



THE WALKER LEGAL GROUP

**Testimony of Kye Walker, Esq.
Committee on Economic Development & Agriculture
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Good Morning, Mr. Chairperson, members of the Committee on Economic Development and Agriculture, other members of the 35th Legislature of the Virgin Islands, and the listening and viewing audience. I am Attorney Kye Walker and appear before you to testify regarding the Virgin Islands Cannabis Use Act, the drafted Rules and Regulations that accompany the Act, and proposed amendments to the Act.

Currently, I serve as a legal advisor to the Office of the Governor regarding the enactment and implementation of the Virgin Islands Cannabis Use Act. In that capacity, I have also assisted in the preparation of the rule and regulations for the Act that was passed by the 34th Legislature on December 30, 2022 and signed into law by Governor Albert Bryan on January 18, 2023. The Rules and Regulations (which I will call “Rules” for short) form the regulatory road map for the cannabis industry in the Virgin Islands. The preliminary draft of the Rules were submitted to Director Hannah Carty this week and the Office of Cannabis Regulation and the Cannabis Advisory Board will conduct its initial review of the draft before submitting it to the Department of Justice for a legal sufficiency review and then to general public for the thirty day comment and review period.

The proposed Rules are fundamentally and most critically focused on the issues of safety, enforcement, and the rollout of the various applications for cannabis licenses and permits. The transition to a legalized and regulated cannabis industry will require firm guardrails to

ensure consumer and public safety, and to ensure that the youth of the Territory are not negatively affected. It is essential that the regulatory structure of the brand-new cannabis industry in the Virgin Islands is both strong enough to protect consumers and flexible enough for both regulators and businesses to address novel circumstances and challenges. The proposed Rules strike this balance. I would like to describe a few notable areas of these proposed Rules.

The blending of a medicinal cannabis program with a more encompassing “adult-use” industry for individuals over the age of twenty-one was one of the hallmark features of the Virgin Islands Cannabis Use Act passed by the 34th Legislature. In that regard, the proposed Rules outline the protocols and procedures for our residents to avail themselves of a medically authorized pathway to cannabis consumption and accompanying rights that include personal cultivation of up to twelve plants per qualified patient. The proposed Rules include details regarding the establishment of a registry of medical cannabis patients and practitioners who are authorized to certify that an individual has a qualifying condition that would benefit from the medicinal use of cannabis.

One of the greatest outcomes of an adult use cannabis industry in the VI will be that the cannabis items that our residents and visitors legally consume will be safe and free of molds, microbial contaminants or toxins. The frontlines for consumer product safety in this regard are regulations about cannabis testing and testing facilities. The proposed Rules establish protocols for sampling and testing cannabis plant material and cannabis products to ensure that every batch of flower, concentrate or manufactured product that hits the market has been tested for both safety and for potency. The proposed Rules also establishes an RFP process for the establishment of one OCR-certified testing facility on each of the three major islands in our Territory. There are also licensing procedures and requirements for other licensed Cannabis testing facilities that will be established to meet the demand of testing when the industry is at full maturation.

The Inventory Tracking System is another critical area of the proposed Rules. Commonly known as “seed-to-sale tracking”, the inventory tracking system is a system of software-based inventory management that will enable our regulators to track all cannabis plants

and cannabis product inventory among all growers, manufacturers and dispensaries in the Territory. This is a critical regulatory tool to ensure that legally cultivated cannabis is safe, properly taxed, and does not end up in the illicit market. The proposed Rules establish a process for the Cannabis Advisory Board to select a vendor that can provide a system of software and labeling to meet the requirements of our Territory's Inventory Tracking System. Licensed and permitted growers, manufacturers and retailers of cannabis would all be required to utilize inventory tracking systems that interface with the tracking system to be selected by the OCR.

Training licensees and permittees on how to use the inventory tracking system is one example of industry compliance training that is outlined in the Responsible Vendor Training Program section of the proposed Rules. This Program will require and provide essential training to employees working in the Cannabis industry. Each type of cannabis business would have separate training curricula for various categories of employees that would need to be completed within the first thirty days of employment. In order to achieve both consumer safety and business success, cannabis business managers and employees will need training for compliance with the proposed Rules. The Responsible Vendor Training Program is an insurance policy for the Government to ensure that participants in the industry know how to comply with the Rules to best protect consumers and the public.

The proposed Rules around how licenses and permits will be issued are critical for fairness among the entities seeking to participate in the cannabis industry in the Virgin Islands. The issue of who gets awarded one of the limited numbers of cultivation, dispensary or manufacturing licenses is a potentially contentious one in the public eye. In that regard, the Act passed by this body wisely included a Merit-Based Selection Process to govern the selection of major licenses under the Act. The proposed Rules detail this process and describes specific criteria and a scoring rubric used to give each applicant a published application score, helping to ensure that the review of applications is both transparent and fair and that applicants are keenly aware of what is required by the application process. The Rules outline a separate and simpler selection process for permits issued under the Act: the micro-cultivation permits for licensed farmers and cannabis use permits to enable businesses to meet the demand for legally permissible places to consume cannabis in our Territory.

Residents who have lived in the Territory for ten out of the last fifteen years or otherwise qualifies as a resident under 29 V.I.C. 1003(9)(c) are eligible for majority ownership of licenses under the Act. Other permits and certificates have different residency requirements. The proposed Rules add detail to the effort by this body to provide residents with economic opportunities in a jurisdiction where such opportunities are severely limited due to geography. Due to our size and island-based economies there are limited economic opportunities for residents such that this body with the approval of the Governor has determined that providing economic opportunity to residents serves a legitimate and compelling Government interest. The proposed Rules outline requirements for genuine ownership control of cannabis businesses and extensive rules for investors or other financial interest holders to ensure that our resident majority-owners are genuinely in control of and fairly benefitting from their cannabis licenses.

The proposed Rules also address the issue of fairness in issuing licenses through the Social Equity Plan mandated by the Act. Under the Act, four categories of residents are eligible for social equity points on their Merit-Based Application score when applying for licenses: individuals who have been subjected to the criminal justice system for cannabis prohibition violations, individuals who have been persecuted for their sacramental use of cannabis, female-owned entities and service-disabled veteran owned entities. The proposed Rules outline details on eligibility requirements for our residents to qualify as Social Equity Plan applicants.

The proposed Rules also address restorative justice concerns by outlining the specific cultivation rules for sacramental users. The Rastafarian population in our Territory has been subject to unnecessary persecution for their sacramental use of cannabis for many decades. As a matter of religious freedom for Rastafarians and others in our Territory who use cannabis for sacramental reasons, the Act wisely enables sacramental users to cultivate cannabis, both collectively and individually, for non-commercial purposes once they have met certain requirements under the Act and the Rules. The proposed Rules establish procedures for non-profit organizations representing sacramental users to become certified with the Office of Cannabis Regulation for the issuance of certificates to allow cultivation within specified limits, and for eligibility of individual sacramental users to cultivate and to qualify as Social Equity applicants.

Finally, the proposed Rules include numerous provisions to ensure that our younger citizens are not increasingly exposed to cannabis use, and to prevent increased cannabis consumption rates among young people. In Colorado's experience, a regulated cannabis industry does not have to accompany an increase in youth consumption rates if effective regulations are put in place. These include regulations regarding privacy barriers around licensed premises and designated consumption areas, regulations on advertising guidelines to prevent imagery that would appeal to young people, and strict identification requirements for entry into any cannabis business.

The proposed Rules and Regulations are the first step in the rollout of the cannabis industry in the Virgin Islands under the new Act. It is important that the Rules are consistent with the language and requirements contained in the Act such that it is important that we also address much needed amendments to the Act at this time so that the draft of the Rules can be revised as necessary to reflect the much needed amendments

Due to the condensed final period of drafting and revising the Act this past December, there is some language that needs to be fixed and corrections are needed right away to successfully roll out the Cannabis program. These proposed amendments are contained in the attached appendix. In addition to various scrivener errors, I would like to outline a few of these recommended amendments:

- 1.) In light of the fact that the VI Cannabis Use Act repealed and replaced the Virgin Islands Medical Cannabis Patient Care Act that enabled the Cannabis Advisory Board, it is important to amend the Act to explicitly restart the term length of existing Cannabis Advisory Board members with the signing of the Act by Governor Bryan on January 18th of this year and to ratify all actions taken by the Board under the Virgin Islands Medicinal Cannabis Patient Care Act.

- 2.) The distance requirements from cruise ship ports should be consistent across categories of cannabis businesses. The current language ranges this distance requirement from 250 feet to 1,000 feet depending on the business type. The proposed solution would be to make the premises for all license and permit categories at least 500 feet from cruise ship ports so as to safeguard the family friendly appeal of the most important sector of our tourism economy.

3.) To incentivize, motivate, and reward entrepreneurs interested in cultivating Virgin Islands specific Cannabis strains and Cannabis Products and in anticipation of the decriminalization of Cannabis on a federal level, which would hopefully allow for the marketing, sale and distribution of VI Cannabis products outside of the Territory, the inclusion of tax incentive benefits for individuals and businesses involved in Cannabis Research and Development would encourage greater interest and research and development. It would also provide tax incentive benefits for a younger and local population whose efforts are typically not rewarded by tax incentive benefits available to larger and more profitable companies.

4.) Micro-cultivation permits to cultivate cannabis are critical to our efforts to increase economic opportunities for our residents, particularly for our licensed farmers. The current language of the Act at section 779(c), stating that “no more than one Micro-Cultivation Permit may be issued for a single address” should be changed. Micro-Cultivation permittees should be able to farm cooperatively at the same location, pooling resources and enabling them to meet the sourcing requirements for cultivators and dispensaries.

It is a shared goal of Governor Bryan’s administration and of this body to provide the regulatory infrastructure for a thriving cannabis industry in the Virgin Islands that is safe for consumers, does not negatively affect our young people, adds significantly to our government’s tax base, and increases the economic opportunities for our residents. Embarking on the journey to legalized and regulated cannabis also gives our residents greater medicinal, religious and personal choice freedoms. Additionally, it has the potential to add valuable new dimensions to our Territory’s tourism product, especially when combined with the uniqueness of our beaches, music, food and culture. There are many steps ahead on this journey, and Office of the Governor looks forward to collaborating with the Legislature to build out this vision for the betterment of our Territory.

Thank you. I remain available to answer any of your questions.