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HOUSE BILL 1995

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State of Washington

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By Representatives Dolan, Wylie, Appleton, and Macri

Read first time 02/11/19. Referred to Committee on Commerce & Gaming.

1 AN ACT Relating to direct sales from certain marijuana producers  
2 and processors; and amending RCW 69.50.325, 69.50.363, 69.50.366, and  
3 69.50.535.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 69.50.325 and 2018 c 132 s 3 are each amended to  
6 read as follows:

7 (1) (a) There shall be a marijuana producer's license regulated by  
8 the state liquor and cannabis board and subject to annual renewal.  
9 The licensee ~~((is authorized to))~~ may produce: ~~((+a))~~ (i) Marijuana  
10 for sale at wholesale to marijuana processors and other marijuana  
11 producers; ~~((+b))~~ (ii) immature plants or clones and seeds for sale  
12 to cooperatives as described under RCW 69.51A.250; ~~((and +c))~~ (iii)  
13 immature plants or clones and seeds for sale to qualifying patients  
14 and designated providers as provided under RCW 69.51A.310; and (iv)  
15 marijuana for direct to consumer retail sale from their licensed  
16 location. A direct to consumer retail sale license endorsement to the  
17 marijuana producer's license must be obtained before engaging in  
18 direct to consumer sales. Any sales conducted under the license  
19 endorsement are considered a retail sale under RCW 69.50.535.

20 (b) The production, possession, delivery, distribution, and sale  
21 of marijuana in accordance with the provisions of this chapter and

1 the rules adopted to implement and enforce it, by a validly licensed  
2 marijuana producer, shall not be a criminal or civil offense under  
3 Washington state law.

4 (c) Every marijuana producer's license shall be issued in the  
5 name of the applicant, shall specify the location at which the  
6 marijuana producer intends to operate, which must be within the state  
7 of Washington, and the holder thereof shall not allow any other  
8 person to use the license.

9 (d) The application fee for a marijuana producer's license shall  
10 be two hundred fifty dollars. The annual fee for issuance and renewal  
11 of a marijuana producer's license shall be one thousand three hundred  
12 eighty-one dollars. The annual fee for a direct to consumer retail  
13 sale license endorsement is seventy-five dollars.

14 (e) A separate license shall be required for each location at  
15 which a marijuana producer intends to produce marijuana.

16 (2)(a) There shall be a marijuana processor's license (~~(to)~~)  
17 regulated by the state liquor and cannabis board and subject to  
18 annual renewal. The licensee may: (i) Process, package, and label  
19 marijuana concentrates, useable marijuana, and marijuana-infused  
20 products for sale at wholesale to marijuana processors and marijuana  
21 retailers (~~(, regulated by the state liquor and cannabis board and~~  
22 subject to annual renewal)); and (ii) conduct direct to consumer  
23 retail sales from their licensed location. A direct to consumer  
24 retail sale license endorsement must be obtained before engaging in  
25 direct to consumer sales. Any sale conducted under the license  
26 endorsement is considered a retail sale under RCW 69.50.535.

27 (b) The processing, packaging, possession, delivery,  
28 distribution, and sale of marijuana, useable marijuana, marijuana-  
29 infused products, and marijuana concentrates in accordance with the  
30 provisions of this chapter and chapter 69.51A RCW and the rules  
31 adopted to implement and enforce these chapters, by a validly  
32 licensed marijuana processor, shall not be a criminal or civil  
33 offense under Washington state law.

34 (c) Every marijuana processor's license shall be issued in the  
35 name of the applicant, shall specify the location at which the  
36 licensee intends to operate, which must be within the state of  
37 Washington, and the holder thereof shall not allow any other person  
38 to use the license.

39 (d) The application fee for a marijuana processor's license shall  
40 be two hundred fifty dollars. The annual fee for issuance and renewal

1 of a marijuana processor's license shall be one thousand three  
2 hundred eighty-one dollars. The annual fee for a direct to consumer  
3 retail sale license endorsement is seventy-five dollars.

4 (e) A separate license shall be required for each location at  
5 which a marijuana processor intends to process marijuana.

6 (3)(a) There shall be a marijuana retailer's license to sell  
7 marijuana concentrates, useable marijuana, and marijuana-infused  
8 products at retail in retail outlets, regulated by the state liquor  
9 and cannabis board and subject to annual renewal. The possession,  
10 delivery, distribution, and sale of marijuana concentrates, useable  
11 marijuana, and marijuana-infused products in accordance with the  
12 provisions of this chapter and the rules adopted to implement and  
13 enforce it, by a validly licensed marijuana retailer, shall not be a  
14 criminal or civil offense under Washington state law. Every marijuana  
15 retailer's license shall be issued in the name of the applicant,  
16 shall specify the location of the retail outlet the licensee intends  
17 to operate, which must be within the state of Washington, and the  
18 holder thereof shall not allow any other person to use the license.  
19 The application fee for a marijuana retailer's license shall be two  
20 hundred fifty dollars. The annual fee for issuance and renewal of a  
21 marijuana retailer's license shall be one thousand three hundred  
22 eighty-one dollars. A separate license shall be required for each  
23 location at which a marijuana retailer intends to sell marijuana  
24 concentrates, useable marijuana, and marijuana-infused products.

25 (b) An individual retail licensee and all other persons or  
26 entities with a financial or other ownership interest in the business  
27 operating under the license are limited, in the aggregate, to holding  
28 a collective total of not more than five retail marijuana licenses.

29 (c)(i) A marijuana retailer's license is subject to forfeiture in  
30 accordance with rules adopted by the state liquor and cannabis board  
31 pursuant to this section.

32 (ii) The state liquor and cannabis board shall adopt rules to  
33 establish a license forfeiture process for a licensed marijuana  
34 retailer that is not fully operational and open to the public within  
35 a specified period from the date of license issuance, as established  
36 by the state liquor and cannabis board, subject to the following  
37 restrictions:

38 (A) No marijuana retailer's license may be subject to forfeiture  
39 within the first nine months of license issuance; and

1 (B) The state liquor and cannabis board must require license  
2 forfeiture on or before twenty-four calendar months of license  
3 issuance if a marijuana retailer is not fully operational and open to  
4 the public, unless the board determines that circumstances out of the  
5 licensee's control are preventing the licensee from becoming fully  
6 operational and that, in the board's discretion, the circumstances  
7 warrant extending the forfeiture period beyond twenty-four calendar  
8 months.

9 (iii) The state liquor and cannabis board has discretion in  
10 adopting rules under this subsection (3)(c).

11 (iv) This subsection (3)(c) applies to marijuana retailer's  
12 licenses issued before and after July 23, 2017. However, no license  
13 of a marijuana retailer that otherwise meets the conditions for  
14 license forfeiture established pursuant to this subsection (3)(c) may  
15 be subject to forfeiture within the first nine calendar months of  
16 July 23, 2017.

17 (v) The state liquor and cannabis board may not require license  
18 forfeiture if the licensee has been incapable of opening a fully  
19 operational retail marijuana business due to actions by the city,  
20 town, or county with jurisdiction over the licensee that include any  
21 of the following:

22 (A) The adoption of a ban or moratorium that prohibits the  
23 opening of a retail marijuana business; or

24 (B) The adoption of an ordinance or regulation related to zoning,  
25 business licensing, land use, or other regulatory measure that has  
26 the effect of preventing a licensee from receiving an occupancy  
27 permit from the jurisdiction or which otherwise prevents a licensed  
28 marijuana retailer from becoming operational.

29 (4) The liquor and cannabis board shall issue direct to consumer  
30 retail sale license endorsements authorizing marijuana producers and  
31 marijuana processors to sell marijuana products directly to consumers  
32 if:

33 (a) Sales are limited to the marijuana producer's marijuana crop  
34 and marijuana products created from their crop, or marijuana products  
35 produced by the marijuana processor;

36 (b) Direct sales of useable marijuana must be at least three and  
37 one-half grams; and

38 (c) Sales are in compliance with the limits of RCW 69.50.360.

39 (5) A marijuana producer or marijuana processor applying for a  
40 direct to consumer retail sale license endorsement may have only one

1 marijuana producer license and/or one marijuana processor license  
2 associated with the applicant's uniform business identifier and  
3 issued in the name of the applicant. Applicants with multiple  
4 marijuana producer or processor licenses may not be issued a license  
5 endorsement.

6 (6) A direct to consumer retail sale license endorsement is not a  
7 marijuana retail license as defined by RCW 69.50.325(3) and does not  
8 count toward the jurisdictional caps on the number of licensed retail  
9 locations set by the liquor and cannabis board under RCW  
10 69.50.345(2).

11 (7) The liquor and cannabis board must adopt rules on necessary  
12 on-site security and operational requirements for direct to consumer  
13 sales. However, the security and operational requirements may not be  
14 more stringent than those imposed on a marijuana retailer.

15 **Sec. 2.** RCW 69.50.363 and 2015 c 207 s 7 are each amended to  
16 read as follows:

17 The following acts, when performed by a validly licensed  
18 marijuana processor or employee of a validly licensed marijuana  
19 processor in compliance with rules adopted by the state liquor  
20 (~~control~~) and cannabis board to implement and enforce chapter 3,  
21 Laws of 2013, do not constitute criminal or civil offenses under  
22 Washington state law:

23 (1) Purchase and receipt of marijuana that has been properly  
24 packaged and labeled from a marijuana producer validly licensed under  
25 chapter 3, Laws of 2013;

26 (2) Possession, processing, packaging, and labeling of quantities  
27 of marijuana, useable marijuana, and marijuana-infused products that  
28 do not exceed the maximum amounts established by the state liquor  
29 (~~control~~) and cannabis board under RCW 69.50.345(4);

30 (3) Delivery, distribution, and sale of useable marijuana or  
31 marijuana-infused products to a marijuana retailer validly licensed  
32 under chapter 3, Laws of 2013; (~~and~~)

33 (4) Delivery, distribution, and sale of useable marijuana,  
34 marijuana concentrates, or marijuana-infused products to a federally  
35 recognized Indian tribe as permitted under an agreement between the  
36 state and the tribe entered into under RCW 43.06.490; and

37 (5) If the marijuana processor holds a direct to consumer retail  
38 sale license endorsement, direct to consumer sales of useable  
39 marijuana, marijuana-infused products, or marijuana concentrates.

1       **Sec. 3.** RCW 69.50.366 and 2017 c 317 s 6 are each amended to  
2 read as follows:

3       The following acts, when performed by a validly licensed  
4 marijuana producer or employee of a validly licensed marijuana  
5 producer in compliance with rules adopted by the state liquor and  
6 cannabis board to implement and enforce this chapter, do not  
7 constitute criminal or civil offenses under Washington state law:

8       (1) Production or possession of quantities of marijuana that do  
9 not exceed the maximum amounts established by the state liquor and  
10 cannabis board under RCW 69.50.345(3);

11       (2) Delivery, distribution, and sale of marijuana to a marijuana  
12 processor or another marijuana producer validly licensed under this  
13 chapter;

14       (3) Delivery, distribution, and sale of immature plants or clones  
15 and marijuana seeds to a licensed marijuana researcher, and to  
16 receive or purchase immature plants or clones and seeds from a  
17 licensed marijuana researcher; (~~and~~)

18       (4) Delivery, distribution, and sale of marijuana or useable  
19 marijuana to a federally recognized Indian tribe as permitted under  
20 an agreement between the state and the tribe entered into under RCW  
21 43.06.490; and

22       (5) If the marijuana producer holds a direct to consumer retail  
23 sale license endorsement, direct to consumer sales of useable  
24 marijuana, marijuana-infused products, or marijuana concentrates.

25       **Sec. 4.** RCW 69.50.535 and 2015 2nd sp.s. c 4 s 205 are each  
26 amended to read as follows:

27       (1)(a) There is levied and collected a marijuana excise tax equal  
28 to thirty-seven percent of the selling price on each retail sale in  
29 this state of marijuana concentrates, useable marijuana, and  
30 marijuana-infused products. This tax is separate and in addition to  
31 general state and local sales and use taxes that apply to retail  
32 sales of tangible personal property, and is not part of the total  
33 retail price to which general state and local sales and use taxes  
34 apply. The tax must be separately itemized from the state and local  
35 retail sales tax on the sales receipt provided to the buyer.

36       (b) The tax levied in this section must be reflected in the price  
37 list or quoted shelf price in the licensed marijuana retail store or  
38 on the premises of a marijuana producer or marijuana processor  
39 holding a direct to consumer retail sale license endorsement, and in

1 any advertising that includes prices for all useable marijuana,  
2 marijuana concentrates, or marijuana-infused products.

3 (2) All revenues collected from the marijuana excise tax imposed  
4 under this section must be deposited each day in the dedicated  
5 marijuana account.

6 (3) The tax imposed in this section must be paid by the buyer to  
7 the seller. Each seller must collect from the buyer the full amount  
8 of the tax payable on each taxable sale. The tax collected as  
9 required by this section is deemed to be held in trust by the seller  
10 until paid to the board. If any seller fails to collect the tax  
11 imposed in this section or, having collected the tax, fails to pay it  
12 as prescribed by the board, whether such failure is the result of the  
13 seller's own acts or the result of acts or conditions beyond the  
14 seller's control, the seller is, nevertheless, personally liable to  
15 the state for the amount of the tax.

16 (4) The definitions in this subsection apply throughout this  
17 section unless the context clearly requires otherwise.

18 (a) "Board" means the state liquor and cannabis board.

19 (b) "Retail sale" has the same meaning as in RCW 82.08.010.

20 (c) "Selling price" has the same meaning as in RCW 82.08.010,  
21 except that when product is sold under circumstances where the total  
22 amount of consideration paid for the product is not indicative of its  
23 true value, "selling price" means the true value of the product sold.

24 (d) "Product" means marijuana, marijuana concentrates, useable  
25 marijuana, and marijuana-infused products.

26 (e) "True value" means market value based on sales at comparable  
27 locations in this state of the same or similar product of like  
28 quality and character sold under comparable conditions of sale to  
29 comparable purchasers. However, in the absence of such sales of the  
30 same or similar product, true value means the value of the product  
31 sold as determined by all of the seller's direct and indirect costs  
32 attributable to the product.

33 (5) (a) The board must regularly review the tax level established  
34 under this section and make recommendations, in consultation with the  
35 department of revenue, to the legislature as appropriate regarding  
36 adjustments that would further the goal of discouraging use while  
37 undercutting illegal market prices.

38 (b) The state liquor and cannabis board must report, in  
39 compliance with RCW 43.01.036, to the appropriate committees of the

1 legislature every two years. The report at a minimum must include the  
2 following:

3 (i) The specific recommendations required under (a) of this  
4 subsection;

5 (ii) A comparison of gross sales and tax collections prior to and  
6 after any marijuana tax change;

7 (iii) The increase or decrease in the volume of legal marijuana  
8 sold prior to and after any marijuana tax change;

9 (iv) Increases or decreases in the number of licensed marijuana  
10 producers, processors, and retailers;

11 (v) The number of illegal and noncompliant marijuana outlets the  
12 board requires to be closed;

13 (vi) Gross marijuana sales and tax collections in Oregon; and

14 (vii) The total amount of reported sales and use taxes exempted  
15 for qualifying patients. The department of revenue must provide the  
16 data of exempt amounts to the board.

17 (c) The board is not required to report to the legislature as  
18 required in (b) of this subsection after January 1, 2025.

19 (6) The legislature does not intend and does not authorize any  
20 person or entity to engage in activities or to conspire to engage in  
21 activities that would constitute per se violations of state and  
22 federal antitrust laws including, but not limited to, agreements  
23 among retailers as to the selling price of any goods sold.

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