



Key Observations on Implementing Regulatory Mechanisms Necessary to Ensure the Equitable, Safe, and Effective Administration of Adult-Use Cannabis Laws in Minnesota

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Key observations on implementing regulatory mechanisms necessary to ensure the equitable, safe, and effective administration of adult-use cannabis laws in Minnesota.

Minnesota Management and Budget
Policy Research and Planning
400 Centennial Office Building
658 Cedar Street
St. Paul, MN (zip) 55155
(Phone) 651-259-3696
dominick.washington@state.mn.us
mn.gov/MMB

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INTRODUCTION

Conversations about cannabis legalization are happening across the country at all levels of government. Such conversations are also occurring in Minnesota.

It is critical that our state agencies are prepared to act if adult-use cannabis is legalized either through state legislative action or constitutional amendment or through changes in federal law.

An inter-agency working group recently came together to research existing models in other states, explore potential challenges, and begin to develop a comprehensive, responsible approach to the equitable, safe, and effective administration of adult-use cannabis laws in Minnesota.

This document summarizes the observations and recommendations of the inter-agency working group. The work was divided among four subgroups:

- Public Health
- Public Safety and Criminal Justice Reform
- Economic Development
- Regulatory Framework

Each subgroup explored the following topics:

- Key points of consideration
- Comparisons with other states and the interaction with federal policy
- Key stakeholders
- Recommendations for moving forward

This document is intended as a resource for policymakers; it is not intended to advocate for or against changing the legal status of cannabis in Minnesota. The document is a working draft that will be updated as necessary with relevant information and key findings. Policymakers should gather additional information and insights from a broad range of experts, stakeholders, and community members as they consider whether and how to proceed on this issue.

OVERVIEW

OBSERVATION 1: We have to handle with care.

- The policy establishes a market that is in tension with federal law and impacts public health.
- The cannabis industry is immature and growing fast.
- The administrative requirements are significant.
- It is a matter of justice.

OBSERVATION 2: We have much to consider.

- How will legalizing adult-use cannabis impact the health and safety of all Minnesotans?
- How does the state establish a market that creates opportunity and inclusive growth?
- How does the state ensure the equitable, safe and effective administration of Minnesota's cannabis laws?

OBSERVATION 3: We have to be clear about our next steps.

- **SHORT-TERM:** From now until when adult-use cannabis is legalized in Minnesota.
- **MID-TERM:** From when adult-use cannabis is legalized until the start of legal sales.
- **LONG-TERM:** From the start of legal sales and beyond.

KEY OBSERVATION: We have to handle with care.

The policy establishes a market that is in tension with federal law and impacts public health.

The use, sale and possession of cannabis over 0.3 percent THC is illegal under federal law. This complicates banking, taxation and other areas regulated by federal laws.

Many banks and credit card companies are reluctant to provide accounts to cannabis businesses because it exposes them to significant legal and operational risk. While cannabis businesses are illegal under federal law, they still must pay federal and state income tax. They may not deduct ordinary business expenses such as marketing, training, and transportation from their federal tax liability, which leaves their tax rate between 60 and 90 percent of income. In states where cannabis is legal, businesses are effectively locked out of the traditional banking system and often rely on cash. This means that revenue collection is more cumbersome. It also means that revenue departments must implement new and expensive security measures.

In 2013, the Obama Administration issued the Cole Memorandum, which stated that the Department of Justice did not intend to prosecute for marijuana related crimes in jurisdictions that have legalized activity and effective enforcement and regulatory regimes. In connection with the Cole Memorandum, the Financial Crimes Enforcement Network (FinCEN) provided guidance for reporting entities that may interact with cannabis related businesses but does not provide a safe harbor from enforcement. The Trump Administration revoked the Cole Memorandum by issuing the Sessions Memorandum on January 2, 2018, but the FinCEN guidance remains.

Cannabis may have a wide range of health effects on the body and brain. While there is growing evidence of its health benefits, its health detriments are serious and proven.

There is growing evidence that supports the therapeutic benefits of cannabis for the treatment of pain, epilepsy, nausea, and other health conditions, including post-traumatic stress disorder. A Minnesota Department of Health survey of people enrolled in the state's medical cannabis program found nearly seven in 10 respondents report "clinically meaningful improvement" on the severity of PTSD symptoms.¹ Researchers, however, cannot say with certainty that cannabis itself improved patients' symptoms.²

Cannabis directly affects the brain — specifically the parts of the brain responsible for memory, learning, attention, decision making, coordination, emotions, and reaction time. Developing brains, like those in babies, children, and teenagers, are especially susceptible to the effects of cannabis. Studies show that marijuana use during pregnancy may be linked to future problems with attention, memory, problem-solving skills, and behavior problems in children.³

The Centers for Disease Control, U.S. Food and Drug Administration, state and local health departments, and other clinical and public health partners are investigating a multistate outbreak of lung injury associated with use of e-cigarette, or vaping, products. As of February 4, 2020, 2,758 cases had been reported from all fifty states, the District of Columbia, and two U.S. territories. Sixty-four deaths had been confirmed in twenty-eight states and the District of Colombia.⁴

The latest national and state findings suggest THC-containing e-cigarette or vaping products, particularly those procured from informal sources, played a major role in the outbreak. The CDC recently announced that it identified vitamin E acetate, an additive in some THC-containing products, as the potential cause.

The industry is immature and growing fast.

Retail cannabis sales are legal and regulated in just eleven states. These programs are still very young and will likely continue to evolve for many years.

Eleven states and the District of Columbia have legalized adult-use cannabis consumption, but retail sales of cannabis are only permitted in Alaska, California, Colorado, Illinois, Massachusetts, Michigan, Nevada, Oregon and Washington. Maine will begin retail sales in 2020.

Colorado and Washington were the first two states to legalize adult-use cannabis. Legal sales of cannabis in both states commenced in 2014, just six years ago. Six states have allowed legal sales for three years or less.

Sales of legal cannabis in the United States are estimated to quintuple between now and 2025.

In 2018, total sales of all legalized cannabis in the United States reached \$8.6 billion. As Michigan and Illinois open markets and Maine prepares to open markets for adult-use cannabis in 2020, and with more states likely to follow suit, it is predicted that sales of all legalized cannabis⁵ in the United States will reach \$41 billion by 2025.⁶

There is also an increase in the number of legal-side businesses that create products or provide services which support the cannabis industry. These include products like climate systems for growers as well as odor-proof and child-resistant packaging for retailers.⁷

Products are evolving rapidly, both in terms of product type and consumer preference.

The adult-use cannabis market deals in products that contain more than 0.3 percent THC. These products are divided into a growing number of categories, the three most popular of which are flower, concentrates, and edibles. Across all markets, flower is the most popular product category. However,

concentrates are the fastest growing product category in the industry, with sales predicted to match flower sales by 2022.⁸

There were just 166 cannabis brands across two legalized states in 2014. By 2018, there were over 2,600 cannabis brands across four legalized states, which represented ten times as many brands in Washington and over seven times as many in Colorado in their early days.⁹

The administrative requirements are significant.

States must implement policies that protect public health and safety, create opportunities for inclusive economic growth, and establish systems to capture and invest tax revenue.

There are myriad policy and operational considerations associated with regulating the adult-use cannabis industry. These considerations can be broadly organized into six key areas.

Applications and Licensing: Includes, but is not limited to, developing, implementing, and enforcing rules and regulations for: the type and number of licenses that will be issued; applicant and data submissions requirements; license fee structures; changing, altering, or modifying licensed premises; residency requirements; and license renewal processes.

Cultivation and Manufacturing: Includes, but is not limited to, developing, implementing, and enforcing rules and regulations for: inventory tracking and reporting; production management; labeling, packaging, and product safety; transportation between licensed facilities; on- and off-premise storage; health and safety protections; certifications and trainings; records retention; and security.

Product Safety: Includes, but is not limited to, developing, implementing, and enforcing rules and regulations for: certification requirements (residual solvents, microbials, pesticides, THC/CBD potency levels, metals); analytical processes; testing programs and processes (contaminant, potency, permissible levels, etc.); quality assurance and control; records retention; and security.

Retail and Sales: Includes, but is not limited to, developing, implementing, and enforcing rules and regulations for: inventory tracking and reporting; financial tracking and reporting; labeling, packaging, and product safety; signage and advertising; health and safety protections; security; and the integration of medical and adult-use facilities and sales.

Enforcement and Oversight: Includes, but is not limited to, developing, implementing, and enforcing rules and regulations for: inventory tracking and reporting; state vs. local jurisdiction; law enforcement procedures and education; penalties; administrative hearings; suspensions, subpoenas and appeals; reporting, collecting, and remitting taxes and fees; and state and independent audit requirements.

Program Impact and Education: Includes, but is not limited to, developing, implementing, and enforcing rules and regulations for: cannabis use; public health impact monitoring and reporting;

public health education and engagement; youth use and prevention; tax revenue allocation; impact to peripheral drug, alcohol, and tobacco use and crime rates; and impact of legalization on other states.

States have adopted governance structures and assigned major administrative and regulatory responsibilities to one or several existing or newly created state agencies.

In states that have legalized adult-use cannabis, administrative and regulatory responsibilities generally rest with agencies responsible for liquor and tobacco regulation; revenue agencies; health agencies; agriculture agencies; newly created agencies or regulatory bodies dedicated to cannabis regulation; or a combination of the above.

States generate more than enough revenue from taxes and license fees to cover the administrative costs associated with regulating cannabis sales.

Administrative costs vary for several reasons, including differences in population and varying administrative and regulatory requirements. Given that their populations are relatively similar to Minnesota's, it may be instructive to look at the administrative costs associated with regulating cannabis sales in Colorado, Oregon and Massachusetts.

The ongoing annual regulatory operational costs for Colorado's Marijuana Enforcement Division, which includes staff costs and non-personnel expenses, was more than \$15.9 million for FY 2019. After accounting for regulatory costs, Colorado generated nearly \$247 million in revenue from taxes and fees.

During FY 2018, the Oregon Liquor and Cannabis Commission reported just over \$9.5 million in administrative costs. After accounting for costs to administer, Oregon generated \$83.6 million in revenue from taxes and fees.

The Massachusetts Cannabis Control Commission's FY 2019 budget is nearly \$8 million. As the first year of legal sales ends, Massachusetts is on track to generate approximately \$67 million in revenue from taxes. This does not include revenue generated from license fees, figures for which are not yet available.

States have found it difficult to accurately forecast revenues from taxes, licenses and fees.

Unknown price and demand and lack of historical data leave limited information upon which to base a revenue forecast. This presents a unique challenge for state budget planning. For example, in Nevada's first six months of collecting taxes on adult-use cannabis, revenue came in forty percent higher than forecast, but in California, revenue was forty-five percent below projections in the first six months of collecting taxes. The state should therefore exercise caution when determining whether and where to dedicate cannabis revenue.

It takes, on average, eighteen months for states to fully implement legal adult-use cannabis sales.

Both Colorado and Washington legalized adult-use cannabis in 2012. Legal sales began in Colorado on January 1, 2014. Washington did not begin legal sales until July 2014. Colorado's implementation was quicker because it was able to adapt the existing medical marijuana regulatory framework to a new adult-use system.

California voters approved a legalization law in November 2016. While California has the oldest and biggest medical cannabis program, it did not begin retail sales until January 1, 2018. Maine and Massachusetts also approved adult-use cannabis in November 2016. Michigan approved its adult-use cannabis law two years later. These states have been slower to implement a program. Massachusetts launched sales in November 2018, while Maine and Michigan have already begun, or will soon begin, retail sales in 2020.

Oregon legalized adult-use cannabis in 2014 and Nevada legalized it in 2017. Both states launched retail sales in less than a year. Illinois passed legislation legalizing cannabis in May of 2019 and began legal sales on January 1, 2020. Like Colorado, these states were able to adapt an existing and robust medical cannabis program.

The state will need to collaborate and consult with local governments and Tribal Nations.

States have the authority to legalize adult-use cannabis. However, local governments and Tribal Nations will be challenged to determine what is best for their communities while honoring the needs and concerns of their constituents—and local laws. The state will need to determine whether it will allow local governments to either opt-in or opt-out of allowing cannabis businesses to operate within their jurisdictions. In addition, the state will need to determine if local governments can impose cannabis-specific taxes of their own. As with any policy change that impacts Tribal Nations, the state should engage in consultation with tribes to understand their positions and priorities regarding legalization.

It is a matter of justice.

Efforts to enforce cannabis laws in the United States over the past four decades have largely depended on arrest, incarceration, and the seizure of private property.¹⁰

In 1970, Congress passed the Controlled Substances Act, which classified marijuana as a Schedule I drug, the most restrictive category. In 1971, President Nixon appointed the National Commission on Marihuana and Drug Abuse to investigate the effects of marijuana use, its relationship to other behavior, and the efficacy of existing law. The commission recommended ending marijuana prohibition and adopting other methods to discourage use. The Nixon administration did not implement the recommendations, and marijuana remains classified as a Schedule I drug today.

In Minnesota, there were more than 47,000 cannabis arrests between 2014 and 2018. Between January 1, 1990 and December 31, 2018, there were 1,930 prison admissions for sentences involving cannabis. Today, there are ninety people in prison with an active drug offense involving marijuana. Almost all of them are male (94.6 percent) and more than half (52 percent) are minorities. The average sentence is 37.7 months.

The enforcement of cannabis laws imposes a range of social, psychological, and familial costs on those arrested for violations,¹¹ a disproportionate number of who are people of color.

Individuals who have a criminal record often face challenges throughout their lives accessing gainful employment and qualifying for federal housing.¹²

A 2013 study from the American Civil Liberties Union found that, nationally, Blacks were arrested for violating cannabis possession laws at nearly four times the rates of whites, yet both groups consume cannabis at roughly the same rates.¹³ In 2018, Blacks were nearly six times more likely to be arrested for cannabis violations than whites in Minnesota.¹⁴

Most states do not include Latinxs in the criminal justice data they report. Minnesota only includes Latinxs in prison population data,¹⁵ which makes it difficult to accurately calculate the extent to which they are disproportionately impacted.

Cannabis possession is the fourth most common cause of deportation.¹⁶ Half of all federal drug cases are brought against people classified as Hispanic, a group which makes up just 17 percent of the U.S. population.¹⁷

States are making social justice the focus of their legalization efforts.

In 2012, when voters in Colorado and Washington legalized adult-use cannabis, lawmakers and regulators did little to ensure the opportunities legalization created would be distributed equitably. Since then, every state that has legalized adult-use cannabis has included a social equity initiative as part of its program.

Oregon's cannabis social equity programs take place at the local level. In Portland, three factors go into determining the percentage reduction of license fees: small business designation, diverse business designation, and owners or staff with prior cannabis convictions. Applicants who meet one of the three qualifications receive fifteen percent off their license fee. Applicants who meet two or three of the qualifications receive twenty-five percent off.

California's Social Equity Program seeks to afford eligible applicants an opportunity to be first-to-market in an environment with limited available cannabis business licenses. Applicants get technical and business assistance, may qualify for fee deferrals, and have the opportunity to participate in

programming designed for new or first-time business owners. The program also supports workforce development and job placement. California invested \$10 million in its social equity licensing program, which is granted to local jurisdictions to provide licensing assistance.

Michigan identified nineteen neighborhoods as being the most impacted by cannabis prohibition and enforcement. Eligible social equity applicants from these communities may receive up to sixty percent off the application fee, initial license fee, and future renewal fees.

Illinois established a Cannabis Business Development fund. \$12 million was invested for the first year and is used to fund outreach to attract qualified business license applicants; job training and technical assistance for residents in disproportionately impacted areas; application and license fee reductions; low-interest loans and grants to help new businesses get started and operate; and research to evaluate whether the program is accessible to applicants.

DRAFT

KEY OBSERVATION: We have much to consider.

How will legalizing adult-use cannabis impact the health and safety of all Minnesotans?

Research suggests that cannabis use increased in some states but not others following legalization. The increase may be a function of underreporting prior to legalization.

A survey conducted by the Substance Abuse and Mental Health Services Administration suggests that cannabis use increased in Oregon, Alaska, and Colorado beginning in the year that their ballot measures passed, though slightly before the legalization took effect. The trend in Washington, by contrast, was not as noticeable. Upward trend in use continued in Colorado and Oregon in 2016 but appeared to plateau in Alaska and Washington.¹⁸

The increase may be in part attributable to under-reporting prior to legalization. Decreasing social stigma surrounding marijuana and no longer having to fear legal repercussions can lead to accurate reporting on use in surveys after legalization.¹⁹

Research regarding increased cannabis consumption among those under the age of 21 in states that have legalized cannabis is inconclusive.

While a few studies have found an increase in cannabis consumption, there is evidence that suggests the legalization of adult-use cannabis does not lead to an increase in underage cannabis consumption.

Cannabis use in Colorado youth remains relatively unchanged since legalization.²⁰ In Washington, cannabis use by teenagers has dropped since legalization.²¹ In Oregon, cannabis use among youth was lower in 2018, four years following legalization, than it was in 2012, two years prior to legalization.²² A paper published in the journal JAMA Pediatrics reports that laws legalizing adult-use cannabis were associated with an eight percent drop in the number of high schoolers who said they used marijuana in the last 30 days, and a nine percent drop in the number who said they used at least 10 times in the last 30 days.²³

Vaping as a delivery method should be given special consideration due to the recent health concerns that have been unearthed.

The Centers for Disease Control, U.S. Food and Drug Administration, state and local health departments, and other clinical and public health partners are investigating a multistate outbreak of lung injury associated with use of e-cigarette, or vaping, products.

The health risks of vaping are unknown. Approximately fifty-seven percent of medical cannabis purchases are vape products. The recent lung issues that are being investigated are some of the first incidents recorded of potential harm from vaping.

A recent study found opioid deaths declined in states where adult-use cannabis is legal. However, research in states with medical cannabis programs found opioid deaths increased.

In August 2019, researchers at the University of Massachusetts found a twenty to thirty-five percent reduction in opioid deaths in states where adult-use cannabis is legal. The effect was particularly pronounced for deaths caused by synthetic opioids like fentanyl.²⁴ A study from the Stanford University School of Medicine released in June 2019, examining states where medical cannabis is legal, found twenty-three percent more deaths from opioid overdoses.²⁵

There is no conclusive evidence that legalizing adult-use cannabis leads to either an increase or decrease in alcohol or tobacco use.

Review of research examining the impact of cannabis policy on public health published in the October 2019 issue of the American Journal of Drug and Alcohol Abuse found that, so far, research on the impact of alcohol use is minimal and includes several limitations. For example, researchers have yet to figure out how to consistently survey current and changing alcohol policy in order to compare it to cannabis laws. The impact on tobacco use was equally unclear.²⁶

Traffic safety measures in states where cannabis use is legal should be considered.²⁷

While it is well documented that cannabis impairs many of the skills necessary for safe driving, including judgment, motor coordination, and reaction time, there is currently not enough data to determine the overall long-term impact on traffic fatalities and accidents.²⁸ More resources for traffic safety measures should be considered.

Law enforcement agencies will spend more time and resources to determine cannabis impairment in drivers during traffic stops or when investigating accidents.

Driving while impaired by any substance is illegal in Minnesota. However, there is no nationally recognized level of cannabis impairment, and no reliable roadside test for detecting cannabis impairment.²⁹ The Minnesota Bureau of Criminal Apprehension's Toxicology Section is responsible for testing for the presence of alcohol and other controlled substances in cases involving suspected impaired driving. Any increase in the number of impaired driving investigations will impact case volume, required staff expertise development, and expert testimony demands. Additional staff laboratory staff may be necessary to meet this increase demand.

Law enforcement agencies will need to retire K-9 units certified in cannabis detection.

The continued use of K9's certified in cannabis detection could result in some significant legal challenges as has been seen in other states where marijuana has been legalized. In the states of California and Colorado, law enforcement K9's certified in cannabis detection have been phased out

and replaced with K9's not certified in cannabis detection.³⁰ The state should develop a plan for phasing out K9's certified in cannabis detection.

States that have legalized adult-use cannabis have experienced diversion of legal cannabis products to other states where the product is not legal.

Minnesota would likely experience the same issues since adult-use cannabis is not legal in any bordering state. Diversion of legal products to states without legalized adult-use marijuana would require additional investigators to help deter this illicit activity.

Federal law makes it difficult for cannabis businesses to access traditional banking and financial services.

Current federal laws pose challenges for manufacturers and dispensaries to participate in traditional banking systems. This can lead to businesses utilizing non-traditional borrowing and financing methods, which are prone to fraudulent activity. Additional investigative resources could help the state monitor and prevent such activity.

Absent protections in state law, employers can test for cannabis and refuse to hire, or subject current employees to disciplinary action, if results are positive.

Currently, in all states, employers can test for cannabis at will and take disciplinary action if the result is positive. Some states have written protections into law. For example, Nevada prevents employers from refusing to hire prospective employees who test positive for cannabis, though there are exemptions for positions that require operating dangerous machinery.

Minnesota Statute 181.938 prohibits an employer, with some exceptions³¹, from refusing "to hire a job applicant or discipline or discharge an employee because the applicant or employee engages in or has engaged in the use or enjoyment of lawful consumable products, if the use or enjoyment takes place off the premises of the employer during nonworking hours." More engagement with the business community is necessary on this front to determine the most effective approach to regulation.

Since cannabis is illegal under federal law, institutions that receive federal funds are still subject to mandatory testing. The U.S. Department of Transportation released a memo on recreational cannabis noting that individual states' choices to legalize cannabis have no bearing on the Department of Transportation's regulated drug testing program.

Given federal law, the legalization of adult-use cannabis may impact the Minnesota Department of Military Affairs.

If Minnesota legalizes adult-use cannabis, the Department of Military Affairs will continue to prohibit use by military members because Minn. Stat. §192A.605 generally adopts the Uniform Code of Military Justice, which prohibits cannabis use or possession since it is a controlled substance. The Colorado National Guard reports that cannabis affects fifteen percent of the eligible National Guard applicants by either delaying or preventing their enlistments.³² The Minnesota Department of Military Affairs should be provided with additional resources to support recruitment and retention efforts.

How does the state establish a market that creates opportunity and inclusive growth?

The state should estimate the amount of cannabis that will be necessary to meet market demand and determine who will be permitted to cultivate and manufacture cannabis products.

Securing an accurate estimate of market demand will help the state avoid oversupply or undersupply of cannabis. Oversupply can lead to lower profits for licensed businesses and push retailers and growers to divert supply to the black market; undersupply can lead to inflated prices and push consumers back to the black market.³³

Canada faced a severe undersupply in the months that followed the opening of its adult-use cannabis market in 2018. Provinces were forced to limit hours of operation for dispensaries and either limit or suspend licensing for retailers. One of the most significant factors leading to undersupply was the amount of time it took growers to obtain a cultivator license.³⁴

Oregon, on the other hand, has struggled with oversupply since opening its market in 2015. In January 2019, the state estimated there was enough cannabis in stores, warehouses, and processing plants to satisfy demand for the next six-and-a-half years.³⁵ One of the most significant factors leading to Oregon's oversupply was that the state did not allow regulators to limit the number of cultivator licenses it could issue or the number of plants that could be grown until 2019.

With an accurate estimate of market demand, the state will be able to make informed decisions about the number of licenses it should issue for cannabis cultivation.

The state should not require vertical integration in the cannabis industry.

The state's medical cannabis industry is currently a vertically integrated system limited to two companies that each cultivate, process, and dispense medical cannabis. The manufacturer's registration agreements are renewed every two years. The current model puts the state at risk if it were to lose a manufacturer due to regulatory action or other circumstances. One manufacturer could not adequately serve the existing patient population.

Adopting a new structure that allows the state to issue licenses in key categories of cultivation, processing, and sales could expand market opportunities for new businesses. The state could permit but not require integration. This would give business owners the opportunity to choose whether to integrate their operations and is the approach adopted by Oregon and Nevada. The state could also prohibit or limit vertical integration and enforce various degrees of separation between production and retail, an approach adopted by California, Washington and Illinois that mirrors traditional alcohol licensing models.³⁶

The state should consider implementing programs and services to help businesses in the cannabis industry access financial services.

The federal government still considers marijuana a Schedule I drug under the Controlled Substances Act. As a result, banks, credit unions, and other financial institutions generally refuse to provide services to cannabis related businesses. An estimated seventy percent of cannabis businesses have no relationship with a financial institution and thus use cash for all transactions, including salaries for employees.³⁷

California's State Treasurer established a Cannabis Banking Working Group to produce actionable recommendations designed to provide access to the banking system for cannabis related businesses. The group conducted a feasibility study related to creating a state bank to handle cannabis related businesses. The feasibility study found that a state-backed cannabis bank involves unacceptable degrees of legal, schedule, mission, and financial risks.

The California Senate has introduced and passed SB 51, which would allow for a limited charter for cannabis banking (Cannabis Limited Charter Banking and Credit Union Law) for state-chartered banks and credit unions.

The state should consider the unique challenges of insuring businesses in the cannabis industry when establishing requirements.

Insurance regulations vary across states. California requires a surety bond, commercial general liability, and automobile liability – and allows municipalities to set standards in addition to the state. Colorado does not require licensed commercial cannabis operators to obtain insurance specific to the cannabis industry. Individuals and businesses are subject to the same insurance requirements as all other industries. Illinois has different requirements for dispensaries and cultivation. If home grown is included in the legalization of cannabis, homeowner policies will need to be reviewed to ensure that no coverage gaps exist.

For states that have legalized cannabis, the goal has been to attract cannabis business insurance in the admitted market. For example, California's Insurance Commissioner held a public hearing with

insurance industry and cannabis business representatives to identify gaps in coverage and the limited availability of insurance for the cannabis businesses. The second purpose of the hearing was for the cannabis industry to share information about the business-model, regulatory oversight, risk management, and professionalism of the industry for the insurance marketplace.

In each license type—cultivation, processing, and retail or affiliated businesses (testing labs, construction, security, cargo/transportation)—insurance products will be required. Generally, each of these businesses are required to carry general liability, workers' compensation, product liability, and property insurance. However, the following is a list of types of insurance most frequently needed by the cannabis industry: Automobile, including Distribution (auto and cargo); Commercial General Liability; Crop (Indoor/Outdoor); Crime; Disaster; Director and Officer Liability; Employment Practices Liability; Equipment Breakdown; Errors and Omissions; Excess/Umbrella; General Liability; Product Liability; Premises Liability; Property; Surety Bonds; and Workers' Compensation.

The state should consider establishing regulations to address the cannabis industry's impact on energy and water consumption and the environment.

The cannabis industry has a significant impact on the environment and consumes a considerable amount of energy and water. Massachusetts and Illinois are the only two states that mandate energy and environmental standards at the state level. Colorado and Oregon let local jurisdictions determine energy regulations.

Indoor cannabis cultivation requires a significant amount of lighting. Massachusetts and Illinois cap wattage at 36 watts per square foot of growing canopy. Other states have rebate programs and other incentives to get cannabis businesses to transition to energy efficient equipment.

States generally promote water-use best practices, such as water filtration systems; routine water use evaluations to improve efficiency; irrigation systems and tensiometers; and, for outdoor grow operations, encouraging growers to water during cooler temperatures and avoid watering when rain is expected. Illinois requires cultivators use automated watering systems, measure runoff, and commit to no more than twenty percent of runoff water.

The state should implement social equity programs to promote diversity in the cannabis industry and address the disproportionate impact of prohibition on communities of color.

Social equity programs will help address the lack of diversity in the cannabis industry and acknowledge that the enforcement of cannabis laws disproportionately impacts people and communities of color. Programs should be open to people from communities adversely impacted by cannabis prohibition, or who have prior convictions for violating cannabis laws. The state will need to identify communities, racially and geographically, most impacted by cannabis prohibition.

The state should consider approaches to promote diversity in the cannabis industry. A recent survey found more than eighty percent of cannabis business owners and founders are white, while just 10 percent are Black and Hispanic/Latinx. The state could give preference to businesses owned by individuals from communities disproportionately impacted by prohibition when awarding licenses. In addition, the state could require diversity plans that explains goals for diversity in leadership, hiring, contracting, and ownership as part of the license application process. This could be modeled on the state's existing equal pay and affirmative action requirements for vendors.

The state could establish a lending program for emerging entrepreneurs in the cannabis industry, which grants money to local business development nonprofits to provide loans to entrepreneurs. The state could provide professional training, technical assistance, and mentoring with the goals of reducing barriers to entry in the commercial cannabis industry. The state could also implement direct business development and financing programs.

The state should create a Cannabis Economic Development Fund to support cannabis specific business activities.

Cannabis entrepreneurs and small businesses would still be able to access DEED's general business resources that provide information on finances, taxes, management, and other typical business operations.

How does the state ensure the equitable, safe and effective administration of cannabis laws?

The state should establish a clear policy on cannabis in all of its forms and strive to consolidate functions and oversight as much as possible.

There are many functions that cross cannabis categories. Areas to streamline and consolidate for efficiency include applications and licensing, inspections and investigation (compliance and enforcement), product testing (laboratory services), and software integration and interoperability.

Intentional planning should be done early on to integrate any regulation requirements such as licensing and inspection of cultivation, processing and retail environments, product testing, etc. In other states, it is quite common that cannabis companies will seek licenses for multiple functions and in both the adult-use and medical program.

The state should create the Office of Cannabis Management to safely, equitably and effectively implement and administer the laws enabling access to legalized cannabis.

The Office of Cannabis Management would be advised by a Commission of appointees from the following agencies: Revenue, Commerce, Agriculture, Health, and Public Safety. This Office would oversee the activities of licensing, compliance, product safety, and research. These activities would be

administered by the Office of Cannabis Management through an Executive Director, Legal Counsel, Administrative Support, and other necessary staff. Activities outside of the scope of the Office could be directed by interagency agreements between relevant agencies.

The state should assess the information technology systems and assets that will be necessary for the effective administration of cannabis laws.

Seed-to-sale would need to integrate with licensing software, medical patient registry, and point of sale systems in dispensaries. This may also be the agency to receive the lab results regarding potency, stability, and containment testing.

APPLICATIONS AND LICENSING

The state should license businesses engaged in the cultivation, processing and retail of cannabis and cannabis products.

A cultivation license should be required to grow more than four cannabis plants.³⁸ A processing license should be required to process products containing extracted cannabinoids such as THC or CBD. Different requirements should be identified for the processing of plant material, extraction of cannabinoids, and production of consumables based on risk. A retail license should be required to sell products that are derived from a cannabis plant or contain cannabinoids such as THC or CBD.

The Office of Cannabis Management should develop processes to secure, renew, change and deny a license application. The evaluation and approval of certain licenses may require action or expertise from another state agency. These requirements should be identified and documented through interagency agreements.

It is difficult to determine appropriate fee levels until more is known about the extent of the licensure process and how many licensees will be allowed to operate in Minnesota. The state should aim to keep these fees manageable so as to incentivize business development and discourage black-market activities.

The state should consider limiting the number of licenses available in each category as well as the number of licenses that may be issued to any one group or person.

Limiting the number of licenses any one entity can possess can aid in the development of a craft cannabis industry and prevent one business from gaining an outsized position in the market. Nevada limits the number of licenses an individual can hold to ten percent of the authorized licenses within a given county. Maine limits the number of licenses held by one entity to four licenses. Some states also manage the rate at which licenses are issued, granting licenses in batches and increasing the number of total licenses issued if needed.

The state should require license applicants to submit background check, identification of cannabis locations, and a contract that states they will adhere to the requirements of the license.

Additional licensing requirements could include residency restrictions or proof of insurance. California and Massachusetts require proof of insurance, such as a general liability policy. The state should consider not disqualifying applicants for convictions related to activities that are becoming legal.

CULTIVATION AND MANUFACTURING

The state should invest in a proven seed-to-sale software system to manage inventory tracking and reporting.

Tracing marijuana from “seed to sale” is a way to ensure compliance with the law and that the appropriate tax revenue is being collected. A proven “seed to sale” IT system will track and trace cannabis from seed/clone through the entire lifecycle of processing and sale. This software allows compliance and enforcement to track inventory in real-time and identify suspected diversion of plant/product. Seed-to-sale systems are also vital in the event of a product recall.

The state should require accurate labeling for cannabis as an agricultural seed.

Accurate labeling includes varietal information, purity and germination information, as well as a noxious weed exam. This would be done through the Minnesota Department of Agriculture’s existing seed program and would not be managed by the Office of Cannabis Management.

The state should consider developing an online pollen drift map to prevent pollen contamination.

Cannabis varieties are grown via female plants which contain maximized levels of THC and CBD production. Grain and fiber hemp varieties are generally fifty percent male. If cannabis varieties are being raised for seed, pollen contamination is a concern. An online pollen drift map would help growers see what is planted nearby. However, the benefit should be balanced against any potential data security issues that could create security vulnerabilities for growers.

The state should adopt safety requirements for cannabis-infused food products.

Regulations similar to those for food manufacturing should be required prior to an entity earning a manufacturer’s license. This should include processing of all cannabinoids including CBD. Manufacturing requirements for plant material and flower buds should have a different set of requirements than processing and extraction. All ingredients that contribute to a final consumable cannabis product should meet food safety requirements. Food devoid of cannabis should not be produced in cannabis facilities in order to reduce contamination of non-cannabis products.

The state should develop rules and regulations for transport of cannabis plants and products.

Transportation of cannabis plant material and manufactured product should be overseen by the Office of Cannabis Management utilizing the seed-to-sale tracking system.

The state should consider imposing limits on the types and potency of cannabis products that can be produced and sold legally.

Vaping as a delivery method should be given special consideration due to the recent health concerns. The market has shifted from traditional cannabis flower (less than four percent THC) to very potent flower (up to thirty percent THC) and concentrates like dab and wax (ninety-five percent THC). The range of THC found in concentrate products allowed in other states is thirty to eighty percent THC. Limiting the potency of flower cannabis to twenty percent THC could reduce the potential for risk.

The state should adopt restrictions and requirements related to labeling and packaging.

Packaging for cannabis products should have specific safety features, including childproof and tamper-evident packaging. There should also be very strict regulations about the labels that go on cannabis packaging. Restrictions on products and packaging attractive to youth or children should be implemented. There should be labeling requirements, including warning labels on all packaging, and a universal symbol indicating that a product contains THC. Labeling must follow the labeling requirements in Minnesota Statutes and Rules and should include license numbers, date of sale, batch numbers, information about the product testing, and risk statements, for example, “not for use by children or pregnant women.”

PRODUCT TESTING

The state should take steps to develop and implement a product testing program.

Current laboratory quality standards (methods, method validation protocols, and performance criteria) are insufficient to support a robust, science-based cannabis laboratory accreditation program. Revisions are needed for analytical methods, method validation protocols, performance criteria, proficiency testing and homogenization procedures. Widely accepted laboratory quality standards for testing cannabis and cannabis products do not yet exist.³⁹

The Minnesota Department of Agriculture and Department of Health laboratories will need to develop and certify analytical processes to test for THC or CBD levels, pesticide residue, mycotoxins, heavy metals, or residual solvents.

The Department of Commerce’s Weights and Measures Division could regulate scales and other devices to provide consumer protection, as well as oversee testing of moisture loss in cannabis

products to determine appropriate weights for seed to sale. The National Conference on Weights and Measures is currently developing recommendations on suitability of scales, methods of scale, package and labeling of products, safety for inspectors, and moisture loss of prepackaged products.

The state should designate the Minnesota Environmental Laboratory Accreditation Program as the accreditation provider for cannabis testing laboratories.

Based on experience, skills and expertise, the Minnesota Environmental Laboratory Accreditation Program is uniquely equipped to establish, manage and uphold accreditation of cannabis testing laboratories.

The state should enable the Public Health Lab Environmental Laboratory Section to perform reference testing as an oversight for commercial laboratory testing of cannabis products.

This will ensure commercial cannabis testing labs are performing required testing with the appropriate quality and ethics to ensure that the end users of adult-use cannabis are reasonably protected from public health concerns. This testing would be complimentary to any testing the Minnesota Department of Agriculture laboratory would conduct on plant material and agricultural and or food related products.

The Public Health Lab Environmental Laboratory Section would also be prepared to support cannabis related adverse event investigations. In addition, the testing ENV could align with the current safety testing paradigm used by the Office of Medical Cannabis. With this capability, in the event of the loss of capability and capacity at a lab supporting OMC, ENV could serve as a stopgap until commercial laboratory testing could be resumed, thus preventing a significant loss of patient access to medical cannabis products.

RETAIL AND SALES

The state should restrict purchase of cannabis to people 21 and older and conduct a pre- and post-legalization study to accurately measure underage cannabis consumption.

While some studies suggest the legalization of adult-use cannabis does not lead to an increase in underage cannabis consumption, research regarding increased cannabis consumption among those under the age of 21 in states that have legalized adult-use cannabis is inconclusive.

The state should adopt restrictions and requirements related to marketing and advertising.

Careful consideration should be given to advertising restrictions, especially advertising that targets youth or is related to internet, print, radio and television. Restrictions will need to be within the confines of the First Amendment and could be modeled after existing tobacco restrictions.

Requirements may include warning labels on any advertising. Factors to consider include advertising attractive to youth, deceptive, false, or misleading claims, and outdoor advertising not used as business/storefront identifiers.

The state should utilize the existing process for the reporting and transmittal of taxes and fees.

The Minnesota Department of Revenue collects specialized taxes for other industries. These industry specific taxes have customized filing forms and audits. The department should continue to use their expertise to collect cannabis taxes. Although these processes can be replicated, additional resources will be required given the cash-dependent nature of the business. In addition, these new businesses will need significant outreach and education to ensure they understand their obligations.

ENFORCEMENT AND OVERSIGHT

The state should maintain control of all cannabis-related licensure.

State level licensure is recommended for cultivators, manufacturers, and retail sales, and should be considered for warehouses, distributors, transportation companies, money couriers, and security companies. Local control authority could be granted for certain decision points, but all licensure, as well as oversight and enforcement, should be managed by the Office of Cannabis Management.

The state should make strong efforts to educate law enforcement about cannabis laws.

One option could be a required one-hour class and/or required legal update administered by the Minnesota Board of Peace Officer Standards and Training. In addition, the Office of Cannabis Management should provide online resources including FAQ's and social media messaging.

The state should establish criminal penalties as well as a consistent, progressive administrative civil penalty/fine schedule.

Any significant licensure requirement violations including commercial production or sales without a license, serious license violations, and/or tax violations should trigger state authorities to pursue criminal penalties. Penalties should include suspension and/or revocation of license. An administrative subpoena authority over licensees should be utilized for records and documents. An administrative law judge should be used to litigate civil questions and to create case law for future guidance.

The state should utilize existing processes for reporting and enforcement.

Existing communication processes for alcoholic beverage regulation should be utilized and adjusted to fit legal cannabis regulation. These include agency and program use of revenue collected, state and

independent audits, and youth enforcement. Additionally, existing tobacco educational processes and compliance checks should be used as a model for cannabis.

PROGRAM IMPACT AND EDUCATION

The state should give agencies authority to maintain restrictions on cannabis possession and use at certain facilities.

There will be instances where it is necessary for the state to restrict cannabis possession and use. For instance, some state-operated facilities receiving federal funding will still be subject to various federal requirements that prohibit cannabis possession and use on premises.

Correctional facilities will want to maintain restrictions on cannabis, regardless of delivery method or potency, except in cases of medical necessity as established in the state's medical cannabis program. Medical cannabis in a correctional facility must be stored and distributed in accordance to the facility's established written policy governing the control of psychoactive medications.

As the legalization of cannabis could potentially allow legal use by vulnerable adults living in nursing homes, assisted living facilities, or group home settings licensed by the Department of Human Services, there is the potential for financial, legal and public safety impacts to these populations. Conversely, new policy on the use of legal cannabis in such settings should also consider the residents' constitutional rights to live in the least restrictive setting.

State law prohibits cannabis use in schools, including medical cannabis. The state should consider whether to make exceptions for medical cannabis. Nearly 600 people under the age of eighteen were enrolled in Minnesota's medical cannabis program as of September 30, 2019.⁴⁰ The Education Commission of the States identified six states that have policies providing for administration of medical cannabis to students on school grounds. In these states, common policies include provisions that students must have a valid medical recommendation; only non-smokable products may be administered on school grounds; only parents, legal guardians, or primary caregivers may administer the substance; and students cannot be punished for medical cannabis use on school grounds.⁴¹

The state should develop and execute a comprehensive, evidence-based prevention and protection public education program focused on youth, young adult, and maternal health.

Any new law should include funding or strategies to prevent substance abuse, particularly cannabis consumption by people under the age of 21 and people who are pregnant. According to the Minnesota Department of Human Services, cannabis has typically been the primary substance of abuse among adolescents presenting for treatment. Developing brains, like those in babies, children, and teenagers, are especially susceptible to the hurtful effects of cannabis. Cannabis use during pregnancy may be

linked to future problems with attention, memory, problem-solving skills, and behavior problems in children.

The public education program should be informed by the federal Substance Abuse and Mental Health Services Agency, Strategic Prevention Framework, and the Centers for Disease Control and Prevention Best Practices Guide. It should include policy, systems, and environmental change; counter-marketing communications and media; community and youth-based organizational engagement; and a sustainable infrastructure for evaluation and surveillance. The goals will be to prevent cannabis access, initiation, and use; exposure to secondhand smoke and aerosol emitted from vaping products; and poisonings, particularly related to edibles.

The state should establish a grant program to help communities develop and implement coordinated intervention strategies to prevent and reduce underage cannabis consumption.

Social and cultural norm change models rely on grassroots-level change that are developed and driven by the community. Community level efforts are effective in influencing societal organizations, systems and networks that encourage and support youth and young adults to make behavioral choices consistent with cannabis free norms. Local policy, systems, and environment changes to protect youth and prevent youth cannabis use require the active engagement and leadership of community and youth organizations. State level technical assistance should support these efforts.

The state should implement a state-level, mass-reach health communication program that will deliver strategic, culturally appropriate messages through sustained campaigns in support of the comprehensive youth, young adult, and maternal health prevention program.

An effective health communication and counter-marketing campaign would employ a wide range of paid and earned media, including television, radio, outdoor, and digital advertising. Any campaign aimed at youth and young adults should utilize multiple communication channels such as school-based curriculum, online video, mobile apps, and social media platforms.

In combination with the community intervention grant program, youth and community-based ambassadors would provide development input and actively participate in the creation of and serve as spokespeople for the campaign and counter-marketing activities.

The state should prohibit driving while under the influence of cannabis and ensure law enforcement agencies have the resources necessary to manage increased case load.

Though the relationship between the legalization of adult-use cannabis and traffic fatalities is inconclusive,⁴² researchers have found an overall increase in traffic accidents in states where cannabis use is legal.⁴³ If Minnesota legalizes adult-use cannabis, law enforcement agencies will likely need to devote more time and resources to investigating drug related driving accidents.

The state should require all law enforcement K9s certified in cannabis detection be retired and consider helping offset the associated costs.

The continued use of K9's certified in cannabis detection could result in some significant legal challenges as has been seen in other states where marijuana has been legalized. In the states of California and Colorado, law enforcement K9's certified in cannabis have been phased out and replaced with K9's not certified in cannabis detection. Currently, there are 272 K9's in Minnesota certified to detect cannabis. It costs the Minnesota State Patrol approximately \$26,700 to replace one K9. The cost does not include retirement cost associated with existing K9's.

The state should automatically expunge low-level convictions and arrests for cannabis possession.

Low level offenses would be those as defined by current state statutes which currently defines petty misdemeanor as below 1.5 ounces on the person and below 1.4 grams in a motor vehicle.

The state of Illinois and New York have instituted similar efforts. Those who have convictions for marijuana possession crimes exceeding the petty misdemeanor level should be presumptively granted expungement in cases where the presenting criminal offense is marijuana possession only.

Convictions for sale or distribution of marijuana should not be included in the presumptive expungement requirement. Anyone seeking expungement of criminal convictions for the above crimes is required to follow the expungement process as delineated in current Minnesota law.

The state should release from custody or discharge from supervision anyone currently serving a sentence or under supervision for a crime that would no longer be a crime under new law.

To ensure effective transition services to those who may be subject to release from custody for marijuana possession-related crimes, it is recommended that the Department of Corrections secure funding to aid in the process of pre-release planning and coordination. Nothing in the provision should apply to those who are serving a sentence for crimes beyond cannabis possession.

The state should maintain "No Use" provisions on cannabis for persons subject to probation supervision or supervised released who have a substance use disorder.

"No use of mood-altering substance" directives are often established based upon a determination that a probationer or supervised releasee has a substance use disorder. "No use" directives should be imposed only after determination of a substance abuse disorder by a qualified assessor.

The state should measure the impact legalization would have on lessening the entry into the criminal justice system.

During 2018, marijuana was involved in 769 (154 were listed for marijuana concentrates) of the arrests made by statewide Violent Crime Enforcement Teams (VCET). In addition, VCET groups made sixty-three arrests for non-felony level marijuana possession. Although this data gives a snapshot at one year of marijuana enforcement, it does not provide enough data to better inform a recommendation.

TAXATION

The state should authorize the Minnesota Department of Revenue to collect tax revenue owed as a result of conducting business in the cannabis industry.

The Department of Revenue has expertise in tax compliance and collections. As such, the Department of Revenue, not the Office of Cannabis Management, should handle the registering, auditing, and collecting of cash from retailer taxpayers. All states that have legalized adult-use cannabis utilize their respective Departments of Revenue for revenue collection. Additional resources will be required given the cash-dependent nature of the business. In addition, the state will need to conduct significant outreach and education to ensure cannabis businesses understand their tax obligations.

The state should implement a price-based gross receipts tax at retail.

All states with legal adult-use cannabis impose cannabis-specific excise based on price and/or a non-price characteristic (i.e., weight, plant part, or potency). Also, states vary based on when the tax is imposed in the process of cannabis being grown, processed, or sold. States impose taxes on cultivators, manufacturers, distributors, and/or retailers.

Eight states impose price-based taxes at retail with rates ranging from ten percent in Nevada to thirty-seven percent in Washington. Illinois' retail tax rate varies based on product type and potency. Colorado, Nevada, and Illinois impose price-based taxes at the manufacturer level. California and Maine impose weight-based taxes at the manufacturer level. Alaska imposes a weight-based tax at the cultivator level.

Imposing only a price-based tax at retail allows state revenue officials to: 1) capture all the value added during the cannabis production/distribution process; 2) avoid tax complexity and business design issues that other states have experienced with taxes at the cultivator and manufacturer levels (e.g., tax agencies having to set "fair market values" to tax for pre-retail, non-arms-length transactions between subsidiaries); and 3) reduce the number and kind of taxpayers the Department will have to provide education and outreach to and ensure compliance with the laws.

One result of applying the tax at the retail level is that the rate can appear to be higher than those imposed within a structure where taxes are collected at various points in the stream of production and sale. For example, a state with a tiered tax rate of fifteen percent at the cultivator level, ten percent at the manufacturer level, and fifteen percent at the retail level may have the same effective tax rate as a state that imposes a thirty-seven percent tax rate only at the retail level. However, because consumers tend to focus on the retail tax rate, the consumers in the state with the thirty-seven percent tax rate may think their cannabis is subject to a higher rate.

Another result is that if cannabis prices fall, so too would tax revenues. While weight-based taxes provide some protection against drops in revenue, those benefits are outweighed by the associated administrative complexity. As the market matures and prices stabilize, retail tax rates can be adjusted to address revenue issues.

The state should consider a range of factors when determining the tax rate for cannabis.

Factors that should be considered when determining cannabis tax rates include rates established for tobacco and liquor; administrative and regulatory costs; and impact on final product price relative to the price of black-market cannabis. As noted above, in states where price-based taxes are imposed at the retail-level, tax rates range from ten percent to thirty-seven percent.

The state should exempt cannabis products from sales tax.

Exempting cannabis from sales tax will simplify the tax collection process for both the state and for cannabis retailers. Currently, seven states impose state-level general sales tax on cannabis. The rates imposed range from 5.5 percent in Maine to 7.25 percent in California.⁴⁴ Alaska, Colorado, and Oregon do not impose state-level general sales tax on cannabis.

The state should continue to exempt medical cannabis from all state taxes.

Medical cannabis is currently not taxed. Discontinuing this policy will have an adverse impact on efforts to strengthen the state's medical cannabis program.

The state should consider whether to allow local authorities to impose cannabis-specific taxes.

Most states that regulate retail sales of cannabis allow local jurisdictions to impose their own cannabis-specific excise taxes. However, Colorado does not allow local jurisdictions to impose their own excise tax. Instead, it dedicates ten percent of the revenue from the state retail tax to jurisdictions that permit cannabis businesses to operate.

KEY OBSERVATION: We have to be clear on next steps.

SHORT-TERM: From now until when adult-use cannabis is legalized in Minnesota.

- TEAM: Interagency Working Group.
- GOAL: Determine best approach to implement adult-use regulatory program.
- ROLE: Consultant to policymakers.
- ACTIONS:
 - Outline necessary actions to be prepared to implement adult-use legislation.
 - Cost estimates for actions recommended in this working draft document.
 - Explore adult-use programs in other states.
 - Commission studies to understand:
 - Prevalence of use and perception of marijuana
 - Economic, fiscal and administrative impacts on state and local governments
 - Incidents of impaired driving and hospitalization
 - Provide information to policymakers.

MID-TERM: From when adult-use cannabis is legalized until the start of legal sales.

- TEAM: Working group focused on implementation.
- GOAL: State is ready to begin retail sales on date set by legislation.
- ROLE: Responsible for implementation of adult-use regulatory program.
- ACTIONS: TBD

LONG-TERM: From the start of legal sales and beyond.

- TEAM: Office of Cannabis Management.
- GOAL: Equitable, safe and effective administration of Minnesota's cannabis laws.
- ROLE: Accountable for development, implementation and enforcement of regulations that govern the cultivation, manufacture, sale, and impact of cannabis products in Minnesota.
- ACTIONS: TBD

SUMMARY OF KEY OBSERVATIONS 1 and 2

KEY OBSERVATION 1: We have to handle with care.

The policy establishes a market that is in tension with federal law and impacts public health.

- The use, sale, and possession of cannabis over 0.3 percent THC is illegal under federal law. This complicates banking, taxation, and other areas regulated by federal laws.
- Cannabis may have a wide range of health effects on the body and brain. While there is growing evidence of its health benefits, its health detriments are serious and proven.

The industry is immature and growing fast.

- Retail cannabis sales are legal and regulated in just eleven states. These programs are still very young and will likely continue to evolve for many years.
- Sales of legal cannabis in the United States are estimated to quintuple between now and 2025.
- Products are evolving rapidly, both in terms of product type and consumer preference.

The administrative requirements are significant.

- States must implement policies that protect public health and safety, create opportunities for inclusive economic growth, and establish systems to capture and invest tax revenue.
- States must adopt governance structures and assign major administrative and regulatory responsibilities to one or several existing or newly created state agencies.
- States generate more than enough revenue from taxes and license fees to cover the administrative costs associated with regulating cannabis sales.
- States have found it difficult to accurately forecast revenues from taxes, licenses and fees.
- It takes, on average, eighteen months for states to fully implement legal adult-use cannabis sales.
- The state will need to collaborate and consult with local governments and Tribal Nations.

It's a matter of justice.

- Efforts to enforce cannabis laws in the United States over the past four decades have largely depended on arrest, incarceration, and the seizure of private property.
- The enforcement of cannabis laws imposes a range of social, psychological, and familial costs on those arrested for violations, a disproportionate number of who are people of color.
- States are making social justice the focus of their legalization efforts.

KEY OBSERVATION 2: We have much to consider.

How will legalizing adult-use cannabis impact the health and safety of all Minnesotans?

- Research suggests that cannabis use increased in some states but not others following legalization. The increase may be a function of underreporting prior to legalization.

- Research regarding increased cannabis consumption among those under the age of 21 in states that have legalized cannabis is inconclusive.
- Vaping as a delivery method should be given special consideration due to the recent health concerns that have been unearthed.
- A recent study found opioid deaths declined in states where adult-use cannabis is legal. However, research in states with medical cannabis programs found opioid deaths increased.
- There is no conclusive evidence that legalizing adult-use cannabis leads to either an increase or decrease in alcohol or tobacco use.
- Traffic safety measures in states where cannabis use is legal should be considered. Law enforcement agencies will spend more time and resources to determine cannabis impairment in drivers during traffic stops or when investigating accidents.
- Law enforcement agencies will need to retire K-9 units certified in cannabis detection.
- States that have legalized adult-use cannabis have experienced diversion of legal cannabis products to other states where the product is not legal.
- Federal law makes it difficult for cannabis businesses to access traditional banking and financial services.
- Absent protections in state law, employers can test for cannabis and refuse to hire, or subject current employees to disciplinary action, if results are positive.
- Given federal law, the legalization of adult-use cannabis may impact the Minnesota Department of Military Affairs.

How does the state establish a market that creates opportunity and inclusive growth?

- The state should estimate the amount of cannabis that will be necessary to meet market demand and determine who will be permitted to cultivate and manufacture cannabis products.
- The state should not require vertical integration in the cannabis industry.
- The state should consider implementing programs and services to help businesses in the cannabis industry access financial services.
- The state should consider the unique challenges of insuring businesses in the cannabis industry when establishing requirements.
- The state should consider establishing regulations to address the cannabis industry's impact on energy and water consumption and the environment.
- The state should implement social equity programs to promote diversity in the cannabis industry and address the disproportionate impact of prohibition on communities of color.
- The state should create a Cannabis Economic Development Fund to support cannabis specific business activities.

How does the state ensure the equitable, safe and effective administration of cannabis laws?

- The state should establish a clear policy on cannabis in all its forms and strive to consolidate functions and oversight as much as possible.
- The state should create the Office of Cannabis Management to safely, equitably, and effectively implement and administer the laws enabling access to legalized cannabis.
- The state should assess the information technology systems and assets that will be necessary for the effective administration of cannabis laws.

APPLICATIONS AND LICENSING

- The state should license businesses engaged in the cultivation, processing and retail of cannabis and cannabis products.
- The state should consider limiting the number of licenses available in each category as well as the number of licenses that may be issued to any one group or person.
- The state should require license applicants to submit background check, identification of cannabis locations, and a contract that says they will adhere to the requirements of the license.

CULTIVATION AND MANUFACTURING

- The state should invest in a proven seed-to-sale software system to manage inventory tracking and reporting.
- The state should require accurate labeling for cannabis as an agricultural seed.
- The state should consider developing an online pollen drift map to prevent pollen contamination.
- The state should adopt safety requirements for cannabis-infused food products.
- The state should develop rules and regulations for transport of cannabis plants and products.
- The state should consider imposing limits on the types and potency of cannabis products that can be produced and sold legally.
- The state should adopt restrictions and requirements related to labeling and packaging.

PRODUCT TESTING

- The state should take steps to develop and implement a product testing program.
- The state should designate the Minnesota Environmental Laboratory Accreditation Program as the accreditation provider for cannabis testing laboratories.
- The state should enable the Public Health Lab Environmental Laboratory Section to perform reference testing as an oversight for commercial laboratory testing of cannabis products.

RETAIL AND SALES

- The state should restrict purchase of cannabis to people 21 and older and conduct a pre- and post-legalization study to accurately measure underage cannabis consumption.
- The state should adopt restrictions and requirements related to marketing and advertising.
- The state should utilize existing process for the reporting and transmittal of taxes and fees.

ENFORCEMENT AND OVERSIGHT

- The state should maintain control of all cannabis-related licensure.
- The state should make strong efforts to educate law enforcement about cannabis laws.
- The state should establish criminal penalties as well as a consistent, progressive administrative civil penalty/fine schedule.
- The state should utilize existing processes for revenue reporting and enforcement.

PROGRAM IMPACT AND EDUCATION

- The state should give agencies authority to maintain restrictions on cannabis possession and use at certain facilities.
- The state should develop and execute a comprehensive, evidence-based prevention and protection public education program focused on youth, young adult and maternal health.
- The state should establish a grant program to help communities develop and implement coordinated intervention strategies to prevent and reduce underage cannabis consumption.
- The state should implement a state-level, mass-reach health communication program that will deliver strategic, culturally appropriate messages through sustained campaigns in support of the comprehensive youth, young adult and maternal health prevention program.
- The state should prohibit driving while under the influence of cannabis and ensure law enforcement agencies have the resources necessary to manage increased case load.
- The state should require all law enforcement K9s certified in cannabis detection be retired and consider helping offset the associated costs.
- The state should automatically expunge low-level convictions and arrest for cannabis possession.
- The state should release from custody or discharge from supervision anyone currently serving a sentence or under supervision for a crime that would no longer be a crime under new law.
- The state should maintain “No Use” provisions on cannabis for persons subject to probation supervision or supervised released who have a substance use disorder.
- The state should measure the impact legalization would have on lessening the entry into the criminal justice system.

TAXATION

- The state should authorize the Minnesota Department of Revenue to collect tax revenue owed as a result of conducting business in the cannabis industry.
- The state should implement a price-based gross receipts tax at retail.
- The state should consider a range of factors when determining tax rate for cannabis.
- The state should exempt cannabis products from sales tax.
- The state should continue to exempt medical cannabis from all state taxes.
- The state should consider allowing local authorities to impose and collect cannabis-specific taxes.

Inter-Agency Workgroup on Adult Use Cannabis

Eric Armacanqui, *Minnesota Department of Human Rights*

Scott Beutel, *Minnesota Department of Human Rights*

Deven Bowdry, *Minnesota Department of Employment and Economic Development*

Carla Cincotta, *Minnesota Department of Public Safety*

Darielle Dannen, *Minnesota Department of Employment and Economic Development*

Marie Dotseth, *Minnesota Department of Health*

Robert Doty, *Minnesota Department of Revenue*

Emmet Hedin, *Office of the Governor*

Booker Hodges, *Minnesota Department of Public Safety*

Beth Johnston, *Minnesota Department of Revenue*

Safia Khan, *Minnesota Department of Corrections*

Peder Kjeseth, *Minnesota Department of Agriculture*

Daron Korte, *Minnesota Department of Education*

Emily Lefholz, *Office of the Governor*

Angelina Nguyen, *Minnesota Department of Labor and Industry*

Anne O'Connor, *Minnesota Department of Commerce*

Whitney Place, *Minnesota Department of Agriculture*

Dan Pollock, *Minnesota Department of Human Services*

Luchelle Stevens, *Minnesota Department of Education*

Chris Tholkes, *Minnesota Department of Health*

Angela Vogt, *Minnesota Management and Budget*

Dominick Washington, *Minnesota Management and Budget*

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- ⁴ https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html#what-we-know
- ⁵ Includes \$35 billion for marijuana products and \$6 billion for hemp-derived CBD products. Marijuana projection presumes 75% of the U.S. adult population has consistent access to legal marijuana by 2025. Hemp-derived CBD projection presumes ingestible hemp-derived CBD products are legally available at major retailers and across retail channels.
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- ³⁰ <https://kdvr.com/2019/07/24/agencies-begin-phasing-out-k-9s-who-sniff-for-marijuana-citing-new-law/>
- ³¹ M.S. 181.938, sub. 3
- ³² Department of Military Affairs Memo
- ³³ <https://cannabiz.media/state-cannabis-regulations-lead-to-imbalances-in-supply-and-demand/>
- ³⁴ <https://www.bloomberg.com/news/articles/2018-10-26/marijuana-shortages-abound-in-canada-amid-licensing-rigmarole>
- ³⁵ [https://www.oregon.gov/olcc/marijuana/Documents/Bulletins/2019%20Supply%20and%20Demand%20Legislative%20Report%20FINAL%20for%20Publication\(PDFA\).pdf](https://www.oregon.gov/olcc/marijuana/Documents/Bulletins/2019%20Supply%20and%20Demand%20Legislative%20Report%20FINAL%20for%20Publication(PDFA).pdf)
- ³⁶ <https://journal.cannabislaw.report/washington-vertical-integration-what-it-is-and-why-it-matters-to-cannabis/>
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- ³⁸ This requirement could be challenged under Article 13, Section 7 of the Minnesota Constitution which states that, “Any person may sell or peddle the products of the farm or garden occupied and cultivated by him without obtaining a license therefor.” The Minnesota Department of Agriculture has had efforts to license the production of certain products challenged in the past, for example with raw milk. However, court decisions have consistently held that the constitutional provision exempts farmers from licensure to sell products, but not from substantive regulation of production or sale of those products.
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