to take this opportunity to offer suggestions relating to several issues that will arise as Virginia moves forward. This is by no means an exhaustive list and we will certainly be happy to provide additional input. In this document, we would like to offer our thoughts on topics such as:

- Equitable access to licenses;
- Fair taxation that creates a competitive marketplace;
- Permit personal cultivation with appropriate protections;
- Municipalities empowered to control time, place, and manner;
- Dept. of Agriculture oversight of plant cultivation; and
- Require odor control technology for indoor cultivation, manufacturing & consumption sites to reduce nuisance complaints
- Energy Use Limitations

Equitable access to licenses

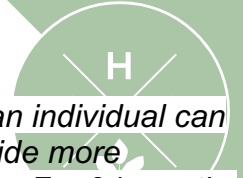
Small and medium size businesses dominate the world economy and according to the World Trade Organization small-and medium-sized enterprises represent over 90 per cent of the business population and 60-70% of employment. This is not different for the emerging cannabis economy and states are setting up their programs to support licensing structures in order to prioritize this type of market place and providing more opportunities for a diverse economy. Virginia should prioritize small and medium size businesses, not monopolies and should base the number of business licenses on consumer demand.

Suggested legislative language.

The department shall issue state license types for cultivators, retailers, testing facilities, processors and microbusiness.

Cultivation operations should be defined by sizes; class A marijuana grower authorizing cultivation of not more than 100 marijuana plants; class B marijuana grower authorizing cultivation of not more than 500 marijuana plants; and class C marijuana grower authorizing cultivation of not more than 2,000 marijuana plants.

A microbusiness is allowed to grow up to 150 cannabis plants, process cannabis into concentrates, edibles, or other infused products, package the finished products, and sell to adults who are over the age of 21.



States can promote diversity in ownership by limiting the number of licenses an individual can hold at one time. In addition, the state can limit the initial license sizes to provide more licensing opportunities for applicants and a more level playing field for startups. For 24 months after initial licensing the department may only accept applications for licensure: for a class A marijuana grower, retailers, testing facilities, processors and microbusiness from persons who are residents of Virginia.

Appropriate Taxation

While it is estimated that tax revenue in the U.S. from cannabis could grow to over \$2B in 2020, it is important that Virginia establish a tax rate that encourages the use of the legal cannabis market while simultaneously discouraging consumers from utilizing the illicit market. We believe Virginia can learn from the experiences of Colorado, Oregon, Washington and California as they established their own regulated taxed systems. After a state sponsored study verified that consumers were still frequenting the illicit market due to a high tax rate, the State of Colorado adjusted their tax rate lower. Colorado has benefited and recently surpassed one billion dollars in total tax revenues collected since adult use was legalized.

Personal Cultivation

We know that some of our consumers use our products to grow cannabis for their personal enjoyment or for the plant's medical benefits. Several states allow for personal cultivation at home or for cultivation in cooperative groups allowing them to share efficiencies of scale to produce the cannabis they desire for medicinal or personal consumption. This approach has proven successful in providing an affordable mechanism to obtain cannabis, allowing patients to grow the cannabis that best treats their conditions. It also facilitates safe production of plants containing only those inputs the grower desires. In several states where local governments still prevent licensed businesses from operating, personal cultivation provides a legal pathway to marijuana over continued solicitation of the illicit market.

Suggested legislative language:

Within a person's residence, possessing, storing, and processing any marijuana produced by marijuana plants cultivated on the premises and cultivating not more than 12 marijuana plants for personal use, provided that no more than 12 marijuana plants are possessed, cultivated, or processed on the premises at once; Plants must be kept in a locked space on the grounds of the private residence not visible from the public right-of-way.

Municipal Control

Overly-restrictive local bans and zoning rules have been used to limit market access and inflate costs. This both drives consumers to the illegal market and undermines the state-regulated system. This is why we believe states should ensure local governments allow state-licensed cannabis businesses to



operate in their jurisdictions. States should adopt measures that allow local governments to address legitimate public health and public safety issues while ensuring the illegal sales are not perpetuated in place of state authorized sales through overly-restrictive zoning requirements.

Local governments should be allowed to regulate time, place, and manner but not completely opt in or out of allowing businesses into their borders. Preventing licensed and regulated businesses from operating allows the illicit market to thrive. California is an example of this, 70% of municipalities still are not allowing licensed legal marijuana operations to operate in their borders. As a result, consumers continue to use illegal pathways to obtain marijuana products.

Department of Agriculture Regulation

The Virginia Department of Agriculture and Consumer Services is the lead state agency in the regulation of the agriculture industry. VDACS possesses the personnel and expertise to lead Virginia's effort to permit commercial and personal cultivation of cannabis. Experience in other states has shown us that the state agency overseeing agriculture is best positioned to handle oversight of cultivation due to their staff's experience working with crops, plant health experts, toxicologists, and other plant health professionals.

Odor Control

Odors from manufacturing and farming operations are common community concerns. Technology exists that can mitigate odors and eliminate complaints for many operators that set up their facilities with proper management and measures.

Suggested legislative language:

All cannabis operations shall be sited and operated in a manner that prevents cannabis odors from being detected offsite. All structures used for cannabis operations shall be equipped and maintained with sufficient odor mitigations systems to prevent cannabis odors from being detected offsite, as follows:

- 1. Each odor mitigation system used in a structure shall be sized appropriately for the volume of the room or rooms for which it mitigates odor emissions, and shall have a rated air flow capacity of cubic feet per minute that is equivalent to that volume, unless otherwise authorized by the department.*
- 2. Each odor mitigation system shall be maintained in working order and shall be in use at all times. Consumables, like filters, used by the odor mitigation system shall be replaced in accordance with the manufacturer guidelines, unless otherwise authorized by the department.*

Energy Use Limitations

Climate controlled agriculture uses complex and integrated systems to create the best growing environment for growers to produce healthy plants and maximum yields. Several well intentioned states have tried to implement energy efficiency standards, however, these restrictions for lighting



and dehumidification fail to account for the current state of technology and the biological factors required to produce healthy plants. Lighting manufacturers have made many advancements in this space and LED technologies are emerging that will help improve energy efficiency in indoor growing. If the state is concerned about energy efficiency impacts we recommend the state create a task force to evaluate and recommend steps to address these concerns as technology continues to evolve and statutes cannot nimbly evolve with.

We applaud the working group for taking the time to learn more about this issue and how Virginia can install major criminal justice reform while creating a new economy. As an American company with over 150 years of business experience, we have many unique insights about this emerging industry and would be happy to continue sharing those perspectives as you continue to consider legislation in Virginia.

Sincerely,

Brian Herrington
Director of Government Affairs