

HOUSE BILL REPORT

SSB 5405

As Reported by House Committee On:
Regulated Substances & Gaming

Title: An act relating to modifying the liquor and cannabis board's subpoena authority relating to cannabis investigations.

Brief Description: Modifying the liquor and cannabis board's subpoena authority.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators King, Keiser and Wilson, C.; by request of Liquor and Cannabis Board).

Brief History:

Committee Activity:

Regulated Substances & Gaming: 3/9/23, 3/27/23 [DPA].

Brief Summary of Substitute Bill
(As Amended By Committee)

- Grants the Liquor and Cannabis Board (LCB) subpoena authority for the production of: (1) books, records, and documents held under the Uniform Controlled Substances Act or the Washington State Medical Use of Cannabis Act; and (2) books and records of common carriers or vehicle rental agencies related to cannabis transportation or possession.
- Adds requirements to the LCB's issuance and service of subpoenas and requires an annual report from the LCB, beginning in 2024 and continuing through 2028, on the LCB's issuance and service of subpoenas in the preceding year.

HOUSE COMMITTEE ON REGULATED SUBSTANCES & GAMING

Majority Report: Do pass as amended. Signed by 11 members: Representatives Kloba, Co-Chair; Wylie, Co-Chair; Stearns, Vice Chair; Chambers, Ranking Minority Member; Robertson, Assistant Ranking Minority Member; Cheney, Morgan, Orwall, Reeves, Walsh

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.

and Waters.

Staff: Peter Clodfelter (786-7127).

Background:

The Liquor and Cannabis Board (LCB) administers and enforces laws regulating and taxing liquor, cannabis, cigarettes, tobacco products, and vapor products. The LCB may issue subpoenas in connection with any investigation, hearing, or proceeding for the production of: (1) books, records, and documents held under chapters of law regulating or taxing liquor, cigarettes, tobacco products, and vapor products; and (2) books and records of common carriers or vehicle rental agencies relating to the transportation or possession of cigarettes, tobacco products, or vapor products.

If a person is served a subpoena from the LCB for the production of books, records, and documents and fails or refuses to obey the subpoena for the production of books, records, and documents when required to do so, the person is subject to proceedings for contempt, and the LCB may institute contempt of court proceedings in the Thurston County Superior Court or the superior court in the county in which the person resides.

Summary of Amended Bill:

The authority of the Liquor and Cannabis Board (LCB) to issue subpoenas in connection with investigations, hearings, or proceedings, for the production of books, records, and documents is extended, to also grant the LCB authority to issue subpoenas for the production of: (1) books, records, and documents held under the Uniform Controlled Substances Act or the Washington State Medical Use of Cannabis Act; and (2) books and records of common carriers or vehicle rental agencies relating to the transportation or possession of cannabis. A comma is added, clarifying, under the last antecedent rule of statutory construction, that certain provisions apply to both common carriers and vehicle rental agencies.

The following requirements are added to the LCB's statutory subpoena authority:

- Prior to signing, issuing, or serving a subpoena, the LCB must, at a minimum, first attempt to obtain production of the books, records, or documents by: (1) an informal investigative contact; and (2) regular mail and certified mail.
- A subpoena may be served by regular mail and certified mail or in person by either: (1) an enforcement officer of the LCB who graduated from the Washington State Criminal Justice Training Commission; or (2) a licensed private investigator.
- Any individual signing, issuing, or serving a subpoena for the LCB must complete training on unconscious bias.
- Information about how to challenge the subpoena must be provided in writing to the person subject to the subpoena with the service of a subpoena.

- The LCB must sign, issue, and serve subpoenas through a uniform process and procedures.
- Except as otherwise provided in the bill, the LCB is subject to the requirements and duties with respect to subpoenas imposed under Washington State superior court civil rules in effect at the time of issuance of the subpoena, regarding the form, issuance, and service of subpoenas, and the duty to take responsible steps to avoid imposing undue burden or expense on a person subject to the subpoena.

The LCB must submit an annual report to the Legislature and the Governor with information about the subpoenas the LCB issued and served in the preceding year. The reports must include, but are not limited to, the following information regarding subpoenas issued and served in the preceding year:

- the total number of subpoenas issued and served by the LCB;
- a comparison of how many subpoenas were issued and served in connection with investigations related to cannabis, liquor, cigarettes, vapor products, and tobacco products;
- how many subpoenas were issued and served to, or were related to an investigation of, a social equity applicant or a licensee who is licensed through the Cannabis Social Equity Program;
- the numbers of subpoenas served in person compared to subpoenas served by regular mail and certified mail;
- how many of the subpoenas successfully resulted in the production of the books, records, or documents sought by the LCB;
- how many contempt of court proceedings the LCB instituted for the failure or refusal to obey a subpoena; and
- a summary of sanctions imposed, or orders issued, by courts in any contempt of court proceedings initiated by the LCB after a person fails or refuses to obey a subpoena for the production of records, books, or documents.

The reports are due by July 1, 2024, and by July 1 of each year thereafter, with a final report due by July 1, 2028.

Amended Bill Compared to Substitute Bill:

The amended bill makes the following changes to the substitute bill:

- adds a requirement that prior to signing, issuing, or serving a subpoena, the Liquor and Cannabis Board (LCB) must, at a minimum, first attempt to obtain production of the books, records, or documents by an informal investigative contact and by regular mail and certified mail;
- requires a subpoena issued and served by the LCB to be served by regular mail and certified mail or in person by: (1) an enforcement officer of the LCB who graduated from the Washington State Criminal Justice Training Commission; or (2) a licensed private investigator;
- requires any individual signing, issuing, or serving a subpoena for the LCB to

- complete training on unconscious bias;
- requires information about how to challenge the subpoena to be provided in writing to the person subject to the subpoena with the service of a subpoena;
- requires the LCB to sign, issue, and serve subpoenas through uniform processes and procedures;
- specifies that, except as otherwise provided in the bill, the LCB is subject to the requirements and duties with respect to subpoenas imposed under Washington State superior court civil court rules in effect at the time of issuance of the subpoena, regarding: (1) the form, issuance, and service of subpoenas; and (2) the duty to take responsible steps to avoid imposing undue burden or expense on a person subject to the subpoena; and
- requires the LCB to submit an annual report to the Legislature and Governor with information about subpoenas the LCB issued and served in the preceding year, with the first report to be submitted by July 1, 2024, with subsequent annual reports submitted each July 1 through July 1, 2028.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 28, 2023.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The bill provides subpoena authority to the Liquor and Cannabis Board (LCB) to regulate cannabis products like the LCB regulates other types of products. When Initiative 502 (2012) (I-502) legalized cannabis, many duties of the LCB were copied over to apply to cannabis, but a mistake was made and the subpoena authority of the LCB was not updated to include references to cannabis. This can have administrative impacts. For example, the LCB needs to determine who is the "true party of interest" (the person actually running the business). Currently, the LCB could see records showing transactions going to some other bank account, but cannot follow up to dig deeper to verify the person applying for the license is the actual owner. As another example, if there is a suspected illicit grow, the first thing to do is subpoena power records of a residence or a business, but the LCB cannot do that. Pursuing a warrant is the option currently available, which means only later obtaining a subpoena after already going into the illicit grow. This bill would make the process much easier. There is widespread agreement on the need to curb the illicit market, which this bill would help.

(Opposed) It was not a mistake that I-502 did not provide the LCB with this subpoena authority. There was intent to keep the prohibition mentality out of the administrative side of the agency. Businesses are dealing with an unfair regulator and do not have a level

playing field, and this bill make that worse. Washington State should stop spending money on cannabis enforcement and focus on addressing property crime enforcement.

Persons Testifying: (In support) Senator Curtis King, prime sponsor; and Marc Webster, Washington State Liquor and Cannabis Board.

(Opposed) John Worthington.

Persons Signed In To Testify But Not Testifying: None.