

SENATE BILL REPORT

E2SSB 5080

As Passed Senate, February 28, 2023

Title: An act relating to expanding and improving the social equity in cannabis program.

Brief Description: Expanding and improving the social equity in cannabis program.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Saldaña, Conway, Frame, Hasegawa, Kuderer, Lovelett, Nguyen, Nobles and Stanford; by request of Liquor and Cannabis Board).

Brief History:

Committee Activity: Labor & Commerce: 1/10/23, 1/12/23, 1/31/23 [DPS-WM, DNP, w/oRec].

Ways & Means: 2/13/23, 2/20/23 [DP2S, DNP, w/oRec].

Floor Activity: Passed Senate: 2/28/23, 32-15.

Brief Summary of Engrossed Second Substitute Bill

- Amends the definitions of disproportionately impacted area, social equity applicant, and social equity plan in the Social Equity in Cannabis Program (Program).
- Extends the Program until July 1, 2032, modifies the licenses the Liquor and Cannabis Board (LCB) may issue or reissue under the Program, which includes certain cannabis retailer, producer, and processor licenses, and waives annual fees under the Program until July 1, 2032.
- Provides a one-time, one-license annual fee reimbursement to current cannabis licensees who submit a social equity plan to LCB.
- Modifies the time period in which a cannabis licensee must have been issued a cannabis license to qualify for a Social Equity Technical Assistance Grant from the Department of Commerce to after April 1, 2023, and before July 1, 2024.

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.

- Requires the Joint Legislative Audit and Review Committee to submit a report on its review of whether current levels of cannabis production align with market demand and capacity by June 30, 2025.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5080 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; King, Ranking Member; Robinson and Stanford.

Minority Report: Do not pass.

Signed by Senators Braun and MacEwen.

Minority Report: That it be referred without recommendation.

Signed by Senator Schoesler.

Staff: Matt Shepard-Koningsor (786-7627)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5080 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Billig, Conway, Dhingra, Hasegawa, Hunt, Keiser, Nguyen, Pedersen, Saldaña, Van De Wege and Wellman.

Minority Report: Do not pass.

Signed by Senators Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Wagoner.

Minority Report: That it be referred without recommendation.

Signed by Senators Mullet, Vice Chair, Capital; Rivers, Assistant Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Boehnke, Braun, Muzzall and Torres.

Staff: Corban Nemeth (786-7736)

Background: Definitions. Disproportionately impacted area (DIA) means a census tract or comparable geographic area that has a high:

- poverty rate;
- participation in federal or state income-based programs;

- rate of unemployment; and
- rate of arrest, conviction, or incarceration related to the sale, possession, use, cultivation, manufacture, or transport of cannabis.

Social equity applicant (Applicant) means an applicant who:

- has at least 51 percent ownership and control by one or more individuals who have resided in a DIA for a period of time defined in the Liquor and Cannabis Board's (LCB) rules after consultation with other specified entities;
- 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
- meets criteria defined in LCB rules after consultation with other specified entities.

Social equity plan means a plan that addresses at least some of the elements in the Social Equity in Cannabis Program (Program) and elements approved by LCB in consultation with the Social Equity in Cannabis Task Force (Task Force). A plan may include a statement of the Applicant's intent to satisfy the ownership requirement, how the Applicant receiving a license will meet social equity goals, the Applicant's personal or family history with cannabis and the criminal justice system, the composition of the workforce the Applicant intends to hire, neighborhood characteristics of the proposed business location, and business plans partnering or assisting organizations with connections to certain populations.

Social Equity in Cannabis Program. The Program was established in 2020 and is administered by LCB. Under the Program, cannabis retailer licenses subject to forfeiture, revocation, or cancellation may be issued or reissued to Applicants meeting the requirements for a cannabis retailer license. Cannabis retailer licenses not previously issued by LCB, but could have been issued without exceeding the statewide limit established before January 1, 2020, may be issued under the Program. To be considered for a retailer license, the Applicant must submit a Social Equity Plan (Plan) with other required application materials. LCB may give priority to an Applicant based on the extent to which the application and Plan address specified social equity goals. LCB may deny an application under the Program if it determines the application does not meet social equity goals, social equity plan requirements, or other cannabis licensing requirements.

Liquor and Cannabis Board Rules. In October 2022, LCB adopted final rules regarding many aspects of cannabis licensing and social equity. In March 2023, LCB is opening the application process for the Program, where it will issue over 40 licenses that were forfeited, cancelled, revoked, or never issued. Applications will be opened for an initial 30-day period and an independent social equity contractor will evaluate and prioritize all applications received during that window based on how long an Applicant lived in a DIA, their history of drug or cannabis offenses, whether incarceration impacted their employment or housing opportunities, and whether the Applicant owned or operated a medical cannabis dispensary or collective garden prior to July 1, 2016, and whether such operation was in a DIA. The rules allow social equity licenses currently designated to a specific city to be

relocated anywhere in the county in which that city is located, but not moved outside of that county.

Social Equity in Cannabis Task Force. In conjunction with the Program, the Legislature established the Task Force in 2020 to advise the Governor, the Legislature, and LCB on policies facilitating the development of the Program. The Task Force includes members from the Legislature, ethnic agencies and commissions, state agencies, and industry representatives. On December 9, 2022, the Task Force submitted its final report to the Legislature which recommended, in part, that the Legislature should:

- reserve new cannabis licenses for Applicants through 2029;
- establish a policy goal that 50 percent of total licenses should be owned by social equity licensees by 2029;
- create additional retail licenses; and
- ensure social equity licenses are portable within the state, subject to local jurisdiction approval.

While the Task Force does not expire until June 2023, it has fulfilled its statutory duties and currently has no more meetings scheduled.

Cannabis Social Equity Technical Assistance Grant Program. The Cannabis Social Equity Technical Assistance Grant Program (TA Grant Program) was established in 2020 to award grants to Applicants submitting a Plan under the Program and cannabis licensees holding a license issued after June 30, 2020, and before July 25, 2021, who meet certain social equity criteria. The Department of Commerce (Commerce) administers the TA Grant Program. Commerce must award grants for eligible technical assistance activities such as navigating the retail licensure process, regulatory compliance training, financial training, and others.

Cannabis License Fees. The application fee for a cannabis producer license, cannabis processor license, and cannabis retailer license is \$250. The annual fee for issuance and renewal of a cannabis producer, cannabis processor, and cannabis retailer's license is \$1,381. The same fee applies for any cannabis retailer license issued, reissued, or renewed under the Program. Separate fees apply for changes of location and ownership.

Liquor and Cannabis Board Rules. In consultation with the Office of Financial Management, LCB must adopt rules determining the maximum number of retail outlets that may be licensed in each county. In making the determination, LCB must consider population distribution, security and safety issues, adequate access to cannabis products, and the number of retail outlets holding a medical cannabis endorsement necessary to meet the medical needs of qualifying patients.

Joint Legislative Audit and Review Committee. The Joint Legislative Audit and Review Committee (JLARC) is a committee comprised of an equal number of House and Senate members, Democrats and Republicans. JLARC conducts performance audits, program evaluations, sunset reviews, and other analyses. Assignments to conduct studies are made

by the Legislature and JLARC itself. Based on these assignments, JLARC's non-partisan staff auditors, under the direction of the Legislative Auditor, independently seek answers to audit questions and issue recommendations to improve performance. JLARC's audits are directed to be independent, objective, and accurate.

Summary of Engrossed Second Substitute Bill: Definitions. DIA is amended to mean a census tract within Washington State where community members were more likely to be impacted by the War on Drugs. These areas must be determined in rule by LCB, in consultation with the Office of Equity, using a standardized statistical equation to identify areas with demographic indicators consistent with populations most impacted by the War on Drugs. LCB must periodically assess these areas for demographic changes in the composition of the population over time. DIA must include areas in the top 15th percentile in at least two of the following demographic indicators:

- the area has a high rate of people living under the federal poverty level;
- the area has a high rate of people who did not graduate from high school;
- the area has a high rate of unemployment; or
- the area has a high rate of people receiving public assistance.

Applicant is amended to mean an applicant who has at least 51 percent ownership and control by one or more individuals who meet at least two of the following qualifications:

- lived in a DIA for a minimum of five years between 1980 and 2010;
- has been arrested or convicted of a cannabis offense or has a family member who was;
- had a household income in the year prior to submitting an application under the Program that was less than the median household income within Washington State as calculated by the U.S. Census Bureau; or
- is both a socially and economically disadvantaged individual as defined by the Office of Minority and Women's Business Enterprises.

Social equity plan elements are amended to reference a cannabis licensee instead of an Applicant and remove certain elements, including a statement of the Applicant's intent to satisfy the ownership requirement of the Program, the Applicant's personal or family history with cannabis and the criminal justice system, and neighborhood characteristics of the proposed business location.

Social Equity in Cannabis Program. After January 1, 2024, all cannabis licensees are encouraged but not required to submit a social equity plan to LCB. If the cannabis licensee is not an Applicant and does not hold a current social equity license, LCB must reimburse, within 30 days, an amount equal to the annual cannabis license fee. LCB must only provide one reimbursement per licensee and only for one license in the case of a licensee holding more than one license. Social equity licenses may be located in any city, town, or county allowing cannabis retail or processing business activity, regardless of whether the cannabis retailer or processor license was originally allocated to or issued in another city, town, or county; and the maximum number of retail cannabis licenses established by LCB in each

county, but may not be relocated to a different city, town, or county after such issuance to a specific jurisdiction. LCB must select a third-party contractor (TPC) to identify and score Applicants, using a scoring rubric developed by LCB. LCB must rely on the score provided by the TPC. LCB's discretion to deny an application under the Program based on not meeting social equity goals is conditioned upon the advice of the TPC.

Forfeited, Revoked, or Cancelled Licenses. Until July 1, 2032, in addition to the cannabis retailer licenses, LCB may issue or reissue the following licenses that were forfeited, revoked, or cancelled under the Program to an Applicant meeting certain licensing requirements:

- up to 100 cannabis processor licenses immediately; and
- beginning January 1, 2025, up to ten cannabis producer licenses, which must be issued in conjunction with a cannabis processor license.

An Applicant is not required to include a social equity plan in their application materials to receive a forfeited, revoked, cancelled, or unissued license.

New Cannabis Retailer and Producer Licenses for the Program. Every three years until July 1, 2032, LCB may, with the approval of the Legislature through the passage of a bill, increase the number of cannabis retailer and cannabis producer licenses for the Program based on the most recent census data and the annual population estimates published by the Office of Financial Management. In addition, between January 1, 2024, and July 1, 2032, LCB may issue up to 52 cannabis retailer licenses under the Program.

Cannabis Social Equity Technical Assistance Grant Program. To qualify for a grant, a cannabis licensee must hold a license issued after April 1, 2023, and before July 1, 2024.

Cannabis License Fees. The annual fee for issuance, reissuance, or renewal of any cannabis license under the Program is waived until July 1, 2032.

Liquor and Cannabis Board Rules. LCB must adopt rules to implement the Program. Prior to adopting any relevant rules, LCB must consider advice on the Program from individuals the Program is intended to benefit. Rules may require social equity licenses to only be transferred to or assumed by Applicants for at least five years from licensure. In determining the maximum number of retail outlets licensed in counties, LCB must consider written input from an incorporated city or town, or county legislative authority when evaluating concerns related to outlet density. LCB may adopt rules identifying how local jurisdiction input on outlet density will be evaluated. An incorporated city or town, or county legislative authority may enact an ordinance prescribing outlet density limitations. LCB must adopt rules establishing a threshold of the number of licenses created in the Program that can be located in each county.

Objections from Local Authorities. LCB may not issue a cannabis retail license for any premises not currently licensed if:

- LCB receives a written objection from an official representative or representatives of an incorporated city or town, or county legislative authority, relating to the physical location of the proposed premises;
- the objection is received by LCB within 20 days of providing notice to the incorporated city or town, or county legislative authority; and
- the objection is based on a preexisting local ordinance limiting outlet density in a specific geographic area.

Joint Legislative Audit and Review Committee Report. JLARC must review prior canopy studies completed by LCB and examine whether current levels of cannabis production align with market demand and capacity, including the impact of any additional cannabis producer licenses granted under the legislation. JLARC must report results of their review to the Governor and Legislature by June 30, 2025.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill (Labor & Commerce) (January 10, 2023): *The committee recommended a different version of the bill than what was heard.* PRO: This bill creates a social equity program that is functional and provides pathways of opportunity. This bill creates more flexibility to assist individuals harmed by the War on Drugs and provides LCB the opportunity to adjust over time. This bill creates a voluntary submission process for social equity plans, which is focused on all licensees. This will hopefully bring all people into the social equity program as a broad approach. The 40 or so licenses currently available are not enough to increase equity in the market and this bill establishes needed licenses. This bill advances social equity and is in-line with recent ordinances passed by the City of Seattle. This bill is a step in the right direction. While we are in support of this bill, allowing current licensees to submit a social equity plan does not help the Black and Brown communities. Stronger language is encouraged to increase licenses based on the health of the market. This program should be overseen by the Office of African American Affairs or the Office of Equity. 100 producer/processor licenses should be added to this bill.

OTHER: While we support the process to increase the number of retailer licenses, we do believe the authority rests with the Legislature. It is in the spirit of the law now and we want to reaffirm that. We want some mechanism in the bill to be portable but prevent saturation in particular areas. We want to make sure LCB considers spatial distribution in issuing social equity licenses and involve local governments in that discussion. This bill does not include anything on residential cannabis gardening, which was recommended by

the task force. This should be included.

Persons Testifying (Labor & Commerce): PRO: Senator Rebecca Saldaña, Prime Sponsor; Micah Sherman, Washington Sun and Craft Grower's Association (WSCA); peter manning, Black Excellence in cannabis; Damian Mims, Black excellence in Cannabis; Mike Asai, Black Excellence In Cannabis; Ollie Garrett, Washington State Liquor and Cannabis Board; Justin Nordhorn, Washington State Liquor and Cannabis Board; Ahmed King, Black Excellence in Cannabis; Josh Warren, Emerald City Collective; Keith Blocker, Tacoma City Council; Samir Junejo, City of Seattle.

OTHER: Paul Jewell, Washington State Association of Counties; Adán Espino Jr, Craft Cannabis Coalition; Vicki Christophersen, Washington CannaBusiness Association; DON SKAKIE, HOMEGROW WASHINGTON.

Persons Signed In To Testify But Not Testifying (Labor & Commerce): PRO: Jonathan Gee; Council Member Keith Blocker, Tacoma City Council; Burl Bryson; Tyler Conway; Derek Dukes; Albert Hunter, Black excellence in Cannabis; jacq sutton, Black Excellence in Cannabis.

CON: john Worthington.

Staff Summary of Public Testimony on Original Bill (Labor & Commerce) (January 12, 2023): *The committee recommended a different version of the bill than what was heard.* PRO: This bill puts us on a path to correct the failed policies of Initiative 502. We still have an industry that is 98 percent White-owned. This bill is about economic empowerment because when people in communities of color do well, people in all communities do better. The 44 retail licenses allotted to social equity applicants accounts for around 8 percent of all retail licenses. This is not equity. Washington's cannabis market makes up around 2 percent of total state revenue, more stores equals more revenue.

OTHER: Testifier asks, "Who do I talk to about price misrepresentation"?

Persons Testifying (Labor & Commerce): PRO: Paula Sardinas, WA Build Back Black Alliance.

OTHER: Evan Briggs.

Persons Signed In To Testify But Not Testifying (Labor & Commerce): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: This legislation will begin to address the consequences of the war on drugs which has disproportionately impacted black, Latinx and indigenous individuals and communities. Stigmatizing of people of color for using or selling cannabis has destroyed families and

broken up communities. It is a common tactic to use the word oversaturation to oppose social equity in cannabis. It is used to limit the number of licenses and opportunities for underrepresented communities. This argument does not account for the systemic barriers and historical injustices that have prevented black and brown communities from participating in this industry. Without effort to address these inequities, these communities will continue to be marginalized and excluded. Local authorities will continue to regulate business locations. It is important to challenge this argument and advocate for policies and practices that promote equity and justice in the cannabis industry. Implementing the social equity program should be the beginning.

CON: From the beginning, reparations should have been given from the drug task force. The fiscal note gives money to the AG and the agency giving them an unfair regulatory advantage. This is unconstitutional. It is a privilege and an immunity. The Liquor and Cannabis Board did them a favor by over-licensing cannabis. Better regulators are needed.

OTHER: Some urban unincorporated areas of counties have seen a disproportionate number of retailers located in relatively small areas, creating clusters because of moratoriums or bans in nearby cities. Large clusters can result in law enforcement impacts and disproportionate exposure to youth that do not occur where clusters do not develop. This bill should include some consideration for appropriate spatial distribution when issuing licenses. The 44 licenses the LCB currently has should be awarded, and the provision to immediately add an additional 52 licenses will shrink the market. There are 46 retail store title certificates held in this state that have not translated to open stores yet because they are in moratorium zones. There is concern that the LCB practice of issuing place-based licenses for cannabis retailers, producers, and processors that violate land use and local zoning regulations has not been corrected. These issues can be resolved by prohibiting the LCB from issuing licenses where local land use and zoning regulations would be violated. This bill should include sharing in the cost for regulation and public safety among jurisdictions.

Persons Testifying (Ways & Means): PRO: Senator Rebecca Saldaña, Prime Sponsor; Peter Manning, Black Excellence In Cannabis; Mike Asai, Black Excellence In Cannabis; Damian Mims, Black Excellence In Cannabis; Raft Hollingsworth; Caitlein Ryan, THE CANNABIS ALLIANCE; Keith Blocker Tacoma City Council, City of Tacoma; Ollie Garrett, Washington State Liquor and Cannabis Board; Ahmed King, Black Excellence in Cannabis.

CON: john Worthington, AAMC.

OTHER: Vicki Christophersen, Washington CannaBusiness Association; Paul Jewell, Washington State Association of Counties; Adan Espino Jr, Craft Cannabis Coalition.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.