



Washington State Liquor and Cannabis Board

House Regulated Substances and Gaming Comm.

Development of Cannabis Policy and Regulation Since Passage of Initiative 502

Washington State Liquor and Cannabis Board (LCB)

January 19, 2023



WA Cannabis History Timeline

1998 -- Medical Cannabis Initiative (I-692)

- Created an affirmative defense to the violation of state laws relating to cannabis usage and possession for medicinal purposes.
- Qualifying patients or their designated primary caregivers may establish the defense if they possess only the amount of marijuana necessary for their personal use, up to a 60-day supply, and if they present valid documentation from a physician to law enforcement officers.

2011 -- Senate Bill 5073

- Established a regulatory system to license the production and distribution of cannabis intended for medicinal use.
- Many portions of the bill were vetoed because of concerns regarding potential federal prosecution of state employees involved with the system.
- The authorization for patient home grows and collective gardens was not vetoed, and that provision gave rise to the statewide expansion of an unregulated market.



WA Cannabis History Timeline

2012 -- Initiative 502

- Established a comprehensive regulatory structure for the licensing and taxation of cannabis production, processing and retail access.
- Authorized possession of cannabis for personal use for persons age 21 and older:
 - 1 ounce of useable cannabis;
 - 16 ounces of cannabis in solid form;
 - 72 ounces in liquid form;
 - 7 grams of cannabis concentrate.

2016 -- Alignment of Medical and Recreational Markets

- Per the 2015 Cannabis Patient Protection Act (SB 5052), the largely unregulated medical cannabis system aligns with the tightly regulated, state-licensed recreational market on July 1, 2016.
- Medical patients access the products that they want through multiple channels
 - Medically endorsed retail stores
 - Four-member co-ops registered with the LCB
 - Homegrown (authorized patients may grow a limited number of plants at home)



I-502 and Agency Objective

Public Safety

- Create a tightly controlled and regulated marijuana market

Agency Role and Responsibilities:

- Created a 3-tier regulatory system for marijuana
- Created licenses for producer, processor and retailer
- Enforcing laws and rules pertaining to licensees
- Collecting and distributing taxes/fees



Federal Enforcement Guidelines

In addition to Washington's laws and rules, the Department of Justice issued eight enforcement guidelines for marijuana businesses. These guidelines are separate from Washington's and are enforced at the discretion of the US Department of Justice.

Eight Guidelines

1. Preventing distribution to minors.
2. Preventing the revenue from going to criminal enterprises, gangs and cartels.
3. Preventing the diversion of marijuana from states where it is legal to other states.
4. Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity.
5. Preventing violence and the use of firearms in the cultivation and distribution of marijuana.
6. Preventing drugged driving and other adverse public health consequences associated with marijuana use.
7. Preventing the growing of marijuana on public lands and the environmental dangers posed by marijuana production on public lands.
8. Preventing marijuana possession or use on federal property.



Licenses Today

Wholesale

- 170 Producer
- 878 Producer Processor
- 236 Processor

Other

- 482 Retailer
- 10 Transportation

Cannabis Testing Labs

- 10 private labs

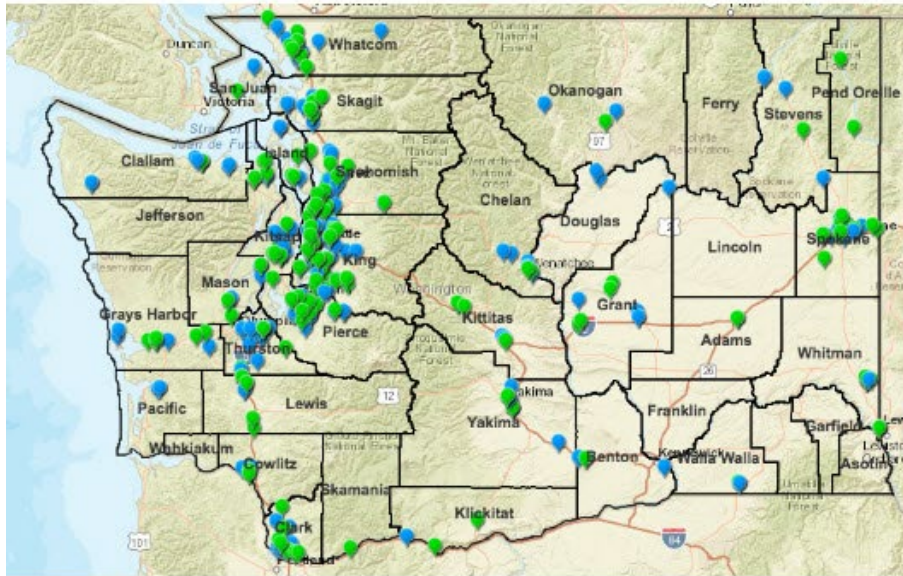
Suite of Tests

- | | |
|---|---|
| <ul style="list-style-type: none">• Moisture content• Foreign matter inspection• Mycotoxin screening• Residual solvent screening | <ul style="list-style-type: none">• Potency analysis;• Microbiological screening• Pesticide screening |
|---|---|

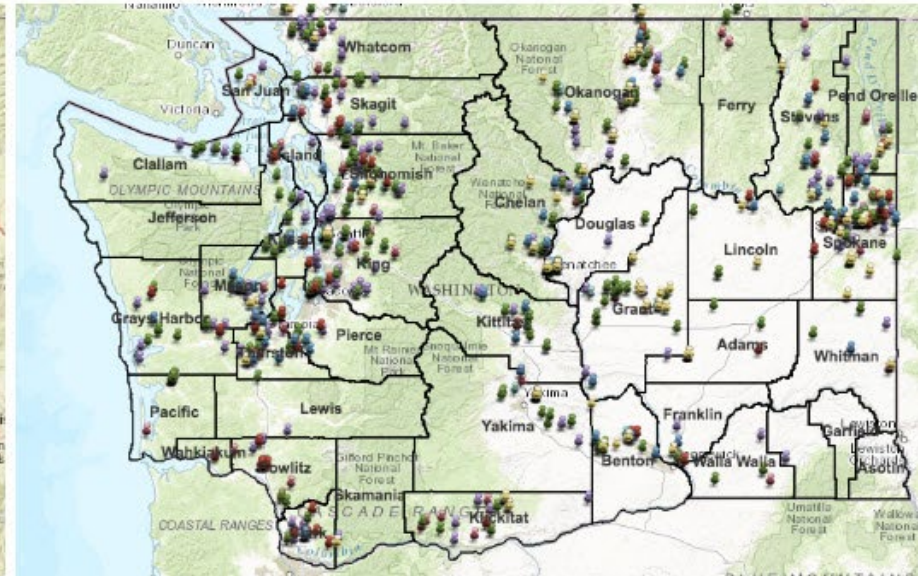


Licensed Locations Today

Retail Locations



Producers/Processors





Consumer Safety

Strict Packaging and Labeling Requirements

- Limited servings and concentration per package
 - Servings are individually wrapped
 - Homogenized to ensure uniform THC concentration
- Warning labels
- Net weight
- Usage warnings (specific warning for ingestible foods and/or liquids about effect delays)
- Upon request
 - Third party lab that tested lot and results



Consumer Safety

Cannabis edible products that have not been allowed



Cannabis-infused beverages that are similar or mimic an alcohol product



Cannabis-infused products and product names that are similar to products that are typically marketed to persons under twenty-one years of age

A cannabis processor may infuse food or drinks with cannabis, provided that:

- The product or products do not require cooking or baking by the consumer;
- The product and package design is not similar to commercially available products marketed for consumption by persons under 21 years of age, as defined by WAC 314.55.105 (1)(c).

Sample Label Mock Up

Warning - May be habit forming

Unlawful outside Washington State

It is illegal to operate a motor vehicle under the influence of cannabis

Caution: Intoxicating effects may be delayed by 2+ hours

INGREDIENTS: Capsule (Vegetable cellulose, water), Cannabis Oil Concentrate

VEGAN and GLUTEN FREE



SATIVA

100mg THC
10 servings, 10mg THC each



NET WEIGHT 0.16 OUNCES (4.5g)

Product Name Product Identity

Total cannabis: 100mg THC
 10mg THC per serving | serving = 1 capsule
 Producer / Processor:
 Two Leaf Cannabis 6021237456
 Extraction process - butane/propane
 Pesticide information visit:
www.TwoLeafCannabis.com



AB42103400020456



Consumer Safety

Product and Label Approval

- All cannabis infused products must be approved by LCB staff to determine if the product and/or packaging is especially appealing to children.

Lab Tested and Approved

- All lots tested by independent accredited labs
- Established and uniform testing standards

Store Signage and Product Warnings

- No minors allowed in stores
- Required product and usage signs within stores



Change in Excise Tax Structure

Transition to 37% Excise Tax Collected at Retail (2015)

- I-502 directed that excise tax be collected in a three-tier 25%/25%/25%/ tax structure.
 - Proved onerous and inefficient to submit and collect.
- The Legislature changed the tax structure, becoming effective 7/1/2015.
- Part of the intent of changing from the three-tier tax structure to only applying the tax on retail sales was to remain revenue neutral.
- The calculation to determine revenue neutrality was based on the Economic and Revenue Forecast Council's (ERFC) forecast at that time.
- At the time of the change, retail sales accounted for approximately 68% of all cannabis sales, including wholesale sales.
- Based on retail sales accounting for 68% of all sales, it was determined that the excise tax rate on retail sales would need to be 37% in order to maintain the same level of revenue forecasted by the ERFC as would be generated under the three-tier 25%/25%/25% tax structure.



Sales/Tax Activity

Retail Sales/Excise Tax (in millions)

<u>Fiscal Year</u>	<u>Retail Sales</u>	<u>Excise Tax</u>
• 2015	\$175.4	\$64.9
• 2016	\$501.9	\$185.7
• 2017	\$850.8	\$314.8
• 2018	\$978.4	\$362.0
• 2019	\$1,055.1	\$390.4
• 2020	\$1,268.1	\$469.2
• 2021	\$1,497.0	\$553.9
• 2022	\$1,380.0	\$510.6

*In addition, DOR collects Retail Sales and Business and Occupation taxes



Where the Money Goes

Estimated Net to Distribute		\$524,092,040	\$519,782,113
Agency	For	FY 22	FY 23
Dept. of Health	Cannabis education and public health program	\$10,538,000	\$10,562,000
University of Washington	Research on short- and long-term effects	\$243,000	\$243,000
Washington State University	Research on short- and long-term effects	\$138,000	\$138,000
WA Health Care Authority	Basic Health Trust Fund Account	\$262,046,020	\$259,891,057
	Contracts with community health centers; Prevention and reduction of substance abuse	\$52,304,000	\$52,975,000
Supt. of Public Instruction	Drop-out prevention	\$520,000	\$533,000
General Fund		\$198,303,020	\$195,440,057



Local Distributions

The distribution of cannabis excise tax revenue is made according to [RCW 69.50.540\(3\)\(c\)](#).

For FY 2023:

The legislature appropriated \$25,243,000 for distribution to local jurisdictions.

Two components of excise tax distribution:

1. Based on **sales** of cannabis products that occurred within the individual jurisdictions.
2. Based on **population** of the jurisdictions.





Excise Taxes by State

Tax Rates

Given that states tax cannabis differently (state vs. local, production vs. retail), it can be difficult to determine the effective tax rates in states with adult-use cannabis markets.

Washington's State Excise Tax is Highest

The states with the highest excise tax rates at retail are Washington (37%), Virginia (21%), Montana (20%), Oregon (17%), and Arizona (16%).

- Illinois taxes at multiple steps (distribution and retail), and adjusts the rate by potency; high THC products would be rates more similar to Washington, while low THC products would be less. New York's new adult-use market has some similarities to this approach.
- California taxes at multiple steps, and has both state and local taxes, which vary by the city a retailer is in.



Examples of Funded Activities

Health Care Authority – Substance abuse prevention and treatment

- Youth treatment services
- Support for and expansion of community- and school-based services
- Tribal prevention and treatment grants

Department of Health

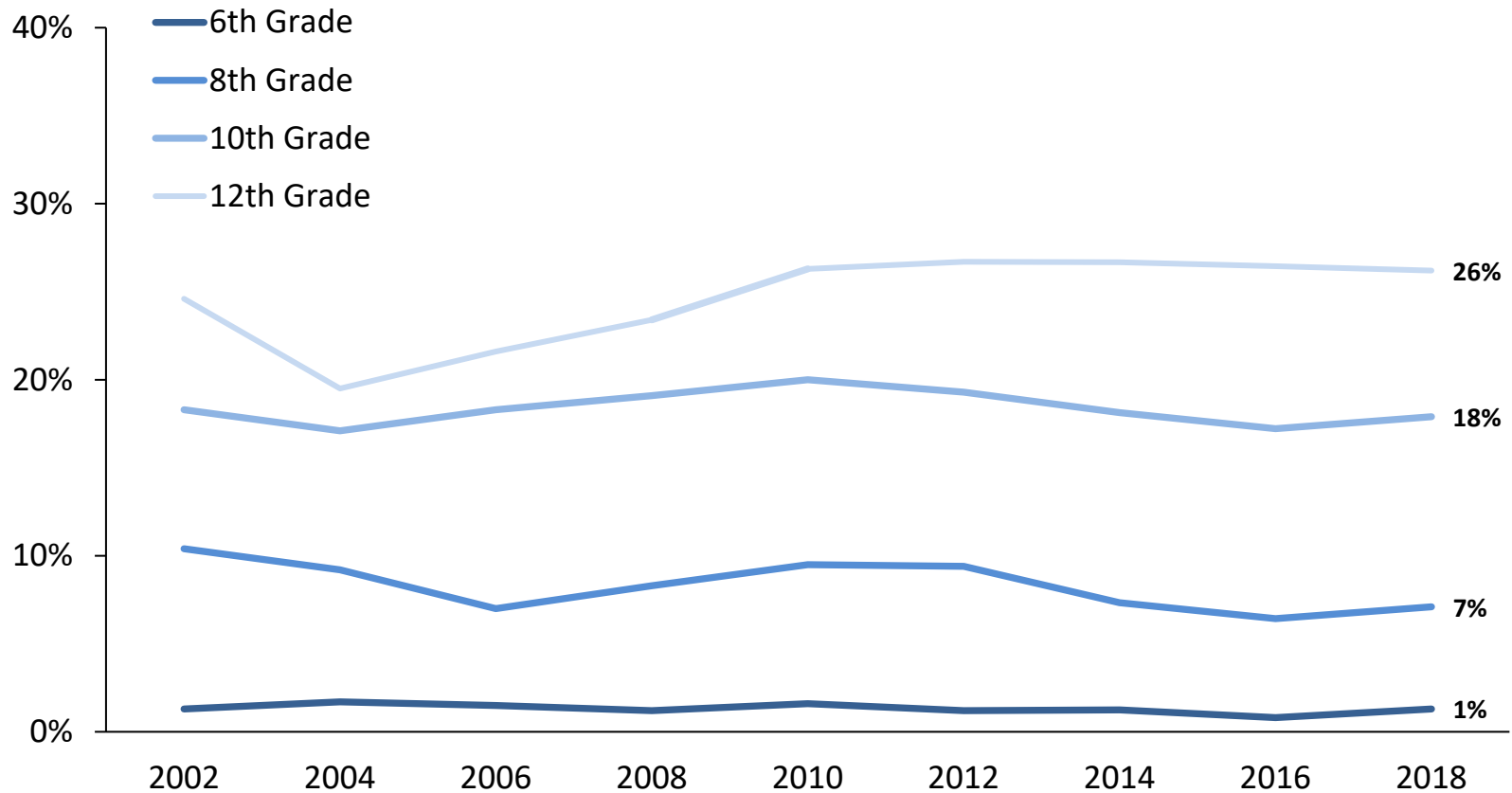
- Media-based education campaigns
- Cannabis and Tobacco community grants
 - General population and priority populations (African American, Latino/Hispanic, Asian/Pacific Islander, American Indian/Alaska Native, and LGBTQT)

Cannabis research at the UW and WSU





WA Healthy Youth Survey (HYS) Used cannabis during the past 30 days?





Teen Cannabis Use (HYS Data)

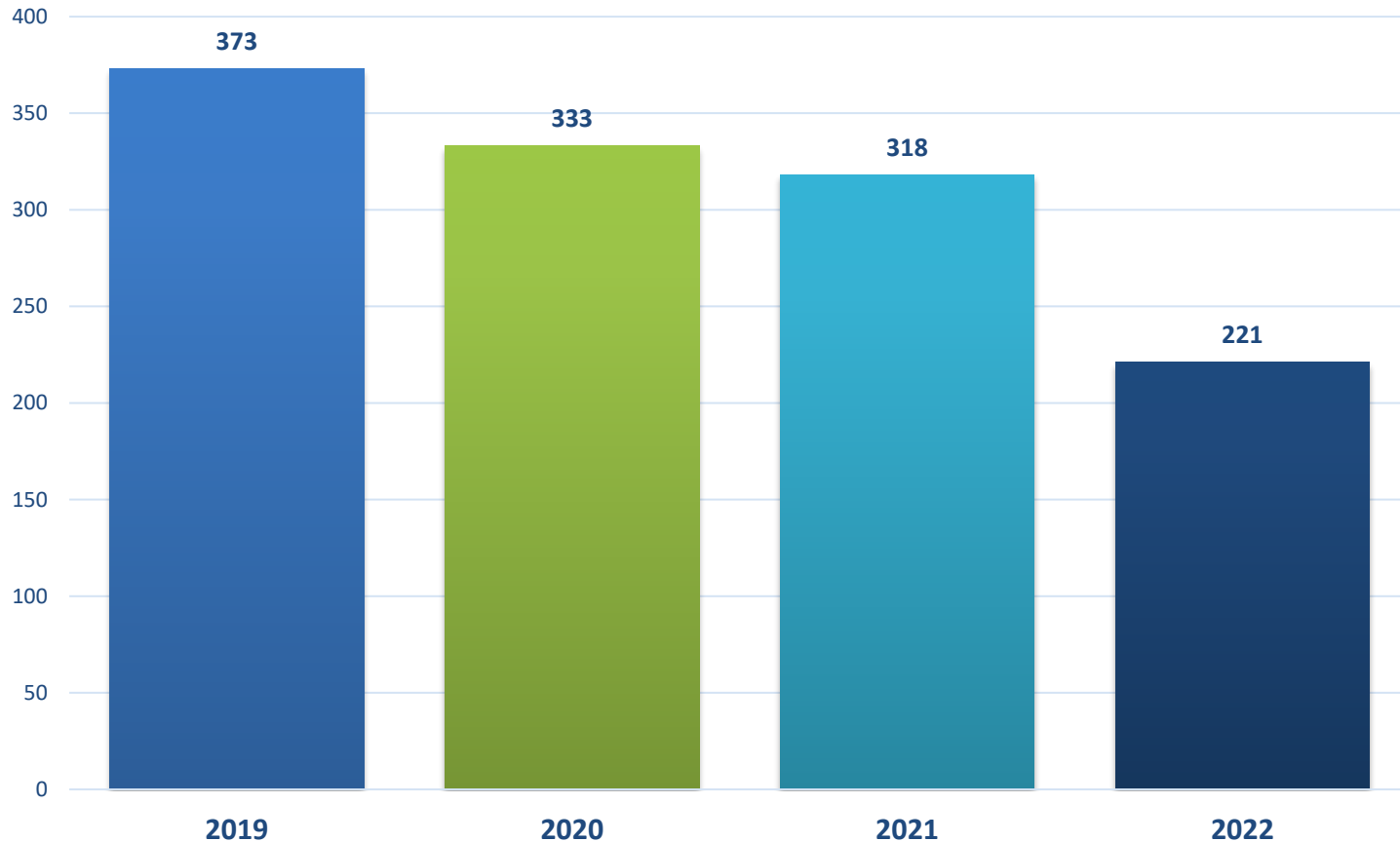
- 30-day marijuana use decreased from 2018 to 2021
 - 8th grade: 7% to 3%
 - 10th grade: 18% to 7%
 - 12th grade: 26% to 16%

Note:

- Prior to 2021, HYS occurred on a biannual basis on even years (i.e., 2014, 2016, 2018)
- Due to the COVID-19 pandemic, HYS 2020 was postponed to 2021
- HYS 2021 was the first online administration
- Given the context of the pandemic and the many changes it brought, we need to be careful when comparing to past years (trends)

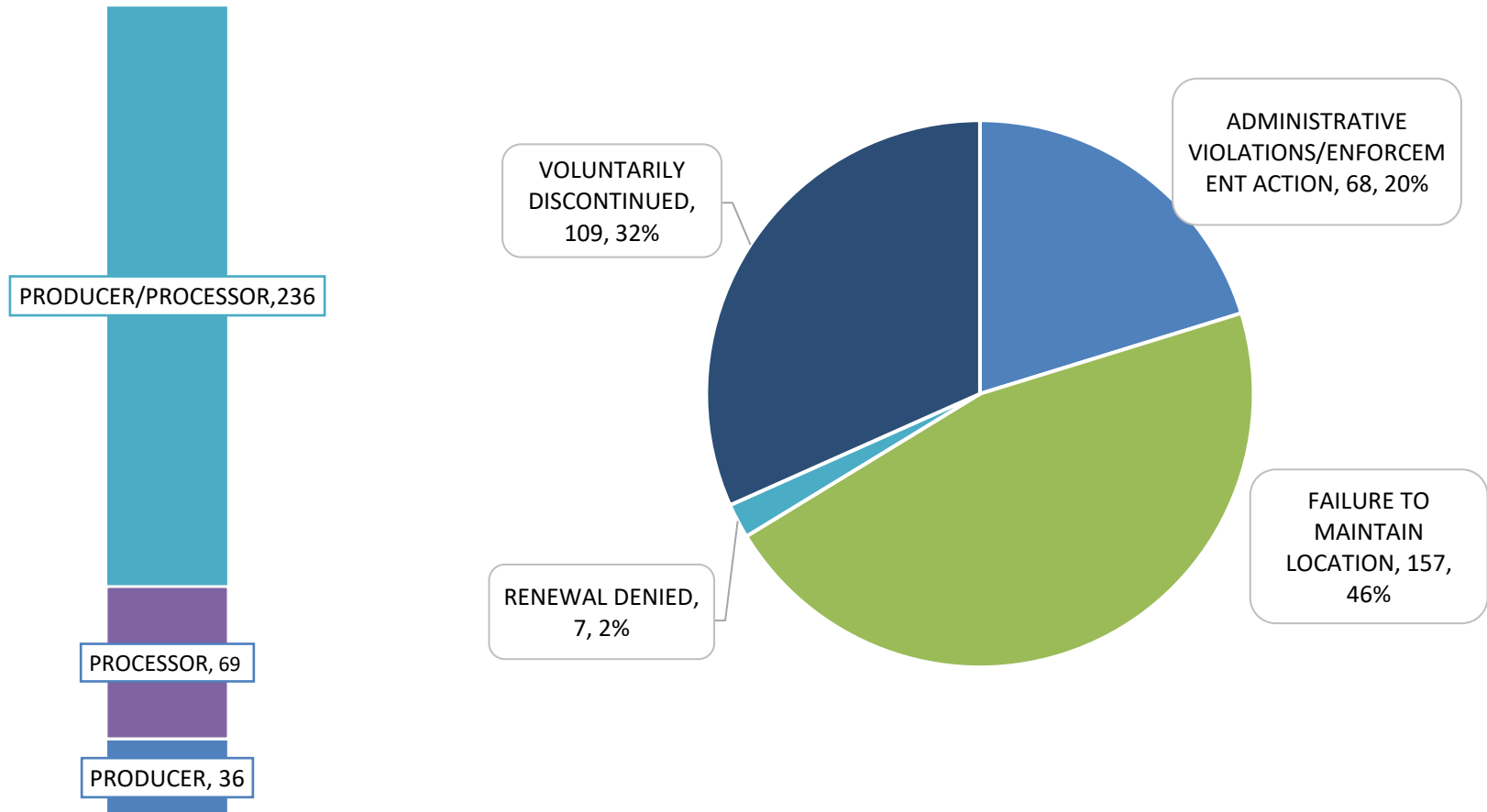


Cannabis License Ownership Changes





Discontinued Producer and Processors





SB 5318 (2019)

Background

- The 2019 legislative session included legislation (SB 5318) that strongly emphasized the LCB's focus to be on compliance and education rather than just enforcement (cannabis).
- Prior to end of 2019 session, LCB hired an independent, respected organization (Hillard Heintze) to review and report on all aspects of Enforcement operations, organizational structure and management.
- Without direct involvement from LCB staff, HH led:
 - Interviews with industry members
 - Interviews with cannabis and alcohol trade organizations
 - Two forums on each side of the state
 - Interviews with LCB staff
- In January 2020, HH released its final report with 18 recommendations



Hillard Heintze Review Themes

Three themes emerged in the HH recommendations:

1. Interpretations of agency decisions (rules, policies, etc.) are inconsistently communicated and applied internally and outside the agency;
2. A lack of transparency and understanding by stakeholders exists about agency decisions and interpretations; and
3. Stronger communication, education, and collaboration with the industry is needed to help them understand and comply with laws, rules and policy.



HH Recommendations Implementation

Board launched penalty rule changes Nov 2018

- Restructured penalties around violation severity and relationship to public health and safety (rather than five categories of violation)

Focus on compliance education, lessening severity of penalties

- Fines cut by half or more
- Cumulative impact of past violations reduced to 2 years, instead of 3 (Aligns with alcohol rules)
- Significantly reduced number of violations that could lead to cancellation
- Provided a deferral option
- Balanced and better aligned penalties across license type
- Incorporated provisions of SB 5318, such as “Notice of Correction”
- Established Voluntary Consultation and Education Program



HH Recommendations Implementation

Implementation completed by early 2021

(report offered 10 key findings, 18 recommendations)

- Created Compliance Consultant role to help educate licensees
- Compliance consultants do not carry firearms
- Presentation of staff altered (badges, apparel, etc.)
- All officer position descriptions revised to emphasize education
- Training expanded focusing on education, de-escalation
- Investigation of complaints policy revamped, now led by HR, with AG & Union partnership; and H/H guidance



HH Recommendations Implementation

- Re-Organization forms new Legal and Policy Team
 - Rules, Policy and External Relations focus
 - Expanded rules staff
 - Directed by Justin Nordhorn
- Program started to offer Interpretive and Policy Statements
 - Provides licensees with a one-stop repository of policy statements and interpretations of statute, rule, or both
 - Focuses on consistency to support licensee compliance and success
 - Cross-divisional team examines questions brought by licensees and LCB staff
 - Example project: CBD sales in licensed I-502 stores



HH Recommendations Implementation

Implementation completed in 2021

- New Enforcement and Education Division Director
- Outreach and engagement with licensees of all industries
- Communication to staff via weekly Director's message
- Director visits to regional offices
- Regular communication with AAG
- Regular meetings between Enforcement and Education leadership and other Divisional leadership



HH Recommendations Implementation

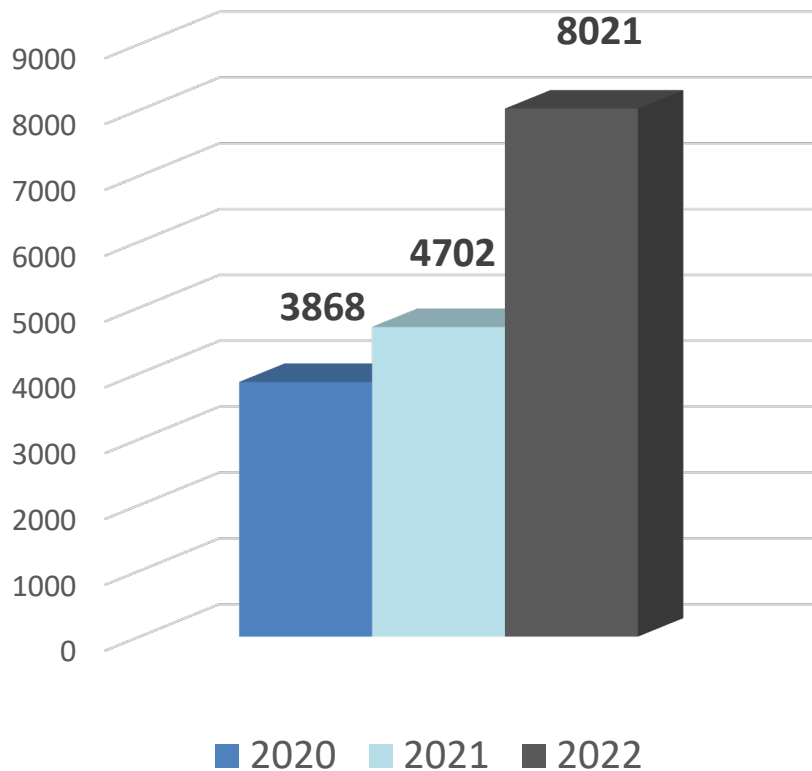
Implementation completed in 2022

- Division strategic plan to include mission and vision statements with focus on public safety and education
- All staff education on Division mission and strategic plan
- Communication to staff via monthly newsletter
- Cannabis retail safety education and support
- Participation in industry association meetings
- Participation in Systems Modernization Project
- Regular data updates to the Executive Management Team and the Board
- Re-defined results and success measures
- Re-defined division decision making authorities

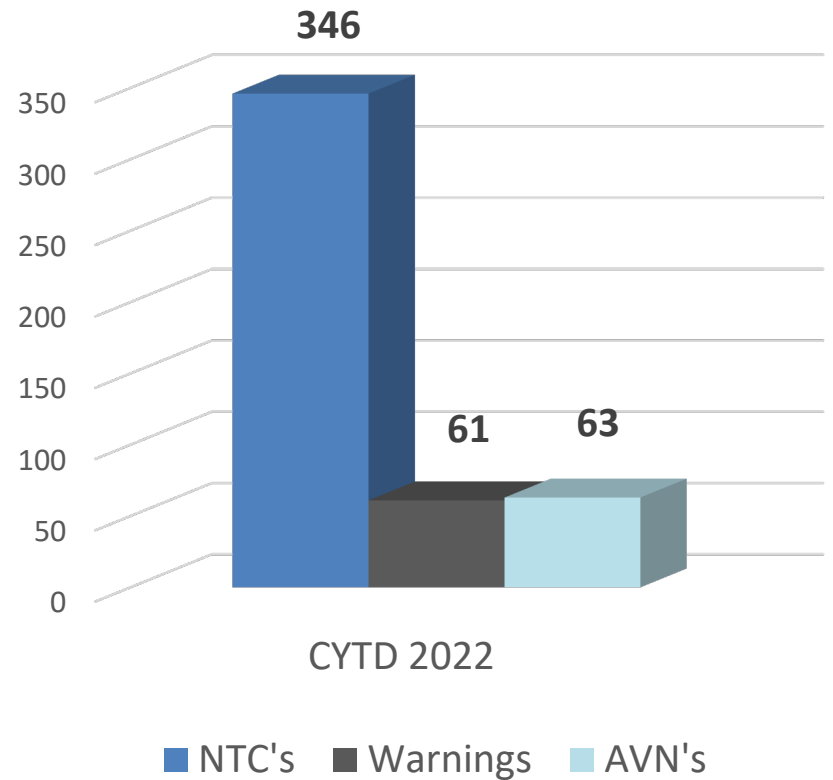


Cannabis Education, Violations & NTC's Breakdown

Education Contacts Year to date



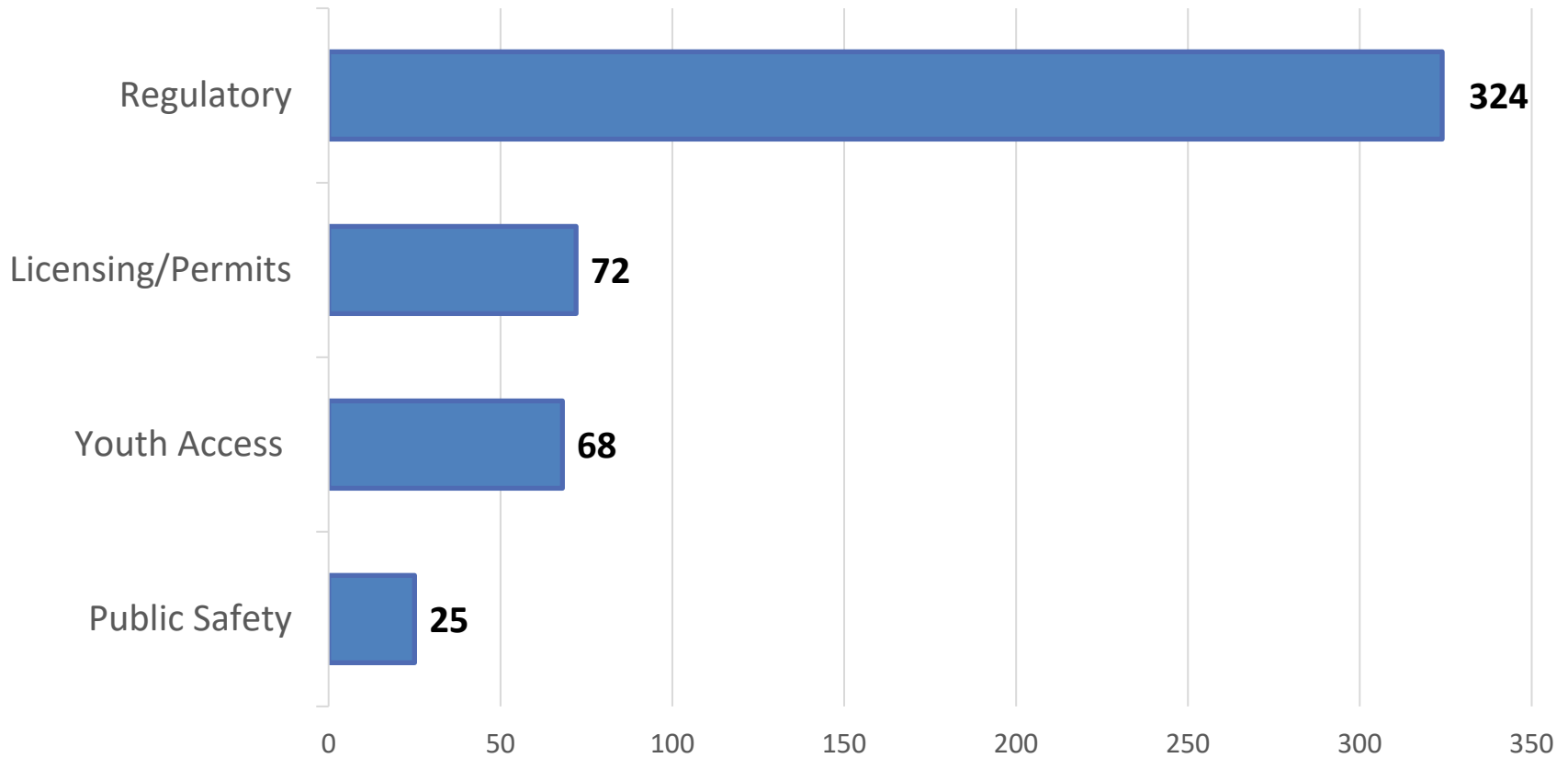
NTC's and Violations





December Cannabis Education Topics

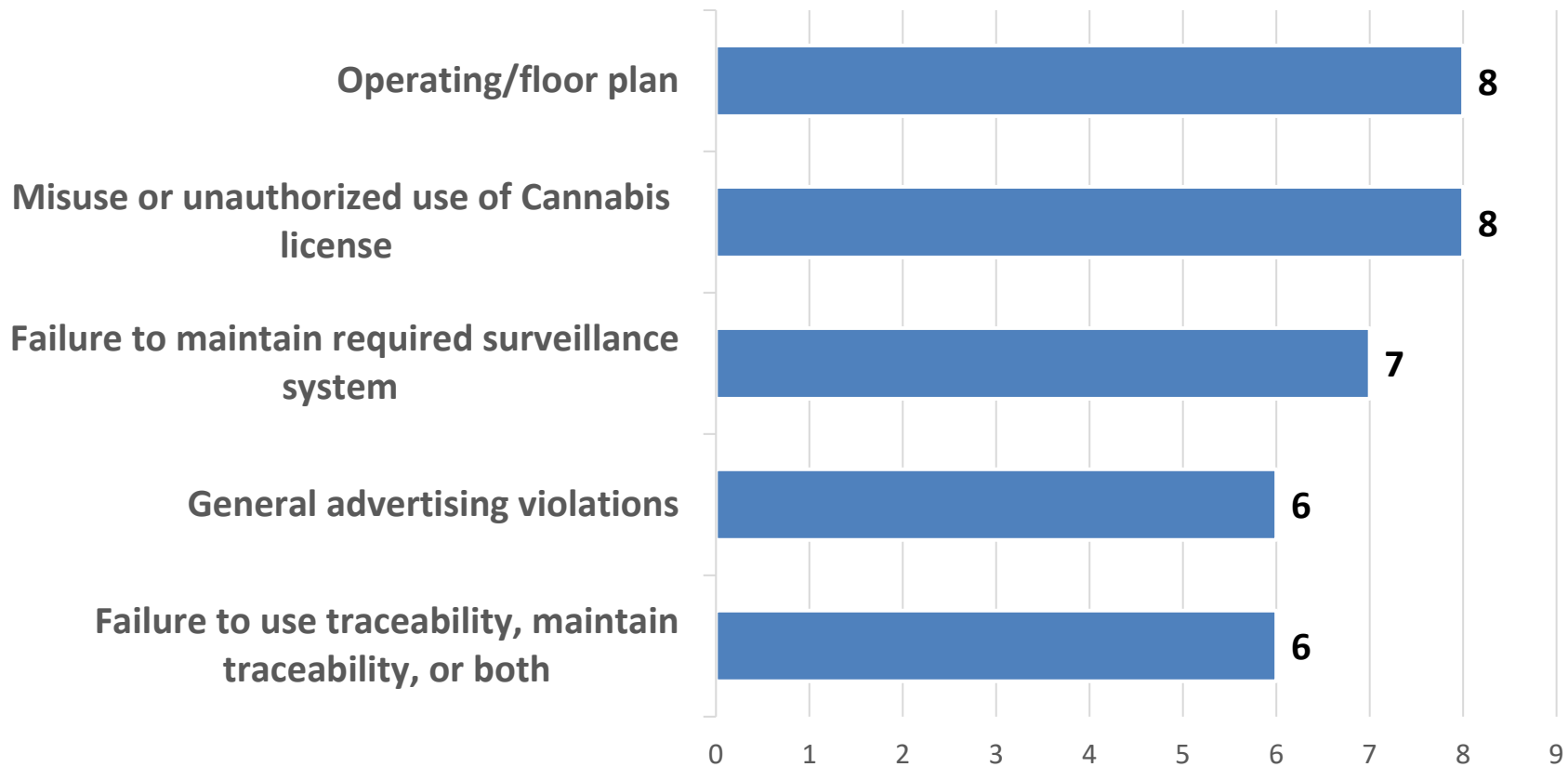
Top 5 Topics





Notice to Correct December 2022

Top 5 Topics





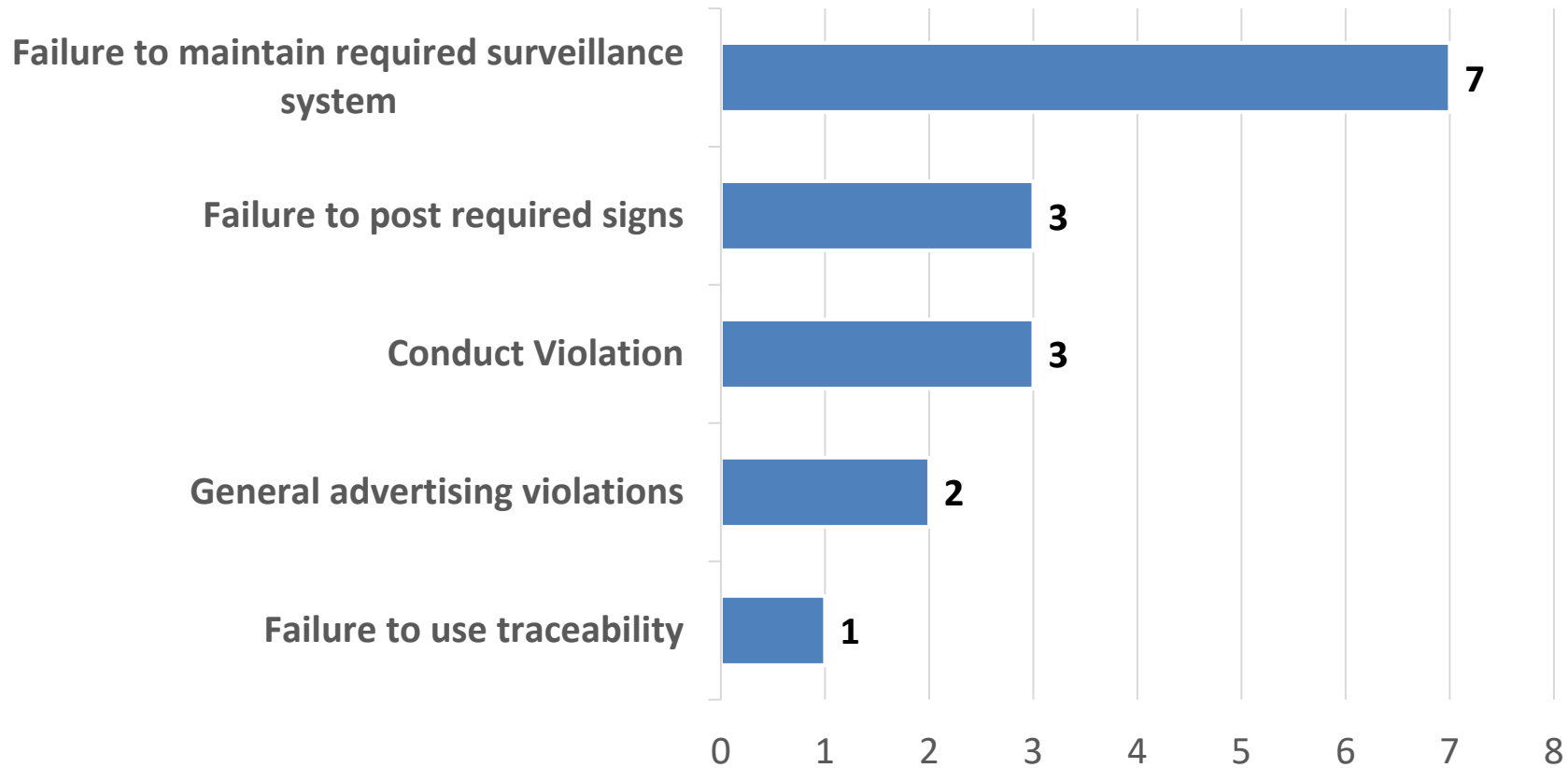
Cannabis AVN and Warning Topics Dec 2022

- No warnings were given in December
- 2 AVN's were issued in December. Both for sale of cannabis to persons under 21.



Cannabis Warning Topics 1st Half 2022

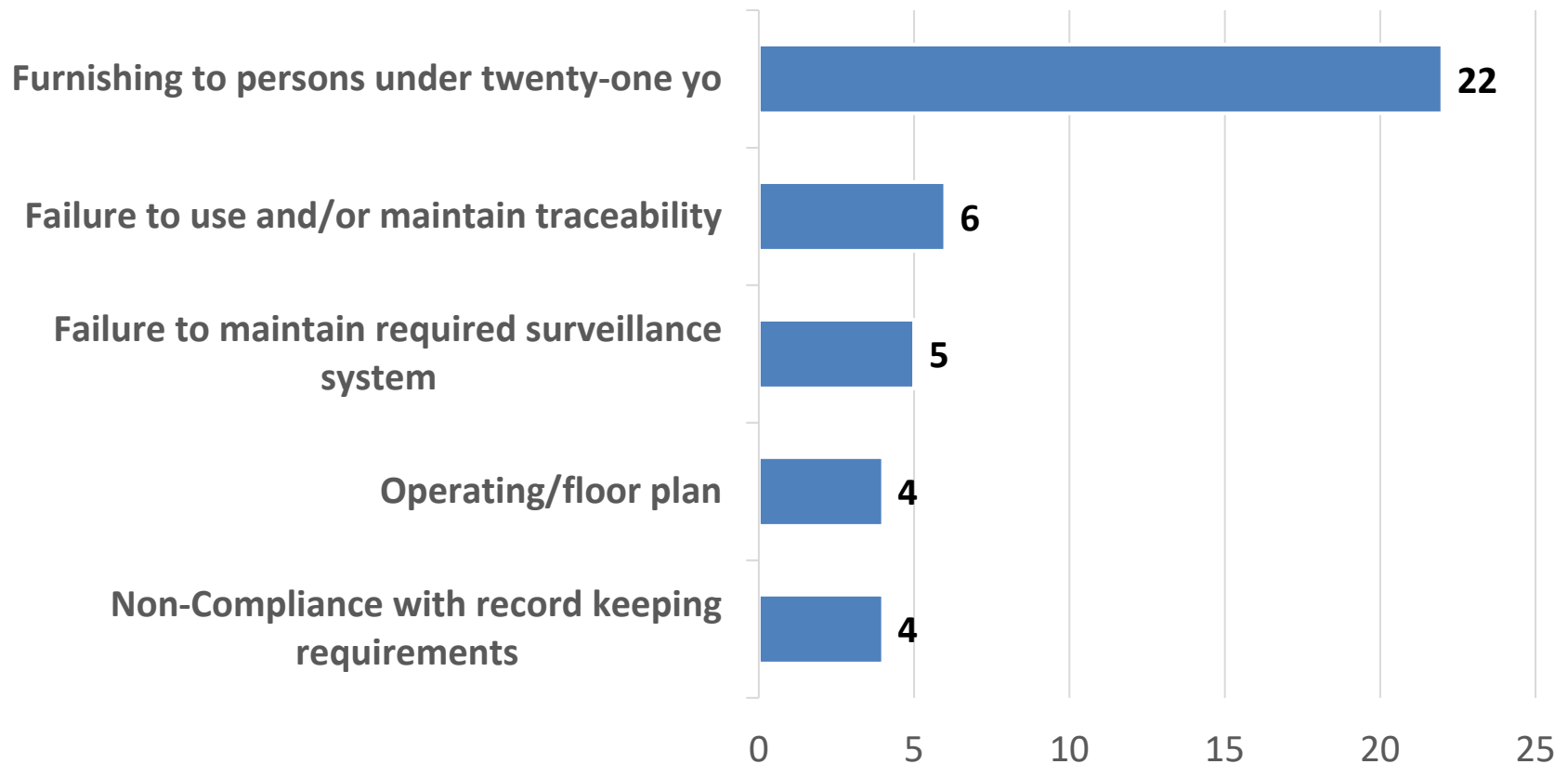
Top 5 Topics





Cannabis AVN Topics 1st Half 2022

Top 5 Topics





HH Recommendations Implementation

Implementation planned for 2023 and beyond

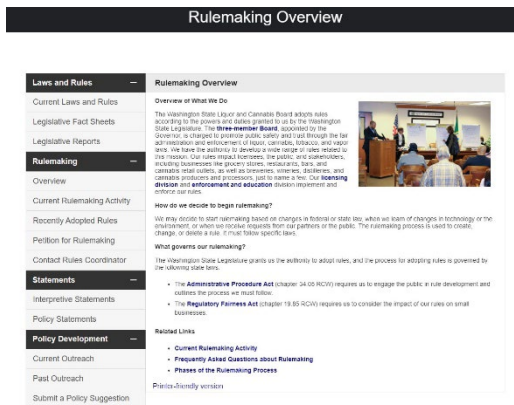
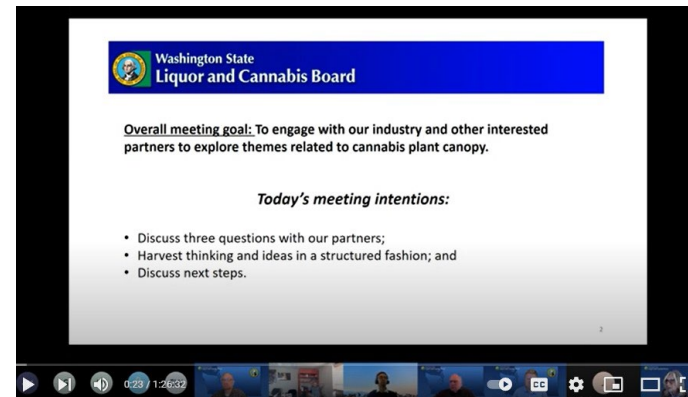
- Division Education Program implementation
- Establish education targets
- Use stakeholder feedback to create education
- Develop mentorship program
- Succession planning
- Director and Deputy Chief visits to regional offices
- Participation in Systems Modernization Project



Stakeholder Engagement Strategies

Rule development stakeholder strategies:

- Listen & Learn
- Deliberative Dialogue
- World Café
- Enhanced, interactive rule development webpage



Washington State
Liquor and Cannabis Board

**LISTEN +
LEARN
FORUM**

Mitigation and Phase-in
Strategies for MJ Quality
Assurance Testing

AUGUST 22

1:00 - 4:00
Headquarters Boardroom
1025 Union Ave. SE
Olympia

OR

via Webinar:
bit.ly/MJTestWebby



Stakeholder Engagement Strategies

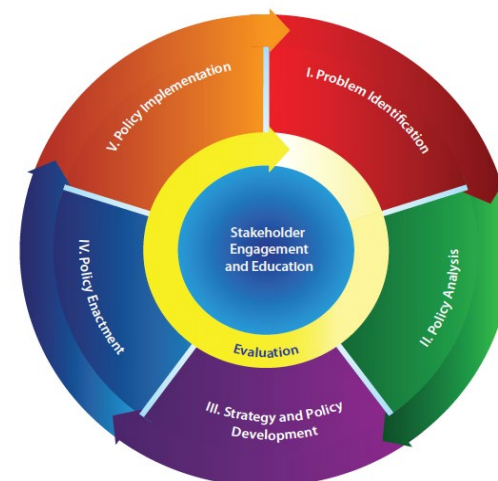
Policy development stakeholder strategies:

- Interpretive & Policy Statement Program
- Deliberative dialogue
- Specialized workgroups and panels
- Enhanced, interactive webpage

Policy Suggestions

<p>Laws and Rules —</p> <ul style="list-style-type: none"> Current Laws and Rules Legislative Fact Sheets Legislative Reports <p>Rulemaking —</p> <ul style="list-style-type: none"> Overview Current Rulemaking Activity Recently Adopted Rules Petition for Rulemaking Contact Rules Coordinator <p>Statements —</p> <ul style="list-style-type: none"> Interpretive Statements Policy Statements <p>Policy Development —</p> <ul style="list-style-type: none"> Current Outreach Past Outreach Submit a Policy Suggestion 	<p>Policy Suggestions</p> <p>The LCB is dedicated to engaging with stakeholders, including panel members, consumer advocacy groups, and interested members of the public. Please send your suggestions and ideas for policy development concepts that you would like the LCB to consider.</p> <p>If you would like a response from us, please include your contact information. After clicking on the provide below, you will have the option to send your suggestions.</p> <p>As an alternative, you can submit your suggestions via email directly to policy@suggestions.wa.gov.</p> <p>View details for suggestions sent. Please do not use this form to submit petitions for rulemaking.</p> <p>Start: <input type="text"/> End: <input type="text"/> Complete: <input type="text"/></p> <p>Name (optional): <input type="text"/></p> <p>Phone (optional): <input type="text"/></p> <p>E-mail (optional): <input type="text"/></p> <p>Suggestions*: <input type="text"/></p> <p><small>CAPTCHA</small> This question is for testing whether you are a human visitor and to prevent automated spam submissions.</p> <p>What code is in this image? <input type="text"/></p> <p><small>Don't see the code you're looking for?</small></p>
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FIGURE 1: POLICY PROCESS





THC Proposal

Purpose

This proposal aims to better define products containing any type of THC, whether from hemp or cannabis, and create age restrictions for products defined as cannabis. The proposal also aims to provide clarity to businesses in the open market on what products are legal to sell.

Proposal

- Create a threshold, similar to alcohol, to identify products that are age restricted and regulated.
- Clearly identify any sales of regulated product requires a license issued by the board.



THC Proposal

Details

- Amends “THC concentration” definition to include all THC and not just delta-9 THC
- Identifies any product containing THC exceeding 1mg per unit and 3mg per package is only allowed to be sold with a cannabis license (exception: health and beauty aides).
- Creates a definition of “hemp consumable” to provide consistency between titles 15 and 69.50 RCW
- Provides a labeling requirement disclosing the presence of any synthetically derived CBD



Social Equity Proposal

Purpose

This proposal aims to improve the flexibility and effectiveness of the current social equity in cannabis program and to expand that program.

Proposal

- Increase the number of social equity licenses
- Flexibility in establishing a retail location
- Incorporates social equity priorities beyond a limited number of licenses
- Ensure social equity remains intact for success



Social Equity Proposal

Details

- Board may increase the number of licenses based on:
 - Recent census data available
 - Annual Population estimates from OFM
- Initial license may be located anywhere in the state
 - Once established it cannot be moved
 - Subject to local control
 - Current rule only allows for location by county
- 51% social equity ownership for minimum five-years
- Voluntary Social Equity Plan
- Reimbursement of renewal fee one time for one of a licensee's stores
 - Incorporates social equity priorities beyond a limited number of licenses
 - Current licensees will need to meet the same requirements as social equity applicants, related to the social equity plan, to qualify for the reimbursement.



Subpoena Proposal

Purpose

This proposal aims to improve alignment of regulatory approaches for cannabis with other regulated products.

Proposal and Details

- Current law provides the board subpoena authority for books, records, and documents for all regulated licensees, except cannabis
- The LCB proposal adds cannabis statutes to RCW 66.08.145
- This supports administrative investigations, hearings, or proceedings related to licenses and permits issued by the board.