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**SUBSTITUTE HOUSE BILL 2336**

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**State of Washington 65th Legislature 2018 Regular Session**

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

AN ACT Relating to permitting cities, towns, and counties to prohibit the production, processing, or sale of marijuana only by an ordinance enacted through a public vote; amending RCW 69.50.334; reenacting and amending RCW 69.50.325; 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; adding a new section to chapter 35A.21 RCW; and providing an effective date.

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 production, processing, and retail sale of marijuana under this chapter and chapter 69.51A RCW. The state of Washington has sole authority to enact regulatory provisions regarding recreational and medical marijuana, and cities, towns, and counties are prohibited from enacting marijuana-related regulatory provisions absent an express grant of authority from the state.

(2) Cities, towns, and counties retain their existing zoning authority regarding the siting of state licensed marijuana producers, processors, and retailers, provided such zoning does not preclude or unreasonably restrict the siting of such businesses within the territorial boundaries of the municipality.

(3) A city, town, or county may not enact a local comprehensive plan, development regulation, or ordinance that expressly prohibits, or has the effect of prohibiting, the siting of a state licensed marijuana retailer, processor, or producer, subject to the following exceptions:

(a) A city, town, or county that does not permit the commercial growing of plants anywhere within its jurisdictional boundaries is not required to allow the siting of licensed marijuana producers;

(b) A city, town, or county that does not permit the commercial processing of plants, plant-based material, or food products anywhere within its jurisdictional boundaries is not required to allow the siting of state licensed marijuana processors; and

(c) A city, town, or county that does not permit retail uses anywhere within its jurisdictional boundaries is not required to allow the siting of licensed marijuana retailers.

(4) The provisions of this section may not be construed to prevent any 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) Any registered voter of a city, town, or county may submit a petition calling for the jurisdiction to enact an ordinance prohibiting the siting or operation of a business or facility to be used for the production, processing, or retail sale of marijuana products authorized under this chapter. The petition must be signed by at least thirty percent of the voters within the jurisdiction and must be filed with the jurisdiction's legislative authority. With respect to petitions filed with a county under this subsection, only registered voters in the unincorporated areas of the county may initiate and sign the petition.

(b) If the legislative authority determines the petition to be sufficient, it must, within sixty days of making such determination, hold a public hearing to consider the petition proposing the enactment of the ordinance prohibiting the siting or operation of a business or facility to be used for the production, processing, or retail sale of marijuana products. Following the public hearing, the legislative authority of the city, county, or town must submit the proposed ordinance for a decision by the voters of the jurisdiction at the next general election occurring in an even-numbered year.

(c) If a majority of the voters of the city, town, or county voting in the election approve the proposed ordinance, the ordinance will take effect on the date specified in the petition. If no effective date is specified in the petition, the ordinance will take effect on a date specified by the legislative authority, which must be at least thirty days, but 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 a referendum proposing the passage of an ordinance to prohibit the siting or operation of any business or facility to be used for the production, processing, or retail sale of marijuana products. Following the approval of the referendum by the local legislative authority, it must be submitted to the voters at the next general election occurring in an even-numbered year. If a majority of the voters of the county, city, or town voting in the election approve the ordinance set forth in the referendum, the ordinance will take effect on the date specified in the ballot proposition. If no effective date is specified in the ballot proposition, the ordinance will take effect on a date specified by the legislative authority, which must be at least thirty days, but no later than sixty days, after the election.

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

(4) Following the passage of an ordinance enacted in accordance with either subsections (1) or (2) of this section, the state liquor and cannabis board may not issue or renew any license under RCW 69.50.325 for the production, processing, or retail sale of marijuana with respect to businesses that are 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 any business or facility to be used for the production, processing, or 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 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 production, processing, or 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 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 production, processing, or 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 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 production, processing, or sale of marijuana under chapter 69.50 RCW.

**Sec.**  RCW 69.50.325 and 2017 c 317 s 1 and 2017 c 316 s 2 are each reenacted and 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 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 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 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 state liquor and cannabis board shall not issue or renew a license under 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 production, processing, or 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 if the licensee's or applicant's designated premises is located within an area subject to an ordinance enacted pursuant to section 2 of this act that prohibits the siting or operation of any business or facility to be used for the production, processing, or 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.

NEW SECTION. **Sec.**  This act takes effect July 1, 2018.

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