H.499

Introduced by Representatives Davis of Washington, Deen of Westminster, Masland of Thetford, Stevens of Shoreham, and Zagar of Barnard

Referred to Committee on

Date:

Subject: Regulated drugs; marijuana

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

1. To create a regulatory structure for the wholesale and retail sale of marijuana that includes licensing and oversight by the Department of Liquor Control.

2. To establish an excise tax on every wholesale seller of $50.00 per ounce upon marijuana sold in Vermont.

3. To permit regulation and licensing for growing industrial hemp in accordance with 6 V.S.A. chapter 34 to proceed regardless of whether federal regulations have been adopted.

4. To permit an individual who is 21 years of age or older to possess up to two ounces of marijuana and three marijuana plants while maintaining criminal penalties for possession of larger amounts of marijuana and for sale of marijuana outside the regulatory structure established in this act.
5. To provide the same penalties for underage possession of marijuana as the current penalties for underage possession of alcohol.

An act relating to regulation and taxation of marijuana

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

Sec. 1. FINDINGS

The General Assembly finds:

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

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

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

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

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

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

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

(9) Removing state criminal penalties for adults 21 years of age and older who use or cultivate small amounts of marijuana and for regulated providers would allow police to spend more time preventing and investigating serious crimes such as rape, assault, robbery, burglary, and driving under the influence of alcohol and other drugs and would create substantial savings.
(10) States are not required to enforce federal law or to prosecute people for engaging in activities prohibited by federal law, and may choose whether or not to impose state criminal penalties on conduct.

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

CHAPTER 41. REGULATION OF MARIJUANA


§ 1101. DEFINITIONS

As used in this chapter:

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

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

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

(4) “Possession limit” means the amount of marijuana possessed at any one time by an individual, which amount can be no more than two ounces of marijuana and three marijuana plants. Only the portion of a marijuana-infused
product that is attributable to marijuana shall count toward the possession limits of this chapter. The weight of marijuana that is attributable to marijuana-infused products shall be determined according to methods set forth in rule by the Department of Public Safety in accordance with 18 V.S.A. chapter 86 (therapeutic use of cannabis).

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

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

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

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

§ 1102. RULEMAKING

The Department shall adopt rules to implement this chapter and shall begin accepting applications for wholesalers, retailers, and safety compliance facilities by January 15, 2014.
Subchapter 3. Permitted Use; Exemptions

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

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

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

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

(3) possess marijuana paraphernalia;

(4) sell marijuana seeds to a wholesaler;

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

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

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

(a) Except as otherwise provided in this section, a person under 21 years of age who possesses marijuana in an amount equal to or less than the possession limit shall be punished in accordance with the provisions set forth in sections
656 and 657 of this title, regarding minors misrepresenting age and procuring, possessing, or consuming liquors.

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

§ 1203. APPLICABILITY

The provisions of this chapter shall not:

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

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

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

(4) be construed to limit the authority of primary and secondary schools to impose noncriminal penalties for the possession of marijuana on school property; or
(5) be construed to allow inmates of a correctional facility to possess or
use marijuana or to limit the authority of law enforcement, the courts, and the
Department of Corrections to impose penalties on inmates who use marijuana
in violation of a court order, conditions of furlough, or rules of a correctional
facility.
§ 1204. SMOKING MARIJUANA PROHIBITED IN PUBLIC PLACES
(a) A person shall not smoke marijuana in a public place. A person who
violates this subsection shall be assessed a civil penalty of not more than
$150.00.
(b) A municipality may impose additional local civil penalties equivalent to
those for the consumption of alcohol in a public place.
(c) The enforcement of this section by villages, towns, and cities shall be
by a local law enforcement officer or a law enforcement officer by contract
with the village, town, or city. Law enforcement officers under this subsection
shall have met minimum training requirements as provided in 20 V.S.A.
§ 2358.
§ 1205. NO ACCOMMODATION REQUIRED; EMPLOYERS;
LANDLORDS
(a) The provisions of this chapter shall not be construed to require
employers to accommodate the use or possession of marijuana, or being under
the influence of marijuana, in a place of employment.
(b) The provisions of this chapter shall not be construed to prevent a landlord from prohibiting the cultivation of marijuana on the rental premises.

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

§ 1206. EXPUNGEMENT OF CRIMINAL HISTORY RECORD

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

Subchapter 5. Criminal Penalties

§ 1301. CRIMINAL POSSESSION, DISPENSING, AND SALE

(a) Possession and cultivation.

(1) A person knowingly and unlawfully possessing marijuana in an amount that exceeds the possession limit shall be imprisoned not more than six months or fined not more than $500.00, or both. A person convicted of a
second or subsequent offense under this subdivision shall be imprisoned not
more than two years or fined not more than $2,000.00, or both.

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

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

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

(b) Selling or dispensing.

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

(2) A person knowingly and unlawfully selling or dispensing four
ounces or more of marijuana shall be imprisoned not more than five years or
fined not more than $100,000.00, or both.
(3) A person knowingly and unlawfully selling or dispensing one pound or more of marijuana shall be imprisoned not more than 15 years or fined not more than $500,000.00, or both.

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

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

Subchapter 7. Wholesale and Retail Sale of Marijuana

§ 1401. LICENSING

(a) General. A person shall not engage in the retail or wholesale sale of marijuana, or operate a safety compliance facility, without obtaining a retail license, wholesale license, or safety compliance facility license from the Department. All licenses shall expire on midnight, April 30, of each year. This subchapter shall not apply to the cultivation or furnishing of marijuana by a person in or on his or her dwelling. Applications for licenses shall be submitted on forms provided by the Department.
(b)(1) Retail license. Upon application to the Department and payment of the fee required by section 1403 of this title, a person may be granted a retail license authorizing the person to transport, possess, and sell marijuana to the public for consumption off the licensed premises, and to purchase marijuana from a licensed wholesaler.

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

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

(c)(1) Wholesale license. Upon application to the Department and payment of the fee required by section 1403 of this title, a person may be granted a wholesale license authorizing the person to cultivate, prepare, package, transport, and sell marijuana to a licensed retailer or licensed wholesaler. A wholesaler may purchase marijuana from another wholesaler to repackage and sell and may purchase marijuana seeds from an adult who is at least 21 years of age.
(2) A wholesaler shall create a unique package and label for its marijuana, identifying the wholesaler as the producer. The packaging shall include:

(A) the name of the wholesaler;

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

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

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

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

(A) employees, agents, or owners of the wholesaler, all of whom shall be 21 years of age or older:
(B) government employees performing their official duties;

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

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

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

§ 1402. SUSPENSION OR REVOCATION OF LICENSE; ADMINISTRATIVE PENALTY

The Commissioner may suspend or revoke any license granted under this chapter or impose an administrative penalty of up to $2,500.00, or both, in the
event that the licensee is in violation of this chapter or any rule or regulation
adopted by the Department.

§ 1403. FEES
(a) The following license fees shall be paid:
(1) For a retail marijuana license: $2,000.00.
(2) For a wholesale marijuana license: $5,000.00.
(3) For a safety compliance facility license: $2,000.00.
(b) The fees collected under this section shall be used by the Department to administer this chapter.

§ 1404. LICENSEE EDUCATION
(a) A license shall not be granted under this chapter until the applicant has met with a departmental investigator for the purpose of being informed of the Vermont laws and rules pertaining to the possession, purchase, storage, and sale of marijuana.
(b) Each licensee shall complete an enforcement seminar every three years conducted by the Department. A license shall not be renewed unless the records of the Department show that the licensee has complied with the terms of this subsection.
(c) Each licensee shall ensure that every employee who is involved in the sale of marijuana complete a training program approved by the Department before the employee begins selling marijuana and at least once every 24
months thereafter. Each licensee shall maintain written documentation, signed by each employee trained, of each training program conducted. A licensee may comply with this requirement by conducting its own training program on its premises, using information and materials furnished by the Department. A licensee who fails to comply with the requirements of this subsection shall be subject to a suspension of no less than one day of the license issued under this chapter.

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

CHAPTER 242. TAX ON MARIJUANA

§ 10311. TAX IMPOSED

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

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

(c) Every wholesale seller shall maintain, for not less than three years, accurate records showing all transactions subject to tax liability under this chapter. The wholesaler shall separately state the tax amount on the invoice to
the retailers. These records are subject to inspection by the Commissioner at
all reasonable times during normal business hours.

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

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

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

§ 10312. PENALTIES

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

§ 10313. APPEALS

Any person aggrieved by an action taken by the Commissioner under this
chapter may appeal in writing to the Commissioner for a review. The
Commissioner shall then grant a hearing under 3 V.S.A. chapter 25 and notify
the aggrieved person in writing of his or her determination. The
Commissioner’s determination may be appealed within 30 days to the Superior
Court of the county of this State in which the taxpayer resides or has a place of
business or to the Superior Court of Washington County.

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

§ 561. INTENT

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

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

§ 567. IMMUNITY

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

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

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

§ 1102. JUDICIAL BUREAU; JURISDICTION

* * *

(b) The judicial bureau Judicial Bureau shall have jurisdiction of the
following matters:
(24) Violations of 7 V.S.A. chapter 41, relating to regulation of marijuana.

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

§ 61. RESTRICTIONS; EXCEPTIONS

A person, partnership, association, or corporation shall not furnish or sell, or expose or keep with intent to sell, any malt or vinous beverage, or spirits, or marijuana, or manufacture, sell, barter, transport, import, export, deliver, prescribe, furnish, or possess any alcohol or marijuana, except as authorized by this title. However, this chapter shall not apply to the furnishing of such beverages or spirits, or marijuana by a person in his or her private dwelling, unless to an habitual drunkard, or unless such dwelling becomes a place of public resort, nor to the sale of fermented cider by the barrel or cask of not less than 32 liquid gallons capacity, provided the same is delivered and removed from the vendor’s premises in such barrel or cask at the time of such sale, nor to the use of sacramental wine, nor to the furnishing, purchase, sale, barter, transportation, importation, exportation, delivery, prescription, or possession of alcohol for manufacturing, mechanical, medicinal, and scientific purposes, provided the same is done under and in accordance with rules and regulations made and permits issued by the Liquor Control Board as hereinafter provided.
Sec. 8. 18 V.S.A. § 4201(15) is amended to read:

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

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

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

Sec. 10. REPEAL

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

Sec. 11. CONSTRUCTION

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

Sec. 12. EFFECTIVE DATE

This act shall take effect on July 1, 2013.