

ESSB 5318 - H COMM AMD

By Committee on Commerce & Gaming

NOT ADOPTED 04/16/2019

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that:

4 (1) In the years since the creation of a legal and regulated
5 marketplace for adult use of cannabis, the industry, stakeholders,
6 and state agencies have collaborated to develop a safe, fully
7 regulated marketplace.

8 (2) As the regulated marketplace has been developing, Washington
9 residents with a strong entrepreneurial spirit have taken great
10 financial and personal risk to become licensed and part of this
11 nascent industry.

12 (3) It should not be surprising that mistakes have been made both
13 by licensees and regulators, and that both have learned from these
14 mistakes leading to a stronger, safer industry.

15 (4) While a strong focus on enforcement is an important component
16 of the regulated marketplace, a strong focus on compliance and
17 education is also critically necessary to assist licensees who strive
18 for compliance and in order to allow the board to focus its
19 enforcement priorities on those violations that directly harm public
20 health and safety.

21 (5) The risk taking entrepreneurs who are trying to comply with
22 board regulations should not face punitive consequences for mistakes
23 made during this initial phase of the industry that did not pose a
24 direct threat to public health and safety.

25 NEW SECTION. **Sec. 2.** A new section is added to chapter 43.05
26 RCW to read as follows:

27 (1) If, during an inspection or visit to a marijuana business
28 licensed under chapter 69.50 RCW that is not a technical assistance
29 visit, the liquor and cannabis board becomes aware of conditions that
30 are not in compliance with applicable laws and rules enforced by the
31 board and are not subject to civil penalties as provided for in

1 section 3 of this act, the board may issue a notice of correction to
2 the licensee that includes:

3 (a) A description of the condition that is not in compliance and
4 the text of the specific section or subsection of the applicable
5 state law or rule;

6 (b) A statement of what is required to achieve compliance;

7 (c) The date by which the board requires compliance to be
8 achieved;

9 (d) Notice of the means to contact any technical assistance
10 services provided by the board or others; and

11 (e) Notice of when, where, and to whom a request to extend the
12 time to achieve compliance for good cause may be filed with the
13 board.

14 (2) A notice of correction is not a formal enforcement action, is
15 not subject to appeal, and is a public record.

16 (3) If the liquor and cannabis board issues a notice of
17 correction, it may not issue a civil penalty for the violations
18 identified in the notice of correction unless the licensee fails to
19 comply with the notice.

20 NEW SECTION. **Sec. 3.** A new section is added to chapter 69.50
21 RCW to read as follows:

22 (1) The liquor and cannabis board may issue a civil penalty
23 without first issuing a notice of correction if:

24 (a) The licensee has previously been subject to an enforcement
25 action for the same or similar type of violation of the same statute
26 or rule or has been given previous notice of the same or similar type
27 of violation of the same statute or rule;

28 (b) Compliance is not achieved by the date established by the
29 liquor and cannabis board in a previously issued notice of correction
30 and if the board has responded to a request for review of the date by
31 reaffirming the original date or establishing a new date; or

32 (c) The board can prove by a preponderance of the evidence:

33 (i) Diversion of marijuana product to the illicit market or sales
34 across state lines;

35 (ii) Furnishing of marijuana product to minors;

36 (iii) Diversion of revenue to criminal enterprises, gangs,
37 cartels, or parties not qualified to hold a marijuana license based
38 on criminal history requirements; or

39 (iv) The commission of nonmarijuana-related crimes.

1 (2) The liquor and cannabis board may adopt rules to implement
2 this section and section 2 of this act.

3 **Sec. 4.** RCW 69.50.342 and 2015 2nd sp.s. c 4 s 1601 are each
4 amended to read as follows:

5 (1) For the purpose of carrying into effect the provisions of
6 chapter 3, Laws of 2013 according to their true intent or of
7 supplying any deficiency therein, the state liquor and cannabis board
8 may adopt rules not inconsistent with the spirit of chapter 3, Laws
9 of 2013 as are deemed necessary or advisable. Without limiting the
10 generality of the preceding sentence, the state liquor and cannabis
11 board is empowered to adopt rules regarding the following:

12 (a) The equipment and management of retail outlets and premises
13 where marijuana is produced or processed, and inspection of the
14 retail outlets and premises where marijuana is produced or processed;

15 (b) The books and records to be created and maintained by
16 licensees, the reports to be made thereon to the state liquor and
17 cannabis board, and inspection of the books and records;

18 (c) Methods of producing, processing, and packaging marijuana,
19 useable marijuana, marijuana concentrates, and marijuana-infused
20 products; conditions of sanitation; safe handling requirements;
21 approved pesticides and pesticide testing requirements; and standards
22 of ingredients, quality, and identity of marijuana, useable
23 marijuana, marijuana concentrates, and marijuana-infused products
24 produced, processed, packaged, or sold by licensees;

25 (d) Security requirements for retail outlets and premises where
26 marijuana is produced or processed, and safety protocols for
27 licensees and their employees;

28 (e) Screening, hiring, training, and supervising employees of
29 licensees;

30 (f) Retail outlet locations and hours of operation;

31 (g) Labeling requirements and restrictions on advertisement of
32 marijuana, useable marijuana, marijuana concentrates, cannabis health
33 and beauty aids, and marijuana-infused products for sale in retail
34 outlets;

35 (h) Forms to be used for purposes of this chapter and chapter
36 69.51A RCW or the rules adopted to implement and enforce these
37 chapters, the terms and conditions to be contained in licenses issued
38 under this chapter and chapter 69.51A RCW, and the qualifications for
39 receiving a license issued under this chapter and chapter 69.51A RCW,

1 including a criminal history record information check. The state
2 liquor and cannabis board may submit any criminal history record
3 information check to the Washington state patrol and to the
4 identification division of the federal bureau of investigation in
5 order that these agencies may search their records for prior arrests
6 and convictions of the individual or individuals who filled out the
7 forms. The state liquor and cannabis board must require
8 fingerprinting of any applicant whose criminal history record
9 information check is submitted to the federal bureau of
10 investigation;

11 (i) Application, reinstatement, and renewal fees for licenses
12 issued under this chapter and chapter 69.51A RCW, and fees for
13 anything done or permitted to be done under the rules adopted to
14 implement and enforce this chapter and chapter 69.51A RCW;

15 (j) The manner of giving and serving notices required by this
16 chapter and chapter 69.51A RCW or rules adopted to implement or
17 enforce these chapters;

18 (k) Times and periods when, and the manner, methods, and means by
19 which, licensees transport and deliver marijuana, marijuana
20 concentrates, useable marijuana, and marijuana-infused products
21 within the state;

22 (l) Identification, seizure, confiscation, destruction, or
23 donation to law enforcement for training purposes of all marijuana,
24 marijuana concentrates, useable marijuana, and marijuana-infused
25 products produced, processed, sold, or offered for sale within this
26 state which do not conform in all respects to the standards
27 prescribed by this chapter or chapter 69.51A RCW or the rules adopted
28 to implement and enforce these chapters.

29 (2) Rules adopted on retail outlets holding medical marijuana
30 endorsements must be adopted in coordination and consultation with
31 the department.

32 (3) The board must adopt rules to perfect and expand existing
33 programs for compliance education for licensed marijuana businesses
34 and their employees. The rules must include a voluntary compliance
35 program created in consultation with licensed marijuana businesses
36 and their employees. The voluntary compliance program must include
37 recommendations on abating violations of this chapter and rules
38 adopted under this chapter.

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 69.50

2 RCW to read as follows:

3 (1) The board may grant a licensee's application for advice and
4 consultation as provided in RCW 69.50.342(3) and visit the licensee's
5 licensed premises in order to provide such advice and consultation.
6 Advice and consultation services are limited to the matters specified
7 in the request affecting the interpretation and applicability of the
8 standards in this chapter to the conditions, structures, machines,
9 equipment, apparatus, devices, materials, methods, means, and
10 practices in the licensee's licensed premises. The board may provide
11 for an alternative means of affording consultation and advice other
12 than on-site consultation.

13 (2) The board must make recommendations on eliminating areas of
14 concern disclosed within the scope of the on-site consultation. A
15 visit to a licensee's licensed premises may not be considered an
16 inspection or investigation under this chapter. During the visit, the
17 board may not issue notices or citations and may not assess civil
18 penalties. However, if the on-site visit discloses a violation with a
19 direct or immediate relationship to public safety and the violation
20 is not corrected, the board may investigate.

21 (3) This section does not provide immunity to a licensee who has
22 applied for consultative services from inspections or investigations
23 conducted under this chapter or from any inspection conducted as a
24 result of a complaint before, during, or after the provision of
25 consultative services.

26 (4) This section does not require an inspection of a licensee's
27 licensed premises that has been visited for consultative purposes.
28 However, if the premises are inspected after a visit, the board may
29 consider any information obtained during the consultation visit in
30 determining the nature of an alleged violation and the amount of
31 penalties to be assessed, if any.

32 (5) Rules adopted under section 6 of this act must provide that
33 violations with a direct or immediate relationship to public safety
34 discovered during the consultation visit must be corrected within a
35 specified period of time and an inspection must be conducted at the
36 end of that time period.

37 (6) All licensees requesting consultative services must be
38 advised of this section and the rules adopted by the board relating
39 to the voluntary compliance program. Information obtained by the
40 board as a result of licensee-requested consultation and training

1 services is confidential and not subject to public inspection under
2 chapter 42.56 RCW.

3 (7) The board may adopt rules on the frequency, manner, and
4 method of providing consultative services to licensees. Rules may
5 include scheduling of consultative services and prioritizing requests
6 for the services while maintaining the enforcement requirements of
7 this chapter.

8 NEW SECTION. **Sec. 6.** A new section is added to chapter 69.50
9 RCW to read as follows:

10 (1) The board must prescribe procedures for the following:

11 (a) Issuance of written warnings or notices to correct in lieu of
12 penalties, sanctions, or other violations with respect to regulatory
13 violations that have no direct or immediate relationship to public
14 safety as defined by the board;

15 (b) Waiving any fines, civil penalties, or administrative
16 sanctions for violations, that have no direct or immediate
17 relationship to public safety, and are corrected by the licensee
18 within a reasonable amount of time as designated by the board; and

19 (c) A compliance program in accordance with chapter 43.05 RCW and
20 RCW 69.50.342, whereby licensees may request compliance assistance
21 and inspections without issuance of a penalty, sanction, or other
22 violation provided that any noncompliant issues are resolved within a
23 specified period of time.

24 (2) The board must adopt rules prescribing penalties for
25 violations of this chapter. The board:

26 (a) May establish escalating penalties for violation of this
27 chapter, provided that the cumulative effect of any such escalating
28 penalties cannot last beyond two years and the escalation applies
29 only to multiple violations that are the same or similar in nature;

30 (b) May not include cancellation of a license for a single
31 violation, unless the board can prove by a preponderance of the
32 evidence:

33 (i) Diversion of marijuana product to the illicit market or sales
34 across state lines;

35 (ii) Furnishing of marijuana product to minors;

36 (iii) Diversion of revenue to criminal enterprises, gangs,
37 cartels, or parties not qualified to hold a marijuana license based
38 on criminal history requirements; or

39 (iv) The commission of nonmarijuana-related crimes;

1 (c) May include cancellation of a license for cumulative
2 violations only if a marijuana licensee commits at least four
3 violations within a two-year period of time;

4 (d) Must consider aggravating and mitigating circumstances and
5 deviate from the prescribed penalties accordingly, and must authorize
6 enforcement officers to do the same, provided that such penalty may
7 not exceed the maximum escalating penalty prescribed by the board for
8 that violation; and

9 (e) May not issue a violation if there is employee misconduct
10 that led to the violation if the licensee provides documentation that
11 before the date of the violation the licensee:

12 (i) Established a compliance program designed to prevent the
13 violation;

14 (ii) Performed meaningful training with employees designed to
15 prevent the violation; and

16 (iii) Had not enabled or ignored the violation or other similar
17 violations in the past.

18 (3) The board may not consider any violation that occurred more
19 than two years prior as grounds for denial, suspension, revocation,
20 cancellation, or nonrenewal, unless the board can prove by a
21 preponderance of the evidence that the prior administrative violation
22 evidences:

23 (a) Diversion of marijuana product to the illicit market or sales
24 across state lines;

25 (b) Furnishing of marijuana product to minors;

26 (c) Diversion of revenue to criminal enterprises, gangs, cartels,
27 or parties not qualified to hold a marijuana license based on
28 criminal history requirements; or

29 (d) The commission of nonmarijuana-related crimes.

30 **Sec. 7.** RCW 69.50.331 and 2017 c 317 s 2 are each amended to
31 read as follows:

32 (1) For the purpose of considering any application for a license
33 to produce, process, research, transport, or deliver marijuana,
34 useable marijuana, marijuana concentrates, or marijuana-infused
35 products subject to the regulations established under RCW 69.50.385,
36 or sell marijuana, or for the renewal of a license to produce,
37 process, research, transport, or deliver marijuana, useable
38 marijuana, marijuana concentrates, or marijuana-infused products
39 subject to the regulations established under RCW 69.50.385, or sell

1 marijuana, the ((~~state liquor and cannabis~~)) board must conduct a
2 comprehensive, fair, and impartial evaluation of the applications
3 timely received.

4 (a) The ((~~state liquor and cannabis~~)) board may cause an
5 inspection of the premises to be made, and may inquire into all
6 matters in connection with the construction and operation of the
7 premises. For the purpose of reviewing any application for a license
8 and for considering the denial, suspension, revocation, cancellation,
9 or renewal or denial thereof, of any license, the ((~~state liquor and~~
10 ~~cannabis~~)) board may consider any prior criminal ((~~conduct~~)) arrests
11 or convictions of the applicant ((~~including an~~)), any public safety
12 administrative violation history record with the ((~~state liquor and~~
13 ~~cannabis~~)) board, and a criminal history record information check.
14 The ((~~state liquor and cannabis~~)) board may submit the criminal
15 history record information check to the Washington state patrol and
16 to the identification division of the federal bureau of investigation
17 in order that these agencies may search their records for prior
18 arrests and convictions of the individual or individuals who filled
19 out the forms. The ((~~state liquor and cannabis~~)) board must require
20 fingerprinting of any applicant whose criminal history record
21 information check is submitted to the federal bureau of
22 investigation. The provisions of RCW 9.95.240 and of chapter 9.96A
23 RCW do not apply to these cases. Subject to the provisions of this
24 section, the ((~~state liquor and cannabis~~)) board may, in its
25 discretion, grant or deny the renewal or license applied for. Denial
26 may be based on, without limitation, the existence of chronic illegal
27 activity documented in objections submitted pursuant to subsections
28 (7)(c) and (10) of this section. Authority to approve an uncontested
29 or unopposed license may be granted by the ((~~state liquor and~~
30 ~~cannabis~~)) board to any staff member the board designates in writing.
31 Conditions for granting this authority must be adopted by rule.

32 (b) No license of any kind may be issued to:

33 (i) A person under the age of twenty-one years;

34 (ii) A person doing business as a sole proprietor who has not
35 lawfully resided in the state for at least six months prior to
36 applying to receive a license;

37 (iii) A partnership, employee cooperative, association, nonprofit
38 corporation, or corporation unless formed under the laws of this
39 state, and unless all of the members thereof are qualified to obtain
40 a license as provided in this section; or

1 (iv) A person whose place of business is conducted by a manager
2 or agent, unless the manager or agent possesses the same
3 qualifications required of the licensee.

4 (2)(a) The (~~state liquor and cannabis~~) board may, in its
5 discretion, subject to (~~the provisions of~~) sections 2, 3, and 6 of
6 this act, RCW 69.50.334, and 69.50.342(3) suspend or cancel any
7 license; and all protections of the licensee from criminal or civil
8 sanctions under state law for producing, processing, researching, or
9 selling marijuana, marijuana concentrates, useable marijuana, or
10 marijuana-infused products thereunder must be suspended or
11 terminated, as the case may be.

12 (b) The (~~state liquor and cannabis~~) board must immediately
13 suspend the license of a person who has been certified pursuant to
14 RCW 74.20A.320 by the department of social and health services as a
15 person who is not in compliance with a support order. If the person
16 has continued to meet all other requirements for reinstatement during
17 the suspension, reissuance of the license is automatic upon the
18 (~~state liquor and cannabis~~) board's receipt of a release issued by
19 the department of social and health services stating that the
20 licensee is in compliance with the order.

21 (c) The (~~state liquor and cannabis~~) board may request the
22 appointment of administrative law judges under chapter 34.12 RCW who
23 shall have power to administer oaths, issue subpoenas for the
24 attendance of witnesses and the production of papers, books,
25 accounts, documents, and testimony, examine witnesses, (~~and to~~)
26 receive testimony in any inquiry, investigation, hearing, or
27 proceeding in any part of the state, and consider mitigating and
28 aggravating circumstances in any case and deviate from any prescribed
29 penalty, under rules (~~and regulations~~) the (~~state liquor and~~
30 ~~cannabis~~) board may adopt.

31 (d) Witnesses must be allowed fees and mileage each way to and
32 from any inquiry, investigation, hearing, or proceeding at the rate
33 authorized by RCW 34.05.446. Fees need not be paid in advance of
34 appearance of witnesses to testify or to produce books, records, or
35 other legal evidence.

36 (e) In case of disobedience of any person to comply with the
37 order of the (~~state liquor and cannabis~~) board or a subpoena issued
38 by the (~~state liquor and cannabis~~) board, or any of its members, or
39 administrative law judges, or on the refusal of a witness to testify
40 to any matter regarding which he or she may be lawfully interrogated,

1 the judge of the superior court of the county in which the person
2 resides, on application of any member of the board or administrative
3 law judge, compels obedience by contempt proceedings, as in the case
4 of disobedience of the requirements of a subpoena issued from said
5 court or a refusal to testify therein.

6 (3) Upon receipt of notice of the suspension or cancellation of a
7 license, the licensee must forthwith deliver up the license to the
8 (~~state liquor and cannabis~~) board. Where the license has been
9 suspended only, the (~~state liquor and cannabis~~) board must return
10 the license to the licensee at the expiration or termination of the
11 period of suspension. The (~~state liquor and cannabis~~) board must
12 notify all other licensees in the county where the subject licensee
13 has its premises of the suspension or cancellation of the license;
14 and no other licensee or employee of another licensee may allow or
15 cause any marijuana, marijuana concentrates, useable marijuana, or
16 marijuana-infused products to be delivered to or for any person at
17 the premises of the subject licensee.

18 (4) Every license issued under this chapter is subject to all
19 conditions and restrictions imposed by this chapter or by rules
20 adopted by the (~~state liquor and cannabis~~) board to implement and
21 enforce this chapter. All conditions and restrictions imposed by the
22 (~~state liquor and cannabis~~) board in the issuance of an individual
23 license must be listed on the face of the individual license along
24 with the trade name, address, and expiration date.

25 (5) Every licensee must post and keep posted its license, or
26 licenses, in a conspicuous place on the premises.

27 (6) No licensee may employ any person under the age of twenty-one
28 years.

29 (7) (a) Before the (~~state liquor and cannabis~~) board issues a
30 new or renewed license to an applicant it must give notice of the
31 application to the chief executive officer of the incorporated city
32 or town, if the application is for a license within an incorporated
33 city or town, or to the county legislative authority, if the
34 application is for a license outside the boundaries of incorporated
35 cities or towns, or to the tribal government if the application is
36 for a license within Indian country, or to the port authority if the
37 application for a license is located on property owned by a port
38 authority.

39 (b) The incorporated city or town through the official or
40 employee selected by it, the county legislative authority or the

1 official or employee selected by it, the tribal government, or port
2 authority has the right to file with the ((~~state liquor and~~
3 ~~cannabis~~)) board within twenty days after the date of transmittal of
4 the notice for applications, or at least thirty days prior to the
5 expiration date for renewals, written objections against the
6 applicant or against the premises for which the new or renewed
7 license is asked. The ((~~state liquor and cannabis~~)) board may extend
8 the time period for submitting written objections upon request from
9 the authority notified by the ((~~state liquor and cannabis~~)) board.

10 (c) The written objections must include a statement of all facts
11 upon which the objections are based, and in case written objections
12 are filed, the city or town or county legislative authority may
13 request, and the ((~~state liquor and cannabis~~)) board may in its
14 discretion hold, a hearing subject to the applicable provisions of
15 Title 34 RCW. If the ((~~state liquor and cannabis~~)) board makes an
16 initial decision to deny a license or renewal based on the written
17 objections of an incorporated city or town or county legislative
18 authority, the applicant may request a hearing subject to the
19 applicable provisions of Title 34 RCW. If a hearing is held at the
20 request of the applicant, ((~~state liquor and cannabis~~)) board
21 representatives must present and defend the ((~~state liquor and~~
22 ~~cannabis~~)) board's initial decision to deny a license or renewal.

23 (d) Upon the granting of a license under this title the ((~~state~~
24 ~~liquor and cannabis~~)) board must send written notification to the
25 chief executive officer of the incorporated city or town in which the
26 license is granted, or to the county legislative authority if the
27 license is granted outside the boundaries of incorporated cities or
28 towns.

29 (8) (a) Except as provided in (b) through (d) of this subsection,
30 the ((~~state liquor and cannabis~~)) board may not issue a license for
31 any premises within one thousand feet of the perimeter of the grounds
32 of any elementary or secondary school, playground, recreation center
33 or facility, child care center, public park, public transit center,
34 or library, or any game arcade admission to which is not restricted
35 to persons aged twenty-one years or older.

36 (b) A city, county, or town may permit the licensing of premises
37 within one thousand feet but not less than one hundred feet of the
38 facilities described in (a) of this subsection, except elementary
39 schools, secondary schools, and playgrounds, by enacting an ordinance
40 authorizing such distance reduction, provided that such distance

1 reduction will not negatively impact the jurisdiction's civil
2 regulatory enforcement, criminal law enforcement interests, public
3 safety, or public health.

4 (c) A city, county, or town may permit the licensing of research
5 premises allowed under RCW 69.50.372 within one thousand feet but not
6 less than one hundred feet of the facilities described in (a) of this
7 subsection by enacting an ordinance authorizing such distance
8 reduction, provided that the ordinance will not negatively impact the
9 jurisdiction's civil regulatory enforcement, criminal law
10 enforcement, public safety, or public health.

11 (d) The (~~state liquor and cannabis~~) board may license premises
12 located in compliance with the distance requirements set in an
13 ordinance adopted under (b) or (c) of this subsection. Before issuing
14 or renewing a research license for premises within one thousand feet
15 but not less than one hundred feet of an elementary school, secondary
16 school, or playground in compliance with an ordinance passed pursuant
17 to (c) of this subsection, the board must ensure that the facility:

18 (i) Meets a security standard exceeding that which applies to
19 marijuana producer, processor, or retailer licensees;

20 (ii) Is inaccessible to the public and no part of the operation
21 of the facility is in view of the general public; and

22 (iii) Bears no advertising or signage indicating that it is a
23 marijuana research facility.

24 (e) The (~~state liquor and cannabis~~) board may not issue a
25 license for any premises within Indian country, as defined in 18
26 U.S.C. Sec. 1151, including any fee patent lands within the exterior
27 boundaries of a reservation, without the consent of the federally
28 recognized tribe associated with the reservation or Indian country.

29 (9) A city, town, or county may adopt an ordinance prohibiting a
30 marijuana producer or marijuana processor from operating or locating
31 a business within areas zoned primarily for residential use or rural
32 use with a minimum lot size of five acres or smaller.

33 (10) In determining whether to grant or deny a license or renewal
34 of any license, the (~~state liquor and cannabis~~) board must give
35 substantial weight to objections from an incorporated city or town or
36 county legislative authority based upon chronic illegal activity
37 associated with the applicant's operations of the premises proposed
38 to be licensed or the applicant's operation of any other licensed
39 premises, or the conduct of the applicant's patrons inside or outside
40 the licensed premises. "Chronic illegal activity" means (a) a

1 pervasive pattern of activity that threatens the public health,
2 safety, and welfare of the city, town, or county including, but not
3 limited to, open container violations, assaults, disturbances,
4 disorderly conduct, or other criminal law violations, or as
5 documented in crime statistics, police reports, emergency medical
6 response data, calls for service, field data, or similar records of a
7 law enforcement agency for the city, town, county, or any other
8 municipal corporation or any state agency; or (b) an unreasonably
9 high number of citations for violations of RCW 46.61.502 associated
10 with the applicant's or licensee's operation of any licensed premises
11 as indicated by the reported statements given to law enforcement upon
12 arrest.

13 NEW SECTION. **Sec. 8.** A new section is added to chapter 69.50
14 RCW to read as follows:

15 (1) This section applies to the board's issuance of
16 administrative violations to licensed marijuana producers,
17 processors, retailers, transporters, and researchers, when a
18 settlement conference is held between a hearing officer or designee
19 of the board and the marijuana licensee that received a notice of an
20 alleged administrative violation or violations.

21 (2) If a settlement agreement is entered between a marijuana
22 licensee and a hearing officer or designee of the board at or after a
23 settlement conference, the terms of the settlement agreement must be
24 given substantial weight by the board.

25 (3) For the purposes of this section:

26 (a) "Settlement agreement" means the agreement or compromise
27 between a licensed marijuana producer, processor, retailer,
28 researcher, transporter, or researcher and the hearing officer or
29 designee of the board with authority to participate in the settlement
30 conference, that:

31 (i) Includes the terms of the agreement or compromise regarding
32 an alleged violation or violations by the licensee of this chapter,
33 chapter 69.51A RCW, or rules adopted under either chapter, and any
34 related penalty or licensing restriction; and

35 (ii) Is in writing and signed by the licensee and the hearing
36 officer or designee of the board.

37 (b) "Settlement conference" means a meeting or discussion between
38 a licensed marijuana producer, processor, retailer, researcher,
39 transporter, researcher, or authorized representative of any of the

1 preceding licensees, and a hearing officer or designee of the board,
2 held for purposes such as discussing the circumstances surrounding an
3 alleged violation of law or rules by the licensee, the recommended
4 penalty, and any aggravating or mitigating factors, and that is
5 intended to resolve the alleged violation before an administrative
6 hearing or judicial proceeding is initiated.

7 **Sec. 9.** RCW 69.50.101 and 2018 c 132 s 2 are each reenacted and
8 amended to read as follows:

9 The definitions in this section apply throughout this chapter
10 unless the context clearly requires otherwise.

11 (a) "Administer" means to apply a controlled substance, whether
12 by injection, inhalation, ingestion, or any other means, directly to
13 the body of a patient or research subject by:

14 (1) a practitioner authorized to prescribe (or, by the
15 practitioner's authorized agent); or

16 (2) the patient or research subject at the direction and in the
17 presence of the practitioner.

18 (b) "Agent" means an authorized person who acts on behalf of or
19 at the direction of a manufacturer, distributor, or dispenser. It
20 does not include a common or contract carrier, public
21 warehouseperson, or employee of the carrier or warehouseperson.

22 (c) "CBD concentration" has the meaning provided in RCW
23 69.51A.010.

24 (d) "CBD product" means any product containing or consisting of
25 cannabidiol.

26 (e) "Commission" means the pharmacy quality assurance commission.

27 (f) "Controlled substance" means a drug, substance, or immediate
28 precursor included in Schedules I through V as set forth in federal
29 or state laws, or federal or commission rules, but does not include
30 industrial hemp as defined in RCW 15.120.010.

31 (g) (1) "Controlled substance analog" means a substance the
32 chemical structure of which is substantially similar to the chemical
33 structure of a controlled substance in Schedule I or II and:

34 (i) that has a stimulant, depressant, or hallucinogenic effect on
35 the central nervous system substantially similar to the stimulant,
36 depressant, or hallucinogenic effect on the central nervous system of
37 a controlled substance included in Schedule I or II; or

38 (ii) with respect to a particular individual, that the individual
39 represents or intends to have a stimulant, depressant, or

1 hallucinogenic effect on the central nervous system substantially
2 similar to the stimulant, depressant, or hallucinogenic effect on the
3 central nervous system of a controlled substance included in Schedule
4 I or II.

5 (2) The term does not include:

6 (i) a controlled substance;

7 (ii) a substance for which there is an approved new drug
8 application;

9 (iii) a substance with respect to which an exemption is in effect
10 for investigational use by a particular person under Section 505 of
11 the federal food, drug, and cosmetic act, 21 U.S.C. Sec. 355, or
12 chapter 69.77 RCW to the extent conduct with respect to the substance
13 is pursuant to the exemption; or

14 (iv) any substance to the extent not intended for human
15 consumption before an exemption takes effect with respect to the
16 substance.

17 (h) "Deliver" or "delivery" means the actual or constructive
18 transfer from one person to another of a substance, whether or not
19 there is an agency relationship.

20 (i) "Department" means the department of health.

21 (j) "Designated provider" has the meaning provided in RCW
22 69.51A.010.

23 (k) "Dispense" means the interpretation of a prescription or
24 order for a controlled substance and, pursuant to that prescription
25 or order, the proper selection, measuring, compounding, labeling, or
26 packaging necessary to prepare that prescription or order for
27 delivery.

28 (l) "Dispenser" means a practitioner who dispenses.

29 (m) "Distribute" means to deliver other than by administering or
30 dispensing a controlled substance.

31 (n) "Distributor" means a person who distributes.

32 (o) "Drug" means (1) a controlled substance recognized as a drug
33 in the official United States pharmacopoeia/national formulary or the
34 official homeopathic pharmacopoeia of the United States, or any
35 supplement to them; (2) controlled substances intended for use in the
36 diagnosis, cure, mitigation, treatment, or prevention of disease in
37 individuals or animals; (3) controlled substances (other than food)
38 intended to affect the structure or any function of the body of
39 individuals or animals; and (4) controlled substances intended for
40 use as a component of any article specified in (1), (2), or (3) of

1 this subsection. The term does not include devices or their
2 components, parts, or accessories.

3 (p) "Drug enforcement administration" means the drug enforcement
4 administration in the United States Department of Justice, or its
5 successor agency.

6 (q) "Electronic communication of prescription information" means
7 the transmission of a prescription or refill authorization for a drug
8 of a practitioner using computer systems. The term does not include a
9 prescription or refill authorization verbally transmitted by
10 telephone nor a facsimile manually signed by the practitioner.

11 (r) "Immature plant or clone" means a plant or clone that has no
12 flowers, is less than twelve inches in height, and is less than
13 twelve inches in diameter.

14 (s) "Immediate precursor" means a substance:

15 (1) that the commission has found to be and by rule designates as
16 being the principal compound commonly used, or produced primarily for
17 use, in the manufacture of a controlled substance;

18 (2) that is an immediate chemical intermediary used or likely to
19 be used in the manufacture of a controlled substance; and

20 (3) the control of which is necessary to prevent, curtail, or
21 limit the manufacture of the controlled substance.

22 (t) "Isomer" means an optical isomer, but in subsection (ff)(5)
23 of this section, RCW 69.50.204(a) (12) and (34), and 69.50.206(b)(4),
24 the term includes any geometrical isomer; in RCW 69.50.204(a) (8) and
25 (42), and 69.50.210(c) the term includes any positional isomer; and
26 in RCW 69.50.204(a) (35), 69.50.204(c), and 69.50.208(a) the term
27 includes any positional or geometric isomer.

28 (u) "Lot" means a definite quantity of marijuana, marijuana
29 concentrates, useable marijuana, or marijuana-infused product
30 identified by a lot number, every portion or package of which is
31 uniform within recognized tolerances for the factors that appear in
32 the labeling.

33 (v) "Lot number" must identify the licensee by business or trade
34 name and Washington state unified business identifier number, and the
35 date of harvest or processing for each lot of marijuana, marijuana
36 concentrates, useable marijuana, or marijuana-infused product.

37 (w) "Manufacture" means the production, preparation, propagation,
38 compounding, conversion, or processing of a controlled substance,
39 either directly or indirectly or by extraction from substances of
40 natural origin, or independently by means of chemical synthesis, or

1 by a combination of extraction and chemical synthesis, and includes
2 any packaging or repackaging of the substance or labeling or
3 relabeling of its container. The term does not include the
4 preparation, compounding, packaging, repackaging, labeling, or
5 relabeling of a controlled substance:

6 (1) by a practitioner as an incident to the practitioner's
7 administering or dispensing of a controlled substance in the course
8 of the practitioner's professional practice; or

9 (2) by a practitioner, or by the practitioner's authorized agent
10 under the practitioner's supervision, for the purpose of, or as an
11 incident to, research, teaching, or chemical analysis and not for
12 sale.

13 (x) "Marijuana" or "marihuana" means all parts of the plant
14 *Cannabis*, whether growing or not, with a THC concentration greater
15 than 0.3 percent on a dry weight basis; the seeds thereof; the resin
16 extracted from any part of the plant; and every compound,
17 manufacture, salt, derivative, mixture, or preparation of the plant,
18 its seeds or resin. The term does not include:

19 (1) The mature stalks of the plant, fiber produced from the
20 stalks, oil or cake made from the seeds of the plant, any other
21 compound, manufacture, salt, derivative, mixture, or preparation of
22 the mature stalks (except the resin extracted therefrom), fiber, oil,
23 or cake, or the sterilized seed of the plant which is incapable of
24 germination; or

25 (2) Industrial hemp as defined in RCW 15.120.010.

26 (y) "Marijuana concentrates" means products consisting wholly or
27 in part of the resin extracted from any part of the plant *Cannabis*
28 and having a THC concentration greater than ten percent.

29 (z) "Marijuana processor" means a person licensed by the state
30 liquor and cannabis board to process marijuana into marijuana
31 concentrates, useable marijuana, and marijuana-infused products,
32 package and label marijuana concentrates, useable marijuana, and
33 marijuana-infused products for sale in retail outlets, and sell
34 marijuana concentrates, useable marijuana, and marijuana-infused
35 products at wholesale to marijuana retailers.

36 (aa) "Marijuana producer" means a person licensed by the state
37 liquor and cannabis board to produce and sell marijuana at wholesale
38 to marijuana processors and other marijuana producers.

1 (bb) "Marijuana products" means useable marijuana, marijuana
2 concentrates, and marijuana-infused products as defined in this
3 section.

4 (cc) "Marijuana researcher" means a person licensed by the state
5 liquor and cannabis board to produce, process, and possess marijuana
6 for the purposes of conducting research on marijuana and marijuana-
7 derived drug products.

8 (dd) "Marijuana retailer" means a person licensed by the state
9 liquor and cannabis board to sell marijuana concentrates, useable
10 marijuana, and marijuana-infused products in a retail outlet.

11 (ee) "Marijuana-infused products" means products that contain
12 marijuana or marijuana extracts, are intended for human use, are
13 derived from marijuana as defined in subsection (x) of this section,
14 and have a THC concentration no greater than ten percent. The term
15 "marijuana-infused products" does not include either useable
16 marijuana or marijuana concentrates.

17 (ff) "Narcotic drug" means any of the following, whether produced
18 directly or indirectly by extraction from substances of vegetable
19 origin, or independently by means of chemical synthesis, or by a
20 combination of extraction and chemical synthesis:

21 (1) Opium, opium derivative, and any derivative of opium or opium
22 derivative, including their salts, isomers, and salts of isomers,
23 whenever the existence of the salts, isomers, and salts of isomers is
24 possible within the specific chemical designation. The term does not
25 include the isoquinoline alkaloids of opium.

26 (2) Synthetic opiate and any derivative of synthetic opiate,
27 including their isomers, esters, ethers, salts, and salts of isomers,
28 esters, and ethers, whenever the existence of the isomers, esters,
29 ethers, and salts is possible within the specific chemical
30 designation.

31 (3) Poppy straw and concentrate of poppy straw.

32 (4) Coca leaves, except coca leaves and extracts of coca leaves
33 from which cocaine, ecgonine, and derivatives or ecgonine or their
34 salts have been removed.

35 (5) Cocaine, or any salt, isomer, or salt of isomer thereof.

36 (6) Cocaine base.

37 (7) Ecgonine, or any derivative, salt, isomer, or salt of isomer
38 thereof.

39 (8) Any compound, mixture, or preparation containing any quantity
40 of any substance referred to in subparagraphs (1) through (7).

1 (gg) "Opiate" means any substance having an addiction-forming or
2 addiction-sustaining liability similar to morphine or being capable
3 of conversion into a drug having addiction-forming or addiction-
4 sustaining liability. The term includes opium, substances derived
5 from opium (opium derivatives), and synthetic opiates. The term does
6 not include, unless specifically designated as controlled under RCW
7 69.50.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan
8 and its salts (dextromethorphan). The term includes the racemic and
9 levorotatory forms of dextromethorphan.

10 (hh) "Opium poppy" means the plant of the species *Papaver*
11 *somniferum* L., except its seeds.

12 (ii) "Person" means individual, corporation, business trust,
13 estate, trust, partnership, association, joint venture, government,
14 governmental subdivision or agency, or any other legal or commercial
15 entity.

16 (jj) "Plant" has the meaning provided in RCW 69.51A.010.

17 (kk) "Poppy straw" means all parts, except the seeds, of the
18 opium poppy, after mowing.

19 (ll) "Practitioner" means:

20 (1) A physician under chapter 18.71 RCW; a physician assistant
21 under chapter 18.71A RCW; an osteopathic physician and surgeon under
22 chapter 18.57 RCW; an osteopathic physician assistant under chapter
23 18.57A RCW who is licensed under RCW 18.57A.020 subject to any
24 limitations in RCW 18.57A.040; an optometrist licensed under chapter
25 18.53 RCW who is certified by the optometry board under RCW 18.53.010
26 subject to any limitations in RCW 18.53.010; a dentist under chapter
27 18.32 RCW; a podiatric physician and surgeon under chapter 18.22 RCW;
28 a veterinarian under chapter 18.92 RCW; a registered nurse, advanced
29 registered nurse practitioner, or licensed practical nurse under
30 chapter 18.79 RCW; a naturopathic physician under chapter 18.36A RCW
31 who is licensed under RCW 18.36A.030 subject to any limitations in
32 RCW 18.36A.040; a pharmacist under chapter 18.64 RCW or a scientific
33 investigator under this chapter, licensed, registered or otherwise
34 permitted insofar as is consistent with those licensing laws to
35 distribute, dispense, conduct research with respect to or administer
36 a controlled substance in the course of their professional practice
37 or research in this state.

38 (2) A pharmacy, hospital or other institution licensed,
39 registered, or otherwise permitted to distribute, dispense, conduct

1 research with respect to or to administer a controlled substance in
2 the course of professional practice or research in this state.

3 (3) A physician licensed to practice medicine and surgery, a
4 physician licensed to practice osteopathic medicine and surgery, a
5 dentist licensed to practice dentistry, a podiatric physician and
6 surgeon licensed to practice podiatric medicine and surgery, a
7 licensed physician assistant or a licensed osteopathic physician
8 assistant specifically approved to prescribe controlled substances by
9 his or her state's medical quality assurance commission or equivalent
10 and his or her supervising physician, an advanced registered nurse
11 practitioner licensed to prescribe controlled substances, or a
12 veterinarian licensed to practice veterinary medicine in any state of
13 the United States.

14 (mm) "Prescription" means an order for controlled substances
15 issued by a practitioner duly authorized by law or rule in the state
16 of Washington to prescribe controlled substances within the scope of
17 his or her professional practice for a legitimate medical purpose.

18 (nn) "Production" includes the manufacturing, planting,
19 cultivating, growing, or harvesting of a controlled substance.

20 (oo) "Qualifying patient" has the meaning provided in RCW
21 69.51A.010.

22 (pp) "Recognition card" has the meaning provided in RCW
23 69.51A.010.

24 (qq) "Retail outlet" means a location licensed by the state
25 liquor and cannabis board for the retail sale of marijuana
26 concentrates, useable marijuana, and marijuana-infused products.

27 (rr) "Secretary" means the secretary of health or the secretary's
28 designee.

29 (ss) "State," unless the context otherwise requires, means a
30 state of the United States, the District of Columbia, the
31 Commonwealth of Puerto Rico, or a territory or insular possession
32 subject to the jurisdiction of the United States.

33 (tt) "THC concentration" means percent of delta-9
34 tetrahydrocannabinol content per dry weight of any part of the plant
35 *Cannabis*, or per volume or weight of marijuana product, or the
36 combined percent of delta-9 tetrahydrocannabinol and
37 tetrahydrocannabinolic acid in any part of the plant *Cannabis*
38 regardless of moisture content.

39 (uu) "Ultimate user" means an individual who lawfully possesses a
40 controlled substance for the individual's own use or for the use of a

1 member of the individual's household or for administering to an
2 animal owned by the individual or by a member of the individual's
3 household.

4 (vv) "Useable marijuana" means dried marijuana flowers. The term
5 "useable marijuana" does not include either marijuana-infused
6 products or marijuana concentrates.

7 (ww) "Board" means the Washington state liquor and cannabis
8 board."

9 Correct the title.

EFFECT: Changes the use of the terms "responsible party" and
"person" to say "licensee" in the context of notices of corrections
and civil penalties issued by the Liquor and Cannabis Board (LCB).

Codifies section 3 of the bill, relating to the LCB's issuance of
civil penalties, in chapter 69.50 RCW instead of in chapter 43.05
RCW.

Amends one of the enumerated circumstances in which the LCB may
issue a civil penalty to a marijuana licensee without first issuing a
notice of correction, may cancel a license for a single violation, or
may consider certain prior violations when making negative licensing
decisions, so the LCB may do so when the LCB can prove by a
preponderance of the evidence the violation is the diversion of
revenue to criminal enterprises, gangs, cartels, or parties not
qualified to hold a marijuana license based on criminal history
requirements.

Eliminates from the enumerated circumstances in which the LCB may
issue a civil penalty without first issuing a notice of correction,
may cancel a license for a single violation, or may consider certain
prior violations when making negative licensing decisions, the act of
using firearms in a facility licensed by the LCB that poses a direct
and significant threat to public safety.

Amends the new limitation that applies to escalating penalties
for violations so an escalation of penalties applies only to multiple
violations that are the same or similar in nature.

Replaces the new clear, cogent, and convincing evidence standard
with a preponderance of the evidence standard in the context of the
LCB proving violations that are punishable with license cancellation,
denial, suspension, revocation, or nonrenewal.

Provides that the LCB may not consider any violation that
occurred more than two years prior (rather than occurred before April
30, 2017), as grounds for denial, suspension, revocation,
cancellation, or nonrenewal, unless one of the enumerated
circumstances applies.

Authorizes the LCB to consider a public safety administrative
violation history record with the LCB in the context of reviewing a
marijuana license application and for considering the denial,
suspension, revocation, cancellation, or nonrenewal of a marijuana
license (so the LCB is not limited to only considering arrests,
convictions, and a criminal history record check).

Changes the use of the term "hearing examiner" to "hearing
officer" in the context of the settlement conferences that may be
held between a hearing officer or LCB designee and the licensee that
received a notice of an alleged violation. Eliminates, from the new

limitations on the LCB's use of settlement agreements, the provision that the LCB may only disapprove, modify, change, or add to the terms of a settlement agreement if the LCB finds an agreement to be clearly erroneous. Retains the requirement that the LCB must give the terms of a settlement agreement substantial weight.

Eliminates the creation of the Legislative Work Group on Cannabis Enforcement and Training Processes and Procedures.

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