

HOUSE BILL REPORT

EHB 1857

As Passed House:
March 3, 2017

Title: An act relating to marijuana with respect to privileges for research licenses, local authority notifications, the retail licensing merit-based application process, processor wholesale events, and jurisdictional requirements.

Brief Description: Addressing provisions concerning marijuana with respect to research licenses, local authority notifications, the retail licensing application process, processor wholesale events, and jurisdictional requirements.

Sponsors: Representatives Kloba, Sawyer, Appleton and Condotta; by request of Liquor and Cannabis Board.

Brief History:

Committee Activity:

Commerce & Gaming: 2/7/17, 2/9/17 [DP].

Floor Activity:

Passed House: 3/3/17, 85-12.

Brief Summary of Engrossed Bill

- Eliminates the Liquor and Cannabis Board's (LCB's) obligation to develop an application process for marijuana licenses that includes three levels of priority among applicants with different experience and qualifications in the marijuana industry, while retaining the LCB's obligation to conduct a comprehensive, fair, and impartial evaluation of applications.
- Requires the LCB to give notice of applications for marijuana licenses and renewals of licenses to tribal governments and to port authorities in certain circumstances, and provides for the filing of written objections by tribal governments and port authorities.
- Prohibits the LCB from issuing a marijuana license for any premises within Indian country, unless incorporated into an agreement with a federally recognized Indian tribe.
- Modifies the LCB's rule-making authority related to the marijuana research license to eliminate an erroneous reference.

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.

- Establishes that the LCB and its members are not personally liable for actions done in the performance of official duties related to administering marijuana statutes, to the same extent the LCB and its members have such protection related to administering liquor statutes.

HOUSE COMMITTEE ON COMMERCE & GAMING

Majority Report: Do pass. Signed by 11 members: Representatives Sawyer, Chair; Kloba, Vice Chair; Condotta, Ranking Minority Member; Vick, Assistant Ranking Minority Member; Barkis, Blake, Farrell, Jenkin, Kirby, Ryu and Young.

Staff: Peter Clodfelter (786-7127).

Background:

Marijuana License Application Process.

The Liquor and Cannabis Board (LCB) issues the following licenses to qualified individuals, business entities, and nonprofit entities, subject to requirements: (1) marijuana producer license; (2) marijuana processor license; (3) marijuana retailer license; (4) marijuana researcher license; and (5) marijuana transporter license. For the purposes of considering an application for such a license, the LCB must conduct a comprehensive, fair, and impartial evaluation of the applications timely received. Additionally, the LCB must develop a competitive, merit-based application process that includes, at a minimum, the opportunity for an applicant to demonstrate experience and qualifications in the marijuana industry.

First priority must be given to applicants that applied to the LCB for a marijuana retailer license prior to July 1, 2014, operated or were employed by a collective garden before January 1, 2013, have maintained a state business license and a municipal business license, as applicable in the relevant jurisdiction, and have a history of paying all applicable state taxes and fees. Second priority must be given to applicants that operated or were employed by a collective garden before January 1, 2013, have maintained a state business license and a municipal business license, as applicable in the relevant jurisdiction, and have had a history of paying all applicable state taxes and fees. Third priority must be given to all other applicants that do not have the experience and qualifications identified of applicants who qualify for first or second priority.

Before the LCB issues or renews a license to an applicant, the LCB must give notice of the application to the chief executive officer of the incorporated city or town, if the application is for a license within an incorporated city or town, or to the county legislative authority, if the application is for a license outside the boundaries of incorporated cities or towns. The city, town, or county, as appropriate, may file with the LCB within 20 days after the date of transmittal of the notice for application, or at least 30 days prior to the expiration date for a renewal, written objections against the applicant or against the premises for which the new or renewed license is asked. The written objections must include a statement of all facts upon which the objections are based, and if written objections are filed, the city, town, or county may request that the LCB hold a hearing subject to the Administrative Procedure Act. The

LCB may extend the time period for submitting written objections. If the LCB makes an initial decision to deny a license or renewal based on the written objections of a city, town, or county, the applicant may request a hearing. If a hearing is held at the request of the applicant, the LCB must present and defend the LCB's initial decision to deny a license or renewal.

The LCB may, in its discretion, grant or deny the renewal or license applied for. Denial may be based on, without limitation, the existence of chronic illegal activity documented in objections submitted to the LCB from the chief executive officer of the incorporated city or town that the applicant's premises is located in, or from the county legislative authority, if the applicant's premises is not located in an incorporated city or town. The LCB must give substantial weight to such objections.

The Legislature delegates authority to the LCB to determine, in consultation with the Office of Financial Management, the maximum number of retail outlets that may be licensed in each county, taking into consideration specific factors.

State-Tribal Marijuana Agreements.

The Governor may enter into agreements with federally recognized Indian tribes concerning marijuana. Marijuana agreements may address any marijuana-related issue that involves both state and tribal interests or otherwise has an impact on tribal-state land.

Marijuana Research License.

There is a marijuana research license issued by the LCB that authorizes a licensee to produce, process, and possess marijuana in order to test chemical potency and composition levels, conduct clinical investigations of marijuana-derived drug products, conduct research on the efficacy and safety of administering marijuana as part of medical treatment, or conduct genomic or agricultural research. The LCB has rule-making authority regarding application requirements, security measures, conditions under which marijuana grown by marijuana processors may be donated to marijuana research licensees, and additional requirements deemed necessary by the LCB.

Limit on Personal Liability of Members of the Liquor and Cannabis Board.

Neither the LCB nor any member of the LCB may be found personally liable in any action at law for damages sustained by any person because of any acts performed or done or omitted to be done by the LCB or any member or employee of the LCB in the performance of the LCB employee or member's duties and in the administration of the liquor statutes.

Summary of Engrossed Bill:

Marijuana License Application Process.

The requirement that the LCB develop a competitive, merit-based application process that includes, at a minimum, the opportunity for an applicant for a marijuana license to demonstrate experience and qualifications in the marijuana industry, is removed. The related priority system for analyzing competing applications for marijuana licenses is removed.

Before the LCB may issue a marijuana license to an applicant or renew the marijuana license of an applicant located in Indian country, the LCB must give notice of the application to the

applicable tribal government. Before the LCB may issue a marijuana license to an applicant or renew the marijuana license of an applicant that is located on property owned by a port authority, the LCB must give notice of the application to the port authority. Similar to the existing rights of cities, towns, and counties, the tribal government or port authority, as applicable, has the right to file with the LCB within 20 days after the date of transmittal of the notice for applications, or at least 30 days prior to the expiration date of a license for renewals, written objections against the applicant or against the premises for which the new or renewed license is asked.

It is established that the LCB's discretion to extend the time period for submitting written objections from cities, towns, counties, tribal governments, and port authorities, is upon the request of the authority notified by the LCB of the license application or renewal.

The LCB may not issue a license for any premises within Indian country, including any federal fee patent lands within the exterior boundaries of a reservation, unless incorporated into an agreement with a federally recognized tribe.

Marijuana Research License.

The erroneous reference to marijuana processors' authority to produce marijuana is removed from the marijuana research license statute. It is established that the LCB's rule-making authority related to the marijuana research license includes the conditions under which marijuana grown by licensed marijuana producers and other product types from marijuana processors may be donated to marijuana research licensees.

Limit on Personal Liability of Members of the Liquor and Cannabis Board.

Neither the LCB nor any member of the LCB may be found personally liable in any action at law for damages sustained by any person because of any acts performed or done or omitted to be done by the LCB or any member or employee of the LCB in the performance of the LCB employee or member's duties and in the administration of the state Uniform Controlled Substances Act.

It is established that the act applies prospectively only, not retroactively. The act applies only to causes of action that arise (if the change is substantive) or that are commenced (if the change is procedural) on or after the effective date of the 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.

Staff Summary of Public Testimony:

(In support) The priority system for evaluating applicants for marijuana licenses that the Legislature established in 2015 when it rolled the medical marijuana system into the recreational marijuana system has served its purpose, and it makes sense to take it out of law now. The Liquor and Cannabis Board (LCB) does not intend to open another window to

accept new applications for state-issued marijuana licenses. If the LCB does accept new applications for marijuana licenses in the future, current law provides the necessary tools to evaluate applications, and the merit-based part of the system is not necessary because there would not be an integration of medical dispensaries like there was in 2015. Tribes and port authorities deserve to receive notice of license applications and renewals in their jurisdictions, like local governments currently do, so it is good the bill includes this provision. The part of the bill clarifying the processor-to-processor sales matches the LCB's current interpretation that any finished product that is packaged and labeled by a marijuana processor must be sold to a marijuana retailer, not another marijuana processor. If the Legislature wants to establish another license category for distributors, it could do so in the future.

(Opposed) It is too early to eliminate the priority system for evaluating applicants for marijuana licenses that the Legislature established in 2015. There are currently not enough marijuana licenses issued to provide qualifying patients in Washington with the level of access to marijuana that qualifying patients need. Another round of licensing could be necessary and the priority system for evaluating applicants could be used for that purpose. Perhaps the limit on liability for LCB board members goes too far, especially because stakeholders that are currently engaged in litigation with the LCB are concerned that the LCB is not sufficiently maintaining its rule-making files and complying with open-meetings laws. The Legislature should take another look at the research license. The current testing systems for marijuana could allow for harmful substances to contaminate marijuana that is donated for research purposes. The federal government has more rigorous testing standards for marijuana at its federal research laboratory, which are better than the standards in state law.

Persons Testifying: (In support) Representative Kloba, prime sponsor; and James Paribello, Liquor and Cannabis Board.

(Opposed) Ryan Sevigny, The Cannabis Alliance; and John Worthington, American Alliance for Medical Cannabis.

Persons Signed In To Testify But Not Testifying: None.