
Commerce & Gaming Committee

HB 1461

Brief Description: Relating to marijuana.

Sponsors: Representatives Hurst and Condotta.

Brief Summary of Bill

- Revises numerous regulatory provisions regarding recreational and medical marijuana, including those pertaining to: excise taxes and exemptions; the allocation of revenues derived from excise tax proceeds; the siting of recreational marijuana businesses; municipal bans and moratoria regarding marijuana businesses; using marijuana in public places; acquisition of marijuana by minors; eradicating illegal marijuana-growing operations; seizure and auction of illegal marijuana by law enforcement agencies; repealing Initiative 502 and all of the medical marijuana statutes; cannabis-based health and beauty aids; and common carrier transportation and delivery services for marijuana businesses.
- Creates two alternative regulatory systems for medical cannabis.

Hearing Date: 2/2/15, 2/3/15

Staff: Thamas Osborn (786-7129); David Rubenstein (786-7153).

The following background and bill summary address Proposed Substitute House Bill 1461 (H-1283.2/15).

Background:

RECREATIONAL MARIJUANA: INITIATIVE 502 AND THE CONTROLLED SUBSTANCES ACT

Introduction to Initiative Measure No. 502.

Initiative Measure No. 502 (I-502) was a ballot measure approved by Washington voters in November of 2012 that: (1) legalized the production, processing, possession and personal use of

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.

marijuana; (2) created a framework for a regulatory scheme to be further developed by the Liquor Control Board (LCB) through its rule-making authority; and (3) revised provisions in criminal statute to accommodate such legalization in accordance with the requirements of the initiative. The scope of I-502 was broad and contained 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 broad rule-making authority with respect to the development of the requisite regulatory scheme;
- implementing excise taxes on marijuana production, processing, 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.

The statutory provisions of I-502 are codified in the state Controlled Substances Act (CSA), chapter 69.50 RCW.

Discretionary Rule-Making Authority of the Liquor Control Board.

The LCB has broad, discretionary rule-making authority regarding the production, use, and possession of marijuana. In addition to this general grant of authority, the LCB is explicitly authorized to adopt specified categories of rules that include, but are not limited to, those necessary for the regulation of the following subject matter areas:

- management and inspection of retail outlets, producers, and processors;
- 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;
- labeling requirements and advertising restrictions; and
- restrictions on the time, manner, and methods of transporting or delivering marijuana.

Mandatory Rule-Making by the Liquor Control Board.

The LCB is also required to develop 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;
- establishing classes of marijuana determined according to grade, condition, THC concentration, and other scientifically based characteristics (in consultation with the Department of Agriculture); and
- time, manner, and place restrictions regarding the advertising of marijuana products.

Licensing of Marijuana Producers, Processors, and Retailers.

The LCB is authorized to issue three categories of commercial marijuana licenses: (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 other processors; 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 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.

Excise Taxes Imposed on Marijuana Producers, Processors, and Retailers.

An excise tax of 25 percent of the sale price must be paid by each of the three categories of licensees at each step of the production, processing, and marketing process:

- Producers pay a tax of 25 percent of the wholesale price of the marijuana sold to processors or to other producers.
- Processors pay a tax of 25 percent of the wholesale price of the useable marijuana or marijuana-infused products sold to retailers or to other processors.
- Retailers pay a tax of 25 percent of the retail price of the useable marijuana or marijuana-infused products sold to the consumer.

Restrictions on Licensed Marijuana Retailers.

Licensed marijuana retailers may not:

- sell products or services other than marijuana products or related paraphernalia;
- employ persons under 21 years of age;
- allow persons under 21 years of age to enter or remain on the premises;
- display 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;
- display marijuana or marijuana-infused products in a manner that is visible to the public from outside the premises; nor
- allow employees to open or consume, or allow 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 I-502.

Transport and Delivery of Recreational Marijuana by Third Party Carriers.

Transportation and/or delivery of marijuana and processed marijuana products may be done only by the employees of a producer, processor, or retailer. Other transportation or trucking services may not be used for this purpose.

Marijuana Product Advertising Limitations.

Marijuana retailers are subject to specified restrictions regarding the advertising of marijuana and marijuana-based products. 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 I-502.

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 facilities:

- 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 age 21 years or older.

Federal law imposes additional penalties on the distribution of controlled substances within 1,000 feet of an elementary or secondary school, college, playground, or public housing facility. The same additional penalties are imposed for distribution within 100 feet of a youth center, swimming pool, or video arcade.

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.

Public Use or Display of Marijuana.

It is unlawful to consume or open a package containing marijuana or marijuana products in view of the general public.

Local Prohibitions and State Preemption.

Many cities and counties throughout the state have enacted ordinances that have the effect of prohibiting the siting of licensed marijuana producers, processors, and retailers within their borders. Approximately 105 cities and 11 counties in Washington have enacted such a prohibition or moratorium. Other cities and counties have enacted special zoning ordinances limiting the location of recreational marijuana businesses to certain areas or have proposed special licensing requirements.

These actions by Washington cities and counties have given rise to litigation regarding whether or not local governments are preempted from enacting local ordinances that have the effect of preventing or interfering with the siting of state licensed marijuana businesses authorized under I-502. Courts in Clark County, the City of Fife, the City of Wenatchee, and elsewhere have ruled that state law does not preempt such actions by local governments. The Washington State Attorney General has published a formal opinion in January 2014 stating that state law does not preempt local ordinances that impose bans or moratoria regarding the siting of marijuana producers, processors, and retailers.

Dedicated Marijuana Fund.

The initiative created a "dedicated marijuana fund," deposited with the State Treasurer and that 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. Among the distributions is \$1.25 million for the LCB to administer the legal marijuana system.

Seizure and Forfeiture of Marijuana Under the CSA.

Marijuana and processed marijuana products that have been unlawfully grown, manufactured, possessed, distributed, or sold in violation of the CSA are devoid of property rights and are subject to seizure and summary forfeiture to the state.

Federal Response to State Marijuana-Related Regulations.

Washington is one of at least 23 states that have passed legislation allowing the use of marijuana for medicinal purposes and one of four states that allow its recreational use. These activities, however, remain illegal under federal law. Absent congressional action, state laws permitting the use of marijuana will not protect a person from prosecution by the federal government.

In recent years, the United States Department of Justice (DOJ) has issued several policy statements regarding state regulation of marijuana. The latest of these was issued in August 2013. In this memorandum, federal prosecutors were instructed to focus investigative and prosecutorial resources related to marijuana on specific enforcement priorities to prevent:

- the distribution of marijuana to minors;
- marijuana sales revenue from being directed to criminal enterprises;
- marijuana from being diverted from states where it is legal to states in which it is illegal;
- state-authorized marijuana activity from being used as a cover for trafficking other illegal drugs or other illegal activity;
- violence and the use of firearms in the production and distribution of marijuana;
- drugged driving and other marijuana-related public health consequences;
- the growth of marijuana on public lands; and
- marijuana possession or use on federal property.

The memorandum maintains that the DOJ has not historically prosecuted individuals in cases that pertain to the possession of small amounts of marijuana for personal use on private property. With respect to state laws that authorize marijuana production, distribution, and possession, the memorandum asserts that when these activities are conducted in compliance with strong and effective regulatory and enforcement systems, there is a reduced threat to federal priorities. In those instances, the memorandum provides that state and local law enforcement should be the primary means of regulation. The memorandum, however, continues to affirm its authority to challenge state regulatory systems and to bring individual enforcement actions in cases in which state enforcement efforts are inadequate.

MEDICAL MARIJUANA IN WASHINGTON STATE

Overview of Initiative 692.

In 1998, Washington voters approved Initiative 692 to allow qualifying patients to use limited amounts of marijuana for medicinal purposes. Qualifying patients may grow their own marijuana or may authorize a designated provider to obtain medical marijuana and perform other responsibilities on behalf of the qualifying patient. They may also obtain marijuana through collective gardens that consist of up to 10 qualifying patients who share in the responsibilities of producing and processing marijuana for medical use.

Qualifying patients and designated providers are protected from arrest or prosecution under state laws relating to marijuana if the individual uses and possesses it for medicinal purposes, does not exceed specified amounts, and meets other criteria.

Qualifying Patients.

A qualifying patient is a person who:

- is a patient of a health care professional;
- has been diagnosed by that health care professional as having a terminal or debilitating medical condition;
- is a resident of the state of Washington at the time of such diagnosis; and
- has been advised by that health care professional about the risks and benefits of the medical use of cannabis and that he or she may benefit from the medical use of cannabis.

Collective Gardens.

Qualifying patients may create and participate in collective gardens for the purpose of producing, processing, transporting, and delivering marijuana for medical use subject to the following conditions:

- no more than 10 qualifying patients may participate in a single collective garden at any time;
- a collective garden may contain no more than 15 plants per patient up to a total of 45 plants;
- a collective garden may contain no more than 24 ounces of useable marijuana per patient, up to a total of 72 ounces of useable marijuana;
- a copy of each qualifying patient's valid documentation must be available at all times on the premises of the collective garden; and
- no useable marijuana from the collective garden is delivered to anyone other than one of the qualifying patients participating in the collective garden.

Collective gardens are not subject to any licensing requirements or other systematic regulatory oversight.

Valid Documentation.

"Valid documentation" means a statement signed and dated by a qualifying patient's health care professional written on tamper-resistant paper, which states that, in the health care professional's professional opinion, the patient may benefit from the medical use of marijuana.

Medical Cannabis Dispensaries.

There are no statutory provisions explicitly authorizing or regulating the operation of medical marijuana dispensaries or other business entities that produce, process, or sell medical marijuana and medical cannabis products.

Taxation.

There are no statutory provisions explicitly addressing the taxation of retail sales of medical cannabis by collective gardens or medical cannabis dispensaries.

Liquor Control Board Work Group.

In 2013, the Legislature directed the LCB to work with the Department of Health (DOH) and the Department of Revenue (DOR) to develop recommendations related to the interaction between the regulation of recreational marijuana compared to medical marijuana. The recommendations must address age limits; authorization requirements for medical marijuana; health care professional regulations; collective gardens; possession amounts; location requirements; licensing requirements for medical marijuana production, processing, and retailing; taxation of medical marijuana; and a designated agency as the appropriate regulatory entity.

The LCB submitted its recommendations to the Legislature in December 2013. The recommendations relate to:

- allowing 18- to 20-year-olds to have access to medical marijuana;
- allowing access to medical marijuana for children under 18 years old with parent or guardian consent;
- establishing a mandatory registry for qualifying patients and designated providers and issuing cards to persons on the registry;
- requiring registry information to be entered by the authorizing health care professional;
- allowing access to the registry for law enforcement, the DOR, and health professions disciplining authorities;
- requiring the DOH to define "debilitating" and "intractable pain";
- eliminating collective gardens;
- reducing possession amounts from 24 ounces of useable marijuana to three ounces;
- allowing qualifying patients and designated providers to possess up to six marijuana plants;
- integrating medical and recreational marijuana producers, processors, and retailers into a single licensing system; and
- exempting purchases for qualifying patients from sales and use taxes.

Summary of Bill:

PART I – HB 1020 – Medical use of cannabis

Introduction and Overview.

A regulatory framework is created for the production, processing, sale, use, and possession of medical cannabis. This framework includes provisions that address:

- licensing of medical cannabis producers, processors, and dispensers by the DOR;
- regulation and rule-making by the DOH and the Department of Agriculture (WSDA);
- documentation needed by a medical cannabis user in order to be immune from arrest, prosecution, or other sanctions;
- insulating law-abiding medical cannabis users, producers, processors, dispensaries, and medical professionals from criminal and civil liability;
- legal requirements for the operation of collective gardens;
- legal requirements for the lawful operation of medical dispensaries, as well as medical cannabis producers and processors;
- taxation; and
- housing rights.

Any applicable taxes qualify for the dietary supplements exemption under the state tax code.

Definitions.

Several definitions are added to those already listed under current statute, including:

- "licensed dispenser," which means a person or entity, licensed by the DOR, that dispenses cannabis for medical use to qualifying patients;
- "licensed processor," which means a person or entity, licensed by the DOR, that processes cannabis for wholesale to a licensed dispenser; and
- "licensed producer," which means a person or entity, licensed by the DOR, that produces cannabis for wholesale to a licensed processor or a licensed dispenser.

Licensed Dispensers.

Licensed dispensers are authorized to possess, sell, dispense, deliver, prepare, package, and label cannabis for the use of its members provided specified criteria are met. The statutory criteria include requirements that licensed dispensers:

- only allow qualifying patients or their designated providers to become members of a dispensary;
- not require members to provide work as part of their membership;
- not deliver cannabis to anyone other than a member of the dispensary;
- not advertise cannabis for sale to the general public in any manner that promotes or tends to promote the abuse of cannabis;
- keep records of all transactions;
- not dispense cannabis that is labeled in a manner that mimics candy, soda, or other treats attractive to children; and
- not be located within 1,000 feet of an accredited elementary or secondary school, public park, or child care center.

A city, town, or county may adopt an ordinance providing for distance requirements that are greater than or less than the distance requirement stated here, provided that it does not preclude the possibility of siting a licensed dispenser or dispensary within their jurisdiction.

Licensed dispensers are subject to regulation by the DOH, which is granted rule-making authority.

Licensed Producers.

Licensed producers are authorized to grow, harvest, process, package, label, and transport medical cannabis for wholesale, provided specified statutory criteria are met. These criteria are analogous to those applicable to licensed dispensers, but also impose additional requirements, including:

- no cannabis from a licensed producer may be delivered to anyone other than a licensed processor or a licensed dispenser; and
- licensed producers must keep records of all production and delivery.

Licensed dispensers are subject to regulation by the WSDA, which is granted rule-making authority.

Licensed Processors.

Licensed processors are authorized to manufacture, prepare, process, package, label, and transport medical cannabis for sale at wholesale, provided specified statutory criteria are met. These criteria are analogous to those applicable to licensed dispensers and producers, but also impose additional requirements, including:

- no cannabis from a licensed producer may be delivered to anyone other than a licensed processor or a licensed dispenser; and
- licensed processors must keep records of all production and delivery.

Licensed dispensers are subject to regulation by the WSDA, which is granted rule-making authority.

Collective Gardens.

Collective gardens are explicitly authorized to engage in the private, unlicensed, noncommercial production, possession, transportation, delivery, or administration of cannabis for medical use, provided the collective garden:

- does not operate on a commercial basis;
- does not engage in any sales;
- does not engage in any commercial activity, including any type of advertising;
- does not rotate more than five members of the collective garden within a 15-day period; and
- abides by all other applicable statutory requirements and restrictions.

General Immunity from Detention, Arrest and Prosecution.

Qualifying patients, designated providers, members of collective gardens, licensed dispensers, licensed processors, and licensed producers who are in compliance with the requirements of chapter 69.51A RCW may not be arrested, searched, prosecuted, or subject to other criminal sanctions or civil consequences under state law for the possession, use, or sale of medical cannabis.

Qualifying patients are entitled to the same rights and protections from civil and criminal liability as are users of prescription drugs under state law.

Housing Rights.

A qualifying patient may not be refused housing or be evicted from housing solely as a result of his or her possession or use of cannabis. However, housing providers that enact and consistently enforce prohibitions against all smoking, including tobacco, in their housing may apply those prohibitions to smoking cannabis.

Banking Services.

Washington state chartered banks and credit unions are authorized to provide financial services to licensed producers, processors, and dispensaries.

Cannabis Stakeholder Workgroup.

A work group of at least twelve medical cannabis stakeholders must be appointed by the Legislature to study the potential benefits and drawbacks of a voluntary patient registry, or uniform identification, system as compared to the current valid documentation required under this chapter. Any recommendations from the work group must be presented to the legislature by January 1, 2016.

PART II – HB 1165 – The creation of a dedicated local jurisdiction marijuana fund

Dedicated Local Jurisdiction Marijuana Fund.

A "local jurisdiction marijuana fund" is created, consisting of revenues derived from the excise taxes imposed on marijuana producers and retailers. In accordance with a formula, such tax revenue is divided between the dedicated marijuana fund and the local jurisdiction marijuana fund. The amounts deposited in each fund are calculated as a percentage of the total excise taxes paid by marijuana producers and retailers, as follows:

- ninety percent of the excise tax revenue obtained from marijuana producers is credited to the dedicated marijuana fund and 10 percent is credited to the local jurisdiction marijuana fund; and
- Eighty percent of the excise tax revenue obtained from marijuana retailers is credited to the dedicated marijuana fund, and 20 percent is credited to the dedicated local jurisdiction marijuana fund.

Local jurisdiction is defined to mean counties, cities, and towns.

Disbursements from the Local Jurisdiction Marijuana Fund.

The funds in the local jurisdiction marijuana fund must be disbursed by the LCB every three months as follows:

- funds derived from marijuana producer excise taxes must be disbursed to the local jurisdiction where the producer is physically located, and such local disbursement must be proportional to the share of total revenues in the fund that are derived from the excise taxes paid by the local producer; and
- funds derived from marijuana retailer excise taxes must be disbursed to the local jurisdiction where the retailer is physically located, and such local disbursement must be proportional to the share of total revenues in the fund that are derived from the excise taxes paid by the local retailer.

PART III – HB 1334 – Taxes payable on sales by marijuana producers, processors, and retailers

Responsibility for Payment of Excise Taxes.

Responsibility for the collection and remittance of excise taxes by marijuana producers, processors, and retailers is revised so as to make the seller responsible for collecting the excise tax from the buyer. The tax must be paid by the buyer to the seller, and the seller holds such tax proceeds in trust until such time as the seller remits the proceeds to the LCB. The seller is personally liable for both the collection of the tax and the transfer of the proceeds to the LCB. A seller is subject to sanctions for failing to comply with specified requirements regarding taxable transactions and for failing to timely pay excise tax revenues to the LCB. An opportunity for an administrative hearing must be provided to any person or business entity receiving a notice of unpaid excise taxes.

Sanctions and Remedies for Unpaid Excise Taxes.

When a limited liability business entity operating a production, processing, or retail marijuana business fails to properly collect or remit marijuana excise taxes, and such corporation has been dissolved or is insolvent, the LCB may take legal action against specified owners, executives, managers, employees, or other designated "responsible individuals," and hold them personally liable. The LCB must follow specified criteria for determining exactly who is liable and the nature of such liability for unpaid excise taxes.

PART IV – HB 1335 – Local option to reduce buffer to 500 feet

Cities, towns, and counties are permitted to pass an ordinance reducing the required buffer from 1,000 feet to 500 feet. The LCB is permitted to issue a license for premises located in compliance with the ordinance.

PART V – HB 1359 – Acquisition of marijuana by minors

The following acts constitute a misdemeanor (punishable by a sentence of up to 90 days and a fine of up to \$1,000):

- inviting a minor into a place where marijuana is sold and allowing or helping the minor to acquire marijuana; and
- transferring an ID to a minor for the purposes of purchasing marijuana products (requires a minimum \$2,500 fine and, if imposed, 25 hours of community restitution).

It is a gross misdemeanor to forge, alter, or acquire a counterfeit identification and provide that identification to a person under the age of 21. Violations carry a sentence of up to 364 days and a minimum fine of \$2,500. However, the manufacture and delivery of counterfeit driver's license and similar state-issued identification is a class C felony punishable by up to five years in prison and a fine of \$10,000.

It is either a class 2 or a class 3 civil infraction for a person under 18 or between 18 and 21 years old, respectively, to purchase, attempt to purchase, or misrepresent his or her age to purchase marijuana or misrepresent his or her age to enter licensed marijuana premises.

Acceptable forms of ID for age verification, such as driver's licenses, are defined.

PART VI – HB 1360 – Concerning marijuana in public places

Consuming or opening a package containing marijuana or marijuana products in a public place is prohibited. "Public place" has the same definition as in liquor control statutes. A violation is a class 3 civil infraction, punishable by a fine of \$50, plus applicable local fines.

PART VII – HB 1361 – Allowing the LCB to accept donations for funding informational material

The power and authority of the LCB is expanded to allow it to accept donations or grants from any source for the purpose of improving public awareness of the health risks associated with the use of marijuana by both youth and adults.

PART VIII – HB 1411 – Concerning the siting of marijuana facilities

Cities May Reduce Buffer Around Certain Entities.

The legislative authority of a city or town may exempt from the buffer requirement any of the entities around which a buffer is required, except for elementary and secondary schools. To do so, it must adopt legislation declaring that in order to allow a marijuana retail facility to be sited, it is necessary to create enough potential locations in the city or town and that the change will not negatively impact the jurisdiction's regulatory, law enforcement, public health, and public safety interests.

PART IX – HB 1412 – Permitting local governments to prohibit marijuana businesses by public vote

Prohibition by Public Vote.

A city, town, or county may prohibit the production, processing, and sale of marijuana under I-502 by passing an ordinance and then submitting the ordinance for approval of a majority of voters at a general or special election. Once enacted, the ordinance takes effect after 10 days, or a later date specified in the ballot measure.

The LCB may not issue or renew a license for a business located in an area subject to the ordinance. Administrative review proceedings applicable to denial or revocation of a marijuana license do not apply to businesses within areas subject to the ordinance.

Revenue Sharing Prohibited.

A city, town, or county prohibiting marijuana businesses may not receive any portion of excise tax revenues collected statewide from such businesses.

PART X – HB 1413 – Revising buffer distances between marijuana businesses and specified facilities

The distance requirements regarding the minimum allowable proximity between marijuana producers, processors, and retailers and specified facilities are revised. Specifically, the minimum distance required between a licensed marijuana business and a recreation center, child care center, public park, public transit center, library, or game arcade that is open to those under 21 years of age is reduced from 1,000 feet to 100 feet. The 1,000-foot minimum distance requirement with regard to schools and playgrounds remains unchanged.

PART XI – HB 1414 – Tax exemption for sales of seeds and cloned plants between licensed marijuana producers

With respect to transactions between licensed marijuana producers, sales of marijuana seeds and live, cloned, nonflowering marijuana plants are made exempt from the 25 percent excise tax. "Nonflowering marijuana plants" are defined as those plants that do not include the presence of developing flowers or buds, pollen, trichomes, or THC crystals.

PART XII – HB 1418 – Enforcement of illegal marijuana production

Within the \$1.25 million dedicated to the LCB, the LCB must contract with one or more state or local law enforcement agencies to support the locating and eradication of illegal marijuana production. The contract must prioritize illegal production on public lands and require notification of federal agencies.

PART XIII – HB 1438 – Permitting local governments to prohibit marijuana businesses only by public vote

Preemption.

The State of Washington fully occupies and preempts the entire field of the regulation of the production, processing, and retail sale of marijuana under I-502. No city, town, or county may adopt an ordinance that prohibits or precludes the siting of such businesses.

However, cities, towns, and counties retain the following powers:

- zoning authority regarding the siting of licensed marijuana businesses;
- the authority to adopt or retain a generally applicable prohibition of commercial plant growing, plant and food-product processing, and retail uses; and
- the authority to adopt and enforce other ordinances generally applying to other businesses, such as licensing or permitting.

Prohibition by Public Vote.

Notwithstanding the general preemption on local laws regarding marijuana businesses, any city, town, or county can prohibit the production, processing, and retail sale of marijuana by public vote. There are two avenues by which a local government may take such a vote.

First, a registered voter in the jurisdiction may submit a petition, signed by at least 30 percent of the registered voters in that jurisdiction, calling for the jurisdiction to prohibit marijuana producers, processors, and/or retailers. Then, within 60 days of determining the petition to be sufficient, the legislative authority in that jurisdiction must hold a public hearing and then submit the question to the voters at a general or special election. If approved by a majority vote, the prohibition takes effect on a date specified in the petition or, if none is specified, another date 30 to 60 days after the election.

Second, the legislative authority of the city, county, or town can initiate the prohibition ordinance by submitting ballot proposition at a general or special election. As with the voter-initiated prohibition, if a majority of the voters approve, the prohibition takes effect on the specified date or another date, 30 to 60 days after the election.

If the vote is to prohibit I-502 businesses in a county, only registered voters living in unincorporated portions of the county may participate in the petition or voting, and the ordinance only applies in those areas.

The LCB may not issue or renew a marijuana producer, processor, or retailer license for a business located in a jurisdiction that has prohibited marijuana businesses by public vote under this act. Also, the administrative review procedures applicable to other licensees or applicants under I-502 are not applicable to businesses within an area subject to the ordinance.

PART XIV – HB 1650 – Seizure and disposition of marijuana and processed marijuana products by law enforcement agencies

Introduction and Overview.

Any state or local law enforcement agency may seize and sell at auction any marijuana, marijuana concentrates, and marijuana-infused products that have been illegally grown, produced, processed, or possessed in violation of the Controlled Substances Act and which are otherwise legally subject to seizure by law enforcement. Only those marijuana producers and marijuana processors licensed by the LCB may participate as buyers in the auction. The auction must be administered by either the law enforcement agency responsible for the seizure or by LCB, to be determined at the option of the law enforcement agency.

Initial Notice and Consultation with the LCB and Law Enforcement Agencies with Concurrent Jurisdiction.

Prior to seizing or harvesting marijuana plants growing on private property, the law enforcement agency must consult with the LCB to determine whether the marijuana is being lawfully grown by a marijuana producer.

Prior to the auctioning of marijuana, marijuana concentrates, or marijuana-infused products, a law enforcement agency must provide notice of the seizure and proposed auction to the state Liquor Control Board and to those federal, state, and local law enforcement agencies having concurrent jurisdiction over the territory in which the seizure occurred.

Preservation and Storage of Seized Marijuana.

Prior to the completion of the auction process, the law enforcement agency conducting the auction is solely responsible for preservation and secure storage of any marijuana, marijuana concentrates, and marijuana-infused products seized and/or harvested. If the seized marijuana is in the form of plants or unprocessed plant material, the law enforcement agency is authorized to harvest and process such plants or plant material and take any other action necessary to preserve the viability of the marijuana for auction.

Notice of Auction.

Licensed marijuana producers and processors must receive at least 24 hours notice of any auction conducted under this section and shall have an opportunity to inspect the marijuana, marijuana concentrates, and marijuana-infused products subject to auction not less than four hours prior to such auction. The notice required under this section shall be provided by the LCB on its public website.

Commercial Regulation of Seized Marijuana and Marijuana Products by the LCB.

Commerce in marijuana, marijuana concentrates, and marijuana-infused products purchased by a licensed producer or processor pursuant to auction is subject to the same statutory and regulatory requirements applicable to marijuana, marijuana concentrates, and marijuana-infused products that are lawfully grown or processed within premises owned or controlled by such producer or processor.

Disposition of Auction Proceeds.

The monetary proceeds obtained from an auction shall be retained by the state or local law enforcement agency that seized the marijuana, marijuana concentrates, or marijuana-infused products for the purpose of auction.

Rule-Making by the LCB.

The LCB is authorized to establish those administrative rules necessary for the implementation of the auction process and the regulation of commerce with respect to the auctioned items, including, but not limited to, rules governing:

- the auctioning of marijuana, marijuana concentrates, and marijuana-infused products;
- the procedures by which a licensed producer or processor may take possession of the marijuana or processed marijuana products following auction; and
- Any special labeling deemed necessary for marijuana or processed marijuana products purchased at auction.

PART XV – HB 1698 – Concerning medical cannabis

"Cannabis" is defined to have the same meaning as marijuana under the CSA.

Qualifying Patients and Verification Cards.

The existing definition of qualifying patient is retained, except that posttraumatic stress disorder is added to the list of qualifying conditions. Any condition may be chronic in addition to terminal or debilitating.

Qualifying patients must hold a verification card issued by a certified health care professional. Verification cards must be on tamper-resistant material, state the date issued, list the quantity and type of cannabis and cannabis plants the patient can possess, and be signed and dated by a certified health care professional. Verification cards must expire within one year for people over 18 years old and within six months for cards issued to minors.

A qualifying patient may possess only as much cannabis as authorized on the patient's verification card. The patient may obtain cannabis from a licensed medical cannabis retailer, a licensed marijuana retailer, a cooperative garden, the patient's designated provider, or the patient's own supply grown at home.

Minors under 18 years old may receive verification cards after a certified health care professional has examined the minor, consulted with the minor's parent or guardian, and consulted with the minor's other health care providers. The minor must be reexamined at least every three months and may not possess or control any cannabis except as required for his or her next dose.

Certified Health Care Professionals and Database.

In order to issue verification cards, health care professionals must undergo certification by the Department of Health (DOH), to include an examination and background checks. Failure to comply with requirement may result in denial or revocation of the professional's certification. Certified health care professionals are subject to standard disciplinary procedures and confidentiality requirements.

Once certified, health care professionals may: (1) issue verification cards either in their offices or at certified medical cannabis clinics, (2) administer cannabis at certified clinics; and (2) advise qualifying patients at a licensed medical cannabis retailer. Before issuing a verification card, the professional must advise patients of the risks and benefits of medical cannabis and must make reasonable attempts to identify modes of use other than smoking.

Certified health care providers may operate a business that exclusively authorizes medical cannabis patients and may advertise with cannabis content.

The DOH must create and administer a statewide database to track verification cards with information supplied by health care providers. The database must not contain any information identifying qualifying patients, but each record must be associated with a unique identifier number that is also printed on each verification card. The database may only be accessed by the DOH, certified health care professionals, certified clinics, or by law enforcement for a specific investigation.

Certified Medical Cannabis Clinics.

The DOH must certify medical cannabis clinics, which may issue verification cards and administer medical cannabis. Certified medical cannabis clinics must meet standards related to personnel credentialing and supervision, physical locations, security, traceability, reporting, documentation, inspection, advertising, sanitation, and fees.

Licensed Medical Cannabis Retailers.

Medical cannabis retailers are licensed by the Liquor Control Board. They must meet the LCB's licensing requirements under I-502 and must:

- have a health care professional on site during business hours;
- sell only medical-class cannabis (as defined by the LCB); and
- employ certified medical cannabis dispensing assistants over 21 years old.

Clinics may not allow health care professionals to examine patients or issue verification cards nor pay the health care professionals any compensation other than a regular salary.

Minors under 18 years old may visit clinics with a parent or guardian, and people between 18 and 21 years old may visit with valid documentation.

Cooperative Gardens and Designated Providers.

Collective gardens are renamed as patient cooperative gardens. Up to 10 qualifying patients may form patient cooperative gardens, which must be located on the property of one of the qualifying patients. Each cooperative garden may contain no more than 45 plants and 72 ounces of useable cannabis. When a patient leaves the cooperative, the other patients must wait at least 15 days before allowing another patient to join.

Medical Cannabis Advisory Committee.

The Medical Cannabis Advisory Committee is established to advise state agencies administering the medical cannabis system. Members of the Committee are appointed by the Governor and must include:

- members of various medical and professional oversight boards and committees;
- university faculty;
- qualifying patients;
- a licensed marijuana producer and processor; and
- representatives from the LCB, the DOH, and the WSDA.

Research.

The University of Washington and Washington State University may produce, process, dispense and administer cannabis for research purposes, if approved by an institutional review board.

Taxes.

Medical cannabis sales are exempt from both the marijuana excise tax established by I-502 and from the general sales tax.

Effective Dates.

The law takes effect December 1, 2016, and patients must be authorized under the new system by June 1, 2017.

PART XVI – HB 1753 – Distinguishing cannabis-based health and beauty aids from marijuana

Cannabis health and beauty aids are exempted from all regulations in the CSA pertaining to marijuana, marijuana concentrates, or marijuana-infused products. "Cannabis health and beauty aid" is defined to mean a product containing parts of the cannabis plant and which:

- is intended for use only as a topical application to provide therapeutic benefit or to enhance appearance;
- contains a THC concentration of no more than 0.3 percent;
- does not cross the blood-brain barrier; and
- is not intended for consumption by humans or animals.

PART XVII – HB 1765 – Repealing I-502 and medical marijuana provisions

All of I-502 and subsequent amending legislation and all of the medical marijuana statutes are repealed. However, a person over 21 years old may possess marijuana in pill form if the person:

- has been advised by a physician about the risks and benefits of medical marijuana and that the person may benefit from it; and
- has been provided with a certification of that advice and a valid prescription.

PART XVIII – HB 1776 – Transportation and delivery services for licensed marijuana businesses

Authorization and Licensing.

A licensed marijuana producer, processor, or retailer may use the services of a common carrier to physically transport or deliver marijuana, useable marijuana, marijuana concentrates, and

marijuana-infused products within the state. The common carrier must be licensed by the LCB. Employees of a licensed common carrier who are involved in the transportation of marijuana or marijuana products must be at least 21 years of age. Statutory provisions regarding the criminal possession of marijuana are amended to allow the lawful transportation and delivery of marijuana by employees of a common carrier, provided the amount of marijuana being transported does not exceed the maximum established by the LCB by rule.

The Carrying of Firearms by Employees of a Common Carrier engaged in the Transportation of Marijuana.

An employee of a common carrier engaged in marijuana-related transportation or delivery services is prohibited from carrying or using a firearm during the course of providing such services, unless:

- the LCB explicitly authorizes the carrying or use of firearms by the employee;
- the employee has a private security guard license; and
- the employee is otherwise in full compliance with LCB regulations.

Rule-Making Authority of the LCB.

The LCB must establish rules creating an annual licensing procedure for a common carrier who seeks to transport or deliver marijuana, useable marijuana, marijuana concentrates, and marijuana-infused products. The LCB must also adopt rules that:

- establish criteria for the approval or denial of a license application;
- provide minimum qualifications for any employee authorized to drive or operate the transportation or delivery vehicle;
- address the safety of the employees transporting or delivering the products, including issues relating to the carrying of firearms by such employees;
- address the security of the products being transported, including a system of electronically tracking all products at both the point of pickup and the point of delivery; and
- set reasonable fees for the application and licensing process.

The LCB may adopt rules establishing the maximum amounts of marijuana, useable marijuana, marijuana concentrates, and marijuana-infused products that may be physically transported or delivered at one time by a common carrier.

Appropriation: None.

Fiscal Note: Not requested.

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