OLR Bill Analysis

sHB 6697

AN ACT CONCERNING THE DEPARTMENT OF CONSUMER PROTECTION'S RECOMMENDATIONS REGARDING CANNABIS REGULATION.

TABLE OF CONTENTS:

§§ 12-13, 18 & 19 — EQUITY JOINT VENTURES

Prohibits equity joint ventures that are retailers or hybrid retailers that share certain common owners from being located within 20 miles from one another; specifies that equity joint ventures created by converting dispensary facilities are not subject to the lottery

§ 20 — ADVERTISEMENTS

Allows certain professional services to advertise cannabis or cannabis-related services; expands the billboard prohibition of advertising between certain hours to all billboards; and exempts certain outdoor business signs from the prohibition on advertising near certain buildings

§ 23 — MANUFACTURER HEMP

Requires manufacturer hemp to be tested in accordance with the laboratory testing standards; allows manufacturers to have a sample retested; allows the DCP commissioner to summarily suspend credentials for certain unauthorized sales; requires certain warnings and disclosures on manufacturer hemp; makes it a CUTPA violation to violate certain manufacturer hemp provisions

SUMMARY

This bill makes various changes to the laws around adult-use cannabis, hemp, and medical marijuana. Among other things, it:

1. establishes a "high-THC hemp product" and classifies it as marijuana or cannabis, thus subjecting it to the various licensing and regulatory requirements (e.g., must be sold only by licensed establishments, tested, and sold only to those age 21 or older except under the medical marijuana program);

2. differentiates between laboratories for controlled substances and hemp from those for cannabis (i.e., marijuana);

3. expands who may serve as a medical marijuana caregiver by allowing those with certain controlled substances convictions to serve and allowing those with a grandparent or spousal relationship with a patient to care for more than one qualifying patient at a time;

4. makes various changes to the adult-cannabis application, lottery, and equity joint venture provisions, such as specifying the confidentiality and permissible disclosures of application materials;

5. allows certain professional services to advertise cannabis or cannabis-related services and expands the billboard advertising prohibition between certain hours to all billboards, not just electronic or illuminated ones;

6. requires manufacturer hemp to have certain warnings and disclosures on the packaging and allows manufactuer hemp that fails a laboratory test to be retested before disposal; and

7. makes numerous minor, technical, and conforming changes.

EFFECTIVE DATE: October 1, 2023, except the provisions on caregivers, Department of Consumer Protection (DCP) applications and the Social Equity lottery, and equity joint ventures are effective upon passage.

§§ 1 & 22-23 — HIGH-TETRAHYDROCANNABINOL (THC) HEMP PRODUCT

Establishes the category of "high-THC hemp product" and classifies it as marijuana or cannabis, thus subjecting it to various licensing and regulatory requirements; requires DESPP to conduct trainings for local police on investigation and enforcement standards for cannabis and high-THC hemp products

The bill establishes the category of "high-THC hemp product" and classifies it as marijuana or cannabis, thus subjecting it to various licensing and regulatory requirements (e.g., must be sold only by licensed establishments, tested, and sold only to those age 21 or older except under the medical marijuana program).

Under the bill, a "high-THC hemp product" is a manufacturer hemp product that has a THC concentration or serving size limit, or is advertised, labeled, or offered for sale as having such a limit, that exceeds the following:

1. for a hemp edible, topical, or transdermal patch: (a) one milligram on a per-serving basis or (b) five milligrams on a per-container basis;

2. for a hemp tincture, including oil intended for ingestion by swallowing or sublingual absorption: (a) one milligram on a per-

serving basis or (b) 25 milligrams on a per-container basis;

3. for a hemp concentrate or extract, including a vape oil, wax, or shatter: 25 milligrams on a per-container basis; or

4. for a manufacturer hemp product not described above: (a) one milligram on a per-serving basis, (b) five milligrams on a per-container basis, or (c) 0.3% on a dry-weight basis.

The bill also modifies the marijuana and cannabis definitions to replace hemp products that exceed 0.3% total THC concentration on a dry-weight basis with high-THC hemp products. Correspondingly, the bill removes the current exemption stating that marijuana does not include manufacturer hemp products.

Police Training

The bill requires, by December 31, 2023, and annually after that, the Department of Emergency Services and Public Protection (DESPP), in conjunction with DCP, to conduct training sessions for local law enforcement agencies and officers, and publish a training bulletin, informing them of the investigation and enforcement standards concerning cannabis and high-THC hemp products.

§§ 1, 21, 37 & 39 — CANNABIS-TYPE SUBSTANCES

Replaces references to "cannabis-type substances" with "cannabis" or "marijuana," thus consolidating conflicting definitions of the former term

Current law provides two somewhat different definitions of "cannabis-type substance," one in the primary controlled substances statutes and another in the Responsible and Equitable Regulation of Adult-Use Cannabis Act (RERACA). In RERACA, the term is the same as the "cannabis" and "marijuana" definitions.

The bill eliminates references to "cannabis-type substances" and substitutes it with either "cannabis" or "marijuana," thus applying RERACA's definition to a broader range of statutes, such as the illegal manufacture or sale of one kilogram or more of marijuana (§ 37). By doing so, the bill specifies that, as with other laws on marijuana or cannabis, the terms do not include (1) any substance the federal Food

and Drug Administration (FDA) approves as a drug and that is reclassified in any controlled substance schedule, or that the federal Drug Enforcement Administration unschedules and (2) synthetic cannabinoids that the DCP commissioner designates as controlled substances and classifies in the appropriate schedule through regulations.

§§ 1-2, 4-9, 15-17 & 46 — CANNABIS TESTING LABORATORY

Differentiates between laboratories for controlled substances and hemp from those for cannabis and establishes statutory license fees for these laboratories; requires DCP to adopt regulations for them to test marijuana samples from certain individuals

The bill differentiates between laboratories for controlled substances and hemp from those for cannabis (i.e., marijuana) by renaming the latter as "cannabis testing laboratories." It makes corresponding changes for laboratory employees to rename them as cannabis testing laboratory employees. The bill also makes various minor, technical, and conforming changes to effectuate these new names.

The bill specifies that a cannabis testing laboratory may be owned by an individual, any legal entity, any other person acting in a fiduciary or representative capacity (whether court appointed or otherwise), or any combination of these.

License Fees

The bill also establishes a provisional license for a cannabis testing laboratory, which has a $500 fee and a final license and renewal fee of $1,000. Under current regulations, a medical marijuana laboratory has a license and renewal fee of $200 (Conn. Agencies Regs., § 21a-408-29).

Regulations

Existing law requires the DCP commissioner to adopt regulations on certain laboratory standards. The bill also requires her to adopt regulations setting procedures for cannabis testing laboratories to accept marijuana samples from caregivers, qualifying patients, and consumers (i.e., someone at least age 21) for testing.

Correspondingly, the bill allows a cannabis testing laboratory or employee to acquire marijuana from these people provided the sample

is acquired under the regulations.

§ 3 — MEDICAL MARIJUANA PATIENT CAREGIVERS

Expands who may serve as a caregiver for a medical marijuana patient by allowing people with certain controlled substances convictions to serve and allowing caregivers with a grandparent or spousal relationship to care for more than one qualifying patient at a time

The bill expands who may serve as a caregiver for a medical marijuana qualifying patient by allowing those who have been convicted of a violation of any law related to the illegal manufacture, sale, or distribution of controlled substances to serve in this role. Current law prohibits them from serving.

The bill also allows caregivers with a grandparent or spousal relationship with the patient to care for more than one qualifying patient at a time. Existing law already allows those with a parental, guardianship, conservatorship, or sibling relationship to do so. By law, a caregiver is someone at least age 18, other than the patient or the patient's health care professional (e.g., physician), who is responsible for managing the patient's well-being with respect to medical marijuana use (CGS § 21a-408).

§§ 9 & 46 — KEY EMPLOYEES

Updates the scope of duties of a cannabis establishment's financial manager; limits criminal history checks to key employees, managers, and owners of a cannabis establishment or cannabis laboratory

Financial Manager

Under current law, a cannabis establishment's financial manager is a key employee who is generally responsible for overseeing a cannabis establishment's financial operations, including various tasks (e.g., revenue generation). The bill redefines the scope of the manager's duty by specifying that the financial operations under this person's oversight include one or more of the following: (1) revenue and expense management; (2) distributions; (3) tax compliance; (4) budget development; or (5) budget management and implementation. Current law specifies a generally similar, but non-exclusive, list of financial operations (e.g., current law includes revenue generation rather than revenue and expense management).

By law, key employees must be at least age 21 and have a DCP license.

Criminal Background Check

Under current law, the DCP commissioner must generally require all individuals listed on an application for a cannabis establishment license, laboratory or research program license, or key employee license to submit to fingerprint-based state and national criminal history checks before issuing the initial license. The bill limits this background check requirement to key employees, managers, and owners of applicants for a cannabis establishment or cannabis testing laboratory license. Similar to current law, it allows the commissioner to require background checks for renewal applications.

By law, DCP must charge the applicant a fee equal to the amount the department is charged to do these checks.

Under the bill, an "owner" is an individual with more than 5% ownership interest in an applicant. A "manager" is an individual who is not a key employee and has an ownership interest in, and executive control of, an applicant. "Executive managerial control" is the authority or power to direct or influence the applicant's direction or operation through agreement, board membership, contract, or voting power.

Under the bill, a key employee, manager, or owner must be denied a license if the key employee's background check reveals a disqualifying conviction. By law, a disqualifying conviction is a conviction in the last 10 years of certain offenses (e.g., certain fraud-related crimes).

By law, the commissioner is allowed to accept a third-party local and national criminal background check submitted by an applicant for a backer or key employee license or renewal instead of a fingerprint-based national criminal history records check. A "backer" is an individual with a direct or indirect financial interest in a cannabis establishment.

§ 10 — DCP APPLICATION

Allows DCP to accept dispensary facility and producer applications after the Social Equity Council identifies certain criteria; generally prohibits those with access to cannabis establishment applications and related materials from disclosing certain information, subject to certain exceptions

Dispensary Facility and Producer Applications

Current law allows DCP to accept applications for certain cannabis licenses within 30 days after the Social Equity Council identifies the criteria for social equity applicants. The bill expands the list of allowable applications to include dispensary facilities and producers. As under existing law, applicants must indicate whether they want to be considered for treatment as a social equity applicant.

Application Information Disclosure

The bill generally prohibits current or former state officers or employees, or employees of anyone who had access to a submitted application, to disclose the application or any information included in or submitted with it.

Under the bill, the commissioner may disclose the following information about a submitted application:

1. the applicant's name, address, and social equity designation, if any;

2. the license type for which the application was submitted;

3. the applicant owner's name, e-mail address, and telephone number;

4. the ownership interest that an owner of a social equity applicant holds in the applicant, expressed as a percentage of all ownership interests in the applicant;

5. the name and address of the person serving as the applicant's primary business contact;

6. the application number assigned to the application;

7. the date the application was submitted to DCP;

8. information on the applicant's formation, including the applicant's business entity type, formation date and place, and business registration number as it appears on the Secretary of the

State's electronic business portal; and

9. the name of all cannabis businesses associated with the applicant and listed on the application.

In addition to the information described above, the commissioner may, in her sole discretion, disclose any personal information or financial document associated with a submitted application to:

1. a federal, state, or local government agency acting in the course of its governmental functions, or a person acting on behalf of the agency in performing these functions;

2. a college or university conducting research or assisting the state in reviewing the applications, if the college or university agrees not to disclose any personally identifying information or confidential business information and deidentifies any personal or financial information it receives from DCP before releasing any related report, study, survey, or similar document;

3. a court officer in connection with an administrative, arbitration, civil, or criminal proceeding in a court or before a government agency or self-regulatory body, including serving process, performing an investigation in anticipation of litigation, an order or the execution or enforcement of a court judgment or order, provided the person given the information or document is a party in interest to the proceeding;

4. a state marshal while performing his or her duties; or

5. the applicant or the applicant's owner to confirm the accuracy of any information or document the applicant or owner submitted to DCP in connection with the application.

Under the bill, any personal information or financial document the commissioner discloses must remain confidential. In addition, the bill prohibits anyone receiving this information or documentation from the commissioner from further distributing it in a way that allows another person to identify any person referenced in, and related to, the

information or document, unless this disclosure is required under other applicable law.

§ 11 — SOCIAL EQUITY LOTTERY

Allows social equity applicants to remove backers subject to Social Equity Council approval and makes minor changes to provisions on lottery rankings and application completeness

Rankings

The bill eliminates a duplicative requirement that the third-party lottery operator rank applications numerically from one to the maximum number DCP sets. As under existing law, the operator must still rank all applications numerically in the order they were drawn, including those that exceed the number to be considered.

Application Completeness

By law, DCP must review each application to be considered, as the third-party operator or council identifies, to confirm it is complete. For these purposes, the bill deems an application complete if each backer of the applicant completes the backer's background check submission within 30 days after DCP sends notice disclosing that the department has selected the applicant for review.

Determination of Ownership Cap

In addition to determining completeness, current law requires the council to determine whether any application includes a backer that would result in a common ownership violation of having two or more licenses in the same license type or category. The bill expands this determination to include whether the lottery applicant has two or more licenses or includes a backer with managerial control over two such licenses. By law, the following are considered to be the same license category: (1) a dispensary facility, retailer, and hybrid retailer license and (2) producer, cultivator, and micro-cultivator license.

Backer Removal

Under current law, an applicant can remove a backer before the application is submitted for a final license, unless the removal would result in a social equity applicant no longer qualifying as a social equity

applicant. The bill allows (1) social equity applicant removals as long as any change to a social equity applicant is reviewed and approved by the Social Equity Council before being reviewed by DCP and (2) backers to be removed from a cannabis establishment application selected through the general lottery at any time with notice to DCP.

§§ 12-13, 18 & 19 — EQUITY JOINT VENTURES

Prohibits equity joint ventures that are retailers or hybrid retailers that share certain common owners from being located within 20 miles from one another; specifies that equity joint ventures created by converting dispensary facilities are not subject to the lottery

Location Limitation

Current law prohibits equity joint ventures that share a common producer or backer or dispensary facility or backer or owner from being located within 20 miles of another commonly owned equity joint venture.

The bill instead prohibits equity joint ventures that are retailers or hybrid retailers from being located within 20 miles of each other if they share a (1) common cultivator or backer, (2) dispensary facility or owner, or (3) hybrid retailer or owner. Existing law already prohibits this for equity joint ventures with a common producer or backer.

Lottery Exemption

Under existing law, upon the Social Equity Council's written approval, equity joint venture applications created by a disproportionately impacted area cultivator or producer expanding its license are not subject to the lottery (CGS §§ 21a-420j & -420m). The bill specifies that this exemption also applies to dispensary facilities converting to hybrid retailers who create an equity joint venture.

§ 20 — ADVERTISEMENTS

Allows certain professional services to advertise cannabis or cannabis-related services; expands the billboard prohibition of advertising between certain hours to all billboards; and exempts certain outdoor business signs from the prohibition on advertising near certain buildings

Professional Services

Current law allows only cannabis establishments to advertise any cannabis or cannabis-related services in Connecticut. The bill also allows

a person who provides professional services related to cannabis purchases, sales, or use to advertise cannabis or cannabis-related services.

Billboards

Current law prohibits advertising by means of an electronic or illuminated billboard between the hours of 6:00 a.m. and 11:00 p.m. The bill expands this prohibition to include all billboards, not just electronic or illuminated ones.

Outdoor Sign Exemption

Current law exempts certain outdoor business signs posted at a cannabis establishment from the law's (1) required warning against underage use and (2) audience requirement (i.e., ascertaining that at least 90% of the audience is expected to be at least age 21). The bill additionally exempts these signs from the law's prohibition on advertising cannabis or cannabis products or paraphernalia in any physical form visible to the public within 500 feet from certain buildings (i.e., elementary or secondary school grounds, recreation centers or facilities, child care centers, playgrounds, public parks, and libraries).

§ 23 — MANUFACTURER HEMP

Requires manufacturer hemp to be tested in accordance with the laboratory testing standards; allows manufacturers to have a sample retested; allows the DCP commissioner to summarily suspend credentials for certain unauthorized sales; requires certain warnings and disclosures on manufacturer hemp; makes it a CUTPA violation to violate certain manufacturer hemp provisions

Laboratory Standards

By law, manufacturer hemp must be tested by an independent testing laboratory in Connecticut. Current law requires that the laboratory test each sample for microbiological contaminants, mycotoxins, heavy metals, and pesticide chemical residue, and for purposes of conducting an active ingredient analysis, if applicable, as determined by the DCP commissioner. The bill instead requires the samples to be tested according to the laboratory testing standards set in the policies, procedures, and regulations the commissioner adopts.

By law, the DCP commissioner must adopt regulations, policies, and

procedures on various cannabis issues, including laboratory standards (CGS § 21a-421j).

Retesting

Currently, if a tested sample fails certain tests the manufacturer must dispose of the entire batch from which it was taken. The bill instead allows manufacturers to have the sample retested and reanalyzed and, if the results are satisfactory, use the hemp batch for manufacturing, processing, and sale.

Under the bill, if a sample does not pass the microbiological, mycotoxin, heavy metal, or pesticide chemical test the manufacturer licensee, if it chooses not to dispose of the batch at this stage, must (1) retest and reanalyze the hemp from which the sample was taken or (2) remediate the batch through a DCP-approved remediation plan sufficient to ensure public health and safety. For retesting, the manufacturer must:

1. have an employee from the same laboratory randomly select another sample from the same hemp batch; and

2. if the sample used to retest or reanalyze the hemp yields satisfactory results for all required testing, an employee from a different laboratory must randomly select a different sample from the same hemp batch for testing. If both samples yield satisfactory results for all required testing the hemp batch from which the samples were taken must be released for manufacturing, processing, and sale.

For remediation plans, the manufacturer can have any laboratory test the remediated sample and then a different laboratory perform the final testing under substantially similar procedures as retesting.

Under the bill, if the manufacturer does not retest, remediate, or pass subsequent laboratory testing then, as under current law, it must dispose of the entire batch from which the sample was taken following DCP-established procedures.

Advertising Restrictions

Current law prohibits any claim of health impacts, medical effects, or physical or mental benefits on any advertising for, labeling of, or marketing of manufacturer hemp products. The bill specifies this applies regardless of whether the products were manufactured in Connecticut or elsewhere. By law, a violation is deemed a violation of the Connecticut Unfair Trade Practices Act (CUTPA).

By law, CUTPA prohibits businesses from engaging in unfair and deceptive acts or practices. It allows the DCP commissioner to issue regulations defining an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than $10,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney's fees; and impose civil penalties of up to $5,000 for willful violations and up to $25,000 for a restraining order violation.

Suspension

By law, manufacturer hemp product sellers do not need to be licensed if they only engage in the following activities:

1. retail or wholesale sale of manufacturer hemp products that require no further hemp manufacturing and that are obtained from someone authorized by law in Connecticut or another jurisdiction to manufacture hemp;

2. acquire manufacturer hemp products only for resale; or

3. retail sale of manufacturer hemp products that are authorized under federal or state law.

The bill allows the DCP or Department of Revenue Services commissioner to summarily suspend any credential their respective department issues to anyone selling manufacturer hemp products in violation of the provision above. The suspension must be done in accordance with the Uniform Administrative Procedure Act's

procedures for licensing matters.

The bill also makes a violation of this provision and those below a CUTPA violation.

Synthetic Cannabinoids

The bill prohibits manufacturer hemp products containing synthetic cannabinoids from being offered for sale in Connecticut or to a Connecticut consumer.

Packaging and Labeling

Under the bill, no manufacturer hemp product offered for sale in Connecticut or to a Connecticut consumer, may be packaged, presented, or advertised in a way that is likely to mislead a consumer by incorporating any statement, brand, design, representation, picture, illustration, or other depiction that:

1. bears a reasonable resemblance to trademarked or characteristic packaging of (a) cannabis offered for sale by a licensed Connecticut cannabis establishment or on tribal land by a tribal credentialed cannabis entity, or (b) a commercially available product other than a cannabis product; or

2. implies that the product (a) is a cannabis product, (b) contains a total THC concentration greater than 0.3% on a dry-weight basis, or (c) is a high-THC hemp product.

Food or Other Product for Human Ingestion. The bill prohibits manufactured hemp products that are a food, beverage, oil, or other product intended for human ingestion to be distributed or sold in Connecticut unless the package or package label contains the following:

1. a scannable barcode, website address, or quick response code that is linked to the certificate of analysis of the final form product batch by an independent testing laboratory and discloses certain information about the product (see below);

2. the product's expiration or best by date, if applicable;

3. a clear and conspicuous statement disclosing certain warnings (see below); and

4. if the product is intended to be inhaled, a clear and conspicuous warning that smoking or vaporizing is hazardous to human health.

The electronic notice must disclose the:

1. product's name;

2. product's manufacturer, packer, or distributor's name, address, and telephone number;

3. batch number, which must match the batch number on the package or label; and

4. concentration of cannabinoids in the product, including total THC and any marketed cannabinoids or ingredients, which DCP must establish in policies and procedures or regulations.

The warnings must be that:

1. children or those who are pregnant or breastfeeding should avoid using the product before consulting with a health care professional about the product's safety;

2. products containing cannabinoids should be kept out of reach of children; and

3. the FDA has not evaluated the product for safety or efficacy.

Cosmetics. The bill prohibits manufactured hemp products that are topical, soap, or cosmetic from being distributed or sold in Connecticut unless the product has within the package or on a label affixed to the package:

1. a substantially similar electronic notice as required for food (see above);

2. the product's expiration or best by date, if applicable; and

3. the following statement: "THE FDA HAS NOT EVALUATED THIS PRODUCT FOR SAFETY OR EFFICACY.".

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute
Yea 21 Nay 1 (03/07/2023)