
Regulated Substances & Gaming Committee

HB 1159

Brief Description: Allowing interstate cannabis agreements.

Sponsors: Representatives Wylie and Stonier.

Brief Summary of Bill

- Authorizes the Governor to enter into interstate cannabis agreements with another state or states for cross-jurisdictional delivery of cannabis between Washington and the other state or states and for cross-jurisdictional coordination and enforcement.
- Specifies mandatory provisions in interstate cannabis agreements.
- Includes a contingent effective date to become effective on the earlier of: (1) federal law amendments to allow for the interstate transfer of cannabis; or (2) the U.S. Department of Justice issuing an opinion or memorandum allowing or tolerating the interstate transfer of cannabis.

Hearing Date: 1/10/23

Staff: Peter Clodfelter (786-7127).

Background:

The Washington State Liquor and Cannabis Board (LCB) licenses and regulates cannabis producers, processors, retailers, researchers, and transporters pursuant to Initiative 502 (2012) (I-502) and laws enacted by the Legislature over the last decade. In creating the legal structure for the adult-use cannabis market in Washington, I-502 established an intrastate cannabis program where all activities related to cannabis production, processing, distribution, and sales occur

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within Washington's borders by Washington licensed businesses. Other states in which voters or Legislatures have since legalized adult-use cannabis and established commercial markets also structured their programs as intrastate programs.

After Washington and Colorado legalized adult-use cannabis at the state level despite cannabis's status as an illegal Schedule I drug under the federal Controlled Substances Act (CSA), in 2013 Deputy U.S. Attorney General James M. Cole of the U.S. Department of Justice (DOJ) issued a memorandum to all the DOJ's attorneys and law enforcement on the subject of guidance regarding cannabis enforcement. This memorandum, which became known as the "Cole Memorandum," said that although Congress has determined cannabis to be a dangerous drug, that illegal distribution and sale of cannabis is a serious crime, and that the DOJ remained committed to enforcing the federal CSA, that the DOJ is committed to using its limited investigative and prosecutorial resources to address the most significant threats. The Cole Memorandum then set out eight enforcement priorities to guide federal prosecutors in using their prosecutorial discretion.

The enforcement priorities were: (1) preventing distribution of cannabis to minors; (2) preventing revenue from the sale of cannabis to going to criminal enterprises; (3) preventing diversion of cannabis from states where it is legal under state law in some form to other states; (4) preventing state-authorized cannabis activity from being used as a cover for trafficking of other illegal drugs or other illegal activity; (5) preventing violence and the use of firearms in the cultivation and distribution of cannabis; (6) preventing drugged driving and the exacerbation of other adverse public health consequences associated with cannabis use; (7) preventing the growing of cannabis on public lands; and (8) preventing cannabis possession or use on federal property. The Cole Memorandum described the need for states to have strong and effective regulatory and enforcement systems to control cannabis cultivation, distribution, sales, and possession. The Cole Memorandum was rescinded in 2018.

In recent years Congress has considered several bills to change cannabis's status at the federal level, including the Marijuana Opportunity Reinvestment and Expungement Act, the Cannabis Administration and Opportunity Act, and the SAFE Banking Act. Legislation to legalize cannabis under federal law has passed the U.S. House of Representatives multiple times, most recently in 2022, but has not passed the U.S. Senate.

Oregon enacted an interstate cannabis law in 2019 (Senate Bill 582), and California enacted an interstate cannabis law in 2022 (Senate Bill 1326), both of which have contingent effective dates based on federal law or policy changes. The laws would authorize the governors of Oregon and California to enter into interstate cannabis agreements with other states regarding cross-jurisdictional cannabis commerce and coordination.

Summary of Bill:

Subject to a contingent effective date, the Governor is authorized to enter into an agreement with another state or states for the purposes of: (1) cross-jurisdictional coordination and enforcement

of cannabis-related businesses authorized to conduct business in Washington, the other state, or both; and (2) cross-jurisdictional delivery of cannabis between Washington and the other state.

An agreement must ensure enforceable public health and safety standards are met, and include a system to regulate and track the interstate delivery of cannabis. Any cannabis delivered into Washington, before sale to a consumer, must be tested in accordance with rules adopted by the Washington State Department of Agriculture, the Washington State Department of Health, and the Washington State Liquor and Cannabis Board (LCB). The cannabis must also be packaged and labeled in accordance with Washington law and the LCB's rules. An agreement must ensure that applicable taxes on the sale, delivery, and receipt of cannabis are collected.

In accordance with an agreement entered by the Governor, a cannabis producer, processor, researcher, or retailer licensed in Washington by the LCB may deliver cannabis to a person located in and authorized to receive cannabis by the other state, and may also receive cannabis from a person located in and authorized to export cannabis by the other state.

If either of the two conditions arise causing the act to take effect, then the LCB must provide written notice of the effective date of the act to affected parties, the Chief Clerk of the House of Representatives, the Secretary of the Senate, the Office of the Code Reviser, and others as deemed appropriate by the LCB. The LCB must also provide written notice of statutory changes necessary to authorize the sale, delivery, and receipt of cannabis in accordance with an interstate cannabis agreement to the Governor and the appropriate committees of the Legislature. Last, the LCB must adopt rules as necessary to authorize the sale, delivery, and receipt of cannabis in accordance with an interstate cannabis agreement.

Appropriation: None.

Fiscal Note: Requested on January 6, 2023.

Effective Date: The bill takes effect on the earlier of the date on which federal law is amended to allow for the interstate transfer of cannabis between authorized cannabis-related businesses or the U.S. Department of Justice issues an opinion or memorandum allowing or tolerating the interstate transfer of cannabis between authorized cannabis-related businesses.