

**Model Legislation:  
Rice University's Baker Institute and  
the South Texas College of Law  
Drug Policy Collaboration 2013**

Part 6 of 8: Regulation of Marijuana Retailers and Commercial Producers

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The following is one of several collections of model statutes produced by the legislation class at South Texas College of Law (STCL) during the spring 2013 semester. The class was offered in collaboration with Rice University's Baker Institute. Students attended lectures on drug policy, legislation, and statutory interpretation conducted by Dru Stevenson, J.D., STCL professor and Baker Institute Scholar; Nathan Jones, Ph.D., Alfred C. Glassell III Postdoctoral Fellow in Drug Policy; and William Martin, Ph.D., Harry and Hazel Chavanne Senior Fellow in Religion and Public Policy and director of the Baker Institute's Drug Policy Program. Each student completed a project addressing one aspect of marijuana legalization or postlegalization regulation through a model statute or ordinance. Links to each of the model statutes can be found at [bakerinstitute.org/model-legislation-2013](http://bakerinstitute.org/model-legislation-2013). Neither the Baker Institute nor the South Texas College of Law endorse any particular policy. The model legislation has not undergone editorial review by the Baker Institute.

## **Introduction to This Collection**

By Dru Stevenson, J.D., Helen and Harry Hutchins Research Professor, South Texas College of Law, and Baker Institute Scholar

As part of our project exploring the legal ramifications of a postlegalization world, some students focused on the commercial regulation related to marijuana production and retail. A separate collection focuses on permits and licensing. Here, the issues are commercialization; industry consolidation; and the option of having exclusively state-run retail outlets (as is the case with alcohol in several states). While most of the academic literature and public discourse about legalization up to now has focused on arguments for or against, decriminalization, few have focused on marijuana as an *industry* after legalization occurs. Many (perhaps most) industries in the United States have seen intense consolidation and corporatization in recent decades, with increasing entry barriers for new firms, increasing market share belonging to large corporate conglomerates, and the inherent problems that come with oligopolistic markets. The alcohol and tobacco industries are no exception – if anything, they provide extreme examples of market consolidation and oligopoly effects. These two product lines have the most in common with marijuana, and therefore provide a foreshadowing of what is to come when marijuana becomes legal, whether for medical or recreational purposes.

Regulation of commerce is a matter of both federal and state law. At both levels of government, a host of statutes and regulations govern permissible corporate forms in certain industries, safety specifications for both facilities and products, anticompetitive activities by firms (price fixing, predatory pricing, tying arrangements), vertical or lateral consolidation, consumer protection, and so on.

## STATUTE 1

### Article 1. Lawful Operations by Marijuana Retailer

#### Section 1.01 Definitions

- a) “Approved Packaging” shall refer to the method in which marijuana is prepared for distribution to the end user in a manner in which such package is appropriately labeled and the integrity of such package cannot be easily compromised without noticeably changing the look of the package.
- b) “Authorized Patron” means a person who is at least 21 years of age and possesses a State of Texas issued identification card or Military issued identification card. An identification card issued by a state other than Texas will not be acceptable for the purchase of marijuana.
- c) “Consume” shall refer to the act of ingesting, inhaling or otherwise introducing marijuana to the human body.
- d) “Lawful Marijuana Container” refers to a container meeting the approved packaging requirements for the transportation and distribution of marijuana.
- e) “Locality” means a county, municipality, city, or a city and county together.
- f) “Marijuana” or “marihuana” means all or part of the genus cannabis 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 its resin, including marihuana concentrate. “Marijuana” or “marihuana” does not include industrial hemp, nor does it include fiber produced from the stalks, oil, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.<sup>1</sup>
- g) “Marijuana Accessories” means any equipment, products, or materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, vaporizing, or containing marijuana, or for consumption.<sup>2</sup>
- h) “Marijuana Products” means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.<sup>3</sup>
- i) “Marijuana Retailer” means an entity that contains a permit to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana manufacturing facilities and to sell marijuana and marijuana products to consumers.<sup>4</sup>
- j) “Nonretail-Grade Marijuana” refers to marijuana that exceeds the levels of tetrahydrocannabinol (THC) concentrations in Retail-Grade Marijuana.
- k) “Retail-Grade Marijuana” refers to marijuana that contains levels of THC, which has been determined by the Texas Commission appointed to study the effects of marijuana to be an acceptable level of toxicity.

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<sup>1</sup> See Colo. Const. art. XVIII, § 16(1)(g) for author’s reference.

<sup>2</sup> See Colo. Const. art. XVIII, § 16(1)(f) for author’s reference.

<sup>3</sup> See Colo. Const. art. XVIII, § 16(1)(k) for author’s reference.

<sup>4</sup> See Colo. Const. art. XVIII, § 16(1)(n) for author’s reference.

- l) “United States Customary Measurements” refers to a system of measurements (inch, yard, etc.) used primarily by the United States of America and very similar to the Imperial system.

### Section 1.02 Marijuana Retailers’ Regulations

- a) A Marijuana Retailer is authorized to provide to consumers, for a fee, Retail-Grade Marijuana and Marijuana Products in lawful marijuana containers to consumers, but not for resale and not to be opened or consumed on or near the premises where sold, as presented in accordance with this code, below.<sup>5</sup>
- b) A Marijuana Retailer’s premises shall be in accordance with this code in order to provide Retail-Grade Marijuana to Authorized Patrons.

### Section 1.03 Location of Marijuana Retailer

- a) A Marijuana Retailer shall establish a store no closer than within 1,000 feet (1,000’) of any elementary or secondary school playground, recreation center or facility, child care center, public park, public transit center, library, and/or game arcade that allow minors to enter.<sup>6</sup>

### Section 1.04 Restrictions on Advertising<sup>7</sup>

- a) Marijuana Retailers shall be limited to a single, one-thousand six hundred square inch (1,600) sign bearing their business/trade name,
- b) Marijuana Products shall not be on display to the general public through window fronts or in any other manner other than inside the store.
- c) Marijuana Products shall not be advertised in any form or through any medium whatsoever within one thousand feet (1,000’) of any elementary or secondary school playground, recreation center or facility, child care center, public park, public transit center, library, and/or game arcade that allow minors to enter.
- d) Marijuana Products shall not be advertised on public transit vehicles, shelters or on any publically owned or operated property.

### Section 1.05 Sell Retail-Grade Marijuana for Off-Premise consumption<sup>8</sup>

- a) A Marijuana Retailer may only provide Retail-Grade Marijuana to Authorized Patrons for consumption no closer than 100 yards of the Marijuana Retailer.
- b) A person commits an offense if the person knowingly consumes Nonretail-Grade or Retail-Grade Marijuana on the premises of a holder of a Marijuana Retailer’s off-premise permit.

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<sup>5</sup> See Texas Alcoholic Beverage Code Annotated §71.01 (West) for author’s reference.

<sup>6</sup> See Washington State Initiative Measure 502 for author’s reference.

<sup>7</sup> Id. (where is this cited above???)

<sup>8</sup> See Texas Alcoholic Beverage Code Annotated §101.72 (West) for author’s reference.

- c) A person is presumed to have knowingly violated Subsection (b) of this section if the warning signs required by Section \_\_\_\_\_ of this code are displayed on the premises.
- d) Except as provided in Subsection (e) of this section, a violation of this section is a Class C Misdemeanor and shall be punishable as such.
- e) If a person has been convicted of a violation of this section occurring within a year of a subsequent violation, the subsequent violation is a Class B Misdemeanor and shall be punishable as such.

#### Section 1.06 Sale in Original Packaging<sup>9</sup>

- a) This section applies to a Marijuana Retailer who is authorized to sell Retail-Grade Marijuana to an ultimate consumer for off-premises consumption.
- b) All Retail-Grade Marijuana must be sold in tamper-proof approved packaging as defined above in Section \_\_\_\_\_, or may resell the contents of the packages as individual packages if the individual packages meet the requirements set forth below.
  - i. Except for purposes of resale as individual containers, a Marijuana Retailer may not:
    - 1. Mutilate, tear apart, or cut apart original packaging in which the Retail-Grade Marijuana was received; or
    - 2. Repackage the Retail-Grade Marijuana in a manner misleading to the consumer or that results in required labeling being omitted or obscured.
- c) A Marijuana Retailer has the duty to reasonably inspect packaging to ensure it meets the approved packaging standards and no signs of tamper are visible.
- d) Every package of Retail-Grade Marijuana must have a label or imprint in legible type showing the full name and address of the manufacturer and, if it contains a special strand of Retail-Grade Marijuana from the distributor, the address of the distributor.<sup>10</sup>
  - i. Any box, crate, carton, or similar device in which containers of Retail-Grade Marijuana are sold or transported must have a label meeting the same requirements.
  - ii. The label of a package of Retail-Grade Marijuana must describe the net contents in the English language and United States Customary measurements with a Metric Measurement equivalent annotated as well.
  - iii. No container, packaging material, or dispensing equipment may bear a label or imprint that:
    - 1. By wording, lettering, numbering, or illustration, or in any other manner refers or alludes to or suggests a manufacturing process, analysis, or a scientific fact;
    - 2. Is untrue in any respect; or
    - 3. By ambiguity, omission, or inference tends to create a misleading impression, or is calculated to cause deception of the consumer with respect to the product.

<sup>9</sup> See Texas Alcoholic Beverage Code Annotated §104.05 (West) for author's reference.

<sup>10</sup> See Texas Alcoholic Beverage Code Annotated §101.41 (West) for author's reference.

### Section 1.07 Retail-Grade Marijuana Tasting Provided by Marijuana Retailer<sup>11</sup>

- a) A Marijuana Retailer must apply for and hold a tasting permit in order to conduct a Retail-Grade Marijuana Tasting.
- b) The holder of a tasting permit may conduct product tastings of only Retail-Grade Marijuana on the licensed premises of the holder's retail store during business hours as provided by this section.
  - i. Written notification of a product tasting must be made to the appropriate commission<sup>12</sup> by mailing a letter to the commission not later than 72 hours before the tasting event. The notification shall clearly state:
    - 1. The type and brand of Retail-Grade Marijuana to be tasted;
    - 2. The method of consumption by Authorized Patrons for the tasting;
    - 3. The date and hours the tasting is to take place; and
    - 4. The address of the premises where the tasting is to occur.
  - ii. Sample portions at a product tasting shall be limited to no more than two-hundredths of an ounce (0.02 oz).
  - iii. When Retail-Grade Marijuana is tasted, not more than one brand or type may be made available for tasting at one time.
  - iv. No charge of any sort may be made for a sample serving.
  - v. A person may be served more than one sample. Samples may not be served to a minor or to an obviously intoxicated person. No samples may be removed from the licensed premises.
  - vi. During the tasting, not more than two containers of each brand or type of product being tasted may be open on the premises at one time.
  - vii. At the conclusion of the tasting, all empty or open containers of Marijuana used in the tasting shall be removed from the premises.
  - viii. A tasting event authorized by this section may not be advertised except by on-site communications.
  - ix. A person other than the Marijuana Retailer or a Marijuana Retailer's agent or employee may not dispense or participate in the dispensing of marijuana under this chapter.

### Section 1.08 Hours of sale and delivery

- a) The sale of Retail-Grade Marijuana will be restricted to the hours of 11 a.m. to 9 p.m. Monday through Saturday.
- b) No sale, offer for sale, or delivery of Retail-Grade Marijuana will be authorized:<sup>13</sup>
  - i. On Sunday;
  - ii. On New Year's Day, Thanksgiving Day, or Christmas Day;
- c) When Christmas Day or New Year's Day falls on a Sunday, Subsection (b) of this section applies to the following Monday.

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<sup>11</sup> See Texas Alcoholic Beverage Code Annotated §101.41 (West) for author's reference.

<sup>12</sup> It is anticipated that a specific commission regulating the sale and transfer of marijuana will be established.

<sup>13</sup> See Texas Alcoholic Beverage Code Annotated §105.01 (West) for author's reference.

### Section 1.09 Nonretail-Grade Marijuana

- a) No Marijuana Retailer may possess, receive, sell, or offer to sell marijuana that is not considered Retail-Grade Marijuana.

### Section 1.10 Retail-Grade Marijuana Acquisition

- a) No Marijuana Retailer may acquire marijuana from other retailers for resale.
- b) All marijuana acquired must be gathered from a licensed distributor.

### Section 1.11 Storage of Marijuana

- a) The Marijuana Retailer must store all products on premises. No Marijuana Retailer may own, possess, or store marijuana for the purpose of resale except on the licensed premises.<sup>14</sup>

### Section 1.12 Warning signs required<sup>15</sup>

- a) Each Marijuana Retailer shall display in a prominent place on his premises signs stating in letters at least two inches high:
  - i. IT IS A CRIME (MISDEMEANOR) TO CONSUME MARIJUANA ON THESE PREMISES.
  - ii. IT IS A CRIME (MISDEMEANOR) TO CONSUME ALCOHOL ON THESE PREMISES.
- b) Each Marijuana Retailer shall also display a sign in compliance with section 30.06 of the Texas Penal Code prohibiting the possession of a firearm by an Authorized Patron, other than licensed peace officers in the United States of America or the Federal Government.
- c) A Marijuana Retailer who fails to comply with this section commits a misdemeanor punishable by a fine of not more than \$250.

### Section 1.13 Locality Enacted Ordinances or Regulations<sup>16</sup>

- a) All Marijuana Retailer's permits are subject to the local County or Municipality's approval for operation.
- b) A locality may enact ordinances or regulations, not in conflict with this section or with regulations or legislation enacted pursuant to this section, governing the time, place, manner, and number of Marijuana Retailers.
- c) A locality may prohibit the operation of a Marijuana Retailer through the enactment of an ordinance or through an initiated or referred measure, provided, any initiated or referred measure to prohibit the operation of a Marijuana Retailer must appear on a general election ballot during a year in which the Texas Legislature is not in session.

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<sup>14</sup> See Texas Alcoholic Beverage Code Annotated §71.06 (West) for author's reference.

<sup>15</sup> See Texas Alcoholic Beverage Code Annotated §71.10 (West) for author's reference.

<sup>16</sup> See Colorado Constitution Article XVIII, § 16(5)(f) for author's reference.

## Section 1.14 Employment Age

- a) All employees of a Marijuana Retailer shall be at least 21 years old.

### **Commentary**

Section 1.01 defines some common terms used throughout the Article that have not been defined in the context of the reading or anywhere else in a Texas Statute or Regulation. The majority of the definitions provided have been extracted from either of the two states that have legalized the recreational use of Marijuana, Colorado and Washington.

The definition of “Approved Packaging” admittedly leaves a term without a definition within the definition when referring to a package being “appropriately labeled.” This is briefly addressed further along in the Article in Section 1.06 but that Section is not meant to be all-inclusive. The author of the Article anticipates a more inclusive requirement for packaging will be provided to accompany the marijuana regulations.

“Authorized Patron” presumably restricts the purchase and consumption of marijuana in the state of Texas to Texas residents and members of the United States Military. It is the author’s intent to do exactly as is presumed. However, the legal purchase and consumption of marijuana by a United States Military member in the state of Texas does not absolve the consumer from any penalties that may be imposed by the federal government.

The author anticipates that a “Marijuana Retailer” will be treated and regulated very similar to that of a liquor retailer in the State of Texas. Therefore, the majority of the statutes referenced for the construction of this Article rely heavily on the liquor, beer, and wine statutes of the State of Texas.

The appropriate level of THC for an end-user is a fact-based determination that can be established by a commission similar to that which determined the appropriate level of alcohol allowed in beer, wine, or distilled liquor, respectively.

Section 1.02 - Keeping in line with the Alcohol regulations, it should be unlawful to allow consumption of marijuana on the premises of a Marijuana Retailer.

Section 1.04 - Advertising has been severely restricted on cigarettes in recent years. Similarly, this regulation will ensure the advertising by Marijuana Retailers is restricted to their single allotted business sign or other allowed medium such as newspaper or magazine. A critical component of the section ensures the advertising will not be allowed on the television or radio since there is not a feasible way to prevent these mediums from reaching within one thousand feet (1,000’) of designated areas.

Section 1.05 - This section is primarily taken from the Texas Alcoholic Beverage Code Annotated §101.72 (West). The punishment for a first time offense is consistent with the Texas Penal Code §49.02 Public Intoxication. Tex. Penal Code Ann. §49.02(a-1) states, “For the purposes of this section, a premises licensed or permitted under the Alcoholic Beverage Code is a public place.”<sup>17</sup> The author is presuming a Marijuana Retailer will be under the same type of regulation as an Alcohol Retailer. Therefore, a Marijuana Retailer’s premise will be considered a public place.

Section 105(c) is not intended to absolve a party from wrongdoing if the required signs are not posted. However, if the required signs are not posted, the presumption that the person knowingly committed the violation is no longer presumed and the burden is shifted to the prosecution.

Section 1.06 - The intent of this section is to maintain the integrity of a marijuana producer’s product while ensuring the consumer the product is indeed what it says it is. The author anticipates a separate Article with guidelines on how the packages should be perfectly created.

This section is intended to put the onus of maintaining proper packaging on the Marijuana Retailer. A reasonable effort by the Marijuana Retailer to inspect the packaging of the product would consist of a cursory check of the contents and ensure there are no rips or tears. Additionally, if capable, check and see if the number of contents described to be in the package are indeed correct.

The Marijuana Retailer must also inspect the packages to ensure the requirements of Section 1.06(d) are contained on the package. The Marijuana Retailer shall not put into commerce any packages of marijuana which do not meet the minimum requirements stated.

As defined above, the United States Customary Measurements refers to measurements commonly used by residents of the United States. However, it seems that most small measurements of marijuana are conducted in Metric Measurements using grams. Then, the larger measurements are conducted by the United States Customary Measurements using ounces or pounds. Therefore, in an effort to maintain a level of consistency, it is intended that the producer of marijuana will mark the packages with measurements in both the United States Customary Measurements and the Metric Measurements.

Lastly, the Marijuana Retailer must reasonably ensure all packages placed into the stream of commerce do not contain false or misleading content. A reasonable Marijuana Retailer standard will be followed for such determination. This section is similar to a requirement that bottles of liquor must not contain any misleading information that is intentionally calculated to cause deception among consumers.

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<sup>17</sup> Tex. Penal Code Ann. § 49.02(a-1) (West)

Section 1.07 - A key component to success of any producer of a product is the trial and comments of their product. This section is not intended to refer to specific Marijuana Retailer giving samples of all their products on demand of the consumer. Rather, this is similar to a Liquor Distillery setting up a booth at a liquor store and providing samples.

A tasting permit is required to ensure the Marijuana Retailer knows what is being sampled at their location and the appropriate commission has knowledge as well. It is not practical for the commission to approve all tastings within the 72 hour requirement but the documented information will provide much needed information for reference.

The sample size of no more than two-hundredths of an ounce (0.02 oz) was calculated by comparing a sixteen ounce (16 oz) bottle of wine to a quarter of an ounce (0.25 oz) of marijuana. A quarter of an ounce (0.25 oz) of marijuana is only a presumed comparison. The Texas Alcoholic Beverage Code Annotated §101.41 (West) limits a sample size of wine to one ounce (1 oz), or 1/16 the bottle of wine.<sup>18</sup> Therefore, a sample size of two-hundredths of an ounce (0.02 oz) is an approximate proportionate sample size.

In order to maintain consistency with the advertising restrictions, the advertisement of a marijuana tasting cannot be advertised by direct mail from the Marijuana Retailer. This is not consistent with the advertising restrictions of liquor but is necessary to maintain the intent of the author.

Section 1.08 - The hours of sale and delivery are exactly consistent with the requirements for the sale and delivery of alcohol. Therefore, if legislation is passed which extends the hours of sale and delivery of alcohol, the same extension should be granted to the sale and delivery of marijuana. However, if legislation is passed which further limits the hours of sale and delivery of alcohol, this statute should remain unchanged.

Section 1.12 - The Texas legislature has a long history of restricting consumption of alcohol on the premises of liquor retailers. Therefore, it is appropriate the same restriction be placed on Marijuana Retailers for both alcohol and marijuana.

An additional requirement is placed in section 1.12 restricting the possession of privately owned firearms, even with a concealed weapons permit. The sale and delivery of marijuana has a history of violence and it is not proper to openly allow the carrying of firearms in such an establishment.

Section 1.13 - Just as localities are capable of restricting the sale of alcohol in their jurisdiction, they must be able to do so with marijuana. This restriction must be the will of the people

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<sup>18</sup> Tex. Alc. Bev. Code Ann. §101.41 (West) for author's reference.

comprising the locality. Therefore, such restrictions must be voted on by the people of the locality.

## STATUTE 2 (commentary interspersed with statutory definitions)

### **Definitions for Laws Relating to Commercial Marijuana Transactions**

#### **Marijuana**

*Raw marijuana, processed marijuana, immature marijuana plants, marijuana products, and marijuana cigarettes.*

This definition is intended to cover all types and variants of “high-inducing” products containing Tetrahydrocannabinol (“THC”). By establishing a broad classification, regulations can have broad applicability. But when the legislature wants to address individual concerns, it can do so by looking to the five individually listed subcategories of marijuana.

#### **Raw Marijuana**

*All parts of the plant Cannabis sativa L., whether growing or not, including the seeds thereof. It does not include industrial hemp, 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 therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.*

This definition comes from the California Health and Safety Code §11018, which defined marijuana in the context of medical marijuana legislation. The majority of marijuana illicitly purchased is raw marijuana, consisting of entire flowers from the plant, so it should be a primary focus for regulators. Defining this term also allows for the indirect regulation of those who might come into contact with this substance.

Seeds are included in what constitutes raw marijuana because of their potential to produce flowering Cannabis plants. This, in turn, allows the individual to produce marijuana, potentially in violation of the licensing requirements of this code. The seeds of the Cannabis plant, although not high-inducing by themselves, are therefore appropriately regulated.

The list of exclusions as to what constitutes “Raw Marijuana” is intended to be exhaustive. All of the parts of the Cannabis plant or products derived from it that are excluded from the definition of “Marijuana” are done so because each one has a non-recreational purpose and does not induce any significant psychoactive effects on its own.

#### **Processed marijuana**

*Any raw marijuana that has undergone processing, which includes, but is not limited to, stemming (that is, removing the stem from the marijuana flower), threshing, cutting, or flavoring the marijuana, or otherwise combining the marijuana with non-marijuana ingredients. For purposes of this definition, processed marijuana does not include marijuana products, and the processing of marijuana does not include the farming, growing, curing, bailing, packaging, or handling of marijuana solely for sale, shipment, or delivery to a marijuana processing facility or manufacturer of marijuana products.*

This definition is modeled after the definition of “Processed Tobacco” in 27 CFR 40.11. This was an appropriate model because the risks of processed marijuana are similar to the risks of processed tobacco.

This definition establishes a further classification of marijuana, enabling a regulatory scheme directed at processed marijuana. This is worthy of specifically addressing because of the

potential risks to the consumer associated with processed marijuana as opposed to whole marijuana flowers.

Stemmed, threshed, or cut marijuana deserve individual regulatory attention because marijuana is easier to imitate when it is broken down from its original flower. For example, dried herbs or harmless plants could be used to dilute a package of ground marijuana. Additionally, a recent problem has developed in synthetic marijuana, innocuous dried plants intended to resemble marijuana that are treated with man-made psychoactive chemicals. These issues do not arise if the marijuana is left unaltered in its original flower form.

Flavoring and combining ingredients to the marijuana pose similar concerns. If flavoring or adding substances were left unregulated, one could more easily mask imitation marijuana or dilute marijuana. Whenever any foreign materials are introduced to marijuana, such as preservatives, flavoring agents, or pesticides, the potential harm to the ultimate consumer of the harmful substances increases. This is a real concern because marijuana is consumed in a variety of ways; consumers will purchase both processed and unprocessed marijuana, as well as marijuana products, including marijuana cigarettes, all depending on their individual preferences.

There is also potential harm to the marijuana product manufacturer, who could unknowingly be using contaminated marijuana in its products. Defining processed marijuana is not intended to impose any requirements on farmers, growers, wholesalers, or shippers. Rather, it should cover marijuana processing facilities and manufacturer of marijuana products because these are the entities that alter marijuana from its natural state.

Marijuana products are unaffected by this definition because they are separately regulated once marijuana or processed marijuana is used to produce a marijuana product.

### **Immature Marijuana Plant**

*A nonflowering marijuana plant that is no taller than eight inches and no wider than eight inches that is produced from a cutting, clipping, or seedling, and is in a growing container that is no larger than two inches wide and two inches tall that is sealed on the sides and bottom.*

This definition is modeled after the most prominent Colorado marijuana bill, HB 13-1317, and would allow for the sale of actual marijuana plants, not just the consumable flower, to be regulated. Because cultivation for personal use is allowed, this provision would permit individuals to purchase marijuana plants to be planted and grown by that individual.

Although personal cultivation in small amounts is permitted without regulation, selling viable marijuana plants risks enabling the illicit or unlicensed sale of marijuana. Buying marijuana clippings or seedlings is essentially buying the means of producing marijuana, and should be regulated more stringently than the purchase of marijuana products. Defining “immature plant” allows for regulations directed at what could otherwise develop into a market running rampant with unlicensed marijuana sellers.

### **Marijuana Product**

*Concentrated marijuana products obtained either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, including hashish, marijuana oil or wax, and any other derivative substance of marijuana, and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, including edible products, ointments, inhalants, and tinctures. The definition also includes any marijuana product that has been packaged, repackaged, labeled, or relabeled.*

This definition is modeled after a similar definition in Colorado HB 13-1317. Further regulation may be necessary when the possibility exists of increasing the potency of marijuana because of the risk of faster or increased intoxication by consumers. Edible products and tinctures pose their own concerns. Most notably, children would be more susceptible to consuming marijuana in the form of a candy bar or soft drink, as opposed to a more unpleasant apparent way like smoking. Thus, limitations on the marketing of marijuana products may be established.

Defining “marijuana product” allows for the licensing authority set standards for marijuana that may be sold. This allows for government oversight of quality control. For instance, the licensing authority could set expiration dates, mandatory curing periods, or permissible THC yield rates.

### **Marijuana Cigarette**

*A roll for smoking that is made of marijuana or marijuana mixed with another ingredient and wrapped or covered with a material other than marijuana.*

This definition is modeled after Texas Health and Safety Code §796.001. Legalizing marijuana would obviously lead to the further commercialization of marijuana for the ultimate consumer. Pre-rolled cigarettes are thus likely to be a popular method of consuming marijuana because of its convenience, similar to the prevalence of tobacco cigarettes. But cigarettes pose concerns different from other marijuana products. First, inhaling the smoke from dried leaves combined with foreign substances poses more health risks than other methods of consumption, like eating or drinking THC-infused products.

Also, historically, cigarette manufacturers have taken advantage of the fact that cigarettes necessarily combine tobacco, or marijuana in this case, with foreign substances to make a final product by adding unnecessary substances. The foreign substances can be helpful, like the paper or filter, or they can have unknown adverse effects, like countless additives cigarette manufacturers have put in cigarettes. One example is the tobacco industry’s use of nicotine metabolism inhibitors in order to promote addiction. The risk of similar circumstances in the marijuana industry provides an adequate basis for the individualized regulation of marijuana cigarettes.

### **Consumer**

*Any person who possesses marijuana for personal consumption.*

This definition is modeled after a similar provision relating to consumers of tobacco in the Texas Health and Safety Code §155.001. This term is different from that of “person.” Only a natural person can be a consumer. The term is intended to differentiate between individuals who possess marijuana for personal use from marijuana establishments. Regulating marijuana establishments is primarily focused on regulating the commercial aspects of the industry. Regulating the consumption of marijuana, on the other hand, is primarily focused on protecting the wellbeing of individuals.

### **Licensing Authority**

*An authority designated by municipal, county, or city and county charter, ordinance, or resolution, or the governing body of a municipality or city and county, responsible for regulating marijuana and the licensing of marijuana establishments. For areas in which a local subunit of the government has not designated a licensing authority, the licensing authority of the state*

*created under this code is responsible for regulating marijuana and the licensing of marijuana establishments in the area.*

This definition is modeled after Colorado HB 13-1317. Establishing a local licensing authority establishes the ability to effectively regulate marijuana. Local licensing authorities have whatever power granted by the individual state, but the most basic are setting standards for licenses to own, operate, or possess a marijuana establishment, as well as approving or denying applications for such; establishing and collecting fines, fees, and taxes; establishing packaging and labeling requirements; and establishing permissible THC limits in marijuana.

Examples of standards to obtain licenses include citizenship or residency requirements, criminal background checks, and compliance with all aspects of local and federal law, among others. The licensing authority can set fees for license applications and fines for violations of this code. Colorado HB 13-1317 suggested a first time application fee of \$5,000. The licensing authority can levy taxes on various aspects of the marijuana industry. It can decide how to disperse the money collected after using it to pay its own operating costs, such as giving surpluses to the local jurisdictions or earmarking it to support public education.

### **Marijuana Establishment**

*A marijuana cultivator, a marijuana processor, a marijuana product manufacturer, a marijuana testing center, a marijuana wholesaler, a marijuana retailer, or a marijuana bar, but not a common carrier engaged solely in transporting marijuana.*

This definition is modeled after Colorado Amendment 64, and is intended to cover every aspect of the commercial marijuana industry. This allows for regulations with general applicability to all participants. In addition, by compartmentalizing the different aspects of the commercial marijuana industry, different classes of licenses can be created and regulations can be tailored to address issues associated with the individual operations involved.

Each separate classification can be viewed as a link in the chain of commercial marijuana. First, marijuana is cultivated. Next, it may either be sold to marijuana wholesalers in its raw form after being tested, or to marijuana processors or marijuana product manufacturers without testing required. Processed marijuana, after being tested, may be sold to wholesalers, marijuana product manufacturers, and marijuana retailers and bars. Marijuana products, after being tested, may be sold to other marijuana product manufacturers, marijuana wholesalers, and marijuana retailers and bars. Marijuana wholesalers may sell to other marijuana wholesalers, marijuana processors, marijuana product manufacturers, and marijuana retailers and bars.

The individual state could decide whether to allow vertical integration in the commercial marijuana industry, such as a single conglomerate cultivating, processing, manufacturing, and selling marijuana, or if each of these individual activities may be undertaken by only one entity under common ownership or control. A Colorado legislative taskforce assigned to suggest a legal framework for marijuana regulations after its state legalized marijuana specifically endorsed the use of vertical integration. Washington, on the other hand, banned such practice when it legalized marijuana in Initiative 502.

Common carriers are specifically excluded because of their tenuous relationship to the concerns associated with the marijuana industry. By refusing to include common carriers in this definition, legislatures can treat marijuana as any other commercial good for issues relating to common carriers or shipment.

### **Marijuana Cultivator**

*Any person or entity licensed to cultivate, grow, farm, package, or prepares marijuana for sale, and to sell marijuana to marijuana retailers, marijuana product manufacturers, and other marijuana cultivators, but not to consumers.*

This definition is modeled after Colorado Amendment 64. Because of the status of marijuana as a popular intoxicant, it should be regulated from the outset, beginning with the growth of the Cannabis plant. Potential issues to be addressed include whether different strains of marijuana or different plants may be combined, what chemicals may be used to aid in growing the Cannabis, and any potential limit on marijuana growth.

### **Marijuana Processer**

*Any person or entity licensed to process marijuana.*

See “Processed Marijuana.”

### **Marijuana Product Manufacturer**

*Any person or entity licensed to manufacture, produce, prepare, propagate, or compound marijuana products or cigarettes, but does not include a person who produces marijuana products or cigarettes solely for the personal consumption or use of that person.*

This definition is modeled after Colorado Amendment 64. People who produce marijuana solely for personal consumption is excluded from this definition in keeping with the general purpose of regulating marijuana while permitting personal use.

See “Marijuana Product.”

### **Marijuana Wholesaler**

*Any person or entity licensed to sell marijuana to marijuana establishments for purposes of resale.*

This definition is modeled after Texas Health and Safety Code §796.001. It includes wholesalers of raw marijuana, processed marijuana, and marijuana products. It allows for wholesalers to be regulated even when other marijuana establishments are not and address specific concerns applicable only to wholesalers. These include potential limits on the amount of marijuana bought or sold in a single transaction, or whether wholesalers have further licensing requirements.

### **Marijuana Testing Center**

*An entity licensed to analyze and certify the safety and potency of marijuana.*

This definition is modeled after Colorado Amendment 64. Under a marijuana regulatory regime, the burden of submitting samples to and paying for a marijuana testing center to analyze and certify the marijuana as required by the licensing authority marijuana should rest with those marijuana establishments with a direct role in the production of marijuana. The entire purpose is that marijuana be tested and meet certain quality-control standards before reaching the consumer.

The licensing authority may set specific standards for when testing is required, but the following is a model that takes into account issues of efficiency and ensuring consumer safety. Marijuana wholesalers, retailers, and bars are never required to submit marijuana for testing. Marijuana cultivator, processers, and product manufacturers must submit marijuana for testing whenever it sells to a marijuana wholesaler, retailer, or bar. However, a marijuana cultivator, processer, or product manufacturer is not required to submit marijuana for testing if it sells to

another marijuana cultivator, processor, or product manufacturer, because the marijuana will still be required to be tested.

### **Marijuana Retailer**

*Any person or entity licensed to sell marijuana to consumers.*

This definition is modeled after the Texas Health and Safety Code §796.001 regarding tobacco retailers. As the only entities allowed to sell marijuana to consumers, along with marijuana bars, it is necessary to focus on marijuana retailers. Issues that can be regulated under this definition include how to handle liability of owners of marijuana retailers for providing the means of intoxication. It should be handled under a similar theory of liability for owners of liquor stores. Also, marijuana retailers face the possibility of consumers stockpiling marijuana purchased from the marijuana retailer, or purchasing for resale.

### **Marijuana Bar**

*Any person or entity licensed to sell marijuana for immediate consumption on the premises.*

This term allows for regulations directed at bars or similar establishments that sell marijuana to be consumed there. Regulating such establishments allows for the effects of intoxicating people by selling marijuana for immediate consumption to be dealt with. Specifically, dramshop liability can be addressed, including at what point, if any, a marijuana bar can be held liable for damage caused by serving an already intoxicated individual or minor. Another issue worthy of addressing is whether partially consumed marijuana (half-smoked cigarette or pipe, half eaten edible marijuana product, etc.) must be entirely consumed or disposed of on the premises.

### **Premises**

*The premises specified in an application for a license to own, operate, or possess a marijuana establishment under this code.*

This definition is modeled after Colorado HB 13-1317. By clearly defining the premises in the application, both the state and applicant are benefitted. The state is able to know precisely where all activities in the commercial marijuana process are occurring, and the individual is able to know a geographical boundary of the premises of his marijuana establishment for purposes of liability. This point is most obvious when considering the liability of marijuana bar owners because public consumption of marijuana is still illegal, except on licensed premises.

### **Licensee**

*Any person who is the holder of a license provided for in this code, or an agent, servant, or employee of that person.*

This definition is modeled after Colorado HB 13-1317. It is important to note that this term applies only to natural persons. Accordingly, a real-life person can be held responsible for any harm caused at any point in the commercial marijuana process.

The following businesses must be licensed to operate a retail marijuana business: retail marijuana stores, retail marijuana products manufacturers, retail marijuana cultivation facilities, and marijuana testing facilities.

### **Sale**

*Any transaction in which a person furnishes marijuana to another in an attempt to gain a profit or mitigate a loss. The term includes, in addition to sales using cash or credit, the giving of any marijuana, regardless of amount, as a sample, prize, or gift and the exchange such for any consideration other than money.*

This definition is modeled after Texas Health and safety Code §796.001. It specifically contemplates and covers the situation in which a person pays off some form of debt with marijuana, and uses the extremely broad term “any consideration.” Defining this term allows for an alternative basis for regulation, apart from regulations on the actual product or industry participants.

Unlike the separate definitions for “Marijuana Sales Tax” (which covers sales between marijuana establishments) and “Marijuana Use Tax” (which covers consumer purchases at marijuana retailers or bars), this term is intended to cover all marijuana transactions.

### **Package**

*The innermost container in which marijuana is placed by an individual and offered for sale or delivery to the ultimate consumer.*

This definition is modeled after a similar definition relating to cigarette packaging in 27 CFR 40.11. By defining package, requirements can be established for what constitutes necessary packaging. Examples include maximum sizes of packages, how the package must be sealed, and what the package can look like. Regulating the size of packages would be useful in indirectly limiting a person’s personal consumption. Mandating that all packages be resealable would have a similar effect. If these were left unregulated, manufacturers could sell large quantities of marijuana, individually packaged in a way that once opened, it soon goes bad. Although this would benefit the manufacturer, this would promote binge consumption by the consumer and is against public policy. Additional concerns include what is prohibited from being shown on the package, such as certain slogans, images, or designs intended to appeal to children. Another option, mandated by Colorado in HB 13-1317 requires that marijuana be placed in a non-transparent container at the point of sale.

### **Label**

*The written notice conspicuously attached to all marijuana packages that meet the requirements determined by the licensing authority.*

Labeling is a necessary requirement for consumer safety. Suggestions for what should be included in a label are volume or weight of the package, THC content yield rate of the packaged marijuana, the trade name of the marijuana, the country of origin, and the date of expiration. The label must be on all marijuana packages, including sub-packages. For instance, if a carton of 10 packs of marijuana cigarettes were sold, the label would have to be on the outside of the carton and on each individual package. This would prevent a seller from breaking down a larger package of marijuana that has a label, and selling the smaller quantities without the necessary labeling.

### **THC Yield Rate**

*The amount of THC yielded by the marijuana that is to be sold or distributed, expressed on a per serving basis.*

This definition is modeled after a similar provision concerning nicotine yield rates in Texas Health and Safety Code §161.353. The THC yield rate is vital information to be included on a label, similar to alcoholic beverages. Although the “THC yield rate” is presently a foreign concept to most, it is intended to guide consumers as they consume marijuana. For example, the casual alcohol drinker generally knows the mental effect a drink will have based on the drink’s alcohol content. Similarly, THC yield rates would inform marijuana consumers on the effects of the marijuana. THC yield rates could act as a basis for pricing or taxing marijuana. Expressions of the THC yield rate would have to explain what constitutes a serving.

### **Required Notice**

*Conspicuous, written notice directed at all employees and customers and located near the place at which marijuana may be purchased, and which includes appropriate warnings or criminal violations associated with the purchase of marijuana.*

Similar to tobacco and alcohol notices required by federal or state laws, certain notices would have to be posted by the proprietor of any marijuana establishment. Suggested examples include that consuming marijuana while pregnant could be harmful to the child’s development, that purchase of marijuana by or for underage individuals is a misdemeanor, and where to report violations of these laws.

### **Price**

*The amount of money a marijuana establishment can charge for the purchase of marijuana, as established by the licensing authority.*

Defining this term gives a jurisdiction to set mandatory pricing for marijuana.

Issues that would have to be established are how the price is measured. Weight or volume would not be appropriate because of the varying potency of marijuana. The THC yield rate would be appropriate because presumably, consumers purchase marijuana for the physical and psychological impact it has, things essentially tied to the THC yield rate of marijuana.

A licensing authority could lower the minimum or maximum prices in order to ensure that as many people as possible do not buy illicit or unlicensed marijuana, but instead turn to more affordable government-sanctioned marijuana. A licensing authority could also decide to raise the price of marijuana in order to dissuade citizens from consuming it.

### **Marijuana Sales Tax**

*The tax on sales between marijuana establishments.*

This definition broadly applies to all marijuana establishments. It is not intended to cover consumer transactions, which is covered by “Marijuana Use Tax.” Because the legislative goals of regulating marijuana establishments and regulating consumers differs so much, transactions entered into solely by marijuana establishments can be taxed differently. The licensing authority could set the sales tax rate based on weight or volume, THC yield rates, or price (which may or may not be based on THC yield rates). The licensing authority could have uniform rates for all marijuana establishments, or employ varying rates depending on the marijuana establishments involved in the particular transaction.

### **Marijuana Use Tax**

*The tax on sales in which a consumer purchases marijuana at a marijuana retailer or bar.*

This definition allows for an addition or alternative to taxing sales between marijuana establishments. This is to be levied at the point of sale and can be set at the regular sales tax rate for that jurisdiction, or an increased rate as determined by the licensing authority.

### **Marijuana Special Tax**

*The federal tax on marijuana establishments.*

This definition is modeled after the tobacco special tax from 27 CFR 10.11. This definition assumes a federal tax on marijuana establishments and should reference the specific code or regulation section. A federal marijuana tax is likely, because the federal government already taxes similar products like tobacco and alcohol. Also, consumers are willing to pay high prices for marijuana, even if inflated by taxes. As long as the combined amount of taxes does not raise the cost of marijuana over its price on the illicit market, consumers will pay.

It is doubtful that the federal tax would have the same applicability as stated here: marijuana establishments as defined by this code. However, the point is to recognize the interplay of federal requirements when the licensing authority establishes licensing requirements, pricing, and other taxes.

## STATUTE 3

### Model Legislation: State Marijuana Stores

#### **Purpose of Act:**<sup>19</sup>

This Act is passed in the exercise of the police power of the state for the protection of the public welfare, health, peace, and morals of the people of the state. This Act regulates the cultivation, storage, transportation, purchase, sale, and possession of marijuana and marijuana products. This Act shall be liberally construed.

Except as provided in this Act, the cultivation, storage, transportation, purchase, sale, and possession of marijuana or marijuana products shall be prohibited.

#### **Severability:**<sup>20</sup>

Should any section, clause, sentence, or provision of this act be held invalid for any reason, the remainder of this Act shall be given effect without the invalid provision or application. The provisions of this Act are severable.

#### **Marijuana Control Commission:**<sup>21</sup>

There shall be a Marijuana Control Commission consisting of three members appointed by the governor with the consent of the Senate. Not more than two members shall belong to the same political party. Each member shall hold office for a term of six years, and the membership terms shall be staggered. If a vacancy shall occur in the commission, it shall be filled for the remainder of the term. Any or all of the commissioners may be removed by the governor for cause.

#### **Powers and duties of the Commission:**<sup>22</sup>

The Commission shall have following powers and duties:

1. To act as a general policymaking body on the subject of marijuana and marijuana products, consistent with the policy established by the Legislature by statute.
2. Adopt and issue, policies, rules, and procedures with respect to marijuana and marijuana products.
3. To control the cultivation, storage, transportation, purchase, sale and possession of marijuana and marijuana products.
4. To set standards and adopt rules for marijuana and marijuana products to protect the public against marijuana or marijuana products containing harmful or impure substances, marijuana and marijuana products containing an improper balance of substances as

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<sup>19</sup> See Idaho 23-102. Purpose of act. North Carolina 18B-100. Purpose of Chapter. Pennsylvania 1-104. Interpretation of act. Utah 32B-1-104. Exercise of police powers – Severability.

<sup>20</sup> See Idaho 23-104. Separability. Utah 32B-1-104. Exercise of police powers – Severability.

<sup>21</sup> See New Hampshire 176:1. Commission. North Carolina 18B-200. North Carolina Alcoholic Beverage Control Commission. Virginia 4.1-101. Department of Alcoholic Beverage Control. Utah 32B-2-201. Alcoholic Beverage Control Commission Created.

<sup>22</sup> See Idaho 23.203. Powers and Duties; 23-207. Specific Rules and Regulations. North Carolina 18B-203. Powers and Duties of the Commission; 18B-206. Standards for alcoholic beverages. Pennsylvania 2-207. General Powers of the Board. Utah 32B-2-202. Powers and duties of the Commission. Virginia. 4.1-103. General powers of Board.

determined by the Commission, spurious or imitation products, and products unfit for human consumption.

5. To test marijuana and marijuana products possessed or offered for sale in this State to determine whether they meet the standards set by the Commission.
6. To operate and regulate the management, bookkeeping, reporting, equipment, records, and merchandise of state marijuana stores and state marijuana warehouses.
7. To purchase, lease, occupy, or improve any land, building, equipment required for the purposes of this Act.
8. To determine the localities within which state marijuana stores and warehouses shall be established and operated and the number and location of such stores and warehouses.
9. To maintain warehouses for marijuana and marijuana products and control the storage and delivery of marijuana and marijuana from such warehouses
10. To appoint every agent and employee required for the Commission's operations.
11. To determine the classes, varieties, and brands of marijuana and marijuana products to be kept in state marijuana warehouses and for sale at state marijuana stores.
12. To determine the nature, form, and capacity of packages containing marijuana or marijuana products kept or sold.
13. To set the prices of marijuana and marijuana products sold in state marijuana stores.
14. To dispose of any damaged marijuana or marijuana products.
15. To regulate the issuance, suspension and revocation of license and permits to cultivate, manufacture, and transport marijuana and marijuana products.
16. To perform all acts necessary to or advisable to carry out the purposes of this Act.

**Distribution of revenue.<sup>23</sup>**

The state treasurer shall be the custodian of an account, which is hereby created, to be known as the "marijuana account," into which shall be paid all moneys collected, received, or recovered for license fees, permit fees, from forfeitures, sales of forfeited property, compromise penalties, and sales of marijuana and marijuana products from state marijuana stores, or any other any other moneys recovered under the provisions of this Act.

All moneys appropriated for, accruing to, or received by said fund are hereby appropriated first for the purpose of this Act to purchase marijuana and marijuana products sold through state marijuana stores and for the payment of expenses of administration and operation of state marijuana warehouses and state marijuana stores. The funds shall next be appropriated to any other expenses required by the regulatory scheme created by the Commission.

Two percent of the annual profits from the sale of marijuana and marijuana products shall be used for the treatment and rehabilitation of persons addicted to the excessive use of marijuana; for the promotion of education, prevention and early intervention programs designed to eliminate abuse and addiction to marijuana; and to the study of the problem of addiction.

All moneys remaining in the marijuana account after expenses have been paid shall be paid into the General Fund annually.

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<sup>23</sup> See Idaho 23-410. Liquor Account Created; 23-402. Appropriation. New Hampshire 176:16 Funds. North Carolina 18B-805. Distribution of revenue. Pennsylvania 8-802. Moneys paid into the State Stores Fund for use of the Commonwealth. Utah 32B-2-301. State Property – Liquor Control Fund – Markup Holding Fund. Virginia 4.1-116. Disposition of moneys collected by Board; creation of Enterprise Fund; reserve fund.

**Local option election:**<sup>24</sup>

In any county, an election may be held on the date of the general election, but no more than once in four years, to determine the will of the electors with respect to the sale of marijuana within the boundaries of their county. If a majority of qualified voters vote “No” on the question, then no marijuana or marijuana products may be sold within the boundaries of the county. If a majority of qualified voters vote “Yes” on the question, then the Commission may locate a marijuana store within the boundaries of the county.

The county clerk must furnish the ballots to be used in such election, which ballots must contain the following words:

“Sale of marijuana and marijuana products within the county, Yes.”

“Sale of marijuana and marijuana products within the county, No.”

The elector in order to vote must indicate the elector’s choice opposite one of the questions in a space provided therefor.

**Commission to establish state marijuana stores:**<sup>25</sup>

The Commission shall establish, operate and maintain state marijuana stores for the sale of marijuana and marijuana products in accordance with the provisions of and the regulations made under this act so long as

1. The proposed state marijuana store is located in a county which has voted in favor of the operation of marijuana stores.
2. The proposed state marijuana store shall not be within 10 road miles of an existing state marijuana store.
3. In determining the location of a proposed state marijuana store, the Commission shall consider its effect on the economy, availability of marijuana, and customers within the surrounding relevant market.

Before establishing a state marijuana store in a county that has voted in favor of the operation of marijuana stores, the Commission shall give notice of the proposed marijuana store by public advertisement in two newspapers of general circulation. The notice shall also be posted for a period of at least 15 days in a conspicuous place on the outside of the premises in which the proposed store is to operate or, in the event that a new structure is to be built in a similarly visible location. If 15 or more taxpayers residing within a quarter of a mile of such location file a protest with the Commission averring that the location is objectionable because of its proximity to a school or private residence, the Commission shall hold a hearing affording an opportunity to the protestants and to the Commission to present evidence. The Commission shall make a determination regarding the proposed marijuana store based on the evidence presented. If the Commission determines that the proposed location is undesirable for the reasons set forth in the protest, the Commission shall abandon the location and find another location.

The Commission may establish, operate and maintain such establishments for storing and testing marijuana as it shall deem expedient to carry out its powers and duties under this act.

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<sup>24</sup> See Idaho 23-917. Referendum – Local Option; 23-918. Form of Ballot. New Hampshire 175:7 Local option. Pennsylvania 4-472. Local option. Virginia 4.1-122. Effect of local option referenda.

<sup>25</sup> See Idaho 23.201. Liquor Stores – Notice of intent to locate. New Hampshire 177:11 Location of agency liquor stores. North Carolina 18B-801. Location, opening, and closing of stores. Pennsylvania 3-301 Board to establish state liquor stores. Utah 32B-2-501. Commission’s power to establish a state store. Virginia 4.1-119. Operation of government stores.

**Proximity to school:**<sup>26</sup>

No state marijuana store or state marijuana warehouse shall be located within 300 feet of a school.

**Store plan:**<sup>27</sup>

The Commission shall develop and maintain a formal written store plan for its state marijuana stores. This plan shall establish goals and policies related to the number, size and staffing patterns of state marijuana stores to ensure the efficient and effective operation of the state marijuana store system.

**Marijuana stores – when stores operate:**<sup>28</sup>

Days – Every state marijuana store shall be open for business week days, except Thanksgiving Day, Christmas Day, and New Year’s Day.

Time – No state marijuana store shall be open, and no state marijuana store employee shall sell marijuana or marijuana products between the hours of 9:00 P.M. and 9:00 A.M.

**Operation of state marijuana stores and warehouses – employees:**<sup>29</sup>

Marijuana and marijuana products shall be sold by employees of the Commission, who shall carry out the provisions of this Act and regulations adopted by the Commission governing the operation of state marijuana stores and the sale of marijuana and marijuana products. Any salesperson employed for any state marijuana store or warehouse shall have been a resident of the state for at least six months prior to such employment. The salaries of such salespersons at state marijuana stores shall not be governed by the amount of sales. No employee of a state marijuana store shall consume marijuana or marijuana products while working.

**Operational requirements for a state marijuana store:**<sup>30</sup>

1. A state store may not sell, offer for sale, or furnish marijuana or marijuana products, except at a price fixed by the Commission.
2. A state store may not sell, offer for sale, or furnish marijuana or marijuana products to:
  - a. A minor;
  - b. A person actually, apparently, or obviously intoxicated;
  - c. A known interdicted person; or
  - d. A known habitual marijuana user.
3. Sale or delivery of marijuana and marijuana products may be made on or from the premises of a state marijuana store, and a state marijuana store may be open for the sale

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<sup>26</sup> See Idaho 23-303. Proximity of school. Pennsylvania 3-301. Board to establish state liquor stores. Utah 32B-1-202. Proximity to community location.

<sup>27</sup> See New Hampshire 177: 3 Store plan.

<sup>28</sup> See Idaho 23-307. Days when sales are prohibited. New Hampshire 177:5 Sunday and holiday openings; 179:19 Hours of sales. North Carolina 18B-802. When stores operate. Pennsylvania 3-304. When sales may be made at Pennsylvania Liquor Stores. Virginia 4.1-120. When government stores closed.

<sup>29</sup> See New Hampshire 177:4 Operation of state stores . Salespersons. 179:20 Employee Restrictions; 179:21 Employment prohibited. Pennsylvania 3-302. Management of Pennsylvania Liquor Stores. Utah 32B-1-303. Qualifications related to employment with the department. Virginia 4.1-119. Operation of government stores.

<sup>30</sup> See Idaho 23-312. Persons under twenty-one and intoxicated persons; 23-615. Restrictions on sale. North Carolina 18B-807. Rules. Utah 32B-2-503. Operational requirements for a state store.

of marijuana and marijuana products, only on a day and during hours directed by this Act.

4. A minor may not be admitted into, or be on the premises of a state store unless accompanied by a person who is
  - a. 21 years of age or older; and / or
  - b. The minor's parent, legal guardian, or spouse.
5. A state store may not sell, offer for sale, or furnish marijuana or marijuana products except in a sealed container.
6. A person may not open a sealed container on the premises of a state store.
7. The Commission may adopt rules concerning the organization and operation of state marijuana stores, the size of state marijuana store signs, the display of marijuana and marijuana products, solicitation in and around state marijuana stores, and any other subject relating to the efficient operation of state marijuana stores.

**Marijuana not to be consumed on premises.<sup>31</sup>**

No vendor, officer, clerk, servant, agent, or employee of the division employed in any state marijuana store or state-owned warehouse shall allow any marijuana or marijuana product to be consumed on the premises of such state marijuana store or state marijuana warehouse.

**Marijuana pricing.<sup>32</sup>**

The Commission shall fix the retail prices at which marijuana and marijuana products are sold in state marijuana stores. The retail price of marijuana and marijuana products sold in state marijuana stores shall be uniform throughout the state.

**Forms of payment.<sup>33</sup>**

With respect to purchases by consumers at state marijuana stores, the Commission shall accept cash in payment for any purchase or series of purchases. The Commission may adopt regulations which provide for accepting a credit card or debit card as payment. Such regulations may provide for the collection, where appropriate, of related fees, penalties, and service charges for the use of a credit card or debit card by any consumer.

**Damaged marijuana and marijuana products.<sup>34</sup>**

All damaged marijuana and marijuana products in the possession of a state marijuana store or warehouse shall be destroyed. State marijuana stores shall keep detailed records of all disposals of damaged marijuana and marijuana products, including brand, quantity, and disposition.

**Brand registration.<sup>35</sup>**

The Commission shall in its discretion determine where and what classes, varieties and brands of marijuana and marijuana products it shall make available to the public. No brand of

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<sup>31</sup> See Idaho 23-313. Liquor not to be consumed on premises.

<sup>32</sup> See Idaho 23-309. Sales. North Carolina 18B-804. Alcoholic beverage pricing. Virginia 4.1-116(C). Disposition of moneys collected by board; creation of Enterprise Fund; reserve fund.

<sup>33</sup> See Virginia 4.1-119(I). Operation of government stores.

<sup>34</sup> See North Carolina 18B-806. Damaged alcoholic beverages

<sup>35</sup> See Pennsylvania 3-305. Sales by Pennsylvania Liquor Stores; 4-445. Brand registration.

marijuana or marijuana products shall be offered, sold or delivered to any buyer within the state unless the cultivator or manufacturer thereof shall first submit an application in the form and manner prescribed by the Commission for the registration of said brand, together with an annual filing fee for each brand registration requested.

**Packaging and containers.**<sup>36</sup>

Marijuana and marijuana products shall be sold and purchased only in their original package. Holders of a marijuana cultivator’s license or a marijuana product manufacturer’s license shall have their packaging or containers specifically approved by the commission and shall be fined for each packaging or container violation. No marijuana or marijuana products shall be sold to any purchaser except in a sealed container with an official seal or label prescribed by the Commission.

**State warehouse.**<sup>37</sup> The Commission shall provide for the receipt, storage, and distribution of marijuana and marijuana products by one of the following methods:

1. By negotiated contract with a privately owned warehouse;
2. By the construction of a warehouse, and by contracting for receipt, storage, and distribution of marijuana and marijuana products by an independent contractor, by negotiated contract, or by the use of procedures for purchase and contract by State agencies, for the operation of that warehouse.

**Transportation.**<sup>38</sup>

Marijuana and marijuana products to be sold in a state store may be transported from the place where the marijuana was cultivated or manufactured to a state marijuana warehouse or state marijuana store if transported by a person licensed by the Commission to transport marijuana and marijuana products.

A person may transport or deliver marijuana or marijuana products in this state without a license, provided the marijuana or marijuana products were obtained as authorized by this Act and provided such marijuana or marijuana products are for consumption only and not for resale purposes.

It shall be unlawful for any person, who does not have a license to transport marijuana, to transport or have in his possession, more than two ounces of marijuana that has not been subjected to regulation by the Commission.

A person, while in or about a vehicle in which marijuana or marijuana products are being transported, may not open, break, or allow to be operated or broken, a container containing marijuana or marijuana products. A person may not smoke, use, ingest, or allow to be smoked, used, or ingested marijuana or marijuana products while it is in transit under this section.

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<sup>36</sup> See Idaho 23-310. Original Package. New Hampshire 177:7 Packages; 179.33 Sizes of beer containers; promotions; notification. Utah 32B-1-604. Requirements for labeling and packaging – Authority of the commission and department; 32B-2-303. Purchase of Liquor

<sup>37</sup> See North Carolina 18B-204. State warehouse.

<sup>38</sup> See Idaho 23-505. Transportation of alcoholic beverages; 23-610. Possession of liquor not subject to regulation by division – illegal – exceptions. New Hampshire 175:6. Transportation of liquor; 179:15 Transportation of beverages and wine. North Carolina 18B-400. Amounts that may be transported; 18B-401. Manner of transportation; 18B-403. Purchase-transportation permit.. Pennsylvania 4-191(2). Possession of transportation of liquor or alcohol. Utah 32B-2-504. Delivery of liquor to state store.

**Cultivation for personal use:**<sup>39</sup>

An individual may grow, possess, process, or transport marijuana and marijuana products for his own use and for the use of his family and guests without a license if the individual is 21 years of age or older. An individual may possess, grow, process or transport no more than six marijuana plants, with three or fewer being mature, flowering plants. Marijuana cultivation for personal consumption shall take place in an enclosed, locked space and shall not be conducted openly or publicly.

**Possession:**

A person is allowed to possess no more than two ounces of marijuana that is not labeled and purchased from a licensed retail marijuana outlet, unless that person is on a premises where it can be shown they have produced the marijuana for their personal consumption. Possession of more than 2 ounces of marijuana that is not properly labeled and purchased from a licensed state marijuana store is prima facie evidence that the marijuana was obtained from an unlicensed and illegal source.

**Licensing for cultivators:**<sup>40</sup>

The Commission may grant a license to a cultivator of marijuana for sale of marijuana to the Commission. Marijuana cultivation for wholesale distribution to state marijuana stores shall take place in an enclosed, locked space consisting of no more than 2,000 square feet. Marijuana cultivation for wholesale distribution to state marijuana stores shall not be conducted openly or publicly. A marijuana cultivator may cultivate, prepare, and package marijuana and sell marijuana to state marijuana stores, to marijuana manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

**Licensing for manufacturers:**<sup>41</sup>

The Commission may grant a license to a manufacturer of marijuana products for sale to the Commission. A marijuana manufacturer may manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to other marijuana manufacturing facilities and to state marijuana stores.

**Licensing for transporters:**<sup>42</sup>

A transporter license shall authorize the licensee to transport and deliver marijuana and marijuana products within this state for sale to the Commission and to pick up marijuana and marijuana products from the holder of a cultivator or manufacturer license.

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<sup>39</sup> See Idaho 23-501. Native wine or beer for personal use. New Hampshire 175:5-b Production of beer for personal or family use. North Carolina 18B-306. Making wines and malt beverages for private use. Utah 32B-11-202. Exemption for manufacture in personal residence of fermented beverage. See also Colorado Article XVII, Section 16 3(b).

<sup>40</sup> See Idaho 23-507. Manufacturers' licenses. New Hampshire 178:6 Liquor manufacturer license. See also Colorado Article XVII, Section 16 2(h).

<sup>41</sup> See Idaho 23-507. Manufacturers' licenses. New Hampshire 178:6 Liquor manufacturer license. See also Colorado Article XVII, Section 16 2(j).

<sup>42</sup> See New Hampshire 178:14 Carrier Licenses.

**Term of License:**<sup>43</sup>

Every license issued by the Commission as permitted by this Act shall expire on December 31st of the year in which it was issued.

**Suspension and revocation of licenses:**<sup>44</sup>

The Commission may suspend or revoke a license for the abuse of its privileges, after reasonable notice and fair hearing in accordance reasonable rules of procedure prescribed by it.

**Commentary: State Marijuana Stores**

States where residents may purchase liquor exclusively from state-run liquor store form the basis of this state marijuana store model legislation. These states include Idaho, New Hampshire, North Carolina, Pennsylvania, Virginia, and Utah. This model state marijuana store legislation borrows heavily from these states' statutes regarding their state-run liquor stores. It attempts to create a scheme where state marijuana stores are established and maintained by Marijuana Control Commission that has the power to purchase and store marijuana for retail sale, hire employees, and regulate prices. The Act also creates a mechanism for distributing funds received through the Commission's actions. Finally, the Act briefly touches on licensing for cultivators, manufacturers, and transporters.

**Purpose of Act:**

This section lays out the principle underlying a state's ability to create and maintain state marijuana stores—the police power. Under the police power, a state may regulate the behavior of individuals in order to protect the public welfare, health, peace, and morals. Liberal construction allows courts to interpret the act with an eye toward the overall scheme of regulating marijuana sale and consumption, not just within the narrow confines of the words of the Act. The Act seeks to regulate all manner of cultivation, storage, transportation, purchase, sale, and possession of marijuana and marijuana products.

**Severability:**

This section allows portions of the act to be declared unconstitutional without defeating the act as a whole. If one section is deemed unsuitable, the rest of the act will remain standing. This allows the Legislature to fix parts of the Act if they are declared unconstitutional without having to re-write it in its entirety.

**Marijuana Control Commission:**

The majority of states with state-run liquor stores do so under the auspices of an overarching Board or Commission that is tasked with regulating, monitoring, and running the state run liquor stores. Members of the Board or Commission are appointed, and for the most part, the states call for the board to be bipartisan. The number of members varies, from a low of three to a high of seven. By allowing for staggered terms of six years, the Commission is insulated from political pressure because the members will serve through at least one political cycle and will be appointed at different times.

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<sup>43</sup> See Idaho 23-513. Term of permits or licenses.

<sup>44</sup> See Idaho 23-517. Suspension and revocation of permits.

**Powers and duties of the Commission:**

This section sets out the basic functions of the Marijuana Control Commission. It enables the Commission to regulate marijuana and marijuana products, to operate state marijuana stores and warehouses, and to issue licenses for cultivation, manufacture, and transportation of marijuana.

**Distribution of revenue:**

This section contemplates what is to be done with the money generated by the sale of marijuana. Granted, any state legalizing marijuana will have its own ideas about where the money should be spent, but this section attempts to give a basic outline of what should be done with the revenue. It creates a state marijuana account into which all money initially received is deposited. The money must first be used to pay the expenses generated by marijuana stores and warehouses and then to other activities required of the Commission. Several states set aside a certain percentage of the remaining revenue to go towards addiction assistance and substance abuse education. Any additional money is deposited in the state's general fund.

**Local option election:**

Before a state marijuana store can be established, the Commission must first have authorization from the voters in the county in which the store is to be located. If registered voters within a county are opposed to the sale of marijuana within their boundaries, the Commission cannot locate a store in that county without their approval. This section sets up a framework for a local option election that enables marijuana to be sold within a county's boundaries.

**Commission to establish state marijuana stores:**

This section allows the Commission to establish and maintain state marijuana stores. It sets out general requirements with respect to the local option and location of state marijuana stores. It also sets out specific notice requirements for the establishment of state marijuana stores. While local consent is required for marijuana to be sold in a county, there is no such requirement for storing or testing marijuana. Storing and testing marijuana does not expose the public to the hazards of marijuana consumption and can be done in an enclosed and protected space.

**Proximity to school:**

This section forbids a state marijuana store or warehouse from being located within 300 feet of a school. This is similar to requirements for establishments serving and selling alcohol in other states.

**Store plan:**

By providing a store plan, the Commission will ensure efficiency and consistency with respect to the maintenance and operation of state marijuana stores.

**Marijuana stores – when stores operate:**

This section dictates the days and hours of operation, similar to those required of liquor stores in many states.

**Operation of state marijuana stores and warehouses – employees:**

This section regulates employees of state marijuana stores and warehouses, requiring them to have been a resident of the state for six months and forbidding employees to consume marijuana while working. The section also dictates that the salaries of state marijuana store employees will not be based on commission. Commission-based salaries encourage the promotion of a particular commodity; this is something states will be hesitant to do with respect to marijuana.

**Operational requirements for a state marijuana store:**

These requirements set out general guidelines for the operation of state marijuana stores: prices, who may enter, and who may purchase. This section also requires that marijuana be sold in sealed packages which cannot be opened on the premises.

**Marijuana not to be consumed on premises:**

This section tasks any employee of the Commission with ensuring that no marijuana is consumed on state marijuana store or warehouse premises.

**Marijuana pricing:**

This section enables the Commission to set consistent retail prices for marijuana and marijuana products sold in all marijuana state stores.

**Forms of payment:**

This section prescribes what forms of payment the state marijuana stores will be allowed to accept.

**Damaged marijuana and marijuana products:**

If a product for sale at a marijuana store or stored in a marijuana warehouse is damaged, it must be destroyed and records documenting the loss must be kept.

**Brand registration:**

This section requires that all types of marijuana and marijuana products sold in state marijuana stores will have first been approved by the Commission. Requiring an annual filing fee generates additional state revenue.

**Packaging and containers:**

This is another mechanism through which the Commission can exercise control over the types of products sold in the state. An official seal or label denotes Commission approval and that the product is licensed for sale in the state.

**State warehouse:**

This section allows for storage of marijuana and marijuana products, in addition to that sold in state marijuana stores. Storage is required for the smooth flow of marijuana sales.

**Transportation:**

This section is an important one for enforcement issues. It regulates who can transport marijuana, where it can be transported, and how much a person may possess without being in

violation of the Act. Marijuana may be transported from a cultivator or manufacturer to a state marijuana store or warehouse by a person licensed by the Commission. If a person does not have a license to transport marijuana, the amount of unapproved marijuana he may transport is limited. This is to ensure that people cultivating marijuana for personal use are not transporting marijuana for resale. This section also forbids the opening and / or consumption of marijuana while it is being transported, similar to a state's liquor open container laws.

**Cultivation for personal use:**

This section limits the amount of marijuana an individual may cultivate for personal use. It requires personal cultivation to take place in an enclosed and locked space.

**Possession:**

This section limits the amount of marijuana a person may possess that has not been approved by the Commission. If the marijuana possessed is not in a properly labeled and sealed Package, this is evidence that the marijuana was obtained from a source other than a state marijuana store.

**Licensing:**

These sections create licenses for cultivators, manufacturers, and transporters. Requiring licenses ensures that the state will know who is producing marijuana and where they are doing it.

The licensing of transporters is necessary as an enforcement tool. If a person is not licensed to transport marijuana, then the amount that can be found in his possession is limited to two ounces of non-approved marijuana. If he is found with more than two ounces that has not been labeled in packaging approved by the Commission, then he is assumed to have acquired the marijuana from an illegal source.

These sections also place limited restrictions on the term of the licenses and when they may be suspended and revoked.

**Sources**

Idaho: <http://legislature.idaho.gov/idstat/Title23/T23.htm>

New Hampshire: <http://www.gencourt.state.nh.us/rsa/html/NHTOC/NHTOC-XIII.htm>

North Carolina: <http://www.ncleg.net/gascripts/Statutes/StatutesTOC.pl?Chapter=0018B>

Pennsylvania:

[http://www.portal.state.pa.us/portal/server.pt/community/pennsylvania\\_liquor\\_code/18291](http://www.portal.state.pa.us/portal/server.pt/community/pennsylvania_liquor_code/18291)

Utah: <http://le.utah.gov/UtahCode/chapter.jsp?code=32B>

Virginia: <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC0401000000100000000000>