
SUBSTITUTE HOUSE BILL 1974

State of Washington

66th Legislature

2019 Regular Session

By House Commerce & Gaming (originally sponsored by Representatives Shewmake, Blake, Peterson, Walsh, Chandler, Macri, Fitzgibbon, Appleton, Thai, Tharinger, and Riccelli)

READ FIRST TIME 02/22/19.

1 AN ACT Relating to establishing a Washington state cannabis
2 commission; amending RCW 42.56.380 and 43.23.033; and adding a new
3 chapter to Title 15 RCW.

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

5 NEW SECTION. **Sec. 1.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires
7 otherwise.

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

9 (2) "Cannabis" has the meaning provided in RCW 69.50.101 for the
10 term "marijuana."

11 (3) "Cannabis processor" has the meaning provided in RCW
12 69.50.101 for the term "marijuana processor."

13 (4) "Cannabis producer" has the meaning provided in RCW 69.50.101
14 for the term "marijuana producer."

15 (5) "Cannabis product" has the meaning provided in RCW 69.50.101
16 for the term "marijuana product."

17 (6) "Cannabis retailer" has the meaning provided in RCW 69.50.101
18 for the term "marijuana retailer."

19 (7) "Commission" means the Washington cannabis commission.

20 (8) "Department" means the department of agriculture.

1 (9) "Director" means the director of the department of
2 agriculture.

3 (10) "Fiscal year" means the twelve-month period beginning
4 January 1st of any year and ending December 31st.

5 (11) "Referendum" means a vote by cannabis producers that is
6 conducted by secret ballot.

7 (12) "Testing laboratory" means an independent, third-party
8 testing laboratory meeting the accreditation requirements of RCW
9 69.50.348.

10 NEW SECTION. **Sec. 2.** (1) Subject to the referendum conducted
11 under section 3 of this act, there is created an agricultural
12 commodity commission to be known as the Washington cannabis
13 commission.

14 (2)(a) The commission shall be comprised of thirteen voting
15 members as follows:

16 (i) Eight members must be cannabis producers and must reside in
17 and be elected from districts as provided in commission rule;

18 (ii) One member must be a cannabis producer from any licensing
19 tier or district;

20 (iii) One member must be a tier one cannabis producer;

21 (iv) One member must be a tier two cannabis producer;

22 (v) One member must be a tier three cannabis producer; and

23 (vi) One member must be the director or the director's designee.

24 (b) An advisory council must assist the commission and consist of
25 the following nonvoting members, appointed by the director of the
26 department upon nomination by the board:

27 (i) One board representative;

28 (ii) One cannabis processor representative;

29 (iii) One cannabis retailer representative; and

30 (iv) One independent testing laboratory representative.

31 (3) Each cannabis producer, cannabis processor, cannabis
32 retailer, and testing laboratory representative must:

33 (a) Be twenty-one years of age or older and a resident of this
34 state;

35 (b) Continue to meet all membership qualifications throughout the
36 member's term; and

37 (c) Be licensed by the board for at least three years before
38 becoming a commission member.

1 (4) Commission members shall serve three-year terms. Of the
2 initial members, five must be appointed for a one-year term, five
3 must be appointed for a two-year term, and the remainder must be
4 appointed for a three-year term. Thereafter, members must be
5 appointed for three-year terms.

6 (5) If a position on the commission becomes vacant due to
7 resignation, disqualification, death, or for any other reason, the
8 commission must notify the director and the unexpired term must
9 immediately be filled by appointment by the director.

10 (6) Each member or employee of the commission must be reimbursed
11 for actual travel expenses incurred in carrying out this chapter as
12 defined by the commission in rule.

13 NEW SECTION. **Sec. 3.** (1) Upon receipt of a petition containing
14 the signatures of five cannabis producers to implement this chapter
15 and to determine cannabis producer participation in the commission
16 and assessment under this chapter, the director shall:

17 (a) Conduct a referendum of cannabis producers. The requirements
18 of assent or approval of the referendum are met if:

19 (i) At least fifty-one percent by numbers of cannabis producers
20 participating in the referendum vote affirmatively; and

21 (ii) Thirty percent of the cannabis producers have been
22 represented in the referendum to determine assent or approval of
23 participation and assessment. The referendum shall be conducted
24 within sixty days of receipt of the petition; and

25 (b) Establish a list of cannabis producers from information
26 provided by the board. In establishing a list of cannabis producers
27 and their individual production, the director must use the cannabis
28 producer's name, mailing address, and production by the cannabis
29 producer in the preceding fiscal year. Information on each cannabis
30 producer must be mailed to each cannabis producer on record with the
31 director for verification. All corrections shall be filed with the
32 director within twenty days from the date of mailing. The list of
33 cannabis producers shall be kept in a file by the director. The list
34 shall be certified as a true representation of the referendum mailing
35 list. Inadvertent failure to notify a cannabis producer does not
36 invalidate a proceeding conducted under this chapter. The director
37 must provide the commission the list of cannabis producers after
38 assent in a referendum as provided in this section.

1 (2) If the director determines that the requisite assent has been
2 given in the referendum conducted under subsection (1) of this
3 section, the director must:

4 (a) Within sixty days after assent of the referendum held,
5 appoint the members of the commission; and

6 (b) Direct the commission to put into force the assessment as
7 provided for in section 10 of this act.

8 (3) If the director determines that the requisite assent has not
9 been given in the referendum conducted under subsection (1) of this
10 section, the director shall take no further action to implement or
11 enforce this chapter.

12 (4) Upon completion of the referendum conducted under subsection
13 (1) of this section, the department must tally the results of the
14 vote and provide the results to the cannabis producers. If a cannabis
15 producer disputes the results of a vote, that producer within sixty
16 days from the announced results, shall provide in writing a statement
17 of why the vote is disputed and request a recount. Once the vote is
18 tallied and distributed, all disputes are resolved, and all matters
19 in a vote are finalized, the individual ballots may be destroyed.

20 (5) Before conducting the referendum provided for in subsection
21 (1) of this section, the director may require the petitioners to
22 deposit with the director an amount of money as the director deems
23 necessary to defray the expenses of conducting the referendum. The
24 director must provide the petitioners an estimate of expenses that
25 may be incurred to conduct a referendum before any service takes
26 place. Petitioners must deposit funds with the director to pay for
27 expenses incurred by the department. The commission must reimburse
28 petitioners the amount paid to the department when funds become
29 available. However, if for any reason the referendum process is
30 discontinued, the petitioners must reimburse the department for
31 expenses incurred by the department up until the time the process is
32 discontinued.

33 (6) The director is not required to hold a referendum under
34 subsection (1) of this section more than once in any twelve-month
35 period.

36 NEW SECTION. **Sec. 4.** Obligations incurred by the commission and
37 any other liabilities or claims against the commission must be
38 enforced only against the assets of the commission and, except to the
39 extent of such assets, no liability for the debts or actions of the

1 commission exists against either the state of Washington or any
2 subdivision or instrumentality thereof or against any member,
3 employee, or agent of the commission or the state of Washington in
4 the person's individual capacity. Except as otherwise provided in
5 this chapter, neither the commission members, nor its employees, may
6 be held individually responsible for errors in judgment, mistakes, or
7 other acts, either of commission or omission, as principal, agent,
8 person, or employee, except for their own individual acts of
9 dishonesty or crime. No person or employee may be held individually
10 responsible for any act or omission of any other commission members.
11 The liability of the commission members shall be several and not
12 joint, and no member is liable for the default of any other member.
13 This section confirms that commission members have been and continue
14 to be, state officers or volunteers for purposes of RCW 4.92.075 and
15 are entitled to the defenses, indemnifications, limitations of
16 liability, and other protections and benefits of chapter 4.92 RCW.

17 NEW SECTION. **Sec. 5.** The commission must:

18 (1) Elect a chair and officers. The officers must include a
19 treasurer who is responsible for all receipts and disbursements by
20 the commission and the faithful discharge of whose duties must be
21 guaranteed by a bond at the sole expense of the commission. The
22 commission must adopt rules for its own governance that provide for
23 the holding of an annual meeting for the election of officers and the
24 transaction of other business and for other meetings the commission
25 may direct;

26 (2) Do all things reasonably necessary to effect the purposes of
27 this chapter and adopt rules in accordance with this chapter;

28 (3) Employ and discharge managers, secretaries, agents,
29 attorneys, and employees and engage the services of independent
30 contractors;

31 (4) Retain, as necessary, the services of private legal counsel
32 to conduct legal actions on behalf of the commission. The retention
33 of a private attorney is subject to review by the office of the
34 attorney general;

35 (5) Participate in international, federal, state, and local
36 hearings, meetings, and other proceedings relating to the production,
37 regulation, distribution, sale, or use of cannabis including
38 activities authorized under RCW 42.17A.635, including the reporting
39 of those activities to the public disclosure commission;

1 (6) Acquire and transfer personal and real property, establish
2 offices, incur expenses, and enter into contracts, including
3 contracts for the creation and printing of promotional literature.
4 The contracts are not subject to chapter 43.19 RCW, and are
5 cancelable by the commission unless performed under conditions of
6 employment that substantially conform to the laws of this state and
7 the rules of the department of labor and industries. The commission
8 may create debt and other liabilities that are reasonable for proper
9 discharge of its duties under this chapter;

10 (7) Maintain accounts with one or more qualified public
11 depositories as the commission may direct, for the deposit of money,
12 and expend money for purposes authorized by this chapter by drafts
13 made by the commission upon such institutions or by other means;

14 (8) Cause to be kept and annually closed, in accordance with
15 generally accepted accounting principles, accurate records of all
16 receipts, disbursements, and other financial transactions, available
17 for audit by the state auditor;

18 (9) Create and maintain a list of producers and disseminate
19 information among and solicit the opinions of producers with respect
20 to the discharge of the duties of the commission, directly, or by
21 arrangement with trade associations or other instrumentalities;

22 (10) Employ, designate as an agent, act in concert with, and
23 enter into contracts with any person, council, commission, or other
24 entity to promote the general welfare of the cannabis industry in
25 Washington state and particularly to assist in the sale and
26 distribution of Washington cannabis. The commission may expend money
27 necessary or advisable for this purpose and to pay its proportionate
28 share of the cost of any program providing direct or indirect
29 assistance to the sale and distribution of Washington cannabis,
30 employing and paying for professional services of all kinds;

31 (11) Sue and be sued as a commission, without individual
32 liability for acts of the commission within the scope of the powers
33 conferred upon it by this chapter;

34 (12) Serve as liaison with the board on behalf of the commission
35 and not for any individual cannabis producer; and

36 (13) Receive such gifts, grants, and endowments from public or
37 private sources as may be made from time to time, in trust or
38 otherwise, for the use and benefit of the purposes of the commission
39 and expend the same or any income therefrom according to the terms of
40 the gifts, grants, or endowments.

1 NEW SECTION. **Sec. 6.** (1) The commission, before the beginning
2 of its fiscal year, must prepare and submit to the director for
3 approval its research plan, its commodity-related education and
4 training plan, and its budget for that fiscal year.

5 (2) The director must review and make a determination of all
6 submissions described in this section in a timely manner.

7 NEW SECTION. **Sec. 7.** The commission exists primarily for the
8 benefit of the people of the state of Washington and its economy.

9 NEW SECTION. **Sec. 8.** The commission may create, provide for,
10 and conduct a comprehensive and extensive research and educational
11 campaign. It must investigate and ascertain the needs of cannabis
12 producers and take into account this information in the discharge of
13 its duties under this chapter.

14 NEW SECTION. **Sec. 9.** The commission must adopt research and
15 educational campaign goals directed at cannabis producers that serve
16 the needs of cannabis producers. The goals may include efforts to:

17 (1) Advance knowledge and practice of the production of cannabis
18 in this state through the research and testing of methods to improve
19 pest management, worker protection and safety training, energy
20 efficiency, and environmental protection;

21 (2) Encourage promotion of Washington agriculture related to
22 cannabis production in the state;

23 (3) Foster economic conditions favorable to investment in the
24 production of Washington cannabis;

25 (4) Limit youth access and youth exposure to cannabis; and

26 (5) Encourage favorable legislative and regulatory treatment of
27 Washington cannabis in markets where cannabis is legal.

28 NEW SECTION. **Sec. 10.** (1) Pursuant to a referendum under
29 section 3 of this act, there is levied, and the commission must
30 collect, upon cannabis produced by a cannabis producer, an annual
31 assessment on cannabis and cannabis products. The commission must
32 establish assessment methodology and amounts in rule.

33 (2) The commission shall adopt rules prescribing the time, place,
34 and method for payment and collection of the assessment and provide
35 for the collection of assessments from producers who ship directly
36 out-of-state.

1 (3) The commission must develop a reporting system to document
2 that the producers in this state are reporting quantities of cannabis
3 produced and are paying the assessment as provided in this section.

4 NEW SECTION. **Sec. 11.** The commission must deposit money
5 collected under section 10 of this act in a separate account in the
6 name of the commission in any bank that is a state depository. All
7 expenditures and disbursements made from this account under this
8 chapter may be made without appropriation. RCW 43.01.050 does not
9 apply to this account or to the money received, collected, or
10 expended as provided in this chapter.

11 NEW SECTION. **Sec. 12.** An assessment levied in an amount
12 determined by the commission under section 10 of this act constitutes
13 a personal debt of every person assessed or who otherwise owes the
14 assessment, and the assessment is due and payable to the commission
15 when payment is called for by the commission. If a producer fails to
16 pay the commission the full amount of the assessment by the date due,
17 the commission may add to the unpaid assessment an amount not
18 exceeding ten percent of the assessment to defray the cost of
19 enforcing its collection. If the person fails to pay an assessment,
20 the commission may bring a civil action for collection against the
21 person or persons in a court of competent jurisdiction. The action
22 shall be tried and judgment rendered as in any other cause of action
23 for a debt due and payable.

24 NEW SECTION. **Sec. 13.** (1) Under RCW 42.56.380, certain
25 agricultural business records, commission records, and department of
26 agriculture records relating to the commission and producers of
27 agricultural commodities are exempt from public disclosure. However,
28 financial and commercial information and records submitted to either
29 the department or the commission for the purpose of administering
30 this chapter may be shared between the department and the commission.
31 They may also be used, if required, in any suit or administrative
32 hearing involving this chapter.

33 (2) This section does not prohibit:

34 (a) The issuance of general statements based upon the reports of
35 cannabis producers subject to this chapter as long as the statements
36 do not identify a specific cannabis producer or licensee; or

1 (b) The publication by the director or the commission of the name
2 of a cannabis producer violating this chapter and a statement of the
3 manner of the violation by that cannabis producer.

4 NEW SECTION. **Sec. 14.** All costs incurred by the department,
5 including the adoption of rules and other actions necessary to carry
6 out this chapter, must be reimbursed by the commission under RCW
7 43.23.033. The commission must provide funds to the department
8 according to the rules adopted by the director.

9 **Sec. 15.** RCW 42.56.380 and 2018 c 170 s 1 and 2018 c 106 s 11
10 are each reenacted and amended to read as follows:

11 The following information relating to agriculture and livestock
12 is exempt from disclosure under this chapter:

13 (1) Business-related information under RCW 15.86.110;

14 (2) Information provided under RCW 15.54.362;

15 (3) Production or sales records required to determine assessment
16 levels and actual assessment payments to commodity boards and
17 commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65,
18 15.66, 15.74, 15.88, 15.115, 15.100, 15.89, 15.--- (the new chapter
19 created in section 17 of this act), and 16.67 RCW or required by the
20 department of agriculture to administer these chapters or the
21 department's programs;

22 (4) Consignment information contained on phytosanitary
23 certificates issued by the department of agriculture under chapters
24 15.13, 15.49, and 15.17 RCW or federal phytosanitary certificates
25 issued under 7 C.F.R. 353 through cooperative agreements with the
26 animal and plant health inspection service, United States department
27 of agriculture, or on applications for phytosanitary certification
28 required by the department of agriculture;

29 (5) Financial and commercial information and records supplied by
30 persons (a) to the department of agriculture for the purpose of
31 conducting a referendum for the potential establishment of a
32 commodity board or commission; or (b) to the department of
33 agriculture or commodity boards or commissions formed under chapter
34 15.24, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.115, 15.100,
35 15.89, 15.--- (the new chapter created in section 17 of this act), or
36 16.67 RCW with respect to domestic or export marketing activities or
37 individual producer's production information;

1 (6) Information obtained regarding the purchases, sales, or
2 production of an individual American ginseng grower or dealer, except
3 for providing reports to the United States fish and wildlife service
4 under RCW 15.19.080;

5 (7) Information collected regarding packers and shippers of
6 fruits and vegetables for the issuance of certificates of compliance
7 under RCW 15.17.140(2) and 15.17.143;

8 (8) Financial statements obtained under RCW 16.65.030(1)(d) for
9 the purposes of determining whether or not the applicant meets the
10 minimum net worth requirements to construct or operate a public
11 livestock market;

12 (9) Information submitted by an individual or business to the
13 department of agriculture under the requirements of chapters 16.36,
14 16.57, and 43.23 RCW for the purpose of herd inventory management for
15 animal disease traceability. This information includes animal
16 ownership, numbers of animals, locations, contact information,
17 movements of livestock, financial information, the purchase and sale
18 of livestock, account numbers or unique identifiers issued by
19 government to private entities, and information related to livestock
20 disease or injury that would identify an animal, a person, or
21 location. Disclosure to local, state, and federal officials is not
22 public disclosure. This exemption does not affect the disclosure of
23 information used in reportable animal health investigations under
24 chapter 16.36 RCW once they are complete;

25 (10) Results of testing for animal diseases from samples
26 submitted by or at the direction of the animal owner or his or her
27 designee that can be identified to a particular business or
28 individual;

29 (11) Records of international livestock importation that can be
30 identified to a particular animal, business, or individual received
31 from the United States department of homeland security or the United
32 States department of agriculture that are not disclosable by the
33 federal agency under federal law including 5 U.S.C. Sec. 552;

34 (12) Records related to the entry of prohibited agricultural
35 products imported into Washington state or that had Washington state
36 as a final destination received from the United States department of
37 homeland security or the United States department of agriculture that
38 are not disclosable by the federal agency under federal law including
39 5 U.S.C. Sec. 552; ((and))

1 (13) Information obtained from the federal government or others
2 under contract with the federal government or records obtained by the
3 department of agriculture, in accordance with RCW 15.135.100; and

4 (14) Hop grower lot numbers and laboratory results associated
5 with the hop grower lot numbers where this information is used by the
6 department of agriculture to issue export documents.

7 **Sec. 16.** RCW 43.23.033 and 2009 c 33 s 38 are each amended to
8 read as follows:

9 (1) The director may provide by rule for a method to fund staff
10 support for all commodity boards and commissions if a position is not
11 directly funded by the legislature.

12 (2) Staff support funded under this section, RCW 15.65.047(1)(c),
13 15.66.055(3), 15.24.215, 15.26.265, 15.28.320, 15.44.190, 15.88.180,
14 15.89.150, section 14 of this act, and 16.67.190, and chapter 15.115
15 RCW shall be limited to one-half full-time equivalent employee for
16 all commodity boards and commissions.

17 NEW SECTION. **Sec. 17.** Sections 1 through 14 of this act
18 constitute a new chapter in Title 15 RCW.

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