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## Commerce & Gaming Committee

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### HB 1857

**Brief Description:** Addressing provisions concerning marijuana with respect to research licenses, local authority notifications, the retail licensing application process, processor wholesale events, and jurisdictional requirements.

**Sponsors:** Representatives Kloba, Sawyer, Appleton and Condotta; by request of Liquor and Cannabis Board.

#### Brief Summary of Bill

- Eliminates the Liquor and Cannabis Board's (LCB's) obligation to develop an application process for marijuana licenses that includes three levels of priority among applicants with different experience and qualifications in the marijuana industry, while retaining the LCB's obligation to conduct a comprehensive, fair, and impartial evaluation of applications.
- Requires the LCB to give notice of applications for marijuana licenses and renewals of licenses to federally recognized Indian tribes and to port authorities in certain circumstances, and provides for the submission of written objections by federally recognized Indian tribes and port authorities.
- Modifies the marijuana processor license with respect to authorized transactions between marijuana processors.
- Modifies the LCB's rulemaking authority related to the marijuana research license to eliminate an erroneous reference.
- Establishes that the LCB and its members are not personally liable for actions done in the performance of official duties related to administering marijuana statutes, to the same extent the LCB and its members have such protection related to administering liquor statutes.

**Hearing Date:** 2/7/17

**Staff:** Peter Clodfelter (786-7127).

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*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.*

## **Background:**

### Marijuana License Application Process.

The Liquor and Cannabis Board (LCB) issues the following licenses to qualified individuals, business entities, and nonprofit entities, subject to requirements: (1) marijuana producer license; (2) marijuana processor license; (3) marijuana retailer license; (4) marijuana researcher license; and (5) marijuana transporter license. For the purposes of considering an application for such a license, the LCB must conduct a comprehensive, fair, and impartial evaluation of the applications timely received. Additionally, in 2015 the Legislature required the LCB to develop a competitive, merit-based application process that includes, at a minimum, the opportunity for an applicant to demonstrate experience and qualifications in the marijuana industry.

In the process established, first priority must be given to applicants that applied to the LCB for a marijuana retailer license prior to July 1, 2014, operated or were employed by a collective garden before January 1, 2013, have maintained a state business license and a municipal business license, as applicable in the relevant jurisdiction, and have a history of paying all applicable state taxes and fees. Second priority must be given to applicants that operated or were employed by a collective garden before January 1, 2013, have maintained a state business license and a municipal business license, as applicable in the relevant jurisdiction, and have had a history of paying all applicable state taxes and fees. Third priority must be given to all other applicants that do not have the experience and qualifications identified of applicants who qualify for first or second priority.

Before the LCB issues or renews a license to an applicant the LCB must give notice of the application to the chief executive officer of the incorporated city or town, if the application is for a license within an incorporated city or town, or to the county legislative authority, if the application is for a license outside the boundaries of incorporated cities or towns. The city, town, or county, as appropriate, may file with the LCB within 20 days after the date of transmittal of the notice for application, or at least 30 days prior to the expiration date for a renewal, written objections against the applicant or against the premises for which the new or renewed license is asked. The written objections must include a statement of all facts upon which the objections are based, and if written objections are filed, the city, town, or county may request that the LCB hold a hearing subject to the Administrative Procedure Act. The LCB may extend the time period for submitting written objections. If the LCB makes an initial decision to deny a license or renewal based on the written objections of a city, town, or county, the applicant may request a hearing. If a hearing is held at the request of the applicant, the LCB must present and defend the LCB's initial decision to deny a license or renewal.

The LCB may, in its discretion, grant or deny the renewal or license applied for. Denial may be based on, without limitation, the existence of chronic illegal activity documented in objections submitted to the LCB from the chief executive officer of the incorporated city or town that the applicant's premises is located in, or from the county legislative authority, if the applicant's premises is not located in an incorporated city or town. The LCB must give substantial weight to such objections.

The Legislature delegates authority to the LCB to determine, in consultation with the Office of Financial Management, the maximum number of retail outlets that may be licensed in each county, taking into consideration specific factors.

### Marijuana Processor License.

There is a marijuana processor's license to process, package, and label marijuana concentrates, useable marijuana, and marijuana-infused products (collectively "marijuana products") for sale at wholesale to marijuana processors and marijuana retailers, regulated by the LCB.

### Marijuana Research License.

There is a marijuana research license issued by the LCB that authorizes a licensee to produce, process, and possess marijuana in order to test chemical potency and composition levels, conduct clinical investigations of marijuana-derived drug products, conduct research on the efficacy and safety of administering marijuana as part of medical treatment, or conduct genomic or agricultural research. The LCB has rulemaking authority regarding application requirements, security measures, conditions under which marijuana grown by marijuana processors may be donated to marijuana research licensees, and additional requirements deemed necessary by the LCB.

### Limit on Personal Liability of Members of the Liquor and Cannabis Board.

Neither the LCB nor any member of the LCB may be found personally liable in any action at law for damages sustained by any person because of any acts performed or done or omitted to be done by the LCB or any member or employee of the LCB in the performance of the LCB employee or member's duties and in the administration of the liquor statutes.

### **Summary of Bill:**

#### Marijuana License Application Process.

The requirement that the LCB develop a competitive, merit-based application process that includes, at a minimum, the opportunity for an applicant for a marijuana license to demonstrate experience and qualifications in the marijuana industry, is removed. The related priority system for analyzing competing applications for marijuana licenses is removed.

Before the LCB may issue a marijuana license to an applicant or renew the marijuana license of an applicant located in Indian country under the jurisdiction of a federally recognized Indian tribe, the LCB must give notice of the application to the applicable tribal government. Before the LCB may issue a marijuana license to an applicant or renew the marijuana license of an applicant that is located on property owned by a port authority, the LCB must give notice of the application to the port authority. Similar to the existing rights of cities, towns, and counties, the tribal government or port authority, as applicable, has the right to file with the LCB within 20 days after the date of transmittal of the notice for applications, or at least 30 days prior to the expiration date of a license for renewals, written objections against the applicant or against the premises for which the new or renewed licensed is asked.

It is established that the LCB's discretion to extend the time period for submitting written objections from cities, towns, counties, federally recognized Indian tribes, and port authorities, is upon the request of the authority notified by the LCB of the license application or renewal.

#### Marijuana Processor License.

The authorization for a marijuana processor to package and label marijuana products for sale at wholesale to another marijuana processor is removed, but the authorization for a marijuana

processor to process marijuana products for sale at wholesale to another marijuana processor is retained. The authorization for a marijuana processor to process, package, and label marijuana for sale at wholesale to marijuana retailers is also retained.

Marijuana Research License.

The erroneous reference to marijuana processors' authority to produce marijuana is removed from the marijuana research license statute. It is established that the LCB's rulemaking authority related to the marijuana research license includes the conditions under which marijuana grown by licensed marijuana producers and other product types from marijuana processors may be donated to marijuana research licensees.

Limit on Personal Liability of Members of the Liquor and Cannabis Board.

Neither the LCB nor any member of the LCB may be found personally liable in any action at law for damages sustained by any person because of any acts performed or done or omitted to be done by the LCB or any member or employee of the LCB in the performance of the LCB employee or member's duties and in the administration of the state Uniform Controlled Substances Act.

It is established that the act applies prospectively only, not retroactively. The act applies only to causes of action that arise (if the change is substantive) or that are commenced (if the change is procedural) on or after the effective date of the act.

**Appropriation:** None.

**Fiscal Note:** Requested on 2/01/17.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.