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HOUSE BILL 2998

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State of Washington

64th Legislature

2016 Regular Session

By Representatives Hurst, Condotta, and Sawyer

Read first time 02/26/16. Referred to Committee on Commerce & Gaming.

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

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

6 NEW SECTION. **Sec. 1.** This act shall be known as the youth  
7 protection, crime reduction, and collateral education funding act of  
8 2016.

9 NEW SECTION. **Sec. 2.** (1) The legislature finds that although  
10 the relationship between humans and marijuana probably goes back a  
11 lot further, tombs of Egyptian mummies dating to 950 B.C. were found  
12 to contain marijuana. In the next three thousand years, little  
13 changed until 1937, when a tax act in the United States had the  
14 practical effect of making marijuana illegal for most Americans. In  
15 1970, the uniform controlled substances act was passed by congress  
16 and marijuana was temporarily listed as a Schedule I controlled  
17 substance. A task force was created to determine how to properly  
18 classify marijuana for placement on the federal schedule of  
19 controlled substances, but political pressures at the time kept  
20 policy makers from finding an appropriate place for marijuana in

1 American law, culture, and medicine. The improper, and illogical,  
2 designation of marijuana as a Schedule I controlled substance, and  
3 the failure of the federal government to recognize three thousand  
4 years of human experience with this substance, has yielded a host of  
5 unfortunate consequences, including bad public policy, wasted  
6 revenue, and harm to the citizens of this state and this country.

7 (2) Today, marijuana is widely recognized as having medical and  
8 therapeutic value, and is an accepted part of daily life for millions  
9 of Americans. Through a citizens' initiative, Initiative Measure No.  
10 502, which was approved by the voters in 2012, Washington citizens  
11 expressed their belief that a carefully regulated and taxed legal  
12 market for consenting adults was vastly superior to a costly and  
13 unsuccessful war on marijuana that did little more than create and  
14 perpetuate an organized crime venture serving an illegal market that  
15 produced billions in illicit profits and untaxed revenue. While  
16 Initiative Measure No. 502 did not declare marijuana to be safe or  
17 encourage its use, the initiative did express the will of the people  
18 that consenting adults in a free society should be allowed the  
19 freedom to personally decide whether or not to use marijuana and that  
20 eliminating the negative impacts of a criminal market is a high  
21 priority for the citizens of the state of Washington. In fact, the  
22 initiative went to great lengths to create a regulatory system that  
23 keeps marijuana out of the hands of anyone under twenty-one years of  
24 age and provides dedicated money for use by universities and other  
25 research institutions to conduct research to determine the potential  
26 dangers and risks of marijuana use. The primary focus of Initiative  
27 Measure No. 502 was, and continues to be, the elimination of a  
28 criminal market that has been violent and very profitable.

29 (3) In the last three years it has been the job of the  
30 legislature to ensure that the wishes of our citizens are fulfilled.  
31 However, progress has been slow and the task is far from complete.  
32 According to estimates by the state liquor and cannabis board, only  
33 one-third of the 1.33 billion dollar annual marijuana market is  
34 currently served by legitimate, licensed Washington businesses. The  
35 other two-thirds is controlled by criminal elements. On any given  
36 day, news outlets around the state still record incidents of violent  
37 crime that led a weary and frustrated population to enact Initiative  
38 Measure No. 502. As recently as last week, on February 13, 2016, a  
39 sixteen year old was killed in Federal Way, Washington, during a  
40 transaction to purchase marijuana. Although far from being an

1 isolated incident, this tragedy points to the two biggest flaws in  
2 the system that had been in place for decades prior to the passage of  
3 Initiative Measure No. 502; drug dealers sell to kids and people  
4 become victims of violent crime, including murder. More often than  
5 not, ordinary citizens become victims when criminals mistakenly do  
6 home invasion robberies at the wrong address, or they are simply in  
7 the cross fire when drug transactions go bad in public places.

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

19 (5) By reducing our current tax rate on marijuana from thirty-  
20 seven percent to twenty-five percent, this act will result in over  
21 one billion dollars in new revenue over the next five years. It will  
22 put an end to the massive cross border sales within Oregon, whose  
23 much more reasonable marijuana tax rate is already at twenty-five  
24 percent. Secondly, this act will repeal the bans and moratoriums on  
25 legal marijuana retailers that have been enacted in eighty-eight  
26 cities and nine counties. These bans and moratoriums force 26.49  
27 percent of Washington residents to buy their untaxed marijuana from  
28 criminal organizations, and have done nothing to reduce the  
29 availability of one of the most easily accessible products to  
30 Washington citizens. In jurisdictions without bans or moratoriums,  
31 licensed and legal stores do not sell marijuana to kids and do pay  
32 taxes. Criminal organizations in jurisdictions with bans and  
33 moratoriums sell marijuana to kids and commit violent crimes, like  
34 murder, and do not pay taxes. Licensed and legal marijuana stores in  
35 jurisdictions without bans and moratoriums sell a carefully grown  
36 product that is properly labeled and has been tested by state  
37 approved labs for dangerous substances such as toxic chemicals,  
38 fertilizers, and other hazardous substances. Illegal criminal  
39 enterprises in jurisdictions with bans and moratoriums sell untested  
40 products of unknown potency and think nothing of selling a product

1 with toxic chemicals and even with mixtures of other illegal drugs.  
2 Jurisdictions that allow legal, licensed, regulated, and taxed  
3 marijuana sales to informed adults are dramatically reducing the  
4 chances that their citizens will be victims of crimes or that  
5 marijuana will be sold to their children. Jurisdictions that have  
6 bans and moratoriums have not reduced the availability of marijuana  
7 by one iota, and are in fact protecting criminal markets and will  
8 ultimately increase crime by opening the door to criminal  
9 organizations that will more aggressively compete for the remaining  
10 illegal market share.

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

26 **Sec. 3.** RCW 69.50.535 and 2015 2nd sp.s. c 4 s 205 are each  
27 amended to read as follows:

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

37 (b) The tax levied in this section must be reflected in the price  
38 list or quoted shelf price in the licensed marijuana retail store and

1 in any advertising that includes prices for all useable marijuana,  
2 marijuana concentrates, or marijuana-infused products.

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

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

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

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

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

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

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

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

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

38 (b) The state liquor and cannabis board must report, in  
39 compliance with RCW 43.01.036, to the appropriate committees of the

1 legislature every two years. The report at a minimum must include the  
2 following:

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

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

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

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

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

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

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

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

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

24 NEW SECTION. **Sec. 4.** A new section is added to chapter 69.50  
25 RCW to read as follows:

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

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

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

38 (4) Nothing in this section may be construed to prevent a city,  
39 town, or county from enacting an ordinance, regulation, or

1 comprehensive plan that precludes the siting of marijuana producers  
2 or processors within its jurisdictional boundaries.

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

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