

FINAL BILL REPORT

ESSB 5318

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Synopsis as Enacted

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

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Rivers, Palumbo and Wagoner).

Senate Committee on Labor & Commerce
Senate Committee on Ways & Means
House Committee on Commerce & Gaming
House Committee on Appropriations

Background: The Liquor and Cannabis Board (LCB) has adopted rules establishing penalties for violations of marijuana statutes and rules. The rules separate the 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 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 four-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.

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.

Summary: Legislative findings are included, and modifications are made to how the LCB may enforce laws and rules against the licensed marijuana businesses the LCB regulates, as well as to how licensees may comply with laws and rules.

Compliance Education and Consultative Services. The LCB must adopt rules to perfect and expand existing programs for compliance education for licensed marijuana businesses and their employees. Through the LCB's compliance education program, the LCB may grant a licensee's application for advice and consultation and visit the licensee's premises. If any areas of concern are disclosed within the scope of any on-site consultation, the LCB must recommend how to eliminate the areas of concern.

A visit to a licensee's premises through the compliance education program is not considered an inspection or investigation. During the visit, the LCB may not issue notices or citations and may not assess civil penalties. However, if the on-site visit discloses a violation with a direct or immediate relationship to public safety and the violation is not corrected, the LCB may investigate. Rules must provide that violations with a direct or immediate relationship to public safety discovered during a consultative visit must be corrected within a specified period of time and an inspection must be conducted at the end of the time period.

Valuable formulae or financial or proprietary commercial information records received during a consultative visit, or while providing consultative services, are not subject to inspection under the Public Records Act.

Notices of Correction. A process is created to authorize the LCB to issue marijuana licensees a notice of correction instead of a civil penalty. A notice of correction describes the noncompliant condition, the relevant text of the law or rule, a statement of what is required to achieve compliance, the date by which compliance must be achieved, notice of how to contact any technical assistance services, and notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the LCB. A notice of correction is not a formal enforcement action, is not subject to appeal, and is a public record.

The LCB may issue a civil penalty without first issuing a notice of correction in the following three circumstances:

- when a licensee has previously been given notice of, or been subject to, an enforcement action for the same or similar violation of the same statute or rule;
- when compliance is not achieved by the date established by the LCB in a previous notice of correction and if the LCB has responded to a request for review of the date by reaffirming the original date or establishing a new date; or
- when the LCB can prove by a preponderance of the evidence any of the following violations have occurred: (a) diversion of marijuana product to the illicit market or sales across state lines; (b) furnishing of marijuana product to minors; (c) diversion of revenue from the sale of a marijuana product to criminal enterprises, gangs, cartels, or parties not qualified to hold a marijuana license based on criminal history requirements; (d) the commission of nonmarijuana-related crimes; or (e) knowingly making a misrepresentation of fact related to conduct or an action that is, or is alleged to be, any of the preceding four violations.

Enforcement Procedures. The LCB must prescribe procedures for enforcement with specific components, such as a process for issuing written warnings or notices to correct instead of penalties, with respect to violations that have no direct or immediate relationship to public safety as defined by the LCB. The LCB must also adopt rules establishing penalties for violations of marijuana laws. However, a single violation may not result in license cancellation unless the LCB can prove by a preponderance of the evidence that the violation evidences any of the following:

- diversion of marijuana product to the illicit market or sales across state lines;
- furnishing of marijuana product to minors;
- diversion of revenue from the sale of marijuana product to criminal enterprises, gangs, cartels, or parties not qualified to hold a marijuana license based on criminal history requirements;
- the commission of nonmarijuana-related crimes; or
- knowingly making a misrepresentation of fact related to conduct or an action that is, or is alleged to be, any of the preceding four violations.

Additionally, the cumulative effect of any escalating penalties must last two years or less. Cumulative violations may result in license cancellation only when a licensee commits at least four violations within a two-year period. The LCB must consider mitigating and aggravating circumstances and deviate from prescribed penalties accordingly, and must authorize enforcement officers to do the same.

The LCB must give substantial consideration to mitigating any penalty imposed on a licensee when there is employee misconduct that led to the violation and the licensee established a compliance program designed to prevent the violation, performed meaningful training with employees designed to prevent the violation, and had not enabled or ignored the violation or other similar violations in the past.

Further, no violation occurring more than two years prior may be considered as grounds for denial, suspension, revocation, cancellation, or nonrenewal of a marijuana license, unless the LCB can prove by a preponderance of the evidence that the prior administrative violation is any of the following violations:

- diversion of marijuana product to the illicit market or sales across state lines;
- furnishing of marijuana product to minors;
- diversion of revenue from the sale of marijuana product to criminal enterprises, gangs, cartels, or parties not qualified to hold a marijuana license based on criminal history requirements;
- the commission of nonmarijuana-related crimes; or
- knowingly making a misrepresentation of fact related to conduct or an action that is, or is alleged to be, any of the preceding four violations.

Administrative law judges may consider mitigating and aggravating circumstances in any case involving a licensee and may deviate from prescribed penalties. Requirements are added related to the LCB's use of settlement conferences and settlement agreements. If a settlement agreement is entered into between a marijuana licensee and a hearing officer or LCB designee or after a settlement conference, the terms of the settlement agreement must be given substantial weight by the LCB.

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

Votes on Final Passage:

Senate	41	5	
House	88	8	(House amended)
Senate	43	4	(Senate concurred)

Effective: July 28, 2019