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**ENGROSSED SUBSTITUTE SENATE BILL 6062**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senator Hill)

AN ACT Relating to marijuana regulations; amending RCW 69.50.535, 69.50.325, 69.50.339, and 66.08.012; adding new sections to chapter 69.50 RCW; repealing RCW 69.50.530, 69.50.540, 69.50.545, and 69.50.550; providing an effective date; and declaring an emergency.

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

**Sec.**  RCW 69.50.535 and 2014 c 192 s 7 are each amended to read as follows:

(1) ((~~There is levied and collected a marijuana excise tax equal to twenty-five percent of the selling price on each wholesale sale in this state of marijuana by a licensed marijuana producer to a licensed marijuana processor or another licensed marijuana producer. This tax is the obligation of the licensed marijuana producer.~~

~~(2) There is levied and collected a marijuana excise tax equal to twenty-five percent of the selling price on each wholesale sale in this state of marijuana concentrates, useable marijuana, and marijuana-infused products by a licensed marijuana processor to a licensed marijuana retailer. This tax is the obligation of the licensed marijuana processor.~~

~~(3)~~)) (a) There is levied and collected a marijuana excise tax equal to ((~~twenty-five~~)) 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 ((~~the obligation of the licensed marijuana retailer, 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 selling price and 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 seller's retail store and in any advertising that includes prices for all useable marijuana, marijuana concentrates, or marijuana-infused products.

((~~(4)~~)) (2) All revenues collected by the board from the marijuana excise ((~~taxes imposed under subsections (1) through (3) of this section shall be deposited each day in a depository approved by the state treasurer and transferred to the state treasurer to be credited to the dedicated marijuana fund.~~

~~(5) The state liquor control board shall regularly review the tax levels established under this section and make recommendations~~)) tax imposed under this section must be distributed as follows:

(a) Eleven million seven hundred thousand dollars per year to the general fund; and

(b) The remainder into the education legacy trust account.

(3) Each year, six million dollars of the amount distributed to the general fund under subsection (2) of this section must be appropriated to counties, cities, and towns in the following manner:

(a) Fifty percent to counties, cities, and towns where marijuana licensees are physically located on a quarterly basis. Each jurisdiction must receive a share of this distribution based on the proportional share of the total revenues generated in the individual jurisdiction from the taxes collected under this section from licensees physically located in each jurisdiction; and

(b) Fifty percent must be distributed to counties, cities, and towns to be used for criminal justice purposes. Criminal justice purposes has the same meaning as described in RCW 82.14.340. The funds must be distributed as follows:

(i) Seventy percent distributed on a per capita basis to counties; and

(ii) Thirty percent distributed on a per capita basis to cities.

(4) 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.

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

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

(d) "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 as determined or agreed to by the board.

(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.

(6) 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.

NEW SECTION. **Sec.**  A new section is added to chapter 69.50 RCW under the subchapter heading "ARTICLE V" to read as follows:

(1) Whenever the board determines that a limited liability business entity has collected trust fund taxes and has failed to remit those taxes to the board and that business entity has been terminated, dissolved, or abandoned, or is insolvent, the board may pursue collection of the entity's unpaid trust fund taxes, including penalties on those taxes, against any or all of the responsible individuals. For purposes of this subsection, "insolvent" means the condition that results when the sum of the entity's debts exceeds the fair market value of its assets. The board may presume that an entity is insolvent if the entity refuses to disclose to the board the nature of its assets and liabilities.

(2)(a) For a responsible individual who is the current or a former chief executive or chief financial officer, liability under this section applies regardless of fault or whether the individual was or should have been aware of the unpaid trust fund tax liability of the limited liability business entity.

(b) For any other responsible individual, liability under this section applies only if he or she willfully failed to pay or to cause to be paid to the board the trust fund taxes due from the limited liability business entity.

(3)(a) Except as provided in this subsection (3)(a), a responsible individual who is the current or a former chief executive or chief financial officer is liable under this section only for trust fund tax liability accrued during the period that he or she was the chief executive or chief financial officer. However, if the responsible individual had the responsibility or duty to remit payment of the limited liability business entity's trust fund taxes to the board during any period of time that the person was not the chief executive or chief financial officer, that individual is also liable for trust fund tax liability that became due during the period that he or she had the duty to remit payment of the limited liability business entity's taxes to the board but was not the chief executive or chief financial officer.

(b) All other responsible individuals are liable under this section only for trust fund tax liability that became due during the period he or she had the responsibility or duty to remit payment of the limited liability business entity's taxes to the board.

(4) Persons described in subsection (3)(b) of this section are exempt from liability under this section in situations where nonpayment of the limited liability business entity's trust fund taxes was due to reasons beyond their control as determined by the board by rule.

(5) Any person having been issued a notice of unpaid trust fund taxes under this section is entitled to an administrative hearing under RCW 69.50.334 and any such rules the board may adopt.

(6) This section does not relieve the limited liability business entity of its trust fund tax liability or otherwise impair other tax collection remedies afforded by law.

(7) 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) "Chief executive" means: The president of a corporation or for other entities or organizations other than corporations or if the corporation does not have a president as one of its officers, the highest ranking executive manager or administrator in charge of the management of the company or organization.

(c) "Chief financial officer" means: The treasurer of a corporation or for entities or organizations other than corporations or if a corporation does not have a treasurer as one of its officers, the highest senior manager who is responsible for overseeing the financial activities of the entire company or organization.

(d) "Limited liability business entity" means a type of business entity that generally shields its owners from personal liability for the debts, obligations, and liabilities of the entity, or a business entity that is managed or owned in whole or in part by an entity that generally shields its owners from personal liability for the debts, obligations, and liabilities of the entity. Limited liability business entities include corporations, limited liability companies, limited liability partnerships, trusts, general partnerships and joint ventures in which one or more of the partners or parties are also limited liability business entities, and limited partnerships in which one or more of the general partners are also limited liability business entities.

(e) "Manager" has the same meaning as in RCW 25.15.005.

(f) "Member" has the same meaning as in RCW 25.15.005, except that the term only includes members of member-managed limited liability companies.

(g) "Officer" means any officer or assistant officer of a corporation, including the president, vice president, secretary, and treasurer.

(h)(i) "Responsible individual" includes any current or former officer, manager, member, partner, or trustee of a limited liability business entity with unpaid trust fund tax liability.

(ii) "Responsible individual" also includes any current or former employee or other individual, but only if the individual had the responsibility or duty to remit payment of the limited liability business entity's unpaid trust fund tax liability.

(iii) Whenever any taxpayer has one or more limited liability business entities as a member, manager, or partner, "responsible individual" also includes any current and former officers, members, or managers of the limited liability business entity or entities or of any other limited liability business entity involved directly in the management of the taxpayer. For purposes of this subsection (7)(h)(iii), "taxpayer" means a limited liability business entity with unpaid trust fund taxes.

(i) "Trust fund taxes" means taxes collected from buyers and deemed held in trust under RCW 69.50.535.

(j) "Willfully failed to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

**Sec.**  RCW 69.50.325 and 2014 c 192 s 2 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 control board and subject to annual renewal. The production, possession, delivery, distribution, and sale of marijuana in accordance with the provisions of chapter 3, Laws of 2013 and the rules adopted to implement and enforce it, by a validly licensed marijuana producer, ((~~shall~~)) is not ((~~be~~)) a criminal or civil offense under Washington state law. Every marijuana producer's license ((~~shall~~)) must be issued in the name of the applicant, ((~~shall~~)) must specify the location at which the marijuana producer intends to operate, which must be within the state of Washington, and the holder thereof ((~~shall~~)) may not allow any other person to use the license. The application fee for a marijuana producer's license ((~~shall be~~)) is two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana producer's license ((~~shall be~~)) is one thousand dollars. A separate license ((~~shall be~~)) is 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 control 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 chapter 3, Laws of 2013 and the rules adopted to implement and enforce it, by a validly licensed marijuana processor, ((~~shall~~)) is not ((~~be~~)) a criminal or civil offense under Washington state law. Every marijuana processor's license ((~~shall~~)) must be issued in the name of the applicant, ((~~shall~~)) must specify the location at which the licensee intends to operate, which must be within the state of Washington, and the holder thereof ((~~shall~~)) may not allow any other person to use the license. The application fee for a marijuana processor's license ((~~shall be~~)) is two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana processor's license ((~~shall be~~)) is one thousand dollars. A separate license ((~~shall be~~)) is 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 control 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 chapter 3, Laws of 2013 and the rules adopted to implement and enforce it, by a validly licensed marijuana retailer, ((~~shall~~)) is not ((~~be~~)) a criminal or civil offense under Washington state law. Every marijuana retailer's license ((~~shall~~)) must be issued in the name of the applicant, ((~~shall~~)) must 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~~)) may not allow any other person to use the license. The application fee for a marijuana retailer's license ((~~shall be~~)) is two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana retailer's license ((~~shall be~~)) is one thousand dollars. A separate license ((~~shall be~~)) is required for each location at which a marijuana retailer intends to sell marijuana concentrates, useable marijuana, and marijuana-infused products.

(4) The revenue from the fees in this section must be deposited into the general fund.

**Sec.**  RCW 69.50.339 and 2013 c 3 s 8 are each amended to read as follows:

(1) If the state liquor control board approves, a license to produce, process, or sell marijuana may be transferred, without charge, to the surviving spouse or domestic partner of a deceased licensee if the license was issued in the names of one or both of the parties. For the purpose of considering the qualifications of the surviving party to receive a marijuana producer's, marijuana processor's, or marijuana retailer's license, the state liquor control board may require a criminal history record information check. The state liquor control board may submit the criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The state liquor control board shall require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation.

(2) The proposed sale of more than ten percent of the outstanding or issued stock of a corporation licensed under this chapter ((~~3, Laws of 2013~~)), or any proposed change in the officers of such a corporation, must be reported to the state liquor control board, and state liquor control board approval must be obtained before the changes are made. A fee of seventy-five dollars will be charged for the processing of the change of stock ownership or corporate officers.

(3) The revenue from the fee in this section must be deposited into the general fund.

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

(1) Marijuana producers, processors, and retailers are prohibited from making sales of any marijuana or marijuana product, if the sale of the marijuana or marijuana product is conditioned upon the buyer's purchase of any service or nonmarijuana product. This subsection applies whether the buyer purchases such service or nonmarijuana product at the time of sale of the marijuana or marijuana product, or in a separate transaction.

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

(a) "Marijuana product" means "useable marijuana," "marijuana concentrates," and "marijuana-infused products" as those terms are defined in RCW 69.50.101.

(b) "Nonmarijuana product" includes paraphernalia, promotional items, lighters, bags, boxes, containers, and such other items as may be identified by the board.

(c) "Service" includes memberships and any other services identified by the board.

**Sec.**  RCW 66.08.012 and 2012 c 117 s 265 are each amended to read as follows:

There shall be a board, known as the "Washington state liquor ((~~control~~)) and cannabis board," consisting of three members, to be appointed by the governor, with the consent of the senate, who ((~~shall~~)) must each be paid an annual salary to be fixed by the governor in accordance with the provisions of RCW 43.03.040. The governor may, in his or her discretion, appoint one of the members as chair of the board, and a majority of the members ((~~shall~~)) constitutes a quorum of the board.

NEW SECTION. **Sec.**  The following acts or parts of acts are each repealed:

(1)RCW 69.50.530 (Dedicated marijuana fund) and 2013 c 3 s 26;

(2)RCW 69.50.540 (Marijuana excise taxes—Disbursements) and 2013 c 3 s 28;

(3)RCW 69.50.545 (Departments of social and health services, health—Adoption of rules for disbursement of marijuana excise taxes) and 2013 c 3 s 29; and

(4)RCW 69.50.550 (Cost-benefit evaluations) and 2013 c 3 s 30.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2015.

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