

# SENATE BILL REPORT

## 2E2SHB 2136

As of Second Reading

**Title:** An act relating to comprehensive marijuana market reforms to ensure a well-regulated and taxed marijuana market in Washington state.

**Brief Description:** Concerning comprehensive marijuana market reforms to ensure a well-regulated and taxed marijuana market in Washington state.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representative Carlyle).

**Brief History:** Passed House: 4/10/15, 67-28; 4/29/15, 70-25.

**Second Special Session:** Passed House: 6/26/15, 59-38.

### Brief Summary of Second Engrossed Second Substitute Bill

- Includes intent language and a tax preference performance statement for the sales and use tax exemption for qualifying patients and designated providers.
- Addresses the liability for unpaid trust fund taxes.
- Modifies marijuana retailer signage requirements, allowing for one additional sign identifying the business or trade name.
- Eliminates the 25 percent producer and processor taxes and increases the 25 percent retailer tax to 37 percent and specifies that the taxes are levied on the buyer.
- Provides marijuana tax revenues for local jurisdictions, distributed based on retail sales and population, at an annual cap of \$15 million per year until June 30, 2019, and \$20 million per year thereafter.
- Changes the allowable uses of marijuana tax revenues for the Department of Social & Health Services (DSHS) and the Department of Health (DOH).
- Modifies the amounts specified for the Liquor Control Board (LCB), DSHS, DOH, University of Washington, Washington State University, Basic Health Plan, Health Care Authority, and Superintendent of Public Instruction from the Dedicated Marijuana Account.

*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.*

- Provides \$95,000 to the State Building Code Council in fiscal year 2016 for the development of fire and building code regulations for marijuana facilities.
- Provides a sales and use tax exemption to qualifying patients and designated providers.
- Clarifies the tax treatment of bundled transactions at licensed marijuana retail stores.
- Prohibits conditional sales by any marijuana business.
- Revises the buffer distance provisions for the siting of a marijuana retail outlet and research licensees. Provides that cities, towns, and counties may prohibit marijuana producers or processors from operating or locating in areas zoned primarily for residential use or rural use with a five-acre minimum lot size or smaller.
- Modifies the residency requirement to apply for a marijuana business license.
- Adds "in a public place" in provisions that prohibit the consumption of marijuana in view of the general public.
- Allows a marijuana business to use a common carrier to transport marijuana between licensed businesses if the carrier is licensed by the LCB.
- Allows the LCB to receive private funding to be used for materials to improve public awareness of the health risks associated with the use of marijuana.
- Exempts cannabis health and beauty aids from all regulations in the Controlled Substances Act pertaining to marijuana if the products meet specific definitions.
- Includes signage requirements for a marijuana business to be placed outside the prospective business location notifying the public prior to the business becoming operational.
- Allows local governments to adopt ordinances requiring individual notice to specific entities when an applicant applies for a marijuana license.
- Modifies the definition of marijuana concentrates.
- Adds buffer limitations to the location of medical marijuana cooperatives. Exempts cooperative registration information from disclosure under the Public Records Act.
- Specifies that the Dedicated Marijuana Account is subject to appropriation.
- Addresses the illegal distribution, manufacture, or sales of synthetic cannabinoids and bath salts.
- Prohibits marijuana sales at drive-through facilities and prohibits the use of vending machines..
- Makes it a felony to maintain or operate a marijuana club or a public place where marijuana is held, stored, or consumed.
- Modifies the distribution of the marijuana research license issuance fees. Clarifies the provisions relating to research entities licensed by a tribe. Authorizes public universities to contract for marijuana research

with federally recognized Indian tribes licensed to conduct marijuana research.

- Provides an additional \$12 million per biennium for cities and counties for distribution, based on retail sales, in the operating budget, subject to appropriation.

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## SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Dean Carlson (786-7305) and Richard Rodger (786-7461)

**Background:** Initiative Measure No. 502. Initiative Measure No. 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; (2) created a framework for a regulatory scheme to be further developed by the Liquor Control Board (LCB) through its rulemaking authority; and (3) revised provisions in criminal statute to accommodate such legalization in accordance with the requirements of the initiative.

LCB. Effective July 24, 2015, the LCB is renamed the Liquor and Cannabis Board.

Federal Response to Marijuana Legalization by the States. The use of marijuana remains illegal under federal law. However, the Department of Justice (DOJ) has issued several policy statements instructing federal prosecutors to focus investigative and prosecutorial resources related to marijuana on specific enforcement priorities. With respect to state laws that authorize marijuana production, distribution, and sales, the federal memorandum states 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 such instances, the memorandum asserts that state and local law enforcement should be the primary means of regulation.

Taxes 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 at retail. Sales tax is also imposed on the sale of marijuana and marijuana products. There are no statutory provisions explicitly addressing the taxation of retail sales of medical cannabis by collective gardens or medical cannabis dispensaries.

Zoning Limitations for Marijuana Businesses. LCB is prohibited from issuing a license to any prospective producer, processor, or retailer whose business premises are located within 1000 feet of the perimeter of the grounds of any of the following facilities: elementary or secondary schools; playgrounds; recreation centers or facilities; child care centers; public parks; public transit centers; libraries; and any game arcade, admission to which is not restricted to persons 21 years of age or older. Federal law imposes additional penalties on the distribution of controlled substances within 1000 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.

Residency Requirements for Applicants for Marijuana Licenses. Currently, a person is required to have established state residency of three months to apply for a marijuana producer, processor, or retailer license.

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

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 in the following locations: Within 1000 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.

Transport and Delivery of Recreational Marijuana by Third-Party Carriers. Transportation and delivery of marijuana and marijuana products may be done only by the employees of a producer, processor, or retailer.

Medical Use of Marijuana. The provisions authorizing qualifying medical marijuana patients to form collective gardens were repealed in SSB 5052 (2015), effective July 1, 2016. The legislation also authorized the creation of four-member cooperatives which may be formed starting on July 1, 2016. Up to four patients or designated providers may participate in a cooperative to share responsibility for the production and processing of marijuana for the medical use of its members. The location of the cooperative must be registered with LCB and is only permitted if it is at least one mile away from a marijuana retailer. The registration must include each member's name and copies of each member's recognition cards.

Dedicated Marijuana Fund. I-502 created a "dedicated marijuana fund" deposited with the State Treasurer that consists of monies derived from marijuana excise taxes, license fees, penalties, forfeitures, and all other monies, income, or revenue received by LCB from marijuana-related activities. Proceeds from the fund must be distributed every three months by LCB to specified public entities and in amounts established in statute. Among the distributions is \$5 million annually for LCB to administer the legal marijuana system.

Synthetic Cannabinoids & Bath Salts. Cathinones and methcathinones are stimulants with methamphetamine-like effects. Cathinones may cause hallucinations, agitation, and serious cardiac symptoms. Cathinone derivatives are commonly known as "bath salts." Current law places cathinones and methcathinones on Schedule I of the Controlled Substances Act, meaning they have no accepted medical value, have a high potential for abuse, and lack accepted safety for use in medical treatment under supervision.

Synthetic cannabinoids are drugs that target the same brain receptors that interact with the tetrahydrocannabinol (THC) present in marijuana that produces a psychoactive effect.

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. 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. Several courts 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.

Marijuana Research Licenses and the Life Sciences Discovery Fund. The LCB may issue marijuana research licenses permitting a licensee to produce and possess marijuana for testing; conduct clinical investigations; conduct research on the efficacy and safety of administering marijuana; and conduct genomic or agricultural research. Marijuana research license applicants must receive approval from the Life Sciences Discovery Fund (LSDF) in order to conduct their research. A licensee may contract with University of Washington (UW) or Washington State University (WSU) to perform research in conjunction with the university. The application fee for a marijuana research license is \$250 and the annual fees for issuance and renewal of the license are \$1,000 each. Fifty percent of the application fee and renewal fee (but not the issuance fee) goes to the LSDF.

**Summary of Bill:** PART I – Intent and Tax Preference Performance Statement. A tax preference performance statement is provided for the Legislature's sales and use tax exemption for qualified medical marijuana patients. The Department of Revenue is required to provide a specific tax reporting line for marijuana retailers to include the amount of exempt sales on their tax return.

PART II – Marijuana Excise Tax, Exemptions, and Distribution of Revenues. *Taxes.* The 25 percent marijuana excise tax on marijuana producers and processors is eliminated. The marijuana retail excise tax is raised from 25 percent to 37 percent and modified by specifically imposing the tax on the buyer of any marijuana product subject to the excise tax. The excise tax is in addition to state retail sales and use tax and must be separately itemized on the sales receipt provided to consumers. The displayed shelf price must illustrate the final price to the consumer, including the marijuana excise tax, but does not need to include the general retail sales tax.

*Tax Exemptions.* A sales and use tax exemption is provided for qualifying patients holding a recognition card. Designated providers of qualifying patients are also exempt from retail sales tax when purchasing for a qualifying patient. Exempt products include those identified by the Department of Health (DOH) as beneficial for medical use, products with low THC, low-THC/high cannabidiol ratio products identified as beneficial by DOH, topicals with low-THC, and products provided by a cooperative to its member.

*Collection.* LCB is granted additional authority to collect and administer the marijuana excise tax. This includes the opportunity for persons who have been issued a notice of unpaid marijuana excise taxes, which are trust fund taxes. Trust fund taxes are defined as those taxes collected from the buyer and held in trust by the seller until remitted to the state and includes the 37 percent marijuana retail excise tax. The retailer may be personally liable for failure to collect or remit the tax.

*LCB Reports.* LCB must report to legislative committees every two years until 2025 regarding the appropriate marijuana tax levels, changes in tax collection and retail sales,

number of licensees, number of illegal outlets, sales and tax collections in the state of Oregon, and amount of sales and use tax exemptions provided for qualifying patients.

*Distribution of Excise Tax Revenue.* The LCB is appropriated not less than (versus not exceeding) \$5,000,000 annually.

The Department of Enterprise Services is provided \$95,000 for fiscal year 2016 for State Building Code Council to develop fire and building code regulations for marijuana facilities.

The Department of Social and Health Services' appropriation is up to 15 percent, but at least \$25,536,000 annually, which may be used for additional purposes including mental health for children and youth, and services to pregnant and parenting women.

DOH's appropriation is up to 10 percent, but at least \$9,750,000 per year, which may also be used for the Washington Poison Control Center.

The UW's appropriation is up to 0.6 percent, but at least \$1,021,000 annually and WSU's appropriation is up to 0.4 percent, but at least \$681,000 annually.

The Basic Health Plan's appropriation is up to 50 percent.

The Washington State Health Care Authority's appropriation is up to 5 percent.

The Superintendent of Public Instruction's appropriation is up to 0.3 percent, but at least \$511,000 annually.

For the 2015-17 biennium, each county receives the ratable share of the taxable marijuana sales in the county – including the cities' sales within the county – up to a maximum of \$6 million per year (contained in Section 1603).

For the 2017-19 biennium and thereafter, after appropriations, the State Treasurer transfers the balance to the general fund, except if fiscal year tax collections exceed \$25 million; thereafter 30 percent of previous year's revenue is distributed to eligible counties, cities, and towns to a maximum of \$15 for fiscal years 2018 and 2019, and a maximum of \$20 million per year each year thereafter.

Of the monies disbursed, 30 percent of the total goes to counties, cities, and towns based on the proportional amount of retail sales of marijuana within the individual jurisdiction.

The remaining 70 percent is disbursed to counties, cities, and towns ratably on a per capita basis as follows: counties will receive 60 percent of this amount – based on total county population – and cities will receive the remaining 40 percent on a per capita basis.

Any jurisdiction that prohibits the siting of a marijuana business is prohibited from receiving a local distribution.

*Marijuana Retailer Signage and Product Displays.* Marijuana retailers may only display two signs for purposes of identifying their business or trade name. Signs cannot be posted within

1000 feet of an elementary or secondary school or a playground. The 1000-foot advertising ban is expanded to include research facilities and marijuana concentrates. Marijuana retailers are no longer required to ensure that product in the store is not visible from a public right-of-way.

PART III – Marijuana Business: Buffers and License Residency. *Local Government Limitations.* A city, town, or county may prohibit a marijuana producer or marijuana processor from operating or locating a business within an area zoned primarily for residential use or an area zoned for rural use with a minimum lot size of five acres or smaller.

*Local Government Buffer Zones.* The legislative authority of a county, city, or town is permitted to reduce the buffer requirements for licensed marijuana businesses from 1000 feet to 100 feet from recreation centers, child care centers, public parks, public transit centers, libraries, and certain game arcades. In order to reduce the buffer requirement, a county, city, or town must pass an ordinance declaring that the reduction will not negatively impact the jurisdiction's law enforcement efforts, public safety, or public health. The 1000-foot buffer requirement for schools and playgrounds is maintained.

A local government may reduce the buffer to 100 feet for a research facility if there are no negative impacts as outlined above. If a research facility is within 1000 feet of a school or playground, the facility must exceed other licensees' security standards, be inaccessible to the public, have no operations in view of the general public, and bear no advertising indicating the nature of the facility.

LCB may license premises with local government established buffers.

*Residency Requirements.* State residency requirements for those applying for a marijuana producer, processor, or retailer license are increased from three months to six months.

PART IV – Public Use of Marijuana. Consuming or opening a package containing marijuana or marijuana products in view of the general public or in a public place is prohibited. "Public place" has the same definition as in liquor control statutes, except that consumption is prohibited in state parks and on brewery and winery grounds.

PART V – Transportation of Marijuana Products. A licensed marijuana producer, processor, or retailer may use the services of a common carrier to transport or deliver marijuana or marijuana products between licensed marijuana businesses located within the state. Common carriers delivering marijuana may use the state ferry system. Delivery drivers are prohibited from carrying a firearm, unless (1) they are authorized by LCB; (2) they hold an armed private security guard license; and (3) they comply with all LCB regulations. Security guards must be licensed as armed private security guards to be eligible to carry a firearm

while transporting or delivering marijuana. LCB must adopt rules on licensing of common carriers for transportation or delivery of marijuana and may set limits on the maximum amount of marijuana that may be moved at one time. Possession of marijuana for transportation purposes, in amounts as may be set by the LCB, does not violate the legal possession limits.

It is not a crime to possess more than 40 grams of marijuana when the possession is authorized under the Controlled Substances Act (CSA).

PART VI – Funding for Marijuana Health Awareness Program. LCB is authorized 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 VII – Cannabis Health and Beauty Aid Exemption. Cannabis health and beauty aids are exempt 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 (1) is intended for use only as a topical application to enhance appearance; (2) contains a THC concentration of no more than 0.3 percent; (3) does not cross the blood-brain barrier; and (4) is not intended for ingestion by humans or animals.

PART VIII – Signage Requirements for Prospective Licensees. Marijuana license applicants must post a public notice on the premises that are subject to a marijuana license. LCB must adopt rules to implement the notice provision and signage requirements. LCB must provide the sign to the applicant but may charge a fee.

Cities, towns, and counties may adopt an ordinance requiring a marijuana business applicant to provide individual notice of the application to schools, churches, playgrounds, etc., that are located within 1000 feet. Notice must be provided sixty days prior to the issuance of a license and contain contact information for the LCB for the submission of comments or concerns.

PART IX – Marijuana-Infused Products and Concentrates. The term "marijuana concentrates" in the CSA is redefined to include all such concentrates having a THC concentration greater than 10 percent. The definition of "marijuana-infused products" in the CSA is revised to reduce the maximum allowable THC concentration in such products from 60 percent to 10 percent.

PART X - Medical Use of Marijuana. Cooperatives may not be located within one mile of a marijuana retailer; 1000 feet of an elementary or secondary school, playground, recreational center or facility, child care center, public park, public transit center, or library, or any under-age-21 game arcade; a reduced zone if allowed by local ordinance; or any area prohibited by a local government. Cooperative registration information submitted to the LCB is exempt from public disclosure.

PART XI – Dedicated Marijuana Account. The dedicated marijuana account is created in the state treasury. Monies in the account must be appropriated before the distributions under Part II can be made.

PART XII – Synthetic Cannabinoids and Bath Salts. Synthetic cannabinoids are added to Schedule I of the Controlled Substances Act. The manufacture, distribution, or possession of synthetic cannabinoids is a felony. Any person who manufactures, sells, or distributes cathinones, methcathinones, and synthetic cannabinoids commits a violation of the Consumer Protection Act, allowing an action by the Attorney General or a private citizen who can prove actual injury.



A person who manufactures, sells, or distributes synthetic cannabinoids, cathinones, or methcathinones must pay a fine between \$10,000 and \$500,000, in addition to other criminal and civil penalties. However, if the person receiving the drug is a minor under 18 years old and at least two years younger than the person violating the law, the minimum fine is increased to \$25,000. Courts may not suspend or defer the fine unless the violator is indigent.

PART XIII – Restricting Selling Methods. Licensed marijuana retailers are prohibited from operating a vending machine for the sale of marijuana products or operating a drive-through purchase facility.

PART XIV – Marijuana Clubs. It is a class C felony to conduct or maintain a marijuana club or a public place where marijuana is held, stored, or consumed. A marijuana club is defined as a club or association that conducts or maintains a premises for individuals with the primary or incidental purpose of keeping or consuming marijuana on the premises.

PART XV - Marijuana Research Licenses. Provides that 50 percent of the license issuance fee for marijuana research licenses is deposited in the LSDF. If that fund no longer exists the monies go to the general fund. UW and WSU may contract with research entities licensed by a tribe. These entities projects do not require approval by the LSDF authority.

PART XVI – Miscellaneous Provisions. Labeling and Advertising Rules. LCB may adopt rules on labeling and advertising for marijuana concentrates and cannabis health and beauty aids.

*Repealer.* The mandatory fines and community service provisions related to misdemeanor marijuana offenses are repealed.

*Local Funding.* If funding of at least \$6 million per fiscal year for 2016 and 2017, in addition to the amounts required by the act, is not provided to local governments for marijuana enforcement in the operating budget by June 30, 2015, this section is null and void.

If the monies are disbursed, 60 percent of the total goes to counties. Any county that prohibits the siting of a marijuana business is prohibited from receiving a local distribution under this provision. The remaining 40 percent is disbursed to cities and towns ratably on the basis of total sales.

*Severability.* If any part of the act is held invalid, the remainder of the act is not affected.

**Appropriation:** None.

**Fiscal Note:** Requested on June 18, 2015.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** The bill contains several effective dates. Please refer to the bill.

**Staff Summary of Public Testimony on Senate Ways & Means Recommended Striking Amendment:** PRO: Local control is important and we appreciate the removal of the preemption provisions and the requirements for local votes. The local jurisdictions need the flexibility that the bill provides in allowing considering of reducing the 1000 foot buffers and allows cities to lessen the impacts on the limited areas currently allowed. The bill will help regulatory enforcement. The tax burden on marijuana businesses is lessened by the bill and it provides relief from the issues with the Internal Revenue Service. From a prevention standpoint this bill contains important measures and should be passed. We appreciate the removal of the sunset on the distributions to local governments.

CON: The 37 percent tax rate is too high and will lessen the amount of revenue to the state. Oregon has a 30 percent tax rate and the bill will cause purchasers to cross the border for purchases. Preemption is an important component and is needed to make the revenue provisions work.

OTHER: The revenue sharing is insufficient for the local governments who have public safety impacts as a result of the initiative. The local share should be 10 percent. The excise tax on qualified patients should be removed and the taxes on the low-THC/high-CBD products is harmful to patients.

**Persons Testifying:** PRO: Vicki Christophersen, WA CannaBusiness Assn.; Jen Estroff, Americans for Safe Access; Seth Dawson, WA Assn. for Substance Abuse Prevention; Candice Bock, Assn. of WA Cities; Scott Plusquellec, city of Seattle; Seth Dawson, WA State Psychiatric Assn.; James Paribello, LCB; Ezra Eickmeyer, citizen.

CON: Representative Condotta.

OTHER: Chris Kaasa, American Civil Liberties Union of WA; Brian Enslow, WA State Assn. of Counties.

**Persons Signed in to Testify But Not Testifying:** No one.