OLR Bill Analysis

sHB 5150 (as amended by House "A")*

AN ACT CONCERNING CANNABIS AND HEMP REGULATION.

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SUMMARY

This bill makes various changes to the laws on adult-use cannabis, hemp, and medical marijuana as summarized in the section-by-section analysis below. It also makes various other minor, technical, and conforming changes.

*House Amendment "A" (1) removes provisions from the underlying bill on social equity applicants partnering with hemp producers, transporter licenses, hemp manufacturers, and dispensary or hybrid retailer relocations; (2) adds provisions redefining certain terms (e.g., cannabis and marijuana), moderate THC-hemp products, and project labor agreements; (3) makes revisions to the provisions on high-THC thresholds and infused beverages, including requiring licensure for manufacturers, adding legacy infused beverages and package store endorsements, and increasing the container fee amount; and (4) makes various minor, technical, and conforming changes.

EFFECTIVE DATE: July 1, 2024, unless otherwise stated.

§§ 1, 4, 6, 23 & 26-35 — INFUSED BEVERAGES

Establishes a new category of THC product, which it classifies as an "infused beverage" and requires it to meet many of the requirements for manufacturer hemp products; generally requires infused beverage manufacturers to be licensed; only allows certain cannabis establishments and package stores to sell these beverages; prohibits sales to anyone under age 21; sets various requirements for testing, signs, packages, and labels;

allows the sale of "legacy infused beverages" until September 30, 2024; imposes a $1 assessment per container; makes it a CUTPA violation to violate certain provisions

The bill establishes a new category of THC product, which it classifies as an "infused beverage" and requires it to meet many of the requirements for manufacturer hemp products. It prohibits sales of these beverages to anyone under age 21 and the beverages may only be sold at package stores or cannabis dispensary facilities, hybrid retailers (i.e., licensed to sell both recreational cannabis and medical marijuana), or retailers.

The bill deems any violation of the manufacturing infused beverages provisions a Connecticut Unfair Trade Practices Act (CUTPA) violation (see BACKGROUND). It also makes technical and conforming changes.

Infused Beverages (§ 26)

An "infused beverage" is a beverage that is not alcoholic; is intended for human consumption; and contains or is advertised, labeled, or offered for sale as containing, a total THC content of less than three milligrams (mg) per container that is at least 12 fluid ounces. It is not considered cannabis, marijuana, or a high-or moderate-THC product.

Manufacturing (§ 27)

License. Regardless of the law on manufacturing, cultivating, and storing hemp by certain cannabis establishments, the bill generally requires, on and after October 1, 2024, anyone who manufactures any infused beverage intended to be sold or offered for sale in Connecticut to have a Department of Consumer Protection (DCP) license.

A person seeking an infused beverage manufacturer license must submit to DCP, in a commissioner-prescribed way, an application with a $5,000 application fee. Each license is valid for one year and must be renewed annually upon submitting a renewal application with a $5,000 renewal fee. All fees are deposited in the consumer protection enforcement account. Under existing law, money from this account must be used to fund positions and other related expenses for enforcing DCP licensing and registration laws (also see § 36, below).

Exemption. Under the bill, certain cannabis establishments may,

beginning October 1, 2024, manufacture infused beverages intended to be sold or offered for sale in the state with DCP approval. To do so, a cultivator, micro-cultivator, food and beverage manufacturer, product manufacturer, or a producer with expanded authorization must submit a written request to DCP for the department's approval.

The cannabis establishments that receive DCP approval are subject to all of the bill's infused beverage provisions and all regulations and policies and procedures adopted that are applicable to infused beverage manufacturers, except they are not subject to the license requirement.

Hemp. The bill requires, beginning October 1, 2024, infused beverage manufacturers to obtain hemp oil under certain conditions for the purpose of manufacturing infused beverages. The hemp oil must:

1. be derived from hemp;

2. have been extracted from hemp grown by certain individuals (see below); and

3. have been extracted from hemp by using a (a) Class 3 residual solvent within the meaning of the most recent United States Pharmacopeia, (b) solvent generally recognized as safe under the federal Food, Drug and Cosmetic Act, or (c) DCP-approved solvent that is posted on the department's website.

The hemp oil must have been:

1. extracted from hemp grown by a (a) hemp producer, as evidenced by a producer-issued certificate of authenticity or (b) licensed hemp grower regulated by a state, territory, or federally recognized Indian tribe, and in accordance with a state or tribal plan the U.S. Department of Agriculture (USDA) approved, as evidenced by a grower-issued certificate of authenticity; or

2. extracted (a) by a person who is actively credentialed by a state or federally recognized Indian tribe to extract hemp and (b) in a facility that a state or federally recognized Indian tribe credentials.

Prohibitions and Requirements. Beginning October 1, 2024, the bill sets certain prohibitions and requirements for manufacturing infused beverages as described below.

Prohibitions. The bill prohibits infused beverages sold or offered to be sold in the state:

1. from including any additive that is psychotropic, or could increase the infused beverage's potency, toxicity, or addictive properties, including caffeine other than those naturally occurring in chocolate, or total THC that exceeds three mgs per container;

2. unless they meet (a) the laboratory testing standards for cannabis under the state's cannabis law and the regulations and policies and procedures adopted under that law or (b) other DCP-approved testing standards that are also posted on the department's website; and

3. from being packaged, labeled, or advertised in any way that is likely to mislead an individual by incorporating any statement, brand, design, representation, picture, illustration, or other depiction that (a) bears a reasonable resemblance to trademarked or characteristic packaging of cannabis offered for sale in the state by a cannabis establishment, or on tribal land by a tribal-credentialed cannabis entity, or a commercially available product other than a cannabis product; or (b) appeals to individuals who are under age 21, by, among other things, making use of any spokesperson or celebrity who appeals to these individuals; depicting any individual who is under age 25 consuming cannabis or an infused beverage; including any object, such as a toy, character, or cartoon character, which suggests the presence of anyone under age 21; or making use of any other method that is designed to appeal to anyone under age 21.

Manufacturer Requirements. The bill requires each infused beverage manufacturer that manufactures any infused beverage intended to be sold or offered for sale in the state to:

1. only manufacture beverages with total THC that does not exceed three mgs per container;

2. manufacture beverages using equipment that is exclusively used to manufacture a beverage or prepared in accordance with good manufacturing practices set under federal law (21 C.F.R. Parts 110 and 111); and

3. ensure that all hemp oil the manufacturer possesses for manufacturing beverages is (a) stored in a secure, locked location separate from any cannabis, and (b) clearly and conspicuously labeled as hemp oil solely for use in manufacturing infused beverages, and (c) solely used for the purpose of manufacturing infused beverages.

Testing. The bill also requires each lot of an infused beverage in its final form to be tested by a cannabis testing laboratory. A statistically significant number of samples must be collected from the lot and submitted for final product testing in a DCP-approved manner. The sampling and final product testing must be conducted by using a representative sample of the lot and by collecting a minimum number of sample increments relative to the lot size.

Symbols. Under the bill, each infused beverage container sold or offered for sale in Connecticut must prominently display a symbol, in a size of at least one-half inch by one-half inch and be in a DCP-approved format, that indicates the beverage is not legal or safe for anyone who is under age 21.

Sales. The bill requires infused beverage manufacturers to only sell infused beverages to a dispensary facility, hybrid retailer, retailer, or wholesale permittee or wholesale permittee for beer.

Verification. For infused beverages manufactured in and regulated by another state, and by a person who is regulated as a food or nonalcoholic beverage manufacturer, the bill requires certain verifications before the beverages may be sold.

Before the specified cannabis establishments sell to a consumer or a wholesaler sells to a package store, they must, based on a representative sample of the infused beverage containers included in the shipment, (1) verify that the included beverages satisfy the packaging, labeling, and advertising requirements above, and (2) for the purposes of preserving public health and safety, verify that the beverages in the shipment were manufactured with the requirements that are substantially similar to the bill's infused beverage prohibitions and manufacturing, testing, and symbol requirements. In addition to making sure these requirements follow the bill's provisions, they must also satisfy any implementing DCP regulations or policies or procedures.

Gift Prohibition. The bill also prohibits cannabis establishments or infused beverage manufacturers, or their agents or employees, from gifting or transferring any infused beverage to a consumer for free as part of a commercial transaction.

Documentation. The bill allows the DCP commissioner to request that an infused beverage manufacturer submit to DCP, in a way he prescribes, documentation sufficient to demonstrate the manufacturer is in compliance with the bill's provisions. The manufacturer must promptly provide the requested documentation.

Investigations and Enforcement. The bill subjects each infused beverage manufacturer to investigation and enforcement provisions of cannabis establishment licenses. By law, the DCP commissioner, for sufficient cause, may take certain disciplinary actions, including suspending or revoking a credential or issuing fines of up to $25,000 per violation, and accepting an offer in compromise (CGS § 21a-421p).

Federal Conflict Report. Under the bill, if the DCP commissioner determines, after consulting the attorney general, that the federal Agricultural Improvement Act of 2018 has been amended in a way that conflicts with these provisions, the commissioner must prepare and submit a report, in coordination with the attorney general, to the General Law Committee.

The report must at least set the scope of the conflict and

recommendations for a resolution. The commissioner must submit the report (1) within 30 days after the USDA announces the amendment, if the General Assembly is in session, or (2) within 60 days after the announcement, if the General Assembly is not in session.

Regulations, Policies, and Procedures. The bill allows the DCP commissioner to adopt regulations to implement these provisions. Before adopting the required regulations, the commissioner must issue policies and procedures to implement the bill's provisions. These policies and procedures have the force and effect of law.

At least 15 days before the policies and procedures take effect, the bill requires the commissioner to post them on DCP's website and submit them to the secretary of the state (SOTS) to be posted on the eRegulations system. A policy or procedure is no longer effective once SOTS codifies the final regulation or, if the regulations have not been submitted to the Regulation Review Committee, July 1, 2028, whichever occurs earlier.

Penalties. Under the bill, following a hearing conducted under the Uniform Administrative Procedure Act (UAPA), the DCP commissioner may impose an administrative civil penalty of up to $5,000 per violation, and suspend, revoke, or place conditions on any infused beverage manufacturer that violates any of these provisions or any implementing regulation. All administrative civil penalties must be deposited in the consumer protection enforcement account.

The commissioner may also summarily suspend, in accordance with the UAPA, any DCP credential that he has issued to a person who violates this provision.

Under the bill, beginning July 1, 2024, anyone who violates these infused beverage provisions is deemed to have violated CUTPA.

Retail Sales (§ 28)

Age Requirement. Beginning July 1, 2024, the bill prohibits infused beverages from being sold or offered for sale to anyone under age 21. It does so by prohibiting a package store owner, agent, or employee;

dispensary facility, hybrid retailer, or retailer from selling these beverages without first verifying the individual's age with a valid driver's license or identification card.

Sales and Sign Requirements. Under the bill, beginning October 1, 2024, an infused beverage may only be sold and distributed if it is sold at a (1) package store that buys from a wholesaler, or (2) dispensary facility, hybrid retailer, or retailer. If sold at a dispensary, hybrid retailer, or retailer, the beverage must be stored and displayed separately from cannabis in the same way as manufacturer hemp products (i.e., displayed with a DCP-approved sign, clearly labeled to distinguish them as a different product, and subject to different testing standards).

Standards. Infused beverages must also meet certain standards of manufacturer hemp products. These standards prohibit these beverages from:

1. having any synthetic cannabinoid and

2. being distributed or sold without certain packaging and labeling (e.g., scannable bar code and product expiration or best-by date if applicable).

Indirect Sales. Beginning July 1, 2024, the bill prohibits infused beverages from being sold, or offered for sale, at retail to anyone in the state by any indirect means, including by mail, telephone, or other electronic means.

Packaging and Labeling Requirements. Beginning October 1, 2024, the bill prohibits anyone from selling, or offering for sale, these beverages in any container containing less than 12 fluid ounces or in packages that have more than four containers.

Penalty. Under the bill, anyone who violates these infused beverage provisions is deemed to have violated CUTPA.

Legacy Infused Beverages (§ 30)

The bill allows a dispensary facility, hybrid retailer, retailer, or

package store to sell legacy infused beverages until September 30, 2024, after receiving a DCP waiver. A "legacy infused beverage" is a beverage that (1) is not an alcoholic beverage, (2) is intended for human consumption, and (3) contains or is advertised, labeled, or offered for sale as containing, THC. The beverage must also, as of June 30, 2024, comply with the Responsible and Equitable Regulation of Adult-Use Cannabis Act (RERACA) and the corresponding DCP policies and procedures and regulations.

Until June 30, 2024, the bill allows these cannabis establishments and package store permittees to submit to DCP, on a commissioner-prescribed form, a waiver application to sell the legacy infused beverages they possess, including their inventory, until September 30, 2024.

A DCP waiver allows these cannabis establishments and package stores to sell legacy infused beverages they possess when the bill passes, as long as all sales are to individuals age 21 or older and in compliance with all applicable provisions of RERACA and implementing regulations and policies and procedures.

EFFECTIVE DATE: Upon passage

Inventory (§ 29)

The bill requires, beginning May 15, 2024, businesses, other than the specified cannabis establishments above and package stores, to take certain actions before they are able to sell any infused or legacy infused beverages. They must, (1) by May 14, 2024, take inventory of the containers they own and possess, and (2) by June 15, 2024, submit to DCP, in a way the commissioner prescribes, a report with the inventory results and a fee of $1 per container in the inventory.

Under the bill, a "business" means any individual or sole proprietorship, partnership, firm, corporation, trust, limited liability company, limited liability partnership, joint stock company, joint venture, association, or other legal entity through which business for profit or not-for-profit is conducted.

If a business does not submit the report and pay the fee by June 15, 2024, the commissioner must:

1. make a good faith estimate, based on the information available to him, of the number of containers that the business owned and possessed on May 14, 2024; and

2. invoice the business $1 per container based on the estimate.

All fees DCP receives from these inventories must be deposited into the consumer protection enforcement account.

Additionally, the DCP commissioner may, subject to the UAPA, revoke, place conditions on, or suspend any certificate, license, permit, registration, or other credential DCP has issued to any business that fails to submit the report and pay the fee before June 15, 2024.

EFFECTIVE DATE: Upon passage

Package Store Endorsement (§ 33)

The bill requires a package store permittee to annually pay DCP $500 for an infused beverage endorsement, which the department must deposit in the consumer protection enforcement account.

Container Assessment (§§ 6 & 35)

The bill requires a $1 assessment on every infused and legacy infused beverage container sold that must be remitted to DCP every six months for certain public health and safety purposes.

Under the bill, a cannabis establishment (i.e., dispensary facility, hybrid retailer, or retailer) and alcohol liquor wholesaler permittee or beer wholesaler permittee must assess this on each container sold. For cannabis establishments, it is on sales to a consumer. For wholesalers, it is on sales to a package store. These assessments are not subject to any sales tax or treated as income tax.

The bill begins the required remittances on different dates, but requires they all occur every six months. For cannabis establishments, it begins October 1, 2024, and for wholesalers it begins January 2, 2025. For

both, they must remit payment to DCP for each infused beverage container sold during the preceding six months, and the funds must be deposited into the consumer protection enforcement account.

§ 1 — MARIJUANA, CANNABIS, CANNABIS-TYPE SUBSTANCES, AND SYNTHETIC AND MANUFACTURED CANNABINOIDS

Narrows the definition of "marijuana" and "cannabis" by removing from the definition (1) the seeds and (2) synthetic cannabinoids; correspondingly deletes references to seeds in the "cannabis-type substances" definition; redefines "synthetic cannabinoids" by specifically excluding manufactured cannabinoids and redefines "manufactured cannabinoids" to specify how they are created rather than basing the definition on their natural structure or the effect they have

Marijuana, Cannabis, and Cannabis-Type Substances

The bill narrows the statutory definition of "marijuana" and "cannabis" by removing from the definition (1) the seeds and (2) synthetic cannabinoids, including in the exemptions.

Under current law, the terms "marijuana" and "cannabis" have the same meaning, which is all parts of a plant or species of the genus cannabis, whether growing or not, and including its seeds and resin; its compounds, manufactures, salts, derivatives, mixtures, and preparations; high-THC hemp products, manufactured cannabinoids, and certain synthetic cannabinoids, except those not included below; or cannabinon, cannabinol, cannabidiol (CBD), and similar compounds unless derived from hemp, except CBD derived from hemp.

Marijuana and cannabis do not include the following:

1. a plant's mature stalks; fiber made from the stalks; oil or cake made from the seeds; a compound, manufacture, salt, derivative, mixture, or preparation made from the stalks, except the extracted resin;

2. sterilized seeds incapable of germination;

3. hemp with a total THC concentration of up to 0.3% on a dry-weight basis that is not a high-THC product;

4. any substance the federal Food and Drug Administration approves as a drug and that is reclassified in any controlled

substance schedule, or that the federal Drug Enforcement Administration unschedules; or

5. synthetic cannabinoids that the DCP commissioner designates as controlled substances and classifies in the appropriate schedule through regulations.

The bill also makes conforming changes to the "cannabis-type substances" definition by correspondingly deleting references to seeds.

Synthetic Cannabinoids

The bill redefines "synthetic cannabinoid" to mean any substance converted by a chemical process to create a cannabinoid or cannabinoid-like substance that has (1) structural features that allow interaction with at least one of the known cannabinoid-specific receptors and (2) any physiological or psychotropic response on at least one cannabinoid specific receptor. It includes hexahydrocannabinol (HHC and HXC) and hydrox4phc (PHC) but does not include manufactured cannabinoids, (see below).

Under current law, "synthetic cannabinoid" means any material, compound, mixture, or preparation containing any quantity of a substance having a psychotropic response primarily by agonist activity at cannabinoid-specific receptors affecting the central nervous system that is produced artificially and not derived from an organic source that naturally contains cannabinoids, unless listed in another controlled substance schedule.

Manufactured Cannabinoids

The bill redefines "manufactured cannabinoids" to specify how they are created rather than basing the definition on their natural structure or the effect they have.

Under the bill, "manufactured cannabinoids" mean cannabinoids created by converting one cannabinoid directly to a different cannabinoid through (1) the application of light or heat, (2) decarboxylation of naturally occurring acidic forms of cannabinoids, or (3) an alternate extraction or conversion process that DCP approves and

publishes on its website.

Under current law, manufactured cannabinoids are cannabinoids naturally occurring from a source other than marijuana that are similar in chemical structure or physiological effect to marijuana-derived cannabinoids, but that are derived by a chemical or biological process.

§§ 1, 31 & 32 — HIGH- AND MODERATE-THC HEMP PRODUCTS

Simplifies the THC thresholds for when a product is considered a high-THC hemp product by imposing a uniform threshold regardless of the product type; establishes the category of "moderate-THC hemp product" and places various requirements on sales (e.g., only to those age 21 and above and only from cannabis establishments or places with a DCP certificate) and requires it to meet many of the requirements for manufacturer hemp products

High-THC Hemp Products (§ 1)

Beginning October 1, 2024, the bill simplifies the THC threshold for when a product is considered a high-THC hemp product and classifying it as marijuana or cannabis, subjecting it to various licensing and regulatory requirements (e.g., it must be sold only by licensed establishments, tested, and sold only to those age 21 or older except under the medical marijuana program). It does so by imposing a uniform THC threshold of one mg per-serving, with up to five mgs per-container, or 0.3% on a dry-weight basis for cannabis flower or cannabis trim.

Under current law, the thresholds are:

1. for a hemp edible, topical, or transdermal patch: (a) one mg on a per-serving basis or (b) five mgs on a per-container basis;

2. for a hemp tincture, including oil intended for ingestion by swallowing, buccal administration (i.e., between the gums and mouth cheek), or sublingual absorption (i.e., placing under tongue to dissolve): (a) one mgs on a per-serving basis or (b) 25 mgs on a per-container basis;

3. for a hemp concentrate or extract, including a vape oil, wax, or shatter (a type of cannabis extract): 25 mgs on a per-container basis; or

4. for a manufacturer hemp product not described above: (a) one mg on a per-serving basis, (b) five mgs on a per-container basis, or (c) 0.3% on a dry-weight basis for cannabis flower or cannabis trim.

Moderate-THC Hemp Product (§§ 31 & 32)

The bill establishes the category of "moderate-THC hemp product" and places various restrictions on sales (e.g., only sold to those age 21 and over).

Beginning January 1, 2025, the bill only allows moderate-THC hemp products to be sold at a cannabis establishment or by a person who holds a DCP certificate of registration. A "moderate-THC hemp product" means a manufacturer hemp product, that has total THC of between one-half mg and five mgs, on a per-container basis.

Certificate of Registration. A person seeking a certificate of registration as a moderate-THC hemp product vendor must submit to DCP, in a form and manner the commissioner prescribes, an application with a $2,000 non-refundable application fee. At a minimum, the application must disclose the place the person sells the moderate-THC hemp product and enough information for the DCP commissioner to determine if (1) in the preceding year, if at least 85% of the average monthly gross revenue generated at the existing location was from retail sales of moderate-THC hemp products to consumers or (2) it is reasonably likely that at least 85% of the average monthly gross revenue at the proposed location will be from retail sales of moderate-THC hemp products to consumers.

The bill generally prohibits the commissioner from issuing the certificate unless he has determined that the applicant satisfies, or is reasonably likely to satisfy, the minimum sales threshold. However, the bill does not require a vendor to (1) meet the minimum sales threshold if it manufactures the products at its registered retail location or (2) disclose the information. The commissioner may issue a certificate to vendors that satisfy this criterion even if they do not satisfy the minimum sales threshold.

Under the bill, the certificate must be renewed annually. Each vendor seeking renewal must submit a renewal application with a $2,000 nonrefundable renewal application fee and the same sales information as required for the initial certificate. Except for certain vendors who are also manufacturers, DCP must only renew the certificate if the vendor meets the same minimum sales threshold.

DCP must deposit these fees into the consumer protection enforcement account.

Prohibitions. The bill prohibits:

1. anyone from acting as or representing himself or herself as a vendor, unless the person actively holds a DCP certificate of registration;

2. anyone selling these products that are intended for human ingestion in packaging that includes more than two containers;

3. cannabis establishments or vendors, or their agents or employees, from gifting or transferring any product for free to a consumer as part of a commercial transaction; and

4. cannabis establishments or vendors, or their agents or employees, from selling moderate-THC hemp products to anyone under age 21. (Before selling these products, they must first verify the individual's age with a valid government-issued driver's license or identity card to establish the person is age 21 or older.)

Standards, Testing, and Labeling. The bill requires all moderate-THC hemp products to meet the same standards, testing, and container labeling as THC-infused beverages (see above).

Investigations and Enforcement. Like infused beverage manufacturers, the bill subjects each moderate-THC hemp product vendor to the investigation and enforcement provisions of cannabis establishment licenses.

Hearing and Penalty. After a hearing under the UAPA, the DCP commissioner may impose an administrative civil penalty of up to $5,000 per violation, and suspend, revoke, or place conditions on a vendor that violates the bill's provisions or any related adopted regulation. Any administrative civil penalty collected must be deposited in the consumer protection enforcement account.

Regulations. The bill requires the DCP commissioner to adopt regulations to implement these provisions. Before adopting the regulations and in order to implement these provisions, he may issue policies and procedures that have the force and effect of law. At least 15 days before the policies and procedures take effect, the bill requires the commissioner to post them on DCP's website and submit them to the secretary of the state (SOTS) to be posted on the eRegulations system. A policy or procedure is no longer effective once the final regulation is adopted or, if the regulations have not been submitted to the Regulation Review Committee, after July 1, 2028, whichever occurs earlier.

Food, Drug and Cosmetic Act. The bill adds unauthorized sales of moderate-THC hemp products as a prohibited act under the state Uniform Food, Drug and Cosmetic Act. Under the Food, Drug, and Cosmetic Act, first violations are generally punishable by up to six months in prison, a fine of up to $500, or both. A subsequent violation is punishable by up to one year in prison, a fine of up to $1,000, or both (CGS § 21a-95).

EFFECTIVE DATE: January 1, 2025, for the moderate THC-hemp product provisions.

§§ 2 & 3 — MARIJUANA TESTING

Requires each cannabis establishment to submit marijuana (i.e., cannabis) samples to a cannabis testing laboratory for testing; sets testing and retesting method standards and procedures

Testing Samples

The bill requires each cannabis establishment to submit marijuana (i.e., cannabis) samples to a cannabis testing laboratory for testing, as required by this provision. By law, a cannabis establishment is a producer, dispensary facility, cultivator, micro-cultivator, retailer,

hybrid retailer, food and beverage manufacturer, product manufacturer, product packager, delivery service, or transporter.

Under the bill, a cannabis testing laboratory must test each marijuana sample for (1) microbiological contaminants, mycotoxins, heavy metals, and pesticide chemical residue and (2) an active ingredient analysis, if applicable. The microbiological testing must include, as a minimum, testing for the Aspergillus species, as set and posted on DCP's website. (Presumably, DCP will set acceptable limits for all of these tests.)

Testing Methods

When conducting the microbiological testing, the marijuana sample must be tested using a molecular method that:

1. includes quantitative polymerase chain reaction;

2. is certified for identifying microbiological DNA; and

3. is approved by the Association of Official Analytical Collaboration International, or a comparable national or international standards organization the DCP commissioner designates.

The bill also allows alternative testing methods if DCP approves them and posts them on the department's website.

Repeat Testing After Failure

Under the bill, if a sample does not pass the testing, the cannabis establishment that submitted the failing sample must repeat testing on the marijuana batch where the sample was taken, in a DCP-approved way. If the repeat test provides satisfactory results, the entire batch may be released for sale.

The bill also allows a cannabis establishment to submit a remediation plan that is sufficient to ensure public health and safety to the commissioner and, if he approves it, the establishment may remediate the batch where the sample was taken and repeat the testing in a DCP-approved way. If all the repeat testing provides satisfactory results, the

entire batch may be released for sale.

Disposing of Batches

If a cannabis establishment does not retest, or if repeat laboratory testing does not provide satisfactory results, the establishment must dispose of the entire marijuana batch where the sample was taken according to DCP commissioner-established procedures, as published on the agency's website.

Marijuana Batch Size

The bill requires the maximum quantity and number of marijuana samples to be sufficient to ensure representative sampling of the corresponding batch size.

§§ 5, 9, 11, 14 & 20 — MICRO-CULTIVATORS

Allows certain social equity cultivator applicants to apply for a micro-cultivator license; eliminates the ability for a micro-cultivator to use its own employees to deliver cannabis; allows micro-cultivators to sell cannabis seedlings

Social Equity Applicants (§§ 5 & 11)

By law, DCP opened a three-month application period for social equity applicants to apply for a provisional and final cultivator license for a facility located in a disproportionately impacted area without participating in a lottery or request for proposals.

The bill allows these social equity applicants to apply for a new micro-cultivator license without any partners.

Application. Under the bill, between July 1, 2024, and March 31, 2025, a social equity applicant that had submitted an application for these cultivator licenses may withdraw the application and apply for a micro-cultivator license. The applicant may do so if:

1. the Social Equity Council verifies the applicant meets the social equity criteria,

2. the applicant is eligible to receive a provisional cultivator license (e.g., passes criminal background check),

3. DCP has not already issued a provisional cultivator license, and

4. the applicant submits an application to DCP with a written statement withdrawing the cultivation application.

Withdrawals. The bill specifies that applicants that withdraw an application are not eligible for a refund on any fee connected to that application.

Issuance of License. Between July 1, 2024, and December 31, 2025, DCP must issue a provisional micro-cultivator license to a social equity applicant if he or she:

1. meets eligibility criteria and submits a timely, completed application and other documentation required to determine eligibility under the social equity applicant process;

2. submits a written statement disclosing whether any change in ownership or control has occurred since the applicant was verified by the Social Equity Council as a social equity applicant; and

3. submits the $500,000 application fee.

These application fees must be deposited into the consumer protection enforcement account.

Changes to Social Equity Status. Under the bill, if the applicant provided a written statement on changes in ownership or control, then the Social Equity Council must determine if the changes are allowed under the laws and regulations governing its application review process.

The council must determine whether the applicant continues to meet the social equity applicant criteria and submit to DCP a written notice disclosing its determination.

License Renewal Fee. Under the bill, a renewal fee for a final micro-cultivator license is the same as existing law (i.e., $1,000 for micro-cultivators). These fees must be paid to the state treasurer to be credited to the General Fund.

Equity Joint Venture. The bill prohibits social equity applicants that receive a micro-cultivator license from being eligible to apply for a provisional and final license to create more than one equity joint venture that the council approves. It also prohibits these applicants from operating the equity joint venture unless the applicant has received the new license, started cultivation activities, and submitted to DCP both the application fee and a conversion fee, which are both $500,000. The conversion fee must be deposited in the Cannabis Social Equity and Innovation Fund. By law, this fund may be used as access to capital for businesses, technical assistance for start-ups, workforce education and community investment funding, and paying costs for regulating cannabis (CGS § 21a-420f).

Application Disclosure and Process. Like the provision allowing applicants to partner with hemp producers, the bill applies the same prohibition on application disclosure and requires submitted applications to be processed as other applications selected through the lottery.

Delivery Service (§ 14)

The bill eliminates the ability for a micro-cultivator to use its own employees to deliver cannabis. Under current law, a micro-cultivator may sell its own cannabis to consumers either through a delivery service or using its own employees.

Seedlings (§§ 14 & 20)

The bill allows a micro-cultivator, and no other cannabis establishment, to sell its own cannabis seedlings to consumers. But a micro-cultivator may only sell a seedling to a consumer if:

1. the micro-cultivator cultivated the seedling in the state from a seed or clone;

2. the seedling has a standing height of up to six inches measured from the base of the stem to the tallest point, does not contain any bud or flower, and has been tested for pesticides and heavy metals based on laboratory testing standards set by policies and

procedures and final regulations; and

3. there is a label or informational tag on the seedling disclosing certain information.

The bill requires the label or informational tag to include the following in legible English, black lettering, Times New Roman font, flat regular typeface, on a contrasting background, and in uniform size of at least one-tenth of one inch, based on a capital letter "K":

1. the micro-cultivator's name;

2. a product description for the seedling;

3. one of the following chemotypes anticipated after flowering: "High THC, Low CBD," "Low THC, High CBD," or "50/50 THC and CBD";

4. the results of the required testing;

5. directions for the optimal care of the seedling;

6. unobscured symbols, in a size of at least one-half inch by one-half inch and in a DCP commissioner-approved format, where the symbols indicate the seedling contains THC and is not legal or safe for individuals under age 21; and

7. a unique identifier that a cannabis analytic tracking generates and DCP maintains to track cannabis under policies, procedures, and final regulations.

Exempts Seedlings From Child-Resistant Packaging and Creates Limit on Sales. The bill exempts micro-cultivators selling seedlings from having to sell them in child-resistant packaging. It also prohibits micro-cultivators from (1) selling more than three seedlings to a consumer in any six-month period and (2) accepting any returned seedlings.

§§ 7 & 8 — SELLING AND DELIVERING CANNABIS OR MEDICAL MARIJUANA

Beginning October 1, 2024, allows municipalities to apply for a court order to take certain merchandise from stores that violate the cannabis or medical marijuana sales and delivery law; makes violations CUTPA violations and adds additional penalties

Municipal Prohibition

By law, only certain specified cannabis establishments may sell or deliver adult-use cannabis to consumers and medical marijuana to patients or caregivers.

Beginning October 1, 2024, the bill allows any municipality, by legislative vote, to prohibit any business from operating within the municipality if the business (1) is found to be illegally selling, offering, or delivering cannabis or (2) poses an immediate threat to public health and safety (see below).

If a municipality's chief executive officer determines that a business in the municipality is operating (i.e., offering sales of goods and services to the general public, including through indirect sales) in this way, he or she may apply to Superior Court for an order to take certain merchandise from the business. If the Superior Court finds that a business is in violation or poses a threat, then it may issue an ex parte (i.e., only one party involved) order without a hearing directing the municipality's chief law enforcement officer to take possession and control of merchandise related to the violation or immediate threat to public health and safety. These items include any cannabis or cannabis product; any cigarette, tobacco, or tobacco product; any merchandise related to these products; and any proceeds related to these products and merchandise.

Under the bill, "immediate threat to public health and safety" includes the presence of any (1) cannabis or cannabis product in connection with any law on selling, offering, or delivering cannabis, or (2) cigarette or tobacco product alongside any cannabis or cannabis product.

Penalties

Beginning October 1, 2024, under the bill, a violation of the law on selling, offering, or delivering cannabis is deemed a CUTPA violation.

Additionally, anyone who aids or abets these violations is assessed a $30,000 civil fine for each violation, where each day the violation continues is a separate offense. A person is not deemed to have aided or abetted a violation, unless he or she:

1. was the owner, officer, controlling shareholder, or in a similar position of authority over a person who is prohibited from selling or offering cannabis and then sold or offered it in violation of these provisions;

2. knew that the person was prohibited and still sold or offered the sale;

3. gave substantial assistance or encouragement for the sale or offer of sale; and

4. the person's conduct was a substantial factor in furthering the sale or offer of sale.

It also imposes a $10,000 civil fine for each violation by anyone who manages or controls a commercial property, building, room, space, or enclosure, in the person's capacity as owner, lessee, agent, employee, or mortgagor, who knowingly makes the commercial area available for use in these violations. Each day a violation continues is a separate offense.

Under the bill, only the attorney general, upon the complaint of the DCP commissioner or a municipality where the violation occurred, may assess any civil penalty or institute a civil action to recover any imposed civil penalties. If a municipality institutes a civil action to recover an imposed civil penalty, the penalty must be paid to the municipality first to reimburse it for the costs for instituting the action. Half of the remainder, if any, is paid to the municipality's treasurer and half is paid to the state treasurer for deposit into the General Fund.

Lastly, the bill specifies that it does not prohibit criminal penalties on anyone prohibited from selling or offering cannabis or cannabis products who does so.

EFFECTIVE DATE: October 1, 2024, for the municipal prohibition

and penalties provision.

§ 9 — BACKER EXCEPTION

Allows an equity joint venture to share an individual owner with another equity joint venture that meets social equity applicant criteria if the individual owner is a backer for certain social equity cultivators

Under current law, the Social Equity Council is prohibited from approving an equity joint venture applicant that shares any individual owner with another equity joint venture that meets the social equity applicant criteria. The bill makes an exception for an individual owner in their capacity as a backer for certain social equity cultivators.

§§ 10 & 18 — PRODUCT PACKAGER EXPANDED ACTIVITIES

Allows a product packager to expand its authorized activities to include the authorized activities of a product manufacturer

The bill allows a product packager to expand its authorized activities to include the authorized activities of a product manufacturer under certain conditions. In order for this to happen the:

1. packager must submit to DCP a completed license expansion application and a $30,000 application fee; and

2. commissioner must authorize the packager, in writing, to perform the expanded activities of a product manufacturer.

The bill requires a product packager that expands its authorized activities to comply with all the laws, regulations, policies, and procedures for product manufacturers. If there is a conflict between the packager requirements and the manufacturer requirements, the more stringent public health and safety standard prevails.

Under the bill, the renewal fee for a product packager's expanded authorization is $25,000. This renewal fee is instead of the product packager renewal fee, which is $25,000.

§§ 12 & 15 — TECHNICAL AND CONFORMING CHANGES

Makes various technical and conforming changes

The bill makes various technical and conforming changes.

§ 13 — SOCIAL EQUITY CULTIVATORS, STATE-RECOGNIZED TRIBAL LAND, AND OUTDOOR CULTIVATION

Allows certain social equity cultivator applicants to locate (1) a facility on a state recognized tribe's reservation or land or (2) an exclusively outdoor grow facility outside a disproportionately impacted area if it is in a municipality that has one; prohibits DCP from granting an application for certain social equity provisional cultivator licenses after December 31, 2025

By law, in order for a social equity applicant who applied for a cultivator license without participating in a lottery to get a final cultivator license, the applicant must provide evidence of certain information, including a right to exclusively occupy a location in a disproportionately impacted area where the cultivation facility will be located (CGS § 21a-420o).

The bill also allows these applicants to provide evidence that they will locate (1) a facility on state-recognized tribal land or (2) an exclusively outdoor grow facility outside a disproportionately impacted area if it is in a municipality that has one.

State Tribal Land

Under the bill, the facility may be located on any reservation of the Schaghticoke, Paucatuck Eastern Pequot, or Golden Hill Paugussett tribes that includes at least 10 acres of contiguous land that was part of the reservation on July 1, 2024, or (2) on any land any state-recognized tribe owns in fee simple if the parcel is at least 10 acres of contiguous land and is in a municipality that contained a disproportionately impacted area before July 1, 2024.

Under existing law, a disproportionately impacted area is a U.S. census track in the state that the Social Equity Council identifies using a statutory process. Additionally, the adult-use cannabis laws provide certain advantages to residents of disproportionately impacted areas (e.g., social equity applicants). And certain cultivators with social equity applicants could have received a license without participating in a lottery if they located their facilities in a disproportionately impacted area (CGS §§ 21a-420(48) & -420o).

Outdoor Cultivation

Under the bill, an exclusively outdoor grow facility may be located outside of a disproportionately impacted area if the facility is in a municipality that has any portion of a disproportionately impacted area. The outdoor grow must be done on land the municipality has approved for agricultural or farming uses and all cultivation must comply with all regulations, policies, and procedures on outdoor cannabis cultivation.

Provisional Cultivator License Prohibition

Additionally, the bill prohibits DCP from granting an application for provisional cultivator licenses after December 31, 2025.

§§ 14 & 21 — STORING CANNABIS

Deems a location to be secure for storing cannabis if it satisfies the requirements for securing certain controlled substances

By law, among other things, a cannabis establishment must store all cannabis in a way to prevent diversion, theft, or loss. Under the bill, a location is deemed to be secure if the location satisfies the state regulations for securing controlled substances (i.e., schedule III, IV, and V, which require storage in an approved vault, safe, or separate secure locked area, among other requirements) (Conn. Agencies Regs., § 21a-262-4).

§§ 16 & 17 — CERTAIN MANUFACTURERS GETTING CANNABIS

Allows a product manufacturer and food and beverage manufacturer to get cannabis from the places it is already allowed to sell, transfer, or transport to

Current law allows a product manufacturer and food and beverage manufacturer to sell, transfer, or transport its own products to a cannabis establishment, cannabis testing laboratory, or research program using its own employees or a transporter. The bill also allows these manufacturers to get cannabis from these places.

§ 19 — PROJECT LABOR AGREEMENT

Expands "project labor agreements" to include affiliated business entities and labor organizations; allows the court to issue penalties for affiliated business entities for project labor agreement violations

Existing law requires certain construction and renovation projects for the operation of a cannabis establishment to be subject to a project labor agreement. Under current law, a project labor agreement is an

agreement between a subcontractor or contractor and a cannabis establishment that binds them to certain conditions. The bill expands the agreement to include affiliate businesses and labor organizations. Under the bill, an agreement is a prehire collective bargaining agreement that is entered into by and between:

1. a cannabis establishment or affiliate business entity (i.e., one that directly, or indirectly through intermediaries, is controlled by, or is under control with, a cannabis establishment);

2. one or more contractors or subcontractors; and

3. one or more labor organizations (i.e., exists for the purpose of collective bargaining or dealing with employers concerning grievances, employment terms or conditions, or other mutual aid or protection, but does not include a company union).

Under the bill, the plan must also establish the terms and conditions of employment in connection with performance of a covered project (i.e., constructing or renovating a facility to operate a cannabis establishment, that is at least $5 million, and performed by or on behalf of a cannabis establishment, or an affiliated business entity).

Under current law, an agreement binds all project contractors and subcontractors by making specifications in all relevant solicitation provisions and contract documents. The bill instead binds each affiliated entity, contractor, and subcontractor to follow the collective bargaining agreement terms by making specifications in all relevant solicitation provisions and contract documents concerning performance of the covered project.

Additionally, under current law, an agreement must establish uniform employment terms and conditions for all construction labor employed on the projects. The bill instead specifies the terms and conditions to apply to construction labor employed in connection with performance of the covered project.

The bill also makes various minor, technical, and conforming

changes.

Employee Organization and Labor Organization

Under current law, an employee organization may enforce the project labor agreement provisions or seek remedies for noncompliance. The bill instead allows a labor organization to take these actions.

Under current law, an "employee organization" is any lawful association, labor organization, federation, or council with a primary purpose of improving wages, hours, and other conditions of employment for cannabis establishments' employees.

Civil Actions

The bill allows a civil action to be brought in the Superior Court where the covered project is to be performed. Under current law, these actions may only be brought where the project is located.

Current law allows the court, after holding a hearing, to order penalties of up to $10,000 per day for each project labor agreement violation by the cannabis establishment. The bill extends this to an affiliated business entity.

Like under current law for a cannabis establishment, an affiliate business entity's failure to comply with the project labor agreement provisions must not be the basis for any administrative action by DCP.

§ 20 — PACKAGING AND SIGNAGE

Allows edible cannabis products to be packaged for multiple servings under certain requirements; requires DCP to establish disclosures for mold and yeast and signage for mold and their remediation practices

Under existing law, the cannabis-related regulations that the DCP commissioner must adopt must include specified labeling and packaging requirements. The bill modifies a few of these requirements and adds another.

Edible Cannabis Packaging

Current law requires packaging for edible cannabis products to be individually wrapped. The bill allows these products to be packaged for

multiple servings if each single standardized serving is easily discernable and is individually wrapped or physically demarked and delineated.

Mold and Yeast

Existing law requires DCP to set laboratory testing standards. The bill requires DCP to:

1. establish consumer disclosures on mold and yeast in cannabis and allowed remediation practices and

2. prescribe signage for dispensary facilities, retailers, and hybrid retailers to prominently display that discloses (a) possible health risks related to mold and (b) the use and possible health risks related to using mold remediation techniques.

§ 22 — ADVERTISING

Generally prohibits cannabis establishments from advertising or marketing a discounted price or other promotional offer to buy cannabis; allows a discounted price or promotion within a dispensary facility, retailer, or hybrid retailer building, or through a delivery service to induce cannabis purchases

The bill generally prohibits cannabis establishments from advertising or marketing that includes a discounted price or other promotional offer as an inducement to buy cannabis or a cannabis product that is not medical marijuana. However, it allows a discounted price or promotional offering, as an inducement to purchase cannabis, (1) within a dispensary facility, retailer, hybrid retailer building; (2) through a delivery service; or (3) on the dispensary facility, retailer, or hybrid retailer's website where cannabis or cannabis products may be lawfully ordered.

§ 24 — SUMMARILY SUSPENDING CERTAIN CREDENTIALS

Expands the DCP and revenue services commissioners' powers to summarily suspend a credential for any violation of the laws on manufacturer hemp, cannabis tax, marijuana and controlled substances tax, medical marijuana, and adult-use cannabis

Under current law, the DCP and revenue services commissioners may summarily suspend any credential their respective department issues to anyone who violates certain provisions on selling manufacturer hemp products (e.g., selling hemp that contains synthetic

cannabinoid and failing to follow labeling or packaging guidelines). The bill expands the power to summarily suspend a credential to apply to any violation of the laws on manufacturer hemp, cannabis tax, marijuana and controlled substances tax, medical marijuana, and adult-use cannabis. As under existing law, these suspensions must be done under the UAPA procedures for matters involving licenses.

§ 24 — MANUFACTURER HEMP PRODUCTS

Specifies out-of-state licensees may apply for a DCP manufacturer hemp license; increases various fines; removes certain manufacturer hemp product violations from being CUTPA violations; requires a police training bulletin to be done annually; specifies that hemp that is lawfully produced under federal law may be transported or shipped through the state

Out-of-State Licensees Getting Connecticut License

Existing law prohibits anyone from manufacturing hemp in Connecticut without a DCP license. But the bill specifies that the manufacturer hemp laws should not be construed to prohibit anyone who is licensed in another state to manufacture, handle, store, and market manufacturer hemp products from applying for or getting a DCP license.

Fine Increase

The bill increases the following fines, from:

1. up to $2,500 to up to $5,000, for a manufacturer licensee who violates the manufacturer hemp law or regulations;

2. up to $2,500 to up to $5,000, for any entity who manufactures in the state without getting a license or does so when its license is suspended; and

3. $250 to $10,000, for anyone who manufactures in the state without a license or when the entity's license is suspended or revoked, payable by mail to the Centralized Infractions Bureau without appearing in court.

For the first two fines, a hearing conducted under the UAPA must be held first.

CUTPA

The bill removes certain manufacturer hemp product violations as CUTPA violations, which they are under current law. These include provisions allowing certain types of sales without a license, prohibiting synthetic cannabinoids, and requiring certain packaging and labeling for different manufacturer hemp products.

Police Training Bulletin on High-THC Hemp Products

Current law required the Department of Emergency Services and Public Protection, in consultation with DCP, to publish a training bulletin by October 31, 2023, informing local law enforcement agencies and officers of the investigation and enforcement standards for cannabis and high-THC hemp products. The bill makes this an annual requirement with the same October 31 deadline.

Hemp Transportation

The bill specifies that nothing in the state hemp laws should be construed to prohibit any hemp shipment or transport through the state if it was lawfully produced under federal law.

The federal law allowing hemp explicitly prohibits states from prohibiting the transportation or shipment of hemp or hemp products produced in accordance with federal law through the state (P. L. 115-334, § 10114(b)).

§ 25 — FOOD AND BEVERAGE MANUFACTURER TRACKING HEMP

Requires food and beverage manufacturers to track third-party purchases of hemp or hemp products

As under existing law for certain cannabis establishments, the bill requires that hemp or hemp products purchased by a food and beverage manufacturer from a third party be tracked as a separate batch throughout the manufacturing process. Once the manufacturer receives the hemp or hemp product, it is deemed cannabis and the licensee must comply with all the cannabis laws and regulations. Manufacturers must keep a copy of the certificate of analysis for the purchased hemp or hemp products and the invoice and transport documents that show the quantity purchased and date received.

§ 36 — CONSUMER PROTECTION ENFORCEMENT ACCOUNT

Requires the DCP commissioner to provide OAG with funds from the consumer protection enforcement account to pay for OAG's expenses for enforcing the law on selling and delivering cannabis or medical marijuana

The bill requires the DCP commissioner, upon the attorney general's request, to execute an agreement with the attorney general to provide the Office of the Attorney General (OAG) with funds from the consumer protection enforcement account as the commissioner and attorney general agree OAG needs to pay for personal services and other enforcement expenses incurred by the office in enforcing the law on selling and delivering cannabis or medical marijuana (CGS § 21a-420c).

BACKGROUND

CUTPA

By law, CUTPA prohibits businesses from engaging in unfair and deceptive acts or practices. It allows the DCP commissioner to issue regulations defining an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than $10,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney's fees; and impose civil penalties of up to $5,000 for willful violations and up to $25,000 for a restraining order violation.

Related Bills

sHB 5235, as amended by House "A," has substantially similar provisions (1) redefining "cannabis," "marijuana," "synthetic cannabinoids," and "manufactured cannabinoids"; (2) allowing multiple-serving edibles; and (3) specifically allowing the transport of hemp through the state if it was lawfully produced under federal law.

sHB 5236 (File 103), favorably reported by the General Law Committee, among other things, allows DCP to impose a civil penalty of up to $5,000 for CUTPA violations, after an administrative hearing.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute
Yea 21 Nay 1 (03/12/2024)

Finance, Revenue and Bonding Committee

Joint Favorable
Yea 32 Nay 15 (04/29/2024)