

# SENATE BILL REPORT

## E2SHB 2136

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As of April 23, 2015

**Title:** An act relating to comprehensive marijuana market reforms to ensure a well-regulated and taxed marijuana market in Washington state.

**Brief Description:** Concerning comprehensive marijuana market reforms to ensure a well-regulated and taxed marijuana market in Washington state.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representative Carlyle).

**Brief History:** Passed House: 4/10/15, 67-28.

**Committee Activity:** Ways & Means:

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### SENATE COMMITTEE ON WAYS & MEANS

**Staff:** Dean Carlson (786-7305)

**Background:** Overview of Initiative Measure No. 502. Initiative Measure No. 502 (I-502) was a ballot measure approved by Washington voters in November 2012 that: (1) legalized the production, processing, possession and personal use of marijuana; (2) created a framework for a regulatory scheme to be further developed by the Liquor Control Board (LCB) through its rulemaking authority; and (3) revised provisions in criminal statute to accommodate such legalization in accordance with the requirements of the initiative.

Federal Response to Marijuana Legalization by the States. The use of marijuana remains illegal under federal law. However, the Department of Justice (DOJ) has issued several policy statements regarding state regulation of marijuana describing when prosecutors may intervene. Federal prosecutors have been instructed to focus investigative and prosecutorial resources related to marijuana on specific enforcement priorities to prevent the distribution of marijuana to minors; marijuana sales revenue from being directed to criminal enterprises; marijuana from being diverted from states where it is legal to states in which it is illegal; state-authorized marijuana activity from being used as a cover for trafficking other illegal drugs or other illegal activity; violence and the use of firearms in the production and distribution of marijuana; drugged driving and other marijuana-related public health consequences; the growth of marijuana on public lands; and marijuana possession or use on federal property.

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With respect to state laws that authorize marijuana production, distribution, and sales, the federal memorandum states that when these activities are conducted in compliance with strong and effective regulatory and enforcement systems, there is a reduced threat to federal priorities. In such instances, the memorandum asserts that state and local law enforcement should be the primary means of regulation.

Taxes on Marijuana Producers, Processors, and Retailers. An excise tax of 25 percent of the sale price must be paid by each of the three categories of licensees at each step of the production, processing, and at retail. Sales tax is also imposed on the sale of marijuana and marijuana products. There are no statutory provisions explicitly addressing the taxation of retail sales of medical cannabis by collective gardens or medical cannabis dispensaries.

Zoning Limitations for Marijuana Businesses. LCB is prohibited from issuing a license to any prospective producer, processor, or retailer whose business premises are located within 1000 feet of the perimeter of the grounds of any of the following facilities: elementary or secondary schools; playgrounds; recreation centers or facilities; child care centers; public parks; public transit centers; libraries; and any game arcade, admission to which is not restricted to persons 21 years of age or older. Federal law imposes additional penalties on the distribution of controlled substances within 1000 feet of an elementary or secondary school, college, playground, or public housing facility. The same additional penalties are imposed for distribution within 100 feet of a youth center, swimming pool, or video arcade.

Residency Requirements for Applicants for Marijuana Licenses. Currently, a person is required to have established state residency of three months to apply for a marijuana producer, processor, or retailer license.

Public Use of Marijuana. It is unlawful to consume or open a package containing marijuana or marijuana products in view of the general public.

Marijuana Product Advertising Limitations. Marijuana retailers are subject to specified restrictions regarding the advertising of marijuana and marijuana-based products. Included in these regulations is a blanket prohibition barring any advertising in the following locations: Within 1000 feet of school grounds, playgrounds, recreation centers, child care centers, public parks, libraries, or specified types of game arcades; on or in a public transit vehicle or public transit shelter; or on publicly-owned property.

Transport and Delivery of Recreational Marijuana by Third-Party Carriers. Transportation and delivery of marijuana and marijuana products may be done only by the employees of a producer, processor, or retailer.

Dedicated Marijuana Fund. I-502 created a "dedicated marijuana fund" deposited with the State Treasurer that consists of monies derived from marijuana excise taxes, license fees, penalties, forfeitures, and all other monies, income, or revenue received by LCB from marijuana-related activities. Proceeds from the fund must be distributed every three months by LCB to specified public entities and in amounts established in statute. Among the distributions is \$5 million annually for LCB to administer the legal marijuana system.

Life Sciences Discovery Fund. In 2005 the Life Sciences Discovery Fund (LSDF) was created to promote life science research in Washington. The LSDF is managed by the LSDF Authority and governed by a board consisting of legislators and persons appointed by the Governor. The LSDF Authority solicits and reviews grant applications.

Tribal-State Compacts. Where authorized by statute, the Governor may enter into compacts with the Indian tribes regarding matters of mutual interest and/or concern. Many state and tribal compacts have been implemented including the areas of gaming, cigarette taxes, and gasoline taxes.

Local Prohibitions and State Preemption. Many cities and counties throughout the state have enacted ordinances that have the effect of prohibiting the siting of licensed marijuana producers, processors, and retailers within their borders. Other cities and counties have enacted special zoning ordinances limiting the location of recreational marijuana businesses to certain areas or have proposed special licensing requirements. Several courts have ruled that state law does not preempt such actions by local governments. The Washington State Attorney General has published a formal opinion in January 2014 stating that state law does not preempt local ordinances that impose bans or moratoria regarding the siting of marijuana producers, processors, and retailers.

**Summary of Bill:** PART I - Intent and Tax Preference Performance Statement. A tax preference performance statement is provided for the Legislature's sales and use tax exemption for qualified medical marijuana patients. The Department of Revenue is required to provide a specific tax reporting line for marijuana retailers to include the amount of exempt sales on their tax return.

Part II - Marijuana Excise Tax, Exemptions, and Distribution of Revenues. *Taxes.* The 25 percent marijuana excise taxes on marijuana producers and processors is eliminated. The marijuana retail excise tax is raised from 25 percent to 30 percent and modified by specifically imposing the tax on the buyer of any marijuana product subject to the excise tax. The excise tax is in addition to state retail sales and use tax and must be separately itemized on the sales receipt provided to consumers. The displayed shelf price must illustrate the final price to the consumer, including the marijuana excise tax, but does not need to include the general retail sales tax.

*Tax Exemptions.* A sales and use tax exemption is provided for qualifying patients holding a recognition card. Designated providers of qualifying patients are also exempt from retail sales tax when purchasing for a qualifying patient. Exempt products include those identified by the Department of Health (DOH) as beneficial for medical use, products with low THC, low-THC/high CBD ratio products identified as beneficial by DOH, topicals with low-THC, and products provided by a cooperative to its member.

*Collection.* LCB is granted additional authority to collect and administer the marijuana excise tax. This includes the opportunity for persons who have been issued a notice of unpaid marijuana excise taxes, which are trust fund taxes. Trust fund taxes are defined as those taxes collected from the buyer and held in trust by the seller until remitted to the state and includes the 30 percent marijuana retail excise tax.

*LCB Reports.* LCB must report to legislative committees every two years until 2025 regarding the appropriate marijuana tax levels, changes in tax collection and retail sales, number of licensees, number of illegal outlets, sales and tax collections in the state of Oregon, and amount of sales and use tax exemptions provided for qualifying patients.

*Distribution of Excise Tax Revenue - State.* Funds appropriated to LCB must be not less than, instead of not exceeding, \$1,250,000.

An appropriation of \$95,000 for the 2016 fiscal year is made to the Department of Enterprise Services for the State Building Code Council to develop fire & building code regulations for marijuana facilities.

DSHS's appropriation may be used for additional purposes including mental health for children and youth, and services to pregnant and parenting women. DSHS's appropriation must be \$28,314,000 for the 2016 fiscal year and increase by rate of population growth plus the implicit price deflator each year thereafter.

DOH's appropriation must be \$9,750,000 for the 2016 fiscal year and increase with growth factors thereafter. The Poison Control Center is also added as a beneficiary of the appropriation.

After appropriations, the Treasurer transfers the balance to the general fund unless fiscal year tax collections exceed \$25 million, in which case local government distributions are made (see below).

*Distribution of Excise Tax Revenue - Local Governments.* If fiscal year tax collections exceed \$25 million, thereafter 30 percent of previous year's revenue is distributed to eligible counties, cities, and towns to a maximum of \$20 million per year until January 1, 2022.

Each county receives the ratable share of the taxable marijuana sales in the county, including the cities' sales within the county. Of the monies disbursed, 30 percent of the total goes to counties, cities, and towns based on the proportional amount of retail sales of marijuana within the individual jurisdiction.

The remaining 70 percent is disbursed to counties, cities, and towns ratably on a per capita basis as follows: counties will receive 60 percent of this amount, based on total county population, and cities will receive the remaining 40 percent on a per capita basis.

Any jurisdiction that prohibits the siting of a marijuana business is prohibited from receiving a local distribution. All distributions to local jurisdictions expire on January 1, 2022.

*The Joint Legislative Audit and Review Committee (JLARC) Report.* JLARC must report on the incremental cost of legalization of marijuana on local jurisdictions by January 31, 2021. Specified areas of data analysis are provided. Counties and cities with a population over 20,000 and receiving more than \$10,000 in marijuana excise tax revenue must report to JLARC annually starting January 31, 2016, until January 31, 2020.

*Marijuana Retailer Signage and Product Displays.* Marijuana retailers may only display two signs for purposes of identifying their business or trade name. Signs cannot be posted within

1000 feet of an elementary or secondary school or a playground. The 1000 foot advertising ban is expanded to include research facilities and marijuana concentrates. Marijuana retailers are no longer required to ensure that product in the store is not visible from a public right-of-way.

PART III - Marijuana Business: Buffers & License Residency. *Local Government Buffer Zones.* The legislative authority of a county, city, or town is permitted to reduce the buffer requirements for licensed marijuana businesses from 1000 feet to 100 feet from recreation centers, child care centers, public parks, public transit centers, libraries, and certain game arcades. However, the 1000-foot buffer requirement for schools and playgrounds is maintained.

In order to reduce the buffer requirement, a county, city, or town must pass an ordinance declaring that the reduction will not negatively impact the jurisdiction's law enforcement efforts, public safety, or public health.

A local government may reduce the buffer to 100 feet for a research facility if there are no negative impacts as outlined above. If a research facility is within 1000 feet of a school or playground, the facility must exceed other licensees' security standards, be inaccessible to the public, have no operations in view of the general public, and bear no advertising indicating the nature of the facility.

LCB may license premises with local government established buffers.

*Residency Requirements.* State residency requirements for those applying for a marijuana producer, processor, or retailer license are increased from three months to six months.

PART IV - Consumption of Marijuana in a Public Place. Consuming or opening a package containing marijuana or marijuana products in a public place is prohibited. "Public place" has the same definition as in liquor control statutes, except that consumption in state parks and on brewery and winery grounds is not permitted.

PART V - Transportation of Marijuana Products. A licensed marijuana producer, processor, or retailer may use the services of a common carrier to transport or deliver marijuana or marijuana products within the state. Common carriers delivering marijuana may use the state ferry system.

Delivery drivers are prohibited from carrying a firearm, unless: (1) they are authorized by LCB; (2) they hold an armed private security guard license; and (3) they comply with all LCB regulations. Security guards must be licensed as armed private security guards to be eligible to carry a firearm while transporting or delivering marijuana.

LCB must adopt rules on licensing of common carriers for transportation or delivery of marijuana and may set limits on the maximum amount of marijuana that may be moved at one time.

Possession of marijuana for transportation purposes, in amounts as may be set by the LCB, does not violate the legal possession limits.

It is not a crime to possess more than 40 grams of marijuana when the possession is authorized under the Controlled Substances Act (CSA).

PART VI - Funding for Marijuana Health Awareness Program. LCB is authorized to accept donations or grants from any source for the purpose of improving public awareness of the health risks associated with the use of marijuana by both youth and adults.

PART VII - Cannabis Health & Beauty Aid Exemption. Cannabis health and beauty aids are exempt from all regulations in the CSA pertaining to marijuana, marijuana concentrates, or marijuana-infused products. "Cannabis health and beauty aid" is defined to mean a product containing parts of the cannabis plant and which: (1) is intended for use only as a topical application to enhance appearance; (2) contains a tetrahydrocannabinol (THC) concentration of no more than 0.3 percent; (3) does not cross the blood-brain barrier; and (4) is not intended for consumption by humans or animals.

PART VIII - Signage Requirements for Prospective Licensees. Marijuana license applicants must post a public notice on the premises that are subject to a marijuana license. LCB must adopt rules to implement the notice provision and signage requirements. LCB must provide the sign to the applicant but may charge a fee.

PART IX - Marijuana-Infused Products & Concentrates. The term "marijuana concentrates" in the CSA is redefined to include all such concentrates having a THC concentration greater than 10 percent. The definition of "marijuana-infused products" in the CSA is revised to reduce the maximum allowable THC concentration in such products from 60 percent to 10 percent.

PART X - Marijuana Research Licenses. A marijuana research license is created allowing holders to produce, process, possess, and deliver marijuana for certain research purposes. Applications must include a project description which requires approval by the Life Sciences Discovery Fund Authority (LSDF) before a license is issued. Licensees may sell marijuana to other research licensees. The application fee is \$250. Fifty percent of the \$1000 annual license fee goes to the LSDF.

The University of Washington and Washington State University may contract with marijuana research licensees to conduct permitted research and may also contract for research with an entity licensed by a federally recognized tribe located within the state. Contracts with tribes are excluded from review by the LSDF.

The LSDF is authorized to review and approve or deny marijuana research license applications. The LSDF can review research reports and determine whether the project continues to meet the research qualifications. Marijuana research reports with proprietary information are exempt under the Public Records Act.

LCB has authority to adopt rules regarding the research licenses.

PART XI - Dedicated Marijuana Account. The dedicated marijuana account is created in the State Treasury. Monies in the account must be appropriated before the distributions under Part II can be made.

PART XII - Agreements Between the Governor & Indian Tribes. The Governor is authorized to enter into agreements with Indian tribes concerning marijuana. The agreements may include such issues as enforcement, regulatory issues, research involving marijuana, taxation, and dispute resolution. The agreements must address public health and safety, security, and cross-border commerce issues.

Taxes, fees, assessments, and other charges do not apply to tribal commercial activities involving marijuana and which are covered by an agreement.

As permitted by a tribal-state agreement: state-licensed marijuana retailers are authorized to buy properly packaged and labeled marijuana and marijuana products; state-licensed marijuana processors are authorized to deliver, distribute, and sell marijuana and marijuana products; and state-licensed marijuana producers are authorized to deliver, distribute, and sell marijuana and marijuana products to and from tribes.

PART XIII - Preemption & Public Vote. A local jurisdiction may not enact or enforce a prohibition on the production, processing, researching, or retail sale of marijuana. A city, town, or county can prohibit marijuana businesses by public vote. A prohibition is put to a vote at a general election if: (1) a petition is signed by 30 percent of the registered voters or (2) a proposition submitted by the jurisdiction's legislative authority. A legislative authority of a city, county, or town may repeal a prohibition no less than two years after enacted.

PART XIV - Miscellaneous Provisions. *Labeling & Advertising Rules.* LCB may adopt rules on labeling and advertising for marijuana concentrates and cannabis health and beauty aids.

*Repealer.* The mandatory fines and community service provisions related to misdemeanor marijuana offenses are repealed.

*Liquor Control Board.* LCB is renamed the Liquor and Cannabis Board.

*Local Funding.* If funding of at least \$12 million – \$6 million per fiscal year for 2016 and 2017, in addition to the amounts required by the act, is not provided in the operating budget to local governments for marijuana enforcement, this section is null and void.

If the monies are disbursed, 30 percent of the total goes to counties, cities, and towns based on the proportional amount of retail sales of marijuana within the individual jurisdiction. The remaining 70 percent is disbursed to counties, cities, and towns ratably on a per capita basis as follows: counties will receive 60 percent of this amount, based on total county population, and cities will receive the remaining 40 percent on a per capita basis.

Any jurisdiction that prohibits the siting of a marijuana business is prohibited from receiving a local distribution.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

**Effective Date:** If Senate Bill 5052, as amended, is enacted into law by July 1, 2015: (1) Parts XII & XIII take effect in 90 days after adjournment; (2) Parts V and X take effect October 1, 2015; and (3) the remainder of the bill takes effect on July 1, 2015.