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**SUBSTITUTE HOUSE BILL 1438**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** House Commerce & Gaming (originally sponsored by Representatives Sawyer, Kirby, and Appleton)

AN ACT Relating to permitting cities, towns, and counties to prohibit the production, processing, and sale of marijuana under Initiative Measure No. 502 only by public vote; amending RCW 69.50.325 and 69.50.334; adding new sections to chapter 69.50 RCW; adding a new section to chapter 36.01 RCW; adding a new section to chapter 35.21 RCW; and adding a new section to chapter 35A.21 RCW.

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

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

(1) Except as provided in section 2 of this act and subsections (2) through (4) of this section, the state of Washington fully occupies and preempts the entire field of regulating the retail sale of marijuana under this chapter.

(2) Cities, towns, and counties retain their existing zoning authority regarding the siting of licensed marijuana retailers.

(3) No local comprehensive plan, development regulation, or ordinance may preclude the siting of licensed marijuana retailers, except that a local jurisdiction that does not permit retail uses anywhere in the jurisdiction is not required to accommodate the siting of licensed marijuana retailers.

(4) Nothing in this section is construed to prevent a city, town, or county from applying ordinances of general application to marijuana businesses.

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

(1)(a) A registered voter of a county, city, or town may submit a petition calling for the county, city, or town to prohibit the siting or operation of any business or facility to be used for the retail sale of marijuana products under this chapter. The petition must be signed by thirty percent or more of the voters of the jurisdiction and must be filed with the legislative authority of the applicable county, city, or town. With respect to petitions to be filed with a county under this subsection, only registered voters in the unincorporated area of the county may initiate and sign the petition.

(b) If the legislative authority determines the petition to be sufficient, the legislative authority must, within sixty days of determining the petition to be sufficient, hold a public hearing on the petition and an implementing ordinance. Following the public hearing, the legislative authority of the county, city, or town legislative body must submit the question of prohibiting siting or operation of any business or facility to be used for the retail sale of marijuana under this chapter to the voters of the jurisdiction at a general election.

(c) If a majority of the voters of the county, city, or town voting in the election approve the prohibition, the prohibition takes effect on the date specified in the petition. If no effective date is specified in the petition, the prohibition takes effect on a date specified by the legislative authority that must be at least thirty days and no later than sixty days after the election.

(2) As an alternative to the petition process established in subsection (1) of this section, the legislative authority of a city, town, or county may initiate an ordinance provided for in subsection (1) of this section by submitting a ballot proposition at a general election prohibiting the siting or operation of any business or facility to be used for the sale of marijuana under this chapter. If a majority of the voters of the county, city, or town voting in the election approve the prohibition, the prohibition takes effect on the date specified in the ballot proposition. If no effective date is specified in the ballot proposition, the prohibition takes effect on a date specified by the legislative authority that must be at least thirty days and no later than sixty days after the election.

(3) With respect to a county enacting an ordinance under this section, the ordinance may apply only to unincorporated areas of the county. No voters within the boundaries of an incorporated city or town may participate in a county election under this section.

(4) Following the passage of an ordinance under subsection (1) or (2) of this section, the state liquor and cannabis board may not issue or renew a license under RCW 69.50.325(3) for the retail sale of marijuana with respect to a business that is either located or proposed to be located within an area subject to the ordinance.

(5) Nothing in this section may be construed to extend powers to cities, counties, or towns beyond the power to prohibit the siting or operation of a business or facility to be used for the sale of marijuana.

NEW SECTION. **Sec.**  A new section is added to chapter 36.01 RCW to read as follows:

Notwithstanding any other provision of law, counties also have the authority granted in section 2 of this act to prohibit by ordinance the siting or operation of any business or facility to be used for the sale of marijuana under chapter 69.50 RCW.

NEW SECTION. **Sec.**  A new section is added to chapter 35.21 RCW to read as follows:

Notwithstanding any other provision of law, cities and towns also have the authority granted in section 2 of this act to prohibit by ordinance the siting or operation of any business or facility to be used for the sale of marijuana under chapter 69.50 RCW.

NEW SECTION. **Sec.**  A new section is added to chapter 35A.21 RCW to read as follows:

Notwithstanding any other provision of law, code cities also have the authority granted in section 2 of this act to prohibit by ordinance the siting or operation of any business or facility to be used for the sale of marijuana under chapter 69.50 RCW.

**Sec.**  RCW 69.50.325 and 2015 c 70 s 5 are each amended to read as follows:

(1) There shall be a marijuana producer's license to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers, regulated by the state liquor and cannabis board and subject to annual renewal. 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 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 dollars. A separate license shall be required for each location at which a marijuana processor intends to process marijuana.

(3) 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 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.

(4) The state liquor and cannabis board may not issue or renew a license under subsection (3) of this section for any premises located within an area subject to an ordinance enacted pursuant to section 2 of this act prohibiting the siting or operation of any business or facility to be used for the retail sale of marijuana.

**Sec.**  RCW 69.50.334 and 2015 2nd sp.s. c 4 s 201 are each amended to read as follows:

(1) Except as provided under subsection (6) of this section, the action, order, or decision of the state liquor and cannabis board as to any denial of an application for the reissuance of a license to produce, process, or sell marijuana, or as to any revocation, suspension, or modification of any license to produce, process, or sell marijuana, or as to the administrative review of a notice of unpaid trust fund taxes under RCW 69.50.565, must be an adjudicative proceeding and subject to the applicable provisions of chapter 34.05 RCW.

(2) An opportunity for a hearing may be provided to an applicant for the reissuance of a license prior to the disposition of the application, and if no opportunity for a prior hearing is provided then an opportunity for a hearing to reconsider the application must be provided the applicant.

(3) An opportunity for a hearing must be provided to a licensee prior to a revocation or modification of any license and, except as provided in subsection ((~~(6)~~)) (7) of this section, prior to the suspension of any license.

(4) An opportunity for a hearing must be provided to any person issued a notice of unpaid trust fund taxes under RCW 69.50.565.

(5) No hearing may be required under this section until demanded by the applicant, licensee, or person issued a notice of unpaid trust fund taxes under RCW 69.50.565.

(6) The provisions of subsection (1) of this section do not apply to an action, order, or decision of the state liquor and cannabis board as to any denial of an application for the reissuance of a license to sell marijuana or as to any revocation, suspension, or modification of any license to sell marijuana if the licensee or applicant's designated premises is located within an area subject to an ordinance enacted pursuant to section 2 of this act, prohibiting the siting or operation of any business or facility to be used for the retail sale of marijuana.

(7) The state liquor and cannabis board may summarily suspend a license for a period of up to one hundred eighty days without a prior hearing if it finds that public health, safety, or welfare imperatively require emergency action, and it incorporates a finding to that effect in its order. Proceedings for revocation or other action must be promptly instituted and determined. An administrative law judge may extend the summary suspension period for up to one calendar year from the first day of the initial summary suspension in the event the proceedings for revocation or other action cannot be completed during the initial one hundred eighty-day period due to actions by the licensee. The state liquor and cannabis board's enforcement division shall complete a preliminary staff investigation of the violation before requesting an emergency suspension by the state liquor and cannabis board.

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