

HOUSE BILL REPORT

HB 1963

As Reported by House Committee On:
Commerce & Gaming

Title: An act relating to financial arrangements regarding licensed marijuana businesses.

Brief Description: Concerning financial arrangements regarding licensed marijuana businesses.

Sponsors: Representative MacEwen.

Brief History:

Committee Activity:

Commerce & Gaming: 2/18/19, 2/19/19 [DP].

Brief Summary of Bill

- Provides that an employee of a licensed marijuana business whose compensation includes base pay plus a commission is not considered an applicant, owner, or true party of interest of the licensee solely due to the commission-based compensation agreement.
- Establishes there is no limit on the amount or value of commission an employee of a licensed marijuana business may receive under an employment agreement, while specifying this does not authorize employees to own licensed businesses unless qualified as a license applicant.
- Authorizes the Liquor and Cannabis Board (LCB) to require a financial investigation and criminal history record check of financiers of marijuana licensees, but their spouses are not subject to these requirements solely due to being the financier's spouse.
- Amends the 2017 law regarding disclosure of marijuana business licensing and consulting contracts with other parties related to trademarks and proprietary information, to specify which types of these contracts are subject to LCB approval.

HOUSE COMMITTEE ON COMMERCE & GAMING

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.

Majority Report: Do pass. Signed by 11 members: Representatives Stanford, Chair; Reeves, Vice Chair; MacEwen, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Blake, Jenkin, Kirby, Kloba, Morgan, Vick and Young.

Staff: Peter Clodfelter (786-7127).

Background:

When reviewing applications for a marijuana license, and for considering the denial, suspension, revocation, or renewal or denial of any license or license renewal, the Liquor and Cannabis Board (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.

Through agency rules, financiers of marijuana license applicants and licensed businesses are subject to criminal history investigations equivalent to that of the license applicant. Financiers are responsible for paying all fees required for the criminal history check. In rule, a "financier" is defined as any person or entity, other than a banking institution, that provides money as a gift or loans money to the applicant or business and expects to be paid back the amount of the loan with or without reasonable interest.

The LCB conducts a financial investigation in order to verify the source of funds used for the acquisition and startup of the business, the applicants' right to the real and personal property, and to verify the true party or parties of interest. A true party of interest, under the LCB rules, includes stockholders of businesses, other owners and officers, as well as their spouses.

A 2017 law addresses the ability of licensed marijuana businesses to enter into licensing agreements or consulting contracts with other individuals and businesses. These 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 LCB.

Summary of Bill:

It is established that an employee of a licensed marijuana business whose employment compensation includes an annual salary, hourly wage, or other base pay, in combination with

a commission component, is not considered an applicant, owner, or true party of interest of the licensee solely because of the amount or value of the commission paid to the employee or the fact that the employment agreement includes commission-based compensation.

There is no limitation on the amount or value of commission, whether determined in relation to the licensed business or entity's gross or net profits or otherwise, that an employee of a licensed marijuana business may receive under the terms of an employment agreement. It is provided that nothing in these new provisions authorizes an employee to own a licensed marijuana business or entity unless the employee meets the application requirements and qualifications that apply to license applicants generally.

A person who is a financier of a licensed marijuana business but who does not have an ownership interest in the licensed business may, as determined by the LCB, be subject to a financial investigation to determine the source of the money provided to or to be provided to the licensee and be subject to a criminal history record information check. However, it is provided that the spouse of a financier of a licensed marijuana business is not subject to either a financial investigation or a criminal history record information check solely because the person is the financier's spouse.

A "financier" is defined in law as any person or entity, other than a banking institution, who provides money as a gift or loans money to the applicant or licensed marijuana business or entity and expects to be paid back the amount of the loan with or without reasonable interest.

Amendments are made to the 2017 law authorizing certain licensing and consulting contracts, related to trademarks and trade secrets between licensed marijuana businesses and other parties when disclosed to the LCB, to specify nothing in the 2017 law requires approval by the LCB of any contracts except for the following two types of contracts: (1) an agreement or contract for consulting services provided to a licensed marijuana business; and (2) an agreement or contract covering employment services of an employee of the licensed marijuana business that is subject to the 2017 law's disclosure requirements.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) There is concern with trends in recent marijuana regulations, which seem at odds with common business practices and employee compensation. To ensure the will of voters as expressed through Initiative 502 (2012) in legalizing marijuana is retained, it is now necessary to codify standard business practices that other industries take for granted. Regulatory actions prohibiting common business practices and employment agreements threaten the ability of marijuana businesses to remain competitive. Experienced managers

and sales staff are in high demand, and they are hard to retain when more flexible compensation arrangements are available in other industries. As is common sense, in the restaurant industry and elsewhere, commission-based compensation for managers and other employees does not qualify the manager or employees as principals of the business. A recent administrative appeal, rightly decided, upheld the use of commission-based compensation in the marijuana industry, and this bill would further support that this is a reasonable business practice.

(Opposed) Strong regulation of the marijuana markets in accordance with Initiative 502 (2012) is favored; so stakeholders are leery of any proposal to weaken the existing framework. But proponents and the LCB are encouraged to reach agreement, and if reasonable ground is found, the opposition would change or even become supportive.

(Other) There is not opposition to the idea that commission-based compensation is reasonable in the marijuana industry. However, if there is no limit to the amount of the commission, this could raise concerns, and may lead to complaints regarding hidden ownership that the LCB would then have to investigate. Please consider adding some limitation on the amount of commissions. Commissions may have the potential to create a profit sharing arrangement constituting an ownership of a licensed business, which requires qualification and vetting. Unlike in the alcohol industry where owners of 10 percent or less of a business are not required to be vetted, in the marijuana context, no matter how small of an ownership interest a person holds in a licensed business, the person must go through the full ownership investigation and meet qualifications. This factor in the original bill is likely a substantial part of the fiscal cost assumptions. The other aspect of the bill there are concerns with is the lack of vetting for spouses of financiers. Currently, vetting spouses of financiers of marijuana businesses is the only way the state can ensure an absence of criminal participation. Additionally, the current vetting practices the bill would prohibit are relied upon by the select state-level financial institutions that have banking relationships with licensed marijuana businesses despite the delicate legal territory of marijuana and banking. Keep this connection in mind as a factor when limiting vetting of spouses.

Persons Testifying: (In support) Representative MacEwen, prime sponsor; Brooke Davies, Washington CannaBusiness Association; and Philip Dawdy, Have A Heart.

(Opposed) Seth Dawson, Washington Association for Substance Abuse Prevention.

(Other) Chris Thompson, Liquor and Cannabis Board.

Persons Signed In To Testify But Not Testifying: None.