H-3721.3

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**HOUSE BILL 2817**

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

**By** Representatives Peterson and Vick

AN ACT Relating to transferring the authority from the liquor and cannabis board to the legislature regarding the issuance and forfeiture of marijuana retailer, marijuana producer, and marijuana processor licenses; amending RCW 69.50.325, 69.50.345, 69.50.354, and 19.85.020; reenacting and amending RCW 69.50.345; creating a new section; providing an effective date; and providing an expiration date.

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

NEW SECTION. **Sec.**  The legislature finds that the regulated marijuana industry has been subject to significant volatility resulting from not only the newness of the industry, but also by frequent revisions to the laws and rules that govern the industry. The legislature also finds:

(1) The regulated marijuana industry would benefit from state agencies assessing the economic impact that new policies would have on the marijuana industry;

(2) Marijuana businesses bear a disproportionate share of regulatory costs and burdens compared to other industries;

(3) Fundamental changes in the regulatory and enforcement culture of the liquor and cannabis board can make it more responsive to small business without compromising the statutory missions of the agency;

(4) When adopting rules to protect the health, safety, and economic welfare of Washington, the liquor and cannabis board should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on marijuana businesses;

(5) Burdensome regulatory and reporting requirements that do not directly further legislative policies can impose unnecessary and disproportionately onerous demands including legal, accounting, and consulting costs upon marijuana businesses with limited resources;

(6) The failure to recognize differences in the scale and resources of highly regulated industries can adversely affect competition in the marketplace, discourage innovation, and restrict improvements in productivity;

(7) Unnecessary regulations create entry barriers in the marijuana industry and discourage potential entrepreneurs from introducing beneficial products and processes;

(8) The practice of treating all marijuana businesses differently to other regulated industries leads to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental, and economic welfare legislation;

(9) Alternative regulatory approaches that do not conflict with the state objective of applicable statutes may be available to minimize the significant economic impact of rules on small businesses; and

(10) The process by which state rules are developed and adopted should require the liquor and cannabis board to solicit the ideas and comments of small businesses, to examine the impact of proposed and existing rules on such businesses, and to review the continued need for existing rules.

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

(1) 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 produce: (a) Marijuana for sale at wholesale to marijuana processors and other marijuana producers; (b) immature plants or clones and seeds for sale to cooperatives as described under RCW 69.51A.250; and (c) immature plants or clones and seeds for sale to qualifying patients and designated providers as provided under RCW 69.51A.310. 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. 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. 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. A separate license shall be required for each location at which a marijuana producer intends to produce marijuana.

(2) There shall be a marijuana processor's license to 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. 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. 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. 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. 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)~~)) (4)(a) An individual retail licensee and all other persons or entities with ((~~a financial or other~~)) an ownership interest in or control over the business operating under the license are limited, in the aggregate, to holding a collective total of not more than ((~~five~~)) seven retail marijuana licenses.

(b) An individual producer or processor licensee and all other persons or entities with an ownership interest in or control over the business operating under the license are limited, in the aggregate, to holding a collective total of not more than five marijuana producer licenses and five marijuana processor 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~~)) if the marijuana retailer is not fully operational and open to the public as of the effective date of this section, 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~~)).

(ii) A marijuana producer or marijuana processor's license is subject to forfeiture if the marijuana producer or marijuana processor is not operational, unless the board determines that circumstances out of the licensee's control are preventing the licensee from becoming operational and that, in the board's discretion, the circumstances warrant extending the forfeiture period. For the purposes of this subsection, a marijuana producer licensee or marijuana processor licensee is considered to not be operational if:

(A) By June 11, 2021, the licensee has not engaged in: At least one lawful and documented marijuana transaction; and transactions totaling no less than ten thousand dollars at current market value; and

(B) During any license year, the licensee fails to engage in: At least one lawful and documented marijuana transaction; and transactions totaling no less than ten thousand dollars at current market value.

(iii) Except for marijuana producer, marijuana processor, or marijuana retailer licenses issued as part of a social equity program authorized by the legislature, forfeited marijuana licenses may not be reissued to new applicants.

(iv) The board may not require ((~~license~~)) forfeiture of a marijuana producer, marijuana processor, or marijuana retailer license 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~~)) licensee from becoming operational.

(v) The board may adopt rules to carry out this subsection (4).

**Sec.**  RCW 69.50.345 and 2019 c 393 s 2 are each amended to read as follows:

The ((~~state liquor and cannabis~~)) board, subject to the provisions of this chapter and chapter 19.85 RCW, must adopt rules that establish the procedures and criteria necessary to implement the following:

(1) Licensing of marijuana producers, marijuana processors, and marijuana retailers, including prescribing forms and establishing application, reinstatement, and renewal fees. This does not include establishing the number of retail outlets that may be licensed in the state under RCW 69.50.354 or expanding the amount of square feet of plant canopy permitted to be in production;

((~~(a) Application forms for marijuana producers must request the applicant to state whether the applicant intends to produce marijuana for sale by marijuana retailers holding medical marijuana endorsements and the amount of or percentage of canopy the applicant intends to commit to growing plants determined by the department under RCW 69.50.375 to be of a THC concentration, CBD concentration, or THC to CBD ratio appropriate for marijuana concentrates, useable marijuana, or marijuana-infused products sold to qualifying patients.~~

~~(b) The state liquor and cannabis board must reconsider and increase limits on the amount of square feet permitted to be in production on July 24, 2015, and increase the percentage of production space for those marijuana producers who intend to grow plants for marijuana retailers holding medical marijuana endorsements if the marijuana producer designates the increased production space to plants determined by the department under RCW 69.50.375 to be of a THC concentration, CBD concentration, or THC to CBD ratio appropriate for marijuana concentrates, useable marijuana, or marijuana-infused products to be sold to qualifying patients. If current marijuana producers do not use all the increased production space, the state liquor and cannabis board may reopen the license period for new marijuana producer license applicants but only to those marijuana producers who agree to grow plants for marijuana retailers holding medical marijuana endorsements. Priority in licensing must be given to marijuana producer license applicants who have an application pending on July 24, 2015, but who are not yet licensed and then to new marijuana producer license applicants. After January 1, 2017, any reconsideration of the limits on the amount of square feet permitted to be in production to meet the medical needs of qualifying patients must consider information contained in the medical marijuana authorization database established in RCW 69.51A.230;~~

~~(2) Determining, in consultation with the office of financial management, the maximum number of retail outlets that may be licensed in each county, taking into consideration:~~

~~(a) Population distribution;~~

~~(b) Security and safety issues;~~

~~(c) The provision of adequate access to licensed sources of marijuana concentrates, useable marijuana, and marijuana-infused products to discourage purchases from the illegal market; and~~

~~(d) The number of retail outlets holding medical marijuana endorsements necessary to meet the medical needs of qualifying patients. The state liquor and cannabis board must reconsider and increase the maximum number of retail outlets it established before July 24, 2015, and allow for a new license application period and a greater number of retail outlets to be permitted in order to accommodate the medical needs of qualifying patients and designated providers. After January 1, 2017, any reconsideration of the maximum number of retail outlets needed to meet the medical needs of qualifying patients must consider information contained in the medical marijuana authorization database established in RCW 69.51A.230;~~

~~(3)~~)) (2) Determining the maximum quantity of marijuana a marijuana producer may have on the premises of a licensed location at any time without violating Washington state law;

((~~(4)~~)) (3) Determining the maximum quantities of marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products a marijuana processor may have on the premises of a licensed location at any time without violating Washington state law;

((~~(5)~~)) (4) Determining the maximum quantities of marijuana concentrates, useable marijuana, and marijuana-infused products a marijuana retailer may have on the premises of a retail outlet at any time without violating Washington state law;

((~~(6)~~)) (5) In making the determinations required by this section, the ((~~state liquor and cannabis~~)) board shall take into consideration:

(a) Security and safety issues;

(b) The provision of adequate access to licensed sources of marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products to discourage purchases from the illegal market; and

(c) Economies of scale, and their impact on licensees' ability to both comply with regulatory requirements and undercut illegal market prices;

((~~(7)~~)) (6) Determining the nature, form, and capacity of all containers to be used by licensees to contain marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products, and their labeling requirements;

((~~(8)~~)) (7) In consultation with the department of agriculture and the department, establishing classes of marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products according to grade, condition, cannabinoid profile, THC concentration, CBD concentration, or other qualitative measurements deemed appropriate by the ((~~state liquor and cannabis~~)) board;

((~~(9)~~)) (8) Establishing reasonable time, place, and manner restrictions and requirements regarding advertising of marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products that are not inconsistent with the provisions of this chapter, taking into consideration:

(a) Federal laws relating to marijuana that are applicable within Washington state;

(b) Minimizing exposure of people under twenty-one years of age to the advertising;

(c) The inclusion of medically and scientifically accurate information about the health and safety risks posed by marijuana use in the advertising; and

(d) Ensuring that retail outlets with medical marijuana endorsements may advertise themselves as medical retail outlets;

((~~(10)~~)) (9) Specifying and regulating the time and periods when, and the manner, methods, and means by which, licensees shall transport and deliver marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products within the state;

((~~(11)~~)) (10) In consultation with the department and the department of agriculture, establishing accreditation requirements for testing laboratories used by licensees to demonstrate compliance with standards adopted by the ((~~state liquor and cannabis~~)) board, and prescribing methods of producing, processing, and packaging marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products; conditions of sanitation; and standards of ingredients, quality, and identity of marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products produced, processed, packaged, or sold by licensees;

((~~(12)~~)) (11) Specifying procedures for identifying, seizing, confiscating, destroying, and donating to law enforcement for training purposes all marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products produced, processed, packaged, labeled, or offered for sale in this state that do not conform in all respects to the standards prescribed by this chapter or the rules of the ((~~state liquor and cannabis~~)) board.

**Sec.**  RCW 69.50.345 and 2019 c 393 s 2 and 2019 c 277 s 6 are each reenacted and amended to read as follows:

The ((~~state liquor and cannabis~~)) board, subject to the provisions of this chapter and chapter 19.85 RCW, must adopt rules that establish the procedures and criteria necessary to implement the following:

(1) Licensing of marijuana producers, marijuana processors, and marijuana retailers, including prescribing forms and establishing application, reinstatement, and renewal fees. This does not include establishing the number of retail outlets that may be licensed in the state under RCW 69.50.354 or expanding the amount of square feet of plant canopy permitted to be in production;

((~~(a) Application forms for marijuana producers must request the applicant to state whether the applicant intends to produce marijuana for sale by marijuana retailers holding medical marijuana endorsements and the amount of or percentage of canopy the applicant intends to commit to growing plants determined by the department under RCW 69.50.375 to be of a THC concentration, CBD concentration, or THC to CBD ratio appropriate for marijuana concentrates, useable marijuana, or marijuana-infused products sold to qualifying patients.~~

~~(b) The state liquor and cannabis board must reconsider and increase limits on the amount of square feet permitted to be in production on July 24, 2015, and increase the percentage of production space for those marijuana producers who intend to grow plants for marijuana retailers holding medical marijuana endorsements if the marijuana producer designates the increased production space to plants determined by the department under RCW 69.50.375 to be of a THC concentration, CBD concentration, or THC to CBD ratio appropriate for marijuana concentrates, useable marijuana, or marijuana-infused products to be sold to qualifying patients. If current marijuana producers do not use all the increased production space, the state liquor and cannabis board may reopen the license period for new marijuana producer license applicants but only to those marijuana producers who agree to grow plants for marijuana retailers holding medical marijuana endorsements. Priority in licensing must be given to marijuana producer license applicants who have an application pending on July 24, 2015, but who are not yet licensed and then to new marijuana producer license applicants. After January 1, 2017, any reconsideration of the limits on the amount of square feet permitted to be in production to meet the medical needs of qualifying patients must consider information contained in the medical marijuana authorization database established in RCW 69.51A.230;~~

~~(2) Determining, in consultation with the office of financial management, the maximum number of retail outlets that may be licensed in each county, taking into consideration:~~

~~(a) Population distribution;~~

~~(b) Security and safety issues;~~

~~(c) The provision of adequate access to licensed sources of marijuana concentrates, useable marijuana, and marijuana-infused products to discourage purchases from the illegal market; and~~

~~(d) The number of retail outlets holding medical marijuana endorsements necessary to meet the medical needs of qualifying patients. The state liquor and cannabis board must reconsider and increase the maximum number of retail outlets it established before July 24, 2015, and allow for a new license application period and a greater number of retail outlets to be permitted in order to accommodate the medical needs of qualifying patients and designated providers. After January 1, 2017, any reconsideration of the maximum number of retail outlets needed to meet the medical needs of qualifying patients must consider information contained in the medical marijuana authorization database established in RCW 69.51A.230;~~

~~(3)~~)) (2) Determining the maximum quantity of marijuana a marijuana producer may have on the premises of a licensed location at any time without violating Washington state law;

((~~(4)~~)) (3) Determining the maximum quantities of marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products a marijuana processor may have on the premises of a licensed location at any time without violating Washington state law;

((~~(5)~~)) (4) Determining the maximum quantities of marijuana concentrates, useable marijuana, and marijuana-infused products a marijuana retailer may have on the premises of a retail outlet at any time without violating Washington state law;

((~~(6)~~)) (5) In making the determinations required by this section, the ((~~state liquor and cannabis~~)) board shall take into consideration:

(a) Security and safety issues;

(b) The provision of adequate access to licensed sources of marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products to discourage purchases from the illegal market; and

(c) Economies of scale, and their impact on licensees' ability to both comply with regulatory requirements and undercut illegal market prices;

((~~(7)~~)) (6) Determining the nature, form, and capacity of all containers to be used by licensees to contain marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products, and their labeling requirements;

((~~(8)~~)) (7) In consultation with the department of agriculture and the department, establishing classes of marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products according to grade, condition, cannabinoid profile, THC concentration, CBD concentration, or other qualitative measurements deemed appropriate by the ((~~state liquor and cannabis~~)) board;

((~~(9)~~)) (8) Establishing reasonable time, place, and manner restrictions and requirements regarding advertising of marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products that are not inconsistent with the provisions of this chapter, taking into consideration:

(a) Federal laws relating to marijuana that are applicable within Washington state;

(b) Minimizing exposure of people under twenty-one years of age to the advertising;

(c) The inclusion of medically and scientifically accurate information about the health and safety risks posed by marijuana use in the advertising; and

(d) Ensuring that retail outlets with medical marijuana endorsements may advertise themselves as medical retail outlets;

((~~(10)~~)) (9) Specifying and regulating the time and periods when, and the manner, methods, and means by which, licensees shall transport and deliver marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products within the state;

((~~(11)~~)) (10) In consultation with the department and the department of agriculture, prescribing methods of producing, processing, and packaging marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products; conditions of sanitation; and standards of ingredients, quality, and identity of marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products produced, processed, packaged, or sold by licensees;

((~~(12)~~)) (11) Specifying procedures for identifying, seizing, confiscating, destroying, and donating to law enforcement for training purposes all marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products produced, processed, packaged, labeled, or offered for sale in this state that do not conform in all respects to the standards prescribed by this chapter or the rules of the ((~~state liquor and cannabis~~)) board.

**Sec.**  RCW 69.50.354 and 2015 c 70 s 9 are each amended to read as follows:

There may be licensed, in no greater number in each of the counties of the state than as ((~~the state liquor and cannabis board shall deem advisable,~~)) licensed on the effective date of this section, unless the legislature increases or decreases the number of licenses, taking into account the economic impact on existing marijuana retailers, marijuana producers, and marijuana processors and retail outlets established for the purpose of making marijuana concentrates, useable marijuana, and marijuana-infused products available for sale to adults aged twenty-one and over. Retail 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 or retail outlet employee, shall not be a criminal or civil offense under Washington state law.

**Sec.**  RCW 19.85.020 and 2007 c 239 s 2 are each amended to read as follows:

The definitions in this section apply through this chapter unless the context clearly requires otherwise.

(1) "Industry" means all of the businesses in this state in any one four-digit standard industrial classification as published by the United States department of commerce, or the North American industry classification system as published by the executive office of the president and the office of management and budget. However, if the use of a four-digit standard industrial classification or North American industry classification system would result in the release of data that would violate state confidentiality laws, "industry" means all businesses in a three-digit standard industrial classification or the North American industry classification system. "Industry" also includes marijuana retailers, producers, and processors for the purposes of RCW 69.50.345.

(2) "Minor cost" means a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater, or one percent of annual payroll. However, for the rules of the department of social and health services "minor cost" means cost per business that is less than fifty dollars of annual cost per client or other appropriate unit of service.

(3) "Small business" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees.

(4) "Small business economic impact statement" means a statement meeting the requirements of RCW 19.85.040 prepared by a state agency pursuant to RCW 19.85.030.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  Section 3 of this act expires July 1, 2024.

NEW SECTION. **Sec.**  Section 4 of this act takes effect July 1, 2024.

**--- END ---**