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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)

READ FIRST TIME 01/26/18.

1 AN ACT Relating to permitting cities, towns, and counties to  
2 prohibit the production, processing, or sale of marijuana only by an  
3 ordinance enacted through a public vote; amending RCW 69.50.334;  
4 reenacting and amending RCW 69.50.325; adding new sections to chapter  
5 69.50 RCW; adding a new section to chapter 36.01 RCW; adding a new  
6 section to chapter 35.21 RCW; adding a new section to chapter 35A.21  
7 RCW; and providing an effective date.

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

9 NEW SECTION. **Sec. 1.** A new section is added to chapter 69.50  
10 RCW to read as follows:

11 (1) Except as provided in section 2 of this act and subsections  
12 (2) through (4) of this section, the state of Washington fully  
13 occupies and preempts the entire field of regulating the production,  
14 processing, and retail sale of marijuana under this chapter and  
15 chapter 69.51A RCW. The state of Washington has sole authority to  
16 enact regulatory provisions regarding recreational and medical  
17 marijuana, and cities, towns, and counties are prohibited from  
18 enacting marijuana-related regulatory provisions absent an express  
19 grant of authority from the state.

20 (2) Cities, towns, and counties retain their existing zoning  
21 authority regarding the siting of state licensed marijuana producers,

1 processors, and retailers, provided such zoning does not preclude or  
2 unreasonably restrict the siting of such businesses within the  
3 territorial boundaries of the municipality.

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

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

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

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

19 (4) The provisions of this section may not be construed to  
20 prevent any city, town, or county from applying ordinances of general  
21 application to marijuana businesses.

22 NEW SECTION. **Sec. 2.** A new section is added to chapter 69.50  
23 RCW to read as follows:

24 (1)(a) Any registered voter of a city, town, or county may submit  
25 a petition calling for the jurisdiction to enact an ordinance  
26 prohibiting the siting or operation of a business or facility to be  
27 used for the production, processing, or retail sale of marijuana  
28 products authorized under this chapter. The petition must be signed  
29 by at least thirty percent of the voters within the jurisdiction and  
30 must be filed with the jurisdiction's legislative authority. With  
31 respect to petitions filed with a county under this subsection, only  
32 registered voters in the unincorporated areas of the county may  
33 initiate and sign the petition.

34 (b) If the legislative authority determines the petition to be  
35 sufficient, it must, within sixty days of making such determination,  
36 hold a public hearing to consider the petition proposing the  
37 enactment of the ordinance prohibiting the siting or operation of a  
38 business or facility to be used for the production, processing, or  
39 retail sale of marijuana products. Following the public hearing, the

1 legislative authority of the city, county, or town must submit the  
2 proposed ordinance for a decision by the voters of the jurisdiction  
3 at the next general election occurring in an even-numbered year.

4 (c) If a majority of the voters of the city, town, or county  
5 voting in the election approve the proposed ordinance, the ordinance  
6 will take effect on the date specified in the petition. If no  
7 effective date is specified in the petition, the ordinance will take  
8 effect on a date specified by the legislative authority, which must  
9 be at least thirty days, but no later than sixty days, after the  
10 election.

11 (2) As an alternative to the petition process established in  
12 subsection (1) of this section, the legislative authority of a city,  
13 town, or county may initiate a referendum proposing the passage of an  
14 ordinance to prohibit the siting or operation of any business or  
15 facility to be used for the production, processing, or retail sale of  
16 marijuana products. Following the approval of the referendum by the  
17 local legislative authority, it must be submitted to the voters at  
18 the next general election occurring in an even-numbered year. If a  
19 majority of the voters of the county, city, or town voting in the  
20 election approve the ordinance set forth in the referendum, the  
21 ordinance will take effect on the date specified in the ballot  
22 proposition. If no effective date is specified in the ballot  
23 proposition, the ordinance will take effect on a date specified by  
24 the legislative authority, which must be at least thirty days, but no  
25 later than sixty days, after the election.

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

31 (4) Following the passage of an ordinance enacted in accordance  
32 with either subsections (1) or (2) of this section, the state liquor  
33 and cannabis board may not issue or renew any license under RCW  
34 69.50.325 for the production, processing, or retail sale of marijuana  
35 with respect to businesses that are either located or proposed to be  
36 located within an area subject to the ordinance.

37 (5) Nothing in this section may be construed to extend powers to  
38 cities, counties, or towns beyond the power to prohibit the siting or  
39 operation of any business or facility to be used for the production,  
40 processing, or sale of marijuana.

1        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 36.01  
2    RCW to read as follows:

3        Notwithstanding any other provision of law, counties have the  
4    authority granted in section 2 of this act to prohibit by ordinance  
5    the siting or operation of any business or facility to be used for  
6    the production, processing, or sale of marijuana under chapter 69.50  
7    RCW.

8        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 35.21  
9    RCW to read as follows:

10       Notwithstanding any other provision of law, cities and towns have  
11    the authority granted in section 2 of this act to prohibit by  
12    ordinance the siting or operation of any business or facility to be  
13    used for the production, processing, or sale of marijuana under  
14    chapter 69.50 RCW.

15       NEW SECTION.    **Sec. 5.**    A new section is added to chapter 35A.21  
16    RCW to read as follows:

17       Notwithstanding any other provision of law, code cities have the  
18    authority granted in section 2 of this act to prohibit by ordinance  
19    the siting or operation of any business or facility to be used for  
20    the production, processing, or sale of marijuana under chapter 69.50  
21    RCW.

22       **Sec. 6.**    RCW 69.50.325 and 2017 c 317 s 1 and 2017 c 316 s 2 are  
23    each reenacted and amended to read as follows:

24       (1) There shall be a marijuana producer's license regulated by  
25    the state liquor and cannabis board and subject to annual renewal.  
26    The licensee is authorized to produce: (a) Marijuana for sale at  
27    wholesale to marijuana processors and other marijuana producers; (b)  
28    immature plants or clones and seeds for sale to cooperatives as  
29    described under RCW 69.51A.250; and (c) immature plants or clones and  
30    seeds for sale to qualifying patients and designated providers as  
31    provided under RCW 69.51A.310. The production, possession, delivery,  
32    distribution, and sale of marijuana in accordance with the provisions  
33    of this chapter and the rules adopted to implement and enforce it, by  
34    a validly licensed marijuana producer, shall not be a criminal or  
35    civil offense under Washington state law. Every marijuana producer's  
36    license shall be issued in the name of the applicant, shall specify  
37    the location at which the marijuana producer intends to operate,

1 which must be within the state of Washington, and the holder thereof  
2 shall not allow any other person to use the license. The application  
3 fee for a marijuana producer's license shall be two hundred fifty  
4 dollars. The annual fee for issuance and renewal of a marijuana  
5 producer's license shall be one thousand three hundred dollars. A  
6 separate license shall be required for each location at which a  
7 marijuana producer intends to produce marijuana.

8 (2) There shall be a marijuana processor's license to process,  
9 package, and label marijuana concentrates, useable marijuana, and  
10 marijuana-infused products for sale at wholesale to marijuana  
11 processors and marijuana retailers, regulated by the state liquor and  
12 cannabis board and subject to annual renewal. The processing,  
13 packaging, possession, delivery, distribution, and sale of marijuana,  
14 useable marijuana, marijuana-infused products, and marijuana  
15 concentrates in accordance with the provisions of this chapter and  
16 chapter 69.51A RCW and the rules adopted to implement and enforce  
17 these chapters, by a validly licensed marijuana processor, shall not  
18 be a criminal or civil offense under Washington state law. Every  
19 marijuana processor's license shall be issued in the name of the  
20 applicant, shall specify the location at which the licensee intends  
21 to operate, which must be within the state of Washington, and the  
22 holder thereof shall not allow any other person to use the license.  
23 The application fee for a marijuana processor's license shall be two  
24 hundred fifty dollars. The annual fee for issuance and renewal of a  
25 marijuana processor's license shall be one thousand three hundred  
26 dollars. A separate license shall be required for each location at  
27 which a marijuana processor intends to process marijuana.

28 (3)(a) There shall be a marijuana retailer's license to sell  
29 marijuana concentrates, useable marijuana, and marijuana-infused  
30 products at retail in retail outlets, regulated by the state liquor  
31 and cannabis board and subject to annual renewal. The possession,  
32 delivery, distribution, and sale of marijuana concentrates, useable  
33 marijuana, and marijuana-infused products in accordance with the  
34 provisions of this chapter and the rules adopted to implement and  
35 enforce it, by a validly licensed marijuana retailer, shall not be a  
36 criminal or civil offense under Washington state law. Every marijuana  
37 retailer's license shall be issued in the name of the applicant,  
38 shall specify the location of the retail outlet the licensee intends  
39 to operate, which must be within the state of Washington, and the  
40 holder thereof shall not allow any other person to use the license.

1 The application fee for a marijuana retailer's license shall be two  
2 hundred fifty dollars. The annual fee for issuance and renewal of a  
3 marijuana retailer's license shall be one thousand three hundred  
4 dollars. A separate license shall be required for each location at  
5 which a marijuana retailer intends to sell marijuana concentrates,  
6 useable marijuana, and marijuana-infused products.

7 (b) An individual retail licensee and all other persons or  
8 entities with a financial or other ownership interest in the business  
9 operating under the license are limited, in the aggregate, to holding  
10 a collective total of not more than five retail marijuana licenses.

11 (c)(i) A marijuana retailer's license is subject to forfeiture in  
12 accordance with rules adopted by the state liquor and cannabis board  
13 pursuant to this section.

14 (ii) The state liquor and cannabis board shall adopt rules to  
15 establish a license forfeiture process for a licensed marijuana  
16 retailer that is not fully operational and open to the public within  
17 a specified period from the date of license issuance, as established  
18 by the state liquor and cannabis board, subject to the following  
19 restrictions:

20 (A) No marijuana retailer's license may be subject to forfeiture  
21 within the first nine months of license issuance; and

22 (B) The state liquor and cannabis board must require license  
23 forfeiture on or before twenty-four calendar months of license  
24 issuance if a marijuana retailer is not fully operational and open to  
25 the public, unless the board determines that circumstances out of the  
26 licensee's control are preventing the licensee from becoming fully  
27 operational and that, in the board's discretion, the circumstances  
28 warrant extending the forfeiture period beyond twenty-four calendar  
29 months.

30 (iii) The state liquor and cannabis board has discretion in  
31 adopting rules under this subsection (3)(c).

32 (iv) This subsection (3)(c) applies to marijuana retailer's  
33 licenses issued before and after July 23, 2017. However, no license  
34 of a marijuana retailer that otherwise meets the conditions for  
35 license forfeiture established pursuant to this subsection (3)(c) may  
36 be subject to forfeiture within the first nine calendar months of  
37 July 23, 2017.

38 (v) The state liquor and cannabis board may not require license  
39 forfeiture if the licensee has been incapable of opening a fully  
40 operational retail marijuana business due to actions by the city,

1 town, or county with jurisdiction over the licensee that include any  
2 of the following:

3 (A) The adoption of a ban or moratorium that prohibits the  
4 opening of a retail marijuana business; or

5 (B) The adoption of an ordinance or regulation related to zoning,  
6 business licensing, land use, or other regulatory measure that has  
7 the effect of preventing a licensee from receiving an occupancy  
8 permit from the jurisdiction or which otherwise prevents a licensed  
9 marijuana retailer from becoming operational.

10 (4) The state liquor and cannabis board shall not issue or renew  
11 a license under this section for any premises located within an area  
12 subject to an ordinance enacted pursuant to section 2 of this act  
13 prohibiting the siting or operation of any business or facility to be  
14 used for the production, processing, or retail sale of marijuana.

15 **Sec. 7.** RCW 69.50.334 and 2015 2nd sp.s. c 4 s 201 are each  
16 amended to read as follows:

17 (1) Except as provided under subsection (6) of this section, the  
18 action, order, or decision of the state liquor and cannabis board as  
19 to any denial of an application for the reissuance of a license to  
20 produce, process, or sell marijuana, or as to any revocation,  
21 suspension, or modification of any license to produce, process, or  
22 sell marijuana, or as to the administrative review of a notice of  
23 unpaid trust fund taxes under RCW 69.50.565, must be an adjudicative  
24 proceeding and subject to the applicable provisions of chapter 34.05  
25 RCW.

26 (2) An opportunity for a hearing may be provided to an applicant  
27 for the reissuance of a license prior to the disposition of the  
28 application, and if no opportunity for a prior hearing is provided  
29 then an opportunity for a hearing to reconsider the application must  
30 be provided the applicant.

31 (3) An opportunity for a hearing must be provided to a licensee  
32 prior to a revocation or modification of any license and, except as  
33 provided in subsection (~~(6)~~) (7) of this section, prior to the  
34 suspension of any license.

35 (4) An opportunity for a hearing must be provided to any person  
36 issued a notice of unpaid trust fund taxes under RCW 69.50.565.

37 (5) No hearing may be required under this section until demanded  
38 by the applicant, licensee, or person issued a notice of unpaid trust  
39 fund taxes under RCW 69.50.565.

1       (6) The provisions of subsection (1) of this section do not apply  
2 if the licensee's or applicant's designated premises is located  
3 within an area subject to an ordinance enacted pursuant to section 2  
4 of this act that prohibits the siting or operation of any business or  
5 facility to be used for the production, processing, or retail sale of  
6 marijuana.

7       (7) The state liquor and cannabis board may summarily suspend a  
8 license for a period of up to one hundred eighty days without a prior  
9 hearing if it finds that public health, safety, or welfare  
10 imperatively require emergency action, and it incorporates a finding  
11 to that effect in its order. Proceedings for revocation or other  
12 action must be promptly instituted and determined. An administrative  
13 law judge may extend the summary suspension period for up to one  
14 calendar year from the first day of the initial summary suspension in  
15 the event the proceedings for revocation or other action cannot be  
16 completed during the initial one hundred eighty-day period due to  
17 actions by the licensee. The state liquor and cannabis board's  
18 enforcement division shall complete a preliminary staff investigation  
19 of the violation before requesting an emergency suspension by the  
20 state liquor and cannabis board.

21       NEW SECTION.   **Sec. 8.** This act takes effect July 1, 2018.

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