

Commerce & Gaming Committee

HB 1237

Brief Description: Reforming the compliance and enforcement provisions for marijuana licensees.

Sponsors: Representatives Kirby, MacEwen, Stanford, Vick, Blake, Eslick and Appleton.

Brief Summary of Bill

- Modifies how the Liquor and Cannabis Board (LCB) may enforce laws and rules against regulated marijuana businesses, and how these businesses may comply with laws and rules.
- Requires rulemaking by the LCB regarding enforcement procedures, with specific components, such as to address de minimis violations.
- Requires and authorizes rulemaking by the LCB regarding penalties, with limits, such as on the effect of cumulative violations, and on what types of violations may result in license cancellation when a heightened evidentiary standard is met.
- Requires the LCB to consider aggravating and mitigating circumstances, and to deviate from prescribed penalties accordingly.
- Limits the LCB's authority to issue violations in certain circumstances involving unpreventable employee misconduct, if the licensee has a documented, thorough internal-compliance program.
- Prohibits the LCB from considering any violation from before June 30, 2018, as grounds for negative licensing actions, except for specific types of violations, including sales to minors and diversion of product, when a heightened evidentiary standard is met.
- Modifies the settlement conference and agreement process to make settlement agreements binding in certain circumstances.
- Makes certain new provisions expire in 2024.

Hearing Date: 1/28/19

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Peter Clodfelter (786-7127).

Background:

Under a process established through agency rulemaking to implement Initiative 502 (2012) and subsequent legislation, the Liquor and Cannabis Board (LCB) has adopted rules establishing penalties for violations of marijuana statutes and rules. The current rules set out a process that separates violations into five main categories: Group 1 violations (public safety); Group 2 violations (regulatory); Group 3 violations (licensing); Group 4 violations (nonretail); and Group 5 violations (transportation).

The LCB's current rules include guidelines on the use of mitigating circumstances and aggravating circumstances. Penalties include monetary penalties as well as license cancellation and suspension, and may vary according to the category of violation and how many similar violations a licensee has within a three-year window. In some circumstances, licensees may opt for a monetary fine or a license suspension.

The LCB's current rules also include a process of offering settlement conferences to licensees who have received notice of an alleged administrative violation, which may be held with a hearing examiner or LCB designee. In this process, if a settlement agreement is reached at the settlement conference, the LCB may disapprove of the terms. In this case, the LCB will notify the licensee of the decision and the licensee is provided the option to renegotiate with the hearing examiner or LCB designee, accept the originally recommended penalty, or request an administrative hearing on the charges.

Summary of Bill:

Legislative findings are included, and modifications are made to how the Liquor and Cannabis Board (LCB) may enforce laws and rules against the licensed marijuana businesses the LCB regulates, as well as to how marijuana licensees may comply with laws and rules.

The LCB must prescribe procedures for enforcement with the following components: (1) a process for the issuance of written warnings for de minimis violations that lack a direct or immediate relationship to public safety; (2) a process for 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 seven days or an earlier time specified by the LCB; and (3) a compliance program where licensees may request compliance assistance and inspections without issuance of a violation, if any noncompliant issues are resolved within a specified time.

The LCB must adopt rules establishing penalties for violations of marijuana law and may establish escalating penalties. However, the cumulative effect of any escalating penalties must last two years or less. Also, a single or cumulative violation may not result in license cancellation unless the LCB can prove by clear, cogent, and convincing evidence that either the licensee has engaged in a pattern or practice of intentional and flagrant disregard of the law, or the current or prior administrative violation is any of the following: (1) diversion of product to the illicit market or across state lines; (2) sales of marijuana to minors; (3) diversion of revenue

to criminal enterprises; (4) use of firearms in a facility licensed by the LCB that poses a direct and significant threat to public safety; or (5) other nonmarijuana-related criminal behavior.

Additionally, the LCB's rules may include license cancellation for cumulative violations only when a licensee commits at least four violations within a two-year period. The LCB must consider aggravating and mitigating circumstances and deviate from prescribed penalties accordingly, and must authorize enforcement officers to do the same. The LCB may not issue a violation if there is unpreventable employee misconduct that led to the violation, if the licensee shows the existence of a thorough compliance program, including rules, training, and equipment designed to prevent the violation, adequate communication of the rules to employees, steps to discover and correct violations of the rules, and effective enforcement of its compliance program as written in practice and not just in theory.

Further, the LCB is prohibited from considering any violation from before June 30, 2018, as grounds for denial, suspension, revocation, cancellation, or nonrenewal, unless the LCB can prove by clear, cogent, and convincing evidence that the prior administrative violation is any of the following: (1) diversion of product to the illicit market or across state lines; (2) sales of marijuana to minors; (3) diversion of revenue to criminal enterprises; (4) use of firearms in a facility licensed by the LCB that poses a direct and significant threat to public safety; or (5) other nonmarijuana-related criminal behavior.

All of the above modifications to the enforcement and compliance process expire on August 1, 2024.

In another section of law without an expiration date, it is provided that for the purposes of reviewing any application for a license and for considering the denial, suspension, revocation, cancellation, or renewal or denial thereof, of any license, the LCB may consider any prior administrative violation history record with the LCB. However, any prior administrative violation that occurred before June 30, 2018, must not be considered unless the LCB can prove by clear, cogent, and convincing evidence that the prior administrative violation evidences any of the following: (1) diversion of product to the illicit market or across state lines; (2) sales of marijuana to minors; (3) diversion of revenue to criminal enterprises; (4) trafficking of a controlled substance; or (5) use of firearms in a facility licensed by the LCB.

Authorization is provided so that the administrative law judges may consider mitigating and aggravating circumstances in any case and may deviate from any prescribed penalties.

Requirements are added related to the LCB's use of settlement conferences and settlement agreements, which may occur after a licensee receives a notice of an alleged administrative violation. If a settlement agreement is entered into between a marijuana licensee and a hearing examiner or LCB designee at or after a settlement conference, the terms of the settlement agreement are binding on the LCB and the LCB may not subsequently disapprove, modify, change, or add to the terms of the settlement agreement, including terms addressing penalties and license restrictions.

A "settlement conference" is defined as a meeting or discussion between a licensed marijuana producer, processor, retailer, researcher, transporter, or authorized representative of any of the preceding licensees, and a hearing examiner or designee of the LCB, 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.

A "settlement agreement" is defined as the agreement or compromise between a licensed marijuana producer, processor, retailer, researcher, or transporter, and the hearing examiner or LCB designee with authority to participate in the settlement conference; it includes the terms of the agreement or compromise regarding an alleged violation or violations by the licensee of laws or rules, as well as any related penalty or licensing restriction. A settlement agreement must be in writing and signed by the licensee and the hearing examiner or LCB.

The Liquor and Cannabis Board is defined as the "board" in the Controlled Substances Act, and various references are changed accordingly.

Appropriation: None.

Fiscal Note: Available.

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