

SSB 5318 - S AMD 182
By Senator Rivers

ADOPTED 03/11/2019

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that:

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

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

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

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

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

25 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.05
26 RCW to read as follows:

27 (1) If, during an inspection or visit to a marijuana business
28 licensed under chapter 69.50 RCW that is not a technical assistance
29 visit, the liquor and cannabis board becomes aware of conditions that
30 are not in compliance with applicable laws and rules enforced by the
31 board and are not subject to civil penalties as provided for in

1 section 3 of this act, the board may issue a notice of correction to
2 the responsible party that includes:

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

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

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

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

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

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

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

20 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.05
21 RCW to read as follows:

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

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

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

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

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

35 (ii) Furnishing of marijuana product to minors;

36 (iii) Diversion of revenue from the sale of marijuana product to
37 criminal enterprises, gangs, or cartels;

38 (iv) Use of firearms in a facility licensed by the board that
39 poses a direct and significant threat to public safety; or

1 (v) The commission of nonmarijuana-related crimes.

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

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

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

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

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

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

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

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

31 (f) Retail outlet locations and hours of operation;

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

36 (h) Forms to be used for purposes of this chapter and chapter
37 69.51A RCW or the rules adopted to implement and enforce these
38 chapters, the terms and conditions to be contained in licenses issued
39 under this chapter and chapter 69.51A RCW, and the qualifications for

1 receiving a license issued under this chapter and chapter 69.51A RCW,
2 including a criminal history record information check. The state
3 liquor and cannabis board may submit any criminal history record
4 information check to the Washington state patrol and to the
5 identification division of the federal bureau of investigation in
6 order that these agencies may search their records for prior arrests
7 and convictions of the individual or individuals who filled out the
8 forms. The state liquor and cannabis board must require
9 fingerprinting of any applicant whose criminal history record
10 information check is submitted to the federal bureau of
11 investigation;

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

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

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

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

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

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

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 69.50

2 RCW to read as follows:

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

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

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

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

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

37 (6) All licensees requesting consultative services must be
38 advised of this section and the rules adopted by the board relating
39 to the voluntary compliance program. Information obtained by the
40 board as a result of licensee-requested consultation and training

1 services is confidential and not subject to public inspection under
2 chapter 42.56 RCW.

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

8 NEW SECTION. **Sec. 6.** A new section is added to chapter 69.50
9 RCW to read as follows:

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

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

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

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

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

26 (a) May establish escalating penalties for violation of this
27 chapter, provided that the cumulative effect of any such escalating
28 penalties cannot last beyond two years;

29 (b) May not include cancellation of a license for a single
30 violation, unless the board can prove by clear, cogent, and
31 convincing evidence that the administrative violation evidences
32 intentional or grossly negligent action or inaction that results in a
33 high probability of:

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

36 (ii) Furnishing of marijuana product to minors;

37 (iii) Diversion of revenue from the sale of marijuana product to
38 criminal enterprises, gangs, or cartels;

1 (iv) Use of firearms in a facility licensed by the board that
2 poses a direct and significant threat to public safety; or

3 (v) The commission of nonmarijuana-related crimes;

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

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

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

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

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

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

21 (3) The board may not consider any violation that occurred before
22 April 30, 2017, as grounds for denial, suspension, revocation,
23 cancellation, or nonrenewal, unless the board can prove by clear,
24 cogent, and convincing evidence that the prior administrative
25 violation evidences:

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

28 (b) Furnishing of marijuana product to minors;

29 (c) Diversion of revenue from the sale of marijuana product to
30 criminal enterprises, gangs, or cartels;

31 (d) Use of firearms in a facility licensed by the board that
32 poses a direct and significant threat to public safety; or

33 (e) The commission of nonmarijuana-related crimes.

34 **Sec. 7.** RCW 69.50.331 and 2017 c 317 s 2 are each amended to
35 read as follows:

36 (1) For the purpose of considering any application for a license
37 to produce, process, research, transport, or deliver marijuana,
38 useable marijuana, marijuana concentrates, or marijuana-infused
39 products subject to the regulations established under RCW 69.50.385,

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

8 (a) The (~~state liquor and cannabis~~) board may cause an
9 inspection of the premises to be made, and may inquire into all
10 matters in connection with the construction and operation of the
11 premises. For the purpose of reviewing any application for a license
12 and for considering the denial, suspension, revocation, cancellation,
13 or renewal or denial thereof, of any license, the (~~state liquor and~~
14 ~~cannabis~~) board may consider any prior criminal (~~conduct~~) arrests
15 or convictions of the applicant (~~including an administrative~~
16 ~~violation history record with the state liquor and cannabis board~~)
17 and a criminal history record information check. The (~~state liquor~~
18 ~~and cannabis~~) board may submit the criminal history record
19 information check to the Washington state patrol and to the
20 identification division of the federal bureau of investigation in
21 order that these agencies may search their records for prior arrests
22 and convictions of the individual or individuals who filled out the
23 forms. The (~~state liquor and cannabis~~) board must require
24 fingerprinting of any applicant whose criminal history record
25 information check is submitted to the federal bureau of
26 investigation. The provisions of RCW 9.95.240 and of chapter 9.96A
27 RCW do not apply to these cases. Subject to the provisions of this
28 section, the (~~state liquor and cannabis~~) board may, in its
29 discretion, grant or deny the renewal or license applied for. Denial
30 may be based on, without limitation, the existence of chronic illegal
31 activity documented in objections submitted pursuant to subsections
32 (7)(c) and (10) of this section. Authority to approve an uncontested
33 or unopposed license may be granted by the (~~state liquor and~~
34 ~~cannabis~~) board to any staff member the board designates in writing.
35 Conditions for granting this authority must be adopted by rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (7) (a) Before the ((~~state liquor and cannabis~~)) board issues a
35 new or renewed license to an applicant it must give notice of the
36 application to the chief executive officer of the incorporated city
37 or town, if the application is for a license within an incorporated
38 city or town, or to the county legislative authority, if the
39 application is for a license outside the boundaries of incorporated
40 cities or towns, or to the tribal government if the application is

1 for a license within Indian country, or to the port authority if the
2 application for a license is located on property owned by a port
3 authority.

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

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

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

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

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

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

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

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

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

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

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

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

38 (10) In determining whether to grant or deny a license or renewal
39 of any license, the (~~state liquor and cannabis~~) board must give
40 substantial weight to objections from an incorporated city or town or

1 county legislative authority based upon chronic illegal activity
2 associated with the applicant's operations of the premises proposed
3 to be licensed or the applicant's operation of any other licensed
4 premises, or the conduct of the applicant's patrons inside or outside
5 the licensed premises. "Chronic illegal activity" means (a) a
6 pervasive pattern of activity that threatens the public health,
7 safety, and welfare of the city, town, or county including, but not
8 limited to, open container violations, assaults, disturbances,
9 disorderly conduct, or other criminal law violations, or as
10 documented in crime statistics, police reports, emergency medical
11 response data, calls for service, field data, or similar records of a
12 law enforcement agency for the city, town, county, or any other
13 municipal corporation or any state agency; or (b) an unreasonably
14 high number of citations for violations of RCW 46.61.502 associated
15 with the applicant's or licensee's operation of any licensed premises
16 as indicated by the reported statements given to law enforcement upon
17 arrest.

18 NEW SECTION. **Sec. 8.** A new section is added to chapter 69.50
19 RCW to read as follows:

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

26 (2) If a settlement agreement is entered between a marijuana
27 licensee and a hearing examiner or designee of the board at or after
28 a settlement conference, the terms of the settlement agreement must
29 be given substantial weight by the board and the board may only
30 disapprove, modify, change, or add to the terms of the settlement
31 agreement including terms addressing penalties and license
32 restrictions if the board finds the agreements to be clearly
33 erroneous.

34 (3) For the purposes of this section:

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

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

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

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

16 **Sec. 9.** RCW 69.50.101 and 2018 c 132 s 2 are each reenacted and
17 amended to read as follows:

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

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

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

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

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

31 (c) "CBD concentration" has the meaning provided in RCW
32 69.51A.010.

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

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

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

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

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

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

14 (2) The term does not include:

15 (i) a controlled substance;

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

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

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

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

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

30 (j) "Designated provider" has the meaning provided in RCW
31 69.51A.010.

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

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

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

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

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

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

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

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

23 (s) "Immediate precursor" means a substance:

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

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

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

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

37 (u) "Lot" means a definite quantity of marijuana, marijuana
38 concentrates, useable marijuana, or marijuana-infused product
39 identified by a lot number, every portion or package of which is

1 uniform within recognized tolerances for the factors that appear in
2 the labeling.

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

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

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

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

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

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

35 (2) Industrial hemp as defined in RCW 15.120.010.

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

39 (z) "Marijuana processor" means a person licensed by the state
40 liquor and cannabis board to process marijuana into marijuana

1 concentrates, useable marijuana, and marijuana-infused products,
2 package and label marijuana concentrates, useable marijuana, and
3 marijuana-infused products for sale in retail outlets, and sell
4 marijuana concentrates, useable marijuana, and marijuana-infused
5 products at wholesale to marijuana retailers.

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

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

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

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

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

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

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

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

39 (3) Poppy straw and concentrate of poppy straw.

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

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

5 (6) Cocaine base.

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

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

10 (gg) "Opiate" means any substance having an addiction-forming or
11 addiction-sustaining liability similar to morphine or being capable
12 of conversion into a drug having addiction-forming or addiction-
13 sustaining liability. The term includes opium, substances derived
14 from opium (opium derivatives), and synthetic opiates. The term does
15 not include, unless specifically designated as controlled under RCW
16 69.50.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan
17 and its salts (dextromethorphan). The term includes the racemic and
18 levorotatory forms of dextromethorphan.

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

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

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

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

28 (ll) "Practitioner" means:

29 (1) A physician under chapter 18.71 RCW; a physician assistant
30 under chapter 18.71A RCW; an osteopathic physician and surgeon under
31 chapter 18.57 RCW; an osteopathic physician assistant under chapter
32 18.57A RCW who is licensed under RCW 18.57A.020 subject to any
33 limitations in RCW 18.57A.040; an optometrist licensed under chapter
34 18.53 RCW who is certified by the optometry board under RCW 18.53.010
35 subject to any limitations in RCW 18.53.010; a dentist under chapter
36 18.32 RCW; a podiatric physician and surgeon under chapter 18.22 RCW;
37 a veterinarian under chapter 18.92 RCW; a registered nurse, advanced
38 registered nurse practitioner, or licensed practical nurse under
39 chapter 18.79 RCW; a naturopathic physician under chapter 18.36A RCW
40 who is licensed under RCW 18.36A.030 subject to any limitations in

1 RCW 18.36A.040; a pharmacist under chapter 18.64 RCW or a scientific
2 investigator under this chapter, licensed, registered or otherwise
3 permitted insofar as is consistent with those licensing laws to
4 distribute, dispense, conduct research with respect to or administer
5 a controlled substance in the course of their professional practice
6 or research in this state.

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

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

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

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

28 (oo) "Qualifying patient" has the meaning provided in RCW
29 69.51A.010.

30 (pp) "Recognition card" has the meaning provided in RCW
31 69.51A.010.

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

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

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

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

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

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

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

17 NEW SECTION. Sec. 10. (1)(a) A legislative work group on
18 cannabis enforcement and training processes and procedures is
19 established, with members as provided in this subsection.

20 (i) The president of the senate shall appoint one member from
21 each of the two largest caucuses of the senate.

22 (ii) The speaker of the house of representatives shall appoint
23 one member from each of the two largest caucuses of the house of
24 representatives.

25 (iii) The president of the senate and the speaker of the house of
26 representatives jointly shall appoint members representing one
27 representative from each of the trade associations representing
28 licensed cannabis businesses and one representative of a labor union
29 representing employees who are enforcement officers for the liquor
30 and cannabis board.

31 (iv) The governor shall appoint one member representing the
32 governor.

33 (v) The chair of the liquor and cannabis board shall appoint one
34 member representing the board.

35 (b) The work group shall choose its cochairs from among its
36 legislative membership. A legislator shall convene the initial
37 meeting of the work group.

38 (2) The work group shall review the following issues:

- 1 (a) The use of anonymous complaints to initiate enforcement
2 actions;
- 3 (b) The uniform qualifications and experience that should be
4 established for enforcement officers;
- 5 (c) The training and guidelines given to enforcement officers;
- 6 (d) Whether the board should create an ombuds position where
7 license holders may register concerns about the board's procedures,
8 actions, or employees, without threat of retaliation; and
- 9 (e) Other such issues as identified by the cochairs of the work
10 group.
- 11 (3) Staff support for the work group must be provided by the
12 senate committee services and the house of representatives office of
13 program research.
- 14 (4) Legislative members of the work group are reimbursed for
15 travel expenses in accordance with RCW 44.04.120. Nonlegislative
16 members are not entitled to be reimbursed for travel expenses if they
17 are elected officials or are participating on behalf of an employer,
18 governmental entity, or other organization. Any reimbursement for
19 other nonlegislative members is subject to chapter 43.03 RCW.
- 20 (5) The expenses of the work group must be paid jointly by the
21 senate and the house of representatives. Work group expenditures are
22 subject to approval by the senate facilities and operations committee
23 and the house of representatives executive rules committee, or their
24 successor committees.
- 25 (6) The work group shall report its findings and recommendations
26 to the appropriate committees of the legislature by December 15,
27 2019.
- 28 (7) This section expires December 31, 2019."

SSB 5318 - S AMD 182
By Senator Rivers

ADOPTED 03/11/2019

29 On page 1, line 2 of the title, after "licensees;" strike the
30 remainder of the title and insert "amending RCW 69.50.342 and
31 69.50.331; reenacting and amending RCW 69.50.101; adding new sections
32 to chapter 43.05 RCW; adding new sections to chapter 69.50 RCW;
33 creating new sections; and providing an expiration date."

EFFECT: Revises the provision that allows the LCB to issue a civil penalty instead of a notice of correction, if the board can prove by a preponderance of the evidence certain specified events.

Revises the provision prohibiting the cancellation of a license for a single violation, unless the board proves by clear, cogent, and convincing evidence that the violation evidences intentional or grossly negligent action or inaction with a high probability of specified results. Removes the phrase "for cumulative violations" from this section.

Revises the provision concerning employee misconduct that led to the violation. The LCB may not issue a violation if the licensee provides documentation of a compliance program, training designed to prevent the violation, and the licensee had not enabled or ignored the violation.

Prohibits the LCB from considering violations occurring prior to April 30, 2017, except for certain specific violations that are proved by clear, cogent, and convincing evidence.

Removes a provision concerning the board's consideration of prior administrative violation history records when reviewing a license, as those provisions are covered in other sections of the bill. Makes an additional cross-reference in the provision concerning license suspensions or cancellations.

Creates a legislative work group on cannabis enforcement and training processes and procedures.

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