
OLR Bill Analysis

sHB 5329 (as amended by House “A”)*

AN ACT CONCERNING CANNABIS.

SUMMARY

This bill makes several changes to the regulation and licensing of adult use (recreational) cannabis. It:

1. imposes additional (a) limitations on when cannabis may be gifted, sold, or transferred and (b) penalties for violating these restrictions;
2. allows a cultivator to create up to two equity joint ventures, which must be approved by the Social Equity Council and licensed by the Department of Consumer Protection (DCP);
3. sets a deadline of 14 months from when DCP granted the license for certain producers or dispensary facilities to create the needed equity joint ventures (two for producers and one for dispensary facilities) before being liable for the full conversion fee;
4. prohibits the Social Equity Council from approving any equity joint venture applicant that shares any individual owner with another equity joint venture that meets the social equity applicant criteria;
5. makes several changes affecting cannabis advertising, including (a) prohibiting out-of-state entities and individuals from advertising any cannabis or services, (b) limiting cannabis billboard advertisements to between 11:00 p.m. and 6:00 a.m., and (c) exempting certain outdoor business signs posted at a cannabis establishment from certain signage requirements;
6. eliminates the density cap that prohibits a municipality from granting zoning approval for more retailers or micro-cultivators

based on the number of municipal residents;

7. establishes a working group to study regulating hemp and the possibility of including it in the state's cannabis program; and
8. deems Social Equity Council members as having resigned if they miss three consecutive meetings or 50% of the meetings in a calendar year.

Separately, the bill extends to physician assistants (PAs) the ability to certify a patient for medical marijuana use (except for glaucoma). Beginning July 1, 2023, it also eliminates the fees for (1) renewing a patient or caregiver registration (currently \$25) and (2) administrative costs associated with issuing or renewing registrations (currently \$75 for qualifying patients) or any other fee in addition to the registration fee (§§ 15 & 17).

*House Amendment "A" (1) moves up the effective date for the gifting limitations from July 1, 2022, to upon passage; (2) lowers the per gifting offense fine amounts, from \$2,500 in the original bill to \$1,000; (3) modifies the original bill's advertising provisions, including limiting the time rather than prohibiting billboard advertisements, prohibiting cannabis plant depictions in advertising, and increasing the minimum distance for advertising from certain buildings; (4) expands the working group's scope to include additional hemp-related topics; (5) adds the provisions on certification by PAs; (6) eliminates certain medical marijuana fees, beginning July 1, 2023; and (7) deems Social Equity Council members as having resigned when they miss a specified number of meetings.

EFFECTIVE DATE: July 1, 2022, except the provisions on (1) gifting limitations, equity joint ventures, the municipal density cap, the working group, and Social Equity Council are effective upon passage, and (2) eliminating the medical marijuana fees are effective July 1, 2023.

§§ 2-4 — PROHIBITION ON CERTAIN GIFTS, SALES, AND TRANSFERS

Current law allows consumers (i.e., people age 21 or older) to give

cannabis to other consumers for free (i.e., without compensation or consideration) if the giver reasonably believes that the other person may possess the cannabis without exceeding the Responsible and Equitable Regulation of Adult-Use Cannabis Act's possession limit.

The bill limits this allowance by prohibiting individuals from gifting, selling, or transferring cannabis to another person:

1. to induce, or in exchange for, any donation for any purpose, including any charitable donation or any donation made to gain admission to any event;
2. at any location, other than a dispensary facility, retailer, or hybrid-retailer, (a) where a consumer may purchase any item other than cannabis, a cannabis product, or services related to cannabis, or (b) that requires consideration, including membership in any club, to gain admission to the location; or
3. as part of any giveaway associated with attendance at any event, including a door prize, goodie bag, or swag bag.

The bill allows people with a bona fide social relationship to give cannabis to one another if the gift is made without consideration and is not associated with a commercial transaction.

Fines

In addition to any existing penalty, the bill subjects anyone who violates this provision to:

1. a municipal fine the bill allows to be locally adopted, which may be up to \$ 1,000 per violation (see below);
2. a Department of Emergency Services and Public Protection (DESPP) fine of \$1,000 per offense, which is payable by mail without appearing in court; and
3. an administrative hearing held by the Department of Revenue Services (DRS) commissioner for failing to pay taxes, which may result in a civil penalty of up to \$1,000 per violation.

Under the bill, “per offense” and “per violation” mean either per transaction or per day the violation continues, as the DESPP or DRS commissioner determines for the respective violation.

The bill allows any municipality to establish, by ordinance, a fine for violating the bill’s gift, sale, and transfer provisions (§ 3). Any police officer or other person the municipal chief executive officer authorizes may issue a citation to anyone who commits a violation. Municipalities that adopt this type of ordinance must also adopt a citation hearing procedure. Revenue from municipal fines must be deposited into the municipality’s general fund or in a designated special fund.

§§ 5-7 & 21 — EQUITY JOINT VENTURES

Cultivators (§ 5)

The bill allows a licensed cultivator to create up to two equity joint ventures, subject to Social Equity Council approval and DCP licensing requirements. The equity joint venture must be in any cannabis establishment business other than a cultivator license. By law, a “cannabis establishment” is a producer, dispensary facility, cultivator, micro-cultivator, retailer, hybrid retailer (i.e., licensed to sell both recreational cannabis and medical marijuana), food and beverage manufacturer, product manufacturer or packager, delivery service, or transporter.

Application Procedure and Contents. Similar to existing law for equity joint ventures for producers and dispensary facilities, the bill requires a licensed cultivator applying for an equity joint venture to submit to the council information that allows the council to determine the venture’s ownership terms. These include the organizing documents outlining each backer’s ownership stake, initial investment, and payout information. They may also include evidence of business formation, ownership allocation, ownership and financing terms, and proof of social equity applicant involvement.

Upon receiving the council’s written approval, the equity joint venture applicant must apply for a DCP license in the same form as required by other cultivators, except the application is not subject to the

lottery.

Ownership and Location Limits. The bill prohibits a cultivator, including its backer, from increasing its ownership in an equity joint venture to more than 50% in the seven years after DCP issues a license. It also prohibits equity joint ventures that share a common cultivator or backer from being located within 20 miles of another commonly owned equity joint venture.

Financial Ratio. The bill requires an equity joint venture applicant to pay 50% of any applicable fee (the full fee is \$25,000 for a provisional license and \$75,000 for a license or renewal) for the first three renewal cycles and then the full amount after that.

Producers and Dispensary Facilities (§§ 6 & 7)

Ownership. By law, producers seeking a license expansion and dispensary facilities seeking to convert to a hybrid retailer may pay reduced fees in exchange for creating a certain number of equity joint ventures (i.e., two for producers and one for dispensaries). Under current law, these equity joint ventures require that the social equity applicant own at least 50% of the business. The bill instead requires that (1) the equity joint venture be at least 50% owned and controlled by an individual or individuals who meet the social equity applicant criteria or (2) the equity joint venture applicant is an individual who meets the social equity applicant criteria.

By law, a social equity applicant is an individual who (1) had average household income of less than 300% of the state median over the three tax years immediately before the application and (2) was a resident of a disproportionately impacted area for at least (a) five of the 10 immediately preceding years or (b) nine years before he or she turned age 18. It may also be a person (e.g., business entity) that is at least 65% owned and controlled by an individual or individuals who meet these criteria.

Fee Deadline. Under current law, if a producer or dispensary pays the reduced expansion or conversion fee but does not subsequently

create the required equity joint ventures, it is liable for the full fee amount (i.e., \$3 million for producers and \$1 million for dispensary facilities). The bill specifies that (1) this must be done within 14 months after DCP approves the license expansion or conversion and gives a final license and (2) the amount due is minus the paid reduced conversion fee.

Limitations. The bill limits producers and dispensary facilities that receive approval to expand or convert to creating two equity joint ventures. They may not apply for, or create, any additional equity joint ventures if, upon the bill's passage, the producer or facility has created at least two equity joint ventures that have received a provisional license.

Financial Ratio. The bill requires an equity joint venture applicant to pay 50% of any applicable fee for the first three renewal cycles and then the full amount thereafter. By law, the reduced conversion fee is \$1.5 million for producers and \$500,000 for dispensary facilities, with an annual renewal fee of \$75,000 for the former and \$25,000 for the latter (CGS § 21a-420e(d) and Conn. Agencies Regs., § 21a-408-29).

Sharing Ownership (§ 21)

The bill prohibits the Social Equity Council from approving any equity joint venture applicant that shares any individual owner with another equity joint venture that meets the social equity applicant criteria (see above).

§ 8 — ADVERTISEMENTS

The bill prohibits out-of-state entities and individuals from advertising any cannabis or services. It does so by limiting cannabis advertisements to cannabis establishment licensees. The bill makes a violation of this prohibition an unfair trade practice (see BACKGROUND).

Billboards

Current law allows billboard advertisements for cannabis establishments only if the advertiser has reliable evidence that at least

90% of the audience is reasonably expected to be at least 21. The bill further limits billboard advertising by prohibiting advertisement on an electronic or illuminated billboard between 6:00 a.m. and 11:00 p.m.

Business Names

Current law prohibits cannabis establishments from advertising cannabis or cannabis paraphernalia, goods, or services in a way that targets or is designed to appeal to those under age 21. The bill specifies that this prohibition includes using a business name or logo.

Plant Images

The bill prohibits establishments from using any image or other visual representation of the cannabis plant or part of the plant, including the leaf, in displays or advertisements. The prohibition on displays applies if it is clearly visible to a person from the outside of the facility used to operate the cannabis establishment or used on any display signs or printed advertising material, or on the outside of the facility used to operate the cannabis establishment.

Sponsored Events

Current law prohibits advertisers from sponsoring certain charitable and sporting events or advertising at or in connection with them unless the sponsor or advertiser has reliable evidence that no more than 10% of the audience is reasonably expected to be under age 21. The bill makes the cannabis establishment responsible for having the reliable evidence by eliminating the sponsor's ability to do so.

Minimum Distance From Certain Buildings

The bill increases the minimum distance, from 500 to 1,500 feet, needed to advertise cannabis or cannabis products or paraphernalia in any physical form visible to the public from certain buildings (i.e., elementary or secondary school grounds, recreation centers or facilities, child care centers, playgrounds, public parks, or libraries). It also adds houses of worship to the list of buildings subject to this requirement.

Outdoor Signs

The bill exempts certain outdoor business signs posted at a cannabis

establishment from existing law's (1) required warning against underage use and (2) audience requirement (i.e., ascertaining that at least 90% of the audience is expected to be over age 21). The exemption applies to any outdoor sign meeting the below criteria and specifically includes monuments, pylons, or wayfinding signs that do so.

To qualify for the exemption, an outdoor sign must:

1. contain only the name and logo of a cannabis establishment;
2. have no image or other visual representation of the cannabis plant or part of the plant, including the leaf;
3. have no more than three colors; and
4. be located on (a) the cannabis establishment's premises, regardless of whether it leases or owns the premises, or (b) a commercial property occupied by multiple tenants, including the cannabis establishment.

§ 9 — DENSITY CAP

The bill eliminates the density cap provisions that (1) until June 30, 2024, limit the number of retailers and micro-cultivators in proportion to the number of municipal residents and (2) after July 1, 2024, allow the DCP commissioner to set a cap.

Current law establishes a density cap until June 30, 2024, of one retailer and one micro-cultivator for every 25,000 residents, as determined by the 2020 census. Municipalities cannot grant zoning approval for more retailers or micro-cultivators than the cap allows. Current law allows the DCP commissioner to set a density cap beginning July 1, 2024, and post it on DCP's website. If she does, municipalities are then prohibited from granting zoning approval for more establishments than the cap allows.

§ 10 — HEMP WORKING GROUP

The bill requires the General Law chairpersons to convene a working group to study:

1. regulating hemp and its products and producers licensed in Connecticut and its neighboring states;
2. the way neighboring states have integrated hemp and its products and producers into their recreational cannabis programs, statutes, and regulations; and
3. possible legislation to integrate hemp and its products and licensed producers into Connecticut's recreational cannabis statutes by allowing (a) licensees to convert their licenses to a license under the state's recreational cannabis statutes and (b) hemp products, including cannabidiol, these licensees produce to be sold in licensed cannabis dispensaries.

Membership

The working group includes the General Law chairpersons, the DCP and agriculture commissioners, or the commissioners' designees, and the following legislative appointments:

1. a Connecticut Farm Bureau representative, appointed by the House speaker;
2. a person who grows hemp in Connecticut, appointed by the Senate president pro tempore;
3. two representatives from Connecticut's cannabis industry, one each appointed by the House and Senate majority leaders; and
4. two legislators representing rural districts, one each appointed by the House and Senate minority leaders.

All initial appointments must be made within 30 days after the bill's passage, and appointing authorities must fill any vacancies.

The bill requires the General Law chairpersons to serve as the working group's chairpersons. They must schedule the first meeting within 60 days after the bill passes. The General Law Committee's administrative staff must serve as the working group's administrative staff.

By January 1, 2023, the bill requires the working group to submit a report on its findings and recommendations to the General Law Committee. The working group terminates when it submits the report or January 1, 2023, whichever is later.

§§ 11-14, 16 & 18-20 – PHYSICIANS ASSISTANTS

The bill extends to PAs the ability to certify a patient for medical marijuana use (except for glaucoma). Existing law allows advance practice registered nurses (APRNs) and physicians to certify patients for medical marijuana use (only physicians can certify glaucoma patients).

Among other things, the bill allows PAs to:

1. diagnose a patient's qualifying debilitating condition, except the bill does not authorize PAs to certify marijuana use for glaucoma;
2. issue a written certification, for up to one year, for a patient to use medical marijuana after (a) completing a medically reasonable assessment of the patient's medical history and condition; (b) making the diagnosis that the palliative use of marijuana would likely outweigh the health risks; and (c) explaining the potential risks and benefits to the patient and parent or guardian of a patient lacking legal capacity;
3. until June 30, 2023, certify a qualifying patient's use of medical marijuana and provide follow-up care using telehealth if they comply with other statutory certification and recordkeeping requirements; and
4. possess and supply marijuana to treat side effects of chemotherapy.

The bill extends to PAs the same protections from civil, criminal, and disciplinary liability that already apply to physicians and APRNs under the medical marijuana law. As is the case for physicians and APRNs, the bill prohibits PAs from having a financial interest in any cannabis establishment, except retailers and delivery services.

§ 21 – SOCIAL EQUITY COUNCIL

The bill sets attendance requirements for Social Equity Council members. Any member who fails to attend three consecutive meetings after the bill’s passage, or who fails to attend 50% of all meetings in any calendar year beginning on and after January 1, 2023, is deemed to have resigned from office. The bill requires the appointing authority to (1) fill the vacancy for the unexpired term of any member deemed to have resigned from office under this provision and (2) use best efforts to ensure the appointment reflects the racial, gender, and geographic diversity of the state’s population.

BACKGROUND

Connecticut Unfair Trade Practices Act (CUTPA)

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease-and-desist orders, order restitution in cases involving less than \$10,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney’s fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

Related Bill

sHB 5147 (File 174), reported favorably by the General Law Committee, contains similar provisions allowing PAs to certify a patient for medical marijuana use (except for glaucoma).

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute

Yea 15 Nay 3 (03/15/2022)