

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



26 ENACTS:

27 **59-7-627**, Utah Code Annotated 1953

28 **59-10-1048**, Utah Code Annotated 1953

29

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

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

32 **4-41a-1001. Medical cannabis pharmacy -- License -- Eligibility.**

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

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

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

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

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

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

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

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

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

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

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

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

57 transact surety business in the state; or
58 (B) a liquid cash account in the amount of \$100,000 with a financial institution;
59 ~~[(iv)]~~ (v) an operating plan that:
60 (A) complies with Section 4-41a-1004;
61 (B) includes operating procedures to comply with the operating requirements for a
62 medical cannabis pharmacy described in this part and with a relevant municipal or county law
63 that is consistent with Section 4-41a-1106; and
64 (C) the department approves;
65 ~~[(v)]~~ (vi) an application fee in an amount that, subject to Subsection 4-41a-104(5), the
66 department sets in accordance with Section 63J-1-504; and
67 ~~[(vi)]~~ (vii) a description of any investigation or adverse action taken by any licensing
68 jurisdiction, government agency, law enforcement agency, or court in any state for any
69 violation or detrimental conduct in relation to any of the applicant's cannabis-related operations
70 or businesses.
71 (c) (i) A person may not locate a medical cannabis pharmacy:
72 (A) within 200 feet of a community location; or
73 (B) in or within 600 feet of a district that the relevant municipality or county has zoned
74 as primarily residential.
75 (ii) The proximity requirements described in Subsection (2)(c)(i) shall be measured
76 from the nearest entrance to the medical cannabis pharmacy establishment by following the
77 shortest route of ordinary pedestrian travel to the property boundary of the community location
78 or residential area.
79 (iii) The department may grant a waiver to reduce the proximity requirements in
80 Subsection (2)(c)(i) by up to 20% if the department determines that it is not reasonably feasible
81 for the applicant to site the proposed medical cannabis pharmacy without the waiver.
82 (iv) An applicant for a license under this section shall provide evidence of compliance
83 with the proximity requirements described in Subsection (2)(c)(i).
84 (d) The department may not issue a license to an eligible applicant that the department
85 has selected to receive a license until the selected eligible applicant complies with the bond or
86 liquid cash requirement described in Subsection ~~[(2)(b)(iii)]~~ (2)(b)(iv).
87 (e) If the department receives more than one application for a medical cannabis

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

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

92 (a) charge the applicant an initial license fee in an amount that, subject to Subsection
93 4-41a-104(5), the department sets in accordance with Section 63J-1-504;

94 (b) notify:

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

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

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

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

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

105 (i) a felony; or

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

107 (b) is younger than 21 years old; or

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

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

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

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

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

119 (6) (a) The department may revoke a license under this part:
120 (i) if the medical cannabis pharmacy does not begin operations within one year after
121 the day on which the department issues an announcement of the department's intent to award a
122 license to the medical cannabis pharmacy;
123 (ii) after the third the same violation of this chapter in any of the licensee's licensed
124 cannabis production establishments or medical cannabis pharmacies;
125 (iii) if an individual described in Subsection [~~(2)(b)(ii)~~] (2)(b)(iii) is convicted, while
126 the license is active, under state or federal law of:
127 (A) a felony; or
128 (B) after December 3, 2018, a misdemeanor for drug distribution;
129 (iv) if the licensee fails to provide the information described in Subsection [~~(2)(b)(vi)~~]
130 (2)(b)(vii) at the time of application, or fails to supplement the information described in
131 Subsection [~~(2)(b)(vi)~~] (2)(b)(vii) with any investigation or adverse action that occurs after the
132 submission of the application within 14 calendar days after the licensee receives notice of the
133 investigation or adverse action;
134 (v) if the medical cannabis pharmacy demonstrates a willful or reckless disregard for
135 the requirements of this chapter or the rules the department makes in accordance with this
136 chapter; or
137 (vi) if, after a change of ownership described in Subsection (11)(c), the department
138 determines that the medical cannabis pharmacy no longer meets the minimum standards for
139 licensure and operation of the medical cannabis pharmacy described in this chapter.
140 (b) The department shall rescind a notice of an intent to issue a license under this part
141 to an applicant or revoke a license issued under this part if the associated medical cannabis
142 pharmacy does not begin operation on or before June 1, 2021.
143 (7) (a) A person who receives a medical cannabis pharmacy license under this chapter,
144 if the municipality or county where the licensed medical cannabis pharmacy will be located
145 requires a local land use permit, shall submit to the department a copy of the licensee's
146 approved application for the land use permit within 120 days after the day on which the
147 department issues the license.
148 (b) If a licensee fails to submit to the department a copy the licensee's approved land
149 use permit application in accordance with Subsection (7)(a), the department may revoke the

150 licensee's license.

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

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

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

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

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

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

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

162 (b) A medical cannabis pharmacy shall report in writing to the department no later than
163 10 business days before the date of any change of ownership of the medical cannabis
164 pharmacy.

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

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

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

170 (A) conduct an application review; and

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

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

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

180 **59-7-627. Nonrefundable cannabis business expenses credit.**

181 (1) As used in this section:

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

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

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

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

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

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

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

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

198 **59-10-1048. Nonrefundable cannabis business expenses credit.**

199 (1) As used in this section:

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

201 (b) "Medical cannabis activity" means the same as that term is defined in Section
 202 [59-7-627](#).

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

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

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

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

210 (2) A qualifying claimant may claim a nonrefundable tax credit equal to 1.8%
 211 multiplied by $\hat{H} \rightarrow$ **the qualifying claimant's distributive share of** $\leftarrow \hat{H}$ pass-through entity
 211a 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.