

Senator Evan J. Vickers proposes the following substitute bill:

CANNABIS BUSINESS TAX CREDIT AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Evan J. Vickers

House Sponsor: Jennifer Dailey-Provost

LONG TITLE

General Description:

This bill enacts a cannabis business expenses income tax credit.

Highlighted Provisions:

This bill:

- ▶ enacts a nonrefundable income tax credit for business expenses related to selling medical cannabis within the state; and
- ▶ requires the Department of Agriculture and Food to collect and report tax identification numbers for persons that apply for a license to sell medical cannabis to the State Tax Commission.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

4-41a-1001, as last amended by Laws of Utah 2023, Chapter 317 and renumbered and amended by Laws of Utah 2023, Chapters 273, 307 and last amended by Coordination Clause, Laws of Utah 2023, Chapter 307



ENACTS:

59-7-627, Utah Code Annotated 1953

59-10-1048, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **4-41a-1001** is amended to read:

4-41a-1001. Medical cannabis pharmacy -- License -- Eligibility.

(1) A person may not operate as a medical cannabis pharmacy without a license that the department issues under this part.

(2) (a) (i) Subject to Subsections (4) and (5) and to Section **4-41a-1005**, the department shall issue a license to operate a medical cannabis pharmacy in accordance with Title 63G, Chapter 6a, Utah Procurement Code.

(ii) The department may not issue a license to operate a medical cannabis pharmacy to an applicant who is not eligible for a license under this section.

(b) An applicant is eligible for a license under this section if the applicant submits to the department:

(i) subject to Subsection (2)(c), a proposed name and address where the applicant will operate the medical cannabis pharmacy;

(ii) the applicant's federal tax identification number for the medical cannabis pharmacy;

~~[(ii)]~~ (iii) the name [and], address, and federal tax identification number of an individual who:

(A) for a publicly traded company, has a financial or voting interest of 10% or greater in the proposed medical cannabis pharmacy;

(B) for a privately held company, a financial or voting interest in the proposed medical cannabis pharmacy; or

(C) has the power to direct or cause the management or control of a proposed medical cannabis pharmacy;

~~[(iii)]~~ (iv) for each application that the applicant submits to the department, a statement from the applicant that the applicant will obtain and maintain:

(A) a performance bond in the amount of \$100,000 issued by a surety authorized to

transact surety business in the state; or

(B) a liquid cash account in the amount of \$100,000 with a financial institution;

~~[(iv)]~~ (v) an operating plan that:

(A) complies with Section 4-41a-1004;

(B) includes operating procedures to comply with the operating requirements for a medical cannabis pharmacy described in this part and with a relevant municipal or county law that is consistent with Section 4-41a-1106; and

(C) the department approves;

~~[(v)]~~ (vi) an application fee in an amount that, subject to Subsection 4-41a-104(5), the department sets in accordance with Section 63J-1-504; and

~~[(vi)]~~ (vii) a description of any investigation or adverse action taken by any licensing jurisdiction, government agency, law enforcement agency, or court in any state for any violation or detrimental conduct in relation to any of the applicant's cannabis-related operations or businesses.

(c) (i) A person may not locate a medical cannabis pharmacy:

(A) within 200 feet of a community location; or

(B) in or within 600 feet of a district that the relevant municipality or county has zoned as primarily residential.

(ii) The proximity requirements described in Subsection (2)(c)(i) shall be measured from the nearest entrance to the medical cannabis pharmacy establishment by following the shortest route of ordinary pedestrian travel to the property boundary of the community location or residential area.

(iii) The department may grant a waiver to reduce the proximity requirements in Subsection (2)(c)(i) by up to 20% if the department determines that it is not reasonably feasible for the applicant to site the proposed medical cannabis pharmacy without the waiver.

(iv) An applicant for a license under this section shall provide evidence of compliance with the proximity requirements described in Subsection (2)(c)(i).

(d) The department may not issue a license to an eligible applicant that the department has selected to receive a license until the selected eligible applicant complies with the bond or liquid cash requirement described in Subsection ~~[(2)(b)(iii)]~~ (2)(b)(iv).

(e) If the department receives more than one application for a medical cannabis

pharmacy within the same city or town, the department shall consult with the local land use authority before approving any of the applications pertaining to that city or town.

(3) If the department selects an applicant for a medical cannabis pharmacy license under this section, the department shall:

(a) charge the applicant an initial license fee in an amount that, subject to Subsection 4-41a-104(5), the department sets in accordance with Section 63J-1-504;

(b) notify:

(i) the Department of Public Safety of the license approval and the names of each individual described in Subsection ~~[(2)(b)(ii)]~~ (2)(b)(iii); and

(ii) the State Tax Commission of the license approval and the name and federal tax identification numbers of each person described in Subsection (2)(b)(ii) or (iii).

(c) charge the licensee a fee in an amount that, subject to Subsection 4-41a-104(5), the department sets in accordance with Section 63J-1-504, for any change in location, ownership, or company structure.

(4) The department may not issue a license to operate a medical cannabis pharmacy to an applicant if an individual described in Subsection ~~[(2)(b)(ii)]~~ (2)(b)(iii):

(a) has been convicted under state or federal law of:

(i) a felony; or

(ii) after December 3, 2018, a misdemeanor for drug distribution;

(b) is younger than 21 years old; or

(c) after September 23, 2019, until January 1, 2023, is actively serving as a legislator.

(5) (a) If an applicant for a medical cannabis pharmacy license under this section holds another license under this chapter, the department may not give preference to the applicant based on the applicant's status as a holder of the license.

(b) If an applicant for a medical cannabis pharmacy license under this section holds a license to operate a cannabis cultivation facility under this section, the department may give consideration to the applicant's status as a holder of the license if:

(i) the applicant demonstrates that a decrease in costs to patients is more likely to result from the applicant's vertical integration than from a more competitive marketplace; and

(ii) the department finds multiple other factors, in addition to the existing license, that support granting the new license.

(6) (a) The department may revoke a license under this part:

(i) if the medical cannabis pharmacy does not begin operations within one year after the day on which the department issues an announcement of the department's intent to award a license to the medical cannabis pharmacy;

(ii) after the third the same violation of this chapter in any of the licensee's licensed cannabis production establishments or medical cannabis pharmacies;

(iii) if an individual described in Subsection ~~[(2)(b)(ii)]~~ (2)(b)(iii) is convicted, while the license is active, under state or federal law of:

(A) a felony; or

(B) after December 3, 2018, a misdemeanor for drug distribution;

(iv) if the licensee fails to provide the information described in Subsection ~~[(2)(b)(vi)]~~ (2)(b)(vii) at the time of application, or fails to supplement the information described in Subsection ~~[(2)(b)(vi)]~~ (2)(b)(vii) with any investigation or adverse action that occurs after the submission of the application within 14 calendar days after the licensee receives notice of the investigation or adverse action;

(v) if the medical cannabis pharmacy demonstrates a willful or reckless disregard for the requirements of this chapter or the rules the department makes in accordance with this chapter; or

(vi) if, after a change of ownership described in Subsection (11)(c), the department determines that the medical cannabis pharmacy no longer meets the minimum standards for licensure and operation of the medical cannabis pharmacy described in this chapter.

(b) The department shall rescind a notice of an intent to issue a license under this part to an applicant or revoke a license issued under this part if the associated medical cannabis pharmacy does not begin operation on or before June 1, 2021.

(7) (a) A person who receives a medical cannabis pharmacy license under this chapter, if the municipality or county where the licensed medical cannabis pharmacy will be located requires a local land use permit, shall submit to the department a copy of the licensee's approved application for the land use permit within 120 days after the day on which the department issues the license.

(b) If a licensee fails to submit to the department a copy the licensee's approved land use permit application in accordance with Subsection (7)(a), the department may revoke the

licensee's license.

(8) The department shall deposit the proceeds of a fee imposed by this section into the Qualified Production Enterprise Fund.

(9) The department shall begin accepting applications under this part on or before March 1, 2020.

(10) (a) The department's authority to issue a license under this section is plenary and is not subject to review.

(b) Notwithstanding Subsection (2), the decision of the department to award a license to an applicant is not subject to:

(i) Title 63G, Chapter 6a, Part 16, Protests; or

(ii) Title 63G, Chapter 6a, Part 17, Procurement Appeals Board.

(11) (a) A medical cannabis pharmacy license is not transferrable or assignable.

(b) A medical cannabis pharmacy shall report in writing to the department no later than 10 business days before the date of any change of ownership of the medical cannabis pharmacy.

(c) If the ownership of a medical cannabis pharmacy changes by 50% or more:

(i) concurrent with the report described in Subsection (11)(b), the medical cannabis pharmacy shall submit a new application described in Subsection (2)(b), subject to Subsection (2)(c);

(ii) within 30 days of the submission of the application, the department shall:

(A) conduct an application review; and

(B) award a license to the medical cannabis pharmacy for the remainder of the term of the medical cannabis pharmacy's license before the ownership change if the medical cannabis pharmacy meets the minimum standards for licensure and operation of the medical cannabis pharmacy described in this chapter; and

(iii) if the department approves the license application, notwithstanding Subsection (3), the medical cannabis pharmacy shall pay a license fee that the department sets in accordance with Section 63J-1-504 in an amount that covers the board's cost of conducting the application review.

Section 2. Section 59-7-627 is enacted to read:

59-7-627. Nonrefundable cannabis business expenses credit.

(1) As used in this section:

(a) "Medical cannabis" means the same as that term is defined in Section [26B-4-201](#).

(b) "Medical cannabis activity" means an activity related to the sale of medical cannabis that is permitted under Title 4, Chapter 41a, Cannabis Production Establishments and Pharmacies, by a qualifying taxpayer.

(c) "Qualifying taxpayer" means a corporation that holds a license issued in accordance with Section [4-41a-1001](#) to sell medical cannabis in the state during the taxable year.

(2) A qualifying taxpayer may claim a nonrefundable tax credit equal to 1.8% multiplied by Utah taxable income that is related to medical cannabis activity.

(3) (a) A qualifying taxpayer may carry forward the amount of the tax credit that exceeds the qualifying taxpayer's tax liability for a period of three years.

(b) A qualifying taxpayer may not carry back the amount of the tax credit that exceeds the qualifying taxpayer's tax liability.

(4) A qualifying taxpayer may not claim a credit described in Subsection (2) to the extent the qualifying taxpayer claims a business expense for medical cannabis activity as a deduction on the qualifying taxpayer's federal income tax return for that taxable year.

Section 3. Section **59-10-1048** is enacted to read:

59-10-1048. Nonrefundable cannabis business expenses credit.

(1) As used in this section:

(a) "Medical cannabis" means the same as that term is defined in Section [26B-4-201](#).

(b) "Medical cannabis activity" means the same as that term is defined in Section [59-7-627](#).

(c) "Pass-through entity income" means income that is derived from or connected with Utah sources related to medical cannabis activity equal to the sum of:

(i) business income as defined in Section [59-10-1402](#); and

(ii) nonbusiness income as defined in Section [59-10-1402](#).

(d) "Qualifying claimant" means a pass-through entity taxpayer of a pass-through entity that holds a license issued in accordance with Section [4-41a-1001](#) to sell medical cannabis in the state during the taxable year.

(2) A qualifying claimant may claim a nonrefundable tax credit equal to 1.8% multiplied by ~~the~~ **the qualifying claimant's distributive share of** ~~the~~ pass-through entity income.

212 (3) (a) A qualifying claimant may carry forward the amount of the tax credit that
213 exceeds the qualifying claimant's tax liability for a period of three years.

214 (b) A qualifying claimant may not carry back the amount of the tax credit that exceeds
215 the qualifying claimant's tax liability.

216 (4) A qualifying claimant may not claim a credit described in Subsection (2) to the
217 extent the qualifying claimant claims a business expense for medical cannabis activity as a
218 deduction on the qualifying claimant's federal income tax return for that taxable year.

219 **Section 4. Effective date.**

220 This bill takes effect on May 1, 2024.

221 **Section 5. Retrospective operation.**

222 (1) The following sections have retrospective operation for a taxable year beginning on
223 or after January 1, 2024:

224 (a) Section [59-7-627](#) has retrospective operation to January 1, 2024; and

225 (b) Section [59-10-1048](#) has retrospective operation to January 1, 2024.