



CONNOR & CONNOR PLLC

ATTORNEYS AT LAW

710 CORONADO CENTER DRIVE, SUITE 121, HENDERSON, NV 89052

August 9, 2017

Reference No. 100.157

Via Email Only

Deonne Contine, Executive Director
State of Nevada
Department of Taxation
1550 College Parkway, Suite 115
Carson City, NV 89706
contine@tax.state.nv.us

Re: Proposed Regulations

Dear Ms. Contine,

I am writing this letter to you regarding the proposed regulations on behalf of the Nevada Cannabis Coalition. First, the Nevada Cannabis Coalition (“NCC”) would like to thank you and the Department for the opportunity to have a thoughtful discussion on the proposed regulations during the public workshops that were held on July 24 – 27, 2017. The NCC recognizes the time and effort that went into developing comprehensive drafts of the proposed regulations for the retail marijuana program in Nevada. The NCC is supportive of a highly regulated cannabis industry in Nevada and has a few suggestions for changes to the current drafts to effectuate a comprehensively regulated and productive business.

The NCC appreciates the Department’s consideration of the following edits:

Definitions:

The NCC suggests the following clarification be added to the “Growing Unit” definition:

Sec. () “Growing Unit” defined. (NRS 453D.())

“Growing Unit” means an area within a marijuana cultivation facility which is serviced by all building facilities, technology, and has all other features specified in the marijuana cultivation facility application to perform growing operations at all stages of growth. A cultivator must show the ability to nourish clones/germinate seedlings, attain vegetative

growth, flower plants to maturity, dry and cure cut plants, trim and package finished plants, and store finished marijuana product in compliance with all regulations. A Growing Unit may be single growing tables, enclosed pods, or rooms. A cultivation facility may have several rooms or areas that together create a Growing Unit and are not required to have the capability to perform all operations at all stages of growth within each room of the cultivation facility.

Furthermore, the NCC understands that the ten percent retail tax imposed by SB 487 applies to the sales price of marijuana or marijuana products. The NCC would request a clarification in the regulations that this retail tax of ten percent does not apply to non-marijuana products sold by the retail marijuana stores (for example paraphernalia or exit bags).

Application and Licensing:

The NCC suggests revising the language regarding financial interest in the license under the “Ownership Transfer” section (item 3). Currently the language is very broad and calls for notification to the Department of “any other agreement of any sort in connection with any registered marijuana establishment...” This language could require the establishment to disclose leases, licensing agreements, packaging agreements, marketing agreements, convertible notes, and a variety of other agreements. The NCC understands the intent of the subsection is to require that all encumbrances of the license or proposed transfer of interest require that the establishment provide notice to the Department. However, the concern is that with such broad language all contracts or agreements could be included. Therefore, the following edits are suggested:

“ No person shall sell, purchase, assign, lease, grant or foreclose a security interest, or otherwise transfer, convey or acquire in any manner whatsoever any interest of any sort whatsoever in or to any registered marijuana establishment (final license holder or conditional license holder), or any portions thereof, or enter into or create a voting trust agreement ~~or any other agreement of any sort in connection~~ with any registered marijuana establishment or any portion thereof, except in accordance with law, regulation, and this policy. It is the policy of the Department that intention to transfer

ownership interest, in any amount greater than zero (0) percent shall cause the owners, operators and/or board members of any registered marijuana establishment to notify the Department on a form prescribed by the Department and in accordance with the procedure laid out in subsection 1 of this Section. ~~If a person who is the owner of an interest in a registered marijuana establishment, proposes to transfer any portion of his/her interest to a person who is then the owner of an interest in a registered marijuana establishment, both parties shall give written notice of such proposed transfer to the Department, including the names and addresses of the parties and the extent of the interest proposed to be transferred. The notice shall be given on a form prescribed by the Department. Transfer of interest shall not be effected before notice to and review by the Department, and reply from the Department on the status of the transfer.~~

Operations:

The NCC understands the need to have operational and functioning security systems at all times and supports the security requirements that are laid out. The following clarification is requested due to delays from contractors or ability to obtain equipment, it may not be possible to always have the repair completed within 72 hours:

Sec. () Security

...

*(d) Reasonable effort must be made to repair each malfunction of surveillance system equipment within seventy-two (72) hours after the malfunction is discovered. The licensee must notify the Department within 24 hours of the detected malfunction and plan of correction. If **work order to repair** a malfunction is not ~~repaired~~ **initiated** within 72 hours*

after it is discovered and the malfunction repaired within a reasonable time, the establishment may be subject to civil penalties for non-compliance with security standards.

NRS 453D limits the amount of concentrated cannabis that a customer may purchase to one-eighth of an ounce. The way the Department has calculated concentrated cannabis may be appropriate for edible marijuana products which are orally ingested, but for concentrates or infused products that are inhaled or absorbed, the limit is not high enough and is not at all an equivalent to one-eighth of an ounce as required by NRS 453D. Therefore, the NCC suggests the following edits¹:

¹ Please note the section referred to above comes from the draft for Operations for Retail Stores. A slightly different version is in the Operations of Marijuana Establishments draft which purportedly only applies to edible marijuana products. This section is listed below with the suggested edits. Please note these two sections currently conflict as the section below allows an ounce of flower AND one-eighth of an ounce of concentrate.

Sec. () Maximum allowable quantity of ~~edible~~ marijuana products to be sold to a customer .

(NRS 453D.())

For the purposes of NRS 453D.(), the maximum allowable quantity of ~~edible~~ marijuana products ~~is an amount~~ ~~that~~ allowed to be sold to a customer is:

- 1. ~~Is equivalent to~~ one ounce of usable marijuana other than concentrated marijuana; ~~and~~*
 - 2. One-eighth of an ounce of concentrate that is the equivalent: ~~of 1750 mg of THC;~~*
 - a. 1750 mg of THC for edible marijuana products;*
 - b. 3500 mg of THC for all concentrate that is not an edible marijuana product; or*
 - c. A combination of the two not to exceed the allowable limits.*
- Or*
- 3. A combination of the two not to exceed the allowable limits.*

Sec. () Maximum allowable quantity of marijuana products to be sold to a customer.

(NRS 453D.())

For the purposes of NRS 453D.(), the maximum allowable quantity of marijuana products allowed to be sold to a customer is:

- 1. One ounce of usable marijuana other than concentrated marijuana;*
- 2. One-eighth of an ounce of concentrate that is the equivalent: ~~of 1750 mg of THC;~~
 - a. 1750 mg of THC for edible marijuana products;*
 - b. 3500 mg of THC for all concentrate that is not an edible marijuana product; or*
 - c. A combination of the two not to exceed the allowable limits.**

or

- 3. A combination of the two not to exceed the allowable limits.*

Finally, the NCC would request that the Department revisit the prohibition on delivery. The Nevada Dispensary has provided a memorandum that lays out the reasons delivery should be permitted. The NCC would appreciate the Department's consideration of the points raised in that memorandum.

Disposal:

As several participants pointed out during the public workshops, there are sanitary, security and operational concerns with the requirement to give 24-hour notice to the Department prior to destruction of the waste. Several NCC members dispose of waste several times a day to ensure smooth and secure operations as well as a sanitary facility. Therefore, the removal to provide 24-hour advance notice prior to destruction of waste should be removed:

- 9. Establishments must provide the Department a ~~minimum of twenty-four hour~~ notice in the traceability system ~~prior to~~ *at the time of rendering the product unusable and disposing of it.**

Furthermore, the requirement to grind the roots and stalks, as discussed at the workshops, is unduly burdensome given that these portions have very limited cannabinoids or terpenes and are extremely difficult to grind. The facilities would need commercial grade grinders to be able

to grind the root balls and stalks. Therefore, the requirement to grind these portions of the plant should be removed.

Finally, certain facilities, specifically retail stores, often do not have the equipment or storage areas to complete destruction of waste on site. Thus, currently the waste is returned to cultivation or production facilities. Therefore, the requirement for each facility to complete destruction on site should be removed:

~~7. Marijuana waste must be rendered unusable prior to leaving a licensed production, cultivation, distribution, retail store or laboratory.~~

Testing:

Given the importance of a single stream of inventory, the NCC is concerned about the substantial deviation from the testing regulations laid out in Chapter 453A of the Nevada Administrative Code. Given that the current medical testing regulations have ensured public safety, the NCC would suggest that these regulations be adopted for the retail marijuana program. If these are not, it is likely that facilities will have to separately designate and track retail and medical product as different testing will be required. Therefore, the NCC would strongly suggest that the current medical testing regulations be adopted.

If the current medical testing regulations laid out in Chapter 453A of the Nevada Administrative Code are not adopted, the NCC would suggest the following changes be made:

- Remove the minimum sample size. Previously the Nevada Cannabis Lab Association, the Nevada Dispensary Association and other members of the industry suggested this change to the Division of Public and Behavioral Health due to the impracticality of taking such large samples with certain production runs. In the alternative, a cap on the amount of products should be placed such as no more than 10 production products from a single production run.
- Remove the shelf-life testing or revise it to not be required until the capability to perform such testing is developed by multiple labs. It is the understanding of the NCC that the labs do not currently have the capacity to conduct such testing and the current regulations would therefore impose a 7-day expiration day requirement. The industry should not be punished while the technology or equipment is acquired and certified. Furthermore, it is unclear if there are clear standards for such testing of edible cannabis items. Therefore, the NCC requests this requirement be removed or it not be required until such standards and the capability to perform such testing is developed. The NCC welcomes the opportunity to discuss ways to determine appropriate expiration dates.
- Remove testing that is redundant or not practical. Several experts testified during the workshops that certain testing should not be required for certain products as it

would be impractical or redundant. Such testing raises the cost of the product to the customer.

- Remove the requirement to test for ANY pesticide not approved by the Department of Agriculture at ANY detectable amount. This requirement would expand the pesticide testing requirement beyond reason as the labs would have the test for pesticides not currently in production or available. This would radically increase the cost of testing which would in turn increase the cost of the product.

Production – Packaging and Labeling:

The requirement to individually package edible products should be removed. There is no additional security that is provided by having the servings individually wrapped. The edible products will already be packaged and then will be placed inside a child-resistant package. The individual wrapping serves no purpose especially given that the servings will need to be marked or stamped.²

Furthermore, as discussed above, the testing provisions regarding shelf-life testing should be reconsidered.

Advertising and Packaging:

The advertising and packaging sections of the regulations are overly broad. In essence, these regulations call for pre-approval of all advertising, including social media, based on subjective standards without the possibility of appeal. Furthermore, the process to obtain approval could take 30 days.³ In essence the Department is requiring hundreds or thousands of advertisements and packages be submitted each month.⁴ Most likely, the Department does not have adequate staffing to review all advertising submissions that would be required by this proposed draft. And given the nature of social media and websites, a 30-day review and approval is not realistic as often posts tie in with current events.

The NCC would suggest that the Department lay out criteria and standards that the licensees must follow. Then the Department can utilize the civil penalty provisions that are

² With regards to the symbol developed by the Department, the NCC would request adequate time to prepare the mold or stamps to ensure compliance with the regulation. At a minimum 6-months should be provided to facilities to develop the molds with the symbols.

³ Or possibly more as it is not outlined what transpires if a decision is not reached within 30 days from the date of submission.

⁴ Simply taking retail stores in consideration, most of these do at least 2 social media posts a day, with some doing several more. Thus, this is approximately, 3,600 posts a month for existing licenses. That does not take into account social media of cultivation or productions or any print advertising, billboards, logos, television ads, radio ads or packaging. With the hundreds of products available and the current number of licenses, the Department could easily receive more than 10,000 submissions a month for review and approval.

Deonne Contine, Executive Director
State of Nevada
Department of Taxation
August 9, 2017
Page 8

outlined in the draft regulations to enforce such provisions. There should be no pre-approval process required.

If the Department desires to require pre-approval for advertising and packaging, the NCC would request the following:

1. The criteria be objective
2. Social media, websites, blog posts, emails and text updates not require pre-approval
3. The period for review be 10 days and if not denied within 10 days, the submission is deemed approved
4. There be an appeal process

The NCC appreciates consideration of these suggested edits to the regulations for retail marijuana facilities pursuant to NRS 453D. The NCC appreciates the opportunity to comment throughout the process and recognizes that as drafts are revised additional suggests or concerns may arise. The NCC looks forward to working with the Department to ensure the retail marijuana facility is a highly-regulated successful industry in the state. If you should have any questions or would like additional clarification, please do not hesitate to contact me.

Sincerely,

CONNOR & CONNOR PLLC

By: 
AMANDA N. CONNOR, ESQ.

ANC/rjp

cc: Jorge Pupo (*Via Email Only:* jpupo@tax.state.nv.us)
Dept. of Taxation Marijuana Program (*Via Email Only:* marijuana@tax.state.nv.us)