

HOUSE BILL REPORT

HB 2368

As Reported by House Committee On: Commerce & Gaming

Title: An act relating to creating a two-year pilot program authorizing up to five qualified licensed marijuana retailers to deliver marijuana to Washington residents in a city with a population of over six hundred fifty thousand.

Brief Description: Creating a two-year pilot program authorizing up to five qualified licensed marijuana retailers to deliver marijuana to Washington residents in a city with a population of over six hundred fifty thousand.

Sponsors: Representatives Hurst and Condotta.

Brief History:

Committee Activity:

Commerce & Gaming: 1/19/16, 2/4/16 [DPS].

Brief Summary of Substitute Bill

- Creates a temporary pilot program allowing the Liquor and Cannabis Board (LCB) to issue an endorsement to licensed marijuana retailers, authorizing them to operate a commercial service offering residential sales and delivery of marijuana products to Washington State citizens over age 21.
- Establishes that the fee for the endorsement must be determined by the LCB such that each endorsement holder pays an amount equivalent to a pro-rata share of pilot program costs.
- Requires the LCB to adopt administrative rules necessary to implement the program.
- Requires the LCB to submit a report and recommendations to the Legislature.

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.

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.

Staff: Thamas Osborn (786-7129).

Background:

Overview of Initiative 502.

Initiative 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.

The LCB issues 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.

Transportation and Delivery of Marijuana By Licensed Marijuana Businesses.

The commercial transportation and/or delivery of marijuana products between or among licensed producers, processors, and retailers may be done by either:

- an employee of a producer, processor, or retailer; or
- an employee of a transportation company licensed by the LCB for the transport of marijuana products among licensed marijuana businesses.

Licensed marijuana retailers are prohibited from delivering marijuana products to customers or otherwise conducting commercial transactions outside of their licensed premises.

Restricting Certain Methods of Selling Marijuana.

Marijuana retailers may not operate a vending machine or a drive-through facility for sale of marijuana products at retail.

Summary of Substitute Bill:

The bill creates a temporary pilot program allowing the LCB to issue an endorsement to licensed marijuana retailers, authorizing them to operate a commercial service offering residential sales and delivery of marijuana products (i.e., useable marijuana, marijuana-infused products, and marijuana concentrates) to Washington citizens over age 21. The endorsement may be issued only to licensed retailers located in a city with a population of over 650,000 and that has implemented a municipal regulatory license for marijuana businesses. The total number of endorsements issued under the pilot program is subject to the discretion of the LCB after considering market conditions and the qualifications of applicants. The fee for the endorsement must be determined by the LCB such that each endorsement holder pays an amount equivalent to a pro-rata share of pilot program costs.

Under the endorsement, delivery orders may be taken by telephone or over the Internet, but the actual delivery may be made only to a private residence located within the jurisdictional boundaries of the pilot program city. Endorsement holders may employ a maximum of two delivery persons per work shift. The commercial activities undertaken pursuant to the endorsement are subject to all existing statutory and rule-based requirements applicable to licensed marijuana businesses.

Marijuana sales and delivery transactions undertaken as part of pilot program are subject to the following requirements and restrictions:

- Deliveries must be by an employee of the retail seller who is over age 21.
- The person ordering marijuana products must be a Washington resident who is over 21 years of age.
- Deliveries may be made only to a private residence within the pilot program city.
- The purchaser receiving delivery must present identification in the form of a valid Washington driver's license or identification card.

The minimum penalty for the delivery of marijuana products to a person who is not a Washington resident or is under age 21 is \$2,500 and forfeiture of the marijuana delivery endorsement.

The LCB must subject each licensed marijuana retailer receiving the endorsement to at least four random tests per year of operation to ensure that no marijuana products are delivered to a person who is not a Washington resident or is under age 21.

To be eligible for the pilot program, a city must have adopted an ordinance or resolution containing requirements that are substantially similar to the administrative rules adopted by the LCB in order to implement the pilot program.

The LCB is granted broad rule-making authority in order to implement the requirements of the pilot program and, not later than September 16, 2016, must have completed the adoption of specified categories of rules, including those relating to:

- eligibility requirements for retailers;
- age and residency verification procedures;
- limits on marijuana product quantities that may be transported for delivery;
- compliance with traceability requirements under the Controlled Substances Act; and
- requirements regarding security procedures, delivery vehicles, and record keeping.

By November 16, 2018, and after consultation with cities participating in the pilot program, the LCB must submit a report to the appropriate committees of the Legislature that, at minimum, contains the following:

- a comprehensive description of the program and its operations;
- a summary of the quantities of marijuana products delivered under the program;
- a description of regulatory or enforcement problems that were encountered; and
- recommendations regarding the future of residential delivery of marijuana products.

The act expires as of July 1, 2019.

Substitute Bill Compared to Original Bill:

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

- Endorsement holders may employ a maximum of two delivery persons per work shift.
 - The fee for the endorsement must be determined by the LCB such that each endorsement holder pays an amount equivalent to a pro-rata share of pilot program costs.
 - The total number of endorsements issued under the pilot program is subject to the discretion of the LCB after considering market conditions and the qualifications of applicants.
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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 represents another significant step toward the development of a tightly controlled legal marijuana marketplace that will eventually eliminate the illicit black market. There are currently many illicit marijuana delivery services operating in Seattle and elsewhere that are in the process of being shut down. This bill would make such black market businesses obsolete and, thus, facilitate the process of shutting them down. Many marijuana consumers want home delivery, and this bill will provide them with a lawful option that can be carefully regulated. If licensed retailers cannot do deliveries, then many consumers will turn to the black market. It is simply good public policy to create a legal, licensed system for deliveries rather than to allow the illicit market to meet the demand.

(Opposed) Most youth obtain marijuana through social contacts, and home delivery is likely to make such access easier and more prevalent. There is no way to prevent youth from obtaining home-delivered marijuana if there is a young adult willing to order it for them. Also, many marijuana business licensees will be harmed by limiting the maximum number of marijuana delivery endorsements to five. This limitation will give a great competitive advantage to the five retailers chosen to receive the endorsement. It might be enough to drive competitors out of business. This, in turn, will harm the producers and processors who provide product to stores that are not allowed to engage in home deliveries.

(Other) Limiting the program to five participants is unfair to those licensed retailers who are left out. If left as is, this bill will result in many retailers going out of business. In order to maintain a competitive and fairly regulated marketplace, every retailer should be allowed to obtain the home delivery endorsement. This bill will have the effect of choosing winners and losers in the retail marijuana marketplace, and it is simply wrong to provide a small number of privileged retailers with a big competitive advantage. Monitoring compliance will present a regulatory problem for the LCB. Also, the LCB will have a difficult time completing the rule-making process by the deadline specified in the bill.

Persons Testifying: (In support) Representative Hurst, prime sponsor; David Mendoza, City of Seattle; John Scochet, Seattle City Attorney's Office; and Ezra Eickmeyer, E&A Strategic Consulting.

(Opposed) Seth Dawson, Washington Association for Substance Abuse Prevention; and Jeff Gilmore.

(Other) Lew McMurrin, Cannabis Organization of Retail Establishments; Logan Bowers, Hashtag; and Justin Nordhorn, Washington State Liquor and Cannabis Board.

Persons Signed In To Testify But Not Testifying: None.