

HOUSE BILL REPORT

SB 5069

As Reported by House Committee On:
Regulated Substances & Gaming

Title: An act relating to interstate cannabis agreements.

Brief Description: Allowing interstate cannabis agreements.

Sponsors: Senators Rivers, Keiser, King, Stanford, Conway, Holy and Van De Wege.

Brief History:

Committee Activity:

Regulated Substances & Gaming: 3/20/23, 3/21/23, 3/23/23 [DP].

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 United States Department of Justice issuing an opinion or memorandum allowing or tolerating the interstate transfer of cannabis.

HOUSE COMMITTEE ON REGULATED SUBSTANCES & GAMING

Majority Report: Do pass. Signed by 8 members: Representatives Kloba, Co-Chair; Wylie, Co-Chair; Stearns, Vice Chair; Chambers, Ranking Minority Member; Morgan, Orwall, Reeves and Waters.

Minority Report: Without recommendation. Signed by 2 members: Representatives

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Robertson, Assistant Ranking Minority Member; Walsh.

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 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.

In recent years, Congress has considered several bills to change the status of cannabis at the federal level, including the Marijuana Opportunity Reinvestment and Expungement Act, the Cannabis Administration and Opportunity Act, and the Secure and Fair Enforcement Banking Act. Legislation to legalize cannabis under federal law has passed one chamber of Congress at different times but has not passed the other chamber.

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 that 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, prior to sale to a consumer, must be tested in accordance with rules adopted by 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 bill to take effect, then the LCB must provide written notice of the effective date of the bill to affected parties, the Chief Clerk of the House of Representatives, the Secretary of the Senate, the Office of the Code Reviser, and others 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: Available.

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 United States Department of Justice issues an opinion or memorandum allowing or tolerating the interstate transfer of cannabis between authorized cannabis-related businesses.

Staff Summary of Public Testimony:

(In support) The bill plans for the future, for if there are federal changes to cannabis law or policy. The bill will not immediately lead to any changes. This will allow businesses to participate in a market if it opens. It is likely the Washington Legislature will not be in session at a time when federal law or policy changes could occur regarding cannabis. Oregon and California have passed this legislation with the same triggers to give effect to their legislation. If Washington does not pass similar legislation, and there are federal changes, Washington businesses will immediately fall behind as Oregon and California begin work on interstate cannabis agreements. On the other hand, if the bill passes, Washington businesses could be at a competitive advantage. It is urged that the bill's triggering conditions not be changed. After passage of the bill, the Governor will have further discussion with other states' governors on the details of the regulatory frameworks. The bill is consistent with work on social equity in the Washington cannabis industry.

(Opposed) The promise of Initiative 502 (2012) was that cannabis activity would be confined within Washington and the market should stay that way. On the triggering condition, a United States Department of Justice memo or opinion can be rescinded, which

happened with the Cole Memorandum. That illustrates the weak foundation of using a federal memorandum or opinion as a basis for a Washington law and interstate cannabis activity. When cannabis is transported across other states, those states' controlled substances acts could give rise to criminal liability. Other states could also sue Washington. Consider the influence of big box stores in the alcohol markets, but in this context with cannabis businesses from other states impacting Washington's cannabis market. The bill could lead to multi-state operators vertically integrating through the interstate agreements, if a retailer in Washington owns a producer in another state subject to an agreement with Washington. Smaller Washington cannabis producers are disadvantaged by this bill, relative to larger multi-state operators licensed in Washington and elsewhere.

Persons Testifying: (In support) Senator Ann Rivers, prime sponsor; Adam Smith, Alliance for Sensible Markets; Vicki Christophersen, Washington CannaBusiness Association; Burl Bryson, The Cannabis Alliance; Peter Manning, Black Excellence in Cannabis; and Lukas Hunter, Harmony Farms.

(Opposed) Scott Waller, Washington Association of Substance Misuse and Violence Prevention; John Worthington; and Mark Ambler.

Persons Signed In To Testify But Not Testifying: None.