

Proposed Changes to NCCR Regulation 5 *FOR ADOPTION*

New

~~{Deleted}~~

Added following 09/30/20-10/05/20 public comment period

Added following 10/12/20 Workshop

5.110 Requirements for transfer of all or a portion of ownership interest; reimbursement of costs to Board; notice to Board; disclosure of facts pertaining to representative capacity of certain persons to Board; permission of Board required for registering certain information in the books and records of the cannabis establishment; investigation.

1. A transfer of an ownership interest in any amount in a cannabis establishment is not effective until the Board has been notified on a form prescribed by the Board of the intent to transfer an ownership interest in the cannabis establishment and the Board has found that each person to whom an ownership interest is proposed to be transferred is individually qualified to be an owner of the cannabis establishment.

2. A cannabis establishment shall, in accordance with this section and upon submission of a statement signed by a person authorized to submit such a statement by the governing documents of the cannabis establishment, transfer all or any portion of its ownership to another party, and the Board shall transfer the license issued to the cannabis establishment to the party acquiring ownership, if the party who will acquire the ownership of the cannabis establishment submits:

(a) If the party will acquire the entirety of the ownership interest in the cannabis establishment, evidence satisfactory to the Board that the party has complied with the NCCR and Title 56 of the NRS for the purpose of operating the cannabis establishment;

(b) For the party and each person who is proposed to be an owner, officer or board member of the cannabis establishment, the name, address and date of birth of the person, a complete set of the fingerprints of the prospective cannabis establishment agent must be submitted by the applicant to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report; and

(c) Proof satisfactory to the Board that, as a result of the transfer of ownership, no person, group of persons or entity will, in a county whose population is 100,000 or more, hold more than one license for a cannabis establishment or more than 10 percent of the licenses for cannabis establishments allocated to the county, whichever is greater.

3. A cannabis establishment shall reimburse the Board for all costs incurred by the Board and Board Agents to determine whether any change in ownership or other change was made to

circumvent the provisions of this section which prohibit the transfer of a license for a cannabis establishment or to otherwise review or investigate a change in ownership.

4. A person shall not sell, purchase, assign, lease, grant or foreclose a security interest or otherwise transfer, convey or acquire in any manner whatsoever any interest of any sort whatsoever in or to any cannabis establishment or any portion thereof, whether the license for the cannabis establishment is conditional or not, or enter into or create a voting trust agreement or any other agreement of any sort in connection with any cannabis establishment or any portion thereof, except in accordance with this chapter and Title 56 of NRS.

5. A cannabis establishment shall notify the Board, on a form prescribed by the Board, each time an ownership interest in any amount in the cannabis establishment is transferred. This form must be signed by:

- (a) All owners of the cannabis establishment; or
- (b) All officers of the cannabis establishment; or
- (c) All board members of the cannabis establishment.

6. A person without a valid cannabis establishment agent registration card for a cannabis establishment shall notify the Board prior to any:

- (a) Transfer or conveyance of any interest in or to a cannabis establishment, or any portion thereof; or
- (b) investment therein; or
- (c) exercise of a significant level of control over; or
- (d) participation in the profits thereof

→by or to any person acting as agent or trustee or in any other representative capacity for or on behalf of another person. Such notification must disclose of all facts pertaining to such action, including, without limitation, a description of the reason for the transfer and any contract or other agreement describing the transaction. Such person must be issued a cannabis establishment agent registration card for the cannabis establishment at issue, on approval by the Board of the proposed action.

7. A cannabis establishment, or an owner, officer or board member thereof, shall not cause or permit any stock certificate or other evidence of beneficial interest in the cannabis establishment to be registered in the books or records of the cannabis establishment in the name of any person other than the true and lawful owner of the beneficial interest without the written permission of the Board.

8. If the person receiving an ownership interest is not a natural person, the recipient must disclose the percentage of the ownership interest in the cannabis establishment received by each person who has an ownership interest in the recipient.

9. A request to transfer an ownership interest in a cannabis establishment which holds a conditional license must be accompanied by a notarized attestation, signed by a person authorized to submit such an attestation by the governing documents of the cannabis establishment, declaring that the prospective owner will build and operate the cannabis establishment at standards that meet or exceed the criteria contained in the original application for the cannabis establishment.

10. The owners of a cannabis establishment may request the transfer of any portion or the entirety of the ownership interest in the cannabis establishment to any existing owner or combination of existing owners of the cannabis establishment by submitting to the Board:

- (a) A completed Transfer of Interest Form prescribed by the Board;
- (b) An affidavit by the owners of the cannabis establishment requesting the transfer affirming under oath that they are authorized to request the transfer of interest and all current owners and interested parties authorize and consent to the transfer of interest;
- (c) All contracts or other agreements which describe the ownership transaction;
and
- (d) Proof satisfactory to the Board that no monopoly will be created.

(e) If such transfer shall increase an ownership interest of an owner with less than a five (5) percent interest to an interest of five (5) percent or more, and this level of interest is maintained for forty-five (45) consecutive days, whether voting or beneficial, then all statutory and regulatory requirements pertaining to owners with five (5) percent interest or more apply as of thirty (30) days after the forty-fifth (45) consecutive day. The cannabis establishment must notify the Board within five (5) business days after it becomes aware of any ownership equal to or exceeding five (5) percent for more than forty-five (45) consecutive days. At the discretion of the Board, the thirty (30) day requirement set forth in this subsection may be extended upon written request of the licensee.

11. The owners of a cannabis establishment may request the transfer of any portion or the entirety of the ownership interest in the cannabis establishment to any natural person who holds an ownership interest in another cannabis establishment or any person whose ownership interest is entirely held by natural persons who hold an ownership interest in another cannabis establishment by submitting to the Board:

- (a) A completed Transfer of Interest Form prescribed by the Board;
- (b) An affidavit by the owners of the cannabis establishment requesting the transfer affirming under oath that they are authorized to request the transfer of interest and all current owners and interested parties authorize and consent to the transfer of interest;
- (c) All contracts or other agreements which describe the ownership transaction;
- (d) Identification of each cannabis establishment in which any person who is proposed to receive an ownership interest in the cannabis establishment which is the subject of the request holds an ownership interest;

(e) A proposed organizational chart for the cannabis establishment which is the subject of the request;

(f) A copy of any document required to be filed with the Secretary of State, if applicable;

(g) A copy of any document required to be revised as a result of the proposed transfer relating to a fictitious name, if applicable;

(h) An updated description of all shares issued in the cannabis establishment and the shares issued per owner as a result of the proposed transfer, if applicable;

(i) A copy of a business license issued to the cannabis establishment by a locality which is revised to reflect the proposed transfer, if applicable; and

(j) Proof satisfactory to the Board that no monopoly will be created.

12. The owners of a cannabis establishment may request the transfer of any portion or the entirety of the ownership interest in the cannabis establishment to any natural person, regardless of whether the natural person holds an ownership interest in another cannabis establishment, or any person whose ownership interest is not entirely held by natural persons who hold an ownership interest in another cannabis establishment by submitting to the Board:

(a) A completed Transfer of Interest Form prescribed by the Board;

(b) An affidavit by the owners of the cannabis establishment requesting the transfer affirming under oath that they are authorized to request the transfer of interest and all current owners and interested parties authorize and consent to the transfer of interest;

(c) All contracts or other agreements which describe the ownership transaction;

(d) A complete set of the fingerprints of the prospective cannabis establishment agent must be submitted by the applicant to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report;

(e) Proof that a complete application for a cannabis establishment agent registration card has been submitted for each person who will receive an ownership interest;

(f) A proposed organizational chart for the cannabis establishment;

(g) A copy of any document required to be filed with the Secretary of State, if applicable;

(h) A copy of any document required to be revised as a result of the proposed transfer relating to a fictitious name, if applicable;

(i) An updated description of all shares issued in the cannabis establishment and the shares issued per owner as a result of the proposed transfer, if applicable;

(j) A copy of a business license issued to the cannabis establishment by a locality which is revised to reflect the proposed transfer, if applicable; and

- (k) Proof satisfactory to the Board that no monopoly will be created.

13. The Board Agents will conduct such investigation of a request submitted pursuant to subsection 10, 11 or 12 and of each person proposed to receive an ownership interest in a cannabis establishment as a result of such a request as the Board Agents determine is necessary. If the Board, as a result of such an investigation, determines additional information is necessary to complete the investigation, the cannabis establishment shall submit such information to the Board in a timely fashion. Upon completion of the investigation, the Board will:

- (a) If the requested change in ownership does not violate any provision of the NCCR or Title 56 of NRS or any other relevant law or regulation:

- (1) Notify the cannabis establishment in writing that the request has been approved;

- (2) Update its records to reflect the new ownership of the cannabis establishment; and

- (3) Notify the locality in which the cannabis establishment is located of the change in ownership of the cannabis establishment.

- (b) If the requested change in ownership violates any provision of the NCCR, Title 56 of NRS or any other relevant law or regulation, notify the cannabis establishment in writing that the request has been denied and state the reason for denial.

14. Except for persons possessing a valid agent card and associated with a licensed cannabis establishment or licensed business entity, each employee, agent, personal representative, lender or holder of indebtedness of a cannabis licensee who, in the opinion of the Board, has the power to exercise a significant influence over the licensee's operation of a cannabis establishment may be required to apply for a license. A person required to be licensed pursuant to this section shall apply for a license within 30 days after the Board requests that the person do so.

5.112 Procedures for waiving requirements of NCCR 5.110 regarding any transfer of ownership of less than 5 percent.

1. The Board may waive the requirement to obtain Board approval for a transfer of a portion of ownership interest of less than 5 percent:

(a) The cannabis establishment can request a waiver of the requirement on a form prescribed by the Board, including, but not limited to, the following information:

(1) An explanation as to why Board approval should be waived for a transfer of ownership interest of less than 5 percent;

(2) A list of all owners of any ownership interest in the Cannabis Establishment, and their address, as of the date of the waiver application, *unless it is a person who holds an ownership interest of less than 5 percent of a publicly traded company then the disclosure will be pursuant to Regulation 5.127;*

(3) A certification by the cannabis establishment that any person who holds an ownership interest of less than 5 percent does not exert control or hold a position of authority over the cannabis establishment and any of the other persons who claim ownership in the cannabis establishment; and

(4) Any other information requested by the Board necessary to promote the health, safety, morals, good order and general welfare of the inhabitants of the State of Nevada and the declared policy of this State.

2. Any such waiver approved by the Board pursuant to this regulation, is valid for a time specified by the Board at its discretion.

3. The Board may deny or rescind any previously approved waiver pursuant to this regulation at its discretion.

4. For purposes of NRS 678B.340(4), with respect only to transfers of interest and cannabis establishment agent registration cards for those who do not volunteer or work at, contract to provide labor to or be employed by an independent contractor to provide labor to a cannabis establishment as a cannabis establishment agent, the term “prospective cannabis establishment agent” shall be deemed to exclude any passive investor in a company owning less than 5 percent of the shares of that company.

5.125 Policies and procedures for waiving requirement to obtain a cannabis agent registration card for any owner, officer and board member who holds an ownership interest of less than 5 percent.

1. The Board may waive the requirement to obtain a cannabis agent registration card for any person who holds an ownership interest of less than 5 percent in a cannabis establishment if:

(a) The person or cannabis establishment requests waiver of the requirement on a form prescribed by the Board, including the following information:

(1) An explanation as to why the cannabis agent registration card requirement should be waived for the person who holds an ownership interest of less than 5 percent;

(2) Identification and address for each person asking for a waiver of the cannabis agent registration card requirement, *unless it is a person who holds an ownership interest of less than 5 percent of a publicly traded company then the disclosure will be pursuant to Regulation 5.127;*

(3) A certification by the cannabis establishment that the person who holds an ownership interest of less than 5 percent does not exert control or hold a position of authority over the cannabis establishment or any of the other persons who claim ownership in the cannabis establishment; and

(4) Any other information requested by the Board necessary to promote the health, safety, morals, good order and general welfare of the inhabitants of the State of Nevada and the declared policy of this State; *and*

(5) If a person who holds an ownership interest of less than 5 percent is found to exert control or hold a position of authority over the cannabis establishment that person will be required to obtain a cannabis agent registration card.

2. Any such waiver approved by the Board pursuant to this regulation, is valid for a time specified by the Board at its discretion.

3. The Board may deny or rescind any previously approved waiver pursuant to this regulation at its discretion.

4. For purposes of NRS 678B.340(4), with respect only to transfers of interest and cannabis establishment agent registration cards for those who do not volunteer or work at, contract to provide labor to or be employed by an independent contractor to provide labor to a cannabis establishment as a cannabis establishment agent, the term “prospective cannabis establishment agent” shall be deemed to exclude any passive investor in a company owning less than 5 percent of the shares of that company.

5.127 When a publicly traded company must give an updated list of owners to the Board.

1. Within seven (7) days following notice of the annual meeting or general meeting of shareholders, each publicly traded company having an ownership interest in a cannabis establishment shall notify the Board of the date of its next annual meeting and shall provide a copy of the shareholder notice and meeting information circular to the Board.

2. A publicly traded company having an interest in a cannabis establishment, or cannabis establishment registered with a stock exchange and/or each establishment offering, having offered, or planning to offer shares for sale or portions of a company for sale must submit disclosures annually within thirty (30) days following the company's annual meeting and also at any other time when a general shareholders meeting is required relating to changes of control of the public company. Such disclosures must include:

(a) An updated list of all officers and board members, and an updated list of all owners with an ownership interest of five (5) percent or more as of the record date disclosed to the CCB under 5.127(1) above, whether voting or beneficial interest including a valid and current name and address of each person disclosed;

(b) An updated list of all beneficial owners regardless of amount or type of ownership. If a list of all beneficial owners cannot be obtained through reasonable cost and/or effort, the publicly traded company must provide an updated list of all non-objecting beneficial owners having an ownership interest in the cannabis establishment as of the record date disclosed to the CCB under 5.127(1), and explain why it cannot obtain a full list of all beneficial owners through reasonable cost and effort;

3. These are minimum requirements and do not in any way abridge or impact the Board or CCB staff from requesting further information or documentation. This section does not remove any requirements that would otherwise apply to a publicly traded company or any other entity subject to regulation by the Nevada Cannabis Compliance Board.