

SENATE No. 2823

Senate, April 7, 2022 -- Text of the Senate Bill relative to equity in the cannabis industry (being the text of Senate, No. 2801, printed as amended)

The Commonwealth of Massachusetts

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

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 2 of said chapter 94G, as so appearing, is hereby amended by
23 inserting after the word “facility”, in line 42, the following words:- ; provided, however, that this
24 paragraph shall not apply to possession or consumption of medical use marijuana as defined in
25 chapter 94I.

26 SECTION 5. Section 3 of said chapter 94G, as so appearing, is hereby amended by
27 striking out subsection (b) and inserting in place thereof the following subsection:-

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

33 The petition shall be on a form prepared by the state secretary, signed by not less than 10
34 per cent of the number of voters of the city or town who voted at the preceding biennial state
35 election and submitted in a timely manner, after filing the petition with the city or town clerk, to
36 the board of registrars or election commissioners. The board of registrars or election
37 commissioners shall certify the signature of registered voters not more than 7 days after receipt
38 of the petition. Upon certification of the signatures, the following question, and a fair and concise
39 summary of the question to be prepared by the city solicitor or town counsel, shall be placed on
40 the ballot for the next regularly occurring municipal or state election in the city or town:

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

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

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

52 (2) As an alternative to a local voter initiative petition process under paragraph (1), a city
53 or town may, by ordinance or by-law, allow the consumption of marijuana or marijuana products

54 on the premises where sold. No local voter initiative shall be required if the sale of marijuana and
55 marijuana products for consumption on the premises is authorized by local law.

56 SECTION 6. Said section 3 of said chapter 94G, as so appearing, is hereby further
57 amended by striking out subsection (d) and inserting in place thereof the following subsection:-

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

65 (2)(i) Notwithstanding any general or special law to the contrary, a host community
66 agreement may include a community impact fee for the host community. The community impact
67 fee shall: (A) be reasonably related to the costs imposed upon the municipality in the preceding
68 year by the operation of the marijuana establishment or medical marijuana treatment center,
69 exceeding costs that would be created by a non-cannabis business entity, as documented pursuant
70 to subparagraph (iii); (B) amount to not more than 3 per cent of the gross sales of the marijuana
71 establishment or medical marijuana treatment center; (C) be effective for not longer than a single
72 5-year term, subject to renewal; (D) commence on the date the marijuana establishment or
73 medical marijuana treatment center is authorized to commence operations by the commission;
74 and (E) not mandate a certain percentage of total sales as the community impact fee. A host

75 community agreement shall be renewed, renegotiated or waived pursuant to paragraph (4)
76 following the expiration of the agreed upon term..

77 (ii) Notwithstanding any general or special law to the contrary, the community impact fee
78 shall encompass all payments and obligations between the host community and the marijuana
79 establishment or a medical marijuana treatment center. Host community agreements shall not
80 include any additional payments or obligations, including, but not limited to, monetary
81 payments, in kind contributions and charitable contributions by the marijuana establishment or
82 medical marijuana treatment center to the host community or any other organization. Payment of
83 the community impact fee shall be due annually to the host community, with the first payment
84 occurring not sooner than upon the first renewal by the commission of a final license to operate
85 the marijuana establishment or medical marijuana treatment center. Any other contractual
86 financial obligation that is explicitly or implicitly a factor considered in, or is a condition of a
87 host community agreement, shall not be enforceable. Nothing in this section shall preclude a
88 marijuana establishment or a medical marijuana treatment center from voluntarily providing
89 organizations with in-kind contributions and charitable contributions after the execution of the
90 host agreement.

91 (iii) Any cost imposed upon a host community by the operation of a marijuana
92 establishment or medical marijuana treatment center shall be documented by the host community
93 and transmitted to the licensee not later than 1 month after the date of the annual renewal of a
94 final license to operate the marijuana establishment or medical marijuana treatment center and
95 shall be a public record as defined by clause Twenty-sixth of section 7 of chapter 4 and chapter
96 66. If a licensee believes the information documented and transmitted by a host community is
97 not reasonably related to the actual costs imposed upon the host community in the preceding year

98 by the operation of the marijuana establishment or medical marijuana treatment center, the
99 licensee may bring a breach of contract action against the host community and recover damages,
100 attorneys' fees and other costs encompassed in the community impact fee that are not reasonably
101 related to the actual costs imposed upon the town. Costs documented under this subparagraph
102 shall not include any costs that would be created by a non-cannabis business entity.

103 (3) The commission shall review and approve each agreement required by this subsection
104 prior to the submission of a complete marijuana establishment or medical marijuana treatment
105 center license application and at each renewal. If the commission determines that an agreement
106 submitted pursuant to this section is not in compliance with this section, the commission may
107 request additional information from, and shall provide written notice of any deficiencies to, the
108 prospective licensee and host community. The commission shall not approve a provisional
109 license application unless the commission approves the agreement and certifies that the
110 agreement complies with this section. The commission shall complete its review of an agreement
111 required by this subsection not later than 120 days after it is received by the commission.

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

116 (5) Notwithstanding any general or special law to the contrary, the commission shall
117 establish rules and promulgate regulations for host communities to promote and encourage full
118 participation in the regulated marijuana industry by individuals from communities that have

119 previously been disproportionately harmed by marijuana prohibition and enforcement and to
120 positively impact those communities.

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

123 SECTION 7. Said section 3 of said chapter 94G, as so appearing, is hereby further
124 amended by adding the following subsection:-

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

130 SECTION 8. Subsection (a) of section 4 of said chapter 94G, as so appearing, is hereby
131 amended by striking out clauses (xxvii) and (xxviii) and inserting in place thereof the following
132 7 clauses:-

133 (xxvii) monitor any federal activity regarding marijuana;

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

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

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

139 (xxxix) establish procedures and policies for municipalities to promote and encourage full
140 participation in the regulated marijuana industry during negotiations of host community
141 agreements with social equity program businesses and economic empowerment priority
142 applicants;

143 (xxxix) prioritize social equity program businesses and economic empowerment priority
144 applicants and any other class of applicants the commission deems eligible for expedited review
145 during an evaluation of applications and inspections; and

146 (xxxix) develop a model host community agreement to serve as guidance for
147 municipalities and prospective licensees.

148 SECTION 9 Said section 4 of said chapter 94G, as so appearing, is hereby further
149 amended by striking out, in line 102, the words “employment or”.

150 SECTION 10. Said section 4 of said chapter 94G, as so appearing, is hereby further
151 amended by inserting after the word “minor”, in line 104, the following words:- “; and provided
152 further, that a prior criminal conviction or other criminal case disposition shall not disqualify an
153 individual or otherwise affect eligibility for employment in connection with a marijuana
154 establishment, other than an independent testing laboratory, unless the offense involved the
155 distribution of a controlled substance, including marijuana, to a minor.

156 SECTION 11. Subsection (a^{1/2}) of said section 4 of said chapter 94G, as so appearing, is
157 hereby amended by striking out clauses (xxxiii) and (xxxiv) and inserting in place thereof the
158 following 6 clauses:-

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

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

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

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

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

178 (xxxviii) requirements for procedures and policies for host communities to promote and
179 encourage full participation in the regulated marijuana industry during negotiations of host
180 community agreements of social equity program businesses and economic empowerment priority

181 applicants, including, but not limited to, advisory guidelines, best practices and minimum
182 acceptable policy standards.

183 SECTION 12. Section 14 of said chapter 94G, as so appearing, is hereby amended by
184 inserting after the word “132B”, in line 15, the following words:- ; provided, however, that,
185 annually, 10 per cent of the fund shall be transferred to the Cannabis Social Equity Trust Fund
186 established in subsection (c).

187 SECTION 13. Said section 14 of said chapter 94G, as so appearing, is hereby further
188 amended by adding the following subsection:-

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

199 (2) There shall be a Cannabis Social Equity Trust Fund board consisting of individuals
200 from, and with experience advocating on behalf of, communities that have been
201 disproportionately harmed by marijuana prohibition and enforcement. The board shall consist of:
202 1 person appointed by the governor with a background in the cannabis industry, who shall serve

203 as chair; 1 person appointed by the treasurer with a background in finance or commercial
204 lending; 1 person appointed by the attorney general with a background in business development
205 or entrepreneurship; 1 person appointed by the state auditor with experience in business
206 development, preferably in the cannabis industry; and 1 person appointed by the secretary of the
207 commonwealth with experience in business development, preferably in the cannabis industry.
208 When making appointments, an appointing authority shall select individuals who are from
209 communities that have been disproportionately harmed by marijuana prohibition and
210 enforcement. Members shall serve for 2-year terms and may be reappointed not more than once
211 by their appointing authority. Any vacancy in a seat on the board shall be filled by the
212 appropriate appointing authority within 60 days of the vacancy. The appointing authority may
213 remove a board member who was appointed by that appointing authority for cause. Before
214 removal, the board member shall be provided with a written statement of the reason for removal
215 and an opportunity to be heard. Board members may be employed by another business that does
216 not pose a conflict of interest with the duties of serving on the board.

217 (3) The board shall promulgate regulations governing the structure and administration of
218 the fund, to be approved by the executive office of housing and economic development,
219 including, but not limited to: (i) requirements for social equity businesses and municipalities who
220 host such businesses to apply to receive a grant or loan from the fund; (ii) conditions of such
221 grants and loans; (iii) procedures pertaining to marijuana establishments or medical marijuana
222 treatment centers that default on a loan from the fund; (iv) a process by which a license is sold as
223 a result of a licensee's default on a loan from the fund; (v) procedures and policies to ensure that
224 applicants and grantees come from all license types; (vi) prohibitions against the sale, transfer or
225 pledge of any asset or interest by a social equity business to an entity or individual other than a

226 social equity business or an individual qualified as an economic empowerment priority applicant
227 as defined by the commission's regulations within an initial, specified timeframe to begin on the
228 date the business is authorized to commence operations by the commission; provided, however,
229 that the initial, specified timeframe shall not exceed 5 years; and (vii) terms for payment of a
230 clawback requiring the commonwealth to recover 100 per cent of the grant and loan funds should
231 a sale, transfer or pledge of any asset or interest by a social equity business occur in violation of
232 clause (vi). The secretary of housing and economic development, subject to the approval of the
233 board, shall be responsible for the selection of recipients, grant or loan values and conditions for
234 such grants or loans.

235 (4) Annually, at the end of each fiscal year, the executive office of housing and economic
236 development, in consultation with the board, shall report on expenditures from the fund. The
237 report shall include, but not be limited to: (i) information that identifies and describes the amount
238 of money spent from the fund; (ii) a list of the entities that received a grant or loan from the fund;
239 (iii) the geographic location of recipient entities; (iv) the form of funding received by each entity;
240 (v) information indicating whether each recipient entity is a minority-owned entity; and (vi) any
241 other information that the executive office and the board deem appropriate to ensure equity and
242 accountability. The report shall be filed with the clerks of the house of representatives and the
243 senate, the house and senate committees on ways and means, the joint committee on cannabis
244 policy and the state auditor. The executive office shall make the report publicly available on its
245 website.

246 (5) The violation of a condition of a grant or loan made pursuant to this section or any
247 other violation of this section shall be punished by a fine of not more than 50 per cent of the

248 violator’s grant or loan value per violation, in addition to funds paid under clause (vii) of
249 paragraph (3), if applicable.

250 SECTION 14. Said chapter 94G is hereby further amended by adding the following
251 section:-

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

258 SECTION 15. Section 22 of chapter 270 of the General Laws, as appearing in the 2020
259 Official Edition, is hereby amended by inserting after the definition of “Enclosed” the following
260 definition:-

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

267 SECTION 16. Subsection (c) of said section 22 of said chapter 270, as so appearing, is
268 hereby amended by inserting after paragraph (5) the following paragraph:-

269 (5½) A licensed marijuana social consumption establishment in designated consumption
270 areas and as permitted by cannabis control commission regulations promulgated pursuant to
271 section 4 of chapter 94G.

272 SECTION 17. Section 100K of chapter 276 of the General Laws, as so appearing, is
273 hereby amended by striking out subsection (b) and inserting in place thereof the following
274 subsection:-

275 (b) The court shall have the discretion to order an expungement pursuant to this section
276 based on what is in the best interest of justice; provided, however, that if the petitioner seeks to
277 expunge a record pursuant to this section for the possession or cultivation of an amount of
278 marijuana decriminalized pursuant to section 32L of chapter 94C, section 13 of chapter 94G or
279 any other law, or for possession with intent to distribute or distribution of marijuana, the court
280 shall order the expungement of the record. Prior to entering an order of expungement pursuant to
281 this section, the court shall hold a hearing if requested by the petitioner or the district attorney.
282 Upon granting or denying a petition for expungement, the court shall enter written findings of
283 fact.

284 Upon an order for expungement pursuant to this section or section 100F, section 100G or
285 section 100H, the trial court clerk's office shall provide the petitioner with a certified copy of the
286 order, the docket sheets and the criminal complaint related to the expunged charge. The
287 commissioner of probation shall send a copy of the expungement order to the applicable police
288 department and the department shall expunge any police record related to the expunged charge.

289 SECTION 18. Said section 100K of said chapter 276, as so appearing, is hereby further
290 amended by adding the following subsection:-

291 (d) An expungement order pursuant to this section or section 100F, section 100G or
292 section 100H shall not preclude a court from exercising its jurisdiction over any subsequently
293 filed motion to amend the record, post-judgment relief motion or petition or any other future
294 collateral attack on an expunged conviction.

295 SECTION 19. Section 51 of chapter 55 of the acts of 2017 is hereby amended by striking
296 out the words “and (ii)” and inserting in place thereof the following words: (ii) a campaign to
297 educate the public on health risks associated with marijuana and tetrahydrocannabinol
298 consumption, including, but not limited to, the risks: (A) to mental health; (B) of use during
299 pregnancy; (C) of use of high potency products; and (D) of home extraction of marijuana
300 concentrates; and (iii).

301 SECTION 20. There shall be a special commission on drugged driving to monitor the
302 development of technology and methods related to the reliable testing of individuals operating
303 motor vehicles under the influence of marijuana. The commission shall study: (i) information
304 and data on the development of scientific and medical testing; (ii) potential technological forms
305 of testing; (iii) methods and procedures to facilitate the ability of drug recognition experts to
306 reliably assess marijuana impairment and present evidence in judicial proceedings; (iv) the
307 potential for bias in testing; (v) the admissibility of evidence of impaired driving in court
308 proceedings; (vi) an assessment of the suitability of state open container laws as they pertain to
309 marijuana and recommendations for applicability; and (vii) anything else the commission deems
310 necessary or significant.

311 The commission shall consist of: the executive director of the Massachusetts cannabis
312 control commission or a designee, who shall serve as chair; the secretary of public safety and

313 security or a designee; the attorney general or a designee; the colonel of state police or a
314 designee; the president of Massachusetts Chiefs of Police Association Incorporated or a
315 designee; the president of the Massachusetts District Attorney's Association or a designee; the
316 president of the Massachusetts Bar Association or a designee; 2 persons appointed by the
317 president of the American Civil Liberties Union of Massachusetts, Inc., 1 of whom shall be a
318 formerly incarcerated or arrested individual; 1 representative of the committee for public counsel
319 services; 2 persons appointed by Lawyers for Civil Rights, Inc.; the chief executive officer of the
320 AAA Southern New England or a designee; the president of the NAACP New England Area
321 Conference or a designee; 2 persons appointed by The Massachusetts Medical Society; 1 person
322 from organized labor representing police officers; and 2 persons appointed by the executive
323 director of the cannabis control commission who shall be members of the public with expertise
324 in scientific research on or technological development in testing capabilities of these substances.
325 Members of the commission shall serve without compensation.

326 Annually, not later than January 1, the commission shall submit a report of its findings
327 and recommendations to the joint committee on the judiciary, the joint committee on public
328 safety and homeland security, the joint committee on racial equity, civil rights, and inclusion, the
329 clerks of the house of representatives and the senate, and the chief justice of the trial court of the
330 commonwealth; provided, however, that the commission may submit additional periodic reports
331 as it determines to be necessary. The first report of the commission shall be submitted not later
332 than January 1, 2024. The final report of the commission shall be submitted not later than
333 January 1, 2034.

334 SECTION 21. Initial appointments to the Cannabis Social Equity Trust Fund board
335 established in section 14 of chapter 94G of the General Laws shall be made not more than 60
336 days after the effective date of this act.

337 SECTION 22. The Massachusetts cannabis control commission shall amend its
338 regulations to be consistent with this act not more than 1 year from the effective date of this act.