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## Commerce & Gaming Committee

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### HB 1794

**Brief Description:** Concerning agreements between licensed marijuana businesses and other people and businesses, including royalty and licensing agreements relating to the use of intellectual property.

**Sponsors:** Representatives Stanford, MacEwen, Blake, Vick, Kirby, Young, Reeves and Appleton.

#### Brief Summary of Bill

- Updates terminology regarding authorized agreements that licensed marijuana businesses may enter with other parties related to goods or services with trademark or other intellectual property protections.
- Specifies the authorization encompasses, among other agreements, agreements related to goods or services registered as a trademark under another state's law or international trademark law.
- Lists specific types of contract provisions that may be included in an agreement, such as (1) royalty fees based on net revenues or sales of certain products, (2) terms giving either party exclusivity to the use of intellectual property, and (3) quality control standards as necessary to protect the integrity of the intellectual property.
- Prohibits agreements in compliance with the authorization from subjecting the other party to investigation or qualification by the Liquor and Cannabis Board (LCB).
- Removes the requirement that marijuana licensees must disclose these types of authorized agreements to the LCB, and adds a requirement that these agreements are subject to recordkeeping requirements established under the LCB's rules.

**Hearing Date:** 2/7/19

**Staff:** Peter Clodfelter (786-7127).

**Background:**

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*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.*

A 2017 law addresses the ability of licensed marijuana businesses to enter into licensing agreements or consulting contracts with other individuals and businesses. Such agreements or contracts may relate to any goods or services that are registered as a trademark under federal or state law, any unregistered trademark, trade name, or trade dress, or any trade secret, technology, or proprietary information used to manufacture a cannabis product or used to provide a service related to a marijuana business. All of these types of agreements entered into by a licensed marijuana business must be disclosed to the Liquor and Cannabis Board (LCB).

Initiative 502 (2012) granted the LCB authority to adopt rules regarding the records to be created and maintained by marijuana licensees, the reports to be made to the LCB, and inspection of the books and records. The LCB adopted these rules, which make marijuana licensees responsible for keeping records that clearly reflect all financial transactions and the financial condition of the business. Under the LCB's rules, specific records must be kept and maintained at the licensed premises for at least five years and made available for inspection upon request.

### **Summary of Bill:**

Terminology referencing authorized agreements related to licensed marijuana businesses and trademarks, trade secrets, and other intellectual property is updated to more broadly describe the types of agreements covered under the authorization, as well as to more broadly describe the types of business entities that may be parties to any such agreement. Agreements that licensed marijuana businesses may enter involving a registered trademark may also relate to any goods or services registered as a trademark under another state's law or international trademark law, and not only to trademarks registered under federal law or Washington state law.

Any agreement between a licensed marijuana business and another person, business, or entity related to goods or services that are trademarked or otherwise protected may include the following types of provisions:

- a royalty fee calculated based on the net revenue of the licensed marijuana business for use of the intellectual property, provided that the royalty fee is no greater than an amount equivalent to 10 percent of the licensed marijuana business's net revenue;
- a royalty fee or flat rate calculated based on sales of each product that includes the licensed intellectual property;
- a flat rate or lump sum calculated based on time or milestones;
- terms giving either party exclusivity or qualified exclusivity as it relates to use of the intellectual property;
- quality control standards as necessary to protect the integrity of the intellectual property;
- enforcement obligations to be undertaken by the licensed marijuana business;
- covenants to use the licensed intellectual property; and
- assignment of licensor improvements of the intellectual property.

Any agreement that complies with this authorization may not subject the other party to the agreement to investigation or qualification by the LCB. The requirement is removed that the authorized agreements entered into by licensed marijuana businesses must be disclosed to the LCB, while a requirement is added that all agreements entered into by a licensed marijuana business under the authorization are subject to the LCB's recordkeeping requirements as established by rule.

**Appropriation:** None.

**Fiscal Note:** Available.

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