

SENATE BILL REPORT

SB 5069

As Passed Senate, March 1, 2023

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: Labor & Commerce: 1/10/23, 1/17/23 [DP, w/oRec].

Floor Activity: Passed Senate: 3/1/23, 40-8.

Brief Summary of Bill

- Authorizes the Governor to enter into interstate cannabis agreements if the federal government legalizes cannabis, or the U.S. Department of Justice issues an opinion or memorandum allowing or tolerating the interstate transfer of cannabis.
- Requires the Liquor and Cannabis Board (LCB) to, upon either condition occurring, notify the Legislature and the Office of the Code Reviser of the act's effective date, and notify the Governor and the Legislature of necessary statutory changes.
- Requires LCB to adopt rules necessary to authorize the sale, delivery, and receipt of cannabis in accordance with an interstate agreement.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: Do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; King, Ranking Member; Braun, MacEwen, Robinson, Schoesler and Stanford.

Minority Report: That it be referred without recommendation.

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.

Signed by Senator Saldaña, Vice Chair.

Staff: Matt Shepard-Koningsor (786-7627)

Background: Cannabis Legality. Under federal and state law, cannabis—or marijuana, the term used in federal law—is classified as a Schedule I substance. The manufacture, possession, or distribution of Schedule I substances is a criminal offense, however, many states have legalized cannabis for medicinal purposes, recreational purposes, or both. Medical cannabis is legal in 39 states and the District of Columbia (D.C.), recreational cannabis is legal in 21 states and D.C., and other states are actively considering the issue. State laws regarding cannabis vary considerably. Washington legalized medical cannabis in 1998, recreational cannabis in 2012, and created a regulatory system by which cannabis may be produced, processed, and sold in the state. The Liquor and Cannabis Board (LCB) regulates most aspects of this system in coordination with other state agencies. Despite this legal regulatory system, cannabis remains a Schedule I substance under state law and a licensee may not export cannabis outside of the state. In addition, since cannabis remains illegal under federal law, transporting it across state lines is prohibited.

Federal Developments. The U.S. Department of Justice (DOJ) has issued numerous memoranda relative to cannabis. On August 29, 2013, former Deputy Attorney General James Cole issued a memorandum (Cole Memo) to all U.S. Attorneys stating, among other things, DOJ would not enforce federal cannabis prohibition in states that legalized cannabis in some form, and have implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of cannabis. The Cole Memo stated that federal cannabis enforcement resources would be focused on specific cases, such as distribution of cannabis to minors and revenue from the sale of cannabis going to criminal enterprises, gangs, and cartels. On January 4, 2018, former Attorney General Jeff Sessions issued a memorandum (Sessions Memo) rescinding the Cole Memo and directed all U.S. Attorneys to follow well-established principles when pursuing prosecutions related to cannabis activities. DOJ has not issued additional formal guidance on its enforcement priorities relative to cannabis under the Biden Administration. However, on October 6, 2022, President Biden granted a pardon to everyone convicted of simple cannabis possession under federal law and called for a review of how cannabis is scheduled under the federal Controlled Substances Act (CSA).

In recent years, Congress has heard bills attempting to legalize cannabis but none have passed both chambers. In April 2022, the Marijuana Opportunity and Reinvestment (MORE) Act passed the U.S. Senate. The MORE Act, among other things, removes cannabis from the list of scheduled substances under the federal CSA and eliminates criminal penalties for an individual who manufactures, distributes, or possesses cannabis. The Secure and Fair Enforcement (SAFE) Banking Act is another bill introduced but not passed in recent years, which attempts to simplify the process for financial institutions to offer services to cannabis businesses.

State Developments. In 2019, Oregon passed SB 582, which, among other things, authorizes the Governor of Oregon to make agreements regarding coordination and enforcement of licensed cannabis-related businesses with other states. SB 582 permits interstate agreements only after federal law allows the interstate transfer of cannabis or DOJ issues an opinion or memorandum stating it allows or tolerates the interstate transfer of cannabis. Similarly, in 2022, California passed SB 1326, allowing the state to enter into an interstate cannabis agreement to allow cannabis or cannabis products to be transported across state lines if the other state meets or exceeds certain health and safety requirements, and allows California to engage in commercial activities with out-of-state licensees. Interstate agreements may only take effect if certain federal actions occur regarding the interstate sale and transfer of cannabis.

Summary of Bill: The Governor may enter into an agreement with another state or states for:

- cross-jurisdictional coordination and enforcement of cannabis-related businesses authorized to conduct business in this state, the other state, or both; and
- cross-jurisdictional delivery of cannabis between this state and the other state.

Interstate agreements must ensure:

- enforceable public health and safety standards are met, and include a system to regulate and track the interstate delivery of cannabis; and
- any cannabis delivered into this state, prior to sale, is tested, packaged, and labeled in accordance with rules adopted by LCB and the Washington State Department of Health, and applicable taxes are collected on the sale, delivery, and receipt of cannabis.

In accordance with an interstate agreement, Washington cannabis licensees may deliver cannabis to, and receive cannabis from, an authorized person in the other state.

The bill takes effect only if federal law is amended to allow for the interstate transfer of cannabis between authorized cannabis-related businesses, or DOJ issues an opinion or memorandum allowing or tolerating the interstate transfer of cannabis between authorized cannabis-related businesses. If the bill takes effect, LCB must:

- provide written notice of the bill's effective date to affected parties, the Legislature, and the Office of the Code Reviser;
- provide written notice of statutory changes necessary to authorize the sale, delivery, and receipt of cannabis in accordance with an interstate agreement, to the Governor and the Legislature; and
- adopt rules necessary to authorize the sale, delivery, and receipt of cannabis in accordance with an interstate agreement.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill contains a contingent effective date.

Staff Summary of Public Testimony: PRO: There are only 11 states that have not legalized cannabis and this would empower the Governor if there is federal action to enter into interstate cannabis agreements ensuring our businesses can function. This is an essential bill for Washington cannabis companies to compete. We recommend other aspects of the California law be added to this bill. The Dormant Commerce Clause would require Washington participate in the national market and we need to pass this bill to ensure this can happen without unintended outcomes. We want our industry members to be able to compete in the new national market if there is federal action while the Legislature is not in session. We do not want other states to get a head-start. The Governor could enter into interstate cannabis agreements but then come back to the Legislature to change the necessary laws. We need this bill to make sure no technical things get in the way if the feds act unexpectedly.

CON: This bill expands the cannabis industry without including the Black and Brown communities. This bill would expand White businesses and push Black and Brown communities even further behind. Anything dealing with cannabis should be focused on equity first. This bill moves ahead without looking backward first. Washington has been ahead on cannabis but dropped the ball on equity.

Persons Testifying: PRO: Senator Ann Rivers, Prime Sponsor; Micah Sherman, Washington Sun and Craft Grower's Association (WSCA); Burl Bryson, The Cannabis Alliance; Ann Rivers, Yes. Senator Ann Rivers; Ezra Eickmeyer, Producers NW; Vicki Christophersen, Washington CannaBusiness Association.

CON: Peter Manning, Black excellence in Cannabis; Mike Asai, Black excellence in Cannabis; Damian Mims, Black excellence in Cannabis; Ahmed King, Black excellence in Cannabis.

Persons Signed In To Testify But Not Testifying: No one.