

# SENATE BILL REPORT

## SB 5662

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As of February 6, 2023

**Title:** An act relating to creating the cannabis employee job retention act.

**Brief Description:** Creating the cannabis employee job retention act.

**Sponsors:** Senators Saldaña and Nguyen.

**Brief History:**

**Committee Activity:** Labor & Commerce: 2/06/23.

**Brief Summary of Bill**

- Creates the Cannabis Employee Job Retention Act to be administered by the Department of Labor and Industries (L&I).
- Requires certain outgoing cannabis employers to provide, and certain incoming cannabis employers to utilize, a preferential hiring list when the cannabis business undergoes a change in control, and contains additional provisions regarding notice, compliance, records, protected rights, enforcement, appeals, and penalties.

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### SENATE COMMITTEE ON LABOR & COMMERCE

**Staff:** Susan Jones (786-7404)

**Background:** Cannabis Licensees Ownership Changes. A cannabis license must be issued in the name or names of the true party or parties of interest. The Liquor and Cannabis Board (LCB) may conduct an investigation of any true party of interest who exercises control over the applicant's business operations. This may include financial and criminal background investigations.

Licensees must receive prior LCB approval before making certain ownership changes.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

LCB may inquire into all matters in connection with any sale of stock or units or proposed change in officers or members. If LCB receives an application to change the ownership structure of a licensee, the application will be withdrawn unless one or more of the following is submitted:

- proof that the party being removed was notified they were being removed and they did not object within 90 days;
- signed documentation from the true party of interest being removed for the licensed entity that they agree with the removal; or
- a final court document removing them.

City of Seattle Ordinances. The City of Seattle has passed job retention ordinances for cannabis and hotel employees.

**Summary of Bill:** Cannabis Business Change in Control - Preferential Hiring List and Notice. When a cannabis business undergoes a change in control, the outgoing cannabis employer must provide a preferential hiring list to the incoming cannabis employer within 15 calendar days after the execution of the transfer document and post written notice of the change in control in a conspicuous place to employees and employment applicants within five business days after the execution of the transfer document. Contents of the notice are provided. The incoming cannabis employer must keep the required notice posted during any closure of the cannabis business and for 180 calendar days after the cannabis business is open to the public under its control.

Applicable Employees and Employers. These provisions apply to:

- employees who have worked in the state for an outgoing cannabis employer for at least 30 calendar days within the last 180 days prior to the execution of a transfer document.
- employers who own, control, or operate a cannabis business in the state, including integrated enterprises—separate entities that form an integrated enterprise are considered a single employer.

An employer holding a cannabis retail license issued under the Social Equity Program is not covered under these provisions until January 1, 2030, if the employer did not previously hold a cannabis retail license.

Hiring From Preferential List. The incoming cannabis employer must maintain and hire from the preferential hiring list for a period from the execution of the transfer document and continuing for 180 calendar days after the cannabis business is open to the public under the incoming cannabis employer. The hiring must be by seniority within each job classification to the extent that comparable job classifications exist.

An employment offer must be in writing and remain open for at least ten business days. If the employee accepts the offer, the incoming cannabis employer must retain that employee for no fewer than 90 calendar days following the employment commencement date (90-day

period). During the 90-day period, the incoming cannabis employer:

- must employ the employee under the same terms and conditions of the outgoing cannabis employer, including wages and benefits.
- may not lay off employees unless the incoming cannabis employer determines that fewer cannabis employees are required than by the outgoing cannabis employer and must retain employees by seniority within each job classification.
- may not discharge an employee unless there is just cause for the discharge.

At the end of the 90-day period, the employer must provide a written performance evaluation to each employee. If the performance is satisfactory, the employer must consider offering the employee continued employment under the same terms. The requirements for incoming cannabis employers apply to reactivating cannabis employers.

Department of Labor and Industries Poster of Employee Rights. The Department of Labor and Industries (L&I) must create a poster of these rights in English, Spanish, and other languages L&I determines is appropriate. Employers must display the poster at every workplace or jobsite in English and in the primary language of the employees at the particular workplace.

Records Retention. Each employer must retain the preferential hiring list, written verification of offers of employment records, and performance evaluations for three years. If the employer fails to retain adequate required records, a presumption is created, rebuttable by clear and convincing evidence, there is a violation for the periods for which records were not retained for each employee for whom records were not retained.

Retaliation Prohibited and Rebuttable Presumption. An employer or any other person may not interfere with, restrain, deny, or attempt to deny the exercise of any protected right or take any adverse action because the person has exercised in good faith a protected right. Rights protected include the right to make inquiries or inform others about protected rights; inform the person's employer, the person's legal counsel, a union or similar organization, or any other person about an alleged violation; file an oral or written complaint with L&I or bring a civil action for an alleged violation; cooperate with L&I investigations; testify in a proceeding; refuse to participate in an activity that would result in a violation of city, state, or federal law; and oppose any unlawful policy, practice, or act that is unlawful.

An employer may not communicate to a person exercising protected rights, directly or indirectly, the willingness to inform a government employee or contracted organization that the person is not lawfully in the United States, or to report, or to make an implied or express assertion of a willingness to report, suspected citizenship or immigration status of an employee or a family member of the employee to a federal, state, or local agency, because the employee has exercised a protected right.

There is a rebuttable presumption of retaliation if the employer takes an adverse action within 90 days of the exercise of protected rights. The employer may rebut the presumption

with clear and convincing evidence that the adverse action was taken for a permissible purpose.

Department of Labor and Industries Investigation of Complaints. L&I may investigate any alleged violations and initiate an investigation upon receiving a complaint or report by an employee of an alleged violation. L&I may not investigate any alleged violation that occurred more than three years before the date the employee reported the alleged violation. L&I may prioritize investigations of vulnerable workforces.

L&I must encourage reporting by keeping the reporter's name and other identifying information confidential, except with the reporter's authorization; and by requiring the employer to post or notify employees about an investigation; and certifying the eligibility of eligible persons for "U" visas.

When the L&I director has reason to believe a violation has occurred, the director may order any appropriate temporary or interim relief pending completion of a full investigation or hearing. A respondent may appeal any such order.

Except when there is an agreed upon settlement, L&I must issue a written determination with findings of fact resulting from the investigation and a statement of whether a violation has occurred based on a preponderance of the evidence, including issuing a determination of compliance or a citation and notice of assessment that must identify the violations. Rights to appeal must be provided.

Penalties and Other Sanctions. The payment of unpaid compensation, liquidated damages of up to twice the amount of unpaid compensation, civil penalties, penalties payable to aggrieved parties, fines, and interest at 12 percent, is cumulative and is not intended to be exclusive of any other available remedies, penalties, fines, and procedures. L&I may waive specified penalties under certain circumstances, including when the employer has paid certain amounts to the aggrieved party.

The amounts of all civil penalties, penalties payable to aggrieved parties, and fines must be increased annually to reflect the rate of inflation and calculated to the nearest cent on January 1st of each year thereafter. L&I must publish a schedule of these amounts on its website.

Unpaid Compensation and Liquidated Damages. If a violation is found, the violator is liable for full payment of unpaid compensation due plus interest in favor of the aggrieved party, and other equitable relief. For a first violation, L&I may assess liquidated damages in an additional amount of up to twice the unpaid compensation. For subsequent violations, L&I must assess liquidated damages of twice the unpaid compensation.

Penalties for Retaliation. Violations for retaliation are subject to any appropriate relief at law or equity including, reinstatement of the aggrieved party, front pay in lieu of

reinstatement of unpaid compensation plus interest, and liquidated damages up to twice the unpaid compensation. L&I must also order the imposition of a penalty payable to the aggrieved party up to \$5,755.31.

Civil Penalties. L&I may assess civil penalties for a violation and may specify that civil penalties are due to the aggrieved party rather than due to L&I as follows:

- for a first violation, up to \$575.31 per aggrieved party;
- for a second violation, up to \$1,150.63 per aggrieved party, or an amount equal to 10 percent of the total amount of unpaid compensation, whichever is greater; and
- for a third or any subsequent violation of this chapter, a mandatory civil penalty up to \$5,755.31 per aggrieved party, or an amount equal to 10 percent of the total amount of unpaid compensation, whichever is greater.

Fines for Other Violations. L&I may assess the following fines per aggrieved party and may specify that fines are due to the aggrieved party rather than due to L&I for failure to take the following actions:

- \$575.31 for failure to post notice of the change in control; hire from the preferential hiring list; retain an employee for at least 90 days; provide employees with written notice of rights; retain records for three years; provide notice of investigation to employees; provide notice of failure to comply with final order to the public; and
- \$1,150.63 for failure to comply with prohibitions against retaliation for exercising protected rights

The maximum amount that may be imposed in fines in a one-year period for each type of violation is \$5,755.31 per aggrieved party. If a fine for retaliation is issued, the maximum amount that may be imposed is \$23,020 per aggrieved party.

Other Penalties and Assessments. A respondent that willfully hinders, prevents, impedes, or interferes with the duties of L&I or an administrative law judge is subject to a civil penalty not less than \$1,150.63 and not more than \$5,755.31. L&I may assess against the respondent in favor of L&I the reasonable costs, including reasonable attorneys' fees. A respondent that is the subject of a settlement agreement stipulating that a violation has occurred, or subject to a final order, may not bid, or have a bid considered, on any state contract until such amounts due under the final order have been paid in full. If the respondent is the subject of a final order two times or more within a five-year period, the respondent may not bid on any state contract for two years.

Fines and civil penalties paid to L&I are deposited in the Supplemental Pension Fund. Appeal provisions are provided. An employer who fails to allow adequate inspection of records in an investigation by L&I within a reasonable time period may not use such records in any appeal to challenge the correctness of any L&I determination of wages owed or penalty assessed.

Private Right of Action. An employee who has filed a complaint or initiated an investigation with L&I may elect to terminate the administrative action and preserve a

private right of action, by providing written notice to L&I within ten business days after the employee's receipt of L&I's citation and notice of assessment. This will terminate L&I's actions.

Failure to Comply or Subject to a Settlement Agreement or Order. If a respondent fails to comply within 30 days of any settlement agreement with L&I, or with any final order after the appeal rights are exhausted, L&I may pursue measures to secure compliance, including requiring the respondent to post notice of the failure to comply and requesting LCB or the Department of Revenue (DOR) deny, suspend, refuse to renew, or revoke any cannabis business license until the employer complies with the remedy in the settlement agreement or final order. LCB and DOR are authorized to deny, refuse to renew, or revoke the cannabis business license.

A respondent that is the subject of a settlement agreement or final order may not quit business, dispose of their business or stock of goods without first notifying L&I and the successor of the amounts owed under the settlement agreement or final order at least three business days prior to such transaction. At the time the time of completion of the transaction, the full amount of the remedy will be immediately due and payable. There is successor liability. An aggrieved party may bring a civil action against the employer or other person violating these provisions and may be awarded reasonable attorney fees and costs and legal or equitable relief to remedy the violation including the payment of any unpaid compensation plus interest, liquidated damages up to twice the unpaid compensation, and a penalty of up to \$5,755.31 if the aggrieved party was subject to prohibited retaliation. Interest is 12 percent. Members of a class are described.

Waiver Void. Any waiver by an individual of these provisions is contrary to public policy and is void and unenforceable.

Miscellaneous Provisions. These provisions do not replace or preempt certain other local or common laws. Legislative findings are made. Definitions are provided. L&I must administer and enforce the act and is granted rulemaking authority.

**Appropriation:** None.

**Fiscal Note:** Requested on January 31, 2023.

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

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

**Staff Summary of Public Testimony (Regular Session 2023):** PRO: This bill provides opportunity for job security in the cannabis industry. As we see bills about new licenses, we should look at ways to keep people employ at least on a temporary basis.

An example was given of a cannabis business being sold. The workers were notified on June 10th of the closing on July 1st. There was no information on why it was closing. The new employer posted jobs but no one reached out to the current employees. Having only 3 weeks' notice was terrifying. This bill will help save jobs and livelihoods. In one sale, they only kept the female employee. After one closure, some employees were evicted. There are a limited number of cannabis jobs in the state. Work has been done in social equity but we cannot forget the workers. Many workers are women and people of color.

CON: We have grave concerns. It singles out the cannabis industry. This applies to all licensees, not just retailers. The purchaser may need different types of employees.

It eliminates at will for cannabis industry. It adds recordkeeping requirements. This seems like a previous bill with a point system. The rebuttable presumption has a standard used for constitutional challenges.

**Persons Testifying:** PRO: Senator Rebecca Saldaña, Prime Sponsor; Kristen Wells; Zion Grae-El; Amirah Ziada, UFCW 3000.

CON: Vicki Christophersen, Washington CannaBusiness Association; Bob Battles, Association of Washington Business (AWB).

**Persons Signed In To Testify But Not Testifying:** No one.