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**HOUSE BILL 1995**

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

**By** Representatives Dolan, Wylie, Appleton, and Macri

AN ACT Relating to direct sales from certain marijuana producers and processors; and amending RCW 69.50.325, 69.50.363, 69.50.366, and 69.50.535.

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

**Sec.**  RCW 69.50.325 and 2018 c 132 s 3 are each amended to read as follows:

(1)(a) There shall be a marijuana producer's license regulated by the state liquor and cannabis board and subject to annual renewal. The licensee ((~~is authorized to~~)) may produce: ((~~(a)~~)) (i) Marijuana for sale at wholesale to marijuana processors and other marijuana producers; ((~~(b)~~)) (ii) immature plants or clones and seeds for sale to cooperatives as described under RCW 69.51A.250; ((~~and (c)~~)) (iii) immature plants or clones and seeds for sale to qualifying patients and designated providers as provided under RCW 69.51A.310; and (iv) marijuana for direct to consumer retail sale from their licensed location. A direct to consumer retail sale license endorsement to the marijuana producer's license must be obtained before engaging in direct to consumer sales. Any sales conducted under the license endorsement are considered a retail sale under RCW 69.50.535.

(b) The production, possession, delivery, distribution, and sale of marijuana in accordance with the provisions of this chapter and the rules adopted to implement and enforce it, by a validly licensed marijuana producer, shall not be a criminal or civil offense under Washington state law.

(c) Every marijuana producer's license shall be issued in the name of the applicant, shall specify the location at which the marijuana producer intends to operate, which must be within the state of Washington, and the holder thereof shall not allow any other person to use the license.

(d) The application fee for a marijuana producer's license shall be two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana producer's license shall be one thousand three hundred eighty-one dollars. The annual fee for a direct to consumer retail sale license endorsement is seventy-five dollars.

(e) A separate license shall be required for each location at which a marijuana producer intends to produce marijuana.

(2)(a) There shall be a marijuana processor's license ((~~to~~)) regulated by the state liquor and cannabis board and subject to annual renewal. The licensee may: (i) Process, package, and label marijuana concentrates, useable marijuana, and marijuana-infused products for sale at wholesale to marijuana processors and marijuana retailers((~~, regulated by the state liquor and cannabis board and subject to annual renewal~~)); and (ii) conduct direct to consumer retail sales from their licensed location. A direct to consumer retail sale license endorsement must be obtained before engaging in direct to consumer sales. Any sale conducted under the license endorsement is considered a retail sale under RCW 69.50.535.

(b) The processing, packaging, possession, delivery, distribution, and sale of marijuana, useable marijuana, marijuana-infused products, and marijuana concentrates in accordance with the provisions of this chapter and chapter 69.51A RCW and the rules adopted to implement and enforce these chapters, by a validly licensed marijuana processor, shall not be a criminal or civil offense under Washington state law.

(c) Every marijuana processor's license shall be issued in the name of the applicant, shall specify the location at which the licensee intends to operate, which must be within the state of Washington, and the holder thereof shall not allow any other person to use the license.

(d) The application fee for a marijuana processor's license shall be two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana processor's license shall be one thousand three hundred eighty-one dollars. The annual fee for a direct to consumer retail sale license endorsement is seventy-five dollars.

(e) A separate license shall be required for each location at which a marijuana processor intends to process marijuana.

(3)(a) There shall be a marijuana retailer's license to sell marijuana concentrates, useable marijuana, and marijuana-infused products at retail in retail outlets, regulated by the state liquor and cannabis board and subject to annual renewal. The possession, delivery, distribution, and sale of marijuana concentrates, useable marijuana, and marijuana-infused products in accordance with the provisions of this chapter and the rules adopted to implement and enforce it, by a validly licensed marijuana retailer, shall not be a criminal or civil offense under Washington state law. Every marijuana retailer's license shall be issued in the name of the applicant, shall specify the location of the retail outlet the licensee intends to operate, which must be within the state of Washington, and the holder thereof shall not allow any other person to use the license. The application fee for a marijuana retailer's license shall be two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana retailer's license shall be one thousand three hundred eighty-one dollars. A separate license shall be required for each location at which a marijuana retailer intends to sell marijuana concentrates, useable marijuana, and marijuana-infused products.

(b) An individual retail licensee and all other persons or entities with a financial or other ownership interest in the business operating under the license are limited, in the aggregate, to holding a collective total of not more than five retail marijuana licenses.

(c)(i) A marijuana retailer's license is subject to forfeiture in accordance with rules adopted by the state liquor and cannabis board pursuant to this section.

(ii) The state liquor and cannabis board shall adopt rules to establish a license forfeiture process for a licensed marijuana retailer that is not fully operational and open to the public within a specified period from the date of license issuance, as established by the state liquor and cannabis board, subject to the following restrictions:

(A) No marijuana retailer's license may be subject to forfeiture within the first nine months of license issuance; and

(B) The state liquor and cannabis board must require license forfeiture on or before twenty-four calendar months of license issuance if a marijuana retailer is not fully operational and open to the public, unless the board determines that circumstances out of the licensee's control are preventing the licensee from becoming fully operational and that, in the board's discretion, the circumstances warrant extending the forfeiture period beyond twenty-four calendar months.

(iii) The state liquor and cannabis board has discretion in adopting rules under this subsection (3)(c).

(iv) This subsection (3)(c) applies to marijuana retailer's licenses issued before and after July 23, 2017. However, no license of a marijuana retailer that otherwise meets the conditions for license forfeiture established pursuant to this subsection (3)(c) may be subject to forfeiture within the first nine calendar months of July 23, 2017.

(v) The state liquor and cannabis board may not require license forfeiture if the licensee has been incapable of opening a fully operational retail marijuana business due to actions by the city, town, or county with jurisdiction over the licensee that include any of the following:

(A) The adoption of a ban or moratorium that prohibits the opening of a retail marijuana business; or

(B) The adoption of an ordinance or regulation related to zoning, business licensing, land use, or other regulatory measure that has the effect of preventing a licensee from receiving an occupancy permit from the jurisdiction or which otherwise prevents a licensed marijuana retailer from becoming operational.

(4) The liquor and cannabis board shall issue direct to consumer retail sale license endorsements authorizing marijuana producers and marijuana processors to sell marijuana products directly to consumers if:

(a) Sales are limited to the marijuana producer's marijuana crop and marijuana products created from their crop, or marijuana products produced by the marijuana processor;

(b) Direct sales of useable marijuana must be at least three and one-half grams; and

(c) Sales are in compliance with the limits of RCW 69.50.360.

(5) A marijuana producer or marijuana processor applying for a direct to consumer retail sale license endorsement may have only one marijuana producer license and/or one marijuana processor license associated with the applicant's uniform business identifier and issued in the name of the applicant. Applicants with multiple marijuana producer or processor licenses may not be issued a license endorsement.

(6) A direct to consumer retail sale license endorsement is not a marijuana retail license as defined by RCW 69.50.325(3) and does not count toward the jurisdictional caps on the number of licensed retail locations set by the liquor and cannabis board under RCW 69.50.345(2).

(7) The liquor and cannabis board must adopt rules on necessary on-site security and operational requirements for direct to consumer sales. However, the security and operational requirements may not be more stringent than those imposed on a marijuana retailer.

**Sec.**  RCW 69.50.363 and 2015 c 207 s 7 are each amended to read as follows:

The following acts, when performed by a validly licensed marijuana processor or employee of a validly licensed marijuana processor in compliance with rules adopted by the state liquor ((~~control~~)) and cannabis board to implement and enforce chapter 3, Laws of 2013, do not constitute criminal or civil offenses under Washington state law:

(1) Purchase and receipt of marijuana that has been properly packaged and labeled from a marijuana producer validly licensed under chapter 3, Laws of 2013;

(2) Possession, processing, packaging, and labeling of quantities of marijuana, useable marijuana, and marijuana-infused products that do not exceed the maximum amounts established by the state liquor ((~~control~~)) and cannabis board under RCW 69.50.345(4);

(3) Delivery, distribution, and sale of useable marijuana or marijuana-infused products to a marijuana retailer validly licensed under chapter 3, Laws of 2013; ((~~and~~))

(4) Delivery, distribution, and sale of useable marijuana, marijuana concentrates, or marijuana-infused products to a federally recognized Indian tribe as permitted under an agreement between the state and the tribe entered into under RCW 43.06.490; and

(5) If the marijuana processor holds a direct to consumer retail sale license endorsement, direct to consumer sales of useable marijuana, marijuana-infused products, or marijuana concentrates.

**Sec.**  RCW 69.50.366 and 2017 c 317 s 6 are each amended to read as follows:

The following acts, when performed by a validly licensed marijuana producer or employee of a validly licensed marijuana producer in compliance with rules adopted by the state liquor and cannabis board to implement and enforce this chapter, do not constitute criminal or civil offenses under Washington state law:

(1) Production or possession of quantities of marijuana that do not exceed the maximum amounts established by the state liquor and cannabis board under RCW 69.50.345(3);

(2) Delivery, distribution, and sale of marijuana to a marijuana processor or another marijuana producer validly licensed under this chapter;

(3) Delivery, distribution, and sale of immature plants or clones and marijuana seeds to a licensed marijuana researcher, and to receive or purchase immature plants or clones and seeds from a licensed marijuana researcher; ((~~and~~))

(4) Delivery, distribution, and sale of marijuana or useable marijuana to a federally recognized Indian tribe as permitted under an agreement between the state and the tribe entered into under RCW 43.06.490; and

(5) If the marijuana producer holds a direct to consumer retail sale license endorsement, direct to consumer sales of useable marijuana, marijuana-infused products, or marijuana concentrates.

**Sec.**  RCW 69.50.535 and 2015 2nd sp.s. c 4 s 205 are each amended to read as follows:

(1)(a) There is levied and collected a marijuana excise tax equal to thirty-seven percent of the selling price on each retail sale in this state of marijuana concentrates, useable marijuana, and marijuana-infused products. This tax is separate and in addition to general state and local sales and use taxes that apply to retail sales of tangible personal property, and is not part of the total retail price to which general state and local sales and use taxes apply. The tax must be separately itemized from the state and local retail sales tax on the sales receipt provided to the buyer.

(b) The tax levied in this section must be reflected in the price list or quoted shelf price in the licensed marijuana retail store or on the premises of a marijuana producer or marijuana processor holding a direct to consumer retail sale license endorsement, and in any advertising that includes prices for all useable marijuana, marijuana concentrates, or marijuana-infused products.

(2) All revenues collected from the marijuana excise tax imposed under this section must be deposited each day in the dedicated marijuana account.

(3) The tax imposed in this section must be paid by the buyer to the seller. Each seller must collect from the buyer the full amount of the tax payable on each taxable sale. The tax collected as required by this section is deemed to be held in trust by the seller until paid to the board. If any seller fails to collect the tax imposed in this section or, having collected the tax, fails to pay it as prescribed by the board, whether such failure is the result of the seller's own acts or the result of acts or conditions beyond the seller's control, the seller is, nevertheless, personally liable to the state for the amount of the tax.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

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

(b) "Retail sale" has the same meaning as in RCW 82.08.010.

(c) "Selling price" has the same meaning as in RCW 82.08.010, except that when product is sold under circumstances where the total amount of consideration paid for the product is not indicative of its true value, "selling price" means the true value of the product sold.

(d) "Product" means marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products.

(e) "True value" means market value based on sales at comparable locations in this state of the same or similar product of like quality and character sold under comparable conditions of sale to comparable purchasers. However, in the absence of such sales of the same or similar product, true value means the value of the product sold as determined by all of the seller's direct and indirect costs attributable to the product.

(5)(a) The board must regularly review the tax level established under this section and make recommendations, in consultation with the department of revenue, to the legislature as appropriate regarding adjustments that would further the goal of discouraging use while undercutting illegal market prices.

(b) The state liquor and cannabis board must report, in compliance with RCW 43.01.036, to the appropriate committees of the legislature every two years. The report at a minimum must include the following:

(i) The specific recommendations required under (a) of this subsection;

(ii) A comparison of gross sales and tax collections prior to and after any marijuana tax change;

(iii) The increase or decrease in the volume of legal marijuana sold prior to and after any marijuana tax change;

(iv) Increases or decreases in the number of licensed marijuana producers, processors, and retailers;

(v) The number of illegal and noncompliant marijuana outlets the board requires to be closed;

(vi) Gross marijuana sales and tax collections in Oregon; and

(vii) The total amount of reported sales and use taxes exempted for qualifying patients. The department of revenue must provide the data of exempt amounts to the board.

(c) The board is not required to report to the legislature as required in (b) of this subsection after January 1, 2025.

(6) The legislature does not intend and does not authorize any person or entity to engage in activities or to conspire to engage in activities that would constitute per se violations of state and federal antitrust laws including, but not limited to, agreements among retailers as to the selling price of any goods sold.

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