

2024-03-26 HB272 (Support with Amendments).pdf

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March 26, 2024

TO: The Honorable Pam Beidle
Chair, Finance Committee

FROM: Tiffany Clark
Chief Counsel, Legislative Affairs, Office of the Attorney General

RE: House Bill 272 – Cannabis Licensing and registration – Use of Straw
Ownership – Prohibition – **Support with Amendments**

The Office of Attorney General respectfully urges the Senate Finance Committee to report favorably on House Bill 272 – Cannabis Licensing and registration – Use of Straw Ownership – Prohibition. House Bill 272 prohibits nominal ownership of cannabis licenses if that ownership interest is held for the purposes of meeting certain requirements of the Cannabis Reform Act of 2023.

The Cannabis Reform Act of 2023 created a “social equity license” to promote and encourage full participation in the cannabis industry by people from communities that have been disproportionately impacted by the war on drugs in order to positively impact these communities. The social equity license exists in many other states that have adult-use cannabis industries, including, New York, Connecticut, and New Jersey. As we have looked to these states for guidance setting up our social equity licenses, we’ve observed patterns in which large corporations use their financial resources to recruit those who qualify as social equity applicants to join them as partners in a social equity cannabis business license, and then exploit the very individuals intended to benefit through these programs. Unfortunately, we have also observed evidence of these same

schemes being attempted in Maryland. This conduct, if unchecked, would completely subvert the legislative intent behind our State's social equity OAG has been working to support the Maryland Cannabis Administration's (MCA) and the Office of Social Equity's (OSE) strategic efforts to protect the integrity of the first cannabis license application round in the nation reserved exclusively for social equity applicants across all license categories. House Bill 272 would give OAG attorneys and our client units an additional tool to use to combat efforts to corrupt this application round. Three amendments to House Bill 272 would make the resulting legislation even more effective in guarding against malfeasance and accomplishing the legislative intent behind the Cannabis Reform Act.

1. Consider expanding the bill language to expressly require examination of both ownership and control. This body has recognized through prior legislative action that this industry uses a variety of transactional documents to aggregate financial and managerial power over a licensed business, and you have given the MCA the authority and responsibility to investigate and regulate not just ownership but also control of a license.¹ HB 272 speaks to ownership without the benefits and risks of genuine ownership, but may be further strengthened by incorporating language reflecting the significance of control of a license into the current language.

2. Authorize enforcement of House Bill 272 by the MCA without requiring a criminal conviction. While there may be value in establishing criminal liability for those who seek to exploit social equity applicants to secure additional market power in Maryland's cannabis industry, the MCA should be authorized to take action against the license without waiting for a criminal conviction. The burden of proof required to secure a criminal conviction is far higher than that required to establish a regulatory violation and the MCA's ability to effectively execute the social equity licensing program will be hampered if it is forced to wait for a criminal conviction to be secured before taking action on the license. Further, bill language should be adjusted to clarify that any social equity applicant who may have been misled into holding a position as a straw man owner is not at risk of criminal prosecution under this provision.

3. Change the effective date of the bill to enable prompt application. House Bill 272 was introduced with an effective date of October 1, 2024, however the Cannabis Reform Act required that the social equity licensing round move swiftly. MCA has collected and reviewed applications and is presently finalizing determinations of which applications are eligible for the license lottery. The lottery will not be conducted until March at the earliest, and any applicants selected in the lottery will be subject to further investigation on elements of ownership and control by the MCA with the assistance of third-party accounting, legal, and investigatory professionals before any may be awarded a conditional license. House Bill 272 would be most beneficial in that stage immediately following investigations of ownership and control of selected applicants. Amending the effective date of House Bill 272 to June 1, 2024 would make this legislation more helpful in safeguarding the initial social equity licensing process.

¹ Md. Code Ann., Alc. Bev. Can. §§ 36-101(o) (defining "control"); 36-502 (requiring one who wishes to hold control of a cannabis license to apply for and receive approval from the MCA); 36-503(b)(c) (imposing restrictions on transfers of ownership or control of a license).

OAG supports MCA and OSE in their efforts to execute the cannabis business license application process for social equity applicants mandated under the Cannabis Reform Act of 2023. MCA and OSE are currently executing the General Assembly's intended strategy to create a more equitable cannabis industry in this State and need additional authority to strengthen their ability to protect the integrity of the process.

For the foregoing reasons, the Office of the Attorney General urges a favorable report on House Bill 272 with amendments.

cc: The Honorable Robin Grammer
Finance Committee Members

FAV - HB0272 - MCA.docx (1).pdf

Uploaded by: Andrew Garrison

Position: FAV



Wes Moore, Governor • Aruna Miller, Lt. Governor • Will Tilburg, Director

Tuesday, March 26, 2024

The Honorable Pamela Beidle
Chair, Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, MD 21401

RE: House Bill 272 – Cannabis Licensing and Registration – Use of Straw Ownership – Prohibition - FAV

Dear Chair Beidle -

The Maryland Cannabis Administration (MCA) is submitting this letter of support for House Bill 272 – Cannabis Licensing and Registration – Use of Straw Ownership – Prohibition (HB0272), and respectfully requests a favorable report on the bill.

HB0272 prohibits certain nominal ownership of cannabis licenses for the purposes of meeting the requirements established by the General Assembly under Chapters 254/255 of 2023, the Cannabis Reform Act.

The Maryland Cannabis Administration (MCA) and Office of Social Equity (OSE) are aware of attempts to exploit social equity cannabis business licensing rounds in other jurisdictions (e.g., Arizona, Connecticut, Missouri). Prior to the licensing round, MCA and OSE were also made aware that prospective and verified social equity applicants had been approached via postcards, craigslist ads, job postings, and in-person technical assistance events to serve as straw or figurehead owners in cannabis business license applications. Moreover, the MCA identified several attempts by non-social equity businesses to exploit social equity applicants during the pre-application verification period, and canceled the links for dozens of individuals who it identified were fraudulently submitting information.

MCA is undertaking measures to protect the integrity of the first cannabis license application round in the nation reserved exclusively for social equity applicants across all license categories, and HB0272 is aligned with the MCA's strategy moving forward to ensure the integrity of the application round.

The Third Reader of HB272 incorporates provisions requested by the MCA and adopted by the House of Delegates to strengthen HB0272 and ensure the MCA is able to enforce these provisions, including:

1. **Clarifying that other types of agreements pertaining to ownership or control are covered in the legislation.** Throughout the country, cannabis regulators are seeing operating agreements, management agreements, convertible debt agreements, and other contractual relationships between a licensee and another party that may be vehicles for inequitable relationships between the licensee and the other party. The MCA requested that the House define “genuine ownership” and including the existing definition of “control” to provisions of HB0272
2. **Allowing for MCA enforcement of the HB0272 provisions without criminal conviction.** HB0272 establishes criminal penalties for entities that engage in nominal ownership agreements, however, it makes suspension or revocation of a license contingent on conviction through a criminal violation. The MCA believes there is value in adding criminal penalties to these types of ownership or control agreements, but requested to authorize administrative actions against a licensee or applicant that is found to be in violation of these provisions following a hearing conducted by the MCA. This will allow the MCA to move more quickly against prohibited ownership and control structures.
3. **Aligning effective date with MCA’s licensing timeline.** As introduced, HB0272 had an effective date of October 1, 2024. The initial 30-day license application authorized under the CRA closed on December 12, 2023. All applications were notified of the status of their application on February 9, and MCA held the license application lottery on March 14th. MCA is now in the process of investigating any claims related to ownership or control with the assistance of third-party accounting, legal, and investigatory professionals. It is during this phase and into the conditional licensing period that the provisions in HB0272 would be best applied. Moving the effective date to June 1, 2024 would make the provisions most applicable to the newly selected licenses in the early stages of the conditional license period.

The MCA would additionally like to stress that due to federal restrictions and shifting economic trends, access to capital is limited in the cannabis industry, particularly for new market entrants. With these factors in mind, the CRA permits, and even encourages, partnerships between social equity applicants and non-social equity businesses. Therefore, the MCA is seeking to ensure that social equity applicants own and control the applicant entity, and welcomes support from the General Assembly with the provisions of HB0272 to ensure that

these are fair and equitable agreements, while still permitting and facilitating investment in these businesses from outside sources.

I hope this information is useful. If you would like to discuss this further, please contact me at (410) 487-8069 or william.tilburg@maryland.gov or Andrew Garrison, Chief of the Office of Policy and Government Affairs at (443) 844-6114 or andrew.garrison@maryland.gov.

Sincerely,

A handwritten signature in blue ink that reads "William Tilburg". The signature is written in a cursive style and is followed by a long, horizontal flourish.

Will Tilburg, JD, MPH
Director, Maryland Cannabis Administration

cc: Members of the Senate Finance Committee