

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2015

Bill Number: S.95 Name of Bill: An act relating to regulation and taxation of marijuana

Agency/Dept: Vermont State Police Author of Bill Det. Robert McKenna
Review: _____

Date of Bill Review: March 6, 2015 Related Bills and Key Players: H 277 – Taxation of marijuana

Status of Bill: (check one)

☒ Upon Introduction ☐ As passed by 1st body ☐ As passed by both bodies

Recommended Position:

☐ Support ☐ Oppose ☒ Remain Neutral ☐ Support with modifications identified in # 8 below

Analysis of Bill

1. Summary of bill and issue it addresses. *Describe what the bill is intended to accomplish and why.*

This bill proposes to:

1. Permit a person who is 21 years of age or older to possess limited amounts of marijuana for personal use, while retaining civil and criminal penalties for possession above the limits and for unauthorized dispensing or sale of marijuana.
2. Provide civil penalties for a person who is under 21 years of age who possesses marijuana or attempts to procure marijuana from a registered marijuana establishment.
3. Establish a Marijuana Control Board within the Department of Public Safety. The Board would be responsible for rulemaking and administering registrations for marijuana establishments.
4. Create a regulatory structure for the cultivation, production, testing, and sale of marijuana that includes oversight by the Marijuana Control Board and the Department of Public Safety.
5. Permit a nonprofit dispensary or a benefit corporation to register with the Marijuana Control Board as a Marijuana Cultivator, Marijuana Product Manufacturer, Marijuana Testing Laboratory, Marijuana Retailer, or Marijuana Lounge.
6. Permit municipalities to prohibit or regulate marijuana establishments.
7. Retain criminal penalties for operating a motor vehicle under the influence of a drug.
8. Prohibit smoking marijuana in a public place.
9. Establish an excise tax of \$40.00 per ounce on marijuana flowers, \$15.00 per ounce on any other marijuana, and \$25.00 on each immature marijuana plant sold by a cultivator.
10. Distribute funds generated by marijuana taxes to initiatives focusing on public education about the safety risks of alcohol, tobacco, and marijuana, evidence-based criminal justice programs and substance abuse treatment services, law enforcement, municipalities that have marijuana establishments in their jurisdictions, the Youth Substance Abuse Safety Program, and academic and medical research on marijuana.

2. Is there a need for this bill? *Please explain why or why not.*

Currently, there is not a need for this bill to be enacted and the notion that a necessity exists, as identified by the legislature, is predicated on inaccurate information.

Those who support this legislation argue that because marijuana is commonly used in Vermont, with an estimated 80,000 residents having used marijuana in the last month (Findings of the General Assembly) and because more than 75 years of criminalizing marijuana has failed to prevent marijuana use, (citing a study published in the American Journal of Public Health that found no evidence supporting the claim that criminalization reduces marijuana use), the use of marijuana should be treated in the same manner as the use of alcohol; the abuse of either treated as a public health matter; and irresponsible use of either that causes harm to others sanctioned with penalties. This approach would allow for revenue to be generated and to be used to support prevention, education, treatment, and law enforcement efforts resulting in a net reduction in public harm and an overall improvement in public safety. In light of these arguments, the Department of Public Safety offers the following counterarguments and has identified the following concerns.

According to the US Census Bureau, the population of Vermont in 2014 was estimated to be 626,562 people, approximately 80% of which were older than 18 years old (approximately 501,249 people according to a 2013 statistic). Assuming the accuracy of these statistics, only approximately 16% of the adult population used marijuana within the past month. However, it is not known whether the statistical sample above accounted for those that are using medical marijuana or if the age of the responder was taken into account, but according to the data above, the assertion that marijuana is a commonly used drug in Vermont appears to be a completely subjective opinion based upon one's definition of "common."

Furthermore, despite the apparent desire for this bill to be enacted by the General Assembly, they identified eight legitimate federal concerns about marijuana reform for which they failed to adequately recommend remedies. These concerns are:

- A.) The distribution of marijuana to persons less than 21 years of age;
- B.) Revenue from sale of marijuana going to criminal enterprises;
- C.) Diversion of marijuana to states that do not permit possession of marijuana;
- D.) State authorized marijuana activity from being used as a cover or pretext for trafficking of other illegal drugs or activity;
- E.) Violence and the use of firearms in the cultivation and distribution of marijuana;
- F.) Drugged driving and the exacerbation of any other adverse public health consequences of marijuana use;
- G.) Growing marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- H.) Possession or use of marijuana on federal property.

In addition to these concerns, the Department of Public Safety is concerned about the potential impact that this legislation will have on the youth of Vermont. The available research suggests that marijuana use is especially harmful to teenagers. In that vein, reducing the ability of Vermont's youths to obtain marijuana is a priority.

Currently, the youth of Vermont "has the highest prevalence of past 30 day marijuana use among 12-17 year olds" when compared to all other states (Vermont Department of Health) and according to the National Institute on Drug Abuse, as the perceived danger associated with marijuana use decreases among this group, the amount of marijuana use increases. Despite the legislative intent to prevent persons under the age of 21 from acquiring marijuana, it implies that marijuana is not as harmful as it was once thought to be.

Moreover, the enactment of this legislation creates an unfortunate marketplace in which marijuana obtained in legal fashion by those older than 21 can sell it to those under 21 for a significant profit. The potency of the legally obtained marijuana is likely to be much greater than the potency of the "homegrown" variety and therefore a more attractive product. In the same manner that alcohol is readily available to persons under 21 and tobacco to persons under 18, the ability to prevent someone under the age of 21 from procuring marijuana is a monumental if not impossible task.

Other potential problems include the increase of illicit marijuana trafficking in Vermont. The legislation allows for individuals to transfer up to one ounce of marijuana (without remuneration) to another individual greater than 21 years of age. This language virtually allows the sale of up to an ounce of marijuana between persons older than 21. In order for this transfer to be illegal, law enforcement must be able to demonstrate that the transferor received money in exchange for the drugs; a most difficult if not impossible feat. With this type of impunity, the job of marijuana traffickers will become much easier, more attractive, more profitable, and will allow them to easily undercut the sale price of the legal marijuana.

With an increase in marijuana use, the Department of Public Safety fears an increase of marijuana impaired drivers. In a December 9th, 2010 report from the National Survey on Drug Use & Health, Vermont ranked #2 in the Nation when it came to (past year) drugged driving rates. The state of Rhode Island had the highest rate at (7.8 percent) and Vermont was a close second at (6.6 percent). In 2008 marijuana was also the #1 drug (besides alcohol) that was found in the system of drivers involved in fatal accidents. With the passage of this legislation, the availability of marijuana is going to increase, and with it, the likelihood that people will use it prior to and during their operation of motor vehicles.

The Department of Public Safety also fears that this legislation will have a negative impact on law enforcement's ability to detect and deter crime as it relates to issues of search and seizure. The ability for law enforcement officers to conduct a lawful search based on the presence of marijuana is instrumental in uncovering crimes of greater magnitude. Members of the Vermont Drug Task Force have told me that their ability to disrupt drug trafficking into the state (specifically heroin and cocaine base) is enhanced greatly by the ability to enforce possession of marijuana laws. That ability will all but disappear with the enactment of this legislation. No longer will the mere presence of marijuana be sufficient cause to delve deeper into investigative actions and crimes of all types will pass under the nose of law enforcement without the ability to combat it. In addition, law enforcement officers will have a more difficult task identifying people suspected of crimes. Law enforcement officers use all the tools available to them to promote public safety. One of these tools is the ability to take into custody someone that is committing a witnessed misdemeanor (Rule 3) for the purpose of identifying and processing him/her. This tactic is extremely important for police and especially for those officers charged with investigating drug related offenses in the state. The enactment of this legislation strips this ability away from police, making their jobs more difficult, and putting public safety at risk.

3. What are likely to be the fiscal and programmatic implications of this bill for this Department?

As discussed above, one of the fears associated with the passage of this legislation, is the increase in the presence of Butane Hash Oil (BHO) and the associated labs in which it is manufactured. These labs present many of the same volatile risks that crystal methamphetamine labs do. As a result, law enforcement officers will be called upon to respond to these labs to ensure public safety, and to assist those in need following serious and sometimes fatal injuries. The costs associated with these responses include (but are not limited to) training logistics and hours, overtime pay, pay for injuries (short and long term) incurred during these investigations, and specialized equipment.

With respect to programming implications, the Department of Public Safety may need to create a specialized team to investigate, eradicate and clean up these labs, or at the very least, increase the number of members on the Clandestine Lab team. Either of these options represents an increase in costs.

4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?

The passage of this legislation would create initial costs that will include the salaries of the Board Members, and those charged with enforcing this legislation (as well as incidentals required for both groups to

effectively carry out their duties). These costs will likely be funded in the future by the taxes collected as a result of this legislation (garnered from the state's general fund where 60% of the revenue will be sent).

5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it? (for example, public, municipalities, organizations, business, regulated entities, etc)

Some potential costs might include those incurred for the medical treatment of those using marijuana to excess or in volatile forms (butane hash oil); the clean-up of butane hash oil laboratories; the medical treatment of individuals involved in marijuana related motor vehicle crashes resulting in injury; and the treatment of those seeking to end their addiction to marijuana.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why?

Small business owners who seek to own a marijuana dispensary will likely support the legislation as an option to start and run their own business.

People who smoke marijuana illegally will likely support the legislation because it will legitimize their current illegal behavior.

People who believe that the revenue generated from marijuana sales will offset the state's debt will likely support it for just that reason.

6.2 Who else is likely to oppose the proposal and why?

Health care professionals that are likely to see an increase in marijuana related injuries will likely oppose this legislation as their time will be stretched thinner than it already is.

Parents with young children will likely oppose this legislation on the grounds that it will be more readily available to their children and will be more prevalent in society, suggesting to them that the use of marijuana is not harmful.

7. Rationale for recommendation: *Justify recommendation stated above.*

This bill seeks to legalize, regulate and tax marijuana use under the legislative guidelines discussed above and aims to follow in the footsteps of three other states that have passed similar laws (Washington, Colorado and Alaska). That all three of these states have implemented these changes within the recent past, there are no significant longitudinal studies regarding the laws' effect on public health and/or public safety. As a result, the Vermont Department of Public Safety cites a lack of sufficient information to offer an informed opinion regarding this legislation. Instead, the Department suggests a more in depth examination of both the long and short term effects witnessed in these three other states so that if this type of legislation is enacted, it can be done in a manner that allows Vermonters to reap the benefits and avoid the pitfalls discovered by other states. Passing this legislation is not a necessity and prudence should dictate the speed with which it is pursued.

8. Specific modifications that would be needed to recommend support of this bill: *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*

The Department of Public Safety does not believe there are any simple modifications that can be offered to change its position on this legislation.

9. Gubernatorial appointments to board or commission?

None at this time.

Secretary/Commissioner has reviewed this document

A handwritten signature in blue ink, appearing to be "K. Gray", is written over a faint rectangular stamp.

Date: 4/7/15