

HOUSE BILL REPORT

HB 2364

As Reported by House Committee On: Commerce & Gaming

Title: An act relating to the licensing of marijuana-related businesses involving a partnership, employee cooperative, association, nonprofit corporation, corporation, or limited liability company.

Brief Description: Concerning the licensing of marijuana-related businesses involving a partnership, employee cooperative, association, nonprofit corporation, corporation, or limited liability company.

Sponsors: Representatives Wylie, Fitzgibbon, S. Hunt, Moeller, Vick and Buys.

Brief History:

Committee Activity:

Commerce & Gaming: 1/19/16, 2/1/16 [DPS].

Brief Summary of Substitute Bill

- Prohibits the Liquor and Cannabis Board (LCB) from issuing a commercial marijuana license to a business or nonprofit entity unless it is lawfully registered with the Secretary of State and its interest holders meet specified residency requirements.
- Grants discretionary authority to the LCB to deny a commercial marijuana license to an entity if the entity has nonresident interest holders who are difficult to adequately investigate because of their nonresident status.

HOUSE COMMITTEE ON COMMERCE & GAMING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Hurst, Chair; Wylie, Vice Chair; Condotta, Ranking Minority Member; Holy, Assistant Ranking Minority Member; Blake, Kirby, Scott, Van De Wege and Vick.

Staff: Thamas Osborn (786-7129).

Background:

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.

Overview of Initiative 502.

Initiative 502 (I-502) was a ballot measure approved by Washington voters in November 2012 that: (1) legalized the production, processing, possession, and personal use of marijuana and marijuana-derived products; (2) created a framework for a regulatory scheme to be further developed by the Liquor and Cannabis Board (LCB) through its rule-making authority; and (3) implemented a taxation system for commercial marijuana enterprises.

Licensing of Marijuana Producers, Processors, and Retailers Under the Controlled Substances Act.

The LCB issues three categories of marijuana-related business 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 LCB is required to conduct a comprehensive, fair, and impartial evaluation of all applications for the various state-issued marijuana business licenses. However, pursuant to statute, the LCB is granted very broad, discretionary authority to grant or deny a license application. The process of evaluating license applications includes the following:

- the experience and qualifications of the applicant;
- an extensive criminal background check;
- verification that the applicant has the requisite municipal business licenses; and
- an inspection of the premises to be licensed, including an inquiry into the construction and operation of the premises.

Pursuant to statute, the LCB cannot issue a marijuana business license to:

- a person under 21 years of age;
- a person doing business as a sole proprietor who has not lawfully resided in the state for at least six months prior to applying to receive a license;
- a partnership, employee cooperative, association, nonprofit corporation, or corporation unless formed under the laws of this state, and unless all of the members thereof are qualified to obtain a license as provided in this section; or
- a person whose place of business is conducted by a manager or agent, unless the manager or agent possesses the same qualifications required of the licensee.

State Legal Requirements for Doing Business in Washington.

In order to operate in Washington, a business entity must obtain a license from the Department of Revenue (DOR). However, as a general rule, the DOR will not issue a business license unless the business entity is lawfully registered with the Secretary of State. The entities that must register with the Secretary of State include domestic business entities, such as corporations, nonprofit corporations, limited liability companies, limited liability partnerships, and general cooperative associations, as well as all "foreign" business entities. A foreign business entity is any out-of-state business entity whose internal affairs are governed by the laws of a jurisdiction other than the State of Washington.

Under the Uniform Business Organizations Code (UBOC), in order to do business in this state a domestic business entity must obtain a "certificate of existence" from the Secretary of

State. The UBOC requires foreign business entities to obtain a "certificate of registration" before conducting in-state business transactions.

Summary of Substitute Bill:

A business or nonprofit entity may not obtain a commercial marijuana license unless it is lawfully registered with the Secretary of State and: (a) more than 50 percent of the interest in the entity is held by one or more interest holders who lawfully reside in the state; and (b) all interest holders who are not state residents are resident citizens of the United States.

The LCB is granted discretionary authority to deny a license to an entity if the entity has nonresident interest holders who are difficult to adequately investigate because of their nonresident status.

The bill makes technical corrections to terminology so as to make it consistent with the UBOC.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes to the original bill:

- establishes that a business or nonprofit entity may not be issued a commercial marijuana license unless: (a) more than 50 percent of the interest in the entity is held by one or more interest holders who lawfully reside in the state; and (b) that all interest holders who are not state residents must be resident citizens of the United States;
- provides the state LCB with discretionary authority to deny a license to an entity if the entity has nonresident interest holders who are difficult to adequately investigate because of their nonresident status; and
- makes technical corrections to terminology so as to make the bill consistent with the UBOC, which became effective on January 1, 2016.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill is necessary in order to clarify existing law about out-of-state investment in the commercial marijuana market and to enable marijuana businesses to obtain investment capital from large business entities. Under current law, it is unclear whether

interest holders in marijuana businesses must be state residents, and the bill resolves this issue. Domestic marijuana businesses need investment capital in order to grow and compete, and the bill will make such capital more readily available. The other states with legal marijuana markets allow out-of-state corporate investments, so Washington needs the same in order to remain competitive. Currently, many licensees are operating on narrow profit margins, and making corporate investment capital available would facilitate their financial survival. The bill would make the investment process much more transparent, open, and honest.

(Opposed) None.

(Other) The owners of small marijuana enterprises are concerned about an influx of large corporate entities entering the marijuana marketplace. There should be some restrictions and requirements in place that would ensure that large entities with big money are not allowed to dominate the market. The bill should require that majority control of business entities be held by state residents and that investors be citizens of the United States.

Persons Testifying: (In support) Representative Wylie, prime sponsor; Chris Masse, Miller Nash Graham & Dunn LLP; Ezra Eickmeyer, E&A Strategic Consulting; and Chris Kealy, Emerald Green Alliance.

(Other) Lew McMurrin, Cannabis Organization of Retail Establishments; and John Paribello and Becky Smith, Washington State Liquor Cannabis Board.

Persons Signed In To Testify But Not Testifying: None.