
Commerce & Gaming Committee

ESSB 5131

Brief Description: Concerning marijuana with respect to privileges for research licenses, local authority notifications, the retail licensing merit-based application process, certain transfers of plants and seeds, licensing agreements and contracts, advertising, and jurisdictional requirements.

Sponsors: Senate Committee on Commerce, Labor & Sports (originally sponsored by Senators Rivers and Conway; by request of Liquor and Cannabis Board).

Brief Summary of Engrossed Substitute Bill

- Authorizes licensed marijuana producers to sell immature marijuana plants or clones, and seeds, to medical marijuana cooperatives, qualifying medical marijuana patients, and licensed researchers.
- Requires that the Liquor and Cannabis Board (LCB) provide tribes and port authorities with the same legal notices regarding pending marijuana business applications as are given to cities, towns, and counties.
- Eliminates the competitive, merit-based application process for retail marijuana licenses.
- Extends the LCB's general immunity from personal liability to include the LCB's duties relating to the regulation of marijuana-related activities.
- Allows licensed marijuana businesses to enter into licensing agreements or consulting contracts regarding trademarks, trade names, trade secrets, technology and other business matters.
- Authorizes an industrial hemp research program to dispose of industrial hemp by-products and waste material by selling them to a licensed marijuana processor and requires that the monies raised be used to fund the research program.
- Exempts from disclosure under the Public Records Act any trade secrets, technology, proprietary information, and financial information contained in any agreement or

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contract entered into by a licensed marijuana business, and which have been submitted to or obtained by the LCB.

- Adds immature plants or clones, and marijuana seeds, to the list of marijuana products that may be lawfully transported by licensed third party common carriers within the state.
- Extends the criminal and civil immunity applicable to marijuana producers to include commercial activities with licensed marijuana researchers involving the delivery, distribution, and sale of immature plants or clones, and marijuana seeds.
- Prohibits marijuana licensees from using advertising that is targeted to youth and from using objects or characters that are appealing to children.
- Places a variety of additional restrictions on marijuana advertising in public places.
- Increases the allowable size of the signs at a retail marijuana business to a maximum of 2,400 square inches.
- Allows marijuana-related billboards for the sole purpose of identifying the name of a marijuana retailer's business and providing directional information to the retailer's store.
- Requires the LCB to adopt rules regarding the regulation of marijuana-related advertising that are as restrictive as state and federal regulations pertaining to cigarette advertising.
- Authorizes a city, town, or county to adopt rules for outdoor advertising by licensed marijuana retailers that are more restrictive than the advertising restrictions imposed under state law.

Hearing Date: 3/20/17

Staff: Thamas Osborn (786-7129).

Background:

Sale of Marijuana Plants by Licensed Marijuana Producers.

Licensed marijuana producers are authorized to sell marijuana at wholesale to other producers and licensed processors, and may also sell live plants to medical marijuana cooperatives. Medical marijuana patients who are not members of a cooperative have no legal means of purchasing marijuana plants from a producer.

There are no statutory provisions explicitly referencing the sale of "immature" plants, clones, or seeds.

Competitive Application Process for the Issuance of Marijuana Licenses.

During the 2015 legislative session, legislation was enacted to merge the recreational and medical marijuana systems. This merger required the closure of all unlicensed medical marijuana dispensaries/collective gardens and created a new system in which retail recreational marijuana businesses could obtain an additional license authorizing the retail sale of medical marijuana products. In anticipation of the need for additional retail licensees in order to meet the demand created by the closure of the unlicensed dispensaries, the legislature created a competitive, merit-based application process for those applying for retail licenses. This application process is administered by the Liquor and Cannabis Board (LCB) and requires it to follow specified guidelines and requirements in implementing the new license approval process. Now that the merger of the recreational and medical marijuana systems is complete and the additional retail outlets have been licensed, the LCB is no longer accepting applications for retail licenses.

Notice to Local Governments of Pending Applications for Marijuana Licenses.

Before the LCB issues a new or renewed license to a marijuana license applicant, it must give notice of the application to the municipality where the business will be located. The municipality may file a written objection regarding the applicant or the location of the business for both new licenses or renewals. The LCB may extend the time period during which written objections will be considered.

Rule-Making Authority of the Liquor and Cannabis Board Regarding Marijuana Research Licensees.

The LCB is authorized to adopt rules concerning the conditions under which a marijuana research licensee may receive donated marijuana that is grown by a licensed marijuana producer. This authority does not include the enactment of rules regarding the conditions under which various other types of marijuana products (i.e., useable marijuana, marijuana concentrates, or marijuana-infused products) may be donated by a licensed marijuana processor.

Exemption from Criminal or Civil Liability for Marijuana Research Licensees.

Marijuana research licensees are immune from criminal or civil liability with respect to the production, processing, delivery, donation, and sale of marijuana provided such activities are conducted in accordance with chapter 69.50 RCW.

The Registration and Use of Trademarks and Other Proprietary Product Identifiers.

Registration of a trademark provides the registered user with exclusive use of that trademark and protects against infringements upon the owner's rights. A trademark may be registered with the U.S. Trademark and Patent Office or the Washington Secretary of State's Office. Because of the federal prohibition on marijuana, it is not possible for marijuana businesses to receive federal trademark protection.

Unregistered trademarks which are used to distinguish a product or service have a more limited protection than registered trademarks, and are usually enforceable only in the area where the business is located.

Trade dress refers to a product's physical appearance, including its size, shape, color, design, and texture. Trade dress may also refer to the manner in which a product is packaged, promoted, or

advertised. There is no formal registration requirement for trade dress. Trade dress may become proprietary, and thus subject to legal protection, by virtue of having a distinctive and recognizable design associated with particular business entity.

Exemptions from Public Records Act for Licensed Marijuana Businesses.

The Public Records Act (PRA) generally requires that, upon request by a member of the public, any state or local government agency must make available any public record maintained by the state or local government agency. The term "public record" is broadly defined. Among the various exceptions to the general rule requiring disclosure of public records are several exceptions related to information submitted to, or obtained by, the LCB during the licensing or regulatory process with respect to marijuana businesses.

Exemptions from disclosure under the PRA exist for the following information, either submitted to, or obtained by, the LCB, related to marijuana businesses:

- financial institution and retirement account information, and building security plan information;
- marijuana transport information, vehicle and driver identification data, and account numbers or unique access identifiers issued to private entities for traceability system access; and
- proprietary financial, commercial, operations, and technical and research information and data from applications from marijuana research licensees applications or reports.

Immunity from Criminal or Civil Liability for Licensed Marijuana Producers.

A licensed marijuana producer is immune from criminal and civil liability for activities involving;

- the production or possession of marijuana; and
- the delivery, distribution, and sale of marijuana to a licensed processor or another licensed producer.

This immunity is contingent on the producer being in compliance with the provisions chapter 69.50 RCW and the regulations promulgated by the LCB.

These immunity provisions are silent regarding commercial activities between producers and licensed marijuana researchers involving the delivery, distribution, and sale of immature plants or clones, and marijuana seeds.

Transport and Delivery of Marijuana by Licensed Third Party Carriers.

A licensed marijuana producer, processor, researcher, or retailer may use the services of a third party common carrier to physically transport or deliver marijuana, useable marijuana, marijuana concentrates, and marijuana-infused products between LCB licensed entities within the state. The common carrier must be licensed by the LCB and may only transport marijuana products among licensed marijuana businesses.

Marijuana Plant Cultivation by Medical Marijuana Cooperatives and Qualifying Patients.

Qualifying medical marijuana patients are authorized to possess and cultivate marijuana plants for personal use. A patient who possesses a medical marijuana recognition card, but who is not registered in the state database, may cultivate up to a maximum of four plants. By contrast, a qualifying patient who is registered in the state medical marijuana database may cultivate up to a

maximum of six plants. However, with the requisite medical authorization, a patient registered in the database may be authorized to cultivate up to a maximum of 15 plants.

In order to purchase plants from a licensed producer, a patient must be a member of a medical marijuana cooperative registered with the LCB. All members of the cooperative must hold medical marijuana recognition cards and be registered in the state database. Patients who are not members of a cooperative have no legal means of purchasing plants from licensed marijuana producers.

Industrial Hemp Research Program Administered by the Washington State Department of Agriculture.

Industrial hemp is designated as an agricultural product that may be grown, produced, processed, possessed, and exchanged in Washington solely as part of the industrial hemp research program supervised by the Washington State Department of Agriculture (WSDA). The WSDA is required to establish an industrial hemp research program that authorizes WSDA licensed entities to cultivate industrial hemp for the purpose of researching the feasibility of industrial hemp production in Washington. The WSDA must supervise the program through licensure and seed certification, but may not fund growing operations. Under the requirements established for the program, processing any part of an industrial hemp plant as food, extract, oil, cake, concentrate, resin, or other preparation for topical use, oral consumption, or inhalation by humans is expressly prohibited. The processing of industrial hemp seed is exempt from this prohibition.

Restrictions on Advertising by Licensed Marijuana Producers, Processors, Retailers, and Researchers.

A marijuana retailer may display only two signs for the purpose of identifying the retail outlet by its business or trade name. Signs must be permanently attached to a building or other structure and must be no larger than 1,600 square inches. No sign may be posted within 1,000 feet of an elementary or secondary school, or a playground.

Licensed producers, processors, retailers, and researchers are prohibited from advertising any marijuana product in a public transit vehicle, public transit shelter, or on any publicly owned or operated property. In addition, marijuana businesses are prohibited from advertising marijuana products within 1,000 feet of the perimeter of a:

- school;
- playground;
- recreation center or facility;
- child care center;
- public park;
- library; or
- arcade game facility that allows admission to patrons under twenty one years of age.

Summary of Bill:

Sale of Plants, Clones, and Seeds to Medical Marijuana Cooperatives and Qualifying Patients by Licensed Marijuana Producers.

Marijuana plants sold to medical marijuana cooperatives by licensed marijuana producers must be "immature" marijuana plants. In addition to the sale of immature plants, marijuana producers are authorized to sell immature clones and seeds to medical marijuana cooperatives. "Immature

plant or clone" is defined to mean a plant or clone that has no flowers, is less than 12 inches in height, and less than 12 inches in diameter.

Licensed producers may also sell immature plants or clones, and seeds, to any patient holding a medical marijuana recognition card and who is entered in the medical marijuana database, regardless of whether he or she is a member of a medical marijuana cooperative.

Competitive Application Process for the Issuance of Marijuana Licenses.

The competitive, merit-based application process for retail marijuana licenses is eliminated from statute.

Notice to Local Governments of Pending Applications for Marijuana Licenses.

The requirement that local governments be given notice of pending applications or renewals of marijuana licenses is extended to include tribal governments and port authorities. A decision by the LCB to extend the time period during which written objections may be considered must be based upon a request from the local governmental entity.

Rule-Making Authority of the Liquor and Cannabis Board Regarding Marijuana Research Licensees.

The LCB's rule-making authority is extended to include the setting of conditions under which a marijuana researcher may receive donated marijuana from a licensed marijuana producer.

Immunity from Criminal or Civil Liability for Marijuana Research Licensees.

The immunity for marijuana research licensees from criminal or civil liability with respect to the production, processing, delivery, donation, and sale of marijuana is extended to include such activities involving immature plants or clones, and seeds.

Authority of Marijuana Businesses to Enter into Consulting Contracts or Licensing Agreements.

Licensed marijuana businesses are authorized to enter into licensing agreements or consulting contracts with any person or entity for goods or services involving registered trademarks, unregistered trademarks, trade names, or trade dress. This authority also extends to trade secrets, technology, or proprietary information related to the manufacturing of a marijuana product or used to provide a service related to a marijuana business. All such agreements or contracts entered into by a licensed marijuana business must be disclosed to the LCB.

Exemptions from Public Records Act for Licensed Marijuana Businesses.

Trade secrets, technology, proprietary information, and financial considerations contained in any agreement or contract entered into by a licensed marijuana business, and which may be submitted to or obtained by the LCB, are exempt from disclosure under the PRA.

Transport and Delivery of Marijuana Products by Licensed Third Party Carriers.

Immature plants or clones, and marijuana seeds, are added to the list of marijuana products that may be lawfully transported by licensed third party common carriers within the state.

Immunity from Criminal or Civil Liability for Licensed Marijuana Producers.

The criminal and civil immunity applicable to marijuana producers is extended to include commercial activities with licensed marijuana researchers involving the delivery, distribution, and sale of immature plants or clones, and marijuana seeds.

Marijuana Processors and Industrial Hemp Research Programs.

After the research has been completed, industrial hemp research programs are authorized to dispose of industrial hemp by-products and waste material by selling these materials to a licensed marijuana processor. The monies raised by these sales must be used to fund the industrial hemp research program. The WSDA may adopt rules, in consultation with the LCB, to implement this provision.

Marketing and Advertising Regulations Applicable to Licensed Marijuana Businesses.

Marijuana licensees are prohibited from engaging in marketing or advertising activities that involve any of the following:

- any advertising practice that has the potential of encouraging marijuana use by youth;
- use of objects, images, or characters that are especially appealing to children or minors;
- advertising methods that involve the outdoor use of "commercial mascots", including costumed employees, animals, inflatable objects, and sandwich board signs; or
- advertising in or on transit facilities or vehicles, whether public or private, including bus stops, airports, taxi stands, train stations, transit waiting areas, etc.

Specified types of outdoor advertising are prohibited, including:

- signs and placards in facilities that receive public allocations such as arenas, stadiums, fairs, and shopping malls, regardless of whether such facilities are open-air or enclosed;
- billboards that are visible to the public from roads, highways, parking areas, or rights of way, unless otherwise permitted by statute; or
- other specified types of advertisements that are visible from outdoor areas and which are not explicitly permitted by statute.

Subject to specified requirements, certain forms of marijuana related advertising are explicitly permitted, including:

- billboards that serve the sole purpose of providing the public with notice of the location of a marijuana retailer and which are limited to text stating the licensed name of the business and directional information;
- an individual outdoor advertising sign not larger than 2,400 square inches (i.e., 200 square feet) and which is not in such close proximity to one or more additional marijuana advertisements so as to have the effect of creating a single advertisement exceeding the 2,400 square inch limit; and
- outdoor advertisements at the site of an event to be held at an adults-only facility and that do not advertise any marijuana product other than a brand name necessary to identify the event.

Statutory requirements limiting retail marijuana business signs to a maximum of 1,200 square inches are eliminated. In addition, retailers are no longer limited to a maximum of two signs that are permanently affixed to building or other structure.

Rule-Making Authority of the LCB Regarding Advertising.

The LCB must adopt rules implementing advertising requirements applicable to marijuana business licensees. Such rules must be as restrictive as the state and federal guidelines regulating cigarette advertising. In addition, the rules must establish escalating penalties including fines and possible suspension or revocation of a marijuana license for repeat violations.

Regulatory Authority of Municipalities Regarding Outdoor Advertising.

A city, town, or county may adopt rules for outdoor advertising by licensed marijuana retailers that are more restrictive than the advertising restrictions imposed by statute. Enforcement of local government restrictions on marijuana-related advertising by a city, town, or county is the responsibility of the local government.

Prospective Application of the Act.

This Act applies prospectively only and not retroactively. For causes of action of a substantive nature, the act applies only to legal issues that arise on, or after, the effective date of this Act. For causes of action of a procedural nature, the Act applies only to legal actions that commence on, or after, the effective date of this Act.

Appropriation: None.

Fiscal Note: Requested on March 13, 2017.

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