

HOUSE BILL REPORT

HB 2022

As Reported by House Committee On:
Commerce & Gaming

Title: An act relating to social equity in the cannabis industry.

Brief Description: Concerning social equity in the cannabis industry.

Sponsors: Representatives Wicks, Johnson, J., Berry, Taylor, Riccelli, Ryu, Sells, Macri, Bateman, Orwall, Ormsby, Lekanoff and Pollet.

Brief History:

Committee Activity:

Commerce & Gaming: 1/28/22, 2/3/22 [DPS].

Brief Summary of Substitute Bill

- Requires the Liquor and Cannabis Board to make available 38 new cannabis retailer licenses and 25 new cannabis producer/processor licenses each year between 2022 and 2029 to social equity applicants.
- Limits the issuance of cannabis producer, processor, retailer, and any new license types created through 2029 so licenses may only be issued to social equity applicants and, beginning in 2030, requires 50 percent of new cannabis licenses issued to be to social equity applicants.
- Authorizes licenses issued through the social equity program to be for premises in any local jurisdiction that permits the business activity.
- Waives the annual licensing fee for cannabis social equity licensees.
- Changes the definition of "social equity applicant" and eliminates the requirement to submit a social equity plan.
- Creates a process for prioritizing applications for the new licenses.
- Modifies cannabis excise tax distributions including allocating money for grants, low-interest loans, and technical assistance.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not 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 5 members: Representatives Kloba, Chair; Wicks, Vice Chair; Kirby, Morgan and Wylie.

Minority Report: Do not pass. Signed by 4 members: Representatives MacEwen, Ranking Minority Member; Robertson, Assistant Ranking Minority Member; Chambers and Vick.

Staff: Peter Clodfelter (786-7127)

Background:

The Social Equity in Cannabis Task Force.

The Legislature established the Social Equity in Cannabis Task Force (SECTF) in 2020 (modified in 2021) to make recommendations to the Liquor and Cannabis Board (LCB) including on establishing a social equity program for the issuance and re-issuance of existing retail, processor, and producer cannabis licenses, and to advise the Governor and the Legislature on policies to facilitate development of a cannabis social equity program. The SECTF includes legislators, agency representatives, community members, and cannabis industry licensee representatives. The SECTF issued recommendations to the LCB and the Legislature in January 2022 and the work of the SECTF continues with a December 2022 due date for a report to the Governor, the LCB, and the Legislature.

Cannabis Licensing.

The LCB licenses and regulates cannabis producers, processors, and retailers. The annual license fee for each of those license types is \$1,381 per year. A cannabis research license, as well as a transportation license, is also available.

In consultation with the Office of Financial Management, the LCB determines the maximum number of cannabis retail outlets that may be licensed in each county, taking into consideration: (1) population distribution; (2) security and safety issues; (3) the provision of adequate access to cannabis products to discourage purchases from the illegal market; and (4) the number of retail outlets holding a medical endorsement necessary to meet medical needs of qualifying patients. Originally, the LCB set a statewide limit of 334 retail licenses, which in 2015, following legislative action, was increased to 556 retail licenses. Retail licenses may not be moved out of the county in which they were allocated by the LCB.

There are currently over 1,000 businesses licensed as cannabis producers, processors, or as both producers and processors. Currently, except through the social equity program, the LCB is not accepting new applications for cannabis producer, processor, or retailer licenses. As a part of the social equity program, beginning December 1, 2020, until July 1,

2029, cannabis retailer licenses that have been subject to forfeiture, revocation, or cancellation by the LCB, or cannabis retailer licenses that were not previously issued by the LCB but could have been issued without exceeding the limit on the statewide number of cannabis retailer licenses established before January 1, 2020, may be issued to social equity applicants.

Social equity applicants must submit a social equity plan and meet social equity goals along with other cannabis retailer license requirements. The LCB may adopt rules to implement the program and may require that licenses awarded through the program be transferred or sold only to individuals who comply with the requirements for initial licensure as social equity applicants with a social equity plan.

"Social Equity Applicant" Definition.

A "social equity applicant" is currently defined as the following:

- an applicant who has at least 51 percent ownership and control by one or more individuals who have resided in a disproportionately impacted area for a period of time defined in rule by the LCB after consultation with the Commission on African American Affairs and other commissions, agencies, and community members as determined by the LCB;
- an applicant who has at least 51 percent ownership and control by at least one individual who has been convicted of a cannabis offense, a drug offense, or is a family member of such an individual; or
- an applicant who meets criteria defined in rule by the LCB after consultation with the Commission on African American Affairs and other commissions, agencies, and community members as determined by the LCB.

"Disproportionately Impacted Area" Definition.

A "disproportionately impacted area" is currently defined as a census tract or comparable geographic area that satisfies the following criteria, which may be further defined in rule by the LCB after consultation with the Commission on African American Affairs and other agencies, commissions, and community members as determined by the LCB:

- the area has a high poverty rate;
- the area has a high rate of participation in income-based federal or state programs;
- the area has a high rate of unemployment; and
- the area has a high rate of arrest, conviction, or incarceration related to the sale, possession, use, cultivation, manufacture, or transport of cannabis.

"Social Equity Plan" Definition.

A "social equity plan" is currently defined as a plan that addresses at least some of the following elements, along with any additional plan components approved by the LCB following consultation with the SECTF:

- a statement that the applicant qualifies as a social equity applicant and intends to own at least 51 percent of the proposed cannabis retail business, or applicants representing at least 51 percent of the ownership of the proposed business qualify as social equity

- applicants;
- a description of how issuing a cannabis retail license to the applicant will meet social equity goals;
- the applicant's personal or family history with the criminal justice system including any offenses involving cannabis;
- the composition of the workforce the applicant intends to hire;
- neighborhood characteristics of the intended location, focusing especially on disproportionately impacted areas; and
- business plans involving partnerships or assistance to organizations or residents connected to populations with a history of high rates of enforcement of cannabis prohibition.

Cannabis Excise Tax Distributions.

Cannabis excise taxes and license fees are deposited in the Dedicated Marijuana Account and appropriations are directed to specific recipients and accounts through a formula. Within the current appropriations are \$1.65 million for fiscal year (FY) 2022 and \$1.65 million for FY 2023 to the Department of Commerce to fund the Cannabis Social Equity Technical Assistance Grant Program, and also \$163,000 for FY 2022 and \$159,000 for FY 2023 to the Department of Commerce to establish a roster of mentors as part of the cannabis social equity program.

Roster of Mentors.

The Department of Commerce may contract to establish a roster of mentors who are available to support and advise social equity applicants and licensees who meet social equity applicant criteria. Contractors must: (1) have knowledge and experience demonstrating their ability to effectively advise eligible applicants and licensees in navigating the state's licensing and regulatory framework or on producing and processing cannabis; (2) be a business that is at least 51 percent minority or woman-owned; and (3) meet reporting and invoicing requirements of the Department of Commerce.

Summary of Substitute Bill:

Cannabis Licenses for Qualifying Social Equity Applicants.

Beginning in calendar year 2022 and in each calendar year through 2029, the Liquor and Cannabis Board (LCB) must make available 38 new cannabis retailer licenses and 25 new cannabis producer/processor licenses each year to applicants who qualify as social equity applicants. A restriction on not exceeding the statewide number of retail licenses established before January 1, 2020, is eliminated from the LCB's current authority to issue or reissue retailer licenses to social equity applicants.

Restrictions on Issuing Cannabis Licenses.

The LCB is prohibited from issuing new cannabis producer, processor, and retailer licenses through December 31, 2029, except for through the social equity program to social equity

applicants. It is specified this restriction also applies to any new commercial cannabis license type that the Legislature may create in the future, through December 2029. Beginning January 2030, at least 50 percent of the total number of new licenses issued for cannabis producer, processor, retailer licenses, and any new commercial cannabis license types, must be issued to applicants who qualify as social equity applicants.

License Fees and Licensed Premises Location.

The annual fee is waived for issuance, reissuance, or renewal of cannabis licenses issued through the social equity program. All licenses issued through the social equity program may be for premises in any county, city, or town that permits the cannabis business activity at the proposed location, regardless of the limit on the number of retail licenses per county otherwise established by the LCB.

"Social Equity Applicant" Definition.

The definition of "social equity applicant" is amended as follows:

- to require an applicant to reside in a disproportionately impacted area for at least six months out of the last 60 years, if qualifying based on living in a disproportionately impacted area for a specified time; and
- to specify that a person may qualify as a social equity applicant if they have at least 51 percent ownership and control by at least one individual who was disproportionately harmed by the war on drugs as evidenced by rates of arrest for marijuana possession offenses.

The Office of Equity is added and the Commission on African American Affairs is removed from the agencies and community members that LCB must consult when defining further criteria in rule on qualifying as a social equity applicant.

Social Equity Plans.

The requirement that an applicant must submit a social equity plan is replaced with a requirement that an applicant must submit documentation to verify qualification status. References to social equity plans and certain references to social equity goals are eliminated.

Prioritizing Applications.

In determining the issuance of a license among applicants, the LCB, in consultation with the Office of Equity and community organizations, must select a third-party contractor to prioritize applicants and the LCB must review applications based on the priority set by the third-party contractor. The third-party contractor must prioritize applicants based on a scoring rubric developed by the LCB with input from the Social Equity in Cannabis Task Force and approved by the Office of Equity.

Rules on License Transfer.

Rules adopted by the LCB must require that licenses awarded through the social equity program be transferred or sold only to individuals who comply with the requirements for

initial licensure as a social equity applicant for a period of at least 5 years from the date of transfer or sale.

Agency Consultation.

The Office of Equity is added and the Commission on African American Affairs is removed from the agencies/commissions consulted on further defining the definition of "disproportionately impacted area." Also, to be a contractor on the roster of mentors available to support and advise social equity applicants/licensees, an additional requirement is added that a contractor must be approved through the Office of Equity.

Cannabis Excise Tax Distributions.

Appropriations are directed from the Dedicated Marijuana Account, on an annual basis, to the Department of Commerce, for grants, low-interest loans, and technical assistance under the cannabis social equity program. The existing Cannabis Social Equity Technical Assistance Grant Program administered by the Department of Commerce is changed to the Cannabis Social Equity Grant, Low-Interest Loan, and Technical Assistance Program. The amount of \$22.5 million is provided to the Department of Commerce, annually, to fund cannabis social equity grants and low-interest loans for licensees under the social equity program. The amount of \$1.1 million is provided to the Department of Commerce, annually, to make available technical assistance to cannabis license applicants and licensees within the cannabis social equity program, including establishing a roster of mentors to provide technical assistance.

Grants and Low-Interest Loans.

The Department of Commerce may award grants to cannabis producers, processors, and retailers licensed under the cannabis social equity program. Eligible activities for grants include, but are not limited to the following: (1) fees associated with a loan; (2) costs associated with complying with a state or local licensing requirement; and (3) capital equipment costs. Grant awards may be up to \$100,000 per eligible applicant. Eligible applicants may apply for one grant annually, not to exceed a total of three grant awards.

The Department of Commerce may work with participating lenders to make low-interest loans available for licensees under the social equity program. The Department of Commerce may reserve a portion of funds allocated or received to support loan loss reserves, collateral supports, or other efforts to reduce underwriting risk for participating lenders. Eligible business-related expenses for loan applicants include the following: (1) capital and equipment costs; (2) commercial property including, but not limited to, purchases and improvements; and (3) operating lines of credit and other costs associated with industry-accepted lending practices.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes compared to the original bill:

- eliminates the requirement that the Liquor and Cannabis Board (LCB) must "issue"

- each of the new cannabis licenses in each calendar year beginning in 2022 through 2029, while retaining the requirement that the LCB must "make available" the licenses each calendar year beginning in 2022 through 2029;
- eliminates a reference to the word "mobile" while retaining the authorization for cannabis licenses issued under the social equity program to be for premises located within any city, county, or town in the state that permits the cannabis business activity at the proposed location;
 - restores current law by eliminating all proposed changes to distance requirements in cannabis licensing;
 - modifies proposed changes to the prioritization process for cannabis licenses under the social equity program so that the LCB, in consultation with the Office of Equity and community organizations, must select a third-party contractor to prioritize applicants based on a scoring rubric developed by the LCB with input from the Social Equity in Cannabis Task Force and approved by the Office of Equity;
 - modifies proposed changes to the definition of "social equity applicant" so that: (1) for applicants qualifying based on living in a disproportionately impacted area, the time period applicants must reside in the area is at least six months out of the last 60 years instead of at least five years out of the last 60 years; and (2) for applicants qualifying based on being disproportionately harmed by the war on drugs as evidenced by rates of arrest for cannabis possession offenses, the express requirement that an applicant be a racial minority is eliminated; and
 - modifies the proposed Cannabis Social Equity Grant, Low-Interest Loan, and Technical Assistance Program administered by the Department of Commerce as follows: (1) combines the proposed annual \$15 million for grants and \$7.5 million for low-interest loans to \$22.5 million annually for grants and low-interest loans; (2) limits grants and loans to licensees under the social equity program, so applicants are not eligible for grants and loans but are eligible for technical assistance; (3) specifies the Department of Commerce "may" instead of "must" award grants and loans; (4) adds eligible activities for grants, limits grants to \$100,000 per eligible applicant, and specifies that eligible applicants may apply for one grant annually and three total grant awards; (5) specifies eligible business-related expenses for which loans are available; and (6) authorizes the Department of Commerce to work with participating lenders to make loans and to reserve a portion of funds allocated or received in order to support loan loss reserves and reduce underwriting risk.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 4, relating to the Liquor and Cannabis Board's rulemaking authority, which takes effect July 1, 2024.

Staff Summary of Public Testimony:

(In support) The bill incorporates many of the recommendations of the Social Equity in Cannabis Task Force (SECTF) and it is time for this bold step. The bill starts the process of correcting past wrongs. It will support entrepreneurship in communities that have been left out, or pushed out, of the industry, and will create jobs and wealth. With billions of dollars in cannabis sold since sales began after Initiative 502 (I-502) passed, data shows that communities of color have not been included in the economic opportunities to build wealth created by legal cannabis. African Americans currently represent only 2 or 3 percent of the cannabis industry and this bill is a necessary step to open economic opportunities. The bill would lead to the establishment of 63 new businesses this year alone for individuals in communities historically left out. In addition to working to right past wrongs, the bill helps the cannabis industry overall. There is agreement on the intended outcome of using a scoring rubric to prioritize applicants and, of the two possible versions, the Liquor and Cannabis Board's (LCB) proposal, which is modeled on the rubric proposed by the SECTF, is preferred. The LCB is committed to adopting a cannabis social equity program that is impactful and can withstand legal challenges. The rubric developed by the LCB is robust and protective of the program's goals. The provisions in the original bill about prioritizing applicants and the use of the third-party contractor for this purpose should be amended so the LCB retains authority to prioritize applicants in consultation with the Office of Equity. There are some concerns about administrative challenges related to the grants and loans, but the Department of Commerce supports the bill and those concerns can be resolved. The bill is a step toward equity, restoration, and economic inclusion for communities devastated by the war on drugs and other practices. Black owners of former medical cannabis stores experienced brutal discrimination and are currently experiencing psychological and economic trauma. When I-502 passed, black and brown people were left out of the profitable industry. The communities who directly experienced harms of historical policies on cannabis are currently being told they can purchase cannabis but cannot participate as owners in the industry. This bill is one step in addressing historical wrongs. There has been consolidation in the cannabis industry and currently there are only about 200 people who own all the cannabis retail licenses. There is a lack of diversity in all aspects of the industry including with ownership of producers and process. Action needs to be taken to increase diversity in the industry before it is too expensive to enter the market. The industry needs a shot in the arm of diversity and inclusion.

(Opposed) There is not opposition to social equity in the cannabis industry, only to the specific approach in the bill to address equity. There are more appropriate ways to rectify past wrongs to communities than to issue cannabis licenses exclusively to those communities. Consider options like helping people attend college or start non-cannabis businesses. Similar to how communities do not want to be inundated with liquor stores, gun stores, and predatory lending businesses, communities do not want to be inundated with cannabis stores. The new licenses created by the bill will exacerbate problems local governments currently face when cannabis licenses are issued contrary to local zoning. The bill should prohibit the LCB from issuing a license if a local government submits a written

objection based on zoning conflicts. Robbery and theft issues could increase because of the new cannabis licenses. With the changes in the bill to buffer zones, this raises concerns about these crimes occurring near children. Removing buffer zones will cause harm to disproportionately impacted communities, not heal harm. Existing licenses that are not being used should be available for social equity licensing, but new licenses should not be created. There is a lack of confidence in the LCB's ability to issue this many licenses in this time frame. The vast majority of cannabis producers and processors are currently struggling economically. Adding this many new licenses will destabilize the industry, particularly on the producer and processor side. Instead, consider creating delivery licenses or consumption lounge licenses for social equity applicants.

(Other) The bill is a step in the right direction but does not do enough. The meager number of new licenses created will not help enough people. Consider making more licenses available for social equity applicants relative to the original bill.

Persons Testifying: (In support) Representative Emily Wicks, prime sponsor; Julius Caesar Robinson, The Emperors Group; Darrell Powell, The National Association for the Advancement of Colored People - Alaska, Oregon, and Washington State; Jim Buchanan and Philip Petty, Washington State African American Cannabis Association; Damarys Espinoza, Community Health Board Coalition; Micah Sherman, Washington Sun and Craft Growers Association; Lukas Hunter, Harmony Farms; Sheri Sawyer, Office of the Governor; Dorian Waller, Commission on African American Affairs; K. Wyking Garrett, Africatown Community Land Trust; Paul Brice; Chris Thompson, Liquor and Cannabis Board; Jim Makoso, Social Equity in Cannabis Task Force; Raft Hollingsworth, Hollingsworth Cannabis; and Rick Anderson, Washington State Department of Commerce.

(Opposed) Juliana Roe, Washington State Association of Counties; Adán Espino and Sheley Anderson, Craft Cannabis Coalition; Pablo Gonzalez; and Joseph Sewell.

(Other) Mark Seegmueller, Mad Mark Cannabis Farms.

Persons Signed In To Testify But Not Testifying: Joy Hollingsworth, Hollingsworth Company; Victor Rodriguez, Governors Interagency Council on Health Disparities; Renee Fanelli; Emijah Smith; Alan Scheidecker; and Mike Asai, Emerald City Collective Gardens; James Shelton; Christopher King; and Sami Saad.