

# Governor's FY 2020 Budget: Articles

Staff Presentation to the House Finance  
Committee  
March 20, 2019

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# Introduction

- Article 20
  - Several changes to current hemp & medical marijuana programs
  - Establishes a 21+ adult-use marijuana program
    - Tax regime of excise & sales taxes for related products
  - Centralizes regulation of all programs
    - Office of Cannabis Regulation within DBR
      - Assistance from variety of agencies

# Article 20 – Background

- Cannabis plant genus
  - Cannabis L. is Hemp
  - Cannabis Sativa L. is marijuana
    - Cannabinoid chemical family w/in Cannabis, including THC (psychotropic) & CBD (not psychotropic) which have widely varied effects

<b>Cannabis</b>				
<b>Term</b>	<b>THC</b>	<b>CBD</b>	<b>Legal</b>	<b>Regulated</b>
Hemp	<0.3% THC	Yes	Limited Circumstances	Yes
Marijuana	>0.3% THC	Yes	Not Federally	Medically

# Article 20 – Hemp & Marijuana

- **Industrial Hemp Act**
- Hawkins/Slater Medical Marijuana
  - Regulatory oversight shift
  - Expansion of regulated entities
    - Licensed Processors
    - Compassion centers
- Adult Use Marijuana
- Centralization, Enforcement & Taxation
- Fiscal impact

# Industrial Hemp

- Business Regulation primary regulatory authority w/ assistance of DEM Division of Agriculture
  - Assembly authorized in 2016-H 8232
  - Permits growth and production as part of research or pilot programs
    - 41 states permit these activities
      - Includes all of New England except Connecticut

# Industrial Hemp

- 2016 law established licenses for growers & handlers
  - Application fee \$250, 2-yr License \$2,500
    - Required fee revenues be provided to the Department for the cost of enforcement
  - Regulations promulgated effective October 9, 2018
    - Implementation delayed due to medical marijuana program changes & lack of certified testing facilities

# Article 20 – Consumable CBD

- Article 20 permits production of hemp-derived CBD consumable products
- Establishes new licenses - \$500 annually
  - Distributor & retailer
    - Distribution or sale only, no growth or processing
  - Current licensees may not distribute & sell
    - Would get new license at no additional cost
- Establishes regulatory authority of DBR & Taxation
  - Formally establishes restricted receipt acct.

# Article 20 – Consumable CBD

- The Governor's requested March 13 amendment
  - Clarifies that all consumable CBD products subject to existing food processing and safety regulation
  - Establishes DBR authority for product quality & retail requirements
  - Provides that excess revenues transfer to the general fund annually
  - Makes technical corrections



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# History – Rhode Island Program

- 2005 Assembly passed legislation to create a medical marijuana program
  - Vetoed by Governor Carcieri
    - Veto overridden first day of 2006 session
  - Original law sunset June 30, 2007
    - Made permanent by 2007 Assembly
  - Administered by Department of Health
    - No specific staff or funds authorized
  - 2014 Assembly lifted cap on compassion center plant count imposed in 2012

# History – Rhode Island Program

- 2016 Assembly
  - Expanded regulation and enforcement
    - Departments of Health & Business Regulation
    - Shifted licensing of compassion centers to DBR
  - Established licenses for cultivators
    - Grow plants exclusively for compassion centers
    - Centers not obligated to purchase from them
  - Instituted tagging system for plants grown by patients and caregivers
    - Authorized fees for plants tags

# History – Rhode Island Program

- 2016 Assembly
  - Moved to annual registration renewals
  - Established protocols for sharing information with law enforcement
  - Required all registration, renewal & license fees be deposited as restricted receipts
    - Use by DOH & DBR to administer program
    - 4.0 new positions in Business Regulation
- 2017 Assembly authorized transfer of excess receipts to general revenues

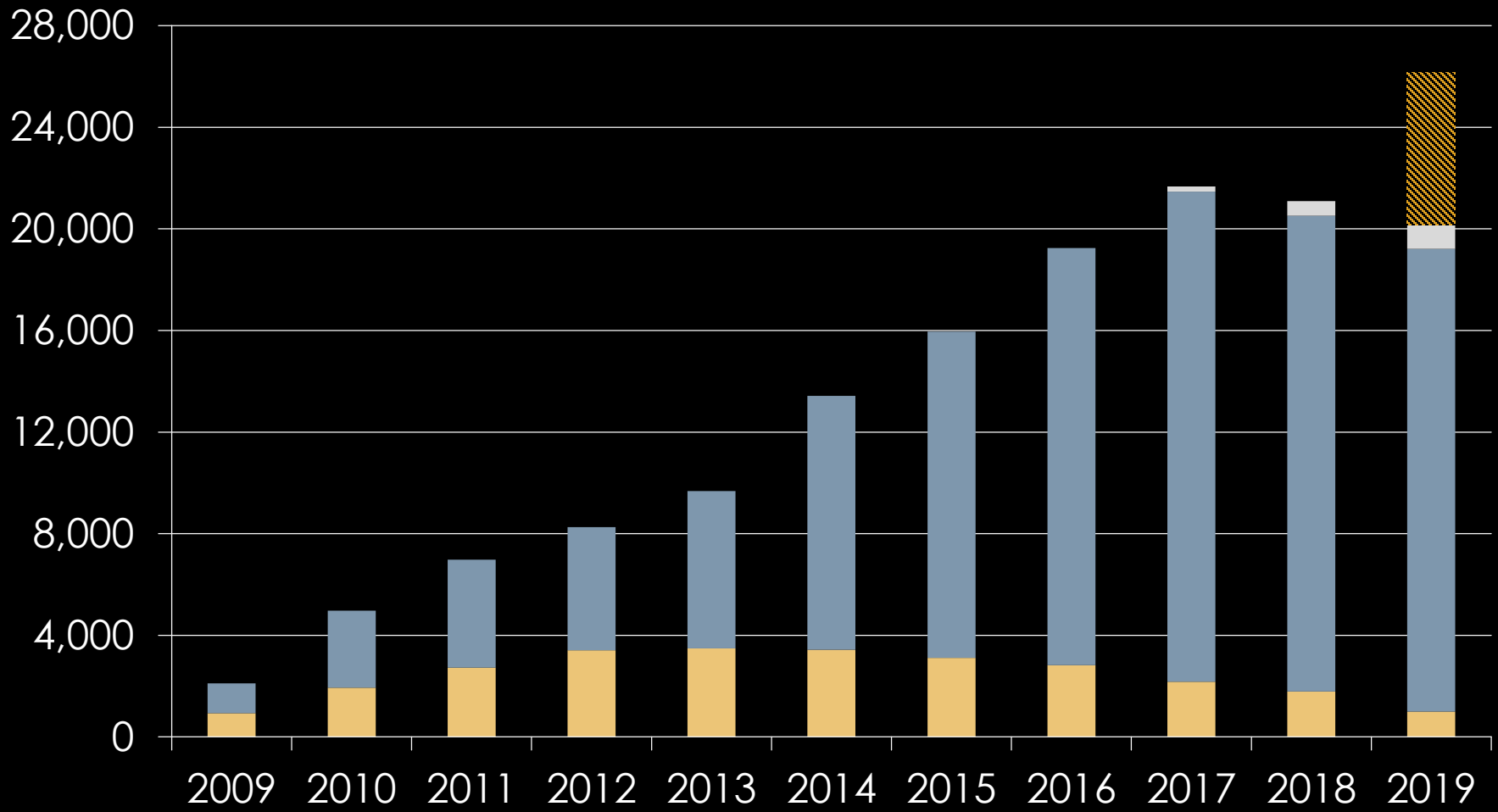
# History – Rhode Island Program

- 2018 Assembly
  - Expanded access
    - Permitted nurses and physicians assistants to write program referrals
    - Allowed out of state cardholders to purchase through compassion centers
  - Established legal protections for testing facilities & FDA approved medications
  - Increased compassion center renewal fees from \$5,000 to \$250,000

# History – Rhode Island Program

- Health
  - Patients
  - Caregivers
  - Authorized purchasers
    - Can purchase on behalf of patient
- Business Regulation
  - Cultivators
  - Compassion Centers
  - Plant Tags
    - Patients
    - Caregivers

# Medical Marijuana Participation



Source: DOH/DBR Other Cardholders Auth. Purchasers Patients Caregivers

# Medical Marijuana Participation

- 2018 change to permit out of state cardholders has significantly increased the number of eligible purchasers
  - It appears some out of state cards are easily attainable
    - Creates opportunities for tax avoidance & circumventing proposed potency cap

Program	Effective Tax Rate	Potency Cap
Medical	14%	None
Adult Use – Article 20	20%	50%



# Medical Marijuana Program – Oversight

- Current law allows CT and MA physicians to do referrals
  - Currently 138 out of state doctors have certified 5,068 patients ~ 28% of total patients
  - Last year total reported was 40% of patients
  - Amendment requested to Article 20 on March 13 rescinds this authority
    - Similar to prior years' proposals
    - Out of state physicians not subject to local DOH oversight and accountability

# Medical Marijuana Program – Oversight

- Under current law all patients can appoint a caregiver
  - Caregivers may grow for 5 patients
    - 6 if caregiver is also a patient
  - Patient-related expenses are reimbursable
- Program participants may possess and cultivate medical marijuana
  - Amounts consistent with participant type
  - May gift excess product to other participants to which they are not directly connected

# Article 20 – Oversight

- Article 20 would shift regulatory oversight
  - Licensing of caregivers would move from Health to Business Regulation
    - Governor also proposed shift of caregiver oversight as part of 2016 & 2018 changes
    - Assembly maintained in Health
  - To align with DBR's regulation of plant growth via tag system
    - Allow for stricter enforcement

# Article 20 – Oversight

- Article 20 restricts patient load to 1
  - Patient load includes self
    - Some exceptions subject to regulation
  - Designed to restrict self grows
  - Department may refuse an applicant for cause, including prior violations
  - Limits reimbursable expenses, subject to regulation

# Article 20 – Oversight

- Article lowers allowable plant limits for patients and caregivers by half
  - Increases possession limits by 20%
  - Repeals gifting provision; DBR to regulate the transfer between caregivers and patients

Type	Current law			Article 20		
	Mature	Seedling	Oz.	Mature	Immature	Oz.
Patients	12	12	2.5	6	6	3
Caregiver -1	12	24	2.5	6	6	3
Caregiver -1+	24	24	5	12	12	6
Absolute Maximum	24	24	-	12	12	-

# Article 20 – Processors

- Existing facilities currently make related products – no separate license
  - Edibles and oils
- Article 20 creates “processor” license
  - Plants would be supplied by cultivators & compassion centers to process or manufacture into products
  - Sales limited to other licensed entities

# Article 20 – Processors

- Application fees & licenses not in law
  - Implementation to be set by regulation
- Provides for other unspecified medical marijuana licenses
  - Broad authority to establish new licenses provided those establishments cannot engage in retail sales to cardholders

# Article 20 – Compassion Centers

- Compassion Centers
  - Current limit is 3 centers - aka dispensaries
    - Centers are required to be non-profit
  - Dispensaries to patient ratio low
    - National ~ 1:1,500
    - Rhode Island ~ 1:6,071



# Article 20 – Compassion Centers

- Compassion Centers
  - Article would allow 9 centers
    - Application process would open if approved or licensed center count drops below 9
    - Approval process must consider underserved areas
  - Fees for both initial application and registration would increase, renewals would decrease

# Article 20 – Compassion Centers

Compassion Center	Application	Initial	Renewal
Rhode Island - Current	\$250	\$5,000	\$250,000
Rhode Island - Article 20	\$5,000	\$50,000	\$50,000
Connecticut	\$1,000	\$5,000	\$5,000
Massachusetts	\$1,500 / \$30,000	\$50,000	\$50,000

- MA/CT comparison to retail centers only
  - CT - producer license \$25,000 application; \$75,000
  - MA – activity based licenses; Medical to retail charges conversion fee + sum of activity fees

# Article 20 – Compassion Centers

- Article 20 requires Compassion Centers “in good standing” be provided retail licenses for 2<sup>nd</sup> locations
  - Unlicensed entities prohibited from applying prior to September 2019
    - Within a cap of 9 centers, new entrants to the market would be a maximum of 3
- Centers would be permitted to engage in adult use sales
  - Adult use sales centers to be for-profit

# Article 20 – Compassion Centers

- Article changes licensed activities
  - Prohibits unlicensed cultivation & manufacturing (processing)
    - As noted with new processor license
  - Cultivators currently licensed by facility size via regulation
    - DBR established 5 classes
      - Micro and A through D
    - Current compassion centers are allowed to grow without separate license
      - Existing centers would be Class A or larger

# Article 20 – Compassion Centers

- The Governor's requested March 13 amendment
  - Incorporates the for-profit status proposed into the definition for a Compassion Center
  - Repeals the permission for doctors of Connecticut and Massachusetts to write referrals to the program
  - Clarifies that cultivators may not be a caretaker registered with a patient other than themselves

# Article 20 – Hemp & Marijuana

- Industrial Hemp Act
- Hawkins/Slater Medical Marijuana
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  - Expansion of regulated entities
    - Licensed manufacturers
    - Compassion centers
- **Adult Use Marijuana**
- Centralization, Enforcement & Taxation
- Fiscal impact

# Article 20 – Adult Use

- Findings noted in Article 20
  - Prohibition of possession, production, sale has been ineffective; an illicit market has thrived undermining health, safety & wellness
  - Regional & national shifts in cannabis policy are providing easy access to these products, but no benefit to the state
  - Best interests of State to implement regulatory framework & tax structure which shall be tightly regulated - the revenue from which would be used to regulate & mitigate the risks

# Article 20 – Adult Use

- 33 States & D.C. have medical programs
  - 22 States & D.C. decriminalized limited possession
- 10 States have legalized adult use

State	Medical	Adult Use	Launch Time
Massachusetts	Yes	Yes	2-years
Connecticut	Yes	Bill Introduced	N/A
New Hampshire	Yes	Bill Introduced	N/A
Vermont	Yes	Yes	No Retail
Maine	Yes	Yes - Spring 2019	2.5 years
New York	Yes	Budget Proposal	N/A



# Article 20 – Adult Use

- Establishes the use of products by adults 21+
  - Decriminalizes the use, possession & licensed sale of specified amounts of product or paraphernalia for private use
    - Limits available potency
  - Establishes licenses similar, but distinct from the medical marijuana entities
    - Excluding previously discussed Compassion Centers

# Article 20 – Adult Use

- Adults 21+ permitted to purchase, possess, & transport up to 1.0 oz.
  - May possess up to 5.0 oz. in their residence
    - Up to 10.0 oz. for residence with 2+ adults
  - May transfer product to 21+ adults
    - Prohibits sale of product or services in lieu of “sale”
  - May use within their homes
    - Non-inhalant use cannot be prohibited
    - Certain restrictions for boarders, renters & guests, residents of government properties, multi-unit buildings; \$150 per violation

# Article 20 – Adult Use

- Activities still prohibited:
  - Usage in a public or unlicensed space
  - Distribution to the under age
    - Subject to \$10,000 penalty, prosecuted as a felony
      - Amendment removes felony for distribution to individuals by someone less than three years their senior
    - Misrepresentation of age
  - Possession in a school subject to local authority or RI Dept. of Education
    - Subject to RIDE regulation, penalties may include suspension, expulsion, community service, & school event exclusion

# Article 20 – Adult Use

- Activities still prohibited:
  - Possession by the incarcerated or on the premise of a correctional facility
  - Unlicensed related activities which are or should be licensed
    - Or the use of prohibited solvents
      - Subject to felony charges and \$5,000 fine per violation
  - Driving while impaired

# Article 20 – Adult Use

- Activities still prohibited:
  - Driving while impaired
    - Subject to saliva chemical test
    - Testimony of a certified drug recognition expert or evaluator admissible as evidence

<b>Offense</b>	<b>Penalty</b>	<b>Community Service</b>	<b>Suspension</b>
1 <sup>st</sup>	\$100 to \$500	30 hours	30 days
2 <sup>nd</sup>	\$500 to \$750	40 hours	3 months
3 <sup>rd</sup> or more	\$750 to \$1,000	50 Hours	1 year

# Article 20 – Adult Use

- Activities still prohibited:
  - Possession in excess of plants or product limits
    - Violations subject to seizure & destruction of plants

<b>Violations</b>	<b>Penalty</b>
Possession	\$2,000
1-5 plants	\$2,000
6-10 plants	\$3,000
11-20 plants	\$4,000
21+ plants	\$5,000*

\*Felony requiring prosecution  
by Attorney General

# Article 20 – Adult Use

- Employment
  - Employers are not required to accommodate an employee's use/ possession in workplace
    - May institute policies prohibiting such activities in the workplace
  - Employers may not fire or take disciplinary action against a person's lawful private usage
  - Federal contractor's exempt to the extent inaction would present a business risk

# Article 20 – Adult Use

- Governor's requested amendment
  - Allows employers to adopt policies that extend past the workplace
    - Eliminates protections for private, lawful use
    - Allows similar policies for alcohol impairment
  - Explicitly prohibits patients & caretakers from transferring product
  - Clarifies medical/adult use possession limits
  - Exempts patient cardholders acting as their own caretakers from a background check



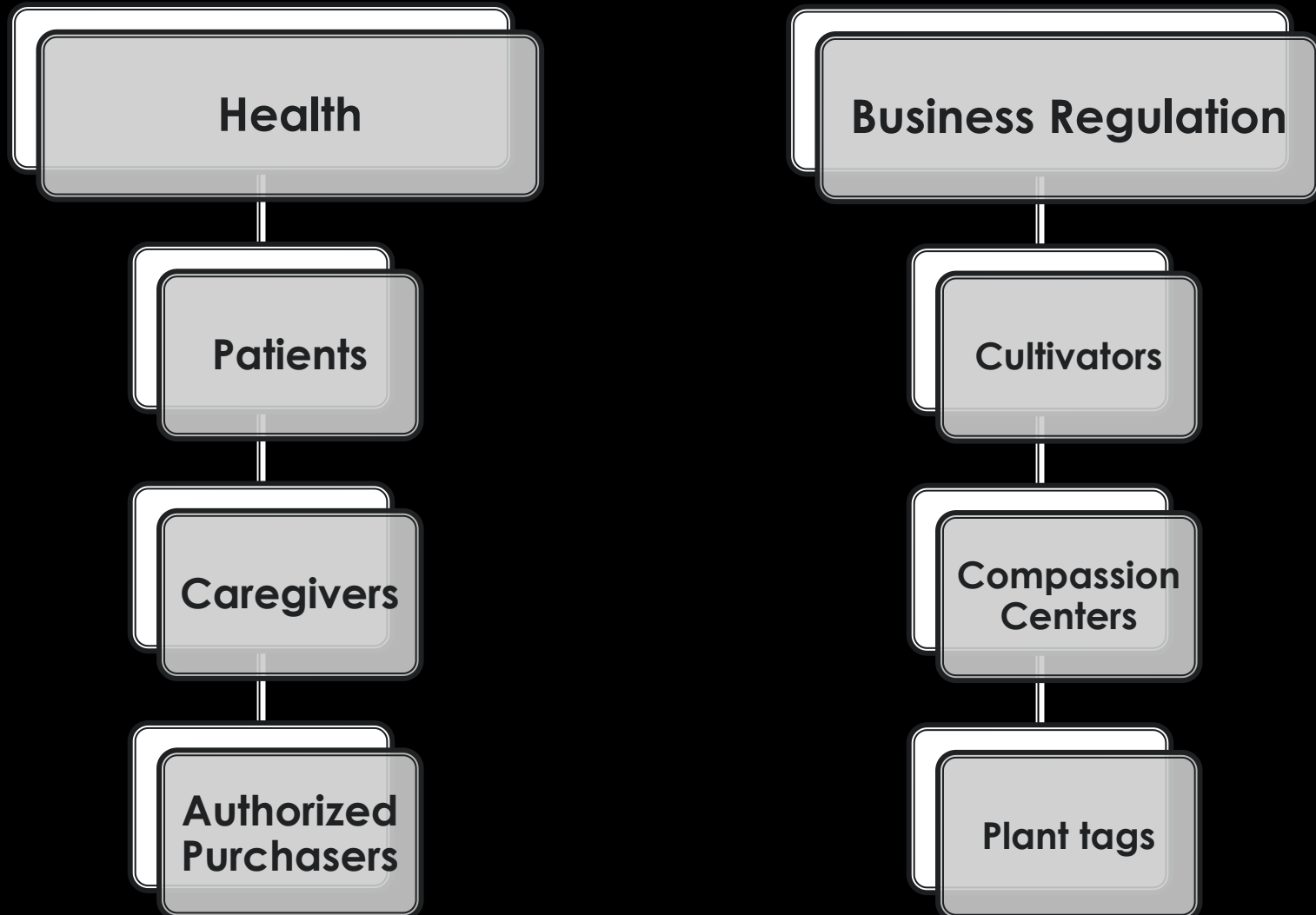
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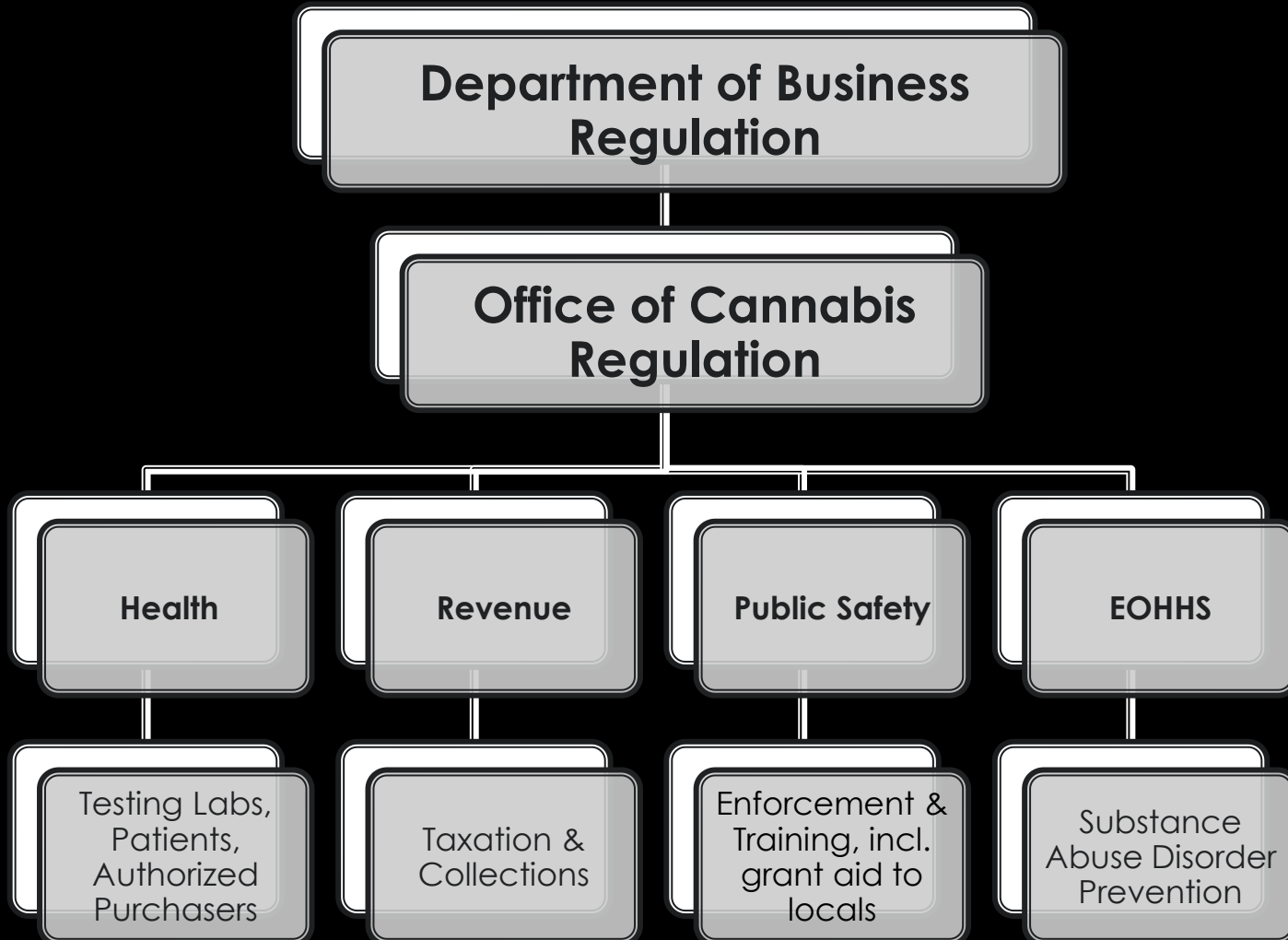
# Article 20 – Centralization

- Establishes a new Office of Cannabis Regulation within the Department of Business Regulation
  - Provide oversight & coordination of all agency implementation, regulation, including strategic policy response
  - Providing guidance to municipalities
  - Report to officials the estimated projected revenues & distribution funds which assist in the oversight and regulation of all marijuana

# Current Regulatory Hierarchy



# Proposed Regulatory Hierarchy



# Article 20 – Centralization

## Powers

Subject to Discretion	To Issue any license type, including future industry to support the market (online sale, delivery, etc...), permit a medical licensees' adult use activities if no risk to medical activity
Subject to Limitations	Number of industries licenses, production volume, potency level, number of licenses held by an entity
Define by Regulation	License application windows, industry sizes & fees, indoor/outdoor growth, streamline medical licensee applications for adult use activities, quarantine & destruction contraband & prohibited materials, renewal

# Article 20 – Centralization

- Office of Cannabis Regulation with Department of Health to establish
  - Standards for laboratory proficiency, quality control, test standardization & round robin testing
  - Produce additional laboratory licenses pursuant to these standards; the annual
    - License fees & related employee registration cards subject to the discretion of the Department of Health
  - Phase-in of laboratory testing requirements if the market lacks necessary capacity
    - 1 laboratory in process for approval

# Article 20 – Centralization

- Requires Legislative Advisory Council
  - Uncompensated 14 member council
    - 7 appointed by each chamber, 2-year terms
      - 1 each member of the Assembly, expert in law enforcement, public health, marijuana business, social welfare/justice, marijuana law attorney, consumer representative
  - To advise the legislature on implementation and policy changes

# Article 20 – Enforcement

- Codifies DBR's areas of regulation and authority
  - Transportation/Delivery
  - Seizure/Destruction
  - Security requirements
    - Including use of a seed to sale tracking system
  - Marketing & Advertising practices
  - Extends grounds for registry card denial for caregivers & purchasers to prior violations
    - Currently only incomplete/falsified information



# Article 20 – Enforcement

- Establishes fines for Compassion Centers
  - No threat to public health/safety - \$500
  - Threat to public health/safety - \$2,000
    - No collections assumed in budget
- Provides authority for show cause/ cease and desist orders for any program violation of a licensed activity
  - Decisions stand until Superior Court ruling

# Article 20 – Enforcement

- The Governor's requested March 13 amendment
  - Extends zoning enactment to Jan. 2021
    - It also extends the date for a referendum to November 5, 2020 with zoning in place by April 1, 2021
  - Permits an establishment to compensate a municipality for actual expenses incurred subject to oversight of the Office of Cannabis Regulation

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- **Fiscal impact**

# Article 20 – Fiscal Impact

- Taxation established
  - Cultivation by volume, equivalent amount or fractional parts thereof
    - \$3.00 per ounce of trim
    - \$10.00 per ounce of flower
  - Retail excise tax rate of 10%

# Article 20 – Fiscal Impact

- Taxation established
  - Consumable CBD products taxed similar to other tobacco products
    - 80% of wholesale cost of CBD products
  - Requires transactions between licensed entities
    - In the instance of unlicensed entity transactions retailer has 5 days to self-report and remit the tax

# Article 20 – Fiscal Impact

## Compassion Center Collections

Fiscal Year	Gross Receipts	Sales Tax: 7%	Surcharge: 4%	Total Revenue
2013	\$ 0.42	0.02	0.03	\$ 0.05
2014	\$ 6.73	0.27	0.47	\$ 0.74
2015	\$ 9.64	0.39	0.68	\$ 1.06
2016	\$17.16	0.69	1.20	\$ 1.89
2017	\$28.26	1.13	1.98	\$ 3.11
2018	\$38.19	1.53	2.67	\$ 4.20
2019*	\$28.25	1.13	1.98	\$ 3.11

*\*through Jan 1 –annualizes to \$5.4 million based on FY 2018*

# Article 20 – Fiscal Impact

## Taxes and Fees from the Adult Use Program



### Marijuana Trust Fund



**Regulating  
Agencies  
25%**



Business Regulation	Program administration & enforcement
Health	Public health monitoring, research, data collection, & surveillance
Revenue	Revenue collection & enforcement
Public Safety	Public awareness campaigns, training, technology improvements grants to local law enforcement
EOHHS / BHDDH	Substance use disorder prevention -or adults & youth; treatment & recovery support services

**General Fund 60%**

**Municipalities 15%**

# Article 20 – Fiscal Impact

- Municipalities
  - May not ban activity by regular business
    - Zoning compliant to Office regulation
  - By referendum; entities by separate question
    - Election by Nov. 5, 2019; authority in place by Jan. 1, 2020
  - May not prohibit existing medical operations

Distribution Basis	Share
All Communities	3.75%
By License type	3.75%
<i>Cultivators</i>	0.94%
<i>Processors</i>	0.94%
<i>Retailers</i>	1.88%
Volume of Sales	7.5%
<b>Total</b>	<b>15%</b>



# Article 20 – Fiscal Impact

<b>Marijuana Net New Revenues</b>					
<b>Item</b>	<b>FY 2020</b>	<b>FY 2021</b>	<b>FY 2022</b>	<b>FY 2023</b>	<b>FY 2024</b>
Adult Use	\$4.8	\$19.4	\$19.8	\$20.2	\$20.5
Medical Marijuana	1.6	2.2	2.3	2.3	2.3
Hemp	0.1	0.2	0.2	0.2	0.3
<b>Total</b>	<b>\$6.5</b>	<b>\$21.8</b>	<b>\$22.2</b>	<b>\$22.7</b>	<b>\$23.0</b>

*\$ in millions*

# Article 20 – Fiscal Impact

Expenses				
Department	FTE	Staffing	Operations	Total
BUSINESS REGULATION	12.0	\$2.5	\$3.0	\$5.6
HEALTH	3.0	0.9	0.1	1.0
PUBLIC SAFETY	-	-	0.9	0.9
REVENUE	4.0	0.3	0.5	0.8
EOHHS	-	-	1.0	1.0
BHDDH	1.0	-	-	-
<b>Subtotal</b>	<b>20.0</b>	<b>\$2.6</b>	<b>\$4.8</b>	<b>\$7.3</b>
<i>Medical Marijuana*</i>	9.0	1.2	0.7	1.9
<b>Total</b>	<b>29.0</b>	<b>\$3.7</b>	<b>\$5.5</b>	<b>\$9.2</b>

\$ in millions; \* Existing program staff & expenses

# Article 20 – Fiscal Impact

- The Governor's requested March 13 amendment
  - Reduces the rate for CBD products to 40% of wholesale cost
    - Article 5 proposes same rate for vapor & electronic nicotine delivery system products
      - Hearing March 21, 2019
  - Adjusts revenue estimate accordingly
    - Negligible impact
  - Moves account from EOHHS to BHDDH

# Article 20 – Adult Use

State	Medical Tax	Adult Use Tax
Massachusetts	Exempt	10.75% Excise 6.25% Sales Tax Up to 3.0% Local Tax
Connecticut	\$3.50/gram ~\$85.22/oz	-
New Hampshire	No tax	-
Vermont*	Exempt from Sales tax	N/A
Maine	5.5% Sales tax 8% for edibles	10% Sales tax \$335/lb. or plant \$94/lb. trim \$1.50 per seedling \$0.30 per seed
New York	7% Gross Receipts	\$1/gram flower \$0.25/ gram trim 20% of Wholesale 2% local tax

\*Does not permit retail sale – Bill Proposed

# Article 20 – Tax Summary

<b>Tax Structure</b>	<b>Sales Tax</b>	<b>Gross/Excise</b>	<b>Wholesale</b>	<b>Weight Based*</b>	<b>Eff. Rate</b>
Current Law - Medical	7%	4%	-	-	11%
Article 20 - Medical	7%	4%		3%	14%
Article 20- Adult Use	7%	10%	-	3%	20%
Article 20 - CBD	7%		40%	-	?
*may change with pricing					

# Medical Marijuana Participation

- 2018 change to permit out of state cardholders has significantly increased the number of eligible purchasers
  - It appears some out of state cards are easily attainable
    - Creates opportunities for tax avoidance & circumventing proposed potency cap

<b>Program</b>	<b>Effective Tax Rate</b>	<b>Potency Cap</b>
Medical	14%	None
Adult Use – Article 20	20%	50%

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