
Commerce & Gaming Committee

HB 1289

Brief Description: Concerning marijuana businesses.

Sponsors: Representatives Stanford, Appleton, Macri, Doglio, Fitzgibbon, Stonier and Wylie.

Brief Summary of Bill

- Establishes exceptions to the six-month residency requirement, and to the five-license limit for retailers, for marijuana businesses with labor peace agreements in effect.
- Requires a similar exception to any license limit established by Liquor and Cannabis Board (LCB) rule for individual marijuana producers and processors, for producers and processors with labor peace agreements in effect.
- Requires any marijuana business relying on the new authorizations tied to having and maintaining a labor peace agreement to enter or make a good-faith effort to enter a collective bargaining agreement within 150 days of opening.
- Includes provisions authorizing holding companies to provide certain defined "management services" to licensed marijuana businesses under common ownership.
- Authorizes the LCB to define additional "management services" by rule, limits the LCB's rulemaking authority in other respects, and defines relevant terms.
- Includes provisions addressing inheritance of a business with a marijuana license.

Hearing Date: 1/28/19

Staff: Peter Clodfelter (786-7127).

Background:

Initiative 502 (2012) is applied to require all owners of licensed marijuana businesses to have lawfully resided in Washington state for at least six months prior to applying for a marijuana license from the Liquor and Cannabis Board (LCB). Additionally, no marijuana license may be issued to a person under the age of 21 years, or to a partnership, employee cooperative,

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association, nonprofit corporation, or corporation unless formed under Washington state law and unless all of the members thereof are qualified to obtain a license. If a manager or agent conducts the business of a licensed marijuana establishment, the manager or agent must possess the same qualifications required of the licensee.

To apply for a marijuana producer, processor, or retailer license there is a \$250 application fee, plus fees equivalent to \$1,480 for license issuance and annually for license renewal. When an application for a marijuana license is submitted to the LCB, the LCB may inspect the premises proposed to be licensed, and may inquire into all matters in connection with the construction and operation of the premises. When reviewing applications for a license, and for considering the denial, suspension, revocation, or renewal or denial of any license or license renewal, the LCB may consider any prior criminal conduct of the applicants, including an administrative violation history record with the LCB and a criminal history record information check.

The LCB may submit the criminal history record information check to the Washington State Patrol (WSP) and to the identification division of the Federal Bureau of Investigation (FBI) so the WSP and FBI may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The LCB must require fingerprinting of any applicant whose criminal history record information check is submitted to the FBI. The LCB has discretion in granting or denying the license or license renewal applied for by an applicant or licensee. Denial may be based on, without limitation, the the existence of chronic illegal activity documented in objections submitted to the LCB from the relevant local government.

Individual marijuana retailer licensees and all other persons or entities with a financial or other ownership interest in the business operating under the license are limited, in the aggregate, to holding a collective total of not more than five retail marijuana licenses.

In the Uniform Business Organizations Code, the following terms have the following definitions:

- "Entity" means a business corporation, a nonprofit corporation, a limited liability partnership, a limited partnership, a limited liability company, or a general cooperative association.
- "Interest" means a share in a business corporation, a membership or share in a nonprofit corporation, a partnership interest in a limited liability partnership, a partnership interest in a limited partnership, a limited liability company interest, or a share or membership in a general cooperative association.
- "Interest holder" means a shareholder of a business corporation, a member or shareholder of a nonprofit corporation, a partner of a limited liability partnership, a general or limited partner of a limited partnership, a member of a limited liability company, or a shareholder or member of a general cooperative association.

The Secretary of State issues a certificate of registration to foreign entities registered in Washington state. A certificate of registration contains information including the foreign entity's name, as well as statements such as that the entity is registered to do business in the state and that the most recent annual report has been delivered to the Secretary of State for filing. A certificate of registration issued by the Secretary of State may be relied upon as conclusive evidence of the facts stated in the certificate, and that as of the date of its issuance, in the case of a foreign entity, it is registered and authorized to do business in Washington.

Summary of Bill:

An exception is provided to the six-month residency requirement for marijuana licenses. The Liquor and Cannabis Board (LCB) may issue a marijuana producer, processor, or retailer license to a sole proprietor or business or nonprofit entity not formed under Washington state law, and for which any or all interest holders are not state residents, if the following requirements are met: (1) the applicant has in effect a labor peace agreement and meets requirements associated with labor peace agreements and collective bargaining; (2) the applicant, if a business or nonprofit entity, holds a certificate of registration from the Secretary of State; and (3) all interest holders are resident citizens of the United States and qualified for a license.

The LCB may deny a license or license renewal to a person or entity if the LCB is unable to investigate a person or interest holder. The LCB must suspend, cancel, or revoke the license of an establishment for which there is no longer a labor peace agreement in effect and for which a labor peace agreement is required.

A labor peace agreement is defined as an agreement between an employer and a bona fide labor organization in which the employer agrees to remain neutral or to assist the bona fide labor organization in unionizing the employer's employees or otherwise agrees to work with or provide information to the bona fide labor organization for the purpose of unionizing employees.

The five-license limit for marijuana retailers does not apply to a licensed marijuana retailer or applicant for a retailer license that has in effect a labor peace agreement covering each establishment. If the LCB adopts rules limiting the collective number of marijuana producer or processor licenses that an individual producer or processor licensee may hold, then the LCB's rules must provide a similar exemption for individual marijuana producer or processor licensees that have in effect a labor peace agreement and comply with the associated requirements to the same extent as is provided for marijuana retailers with a labor peace agreement.

To take advantage of the new authorizations associated with having in effect a labor peace agreement at each licensed establishment, a licensee or applicant must submit to the LCB an attestation signed by a bona fide labor organization stating the licensee or applicant has entered into a labor peace agreement with the bona fide labor organization. The LCB may issue a conditional license to an applicant who has not fully complied with this requirement.

For each applicant or licensee relying on the authorizations associated with labor peace agreements, the submission of the attestation and the maintenance of a labor peace agreement with a bona fide labor organization is an ongoing material condition of the establishment's license. Accordingly, the LCB must suspend, cancel, or revoke the license of an establishment for which the board determines there is no longer a labor peace agreement in effect and for which a labor peace agreement is required.

Failure to enter, or to make a good faith effort to enter, into a collective bargaining agreement within 150 days of the opening of a licensed marijuana establishment relying on the new authorizations associated with labor peace agreements, must result in the suspension or revocation of the establishment's license.

The LCB is prohibited from adopting rules doing any of the following with respect to applicants or licensees that have in effect labor peace agreements covering each establishment: (1) limiting the number of marijuana retailer licenses an individual licensee and other persons or entities with an interest in the business operating under the license may hold in the aggregate; (2) limiting the number of marijuana producer or processor licenses that an individual producer or processor licensee and other persons or entities with an interest in the business operating under the license may hold in the aggregate; or (3) requiring a person or interest holder to be a Washington state resident or requiring a business or nonprofit entity to be formed under Washington state law for the person or entity to qualify for a marijuana producer, processor, or retailer license.

It is provided that nothing in the Controlled Substances Act prevents an interest in a business with a marijuana producer, processor, retailer, or transportation license from transferring, upon the death or incapacity of the owner, to an heir or assign of the owner in accordance with the Uniform Transfers to Minors Act, or otherwise, even if the heir or assign is under age 21.

Similarly, it is provided that nothing in the Controlled Substances Act prevents a person or entity with an interest in a licensed marijuana producer, processor, or retailer from forming a separate entity that is a holding company to provide management services to the licensee or a group of licensees under common ownership. The holding company may be a publicly held or privately held entity, and is not required to be licensed by the LCB if the following requirements are met:

- the holding company provides only those services that qualify as management services;
- the holding company does not, in the state of Washington, engage in producing, processing, possessing, selling, distributing, transporting, or transferring marijuana, marijuana products, immature plants or clones, or seeds; and
- all contracts entered into by a licensed marijuana business and a holding company are disclosed to the LCB.

The term "management services" is defined as the following services performed for a licensed marijuana producer, processor, or retailer, or for a group of such licensees under common ownership: (1) administration and payment of federal, state, and local tax obligations; (2) administration and payment of employee salaries, benefits, and contractor payments; (3) management of intellectual property; and (4) any other services authorized under LCB's rules.

Definitions of the terms "entity," "interest," and "interest holder" from the Uniform Business Organizations Code are added to the marijuana licensing statute, and terms related to business and nonprofit entities are updated. Additionally, the term "common ownership" is defined as having at least one person with an ownership interest in all of the licensees. The Liquor and Cannabis Board is defined as the "board" in the Controlled Substances Act, and various references are changed accordingly. A codified out-of-date reference to the effective date of previous legislation is removed.

Appropriation: None.

Fiscal Note: Available.

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