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**SECOND SUBSTITUTE HOUSE BILL 2870**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** House Appropriations (originally sponsored by Representatives Pettigrew and Ryu; by request of Liquor and Cannabis Board)

AN ACT Relating to allowing additional marijuana retail licenses for social equity purposes; amending RCW 69.50.540; adding new sections to chapter 69.50 RCW; adding a new section to chapter 43.330 RCW; creating a new section; and providing an expiration date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  (1) The legislature finds that the history of marijuana prohibition enforcement has created disproportionate impacts, with the greatest harm falling upon communities of color. For example, national data indicate that while African Americans and white Americans have similar marijuana usage rates, African Americans have been arrested at four times the rate of white Americans. Data for Washington state also show disproportionate impacts across racial and ethnic lines from marijuana prohibition enforcement. As a further example, Latino and Native American Washingtonians were arrested for marijuana possession 1.6 times more often than white residents between 2000 and 2010. Even after Washington voters legalized marijuana possession and use for adults, disproportionate impacts continued, with arrests of African Americans in Washington for possession remaining more than twice the arrest rate for white residents, according to Washington State University research.

(2) General prohibition of marijuana possession and use by adults in Washington ended when state voters enacted Initiative Measure No. 502 in 2012. When the state created a system for legal marijuana production and retail sale, it was one of the first governmental jurisdictions to face the challenge of creating a regulatory structure for a controlled substance long-banned as an illegal and dangerous drug. Social equity considerations were not fully considered in licensing criteria for the newly created adult use marijuana industry. Subsequently concerns have been widely expressed about the absence of social equity in Washington's marijuana industry.

(3) The legislature finds that social equity with respect to marijuana requires not merely the elimination of legal prohibitions, but also economic opportunities particularly for residents who come from communities disproportionately impacted by historical marijuana prohibition. The legislature intends that the marijuana industry be reflective of the diverse population of the state and that it provides economic opportunities for all communities while addressing disproportionate impacts from prohibition. The legislature therefore intends to establish a legislative task force on marijuana social equity and make available currently unused licenses and provide recommendations on providing new opportunities for marijuana retail licenses to create a more diverse industry that reflects Washington's social equity values.

NEW SECTION. **Sec.**  A new section is added to chapter 69.50 RCW to read as follows:

(1) Until July 1, 2028, marijuana retailer licenses that have been subject to forfeiture, revocation, or cancellation by the board, or marijuana retailer licenses that were not previously issued by the board but could have been issued without exceeding the limit on the statewide number of marijuana retailer licenses established in rule by the board, may be issued or reissued to an applicant who meets the marijuana retailer license requirements of this chapter.

(2)(a) In order to be considered for a retail license under subsection (1) of this section, applicants must submit a social equity plan provided by the commission on African American affairs along with other board marijuana retailer license requirements to the relevant city, town, or county.

(b) Persons holding an existing marijuana retailer license or title certificate for a marijuana retailer business in a local jurisdiction subject to a ban or moratorium on marijuana retail businesses may apply for a license under this section.

(3)(a) In determining the issuance of a license among applicants, the board must give priority to those social equity applicants who represent a race or gender that has experienced some form of discrimination due to passive participation in a system of racial exclusion under the judicial test of strict scrutiny. These applicants must come from a city, town, or county with a history of disparate impact. It may also prioritize applicants based on the extent to which the application addresses the items required by the social equity plan.

(b) The board may deny any application forwarded under this subsection if the board determines that:

(i) The application does not meet social equity goals or does not meet social equity plan requirements;

(ii) The application does not otherwise meet the licensing requirements of this chapter; or

(iii) Additional marijuana retailer licenses are not needed to meet social equity goals in that city, town, or county.

(4) The board may adopt rules to implement this section. Rules may include strategies for receiving advice on the social equity plan from communities the plan is intended to benefit. Rules may also require that licenses awarded under this section be transferred or sold only to individuals or groups of individuals who comply with the requirements for initial licensure in the social equity plan under this section.

(5) For the purposes of this section:

(a) "Social equity applicant" means:

(i) An applicant who has at least fifty-one percent ownership and control by one or more individuals who have resided for at least five of the preceding ten years in a disproportionately impacted area; or

(ii) An applicant who has at least fifty-one percent ownership and control by at least one individual who has been convicted of a misdemeanor marijuana offense that is eligible for a vacation of the applicant's record of conviction for the misdemeanor marijuana offense under RCW 9.96.060, or is a family member of an individual impacted under this subsection.

(b) "Social equity goals" means:

(i) Increasing the number of marijuana retailer licenses held by people of color, especially those from communities that are underrepresented in the marijuana industry and whose communities have suffered a disproportionate number of marijuana arrests beginning January 1, 1988; and

(ii) Reducing disproportionate impacts from the historical application and enforcement of marijuana prohibition laws.

(c) "Social equity plan" means a plan put forth by the Washington state commission on African American affairs whose powers and duties are inclusive of, but not limited to, advising the governor and state agencies on the development and implementation of policies, plans, and programs that relate to the special needs of African Americans. If the application proposes ownership by more than one person, then at least fifty-one percent of the proposed ownership structure must reflect membership in communities of color. The plan must include:

(i) A statement that the social equity applicant belongs to one or more communities of color and intends to own at least fifty-one percent of the proposed marijuana retail business or applicants representing at least fifty-one percent of the ownership of the proposed business belong to one or more communities of color;

(ii) How issuing a marijuana retail license to the social equity applicant will meet social equity goals;

(iii) The social equity applicant's personal history with the criminal justice system including any offenses involving marijuana;

(iv) The composition of the workforce the social equity applicant intends to hire, especially persons of color;

(v) Neighborhood characteristics of the location where the social equity applicant intends to operate, focusing on the disproportionate historical impacts of marijuana prohibition; and

(vi) Business plans involving partnerships or assistance to organizations or residents with connection to populations with a history of disproportionate impact and harm related to enforcement of marijuana prohibition.

NEW SECTION. **Sec.**  A new section is added to chapter 43.330 RCW to read as follows:

(1) The technical assistance competitive grant program is established and is to be administered by the department.

(2) The technical assistance competitive grant program must award grants on a competitive basis to marijuana retailer license applicants who are submitting social equity plans under section 2 of this act. The department must award grants primarily based on the strength of the social equity plans submitted by applicants but may also consider additional criteria if deemed necessary or appropriate by the department. Technical assistance activities eligible for funding under the technical assistance competitive grant program include:

(a) Assistance navigating the marijuana retailer licensure process;

(b) Marijuana-business specific education and business plan development;

(c) Regulatory compliance training;

(d) Financial management training and assistance in seeking micro loans;

(e) The purchase of equipment, software, or facilities; and

(f) Connecting applicants with established industry members and tribal marijuana enterprises and programs for mentoring and other forms of support approved by the liquor and cannabis board and city, town, and county authorities.

(3) Funding for the technical assistance competitive grant program must be provided through the dedicated marijuana account under RCW 69.50.540. Additionally, the department may solicit, receive, and expend private contributions to support the grant program.

(4) The department may adopt rules to implement this section.

**Sec.**  RCW 69.50.540 and 2019 c 415 s 978 are each amended to read as follows:

The legislature must annually appropriate moneys in the dedicated marijuana account created in RCW 69.50.530 as follows:

(1) For the purposes listed in this subsection (1), the legislature must appropriate to the respective agencies amounts sufficient to make the following expenditures on a quarterly basis or as provided in this subsection:

(a) One hundred twenty-five thousand dollars to the health care authority to design and administer the Washington state healthy youth survey, analyze the collected data, and produce reports, in collaboration with the office of the superintendent of public instruction, department of health, department of commerce, family policy council, and ((~~state liquor and cannabis~~)) board. The survey must be conducted at least every two years and include questions regarding, but not necessarily limited to, academic achievement, age at time of substance use initiation, antisocial behavior of friends, attitudes toward antisocial behavior, attitudes toward substance use, laws and community norms regarding antisocial behavior, family conflict, family management, parental attitudes toward substance use, peer rewarding of antisocial behavior, perceived risk of substance use, and rebelliousness. Funds disbursed under this subsection may be used to expand administration of the healthy youth survey to student populations attending institutions of higher education in Washington;

(b) Fifty thousand dollars to the health care authority for the purpose of contracting with the Washington state institute for public policy to conduct the cost-benefit evaluation and produce the reports described in RCW 69.50.550. This appropriation ends after production of the final report required by RCW 69.50.550;

(c) Five thousand dollars to the University of Washington alcohol and drug abuse institute for the creation, maintenance, and timely updating of web-based public education materials providing medically and scientifically accurate information about the health and safety risks posed by marijuana use;

(d)(i) An amount not less than one million two hundred fifty thousand dollars to the ((~~state liquor and cannabis~~)) board for administration of this chapter as appropriated in the omnibus appropriations act;

(ii) Two million six hundred fifty-one thousand seven hundred fifty dollars for fiscal year 2018 and three hundred fifty-one thousand seven hundred fifty dollars for fiscal year 2019 to the health professions account established under RCW 43.70.320 for the development and administration of the marijuana authorization database by the department of health;

(iii) Two million seven hundred twenty-three thousand dollars for fiscal year 2020 and two million five hundred twenty-three thousand dollars for fiscal year 2021 to the Washington state patrol for a drug enforcement task force. It is the intent of the legislature that this policy will be continued in the 2021-2023 fiscal biennium; and

(iv) Ninety-eight thousand dollars for fiscal year 2019 to the department of ecology for research on accreditation of marijuana product testing laboratories;

(e) Four hundred sixty-five thousand dollars for fiscal year 2020 and four hundred sixty-four thousand dollars for fiscal year 2021 to the department of ecology for implementation of accreditation of marijuana product testing laboratories;

(f) One hundred eighty-nine thousand dollars for fiscal year 2020 to the department of health for rule making regarding compassionate care renewals;

(g) Eight hundred eight thousand dollars for fiscal year 2020 and eight hundred eight thousand dollars for fiscal year 2021 to the department of health for the administration of the marijuana authorization database; ((~~and~~))

(h) ((~~$635,000 [six hundred thirty-five thousand dollars]~~)) Six hundred thirty-five thousand dollars for fiscal year 2020 and ((~~$635,000 [six hundred thirty-five thousand dollars]~~)) six hundred thirty-five thousand dollars for fiscal year 2021 to the department of agriculture for compliance-based laboratory analysis of pesticides in marijuana((~~.~~)); and

(i) One million one hundred thousand dollars annually to the department of commerce to fund the technical assistance competitive grant program under section 3 of this act; and

(2) From the amounts in the dedicated marijuana account after appropriation of the amounts identified in subsection (1) of this section, the legislature must appropriate for the purposes listed in this subsection (2) as follows:

(a)(i) Up to fifteen percent to the health care authority for the development, implementation, maintenance, and evaluation of programs and practices aimed at the prevention or reduction of maladaptive substance use, substance use disorder, substance abuse or substance dependence, as these terms are defined in the Diagnostic and Statistical Manual of Mental Disorders, among middle school and high school-age students, whether as an explicit goal of a given program or practice or as a consistently corresponding effect of its implementation, mental health services for children and youth, and services for pregnant and parenting women; PROVIDED, That:

(A) Of the funds appropriated under (a)(i) of this subsection for new programs and new services, at least eighty-five percent must be directed to evidence-based or research-based programs and practices that produce objectively measurable results and, by September 1, 2020, are cost-beneficial; and

(B) Up to fifteen percent of the funds appropriated under (a)(i) of this subsection for new programs and new services may be directed to proven and tested practices, emerging best practices, or promising practices.

(ii) In deciding which programs and practices to fund, the director of the health care authority must consult, at least annually, with the University of Washington's social development research group and the University of Washington's alcohol and drug abuse institute.

(iii) For each fiscal year, the legislature must appropriate a minimum of twenty-five million five hundred thirty-six thousand dollars under this subsection (2)(a);

(b)(i) Up to ten percent to the department of health for the following, subject to (b)(ii) of this subsection (2):

(A) Creation, implementation, operation, and management of a marijuana education and public health program that contains the following:

(I) A marijuana use public health hotline that provides referrals to substance abuse treatment providers, utilizes evidence-based or research-based public health approaches to minimizing the harms associated with marijuana use, and does not solely advocate an abstinence-only approach;

(II) A grants program for local health departments or other local community agencies that supports development and implementation of coordinated intervention strategies for the prevention and reduction of marijuana use by youth; and

(III) Media-based education campaigns across television, internet, radio, print, and out-of-home advertising, separately targeting youth and adults, that provide medically and scientifically accurate information about the health and safety risks posed by marijuana use; and

(B) The Washington poison control center.

(ii) For each fiscal year, the legislature must appropriate a minimum of nine million seven hundred fifty thousand dollars under this subsection (2)(b);

(c)(i) Up to six-tenths of one percent to the University of Washington and four-tenths of one percent to Washington State University for research on the short and long-term effects of marijuana use, to include but not be limited to formal and informal methods for estimating and measuring intoxication and impairment, and for the dissemination of such research.

(ii) For each fiscal year, except for the 2017-2019 and 2019-2021 fiscal biennia, the legislature must appropriate a minimum of one million twenty-one thousand dollars to the University of Washington. For each fiscal year, except for the 2017-2019 and 2019-2021 fiscal biennia, the legislature must appropriate a minimum of six hundred eighty-one thousand dollars to Washington State University under this subsection (2)(c). It is the intent of the legislature that this policy will be continued in the 2019-2021 fiscal biennium;

(d) Fifty percent to the state basic health plan trust account to be administered by the Washington basic health plan administrator and used as provided under chapter 70.47 RCW;

(e) Five percent to the Washington state health care authority to be expended exclusively through contracts with community health centers to provide primary health and dental care services, migrant health services, and maternity health care services as provided under RCW 41.05.220;

(f)(i) Up to three-tenths of one percent to the office of the superintendent of public instruction to fund grants to building bridges programs under chapter 28A.175 RCW.

(ii) For each fiscal year, the legislature must appropriate a minimum of five hundred eleven thousand dollars to the office of the superintendent of public instruction under this subsection (2)(f); and

(g) At the end of each fiscal year, the treasurer must transfer any amounts in the dedicated marijuana account that are not appropriated pursuant to subsection (1) of this section and this subsection (2) into the general fund, except as provided in (g)(i) of this subsection (2).

(i) Beginning in fiscal year 2018, if marijuana excise tax collections deposited into the general fund in the prior fiscal year exceed twenty-five million dollars, then each fiscal year the legislature must appropriate an amount equal to thirty percent of all marijuana excise taxes deposited into the general fund the prior fiscal year to the treasurer for distribution to counties, cities, and towns as follows:

(A) Thirty percent must be distributed to counties, cities, and towns where licensed marijuana retailers are physically located. Each jurisdiction must receive a share of the revenue distribution under this subsection (2)(g)(i)(A) based on the proportional share of the total revenues generated in the individual jurisdiction from the taxes collected under RCW 69.50.535, from licensed marijuana retailers physically located in each jurisdiction. For purposes of this subsection (2)(g)(i)(A), one hundred percent of the proportional amount attributed to a retailer physically located in a city or town must be distributed to the city or town.

(B) Seventy percent must be distributed to counties, cities, and towns ratably on a per capita basis. Counties must receive sixty percent of the distribution, which must be disbursed based on each county's total proportional population. Funds may only be distributed to jurisdictions that do not prohibit the siting of any state licensed marijuana producer, processor, or retailer.

(ii) Distribution amounts allocated to each county, city, and town must be distributed in four installments by the last day of each fiscal quarter.

(iii) By September 15th of each year, the ((~~state liquor and cannabis~~)) board must provide the state treasurer the annual distribution amount, if any, for each county and city as determined in (g)(i) of this subsection (2).

(iv) The total share of marijuana excise tax revenues distributed to counties and cities in (g)(i) of this subsection (2) may not exceed fifteen million dollars in fiscal years 2018, 2019, 2020, and 2021, and twenty million dollars per fiscal year thereafter. It is the intent of the legislature that the policy for the maximum distributions in the subsequent fiscal biennia will be no more than fifteen million dollars per fiscal year.

((~~For the purposes of this section, "marijuana products" means "useable marijuana," "marijuana concentrates," and "marijuana-infused products" as those terms are defined in RCW 69.50.101.~~))

NEW SECTION. **Sec.**  A new section is added to chapter 69.50 RCW to read as follows:

(1) A legislative task force on social equity in marijuana is established. The purpose of the task force is to make recommendations to the board including but not limited to establishing a social equity program for the issuance and reissuance of marijuana licenses.

(2) The members of the task force are as provided in this subsection.

(a) The president of the senate shall appoint one member from each of the two largest caucuses of the senate.

(b) The speaker of the house of representatives shall appoint one member from each of the two largest caucuses of the house of representatives.

(c) The president of the senate and the speaker of the house of representatives shall jointly appoint:

(i) One member from each of the following:

(A) The commission on African American affairs;

(B) The commission on Hispanic affairs;

(C) The governor's office of Indian affairs;

(D) An organization representing the African American community;

(E) An organization representing the Latinx community;

(F) The liquor and cannabis board;

(G) The office of the attorney general; and

(H) The association of Washington cities;

(ii) Two members that currently hold a marijuana retail license; and

(iii) Two members that currently hold a producer or processor license or both.

(3) In addition to the members appointed to the task force under subsection (2) of this section, individuals representing other sectors may be invited by the chair of the committee, in consultation with the other appointed members of the task force, to participate in an advisory capacity in meetings of the task force.

(a) Individuals participating in an advisory capacity under this subsection are not members of the task force, may not vote, and are not subject to the appointment process established in this section.

(b) There is no limit to the number of individuals who may participate in task force meetings in an advisory capacity under this subsection.

(c) A majority of the task force members constitutes a quorum. If a member has not been designated for a position set forth in this section, that position may not be counted for the purpose of determining a quorum.

(4) The task force shall hold its first meeting by July 1, 2020. The task force shall elect a chair from among its legislative members at the first meeting. The election of the chair must be by a majority vote of the task force members who are present at the meeting. The chair of the task force is responsible for arranging subsequent meetings and developing meeting agendas.

(5) Staff support for the task force, including arranging the first meeting of the task force and assisting the chair of the task force in arranging subsequent meetings, must be provided by senate committee services and the house of representatives office of program research.

(6) The expenses of the task force must be paid jointly by the senate and the house of representatives. Task force expenditures are subject to approval by the senate facilities and operations committee and the house of representatives executive rules committee, or their successor committees.

(7) Legislative members of the task force may be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members are not entitled to be reimbursed for travel expenses if they are elected officials or are participating on behalf of an employer, governmental entity, or other organization. Any reimbursement for other nonlegislative members is subject to chapter 43.03 RCW.

(8) The task force is a class one group under chapter 43.03 RCW.

(9) A public comment period must be provided at every meeting of the task force.

(10) The task force shall submit a report on recommended policies that will facilitate the development of a marijuana social equity program in Washington to the governor and the appropriate committees of the legislature by December 1, 2020. The recommendations must include whether any additional marijuana licenses should be issued beyond the total amount of marijuana licenses that have been issued as of the effective date of this section. For purposes of determining the total amount of licenses issued as of the effective date of this section, the total amount does include licenses that have been forfeited, revoked, or canceled.

(11) The board may adopt rules to implement the recommendations of the task force.

(12) This section expires June 30, 2028.

**--- END ---**