

SENATE No. 2801

The Commonwealth of Massachusetts

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

SENATE, March 31, 2022.

The committee on Senate Ways and Means, to whom was referred the Senate Bill relative to social equity and host community agreements in the cannabis industry (Senate, No. 2660),- reports, recommending that the same ought to pass with an amendment substituting a new draft entitled "An Act relative to equity in the cannabis industry" (Senate, No. 2801).

For the committee,
Michael J. Rodrigues

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An Act relative to equity in the cannabis industry.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 2 of chapter 64N of the General Laws, as appearing in the 2020
2 Official Edition, is hereby amended by amended by adding the following paragraph:-

3 A sum equal to 1 per cent of the total sales price received under this section, from a
4 marijuana retailer that is a social equity business, as defined in section 1 of chapter 94G, shall,
5 not less than quarterly, be distributed, credited and paid by the state treasurer upon certification
6 of the commissioner, to each city or town that has at least 1 marijuana retailer that is a social
7 equity business, in proportion to the amount of the sums received from the sale of marijuana or
8 marijuana products by any such marijuana retailer in the city or town. Any city or town seeking
9 to dispute the commissioner's calculation of its distribution under this paragraph shall notify the
10 commissioner, in writing, not later than 1 year from the date the money was distributed by the
11 commissioner to the city or town.

12 SECTION 2. Section 1 of chapter 94G of the General Laws, as so appearing, is hereby
13 amended by inserting after the definition of “Host community” the following definition:-

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

16 SECTION 3. Said section 1 of said chapter 94G, as so appearing, is hereby further
17 amended by inserting after the definition of “Residual solvent” the following definition:-

18 “Social equity business”, a marijuana establishment with not less than 51 per cent
19 majority ownership of individuals who are eligible for the social equity program under section 22
20 or whose ownership qualifies it as an economic empowerment priority applicant as defined by
21 the commission’s regulations promulgated pursuant to section 4.

22 SECTION 4. Section 3 of said chapter 94G, as so appearing, is hereby amended by
23 striking out subsection (b) and inserting in place thereof the following subsection:-

24 (b)(1) The city council of a city and the board of selectmen or town council of a town
25 shall, upon the filing with the city or town clerk of a petition meeting the requirements of this
26 subsection, request that the question of whether to allow, in the city or town, the sale of
27 marijuana and marijuana products for consumption on the premises where sold, be submitted to
28 the voters of the city or town.

29 The petition shall be on a form prepared by the state secretary, signed by not less than 10
30 per cent of the number of voters of the city or town who voted at the preceding biennial state
31 election and submitted in a timely manner, after filing the petition with the city or town clerk, to
32 the board of registrars or election commissioners. The board of registrars or election
33 commissioners shall certify the signature of registered voters not more than 7 days after receipt
34 of the petition. Upon certification of the signatures, the following question, and a fair and concise

35 summary of the question to be prepared by the city solicitor or town counsel, shall be placed on
36 the ballot for the next regularly occurring municipal or state election in the city or town:

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

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

45 If a majority of the votes cast in the city or town are in favor of allowing the consumption
46 of marijuana or marijuana products on the premises where sold, such city or town shall have
47 authorized the consumption of marijuana and marijuana products on the premises where sold.

48 (2) As an alternative to a local voter initiative petition process under paragraph (1), a city
49 or town may, by ordinance or by-law, allow the consumption of marijuana or marijuana products
50 on the premises where sold. No local voter initiative shall be required if the sale of marijuana and
51 marijuana products for consumption on the premises is authorized by local law.

52 SECTION 5. Said section 3 of said chapter 94G, as so appearing, is hereby further
53 amended by striking out subsection (d) and inserting in place thereof the following subsection:-

54 (d)(1) A marijuana establishment or a medical marijuana treatment center seeking a new
55 license or renewal of a license to operate or continue to operate in a municipality that permits

56 such operation shall negotiate and execute an agreement with that host community setting forth
57 the conditions to have a marijuana establishment or medical marijuana treatment center located
58 within the host community, which shall include, but not be limited to, all stipulations of
59 responsibilities between the host community and the marijuana establishment or medical
60 marijuana treatment center.

61 (2)(i) Notwithstanding any general or special law to the contrary, a host community
62 agreement may include a community impact fee for the host community. The community impact
63 fee shall: (A) be reasonably related to the costs imposed upon the municipality in the preceding
64 year by the operation of the marijuana establishment or medical marijuana treatment center,
65 exceeding costs that would be created by a non-cannabis business entity, as documented pursuant
66 to subparagraph (iii); (B) amount to not more than 3 per cent of the gross sales of the marijuana
67 establishment or medical marijuana treatment center; (C) be effective for not longer than a single
68 5-year term, subject to renewal; (D) commence on the date the marijuana establishment or
69 medical marijuana treatment center is authorized to commence operations by the commission;
70 and (E) not mandate a certain percentage of total sales as the community impact fee. A host
71 community agreement may be renewed following the expiration of the agreed upon term.

72 (ii) Notwithstanding any general or special law to the contrary, the community impact fee
73 shall encompass all payments and obligations between the host community and the marijuana
74 establishment or a medical marijuana treatment center. Host community agreements shall not
75 include any additional payments or obligations, including, but not limited to, monetary
76 payments, in kind contributions and charitable contributions by the marijuana establishment or
77 medical marijuana treatment center to the host community or any other organization. Payment of
78 the community impact fee shall be due annually to the host community, with the first payment

79 occurring not sooner than upon the first renewal by the commission of a final license to operate
80 the marijuana establishment or medical marijuana treatment center. Any other contractual
81 financial obligation that is explicitly or implicitly a factor considered in, or is a condition of a
82 host community agreement, shall not be enforceable. Nothing in this section shall preclude a
83 marijuana establishment or a medical marijuana treatment center from voluntarily providing
84 organizations with in-kind contributions and charitable contributions after the execution of the
85 host agreement.

86 (iii) Any cost imposed upon a host community by the operation of a marijuana
87 establishment or medical marijuana treatment center shall be documented by the host community
88 and transmitted to the licensee not later than 1 month after the date of the annual renewal of a
89 final license to operate the marijuana establishment or medical marijuana treatment center and
90 shall be a public record as defined by clause Twenty-sixth of section 7 of chapter 4 and chapter
91 66. If a licensee believes the information documented and transmitted by a host community is
92 not reasonably related to the actual costs imposed upon the host community in the preceding year
93 by the operation of the marijuana establishment or medical marijuana treatment center, the
94 licensee may bring a breach of contract action against the host community and recover damages,
95 attorneys' fees and other costs encompassed in the community impact fee that are not reasonably
96 related to the actual costs imposed upon the town. Costs documented under this subparagraph
97 shall not include any costs that would be created by a non-cannabis business entity.

98 (3) The commission shall review and approve each agreement required by this subsection
99 prior to the submission of a complete marijuana establishment or medical marijuana treatment
100 center license application and at each renewal. The commission shall not approve a provisional

101 license application unless the commission approves the agreement and certifies that the
102 agreement complies with this section.

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

107 (5) Notwithstanding any general or special law to the contrary, the commission shall
108 establish rules and promulgate regulations for host communities to promote and encourage full
109 participation in the regulated marijuana industry by individuals from communities that have
110 previously been disproportionately harmed by marijuana prohibition and enforcement and to
111 positively impact those communities.

112 (6) The commission shall issue rules and promulgate regulations necessary to implement
113 this subsection.

114 SECTION 6. Said section 3 of said chapter 94G, as so appearing, is hereby further
115 amended by adding the following subsection:-

116 (f) A city or town shall adhere to cannabis control commission regulations promulgated
117 pursuant to section 4 regarding procedures and policies for host communities to promote and
118 encourage full participation in the regulated marijuana industry by people from communities that
119 have been disproportionately harmed by marijuana prohibition and enforcement and may
120 establish additional procedures and policies to further this goal.

121 SECTION 7. Subsection (a) of section 4 of said chapter 94G, as so appearing, is hereby
122 amended by striking out clauses (xxvii) and (xxviii) and inserting in place thereof the following
123 6 clauses:-

124 (xxvii) monitor any federal activity regarding marijuana;

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

127 (xxix) review and approve host community agreements pursuant to paragraph (3) of
128 subsection (d) of section 3;

129 (xxx) regulate and enforce all host community agreements;

130 (xxxi) establish procedures and policies for municipalities to promote and encourage full
131 participation in the regulated marijuana industry during negotiations of host community
132 agreements with social equity program businesses and economic empowerment priority
133 applicants;

134 (xxxii) prioritize social equity program businesses and economic empowerment priority
135 applicants and any other class of applicants the commission deems eligible for expedited review
136 during an evaluation of applications and inspections.

137 SECTION 8. Subsection (a½) of said section 4 of said chapter 94G, as so appearing, is
138 hereby amended by striking out clauses (xxxiii) and (xxxiv) and inserting in place thereof the
139 following 6 clauses:-

140 (xxxiii) requirements that prohibit marijuana product manufacturers from altering or
141 utilizing commercially-manufactured food products when manufacturing marijuana products

142 unless the food product was commercially manufactured specifically for use by the marijuana
143 product manufacturer to infuse with marijuana; provided, however, that a commercially-
144 manufactured food product may be used as an ingredient in a marijuana product if: (A) it is used
145 in a way that renders it unrecognizable as the commercial food product in the marijuana product;
146 and (B) there is no statement or advertisement indicating that the marijuana product contains the
147 commercially-manufactured food product;

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

150 (xxxv) criteria for allowing marijuana establishments and medical marijuana treatment
151 centers to satisfy their diversity plan or positive impact plan requirement for licensure in part by
152 donating a percentage of their revenue to the Cannabis Social Equity Trust Fund established in
153 subsection (c) of section 14;

154 (xxxvi) requirements and procedures for host community agreements, including, but not
155 limited to, criteria for calculating community impact fees, consistent with subsection (d) of
156 section 3;

157 (xxxvii) criteria for reviewing, certifying and approving host community agreements and
158 community impact fees; and

159 (xxxviii) requirements for procedures and policies for host communities to promote and
160 encourage full participation in the regulated marijuana industry during negotiations of host
161 community agreements of social equity program businesses and economic empowerment priority
162 applicants, including, but not limited to, advisory guidelines, best practices and minimum
163 acceptable policy standards.

164 SECTION 9 Section 14 of said chapter 94G, as so appearing, is hereby amended by
165 inserting, after the word “132B”, in line 15, the following words:- ; provided, however, that,
166 annually, 10 per cent of the fund shall be transferred to the Cannabis Social Equity Trust Fund
167 established in subsection (c).

168 SECTION 10. Said section 14 of said chapter 94G, as so appearing, is hereby further
169 amended by adding the following subsection:-

170 (c)(1) There shall be a Cannabis Social Equity Trust Fund to encourage the full
171 participation in the regulated marijuana industry in the commonwealth, of entrepreneurs from
172 communities that have been disproportionately harmed by marijuana prohibition and
173 enforcement. The fund shall consist of: (i) funds transferred pursuant to subsection (b); and (ii)
174 any funds from private sources, including, but not limited to, gifts, grants and donations. Money
175 in the fund shall be used to make grants and loans, including no-interest loans and forgivable
176 loans, to social equity program participants and economic empowerment priority applicants. The
177 fund shall be administered by the executive office of housing and economic development, in
178 consultation with the Cannabis Social Equity Trust Fund board established in this subsection.
179 Money remaining in this fund at the end of the fiscal year shall not revert to the General Fund.

180 (2) There shall be a Cannabis Social Equity Trust Fund board consisting of individuals
181 from, and with experience advocating on behalf of, communities that have been
182 disproportionately harmed by marijuana prohibition and enforcement. The board shall consist of:
183 1 person appointed by the governor with a background in the cannabis industry, who shall serve
184 as chair; 1 person appointed by the treasurer with a background in finance or commercial
185 lending; 1 person appointed by the attorney general with a background in business development

186 or entrepreneurship; 1 person appointed by the state auditor with experience in business
187 development, preferably in the cannabis industry; and 1 person appointed by the secretary of the
188 commonwealth with experience in business development, preferably in the cannabis industry.
189 When making appointments, an appointing authority shall select individuals who are from
190 communities that have been disproportionately harmed by marijuana prohibition and
191 enforcement. Members shall serve for 2-year terms and may be reappointed not more than once
192 by their appointing authority. Any vacancy in a seat on the board shall be filled by the
193 appropriate appointing authority within 60 days of the vacancy. The appointing authority may
194 remove a board member who was appointed by that appointing authority for cause. Before
195 removal, the board member shall be provided with a written statement of the reason for removal
196 and an opportunity to be heard. Board members may be employed by another business that does
197 not pose a conflict of interest with the duties of serving on the board.

198 (3) The board shall regulations governing the structure and administration of the fund, to
199 be approved by the executive office of housing and economic development, including, but not
200 limited to: (i) requirements for social equity businesses and municipalities who host such
201 businesses to apply to receive a grant or loan from the fund; (ii) conditions of such grants and
202 loans; (iii) procedures pertaining to marijuana establishments or medical marijuana treatment
203 centers that default on a loan from the fund; and (iv) a process by which a license is sold as a
204 result of a licensee's default on a loan from the fund. The secretary of housing and economic
205 development, subject to the approval of the board, shall be responsible for the selection of
206 recipients, grant or loan values and conditions for such grants or loans.

207 SECTION 11. Said chapter 94G is hereby amended by adding the following section:-

208 Section 22. The commission shall administer a social equity program to encourage and
209 enable full participation in the marijuana industry of people from communities that have been
210 disproportionately harmed by marijuana prohibition and enforcement and to positively impact
211 those communities. The program shall offer technical assistance and training to individuals
212 certified by the commission as economic empowerment priority applicants and that meet other
213 criteria determined by the commission.

214 SECTION 12. Section 22 of chapter 270 of the General Laws, as appearing in the 2020
215 Official Edition, is hereby amended by inserting after the definition of “Lodging home” the
216 following definition:-

217 “Licensed marijuana social consumption establishment”, an establishment that is, at a
218 minimum: (i) licensed by the Massachusetts cannabis control commission established under
219 section 76 of chapter 10 for sale of marijuana and marijuana products for consumption on the
220 premises pursuant to regulations promulgated pursuant to section 4 of chapter 94G; and (ii)
221 authorized to allow social consumption on premises, where required, by the appropriate authority
222 in the city or town in which the establishment is located.

223 SECTION 13. Subsection (c) of said section 22 of said chapter 270, as so appearing, is
224 hereby amended by inserting, after paragraph (5), the following paragraph:-

225 (5½) A licensed marijuana social consumption establishment in designated consumption
226 areas and as permitted by cannabis control commission regulations promulgated pursuant to
227 section 4 of chapter 94G.

228 SECTION 14. Initial appointments to the Cannabis Social Equity Trust Fund board
229 established in section 14 of chapter 94G of the General Laws shall be made not more than 60
230 days after the effective date of this act.

231 SECTION 15. The Massachusetts cannabis control commission shall amend its
232 regulations to be consistent with this act not more than 1 year from the effective date of this act.