
Commerce & Gaming Committee

HB 2263

Brief Description: Expanding opportunities for marijuana businesses by removing residency barriers and providing access to capital for minority and women-owned businesses through a fee on certain investments.

Sponsors: Representatives Pettigrew, MacEwen, Kirby, Blake, Fitzgibbon, Ryu, Appleton, Frame, Ormsby, Wylie and Peterson.

Brief Summary of Bill

- Establishes the Marijuana Equity Loan Program (Program) under the Department of Commerce to assist minority and women-owned business enterprises in accessing the marijuana market and expanding existing marijuana businesses.
- Requires the Department to set interest rates and payment terms under the Program with assistance from the newly established Marijuana Equity Advisory Board.
- Eliminates the six-month residency requirement for marijuana licenses.
- Requires the collection of a 1 percent transaction fee on any financial contribution in excess of \$500,000 made by an investor or financier to a licensed marijuana business.
- Authorizes out-of-state ownership of licensed marijuana businesses, subject to restrictions.
- Modifies provisions related to the natural persons required to qualify for, or be named on, a marijuana license.
- Grants the Liquor and Cannabis Board authority to impose additional licensing fees to recover investigatory costs and deny license issuances and renewals when the Liquor and Cannabis Board is unable to investigate any nonresident requiring investigation.

Hearing Date: 1/16/20

Staff: Kyle Raymond (786-7190).

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.

Background:

Marijuana License Overview.

Initiative 502 is implemented to require all owners of licensed marijuana businesses to have lawfully resided in Washington 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, association, nonprofit corporation, or corporation unless formed under Washington 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 existence of chronic illegal activity documented in objections submitted to the LCB from the relevant local government.

In the Uniform Business Organizations Code, the terms "entity" and "interest" are defined. "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.

The Secretary of State issues a certificate of registration to foreign entities registered in Washington. 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.

Dedicated Marijuana Account.

The Dedicated Marijuana Account is an appropriated account. All moneys received by the LCB from marijuana-related activities must be deposited in this account. These moneys include marijuana excise taxes collected from sales of marijuana and marijuana products, license fees, penalties, and forfeitures from marijuana producers, processors, researchers, and retailers. Moneys from the account are distributed to agencies, local governments, and to the Basic Health Plan Trust Account. At the end of each fiscal year, unappropriated amounts in the Dedicated Marijuana Account are transferred to the State General Fund.

Department of Commerce.

The Department of Commerce (Department) is responsible for growing and improving jobs, as well as facilitating innovation in the state. The Department provides business assistance and economic development services primarily through sector-based and cluster-based regional organizations in order to:

- generate greater local capacity to respond to economic growth and environmental challenges;
- promote partnerships and the use of intermediaries to achieve the Department's goals; and
- leverage state resources.

The Department is responsible for promoting community and economic development statewide by assisting communities to increase economic vitality and the quality of citizens' lives, and assisting the state's businesses to maintain and increase economic competitiveness while maintaining a healthy environment. The Department's community and economic development efforts include, but are not limited to: increasing economic opportunity, engaging in business and trade development, and fostering the development of minority and women-owned businesses.

Office of Minority and Women's Business Enterprises.

The Office of Minority and Women's Business Enterprises (OMWBE) was created to provide minority and women-owned and controlled businesses with the maximum practicable opportunity for increased participation in public-works contracts and public contracts for goods and services.

The OMWBE is the sole authority in Washington for certifying minority, women-owned, and socially and economically disadvantaged business enterprises. Certified business enterprises are listed in the OMWBE database. Cities, counties, state agencies, transportation, and educational institutions use the database to source small and diverse firms for potential contracting opportunities. Among other duties, the OMWBE must identify barriers to equal participation by qualified businesses in all state agency and educational contracts, and the OMWBE must establish annual participation goals by qualified businesses for each state agency and educational institution.

Summary of Bill:

Marijuana Equity Account.

The Marijuana Equity Account (Account) is created in the custody of the State Treasurer. All receipts from the transaction fee on new investments in marijuana businesses and payments made on loans must be deposited in the Account.

Expenditures from the Account may be used only for providing loans with low or no interest to certified minority and women-owned and operated marijuana business enterprises. The Director of the Department of Commerce (Department), or the Director's Designee, may authorize expenditures from the Account. An appropriation is not required for expenditures from the Account.

Marijuana Equity Loan Program.

The Marijuana Equity Loan Program (Program) is created in the Department to assist minority and women-owned and operated business enterprises to enter into the marijuana marketplace and to assist in the expansion of their existing marijuana businesses.

The Department may provide loans from the Account to certified minority and women-owned and operated marijuana business enterprises.

\$100,000 from the Dedicated Marijuana Account is distributed to the Department for implementing the Program.

Program Loan Repayment Rulemaking. The Department must adopt rules to implement the loan program, including setting interest rates and payment terms. The rules may include additional criteria for making loans as recommended by the Marijuana Equity Advisory Board.

The rules adopted by the Department must be guided by the following principles:

- The initial interest rates on loans during the initial borrowing term of the loan may be as low as 0 percent, but may not exceed 2 percent.
- After the initial borrowing term is complete, the interest rate on a loan will increase from the initial interest rate by an additional 0.5 percent per year for the next 5 years of the loan term.
- Interest-only loan payments are only allowed during the initial borrowing term.
- All loans made under this section must have a maximum repayment term of 10 years.

The initial term for borrowers who obtain a marijuana producer or marijuana processor license is 4 years. The initial term for borrowers who obtain a marijuana retail license is 2 years.

All loan repayment moneys received must be deposited into the Marijuana Equity Account for the purpose of making new loans.

Marijuana Equity Advisory Board. The Department must create a Marijuana Equity Advisory Board (Board) to assist in implementing the Program. The Board may assist the Department in developing criteria for making loans to minority and women-owned and operated marijuana business enterprises.

The Board must include individuals representing the following:

- minority and women-owned marijuana businesses in current operation;
- members of statewide organizations representing marijuana business interests;
- a representative of the Office of Minority and Women's Business Enterprises; and
- a representative from the Liquor and Cannabis Board (LCB).

The Department may include other interested stakeholders. The Chair of the Board must be a representative of the Department.

The members of the Board are not compensated, but members are entitled to payment for eligible travel expenses.

The LCB must reimburse the Department for expenses incurred under this section from the Board's Dedicated Marijuana Account appropriation.

Program Reporting Requirement. The Department must submit an annual report to the appropriate committees of the Legislature that specifies the:

- number of loans that were made in the program;
- the average initial interest rates on the loans;
- the average length of the loans;
- the total amount loaned in the calendar year;
- the current account balance; and
- the amount of loan interest and premium repayments deposited back into the account each year.

Residency Requirement.

The six-month residency requirement for obtaining a marijuana license is eliminated. Terms referencing business and nonprofit entities are updated to reflect terms used in the Uniform Business Organizations Code.

It is provided that a person is not required to be a Washington resident, and a business or nonprofit entity with a certificate of registration is not required to be formed under Washington law to qualify for a marijuana license.

However, natural persons holding an ownership interest of more than 10 percent of the entity must qualify for and be named on the license. In contrast, natural persons owning 10 percent or less of the entity are not required to qualify for or be named on the license.

If no natural person owns more than 10 percent of the entity, the natural person with the largest ownership interest must qualify for and be named on the license.

Officers and directors of the entity must possess the same qualifications required of the licensee.

The identification of any natural person must be disclosed to the LCB if the person holds an ownership interest of 10 percent or less, but more than 1 percent of the entity, and the person is not otherwise required to qualify for and be named on the license.

The LCB may impose additional licensing fees to recover any additional costs incurred in investigating a nonresident required to be investigated. If, after reasonable efforts, the LCB is unable to investigate any nonresident required to be investigated under the investigatory standards applicable to the investigation of a state resident, the LCB has discretionary authority to deny a license or license renewal to an entity.

The definitions of the terms "entity" and "interest" used in the Uniform Business Organizations Code are added to the marijuana licensing statute.

Transaction Fee.

The LCB is required to collect a transaction fee from any investor or financier on any financial contribution made by the investor or financier to a licensed marijuana business. Amounts collected from the established transaction fee must be deposited into the Account.

The transaction fee is assessed at a rate of 1 percent on any financial contribution by an investor or financier in excess of \$500,000. Beginning July 1, 2022, if the total amount collected from the fee does not exceed \$2 million, then the fee will be assessed at a rate of 1 percent on any contribution amounts above \$200,000.

In determining the amount of the financial contribution to assess the fee, financial contributions by an investor or financier, and any affiliate or relative of the investor or financier, within any 12 month period, must be aggregated.

The board may adopt rules in accordance with this section.

The transaction fee must be collected in conjunction with the Marijuana Additional Funding Application and the Change in Governing People, Percentage Owned, or Stock Unit Ownership application processing fees.

Applicants must provide, in a form and manner determined by the LCB, adequate records of financial contributions, including the amounts and sources of all financial contributions.

Any amounts received as the result of a change in ownership or transfer of stock must be disclosed to the LCB and is subject to the transaction fee.

The transaction fee expires June 30, 2030.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill takes effect July 1, 2020.