

SENATE BILL REPORT

ESHB 1794

As Passed Senate, April 13, 2019

Title: An act relating to agreements between licensed marijuana businesses and other people and businesses, including royalty and licensing agreements relating to the use of intellectual property.

Brief Description: Concerning agreements between licensed marijuana businesses and other people and businesses, including royalty and licensing agreements relating to the use of intellectual property.

Sponsors: House Committee on Commerce & Gaming (originally sponsored by Representatives Stanford, MacEwen, Blake, Vick, Kirby, Young, Reeves and Appleton).

Brief History: Passed House: 3/07/19, 86-11.

Committee Activity: Labor & Commerce: 3/19/19, 3/28/19 [DP, w/oRec].

Floor Activity:

Passed Senate: 4/13/19, 39-6.

Brief Summary of Bill

- Updates terminology regarding authorized agreements that licensed marijuana businesses may enter with other parties related to goods or services with trademark or other intellectual property protections.
- Specifies the authorization encompasses, among other agreements, agreements related to goods or services registered as a trademark under another state's law or international trademark law.
- Lists specific types of contract provisions that may be included in an agreement, such as (1) royalty fees subject to certain limits; (2) terms giving either party exclusivity to the use of intellectual property; and (3) quality control standards to protect the integrity of the intellectual property.
- Exempts non-licensed parties to authorized intellectual property agreements from qualifying for a marijuana license for purposes of the agreement.
- Provides that authorized intellectual property agreements are subject to recordkeeping requirements established under the Liquor and Cannabis Board's rules.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: Do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; King, Ranking Member; Saldaña, Walsh and Wellman.

Minority Report: That it be referred without recommendation.

Signed by Senator Braun.

Staff: Richard Rodger (786-7461)

Background: Licensed marijuana businesses are authorized to enter into licensing agreements or consulting contracts with other individuals and businesses. The agreements or contracts may relate to (1) any goods or services that are registered as a trademark under federal or state law; (2) any unregistered trademark, trade name, or trade dress; or (3) any trade secret, technology, or proprietary information used to manufacture a cannabis product or used to provide a service related to a marijuana business. All of these agreements entered into by a licensed marijuana business must be disclosed to the Liquor and Cannabis Board (LCB).

Initiative 502 (2012) granted the LCB authority to adopt rules regarding the records to be created and maintained by marijuana licensees, the reports to be made to the LCB, and inspection of the books and records. The LCB's rules make marijuana licensees responsible for keeping records that clearly reflect all financial transactions and the financial condition of the business. Under the rules, specific records must be kept and maintained at the licensed premises for at least five years and made available for inspection upon request.

Summary of Bill: Terminology referencing authorized agreements related to licensed marijuana businesses and trademarks, trade secrets, and other intellectual property is updated to more broadly describe the types of agreements covered and the types of business entities that may be parties to any such agreement. Licensed marijuana businesses may also enter into agreements relating to any goods or services registered as a trademark under another state's law or international trademark law.

Any agreement between a licensed marijuana business and another person, business, or entity related to goods or services that are trademarked or otherwise protected may include the following types of provisions:

- a royalty fee or flat rate calculated based on sales of each product that includes the licensed intellectual property or was manufactured or sold using the licensed intellectual property or service, provided the royalty fee is no greater than 10 percent of the licensee's gross sales from the product;
- a flat rate or lump sum calculated based on time or milestones;
- terms giving either party exclusivity or qualified exclusivity as it relates to use of the intellectual property;
- quality control standards as necessary to protect the integrity of the intellectual property;
- enforcement obligations to be undertaken by the licensed marijuana business;
- covenants to use the licensed intellectual property; and

- assignment of licensor improvements of the intellectual property.

A person, business, or entity that enters into an agreement with a licensed marijuana business, where both parties to the agreement are in compliance with the authorization, is exempt from the requirement to qualify for a marijuana business license for purposes of the agreement. A requirement is added that all agreements entered into by a licensed marijuana business under the authorization are subject to the LCB's recordkeeping requirements as established by rule.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This is a sensible bill that supports our small marijuana businesses. It provides prescriptive language that should assist the LCB in adopting rules for the marijuana business agreements and ensure the rules are not in conflict with the intent of the legislation. This will assist companies in sharing brand names and technologies. Intellectual properties are intangible assets that are a large share of the U.S. economy. We have had a constructive dialog with the LCB in developing this language. It places caps on the amount of royalties that may be charged, which lessen the concerns around true parties of interest. The provisions align us with other industries and other states.

Persons Testifying: PRO: Chris Marr, Grow-Op Farms; Christine Masse, Miller Nash Graham & Dunn; Andy Brassington, Evergreen Herbal; Tammi Hill, Cannex; Vicki Christophersen, Washington CannaBusiness Association; Chris Thompson, LCB.

Persons Signed In To Testify But Not Testifying: No one.