



DELAWARE GENERAL ASSEMBLY
STATE OF DELAWARE
LEGISLATIVE HALL
DOVER, DELAWARE 19901

Adult Use Cannabis Task Force

**Wednesday, October 4, 2017
10:00a.m. – 12:00p.m.
House Chamber, Legislative Hall, Dover**

Task Force Members Present:

Representative Helene Keeley, House of Representatives
Senator Margaret Rose Henry, Delaware State Senate
Senator Bryant Richardson, Delaware State Senate
Representative Steve Smyk, House of Representatives
Dr. Clarence Watson, Division of Substance Abuse and Mental Health (DSAMH)
Mark Lally, President of the First State Compassion Center
Jermaine Hatton, Delaware League of Local Governments
John Sybert, Sussex County Advocate
Cynthia Ferguson, New Castle County Advocate
Tom Donovan, Kent County Advocate
Secretary Rick Geisenberger, Department of Finance
Robert Glen, State Bank Commissioner
Brendan O'Neill, Office of Defense Services (ODS)
Cathy Rossi, AAA Mid-Atlantic
Tim Holly, Delaware State Chamber of Commerce Employer Advocacy & Education Committee
Chief William Bryson, Delaware Police Chiefs' Council
Director John Yeomans, Dept. of Safety & Homeland Security
Jamie Mack, Division of Public Health (DPH)
Kim Robbins, Delaware Pharmacist Society
Michelle Jacobs, Department of Natural Resources and Environmental Control (DNREC)
Deputy Secretary Kenneth Bounds, Department of Agriculture
Dr. Jason Silversteen, Medical Marijuana Act Oversight Committee

Sen. Henry, co-chair, called the meeting to order at 10:02 a.m.

Rep. Keeley, co-chair, took attendance. A quorum was present. She asked the Task Force members if they had any edits to the minutes from the previous meeting.

Cathy Rossi, AAA Mid-Atlantic, requested that her comment on page 3 have the addition of "and voiced AAA's opposition to recreational marijuana because of traffic safety challenges with driving impairment."

Deputy Secretary Kenneth Bounds, Department of Agriculture, requested the correction of “ergonomic” to “agronomic” in his comment on page 4.

Rep. Smyk motioned to accept minutes with Ms. Rossi and Deputy Secretary Bounds’ corrections.

The minutes were accepted with those corrections.

Rep. Keeley addressed a letter she and Sen. Henry received from the *Keep Delaware Safe and Healthy Coalition*. The organizations that signed the letter, many of them present at the Task Force meeting, requested the co-chairs consider extending the deadline that the final report is due to the General Assembly and the Governor. Rep. Keeley said she and Sen. Henry are open to adding additional meetings.

Sen. Henry moved to the next item on the agenda and asked Tim Holly to present.

Tim Holly, Delaware State Chamber of Commerce (DSCC) Employer Advocacy & Education Committee, thanked the Co-Chairs for the opportunity to present. The committee he represents is philosophically opposed to legalizing cannabis, although he respects that employers across the state have differing views. However, the purpose of the task force is to study the issues surrounding the possible future legalization of cannabis so he based his presentation on that premise. At the previous meeting he articulated a list of concerns that employers have about the implications of legalization. He said each of them should be addressed or considered in the drafting of this bill.

The objective in his presentation today is to recommend six specific things that could be done to increase the probability of support from the business community, or at least would decrease opposition:

- 1) If employees are enabled through new law to use marijuana despite the objection of DSCC, DSCC proposes that lawmakers keep the risk of that decision on the shoulders of citizens generally and not on employers - by giving employers statutory immunity from suit in the event someone is injured by another and marijuana use is found to be a contributing cause. DSCC realizes that there are some circumstances where statutory immunity might be considered unreasonable; but that is an issue that the lawmakers should address – erring on the side of immunity. *Examples: 14 Del. C. § 4112; 29 Del. C. § 9006A.* They leave it to the medical community to opine whether marijuana is distinguishable from other controlled but legal substances in determining whether immunity for marijuana issue is reasonable where statutory immunity may not exist elsewhere.
- 2) New law should re-address Title 16, Chapter 49A, at (a)(3)(b). Employers should remain unrestricted in deciding for themselves how they feel about marijuana use (medical or otherwise); and retain the freedom to enforce policy regarding marijuana however they deem best (including a “0 tolerance” policy) – at least for so long as it is a federally-prohibited substance. Thus, 4905A(a)(3)(b) should be deleted. An even better change in the eyes of most employers would be to delete 4905A(a)(3) in its entirety.

- 3) In Section 4905B the standard at issue here is “under the influence.” Either 4905B should be revised to make “under the influence of” read “impaired by” (as in 4905(a)(3)(b)) or vice versa. In either or both events, the terms should be defined— again with a statutory (not regulatory) method for testing for “under the influence” or “impairment.” More generally, many employers would like to see heavier revision to 4905B to clarify a much broader retained right for employers.
- 4) In Section 4909B, “Nothing in this chapter” should be revised to “Nothing in Delaware law or regulation.” If something in Delaware statute or regulation is intended to require such a thing as addressed in 4909B, the legislators proposing this law should be crystal clear where and what imposes such a requirement so that citizens can be very clear about what employers are being asked to shoulder as responsibility for this new law. 4909B should also be revised to delete the word “a” between the words “controls” and “property.” Thus, this would pertain to non-real and real property alike – such as a company vehicle as well as the company warehouse, office, parking lot, etc. While DSCC categorically opposes legalization of marijuana, DSCC is in favor of a clear provision that makes clear that employers can, in all ways, prohibit everything pertaining to marijuana in space that the employer occupies, owns, or controls; and in or on their occupied, owned, or controlled property.
- 5) Moving onto another of the issues of concern, as part of this bill, there should be an amendment somewhere in Title 19, Part II, providing that any employee found to be injured in part due to “impairment” or “influence” of marijuana, that employee is not eligible/qualified to receive workers’ compensation benefits and that termination for such “impairment” or “influence” is lawful. Again, a statutory definition should be provided for “impairment” and/or “influence” and a statutory (not regulatory) standard for testing should be included.
- 6) There should be an amendment somewhere in Title 19, Part III, providing that any employee becoming unemployed due to any issue pertaining to marijuana (be it absenteeism, tardiness, performance, or prohibited use, consumption, possession, transfer, display, transportation, sale, or growing) is not eligible/qualified to receive unemployment compensation benefits; and that employers’ experience ratings shall not be negatively impacted by such employee’s loss of employment. As with the other issues, if the words “impairment” or “influence” are used in such amendment, a statutory definition should be provided for “impairment” or “influence” and a statutory (not regulatory) standard for testing should be included.

Mr. Holly concluded his presentation by saying the most commonly-stated issue of concern by employers is that no law using the words “impairment” or “influence” should be passed until those terms are clearly defined and well-accepted testing methods (confirmed by the Delaware medical community) are codified.

Rep. Keeley wanted to be open about the fact that she does currently sit on the DSCC Employer Advocacy & Education Committee as part of her other job with the Department of Labor. She was not present at the meeting where Mr. Holly and other committee members discussed this issue. Every day, employers are dealing with drug and alcohol use in the workplace. Do task force members believe that it would be helpful to include other substances, in addition to cannabis, in the bill that employers can prohibit?

Mr. Holly stated that employers look to the statutes in place when enforcing rules about employee behavior. He would support expanding the scope of drugs that employers could make regulations about, but he leaves it to the medical community to determine what is appropriate.

Rep. Keeley recognized the presence of Robert Scoglietti in the room. She asked if he would like to comment on any of the issues raised in Mr. Holly's presentation or share any insight on his work creating workplace regulations.

Robert Scoglietti, Office of Management and Budget (OMB), said legislation passed in 2007 that required OMB to development of regulations for the testing of employees working on public works job sites. These are not necessarily employees of the State, but could be contractors and subcontractors. Accommodations for people who have medical marijuana cards were made and built into the regulations. The regulations have been in effect since January 1, 2016. The regulations, which require a series of amendments, will be posted in their final form in the December issue of Registrar. He said he would share the issue with the Task Force when it is published in December.

Sen. Henry asked Jamie Mack from the Division of Public Health to commence his presentation.

Jamie Mack, Division of Public Health (DPH), began by stating that his presentation is not indicative of DPH's position on this topic. DPH has learned some best practices through their operation of Delaware's medical marijuana program, operations in other jurisdictions, and the National Cannabis Summit. DPH has suggestions for specific aspects of legalization. In order to ensure product safety, fertilizers should be limited to organic products and formulation- no pesticides. Third parties should be responsible for routine testing of products for pesticides and fungus/mold. Any location that sells edibles should be required to comply with the Delaware Food Code, and be packaged based on THC/CBD content with servings delineated or packaged individually, as it is possible to overdose on cannabis. Mr. Mack also stated that the bill should limit the cannabis products being sold to shelf stable products only that do not have expiration dates or need to be kept in controlled temperature environments. If there is an issue with a product they need to be able to trace it back to the source in order to appropriately recall it. Packaging of products should be opaque, child resistant, and comply with FDA labeling requirements (including serving size, THC content, and directions for the appropriate use of the product). He also suggested that a universal symbol for cannabis be required to be printed on all products.

Rep. Keeley noted concerns with cannabis products being sold that are shaped like candies and emphasized her support for opaque and child resistant packaging. She asked why DPH does not advise allowing perishable products, such as butters.

Mr. Mack replied that it's a food safety issue. Complying with regulations is a significant expense on anyone producing the product. There are concerns about it not being stored correctly, both because it's a food product and because it's a marijuana product. He advises starting this endeavor conservatively; there's always room to expand later. Other states have restricted the form of the cannabis product, prohibiting candy to be shaped like cartoon characters.

Sen. Henry agreed that the State has learned a lot from legalizing medical marijuana and that's been helpful in creating regulations.

Kim Robbins, Delaware Pharmacist Society, began her presentation. She explained that the role of a pharmacist is to look at the appropriateness of a drug for treating a particular condition, look at contraindications, and the abuse and misuse of certain drugs. Another important role pharmacists play is to inform the public how to use a particular medication. She explained that although marijuana is helpful for many medical conditions, it's less addictive than alcohol, and it's safe under medical supervision it's still a drug that carries with it the potential of serious drug interactions. There are over 311 medical interactions with cannabis, which can cause side effects like respiratory depression, coma, low blood pressure, neurotoxicity, and others. Depending on the other medications a person is taking, using cannabis could have an additive effect. It is the duty of a pharmacist to inform and counsel patients on public safety and provide accurate information on drugs. Marijuana is a drug, therefore pharmacists should have a role in educating the public since there is the possibility of it interacting with other drugs. This is not a reason to keep it illegal, just to make sure that the public is aware of the risks. Pharmacists are there to educate, not sell as they could lose their license. If marijuana is legalized, she suggests having pharmacists present at retail dispensaries in consultation roles. Several other states have already legalized recreational marijuana and they all have their own rules about how much can be bought. She suggests a state-wide monitoring system be implemented that monitors sales of marijuana, similar to the nationwide Sudafed monitoring system.

Rep. Keeley thanked Ms. Robbins for her presentation. If someone is on a medication and decides to use legal cannabis, she wants them to have all the information available about their decision. They may decide to use it anyway, but they are the adults with the ability to make their own decisions.

Director John Yeomans, Department of Safety and Homeland Security, began his presentation. If the legislation was to pass and cannabis was legalized for adults, there would need to be a regulated cannabis market in place that takes into effect the below issues:

- 1) Preventing distribution to minors
- 2) Preventing revenue from going to criminal enterprises or being used as a cover for the trafficking of illegal drugs or activity
- 3) Preventing violence and the use of firearms in the cultivation and distribution of cannabis
- 4) Preventing the diversion of cannabis from states where it's legal to other states

Director Yeomans agreed with Mr. Mack that it is better to start off with a conservative model and as the industry grows certain issues can be revisited at later times as necessary. In terms of the regulatory system, he suggests creating a 3-tier regulatory system for cannabis, similar to the current system for the sale of alcohol. There would be an additional tier for the testing of products. There needs to be the flexibility in the industry for it to move from horizontal to vertical integration and to allow the retailer to also grow.

This should be a tightly regulated process, and would include limiting the number of licenses and size of cultivation, seed-to-sale tracking, strict product testing and environmental and water use

requirements, and horizontal integration. The trade-off would be that a tightly regulated market will mean more production will remain illegal and unregulated. Local police forces will have limited to no regulatory responsibility, only handling underage possession/consumption of cannabis and DUI. For the State Enforcement Agency to oversee compliance with state cannabis law in the same way they do for alcohol consumption they will need additional funding for staffing. This also impacts the regulatory field which would need more funding for staffing. He asked why particular numbers were used in HB 110 and requested additional dialogue on developing what would be the best numbers to use for Delaware.

Rep. Keeley said she would be happy to work with Director Yeomans and look at other states' models and see what would be appropriate for Delaware, based on Delaware's population size.

Sen. Henry agreed and said she's learned a lot about the issue from helping to develop the model for medical marijuana.

Director Yeomans said that he appreciated the language in the bill about the size of grows and said seed to sale tracking is an absolute must. There needs to be product accountability to prevent diversion. Product testing and environmental capabilities must be taken into consideration and there must be appropriate guidelines. Another issue to consider is the disposal of marijuana products. He suggested that current disposal guidelines used in medical marijuana centers may be applicable. He also suggested there be mandatory training for employees working in the marijuana dispensaries, similar to the training servers receive if they serve alcohol to make sure they understand the dangers of overserving and know how to check IDs. He also recommended adding to HB 110 a provision that prohibits someone under the age of 21 from entering a marijuana dispensary, just like there is current language about entering a liquor store underage. This would limit youth access. Other suggestions included whether only in-state companies could apply for a license to sell cannabis, increasing the security of a dispensary and the vetting process before someone can enter a dispensary, and banning the production of cannabis products that look like candy/cartoon characters such as gummy bears.

John Sybert, Sussex County Advocate, began his presentation. He is in favor of all aspects of consumer safety, including preventing access by children, ensuring products have no pesticides or adulterants, and making sure that the labeling process is clear to consumers. He discussed the two tier system of opening a cannabis product and showed examples of what's included on a cannabis product label (including a Harvest Batch number, safety warnings, the strain name and grower, cannabinoid profile, testing facility, and others). He explained the Terpene profile, how there are many different types that are used for different purposes and have different scents. It's imperative to know the type and amount of terpenes and full cannabinoid profile in each product and this would need to be certified information. Weights and measurements must be standardized. There should also be a way for consumer complaints to be received and processed and products to be recalled and disposed of. Marketing and advertisements could be limited to certain mediums and outlets, and would not be permitted to be false, misleading, or targeted towards minors. Additionally, a program "We Card", similar to what's currently being done to try to reduce teenage tobacco and alcohol consumption, could be implemented. The public can be educated on the best way to use cannabis.

Thomas Donovan, Kent County Advocate, stated that as society moves out of the era of prohibition, we're doing a good thing by ending a bad policy by legalizing cannabis. He suggested adding industrial hemp to HB 110. Farmers would like to grow industrial hemp, which is related to cannabis but has no more than 0.3% THC. Legalizing the growing of industrial hemp would create jobs and replenish the earth through crop rotation. It also has a short growing cycle.

Education of the public on the health effects of cannabis is extremely important. He recommends the development of unbiased, fact-based public education campaigns and publications regarding cannabis consumption, including education on the different types of cannabis and cannabis products, the effects of cannabis consumption utilizing different consumption methods and different forms of cannabis products, and best practices for responsible consumption. He also supports that HB 110 earmarks tax revenue to fund evidence-based voluntary programs for the treatment of alcohol, tobacco, and cannabis abuse and addiction. While the dependence rate for cannabis is far lower than legal substances such as alcohol and caffeine, the public will benefit from the availability of voluntary substance abuse programs. The bill will also not alter or interfere with the current medical marijuana program. He recommends that regulations be established requiring a licensee producing retail cannabis and who are licensees under the Delaware Medical Marijuana Act be required to maintain separate operations, inventory, and not commingle any retail products with medical products.

Municipalities should be allowed to make reasonable restrictions. However, if their restrictions essentially amount to prohibition, illegal markets will thrive in those areas. Employers should be free to make their own decisions and policies about how they interact with their employees. Employees should responsibly consume cannabis and not consume it while working and not attend work impaired. There should be increased education for employers about cannabis, and the issue of under the influence vs impairment should be clarified. THC does tend to stay in the system for a while, but that doesn't necessarily mean someone is impaired.

Rep. Keeley opened the floor for public comment; each guest was given two minutes.

Zoe Patchell, Delaware CAN, said DE CAN is opposed to putting a low limit on THC in edibles as they are arbitrary and counterproductive. The illegal market is flooded with high THC concentrates and products. No deaths from cannabis overdoses have occurred in Delaware. Public consumer education and strict labeling requirements are the best way to address concerns.

Rich Jester, civilian, spoke as a local expert on cannabis. No one has ever died from a cannabis overdose. Many medications mentioned can be negated through the use of cannabis.

William Lynch, representing atTACK addiction, stated marijuana is a gateway drug. There's already a serious opioid crisis in the country and poly use of drugs. People are being admitted to rehab for marijuana addiction. Recreational cannabis use is harmful, and can lead to serious health issues. THC levels have been increasing and individuals have developed Cannabis Use Disorder. He does not support legalizing marijuana.

Glenn Condon, Delaware Drug Intelligence Officer, stated marijuana traffic-related deaths have increased 48% over a three year average in Colorado since they legalized marijuana, according to the Rocky Mountain High Intensity Drug Trafficking Area report. He also mentioned an article in The American Journal of Psychiatry that examined whether cannabis use is associated with a change in the risk of nonmedical prescription opioid use and opioid use disorder.

Rep. Keeley said it's also important to know if alcohol or other drugs are in a person's system. Often others substances besides cannabis are present. There needs to be a complete picture of what's going on.

Jack Guerin, Unitarian Universalist Delaware Advocacy Network (UUDAN), advocated for the integration of medical and retail marijuana. No other state keeps these two industries separated. He is concerned that this separate structure will negatively impact the medical marijuana industry and suggests their integration.

Rep. Smyk said this was a very informative meeting with great insight from all presenters. He registered his concerns that multiple advocates presented, stating that this may not be fair.

Rep. Keeley stressed the importance of all presenters using reliable information. Sources must be appropriately cited from trustworthy sources.

Cathy Rossi, AAA Mid-Atlantic, referenced Director Yeoman's earlier comments about the need for increased funding. She asked if there is any estimate of costs related to regulatory oversight of legalized marijuana. Given increased marijuana use among young people, she remains concerned about young drivers and penalties for advertising or selling marijuana to minors/young drivers.

Rep. Keeley stated that any cost projections would come from the Controller General's Office and the Office of Management and Budget in the form of a fiscal note. Staff will be sending out an email requesting presenters for the next meeting on November 1. The topic will be Taxation, Banking, Revenue, and Regulations.

The meeting was adjourned at 12:01 p.m.

Attendance List:

1. Barzilai Axelrod (Attorney General's Office)
2. Dr. Neil Kaye (Medical Society of Delaware)
3. Jim Lardear (AAA Mid-Atlantic)
4. William J. Lynch Jr. (ATTACK Addiction)
5. Debbie Gottschalk (Division of Research)
6. Glenn S. Condon (PCHIDTA)
7. Kevin Jones (DATE)
8. Jeff Horvath (Delaware Police Chiefs' Council)
9. James Dechene (DSCC)
10. Chas McCormick (DE Pharmacist)

11. Kyra Hoffner (DCAN)
12. Spencer Price (CGO)
13. Deputy Secretary Kimberly Chandler (Dept. of Safety & Homeland Security)
14. Jack Guerin (UUDAN)
15. Mark Devore (OMB)
16. Robert Scoglietti (OMB)
17. Nelson Hill (UFCW Local 27)
18. Rich Jester
19. Kelly Williams (Noble Territory)
20. Christine Schiltz (Parkowski Guerke & Swayze)
21. Nancy Lemus (Parent Advocate)
22. Lincoln Willis (DLLG)
23. Debbie Hamilton (Hamilton Goodman)
24. Lisa Goodman (Hamilton Goodman)
25. Zoe Patchell (DE CAN)
26. Rep. Jeff Spiegelman
27. Rep. Andria Bennett