



## Comparison of marijuana legalization legislation to JLARC report

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## Legislative direction

- HB 2312 & SB 1406 (2021) legalize possession and eventual commercial sale of marijuana in Virginia
- Legislation directed JLARC to
  - analyze the provisions of legalization
  - compare provisions to JLARC report\*
  - report comparison by November 1, 2021

*\*Key Considerations for Marijuana Legalization, JLARC, November 2020.*

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# Presentation structure

## Background & summary

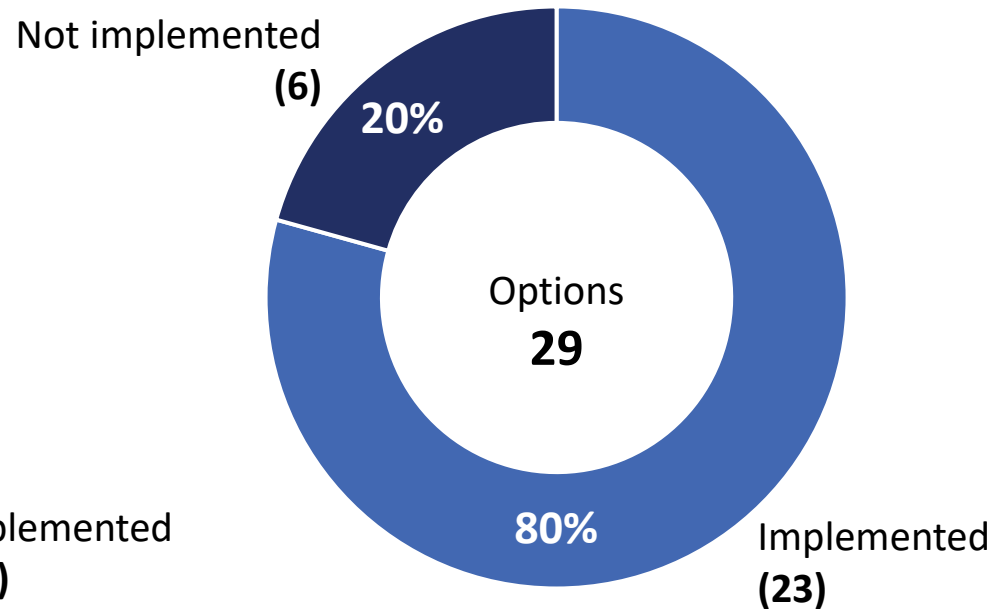
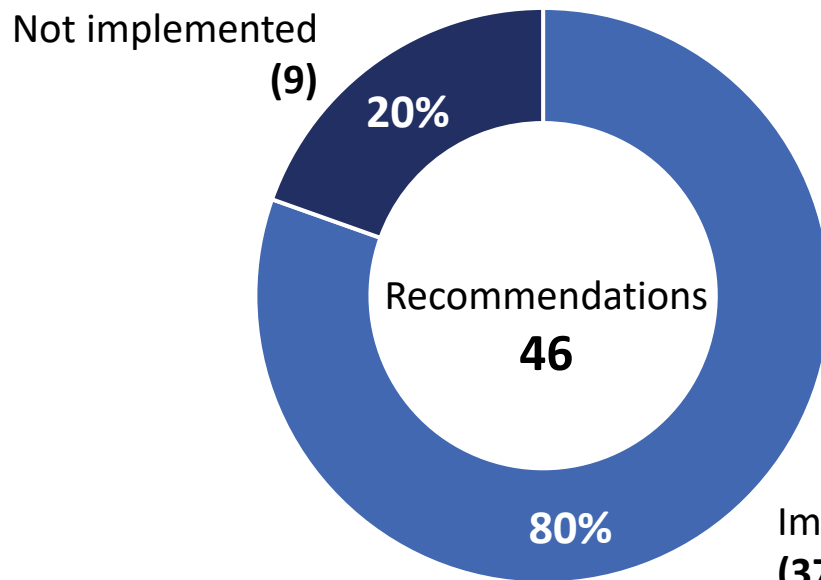
Legislative or agency action

Additional actions to consider

Appendix – Detail on all potential actions

# Virginia's legalization of marijuana is largely consistent with JLARC recommendations

- 2021 General Assembly implemented 80% of the recommendations & policy options in JLARC's *Key Considerations for Marijuana Legalization*



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## Legislation addresses wide range of key considerations for marijuana legalization

- Legalizing marijuana use by adults 21 and over
- Expunging records of prior marijuana offenses
- Creation & regulation of a commercial sales market
- Funding & programs to redress the prior disproportionate effects of marijuana law enforcement
- Funding, programs, & restrictions to facilitate public health
- Retail sales tax on marijuana & marijuana products

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# Presentation structure

Background & summary

**Legislative or agency action**

Additional actions to consider

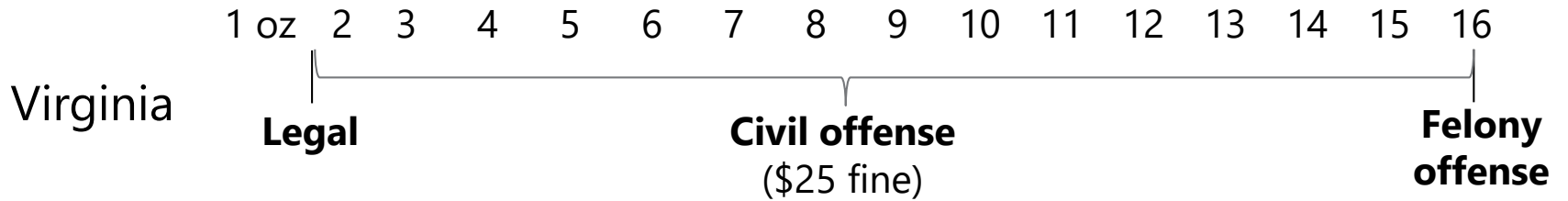
Appendix – Detail on all potential actions

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## Possession limits and penalties for violations

- Law establishes minimum possession age (21) and amount (one ounce) that JLARC recommended
- In contrast with other states, Virginia's penalty structure for illegal possession escalates from a civil penalty directly to a felony offense
- All other legalized states have a misdemeanor charge for possession above the legal amount

# Possession limits and penalties for violations (continued)



**Legislative action**

**Establish misdemeanor possession amount**



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## Possession of edibles, vape oils, and other marijuana products

- Law directs the Virginia Cannabis Control Authority (VCCA) to set possession “equivalent amounts” for marijuana edibles, vape oils, and other products *in regulation*
- Possession will be legal before VCCA can issue regulations
- From July 1, 2021 until date regulations become effective, no clear possession equivalents for these products

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Agency  
action

VCCA set possession equivalencies using emergency regulation process

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## Retail locations for medical marijuana licensees

- Law allows Virginia's 5 medical marijuana licensees to participate in commercial sales market similar to JLARC recommendations and policy options
- However, law grants medical licensees more substantial retail advantage than proposed in JLARC report
  - Up to 6 locations per licensee, for total of 30 locations

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**Legislative  
action**

**Restrict medical licensees to 3 adult-use retail  
locations**

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## Special treatment of industrial hemp processors

- Law may allow any business to register as hemp processor, pay a \$1M fee, and operate as vertically integrated marijuana operation not subject to state license caps
  - Industrial hemp processors are registered, not licensed
  - Registration is relatively easy: submit basic info and \$200 to VDACS
  - No limit on number of registered hemp processors

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**Legislative  
action**

**Eliminate special treatment of registered hemp  
processors**

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## Cultivation license classes and caps

- Law creates two classes of cultivation licenses
  - Class A – marijuana
  - Class B – hemp (low THC)
- Both classes count toward the 450 cultivation license cap
- Class B will take away license opportunities from Class A and could result in under supply of marijuana in market

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**Legislative  
action**

**Set separate license caps for Class A and B**

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# Timeline for starting commercial market

- The law requires VCCA to
  - establish regulations and accept license applications July 1, 2023
  - allow retail sales to begin no earlier than Jan 1, 2024
- Timeline allows 6 months for market to be established, which is not enough time for
  - applicants to submit applications, set up operations
  - regulator to award licenses, approve operations
  - cultivators to grow first crop for market

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## Legislative action

**Move up date for implementing regulations and accepting applications to January 1, 2023, allowing 1 year for market to be established**

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## Timeline for developing regulations

- Legislation requires re-enactment of the commercial market provisions in 2022
- Re-enactment requirement creates some uncertainty in commercial laws, however...
- Initial drafting of regulations probably needs to begin before re-enactment if state is to meet the Jan. 1, 2024 retail sales date goal

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**Agency  
action**

**VCCA begin initial drafting of regulations by Fall  
2021**

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## Regulatory authority to create license classes

- Law does not expressly state whether VCCA can create different classes of licenses, within each license type, such as different *sizes* of cultivators
- JLARC recommended granting regulator this authority to
  - ensure market is not over- or under-supplied
  - prevent large cultivators from dominating market
  - allow specialization (e.g., edibles or vape oils)

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### Legislative action

Authorize regulator to create different classes of licenses within each of the license types

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# Responsibility for overseeing marijuana testing labs

- Law requires independent testing of marijuana products for safety and quality, similar to JLARC recommendation
- Law directs VCCA to oversee all testing labs and practices; JLARC recommended vesting some duties with state's Division of Consolidated Laboratory Services (DCLS)
  - leverage existing scientific and regulatory expertise
  - VCCA would still play a key role

<b>Agency action</b>	<b>VCCA and DCLS develop proposal for if and how responsibility for testing labs could best be divided</b>
<b>Legislative action</b>	<b>Enact changes that would divide responsibilities for testing labs, as identified by VCCA and DCLS</b>



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# Effectively awarding community reinvestment grants

- Law creates a community reinvestment board to address prior negative impacts, consistent with a JLARC policy option
- Board will have substantial funding but is not required to use clearly defined and transparent grant guidelines
- Consistent with its advice for other similar grant programs, JLARC proposed directing the board to
  - establish clear limits on grant awards, eligibility criteria, and process for receiving, reviewing, and scoring grant proposals
  - monitor and publicly report grant status & outcomes

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## Legislative action

**Establish additional statutory requirements to ensure social equity grant program is effectively and transparently administered**

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## Social equity program eligibility criteria

- Social equity eligibility gives access to assistance programs, loans, and preferences in license awards
- Other states faced challenges setting eligibility criteria
- Broad criteria extend eligibility to more individuals, but
- Narrow criteria can better
  - direct eligibility to individuals who have actually experienced harm
  - Reduce possibility that individuals who have not been harmed receive preferences intended for others

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## Social equity program eligibility criteria (continued)

- Law allows individuals to qualify for social equity status if they meet any one of the following criteria
  - convicted of marijuana offense
  - family member of person convicted of marijuana offense
  - resided in economically distressed area
  - resided in high marijuana law enforcement area
  - graduate of Virginia HBCU

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## Social equity program eligibility criteria (continued)

- Extending eligibility to family members of convicted persons greatly increases the number of eligible individuals
  - e.g., likely 3 or more qualifying family members for each person convicted  $\approx$ 300,000 or more
  - Increase competition for social equity licenses
- Verifying family relationships creates challenges that may slow down eligibility decisions, license awards

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### Legislative action

Eliminate social equity eligibility criterion related to some or all family members of convicted persons

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## Definition of social equity ownership

- Other states have faced challenges keeping unscrupulous parties from using misleading business structures to qualify for social equity programs
  - designate a "front applicant" to qualify for social equity status, but individual has no actual authority or financial interest
- Clear ownership definition is best established in regulations
  - Washington state and others have used regulations to clearly define ownership and reduce use of misleading business structures
  - By setting definition in regulation, VCCA would be able to quickly respond to attempts to misuse Virginia's social equity program

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**Agency  
action**

**VCCA develop clear definition of business ownership  
for social equity program**

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# Presentation structure

Background & summary

Legislative or agency action

**Additional actions to consider**

Appendix – Detail on all potential actions

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# Additional legalization topics to consider

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<b>Possession and manufacturing at home</b>	Minimum age for industry employment
Law enforcement training on new laws	Marijuana industry employee registration
VCCA access to expunged records	Alcohol and tobacco sales by marijuana licensees
<b>Vertical integration for small businesses</b>	Encouraging diverse employment by industry and ancillary businesses
Activities allowed under different license types	Clarifying individual and private business rights
Changes to license caps	Affirming legitimacy of licensed marijuana operations
Local zoning authority clarification	

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## Questions? / Comments?

- Mark Gribbin, Chief Legislative Analyst
- Justin Brown, Associate Director



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# Appendix – Detail on all potential actions

This appendix identifies and describes actions for the legislature to consider or for an agency to take. It also identifies key areas where no further action is needed.

Legislative action	Legislative action should be strongly considered to address a need identified by JLARC staff
Legislative consideration	Legislative action could be considered to address a need identified by JLARC staff
Agency action	Agency action is needed to address a need identified by JLARC staff
No further action to consider	Legislation largely reflects what was recommended or presented as an option in JLARC's report, and JLARC staff did not identify a potential need for any further action at this time

# Civil & criminal laws

<b>Public possession limits</b> (§4.1-1100)	<ul style="list-style-type: none"><li>• Make possession of 2.5 ounces to one pound of marijuana or its equivalent a misdemeanor offense, when possessed in a public place. (If a higher misdemeanor possession limit is preferred, could set a higher threshold, such as 5 ounces.)</li></ul>
<b>Legislative action*</b>	
<b>Possession and manufacturing at home</b> (§4.1-1100, 4.1-1101(C), 4.1-1118)	<ul style="list-style-type: none"><li>• Set a clear limit on amount of marijuana that can be possessed at a home residence or other privately owned property that is not a public place</li><li>• More clearly distinguish and define penalties for unlicensed, hazardous manufacturing practices (e.g., butane extraction) and non-hazardous manufacturing for non-commercial purposes (e.g., baking marijuana brownies for personal consumption)</li></ul>
<b>Leg. consideration*</b>	
<b>Possession equivalency</b> (§4.1-1100)	<ul style="list-style-type: none"><li>• <u>VCCA</u> should implement emergency regulations that establish possession equivalencies for marijuana products such as consumables, ointments, tinctures, and concentrates</li></ul>
<b>Agency action</b>	

\*JLARC staff can provide members additional commentary upon request about addressing items marked for legislative action or consideration

# Civil & criminal laws

<p><b>Law enforcement training on new laws</b> Appropriation Act (427 D)</p>	<ul style="list-style-type: none"> <li>• Direct DCJS to develop model marijuana law enforcement policy and training</li> </ul>
<p>Leg. consideration*</p>	
<p><b>VCCA access to expunged records</b> (19.2-392.2:1(F), 19.2-392.2:2(H))</p>	<ul style="list-style-type: none"> <li>• Consider authorizing VCCA to have access to expunged records for purposes of verifying an applicant's eligibility for social equity status (currently, VCCA is not listed as one of the agencies that will have access to these records, which means it may have to rely on applicants to provide records when applying for social equity status <i>after</i> the point in time when records are expunged; records are not likely to be expunged until after initial licenses have been awarded so this does not appear to be a pressing need)</li> </ul>
<p>Leg. consideration*</p>	
<p><b>No further action to consider</b></p>	<ul style="list-style-type: none"> <li>• Expungement of prior marijuana offenses ((§19.2-392.1, §19.2-392.2:1, §19.2-389.3, Enactment 9) • Sharing or gifting small amounts (§4.1-1101.1, §4.1-1103(C), §4.1-1104, §4.1-1108) • Illegal gifting for profit (§4.1-1103, §4.1-1101.1, §4.1-803, §4.1-1202) • Purchase, possession, or use by underage adults (§4.1-1105, §4.1-1105.1) • Purchase, possession, or use by minors under 18 (§4.1-1105, §4.1-1105.1) • Possession of marijuana paraphernalia (stricken from §18.2-265.1 et seq) • Public use (§4.1-1108, §15.2-2820) • Use in motor vehicles (§4.1-1107) • Home cultivation (§4.1-606(B)(16), §4.1-1101) • Manufacturing illegally (§4.1-1101(C), §4.1-1118) • Illegal distribution, cultivation, and manufacturing (§4.1-1103, §4.1-1104, §4.1-1106, §4.1-1100(C), §4.1-1101, §4.1-1102)</li> </ul>

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# Commercial market

**Medical marijuana licensees** (§4.1-606(B)(19)(C), §4.1-805, Enactment 11)

**Legislative action\***

- Reduce number of adult use retail locations that each medical licensee can have from 6 to 3

**Hemp processors and cultivation licenses for hemp growers** (§4.1-606(B)(19)(C), 4.1-800(A), §4.1-805, Enactment 11)

**Legislative action\***

- Not allow registered industrial hemp processors to be vertically integrated and exempted from license caps
- Create separate license caps for Class A and B cultivation licenses. Class A licenses allow cultivation of marijuana with any THC content, whereas Class B cultivation licenses allow cultivation of hemp with <1% THC.

**Classes / tiers within license types**

**Legislative action\***

- Direct VCCA to create sized-based cultivation classifications and set a maximum size limit on the largest classification of cultivators
- Authorize VCCA to create different classifications of manufacturing and wholesale licenses that allow for applicants and license holders to specialize in certain operations

\*JLARC staff can provide members additional commentary upon request about addressing items marked for legislative action or consideration

# Commercial market

<b>Vertical integration for small businesses</b> (§4.1-606(C), §4.1-805) <b>Leg. consideration*</b>	<ul style="list-style-type: none"><li>• Allow smallest tier of cultivators to also sell their own products at retail instead of having to gain a separate, second license or create a new microbusiness license that allows small businesses to both grow and sell under one license</li></ul>
<b>Activities allowed under different license types</b> (§4.1-600, §4.1-800, §4.1-801, §4.1-802, §4.1-803, §4.1-804) <b>Leg. consideration*</b>	<ul style="list-style-type: none"><li>• Authorize wholesalers to package and label products</li><li>• Clearly indicate which licensed businesses are allowed to transport marijuana (current law suggests, but does not explicitly state, that all licensees can transport except for retailers; allowing most or all types of license holders to transport will improve market efficiency)</li></ul>
<b>Changes to license caps</b> (§4.1-606(C), Enactment 11) <b>Leg. consideration*</b>	<ul style="list-style-type: none"><li>• Exempt smallest classification of cultivators from license caps or increase number of small cultivator licenses allowed</li><li>• Remove or increase caps on the number of manufacturing and wholesaler licenses that can be issued</li></ul>
<b>Local zoning authority clarification</b> (§4.1-630(C), §4.1-631, §4.1-809(2)(a), §4.1-900(2)(a), §4.1-1004(C)) <b>Leg. consideration*</b>	<ul style="list-style-type: none"><li>• Clarify whether localities can use zoning special permitting authority as a blanket way to vet and review all proposed marijuana business locations</li></ul>

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# Commercial market

<p><b>Minimum age for industry employment</b> (§4.1-809(1)(d), 804(B)(4)(c), §4.1-1200(A)(7))</p> <p><b>Marijuana industry employee registration</b></p>	<ul style="list-style-type: none"> <li>• Require all employees of all types of licensed marijuana businesses to be 21 or older</li> <li>• Require some or all employees of licensed marijuana businesses to be registered with VCCA</li> </ul>
<p>Leg. consideration*</p>	
<p><b>Alcohol and tobacco sales by marijuana licensees</b> (§4.1-809(1)(k))</p>	<ul style="list-style-type: none"> <li>• Restrict all licensed marijuana businesses from being licensed to manufacture, distribute, or sell alcohol or tobacco at their establishments</li> </ul>
<p>Leg. consideration*</p>	
<p><b>License qualifications &amp; award process</b> (§4.1-601, §4.1-604(1)(2)(3)(33), §4.1-606(B)(5)(C), §4.1-606, 4.1-1000(A)(E), Enactment 11)</p>	<ul style="list-style-type: none"> <li>• <u>VCCA</u> adopt/consider JLARC's recommendations and options related to license qualifications and awards</li> </ul>
<p>Agency action</p>	
<p>No further action to consider</p>	<ul style="list-style-type: none"> <li>• Affirm goal establishing commercial market (§4.1-601)</li> <li>• Limits on license transferability and ownership (§4.1-702(B), §4.1-606(B)(18))</li> <li>• Home delivery and on-site consumption venues (§4.1-803)</li> <li>• Local prohibitions (Enactments 5, 23; §4.1-629)</li> <li>• Eventually merge medical and retail markets (Enactment 21, §4.1-606(G))</li> </ul>

\*JLARC staff can provide members additional commentary upon request about addressing items marked for legislative action or consideration

# Product testing

**Responsibility to regulate testing** (§4.1-606(3)(4), §4.1-1400, §4.1-1401, §4.1-1403, §3.2-3906, §3.2-5145.6 et seq)

**Legislative action\***

- Based on VCCA and DCLS proposal (see below), (1) vest DCLS with responsibility to establish regulations for some aspects of the state's marijuana testing program, to potentially include acceptable testing practices, methods, standards, quality control analysis, and equipment certification and calibration, (2) direct DCLS to develop and implement a certification program for licensed marijuana testing laboratories, and (3) provide DCLS with funding to establish the program
- Clarify definition of independent labs not having an "interest" in other marijuana businesses

**Responsibility to regulate testing** (§4.1-606(3)(4), §4.1-1400, §4.1-1401, §4.1-1403, §3.2-3906, §3.2-5145.6 et seq)

**Agency action**

- VCCA and DCLS should develop and submit proposal for if and how statutory oversight responsibilities for state-licensed marijuana testing facilities could be divided between the two bodies to take advantage of DCLS' expertise and experience in certifying testing laboratories, for consideration by the General Assembly

**No further action to consider**

- Independent testing (§4.1-802)
- Testing for product quality and safety (§4.1-1400)

# Regulating agency

**No further action to consider**

- Regulatory board & agency (§4.1-601, §4.1-602, §4.1-604(1)(3)(18), 4.1-606, §4.1-607, §4.1-608(A)(D), §4.1-805, Budget Item 479(U))
- Board membership (§4.1-610, §4.1-607(F), §4.1-810)
- Regulation setting process (Enactment 10, Enactment 22)
- License fees (§4.1-604(30), §4.1-606(12), §4.1-1000(C)(F), §4.1-1001, 4.1-1002)

\*JLARC staff can provide members additional commentary upon request about addressing items marked for legislative action or consideration

# Social equity programs

**Community reinvestment fund and program** (§2.2-2499.1 et seq)

**Legislative action\***

- Direct the CERB to establish (i) clear guidelines for the number of grants awarded annually and the maximum grant dollar amounts, (ii) clearly defined eligibility criteria, (iii) a well-defined and transparent process for receiving grant proposals and reviewing, scoring, and making grant awards
- Direct the CERB to monitor and publically report the status and outcomes of projects that have received grant awards
- Direct VCCA to provide the CERB with regular, public reports on the status of its efforts to promote diverse business ownership within the cannabis industry

**Social equity criteria** (§4.1-606(B)(13))

**Legislative action\***

- Consider further narrowing social equity eligibility criteria by eliminating provisions that extend social equity eligibility to family members of persons convicted of marijuana offenses. This could better ensure that persons qualifying for social equity status are those intended to benefit from social equity programs.  
(If there is a desire to further narrow criteria, could also require applicants that qualify based on residency to meet *both* of the residency criteria instead of just one. For example, the applicant would have to be from a disproportionately policed area that is also economically distressed.)

**Clear definition of social equity ownership** (§4.1-601, §4.1-604(1), §4.1-606)

**Agency action**

- VCCA should clearly define what constitutes ownership of a licensed marijuana business, in regulations

\*JLARC staff can provide members additional commentary upon request about addressing items marked for legislative action or consideration



# Social equity programs

**Encouraging diverse employment by industry and ancillary businesses**

Leg. consideration\*

- Direct VCCA to (a) extend outreach efforts to potential employees and ancillary business owners in communities most impacted by marijuana law enforcement, and (b) develop directories of potential employees and ancillary business owners to be shared with marijuana business license holders

**License application qualifications** (§4.1-606(B)(5)(15), §4.1-809(2), §4.1-1000(B))

Agency action

- VCCA should report to the General Assembly on whether the statutory license requirements related to property ownership are likely to hinder opportunities for small and social equity applicants

**No further action to consider**

- Breadth of social equity programs and types
- Applicant barrier crimes and consideration of past marijuana offenses (§4.1-809(1)(c)(h), §4.1-900(C), (4.1-1000(B))
- Preferential treatment in license awards (Enactment 11, (§4.1-606(B)(15))
- Preserving future license opportunities for social equity applicants (§4.1-606(C)(1), Enactment 11)
- Centralized social equity assistance program and loan fund (§4.1-604(9), §4.1-606(B)(15), §4.1-1000(C), §4.1-1500 thru §4.1-1503)
- Funding existing community assistance programs (§4.1-614(B), §4.1-805(C))

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# Public health

No further action to consider

- Youth prevention and other public safety campaigns (Enactment 12, §4.1-614(B)(4), Budget Item 479(V))
- Additional funding for substance abuse prevention (§4.1-614(B))
- Product, packaging, and labeling restrictions (§4.1-604(4)(32), §4.1-606(B)(3)(4)(6)(7)(F), §4.1-1400, §4.1-1401, §4.1-1402, §4.1-1403, §3.2-3906, §3.2-5145.6 et seq)
- Advertising restrictions (§4.1-606(B)(17), §4.1-1116, §4.1-1204, §4.1-1404, §4.1-1405)

# Taxation

No further action to consider

- Taxation approach (retail, local option) and tax rate (§4.1-1003, 1004)

# Misc / Other

Clarify individual and private business rights

Leg. consideration\*

- Clarify or change state laws regarding the rights of employers/employees, landlord/tenants, and property owners in general vis-à-vis marijuana use and cultivation
  - Clarify how parental marijuana use can be considered in child custody, foster care, and adoption decisions
  - Clarify how marijuana use can be considered in state licensing and certification

Affirming legitimacy of licensed marijuana operations (§4.1-701, §6.2-107.1)

Leg. consideration\*

- Clarify that it is legal for any Virginia business to perform commercial transactions with a licensed marijuana operation, and explicitly specify that it is legal to sell and lease property to licensed marijuana operations

\*JLARC staff can provide members additional commentary upon request about addressing items marked for legislative action or consideration