

1 S.306

2 Introduced by Senator Zuckerman

3 Referred to Committee on

4 Date:

5 Subject: Regulated drugs; marijuana

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

7 (1) create a regulatory structure for the wholesale and retail sale of marijuana

8 that includes licensing and oversight by the Department of Liquor Control;

9 (2) establish an excise tax on every wholesale seller of \$50.00 per ounce upon  
10 marijuana sold in Vermont;

11 (3) permit an individual who is 21 years of age or older to possess up to two  
12 ounces of marijuana and three marijuana plants while maintaining criminal

13 penalties for possession of larger amounts of marijuana and for sale of  
14 marijuana outside the regulatory structure established in this bill; and

15 (4) provide the same penalties for underage possession of marijuana as the  
16 current penalties for underage possession of alcohol.

17 An act relating to regulation and taxation of marijuana

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

2 Sec. 1. FINDINGS

3 The General Assembly finds:

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

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

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

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

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

18 (6) In June 2005, 530 economists, including three Nobel Laureates,  
19 endorsed a study on the costs of marijuana prohibition by Harvard professor  
20 Dr. Jeffrey Miron. The study estimated that taxing and regulating marijuana  
21 would yield \$10–14 billion in increased revenues and savings, and called for

1 “an open and honest debate about marijuana prohibition.” The economists  
2 stated, “We believe such a debate will favor a regime in which marijuana is  
3 legal but taxed and regulated like other goods.”

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

8 (8) There is an alarming racial disparity in marijuana arrests in Vermont,  
9 with African-Americans arrested at more than four times the rate of whites in  
10 2010, although their marijuana usage rates were very similar.

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

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

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

2 CHAPTER 41. REGULATION OF MARIJUANA

3 Subchapter 1. General Provisions

4 § 1101. DEFINITIONS

5 As used in this chapter:

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

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

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

16 (4) “Possession limit” means the amount of marijuana possessed at any  
17 one time by an individual, which amount can be no more than two ounces of  
18 marijuana and three marijuana plants. Only the portion of a marijuana-infused  
19 product that is attributable to marijuana shall count toward the possession  
20 limits of this chapter. The weight of marijuana that is attributable to  
21 marijuana-infused products shall be determined according to methods set forth

1 in rule by the Department of Public Safety in accordance with 18 V.S.A.  
2 chapter 86 (therapeutic use of cannabis).

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

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

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

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

15 § 1102. RULEMAKING

16 The Department shall adopt rules to implement this chapter and shall begin  
17 accepting applications for wholesalers, retailers, and safety compliance  
18 facilities by January 15, 2015.

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  
6                    possession 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  
5           correctional 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  
9           than \$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, 2014, 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,  
16 or 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  
8           50 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  
12       wholesale 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  
3 shall 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

1 24 months thereafter. Each licensee shall maintain written documentation,  
2 signed by each employee trained, of each training program conducted. A  
3 licensee may comply with this requirement by conducting its own training  
4 program on its premises, using information and materials furnished by the  
5 Department. A licensee who fails to comply with the requirements of this  
6 subsection shall be subject to a suspension of no less than one day of the  
7 license issued under this 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  
4 this 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 on or before the date that payment is due or fails to  
14 submit a return as required by this chapter is subject to the provisions of  
15 section 3202 (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. 4 V.S.A. § 1102 is amended to read:

4 § 1102. JUDICIAL BUREAU; JURISDICTION

5 \* \* \*

6 (b) The Judicial Bureau shall have jurisdiction of the following matters:

7 \* \* \*

8 (25) Violations of 7 V.S.A. chapter 41, relating to regulation  
9 of marijuana.

10 Sec. 5. 7 V.S.A. § 61 is amended to read:

11 § 61. RESTRICTIONS; EXCEPTIONS

12 A person, partnership, association, or corporation shall not furnish or sell, or  
13 expose or keep with intent to sell, any malt or vinous beverage, or spirits, or  
14 marijuana, or manufacture, sell, barter, transport, import, export, deliver,  
15 prescribe, furnish, or possess any alcohol or marijuana, except as authorized by  
16 this title. However, this chapter shall not apply to the furnishing of such  
17 beverages ~~or~~, spirits, or marijuana by a person in his or her private dwelling or  
18 unless such dwelling becomes a place of public resort, nor to the sale of  
19 fermented cider by the barrel or cask of not less than 32 liquid gallons  
20 capacity, provided the same is delivered and removed from the vendor's  
21 premises in such barrel or cask at the time of such sale, nor to the use of

1 sacramental wine, nor to the furnishing, purchase, sale, barter, transportation,  
2 importation, exportation, delivery, prescription, or possession of alcohol for  
3 manufacturing, mechanical, medicinal, and scientific purposes, provided the  
4 same is done under and in accordance with rules ~~and regulations~~ made and  
5 licenses and permits issued by the Liquor Control Board as  
6 hereinafter provided.

7 Sec. 6. 18 V.S.A. § 4201(15) is amended to read:

8 (15) “Marijuana” ~~means any plant material of the genus Cannabis or any~~  
9 ~~preparation, compound, or mixture thereof except:~~

10 (A) ~~sterilized seeds of the plant;~~

11 (B) ~~fiber produced from the stalks; or~~

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

13 shall have the same meaning as provided in 7 V.S.A. § 1101.

14 Sec. 7. 18 V.S.A. § 4472(8) is amended to read:

15 (8) “Marijuana” shall have the same meaning as provided in ~~subdivision~~  
16 ~~4201(15) of this title~~ 7 V.S.A. § 1101.

17 Sec. 8. REPEAL

18 18 V.S.A. §§ 4230 (marijuana) and 4230a (marijuana possession by a  
19 person 21 years of age or older; civil violation) are repealed.

1       Sec. 9. CONSTRUCTION

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

5       Sec. 10. EFFECTIVE DATE

6           This act shall take effect on July 1, 2014.