



SB 846 PA Cannabis Regulation Detailed Bill Summary

Sponsored by Sens. Laughlin, Street, Kearney, Fontana, and Kane
Referred to Law & Justice Committee

Personal Liberty and Possession Limits

180 days after passage, allows adults 21 and over to:

- possess, use, purchase, and transport up to 30 grams of cannabis, 1,000 milligrams of THC in infused products, and five grams of cannabis concentrate.
- gift cannabis within legal limits.
- possess, obtain, use, transport, and purchase cannabis paraphernalia.

→ Cannabis smoking is generally permitted anywhere cigarette smoking is permitted.

Limitations and Prohibited Acts

- Cannabis use may be prohibited by anyone in lawful possession of property, including the Commonwealth itself.
 - Cannabis must be in a cannabis container and reasonably inaccessible while in a motor vehicle that is moving.
 - Cannabis cannot be used in a vehicle, whether it is parked or moving.
 - Revises Pennsylvania's DUI law to provide that it is illegal to drive with any amount of cannabis, THC, or concentrate in one's blood.
- Provides that having a medical cannabis recommendation is not a defense.
- Does not change existing law criminalizing driving with a Schedule I substance or metabolite in one's system (or a Schedule II or III drug that was not prescribed or its metabolite).
- Does not appear to re- or deschedule marijuana from Schedule I.
- THC can stay in regular users' blood for many hours or days after last use.
- Cannabis metabolites can stay in one's system for 30 days post-use.
- The bill does not:
- allow cannabis use "knowingly in close physical proximity to an individual younger than 21 years of age."
- allow any person to undertake an action while under the influence if doing so would be negligent or malpractice.
- allow cannabis possession in locations including schools or school buses (unless permitted for

patients by another law), correctional institutes, or in a residence that is ever used for permitted childcare or social services.

- Adults who transfer cannabis to anyone under 21 can be disqualified from purchasing cannabis, in addition to criminal penalties.
- The board will create a list of banned purchasers and set penalties for retailers who sell to them.

Non-Discrimination Against Cannabis Consumers

- Provides some non-discrimination protections for cannabis consumers, including related to occupational and professional licensing, child custody, medical care, and firearms. Does not include employment protections.
- Provides no state rights or privileges can be revoked for the lawful use of cannabis.
- The presence of cannabinoids in a parent, guardian, or grandparent — or their state-legal cannabis-related activities — may not be the sole, primary basis or supporting basis for an action or proceeding by a child welfare agency, or family or juvenile court. This applies to fitness for adoption and as a foster parent.
- Protections do not apply if "the individual's actions in relation to cannabis create an unreasonable danger to the safety of the child or otherwise show the individual is not competent as established by clear and convincing evidence."
- Provides nothing prohibits employers from adopting a drug-free workplace or employment policy.
- Provides law enforcement aren't subject to liability except "for willful and wanton misconduct" for "taking an action within the scope of the official duties" of the law enforcement or correctional agency or employee to prohibit or prevent the possession or use of cannabis by" prisoners and people on parole or mandatory supervision.

Removing Jail Time for Minors in Possession

- Reduces penalty for those under 21 years of age possessing or using cannabis from possible jail time to:
 - for a first offense, a written warning
 - for 2nd offense, a fine of no more than \$250
 - for 3rd and subsequent offense, a fine of no more than \$500
- The youth may also be admitted to adjudication alternatives.
- In the case of minors under the age of 18, a parent/guardian will also be notified.

Cannabis Regulatory Control Board

- Establishes a Cannabis Regulatory Control Board – an independent agency composed of appointed members, plus an executive director, chief medical officer (who must have cannabis experience), and staff who serve "at the pleasure of the board."

- The Board will administer the adult-use and medical cannabis programs.
- The Board operates with funds from the Cannabis Regulatory Fund.
 - Transfers the Department of Health's oversight of the medical marijuana program to the Board within 180 days of passage.
 - Three board members will be appointed by the governor: one representative of the cannabis industry and one person with experience working in re-entry, workforce development, community organizing in a disproportionately impacted area, and/or communities negatively impacted by prohibition.
 - One board member will be appointed by each the Speaker, President Pro Tem of Senate, House Minority Leader, and Senate Minority Leader.
 - Each board member must be a resident and may not hold or be a candidate for state, local, or federal office.
 - Board members cannot have a non-cannabis felony conviction.
 - The governor will appoint the board chair.

Adult-Use Cannabis Business Licensing

- Four types of adult-use licenses will be issued:
 - dispensing
 - cultivation/processing
 - micro-cultivation (which includes processing and is limited to 3,000 square feet of canopy)
 - testing labs
- All adult-use dispensaries may also sell to patients.
- Cultivation/processing licensees may produce concentrates, cannabis-infused edibles, and nonedible products, including tinctures and topicals.
- Within 180 days of passage, licensed medical cannabis dispensaries are authorized to sell adult-use cannabis if they pay a licensing fee of \$25,000, regardless of whether the Cannabis Control Board has issued rules.
- They will have 180 days from the passage of a new temporary regulation promulgated by the Board to comply with the temporary regulation.
 - Medical cannabis dispensary licensees may also apply to double the number of dispensary permits they hold. The new dispensaries will be dual-use — serving both adult-use consumers and patients.
- As a condition of the additional permit (each permit is for three dispensing locations), the existing medical business must either mentor and support a social and economic equity applicant or must make a good faith effort to do so and contribute \$100,000 to the Cannabis Business Development Fund.
- The medical businesses must execute a “charter agreement” to provide financial, mentorship, training, operational, and other support to the social and economic equity applicant to operate a

dispensary at up to three locations.

- The agreement is subject to approval by the Board.
- During the term of the charter agreement, the medical cannabis licensee may not take more than a 10% ownership stake in the equity applicant's business.
- The agreement may provide for repayment of financial support over 10 years, with terms that allow the social and economic equity applicant to profit from the business.
- At the end of the agreement, the social and economic equity applicant must have full ownership and control.
- An existing medical business' failure to adhere is grounds to revoke that business's dispensary permit.
 - Within 180 days of passage, licensed medical marijuana growers/processors are authorized to sell adult-use cannabis if they:
 - pay a licensing fee of \$100,000 to the Cannabis Regulation Fund;
 - pay \$100,000 to the Cannabis Business Development Fund; and
 - satisfy one of a menu of options related to equity:
 - pay \$100,000 more to the Cannabis Business Development;
 - pay \$100,000 to fund a cannabis industry training or education program, or a jobs program for re-entry in a disproportionately impacted area;
 - incubate a social equity applicant with Board approval for at least a year, including by making a loan of at least \$100,000; or
 - make an interest-free loan of at least \$200,000 to a social and economic equity applicant and participate in a sponsorship for at least two years
- In the last two options, the grower/processor cannot take an ownership stake in the social and economic equity applicant.
 - Non-vertically integrated medical cannabis growers/processors (who do not hold a dispensing permit) may apply for a permit to operate up to three dual-use retail locations within 60 days of the Board being seated.
 - They will also have priority for a second permit for three retail locations.
 - Sales may not begin before June 1, 2024.
 - In addition to permits issued to existing medical cannabis dispensaries and to social and economic equity applicants receiving support from them, the Board will issue "up to four" dual-use dispensary licenses after January 1, 2024.
 - "To ensure the geographic dispersion of dispensing organization permittees throughout this

Commonwealth, the board shall determine how many permits should be awarded across this Commonwealth“

- Applicants may file a single application.
- Applicants issued licenses will have one year to get up and running, absent good cause.
- Businesses will be inspected prior to opening, including to determine if there is sufficient space between the business and schools, playgrounds, and daycares, and to see they are a sufficient size, parking, and ADA accessibility.
 - On or after January 1, 2024, the Board will issue between zero and three new cultivation permits to entities other than existing medical growers/processors.
- At least the first of the permits must be issued to a qualified social and economic equity applicant.
 - Authorizes all adult-use cultivation licensees — including medical growers/processors who previously had only one location — to operate two physical locations.
 - The Board may issue micro-cultivation center permits after considering factors including how much of the cannabis market is still illicit in Pennsylvania; whether there is an adequate supply of cannabis and cannabis products; whether there is an oversupply; and security risks and issues with micro-cultivation centers.
- Micro-cultivation centers may share premises with affiliated dispensaries.
 - Applicants for new or additional dispensary permits, cultivation center permits, and micro-cultivation permits must submit applications that include fees, proof they own the location, a business plan, a facilities plan, a community engagement plan, the local zoning ordinance(s) and — if applicable — proof of approval of the local zoning office. If applicable, they will also submit evidence of their status as a social and economic equity applicant.
 - Laboratories must be accredited and approved by the Board. They cannot have any financial or management interest in other types of cannabis businesses.

Fostering Equity and Diversity in Licensing

- Regulators are required to develop policies and procedures to prioritize and promote diversity and full participation by individuals from disproportionately impacted areas (DIAs).
- A social and economic equity applicant is defined as an applicant that does not generate an annual income of more than \$75,000 or have financial assets exceeding \$250,000 AND has 75% ownership and control by one or more individuals who meets one of the following:
 - lived in a DIA for at least five of the prior 10 years, or
 - was arrested, convicted, or adjudicated delinquent for cannabis offenses that are eligible for expungement under the bill’s provisions, or is the close family member of someone who was.
- Disproportionately impacted areas (DIAs) are defined as an area:
 - with a poverty rate of at least 20% according to the Census,

- where 75% or more of the children participate in the national school lunch program,
- where 20% of the households receive SNAP assistance, or
- with an unemployment rate of more than 120% at the national average.
 - For equity applicants, regulators will waive 50% of the non-refundable application fee, the non-refundable fee associated with purchasing a permit, and any surety bond, if:
- the applicant and any individual entity with 10% or greater ownership has less than \$750,000 of income in the previous year; and
- the applicant and any individual entity with 10% or greater ownership has no more than two other permits for a cannabis establishment in the Commonwealth.
 - If an equity applicant sells or transfers their permit, the new permittee must pay the full amount and any loans received within one year of issuance and within five years of the permit being issued.
 - On January 1, 2024 and annually thereafter, the Board shall prepare and issue a public report that assesses diversity in the cannabis industry and methods for reducing barriers to entry, including access to capital.

Cannabis Business Development Fund

- A Cannabis Business Development Fund would be created and administered by the Department of Community and Economic Development.
- It will be used for:
 - providing grants and low- and zero-interest loans to qualified social and economic equity applicants to pay ordinary and necessary expenses to start and operate a cannabis business establishment;
 - paying for outreach to target and attract social and economic equity applicants;
 - grants and loans for legal expenses for agreements between equity applicants and medical cannabis businesses for charter agreements;
 - conducting studies or research into participation of minorities in the cannabis industry;
 - researching participation of minorities, women, veterans, or individuals with disabilities in the cannabis industry;
 - assisting with job training and technical assistance for residents in DIA's; and
 - assisting with re-entry programs.
- \$3 million will be transferred from the Cannabis Regulation Fund to the Cannabis Development Fund.
- The state treasurer must transfer the balance of the Medical Marijuana Program Fund (which had been allocated to things including financial assistance for low-income patients) into the Cannabis Business Development Fund.

- Each year by January 1, 2024, the board must issue a report assessing diversity in the industry and “methods for reducing or eliminating any identified barriers to entry, including access to capital.”

Local Role

- Local governments may enact reasonable ordinances or resolutions regulating cannabis business establishments.
 - Local governments may enact reasonable rules governing the time, place, manner, and number of cannabis businesses, including minimum distance limitations between cannabis business establishments and sensitive locations.
- They may not enact ordinances to prohibit a cannabis business establishment from locating within their jurisdiction.
- No local government may “unreasonably prohibit the use of cannabis” authorized by the bill.
 - Local governments may authorize or permit on-premises consumption of cannabis at or in an adult-use dispensing organization.

Regulations and Restrictions

- THC potency in adult-use products is capped at levels that are vastly lower than what is sold at adult-use and existing medical stores:
 - 15% for cannabis flower
 - 40% for cannabis concentrates
 - The Board will:
 - have regulatory and enforcement authority over the cultivating, processing, transporting, dispensing, and using of cannabis in Pennsylvania.
 - craft adult-use regulations within 180 days of the bill’s passage.
 - designate a seed-to-sale tracking system.
 - Promulgate regulations including related to security, financial disclosure, transportation, home delivery, and curbside pickup.
 - develop recordkeeping requirements and enforcement procedures including inspections and hold hearings on appeals.
 - craft “procedures for the investigation and enforcement of unregulated and unlicensed cannabis” commerce.
 - set research agendas, convene workgroups, establish public outreach, and collaborate with other agencies.
- Dispensaries:
 - may be open from 6 am to 10 pm, unless the locality provides otherwise.
 - must have operational video surveillance, seed-to-sale tracking, and an inventory point-of-sale

system.

- must have an agent-in-charge, with specified responsibilities including recordkeeping, inventory and reconciliation, agent training, and compliance.
 - All cultivation must be in an enclosed, locked facility.
 - Cultivation centers and micro-cultivation centers:
- must have physical inventory recorded weekly.
- must implement a security plan including facility access controls, perimeter intrusion detection, personnel identification, and 24-hour surveillance.
- may not discriminate between dispensaries in the pricing of like products, though this does not prevent volume discounts.
- will be allowed to engage in home delivery services.
 - Micro-cultivation centers cannot be in areas zoned residential.
 - Regulators will promulgate reasonable regulations allowing pesticide use.
 - Regulations are due within 180 days of passage.
 - Each cannabis establishment board member, principal offer, and worker must register with the Board, be fingerprinted, and undergo a background check.
- If they have a conviction for diverting cannabis or otherwise breaking the law about cannabis dispensing after the passage of the bill, they will not be allowed to work in the cannabis industry.
- It is not clear what other convictions may be disqualifying. It specifies that nonviolent criminal convictions related to cannabis are not disqualifying.
 - Regulators may issue fines of up to \$5,000.
 - Permits and cards will not be reissued if the permittee or cardholder fails to file tax returns, fails to pay taxes, or commits certain other offenses.

Advertising, Packaging, and Labeling Rules

- The Board will develop labeling, product safety, packaging, and edible product requirements, including to ensure products don't appeal to minors.
- Advertising and marketing can only be restricted to the extent it is false or misleading, promotes overconsumption, depicts someone under 21 consuming cannabis, makes unsupported health claims about cannabis consumption, or includes any image designed or likely to appeal to a minor.
- Advertising is permitted through discounts and promotional programs.
- Packing must be sealed in a child restraint container or packing in a label consistent with current standards. Cannabis-infused edible and non-edible products must be packaged at the original point of preparation.
- Labeling should indicate if solvents were used to create the concentrate or extract, and the method of extraction.
- Concentrates sold with greater than 70% THC (which can only be medical) must indicate the product is a high-THC product on the label.

- Each cannabis-infused product must include the total milligram content of THC and CBD.
- Packages may contain multiple servings. They must delineate servings if they are in solid form.
- Packages of cannabis-infused products can include up to 1,000 milligrams of THC.
- Labels must include, "Cannabis consumption may impair the ability to drive or operate heavy machinery, is for adult use only and should not be used by pregnant or breastfeeding women. Keep out of reach of children."

Taxation and Revenue Distribution

- Levies a total of 13% in taxes at retail (8% sales tax and 5% excise tax).
 - It is unclear if this applies to medical cannabis. Separately, the law re-codifies the 5% excise wholesale tax on medical cannabis.
 - Deposits the revenue into the Cannabis Regulation Fund.
- Allocates the Cannabis Regulation Fund as follows:
 - 2% is appropriated to the Board for costs and expenses.
 - \$3 million is transferred to the Cannabis Business Development Fund.
 - The remainder is "transferred to the General Fund to provide economic relief to this Commonwealth."
- However, the bill seems to inconsistently provide that taxes collected will be disbursed as follows:
 - 10% to municipalities in which a cannabis establishment is located;
 - 10% to counties in which a cannabis establishment is located, disbursed in proportion to the number of cannabis establishments within the part of the county; and
 - 80% to the Cannabis Regulation Fund.

Cannabis Clean Slate

- Provides for the automatic expungement of arrest, prosecution, and conviction records for certain offenses. The covered offenses are as follows, if they were non-violent:
 - Possessing or gifting up to 30 grams of cannabis or eight grams of hash, and
 - "[T]he manufacture, delivery, or possession with intent to manufacture or deliver, a controlled substance by a person not registered under this act ... or knowingly creating, delivering or possessing with intent to deliver, a counterfeit controlled substance."
- Provides for the immediate release of inmates incarcerated for expungable offenses.
- Within six months of passage, the administrative office of Pennsylvania courts must transmit to the Pennsylvania state police central repository all records related to a covered arrest or conviction. The Court of Common Pleas will order the expungement of all criminal history records.
- Motor vehicle privileges are automatically reinstated for privileges that were suspended or revoked as a result of the individual's conviction.

Miscellaneous

- Exempts financial institutions from state criminal penalties for providing financial services to cannabis business establishments.
- Contracts relating to the operation of a cannabis business establishment are enforceable.
- Unlicensed cannabis sales, cultivation, processing, and offering for sale will carry a civil penalty of up to \$10,000 for each offense. Each day is a separate offense.

Medical Cannabis Provisions

- In the case of a shortage, dual-use growers/processors must prioritize serving patients and caregivers.
- Re-codifies most of the existing medical cannabis law in a new chapter, with some revisions, including:
 - allowing edible products to be sold in the medical program.
 - allowing patients who are 21 or older to grow up to five plants over 5" tall provided:
 - Plants must be grown in an enclosed, locked facility in a residence.
 - Plants must be out of public view.
 - Patients cannot give away or sell any of their home-grown cannabis.
 - Amounts of harvested cannabis exceeding 30 grams must remain secure in the residence where the cannabis is grown.
 - Continues to ban anyone with any drug felony that is less than 10 years old (or who has been out of prison for it for less than a year) from working at or volunteering with any medical cannabis business.