

# SENATE BILL REPORT

## SB 5365

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As of February 1, 2021

**Title:** An act relating to establishing a Washington state cannabis commission.

**Brief Description:** Establishing a Washington state cannabis commission.

**Sponsors:** Senators Stanford, Conway, Das, Keiser and Nguyen.

**Brief History:**

**Committee Activity:** Labor, Commerce & Tribal Affairs: 2/01/21.

### Brief Summary of Bill

- Establishes the Washington State Cannabis Commission comprised of cannabis producers and the director of the Liquor and Cannabis Board, with assistance from an advisory council.
- Assigns specific duties to the Washington State Cannabis Commission.
- Creates the Washington State Cannabis Commission Account.
- Authorizes a surcharge on sales of marijuana and marijuana products at wholesale.
- Requires the commission to complete and submit to the director an annual research, education, and training plan.

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### SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

**Staff:** Matt Shepard-Koningsor (786-7627)

**Background:** Commodity Commissions. A commodity commission may be established for a particular commodity, and some commodity commissions are created directly by statute. Agricultural commodity commissions may be established according to the requirements of the Washington Agricultural Enabling Act. Washington has 21 agricultural

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commodity commissions that are engaged primarily in marketing, research, or both, related to a specific commodity. Some of the current Washington agricultural commissions relate to the commodities of apples, beef, beer, hops, potatoes, and wine.

Marijuana Licenses and Regulators. The commercial marijuana licenses issued by the Liquor and Cannabis Board (LCB) include the marijuana producer license, the marijuana processor license, and the marijuana retailer license. The marijuana producer license authorizes the licensee to produce marijuana for wholesale to marijuana processors and other marijuana producers. Marijuana producers may also sell immature plants or clones and seeds to cooperatives, qualifying patients, and designated providers. Marijuana production may be indoors or outdoors. Marijuana producers may also, but are not required to, be licensed as marijuana processors. Some businesses hold only the marijuana processor license. A marijuana processor license authorizes the licensee to process, package, and label marijuana concentrates, usable marijuana, and marijuana-infused products for wholesale to marijuana processors and marijuana retailers. Neither a licensed marijuana producer nor a licensed marijuana processor may hold a financial interest in a licensed marijuana retailer.

Wholesaling Business and Occupation Tax. The Department of Revenue (DOR) collects taxes in the state. One such tax is a wholesaling business and occupation (B&O) tax. The B&O tax applies if there are sales of goods and certain services to a person who will resell to others. The current wholesaling B&O tax rate is 0.484 percent of the business's gross receipts.

**Summary of Bill:** Commission Structure. The Washington State Cannabis Commission (commission) is established. The commission's purpose is to benefit the people of the state of Washington and its economy by developing and promoting cannabis and cannabis products as part of an existing comprehensive regulatory scheme.

The commission includes 13 voting members that include marijuana producers and an LCB representative. The commission's voting members are comprised of:

- eight cannabis producers that reside in, and are elected from, districts across the state;
- three cannabis producers that represent each cannabis production tier;
- a cannabis producer from any licensing tier or district; and
- the director of the LCB (director).

An advisory council is established to assist the commission. The director must appoint one board representative, one processor-only member, one retailer member, and one testing laboratory member to the advisory council.

Each cannabis producer, cannabis processor, cannabis retailer, and testing laboratory member must be 21 years of age or older, a citizen and resident of Washington, and licensed by the LCB for at least three years before becoming a member. The representatives must continue to meet all membership qualifications through their term.

Of the initial members, four must be appointed for a one-year term, four for a two-year term, and four for a three-year term. After the initial terms expire, members, other than the director, must be elected by a vote of active cannabis producers in each district for three-year terms. If a position on the commission becomes vacant, the commission must notify the director, who must immediately appoint another representative to the unexpired term. When making appointments, the director must consider maintaining a balanced and diverse distribution of members based on race, ethnicity, geographic location, gender identity, sexual orientation, and age.

Commission Duties. The commission is established to:

- create plans, conduct programs, and perform research for cannabis-related matters;
- advise local, state, and federal agencies on cannabis-related matters;
- cooperate with interested parties and advise on cannabis-related science, packaging, and labeling;
- conduct reviews, surveys, and inquiries regarding market metrics;
- inform and advise individuals on cannabis-related education;
- assist local, state, and federal government with control of pests and diseases related to cannabis;
- limit youth access and youth exposure to cannabis;
- encourage favorable legislative and regulatory treatment of Washington cannabis; and
- assist Washington cannabis producers in numerous areas of research on cannabis-related matters.

Commission Authority. To accomplish its duties, the commission may:

- adopt rules to carry out its purposes;
- elect a chair and other officers;
- employ and discharge employees and independent contractors;
- designate representatives required under laws governing state agencies;
- keep accurate records of receipts and disbursements subject to inspection and audit;
- acquire personal property, purchase or lease real property, and transfer and convey such property;
- sue and be sued as a commission, without individual liability;
- enter into contracts, cooperative agreements, or interagency agreements;
- receive gifts, grants, and endowments from public or private sources for the use and benefit of the its purposes; and
- speak on behalf of state government with regard to cannabis producers and processors

The commission must prepare and submit its research plan, its commodity-related education and training plan, and its annual budget before the beginning of its fiscal year. The commission must submit these materials to the director for approval, and the director must review and make a determination in a timely manner.

Accounts. The Washington State Cannabis Commission Account (account) is created.

Account funds may only be spent after appropriation from the LCB.

Surcharge Collection. Beginning October 1, 2021, the following surcharges apply to wholesale sales of marijuana:

- 0.29 percent on the gross proceeds of wholesale sales of marijuana including mature marijuana plants, immature marijuana plants or clones, marijuana plant tissue culture, and marijuana seeds; and
- 0.145 percent on the gross proceeds of wholesale sales of marijuana products ready for a consumer.

Surcharges must be deposited into the account.

Wholesalers Business and Occupation Tax. In addition to paying the surcharge above, wholesalers must pay a B&O tax of 0.484 percent on the businesses' gross receipts.

State Civil Service Law. Officers and employees of the commission are exempt from the State Civil Service Law.

Liability. The commission's financial obligations, in addition to liabilities or claims against the commission, must only be enforced against the assets of the commission. Liability for the debts or actions of the commission does not exist against the state of Washington, or any individual member, employee, or agent of the commission or the state of Washington. The commission members, and its employees, may not be held individually responsible for errors in judgment, mistakes, or other acts, except for their own individual acts of dishonesty or crime. No person or employee may be held individually responsible for any act or omission of any other commission members.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: The commission can provide value to cannabis growers and the growers could benefit from pesticide training because most times, they are not trained. This bill is intended as a work-in-progress and will be further developed with the industry and stakeholder groups. The bill's surcharge is small compared to the large amount of benefits it can provide. The surcharge for cannabis is welcomed and will help the industry. The bill will help social equity applicants the most because they are likely new to farming. Cannabis needs the support of science and Washington can be a leader. This will help the product become safer.

CON: There is not consensus within the industry. Farmers are about to be run over by national competition and this adds more things producers will have to do. There is no understanding of exactly what the commission will do. Commission employees should not be exempt from state civil service law and should be able to collectively bargain. It is not a question of if a commission is appropriate, but rather when. This requires broader stakeholder discussion.

OTHER: The bill is opposed in its current form but concerns can be addressed with amendments. The commission's duties are too broad and other individuals should be included as members. The commission should be housed under the Department of Agriculture with other commodity commissions. Marketing and promotion should be removed. There is not yet consensus in the industry to create a commission. It is a conflict for LCB to serve in the dual role of commission work with other cannabis-related duties. There are serious concerns with the LCB director as a member of the commission. This bill required more outreach to the community, especially the black community.

**Persons Testifying:** PRO: Senator Derek Stanford, Prime Sponsor; Shawn DeNae Wagenseller, Washington Bud Company T2 P/P; Steve Walser, Buddy Boy Farms Inc.; Alan Schreiber, Blueberry Commission, Asparagus Commission, Commission on Pesticide Registration.

CON: Vicki Christophersen, Executive Director, Washington CannaBusiness Association; Paige Berger, Hygge Farms; Ezra Eickmeyer, Producers NW; Matt Zuvich, Washington Federation of State Employees.

OTHER: Chris Thompson, Liquor and Cannabis Board; Seth Dawson, Washington Association for Substance Abuse and Violence Prevention; Kelly McLain, Washington State Department of Agriculture.

**Persons Signed In To Testify But Not Testifying:** PRO: Jeff Muse.