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**HOUSE BILL 2998**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Representatives Hurst, Condotta, and Sawyer

AN ACT Relating to facilitating the orderly development of the legal marijuana market and eliminating the illicit marijuana market; amending RCW 69.50.535; adding a new section to chapter 69.50 RCW; and creating new sections.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  This act shall be known as the youth protection, crime reduction, and collateral education funding act of 2016.

NEW SECTION. **Sec.**  (1) The legislature finds that although the relationship between humans and marijuana probably goes back a lot further, tombs of Egyptian mummies dating to 950 B.C. were found to contain marijuana. In the next three thousand years, little changed until 1937, when a tax act in the United States had the practical effect of making marijuana illegal for most Americans. In 1970, the uniform controlled substances act was passed by congress and marijuana was temporarily listed as a Schedule I controlled substance. A task force was created to determine how to properly classify marijuana for placement on the federal schedule of controlled substances, but political pressures at the time kept policy makers from finding an appropriate place for marijuana in American law, culture, and medicine. The improper, and illogical, designation of marijuana as a Schedule I controlled substance, and the failure of the federal government to recognize three thousand years of human experience with this substance, has yielded a host of unfortunate consequences, including bad public policy, wasted revenue, and harm to the citizens of this state and this country.

(2) Today, marijuana is widely recognized as having medical and therapeutic value, and is an accepted part of daily life for millions of Americans. Through a citizens' initiative, Initiative Measure No. 502, which was approved by the voters in 2012, Washington citizens expressed their belief that a carefully regulated and taxed legal market for consenting adults was vastly superior to a costly and unsuccessful war on marijuana that did little more than create and perpetuate an organized crime venture serving an illegal market that produced billions in illicit profits and untaxed revenue. While Initiative Measure No. 502 did not declare marijuana to be safe or encourage its use, the initiative did express the will of the people that consenting adults in a free society should be allowed the freedom to personally decide whether or not to use marijuana and that eliminating the negative impacts of a criminal market is a high priority for the citizens of the state of Washington. In fact, the initiative went to great lengths to create a regulatory system that keeps marijuana out of the hands of anyone under twenty-one years of age and provides dedicated money for use by universities and other research institutions to conduct research to determine the potential dangers and risks of marijuana use. The primary focus of Initiative Measure No. 502 was, and continues to be, the elimination of a criminal market that has been violent and very profitable.

(3) In the last three years it has been the job of the legislature to ensure that the wishes of our citizens are fulfilled. However, progress has been slow and the task is far from complete. According to estimates by the state liquor and cannabis board, only one-third of the 1.33 billion dollar annual marijuana market is currently served by legitimate, licensed Washington businesses. The other two-thirds is controlled by criminal elements. On any given day, news outlets around the state still record incidents of violent crime that led a weary and frustrated population to enact Initiative Measure No. 502. As recently as last week, on February 13, 2016, a sixteen year old was killed in Federal Way, Washington, during a transaction to purchase marijuana. Although far from being an isolated incident, this tragedy points to the two biggest flaws in the system that had been in place for decades prior to the passage of Initiative Measure No. 502; drug dealers sell to kids and people become victims of violent crime, including murder. More often than not, ordinary citizens become victims when criminals mistakenly do home invasion robberies at the wrong address, or they are simply in the cross fire when drug transactions go bad in public places.

(4) Rather than wait another decade for this problem to resolve itself, or simply hope that legitimate entrepreneurs and businessmen will somehow be successful in their competitive struggle against the illicit marijuana market and thus defeat the criminal element, it is time for the legislature to intervene now. The intent of this act is to bring to an end, as quickly as possible, the criminal marijuana market place in Washington state, and at the same time bring in an additional 1.085 billion dollars in new revenue. These funds can then be used to protect kids, educate the public about marijuana, and help pay for other necessary government services, such as education, transportation, and health care.

(5) By reducing our current tax rate on marijuana from thirty-seven percent to twenty-five percent, this act will result in over one billion dollars in new revenue over the next five years. It will put an end to the massive cross border sales within Oregon, whose much more reasonable marijuana tax rate is already at twenty-five percent. Secondly, this act will repeal the bans and moratoriums on legal marijuana retailers that have been enacted in eighty-eight cities and nine counties. These bans and moratoriums force 26.49 percent of Washington residents to buy their untaxed marijuana from criminal organizations, and have done nothing to reduce the availability of one of the most easily accessible products to Washington citizens. In jurisdictions without bans or moratoriums, licensed and legal stores do not sell marijuana to kids and do pay taxes. Criminal organizations in jurisdictions with bans and moratoriums sell marijuana to kids and commit violent crimes, like murder, and do not pay taxes. Licensed and legal marijuana stores in jurisdictions without bans and moratoriums sell a carefully grown product that is properly labeled and has been tested by state approved labs for dangerous substances such as toxic chemicals, fertilizers, and other hazardous substances. Illegal criminal enterprises in jurisdictions with bans and moratoriums sell untested products of unknown potency and think nothing of selling a product with toxic chemicals and even with mixtures of other illegal drugs. Jurisdictions that allow legal, licensed, regulated, and taxed marijuana sales to informed adults are dramatically reducing the chances that their citizens will be victims of crimes or that marijuana will be sold to their children. Jurisdictions that have bans and moratoriums have not reduced the availability of marijuana by one iota, and are in fact protecting criminal markets and will ultimately increase crime by opening the door to criminal organizations that will more aggressively compete for the remaining illegal market share.

(6) Finally, the legal, regulated, and licensed marijuana market in Washington state is inching closer to collapsing the profitability index for the criminal market. We now stand at the precipice of an opportunity to end the illicit marijuana market once and for all, and this act represents a crucial step towards achieving this goal. By making a small adjustment to the cost index through a slight reduction in the tax rate for legal marijuana, this act will end the profitability of the current criminal markets. By both adjusting the tax rate on marijuana and ending bans and moratoriums, we will bring a quick and successful end to the criminal markets and provide over one billion dollars in new revenue. We can use this money to make sure that marijuana stays out of the hands of kids, better inform our citizens as to the risks of recreational use, study the benefits of medical marijuana, while at the same time enhancing public health and helping to fund education.

**Sec.**  RCW 69.50.535 and 2015 2nd sp.s. c 4 s 205 are each amended to read as follows:

(1)(a) There is levied and collected a marijuana excise tax equal to ((~~thirty-seven~~)) twenty-five percent of the selling price on each retail sale in this state of marijuana concentrates, useable marijuana, and marijuana-infused products. This tax is separate and in addition to general state and local sales and use taxes that apply to retail sales of tangible personal property, and is not part of the total retail price to which general state and local sales and use taxes apply. The tax must be separately itemized from the state and local retail sales tax on the sales receipt provided to the buyer.

(b) The tax levied in this section must be reflected in the price list or quoted shelf price in the licensed marijuana retail store and in any advertising that includes prices for all useable marijuana, marijuana concentrates, or marijuana-infused products.

(2) All revenues collected from the marijuana excise tax imposed under this section must be deposited each day in the dedicated marijuana account.

(3) The tax imposed in this section must be paid by the buyer to the seller. Each seller must collect from the buyer the full amount of the tax payable on each taxable sale. The tax collected as required by this section is deemed to be held in trust by the seller until paid to the board. If any seller fails to collect the tax imposed in this section or, having collected the tax, fails to pay it as prescribed by the board, whether such failure is the result of the seller's own acts or the result of acts or conditions beyond the seller's control, the seller is, nevertheless, personally liable to the state for the amount of the tax.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Board" means the state liquor and cannabis board.

(b) "Retail sale" has the same meaning as in RCW 82.08.010.

(c) "Selling price" has the same meaning as in RCW 82.08.010, except that when product is sold under circumstances where the total amount of consideration paid for the product is not indicative of its true value, "selling price" means the true value of the product sold.

(d) "Product" means marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products.

(e) "True value" means market value based on sales at comparable locations in this state of the same or similar product of like quality and character sold under comparable conditions of sale to comparable purchasers. However, in the absence of such sales of the same or similar product, true value means the value of the product sold as determined by all of the seller's direct and indirect costs attributable to the product.

(5)(a) The board must regularly review the tax level established under this section and make recommendations, in consultation with the department of revenue, to the legislature as appropriate regarding adjustments that would further the goal of discouraging use while undercutting illegal market prices.

(b) The state liquor and cannabis board must report, in compliance with RCW 43.01.036, to the appropriate committees of the legislature every two years. The report at a minimum must include the following:

(i) The specific recommendations required under (a) of this subsection;

(ii) A comparison of gross sales and tax collections prior to and after any marijuana tax change;

(iii) The increase or decrease in the volume of legal marijuana sold prior to and after any marijuana tax change;

(iv) Increases or decreases in the number of licensed marijuana producers, processors, and retailers;

(v) The number of illegal and noncompliant marijuana outlets the board requires to be closed;

(vi) Gross marijuana sales and tax collections in Oregon; and

(vii) The total amount of reported sales and use taxes exempted for qualifying patients. The department of revenue must provide the data of exempt amounts to the board.

(c) The board is not required to report to the legislature as required in (b) of this subsection after January 1, 2025.

(6) The legislature does not intend and does not authorize any person or entity to engage in activities or to conspire to engage in activities that would constitute per se violations of state and federal antitrust laws including, but not limited to, agreements among retailers as to the selling price of any goods sold.

NEW SECTION. **Sec.**  A new section is added to chapter 69.50 RCW to read as follows:

(1) Except as otherwise provided in this section, the state of Washington fully occupies and preempts the entire field of regulating the production, processing, and retail sale of useable marijuana, marijuana-infused products, and marijuana concentrates under this chapter.

(2) Cities, towns, and counties retain their existing zoning authority regarding the siting of licensed marijuana retailers.

(3) No local comprehensive plan, development regulation, or ordinance may preclude the siting of licensed marijuana retailers, except that a local jurisdiction that does not permit retail uses anywhere in the jurisdiction is not required to accommodate the siting of licensed marijuana retailers.

(4) Nothing in this section may be construed to prevent a city, town, or county from enacting an ordinance, regulation, or comprehensive plan that precludes the siting of marijuana producers or processors within its jurisdictional boundaries.

(5) Nothing in this section may be construed to prevent a city, town, or county from applying ordinances of general application to marijuana businesses.

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