

# SENATE BILL REPORT

## ESSB 5131

---

As Amended by House, April 11, 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, certain transfers of plants and seeds, licensing agreements and contracts, residency requirements, and jurisdictional requirements.

**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 History:**

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

**Floor Activity:**

Passed Senate: 3/07/17, 48-0.

Passed House: 4/11/17, 74-24.

**Brief Summary of Engrossed First Substitute Bill**

- 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.
- Authorizes a licensed producer 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.

---

*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 an industrial hemp research program to dispose of the industrial hemp by-product and waste material, after the research has been conducted, by selling them to a licensed marijuana processor.
- Requires that any monies raised are for the hemp research program.
- Clarifies a legislative intent regarding the need to protect children from marijuana advertising to assist the state's efforts to discourage and prevent underage consumption.
- Prohibits marijuana licensees from using advertising that is targeted to youth and from using objects or characters that are appealing to children.
- Places additional restrictions on marijuana advertising in public places and bans the use of commercial mascots.
- Increases the allowable size of the signs at a retail marijuana business to a maximum of 2400 square inches.
- Allows billboards for the sole purpose of providing directional information to a licensed marijuana retailer's store.

---

## 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:** Notice to Local Governments. Before the LCB issues a new or renewed license to an applicant the LCB 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 Producers. The marijuana producer's license authorizes the licensee to produce marijuana for the sale at wholesale to marijuana processors and other marijuana producers and to sell plants to medical marijuana cooperatives. There are no statutory provisions regarding the sale of immature plants, clones, or seeds.

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 the patients or providers to purchase plants, clones, or seeds.

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.

Marijuana Research Licensees. The LCB is authorized to adopt rules concerning the conditions under which a marijuana researcher may receive donated marijuana that is grown by a licensed 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.

Industrial Hemp Research Program. The Washington State Department of Agriculture (WSDA) is authorized to establish an industrial hemp research program, licensing program, and seed certification program.

General Restrictions on Marijuana Advertising. Licensed marijuana producers, processors, researchers, or retailers are prohibited from placing or maintaining an advertisement of marijuana, useable marijuana, marijuana concentrates, or a marijuana-infused product: (1)

within 1000 feet of the perimeter of a school grounds, playground, recreation center or facility, child care center, public park, or library, or any game arcade admission to which is not restricted to persons 21 years of age or older; (2) on any public transit vehicle or public transit shelter; or (3) on any publicly owned or operated property.

Signs on Marijuana Retail Businesses. A licensed marijuana retailer is limited to two signs outside of the licensed premises. Each sign must be no larger than 1600 square inches and must be permanently affixed to a building or other structure. The signs may not be posted within 1000 feet from any elementary school, secondary school, or playground.

Advertising Penalties. The LCB must issue a fine in the amount \$1,000 to a marijuana licensee for each violation of the restrictions on advertising.

**Summary of Engrossed First Substitute Bill: 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 Producers. Marijuana producers are authorized to produce immature marijuana plants, clones, and seeds for the sale to medical marijuana cooperatives, to certain qualifying medical marijuana patients, and to the patient's designated provider. The patients and providers must hold a recognition card and be entered in the medical marijuana authorization database. Immature marijuana plants and clones are defined as plants without flowers, that are less than 12 inches high, and less than 12 inches in diameter.

Medical Marijuana Cooperatives. Medical marijuana cooperatives are also authorized to 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.

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.

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 chapters covering the Uniform Controlled Substances Act (UCSA) and the medical marijuana provisions. 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 licensing agreements or consulting contracts entered into by a marijuana licensee are exempt from public disclosure under PRA.

Industrial Hemp Research Programs. Industrial hemp research programs are authorized to dispose of the industrial hemp by-product and waste material, after the research has been conducted, by selling these materials to a licensed marijuana processor. The funds raised by these sales must be used for the industrial hemp research program. The WSDA may adopt rules, in consultation with the LCB, to implement this provision.

Legislative Findings on Marijuana Advertising. Legislative findings are made regarding the state's interest in limiting some marijuana advertising to help discourage and prevent children, youth, and young adults from underage consumption.

Marijuana Advertising in General. Marijuana licensees are prohibited from using advertising that is targeted to youth and from using objects, such as toys, inflatables, characters, or cartoon characters that are appealing to children. The phrases outdoor advertising and transit advertising are defined and additional limitations are placed on their use. The use of billboards, signs, and placards are prohibited in arenas, stadiums, shopping malls, fairs, farmers' markets, and video game arcades, excluding adult-only facilities.

Signs on Marijuana Retail Businesses. Marijuana retail business signs are no longer required to be on the building and may be placed outside of the building. The signs may be up to 2400 square inches. The signs may not be placed in such a proximity to create a larger mosaic-type advertisement.

Commercial Mascots. Marijuana licensees are prohibited from using or employing a commercial mascot outside a licensed marijuana business. Commercial mascots are defined to include live human beings, animals, or mechanical devices used for the purpose of commercial advertising.

Billboards. Advertising of marijuana is prohibited on billboards that are visible from any street, road, highway, right-of-way, or public parking area, except for the sole purpose of providing directional information to a licensed retail outlet. The content of the directional signs is strictly limited to the store's licensed name, its logo, and directions to the licensed retail outlet. The billboards and signs may not contain any depictions of marijuana plants or products.

Transit Advertising. No marijuana licensees may engage in transit advertisements. Transit advertisements is defined to mean advertising on or within private or public vehicles and all advertisements placed at, on or within any bus stop, taxi stand, transportation waiting area, train station, airport, or any similar transit-related location.

Advertising Penalties. The fines for advertising violations remains a mandatory fine of \$1,000, until the LCB adopts rules establishing a schedule of escalating penalties including fines, suspensions, or revocations for subsequent violations.

Rulemaking. The LCB must adopt advertising rules that are as restrictive as the state and federal guidelines regulating cigarette advertising.

Local Governments. Local governments may adopt more restrictive advertising restrictions and must do their own enforcement of local laws.

**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.

**EFFECT OF HOUSE AMENDMENT(S):**

- Limits a marijuana retailer and his or her partners to holding a collective total of not more than five retail marijuana licenses.
- Requires that a retail marijuana licensee forfeit their license if they fail to open a retail store within a specified time period following the issuance of the license, provides an initial grace period of nine months after the effective date of the act, and prohibits forfeiture if the opening was prevented by legal or regulatory actions by a city, town, or county.
- Prohibits the state LCB from issuing a marijuana business license for premises located within Indian country, including any fee patent lands within the perimeter of a reservation, without the consent of the federally recognized Indian tribe associated with the reservation or Indian country.
- Revises and clarifies provisions authorizing an industrial hemp licensee to sell or transfer industrial hemp to a licensed marijuana processor, required marijuana processors to obtain a license from WSDA in order to process industrial hemp, and provides that the LCB's or DOH's rules may not prohibit the processing or sale of any specific type of product that is derived, in whole or part, from industrial hemp.
- Prohibits a marijuana licensee from engaging in any advertising or marketing practice that specifically targets persons residing outside of the state of Washington.
- Clarifies provisions prohibiting marijuana-related advertising that targets children or youth, or that otherwise might encourage the purchase or consumption of marijuana by minors.
- Revises and clarifies provisions related to outdoor advertising for marijuana businesses and marijuana products, including billboards and other signage, and prohibits the use of billboards for advertising or promotion of retail marijuana businesses or products after July 1, 2018.
- Reduces the maximum size of marijuana-related advertising signs from 2400 to 1600 square inches.
- Limits to two, the number of advertising signs that a marijuana retailer may display outside of the licensed premises.
- Requires that the text of all marijuana advertising signs be limited to information identifying the business by name, stating its location, and identifying the nature of the business. All signs are prohibited from containing any depiction of marijuana plants, marijuana products, or images that might be appealing to children.
- Grants rule-making authority to the LCB to regulate the text and images that are permissible on outdoor advertising. Such rule making must be consistent with other administrative rules generally applicable to the advertising of marijuana businesses and products.
- Requires that advertising signs within the premises of a retail marijuana business outlet that are visible to the public from outside the premises meet the signage regulations and requirements applicable to outdoor signs as set forth in the act.

- Authorizes an adult to share limited quantities of marijuana products with other adults, provided such sharing is done for a noncommercial purpose and is not conditioned upon or done in connection with financial consideration of any kind.
- Creates a regulatory and licensing system, administered by the Washington State Department of Agriculture and the LCB, for the regulation of the production and processing of marijuana-infused edibles.
- Creates a voluntary program for the certification and regulation of organic marijuana products that is administered by the Washington state department of agriculture.
- Strikes provisions authorizing a medical marijuana patient holding a medical marijuana recognition card and who is registered in the state database to purchase plants, clones, or seeds from a licensed marijuana producer.
- Strikes provisions authorizing a licensed marijuana producer to sell marijuana plants, clones, or seeds to a medical marijuana patient holding a medical marijuana recognition card.
- Revises and clarifies jurisdictional language pertaining to Indian tribes and Indian country with respect to marijuana licensing provisions.
- Requires that all signs or other print advertising for marijuana businesses or marijuana products contain text stating that marijuana products may only be purchased or possessed by persons twenty-one years of age or older.
- Includes "inflatable tube displays" in the definition of "commercial mascot," which a marijuana licensee may not use in order to draw attention to a marijuana business or its products.
- Requires the LCB to "review and report" on demographic data regarding the race, ethnicity, and gender of license applicants.