



The Commonwealth of Massachusetts
Massachusetts Senate

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Via Electronic Mail Only

August 11, 2023

Re: Retail and Delivery Operator Agent Suitability Standards

Dear Commissioners of the Cannabis Control Commission:

I write regarding draft regulations put forward by the Cannabis Control Commission (CCC) implementing recent legislative action through the passage of *An Act Relative to Equity in the Cannabis Industry* (the “Act”).¹ I greatly appreciate the attention and effort of you and your staff in creating this draft. As discussed below, while one provision of the Act sought to remove barriers to employment, the draft regulations create a public safety risk by opening a window for sex offenders to gain employment in the marijuana industry as retail or delivery operator agents. I respectfully request the CCC protect customers and other marijuana workers by adding stronger protections to the draft regulations to ensure sex offenders do not obtain agent registration.²

Background:

As you know, the Act inserted the following provision into Chapter 94G regarding employment suitability:

and provided further, that a prior criminal conviction or other criminal case disposition shall not disqualify an individual or otherwise affect eligibility for employment in connection with a marijuana establishment, other than an independent testing laboratory, unless the offense involved the distribution of a controlled substance, including marijuana, to a minor;³

In turn, the CCC’s draft regulations propose deleting certain suitability standards from the existing regulations. Specifically, the draft regulations propose deleting from Table B, which sets suitability standards for retail and delivery operator agents, a disqualification for those who have been convicted of a “sex offense” and failure to register as a sex offender:⁴

¹ St. 2022, c. 180.

² The CCC should also consider making similar changes to the equivalent Table B for Medical Marijuana Treatment Center (MTC) Agents. See 935 C.M.R. 501.802 (Suitability Standard for Registration as a Medical Marijuana Treatment Center Agent).

³ M.G.L. c. 94G, § 4(a1/2)(iii) as amended by St. 2022, c. 180, § 13.

⁴ July 28, 2023, Cannabis Control Commission Public Meeting Packet, p. 150 & 287, available at:

<https://masscannabiscontrol.com/wp-content/uploads/2023/07/Meeting-Book-Cannabis-Control-Commission-Regulatory-Review-Public-Meeting-230728.pdf>.

| Time Period | Precipitating Issue | Result |
|--------------------|---|----------------------------|
| Indefinite | Sex Offense: Felony conviction for a "sex offense" as defined in M.G.L. c. 6, § 178C and M.G.L. c. 127, § 133E or like offenses in Other Jurisdictions. | Mandatory Disqualification |
| Indefinite | Failure to Register as a Sex Offender in Any Jurisdiction | Mandatory Disqualification |

I have attached to this letter an exhibit which was utilized by the CCC when it initially implemented the mandatory disqualification on “sex offenses” back in 2017.⁵ These offenses that were prohibited up till now under existing regulations are some of the worst offenses possible and the CCC rightly responded to this exhibit by instituting a categorical indefinite mandatory disqualification on anyone convicted of committing such an offense.

I understand that the CCC intends to rely on a “catch-all” suitability provision which would be applied as part of the agent registration process to protect public health, safety, and welfare.⁶

| Time Period | Precipitating Issue | Result |
|----------------------|---|---|
| Preceding Five Years | The applicant's or Licensee's prior actions posed or would likely pose a risk to the public health, safety, or welfare; and the risk posed by the applicant's or Licensee's actions relates or would likely relate to the operation of a Marijuana Establishment. | May make a Negative Suitability Determination in accordance with 935 CMR 500.800(8) |

This provision would allow the CCC to make a negative suitability determination if an individual’s prior acts pose a risk to public health, safety or welfare and relates to the operation of a marijuana establishment. Quite frankly, relying on this “catch-all” is inadequate to protect customers and other marijuana workers.

As described in 2017 when the CCC adopted these retail marijuana establishment suitability standards, including the mandatory disqualification on those who committed sex offenses, the CCC recognized the importance of higher standards for retail suitability:

Commissioner McBride says the first one is the retail marijuana establishment suitability standard. Individuals who are employed by retail establishments are indirect and direct contact with the consumers. They’re much more likely to be

⁵ See Attached, also available at: <https://masscannabiscontrol.com/wp-content/uploads/2018/01/Sexual-Conduct-and-Abuse-Related-Offenses.pdf>.

⁶ July 28, 2023, Public Meeting of the Cannabis Control Commission, 3:43, available at: <https://youtu.be/2K7YIzOjyok?t=13390>.

receiving personal information, so therefore the standards should be higher for those employees.⁷

Striking these existing prohibitions and merely falling back on a “catch-all” does not reflect a higher standard. In addition, the operation of the “catch-all” provision has several short comings which make it an inadequate substitute to protect the public health, safety and welfare.

First, as noted during the CCC’s hearing on the draft regulations, CCC staff do not receive a copy of the background check for prospective employees seeking to register as agents.⁸ In fact, as noted by staff at the hearing not only does the CCC not require submission of the background check, the CCC encourages that employers do not submit the background check to the CCC because it could contain sensitive information.⁹ Instead, the CCC bases its suitability review on the reporting of the employer to the CCC of certain “background check events.” Staff in turn review these employer disclosures and apply the suitability standards. This creates a risk that incomplete or inaccurate reporting by the employer will enable an individual who poses a risk to public health, safety, or welfare to avoid application of the “catch-all” provision by CCC staff.¹⁰

Second, even if the CCC is notified of an issue by the employer that poses a risk to public health, safety, or welfare, the “catch-all” provision only provides that the CCC “may make a Negative Suitability Determination,” in contrast to the existing “Mandatory Disqualification” currently imposed. A substantially weaker standard subject to agency discretion on how it is applied.

Finally, the “catch-all” provision only applies for the “preceding five years” in contrast to the “indefinite” time period for the existing prohibition. As a result, even if the CCC becomes aware of a risk to the public health, safety, or welfare, if the precipitating issue occurred outside of the preceding five years – the “catch-all” provision will not apply. Even in the other instances that the suitability standards do not “indefinitely” look back, they at least look back 10 years when it comes to “Sex Offenses.”¹¹

⁷ December 12, 2017 Meeting Minutes of the Cannabis Control Commission Public Meeting, *available at*: [2017.12.12-Meeting-Minutes.FINAL .pdf \(masscannabiscontrol.com\)](https://www.masscannabiscontrol.com/2017.12.12-Meeting-Minutes.FINAL.pdf).

⁸ July 28, 2023, Public Meeting of the Cannabis Control Commission, 3:41, *available at*: <https://youtu.be/2K7YIzOjyok?t=13300>.

⁹ *Id.*

¹⁰ According to CCC staff at the July 28, 2023, meeting of the CCC, the “safety net” to ensure that the background check is actually run by the employer and that the disclosures are complete is that during CCC field visits, CCC staff check that the personal files contain the employee’s background check. *Id.* at 3:42 *available at* <https://youtu.be/2K7YIzOjyok?t=13326>. However, this “safety net” does not occur until a later stage when the site visit takes place and requires that CCC staff examine that all disclosures accurately reflect the content of the employer run background checks.

¹¹ See 935 C.M.R. 500.802, Table C (Setting a look back period of 10 years for “sex offenses” for Marijuana Product Manufacturer Marijuana Establishment Agents).

Recommendations:

1) Prohibit Individuals Required to Register as Sex Offenders from Acting as Retail or Delivery Operator Agents

The CCC should copy the prohibition found in Table A relating to mandatory disqualification for individuals required to registered as sex offenders into Table B, so as to apply it to retail workers and delivery operator agents. Whether an individual is required to register as a sex offender arises from a determination by the Sex Offender Registry Board (SORB) – a separate civil process distinct from the “prior criminal conviction or other criminal case disposition.”¹² As a result, its inclusion in Table B is not prohibited by the Act’s recent amendment to agent suitability as the mandatory disqualification would be triggered by SORB’s determination and not the “prior criminal conviction or other criminal case disposition.” Adding this mandatory disqualification reflects the commonsense position that individuals required to register as sex offenders should not be interacting with customers and other marijuana retail workers in either a retail setting or making deliveries to individual’s homes.

2) Strengthen the “Catch-All” Provision

In addition, the CCC should strengthen the “catch-all” provision. First, the look back time period should be expanded to at least 10 years. In addition, a copy of the background check for prospective employees who seek registration as agents should be transmitted to the CCC. Given the broad reach of the “catch-all” provision, and the CCC’s intention to rely on it to protect public health, safety, or welfare, CCC staff should view the background check report directly rather than rely on the disclosures submitted by the employer.

Thank you for your attention to this matter.

Sincerely,



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Enclosure

cc:

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¹² See generally 803 C.M.R. 1.06 (Laying out the Sex Offender Registry Board’s responsibility in determining if a sex offender has a duty to register).