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## Cannabis Oversight Commission

August 17, 2021, at 2:00 p.m.

Pocahontas Building, Senate Committee Room A

<https://studies.viriniageneralassembly.gov/studies/569>

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The Cannabis Oversight Commission met in Richmond with Lindley Griffin, committee clerk from the Senate Clerk's Office, calling the meeting to order.<sup>1</sup> For the first order of business, Senator Adam P. Ebbin was unanimously elected as chair of the Commission. Senator Ebbin asked for nominations for vice-chair. Delegate Charniele L. Herring was unanimously elected as vice-chair of the Commission. Following opening remarks by Senator Ebbin and introductions, the meeting continued with presentations, discussion, and public comment. Materials presented at the meeting are accessible through the [Commission's webpage](#).

### **Presentation: Report on Administration Actions and Progress from the Cannabis Control Authority**

*Megan Field, Policy Advisor - Public Safety and Agriculture, Office of the Governor*

Ms. Field noted that it has been only six weeks since HB 2312 and SB 1406, the identical bills passed during the 2021 Special Session I legalizing and regulating marijuana, became effective. She emphasized that implementing the provisions of the bills will be a multi-year process and noted that some provisions of the bills will require reenactment.

Ms. Field then discussed actions Governor Ralph S. Northam's Administration has taken since the July 1 effective date. She reported that in July the Virginia State Police (VSP) sealed from public view over 64,000 misdemeanor possession with intent to distribute arrest and conviction records in its database. She explained that this follows the sealing of simple possession records that occurred in 2020 and that these actions are an important first step toward removing barriers to employment, housing, and education for Virginians.

Further, she discussed public health initiatives the Administration has worked on. She stated that VSP has begun training law-enforcement officers on how to recognize drugged driving and that the Secretary of Health and Human Resources team is developing a public awareness campaign with a focus on young people.

Ms. Field emphasized that the Administration has been working to make sure that the public understands what changes occurred on July 1, 2021, related to the legalization of marijuana, and as a part of this initiative they created a website—[cannabis.virginia.gov](https://cannabis.virginia.gov)—on which Virginians can find answers to commonly asked questions, read updates on the Commonwealth's work on cannabis legalization, and find ways to be in touch with state officials. Additionally, she noted that the Governor has made his appointments to three cannabis boards—the Cannabis Equity

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<sup>1</sup> **Members Present:** Senator Adam P. Ebbin (chair), Delegate Charniele L. Herring (vice-chair), Senator L. Louise Lucas, Senator Ryan T. McDougle, Senator Jeremy S. McPike, Delegate Dawn M. Adams, Delegate Jeffrey L. Campbell, Delegate Paul E. Krizek, Delegate Don L. Scott, Jr.

**Members Absent:** Delegate James W. Morefield

Reinvestment Board, the Cannabis Public Health Advisory Council, and the Virginia Cannabis Control Authority (CCA) Board of Directors (the Board).

Noting that the CCA falls under the Secretariat of Public Safety and Homeland Security, Ms. Field stated that she is working closely with Secretary Brian J. Moran's team to begin setting up the infrastructure for the new Authority. She reminded the Commissioners that the CCA has two and a half years to establish a new authority, draft regulations, issue licenses, and implement ambitious social equity and public health and safety goals. Additionally, in the coming months, the CCA's Board will need to establish foundational systems and policies, including in the areas of human resources, finance, and procurement. The Governor's team is helping the CCA draft the job descriptions for the statutorily created social equity liaison position and the liaison to the Cannabis Public Health Advisory Council and is recommending the CCA prioritize hiring these individuals as soon as possible.

Ms. Field concluded by emphasizing that the Administration stands ready to provide aid and guidance to the CCA as needed. Similarly, it looks forward to providing whatever assistance it can to the Commission as it prepares for items that will become law with reenactment.

### **Presentation: Report by the Joint Legislative Audit and Review Commission**

*Mark Gribbin, Project Leader, Joint Legislative Audit and Review Commission (JLARC)*

Mr. Gribbin presented an analysis of how the provisions of HB 2312 and SB 1406 (the bills) compare to the original recommendations made by JLARC in its November 2020 report "Key Considerations for Marijuana Legalization." He noted that the bills directed JLARC to undertake this analysis and present the results to the General Assembly by November 1, 2021, and stated that the bills implemented 80 percent of the recommendations and policy options in JLARC's report. However, while the bills did address much of what JLARC recommended, he shared that JLARC staff has identified some areas where refinements or clarifications could be considered.

Mr. Gribbin then outlined the areas in which JLARC staff believes that further action should be strongly considered. Such recommendations include the following:

1. That the General Assembly align itself with most other legalized states by creating an intermediate misdemeanor possession amount;
2. That the CCA set possession equivalencies for marijuana edibles, vape oils, and other products using the emergency regulation procedure because possession of such products is currently legal as of July 1, 2021, but there are currently no regulations establishing the possession equivalencies;
3. That the General Assembly restrict medical licensees to three adult-use retail locations each in order to reduce the retail advantage that such licensees would have under current law (in which such licensees are allowed to have up to seven percent of all adult-use retail locations);
4. That the General Assembly eliminate special treatment of registered hemp processors by removing a loophole that allows any business to register as a hemp processor, pay a \$1 million fee, and operate as a vertically integrated marijuana operation not subject to state license caps;
5. That the General Assembly set separate license caps for Class A (marijuana) and Class B (hemp—low THC) cultivation facility licenses in order to prevent Class B licensees from



taking away opportunities for businesses to obtain Class A licenses, which could potentially lead to an undersupply of marijuana in the market;

6. That the General Assembly move up from July 1, 2023, to January 1, 2023, the date for the CCA to implement regulations and begin accepting applications for licenses, which would provide one year for the market to be established (e.g., applicants to submit applications and set up operations, the CCA to award licenses and approve operations, and cultivators to grow their first crop for sale on the market);
7. That the CCA, despite the fact that the commercial market provisions of the legalization bills must be reenacted during the 2022 Session of the General Assembly, begin preliminary drafting of its regulations starting in the fall of 2021 so that it will be better situated to meet the January 1, 2024, retail sales date goal;
8. That the General Assembly authorize the CCA to create different classes of licenses within the different license categories, which would help the CCA ensure that the market is not over- or under-supplied, prevent large cultivators from dominating the market, and allow for specialization (e.g., edibles or vape oils);
9. That to leverage existing scientific and regulatory expertise, (i) the CCA and the Division of Consolidated Laboratory Services (DCLS) develop a proposal for whether and how responsibility for overseeing marijuana testing labs and practices could be divided between the entities and (ii) the General Assembly consider and enact any such changes suggested by the CCA and DCLS;
10. That the General Assembly establish additional statutory requirements to ensure that the social equity grant programs are effectively and transparently administered;
11. That the General Assembly eliminate the social equity eligibility criterion for some or all family members of convicted persons in order to (i) reduce the possibility that individuals who have not been harmed receive preferences intended for others and (ii) reduce challenges that the CCA might face in verifying family relationships (which could slow down eligibility decisions and license awards); and
12. That the CCA develop in regulations a clear definition of business ownership for purposes of qualifying for social equity programs.

Senator Ebbin asked for clarification regarding why JLARC recommends reducing from six to three the number of adult-use retail locations medical licensees may operate. Mr. Gribbin explained that if all five medical licensees operate the maximum of six adult-use retail locations each, medical licensees would be operating seven percent of the total number of retail locations permitted to operate in the state. He stated that the basis for JLARC's recommendation is that if the market share of the medical licensees is kept lower, there is a smaller chance that these large, vertically integrated companies will dominate the market and push out competition from smaller, nonvertically integrated companies.

Delegate Herring and Delegate Don L. Scott, Jr., asked for clarification as to when the CCA should begin drafting the regulations. Mr. Gribbin responded that while the regulatory process could not formally take place until after reenactment of the relevant portions of the legalization bills next year, JLARC's recommendation is for the CCA to begin work informally this fall so the regulatory process can begin right after reenactment. Delegate Scott asked whether having



the CCA collaborate with DCLS on the regulations relating to marijuana testing labs and procedures could help speed up the process. Mr. Gribbin said yes.

Delegate Paul E. Krizek asked if JLARC has any data on how entrenched the illegal market is and whether JLARC will be tracking such data over the next several years while the legal market is being established. Mr. Gribbin responded that it is difficult to track the illegal market. Following up, Delegate Krizek asked if arrest data on the number of individuals who are arrested for illegally selling marijuana could shed light on the magnitude of the illegal market. Mr. Gribbin said yes.

Delegate Krizek also asked if JLARC has any concerns about oversaturation of the sale of marijuana in particular communities or neighborhoods. Mr. Gribbin answered that the CCA has statutory authority to determine where retail locations can be located and that the CCA is charged with considering the health implications affecting surrounding communities in making those decisions. Delegate Krizek then asked if there are concerns about only one or two companies gaining control of all 400 retail licenses since there is nothing in the current law to prohibit that from happening. Mr. Gribbin stated that he will double check to see if a provision prohibiting such activity was included in the final version of the legalization bills, but he noted that there is a provision included that prevents a licensee from selling its license to someone else. He noted that this provision would prevent one company from buying up licenses from other companies, thereby preventing consolidation.

Finally, Delegate Krizek stressed the importance of the Cannabis Equity Reinvestment Fund (the Fund), but noted that the Fund is funded by license application fees and taxes on retail marijuana sales, which will not begin flowing to the CCA until 2023 and 2024, respectively.. Mr. Gribbin explained that the Fund could be provided with a working capital advance.

Delegate Dawn M. Adams stated that she disagrees with JLARC's recommendation to reduce from six to three the number of adult-use retail locations that medical licensees may operate. She expressed concerns about patient access and posited that having more adult-use retail locations operated by medical providers could help to drive down costs for patients. She also stated that she views the tax on marijuana as disproportionately high compared to the taxes on alcohol and tobacco, which she believes are more dangerous substances. Finally, she expressed concerns about the lack of age limits, safety protocols, laboratory testing requirements, etc., related to hemp and asked how those concerns fit into the larger discussion of the legalization of marijuana. Mr. Gribbin noted that the topic of hemp was outside the scope of JLARC's study and suggested that the Virginia Department of Agriculture and Consumer Services, the lead regulator of hemp, be contacted for answers to those questions.

## **Discussion**

Senator Ebbin moderated a discussion among the Commission members on several topics that were included on the agenda. The first topic was expediting legal access and commercial sales. Senator Ebbin asked David May, staff to the Commission, to summarize a proposal received from pharmaceutical processors for speeding up legal sales by capitalizing on their existing capacity for such sales. Mr. May explained that the proposal involves creating a temporary permit under which pharmaceutical processors would be permitted to operate in accordance with a skeletal rule structure until the CCA's regulations were put into place. As a condition of receiving a temporary permit, the pharmaceutical processors would be required to take on



approximately five social equity licensees in an incubator program through which the pharmaceutical processors would help the social equity licensees get started. In response to concerns voiced by Delegate Herring relating to the social equity piece of the proposal, Mr. May clarified that the social equity licensees would be entirely independent of the pharmaceutical processors, and the Board would select the social equity licensees to participate in the program using the same qualification criteria that is outlined in the legalization bills.

Delegate Krizek reminded the Commission members that the General Assembly has legalized the use of marijuana, but it has not yet legalized the actual purchase of marijuana. He expressed concern over whether the general public understands this framework, as well as concerns about causing the illegal market to flourish in the lead-up to the beginning of legal sales in 2024. He stressed the importance of beginning the legal and safe sale of marijuana as soon as possible. Closing out this discussion topic, Senator Ebbin suggested exploring at a future meeting proposals for creating a legal avenue for individuals to purchase seeds or clippings for personal cultivations.

Addressing the next discussion topic, the market structure, including vertical integration and license caps, Senator Ebbin reminded the Commission members that the legalization bills codify caps on the number of licenses that may be issued in each license category. He posed to the Commission members the question of whether the public interest would be better served by granting the CCA the authority to establish these license caps in regulations rather than setting them out in statute. He noted that if the CCA were to be granted this authority, it would have flexibility to respond to changes in supply, demand, costs, and conditions related to the black market. Regarding vertical integration, Senator Jeremy S. McPike cautioned the Commission against prohibiting vertical integration in such a way as to impose artificial barriers between businesses such as farmers and producers that want to collaborate and share in both the profits and risks associated with the business.

Delegate Jeffrey L. Campbell requested more information concerning the policy rationale for limiting the transferability of licenses. Delegate Adams echoed his sentiments. Senator McPike recalled that part of the discussion during debate of the legalization bills was that there needed to be a mechanism by which to prevent a handful of large companies from buying up a large number of the licenses, thereby consolidating their market share and pushing smaller companies out of the market. Mr. May added that during those discussions members also looked to the regulatory scheme for alcoholic beverage control (ABC) licenses. Such licenses are not transferable based upon the rationale that the General Assembly vested the Board of Directors of the Virginia Alcoholic Beverage Control Authority (ABC Board) with the authority to determine who is eligible for a license and can safely operate a licensed establishment. As such, Mr. May explained, the licensee does not actually own his or her license. If the licensee forgoes its license, then it is up to the ABC Board to determine whether the next person who is going to take over the business is eligible. The major difference with marijuana, though, is that the total number of marijuana licenses that may be issued in each category is capped, which is not the case with ABC licenses.

### **Public Comment**

Michael McDermott with Faces and Voices of Recovery (FAVOR) of Virginia shared his concerns that unintended consequences may result from legalization of marijuana. He cited statistics from other states that have legalized marijuana showing that after legalization,



potencies of heroin and oxycodone increased, and that these increases correlated with increased criminal and overdose activity, affecting overall community quality of life. He stressed that in establishing the regulatory scheme for the legalization of marijuana, Virginia has a historic opportunity to learn not only from its own past regulatory efforts related to alcohol and tobacco, but also from other states that are farther along the "slippery slope" of marijuana legalization and regulation. He challenged those making and implementing policy decisions to be sensitive to the many dimensions of substance use disorder. He also called for an increase in lived-experience representation on the marijuana advisory boards, and requested that portions of the marijuana tax revenue be provided to nongovernmental organizations that provide evidence-based, lived-experience substance use disorder recovery services.

James Slade, a citizen from the City of Richmond, shared that he grew up in an area that was disproportionately policed, but he moved away when the area became gentrified. He asked whether, based on this experience, he would still qualify for the social equity programs. He stated that he is not concerned about potential market oversaturation because he believes that the market will resolve any saturation problems on its own. He discouraged the Commission from establishing a misdemeanor charge for certain levels of marijuana possession and stressed that if possession of marijuana is going to be decriminalized, it should be decriminalized entirely. He encouraged the Commission to come up with a mechanism to provide seeds to individuals who want to engage in home cultivation since such individuals cannot legally purchase seeds under current law. He cautioned the Commission that the illegal market may still thrive after legal sales begin due to the high tax on legal marijuana, particularly with regard to marijuana flowers. Finally, he encouraged the Commission to create a "craft" license for small farmers who want to sell their marijuana on a small scale to consumers in a store or restaurant in their community.

Michael Krawitz, the Executive Director for Veterans for Medical Cannabis Access and a member of the Cannabis Public Health Advisory Council, introduced himself to the Commissioners and shared that he would like to offer his insight and expertise in the field as a resource to the Commission as it undertakes its work. He expressed his hope that the number of plants that individuals may grow at home will be increased, as well as his hope that community growing for others that cannot grow themselves (such as veterans in federal housing) will be permitted.

Vickie Williams-Cullins, a member of the Cannabis Equity Reinvestment Board, expressed her hope that the date for legalized sales will be moved up as quickly as possible. She also stressed the importance of making sure that law-enforcement officers have been adequately trained on all of the recent changes to Virginia's marijuana laws.

Mike Sauer, a participant in Virginia's hemp industry, spoke of the experience that hemp growers have gained over the last several years of growing and processing hemp, and shared that such experience may be helpful to the Commission as it undertakes its work. He also shared his opinion that there should not be any felony penalty for possession of marijuana.

### **Next Meeting**

No date was set for the next meeting; however, Senator Ebbin provided the following list of topics he recommended the Commission consider at its next meeting: resentencing, review, and release; parental rights; employment protections; housing rights; youth and under 21 possession treatment; and the addition of a "medical board" to the CCA.



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For more information, see the [\*Commission's website\*](#) or contact the Division of Legislative Services staff:

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