

# HB 372 -- Redline

HA 1 to HB 372 to Bill Text -- AN ACT TO AMEND TITLES 4, 11, 16, AND 30 OF THE DELAWARE CODE RELATING TO CREATION OF THE DELAWARE MARIJUANA CONTROL ACT.

Deletions ~~struck~~ · Insertions underlined

Osienski ~~HOUSE OF Rep.~~ ~~REPRESENTATIVES 151st GENERAL ASSEMBLY HOUSE AMENDMENT NO.~~  
~~1Baumbach TO& HOUSERep.~~ ~~BILL NO.~~  
~~372Bennett AMEND& HouseRep.~~ ~~Bill No.~~  
~~372Dorsey byWalker deleting& linesRep.~~ ~~195 through 207 and inserting in lieu thereof the following:~~  
~~"NothingFree! in thisRep. chapter is intended to impact or impose any requirement or restriction on employers with respect to terms and conditions of employment including but not limited to accommodation, policies, or discipline."~~  
~~SYNOPSISHeffernan This& amendmentRep.~~ ~~substitutes language from House Amendment No.~~  
~~7Kowalko to& HouseRep.~~ ~~Bill No.~~  
~~305Longhurst relating& toRep.~~ ~~the impact of legalization and regulation on employers and employees.~~  
Lynn & Rep.  
Minor-Brown & Sen.  
Paradee & Sen.  
Lockman & Sen.  
S.  
McBride & Sen.  
Pinkney & Sen.  
Sturgeon & Sen.  
Townsend Reps.  
Bentz, Chukwuocha, Griffith, Lambert, Matthews, Mitchell, S.  
Moore, Morrison, K.  
Williams, Wilson- Anton;  
Sens.  
Gay, Poore, Sokola, Walsh HOUSE OF REPRESENTATIVES 151st GENERAL ASSEMBLY HOUSE BILL NO.  
372 AN ACT TO AMEND TITLES 4, 11, 16, AND 30 OF THE DELAWARE CODE RELATING TO CREATION OF THE DELAWARE MARIJUANA CONTROL ACT.  
WHEREAS, current federal and state policies prohibiting the use of marijuana inadequately control the use of the substance and instead, contribute to the development of a robust illegal market;  
and WHEREAS, the regulation of a legal marijuana industry would curtail the illegal market for marijuana in Delaware by diverting demand away from illegal cartels and enterprises;  
and WHEREAS, it is the responsibility of the General Assembly to ensure that Delawareans most impacted by prohibition are guaranteed access to the legal marijuana market;  
and WHEREAS, the creation of a legal framework to regulate the production and sale of marijuana in the State of Colorado and the State of Washington has generated a \$1 billion industry and yielded more than 18,000 well-paying jobs in each state;  
and WHEREAS, Delaware recognizes the economic benefits of a legal marijuana market as well as the importance of regulating the substance in a manner similar to alcohol and restricting its use to persons over 21 years old.  
NOW, THEREFORE:  
BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):  
Section 1.  
Amend Subchapter IV, Chapter 47, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:  
Sec. 4750.  
State-legal marijuana activities.  
The offenses and penalties provided for in this chapter do not apply to marijuana-related conduct allowed under the Delaware Medical Marijuana Act, Chapter 49A of this title or the Delaware Marijuana Control Act, Chapter 13 of Title 4.  
MAW Page 1 of ~~147~~ Released:  
~~04/07/2022~~03/30/2022 ~~11:48~~02:27 ~~AMP~~PM ~~2141510616~~Section 2.  
Amend Chapter 47, Title 16 of the Delaware Code by making deletions as shown by strike through and

insertions as shown by underline as follows:

Sec. 4701.

Definitions.

As used in this chapter:

(28) a.

"Marijuana" means all parts of the plant Cannabis sativa L., whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin.

b.

It "Marijuana" does not include any of the following:

1.

the The mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, or 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.

2.

Marijuana does not include products Products approved by the US Food and Drug Administration.

3.

Industrial hemp as defined in Sec. 2801 of Title 3.

Section 3.

Amend Sec. 4902A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Sec. 4902A.

Definitions.

(17) "Registered safety compliance facility" means a nonprofit entity registered under Sec. 4915A of this title by the Department to provide 1 or more of the following services:

testing marijuana produced for medical use or under Chapter 13 of Title 4 for potency and contaminants; and training cardholders and prospective compassion center agents.

cardholders, compassion center agents, and owners and employees of entities operating under Chapter 13 of Title 4.

The training may include, but need not be limited to, information related to 1 or more of the following:

a.

The safe and efficient cultivation, harvesting, packaging, labeling, and distribution of marijuana;

b.

Security and inventory accountability procedures;

and c.

Up-to-date scientific and medical research findings related to medical marijuana.

Section 4.

Amend Chapter 4, Title 4 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Sec. 401.

Division of Alcohol and Tobacco Enforcement.

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03/30/2022 02:27 PM The Division of Alcohol and Tobacco Enforcement of the Department of Safety and Homeland Security is established as follows for the administrative, ministerial, budgetary and clerical functions for the enforcement of the alcohol laws of this Code and Code, youth access to tobacco laws in Sec.Sec. 1115 through 1127 of Title 11, and the marijuana laws of this title.

Sec. 403.

Duties and powers of the Division.

The Division shall:

(1)?Investigate, prevent, and arrest for violations of this title, make seizure of alcoholic liquor, manufactured, sold, kept, or transported in contravention thereof, and confiscate such alcoholic liquor whenever required by any provision of this title;

(2)?Arrange for the proper sampling, testing and analyzing of alcoholic liquor offered for sale in this State upon receipt of a complaint regarding health by entering into an agreement with the Director of Forensic Science Laboratories of the Department of Health and Social Services Department of Safety and

Homeland Security Division of Forensic Science to test alcoholic liquor product when requested by the Division.

This subsection does not apply to home breweries.

(3)?Only require an inventory by a package store licensee if it has evidence to support a finding that such licensee has violated this title.

(4) Investigate, prevent, and arrest for violations of this title;

seize marijuana, including marijuana products and accessories that are manufactured, sold, kept, or transported in contravention thereof;

and confiscate such marijuana, including marijuana products and accessories, whenever required by any provision of this title;

Section 5.

Amend Title 4 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Title 4 Alcoholic Liquors and Marijuana Chapter 13.

The Delaware Marijuana Control Act.

Subchapter I.

General Provisions.

Sec. 1301.

Purpose and findings.

(a) In the interest of creating jobs with community benefits, eliminating the cannabis illegal market to allow law enforcement to focus on violent crime and property crimes, and promoting individual freedom, the General Assembly finds and declares that the personal use of marijuana should be legal for persons 21 years of age or older and taxed in a manner similar to alcohol.

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03/30/2022 02:27 PM 80 (b) In the interest of the health and public safety of our citizenry, the General Assembly further finds and declares that marijuana must be regulated in a manner similar to alcohol to ensure all of the following:

(1) Individuals will have to show proof of age before purchasing marijuana.

(2) Selling, distributing, or transferring marijuana individuals under the age of 21 remains illegal.

(3) Driving under the influence of marijuana remains illegal.

(4) Legitimate, taxpaying businesspeople, not criminal actors, conduct sales of marijuana.

(5) Marijuana sold in this State will be tested, labeled, and subject to additional regulations to ensure that consumers are informed and protected.

(c) The General Assembly further finds and declares that it is necessary to ensure consistency and fairness throughout this State, and therefore, that the matters addressed by this chapter are of statewide concern, except as specified in this chapter.

Sec. 1302.

Definitions.

As used in this chapter:

(1) "Appeals Commission" means 3 persons, 1 from each County, appointed by the Governor with the advice and consent of the majority of the Senate.

(2) "Commissioner" means the person appointed by the Governor and confirmed by the Senate who serves as the Marijuana Commissioner for the State.

(3) "Compassion center" means an entity registered as a compassion center under Sec. 4914A of Title 16.

(4) "Consumer" means an individual 21 years of age or older who purchases marijuana, marijuana products, or marijuana accessories for personal use by the individual or other individuals 21 years of age or older, but not for resale to others.

(5) "Department" means the Department of Safety and Homeland Security.

(6) "Disproportionately impacted area" means census tracts identified by the Commissioner in collaboration with state and local agencies that have high rates of arrest, conviction, and incarceration relating to the sale, possession, use, cultivation, manufacture, or transport of marijuana.

(7) "Division" means the Division of Alcohol and Tobacco Enforcement.

(8) "Immature plant" means a nonflowering marijuana plant, no taller than 8 inches and no wider than 8 inches;

that is produced from a cutting, clipping, or seedling;

is in a cultivating container;

and which does not have buds that may be observed by visual examination.

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03/30/2022 02:27 PM (9) "Labor peace agreement" means an agreement between a licensee and any bona fide labor organization that prohibits labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the licensee's business.

This agreement means that the licensee has agreed not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the licensee's employees.

The agreement shall provide a bona fide labor organization access at reasonable times to areas in which the licensee's employees work, for the purpose of meeting with employees to discuss the employees' right to representation, employment rights under state law, and terms and conditions of employment.

This type of agreement shall not mandate a particular method of election or certification of the bona fide labor organization.

(10) "License" means any license or permit to cultivate, possess, manufacture, sell, transport, or test marijuana or marijuana products and accessories authorized or issued by the Commissioner under this chapter.

(11) "Marijuana" means as defined in Sec. 4701 of Title 16.

(12) "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 ingesting, inhaling, or otherwise introducing marijuana into the human body.

(13) "Marijuana cultivation facility" or "cultivation facility" means an entity licensed to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.

A marijuana cultivation facility may not produce marijuana concentrates, tinctures, extracts, or other marijuana products.

(14) "Marijuana establishment" means an entity licensed as a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, or a retail marijuana store.

(15) "Marijuana product manufacturing facility" means an entity licensed to purchase marijuana; manufacture, prepare, and package marijuana products;

and sell marijuana and marijuana products to other marijuana product manufacturing facilities and retail marijuana stores, but not to consumers.

(16) "Marijuana products" means products that are comprised of marijuana, including concentrated marijuana, and other ingredients and are intended for use or consumption, such as edible products, ointments, and tinctures.

(17) "Marijuana testing facility" means an entity licensed to test marijuana for potency and contaminants.

(18) "Microbusiness license" means a license issued pursuant to Part B of Subchapter III of this title which includes any of the following:

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03/30/2022 02:27 PM a.

Marijuana cultivation facility license.

b.

Marijuana product manufacturing license.

(19) "Open license" means a license issued pursuant to Part A of Subchapter III of this title that is not a social equity license or microbusiness license which includes all of the following:

a.

Retail marijuana store license b.

Marijuana testing facility license.

c.

Marijuana cultivation facility license.

d.

Marijuana product manufacturing license.

(20) "Person" means as defined in Sec. 302 of Title 1.

(21) "Possession limit" means the amount of marijuana that may be possessed at any one time by an individual 21 years of age or older who is not a registered qualifying patient or a registered designated caregiver under Chapter 49A of Title 16.

(22) "Public place" means any indoor or outdoor area or portion thereof generally accessible to the public.

(23) "Retail marijuana" means "marijuana", as defined in Sec. 4701 of Title 16, that is cultivated, manufactured, distributed, or sold by a licensed retail marijuana establishment.

(24) "Retail marijuana store" means an entity licensed to purchase marijuana from marijuana cultivation facilities;

to purchase marijuana and marijuana products from marijuana product manufacturing facilities;

and to sell marijuana and marijuana products to consumers.

(25) "Social equity license" means a license issued pursuant to Part B of Subchapter III of this title for any of the following:

a.

Retail marijuana store license.

b.

Marijuana testing facility license.

c.

Marijuana cultivation facility license.

d.

Marijuana product manufacturing license.

(26) "Smoking" means both of the following:

a.

The burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains marijuana.

b.

The use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any form.

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03/30/2022 02:27 PM (27) "Unreasonably impracticable" means that the measures necessary to comply with the regulations require such a high investment of risk, money, time, or any other resource or asset that the operation of a marijuana establishment is not worthy of being carried out in practice by a reasonably prudent businessperson.

(28) "Work" means as defined in Sec. 3302 of Title 19.

Sec. 1303.

Personal use of marijuana.

(a) All of the following acts are lawful and are not an offense under the law of this State or the law of any municipality or county within this State and are not the basis for seizure or forfeiture of assets under the law of this State for an individual 21 years of age or older:

(1) Possessing, using, displaying, purchasing, or transporting marijuana accessories or 1 ounce or less of marijuana, of which no more than 5 grams may be concentrated marijuana, outside of a motor vehicle.

(2) Possessing and transporting marijuana accessories or 1 ounce or less of marijuana, of which no more than 5 grams may be concentrated marijuana, inside of a motor vehicle as long as the marijuana accessories or marijuana is in a closed container or is not readily accessible to anyone inside the motor vehicle.

(3) Transferring 1 ounce or less of marijuana without remuneration to an individual who is 21 years of age or older so long as the transferor reasonably believes the transfer will not cause the other person to possess more than 1 ounce of marijuana.

(4) Assisting another individual who is 21 years of age or older in any of the acts described in paragraphs (1), (2), and (3) of this subsection.

(b) The following acts remain unlawful and an offense under the law of this State:

(1) Consuming marijuana in an area accessible to the public or in a moving vehicle, as defined and punished under Sec. 4764(d) of Title 16.

(2) Growing, manufacturing, selling, or cultivating marijuana without a license granted under this chapter or Chapter 49A of Title 16, as defined and punished under Chapter 47 of Title 16.

(3) Unlawfully using a license or identification card as defined and punished under Sec. 2751 of Title 21.

Sec. 1304.

Marijuana accessories authorized.

An individual who is 21 years of age or older is authorized to manufacture, possess, and purchase marijuana accessories, and to distribute or sell marijuana accessories, to an individual who is 21 years of age or older.

Sec. 1305.

Places of employment.

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03/30/2022 02:27 PM (a) Nothing in this chapter is intended to require an employer to permit or accommodate any of the following while the employee is at work:

the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana.

(b) Nothing in this chapter is intended to affect the ability of employers to do any of the following:

(1) Have policies restricting the use of marijuana by employees at work.

(2) Have policies necessary to prevent the loss of a monetary or licensing-related benefit under federal law or regulations.

(3) Discipline employees under policies necessary to prevent the loss of a monetary or licensing-related benefit under federal law or regulations.

(4) Discipline employees who are under the influence of marijuana at work.

For purposes of this section, "under the influence" means that because of marijuana use, the individual is less able than the individual would ordinarily have been, either mentally or physically, to exercise clear judgment, sufficient physical control, or due care in exercising the responsibilities of their job.

Sec. 1306.

Driving under the influence prohibited.

Nothing in this chapter is intended to allow driving under the influence of marijuana or driving while impaired by marijuana or to supersede laws related to driving under the influence of marijuana or driving while impaired by marijuana.

This chapter is not intended to prevent the State from enacting and imposing penalties for driving under the influence of or while impaired by marijuana.

Sec. 1307.

Individuals under age 21;  
prohibitions.

(a) Nothing in this chapter is intended to permit the transfer of marijuana, with or without remuneration, to an individual under the age of 21 or to allow an individual under the age of 21 to purchase, possess, use, transport, or consume marijuana.

(b) It is unlawful for an individual under the age of 21 years to knowingly enter or remain in an establishment licensed under this chapter.

A violation of this subsection is a civil offense punishable by a civil penalty of \$50.

Sec. 1308.

Private property rights.

Nothing in this chapter prohibits a person, employer, school, hospital, detention facility, corporation, or any other entity who occupies, owns, or controls a property from prohibiting or otherwise regulating the possession, consumption, use, display, transfer, distribution, sale, transportation, or growing of marijuana on or in that property, except that in the case of the rental of a residential dwelling, a landlord may only prohibit the possession of marijuana or the consumption of marijuana by non-smoked means if one or more of the following applies:

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03/30/2022 02:27 PM (1) The building is the primary residence of the landlord, no more than 3 rooms in the building are rented to tenants, and no more than 3 tenants occupy such building.

(2) Residence is merely incidental to detention or to the provision of medical, geriatric, educational, counseling, religious, or similar services, including prisons, student housing provided by a college or school, long term care facilities, and hospitals.

(3) Failing to prohibit marijuana possession or consumption would violate federal law or regulations or cause the landlord to lose a monetary or licensing-related benefit under federal law or regulations.

Sec. 1309.

Unlawful marijuana extraction, penalties.

(a) It is unlawful for a person, other than a marijuana product manufacturer complying with this chapter and department regulations, to extract compounds from marijuana using solvents other than water, glycerin, propylene glycol, vegetable oil, or food grade ethanol (ethyl alcohol).

(b) It is unlawful for a person to extract compounds from marijuana using ethanol in the presence or vicinity of open flame.

(c) Violation of this section is a class G felony punishable by up to 3 years' incarceration and a fine of up to \$5,000.

Sec. 1310.

Lawful operation of marijuana-related establishments.

(a) It is lawful and may not be an offense under the law of this State, or be the basis for seizure or forfeiture of assets under the law of this State, for an individual 21 years of age or older to do any of the following:

(1) Manufacture, possess, or purchase marijuana accessories or sell marijuana accessories to an individual who is 21 years of age or older in a manner set forth in this chapter.

(2) Possess, display, or transport marijuana or marijuana products;

purchase marijuana from a marijuana cultivation facility;

purchase marijuana or marijuana products from a marijuana product manufacturing facility;

or sell marijuana or marijuana products to consumers if the person conducting the activities described in this paragraph (a)(2) of this section holds a valid license to operate a retail marijuana store or is acting in the person's capacity as an owner, employee, or agent of a licensed retail marijuana store.

(3) Cultivate, harvest, process, package, transport, display, or possess marijuana;

deliver or transfer marijuana to a marijuana testing facility;

sell marijuana to a marijuana cultivation facility, a marijuana product manufacturing facility, or a retail marijuana store;

or purchase marijuana from a marijuana cultivation facility if the person conducting the activities

described in this paragraph (a)(3) of this section holds a valid license to operate a marijuana cultivation facility or is acting in the person's capacity as an owner, employee, or agent of a licensed marijuana cultivation facility.

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03/30/2022 02:27 PM (4) Package, process, transport, manufacture, display, or possess marijuana or marijuana products;

deliver or transfer marijuana or marijuana products to a marijuana testing facility;

sell marijuana or marijuana products to a retail marijuana store or a marijuana product manufacturing facility;

purchase marijuana from a marijuana cultivation facility;

or purchase marijuana or marijuana products from a marijuana product manufacturing facility if the person conducting the activities described in this paragraph (a)(4) of this section holds a valid license to operate a marijuana product manufacturing facility or is acting in the person's capacity as an owner, employee, or agent of a licensed marijuana product manufacturing facility.

(5) Possess, cultivate, process, repack, store, transport, display, transfer, or deliver marijuana or marijuana products if the person holds a valid license to operate a marijuana testing facility or is acting in the person's capacity as an owner, employee, or agent of a licensed marijuana testing facility.

(6) Lease or otherwise allow the use of property owned, occupied, or controlled by any person, for any of the activities conducted lawfully under this chapter.

(b)(1) An entity licensed under this chapter may not sell or deliver marijuana or marijuana products on Thanksgiving, Easter, or Christmas or at hours other than those prescribed by the rules or regulations of the Commissioner.

(2) A holder of license for a retail marijuana store may not sell or deliver marijuana or marijuana products on Thanksgiving, Easter, or Christmas or between the hours of 1:00 a.m.

and 9:00 a.m.

on Mondays through Saturdays, and on Sundays before noon or after 8:00 p.m.

Any municipality with a population of 50,000 or more may limit sales under this subsection within the boundaries of the municipality to a maximum of 4 hours on Sundays as established by ordinance of the municipality.

The closing hours for days of the week other than Sunday may be made earlier in any municipality having

a population of 50,000 or more persons, by ordinance of the municipality;  
provided however, that such ordinance be consistent with the State and federal constitutions and must  
treat all businesses fairly.

During the months of October through December, a holder of a license for a retail marijuana store may  
have sales take place beginning at 8:00 a.m.

on Fridays through Saturdays and 10:00 a.m.

on Sundays.

(3) Any holder of a license for a retail marijuana store who wishes to sell marijuana or marijuana  
products on Sundays must pay a biennial license fee of \$500.00 for the issuance of a special license to  
sell marijuana and marijuana products on Sundays, which is in addition to any other license fees which  
may be required of the holder.

(c) Marijuana and marijuana products may not be sold in an establishment licensed to sell alcoholic  
liquors under this title.

Sec. 1311.

Enforcement.

Inspections and enforcement activities are to be conducted under Subchapter VI of Chapter 47 of Title  
16.

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03/30/2022 02:27 PM Sec. 1312.

Contracts enforceable.

Contracts related to the operation of a marijuana establishment licensed under this chapter are  
enforceable.

A contract entered into by a licensed marijuana establishment or its employees or agents as permitted  
under a valid license, or by those who allow property to be used by a licensed marijuana establishment,  
its employees, or its agents as permitted under a valid license, is not unenforceable on the basis that  
cultivating, obtaining, manufacturing, distributing, dispensing, transporting, selling, possessing, or  
using marijuana is prohibited by federal law.

Sec. 1313.

Verifying the age of marijuana consumers.

(a) Whoever sells any marijuana to a person who has not reached the age of 21 years, or sells to any  
person of more than such age any marijuana knowing that such marijuana is bought for a person who is  
less than 21 years of age shall be subject to a civil penalty not less than \$250 nor more than \$500.

(b) In any enforcement action under this section, it is an affirmative defense that the individual who  
is under 21 years old presented identification, with a photograph of such individual affixed thereon, to  
the accused and the identification set forth information which would lead a reasonable person to believe  
such individual was 21 years old or older.

Sec. 1314.

Medical marijuana provision not affected.

Nothing in this chapter may be construed to limit any privileges or rights of a medical marijuana  
patient, primary caregiver, or medical marijuana compassion center under the Delaware Medical Marijuana  
Act, Chapter 49A of Title 16.

Sec. 1315.

Oversight Committee;

annual report by the Commissioner.

(a) The Delaware Marijuana Control Act Oversight Committee is established to evaluate and make  
recommendations regarding the implementation of this chapter.

(1) The Oversight Committee shall consist of 15 members who possess the qualifications and are appointed  
as follows:

a.

The Secretary of the Department, or designee appointed by the Secretary.

b.

The Director of the Division of Revenue, or designee appointed by the Director of the Division of  
Revenue.

c.

The Director of the Division of Public Health, or designee appointed by the Director of the Division of  
Public Health.

d.

The Director of the Division of Substance Abuse and Mental Health, or designee appointed by the Director of the Division of Substance Abuse and Mental Health.

e.

The Director of the Delaware Medical Marijuana Program.

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The Chief Officer of the Division of Diversity and Inclusion.

g.

The Director of the Small Business Division.

h.

1 member, appointed by the Speaker of the House of Representatives.

i.

1 member, appointed by the President Pro Tempore of the Senate.

j.

1 marijuana advocate from each county appointed by the Speaker of the House of Representatives.

k.

1 marijuana advocate from each county appointed by the President Pro Tempore of the Senate.

(2) The members of the Oversight Committee shall serve at the pleasure of the appointing authority.

(3) A quorum shall consist of a majority of the membership of the Oversight Committee.

(4) The Oversight Committee shall select a chair and vice chair from among its members.

(5) Staff support for the Oversight Committee shall be provided by the Division.

(6) The Oversight Committee shall meet at least 2 times per year for the purpose of evaluating and making recommendations to the Governor, the General Assembly, and the Department regarding the following:

a.

The ability of consumers in all areas of the State to obtain legal marijuana.

b.

The sufficiency of the regulatory and security safeguards under this chapter and adopted by the Commissioner to ensure that access to and use of marijuana cultivated is provided only to individuals age 21 or over.

c.

Any recommended additions or revisions to the Commissioner's regulations or this chapter, including relating to security, safe handling, labeling, and nomenclature.

d.

Any research studies regarding health effects of using marijuana.

e.

The impact of the Delaware Marijuana Control Act on decreasing the illegal sales and production of marijuana.

f.

The impact of the Delaware Marijuana Control Act on other aspects of public safety, including the incidence of people driving under the influence, using marijuana in places or in a manner prohibited by this chapter, and the use of prescription opioids and illegal opioids.

g.

Any research and recommendations to implement current best practices for the development of a diverse workforce among marijuana establishments, including diversity among employees, licensees, and owners of marijuana establishments.

(b) The Commissioner shall submit to the Governor and members of the General Assembly an annual report setting forth all matters of interest and all statistics concerning marijuana regulation and control in the State, including the following:

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03/30/2022 02:27 PM (1) The number of licenses of each kind issued within the State and the number cancelled during the year.

(2) The amount of marijuana and marijuana products sold within the State.

(3) Statistics regarding diversity among marijuana establishments, including diversity of employees,

licensees, and owners of marijuana establishments.

(4) Outcomes and effectiveness of the issuance of social equity licenses which shall include all of the following:

a.

The number of and types of social equity licenses issued.

b.

The number of persons or entities receiving financial assistance, and from what source.

c.

The location of the social equity licenses.

d.

If applicable, the number of new jobs or other forms of economic output created as a result of the social equity licenses.

(5) Other data as may make a complete report to the people of this State.

(c) If marijuana is decriminalized under federal law, the Commissioner shall submit a report to the Governor and the General Assembly evaluating the state's compliance with federal law and make recommendations as to any changes needed in this State's marijuana law to be compliant with federal law. Sec. 1316.

Protections for conduct authorized by this chapter.

(a) A public officer or employee of the State, including the members of any board, commission, conservation district or agency of the State, whether elected or appointed, and whether now or previously serving as such, and any contractor or volunteer performing work for the State, whose job functions include, assist, support, regulate, approve, or authorize any of the conduct authorized by this chapter are not subject to arrest, prosecution, or the denial of any right or privilege, including any criminal or civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau where the conduct of the public officer or employee, contractor, or volunteer meets all of the following:

(1) The conduct arises out of or relates to activities required or authorized by this chapter.

(2) The conduct was carried out as authorized by this chapter or regulations authorized by this chapter.

(3) The conduct was carried out in good faith.

(b) A public officer or employee of the State, including the members of any board, commission, conservation district or agency of the State, whether elected or appointed, and whether now or previously serving as such, and any contractor or volunteer performing work for the State, whose job functions include, assist, support, regulate, approve, or authorize any of the conduct authorized by this chapter is entitled to the same rights and privileges set forth in Sec. 3925 and Sec. 4002 of Title 10.

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03/30/2022 02:27 PM Sec.Sec. 1317-1320.

Reserved.

Subchapter II.

Marijuana Commissioner and Appeals Commission.

Sec. 1321.

Marijuana Commissioner:

Appeals Commission:

qualifications;

appointment;

term;

compensation.

(a) The Commissioner must be a resident of this State and suitably educated and experienced to carry out the duties and responsibilities set forth in this chapter.

(b) The Commissioner and the 3 members of the Appeals Commission, consisting of 1 member from each County, shall be appointed by the Governor and confirmed by a majority of the members elected to the Senate and shall serve at the pleasure of the Governor.

(c) The Commissioner may name a Deputy Commissioner.

The Commissioner may, during an absence from the State, appoint the Deputy Commissioner to serve as Acting Commissioner during such absence.

In the event of death, resignation, temporary incapacity, or removal of the Commissioner, and prior to

the appointment of a successor, the Governor may appoint the Deputy Commissioner, or such other person as deemed qualified by the Governor, to serve as Acting Commissioner.

The Acting Commissioner has all the powers and shall perform all the duties and functions of the Commissioner during the Commissioner's absence or incapacity or until a successor is qualified and appointed.

(d) The Commissioner is to be compensated as provided for in the Annual Budget Act.

(e) The members of the Appeals Commission are to be compensated at the rate of \$150 per meeting together with the reasonable expenses for no more than 12 meetings per year.

(f) The Appeals Commission shall meet and elect a chair who shall convene meetings of the Commission as frequently as needed to consider appeals of the Commissioner's decision.

Sec. 1322.

Duties and powers of the Commissioner.

(a) The Commissioner, in accordance with the Administrative Procedures Act, Chapter 101 of Title 29, shall do all of the following:

(1) Adopt rules and regulations consistent with Sec. 1331 of this title and other provisions of this chapter or of any other law of this State, and all such rules and regulations have the force and effect of law.

A rule or regulation may not extend, modify, or conflict with any law of this State or the reasonable implications thereof.

A rule or regulation adopted under this paragraph (a)(1) of this section must focus primarily on public safety and the best interests of the consumer and may not unduly restrict competition within the marijuana industry.

(2) Maintain ongoing communication with the Department of Agriculture regarding the physical address where marijuana is cultivated.

Prior to issuing any license for cultivation of marijuana, the Commissioner shall notify the Department of Agriculture of a proposed location of any marijuana cultivation establishment, and take into HD :

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03/30/2022 02:27 PM consideration any concerns by the Department of Agriculture as it relates to the indoor and outdoor cultivation of marijuana.

(3) Establish rules and regulations for the effective control of the business of cultivation, manufacture, and sale of marijuana and marijuana products within the State, including the time, place, and manner in which marijuana and marijuana products may be sold and dispensed, not inconsistent with Sec. 1331 of this title and other provisions of this chapter or with any other law of this State.

(4) Establish health and safety regulations for the indoor and outdoor cultivation of marijuana by marijuana establishments under this chapter.

Such rules and regulations under this section must be consistent with applicable rules and regulations established under the regulatory authority of the Department of Agriculture and the Department of Natural Resources and Environmental Control and may include all of the following:

a.

Prohibition of the use of pesticides that are neither organic nor federally approved for marijuana.

b.

Standards for the use of carbon dioxide.

c.

Standards for water use.

d.

Standards for disposal of waste.

e.

Standards for indoor and outdoor air quality.

(5) Grant, refuse, or cancel licenses required by this chapter for the cultivation, manufacture, or sale of marijuana and marijuana products, or other licenses required by this chapter in regard thereto and to transfer any license granted.

The Commissioner must provide the applicant or licensee with written communication regarding any decision to grant, refuse, or cancel licenses required by this chapter for the cultivation, manufacture, or sale of marijuana and marijuana products, or other licenses required by this chapter in regard thereto, and when transferring any license granted.

(6) Hear complaints in regard to the appointments of, or the conduct of business in, any establishment where marijuana or marijuana products are licensed to be sold upon receipt of a petition signed by at least 10 individuals who are residents of the same neighborhood.

Ten days' notice of such hearings, together with a recital of the complaint, must be sent by the Commissioner's office by registered mail to the address of the holder of the license for the establishment.

Like notice must be delivered at the establishment by affixing the notice addressed to the holder of the license to the outside of an entrance door to the establishment.

The hearings must be public and conducted by the Commissioner.

The Commissioner, for the purpose of such hearings, has the power to issue subpoenas, compel the attendance of witnesses, administer oaths, take testimony, and compel the production of pertinent books, payrolls, accounts, papers, records, and documents.

In case any person summoned to testify or to produce any such written or HD :

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03/30/2022 02:27 PM printed evidence refuses, without reasonable cause, to be examined, to answer a legal and pertinent question, or to produce any such written or printed evidence, the Commissioner conducting the hearing may certify the fact of any such refusal to the Superior Court of the county in which such hearing is held and the court may proceed against the person so refusing as for a contempt and punish such person in the same manner as persons are punished for contempt of court.

(7) Compel the attendance of witnesses and the production of contracts, papers, books, accounts, and other documents.

Subpoenas issued must be signed by the Commissioner and may be served by any sheriff, deputy sheriff, constable, or any agent of the Division and return thereof made to the Commissioner.

The Commissioner may enforce compliance with a subpoena issued under this subsection by filing a motion to compel in the Superior Court, which shall have jurisdiction over the matter.

The court may award costs and attorney fees if it determines that noncompliance with a Commissioner subpoena was unjustified, intentional, or in bad faith.

(8) Act, for purposes of this chapter, as the competent authority in connection with other matters pertinent thereto.

(9) Provide such special seals, labels, and wrappers as deemed necessary for protection of the public against imitations, adulterations, and frauds, and prescribe the proper use of the seals, labels, and wrappers.

(10) Provide such warning signs as may be required by this chapter and distribute such signs to license holders and promulgate regulations with respect to the posting of said signs.

The Commissioner may charge a nominal fee to cover printing, handling, and distribution costs.

(11) Coordinate with the Division of Small Business, Development and Tourism to connect potential marijuana establishments licensed under this chapter with programs that support business development, including farms and programs that support small businesses owned by minorities, women, and veterans.

(12) Establish rules and regulations for the effective collection of data regarding retail sales of marijuana and marijuana products by consumers to track compliance of possession limits.

(13) Consult with the Division of Alcohol and Tobacco Enforcement before adopting or establishing any rules or regulations that concern enforcement.

(b) The Commissioner's decision on any appeal or hearing under this chapter must be in writing and is final and conclusive unless a party to such hearing files an appeal within 30 days from the date of the postmark on the Commissioner's decision by mailing notice of the appeal to the Commissioner's office. Upon receipt of the appeal, the Commissioner shall notify the chair of the Appeals Commission of the pending appeal and the chair shall convene the Appeals Commission with at least 20 days' notice to all parties.

The Appeals Commission shall hear the appeal and shall HD :

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03/30/2022 02:27 PM review the matter on the record;

act in accordance with the Administrative Procedures Act, Chapter 101 of Title 29;

and affirm, reverse, or modify the decision of the Commissioner.

A decision of the Commissioner may only be reversed upon a finding of abuse of discretion.

(c) The Commissioner may appear before the Appeals Commission for any appeal of a Commissioner's decision and may appeal any decision of the Appeals Commission or any decision of the Superior Court on appeal from the Appeals Commission.

Sec. 1323.

Oath of Office of Commissioner and employees.

The Commissioner, members of the Appeals Commission, and any hearing officer shall, on entering office,

take the oath or affirmation set forth in Article XIV of the Constitution of this State.

Any other employee may be required to take the oath or affirmation set forth in Article XIV of the Constitution of this State at the discretion of the Secretary of the Department of Safety and Homeland Security.

Sec. 1324.

Conflict of interest.

(a) The Commissioner, members of the Appeals Commission, and any hearing officer or such person's spouse, or such person's parent, son, or daughter residing at such person's residence, may not have a financial interest in any entity that sells, manufactures, cultivates, or uses marijuana;

provided, however, such persons may invest in mutual funds or similar financial instruments that hold no more than a 10% interest in any such entity.

(b) Neither the Commissioner nor any person employed in the office of the Commissioner shall receive any commission or profit whatsoever from, or have any interest whatsoever in a business licensed under this chapter to cultivate, manufacture, purchase, or sell marijuana or marijuana products;

provided, however, that nothing in this section shall prevent the Commissioner, a member of the Appeals Commission, a hearing officer, or an employee from purchasing and keeping marijuana or marijuana products for the personal use of him or herself, or members of his or her family or his or her guests if such purchase is otherwise permitted by this chapter.

(c) The Commissioner and the members of the Appeals Commission shall annually file the Financial Report required under Sec. 5813 of Title 29 with the Public Integrity Commission.

Sec. 1325.

Commissioner's statement of interest in marijuana business.

When notified of appointment as Commissioner or to the Appeals Commission, the individual so notified shall furnish in duplicate and in writing to the Governor and to the President Pro Tempore of the Senate a statement of every interest, direct or indirect, and however small, held or owned by the individual as a member or as a stockholder in any partnership, corporation, or other association engaged in the sale or in the cultivation or manufacture of marijuana or marijuana products or in any undertaking, industry, or business in which marijuana or marijuana products are used or HD :

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03/30/2022 02:27 PM required.

Prior to taking the oath of office, the Commissioner and members of the Appeals Commission must wholly and fully dispose of all interests, except those permitted by Sec. 1324 of this title.

One copy of the statement must be inserted in the permanent records of the office of the Commissioner open to public inspection.

Sec. 1326.

Employees of the Division:

Commissioner.

The Department of Safety and Homeland Security shall appoint, employ, or dismiss every officer or employee, not appointed by the Governor, necessary for carrying out the work of the Division, Appeals Commission, and Commissioner;

establish salaries, subject to the annual appropriation in the Budget Act;

and assign official titles and duties.

The Department may engage the services of experts and persons engaged in the practice of a relevant profession.

At the discretion of the Secretary of the Department of Safety and Homeland Security, officers and employees of the Division shall have the police powers of constables and other police officers of the State, counties, and other subdivisions of the State;

shall be conservators of the peace throughout the State;

shall be eligible for certification by the Council on Police Training;

and may suppress all acts of violence and enforce the provisions of this chapter.

Sec. 1327.

Property and profits of the office of the Commissioner.

All property owned by the office of the Commissioner and all associated profits are the property of the State.

Sec.Sec. 1328-1330.

Reserved.

Subchapter III.

Regulation and Licensure.

Sec. 1331.

Regulations.

(a) The Commissioner shall adopt regulations necessary for implementation of this chapter.

The regulations may not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable.

Regulations and fees for marijuana cultivation facilities may be varied based on the size of the facility to ensure that the operation of smaller facilities is not made unreasonably impracticable.

The Commissioner shall include all of the following in the regulations:

(1) Procedures for the issuance, renewal, suspension, transfer, and revocation of a license to operate a marijuana establishment with all procedures subject to the Administrative Procedures Act, Chapter 101 of Title 29.

(2) A competitive scoring process to determine which applicants may obtain licenses to operate each type of marijuana establishment if more qualified applicants apply than the Commissioner may license under this subchapter and that ensures applicants will follow best practices for community engagement, consumer protection, food safety, worker safety, family support jobs, diversity, public safety, and environmental stewardship.

The competitive scoring process for retail marijuana stores must be varied to account for geographic distribution or population density, or both.

(3) The criteria for the competitive scoring process for all license types must include the following:

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The applicants comprehensive business plan, including an annual budget and pro forma financial statements.

b.

The experience, training, and expertise of the applicant and managing officers.

c.

The applicant's plans for safety, security, and the prevention of diversion.

d.

The applicant's plans for operations, training, and staffing, including all of the following:

1.

A social responsibility plan outlining diversity goals, including plans to recruit and hire people of color, women, and veterans and to support their ownership and promotion within the organization, as well as the percent of employees it plans to hire from within the respective city or region of the State.

2.

A plan to provide a safe, healthy, and economically beneficial working environment with fair scheduling practices, family-supporting wages, and benefits for its employees.

3.

Any criminal, civil, or regulatory history encountered by other entities the applicant and managing officers have previously controlled or managed.

4.

The suitability of the proposed location for the facilities.

5.