

ASSEMBLY HEALTH COMMITTEE

STATEMENT TO

ASSEMBLY, No. 5179

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 8, 2021

The Assembly Health Committee reports favorably and with committee amendments Assembly Bill No. 5179.

As amended by the committee, this bill revises the restrictions that apply to ownership of or investment in a medical cannabis dispensary and other types of alternative treatment centers (ATCs), and grants the Cannabis Regulatory Commission (CRC) additional authority to review management services agreements for ATC permit applicants to determine whether the terms of the agreement are commercially reasonable and consistent with fair market value.

Current law provides that, subject to certain exceptions, no entity may simultaneously hold more than one medical cannabis cultivator, medical cannabis manufacturer, or medical cannabis dispensary permit, although, effective January 2021, a single entity may hold up to one of each type of permit.

This bill would establish a new exception to these ownership restrictions, pursuant to which an investor, investor group, or fund that provides significant financial or technical assistance or the use of intellectual property, or a combination thereof, to an applicant for a medical cannabis dispensary permit that has been certified as a minority or women's business or is a disabled-veterans' business, may own up to a 40 percent interest in up to 10 entities that have been issued a medical cannabis dispensary permit, provided any such dispensary permit holder is also certified as a minority or women's business or is a disabled-veterans' business.

The bill requires that the terms of the agreement for the provision of significant financial or technical assistance or use of intellectual property, whether provided in the form of equity, a loan, or otherwise, including interest rates, returns, and fees, are commercially reasonable based on the terms generally provided to comparable businesses. The terms of the agreement may include performance, quality, and other requirements as a condition of providing the significant financial or technical assistance or the use of intellectual property. The applicant will be required to submit a copy of the agreement to the CRC for review.

Under the bill, an applicant for a medical cannabis dispensary permit that receives significant financial or technical assistance or the

use of intellectual property will be required to pay back the full value of the financial or technical assistance or intellectual property provided, plus any applicable interest and fees, within seven years after the date of the agreement, but no earlier than three years after the date of the agreement. An investor, investor group, or fund that has acquired an ownership interest in one or more medical cannabis dispensaries as authorized under the bill will be permitted to maintain the ownership interest after the full value of the assistance provided has been repaid.

The bill provides that in no case may the controlling interest in the entity that holds a medical cannabis dispensary permit revert to the investor group or fund in the event of a default or failure by the certified minority or women's business or disabled-veterans' business, and any such controlling interest may only be transferred to a certified minority or women's business or a disabled-veterans' business.

The bill allows an entity holding a medical cannabis cultivator, manufacturer, or dispensary permit, or an individual associated with the ownership or management of the entity, to participate in an investor group or a fund that meets the requirements of the bill.

The bill requires all applicants for an ATC permit to submit with the application a copy of any agreement between the applicant and a third party entity for the third party entity to provide services to the applicant. The services agreement will not be considered as part of the application, but, along with agreements to provide significant financial or technical assistance or the significant use of intellectual property to an applicant, will be subject to review by the CRC to determine whether the terms of the agreement, including interest rates, returns, and fees, are commercially reasonable and consistent with the fair market value for the terms generally applicable to agreements of a comparable nature. In the event the CRC determines the terms of an agreement are not commercially reasonable or consistent with fair market value, the CRC will have the authority to withhold approval of the permit application until the parties renegotiate a new agreement that, as determined by the CRC, is commercially reasonable and consistent with fair market value. The parties to the agreement may request that the CRC provide guidance as to what terms it would find to be commercially reasonable and consistent with fair market value. Nothing in the bill is to be construed to require the CRC to award a permit to an applicant if the CRC determines the applicant does not otherwise meet the requirements for issuance of the permit.

As reported by the committee with amendments, Assembly Bill No. 5179 is identical to Senate Bill No. 2875 (1R), which the committee also reported on this date with amendments.

COMMITTEE AMENDMENTS:

The committee amendments revise the bill to require that agreements to provide significant financial or technical assistance or

the significant use of intellectual property to an applicant for a medical cannabis dispensary permit under the bill be submitted to the Cannabis Regulatory Commission (CRC) along with the other application materials.

The committee amendments require all applicants for an alternative treatment center (ATC) permit to submit to the CRC, along with the application materials, copies of any services agreements the applicant has entered into with a third party entity.

The committee amendments expressly grant the CRC the authority to review services agreements and agreements to provide significant financial or technical assistance or the significant use of intellectual property to an applicant, to determine whether the terms of the agreement are commercially reasonable and consistent with fair market value. If the CRC finds the terms are not commercially reasonable and consistent with fair market value, the CRC will have the authority to withhold approval of an ATC permit application until the parties renegotiate a new agreement under terms that are commercially reasonable and consistent with fair market value, as determined by the CRC.