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Statement of Emergency

Regulation to provide criteria for determining whether there is an insufficient number of liquor wholesale dealers to serve the marijuana distribution market under NRS 453D.210

Voters approved the Regulation and Taxation of Marijuana Act at the 2016 General Election. The Act is codified in Chapter 453D and provides that the Department shall adopt all regulations necessary or convenient to carry out the provisions of this chapter, including requirements related to licensing of marijuana establishments.

The Act legalizes possession of 1 ounce of marijuana and provides for the legal sale by state-licensed retail stores to anyone 21 or older (adult-use marijuana). In January, approximately $100 million in revenue was included in the State's budget for the next biennium and that budget was enacted by the Legislature and became effective on July 1, 2017.

NRS Chapter 453D requires licensing of marijuana distributors and prohibits transportation of marijuana or marijuana products to a licensed retail store by anyone other than a licensed marijuana distributor. With respect to licensing marijuana distributors, the Act provides:

> "For 18 months after the Department begins to receive applications for marijuana establishments, the Department shall issue licenses for marijuana distributors pursuant to this chapter only to persons holding a wholesale dealer license pursuant to chapter 369 of NRS, unless the Department determines that an insufficient number of marijuana distributors will result from this limitation."

In May, the Department adopted Regulation T002-17 which included rules for licensing and requirements for liquor distributors to provide information demonstrating their ability to serve the marijuana delivery market. While NRS Chapter 453D does not require the Department to adopt regulations to make an insufficiency determination, a Court decision issued on June 20, 2017, prohibits the Department from making such a determination until it has gone through the regulatory process in NRS Chapter 233B to establish rules for what number of distributors are necessary to serve the marijuana market.

As of July 1, 2017, certain medical marijuana establishments are licensed to sell adult-use marijuana and marijuana products to anyone 21 or older. Currently, 47 retail marijuana stores are licensed statewide. The initial weekend of legal operation of marijuana establishments resulted in well over 40,000 retail transactions and some establishments report sales of more than double their estimates. Additionally, some establishments report the need for delivery within the next several days.

Four wholesale liquor dealers applied for a marijuana distributor license prior to the May 31st application deadline provided in T002-17. An additional three wholesale liquor dealers have applied for marijuana distributor licenses since the Court's June 20 Order. However, as of July 5, 2017, for various reasons, including local government issues, lack of completed applications and zoning review, no wholesale liquor dealer has met the application requirements to receive a marijuana distributor license.

Notwithstanding the fact that currently no applicants from a wholesale liquor dealer have qualified to be licensed as marijuana distributors, the Department is unable to make a determination that an insufficient number of marijuana distributors will result from limiting marijuana distributor licenses only to persons holding a wholesale dealer license pursuant to chapter 369 of NRS, without adopting this Emergency Regulation. Without the ability to make a sufficiency determination, the Department cannot license other marijuana distributor applicants and, therefore, no marijuana or marijuana product can be transferred to a retail store. Without the retail sale of marijuana, the State will not realize the revenue on which the State budget relies.

Additionally, media reports highlight the customer relief that they no longer have to purchase product from the black market. Without the ability to license marijuana distributors to continue the flow of product to the retail store, a high likelihood exists that consumers will revert to the black market. Finally, the marijuana industry has invested hundreds of millions of dollars to build facilities across the state. These businesses have recently hired and trained thousands of additional employees to meet the increased demand of adult-use. Unless the issue with distributor licensing is resolved quickly the inability to deliver product to the retail stores will result in many of these employees losing their jobs and will cause this nascent industry to grind to a halt. Some indicate that without the continued market they will go out of business.

This Emergency Regulation is necessary to provide for the structure that will allow the Department to, if necessary, make a determination that will maintain the flow of revenue related to the legal sale and regulation of marijuana. Additionally, adopting an Emergency Regulation to allow for such a determination will prevent reversion to the black market and preserve the legal market so that legally licensed and regulated businesses continue to operate, pay employees and realize the returns from their investments. It is necessary to implement them on an emergency basis as the Department has issued marijuana establishment licenses and retail stores began selling marijuana to adults as of July 1, 2017, while at the same time there are no licensed marijuana distributors.

Dated this 6th day of July, 2017:

Deonne E. Contine

Deonne E. Contine, Executive Director
Nevada Department of Taxation

I hereby endorse the Statement of Emergency prepared by the Executive Director of the Department of Taxation.

Dated this 7th day of July, 2017:

Brian Sandoval, Governor
State of Nevada

Emergency Regulation

Nevada Tax Commission

July 13, 2017

Explanation – Matter in *italics* is new; matter in brackets [~~omitted material~~] is material to be omitted.

Filing of an Emergency Administrative Regulation

AUTHORITY: 2016 initiative petition, Ballot Question No. 2; NRS 453D

Sec. 1. The Department will determine that an insufficient number of marijuana distributors will result from limiting marijuana distribution licenses only to persons holding a wholesale dealer license pursuant to Chapter 369 of NRS based on the following:

- ***A. Criteria related to industry demand that includes, but is not limited to,***
  - ***1) A sample of the historic market demand for marijuana distribution in the last three months based on survey responses from a sampling of the marijuana and medical marijuana establishments.***
  - ***2) Industry growth expectations based on historical growth from other states when the legal marijuana market began or growth in taxable sales in Nevada or both.***
  - ***3) Historic operational needs of the marijuana establishments including, but not limited to, the need for the following:***
    - ***a. Orders delivered within 24 hours;***
    - ***b. Intake and compliance that requires the following:***

i. *Visual inspection of product and packaging to ensure it is the correct product and it meets quality standards.*

ii. *Vendor invoice provided and includes batch number, lot number and amount.*

iii. *Travel plan provided and includes the 20 digit number for the supplying and receiving facilities and includes the Agent Card number for the employee shipping and the employee receiving the product.*

iv. *Soil Amendment provided.*

v. *Lab results provided.*

vi. *Verify the products' batch and lot numbers (or production run numbers, if applicable) match on the invoice, lab results and labels.*

vii. *All necessary labels are attached to products or provided by the cultivation/production facility.*

viii. *Verify all information on labels is correct compared to lab report, including cannabinoids and terpenoids.*

c. *The ability to immediately process returns;*

d. *Need for statewide distribution;*

e. *Need for each dispensary to receive a minimum of 3-5 deliveries a day;*

f. *Flexibility in deliveries as products are not always ready at the same time;*

g. *Ability to handle cash and process IRS paperwork related thereto; and*

h. Any other criteria the Department determines necessary to protect the public health, safety and general welfare.

B. Criteria related to ability of a NRS Chapter 369 wholesaler to meet industry demand that include, but is not limited to,

1) The NRS Chapter 369 wholesaler is competent to serve the market. Competency will be evaluated on factors that show it is prepared to serve the needs of the market and may include evaluation of the following:

a. Compliance with the application requirements required by statute and regulation;

b. Standard operating procedures showing compliance with all statutes and regulation and demonstrating that it can deliver marijuana safely, securely and pursuant to industry standards;

c. Evidence that the NRS Chapter 369 wholesaler understands the requirements of seed to sale tracking and has contracted with an inventory control vendor or has some other demonstrated system to accurately provide a trip log or otherwise track the movement of marijuana or marijuana products as required by law;

d. The NRS Chapter 369 wholesaler has a place and method to store marijuana or marijuana products securely and safely if there is an unforeseen situation where storage is necessary;

2) The NRS Chapter 369 wholesaler has the capacity to serve the market. Capacity will be evaluated on information submitted by the NRS Chapter 369 wholesaler, as follows:

a. Demonstration that it has vehicles that meet the requirements of the regulations adopted by the Department and that it has complied with any local jurisdiction's requirements for transportation that may be more stringent for the transport of marijuana or marijuana products;

b. Employee and training manual that shows that its employees or contractors can be hired and trained and meet the requirements to obtain an agent card;

c. The NRS Chapter 369 wholesale dealer may provide any additional information that demonstrates its ability to meet the demand criteria in Subsection A of this emergency regulation;

3) The NRS Chapter 369 wholesaler is committed to serve the market.

a. The NRS Chapter 369 wholesaler has resolved to the best of its ability any potential conflicts with its federal liquor licensing and the distribution of a federally illegal product;

b. The NRS Chapter 369 wholesaler has made or has the resources for immediate investment of time, money and human resources to serve the market; and

c. Any other information that demonstrates an ongoing commitment to serving the transportation needs of the marijuana market.

4) The Department may consider any other criteria in its discretion to protect the public health, safety and general welfare.

Sec. 2. *Any determination of whether an insufficient number of marijuana distributors will result from limiting marijuana distribution licenses to only NRS 369 wholesalers will be made*

in a meeting noticed pursuant to the notice requirements in NRS Chapter 241. The meeting will be noticed after a request made with 5 calendar days' notice for the marijuana establishments to complete the survey in Subsection A and for each NRS Chapter 369 wholesaler that has applied for or received a distributor license pursuant to NRS 453D.210(3) to provide information as designated in Subsection B. The decision by the Department is final unless appealed to the Nevada Tax Commission as provided in NRS 360.245.