

1 H.499

2 Introduced by Representatives Davis of Washington, Deen of Westminster,

3 Masland of Thetford, Stevens of Shoreham, and Zagar of

4 Barnard

5 Referred to Committee on

6 Date:

7 Subject: Regulated drugs; marijuana

8 Statement of purpose of bill as introduced: This bill proposes:

- 9 1. To create a regulatory structure for the wholesale and retail sale of
10 marijuana that includes licensing and oversight by the Department of Liquor
11 Control.
- 12 2. To establish an excise tax on every wholesale seller of \$50.00 per ounce
13 upon marijuana sold in Vermont.
- 14 3. To permit regulation and licensing for growing industrial hemp in
15 accordance with 6 V.S.A. chapter 34 to proceed regardless of whether federal
16 regulations have been adopted.
- 17 4. To permit an individual who is 21 years of age or older to possess up to two
18 ounces of marijuana and three marijuana plants while maintaining criminal
19 penalties for possession of larger amounts of marijuana and for sale of
20 marijuana outside the regulatory structure established in this act.

1 5. To provide the same penalties for underage possession of marijuana as the
2 current penalties for underage possession of alcohol.

3 An act relating to regulation and taxation of marijuana

4 It is hereby enacted by the General Assembly of the State of Vermont:

5 Sec. 1. FINDINGS

6 The General Assembly finds:

7 (1) More than 70 years of criminalizing marijuana has failed to prevent
8 marijuana use. A study published in the American Journal of Public Health
9 found that no evidence supports the claim that criminalization reduces
10 marijuana use.

11 (2) More than 100 million adults in the United States have used
12 marijuana.

13 (3) There were more than 858,000 arrests for marijuana offenses in the
14 United States in 2009, which is more than the entire population of Vermont.

15 (4) More than 8,100 suspects were taken into custody by federal law
16 enforcement in 2004, amounting to about one percent of all marijuana arrests.
17 This demonstrates that nearly all marijuana arrests occur on the state level and
18 shows that state legislative action has the ability to make a significant impact.

19 (5) Epidemic drug cartel violence in Mexico is partially funded by the
20 profits of marijuana sales in the United States.

1 (6) In June 2005, 530 economists, including three Nobel Laureates,
2 endorsed a study on the costs of marijuana prohibition by Harvard professor
3 Dr. Jeffrey Miron. The study estimated that taxing and regulating marijuana
4 would yield \$10–14 billion in increased revenues and savings, and called for
5 “an open and honest debate about marijuana prohibition.” The economists
6 stated, “We believe such a debate will favor a regime in which marijuana is
7 legal but taxed and regulated like other goods.”

8 (7) A lack of marijuana market regulation ensures that marijuana
9 production and distribution are in the hands of unlicensed growers who are
10 untaxed, unmonitored, and often cultivate on state or federal lands.
11 Unregulated marijuana is not controlled or regulated for safety concerns.

12 (8) There is an alarming racial disparity in marijuana arrests in Vermont,
13 with African-Americans arrested at more than four times the rate of whites in
14 2010, although their marijuana usage rates were very similar.

15 (9) Removing state criminal penalties for adults 21 years of age and
16 older who use or cultivate small amounts of marijuana and for regulated
17 providers would allow police to spend more time preventing and investigating
18 serious crimes such as rape, assault, robbery, burglary, and driving under the
19 influence of alcohol and other drugs and would create substantial savings.

1 (10) States are not required to enforce federal law or to prosecute people
2 for engaging in activities prohibited by federal law, and may choose whether or
3 not to impose state criminal penalties on conduct.

4 Sec. 2. 7 V.S.A. chapter 41 is added to read:

5 CHAPTER 41. REGULATION OF MARIJUANA

6 Subchapter 1. General Provisions

7 § 1101. DEFINITIONS

8 As used in this chapter:

9 (1) “Commissioner” means the Commissioner of Liquor Control.

10 (2) “Department” means the Department of Liquor Control.

11 (3) “Marijuana” means all parts of the plant Cannabis sativa L., whether
12 growing or not, the seeds thereof; the resin extracted from any part of the plant;
13 and every compound, manufacture, salt, derivative, mixture, or preparation of
14 the plant, its seeds, or resin. It does not include the mature stalks of the plant,
15 fiber produced from the stalks, oil or cake made from the seeds of the plant,
16 any other compound, manufacture, salt, derivative, mixture, or preparation of
17 the mature stalks (except the resin extracted from it), fiber, oil, or cake, or the
18 sterilized seed of the plant that is incapable of germination.

19 (4) “Possession limit” means the amount of marijuana possessed at any
20 one time by an individual, which amount can be no more than two ounces of
21 marijuana and three marijuana plants. Only the portion of a marijuana-infused

1 product that is attributable to marijuana shall count toward the possession
2 limits of this chapter. The weight of marijuana that is attributable to
3 marijuana-infused products shall be determined according to methods set forth
4 in rule by the Department of Public Safety in accordance with 18 V.S.A.
5 chapter 86 (therapeutic use of cannabis).

6 (5) “Public place” means any street, alley, park, sidewalk, public
7 building other than individual dwellings, or any place of public
8 accommodation as defined in 9 V.S.A. § 4501.

9 (6) “Retailer” means a person licensed pursuant to section 1102 of this
10 chapter to sell marijuana or marijuana paraphernalia to consumers.

11 (7) “Safety compliance facility” means a facility licensed pursuant to
12 section 1401 of this chapter to provide either training in the cultivation and
13 safe handling of marijuana, including the security and inventory procedures, or
14 testing marijuana for potency and contaminants.

15 (8) “Wholesaler” means a person that is licensed pursuant to 1401
16 section of this chapter to cultivate, prepare, package, and sell marijuana to a
17 retailer or another wholesaler.

18 § 1102. RULEMAKING

19 The Department shall adopt rules to implement this chapter and shall begin
20 accepting applications for wholesalers, retailers, and safety compliance
21 facilities by January 15, 2014.

1 Subchapter 3. Permitted Use; Exemptions

2 § 1201. POSSESSION OF MARIJUANA BY A PERSON AT LEAST 21
3 YEARS OF AGE

4 (a) A person who is 21 years of age or older may:

5 (1) possess marijuana in an amount equal to or less than the possession
6 limit;

7 (2) transfer without remuneration marijuana in an amount equal to or
8 less than the possession limit to another person who is at least 21 years of age;

9 (3) possess marijuana paraphernalia;

10 (4) sell marijuana seeds to a wholesaler;

11 (5) manufacture or possess marijuana paraphernalia or sell marijuana
12 paraphernalia to a person who is at least 21 years of age.

13 (b) Except as otherwise provided in this chapter, a person who engages in
14 activity described in subsection (a) of this section shall not be penalized or
15 sanctioned in any manner by the State or any of its political subdivisions or
16 denied any right or privilege under state law.

17 § 1202. POSSESSION OF MARIJUANA BY A PERSON UNDER
18 21 YEARS OF AGE

19 (a) Except as otherwise provided in this section, a person under 21 years of
20 age who possesses marijuana in an amount equal to or less than the possession
21 limit shall be punished in accordance with the provisions set forth in sections

1 656 and 657 of this title, regarding minors misrepresenting age and procuring,
2 possessing, or consuming liquors.

3 (b) In lieu of the Alcohol Safety Program required pursuant to sections 656
4 and 657 of this title, the Diversion Board shall register the person for a Drug
5 Awareness and Safety Program. The Program, which the Diversion Board
6 shall establish pursuant to this section, shall provide at least four hours of
7 classroom instruction or group discussion and ten hours of community service.
8 The subject matter of the Program shall be specific to the use and abuse of
9 marijuana and other regulated drugs, with particular emphasis on early
10 detection and prevention of drug abuse.

11 § 1203. APPLICABILITY

12 The provisions of this chapter shall not:

13 (1) exempt any person from arrest or prosecution for being under the
14 influence of marijuana while operating a vehicle of any kind;

15 (2) be construed to repeal or modify existing laws or policies concerning
16 the operation of vehicles of any kind while under the influence of marijuana;

17 (3) be construed to prohibit a municipality from providing additional
18 penalties for the use of marijuana in public places;

19 (4) be construed to limit the authority of primary and secondary schools
20 to impose noncriminal penalties for the possession of marijuana on school
21 property; or

1 (5) be construed to allow inmates of a correctional facility to possess or
2 use marijuana or to limit the authority of law enforcement, the courts, and the
3 Department of Corrections to impose penalties on inmates who use marijuana
4 in violation of a court order, conditions of furlough, or rules of a correctional
5 facility.

6 § 1204. SMOKING MARIJUANA PROHIBITED IN PUBLIC PLACES

7 (a) A person shall not smoke marijuana in a public place. A person who
8 violates this subsection shall be assessed a civil penalty of not more than
9 \$150.00.

10 (b) A municipality may impose additional local civil penalties equivalent to
11 those for the consumption of alcohol in a public place.

12 (c) The enforcement of this section by villages, towns, and cities shall be
13 by a local law enforcement officer or a law enforcement officer by contract
14 with the village, town, or city. Law enforcement officers under this subsection
15 shall have met minimum training requirements as provided in 20 V.S.A.
16 § 2358.

17 § 1205. NO ACCOMMODATION REQUIRED; EMPLOYERS;

18 LANDLORDS

19 (a) The provisions of this chapter shall not be construed to require
20 employers to accommodate the use or possession of marijuana, or being under
21 the influence of marijuana, in a place of employment.

1 (b) The provisions of this chapter shall not be construed to prevent a
2 landlord from prohibiting the cultivation of marijuana on the rental premises.

3 (c) A landlord or innkeeper may prohibit the smoking of marijuana on the
4 rented property or in rooms if the landlord or innkeeper posts a notice.

5 § 1206. EXPUNGEMENT OF CRIMINAL HISTORY RECORD

6 On or before December 1, 2013, the Civil Division of the Washington
7 County Superior Court shall issue an order to expunge all records and files
8 related to the arrest, citation, investigation, charge, adjudication of guilt,
9 criminal proceedings, and any sentence related to a conviction for possession
10 of two ounces or less of marijuana or possession of marijuana paraphernalia,
11 provided the person was 21 years of age or older at the time of conviction.
12 Copies of the order shall be sent to each agency, department, or official named
13 therein. Thereafter, the courts, law enforcement officers, agencies, and
14 departments shall reply to any request for information that no record exists
15 with respect to such person upon inquiry in the matter.

16 Subchapter 5. Criminal Penalties

17 § 1301. CRIMINAL POSSESSION, DISPENSING, AND SALE

18 (a) Possession and cultivation.

19 (1) A person knowingly and unlawfully possessing marijuana in an
20 amount that exceeds the possession limit shall be imprisoned not more than six
21 months or fined not more than \$500.00, or both. A person convicted of a

1 second or subsequent offense under this subdivision shall be imprisoned not
2 more than two years or fined not more than \$2,000.00, or both.

3 (2) A person knowingly and unlawfully possessing four ounces or more
4 of marijuana shall be imprisoned not more than three years or fined not more
5 than \$10,000.00, or both.

6 (3) A person knowingly and unlawfully possessing one pound or more
7 of marijuana shall be imprisoned not more than five years or fined not more
8 than \$100,000.00, or both.

9 (4) A person knowingly and unlawfully possessing 10 pounds or more
10 of marijuana shall be imprisoned not more than 15 years or fined not more than
11 \$500,000.00, or both.

12 (b) Selling or dispensing.

13 (1) A person knowingly and unlawfully dispensing marijuana in an
14 amount that exceeds the possession limit or selling any marijuana shall be
15 imprisoned not more than two years or fined not more than \$10,000.00, or
16 both.

17 (2) A person knowingly and unlawfully selling or dispensing four
18 ounces or more of marijuana shall be imprisoned not more than five years or
19 fined not more than \$100,000.00, or both.

1 (3) A person knowingly and unlawfully selling or dispensing one pound
2 or more of marijuana shall be imprisoned not more than 15 years or fined not
3 more than \$500,000.00, or both.

4 (c) Trafficking. A person knowingly and unlawfully possessing 50 pounds
5 or more of marijuana with the intent to sell or dispense the marijuana shall be
6 imprisoned not more than 30 years or fined not more than \$1,000,000.00, or
7 both. There shall be a permissive inference that a person who possesses 50
8 pounds or more of marijuana intends to sell or dispense the marijuana.

9 (d) Exemption. This section shall not apply to marijuana retailers, safety
10 compliance facilities, wholesalers, and their staff members and agents who are
11 in compliance with state law pursuant to this chapter.

12 Subchapter 7. Wholesale and Retail Sale of Marijuana

13 § 1401. LICENSING

14 (a) General. A person shall not engage in the retail or wholesale sale of
15 marijuana, or operate a safety compliance facility, without obtaining a retail
16 license, wholesale license, or safety compliance facility license from the
17 Department. All licenses shall expire on midnight, April 30, of each year.
18 This subchapter shall not apply to the cultivation or furnishing of marijuana by
19 a person in or on his or her dwelling. Applications for licenses shall be
20 submitted on forms provided by the Department.

1 (b)(1) Retail license. Upon application to the Department and payment of
2 the fee required by section 1403 of this title, a person may be granted a retail
3 license authorizing the person to transport, possess, and sell marijuana to the
4 public for consumption off the licensed premises, and to purchase marijuana
5 from a licensed wholesaler.

6 (2) A retailer shall include a safety insert with all marijuana sold. The
7 insert shall be developed or approved by the Department and supplied to the
8 retailer free of charge. The insert shall contain information regarding methods
9 for administering marijuana, the potential dangers of marijuana use, and the
10 symptoms of problematic usage.

11 (3) A retailer shall only sell marijuana in its original wholesale
12 packaging.

13 (c)(1) Wholesale license. Upon application to the Department and payment
14 of the fee required by section 1403 of this title, a person may be granted a
15 wholesale license authorizing the person to cultivate, prepare, package,
16 transport, and sell marijuana to a licensed retailer or licensed wholesaler. A
17 wholesaler may purchase marijuana from another wholesaler to repackage and
18 sell and may purchase marijuana seeds from an adult who is at least 21 years
19 of age.

1 (2) A wholesaler shall create a unique package and label for its
2 marijuana, identifying the wholesaler as the producer. The packaging shall
3 include:

4 (A) the name of the wholesaler;

5 (B) the potency of the marijuana represented by the percentage of
6 tetrahydrocannabinol by mass as determined by a safety compliance facility;

7 (C) a “produced on” date reflecting the date that the wholesaler
8 finished drying and processing the marijuana and placed it in its
9 packaging; and

10 (D) warnings in substantially the following form stating
11 “Consumption of marijuana impairs your ability to drive a car and operate
12 machinery,” “Keep away from children,” and “Possession of marijuana is
13 illegal outside Vermont and under federal law.”

14 (3) Marijuana shall be cultivated only in one or more enclosed, locked
15 facilities, each of which shall be registered with the Department. An
16 “enclosed, locked facility” is either indoors or otherwise not visible to the
17 public and may include a building, room, greenhouse, fully enclosed fenced-in
18 area, or other location enclosed on all sides and equipped with locks or other
19 security devices that permit access only by:

20 (A) employees, agents, or owners of the wholesaler, all of whom
21 shall be 21 years of age or older;

1 (B) government employees performing their official duties;

2 (C) contractors performing labor that does not include marijuana
3 cultivation, packaging, or processing; contractors must be accompanied by an
4 employee, agent, or owner of the wholesaler when they are in areas where
5 marijuana is being grown or stored; or

6 (D) members of the media, elected officials, and other individuals 21
7 years of age or older touring the facility, if they are accompanied by an
8 employee, agent, or owner of the wholesaler.

9 (d) Safety compliance facility license. Upon application to the Department
10 and payment of the fee required by section 1403 of this title, a person may be
11 granted a safety compliance facility license. A safety compliance facility
12 license shall allow the holder to acquire, possess, analyze, test for potency, and
13 transport marijuana obtained from wholesalers, retailers, or, if the quantity of
14 marijuana is two ounces or less, an adult who is 21 years of age or older; to
15 provide training relating to the cultivation and handling of marijuana, including
16 security and inventory procedures; and to receive compensation for analytical
17 testing of marijuana, including for contaminants and potency.

18 § 1402. SUSPENSION OR REVOCATION OF LICENSE;

19 ADMINISTRATIVE PENALTY

20 The Commissioner may suspend or revoke any license granted under this
21 chapter or impose an administrative penalty of up to \$2,500.00, or both, in the

1 event that the licensee is in violation of this chapter or any rule or regulation
2 adopted by the Department.

3 § 1403. FEES

4 (a) The following license fees shall be paid:

5 (1) For a retail marijuana license: \$2,000.00.

6 (2) For a wholesale marijuana license: \$5,000.00.

7 (3) For a safety compliance facility license: \$2,000.00.

8 (b) The fees collected under this section shall be used by the Department to
9 administer this chapter.

10 § 1404. LICENSEE EDUCATION

11 (a) A license shall not be granted under this chapter until the applicant has
12 met with a departmental investigator for the purpose of being informed of the
13 Vermont laws and rules pertaining to the possession, purchase, storage, and
14 sale of marijuana.

15 (b) Each licensee shall complete an enforcement seminar every three years
16 conducted by the Department. A license shall not be renewed unless the
17 records of the Department show that the licensee has complied with the terms
18 of this subsection.

19 (c) Each licensee shall ensure that every employee who is involved in the
20 sale of marijuana complete a training program approved by the Department
21 before the employee begins selling marijuana and at least once every 24

1 months thereafter. Each licensee shall maintain written documentation, signed
2 by each employee trained, of each training program conducted. A licensee
3 may comply with this requirement by conducting its own training program on
4 its premises, using information and materials furnished by the Department. A
5 licensee who fails to comply with the requirements of this subsection shall be
6 subject to a suspension of no less than one day of the license issued under this
7 chapter.

8 Sec. 3. 32 V.S.A. chapter 242 is added to read:

9 CHAPTER 242. TAX ON MARIJUANA

10 § 10311. TAX IMPOSED

11 (a) There is imposed an excise tax on every wholesale seller of \$50.00 per
12 ounce upon marijuana sold in the State.

13 (b) Any wholesale seller liable for the tax imposed by this section shall, on
14 or before the 15th day of every month, return to the Commissioner, under oath
15 of a person with legal authority to bind the wholesaler, a statement containing
16 its name and place of business, the quantity of marijuana subject to the excise
17 tax imposed by this chapter sold in the preceding month, and any other
18 information required by the Commissioner, along with the tax due.

19 (c) Every wholesale seller shall maintain, for not less than three years,
20 accurate records showing all transactions subject to tax liability under this
21 chapter. The wholesaler shall separately state the tax amount on the invoice to

1 the retailers. These records are subject to inspection by the Commissioner at
2 all reasonable times during normal business hours.

3 (d) The following sales shall be exempt from the tax imposed under this
4 section:

5 (1) sales under any circumstances in which the State is without power to
6 impose the tax; and

7 (2) sales by a wholesaler to another wholesaler and not intended for
8 resale to a retailer or consumer if the purchasing wholesaler holds a license
9 issued under 7 V.S.A. § 1401(c) and if the sales invoice clearly states the sale
10 is exempt.

11 § 10312. PENALTIES

12 Any person subject to the provisions of this chapter who fails to pay the tax
13 imposed by this chapter by the date that payment is due or fails to submit a
14 return as required by this chapter is subject to the provisions of section 3202
15 (interest and penalties) of this title.

16 § 10313. APPEALS

17 Any person aggrieved by an action taken by the Commissioner under this
18 chapter may appeal in writing to the Commissioner for a review. The
19 Commissioner shall then grant a hearing under 3 V.S.A. chapter 25 and notify
20 the aggrieved person in writing of his or her determination. The
21 Commissioner's determination may be appealed within 30 days to the Superior

1 Court of the county of this State in which the taxpayer resides or has a place of
2 business or to the Superior Court of Washington County.

3 Sec. 4. 6 V.S.A. § 561 is amended to read:

4 § 561. INTENT

5 The intent of this ~~act~~ chapter is to establish policy and procedures for
6 growing industrial hemp in Vermont so that farmers and other businesses in
7 the Vermont agricultural industry can take advantage of this market
8 opportunity ~~when federal regulations permit.~~

9 Sec. 5. 6 V.S.A. § 567 is added to read:

10 § 567. IMMUNITY

11 (a) It is not a violation of state or local law for a person to plant, grow,
12 harvest, possess, process, sell, and buy industrial hemp if that person does so in
13 compliance with this chapter and rules adopted in accordance with section 566
14 of this title.

15 (b) It is not a violation of state or local law for a person to purchase and
16 possess hemp products.

17 Sec. 6. 4 V.S.A. § 1102 is amended to read:

18 § 1102. JUDICIAL BUREAU; JURISDICTION

19 * * *

20 (b) The ~~judicial bureau~~ Judicial Bureau shall have jurisdiction of the
21 following matters:

1 * * *

2 (24) Violations of 7 V.S.A. chapter 41, relating to regulation of
3 marijuana.

4 Sec. 7. 7 V.S.A. § 61 is amended to read:

5 § 61. RESTRICTIONS; EXCEPTIONS

6 A person, partnership, association, or corporation shall not furnish or sell, or
7 expose or keep with intent to sell, any malt or vinous beverage, or spirits, or
8 marijuana, or manufacture, sell, barter, transport, import, export, deliver,
9 prescribe, furnish, or possess any alcohol or marijuana, except as authorized by
10 this title. However, this chapter shall not apply to the furnishing of such
11 beverages ~~or~~ spirits, or marijuana by a person in his or her private dwelling,
12 ~~unless to an habitual drunkard~~, or unless such dwelling becomes a place of
13 public resort, nor to the sale of fermented cider by the barrel or cask of not less
14 than 32 liquid gallons capacity, provided the same is delivered and removed
15 from the vendor's premises in such barrel or cask at the time of such sale, nor
16 to the use of sacramental wine, nor to the furnishing, purchase, sale, barter,
17 transportation, importation, exportation, delivery, prescription, or possession of
18 alcohol for manufacturing, mechanical, medicinal, and scientific purposes,
19 provided the same is done under and in accordance with rules ~~and regulations~~
20 made and permits issued by the ~~liquor control board~~ Liquor Control Board as
21 hereinafter provided.

1 Sec. 8. 18 V.S.A. § 4201(15) is amended to read:

2 (15) “Marijuana” ~~means any plant material of the genus cannabis or any~~
3 ~~preparation, compound, or mixture thereof except sterilized seeds of the plant~~
4 ~~and fiber produced from the stalks~~ shall have the same meaning as provided in
5 7 V.S.A. § 1101.

6 Sec. 9. 18 V.S.A. § 4472(8) is amended to read:

7 (8) “Marijuana” shall have the same meaning as provided in ~~subdivision~~
8 ~~4201(15) of this title~~ 7 V.S.A. § 1101.

9 Sec. 10. REPEAL

10 18 V.S.A. § 4230 (marijuana) is repealed.

11 Sec. 11. CONSTRUCTION

12 Nothing in this act shall be construed to repeal or modify state law
13 concerning the therapeutic use of cannabis as provided in 18 V.S.A.
14 chapter 86.

15 Sec. 12. EFFECTIVE DATE

16 This act shall take effect on July 1, 2013.