

HOUSE No. 4800

Text of an amendment, recommended by the committee on Ways and Means, to the Senate Bill relative to equity in the cannabis industry (Senate, No. 2823), as changed by the committee on Bills in the Third Reading and as amended by the House. May 18, 2022.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

By striking out all after the enacting clause and inserting in place thereof the following:—

1 SECTION A. Subsection (d) of section 2 of chapter 62 of the General Laws, as appearing
2 in the 2020 Official Edition, is hereby amended by adding the following paragraph:-

3 (4) An amount equal to the amount paid or incurred during the taxable year in carrying on
4 the trade or business of a marijuana establishment as defined in section 1 of chapter 94G or a
5 medical marijuana treatment center as defined in section 1 of chapter 94I that would have been
6 deductible under the Code, but for section 280E of said Code.

7 SECTION B. Section 30 of chapter 63 of the General Laws, as so appearing, is hereby
8 amended by striking out paragraph 4 and inserting in place thereof the following paragraph:-

9 4. “Net income”, gross income less the deductions, but not credits, allowable under the
10 provisions of the Code, as amended and in effect for the taxable year; provided, however, that
11 any deduction otherwise allowable which is allocable, in whole or in part, to 1 or more classes of
12 income not included in a corporation’s taxable net income, as determined under subsection (a) of
13 section 38, shall not be allowed. In the case of a corporation exempt from taxation under section

501 of the Code, “net income” means unrelated business taxable income, as defined in section 512 of the Code. In lieu of disallowing any deduction allocable, in whole or in part, to dividends not included in a corporation’s taxable net income, 5 per cent of such dividends shall be includable therein, as provided in said subsection (a) of said section 38. For purposes of this section and subsection (a) of section 38, the term “dividend” shall include but not be limited to amounts included in federal gross income pursuant to sections 951 and 951A of the Code. For purposes of this section, any dividend received directly or indirectly from a real estate investment trust, as provided in sections 856 to 859, inclusive, of the Code, for the taxable year of the trust in which a dividend is paid, shall not be: (i) treated as a dividend; and (ii) included as part of the dividends received deduction otherwise available to the taxpayer under paragraph (1) of subsection (a) of section 38. Any dividend received directly or indirectly from a regulated investment company, as provided in sections 851 to 855, inclusive, of the Code, shall not be included as part of the dividends received deduction otherwise available under paragraph (1) of subsection (a) of section 38.

The following deductions shall be allowed: (i) a deduction for that portion of wages or salaries paid or incurred for the taxable year equal to the amount of the credit allowable for the taxable year under section 51 of the Code and otherwise disallowed under section 280C of said Code, and (ii) a deduction for any amount paid or incurred during the taxable year in carrying on the trade or business of a marijuana establishment, as defined in section 1 of chapter 94G, or a medical marijuana treatment center, as defined in section 1 of chapter 94I, that would have been deductible under the Code, but for section 280E of said Code.

Deductions with respect to the following items shall not be allowed:

(i) dividends received;

(ii) losses sustained in other taxable years, except for the net operating losses as provided in paragraph 5 of this section;

(iii) taxes on or measured by income, franchise taxes measured by net income, franchise taxes for the privilege of doing business and capital stock taxes imposed by any state;

(iv) the deduction allowed by section 168(k) of said Code.

(v) except as otherwise provided in section 31J, interest expense paid, accrued or asserted in connection with a dividend of a note or similar obligation stating the requirement that such interest is to be paid by the corporation that dividends such obligation to its shareholders.

(vi) the deduction allowed by section 199 of the Code.

(vii) the deduction described in section 163(e)(5) of the Code to the extent increased by amendments to section 163(e)(5)(F) and section 163(i)(1) of the Code, inserted by section 1232 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

(viii) the deductions allowed by sections 245A, 250, and 965(c) of the Code.

SECTION C. Section 7E of chapter 64C of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by striking subsection (m) and inserting in place thereof the following subsection:-

(m) Marijuana products and marijuana accessories as defined in section 1 of chapter 94G shall not be subject to the excise imposed under this section; provided, however, that marijuana

accessories that are manufactured to also deliver nicotine shall be considered an electronic nicotine delivery system and shall be subject to the excise imposed under this section.

SECTION 1. Section 1 of chapter 64N of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by adding the following subsection:-

(c) “Social equity business”, a marijuana retailer that is a social equity business, as defined in section 1 of chapter 94G.

SECTION 2. Section 5 of said chapter 64N, as so appearing, is hereby amended by adding the following paragraph:-

In the case of a social equity business, 1 per cent of the revenue collected pursuant to section 2 from any social equity business shall not be deposited in the Marijuana Regulation Fund, but shall be distributed, credited and paid by the state treasurer upon certification of the commissioner to the city or town in which the social equity business is located.

SECTION 3. Section 1 of chapter 94G of the General Laws, as so appearing, is hereby amended by inserting after the definition of “Host community” the following definition:-

“Host community agreement”, an agreement between a marijuana establishment or a medical marijuana treatment center and a municipality pursuant to subsection (d) of section 3.

SECTION 4. Said section 1 of said chapter 94G, as so appearing, is hereby further amended by inserting after the definition of “Marijuana retailer” the following definition:-

“Medical marijuana treatment center”, a medical marijuana treatment center as defined in section 1 of chapter 94I.

SECTION 5. Said section 1 of said chapter 94G, as so appearing, is hereby further amended by inserting after the definition of “Residual solvent” the following definition:-

“Social equity business”, a marijuana establishment that is majority-owned by individuals who are eligible for the social equity program under section 22, or whose ownership qualifies it as an economic empowerment priority applicant as defined by the commission pursuant to section 4.

SECTION 6. Section 3 of said chapter 94G, as so appearing, is hereby amended by striking out subsection (b) and inserting in place thereof the following subsection:-

(b)(1) For the purposes of this subsection, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Ballot question committee”, as defined in section 1 of chapter 55.

“Registrars”, as defined in section 1 of chapter 50.

(2)(i) The city council of a city and the board of selectmen, the select board or town council of a town shall, upon the filing with the city or town clerk of a petition meeting the requirements of subparagraph (ii), request to the city or town clerk that the question appearing in said subparagraph (ii), as to whether to allow, in the city or town, the sale of marijuana and marijuana products for consumption on the premises where sold, be submitted to the voters of the city or town.

(ii) The petition shall be on a form prepared by the state secretary, signed by not less than 10 per cent of the number of voters of the city or town who voted at the preceding biennial state election and filed with the city or town clerk, who shall then submit the petition to the registrars

forthwith. The registrars shall certify the signature of registered voters not more than 7 days after receipt of the petition. Upon certification of the signatures, the registrars shall submit such certification to the city council, town council, board of selectmen or select board, as the case may be, which shall cause the following question, and a fair and concise summary of the question to be prepared by the city solicitor or town counsel, to be placed on the ballot for the next regularly occurring municipal or state election in the city or town:

“Shall [city or town] allow the sale of marijuana and marijuana products, as those terms are defined in section 1 of chapter 94G of the General Laws, for consumption on the premises where sold, a summary of which appears below?”

(iii) The question shall appear on the ballot for the next regularly occurring municipal election if the election is to be held not less than 35 days after certification. To appear on the ballot for the next regularly occurring biennial state election, the city or town clerk shall provide notice, including the ballot question and summary, to the state secretary not later than the first Wednesday in August before the biennial state election.

(iv) If a majority of the votes cast in the city or town are not in favor of allowing the consumption of marijuana or marijuana products on the premises where sold, such city or town shall not have authorized the consumption of marijuana and marijuana products on the premises where sold. If a majority of the votes cast in the city or town are in favor of allowing the consumption of marijuana or marijuana products on the premises where sold, such city or town shall have authorized the consumption of marijuana and marijuana products on the premises where sold.

(3) As an alternative to a local voter initiative petition process pursuant to paragraph (2), a city or town may, by ordinance or by-law, allow the consumption of marijuana or marijuana products on the premises where sold. No local voter initiative shall be required if the sale of marijuana and marijuana products for consumption on the premises is authorized by such ordinance or by-law.

(4) A ballot question committee organized to favor or oppose a question placed on the ballot pursuant to paragraph (2) of this subsection shall comply with applicable guidance and regulations issued by the office of campaign and political finance for municipal ballot question committees.

SECTION 7. Said section 3 of said chapter 94G, as so appearing, is hereby further amended by striking out subsection (d) and inserting in place thereof the following subsection:-

(d)(1) A marijuana establishment or a medical marijuana treatment center seeking a new license or renewal of a license to operate or continue to operate in a municipality that permits such operation shall negotiate and execute a host community agreement setting forth the conditions to have a marijuana establishment or medical marijuana treatment center located within the host community, which shall include, but shall not be limited to, all stipulations of responsibilities between the host community and the marijuana establishment or medical marijuana treatment center.

(2)(i) Notwithstanding any general or special law to the contrary, a host community agreement may include a community impact fee for the host community; provided, however, that no host community agreement shall include a community impact fee after the fifth year of operation of a marijuana establishment or a medical marijuana treatment center. The community

139 impact fee shall: (A) be reasonably related to the costs imposed upon the municipality by the
140 operation of the marijuana establishment or medical marijuana treatment center, which shall be
141 calculated as the costs imposed in the preceding year by the operation of said establishment or
142 treatment center, reduced by the costs that would be imposed upon the municipality by a
143 business entity that is not a marijuana establishment or medical marijuana treatment center, as
144 documented pursuant to subparagraph (iii); (B) amount to not more than 3 per cent of the gross
145 sales of the marijuana establishment or medical marijuana treatment center; (C) not be effective
146 after the marijuana establishment or medical marijuana treatment center's fifth year of operation;
147 (D) commence on the date the marijuana establishment or medical marijuana treatment center is
148 granted a final license by the commission; and (E) not mandate a certain percentage of total or
149 gross sales as the community impact fee.

150 (ii) Notwithstanding any general or special law to the contrary, the community impact fee
151 shall encompass all payments and obligations between the host community and the marijuana
152 establishment or a medical marijuana treatment center. The community impact fee shall not
153 include any additional payments or obligations, including, but not limited to, monetary
154 payments, in-kind contributions or charitable contributions by the marijuana establishment or
155 medical marijuana treatment center to the host community or any other organization. Payment of
156 the community impact fee shall be due annually to the host community, with the first payment
157 occurring not sooner than upon the first annual renewal by the commission of a final license to
158 operate the marijuana establishment or medical marijuana treatment center. Any other
159 contractual financial obligation that is explicitly or implicitly a factor considered in, or is a
160 condition of, a host community agreement, shall not be enforceable. Nothing in this section shall
161 preclude a marijuana establishment or a medical marijuana treatment center from voluntarily

providing organizations with monetary payments, in-kind contributions or charitable contributions after the execution of the host community agreement; provided, however, that a host community agreement shall not include a promise to make a future monetary payment, in-kind contribution or charitable contribution.

(iii) Any cost imposed upon a host community by the operation of a marijuana establishment or medical marijuana treatment center shall be documented by the host community and transmitted to the licensee not later than 1 month after the date of the annual renewal of a final license to operate the marijuana establishment or medical marijuana treatment center and shall be a public record as defined by clause Twenty-sixth of section 7 of chapter 4 and chapter 66.

(iv) If a licensee has cause to believe that the information documented and transmitted by a host community is not reasonably related to the actual costs imposed upon the host community in the preceding year by the operation of the marijuana establishment or medical marijuana treatment center, the licensee may petition the commission to review the costs documented by the host community and determine if the host community's calculation of reasonably related costs conforms to the requirements of this section; provided, that the commission may consider the reasonableness of past community impact fees paid under the same host community agreement during its review.

(3) The commission shall review and approve each host community agreement as part of a completed marijuana establishment or medical marijuana treatment center license application and at each license renewal. If the commission determines that a host community agreement is not in compliance with this section, the commission shall provide written notice of any

deficiencies and may request additional information from the prospective licensee and host community. The commission shall not approve a final license application unless the commission approves the host community agreement and certifies that the host community agreement complies with this subsection. The commission shall complete its review of a host community agreement not later than 45 days after it is received by the commission.

(4) A host community may waive the host community agreement requirement; provided, however, that the host community shall submit to the commission a written waiver executed by the host community and the marijuana establishment or medical marijuana treatment center.

(5) Notwithstanding any general or special law to the contrary, all host communities shall establish procedures and policies to promote and encourage full participation in the regulated marijuana industry by people from communities that have previously been disproportionately harmed by marijuana prohibition and enforcement and to positively impact those communities; provided, that the commission shall establish minimum acceptable standards for such procedures and policies that may be adopted by host communities to achieve compliance with the requirements of this paragraph. A city or town that is not a host community shall establish such procedures and policies before entering into a host community agreement with a marijuana establishment or medical marijuana treatment center.

SECTION 8. Subsection (a) of section 4 of said chapter 94G, as so appearing, is hereby amended by striking out clauses (xxvii) and (xxviii) and inserting in place thereof the following 4 clauses:-

(xxvii) monitor any federal activity regarding marijuana;

(xxviii) adopt, amend or repeal regulations for the implementation, administration and enforcement of this chapter;

(xxix) review, determine the lawfulness of and approve host community agreements pursuant to paragraph (3) of subsection (d) of section 3; and

(xxx) prioritize social equity program businesses, economic empowerment priority applicants and any other class of applicants the commission deems eligible for expedited review.

SECTION 9. Subsection (a½) of said section 4 of said chapter 94G, as so appearing, is hereby amended by striking out clauses (xxxiii) and (xxxiv) and inserting in place thereof the following 4 clauses:-

(xxxiii) requirements that prohibit marijuana product manufacturers from altering or utilizing commercially-manufactured food products when manufacturing marijuana products unless the food product was commercially manufactured specifically for use by the marijuana product manufacturer to infuse with marijuana; provided, however, that a commercially-manufactured food product may be used as an ingredient in a marijuana product if: (A) it is used in a way that renders it unrecognizable as the commercial food product in the marijuana product; and (B) there is no statement or advertisement indicating that the marijuana product contains the commercially-manufactured food product;

(xxxiv) energy and environmental standards for licensure and licensure renewal of marijuana establishments licensed as a marijuana cultivator or marijuana product manufacturer;

(xxxv) criteria for reviewing and approving host community agreements and community impact fees, including, but not limited to, criteria for calculating community impact fees consistent with paragraph (2) of subsection (d) of section 3; and

(xxxvi) minimum acceptable standards for municipal policies to promote and encourage full participation in the regulated marijuana industry pursuant to paragraph (5) of subsection (d) of section 3.

SECTION 9A. Said section 4 of said chapter 94G, as so appearing, is hereby further amended by striking out the word “marijuana”, in lines 347 and 357, and inserting in place thereof, in each instance, the following word:- cannabis.

SECTION 10. Section 14 of said chapter 94G, as so appearing, is hereby amended by inserting after the words “chapter 132B”, in line 15, the following words:- ; provided, however, that, annually, twenty per cent of the fund shall be transferred to the Cannabis Social Equity Trust Fund established in section 14A.

SECTION 11. Said chapter 94G is hereby further amended by inserting after section 14 the following new section:-

Section 14A. (a) There shall be a Cannabis Social Equity Trust Fund to encourage the full participation in the commonwealth’s regulated marijuana industry of entrepreneurs from communities that have been disproportionately harmed by marijuana prohibition and enforcement. The fund shall consist of: (i) funds transferred pursuant to subsection (b) of section 14; and (ii) any funds from private sources, including, but not limited to, gifts, grants and donations. Money in the fund shall be used to make grants and loans, including no-interest loans and forgivable loans, to social equity program participants and economic empowerment priority

applicants. The fund shall be administered by the executive office of housing and economic development, in consultation with the cannabis social equity advisory board established in subsection (b). Money remaining in this fund at the end of the fiscal year shall not revert to the General Fund.

(b) There shall be a cannabis social equity advisory board, hereinafter referred to as the advisory board, consisting of individuals from, or with experience advocating on behalf of, communities that have been disproportionately harmed by marijuana prohibition and enforcement. The board shall consist of: 1 person appointed by the governor with a background in the cannabis industry, who shall serve as chair; 1 person appointed by the treasurer and receiver-general with a background in finance or commercial lending; 1 person appointed by the attorney general with a background in business development or entrepreneurship; and 2 persons appointed by a majority vote of the governor, treasurer and receiver-general and attorney general, both of whom shall have experience in business development, preferably in the cannabis industry. When making appointments, an appointing authority shall select individuals who are from, or have experience advocating for, communities that have been disproportionately harmed by marijuana prohibition and enforcement. Each advisory board member shall serve for a 5-year term and may be reappointed by their appointing authority, and shall serve without compensation except for reimbursement of actual expenses reasonably incurred in the performance of their duties as a member or on behalf of the advisory board. Any vacancy in a seat on the advisory board shall be filled by the appropriate appointing authority within 60 days of the vacancy. The appointing authority may remove an advisory board member who was appointed by that appointing authority for cause. Before removal, the advisory board member shall be provided with a written statement of the reason for removal and an opportunity to be heard.

(c) The executive office of housing and economic development, in consultation with the advisory board, shall promulgate regulations governing the structure and administration of the fund, including, but not limited to: (i) requirements for social equity businesses and municipalities who host such businesses to apply to receive a grant or loan from the fund; (ii) conditions of such grants and loans; (iii) procedures pertaining to marijuana establishments or medical marijuana treatment centers that default on a loan from the fund; and (iv) a process by which a license is sold as a result of a licensee's default on a loan from the fund. The secretary of housing and economic development, in consultation with the advisory board, shall be responsible for the selection of recipients, grant or loan values and conditions for such grants or loans; provided, that when selecting recipients the secretary, in consultation with the advisory board, shall take into consideration the racial, ethnic and gender demographics of the municipality in which the recipient businesses are located.

(d) Annually, not later than July 31, the executive office of housing and economic development, in consultation with the advisory board, shall report on expenditures from the fund in the previous fiscal year. The report shall include, but shall not be limited to: (i) information that identifies and describes the amount of money expended from the fund; (ii) a list of the entities that received a grant or loan from the fund; (iii) the geographic location of recipient entities; (iv) the form of funding received by each entity; (v) information indicating whether each recipient entity is a minority-owned entity; and (vi) any other information that the executive office and the advisory board deem appropriate to ensure equity and accountability. The report shall be filed with the clerks of the house of representatives and the senate, the house and senate committees on ways and means and the joint committee on cannabis policy. The executive office shall make the report publicly available on its website.

SECTION 11A. Subsection (b) of section 17 of chapter 94G of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by inserting after the first sentence the following 2 sentences:- Said departments and executive offices shall: (i) provide the commission with any existing data requested by the commission, subject to any applicable confidentiality laws and regulations regarding personally identifying information; (ii) collect data, as reasonably requested by the commission, to complete the commission's research agenda; and (iii) provide data requested by the commission pursuant to clause (ii) to the commission subject to any applicable confidentiality laws and regulations regarding personally identifying information. Any personally identifiable information contained in data acquired through this section shall not be considered a public record and shall not be subject to disclosure pursuant to clause twenty-sixth of section 7 of chapter 4 and chapter 66.

SECTION 12. Said chapter 94G is hereby further amended by adding the following section:-

Section 22. The commission shall administer a social equity program to encourage and enable full participation in the marijuana industry of people from communities that have been disproportionately harmed by marijuana prohibition and enforcement and to positively impact those communities. The program shall offer: (i) technical assistance and training; and (ii) access to funds available through the Cannabis Social Equity Trust Fund, established in section 14A, to individuals certified by the commission as economic empowerment priority applicants and that meet other criteria determined by the commission.

[No sections 13 and 14]

SECTION 15. Chapter 276 of the General Laws is hereby amended by inserting after section 100K the following section:-

100K¹/₄. (a) Notwithstanding the requirements of section 100I and section 100J, a court shall, within 30 days of a petition being filed, order the expungement of a record created as a result of a criminal court appearance, juvenile court appearance or disposition for:

(1) the possession or cultivation of an amount of marijuana decriminalized by chapter 387 of the acts of 2008;

(2) the possession or cultivation of an amount of marijuana decriminalized by chapter 334 of the acts of 2016;

(3) the possession or cultivation of an amount of marijuana decriminalized by chapter 55 of the acts of 2017;

(4) possession of marijuana with intent to distribute based on an amount of marijuana decriminalized by chapter 387 of the acts of 2008, chapter 334 of the acts of 2016 or chapter 55 of the acts of 2017; or

(5) distribution of marijuana based on an amount of marijuana decriminalized by chapter 387 of the acts of 2008, chapter 334 of the acts of 2016 or chapter 55 of the acts of 2017.

(b) Prior to entering an order on a petition for expungement pursuant to subsection (a), the court shall hold a hearing if requested by the petitioner or the district attorney. Upon entering an order on a petition for expungement pursuant to subsection (a), the court shall enter written findings of fact.

(c) The court shall forward any order of expungement pursuant to this section forthwith to the clerk of the court where the record was created, to the commissioner and to the commissioner of criminal justice information services appointed pursuant to section 167A of chapter 6.

SECTION 16. (a) Notwithstanding any general or special law to the contrary, a host community shall establish initial procedures or policies required by paragraph (5) of subsection (d) of section 3 of chapter 94G of the General Laws not later than July 1, 2023.

(b) The failure of a host community to establish procedures or policies pursuant to subsection (a) shall result in a monetary penalty to the host community equal to the annual total of community impact fees received from all marijuana establishments or medical marijuana treatment centers operating within the host community, to be deposited into the Cannabis Social Equity Trust Fund established in section 14A of said chapter 94G.

SECTION 17. Initial appointments to the cannabis social equity advisory board established in section 14A of chapter 94G of the General Laws shall be made not later than 60 days after the effective date of this act.

SECTION 18. The Massachusetts cannabis control commission shall promulgate or amend regulations as necessary to be consistent with this act not later than 1 year from the effective date of this act.

SECTION 19. Sections A and B shall take effect for taxable years beginning on or after January 1, 2022.