
**Agriculture & Natural Resources
Committee**

HB 1692

Brief Description: Concerning agriculture and farming.

Sponsors: Representatives Buys, Sawyer, Chapman, Condotta, Stanford, Lytton, Vick, Blake and Fitzgibbon.

Brief Summary of Bill

- Adds marijuana, useable marijuana, and marijuana-infused products to the list of farm products whose production constitutes an "agricultural activity" so as to be presumed reasonable and not a nuisance.
- Provides that, for purposes of nuisance law, "agricultural activities" involving marijuana, useable marijuana, or marijuana-infused products are considered to have been established before surrounding nonagricultural and nonforestry activities if the activity was licensed by the Washington State Liquor and Cannabis Board before the effective date of the act.
- Modifies the business and occupation tax definition of "agricultural products" to remove the exclusion for marijuana, useable marijuana, and marijuana-infused products.

Hearing Date: 2/15/17

Staff: Robert Hatfield (786-7117).

Background:

Nuisance.

A nuisance is an activity that injures health, is indecent, offends the senses, or obstructs the free use of property so that it interferes with the comfortable enjoyment of life and property. In a nuisance lawsuit, a plaintiff may sue a property owner based on the claim that the property owner has made unreasonable use of his or her property to the detriment of the plaintiff's property.

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.

Nuisance-Agricultural Activities Exemption.

Agricultural activities conducted on farmland are generally presumed to be reasonable and not a nuisance unless the activity or practice has a substantial adverse effect on public health and safety. In order to be considered reasonable and thus not a nuisance, the agricultural activities must be consistent with good agricultural practices and established prior to surrounding non-agricultural activities. Agricultural activities that comply with all applicable laws and rules are presumed to be good agricultural practices.

For the purposes of nuisance law, "agricultural activities" are defined as activities that occur on a farm in connection with the commercial production of farm products.

For the purposes of nuisance law, "farm products" are defined to include certain specified products, including, among other things, livestock, vegetables, grasses, trees, and freshwater fish and fish products.

Liquor and Cannabis Board.

The Liquor and Cannabis Board (Board) issues various licenses and permits relating to the production, distribution and retail sale of beer, wine, and spirits. It also issues licenses for the production, processing, and retail sale of marijuana under the Washington Controlled Substances Act (CSA). Each license and permit issued by the Board carries a fee, which is either fixed (as in the case of microbrewery licenses, for example) or varied depending on sales (as in the case of the spirits retail license fee).

Business and Occupation Tax.

A business and occupation (B&O) tax on the gross receipts of all in-state business activities, except utility activities, is imposed on every person who has a substantial nexus to the state for the act or privilege of doing business. The B&O tax does not apply to farmers (persons producing agricultural products for sale) selling agricultural products at wholesale or growing agricultural products owned by others, such as custom feed operations.

The B&O tax definition of "agricultural product" does not include marijuana, useable marijuana, or marijuana-infused products.

Controlled Substances Act-Definitions of Marijuana, Useable Marijuana, or Marijuana-infused Products.

The CSA defines "marijuana" as all parts of the Cannabis plant with a THC concentration greater than 0.3 percent on a dry weight basis. The CSA defines "useable marijuana" as dried marijuana flowers. The CSA defines "marijuana-infused products" as products that, among other things, contain marijuana or marijuana extracts and have a THC concentration no greater than ten percent.

Summary of Bill:

The definition of "farm product" under the nuisance statute is expanded to include marijuana, useable marijuana, and marijuana-infused products.

For purposes of the nuisance statute, agricultural activities involving marijuana, useable marijuana, or marijuana-infused products are considered to have been established before surrounding nonagricultural and nonforestry activities if the activity was licensed by the Washington State Liquor and Cannabis Board before the effective date of the act.

The definition of "agricultural product" under the business and occupation tax statute is modified to remove the exclusion for marijuana, useable marijuana, or marijuana-infused products. The definitions of "marijuana", "useable marijuana", and "marijuana-infused products" are the same as found in the Washington Controlled Substances Act.

Appropriation: None.

Fiscal Note: Available.

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