



SPONSOR: Rep. Osienski

HOUSE OF REPRESENTATIVES  
151st GENERAL ASSEMBLY

HOUSE AMENDMENT NO. 1  
TO  
HOUSE BILL NO. 305

1 AMEND House Bill No. 305 by deleting lines 93 through 96 in their entirety.

2 FURTHER AMEND House Bill No. 305 by deleting line 375 and substituting in lieu thereof the following:

3 “§ 1316. Protections for conduct authorized by this chapter.

4 (a) A public officer or employee of the State, including the members of any board, commission, conservation  
5 district or agency of the State, whether elected or appointed, and whether now or previously serving as such, and any  
6 contractor or volunteer performing work for the State, whose job functions include, assist, support, regulate, approve, or  
7 authorize any of the conduct authorized by this chapter are not subject to arrest, prosecution, or the denial of any right or  
8 privilege, including any criminal or civil penalty or disciplinary action by a court or occupational or professional licensing  
9 board or bureau where the conduct of the public officer or employee, contractor, or volunteer meets all of the following:

10 (1) The conduct arises out of or relates to activities required or authorized by this chapter.

11 (2) The conduct was carried out as authorized by this chapter or regulations authorized by this chapter.

12 (3) The conduct was carried out in good faith.

13 (b) A public officer or employee of the State, including the members of any board, commission, conservation  
14 district or agency of the State, whether elected or appointed, and whether now or previously serving as such, and any  
15 contractor or volunteer performing work for the State, whose job functions include, assist, support, regulate, approve, or  
16 authorize any of the conduct authorized by this chapter is entitled to the same rights and privileges set forth in § 3925 and §  
17 4002 of Title 10.

18 §§ 1317-1320. Reserved.”.

19 FURTHER AMEND House Bill No. 305 on line 403 by deleting “or hemp” as it appears therein.

20 FURTHER AMEND House Bill No. 305 by inserting after line 507 and before line 508 the following:

21 “All property owned by the office of the Commissioner and all associated profits are the property of the State.”.

22 FURTHER AMEND House Bill No. 305 on line 522 by inserting the following after the period thereon: “Should  
23 the Commissioner determine that there are more qualified applicants than allotted licenses for a particular marijuana

24 establishment, the Commissioner shall employ a lottery system to determine which of the qualified applicants receive a  
25 license.”.

26 FURTHER AMEND House Bill No. 305 on line 659 and 660 by deleting “peace or police officer” as it appears  
27 therein and substituting in lieu thereof “law enforcement officer”.

28 FURTHER AMEND House Bill No. 305 by deleting lines 712 through 721 and substituting in lieu thereof the  
29 following:

30 “(b)(1) A marijuana cultivation facility shall pay the Commissioner biennially for a marijuana cultivation facility  
31 license as set forth in this subsection (b). A marijuana cultivation facility licensee must renew the license biennially by  
32 paying the fee set forth in this subsection (b) and by providing documentation of a labor peace agreement.

33 (2) The license fee is based on the cannabis plant grow canopy area, which is calculated as follows:

34 a. Square footage of a cannabis plant grow canopy area is measured horizontally starting from the  
35 outermost point of the furthest plant in a cannabis plant grow canopy area and continuing around the outside of all  
36 plants located within the cannabis plant grow canopy area.

37 b. If a vertically tiered or shelving system is included in the cultivation area, the surface area of each tier  
38 or shelf must be included in calculating the cannabis plant grow canopy area. Vertical tiers or shelving systems  
39 may not exceed 24 feet in height.

40 c. A cannabis plant grow canopy area is the total square feet in which a cannabis cultivator plants and  
41 grows cannabis plants, and does not include areas exclusively used for harvesting, drying, curing, packaging,  
42 labeling, or storing cannabis.

43 (3) a. For an indoor facility with a cannabis plant grow canopy area equal to or between 2,501 and 7,500  
44 square feet or for an outdoor facility with a cannabis plant grow canopy area is equal to or between 1.1 and 2.5 acres,  
45 the fee is \$5,000.

46 b. For an indoor facility with a cannabis plant grow canopy area between 7,501 and 10,000 square feet or  
47 for an outdoor facility with a cannabis plant grow canopy area equal to or between 2.6 and 5 acres, the fee is  
48 \$7,500.

49 c. For an indoor facility with a cannabis plant grow canopy area equal to or greater than 10,001 square  
50 feet or for an outdoor facility with a cannabis plant grow canopy area equal to or greater than 5.1 acres, the fee is  
51 \$10,000.”.

52 FURTHER AMEND House Bill No. 305 on line 722 and 723 by deleting “wholesale purchase” as it appears  
53 thereon and substituting in lieu thereof “sale pursuant to subsection (a) of this section”.

54 FURTHER AMEND House Bill No. 305 on line 735 by deleting “§ 1331(a)(3)b.” as it appears thereon and  
55 substituting in lieu thereof “§ 1331(a)(3)c.”.

56 FURTHER AMEND House Bill No. 305 on line 813 by deleting “§ 1328” as it appears thereon and substituting in  
57 lieu thereof “§ 1336 of this title”.

58 FURTHER AMEND House Bill No. 305 on line 846 by deleting “and” as it appears therein and substituting in  
59 lieu thereof “or”.

60 FURTHER AMEND House Bill No. 305 on line 878 and 882 by deleting “subsection (c) of” as it appears thereon.

61 FURTHER AMEND House Bill No. 305 on line 957 by inserting after “Subchapter VI” as it appears thereon, the  
62 following: “, Chapter 5”.

63 FURTHER AMEND House Bill No. 305 on line 981 by deleting “for consumption on or off the premises” as it  
64 appears therein.

65 FURTHER AMEND House Bill No. 305 on line 1036 by deleting “7r” as it appears therein and substituting in lieu  
66 thereof “or”.

67 FURTHER AMEND House Bill No. 305 on line 1065 by deleting “subsection (d)” and substituting in lieu thereof  
68 “subsection (c)”.

69 FURTHER AMEND House Bill No. 305 by deleting “Department of Finance” as it appears on lines 1098 and 1122  
70 and substituting in lieu thereof “Commissioner”.

71 FURTHER AMEND House Bill No. 305 by deleting lines 1201 and 1202 in their entirety and substituting in lieu  
72 thereof the following:

73 “(b) A person who violates this section is subject to a civil penalty of up to \$1,000 and may be charged the costs of  
74 an enforcement action.”.

75 FURTHER AMEND House Bill No. 305 by deleting lines 1213 and 1214 in their entirety and substituting in lieu  
76 thereof the following:

77 “(c) A person who violates this section is subject to a civil penalty of not less than \$50 nor more than \$500.”

78 FURTHER AMEND House Bill No. 305 by deleting lines 1215 through 1218 in their entirety and substituting in  
79 lieu thereof:

80 “§ 1386. [Reserved]”.

81 FURTHER AMEND House Bill No. 305 by deleting lines 1233 through 1236 in their entirety and substituting in  
82 lieu thereof the following:

83                   “(2) To the administrative costs and expenses of the Department of Justice incurred to administer the Justice  
84                   Reinvestment Fund.

85                   (3) After the payment under paragraphs (a)(1) and (2) of this section, and the transfer to the Justice  
86                   Reinvestment Fund set forth in § 1387(a)(2)of this title, any remainder shall be appropriated as determined by the  
87                   General Assembly.”.

88                   FURTHER AMEND House Bill No. 305 by deleting lines 1254 through 1258 in their entirety and substituting in  
89                   lieu thereof the following:

90                   “§ 1903. Computation of taxable income.

91                   (a) The “entire net income” of a corporation for any income year means the amount of its federal taxable income  
92                   for such year as computed for purposes of the federal income tax increased by:

93                   (1) Any interest income (including discount) on obligations issued by states of the United States or political  
94                   subdivisions thereof other than this State and its subdivisions, and

95                   (2) The amount of any deduction allowed for purposes of the federal income tax pursuant to § 164 of the  
96                   Internal Revenue Code (26 U.S.C. § 164) for taxes paid on, or according to or measured by, in whole or in part, such  
97                   corporation’s net income or profits, to any state (including this State), territory, county or political subdivision thereof,  
98                   or any tax paid in lieu of such income tax, and its federal taxable income shall be further adjusted by eliminating:

99                   j. An amount equal to the ordinary and necessary business expenses paid or incurred for the taxable year  
100                   by a marijuana business operating pursuant to Chapter 13 of Title 4 or Chapter 49A of Title 16, which is  
101                   disallowed as a deduction for federal purposes pursuant to § 280E of the Internal Revenue Code.”.

102                   FURTHER AMEND House Bill No. 305 by inserting after line 1258 and before line 1259 the following and  
103                   redesignating accordingly:

104                   Section 7. Amend Subchapter II, Chapter 16, Title 30 of the Delaware Code by making deletions as shown by  
105                   strike through and insertions as shown by underline as follows:

106                   “§ 1625. Special rules for certain tax deductions for pass-through entities.

107                   (a) Definitions. As used in this section:

108                   (1) “Qualified business” means a pass-through entity operating a marijuana establishment pursuant to Chapter  
109                   13 of Title 4 or Chapter 49A of Title 16.

110                   (2) “Qualified expenses” mean the ordinary and necessary business expenses paid or incurred for the taxable  
111                   year in carrying on a qualified business, which are disallowed as a deduction for federal purposes pursuant to § 280E of  
112                   the Internal Revenue Code.

113           (b) Deduction. A pass-through entity operating a qualified business may deduct its qualified expenses in  
114 computing its total income.

115           Section 8. Amend § 581, Title 30 of the Delaware Code by making deletions as shown by strike through and  
116 insertions as shown by underline as follows:

117           § 581. Inspection of returns by federal, state and local officials.

118           (b) Notwithstanding any other provision of this section or § 368 of this title, the Director is specifically authorized  
119 to enter into an agreement with the Department of Labor, the Office of the State Bank Commissioner, the Department of  
120 Natural Resources and Environmental Control, the Division of Motor Vehicles, the Division of Alcohol and Tobacco  
121 Enforcement, the Division of Medicaid and Medical Assistance, the Enhanced 911 Emergency Service Board, the  
122 Marijuana Commissioner, or the Alcoholic Beverage Control Commissioner to provide for the inspection of any tax return  
123 filed under this title (other than Chapters 30, 51, and 52) or under Title 4; provided, however, that such inspection shall be  
124 pursuant to the Department of Labor's duties under Title 19, the Office of the State Bank Commissioner's duties under  
125 Title 5, the Department of Natural Resources and Environmental Control's duties under Title 7, the Division of Motor  
126 Vehicles' duties under Title 21, the Division of Alcohol and Tobacco Enforcement's duties under Titles 4 and 11, the  
127 Division of Medicaid and Medical Assistance's duties under Title 16, the Enhanced 911 Emergency Service Board's duties  
128 under Title 16, the Marijuana Commissioner's duties under Title 4, or the Alcoholic Beverage Control Commissioner's  
129 duties under Title 4, and may be subject to such additional requirements as may be imposed by the Director.

130           Section 9. Amend § 2901, Title 30 of the Delaware Code by making deletions as shown by strike through and  
131 insertions as shown by underline as follows:

132           § 2901. Definitions.

133           As used in this chapter:

134           (8) "Gross receipts":

135           a. In the case of a retailer, "gross receipts" includes total consideration received for all goods sold or  
136 services rendered within this State, but shall not include tobacco products taxes or motor fuel taxes paid or payable  
137 to the State under ~~Part IV of this title~~title, marijuana products taxes paid or payable to the Statue under Title 4, or  
138 gasoline and special fuel taxes paid or payable to the federal government under Internal Revenue Code § 4041 [26  
139 U.S.C. § 4041] or § 4081 [26 U.S.C. § 4081]; or receipts derived from the sale of petroleum products provided  
140 such products were sold to the retailer by a person who is licensed under this chapter and such sale is described in  
141 the definition of "gross receipts" with regard to such person.".

142 FURTHER AMEND House Bill No. 305 by deleting lines 1271 and 1272 in their entirety and substituting in lieu  
143 thereof the following:

144 “Section 13. When funds have been appropriated for implementation of this Act, the Controller General shall  
145 provide notice to the Registrar of Regulations that the funds required to implement this Act have been appropriated. This  
146 Act takes effect on publication in the Register of Regulations of a notice by the Controller General the funds required to  
147 implement this Act have been appropriated.

148 Section 14. If the notice under Section 13 of this Act is published before this Act is enacted, this Act takes effect  
149 on enactment.”.

### SYNOPSIS

This amendment makes several technical corrections. In addition, it does all of the following:

1. Adds explicit language protecting and indemnifying state employees, contractors, and volunteers who will be following state law under this Act which may be in contravention of federal law.
2. Specifies that in the event there are more qualified applicants than there are available licenses for a particular type of marijuana establishment, the Commissioner should use a lottery process to award licenses.
3. For marijuana cultivation facility licenses, specifies that the fee is based on the cannabis grow area and sets forth rules for calculating that area.
4. Assigns responsibility for license refunds to the Department of Homeland Security, as is current practice for alcohol licenses.
5. Clarifies certain civil penalties.
6. Clarifies costs and expenses that will be covered out of the Marijuana Regulation Fund.
7. Creates a state tax deduction for marijuana establishment business expenses for pass-through entities comparable to the one already in the bill for corporations.
8. Exempts marijuana taxes paid from calculations of the gross receipts tax.
9. Makes administrative corrections requested by the Department of Finance.
10. Makes a technical correction to effective date clause to eliminate potential ambiguity.