

# SENATE BILL REPORT

## SB 5131

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As Reported by Senate Committee On:  
Commerce, Labor & Sports, February 2, 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. [**Revised for 1st Substitute:** Concerning marijuana with respect to privileges for research licenses, local authority notifications, the retail licensing merit-based application process, processor wholesale events, certain transfers of plants and seeds, licensing agreements and contracts, residency requirements, and jurisdictional requirements.]

**Sponsors:** Senators Rivers and Conway; by request of Liquor and Cannabis Board.

**Brief History:**

**Committee Activity:** Commerce, Labor & Sports: 1/19/17, 2/02/17 [DPS, w/oRec].

**Brief Summary of Substitute Bill**

- Clarifies that licensed marijuana processors may only package and label products for sale to retailers.
- Eliminates the merit-based application process to obtain a retail marijuana license.
- Provides tribes and port authorities with the same notices regarding marijuana business applications as given to cities, towns, and counties.
- Extends the Liquor and Cannabis Board's (LCB) general immunity from personal liability to include the board's duties relating to marijuana.
- Allows licensed marijuana businesses to enter into licensing agreements or consulting contracts for goods or services related to a marijuana business.
- Requires at least 50 percent of a marijuana business ownership interests to live in the state. Out-of-state owners must be U.S. citizens.

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*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.*

- Authorizes a licensed processor to sell immature marijuana plants, clones, and seeds to marijuana researchers, cooperatives, and qualified patients and providers.
- Authorizes the transportation of immature marijuana plants, clones, and seeds.

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## SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS

**Majority Report:** That Substitute Senate Bill No. 5131 be substituted therefor, and the substitute bill do pass.

Signed by Senators Baumgartner, Chair; Keiser, Ranking Minority Member; Conway, Hasegawa and Saldaña.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Braun, Vice Chair; King, Rossi and Wilson.

**Staff:** Richard Rodger (786-7461)

**Background:** Marijuana Processors. Marijuana processors are licensed by the LCB to process, package, and label marijuana concentrates, useable marijuana, and marijuana-infused products for sale at wholesale to marijuana processors and marijuana retailers. This language has caused some confusion regarding the extent of the processors' legal authority to sell packaged and labeled products.

Applications for Retail Marijuana Licenses. When the state merged the recreational and medical marijuana retail operations, it required the LCB to use a competitive, merit-based application process for the issuance of additional retail licenses. The LCB was required to give preference between competing applications in the licensing process to applicants that had specific experience and qualifications. That merit-based process has been completed and the LCB is no longer accepting applications for retail licenses.

Notice to Local Governments. Before the LCB issues a new or renewed license to an applicant it must give notice of the application to the city or town where the business will be located. If the application is for a license outside the boundaries of incorporated cities or towns, the notice is given to the county legislative authority. The city, town, or county may file a written objection against the applicant or against the premises for both new licenses or renewals. The LCB may extend the time period for submitting written objections.

Marijuana Research Licensees. The LCB is authorized to adopt rules concerning the conditions under which a marijuana researcher may receive donated marijuana, grown by a marijuana producer. There is no statutory authority for marijuana researchers to purchase or obtain immature plants, clones, or seeds from a marijuana producer.

LCB Board Member & Staff Immunity. The LCB's general authorizing statute contains a standard clause providing the board members and the board's staff with immunity from personal liability for any damages sustained by any person because of any acts performed,

done, or omitted in the performance of their duties. The immunity applies to those acts taken under the general authorizing statute.

Trademarks and Trade Dress. 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. Currently, because of the federal prohibition on marijuana, it is generally 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 receives its legal protection simply by distinctive and recognizable design.

Public Records Act. The Public Records Act (PRA) requires state and local agencies to make their written records available to the public for inspection and copying upon request, unless the information meets certain requirements for exemption.

Marijuana Business Owner Residency Requirements. All applicants applying for a marijuana license must have resided in the state of Washington for at least six months prior to an application for a marijuana license. All partnerships, employee cooperatives, associations, nonprofit corporations, or corporations applying for a marijuana license must be formed in Washington and all their members must meet the six month residency requirement.

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.

Medical Marijuana Cooperatives. Medical marijuana cooperatives consisting of up to four qualifying medical marijuana patients must purchase their plants from a licensed marijuana producer. There are no provisions authorizing the cooperatives to purchase marijuana clones or seeds.

Medical Marijuana Patients and Designated Providers. Qualified medical marijuana patients and the designated providers are authorized to grow marijuana plants. However, there are no statutory provisions that allow them to purchase plants, clones, or seeds.

**Summary of Bill (First Substitute):** Marijuana Processors. The statute is clarified that marijuana processors are licensed to (1) process marijuana concentrates, useable marijuana, and marijuana-infused products for sale at wholesale to marijuana processors and (2) process, package, and label marijuana concentrates, useable marijuana, and marijuana-infused products for sale at wholesale to marijuana retailers. The key difference being that processors may only package and label products for sale to retailers.

Applications for Retail Marijuana Licenses. The merit-based application process to obtain a retail marijuana license is eliminated.

Notice to Local Governments. The notice provisions pertaining to applications for a marijuana license that is given to cities, towns and counties, is extended to include tribal governments and port authorities. The LCB's extension of time to accept written objections must be based upon a request from the notified authority.

Marijuana Research Licensees. The LCB rule making authority is extended to set conditions under which a marijuana researcher may receive donated marijuana from a licensed marijuana producer. Marijuana researchers and marijuana producers may purchase or obtain immature plants, clones, or seeds from each other.

LCB Board Member & Staff Immunity. The LCB's general immunity from personal liability is extended to the board's duties performed under the separate chapter covering the Uniform Controlled Substances Act (UCSA). The UCSA includes the board's duties relating to marijuana licensing and enforcement.

Trademarks and Trade Dress. A licensed marijuana business may enter into a licensing agreement or consulting contract with any individual, partnership, employee cooperative, association, nonprofit corporation, or corporation.

Public Records Act. Trade secrets, technology, proprietary, and financial information contained in any agreements or contracts entered into by a marijuana licensee are exempt from public disclosure under PRA.

Marijuana Business Owner Residency Requirements. A business or nonprofit entity may obtain a state marijuana business license provided that (1) it is lawfully registered with the Secretary of State, (2) more than 50 percent of the interest in the entity is held by one or more interest holders who lawfully reside in the state, and (3) all out-of-state interest holders are resident citizens of the U.S. The LCB is granted discretionary authority to deny a license if a nonresident interest holder is difficult to adequately investigate.

Transportation of Marijuana Products. A common carrier licensed to transport marijuana and marijuana products between licensed marijuana businesses may also transport immature plants, clones, and seeds.

Medical Marijuana Cooperatives. Medical marijuana cooperatives may also purchase marijuana clones or seeds from a licensed producer.

Medical Marijuana Patients and Designated Providers. Qualified medical marijuana patients and the designated providers may purchase immature plants, clones, or seeds from a licensed producer. In order to qualify they must hold a recognition card and be entered in the medical marijuana authorization database.

**EFFECT OF CHANGES MADE BY COMMERCE, LABOR & SPORTS COMMITTEE (First Substitute):**

- Allows licensed marijuana businesses to enter into licensing agreements or consulting contracts for goods or services related to a marijuana business.
- Requires at least 50 percent of a marijuana business ownership interests to live in the state. Out-of-state owners must be U.S. citizens.
- Authorizes a licensed processor to sell immature marijuana plants, clones, and seeds to marijuana researchers, cooperatives, patients, and providers who hold recognition cards and are in the authorization database.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: This is a cleanup bill that covers the items we didn't anticipate with last year's bills. As a business association, we are supportive of these technical changes. The merit-based system was designed to integrate the existing medical dispensaries into the recreational system and that goal has been accomplished. There were a few litigation events over the merit-based system but those were all settled and the LCB won all of them. Changing the system would not prevent a court from examining the law as it pertained to any lawsuits. The clarification to the definitions will codify the LCB's current practice regarding the sale of finished products. Processors should not be selling finished products to other processors. By doing so, the processors are acting as distributors which is not authorized. The Legislature can create a distributor's license if it wants one. Allowing producers to donate product to the researchers makes sense. This omission was merely an oversight.

CON: Any changes to the definitions can cost a marijuana business thousands or millions of dollars. Do not change these definitions after the businesses have entered in to financial arrangements that depend on stability. The merit-based system would have been nice for the medical community; however, the LCB did not follow the letter of the law when issuing these licenses. We are concerned about the removal for the current priority system. I oppose the research license provisions because nobody is really using research anymore. This bill is just about bureaucracy. The DOJ's Cole memorandum can be changed at any time.

OTHER: The merit-based system didn't follow the law and there are still lawsuits and administrative appeals pending. The process for issuing licenses is not complete and should still be used.

**Persons Testifying:** PRO: Senator Ann Rivers, Prime Sponsor; James Paribello, WSLCB; Vicki Christophersen, CannaBusiness Association.

CON: John Worthington, viper Pac. 420LEAKS, CAC.AAMC; Philip Dawdy, Have A Heart; Yolanda Goff, STRYPS/Co-Founder.

OTHER: Ryan Sevigny, The Cannabis Alliance.

**Persons Signed In To Testify But Not Testifying:** No one.