

## SPONSOR:

## HOUSE OF REPRESENTATIVES 150th GENERAL ASSEMBLY

## **HOUSE BILL**

AN ACT TO AMEND TITLE 4, 16, AND 30 OF THE DELAWARE CODE CREATING THE DELAWARE MARIJUANA CONTROL ACT.

1	WHEREAS, current federal and state policies prohibiting the use of marijuana inadequately control the use of the
2	substance and instead, contribute to the development of a robust black market;
3	WHEREAS, the legalization of marijuana would effectively eliminate the black market for marijuana in Delaware
4	by diverting demand away from such illicit cartels and enterprises, and provide law enforcement officials the legal means
5	necessary to ensure the safe legal use of marijuana in Delaware;
6	WHEREAS, the legalization of marijuana would address criminal justice concerns related to the production,
7	possessions, and transportation of the substance, recognizing the a black individual is four times more likely to be arrested
8	for marijuana possession than a white individual despite equal rates of use;
9	WHEREAS, the creation of a legal framework to regulate the production and sale of marijuana in the State of
10	Colorado and the State of Washington has generated a \$1 billion industry and yielded more than 18,000 well-paying jobs in
11	each state;
12	WHEREAS, Delaware recognizes the economic benefits of a legal marijuana market as well as the importance of
13	regulating the substance in a manner similar to alcohol and restricting its use to persons over 21 years old;
14	NOW, THEREFORE:
15	BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all
16	members elected to each house thereof concurring therein):
17	Section 1. Amend Subchapter IV, Chapter 47, Title 16 of the Delaware Code by making deletions as shown by
18	strikethrough and insertions as shown by underline as follows:
19	§ 4750. State-legal marijuana activities.
20	The offenses and penalties provided for in this chapter do not apply to marijuana-related conduct allowed under
21	the Delaware Medical Marijuana Act, Chapter 49A of this title or the Delaware Marijuana Control Act, Chapter 13 of Title
22	<u>4.</u>

Page 1 of 45 HD : MRS : TEH Draft: 05/15/2019 11:09 AM

23	Section 2. Amend § 4764, Title 16 of the Delaware Code by making deletions as shown by strike through and
24	insertions as shown by underline as follows:
25	§ 4764. Possession of marijuana; class B misdemeanor, unclassified misdemeanor, or civil violation.
26	(c) Any person 21 years of age or older who knowingly or intentionally possesses a personal use quantity of a
27	controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise
28	authorized by this chapter, shall be assessed a civil penalty of \$100 in addition to such routine assessments necessary for
29	the administration of civil violations and the marijuana shall be forfeited. Private use or consumption by a person 21 years
30	of age or older of a personal use quantity of a controlled substance or a counterfeit controlled substance classified in §
31	4714(d)(19) of this title shall likewise be punishable by a civil penalty under this subsection. Any person 18 years of age of
32	older, but under 21 years of age, who commits any of the acts described in this subsection knowingly or intentionally
33	possesses a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19)
34	of this title or who uses or consumes a personal use quantity of a controlled substance or a counterfeit controlled substance
35	classified in § 4714(d)(19) of this title shall be assessed a civil penalty of \$100 for the first offense and shall be guilty of an
36	unclassified misdemeanor and fined \$100 for a second or subsequent offense. Unpaid fines shall double if not paid within
37	90 days of final adjudication of the violation.
38	Section 3. Amend § 4902A, Title 16 of the Delaware Code by making deletions as shown by strike through and
39	insertions as shown by underline as follows:
40	§ 4902A. Definitions.
41	(15) "Registered safety compliance facility" means a nonprofit entity registered under § 4915A of this
42	title by the Department to provide 1 or more of the following services: testing marijuana produced for medical use
43	or under Chapter 13 of Title 4 for potency and contaminants; and training eardholders and prospective compassion
44	center agents cardholders, compassion center agents, and owners and employees of entities operating under
45	Chapter 13 of Title 4. The training may include, but need not be limited to, information related to 1 or more of the
46	following:
47	a. The safe and efficient cultivation, harvesting, packaging, labeling, and distribution of marijuana;
48	b. Security and inventory accountability procedures; and
49	c. Up-to-date scientific and medical research findings related to medical marijuana.
50	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:

§ 401 Division of Alcohol and Tobacco Enforcement.

51

53	The Division of Alcohol and Tobacco Enforcement of the Department of Safety and Homeland Security is
54	established as follows for the administrative, ministerial, budgetary and clerical functions for the enforcement of the alcohol
55	laws of this Code, and youth access to tobacco laws in §§ 1115 through 1127 of Title 11, and the marijuana laws of this
56	title.
57	§ 402 Location of office.
58	§ 403 Duties and powers of the Division.
59	The Division shall:
60	(1) Investigate, prevent and arrest for violations of this title, make seizure of alcoholic liquor, manufactured
61	sold, kept or transported in contravention thereof, and confiscate such alcoholic liquor whenever required by any
62	provision of this title;
63	(2) Arrange for the proper sampling, testing and analyzing of alcoholic liquor offered for sale in this State
64	upon receipt of a complaint regarding health by entering into an agreement with the Director of Forensic Science
65	Laboratories of the Department of Health and Social Services to test alcoholic liquor product when requested by the
66	Division. This subsection does not apply to home breweries.
67	(3) Only require an inventory by a package store licensee if it has evidence to support a finding that such
68	licensee has violated this title.
69	(4) Investigate, prevent, and arrest for violations of this title; seize marijuana, including marijuana products
70	and accessories that are manufactured, sold, kept, or transported in contravention thereof; and confiscate such
71	marijuana, including marijuana products and accessories, whenever required by any provision of this title;
72	(5) Arrange for the proper sampling, testing, and analyzing of marijuana, including marijuana products and
73	accessories, that is offered for sale in this State upon receipt of a complaint regarding health by entering into an
74	agreement with the Director of Forensic Science Laboratories of the Department of Health and Social Services to tes
75	marijuana and marijuana products when requested by the Division.
76	Section 5. Amend Title 4 of the Delaware Code by making deletions as shown by strike through and insertions as
77	shown by underline as follows:
78	Chapter 13. The Delaware Marijuana Control Act.
79	Subchapter I. General Provisions.
80	§ 1301. Purpose and findings.
81	(a) In the interest of creating jobs with community benefits, eliminating the cannabis black market to allow
82	law enforcement to focus on violent crime and property crimes, and promoting individual freedom, the General

83	Assembly finds and declares that the personal use of marijuana should be legal for persons 21 years of age or older and
84	taxed in a manner similar to alcohol.
85	(b) In the interest of the health and public safety of our citizenry, the General Assembly further finds and
86	declares that marijuana must be regulated in a manner similar to alcohol to ensure all of the following:
87	(1) Individuals will have to show proof of age before purchasing marijuana.
88	(2) Selling, distributing, or transferring marijuana to minors and other individuals under the age of 21 remains
89	illegal.
90	(3) Driving under the influence of marijuana remains illegal.
91	(4) Legitimate, taxpaying business people, not criminal actors, conduct sales of marijuana.
92	(5) Marijuana sold in this State will be tested, labeled, and subject to additional regulations to ensure that
93	consumers are informed and protected.
94	(c) The General Assembly further finds and declares that it is necessary to ensure consistency and fairness
95	throughout this State, and therefore, that the matters addressed by this chapter are of statewide concern, except as specified
96	in this chapter.
97	§ 1302. Definitions.
98	As used in this chapter:
99	(1) "Appeals Commission" means 3 persons, 1 from each County, appointed by the Governor with the
100	advice and consent of the majority of the Senate.
101	(2) "Commissioner" means the person appointed by the Governor and confirmed by the Senate who
102	serves as the Marijuana Commissioner for the State.
103	(3) "Compassion center" means an entity registered as a compassion center under § 4914A of Title 16.
104	(4) "Consumer" means an individual 21 years of age or older who purchases marijuana, marijuana
105	products, or marijuana accessories for personal use by the individual or other individuals 21 years of age or older,
106	but not for resale to others.
107	(5) "Department" means the Department of Safety and Homeland Security.
108	(6) "Division" means the Division of Alcohol and Tobacco Enforcement.
109	(7) "Immature plant" means a nonflowering marijuana plant, no taller than 8 inches and no wider than 8
110	inches; that is produced from a cutting, clipping, or seedling; is in a cultivating container; and which does not have
111	buds that may be observed by visual examination.

112	(8) "License" means any license or permit to cultivate, possess, manufacture, sell, transport, or test
113	marijuana or marijuana products and accessories authorized or issued by the Commissioner under this chapter.
114	(9) "Locality" means a "municipal corporation" under § 801 of Title 22.
115	(10) "Marijuana" means as defined in § 4701 of Title 16.
116	(11) "Marijuana accessories" means any equipment, products, or materials of any kind which are used,
117	intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, composting,
118	manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging,
119	repackaging, storing, vaporizing, or containing marijuana; or for ingesting, inhaling, or otherwise introducing
120	marijuana into the human body.
121	(12) "Marijuana cultivation facility" or "cultivation facility" means an entity licensed to cultivate,
122	prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing
123	facilities, and to other marijuana cultivation facilities, but not to consumers. A marijuana cultivation facility may
124	not produce marijuana concentrates, tinctures, extracts, or other marijuana products.
125	(13) "Marijuana establishment" means an entity licensed as a marijuana cultivation facility, a marijuana
126	testing facility, a marijuana product manufacturing facility, or a retail marijuana store.
127	(14) "Marijuana product manufacturing facility" means an entity licensed to purchase marijuana;
128	manufacture, prepare, and package marijuana products; and sell marijuana and marijuana products to marijuana
129	product manufacturing facilities and retail marijuana stores, but not to consumers.
130	(15) "Marijuana products" means products that are comprised of marijuana, including concentrated
131	marijuana, and other ingredients and are intended for use or consumption, such as edible products, ointments, and
132	tinctures.
133	(16) "Marijuana testing facility" means an entity licensed to test marijuana for potency and contaminants.
134	(17) "Possession limit" means the amount of marijuana that may be possessed at any one time by an
135	individual over the age of 21 who is not a registered qualifying patient or a registered designated caregiver under
136	Chapter 49A of Title 16.
137	(18) "Public place" means any indoor or outdoor area or portion thereof generally accessible to the
138	public.
139	(19) "Retail marijuana" means "marijuana", as defined in § 4701 of Title 16, that is cultivated,
140	manufactured, distributed, or sold by a licensed retail marijuana establishment.

Page 5 of 45

HD : MRS : TEH Draft: 05/15/2019 11:09 AM 1031500139

141	(20) "Retail marijuana store" means an entity licensed to purchase marijuana from marijuana cultivation
142	facilities; to purchase marijuana and marijuana products from marijuana product manufacturing facilities; and to
143	sell marijuana and marijuana products to consumers.
144	(21) "Smoking" means one of the following:
145	a. The burning of a lighted cigarette, cigar, pipe, or any other matter or substance that contains marijuana.
146	b. The use of an electronic smoking device which creates an aerosol or vapor, in any manner or in any
147	<u>form.</u>
148	(22) "Unreasonably impracticable" means that the measures necessary to comply with the regulations
149	require such a high investment of risk, money, time, or any other resource or asset that the operation of a
150	marijuana establishment is not worthy of being carried out in practice by a reasonably prudent businessperson.
151	(23) "Work" means as defined in § 3302 of Title 19.
152	§ 1303. Personal use of marijuana.
153	(a) All of the following acts are lawful and are not an offense under the law of this State or the law of any locality
154	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
155	of age or older:
156	(1) Possessing, using, displaying, purchasing, or transporting marijuana accessories or 1 ounce or less of
157	marijuana, of which no more than 5 grams may be concentrated marijuana, outside of a motor vehicle.
158	(2) Possessing and transporting marijuana accessories or 1 ounce or less of marijuana, of which no more than
159	5 grams may be concentrated marijuana, inside of a motor vehicle as long as the marijuana accessories or marijuana is
160	in sealed packaging or is not readily accessible to anyone inside the motor vehicle. A violation of this subsection is a
161	civil offense punishable by a civil penalty of \$50.
162	(3) Transferring 1 ounce or less of marijuana without remuneration to an individual who is 21 years of age or
163	older as long as receiving the transferred marijuana would not cause the receiving individual to be over the possession
164	<u>limit.</u>
165	(4) Assisting another individual who is 21 years of age or older in any of the acts described in paragraphs (1)
166	and (2) of this subsection.
167	(b) The following acts remain unlawful and an offense under the law of this State:
168	(1) Consuming marijuana in public or in a moving vehicle, as defined and punished under § 4764(d) of Title
169	16.

Page 6 of 45

HD : MRS : TEH Draft: 05/15/2019 11:09 AM 1031500139

170	(2) Growing, manufacturing, selling, or cultivating marijuana without a license granted under this chapter or
171	Chapter 49A of Title 16, as defined and punished under Chapter 47 of Title 16.
172	(3) Unlawfully using a license or identification card as defined and punished under § 2751 of Title 21.
173	§ 1304. Marijuana accessories authorized.
174	An individual who is 21 years of age or older is authorized to manufacture, possess, and purchase marijuana
175	accessories, and to distribute or sell marijuana accessories, to an individual who is 21 years of age or older.
176	§ 1305. Places of employment.
177	Nothing in this chapter is intended to require an employer to permit or accommodate any of the following while
178	the employee is at work: the use, consumption, possession, transfer, display, transportation, sale, or growing of marijuana.
179	Nothing in this chapter is intended to affect the ability of employers to do any of the following:
180	(1) Have policies restricting the use of marijuana by employees at work.
181	(2) Have policies necessary to prevent the loss of a monetary or licensing-related benefit under federal law or
182	regulations.
183	(3) Discipline employees under policies necessary to prevent the loss of a monetary or licensing-related
184	benefit under federal law or regulations.
185	(4) Discipline employees who are under the influence of marijuana at work. For purposes of this section,
186	"under the influence" means that because of marijuana use, the individual is less able than the individual would
187	ordinarily have been, either mentally or physically, to exercise clear judgment, sufficient physical control, or due care
188	in exercising the responsibilities of their job.
189	§ 1306. Driving under the influence prohibited.
190	Nothing in this chapter is intended to allow driving under the influence of marijuana or driving while impaired by
191	marijuana or to supersede laws related to driving under the influence of marijuana or driving while impaired by marijuana.
192	This chapter is not intended to prevent the State from enacting and imposing penalties for driving under the influence of or
193	while impaired by marijuana.
194	§ 1307. Individuals under age 21; prohibitions.
195	(a) Nothing in this chapter is intended to permit the transfer of marijuana, with or without remuneration, to an
196	individual under the age of 21 or to allow an individual under the age of 21 to purchase, possess, use, transport, or consume
197	marijuana.
198	(b) It is unlawful for an individual under the age of 21 years to knowingly enter or remain in an establishment
199	licensed under this chapter. A violation of this subsection is a civil offense punishable by a civil penalty of \$50.

Page 7 of 45

200	§ 1308. Private property rights.
201	Nothing in this chapter prohibits a person, employer, school, hospital, detention facility, corporation, or any other
202	entity who occupies, owns, or controls a property from prohibiting or otherwise regulating the possession, consumption,
203	use, display, transfer, distribution, sale, transportation, or growing of marijuana on or in that property, except that in the
204	case of the rental of a residential dwelling a landlord may not prohibit the possession of marijuana or the consumption of
205	marijuana by non-smoked means unless one of the following applies:
206	(1) The building is the primary residence of the landlord, no more than 3 rooms in the building are rented to
207	tenants, and no more than 3 tenants occupy such building.
208	(2) Residence is merely incidental to detention or to the provision of medical, geriatric, educational,
209	counseling, religious, or similar services, including prisons, student housing provided by a college or school, long term
210	care facilities, and hospitals.
211	(3) Failing to prohibit marijuana possession or consumption would violate federal law or regulations or cause
212	the landlord to lose a monetary or licensing-related benefit under federal law or regulations.
213	§ 1309. Unlawful marijuana extraction, penalties.
214	(a) It is unlawful for a person, other than a marijuana product manufacturer complying with this chapter and
215	department regulations, to extract compounds from marijuana using solvents other than water, glycerin, propylene glycol,
216	vegetable oil, or food grade ethanol (ethyl alcohol).
217	(b) It is unlawful for a person to extract compounds from marijuana using ethanol in the presence or vicinity of
218	open flame.
219	(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.
220	§ 1310. Lawful operation of marijuana-related facilities.
221	(a) It is lawful and may not be an offense under the laws of this State, or be the basis for seizure or forfeiture of
222	assets under the laws of this State, for an individual 21 years of age or older to do any of the following:
223	(1) Manufacture, possess, or purchase marijuana accessories or sell marijuana accessories to an individual
224	who is 21 years of age or older in a manner set forth in this chapter.
225	(2) Possess, display, or transport marijuana or marijuana products; purchase marijuana from a marijuana
226	cultivation facility; purchase marijuana or marijuana products from a marijuana product manufacturing facility; or sell
227	marijuana or marijuana products to consumers if the person conducting the activities described in this paragraph (a)(2)
228	of this section holds a valid license to operate a retail marijuana store or is acting in the person's capacity as an owner

Page 8 of 45

HD : MRS : TEH 1031500139

229

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.
	(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 current, 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, repackage, store, transport, display, transfer, or deliver marijuana or marijuana
	products if the person holds a current, 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 Sundays,
Tha	anksgiving, 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 locality with a population of 50,000 or more may limit sales under
	this subsection within the boundaries of the locality to a maximum of 4 hours on Sundays as established by ordinance
	of the locality. The closing hours for days of the week other than Sunday may be made earlier in any locality having a
	population of 50,000 or more persons, by ordinance of the municipal corporation; 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.

258	(3) Any holder of a license for a retail marijuana store who wishes to sell marijuana or marijuana products on
259	Sundays must pay a biennial license fee of \$500 for the issuance of a special license to sell marijuana and marijuana
260	products on Sundays, which is in addition to any other license fees which may be required of the holder.
261	(c) Marijuana and marijuana products may not be sold in an establishment licensed to sell alcoholic liquors under
262	Title 4.
263	§ 1311. Enforcement.
264	Inspections and enforcement activities are to be conducted under Subchapter VI of Chapter 47 of Title 16.
265	§ 1312. Contracts enforceable.
266	Contracts related to the operation of a licensed marijuana establishment registered under this chapter are
267	enforceable. A contract entered into by a licensed marijuana establishment or its employees or agents as permitted under a
268	valid license, or by those who allow property to be used by a licensed marijuana establishment, its employees, or its agents
269	as permitted under a valid registration, is not unenforceable on the basis that cultivating, obtaining, manufacturing,
270	distributing, dispensing, transporting, selling, possessing, or using marijuana is prohibited by federal law.
271	§ 1313. Verifying the age of marijuana consumers.
272	In any prosecution for an offense under Chapter 47 of Title 16, it is an affirmative defense that the individual who
273	is under 21 years old presented identification, with a photograph of such individual affixed thereon, to the accused and the
274	identification set forth information which would lead a reasonable person to believe such individual was 21 years old or
275	<u>older</u> .
276	§ 1314. Medical marijuana provision not affected.
277	Nothing in this chapter may be construed to limit any privileges or rights of a medical marijuana patient, primary
278	caregiver, or medical marijuana dispensary under the Delaware Medical Marijuana Act, Chapter 49A of Title 16.
279	§ 1315. Oversight Committee; annual report by the Commissioner.
280	(a) The Delaware Marijuana Control Act Oversight Committee is established to evaluate and make
281	recommendations regarding the implementation of this chapter.
282	(1) The Oversight Committee shall consist of 14 members who possess the qualifications and are appointed as
283	<u>follows:</u>
284	a. The Secretary of the Department, or designee appointed by the Secretary.
285	b. The Director of the Division of Revenue, or designee appointed by the Director of the Division of
286	Revenue.

Page 10 of 45

287	c. The Director of the Division of Public Health, or designee appointed by the Director of the Division of
288	Public Health.
289	d. The Director of the Division of Substance Abuse and Mental Health, or designee appointed by the
290	Director of the Division of Substance Abuse and Mental Health.
291	e. The Director of the Delaware Medical Marijuana Program.
292	f. The chair of the Medical Marijuana Act Oversight Committee.
293	g. One member, appointed by the President Pro Tempore of the Senate.
294	h. One member, appointed by the Speaker of the House.
295	i. Two members appointed by the Governor.
296	j. One civilian resident from each county appointed by the legislature.
297	k. The Chief Officer of the Division of Diversity and Inclusion.
298	(2) The members of the Oversight Committee shall serve at the pleasure of the appointing authority.
299	(3) A quorum shall consist of a majority of the membership of the Oversight Committee.
300	(4) The Oversight Committee shall select a chair and vice chair from among its members.
301	(5) Staff support for the Oversight Committee shall be provided by the Division.
302	(6) The Oversight Committee shall meet at least 2 times per year for the purpose of evaluating and making
303	recommendations to the Governor, the General Assembly, and the Department regarding the following:
304	a. The ability of consumers in all areas of the State to obtain legal marijuana.
305	b. The sufficiency of the regulatory and security safeguards under this chapter and adopted by the
306	Commissioner to ensure that access to and use of marijuana cultivated is provided only to individuals age 21 or
307	<u>over.</u>
308	c. Any recommended additions or revisions to the Commissioner's regulations or this chapter, including
309	relating to security, safe handling, labeling, and nomenclature.
310	d. Any research studies regarding health effects of using marijuana.
311	e. The impact of the Delaware Marijuana Control Act on decreasing the illegal sales and production of
312	marijuana.
313	f. The impact of the Delaware Marijuana Control Act on other aspects of public safety, including the
314	incidence of people driving under the influence, using marijuana in places or in a manner prohibited by this
315	chapter, and the use of prescription opioids and illegal opioids.

Page 11 of 45

Draft: 05/15/2019 11:09 AM

316	g. Any research and recommendations to implement current best practices for the development of a
317	diverse workforce among marijuana establishments, including diversity among employees, licensees and owners
318	of marijuana establishments.
319	(b) The Commissioner shall submit to the Governor and members of the General Assembly an annual report
320	setting forth all matters of interest and all statistics concerning marijuana regulation and control in the State, including the
321	following:
322	(1) The number of licenses of each kind issued within the State and the number cancelled during the year.
323	(2) The amount of marijuana and marijuana products sold within the State.
324	(3) Statistics regarding diversity among marijuana establishments, including diversity of employees,
325	licensees and owners of marijuana establishments.
326	(4) Other data as may make a complete report to the people of this State.
327	§ 1316. Duties and powers of the Department of Health and Social Services.
328	(a) The Department of Health and Social Services shall establish health and safety regulations for the indoor and
329	outdoor cultivation of marijuana by marijuana establishments under this chapter, including all of the following:
330	(1) Prohibition of the use of pesticides that are neither organic nor federally-approved for marijuana.
331	(2) Standards for the use of carbon dioxide.
332	(3) Standards for water use.
333	(4) Standards for disposal of waste.
334	(5) Standards for indoor and outdoor air quality.
335	(b) Rules and regulations established under this section must be consistent with applicable rules and regulations
336	established under the regulatory authority of the Department of Agriculture and the Department of Natural Resources and
337	Environmental Control.
338	Subchapter II. Marijuana Commissioner and Appeals Commission.
339	§ 1317. Marijuana Commissioner; Appeals Commission; qualifications; appointment; term; compensation.
340	(a) The Commissioner must be a resident of this State and suitably educated and experienced to carry out the
341	duties and responsibilities set forth in this chapter.
342	(b) The Commissioner and the 3 members of the Appeals Commission, consisting of 1 member from each County,
343	shall be appointed by the Governor and confirmed by a majority of the members elected to the Senate and shall serve at the
344	pleasure of the Governor

Page 12 of 45

345	(c) The Commissioner may name a Deputy Commissioner. The Commissioner may, during an absence from the
346	State, appoint the Deputy Commissioner to serve as Acting Commissioner during such absence. In the event of death
347	resignation, temporary incapacity, or removal of the Commissioner, and prior to the appointment of a successor, the
348	Governor may appoint the Deputy Commissioner, or such other person as deemed qualified by the Governor, to serve as
349	Acting Commissioner. The Acting Commissioner has all the powers and shall perform all the duties and functions of the
350	Commissioner during the Commissioner's absence or incapacity or until a successor is qualified and appointed.
351	(d) The Commissioner is to be compensated as provided for in the Annual Budget Act.
352	(e) The members of the Appeals Commission are to be compensated at the rate of \$150 per meeting together with
353	the reasonable expenses for no more than 12 meetings per year.
354	(f) The Appeals Commission shall meet and elect a chair who shall convene meetings of the Commission as
355	frequently as needed to consider appeals of the Commissioner's decision.
356	§ 1318. Duties and powers of the Commissioner.
357	(a) The Commissioner, in accordance with the Administrative Procedures Act, Chapter 101 of Title 29, shall do al
358	of the following:
359	(1) Adopt rules and regulations consistent with § 1324 of this title and other provisions of this chapter or of
360	any other law of this State, and all such rules and regulations have the force and effect of law. A rule or regulation may
361	not extend, modify, or conflict with any law of this State or the reasonable implications thereof. A rule or regulation
362	adopted under this paragraph (a)(1) of this section must focus primarily on public safety and the best interests of the
363	consumer and may not unduly restrict competition within the marijuana industry.
364	(2) Establish rules and regulations for the effective control of the business of cultivation, manufacture, and
365	sale of marijuana and marijuana products within the State, including the time, place, and manner in which marijuana
366	and marijuana products may be sold and dispensed, not inconsistent with § 1324 of this title and other provisions of
367	this chapter or with any other law of this State.
368	(3) Grant, refuse, or cancel licenses required by this chapter for the cultivation, manufacture, or sale of
369	marijuana and marijuana products, or other licenses required by this chapter in regard thereto and to transfer any
370	license granted. The Commissioner must provide the applicant or licensee with written communication regarding any
371	decision to grant, refuse, or cancel licenses required by this chapter for the cultivation, manufacture, or sale of
372	marijuana and marijuana products, or other licenses required by this chapter in regard thereto, and when transferring
373	any license granted.

Page 13 of 45

	(4) Hear complaints in regard to the appointments of, or the conduct of business in, any establishment where
marijuan	a or marijuana products are licensed to be sold upon receipt of a petition signed by at least 10 individuals who
are resid	ents of the same neighborhood. Ten days' notice of such hearings, together with a recital of the complaint
nust be	sent by the Commissioner's office by registered mail to the address of the holder of the license for the
establish	ment. Like notice must be delivered at the establishment by affixing the notice addressed to the holder of the
icense t	the outside of an entrance door to the establishment. The hearings must be public and conducted by the
<u>'ommis</u>	sioner. The Commissioner, for the purpose of such hearings, has the power to issue subpoenas, compel the
attendan	te of witnesses, administer oaths, take testimony, and compel the production of pertinent books, payrolls
ccounts	papers, records, and documents. In case any person summoned to testify or to produce any such written o
rinted e	vidence refuses, without reasonable cause, to be examined, to answer a legal and pertinent question, or to
roduce	any such written or printed evidence, the Commissioner conducting the hearing may certify the fact of any
such refu	isal to the Superior Court of the county in which such hearing is held and the court may proceed against the
person so	o refusing as for a contempt and punish such person in the same manner as persons are punished for contemp
of court.	
	(5) Compel the attendance of witnesses and the production of contracts, papers, books, accounts and other
locumen	ts. Subpoenas issued must be signed by the Commissioner and may be served by any sheriff, deputy sheriff
onstable	e, or any agent of the Division and return thereof made to the Commissioner. The Commissioner may enforce
compliar	ce with a subpoena issued under this subsection by filing a motion to compel in the Superior Court, which
shall ha	ve jurisdiction over the matter. The court may award costs and attorney fees if it determines that
noncomp	liance with a Commissioner subpoena was unjustified, intentional, or in bad faith.
	(6) Act, for purposes of this chapter, as the competent authority in connection with other matters pertinent
thereto.	
	(7) Provide such special seals, labels, and wrappers as deemed necessary for protection of the public against

(7) 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.

(8) 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.

(9) Coordinate with the Division of Small Business, Development and Tourism and the Department of Agriculture to connect potential marijuana establishments licensed under this chapter with programs that support

Draft: 05/15/2019 11:09 AM

403	business development, including farms and programs that support small businesses owned by minorities, women, and
404	veterans.
405	(10) Establish rules and regulations for the effective collection of data regarding retail sales of marijuana and
406	marijuana products by consumers to track compliance of possession limits.
407	(b) The Commissioner's decision on any appeal or hearing under this chapter must be in writing and is final and
408	conclusive unless a party to such hearing files an appeal within 30 days from the date of the postmark on the
409	Commissioner's decision by mailing notice of the appeal to the Commissioner's office. Upon receipt of the appeal, the
410	Commissioner shall notify the chair of the Appeals Commission of the pending appeal and the chair shall convene the
411	Appeals Commission with at least 20 days' notice to all parties. The Appeals Commission shall hear the appeal and shall
412	review the matter on the record; act in accordance with the Administrative Procedures Act, Chapter 101 of Title 29; and
413	affirm, reverse, or modify the decision of the Commissioner. A decision of the Commissioner may only be reversed upon a
414	finding of abuse of discretion.
415	(c) The Commissioner may appear before the Appeals Commission for any appeal of a Commissioner's decision
416	and may appeal any decision of the Appeals Commission or any decision of the Superior Court on appeal from the Appeals
417	Commission.
418	§ 1319. Oath of Office of Commissioner and employees.
419	The Commissioner, members of the Appeals Commission, and any hearing officer shall, on entering office, take
420	the oath or affirmation set forth in article XIV of the Constitution of this State. Any other employee may be required to take
421	the oath or affirmation set forth in article XIV of the Constitution of this State at the discretion of the Secretary of the
422	Department of Safety and Homeland Security.
423	§ 1320. Conflict of interest.
424	(a) The Commissioner, members of the Appeals Commission, and any hearing officer or such person's spouse,
425	parent, legal guardian, son, or daughter residing at such person's residence, may not have a financial interest in any entity
426	that sells, manufactures, cultivates, or uses marijuana; provided, however, such persons may invest in mutual funds or
427	similar financial instruments that hold no more than a 10% interest in any such entity.
428	(b) Neither the Commissioner nor any person employed in the office of the Commissioner shall receive any
429	commission or profit whatsoever from, or have any interest whatsoever in a business licensed under this chapter to
430	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

HD: MRS: TEH 1031500139

432	and keeping marijuana or marijuana products for the personal use of him or herself, or members of his or her family or his
433	or her guests if such purchase is otherwise permitted by this chapter.
434	(c) The Commissioner and the members of the Appeals Commission shall annually file the Financial Report
435	required under § 5813 of Title 29 with the Public Integrity Commission.
436	§ 1321. Commissioner's statement of interest in marijuana business.
437	When notified of appointment as Commissioner or to the Appeals Commission, the individual so notified shall
438	furnish in duplicate and in writing to the Governor and to the President Pro Tempore of the Senate a statement of every
439	interest, direct or indirect, and however small, held or owned by the individual as a member or as a stockholder in any
440	partnership, corporation, or other association engaged in the sale or in the cultivation or manufacture of marijuana or
441	marijuana products or in any undertaking, industry, or business in which marijuana or marijuana products are used or
442	required. Prior to taking the oath of office, the Commissioner and members of the Appeals Commission must wholly and
443	fully dispose of all interests, except those permitted by § 1320 of this chapter. One copy of the statement must be inserted in
444	the permanent records of the office of the Commissioner open to public inspection.
445	§ 1322. Employees of the Division; Commissioner.
446	The Department of Safety and Homeland Security shall appoint, employ, or dismiss every officer or employee, not
447	appointed by the Governor, necessary for carrying out the work of the Division, Appeals Commission, and Commissioner
448	establish salaries, subject to the Annual Appropriation in the Budget Act; and assign official titles and duties. The
449	Department may engage the services of experts and persons engaged in the practice of a relevant profession. At the
450	discretion of the Secretary of the Department of Safety and Homeland Security, officers and employees of the Division
451	shall have the police powers of constables and other police officers of the State, counties, and other subdivisions of the
452	State; shall be conservators of the peace throughout the State; shall be eligible for certification by the Council on Police
453	Training; and may suppress all acts of violence and enforce the provisions of this chapter.
454	§ 1323. Property and profits of the office of the Commissioner.
455	All property owned by the office of the Commissioner and all associated profits is the property of the State.
456	Subchapter III. Regulation and Licensure.
457	§ 1324. Regulations.
458	(a) The Commissioner shall adopt regulations necessary for implementation of this chapter consistent with § 1324
459	of this title and other provisions of this chapter. The regulations may not prohibit the operation of marijuana establishments

460

either expressly or through regulations that make their operation unreasonably impracticable. Regulations and fees for

461	marijuana cultivation facilities may be varied based on the size of the facility to ensure that the operation of smaller
462	facilities is not made unreasonably impracticable. The Commissioner shall include all of the following in the regulations:
463	(1) Procedures for the issuance, renewal, suspension, and revocation of a registration to operate a marijuana
464	establishment with all procedures subject to the Administrative Procedures Act, Chapter 101 of Title 29.
465	(2) A competitive scoring process to determine which applicants may obtain licenses to operate each type of
466	marijuana establishment if more qualified applicants apply than the Commissioner may license under this subchapter
467	and that ensures applicants will follow best practices for community engagement, consumer protection, food safety,
468	worker safety, family support jobs, diversity, public safety, and environmental stewardship. The competitive scoring
469	process for retail marijuana stores must be varied to account for geographic distribution or population density, or both.
470	The criteria must include the following:
471	a. The experience, training, and expertise of the applicant and managing officers.
472	b. The applicant's plans for safety, security, and the prevention of diversion.
473	c. The applicant's plans for operations, training, and staffing, including:
474	1. A social responsibility plan outlining diversity goals, including plans to recruit and hire people of
475	color, women, and veterans and to support their ownership and promotion within the organization, as well as
476	the percent of employees it plans to hire from within the respective city or region of the State.
477	2. An environment and sustainability plan, including efforts it will take to minimize the carbon
478	footprint, environmental impact, and resources needs of its facilities and other business operations, such as
479	plans to use renewable energy sources, minimization of water usage, employing organic cultivation methods,
480	and adoption of other sustainable business practices.
481	3. A plan to provide a safe, healthy and economically beneficial working environment with fair
482	scheduling practices, family-supporting wages, and benefits for its employees.
483	4. Any criminal, civil, or regulatory history encountered by other entities the applicant and managing
484	officers have previously controlled or managed.
485	5. The suitability of the purposed location for the facilities.
486	6. Any other criteria deemed appropriate by the Commissioner.
487	(3) A non-refundable \$5,000 application fee for all marijuana establishments that may be adjusted annually
488	for inflation.
489	(4) Qualifications for licensure that are directly and demonstrably related to the operation of a marijuana
490	establishment.

Page 17 of 45

191	(5) Procedures for how establishments licensed under this chapter must track marijuana from seed to sale.
192	(6) Security requirements for marijuana establishments, including lighting, physical security, video, and alarm
193	requirements.
194	(7) Requirements for the transportation and storage of marijuana and marijuana products by marijuana
195	establishments.
196	(8) Employment and training requirements for licensees, employees and agents of marijuana establishments,
197	including the following:
198	a. That each marijuana establishment create an identification badge for each employee or agent.
199	b. That employees of retail marijuana store establishments be trained in recognizing valid identification
500	cards.
501	(9) Requirements to prevent the sale or diversion of marijuana and marijuana products to individuals under the
502	age of 21. To protect individual privacy, the Commissioner may not require a consumer to provide a retail marijuana
503	store with personal information other than government-issued identification to determine the consumer's age and a
504	retail marijuana store may not be required to acquire and record personal information about consumers.
505	(10) Standards for marijuana product manufacturers to use so that consumers can determine the amount of
506	marijuana in each product and compare the amount of marijuana in different products based upon the standard
507	measurements, including a definition of the amount of delta-9 tetrahydrocannabinol that constitutes a single serving in
508	a marijuana product.
509	(11) Requirements for marijuana and marijuana products sold or distributed by marijuana establishments,
510	including information for consumers and labeling requirements for marijuana products that include all of the following:
511	a. The length of time it typically takes for a product to take effect.
512	b. The amount of marijuana in the product using the standard established in this section, not to exceed 10
513	mg per serving.
514	c. The serving size and the number of servings in each package, not to exceed 5 servings.
515	d. Ingredients and possible allergens.
516	e. A nutritional fact panel.
517	f. The requirement that information on the packaging may not mislead consumers.
518	The specific batch number of the product

519	h. Educational information for consumers to educate consumers, including evidence-based information
520	about how to interpret the information on the label, health effects, and potential interactions with prescription and
521	nonprescription medications.
522	i. Opaque, child-resistant packaging, which must be designed or constructed to be significantly difficult
523	for children under 5 years of age to open and not difficult for normal adults to use properly as defined by 16 C.F.R.
524	<u>§ 1700.20.</u>
525	j. A standard symbol indicating edible marijuana products contain marijuana so that marijuana products
526	are clearly identifiable.
527	k. A warning label that explains evidence-based harms from consuming marijuana, including the impact
528	on developing brains, the impact on an individual's ability to operate machinery, and any interference with
529	prescription drugs.
530	(12) Health and safety regulations and standards for the manufacture of marijuana products by marijuana
531	establishments consistent with other State requirements for food, including all of the following:
532	a. Prohibition of the manufacture of products that look like candy or cartoon characters.
533	b. Restrictions or prohibitions on additives to marijuana and marijuana-infused products, including
534	additives that are toxic, designed to make the product more addictive, or designed to make the product more
535	appealing to children, but not including common baking and cooking items.
536	c. Standards for the safe manufacture of marijuana extracts and concentrates.
537	d. Requirements for random sample testing, including the manner and frequency of testing, to ensure
538	quality control, including by ensuring that marijuana and marijuana-infused products are accurately labeled for
539	potency. The testing analysis must include testing for residual solvents, poisons, or toxins; harmful chemicals:
540	dangerous molds or mildew; filth; harmful microbials such as E. Coli or salmonella; and pesticides.
541	(13) Restrictions on the advertising, marketing, and signage of marijuana and marijuana products, including a
542	prohibition on mass-market campaigns that have a high likelihood of reaching minors.
543	(14) Restrictions on the display of marijuana and marijuana products, including requirements that marijuana
544	and marijuana products may not be displayed in a manner that is visible to the general public from a public right-of-
545	<u>way.</u>
546	(15) Requirements governing visits to cultivation facilities and product manufacturers, including the
547	requirement that these marijuana establishment log visitors.

 $\mathsf{HD}:\mathsf{MRS}:\mathsf{TEH}$ 

548	(16) Requirements that educational materials be disseminated to consumers who purchase marijuana-infused
549	products.
550	(17) Standards for the operation of testing laboratories, including requirements for equipment and
551	qualifications for personnel, consistent with the requirements established under Chapter 49A of Title 16 for a registered
552	safety compliance facility.
553	(18) Civil penalties for the failure to comply with regulations made under this chapter.
554	(19) Procedures for receiving and processing consumer complaints about marijuana establishments.
555	§ 1325. Retail marijuana store licenses.
556	(a) A retail marijuana store license may only be issued to a person selling retail marijuana or retail marijuana
557	products under the terms and conditions of this chapter. A license issued under this section is valid for 2 years. Each
558	application for a retail marijuana store license must contain all of the following:
559	(1) The application materials required by the Commissioner, including the location where the retail marijuana
560	store will operate.
561	(2) The application fee in an amount determined by the Commissioner.
562	(3) Proof of compliance with § 1329 of this chapter.
563	(4) Proof of compliance with § 1314 of this chapter.
564	(b) A retail marijuana store licensee shall pay the Commissioner \$10,000 biennially for the retail marijuana store
565	license. A retail marijuana store licensee must renew the license biennially by paying the fee required by this subsection.
566	(c) A retail marijuana store may purchase retail marijuana from a licensed retail marijuana cultivation facility or
567	may cultivate its own retail marijuana if it obtains a retail marijuana cultivation facility license under § 1327 of this chapter.
568	(d) A retail marijuana store shall track all of its retail marijuana and retail marijuana products from the point that
569	they are transferred from a retail marijuana cultivation facility or retail marijuana products manufacturer to the point of sale.
570	(e)(1) A retail marijuana store licensee may also sell retail marijuana products that are prepackaged and labeled as
571	required by this chapter.
572	(2) A retail marijuana store licensee may transact with a retail marijuana products manufacturing licensee for
573	the purchase of retail marijuana products upon a retail marijuana products manufacturing licensee's licensed premises
574	or a retail marijuana store's licensed premises.
575	(f)(1) A retail marijuana store may not sell more than 1 ounce of retail marijuana or its equivalent in retail
576	marijuana products, including retail marijuana concentrate, except for nonedible, nonpsychoactive retail marijuana

577	products, including ointments, lotions, balms, and other nontransdermal topical products, during a single transaction to an
578	individual.
579	(2) Prior to initiating a sale to an individual, an employee of the retail marijuana store making the sale shall
580	verify that the purchaser has a valid government-issued photo identification card showing that the individual is 21
581	years of age or older. If an individual under 21 years of age presents a fraudulent proof of age, any action relying on
582	the fraudulent proof of age is not grounds for the revocation or suspension of any license issued under this section.
583	a. If a retail marijuana store licensee or employee has reasonable cause to believe that an individual is
584	under 21 years of age and is exhibiting fraudulent proof of age in an attempt to obtain any retail marijuana or
585	marijuana product, the licensee or employee is authorized to confiscate such fraudulent proof of age, if possible,
586	and shall, within 72 hours after the confiscation, remit it to a state or local law enforcement agency. The failure to
587	confiscate such fraudulent proof of age or to remit to a state or local law enforcement agency within 72 hours after
588	the confiscation does not constitute a criminal offense.
589	b. If a retail marijuana store licensee or employee believes that an individual is under 21 years of age and
590	is exhibiting fraudulent proof of age in an attempt to obtain any retail marijuana or retail marijuana product, the
591	licensee or employee, employee of the Division, or any law enforcement officer as defined in § 222 of Title 11,
592	acting in good faith and upon reasonable grounds therefor, may detain and question such person in a reasonable
593	manner for the purpose of ascertaining whether the person is guilty of any unlawful act regarding the purchase of
594	retail marijuana. The questioning of an individual by an employee or a peace or police officer does not render the
595	licensee, the employee, or the peace or police officer civilly or criminally liable for slander, false arrest, false
596	imprisonment, malicious prosecution, or unlawful detention.
597	(h) A retail marijuana store must provide a sample of its products to a facility that has a marijuana testing facility
598	license for testing and research purposes as required by regulations adopted under this chapter. A retail marijuana store
599	shall maintain a record of what was provided to the testing facility, the identity of the testing facility, and the results of the
600	testing.
601	(i) All retail marijuana and retail marijuana products sold at a licensed retail marijuana store must be packaged and
602	labeled as required by this chapter.
603	(j) A retail marijuana store shall comply with all provisions of State and federal law in regards to individuals with
604	disabilities.
605	(k)(1) A retail marijuana store may only sell retail marijuana; retail marijuana products; marijuana accessories;

nonconsumable products such as apparel; and marijuana related products, such as childproof packaging containers, but is

607	prohibited from selling or giving away any consumable product, including cigarettes or alcohol, or any edible product that
608	does not contain marijuana, including sodas, candies, or baked goods.
609	(2) A retail marijuana store may not sell any retail marijuana or retail marijuana products that contain nicotine
610	or alcohol, if the sale of the alcohol would require a license under this title.
611	(3) A retail marijuana store may not sell retail marijuana or retail marijuana products over the Internet or
612	deliver retail marijuana or retail marijuana products to a person not physically present in the retail marijuana store's
613	licensed premises.
614	(l) A display case containing marijuana concentrate must include the potency of the marijuana concentrate next to
615	the name of the product using the standard established under this chapter.
616	(m) Retail marijuana store licenses shall be issued as follows:
617	(1) Beginning 10 months after [the effective date of this Act], the Commissioner shall begin accepting
618	applications for retail marijuana store licenses. Beginning 11 months after [the effective date of this Act] the
619	Commissioner shall begin issuing retail marijuana store licenses. The Commissioner shall issue 15 retail marijuana
620	store licenses 16 months after [the effective date of this Act], provided a sufficient number of qualified applicants exist.
621	(2) An authorized representative of a properly registered compassion center under § 4914A of Title 16 that
622	does not already hold a retail marijuana store license shall be given priority over other applicants in any competitive
623	application process. Any retail marijuana store license issued under this subsection is considered a business registration
624	separate and distinct from the registration issued under § 4914A of Title 16.
625	(3) If there are fewer than 15 licensed retail marijuana stores any time 2 years after [the effective date of this
626	Act], the Commissioner shall accept applications and grant licenses for additional retail marijuana stores.
627	(4) The Commissioner may accept applications and grant licenses for more than 15 retail marijuana stores if,
628	after 3 years from [the effective date of this Act], additional stores are needed to meet demand statewide or in a
629	geographic area.
630	(5) Impossibility of performance because of opposition by localities or a lack of qualified applications is a
631	defense to any lawsuit brought against the Commissioner to comply with the issuance of the required number of
632	<u>licenses.</u>
633	(o) Beginning thirty days after [the effective date of this Act] and for the 11 months thereafter, prior to applying
634	and obtaining a license under subsection (n)(1) of this section, a properly registered compassion center under § 4914A of
635	Title 16 may sell small quantities of recreational marijuana with the following conditions:

636	(1) The compassion center may not sell more than 3.5 grams of retail marijuana or its equivalent in retail
637	marijuana products, including retail marijuana concentrate, except for nonedible, nonpsychoactive retail marijuana
638	products, including ointments, lotions, balms, and other nontransdermal topical products, during a single transaction to
639	an individual that will revert to the 1 ounce limit pursuant to subsection (n)(1) of this section upon approval of a retail
640	marijuana store license.
641	(2) A temporary marijuana control enforcement tax imposed under this subsection at the rate of 25% of the
642	retail sales price of the marijuana product that will revert to the 15% rate pursuant to § 1342(b) of this chapter upon
643	approval of a retail marijuana store license. With the exception of the higher rate, this temporary marijuana control
644	enforcement tax shall follow the other requirements of § 1342(b).
645	(3) The Director of the Delaware Medical Marijuana Program shall indicate by [the effective date of this Act]
646	the percentage of marijuana product stock that must be reserved by compassion centers for medical marijuana
647	consumers.
648	(4) The Director of the Delaware Medical Marijuana Program may freeze recreational sales in a compassion
649	center if there is cause to believe the compassion center is unable to meet the demands of its medical marijuana patients
650	due to its recreational marijuana sales.
651	§ 1326. Marijuana testing facility licenses.
652	(a) A marijuana testing facility license may be issued to a person who performs testing and research on retail
653	marijuana under the terms and conditions of this chapter. A license issued under this section is valid for 2 years. Each
654	application for a marijuana testing facility license must contain all of the following:
655	(1) The application materials required by the Commissioner, including the location where the marijuana
656	testing facility will operate.
657	(2) The application fee in an amount determined by the Commissioner.
658	(3) Proof of compliance with § 1329 of this chapter.
659	(4) Proof of compliance with § 1314 of this chapter.
660	(b) A marijuana testing facility licensee shall pay the Commissioner \$10,000 biennially for the marijuana testing
661	facility license. A marijuana testing facility licensee must renew the license biennially by paying the fee required by this
662	subsection.
663	(c) The Commissioner shall promulgate rules related to acceptable testing and research practices, including testing,
664	standards; quality control analysis; equipment certification and calibration; chemical identification; identifying other

665

substances; and other measurers used in bona fide research methods.

(d) A person who has a financial interest in a marijuana testing facility license from the Commissioner for testing
purposes may not have a financial interest in a registered compassion center, a marijuana cultivation facility, a marijuan
products manufacturing facility, or a retail marijuana store. A person that has a financial interest in a registered compassion
center, a marijuana cultivation facility, a marijuana products manufacturing facility, or a retail marijuana store may no
have a financial interest in a facility that has a marijuana testing facility license or is a registered safety compliance facility
(e) Marijuana testing facility licenses shall be issued as follows:
(1) Beginning 10 months after [the effective date of this Act], the Commissioner shall begin accepting
applications for a license to operate as a marijuana testing facility in accordance with this chapter. Beginning 1
months after [the effective date of this Act], the Commissioner shall begin issuing marijuana testing facility licenses
The Commissioner shall issue 5 marijuana testing facility licenses 16 months after [the effective date of this Act
provided a sufficient number of qualified applicants exist.
(2) If there are fewer than 5 licensed marijuana testing facilities at any time 2 years after [the effective date of
this Act] or later, the Commissioner shall accept applications and grant licenses for marijuana testing facilities.
(3) The Commissioner may accept applications and grant licenses for more than 5 licensed marijuana testin
facilities if needed if there are an insufficient number of marijuana testing facilities to meet demand statewide or in
geographic area.
(4) Impossibility of performance because of opposition by localities or a lack of qualified applications is
defense to any lawsuit brought against the Division to comply with the issuance of the required number of licenses.
§ 1327. Marijuana cultivation facility licenses.
(a) A marijuana cultivation facility license may be issued only to a person who cultivates retail marijuana for sal
and distribution to licensed retail marijuana stores, marijuana products manufacturing licensees, or other marijuan
cultivation facilities under the terms and conditions of this chapter. A license issued under this section is valid for 2 years
Each application for a marijuana cultivation facility license must contain all of the following:
(1) The application materials required by the Commissioner, including the location where the marijuan
cultivation facility will operate.
(2) The application fee in an amount determined by the Commissioner.
(3) Proof of compliance with § 1329 of this chapter.
(4) Proof of compliance with § 1314 of this chapter.

594	(b) A marijuana cultivation facility licensee shall pay the Commissioner biennially for the marijuana cultivation
595	facility license according to the rates below. A marijuana cultivation facility licensee must renew the license biennially by
596	paying the fee required by this subsection. The license fee for a marijuana cultivation facility shall be as follows:
597	(1) For an indoor facility that is equal to or less than 2,500 square feet or an outdoor facility that is equal to or
598	less than 1 acre, the fee is \$2,500.
599	(2) For an indoor facility that is equal to or between 2,501 and 7,500 square feet or for an outdoor facility that
700	is equal to or between 1.1 and 2.5 acres, the fee is \$5,000.
701	(3) For an indoor facility that is between 7,501 and 10,000 square feet or for an outdoor facility that is equal to
702	or between 2.6 and 5 acres, the fee is \$7,500.
703	(4) For an indoor facility that is equal to or greater than 10,001 square feet or for an outdoor facility that is
704	equal to or greater than 5.1 acres, the fee is \$10,000.
705	(c) A marijuana cultivation facility shall track the marijuana it cultivates from seed or immature plant to wholesale
706	purchase.
707	(d) A marijuana cultivation facility must provide a sample of its products to a facility that has a marijuana testing
708	facility license for testing and research purposes as required by regulations adopted under this chapter. A marijuana
709	cultivation facility shall maintain a record of what was provided to the testing facility, the identity of the testing facility, and
710	the testing results.
711	(e) Retail marijuana or retail marijuana products may not be consumed on the premises of a retail marijuana
712	cultivation facility.
713	(f) Marijuana cultivation facility licenses shall be issued as follows:
714	(1) Beginning 10 months after [the effective date of this Act], the Commissioner shall begin accepting
715	applications for a license to operate as a marijuana cultivation facility in accordance with this chapter. Beginning 11
716	months after [the effective date of this Act], the Commissioner shall begin issuing marijuana cultivation facility
717	licenses. The Commissioner shall issue 50 marijuana cultivation facility licenses 12 months after [the effective date of
718	this Act], provided a sufficient number of qualified applicants exist, as follows:
719	a. At least 20 registrations for cultivation of indoor facilities equal to or less than 2,500 square feet or
720	outdoor facilities equal to or less than 1 acre.
721	b. At least 10 registrations for cultivation of indoor facilities equal to or between 2,501 and 7,500 square
722	feet or outdoor facilities equal to or between 1.1 and 2.5 acres.

Page 25 of 45

HD : MRS : TEH Draft: 05/15/2019 11:09 AM 1031500139

723	c. At least 7 registrations for cultivation of indoor facilities between 7,501 and 10,000 square feet or
724	outdoor facilities equal to or between 2.6 and 5 acres.
725	d. No more than 7 registrations for cultivation of indoor facilities equal to or greater than 10,001 square
726	feet or outdoor facilities equal to or greater than 5.1 acres.
727	e. No marijuana cultivation facility license may be issued for an indoor facility exceeding 12,500 square
728	feet or for an outdoor facility exceeding 7.5 acres unless additional tiers are created by the Commissioner under §
729	1327(f)(6) of this chapter.
730	(4) At the time of renewal under § 1327(b) of this chapter, a marijuana cultivation facility licensee may
731	request a one tier increase in size each renewal period, as long as an updated safety, security and prevention of
732	diversion plan is provided as required under § 1324(a)(2)b. of this chapter.
733	(5) The Commissioner may accept applications and grant licenses any time 2 years after [the effective date of
734	this Act] that there are fewer than 50 licensed marijuana cultivation facilities or 50 licensed marijuana cultivation
735	facilities is insufficient to meet demand or outcompete the criminal market.
736	(6) The Commissioner may create additional tiers under § 1327(f)(1) of this chapter anytime 2 years after [the
737	effective date of this Act] if demand requires additional tiers.
738	(7) Impossibility of performance because of opposition by localities or a lack of qualified applications is a
739	defense to any lawsuit brought against the Commissioner to comply with the issuance of the required number of
740	<u>licenses.</u>
741	§ 1328. Marijuana product manufacturing facility registration.
742	(a) A marijuana product manufacturing facility license may be issued only to a person who manufactures and
743	distributes marijuana products under the terms and conditions of this chapter. A license issued under this section is valid for
744	2 years. Each application for a marijuana product manufacturing facility license must contain all of the following:
745	(1) The application materials required by the Commissioner, including the location where the marijuana
746	product manufacturing facility will operate.
747	(2) The application fee in an amount determined by the Commissioner.
748	(3) Proof of compliance with § 1329 of this chapter.
749	(4) Proof of compliance with § 1314 of this chapter.
750	(b) A marijuana product manufacturing facility licensee shall pay the Commissioner \$10,000 biennially for the
751	marijuana product manufacturing facility license. A marijuana product manufacturing facility licensee must renew the
752	license biennially by paying the fee required by this subsection.

Page 26 of 45

753	(c) A marijuana product manufacturing facility shall track all of its marijuana products from the point the
754	marijuana is received from the retail marijuana cultivation facility until the products are transferred to a retain marijuana
755	store.
756	(d) A marijuana product manufacturing facility may not do any of the following:
757	(1) Add any marijuana to a food product where the manufacturer of the food product holds a trademark to the
758	food product's name; except that a manufacturer may use a trademarked food product if the manufacturer uses the
759	product as a component or as part of a recipe and where the marijuana product manufacturer does not state or advertise
760	to the consumer that the final retail marijuana product contains a trademarked food product.
761	(2) Intentionally or knowingly label or package a retail marijuana product in a manner that would cause a
762	reasonable consumer confusion as to whether the retail marijuana product was a trademarked food product.
763	(3) Label or package a product in a manner that violates any federal trademark law or regulation.
764	(e) Retail marijuana products shall be prepared in a marijuana product manufacturing facility that is used
765	exclusively for the manufacture and preparation of retail marijuana or retail marijuana products and using equipment that is
766	used exclusively for the manufacture and preparation of retail marijuana products.
767	(f) All licensed premises on which retail marijuana products are manufactured must meet the sanitary standards for
768	retail marijuana product preparation promulgated under this chapter and as applicable under all of the following:
769	(1) Section 122(3)u of Title 16 and related regulations, the State of Delaware Food Code, § 4458 of Title 16 of
770	the Delaware Administrative Code, and the Cottage Food Regulations, § 4458A of Title 16 of the Delaware
771	Administrative Code.
772	(2) Chapter 35 of Title 16.
773	(3) Chapter 41 of Title 16.
774	(4) Chapter 43 of Title 16.
775	(g) All retail marijuana products must be shelf-stable and not require refrigeration to prevent spoilage.
776	(h) A retail marijuana product must be sealed and conspicuously labeled in compliance with this article and any
777	rules promulgated under this chapter.
778	(1) A marijuana product manufacturing facility shall package and label each product manufactured as required
779	by the rules established by the Commissioner, including the use of the standard symbol.
780	(2) An edible retail marijuana product must list its ingredients and may list its compatibility with dietary
781	practices.

Page 27 of 45

HD : MRS : TEH Draft: 05/15/2019 11:09 AM 1031500139

782	(3) The standard symbol requirements as established by the Commissioner do not apply to a multi-serving
783	liquid retail marijuana product that is impracticable to mark if the product complies with all statutory and rule
784	packaging requirements for multi-serving edibles and with all of the following enhanced requirements to reduce the
785	risk of accidental ingestion:
786	a. A multi-serving liquid is packaged in a structure that uses a single mechanism to achieve both child-
787	resistance and accurate pouring measurement of each liquid serving in increments equal to or less than 10
788	milligrams of active THC per serving, with no more than 100 milligrams of active THC total per package.
789	b. The measurement component is within the child-resistant cap or closure of the bottle and is not a
790	separate component.
791	(i) Retail marijuana or retail marijuana products may not be consumed on the premises of a marijuana product
792	manufacturing facility.
793	(j) A marijuana product manufacturing facility must provide a sample of its products to a facility that has a
794	marijuana testing facility license for testing and research purposes as required by regulations adopted under this chapter. A
795	marijuana product manufacturing facility shall maintain a record of what was provided to the testing facility, the identity of
796	the testing facility, and the results of the testing.
797	(k) Marijuana product manufacturing facility licenses shall be issued as follows:
798	(1) Beginning 10 months after [the effective date of this Act], the Commissioner shall begin accepting
799	applications for a license to operate as a marijuana product manufacturing facility in accordance with this chapter.
800	Beginning 11 months after [the effective date of this Act], the Commissioner shall begin issuing marijuana product
801	manufacturing facility licenses. The Commissioner shall issue 10 marijuana product manufacturing facility 13 months
802	after [the effective date of this Act], provided a sufficient number of qualified applicants exist.
803	(2) Beginning 15 months after [the effective date of this Act], the Commissioner shall issue at least 20
804	additional marijuana product manufacturing facility licenses, for a total of 30 marijuana product manufacturing facility
805	licenses overall, provided a sufficient number of qualified applicants exist.
806	(3) The Commissioner may accept applications and grant licenses for additional marijuana product
807	manufacturing facilities any time 2 years after [the effective date of this Act].
808	(4) Impossibility of performance because of opposition by localities or a lack of qualified applications is a
809	defense to any lawsuit brought against the Commissioner to comply with the issuance of the required number of
810	<u>licenses.</u>
811	§ 1329. Local control.

Page 28 of 45

812	(a) A locality may prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing
813	facilities, marijuana testing facilities, or retail marijuana stores through the enactment of an ordinance or through ar
814	initiated or referred measure.
815	(b) A locality may enact ordinances or regulations that are not in conflict with this chapter or in conflict with
816	regulations enacted under this chapter, governing the time, place, manner, and number of marijuana establishmen
817	operations. A locality may establish civil penalties for violation of an ordinance or regulations governing the time, place
818	and manner of a marijuana establishment that may operate in such locality.
819	§ 1330. Procedural requirements governing Commissioner's action; hearing; appeal.
820	(a) The Commissioner shall distribute and receive all of the applications for licensure under this chapter, and shall
821	refer an application to the Division for investigation. If it appears that any application should not be granted, the
822	Commissioner shall so notify the applicant stating the reason for denial.
823	(b) Hearings on applications for licensure under this chapter.
824	(1) If 10 or more persons who reside or own property within 1 mile of the premises where the license is to
825	operate or in any locality within 1 mile of the premises where the license is to operate file a protest against the issuance
826	of the license with the Commissioner within 30 days from the filing of the application, then a hearing must be held to
827	consider the application and protest and, specifically, the concerns of the members of the community within which the
828	license is to operate.
829	(2) The Commissioner may hold a hearing in the absence of a protest.
830	(3) The Commissioner shall cause notice of the time and location of the hearing to be published in 2
831	consecutive issues of the same newspapers within which the applicant published notice of the applicant's application
832	for the license.
833	(4) The Commissioner shall send notice of the time and location of the hearing to the applicant and to each of
834	the persons who signed the protest and provided a legible name and address; provided, however, that it is sufficient for
835	the Commissioner to send notice to a legal agent representing a person.
836	(5) The Commissioner shall conduct the hearing and shall make and keep a record of the hearing. The record
837	must include the evidence, the Commissioner's findings of fact, the Commissioner's decision, and a brief statement of
838	the reasons for the decision.
839	(6) The Commissioner shall issue a written decision after the hearing. The Commissioner's decision must

840

show the manner in which the Commissioner construed the law and applied it to the facts, must recite any objections

841	presented by the community, and must show how and the extent to which the Commissioner took community concerns
842	into account and gave them due consideration when making the decision.
843	(c) The Commissioner's decision on an application must be in writing and is final and conclusive unless a party to
844	such hearing files an appeal within 30 days from the date of the postmark on the Commissioner's decision by mailing notice
845	of the appeal to the Commissioner's office. Upon receipt of the appeal, the Commissioner shall notify the chair of the
846	Appeals Commission of the pending appeal and the chair shall convene the Appeals Commission with at least 20 days'
847	notice to all parties. The Appeals Commission shall hear the appeal and shall review the matter on the record; act in
848	accordance with the Administrative Procedures Act, Chapter 101 of Title 29; and affirm, reverse, or modify the decision of
849	the Commissioner. A decision of the Commissioner may only be reversed upon a finding of abuse of discretion.
850	(d) A party who is aggrieved by a final decision of the Appeals Commission may file a written appeal with the
851	Superior Court within 30 days of the date that the Appeals Commission's decision was mailed. The Superior Court's review
852	of an appeal shall be on the record and in accordance with the Administrative Procedures Act, subchapter V of Chapter 101
853	of Title 29. The Superior Court's review shall take into account the experience and specialized competence of the
854	Commissioner and the purpose under which the Commissioner acted. Further, the Superior Court's review, in the absence
855	of fraud, shall be limited to whether the Commissioner's decision is supported by substantial evidence on the record and is
856	free from legal error.
857	§ 1331. Decision upon application for renewal of license; time of making.
858	On or before the first day of the month preceding the biennial expiration date of a license, the Commissioner shall
859	render a decision upon every application properly and completely made to it on or before the first day of the third month
860	preceding the biennial expiration date of a license.
861	§ 1332. Grounds for refusal of license; transfer or extension of premises.
862	(a) The Commissioner may not grant a license under this chapter in any county or subdivision thereof, if granting a
863	license is contrary to any law in such county or subdivision thereof adopted under § 1329 of this chapter.
864	(b) The Commissioner may refuse to license an applicant if the Commissioner has substantial evidence that would
865	reasonably support a belief that any of the following apply:
866	(1) There are sufficient licensed premises in the locality, or the granting of a license in the locality stated in
867	the application is not otherwise demanded by public interest or convenience.
868	(2) The applicant appears to be financially irresponsible.
869	(3) The applicant has made false statements to the Commissioner.

Page 30 of 45

Draft: 05/15/2019 11:09 AM

870	(4) The applicant, including any of the applicant's directors or officers, or any of the applicant's shareholders
871	who hold more than 10% of the outstanding issued shares, has been convicted of an offense that is substantially related
872	to the qualifications, functions, or duties of the business or profession for which the application is made, except that if
873	the Commissioner determines that the applicant is otherwise suitable to be issued a license, and granting the license
874	would not compromise public safety, the Commissioner shall conduct a thorough review of the nature of the crime,
875	conviction, circumstances, and evidence of rehabilitation of the applicant, and shall evaluate the suitability of the
876	applicant to be issued a license based on the evidence found through the review. In determining which offenses are
877	substantially related to the qualifications, functions, or duties of the business or profession for which the application is
878	made, the Commissioner shall include, but not be limited to, the following:
879	a. A violent felony conviction as defined in §4201(c) of Title 16 or its functional equivalent under the
880	laws of the United States, any state or territory of the United States, or any other country.
881	b. Any Class A through C felony conviction as defined in Title 11 or Title 16 or its functional equivalent
882	under the laws of the United States, any state or territory of the United States, or any other country.
883	c. Any felony conviction regarding an offense against public administration as defined in Subchapter VI
884	of Title 11 or its functional equivalent under the laws of the United States, any state or territory of the United
885	States, or any other country.
886	d. A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving
887	away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing,
888	offering to furnish, administering, or giving any controlled substance to a minor.
889	e. A felony drug conviction as defined in Chapter 47 of Title 16 or its functional equivalent under the
890	laws of the United States, any state or territory of the United States, or any other country.
891	f. Except as provided in subparagraphs d. and e., a prior conviction, where the sentence, including any
892	term of probation, incarceration, or supervised release, is completed, for possession of, possession for sale, sale,
893	manufacture, transportation, or cultivation of a controlled substance is not considered substantially related, and
894	shall not be the sole ground for denial of a license.
895	(6) A substantial objection to the granting of the license has been presented by the community within which
896	the license is to operate, or that the granting of such license is otherwise not in the public interest. For the purposes of
897	this subsection, the term "substantial objection" includes 1 or more of the following:
898	a. Any objection, or group of objections, presented to the Commissioner either individually or as a group,

by persons who reside within 5 miles of where the licensee is to operate, sufficient to give the Commissioner

900	reason to believe that a majority of the residents in that 5 mile radius within which the licensee is to operate
901	oppose the issuance of the license.
902	b. Any objection, or group of objections, presented to the Commissioner either individually or as a group
903	the content of which gives the Commissioner reason to believe the quality of life of the community within which
904	the licensee is to operate will be adversely affected by the granting of the license.
905	(c) The Commissioner may refuse to grant a license to sell marijuana, marijuana products, or marijuana
906	accessories to any new establishment to be located in the vicinity of a church, school, college or substance abuse treatmen
907	facility as defined under § 2203 of Title 16. The Commissioner may issue a license to any establishment located in the
908	vicinity of a church, school, or college when such establishment has been located in a place prior to the time any church
909	school, or college may thereafter be located in the vicinity of such establishment.
910	(d) The Commissioner shall refuse to grant a license for the sale of marijuana, marijuana products, or marijuana
911	accessories for consumption on or off the premises when there is an existing licensed establishment of the same type within
912	1200 feet by accessible public road or street in any incorporated city or town, or within 1 mile by accessible public road or
913	street in any unincorporated or rural area. If there is an existing licensed establishment less than 1 mile but more than nine
914	tenths of 1 mile by accessible public road or street in any unincorporated or rural area, the Commissioner may grant such
915	license. This subsection does not apply to any of the following:
916	(1) Any existing license or to the sale, transfer of ownership, or renewal of an existing license.
917	(2) Any licensee who desires to move the location of the licensee's license to a location within 500 fee
918	thereof by accessible public road or street or any licensee located in a shopping center or shopping mall who desires to
919	move the location of the licensee's license any distance within the same shopping center or shopping mall, whether
920	such center or mall consists of 1 or more than 1 separate buildings.
921	(e) Any holder of an existing license who desires to move the location of the existing license due to the destruction
922	of the building, loss of lease, diversion of highway traffic pattern, or other reason beyond the control of the licensee, shall
923	have preference in the issuance of a new license provided that the application satisfies this section and all other
924	requirements under this chapter.
925	(f) The Commissioner may not grant a new license of any type and may not grant an extension of premises of an
926	existing license of any type unless the application for said new license or for said extension is accompanied by a Certificate
927	of Compliance from the appropriate political subdivision showing all of the following:
928	(1) That the premises where the license is to be used are properly zoned for the applicant's intended use.
929	(2) That all necessary permits have been approved.

930	(3) That the applicant has complied with all other applicable licensing requirements of the appropriate
931	political subdivision.
932	(g) Subsection (f) of this section does not apply to any application for a temporary extension of premises as
933	authorized by Commissioner rule if such application has not been objected to by the appropriate political subdivision and
934	the political subdivision was provided with notice of the application by the applicant within 7 days of the date the
935	application is filed with the Commissioner.
936	§ 1333. Finality of Commissioner's decision refusing license.
937	If an application is not timely protested, but the Commissioner determines that the application should nevertheless
938	be denied, the Commissioner shall render the decision promptly in writing. The Commissioner's decision shall be final and
939	conclusive unless, within 30 days after notice thereof has been mailed by the Commissioner's office, the applicant files an
940	appeal in the office of the Commissioner. The appeal shall follow the procedure outlined in § 1330 of this chapter.
941	§ 1334. Improvements to premises.
942	The Commissioner may not require an applicant to make improvements to the premises before the issuance of a
943	license; however, the Commissioner may issue a license to sell marijuana, marijuana products, or marijuana accessories
944	upon the condition that certain improvements shall be made to the premises.
945	§ 1335. Grounds for cancellation, suspension, or fines.
946	(a) The Commissioner may cancel every license made use of on behalf of any person other than the one to whom
947	or on behalf of whom it has been issued.
948	(b) If the Commissioner has reasonable grounds to believe that a licensee has committed any of the violations in
949	subsection (c) of this section, the Commissioner may do one or more of the following:
950	(1) Suspend the licensee's license.
951	(2) Cancel the licensee's license if the Commissioner determines the violations to be repeated and continuous,
952	or egregious.
953	(3) Fine the licensee.
954	(c) It is a violation for a licensee to do any of the following:
955	(1) Violate any provision of this chapter or any regulation of the Commissioner or the Department of Health
956	and Social Services under this chapter.
957	(2) Make any false representation or statement to the Commissioner in order to induce or prevent action by the
958	Commissioner.
959	(3) Not maintain an acceptable bond, if a bond is required.

960	(4) Maintain a noisy, lewd, disorderly, or unsanitary establishment or supply impure or otherwise deleterious
961	marijuana or marijuana products.
962	(5) Habitually use dangerous or narcotic drugs, or is in the habit of using alcoholic beverages or marijuana
963	products to excess.
964	(6) Sell marijuana or marijuana products to minors in contravention of § 1305 of this chapter.
965	(7) Possess on the licensee's licensed premises or sell or offer for sale any marijuana or marijuana products not
966	purchased or sold under this chapter.
967	(8) Use any seal, labels, or wrapper not purchased from or through the Commissioner which are deceptively
968	similar to those used by the Commissioner.
969	(9) Be convicted of a felony or be convicted of violating any of the marijuana laws of this State, general or
970	local, including the provisions of this chapter.
971	(10) Admit guilt or be adjudged guilty of violations of local, municipal, county, or State regulations
972	ordinances, or codes related to the operation of a licensed premises.
973	(11) Discipline, threaten, or otherwise penalize any person for refusing to violate or aiding the enforcement of
974	the provisions of this chapter or the rules of the Commissioner.
975	(d) Notwithstanding subsection (b) of this section, the Commissioner may cancel or suspend a license if there is
976	any other reason which, in the opinion of the Commissioner, warrants cancelling or suspending the license.
977	(e) The Commissioner may not cancel or suspend any license for the sale of marijuana products or impose any fine
978	for an alleged violation of § 1305 of this chapter where the licensee or its employee has made a reasonable effort to
979	determine the age of a purchaser of the marijuana products. For purposes of this subsection, a licensee or its employee is
980	deemed to have made a reasonable effort to determine the age of a purchaser if, prior to any sale of marijuana products, the
981	licensee or its employee requires the purchaser to display identification, with a photograph of the purchaser thereon affixed
982	which sets forth information that would lead a reasonable person to believe the purchaser to be 21 years of age or older.
983	(f) The Commissioner may also suspend a license for any of the grounds for refusal of a license under § 1332 of
984	this chapter.
985	(g) The Commissioner may cancel any retail license if it has reasonable grounds to believe that the license was
986	granted in violation of this chapter, or any rule enacted pursuant to § 1324 of this chapter.
987	§ 1336. Public hearing and right of appeal.
988	(a) The Commissioner may not cancel or suspend a license, or fine a licensee, before both of the following occur-

989	(1) The licensee has been given a public hearing by the Commissioner at which time the licensee is entitled to
990	legal representation and to present witnesses.
991	(2) The ground for canceling or suspending a license is established by clear and convincing evidence.
992	(b) The Commissioner shall keep a full and complete record of all proceedings incident to a hearing under
993	subsection (a) of this section. The Commissioner shall record all testimony at such hearing, but need not have it transcribed
994	unless an order of the Commissioner is appealed to the Superior Court under subsection (d) of this section.
995	(c) An order of the Commissioner relative to suspension or cancellation of a license, or fining a licensee, becomes
996	final 10 days after the licensee receives notice thereof, unless, within 10 days of the date of the postmark on the
997	Commissioner's decision, a written appeal is filed in the Superior Court. No bond may be required for filing such appeal.
998	(d) The appeal must state the grounds upon which a review is sought. After the appeal is filed, service shall be
999	made by the Sheriff upon the Commissioner. The Commissioner shall certify and file with the court all documents and
1000	papers and a transcript of all testimony taken in the matter, together with the Commissioner's findings therein as soon as
1001	practicable but in no event later than 20 calendar days from the date of service of the appeal. The Superior Court's review of
1002	an appeal shall be on the record and the Superior Court shall take into account the experience and specialized competence
1003	of the Commissioner and the purpose under which the Commissioner acted. Further, the Superior Court's review, in the
1004	absence of fraud, shall be limited to whether the Commissioner's decision is supported by substantial evidence on the
1005	record and is free from legal error.
1006	(e) An appeal without bond may be taken from the decision of the Superior Court to the Supreme Court in the
1007	same manner as is provided in civil cases. Upon the final determination of judicial proceedings, the Commissioner shall
1008	enter an order in accordance with such determination, or shall take such further or other action as the Court may order. A
1009	petition for Supreme Court review shall act as a supersedeas.
1010	§ 1337. Effect of cancellation or surrender of license; notice.
1011	(a) The cancellation or acceptance of a surrender of a license entails the loss of the privilege conferred by the
1012	license and entails the acceptance of or the seizure by the Commissioner of any marijuana or marijuana products found in
1013	the possession of the licensee, except those which occur solely by reason of the death of the licensee.
1014	(b) Notice of the order of the cancellation or acceptance of the surrender of a license may be served by an officer
1015	designated by the Commissioner; by affixing a duplicate thereof to the outside of the entrance door of the licensed
1016	premises; by leaving a duplicate with the holder of the license, or with any member of the family of the holder over the age

of 18 years at the residence of the holder; or otherwise as in the judgment of the Commissioner will give notice of such

HD: MRS: TEH 1031500139

1018	cancellation or acceptance of the surrender. All cancellations or acceptances of surrender of a license take effect as soon as
1019	the order is served.
1020	(c) The cancellation or acceptance of surrender of a license does not prevent the filing of any criminal proceedings
1021	for any offense against the licensee while the license was in force. No conviction obtained for any offense prevents the
1022	Commissioner from cancelling a license or from making at the same time a seizure of marijuana or marijuana products as
1023	provided in this title.
1024	(d) The Commissioner shall adopt regulations for seizure of marijuana and marijuana products that preserves and
1025	does not destroy the marijuana or marijuana products.
1026	§ 1338. Payments to former licensee.
1027	The Department of Finance shall, within 30 days of the date of the cancellation or acceptance of surrender of a
1028	license, remit to the former licensee a part of the license fee which has been paid and pertains to the unexpired term of the
1029	license. In addition, the Commissioner shall remit to the former licensee the amount originally received by the
1030	Commissioner from the former licensee in payment for such marijuana or marijuana products accepted or seized as remains
1031	in packages sealed by the Commissioner, after paying or deducting therefrom all costs and expenses incurred by the
1032	Commissioner by reason of the acceptance or seizure of the marijuana or marijuana products of the former licensee. When
1033	other legally acquired marijuana or marijuana products have been accepted or seized under this section, the value thereof as
1034	determined by the Commissioner must be remitted by the Commissioner to the former licensee, after paying or deducting
1035	therefrom all costs and expenses incurred by the Commissioner by reason of the acceptance or seizure of the marijuana or
1036	marijuana products of the former licensee. No payment may be made for illegally acquired marijuana or marijuana products
1037	that have been seized under this section.
1038	§ 1339. Transfer of license.
1039	(a) The rights conferred by a license may be transferred by the Commissioner to any representative designated by
1040	the person to whom or on behalf of whom the license was originally granted, if such representative is a person approved by
1041	the Commissioner. In the case of death of a licensee, the Commissioner may transfer the license to a qualified person
1042	recommended by the executor or administrator of the estate of the deceased licensee.
1043	(b) In instances where the Commissioner has approved the transfer of a license, all matters concerning marijuana
1044	inventories must be handled directly between the transferor and the transferee and all payments must be made directly and

not through the Commissioner.

may be adjusted annually for inflation

1045

1046

1047

(c) A non-refundable \$5,000 transfer fee is required for the transfer of any marijuana establishment license that

1048	§ 1340. Death of licensee; payments to licensee's estate.
1049	If any licensee dies and no application is made for transfer of the license, or the Commissioner refuses to permit
1050	the transfer of the license to another person, the Department of Finance shall return to the legal representative of such
1051	deceased licensee a share of the license fee received by the Department proportionate to the number of full calendar months
1052	of the unexpired term. If the marijuana or marijuana products in possession of the licensee at the time of the licensee's death
1053	are delivered to the Commissioner and the Commissioner ascertains that such marijuana or marijuana products have been
1054	received by the deceased licensee according to law, the Commissioner must pay to the legal representative the amount
1055	originally received by the Commissioner for such marijuana or marijuana products less 10% thereof, or the appraised value
1056	less 10% thereof.
1057	Subchapter IV. Marijuana Regulation Fund.
1058	§ 1341. Marijuana Regulation Fund.
1059	The Marijuana Regulation Fund is established consisting of fees collected and civil penalties imposed under this
1060	chapter and taxes imposed under this subchapter. The Department of Finance shall administer the fund.
1061	§ 1342. Levy and rate of marijuana control enforcement tax; collection.
1062	(a) A tax is imposed on the retail sale of marijuana products under this chapter in this State. This tax is not
1063	imposed on the sale of medical marijuana products under Chapter 49A of Title 16.
1064	(b) The tax imposed under this section is at the rate of 15% of the retail sales price of the marijuana product.
1065	(c) If the tax imposed under this section does not equal an amount calculable to a whole cent, the tax shall be equal
1066	to the next higher whole cent.
1067	(d) Except as otherwise provided by the Commissioner, the amount of the tax shall be separately stated on an
1068	invoice, receipt, or other similar document that the marijuana retailer provides to the consumer at the time the retail sale
1069	occurs.
1070	(e) A person may not knowingly sell, purchase, install, transfer, or possess electronic devices or software programs
1071	for the purposes of either of the following:
1072	(1) Hiding or removing records of retail sales of marijuana products.
1073	(2) Falsifying records of retail sales of marijuana products.
1074	(f) A marijuana retailer may not discount a marijuana item or offer a marijuana item for free if the retail sale of the
1075	marijuana item is made in conjunction with the retail sale of any other item.
1076	§ 1343. Collection of tax; quarterly reports of retail marijuana store licensees.

1077	(a) The marijuana control enforcement tax imposed on the consumer under § 1342 of this chapter shall be
1078	collected at the point of sale and remitted by each retail marijuana store licensee that engages in the retail sale of marijuana
1079	products. The marijuana control enforcement tax is considered a tax upon the retail marijuana store licensee that is required
1080	to collect the tax, and the retail marijuana store licensee is considered a taxpayer.
1081	(b) A retail marijuana store licensee shall file a report to the Commissioner on or before the last day of January,
1082	April, July, and October of each year for the previous calendar quarter.
1083	(c) A retail marijuana store licensee shall pay the marijuana control enforcement tax to the Commissioner in the
1084	form and manner prescribed by the Commissioner, but not later than with each quarterly report, without regard to an
1085	extension granted under subsection (e) of this section.
1086	(d) A retail marijuana store licensee shall file the reports required under this section regardless of whether any tax
1087	is owed.
1088	(e) For good cause, the Commissioner may extend the time for filing a report under this section. The extension
1089	may be granted at any time if a written request is filed with the Commissioner during or prior to the period for which the
1090	extension may be granted. The Commissioner may not grant an extension of more than 30 days.
1091	(f) The fact that a retail marijuana store licensee's name is signed to a report is prima facie evidence for all
1092	purposes that the reports were actually signed by such distributor or a duly authorized agent. Such statements shall contain
1093	a declaration by the person making the same, to the effect that the statements contained therein are true and are made under
1094	penalties of perjury, which declaration shall have the same force and effect as a verification of the return and are in lieu of
1095	such verification.
1096	(g) The quarterly reports or payments of tax under this section are considered to have been duly and timely filed if
1097	such reports or payments are deposited in the United States mail with postage prepaid on or before the last day of January,
1098	April, July, and October of each year for the previous calendar quarter. The Commissioner may grant a retail marijuana
1099	store licensee a reasonable extension of time for good cause.
1100	(h) In lieu of depositing tax payments in the United States mail, a retail marijuana store licensee may hand deliver
1101	said payment to the Commissioner or the Commissioner may require retail marijuana stores to make electronic transfers of
1102	such funds to the appropriate state account.
1103	(i) When the last day of January, April, July, and October falls on a weekend or state holiday, the due date of the
1104	statement and tax shall be the next following business day of the State.
1105	§ 1344. Retention of records by retail marijuana store licensee; penalties.

1106	(a) Each retail marijuana store licensee shall maintain and keep, for a period of 3 years, such records of marijuana
1107	products sold within this State by such retail marijuana store licensee, together with invoices, bills of lading, and other
1108	pertinent records and papers as may be required by the Commissioner for the reasonable administration of this chapter.
1109	(b) Whoever violates this section shall be fined not more than \$1,000 and the costs of prosecution, or imprisoned
1110	not more than 1 year, or both.
1111	§ 1345. Inspection of records.
1112	(a) The Commissioner, or any agent or employee duly authorized by the Commissioner, my inspect the record of
1113	all purchases, receipts, sales, and distribution of marijuana products of every retail marijuana store licensee shall at all times
1114	during the business hours of the day.
1115	(b) The Commissioner shall inspect the records of all purchases, receipts, sales, and distribution of marijuana
1116	products of retail marijuana store licensees to the extent deemed necessary by the Secretary, by or through such agent or
1117	employee as may be duly authorized by it, to ascertain whether the retail marijuana store licensees are complying with this
1118	chapter. If it is found that the retail marijuana store licensee are not complying with this chapter, the Commissioner shall
1119	report to the Attorney General in what respects the retail marijuana store licensee are failing to so comply with this chapter.
1120	§ 1346. Discontinuance, sale, or transfer of business by retail marijuana store licensee; penalties.
1121	(a) Whenever a person ceases to engage in business as retail marijuana store licensee within this State under §
1122	1337 through § 1340 of this chapter, all taxes, penalties, and interest under this chapter not yet due and payable under the
1123	provisions of this chapter shall, notwithstanding such provisions, become due and payable concurrently with the
1124	discontinuance, sale, or transfer, and the retail marijuana store licensee shall concurrently with such discontinuance, sale, or
1125	transfer make a report and pay all such taxes, interest, and penalties.
1126	(b) If a retail marijuana store license is transferred under § 1339 of this chapter, the purchaser or transferee shall be
1127	liable to this State for the amount of all taxes, penalties, and interest under this chapter, accrued against any retail marijuana
1128	store licensee selling or transferring a business, on the date of such sale or transfer, but only to the extent of the value of the
1129	property and business thereby acquired from such distributor or retailer.
1130	(c) A person who violates this section is punished with a fine of not less than \$50 and the costs of the prosecution,
1131	or imprisoned not more than 1 year, or both.
1132	§ 1347. Penalties for failure to file reports or pay tax when due.
1133	(a) When a retail marijuana store licensee fails to file monthly reports with the Commissioner under § 1343 of this
1134	chapter or when a retail marijuana store licensee fails to pay the Commissioner the amount of taxes due to this State as

1135	required by § 1342 of this chapter, a penalty of \$50 for each business day accrues up to a maximum of \$3,000 for each
1136	report.
1137	(b) Any tax due under § 1342 of this chapter bears an interest at the rate of 1% per month, or fraction thereof, until
1138	the tax due is paid.
1139	(c) Commissioner may waive all or any part of the penalty and interest when it is established to the satisfaction of
1140	the Commissioner that failure to file the monthly report or pay the tax by the last day of January, April, July, and October
1141	was not with intent to violate the law.
1142	§ 1348. Enforcement; liability; notices of determination and assessment.
1143	(a) Every person who collects any amount under § 1342 of this chapter shall hold the same in trust for the State
1144	and for the payment thereof to the Commissioner in the manner and at the time provided in § 1343 of this chapter.
1145	(b) In any action or proceeding for the collection of the marijuana control enforcement tax or penalties or interest
1146	imposed in connection therewith, an assessment by the Commissioner of the amount of the tax due and interest or penalties
1147	due to the State constitutes prima facie evidence of the claim of the State, and the retail marijuana store licensee has the
1148	burden of proof to show that the assessment was incorrect and contrary to law.
1149	(c) Promptly after the date of a determination of the marijuana control enforcement tax or penalties or interest due.
1150	the Commissioner shall notify the person against whom the assessment is made by mail. Within 60 days after the date of
1151	notification, such person may file with the Commissioner a petition for redetermination of such assessment. Every petition
1152	for redetermination must state specifically the reason or reasons which the petitioner believes entitles the petitioner to such
1153	redetermination. The Secretary must dispose of a petition for redetermination within 90 days after the receipt of the
1154	petition. The Secretary must promptly provide notice of the decision to the petitioner, in writing.
1155	(d) The petitioner may appeal the decision by the Secretary under this section to the Superior Court of this State
1156	within 60 days of the date of the decision.
1157	§ 1349. Collection of delinquent taxes.
1158	If a retail marijuana store licensee is in default for more than 10 days in payment of any taxes or penalties thereor
1159	payable under the terms of this chapter, the Commissioner may issue a warrant under its official seal, and signed by its
1160	Secretary, directed to the sheriff of any county of the State, commanding the sheriff to levy upon and sell the goods and
1161	chattels of such retail marijuana store licensee, without exemption, found within the sheriff's jurisdiction, for the payment
1162	of the amount of such delinquency, with the added penalties and interest and the cost of executing the warrant, and to return
1163	such warrant to the Commissioner and to pay the Commissioner the money collected by virtue thereof within the time to be

Page 40 of 45

therein specified, which shall not be less than 20 nor more than 60 days from the date of the warrant. The sheriff, to whom

HD: MRS: TEH 1031500139

1165 any such warrant is directed, shall proceed upon the same in all respects and with like effect and in the same manner as 1166 prescribed by law in respect to executions issued against the goods and chattels upon judgments by a court of record, and 1167 shall be entitled to the same fees for services in executing the warrant, to be collected in the same manner; provided, that 1168 nothing in this section shall be construed as forfeiting or waiving any rights to collect such taxes by an action upon any 1169 bond that may be filed with the Commissioner under the provisions of this chapter, or by suit or otherwise, and in case such 1170 suit, action or other proceeding shall have been instituted for the collection of said tax, such suit, action or other proceeding 1171 shall not be construed as waiving any other right herein provided. 1172 § 1350. Penalties. 1173 (a)(1) A person who fails or refuses to pay the tax imposed under § 1342 of this chapter; fails to file a report under 1174 § 1343 of this chapter; makes any false statement in any application, report or statement required by this subchapter; refuses 1175 to permit the Commissioner or any deputy to examine records under this subchapter; or fails to keep proper records of 1176 quantities of marijuana products sold under this chapter; or collects or causes to be repaid to any person any tax not being 1177 entitled to the same under § 1342 of this chapter is punished as follows: 1178 a. For the first offense, fined not more than \$500 or imprisoned not more than 6 months, or both. 1179 b. For a second and any subsequent offense, fined not more than \$1,000 or imprisoned not more than 1 1180 year, or both. 1181 (2) In addition to the penalty under subsection (a)(1) of this section, the defendant must pay all taxes and 1182 penalties due the State under this chapter and pay to the State any other moneys wrongfully withheld or illegally 1183 refunded. Each day or part thereof during which any person shall engage in business as a distributor or retailer without 1184 being the holder of a valid license constitutes a separate offense. 1185 (b) Whoever refuses or neglects to make any statement, report, or return under this subchapter, or knowingly 1186 makes, aids, or assists any other person in making a false statement in a report to the Commissioner or in connection with 1187 an application for refund of any tax is fined not less than \$100 nor more than \$1,000, or imprisoned not less than 30 days 1188 nor more than 1 year, or both. The Superior Court of this State has exclusive jurisdiction over violations of this subchapter. 1189 (c) The Delaware State Police are authorized and directed to assist in the enforcement of this section. 1190 § 1351. Collection of bad checks; service charge; interest. 1191 If a check received in payment of moneys due the Commissioner under this chapter is returned to the 1192 Commissioner by the maker's bank because of insufficient funds, closed account, stopped payment, or any other reason, 1193 there shall be imposed upon the maker a service charge of \$10 and interest at the rate of 1% per month, or fraction thereof,

Page 41 of 45

shall accrue on the tax, if any, from the date such tax was due to be paid. A statement shall be sent to the maker demanding

HD: MRS: TEH

1195	payment within 15 days of the original amount of the check plus the added service charge, interest, if any, and the cost of
1196	the postage incurred in mailing the statement. Failure of the maker to respond to the demand within 15 days shall constitute
1197	cause for the Commissioner to suspend the maker's retail marijuana store license and 30 days thereafter, to revoke the
1198	maker's retail marijuana store license.
1199	§ 1352. Rules and regulations.
1200	The Commissioner shall make and publish such rules and regulations with respect to the collection and payment of
1201	the taxes imposed by this chapter as it deems proper, and all such rules and regulations that are not inconsistent with the
1202	provisions of this chapter have the force and effect of law.
1203	§ 1353. Deposit of receipts.
1204	All money received by the Commissioner under this chapter must be deposited, not later than the close of the
1205	business day next following such receipt, to the Division of Revenue of the Department of Finance to the credit of the
1206	Marijuana Regulation Fund.
1207	§ 1354. Apportionment of revenue.
1208	Revenues generated by the marijuana control enforcement tax under § 1342 of this chapter must be accounted for
1209	to the State Treasurer and all proceeds must be placed into a special account known as the Marijuana Regulation Fund. The
1210	funds in the Marijuana Regulation Fund in each fiscal year must be appropriated by the General Assembly as follows:
1211	(1) First, to the administrative costs and expenses of the Commissioner, the Division, and the Department of
1212	Health and Social Services, including administrative expenses, including payroll and other employment costs.
1213	(2) After the payment under paragraph (1) of this section, any remainder shall be appropriated as determined
1214	by the General Assembly.
1215	§ 1355. Financial statements of the Commissioner.
1216	The Commissioner shall render an account to the State Treasurer, in the manner and at the time required by the
1217	latter, of its receipts and disbursements, and of its assets and liabilities. The State Treasurer may not, however, require such
1218	reports to be rendered more often than quarterly.
1219	§ 1356. Annual audit.
1220	The State Auditor of Accounts shall annually examine and audit the operation of the Office of the Commissioner.
1221	Section 6. Amend § 1903, Title 30 of the Delaware Code by making deletions as shown by strike through and
1222	insertions as shown by underline as follows:
1223	§ 1903. Computation of taxable income.

1224	(e) In computing net income for businesses operating in compliance with Chapter 49A of Title 16 or Chapter
1225	13 of Title 4, there is allowed as a deduction from state taxes all the ordinary and necessary expenses paid or incurred
1226	during the taxable year in carrying on any trade or business, including reasonable allowance for salaries or other
1227	compensation for personal services actually rendered.
1228	Section 7. The regulations required by § 1326 of Title 4 must be adopted not later than 9 months after the effective
1229	date of this Act.
1230	Section 8. The Oversight Committee created under § 1315 of Title 4 may be reviewed by the Sunset Committee of
1231	the General Assembly in the 2024 legislative session.
1232	Section 9. Amend Subchapter IV, Chapter 47, Title 16 of the Delaware Code by making deletions as shown by
1232	strike through and insertions as shown by underline as follows:
1234	§ 4764 Possession of marijuana; class B misdemeanor, unclassified misdemeanor, or civil violation.
1235	(j) Notwithstanding any provision of law to the contrary, any person who prior to December 18, 2015, was
1236	convicted of a single offense arising from an original charge under this section or any predecessor statute, law or ordinance
1237	prohibiting the possession, use or consumption of marijuana or any controlled substance or counterfeit controlled substance
1238	classified in § 4714(d)(19) of this title shall be eligible for mandatory expungement of the records of the conviction and all
1239	indicia of arrest pursuant to the provisions of § 4373 of Title 11, provided the applicant is otherwise eligible for mandatory
1240	expungement as specified therein. Upon issuance of the order of expungement, the records of the conviction and any indicia
1241	of arrest shall be dealt with in accordance with the procedures specified in §§ 4373, 4376, and 4377 of Title 11.
1242	§ 4770 Expungement Eligibility.
1243	(a) Notwithstanding the provisions of any law to the contrary, including any limitation under §4373 of Title 11, an
1244	individual shall be eligible for mandatory expungement of the records of the conviction and all indicia of arrest under §
1245	4373 of Title 11, provided that the person has not been convicted of any violent felonies as defined under § 4201 (c) of
1246	Title 11, if prior to December 18, 2015 the individual was convicted of either of the following:
1247	(1) Any offense or offenses under § 4764 of this subchapter or any predecessor statute, law, or ordinance
1248	prohibiting the possession, use or consumption of marijuana or any controlled substance or counterfeit controlled substance
1249	classified under § 4714(d)(19) of this title.
1250	(2) Any offense or offenses under § 4771 of this title or any predecessor statute, law, or ordinance prohibiting the
1251	possession or use of drug paraphernalia as defined under § 4701(18) of this title.
1252	(b) Upon issuance of the order of expungement, the records of the arrest and conviction and any indicia of
1253	arrest shall be dealt with in accordance with the procedures specified under § 4373, § 4376, and § 4377 of Title 11.

## **SYNOPSIS**

The Delaware Marijuana Control Act regulates and taxes marijuana in the same manner as alcohol. It allows adults over the age of 21 to legally possess and consume under 1 ounce of marijuana for personal use. It does not permit people to grow their own marijuana.

Section 1: Amends Chapter 47 of Title 16 to provide that the offenses and penalties under Uniform Controlled Substances Act do not apply to marijuana-related conduct allowed under the Delaware Marijuana Control Act or the Delaware Medical Marijuana Act, Chapter 49A of Title 16.

Section 2: Amends § 4764 of Title 16 to eliminate any penalty for possessing 1 ounce or less of marijuana for individuals over the age of 21 but maintains the existing civil penalty for possession of 1 ounce or less for adults age 18 to 21.

Section 3: Amends § 4902A of Title 16 so that the definition of a registered safety compliance facility includes not just marijuana produced for medical use but also marijuana produced under the Delaware Marijuana Control Act.

Section 4: Amends § Chapter 4 of Title 4 to expand DATE's duties and powers to the Delaware Marijuana Control Act.

Section 5: This Act creates the Delaware Marijuana Control Act. Subchapter I contains definitions and general provisions. Where definitions or analogous provisions exist in the Delaware Code, the definitions are referenced and the language from existing statutes is used. This section of the Act permits individuals over age 21 to possess, use, purchase, or transport 1 ounce (28 grams) or less of marijuana, no more than 5 grams of which may be concentrated, by individuals 21 years of age or older if the individuals are in compliance with this chapter. It permits the operation of marijuana businesses if they operate under licenses granted under Chapter 49A of Title 16, but imposes the same limits on hours and holiday sales as apply to sales of alcohol. It prohibits the use of marijuana in public, by drivers or passengers in vehicles, and prohibits the smoking of marijuana anywhere that smoking tobacco or ecigarettes is not permitted. Marijuana may not be sold in an establishment licensed to sell alcohol. Employers and some owners of residential housing can prohibit the use of marijuana. There are specific provisions imposing the same penalties as with alcohol sales, for individuals under the age of 21 using false identification to purchase marijuana, and for businesses that fail to verify the age of marijuana consumers.

This Act creates the Delaware Marijuana Control Act Oversight Committee. This Oversight Committee will coordinate the implementation of this Act with the Medical Marijuana Program, the Division of Public Health, the Division of Substance Abuse and Mental Health, and the public. The Oversight Committee will review the effectiveness of the Delaware Marijuana Control Act in regard to the safe operation of facilities licensed under this Act, the impact of this Act on public safety, and the impact of this Act on public health. The Commissioner must submit an annual report to the Governor and the members of the General Assembly setting forth all matters of interest and all statistics concerning marijuana regulation and control in the State including: the number of licenses of each variety issued with the State; including the name and address of each person licensed to cultivate, manufacture, or sell marijuana or marijuana products in the State; the amount of marijuana and marijuana products sold within the State; and the number of licenses of each kind granted and the number cancelled during the year.

Subchapter II creates the Marijuana Commissioner and Appeals Commission. The Commissioner has the power to conduct hearings if neighbors protest the license application of establishments that sell marijuana and subpoena power. It requires the Commissioner to coordinate with the Division of Small Business, Development, and Tourism so that potential businesses licensed under this Act have access to programs, particularly those that support small businesses owned by minorities, women, and veterans.

Subchapter III sets up the regulations and licenses under the Delaware Marijuana Control Act. The Marijuana Commissioner has the authority to adopt regulations to implement this Act and includes specific requirements that marijuana establishments must meet to obtain licenses. Regulations must require that products containing marijuana use of a symbol and a standard measurement to be used on all marijuana products so they are easily identified as containing marijuana and consumers can identify the amount of marijuana in different products; be in opaque, child-resistant packaging; and contain a warning label explaining evidence-based harms from consuming marijuana, including the impact on developing brains. The regulations must also contain security requirements, testing requirements, advertising restrictions, and require that food products comply with State food safety laws.

There are separate licensing requirements for retail marijuana stores, marijuana testing facilities, marijuana cultivation facilities, and marijuana product manufacturing facilities. The application fee for licenses is up to \$5000, which is the same as the application fee for facilities under the Delaware Medical Marijuana program. There is a \$10,000 biennial fee for each license issued under this Act, which is lower than the fee for compassion center under the Delaware Medical Marijuana program, with the exception of cultivation licenses that are determined by square footage of the grow rates. Within 10 months of the effective date of this Act, applications will be accepted from compassion centers and safety compliance facilities registered under Chapter 49A of Title 16 to operate as retail marijuana stores, marijuana cultivation facilities, marijuana product manufacturing facilities, and marijuana testing facilities. Subchapter IV creates the Marijuana Regulation Fund. This fund will consist of fees collected, penalties imposed, and taxes collected under this Act. It creates the marijuana control enforcement tax on retail marijuana in the amount of 15% that will be appropriated as determined by the General Assembly.

Page 44 of 45 HD : MRS : TEH Draft: 05/15/2019 11:09 AM

Section 6: Creates a State tax deduction for all ordinary and necessary expenses paid or incurred by a marijuana establishment to reflect the inability of a business licensed under this Act to deduct these expenses from federal taxes and thus state taxes. This creates a more level playing field with other businesses.

Section 7: Provides that the initial regulations required under this Act be adopted not later than 9 months after the effective date of this Act.

Section 9: This section allows for the expungement of prior marijuana related offenses as long as the individual has no convictions for violent felonies.

D: MRS : TEH Draft: 05/15/2019 11:09 AM

Page 45 of 45