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## Government Accountability & Oversight Committee

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### HB 2000

**Brief Description:** Facilitating the efforts of the liquor control board to ensure the timely implementation of a well-designed, commercially viable regulatory scheme for the development of a legal marketplace for marijuana as required by Initiative Measure No. 502.

**Sponsors:** Representative Hurst.

#### Brief Summary of Bill

- Establishes that participation by a prospective producer, processor, or retailer of marijuana products in the legal market created pursuant Initiative Measure No. 502 requires that such participant qualify for, and purchase, a 502 marketing certificate from the Liquor Control Board (LCB) as a prerequisite to obtaining a license.
- Requires that 502 marketing certificates be sold to prospective market participants by the LCB at a public sale and that such sale must yield a purchase price that is no less than fair market value.
- Revises the distance requirement from one thousand feet down to five hundred feet with respect to the minimum distance required between licensed marijuana marketing operations and specified public facilities.
- Deletes statutory provisions establishing set licensing fees that the LCB must charge a prospective or operating producer, processor, or retailer in order to obtain or renew a license (i.e., the \$250 application fee and \$1,000 annual renewal fee), thus allowing the LCB to set such fees by rule.
- Authorizes the LCB to suspend licenses and reinstate suspended licenses upon payment of monetary penalties set by the LCB pursuant to its rule making authority.

**Hearing Date:** 3/19/13

**Staff:** Thamas Osborn (786-7129).

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

## **Background:**

### **Introduction to Initiative Measure No. 502.**

Initiative Measure No. 502 ("I-502" or "initiative") was a ballot measure approved by Washington voters in November of 2012 that legalizes the production, processing, possession and personal use of marijuana on a limited scale, creates a framework for a regulatory scheme to be further developed by the Liquor Control Board (LCB) through its rule-making authority, and revises provisions in criminal statute to accommodate such legalization in accordance with the requirements of the initiative. The scope of I-502 is quite broad and contains statutory provisions that include the following:

- legalizing the personal use and possession of up to one ounce of marijuana, as well as specified products directly related to such marijuana use;
- licensing and regulating marijuana production, distribution, and retailing;
- designating the LCB as the regulatory entity responsible for the implementation of the initiative, including continuing oversight over the commercial practices and conduct of licensed marijuana producers, processors, and retailers;
- providing the LCB with very broad rule-making authority with respect to the development of the requisite regulatory scheme;
- implementing excise taxes on marijuana production, distribution, and retailing;
- creating a dedicated marijuana fund for the collection and distribution of marijuana-related tax revenues;
- deleting statutory provisions containing criminal and/or civil penalties for marijuana related activities authorized by I-502; and
- amending driving under the influence laws to include specific provisions pertaining to driving under the influence of marijuana.

### **Discretionary Rule Making Authority of the Liquor Control Board.**

I-502 grants to the LCB rule making authority that is sweeping in its power and scope, insofar as this authority is subject to few limitations. The text of the initiative explicitly states that the LCB may adopt those rules which are deemed necessary and advisable in order to implement the provisions of the initiative in accordance with its "true intent" and that such rules must be consistent with the "spirit" of the initiative. Furthermore, the initiative goes on to state that in addition to the general rule making authority described above, the LCB is "empowered" to adopt specific categories of rules that include, *but are not limited to*, those necessary for the regulation of the following subject matter areas:

- management of retail outlets, producers, and processors;
- inspection of retail outlets;
- the books and records required to be created and maintained by licensees;
- methods of producing, processing, and packaging marijuana;
- conditions relating to sanitation, standards for ingredients, as well as the quality and identity of the types of marijuana being grown and sold;
- security requirements and safety protocols for the businesses of licensees;
- screening, hiring, training, and supervising employees;
- locations and hours of operation of retail outlets;
- labeling requirements and advertising restrictions;
- fees relating to applications, reinstatement, or renewal of licenses; and
- restrictions on the times, manner, and methods of transporting or delivering marijuana.

### **Categories of Mandatory Rule Making by the Liquor Control Board.**

The initiative establishes a deadline of December 1, 2013, for the adoption of specified categories of rules establishing the procedures and criteria necessary for the implementation and/or determination of the following:

- licensing requirements for marijuana producers, processors, and retailers;
- the maximum number of retail outlets that may be licensed in each county (in consultation with the Office of Financial Management);
- the quantity of marijuana that a producer, processor, or retailer may lawfully have on hand at any one time;
- packaging and labeling requirements;
- permissible THC concentrations of the marijuana;
- medically and scientifically accurate information regarding the health and safety risks posed by marijuana use;
- establishing classes of marijuana determined according to grade, condition, THC concentration, and other scientifically based characteristics (in consultation with the Department of Agriculture);
- time, place, and manner restrictions regarding the advertising of marijuana products; and
- accreditation requirements for testing laboratories utilized by licensees to demonstrate compliance with scientific standards established by the LCB.

### **I-502 Directive Regarding the Outcome of LCB Rulemaking as it Affects Access to, and Availability of, Legal Marijuana Products.**

Notwithstanding the broad discretionary authority the initiative grants to the LCB in promulgating its rules, the initiative explicitly directs the LCB to design and administer the regulatory scheme so as to ensure that the public has adequate access to licensed sources of marijuana, and marijuana-infused products, in order to discourage purchases from the illegal market. In effect, then, despite the initiative's broad grant of rule making authority to the LCB, this provision of the initiative constitutes an explicit, goal oriented directive that the LCB must serve in developing its rules and regulatory scheme.

### **Licensing of Marijuana Producers, Processors, and Retailers.**

I-502 creates three categories of marijuana marketing licenses to be issued by the LCB in implementing the statutory scheme outlined in the initiative: (1) The marijuana producer's license entitles the holder to produce marijuana for sale at wholesale to licensed marijuana processors or other producers; (2) the marijuana processor's license entitles the holder to process, package, and label marijuana for sale at wholesale to marijuana retailers; and (3) the marijuana retailer's license entitles the holder to sell marijuana products at retail prices in retail outlets.

The three categories of marijuana marketing licenses are subject to identical regulations regarding initial application fees and renewal fees. The initial application fee is \$250. The subsequent issuance and renewal fee, required annually, is \$1,000.

### **Restrictions on Licensed Marijuana Retailers.**

Licensed marijuana retailers are subject to specified restrictions that prohibit the following:

- the sale of products or services other than marijuana products or related paraphernalia;
- employment of persons under 21 years of age;
- allowing persons under 21 years of age to enter or remain on the premises;

- displaying signage visible from outside the premises, except for signage identifying the licensee's business or trade name and that is displayed in compliance with specified size requirements;
- displaying marijuana or marijuana-infused products in a manner that is visible to the public from outside the premises; and
- allowing employees to open or consume, or allowing others to open or consume, any marijuana or marijuana-infused product on the premises.

A retail licensee who violates any of these advertising prohibitions is subject to a \$1,000 fine for each violation. The proceeds of such fines must be deposited in the dedicated marijuana fund established under the initiative.

**Marijuana Product Advertising Limitations.**

I-502 establishes explicit regulations regarding the advertising of marijuana and marijuana based products by licensees. Included in these regulations is a blanket prohibition barring any advertising under the following circumstances:

- within 1,000 feet of school grounds, playgrounds, recreation centers, child care centers, public parks, libraries, or specified types of game arcades;
- on or in a public transit vehicle or public transit shelter; or
- on publicly owned property.

A licensee who violates any of these advertising prohibitions is subject to a \$1,000 fine for each violation. The proceeds of such fines must be deposited in the dedicated marijuana fund established under the initiative.

**Location Limitations for Marijuana Production and Marketing Operations.**

The LCB is prohibited from issuing a license to any prospective producer, processor, or retailer whose business premises are located within 1,000 feet of the perimeter of the grounds of any of the following public establishments:

- elementary or secondary school;
- playground;
- recreation center or facility;
- child care center;
- public park;
- public transit center;
- library; or
- any game arcade, admission to which is not restricted to persons aged 21 years or older.

In determining whether to grant, deny, or renew any license, the LCB must give substantial weight to objections from any incorporated city, town, or county, that are based upon chronic illegal activity associated with an applicant's operation of the premises proposed for licensing or the conduct of the applicant's patrons inside or outside such premises. The LCB must also consider such objections with respect to the applicant's operation of any other licensed premises owned or operated by such applicant.

**Dedicated Marijuana Fund.**

The initiative creates what is called a "dedicated marijuana fund", deposited with the State Treasurer, and which consists of moneys derived from marijuana excise taxes, license fees,

penalties, forfeitures, and all other moneys, income, or revenue received by the LCB from marijuana-related activities. Proceeds from the fund must be distributed every three months by the LCB to specified public entities and in amounts established in statute.

### **Summary of Bill:**

#### **502 Marketing Certificates.**

As the first step towards legally participating in the legal marijuana marketplace, a prospective participant must qualify for, and purchase, a "502 marketing certificate" ("certificate") from the LCB as a prerequisite to obtaining a license. This requirement applies to producers, processors, and retailers alike. However, actual, legal participation in the marijuana market by a prospective participant still requires possession of the requisite business license issued by the LCB. The LCB is required to develop rules establishing the eligibility criteria and processes by which the market participation of an applicant may be authorized via the issuance of the 502 marketing certificate. In effect, then, the sale of a certificate to an applicant symbolizes the LCB's initial approval of an applicant's participation in the market, with final approval being conditioned on the applicant's subsequent receipt of the requisite business license. Ownership of a certificate only entitles the owner to apply for one individual business license. In other words, a separate certificate is required for each license applied for and/or obtained by a prospective producer, processor, or retailer.

A certificate owner has a limited property right in the certificate that he or she can later transfer or sell, subject to the permission of the board. However, a certificate owner must apply and qualify for a license within 180 days of the issuance of the certificate, or such owner risks losing it. If the certificate owner fails to either apply or qualify for a license, the certificate owner must relinquish his or her ownership interest in the certificate to the Board in return for a refund of the purchase price, less reasonable administrative costs incurred by the LCB for processing.

The LCB must develop rules establishing the eligibility criteria and processes for the public sale of 502 marketing certificates. Any such public sale must result in a selling price yielding no less than fair market value.

#### **Changes to Location Limitations for Marijuana Production and Marketing Operations.**

The requirement under the initiative that any type of licensed marijuana marketing operation be located no less than 1,000 feet from specified public facilities is revised downward to a distance of 500 feet. Specifically, the LCB is prohibited from issuing a license to an applicant if the licensed premises would be within 500 feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, or library, or any game arcade that allows persons under 21 to enter. The distance must be measured by the shortest straight line distance from the main entrance of the specified public facility to the main entrance of the proposed licensed location.

#### **Licensing and Other Fee Issues.**

The act deletes statutory provisions establishing set licensing fees that the LCB must charge a prospective or operating producer, processor, or retailer in order to obtain or renew a license (i.e., the \$250 application fee and \$1,000 annual renewal fee). In effect, these deletions leave it to the LCB to set such fees by rule, pursuant to the rule-making authority provided to the LCB under the current provisions of the initiative.

In addition, the fees for application, reinstatement, and renewal of licenses, as determined by the LCB via rule, must cover the cost of administration and enforcement of the licenses.

**License Suspension Provisions.**

The LCB is authorized to suspend licenses and to reinstate suspended licenses upon payment of monetary penalties set by the LCB pursuant to its rule making authority.

**Penalties for Violations of Advertising Restrictions.**

The statutory provisions requiring that the LCB fine a retail licensee \$1,000 for each violation of specified statutory restrictions on the marijuana-related products that may be legally sold by retailers are deleted. These deletions, in effect, leave it to the discretionary authority of the LCB to implement rules regulating the penalties for such violations.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.