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**SUBSTITUTE HOUSE BILL 1974**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** House Commerce & Gaming (originally sponsored by Representatives Shewmake, Blake, Peterson, Walsh, Chandler, Macri, Fitzgibbon, Appleton, Thai, Tharinger, and Riccelli)

AN ACT Relating to establishing a Washington state cannabis commission; amending RCW 42.56.380 and 43.23.033; and adding a new chapter to Title 15 RCW.

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

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the Washington state liquor and cannabis board.

(2) "Cannabis" has the meaning provided in RCW 69.50.101 for the term "marijuana."

(3) "Cannabis processor" has the meaning provided in RCW 69.50.101 for the term "marijuana processor."

(4) "Cannabis producer" has the meaning provided in RCW 69.50.101 for the term "marijuana producer."

(5) "Cannabis product" has the meaning provided in RCW 69.50.101 for the term "marijuana product."

(6) "Cannabis retailer" has the meaning provided in RCW 69.50.101 for the term "marijuana retailer."

(7) "Commission" means the Washington cannabis commission.

(8) "Department" means the department of agriculture.

(9) "Director" means the director of the department of agriculture.

(10) "Fiscal year" means the twelve-month period beginning January 1st of any year and ending December 31st.

(11) "Referendum" means a vote by cannabis producers that is conducted by secret ballot.

(12) "Testing laboratory" means an independent, third-party testing laboratory meeting the accreditation requirements of RCW 69.50.348.

NEW SECTION. **Sec.**  (1) Subject to the referendum conducted under section 3 of this act, there is created an agricultural commodity commission to be known as the Washington cannabis commission.

(2)(a) The commission shall be comprised of thirteen voting members as follows:

(i) Eight members must be cannabis producers and must reside in and be elected from districts as provided in commission rule;

(ii) One member must be a cannabis producer from any licensing tier or district;

(iii) One member must be a tier one cannabis producer;

(iv) One member must be a tier two cannabis producer;

(v) One member must be a tier three cannabis producer; and

(vi) One member must be the director or the director's designee.

(b) An advisory council must assist the commission and consist of the following nonvoting members, appointed by the director of the department upon nomination by the board:

(i) One board representative;

(ii) One cannabis processor representative;

(iii) One cannabis retailer representative; and

(iv) One independent testing laboratory representative.

(3) Each cannabis producer, cannabis processor, cannabis retailer, and testing laboratory representative must:

(a) Be twenty-one years of age or older and a resident of this state;

(b) Continue to meet all membership qualifications throughout the member's term; and

(c) Be licensed by the board for at least three years before becoming a commission member.

(4) Commission members shall serve three-year terms. Of the initial members, five must be appointed for a one-year term, five must be appointed for a two-year term, and the remainder must be appointed for a three-year term. Thereafter, members must be appointed for three-year terms.

(5) If a position on the commission becomes vacant due to resignation, disqualification, death, or for any other reason, the commission must notify the director and the unexpired term must immediately be filled by appointment by the director.

(6) Each member or employee of the commission must be reimbursed for actual travel expenses incurred in carrying out this chapter as defined by the commission in rule.

NEW SECTION. **Sec.**  (1) Upon receipt of a petition containing the signatures of five cannabis producers to implement this chapter and to determine cannabis producer participation in the commission and assessment under this chapter, the director shall:

(a) Conduct a referendum of cannabis producers. The requirements of assent or approval of the referendum are met if:

(i) At least fifty-one percent by numbers of cannabis producers participating in the referendum vote affirmatively; and

(ii) Thirty percent of the cannabis producers have been represented in the referendum to determine assent or approval of participation and assessment. The referendum shall be conducted within sixty days of receipt of the petition; and

(b) Establish a list of cannabis producers from information provided by the board. In establishing a list of cannabis producers and their individual production, the director must use the cannabis producer's name, mailing address, and production by the cannabis producer in the preceding fiscal year. Information on each cannabis producer must be mailed to each cannabis producer on record with the director for verification. All corrections shall be filed with the director within twenty days from the date of mailing. The list of cannabis producers shall be kept in a file by the director. The list shall be certified as a true representation of the referendum mailing list. Inadvertent failure to notify a cannabis producer does not invalidate a proceeding conducted under this chapter. The director must provide the commission the list of cannabis producers after assent in a referendum as provided in this section.

(2) If the director determines that the requisite assent has been given in the referendum conducted under subsection (1) of this section, the director must:

(a) Within sixty days after assent of the referendum held, appoint the members of the commission; and

(b) Direct the commission to put into force the assessment as provided for in section 10 of this act.

(3) If the director determines that the requisite assent has not been given in the referendum conducted under subsection (1) of this section, the director shall take no further action to implement or enforce this chapter.

(4) Upon completion of the referendum conducted under subsection (1) of this section, the department must tally the results of the vote and provide the results to the cannabis producers. If a cannabis producer disputes the results of a vote, that producer within sixty days from the announced results, shall provide in writing a statement of why the vote is disputed and request a recount. Once the vote is tallied and distributed, all disputes are resolved, and all matters in a vote are finalized, the individual ballots may be destroyed.

(5) Before conducting the referendum provided for in subsection (1) of this section, the director may require the petitioners to deposit with the director an amount of money as the director deems necessary to defray the expenses of conducting the referendum. The director must provide the petitioners an estimate of expenses that may be incurred to conduct a referendum before any service takes place. Petitioners must deposit funds with the director to pay for expenses incurred by the department. The commission must reimburse petitioners the amount paid to the department when funds become available. However, if for any reason the referendum process is discontinued, the petitioners must reimburse the department for expenses incurred by the department up until the time the process is discontinued.

(6) The director is not required to hold a referendum under subsection (1) of this section more than once in any twelve-month period.

NEW SECTION. **Sec.**  Obligations incurred by the commission and any other liabilities or claims against the commission must be enforced only against the assets of the commission and, except to the extent of such assets, no liability for the debts or actions of the commission exists against either the state of Washington or any subdivision or instrumentality thereof or against any member, employee, or agent of the commission or the state of Washington in the person's individual capacity. Except as otherwise provided in this chapter, neither the commission members, nor its employees, may be held individually responsible for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No person or employee may be held individually responsible for any act or omission of any other commission members. The liability of the commission members shall be several and not joint, and no member is liable for the default of any other member. This section confirms that commission members have been and continue to be, state officers or volunteers for purposes of RCW 4.92.075 and are entitled to the defenses, indemnifications, limitations of liability, and other protections and benefits of chapter 4.92 RCW.

NEW SECTION. **Sec.**  The commission must:

(1) Elect a chair and officers. The officers must include a treasurer who is responsible for all receipts and disbursements by the commission and the faithful discharge of whose duties must be guaranteed by a bond at the sole expense of the commission. The commission must adopt rules for its own governance that provide for the holding of an annual meeting for the election of officers and the transaction of other business and for other meetings the commission may direct;

(2) Do all things reasonably necessary to effect the purposes of this chapter and adopt rules in accordance with this chapter;

(3) Employ and discharge managers, secretaries, agents, attorneys, and employees and engage the services of independent contractors;

(4) Retain, as necessary, the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review by the office of the attorney general;

(5) Participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, regulation, distribution, sale, or use of cannabis including activities authorized under RCW 42.17A.635, including the reporting of those activities to the public disclosure commission;

(6) Acquire and transfer personal and real property, establish offices, incur expenses, and enter into contracts, including contracts for the creation and printing of promotional literature. The contracts are not subject to chapter 43.19 RCW, and are cancelable by the commission unless performed under conditions of employment that substantially conform to the laws of this state and the rules of the department of labor and industries. The commission may create debt and other liabilities that are reasonable for proper discharge of its duties under this chapter;

(7) Maintain accounts with one or more qualified public depositories as the commission may direct, for the deposit of money, and expend money for purposes authorized by this chapter by drafts made by the commission upon such institutions or by other means;

(8) Cause to be kept and annually closed, in accordance with generally accepted accounting principles, accurate records of all receipts, disbursements, and other financial transactions, available for audit by the state auditor;

(9) Create and maintain a list of producers and disseminate information among and solicit the opinions of producers with respect to the discharge of the duties of the commission, directly, or by arrangement with trade associations or other instrumentalities;

(10) Employ, designate as an agent, act in concert with, and enter into contracts with any person, council, commission, or other entity to promote the general welfare of the cannabis industry in Washington state and particularly to assist in the sale and distribution of Washington cannabis. The commission may expend money necessary or advisable for this purpose and to pay its proportionate share of the cost of any program providing direct or indirect assistance to the sale and distribution of Washington cannabis, employing and paying for professional services of all kinds;

(11) Sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred upon it by this chapter;

(12) Serve as liaison with the board on behalf of the commission and not for any individual cannabis producer; and

(13) Receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the commission and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments.

NEW SECTION. **Sec.**  (1) The commission, before the beginning of its fiscal year, must prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget for that fiscal year.

(2) The director must review and make a determination of all submissions described in this section in a timely manner.

NEW SECTION. **Sec.**  The commission exists primarily for the benefit of the people of the state of Washington and its economy.

NEW SECTION. **Sec.**  The commission may create, provide for, and conduct a comprehensive and extensive research and educational campaign. It must investigate and ascertain the needs of cannabis producers and take into account this information in the discharge of its duties under this chapter.

NEW SECTION. **Sec.**  The commission must adopt research and educational campaign goals directed at cannabis producers that serve the needs of cannabis producers. The goals may include efforts to:

(1) Advance knowledge and practice of the production of cannabis in this state through the research and testing of methods to improve pest management, worker protection and safety training, energy efficiency, and environmental protection;

(2) Encourage promotion of Washington agriculture related to cannabis production in the state;

(3) Foster economic conditions favorable to investment in the production of Washington cannabis;

(4) Limit youth access and youth exposure to cannabis; and

(5) Encourage favorable legislative and regulatory treatment of Washington cannabis in markets where cannabis is legal.

NEW SECTION. **Sec.**  (1) Pursuant to a referendum under section 3 of this act, there is levied, and the commission must collect, upon cannabis produced by a cannabis producer, an annual assessment on cannabis and cannabis products. The commission must establish assessment methodology and amounts in rule.

(2) The commission shall adopt rules prescribing the time, place, and method for payment and collection of the assessment and provide for the collection of assessments from producers who ship directly out-of-state.

(3) The commission must develop a reporting system to document that the producers in this state are reporting quantities of cannabis produced and are paying the assessment as provided in this section.

NEW SECTION. **Sec.**  The commission must deposit money collected under section 10 of this act in a separate account in the name of the commission in any bank that is a state depositary. All expenditures and disbursements made from this account under this chapter may be made without appropriation. RCW 43.01.050 does not apply to this account or to the money received, collected, or expended as provided in this chapter.

NEW SECTION. **Sec.**  An assessment levied in an amount determined by the commission under section 10 of this act constitutes a personal debt of every person assessed or who otherwise owes the assessment, and the assessment is due and payable to the commission when payment is called for by the commission. If a producer fails to pay the commission the full amount of the assessment by the date due, the commission may add to the unpaid assessment an amount not exceeding ten percent of the assessment to defray the cost of enforcing its collection. If the person fails to pay an assessment, the commission may bring a civil action for collection against the person or persons in a court of competent jurisdiction. The action shall be tried and judgment rendered as in any other cause of action for a debt due and payable.

NEW SECTION. **Sec.**  (1) Under RCW 42.56.380, certain agricultural business records, commission records, and department of agriculture records relating to the commission and producers of agricultural commodities are exempt from public disclosure. However, financial and commercial information and records submitted to either the department or the commission for the purpose of administering this chapter may be shared between the department and the commission. They may also be used, if required, in any suit or administrative hearing involving this chapter.

(2) This section does not prohibit:

(a) The issuance of general statements based upon the reports of cannabis producers subject to this chapter as long as the statements do not identify a specific cannabis producer or licensee; or

(b) The publication by the director or the commission of the name of a cannabis producer violating this chapter and a statement of the manner of the violation by that cannabis producer.

NEW SECTION. **Sec.**  All costs incurred by the department, including the adoption of rules and other actions necessary to carry out this chapter, must be reimbursed by the commission under RCW 43.23.033. The commission must provide funds to the department according to the rules adopted by the director.

**Sec.**  RCW 42.56.380 and 2018 c 170 s 1 and 2018 c 106 s 11 are each reenacted and amended to read as follows:

The following information relating to agriculture and livestock is exempt from disclosure under this chapter:

(1) Business-related information under RCW 15.86.110;

(2) Information provided under RCW 15.54.362;

(3) Production or sales records required to determine assessment levels and actual assessment payments to commodity boards and commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.115, 15.100, 15.89, 15.--- (the new chapter created in section 17 of this act), and 16.67 RCW or required by the department of agriculture to administer these chapters or the department's programs;

(4) Consignment information contained on phytosanitary certificates issued by the department of agriculture under chapters 15.13, 15.49, and 15.17 RCW or federal phytosanitary certificates issued under 7 C.F.R. 353 through cooperative agreements with the animal and plant health inspection service, United States department of agriculture, or on applications for phytosanitary certification required by the department of agriculture;

(5) Financial and commercial information and records supplied by persons (a) to the department of agriculture for the purpose of conducting a referendum for the potential establishment of a commodity board or commission; or (b) to the department of agriculture or commodity boards or commissions formed under chapter 15.24, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.115, 15.100, 15.89, 15.--- (the new chapter created in section 17 of this act), or 16.67 RCW with respect to domestic or export marketing activities or individual producer's production information;

(6) Information obtained regarding the purchases, sales, or production of an individual American ginseng grower or dealer, except for providing reports to the United States fish and wildlife service under RCW 15.19.080;

(7) Information collected regarding packers and shippers of fruits and vegetables for the issuance of certificates of compliance under RCW 15.17.140(2) and 15.17.143;

(8) Financial statements obtained under RCW 16.65.030(1)(d) for the purposes of determining whether or not the applicant meets the minimum net worth requirements to construct or operate a public livestock market;

(9) Information submitted by an individual or business to the department of agriculture under the requirements of chapters 16.36, 16.57, and 43.23 RCW for the purpose of herd inventory management for animal disease traceability. This information includes animal ownership, numbers of animals, locations, contact information, movements of livestock, financial information, the purchase and sale of livestock, account numbers or unique identifiers issued by government to private entities, and information related to livestock disease or injury that would identify an animal, a person, or location. Disclosure to local, state, and federal officials is not public disclosure. This exemption does not affect the disclosure of information used in reportable animal health investigations under chapter 16.36 RCW once they are complete;

(10) Results of testing for animal diseases from samples submitted by or at the direction of the animal owner or his or her designee that can be identified to a particular business or individual;

(11) Records of international livestock importation that can be identified to a particular animal, business, or individual received from the United States department of homeland security or the United States department of agriculture that are not disclosable by the federal agency under federal law including 5 U.S.C. Sec. 552;

(12) Records related to the entry of prohibited agricultural products imported into Washington state or that had Washington state as a final destination received from the United States department of homeland security or the United States department of agriculture that are not disclosable by the federal agency under federal law including 5 U.S.C. Sec. 552; ((~~and~~))

(13) Information obtained from the federal government or others under contract with the federal government or records obtained by the department of agriculture, in accordance with RCW 15.135.100; and

(14) Hop grower lot numbers and laboratory results associated with the hop grower lot numbers where this information is used by the department of agriculture to issue export documents.

**Sec.**  RCW 43.23.033 and 2009 c 33 s 38 are each amended to read as follows:

(1) The director may provide by rule for a method to fund staff support for all commodity boards and commissions if a position is not directly funded by the legislature.

(2) Staff support funded under this section, RCW 15.65.047(1)(c), 15.66.055(3), 15.24.215, 15.26.265, 15.28.320, 15.44.190, 15.88.180, 15.89.150, section 14 of this act, and 16.67.190, and chapter 15.115 RCW shall be limited to one-half full-time equivalent employee for all commodity boards and commissions.

NEW SECTION. **Sec.**  Sections 1 through 14 of this act constitute a new chapter in Title 15 RCW.

**--- END ---**