

SENATE BILL REPORT

SB 5101

As of January 24, 2017

Title: An act relating to licensing agreements and consulting contracts for licensed marijuana businesses.

Brief Description: Concerning licensing agreements and consulting contracts for licensed marijuana businesses.

Sponsors: Senators Rivers and Palumbo.

Brief History:

Committee Activity: Commerce, Labor & Sports: 1/16/17.

Brief Summary of Bill

- Allows licensed marijuana businesses to enter into licensing agreements or consulting contracts for goods or services related to a marijuana business.
- Exempts from public disclosure any trade secrets, technology, proprietary information, and financial considerations contained in agreements or contracts submitted to or obtained by the Liquor and Cannabis Board.

SENATE COMMITTEE ON COMMERCE, LABOR & SPORTS

Staff: Richard Rodger (786-7461)

Background: The Liquor and Cannabis Board (LCB) issues licenses to marijuana producers, processors, and retailers and adopts standards for the regulation of these operations. State statutes and regulations do not specifically address the licensee's ability to enter into licensing agreements or consulting contracts.

Registration of a trademark provides the registered user with exclusive use of that trademark and protects against infringements upon the owner's rights. A trademark may be registered with the U.S. Trademark and Patent Office or the Washington Secretary of State's Office. Currently, because of the federal prohibition on marijuana, it is generally not possible for marijuana businesses to receive federal trademark protection.

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.

Unregistered trademarks which are used to distinguish a product or service have a more limited protection than registered trademarks and are usually enforceable only in the area where the business is located. "Trade dress" refers to a product's physical appearance, including its size, shape, color, design, and texture. Trade dress may also refer to the manner in which a product is packaged, promoted, or advertised. There is no formal registration requirement for trade dress. Trade dress receives its legal protection simply by distinctive and recognizable design.

The Public Records Act (PRA) requires state and local agencies to make their written records available to the public for inspection and copying upon request, unless the information meets certain requirements for exemption.

Summary of Bill: A licensed marijuana business may enter into a licensing agreement or consulting contract with any individual, partnership, employee cooperative, association, nonprofit corporation, or corporation for:

- any goods or services that are registered as a trademark under state or federal law;
- any unregistered trademark, trade name, or trade dress; or
- any trade secret, technology, or proprietary information used to manufacture a cannabis product or used to provide a service related to a marijuana business.

All agreements or contracts entered into by a licensed marijuana business must be disclosed to LCB. Trade secrets, technology, proprietary information, and financial considerations contained in any agreements or contracts entered into by a marijuana licensee, which are submitted to or obtained by LCB, are exempt from public disclosure under PRA.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill will assist local marijuana businesses to market their brands that have a cult following in other states that allow the sale of marijuana purposes. Local businesses will also benefit from being able to market out-of-state brands, such as Willie's Reserve. This bill doesn't allow businesses to sell or move marijuana products across state lines, but does allow for the marketing of brand names. The privacy of confidential business records is important to protect these investments. The records are available to the LCB, but cannot be released to the public.

CON: The business records should be available to the public and contain important information relating to a business' true party of interests. The bill is not consistent with the provisions of the DOJ's Cole memorandum regarding keeping business in the state. Our state is just fine without Willie Nelson's marijuana brand.

OTHER: The LCB is not concerned about the privacy portion of the bill, as we still will get the records.

Persons Testifying: PRO: Senator Ann Rivers, Prime Sponsor; Susie Gress, Vashon Velvet; Peter Saladino, BMF Washington; Jerry Derevyanny, NWCS.

CON: Logan Bowers, Cannabis Organization of Retail Establishments; John Kingsbury, Patients United.

OTHER: Justin Nordhorn, LBC.

Persons Signed In To Testify But Not Testifying: CON: Kyle Woodring, Cannabis Organization of Retail Establishments.