**5318-S.E AMH APP H2875.1 - NOT FOR FLOOR USE**

**ESSB 5318** - H COMM AMD

By Committee on Appropriations

**ADOPTED AS AMENDED 04/16/2019**

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec.**  The legislature finds that:

(1) In the years since the creation of a legal and regulated marketplace for adult use of cannabis, the industry, stakeholders, and state agencies have collaborated to develop a safe, fully regulated marketplace.

(2) As the regulated marketplace has been developing, Washington residents with a strong entrepreneurial spirit have taken great financial and personal risk to become licensed and part of this nascent industry.

(3) It should not be surprising that mistakes have been made both by licensees and regulators, and that both have learned from these mistakes leading to a stronger, safer industry.

(4) While a strong focus on enforcement is an important component of the regulated marketplace, a strong focus on compliance and education is also critically necessary to assist licensees who strive for compliance and in order to allow the board to focus its enforcement priorities on those violations that directly harm public health and safety.

(5) The risk taking entrepreneurs who are trying to comply with board regulations should not face punitive consequences for mistakes made during this initial phase of the industry that did not pose a direct threat to public health and safety.

NEW SECTION. **Sec.**  A new section is added to chapter 43.05 RCW to read as follows:

(1) If, during an inspection or visit to a marijuana business licensed under chapter 69.50 RCW that is not a technical assistance visit, the liquor and cannabis board becomes aware of conditions that are not in compliance with applicable laws and rules enforced by the board and are not subject to civil penalties as provided for in section 3 of this act, the board may issue a notice of correction to the licensee that includes:

(a) A description of the condition that is not in compliance and the text of the specific section or subsection of the applicable state law or rule;

(b) A statement of what is required to achieve compliance;

(c) The date by which the board requires compliance to be achieved;

(d) Notice of the means to contact any technical assistance services provided by the board or others; and

(e) Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the board.

(2) A notice of correction is not a formal enforcement action, is not subject to appeal, and is a public record.

(3) If the liquor and cannabis board issues a notice of correction, it may not issue a civil penalty for the violations identified in the notice of correction unless the licensee fails to comply with the notice.

NEW SECTION. **Sec.**  A new section is added to chapter 69.50 RCW to read as follows:

(1) The liquor and cannabis board may issue a civil penalty without first issuing a notice of correction if:

(a) The licensee has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule or has been given previous notice of the same or similar type of violation of the same statute or rule;

(b) Compliance is not achieved by the date established by the liquor and cannabis board in a previously issued notice of correction and if the board has responded to a request for review of the date by reaffirming the original date or establishing a new date; or

(c) The board can prove by a preponderance of the evidence:

(i) Diversion of marijuana product to the illicit market or sales across state lines;

(ii) Intentional furnishing of marijuana product to minors;

(iii) Diversion of revenue to criminal enterprises, gangs, cartels, or parties not qualified to hold a marijuana license based on criminal history requirements; or

(iv) The commission of nonmarijuana-related crimes.

(2) The liquor and cannabis board may adopt rules to implement this section and section 2 of this act.

**Sec.**  RCW 69.50.342 and 2015 2nd sp.s. c 4 s 1601 are each amended to read as follows:

(1) For the purpose of carrying into effect the provisions of chapter 3, Laws of 2013 according to their true intent or of supplying any deficiency therein, the state liquor and cannabis board may adopt rules not inconsistent with the spirit of chapter 3, Laws of 2013 as are deemed necessary or advisable. Without limiting the generality of the preceding sentence, the state liquor and cannabis board is empowered to adopt rules regarding the following:

(a) The equipment and management of retail outlets and premises where marijuana is produced or processed, and inspection of the retail outlets and premises where marijuana is produced or processed;

(b) The books and records to be created and maintained by licensees, the reports to be made thereon to the state liquor and cannabis board, and inspection of the books and records;

(c) Methods of producing, processing, and packaging marijuana, useable marijuana, marijuana concentrates, and marijuana-infused products; conditions of sanitation; safe handling requirements; approved pesticides and pesticide testing requirements; and standards of ingredients, quality, and identity of marijuana, useable marijuana, marijuana concentrates, and marijuana-infused products produced, processed, packaged, or sold by licensees;

(d) Security requirements for retail outlets and premises where marijuana is produced or processed, and safety protocols for licensees and their employees;

(e) Screening, hiring, training, and supervising employees of licensees;

(f) Retail outlet locations and hours of operation;

(g) Labeling requirements and restrictions on advertisement of marijuana, useable marijuana, marijuana concentrates, cannabis health and beauty aids, and marijuana-infused products for sale in retail outlets;

(h) Forms to be used for purposes of this chapter and chapter 69.51A RCW or the rules adopted to implement and enforce these chapters, the terms and conditions to be contained in licenses issued under this chapter and chapter 69.51A RCW, and the qualifications for receiving a license issued under this chapter and chapter 69.51A RCW, including a criminal history record information check. The state liquor and cannabis board may submit any criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The state liquor and cannabis board must require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation;

(i) Application, reinstatement, and renewal fees for licenses issued under this chapter and chapter 69.51A RCW, and fees for anything done or permitted to be done under the rules adopted to implement and enforce this chapter and chapter 69.51A RCW;

(j) The manner of giving and serving notices required by this chapter and chapter 69.51A RCW or rules adopted to implement or enforce these chapters;

(k) Times and periods when, and the manner, methods, and means by which, licensees transport and deliver marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products within the state;

(l) Identification, seizure, confiscation, destruction, or donation to law enforcement for training purposes of all marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products produced, processed, sold, or offered for sale within this state which do not conform in all respects to the standards prescribed by this chapter or chapter 69.51A RCW or the rules adopted to implement and enforce these chapters.

(2) Rules adopted on retail outlets holding medical marijuana endorsements must be adopted in coordination and consultation with the department.

(3) The board must adopt rules to perfect and expand existing programs for compliance education for licensed marijuana businesses and their employees. The rules must include a voluntary compliance program created in consultation with licensed marijuana businesses and their employees. The voluntary compliance program must include recommendations on abating violations of this chapter and rules adopted under this chapter.

NEW SECTION. **Sec.**  A new section is added to chapter 69.50 RCW to read as follows:

(1) The board may grant a licensee's application for advice and consultation as provided in RCW 69.50.342(3) and visit the licensee's licensed premises in order to provide such advice and consultation. Advice and consultation services are limited to the matters specified in the request affecting the interpretation and applicability of the standards in this chapter to the conditions, structures, machines, equipment, apparatus, devices, materials, methods, means, and practices in the licensee's licensed premises. The board may provide for an alternative means of affording consultation and advice other than on-site consultation.

(2) The board must make recommendations on eliminating areas of concern disclosed within the scope of the on-site consultation. A visit to a licensee's licensed premises may not be considered an inspection or investigation under this chapter. During the visit, the board may not issue notices or citations and may not assess civil penalties. However, if the on-site visit discloses a violation with a direct or immediate relationship to public safety and the violation is not corrected, the board may investigate.

(3) This section does not provide immunity to a licensee who has applied for consultative services from inspections or investigations conducted under this chapter or from any inspection conducted as a result of a complaint before, during, or after the provision of consultative services.

(4) This section does not require an inspection of a licensee's licensed premises that has been visited for consultative purposes. However, if the premises are inspected after a visit, the board may consider any information obtained during the consultation visit in determining the nature of an alleged violation and the amount of penalties to be assessed, if any.

(5) Rules adopted under section 6 of this act must provide that violations with a direct or immediate relationship to public safety discovered during the consultation visit must be corrected within a specified period of time and an inspection must be conducted at the end of that time period.

(6) All licensees requesting consultative services must be advised of this section and the rules adopted by the board relating to the voluntary compliance program. Valuable formulae or financial or proprietary commercial information records received during a consultative visit or while providing consultative services in accordance with this section are not subject to inspection pursuant to chapter 42.56 RCW.

(7) The board may adopt rules on the frequency, manner, and method of providing consultative services to licensees. Rules may include scheduling of consultative services and prioritizing requests for the services while maintaining the enforcement requirements of this chapter.

NEW SECTION. **Sec.**  A new section is added to chapter 69.50 RCW to read as follows:

(1) The board must prescribe procedures for the following:

(a) Issuance of written warnings or notices to correct in lieu of penalties, sanctions, or other violations with respect to regulatory violations that have no direct or immediate relationship to public safety as defined by the board;

(b) Waiving any fines, civil penalties, or administrative sanctions for violations, that have no direct or immediate relationship to public safety, and are corrected by the licensee within a reasonable amount of time as designated by the board; and

(c) A compliance program in accordance with chapter 43.05 RCW and RCW 69.50.342, whereby licensees may request compliance assistance and inspections without issuance of a penalty, sanction, or other violation provided that any noncompliant issues are resolved within a specified period of time.

(2) The board must adopt rules prescribing penalties for violations of this chapter. The board:

(a) May establish escalating penalties for violation of this chapter, provided that the cumulative effect of any such escalating penalties cannot last beyond two years and the escalation applies only to multiple violations that are the same or similar in nature;

(b) May not include cancellation of a license for a single violation, unless the board can prove by a preponderance of the evidence:

(i) Diversion of marijuana product to the illicit market or sales across state lines;

(ii) Intentional furnishing of marijuana product to minors;

(iii) Diversion of revenue to criminal enterprises, gangs, cartels, or parties not qualified to hold a marijuana license based on criminal history requirements; or

(iv) The commission of nonmarijuana-related crimes;

(c) May include cancellation of a license for cumulative violations only if a marijuana licensee commits at least four violations within a two-year period of time;

(d) Must consider aggravating and mitigating circumstances and deviate from the prescribed penalties accordingly, and must authorize enforcement officers to do the same, provided that such penalty may not exceed the maximum escalating penalty prescribed by the board for that violation; and

(e) May not issue a violation if there is employee misconduct that led to the violation if the licensee provides documentation that before the date of the violation the licensee:

(i) Established a compliance program designed to prevent the violation;

(ii) Performed meaningful training with employees designed to prevent the violation; and

(iii) Had not enabled or ignored the violation or other similar violations in the past.

(3) The board may not consider any violation that occurred more than two years prior as grounds for denial, suspension, revocation, cancellation, or nonrenewal, unless the board can prove by a preponderance of the evidence that the prior administrative violation evidences:

(a) Diversion of marijuana product to the illicit market or sales across state lines;

(b) Intentional furnishing of marijuana product to minors;

(c) Diversion of revenue to criminal enterprises, gangs, cartels, or parties not qualified to hold a marijuana license based on criminal history requirements; or

(d) The commission of nonmarijuana-related crimes.

**Sec.**  RCW 69.50.331 and 2017 c 317 s 2 are each amended to read as follows:

(1) For the purpose of considering any application for a license to produce, process, research, transport, or deliver marijuana, useable marijuana, marijuana concentrates, or marijuana-infused products subject to the regulations established under RCW 69.50.385, or sell marijuana, or for the renewal of a license to produce, process, research, transport, or deliver marijuana, useable marijuana, marijuana concentrates, or marijuana-infused products subject to the regulations established under RCW 69.50.385, or sell marijuana, the ((~~state liquor and cannabis~~)) board must conduct a comprehensive, fair, and impartial evaluation of the applications timely received.

(a) The ((~~state liquor and cannabis~~)) board may cause an inspection of the premises to be made, and may inquire into all matters in connection with the construction and operation of the premises. For the purpose of reviewing any application for a license and for considering the denial, suspension, revocation, cancellation, or renewal or denial thereof, of any license, the ((~~state liquor and cannabis~~)) board may consider any prior criminal ((~~conduct~~)) arrests or convictions of the applicant ((~~including an~~)), any public safety administrative violation history record with the ((~~state liquor and cannabis~~)) board, and a criminal history record information check. The ((~~state liquor and cannabis~~)) board may submit the criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The ((~~state liquor and cannabis~~)) board must require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation. The provisions of RCW 9.95.240 and of chapter 9.96A RCW do not apply to these cases. Subject to the provisions of this section, the ((~~state liquor and cannabis~~)) board 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 pursuant to subsections (7)(c) and (10) of this section. Authority to approve an uncontested or unopposed license may be granted by the ((~~state liquor and cannabis~~)) board to any staff member the board designates in writing. Conditions for granting this authority must be adopted by rule.

(b) No license of any kind may be issued to:

(i) A person under the age of twenty-one years;

(ii) A person doing business as a sole proprietor who has not lawfully resided in the state for at least six months prior to applying to receive a license;

(iii) A partnership, employee cooperative, association, nonprofit corporation, or corporation unless formed under the laws of this state, and unless all of the members thereof are qualified to obtain a license as provided in this section; or

(iv) A person whose place of business is conducted by a manager or agent, unless the manager or agent possesses the same qualifications required of the licensee.

(2)(a) The ((~~state liquor and cannabis~~)) board may, in its discretion, subject to ((~~the provisions of~~)) sections 2, 3, and 6 of this act, RCW 69.50.334, and 69.50.342(3) suspend or cancel any license; and all protections of the licensee from criminal or civil sanctions under state law for producing, processing, researching, or selling marijuana, marijuana concentrates, useable marijuana, or marijuana-infused products thereunder must be suspended or terminated, as the case may be.

(b) The ((~~state liquor and cannabis~~)) board must immediately suspend the license of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license is automatic upon the ((~~state liquor and cannabis~~)) board's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

(c) The ((~~state liquor and cannabis~~)) board may request the appointment of administrative law judges under chapter 34.12 RCW who shall have power to administer oaths, issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, examine witnesses, ((~~and to~~)) receive testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, and consider mitigating and aggravating circumstances in any case and deviate from any prescribed penalty, under rules ((~~and regulations~~)) the ((~~state liquor and cannabis~~)) board may adopt.

(d) Witnesses must be allowed fees and mileage each way to and from any inquiry, investigation, hearing, or proceeding at the rate authorized by RCW 34.05.446. Fees need not be paid in advance of appearance of witnesses to testify or to produce books, records, or other legal evidence.

(e) In case of disobedience of any person to comply with the order of the ((~~state liquor and cannabis~~)) board or a subpoena issued by the ((~~state liquor and cannabis~~)) board, or any of its members, or administrative law judges, or on the refusal of a witness to testify to any matter regarding which he or she may be lawfully interrogated, the judge of the superior court of the county in which the person resides, on application of any member of the board or administrative law judge, compels obedience by contempt proceedings, as in the case of disobedience of the requirements of a subpoena issued from said court or a refusal to testify therein.

(3) Upon receipt of notice of the suspension or cancellation of a license, the licensee must forthwith deliver up the license to the ((~~state liquor and cannabis~~)) board. Where the license has been suspended only, the ((~~state liquor and cannabis~~)) board must return the license to the licensee at the expiration or termination of the period of suspension. The ((~~state liquor and cannabis~~)) board must notify all other licensees in the county where the subject licensee has its premises of the suspension or cancellation of the license; and no other licensee or employee of another licensee may allow or cause any marijuana, marijuana concentrates, useable marijuana, or marijuana-infused products to be delivered to or for any person at the premises of the subject licensee.

(4) Every license issued under this chapter is subject to all conditions and restrictions imposed by this chapter or by rules adopted by the ((~~state liquor and cannabis~~)) board to implement and enforce this chapter. All conditions and restrictions imposed by the ((~~state liquor and cannabis~~)) board in the issuance of an individual license must be listed on the face of the individual license along with the trade name, address, and expiration date.

(5) Every licensee must post and keep posted its license, or licenses, in a conspicuous place on the premises.

(6) No licensee may employ any person under the age of twenty-one years.

(7)(a) Before the ((~~state liquor and cannabis~~)) board issues a new or renewed license to an applicant it 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, or to the tribal government if the application is for a license within Indian country, or to the port authority if the application for a license is located on property owned by a port authority.

(b) The incorporated city or town through the official or employee selected by it, the county legislative authority or the official or employee selected by it, the tribal government, or port authority has the right to file with the ((~~state liquor and cannabis~~)) board within twenty days after the date of transmittal of the notice for applications, or at least thirty days prior to the expiration date for renewals, written objections against the applicant or against the premises for which the new or renewed license is asked. The ((~~state liquor and cannabis~~)) board may extend the time period for submitting written objections upon request from the authority notified by the ((~~state liquor and cannabis~~)) board.

(c) The written objections must include a statement of all facts upon which the objections are based, and in case written objections are filed, the city or town or county legislative authority may request, and the ((~~state liquor and cannabis~~)) board may in its discretion hold, a hearing subject to the applicable provisions of Title 34 RCW. If the ((~~state liquor and cannabis~~)) board makes an initial decision to deny a license or renewal based on the written objections of an incorporated city or town or county legislative authority, the applicant may request a hearing subject to the applicable provisions of Title 34 RCW. If a hearing is held at the request of the applicant, ((~~state liquor and cannabis~~)) board representatives must present and defend the ((~~state liquor and cannabis~~)) board's initial decision to deny a license or renewal.

(d) Upon the granting of a license under this title the ((~~state liquor and cannabis~~)) board must send written notification to the chief executive officer of the incorporated city or town in which the license is granted, or to the county legislative authority if the license is granted outside the boundaries of incorporated cities or towns.

(8)(a) Except as provided in (b) through (d) of this subsection, the ((~~state liquor and cannabis~~)) board may not issue a license for any premises within one thousand feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, or library, or any game arcade admission to which is not restricted to persons aged twenty-one years or older.

(b) A city, county, or town may permit the licensing of premises within one thousand feet but not less than one hundred feet of the facilities described in (a) of this subsection, except elementary schools, secondary schools, and playgrounds, by enacting an ordinance authorizing such distance reduction, provided that such distance reduction will not negatively impact the jurisdiction's civil regulatory enforcement, criminal law enforcement interests, public safety, or public health.

(c) A city, county, or town may permit the licensing of research premises allowed under RCW 69.50.372 within one thousand feet but not less than one hundred feet of the facilities described in (a) of this subsection by enacting an ordinance authorizing such distance reduction, provided that the ordinance will not negatively impact the jurisdiction's civil regulatory enforcement, criminal law enforcement, public safety, or public health.

(d) The ((~~state liquor and cannabis~~)) board may license premises located in compliance with the distance requirements set in an ordinance adopted under (b) or (c) of this subsection. Before issuing or renewing a research license for premises within one thousand feet but not less than one hundred feet of an elementary school, secondary school, or playground in compliance with an ordinance passed pursuant to (c) of this subsection, the board must ensure that the facility:

(i) Meets a security standard exceeding that which applies to marijuana producer, processor, or retailer licensees;

(ii) Is inaccessible to the public and no part of the operation of the facility is in view of the general public; and

(iii) Bears no advertising or signage indicating that it is a marijuana research facility.

(e) The ((~~state liquor and cannabis~~)) board may not issue a license for any premises within Indian country, as defined in 18 U.S.C. Sec. 1151, including any fee patent lands within the exterior boundaries of a reservation, without the consent of the federally recognized tribe associated with the reservation or Indian country.

(9) A city, town, or county may adopt an ordinance prohibiting a marijuana producer or marijuana processor from operating or locating a business within areas zoned primarily for residential use or rural use with a minimum lot size of five acres or smaller.

(10) In determining whether to grant or deny a license or renewal of any license, the ((~~state liquor and cannabis~~)) board must give substantial weight to objections from an incorporated city or town or county legislative authority based upon chronic illegal activity associated with the applicant's operations of the premises proposed to be licensed or the applicant's operation of any other licensed premises, or the conduct of the applicant's patrons inside or outside the licensed premises. "Chronic illegal activity" means (a) a pervasive pattern of activity that threatens the public health, safety, and welfare of the city, town, or county including, but not limited to, open container violations, assaults, disturbances, disorderly conduct, or other criminal law violations, or as documented in crime statistics, police reports, emergency medical response data, calls for service, field data, or similar records of a law enforcement agency for the city, town, county, or any other municipal corporation or any state agency; or (b) an unreasonably high number of citations for violations of RCW 46.61.502 associated with the applicant's or licensee's operation of any licensed premises as indicated by the reported statements given to law enforcement upon arrest.

NEW SECTION. **Sec.**  A new section is added to chapter 69.50 RCW to read as follows:

(1) This section applies to the board's issuance of administrative violations to licensed marijuana producers, processors, retailers, transporters, and researchers, when a settlement conference is held between a hearing officer or designee of the board and the marijuana licensee that received a notice of an alleged administrative violation or violations.

(2) If a settlement agreement is entered between a marijuana licensee and a hearing officer or designee of the board at or after a settlement conference, the terms of the settlement agreement must be given substantial weight by the board.

(3) For the purposes of this section:

(a) "Settlement agreement" means the agreement or compromise between a licensed marijuana producer, processor, retailer, researcher, transporter, or researcher and the hearing officer or designee of the board with authority to participate in the settlement conference, that:

(i) Includes the terms of the agreement or compromise regarding an alleged violation or violations by the licensee of this chapter, chapter 69.51A RCW, or rules adopted under either chapter, and any related penalty or licensing restriction; and

(ii) Is in writing and signed by the licensee and the hearing officer or designee of the board.

(b) "Settlement conference" means a meeting or discussion between a licensed marijuana producer, processor, retailer, researcher, transporter, researcher, or authorized representative of any of the preceding licensees, and a hearing officer or designee of the board, held for purposes such as discussing the circumstances surrounding an alleged violation of law or rules by the licensee, the recommended penalty, and any aggravating or mitigating factors, and that is intended to resolve the alleged violation before an administrative hearing or judicial proceeding is initiated.

**Sec.**  RCW 69.50.101 and 2018 c 132 s 2 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(a) "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

(1) a practitioner authorized to prescribe (or, by the practitioner's authorized agent); or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseperson, or employee of the carrier or warehouseperson.

(c) "CBD concentration" has the meaning provided in RCW 69.51A.010.

(d) "CBD product" means any product containing or consisting of cannabidiol.

(e) "Commission" means the pharmacy quality assurance commission.

(f) "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal or state laws, or federal or commission rules, but does not include industrial hemp as defined in RCW 15.120.010.

(g)(1) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II and:

(i) that has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II; or

(ii) with respect to a particular individual, that the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II.

(2) The term does not include:

(i) a controlled substance;

(ii) a substance for which there is an approved new drug application;

(iii) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the federal food, drug, and cosmetic act, 21 U.S.C. Sec. 355, or chapter 69.77 RCW to the extent conduct with respect to the substance is pursuant to the exemption; or

(iv) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

(h) "Deliver" or "delivery" means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

(i) "Department" means the department of health.

(j) "Designated provider" has the meaning provided in RCW 69.51A.010.

(k) "Dispense" means the interpretation of a prescription or order for a controlled substance and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(l) "Dispenser" means a practitioner who dispenses.

(m) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(n) "Distributor" means a person who distributes.

(o) "Drug" means (1) a controlled substance recognized as a drug in the official United States pharmacopoeia/national formulary or the official homeopathic pharmacopoeia of the United States, or any supplement to them; (2) controlled substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals; (3) controlled substances (other than food) intended to affect the structure or any function of the body of individuals or animals; and (4) controlled substances intended for use as a component of any article specified in (1), (2), or (3) of this subsection. The term does not include devices or their components, parts, or accessories.

(p) "Drug enforcement administration" means the drug enforcement administration in the United States Department of Justice, or its successor agency.

(q) "Electronic communication of prescription information" means the transmission of a prescription or refill authorization for a drug of a practitioner using computer systems. The term does not include a prescription or refill authorization verbally transmitted by telephone nor a facsimile manually signed by the practitioner.

(r) "Immature plant or clone" means a plant or clone that has no flowers, is less than twelve inches in height, and is less than twelve inches in diameter.

(s) "Immediate precursor" means a substance:

(1) that the commission has found to be and by rule designates as being the principal compound commonly used, or produced primarily for use, in the manufacture of a controlled substance;

(2) that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance; and

(3) the control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

(t) "Isomer" means an optical isomer, but in subsection (ff)(5) of this section, RCW 69.50.204(a) (12) and (34), and 69.50.206(b)(4), the term includes any geometrical isomer; in RCW 69.50.204(a) (8) and (42), and 69.50.210(c) the term includes any positional isomer; and in RCW 69.50.204(a)(35), 69.50.204(c), and 69.50.208(a) the term includes any positional or geometric isomer.

(u) "Lot" means a definite quantity of marijuana, marijuana concentrates, useable marijuana, or marijuana-infused product identified by a lot number, every portion or package of which is uniform within recognized tolerances for the factors that appear in the labeling.

(v) "Lot number" must identify the licensee by business or trade name and Washington state unified business identifier number, and the date of harvest or processing for each lot of marijuana, marijuana concentrates, useable marijuana, or marijuana-infused product.

(w) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation, compounding, packaging, repackaging, labeling, or relabeling of a controlled substance:

(1) by a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(x) "Marijuana" or "marihuana" means all parts of the plant *Cannabis*, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include:

(1) The mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination; or

(2) Industrial hemp as defined in RCW 15.120.010.

(y) "Marijuana concentrates" means products consisting wholly or in part of the resin extracted from any part of the plant *Cannabis* and having a THC concentration greater than ten percent.

(z) "Marijuana processor" means a person licensed by the state liquor and cannabis board to process marijuana into marijuana concentrates, useable marijuana, and marijuana-infused products, package and label marijuana concentrates, useable marijuana, and marijuana-infused products for sale in retail outlets, and sell marijuana concentrates, useable marijuana, and marijuana-infused products at wholesale to marijuana retailers.

(aa) "Marijuana producer" means a person licensed by the state liquor and cannabis board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

(bb) "Marijuana products" means useable marijuana, marijuana concentrates, and marijuana-infused products as defined in this section.

(cc) "Marijuana researcher" means a person licensed by the state liquor and cannabis board to produce, process, and possess marijuana for the purposes of conducting research on marijuana and marijuana-derived drug products.

(dd) "Marijuana retailer" means a person licensed by the state liquor and cannabis board to sell marijuana concentrates, useable marijuana, and marijuana-infused products in a retail outlet.

(ee) "Marijuana-infused products" means products that contain marijuana or marijuana extracts, are intended for human use, are derived from marijuana as defined in subsection (x) of this section, and have a THC concentration no greater than ten percent. The term "marijuana-infused products" does not include either useable marijuana or marijuana concentrates.

(ff) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium, opium derivative, and any derivative of opium or opium derivative, including their salts, isomers, and salts of isomers, whenever the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation. The term does not include the isoquinoline alkaloids of opium.

(2) Synthetic opiate and any derivative of synthetic opiate, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation.

(3) Poppy straw and concentrate of poppy straw.

(4) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives or ecgonine or their salts have been removed.

(5) Cocaine, or any salt, isomer, or salt of isomer thereof.

(6) Cocaine base.

(7) Ecgonine, or any derivative, salt, isomer, or salt of isomer thereof.

(8) Any compound, mixture, or preparation containing any quantity of any substance referred to in subparagraphs (1) through (7).

(gg) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term includes opium, substances derived from opium (opium derivatives), and synthetic opiates. The term does not include, unless specifically designated as controlled under RCW 69.50.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes the racemic and levorotatory forms of dextromethorphan.

(hh) "Opium poppy" means the plant of the species Papaver somniferum L., except its seeds.

(ii) "Person" means individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(jj) "Plant" has the meaning provided in RCW 69.51A.010.

(kk) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(ll) "Practitioner" means:

(1) A physician under chapter 18.71 RCW; a physician assistant under chapter 18.71A RCW; an osteopathic physician and surgeon under chapter 18.57 RCW; an osteopathic physician assistant under chapter 18.57A RCW who is licensed under RCW 18.57A.020 subject to any limitations in RCW 18.57A.040; an optometrist licensed under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010 subject to any limitations in RCW 18.53.010; a dentist under chapter 18.32 RCW; a podiatric physician and surgeon under chapter 18.22 RCW; a veterinarian under chapter 18.92 RCW; a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW; a naturopathic physician under chapter 18.36A RCW who is licensed under RCW 18.36A.030 subject to any limitations in RCW 18.36A.040; a pharmacist under chapter 18.64 RCW or a scientific investigator under this chapter, licensed, registered or otherwise permitted insofar as is consistent with those licensing laws to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of their professional practice or research in this state.

(2) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

(3) A physician licensed to practice medicine and surgery, a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, a licensed physician assistant or a licensed osteopathic physician assistant specifically approved to prescribe controlled substances by his or her state's medical quality assurance commission or equivalent and his or her supervising physician, an advanced registered nurse practitioner licensed to prescribe controlled substances, or a veterinarian licensed to practice veterinary medicine in any state of the United States.

(mm) "Prescription" means an order for controlled substances issued by a practitioner duly authorized by law or rule in the state of Washington to prescribe controlled substances within the scope of his or her professional practice for a legitimate medical purpose.

(nn) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

(oo) "Qualifying patient" has the meaning provided in RCW 69.51A.010.

(pp) "Recognition card" has the meaning provided in RCW 69.51A.010.

(qq) "Retail outlet" means a location licensed by the state liquor and cannabis board for the retail sale of marijuana concentrates, useable marijuana, and marijuana-infused products.

(rr) "Secretary" means the secretary of health or the secretary's designee.

(ss) "State," unless the context otherwise requires, means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(tt) "THC concentration" means percent of delta-9 tetrahydrocannabinol content per dry weight of any part of the plant *Cannabis*, or per volume or weight of marijuana product, or the combined percent of delta-9 tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant *Cannabis* regardless of moisture content.

(uu) "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

(vv) "Useable marijuana" means dried marijuana flowers. The term "useable marijuana" does not include either marijuana-infused products or marijuana concentrates.

(ww) "Board" means the Washington state liquor and cannabis board.

**Sec.**  RCW 42.56.270 and 2018 c 201 s 8008, 2018 c 196 s 21, and 2018 c 4 s 9 are each reenacted and amended to read as follows:

The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.325, 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency;

(5) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW;

(6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;

(7) Financial and valuable trade information under RCW 51.36.120;

(8) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW;

(9) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010;

(10)(a) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), marijuana producer, processor, or retailer license, liquor license, gambling license, or lottery retail license;

(b) Internal control documents, independent auditors' reports and financial statements, and supporting documents: (i) Of house-banked social card game licensees required by the gambling commission pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes with an approved tribal/state compact for class III gaming;

(c) Valuable formulae or financial or proprietary commercial information records received during a consultative visit or while providing consultative services to a licensed marijuana business in accordance with section 5 of this act;

(11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services or the health care authority for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011;

(12)(a) When supplied to and in the records of the department of commerce:

(i) Financial and proprietary information collected from any person and provided to the department of commerce pursuant to RCW 43.330.050(8); and

(ii) Financial or proprietary information collected from any person and provided to the department of commerce or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business;

(b) When developed by the department of commerce based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;

(c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

(d) If there is no written contact for a period of sixty days to the department of commerce from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter;

(13) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter 70.95N RCW to implement chapter 70.95N RCW;

(14) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under chapter 43.350 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information;

(15) Financial and commercial information provided as evidence to the department of licensing as required by RCW 19.112.110 or 19.112.120, except information disclosed in aggregate form that does not permit the identification of information related to individual fuel licensees;

(16) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department of natural resources under RCW 78.44.085;

(17)(a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;

(b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;

(18) Financial, commercial, operations, and technical and research information and data submitted to or obtained by a health sciences and services authority in applications for, or delivery of, grants under RCW 35.104.010 through 35.104.060, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(19) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business;

(20) Financial and commercial information submitted to or obtained by the University of Washington, other than information the university is required to disclose under RCW 28B.20.150, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the University of Washington consolidated endowment fund or to result in private loss to the providers of this information;

(21) Market share data submitted by a manufacturer under RCW 70.95N.190(4);

(22) Financial information supplied to the department of financial institutions or to a portal under RCW 21.20.883, when filed by or on behalf of an issuer of securities for the purpose of obtaining the exemption from state securities registration for small securities offerings provided under RCW 21.20.880 or when filed by or on behalf of an investor for the purpose of purchasing such securities;

(23) Unaggregated or individual notices of a transfer of crude oil that is financial, proprietary, or commercial information, submitted to the department of ecology pursuant to RCW 90.56.565(1)(a), and that is in the possession of the department of ecology or any entity with which the department of ecology has shared the notice pursuant to RCW 90.56.565;

(24) Financial institution and retirement account information, and building security plan information, supplied to the liquor and cannabis board pursuant to RCW 69.50.325, 69.50.331, 69.50.342, and 69.50.345, when filed by or on behalf of a licensee or prospective licensee for the purpose of obtaining, maintaining, or renewing a license to produce, process, transport, or sell marijuana as allowed under chapter 69.50 RCW;

(25) Marijuana transport information, vehicle and driver identification data, and account numbers or unique access identifiers issued to private entities for traceability system access, submitted by an individual or business to the liquor and cannabis board under the requirements of RCW 69.50.325, 69.50.331, 69.50.342, and 69.50.345 for the purpose of marijuana product traceability. Disclosure to local, state, and federal officials is not considered public disclosure for purposes of this section;

(26) Financial and commercial information submitted to or obtained by the retirement board of any city that is responsible for the management of an employees' retirement system pursuant to the authority of chapter 35.39 RCW, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the retirement fund or to result in private loss to the providers of this information except that (a) the names and commitment amounts of the private funds in which retirement funds are invested and (b) the aggregate quarterly performance results for a retirement fund's portfolio of investments in such funds are subject to disclosure;

(27) Proprietary financial, commercial, operations, and technical and research information and data submitted to or obtained by the liquor and cannabis board in applications for marijuana research licenses under RCW 69.50.372, or in reports submitted by marijuana research licensees in accordance with rules adopted by the liquor and cannabis board under RCW 69.50.372;

(28) Trade secrets, technology, proprietary information, and financial considerations contained in any agreements or contracts, entered into by a licensed marijuana business under RCW 69.50.395, which may be submitted to or obtained by the state liquor and cannabis board; and

(29) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the Andy Hill cancer research endowment program in applications for, or delivery of, grants under chapter 43.348 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information; and

(30) Proprietary information filed with the department of health under chapter 69.48 RCW."

Correct the title.

EFFECT: Changes the use of the terms "responsible party" and "person" to say "licensee" in the context of notices of corrections and civil penalties issued by the Liquor and Cannabis Board (LCB).

Codifies section 3 of the bill, relating to the LCB's issuance of civil penalties, in chapter 69.50 RCW instead of in chapter 43.05 RCW.

Amends one of the enumerated circumstances in which the LCB may issue a civil penalty to a marijuana licensee without first issuing a notice of correction, may cancel a license for a single violation, or may consider certain prior violations when making licensing decisions, so the LCB may do so when the LCB can prove by a preponderance of the evidence the violation is the diversion of revenue to criminal enterprises, gangs, cartels, or parties not qualified to hold a marijuana license based on criminal history requirements.

Eliminates from the enumerated circumstances in which the LCB may issue a civil penalty without first issuing a notice of correction, may cancel a license for a single violation, or may consider certain prior violations when making licensing decisions, the act of using firearms in a facility licensed by the LCB that poses a direct and significant threat to public safety.

Adds the word "intentional" to the provisions related to a violation involving the furnishing of marijuana product to minors, so furnishing of marijuana product to minors must be intentional for the LCB to issue a marijuana licensee a civil penalty without first issuing a notice of correction, cancel a license for a single violation, or consider violations that occurred more than two years prior as grounds for license denial, suspension, revocation, cancellation, or nonrenewal.

Amends the new limitation that applies to escalating penalties for violations so an escalation of penalties applies only to multiple violations that are the same or similar in nature.

Replaces the new clear, cogent, and convincing evidence standard with a preponderance of the evidence standard in the context of the LCB proving violations that are punishable with license cancellation, denial, suspension, revocation, or nonrenewal.

Provides that the LCB may not consider any violation that occurred more than two years prior (rather than occurred before April 30, 2017), as grounds for denial, suspension, revocation, cancellation, or nonrenewal, unless one of the enumerated circumstances applies.

Authorizes the LCB to consider a public safety administrative violation history record with the LCB in the context of reviewing a marijuana license application and for considering the denial, suspension, revocation, cancellation, or nonrenewal of a marijuana license (so the LCB is not limited to only considering arrests, convictions, and a criminal history record check).

Changes the use of the term "hearing examiner" to "hearing officer" in the context of the settlement conferences that may be held between a hearing officer or LCB designee and the licensee that received a notice of an alleged violation. Eliminates, from the new limitations on the LCB's use of settlement agreements, the provision that the LCB may only disapprove, modify, change, or add to the terms of a settlement agreement if the LCB finds an agreement to be clearly erroneous. Retains the requirement that the LCB must give the terms of a settlement agreement substantial weight.

Eliminates the creation of the Legislative Work Group on Cannabis Enforcement and Training Processes and Procedures.

Eliminates the provision that information obtained by the LCB as a result of licensee-requested consultation and training services is confidential and not subject to public inspection under the Public Records Act (chapter 42.56 RCW). Adds a provision that valuable formulae or financial or proprietary commercial information records received during a consultative visit, or while providing consultative services, are not subject to inspection pursuant to the Public Records Act. Adds a parallel reference to this new exemption in the Public Records Act.