

# HOUSE BILL REPORT

## HB 2358

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**As Passed House:**  
February 13, 2018

**Title:** An act relating to clarifying marijuana-related definitions.

**Brief Description:** Clarifying marijuana-related definitions.

**Sponsors:** Representatives Sawyer, Lytton and Appleton.

**Brief History:**

**Committee Activity:**

Finance: 1/12/18, 1/19/18 [DP].

**Floor Activity:**

Passed House: 2/13/18, 97-1.

**Brief Summary of Bill**

- Clarifies that marijuana, usable marijuana, and marijuana-infused products do not qualify as "agricultural products" for the purposes of tax treatment and tax preferences.

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### HOUSE COMMITTEE ON FINANCE

**Majority Report:** Do pass. Signed by 9 members: Representatives Frame, Vice Chair; Nealey, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Condotta, Dolan, Pollet, Springer, Stokesbary and Wylie.

**Staff:** Rachelle Harris (786-7137).

**Background:**

Business and Occupation Tax.

Washington's business and occupation (B&O) tax is imposed on the gross receipts of all in-state business activities, except utility activities, on every person who has a substantial nexus to the state for the act or privilege of doing business. The B&O tax does not apply to farmers (persons producing agricultural products for sale) selling agricultural products at wholesale or growing agricultural products owned by others.

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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.*

### Sales and Use Tax.

Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products, and some services. A retail sale is a sale to the final consumer, or end user, of the property, digital product, or service. If retail sales taxes were not collected when the user acquired the property, digital products, or services, then use taxes apply to the value when used in this state. The state, most cities, and all counties levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent. Local sales and use tax rates vary by location, ranging from 0.5 percent to 3.0 percent.

### Tax Preferences.

State law provides for a range of tax preferences that confer reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, deferrals, credits, and preferential tax rates. All new tax preferences automatically expire after 10 years unless an alternative expiration date is provided.

### Marijuana Regulation.

In 2012 Washington voters approved Initiative 502, which established a regulatory system for the production, processing, and distribution of limited amounts of marijuana for recreational use. Under this system, the Liquor Control Board (LCB) issues licenses to marijuana producers, processors, and retailers, and adopts standards for the regulation of these operations. Persons over 21 years of age may purchase and possess up to 1 ounce of useable marijuana, 16 ounces of solid marijuana-infused product, 72 ounces of liquid marijuana-infused product, and 7 grams of marijuana concentrates.

### Marijuana Taxes.

Marijuana sales are subject to an excise tax of 37 percent at the retail level; the excise tax is in addition to the state's B&O tax and state and local retail sales tax. Sales to qualifying patients from a retailer with a medical endorsement are exempt from sales tax. The B&O tax definition of "agricultural product" does not include marijuana, useable marijuana, or marijuana-infused products. For purposes of both B&O and sales and use taxes, the terms "agriculture," "farming," "horticulture," "horticultural," and "horticultural product" may not be construed to include marijuana, usable marijuana, or marijuana-infused products unless explicitly stated otherwise. Marijuana-related activity and sales are excluded from existing state tax preferences.

### **Summary of Bill:**

Definitions for "agricultural product" in the B&O and sales and use tax statutes are further clarified such that, for purposes of tax treatment and tax preferences, marijuana, usable marijuana, and marijuana-infused products are excluded. It is further clarified that, for purposes of tax treatment and tax preferences, the terms "agriculture," "farming," "horticulture," "horticultural," and "horticultural product" may not be construed to include marijuana, usable marijuana, or marijuana-infused products unless explicitly stated otherwise.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) This bill clarifies the removal of cannabis from the definition of "agricultural product" to ensure that it does not get agricultural tax treatment. Earlier bills to deal with this issue had the unintended consequence of confusing the issue, and this bill is intended to help provide clarity.

(Opposed) None.

**Persons Testifying:** Representative Sawyer, prime sponsor; Rebecca Johnson, United Food and Commercial Workers Union 21; and Lara Kaminsky, The Cannabis Alliance.

**Persons Signed In To Testify But Not Testifying:** None.