

HOUSE BILL REPORT

E2SHB 2870

As Passed House:
February 16, 2020

Title: An act relating to allowing additional marijuana retail licenses for social equity purposes.

Brief Description: Allowing the issuance and reissuance of marijuana retail licenses under the social equity program.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Pettigrew and Ryu; by request of Liquor and Cannabis Board).

Brief History:

Committee Activity:

Commerce & Gaming: 2/3/20, 2/6/20 [DPS];

Appropriations: 2/10/20, 2/11/20 [DP2S(w/o sub COG)].

Floor Activity:

Passed House: 2/16/20, 55-41.

Brief Summary of Engrossed Second Substitute Bill

- Establishes a Marijuana Social Equity Program (Program) that authorizes the Liquor and Cannabis Board (LCB) to issue previously forfeited, cancelled, and revoked marijuana retailer licenses to applicants disproportionately impacted by the enforcement of marijuana prohibition laws.
- Establishes a Technical Assistance Competitive Grant Program under the Department of Commerce to provide technical assistance grants to marijuana retail license applicants that submit a Social Equity Plan.
- Establishes a Marijuana Social Equity Task Force (Task Force) to make recommendations to the LCB, including to establish and develop the Program.
- Requires the Task Force to submit a report of recommended policies to the Governor and the Legislature by December 1, 2020, which must include a recommendation on whether to issue new marijuana licenses.
- Authorizes the LCB to adopt rules to implement the recommendations of the Task Force.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON COMMERCE & GAMING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Peterson, Chair; Kloba, Vice Chair; Blake, Kirby, Morgan and Ramel.

Minority Report: Do not pass. Signed by 5 members: Representatives MacEwen, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Jenkin, Vick and Young.

Staff: Kyle Raymond (786-7190).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Commerce & Gaming. Signed by 19 members: Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Chopp, Cody, Dolan, Fitzgibbon, Hansen, Hudgins, Kilduff, Macri, Pettigrew, Pollet, Ryu, Senn, Springer, Sullivan, Tarleton and Tharinger.

Minority Report: Do not pass. Signed by 12 members: Representatives Stokesbary, Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Corry, Dye, Hoff, Kraft, Schmick, Steele, Sutherland and Ybarra.

Minority Report: Without recommendation. Signed by 1 member: Representative Mosbrucker.

Staff: Linda Merelle (786-7092).

Background:

Marijuana Retail Licenses.

The Liquor and Cannabis Board (LCB) is authorized to issue licenses to marijuana retailers to sell marijuana products and paraphernalia at retail to persons at least 21 years of age.

The LCB must consult with the Office of Financial Management (OFM) to determine the maximum number of marijuana retail outlets that may be licensed in each county. When setting the maximum number of licenses, the LCB and the OFM must consider:

- population distribution;
- security and safety issues;
- the provision of adequate access to licensed sources of marijuana and marijuana products to discourage purchases from the illegal market;
- the number of retail outlets holding medical marijuana endorsements necessary to meet the medical needs of qualifying patients; and
- information contained in the medical marijuana authorization database.

Department of Commerce.

The Department of Commerce (Department) is responsible for growing and improving jobs as well as facilitating innovation in the state. The Department provides business assistance and economic development services primarily through sector-based and cluster-based regional organizations in order to:

- generate greater local capacity to respond to economic growth and environmental challenges;
- promote partnerships and the use of intermediaries to achieve the Department's goals; and
- leverage state resources.

The Department is responsible for promoting community and economic development statewide by assisting communities to increase economic vitality and the quality of citizens' lives, and assisting the state's businesses to maintain and increase economic competitiveness while maintaining a healthy environment. The Department's community and economic development efforts include, but are not limited to: increasing economic opportunity, engaging in business and trade development, and fostering the development of minority- and women-owned businesses.

Washington State Commission on African American Affairs.

The Washington State Commission on African American Affairs (Commission) consists of membership appointed by the Governor. The Commission's powers and duties include examining and defining issues pertaining to the rights and special needs of the African American community, making recommendations to the Governor and state agencies on programs and laws, and advising the Governor or agencies on the development of policies and programs that relate to the needs of needs of the African American community. The Commission must also advise the Legislature on issues of concern to the African American community in concert with the Governor.

Dedicated Marijuana Account.

The Dedicated Marijuana Account is an appropriated account. All moneys received by the LCB from marijuana-related activities must be deposited in this account. These moneys include marijuana excise taxes collected from sales of marijuana and marijuana products, license fees, penalties, and forfeitures from marijuana producers, processors, researchers, and retailers. Moneys from the account are distributed to agencies, local governments, and to the Basic Health Plan Trust Account. At the end of each fiscal year, unappropriated amounts in the Dedicated Marijuana Account are transferred to the State General Fund.

Summary of Engrossed Second Substitute Bill:

Social Equity Plan, Goals, and Applicants.

Social Equity Plan. A Social Equity Plan (Plan) is a plan that addresses some of the following elements:

- a statement that the applicant qualifies as a social equity applicant and intends to own at least 51 percent of the proposed marijuana retail business;
- a description of how issuing a marijuana retail license to the social equity applicant will meet social equity goals;
- the social equity applicant's personal or family history with the criminal justice system, including any offenses involving marijuana;

- the composition of the workforce the social equity applicant intends to hire;
- neighborhood characteristics of the location where the social equity applicant intends to operate, focusing on the disproportionate historical impacts of marijuana prohibition; and
- business plans involving partnerships or assistance to organizations or residents with connection to populations with a history of disproportionate impact and harm related to enforcement of marijuana prohibition.

If the application proposes ownership by more than one person, at least 51 percent of the proposed ownership structure must qualify as a social equity applicant.

The LCB may add additional plan components or requirements following consultation with certain marijuana social equity stakeholders.

Social Equity Goals. Social equity goals include: (1) increasing the number of marijuana retailer licenses held by people from communities that have suffered a disproportionate number of marijuana arrests beginning January 1, 1988; and (2) reducing accumulated harm suffered by individuals, families disproportionate impacts from marijuana prohibition enforcement.

Social Equity Applicant. A social equity applicant is an applicant with majority ownership and control by at least one individual who: (1) has resided in a disproportionately impacted area for at least five of the preceding 10 years; or (2) has been convicted of a misdemeanor marijuana offense or is a family member of such an individual.

A "disproportionately impacted area" is a census tract or comparable geographic area with a high rate of: (1) poverty and unemployment; (2) participation in income-based or state programs; and (3) arrest, conviction, and incarceration related to the sale, possession, use, cultivation, manufacture or transport of cannabis.

The LCB may further define criteria for what is considered a "disproportionately impacted area" after consultation with the Commission and other stakeholders.

Marijuana Social Equity Program.

The Social Equity Program (Program) is established under the LCB. From December 1, 2020, through July 1, 2028, marijuana retailer licenses that have been subject to forfeiture, revocation, or cancellation by the LCB may be issued or reissued to a social equity applicant who meets the marijuana retailer license requirements. In addition, marijuana retailer licenses that were not previously issued by the LCB, but could have been issued without exceeding the statewide limit, may be issued under the Program.

To be considered for a retail license, applicants must submit a Plan and other LCB marijuana retailer license requirements to the LCB. Persons holding an existing marijuana retailer license or title certificate for a marijuana retailer business in a local jurisdiction subject to a ban or moratorium on marijuana retail businesses may apply for a license under the Program.

In determining the issuance of a license among applicants, the LCB may give priority to social equity applicants based on the extent to which the application addresses the components of the Plan.

The LCB may deny applications that do not meet social equity goals or Plan requirements, or applicants that do not otherwise meet licensing requirements. The LCB may also deny applications if additional marijuana retailer licenses are not needed to meet social equity goals in that city, town, or county.

The LCB may adopt rules related to the issuance or reissuance of marijuana retail licenses under the Program. The rules may include strategies for receiving advice on the Program from communities that the Program is intended to benefit. The rules may also require licenses awarded be transferred or sold only to individuals or groups of individuals who comply with the requirements for initial licensure in the Program.

Technical Assistance Program.

A Marijuana Social Equity Technical Assistance Competitive Grant Program (Competitive Grant Program) is established under the Department of Commerce (Department).

The Competitive Grant Program must award grants on a competitive basis to marijuana retail license applicants who are submitting a Plan. The Department must award grants primarily based on the strength of the Plan submitted by applicants, but they may also consider additional criteria deemed necessary or appropriate. Technical assistance activities eligible for funding under the Competitive Grant Program include:

- assistance navigating the marijuana retailer licensure process;
- marijuana-business specific education and business plan development;
- regulatory compliance training;
- financial management training and assistance in seeking microloans; and
- connecting social equity applicants with established industry members, tribal marijuana enterprises, programs for mentoring, and other forms of support approved by the LCB.

Dedicated Marijuana Account Appropriations. The Competitive Grant Program is funded with a \$1.1 million annual appropriation from the Dedicated Marijuana Account.

Marijuana Social Equity Task Force.

The Marijuana Social Equity Task Force (Task Force) is established. The purpose of the Task Force is to make recommendations to the LCB on, among other topics, establishing a program for the issuance and reissuance of marijuana retail licenses. The Task Force must also advise the Governor and the Legislature on policies that will facilitate the development of Program.

The Task Force is composed of both legislative and non-legislative members. The President of the Senate and the Speaker of the House of Representatives jointly appoint the members of the Task Force, which include:

- a member of the Commission;
- a member of the Washington State Commission on Hispanic Affairs;
- a member of the Governor's Office of Indian Affairs;

- a member from an organization representing the African American community;
- a member from an organization representing the Latinx community;
- a member from the LCB;
- a member from the Office of the Attorney General;
- a member of the Association of Washington Cities;
- two members that currently hold a marijuana retail license; and
- two members that currently hold a producer or processor license, or both.

The Chair of the Task Force may also invite additional individuals representing other sectors to the task force to participate in an advisory capacity in meetings, in consultation with the appointed members of the Task Force.

The Task Force must submit a report on recommended policies that will facilitate the development of a marijuana social equity program in Washington to the Governor and the Legislature by December 1, 2020. The recommendations from the Task Force must include whether any additional marijuana licenses should be issued beyond the existing total amount of marijuana licenses.

The LCB may adopt rules to implement the recommendations of the Task Force.

Additional Task Force Provisions. The Task Force is required to hold its first meeting by July 1, 2020. The Task Force is required to elect a Chair from among its legislative members at the first meeting.

A public comment period must be provided at every Task Force meeting. Staff support for the Task Force must be provided by Senate Committee Services and the House of Representatives Office of Program Research.

The Task Force expires June 30, 2028.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Commerce & Gaming):

(In support) Marijuana is a new industry that's generating revenue for the state. However, for a number of years, marijuana-related crimes have incarcerated a number of people disproportionately because they were distributing marijuana. Now that marijuana is legal, these same individuals do not have access to legally benefit from the success of the industry. Washington has a responsibility to look at ways to create a balanced opportunity for everyone in the state and create a system that works for everyone. Equity is needed in the marijuana industry, and these changes need to happen expeditiously.

This bill is agency request legislation from the Liquor and Cannabis Board (LCB), and the bill reflects a top priority of the LCB. Initiative 502 missed an opportunity to incorporate a social equity focus from the beginning. States that have legalized cannabis after Washington have incorporated a social equity component into their laws. States that have done this include New York, Massachusetts, Illinois, and California.

Marijuana social equity includes two main components. First, the new cannabis industry should reflect the diverse population of our state. Second, social equity challenges us to create economic opportunity in a cannabis industry for people from communities that have been disproportionately harmed by cannabis prohibition. The history of cannabis prohibition shows abundant evidence there was disproportionate harm in communities of color, and those harmful effects remain with us today. This bill is an effort to create economic opportunity for people in communities that were disproportionately harmed by the war on drugs.

Social equity aims to reduce the barriers that exist for people of color in obtaining new cannabis licenses and provide economic opportunity for those with existing licenses.

This issue is beyond the issuance of licenses. This is about changing the distribution of wealth in the marijuana industry. When marijuana licenses were first issued, only individuals or companies with a lot of financial resources were able to obtain and implement licenses consistent with requirements from the then Liquor and Control Board. This legislation provides an opportunity to advance social equity.

(Opposed) There is a lot of revenue in the marijuana industry, but there is not a lot of profit. Currently, 40 percent of marijuana retail locations in the state are not profitable. It is important to ensure that in meeting social equity goals the state allows for businesses to be successful. The component of the bill that provides business assistance is a more appropriate social equity goal, rather than awarding new cannabis licenses.

The bill would require cities to take on an additional burden in deciding whether or not they want additional retailer licenses in their community. Cities would need to make this decision based on the social equity factors contained in the bill, which would create an administrative burden for cities. The bill should be amended to distribute only the unused licenses. From that point forward, the Legislature can see how the market reacts and later determine whether or not more licenses should be issued or whether a different approach to create greater social equity should be pursued.

Retailers are the smallest group of licensees. This bill needs to be changed to be more inclusive, including having the Social Equity Program include testing, nurseries, business incubation, and women- and minority-owned certified businesses. The bill should eliminate application fees. The bill should allow for safe consumption spaces for marijuana. Protections need to be put in place to ensure that new licenses are not being sold to the highest bidder.

To build a true social equity plan, funding should go into other programs that support all businesses, such as a community bank that has state and other funding mechanisms.

(Other) There are millions of dollars made from cannabis that flow into communities that are not communities of color. This bill is a first step in ensuring the state can address these inequities in the marijuana industry.

The Washington CannaBusiness Association supports the component of the bill that allows the existing revoked or cancelled licenses to be issued immediately through an equity lens. One concern is requiring cities to request new licenses. The LCB should be responsible for issuing new licenses, and this should be based on an analysis of market demand. This is what the LCB did when licenses were initially issued. Based on that analysis, the LCB could then suggest a pathway for additional licenses in various jurisdictions. The upcoming United State Census Bureau data could provide a good source of data for this analysis.

The bill is too narrow. Marijuana producers and processors would also benefit by promoting greater minority participation, and the bill should be expanded to make available forfeited producer licenses for minority applicants.

There are two elements to meet the strict scrutiny standard. First, there has to be a compelling interest to remediate race discrimination. Second, such evidence has to consist of the entity's passive support of a system of racial exclusion. The first two paragraphs of the bill support both of those elements. Any remedy adopted must be narrowly tailored to that discrimination. The program should be directed at African American people that were discriminated against, which would meet the strict scrutiny standard.

Staff Summary of Public Testimony (Appropriations):

(In support) The policies in this bill represent an attempt to make the distribution of the marijuana licenses more accessible and to assist the LCB with developing a better system for distributing licenses. Many communities of color were left out of ownership, and those who are in the business have experienced discrimination and sabotage. Those who suffered under the "War on Drugs" should be able to benefit from the generational transfer of wealth. This bill provides social equity, personal accountability, and responsibility and will drive more revenue to marginalized communities.

(Opposed) None.

Persons Testifying (Commerce & Gaming): (In support) Representative Pettigrew, prime sponsor; Rick Garza, Liquor and Cannabis Board; and Angel Swanson, Cannabis Advisory Council.

(Opposed) Kyle Capizzi, Craft Cannabis Coalition; Aaron Bossett, Black Cannabis Commission; and Sharon Swanson, Association of Washington Cities.

(Other) Paula Sardinas and Will Hausa, Commission on African American Affairs; Peter Manning and Aaron Barfield, Black Excellence in Cannabis; Orlando Huff; Vicki Christophersen, Washington CannaBusiness Association; Chris Marr, Chris Marr Government Affairs; and Kristen Baldwin, The Cannabis Alliance.

Persons Testifying (Appropriations): Representative Pettigrew, prime sponsor; Paula Sardinias, Washington State Commission on African American Affairs; Joy Hollingsworth, The Hollingsworth Cannabis Company; and Sami Saad, Sudanese American Unity Association.

Persons Signed In To Testify But Not Testifying (Commerce & Gaming): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.