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**HOUSE BILL 1412**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Representative Moscoso

AN ACT Relating to municipalities prohibiting the operation of recreational marijuana production, processing, and retail facilities within their jurisdictional boundaries; amending RCW 69.50.325, 69.50.331, 69.50.334, and 69.50.354; adding new sections to chapter 69.50 RCW; and declaring an emergency.

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

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

(1) In accordance with the requirements of this section, any county, city, or town may enact an ordinance prohibiting the siting or operation within its jurisdictional boundaries of any business or facility for the production, processing, and/or retail sale of recreational marijuana products, including marijuana, marijuana concentrates, and marijuana-infused products. In order to be enacted, a proposed ordinance must first be passed by the legislative authority of the county, city, or town and then approved by the majority of voters voting on it at a general or special election. Following the enactment of the ordinance, the state liquor control board shall not issue or renew any recreational marijuana license authorized under this chapter for the production, processing, or retail sale of recreational marijuana products with respect to businesses that are either located or proposed to be located within the jurisdictional boundaries of a county, city, or town enacting the ordinance.

(2) An ordinance proposed by the legislative authority of a county, as authorized under subsection (1) of this section, may be submitted to the voters for their approval or rejection at a general or special election. If the ordinance is approved by a majority of the voters voting on it, the ordinance becomes effective ten days after the results of the election are certified, unless a later date is specified by the ballot measure submitting the ordinance to the voters.

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

A county, city, or town that enacts an ordinance under section 1 of this act prohibiting the siting or operation of any business or facility licensed for the production, processing, or retail sale of recreational marijuana products, including marijuana, marijuana concentrates, and marijuana-infused products, may not receive any portion of excise tax revenues collected statewide from the operation of such businesses.

**Sec.**  RCW 69.50.325 and 2014 c 192 s 2 are each amended to read as follows:

(1) There shall be a marijuana producer's license to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers, regulated by the state liquor control board and subject to annual renewal. The production, possession, delivery, distribution, and sale of marijuana in accordance with the provisions of chapter 3, Laws of 2013 and the rules adopted to implement and enforce it, by a validly licensed marijuana producer, shall not be a criminal or civil offense under Washington state law. Every marijuana producer's license shall be issued in the name of the applicant, shall specify the location at which the marijuana producer intends to operate, which must be within the state of Washington, and the holder thereof shall not allow any other person to use the license. The application fee for a marijuana producer's license shall be two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana producer's license shall be one thousand dollars. A separate license shall be required for each location at which a marijuana producer intends to produce marijuana.

(2) There shall be a marijuana processor's license to process, package, and label marijuana concentrates, useable marijuana, and marijuana-infused products for sale at wholesale to marijuana processors and marijuana retailers, regulated by the state liquor control board and subject to annual renewal. The processing, packaging, possession, delivery, distribution, and sale of marijuana, useable marijuana, marijuana-infused products, and marijuana concentrates in accordance with the provisions of chapter 3, Laws of 2013 and the rules adopted to implement and enforce it, by a validly licensed marijuana processor, shall not be a criminal or civil offense under Washington state law. Every marijuana processor's license shall be issued in the name of the applicant, shall specify the location at which the licensee intends to operate, which must be within the state of Washington, and the holder thereof shall not allow any other person to use the license. The application fee for a marijuana processor's license shall be two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana processor's license shall be one thousand dollars. A separate license shall be required for each location at which a marijuana processor intends to process marijuana.

(3) There shall be a marijuana retailer's license to sell marijuana concentrates, useable marijuana, and marijuana-infused products at retail in retail outlets, regulated by the state liquor control board and subject to annual renewal. The possession, delivery, distribution, and sale of marijuana concentrates, useable marijuana, and marijuana-infused products in accordance with the provisions of chapter 3, Laws of 2013 and the rules adopted to implement and enforce it, by a validly licensed marijuana retailer, shall not be a criminal or civil offense under Washington state law. Every marijuana retailer's license shall be issued in the name of the applicant, shall specify the location of the retail outlet the licensee intends to operate, which must be within the state of Washington, and the holder thereof shall not allow any other person to use the license. The application fee for a marijuana retailer's license shall be two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana retailer's license shall be one thousand dollars. A separate license shall be required for each location at which a marijuana retailer intends to sell marijuana concentrates, useable marijuana, and marijuana-infused products.

(4) The state liquor control board is prohibited from issuing or renewing a commercial marijuana license, as authorized under this section, for an applicant or existing licensee whose place of business is located within the jurisdictional boundaries of any county, city, or town that has enacted, pursuant to section 1 of this act, an ordinance prohibiting the operation of any business or facility for the production, processing, or retail sale of recreational marijuana products, including marijuana, marijuana concentrates, and marijuana-infused products.

**Sec.**  RCW 69.50.331 and 2013 c 3 s 6 are each amended to read as follows:

(1) For the purpose of considering any application for a license to produce, process, or sell marijuana, or for the renewal of a license to produce, process, or sell marijuana, the state liquor control board may cause an inspection of the premises to be made, and may inquire into all matters in connection with the construction and operation of the premises. For the purpose of reviewing any application for a license and for considering the denial, suspension, revocation, or renewal or denial thereof, of any license, the state liquor control board may consider any prior criminal conduct of the applicant including an administrative violation history record with the state liquor control board and a criminal history record information check. The state liquor control board may submit the criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The state liquor control board shall require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation. The provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to these cases. Subject to the provisions of this section, the state liquor control board may, in its discretion, grant or deny the renewal or license applied for. Denial may be based on, without limitation, the existence of chronic illegal activity documented in objections submitted pursuant to subsections (7)(c) and (9) of this section. Authority to approve an uncontested or unopposed license may be granted by the state liquor control board to any staff member the board designates in writing. Conditions for granting this authority shall be adopted by rule. No license of any kind may be issued to:

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

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

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

(d) A person whose place of business is conducted by a manager or agent, unless the manager or agent possesses the same qualifications required of the licensee; or

(e) A person whose existing or proposed place of business is in a county, city, or town that has enacted an ordinance pursuant to section 1 of this act prohibiting the operation or siting of any facility or business for the production, processing, or retail sale of recreational marijuana products, including marijuana, marijuana concentrates, and marijuana-infused products.

(2)(a) The state liquor control board may, in its discretion, subject to the provisions of RCW 69.50.334, suspend or cancel any license; and all protections of the licensee from criminal or civil sanctions under state law for producing, processing, or selling marijuana, useable marijuana, or marijuana-infused products thereunder shall be suspended or terminated, as the case may be.

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

(c) The state liquor control board may request the appointment of administrative law judges under chapter 34.12 RCW who shall have power to administer oaths, issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, examine witnesses, and to receive testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, under rules and regulations the state liquor control board may adopt.

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

(e) In case of disobedience of any person to comply with the order of the state liquor control board or a subpoena issued by the state liquor control board, or any of its members, or administrative law judges, or on the refusal of a witness to testify to any matter regarding which he or she may be lawfully interrogated, the judge of the superior court of the county in which the person resides, on application of any member of the board or administrative law judge, shall compel obedience by contempt proceedings, as in the case of disobedience of the requirements of a subpoena issued from said court or a refusal to testify therein.

(3) Upon receipt of notice of the suspension or cancellation of a license, the licensee shall forthwith deliver up the license to the state liquor control board. Where the license has been suspended only, the state liquor control board shall return the license to the licensee at the expiration or termination of the period of suspension. The state liquor control board shall notify all other licensees in the county where the subject licensee has its premises of the suspension or cancellation of the license; and no other licensee or employee of another licensee may allow or cause any marijuana, useable marijuana, or marijuana-infused products to be delivered to or for any person at the premises of the subject licensee.

(4) Every license issued under chapter 3, Laws of 2013 shall be subject to all conditions and restrictions imposed by chapter 3, Laws of 2013 or by rules adopted by the state liquor control board to implement and enforce chapter 3, Laws of 2013. All conditions and restrictions imposed by the state liquor control board in the issuance of an individual license shall be listed on the face of the individual license along with the trade name, address, and expiration date.

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

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

(7)(a) Before the state liquor control board issues a new or renewed license to an applicant it shall give notice of the application to the chief executive officer of the incorporated city or town, if the application is for a license within an incorporated city or town, or to the county legislative authority, if the application is for a license outside the boundaries of incorporated cities or towns.

(b) The incorporated city or town through the official or employee selected by it, or the county legislative authority or the official or employee selected by it, shall have the right to file with the state liquor control board within twenty days after the date of transmittal of the notice for applications, or at least thirty days prior to the expiration date for renewals, written objections against the applicant or against the premises for which the new or renewed license is asked. The state liquor control board may extend the time period for submitting written objections.

(c) The written objections shall include a statement of all facts upon which the objections are based, and in case written objections are filed, the city or town or county legislative authority may request, and the state liquor control board may in its discretion hold, a hearing subject to the applicable provisions of Title 34 RCW. If the state liquor control board makes an initial decision to deny a license or renewal based on the written objections of an incorporated city or town or county legislative authority, the applicant may request a hearing subject to the applicable provisions of Title 34 RCW. If a hearing is held at the request of the applicant, state liquor control board representatives shall present and defend the state liquor control board's initial decision to deny a license or renewal.

(d) Upon the granting of a license under this title the state liquor control board shall send written notification to the chief executive officer of the incorporated city or town in which the license is granted, or to the county legislative authority if the license is granted outside the boundaries of incorporated cities or towns.

(8) The state liquor control board shall not issue a license for any premises within one thousand feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, or library, or any game arcade admission to which is not restricted to persons aged twenty-one years or older.

(9) In determining whether to grant or deny a license or renewal of any license, the state liquor control board shall give substantial weight to objections from an incorporated city or town or county legislative authority based upon chronic illegal activity associated with the applicant's operations of the premises proposed to be licensed or the applicant's operation of any other licensed premises, or the conduct of the applicant's patrons inside or outside the licensed premises. "Chronic illegal activity" means (a) a pervasive pattern of activity that threatens the public health, safety, and welfare of the city, town, or county including, but not limited to, open container violations, assaults, disturbances, disorderly conduct, or other criminal law violations, or as documented in crime statistics, police reports, emergency medical response data, calls for service, field data, or similar records of a law enforcement agency for the city, town, county, or any other municipal corporation or any state agency; or (b) an unreasonably high number of citations for violations of RCW 46.61.502 associated with the applicant's or licensee's operation of any licensed premises as indicated by the reported statements given to law enforcement upon arrest.

**Sec.**  RCW 69.50.334 and 2013 c 3 s 7 are each amended to read as follows:

(1) Except as provided under subsection (5) of this section, the action, order, or decision of the state liquor control board as to any denial of an application for the reissuance of a license to produce, process, or sell marijuana, or as to any revocation, suspension, or modification of any license to produce, process, or sell marijuana, shall be an adjudicative proceeding and subject to the applicable provisions of chapter 34.05 RCW.

((~~(1)~~))(2) An opportunity for a hearing may be provided to an applicant for the reissuance of a license prior to the disposition of the application, and if no opportunity for a prior hearing is provided then an opportunity for a hearing to reconsider the application must be provided the applicant.

((~~(2)~~))(3) An opportunity for a hearing must be provided to a licensee prior to a revocation or modification of any license and, except as provided in subsection ((~~(4)~~))(6) of this section, prior to the suspension of any license.

((~~(3)~~))(4) No hearing shall be required until demanded by the applicant or licensee.

((~~(4)~~))(5) The provisions of subsection (1) of this section authorizing an adjudicative proceeding do not apply if the licensee's business is located in a jurisdiction that has enacted an ordinance, pursuant to section 1 of this act, prohibiting the siting or operation of any business or facility for the production, processing, or retail sale of recreational marijuana products.

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

**Sec.**  RCW 69.50.354 and 2014 c 192 s 3 are each amended to read as follows:

Subject to the restrictions set forth in section 1 of this act and RCW 69.50.331, there may be licensed, in no greater number in each of the counties of the state than as the state liquor control board shall deem advisable, retail outlets established for the purpose of making marijuana concentrates, useable marijuana, and marijuana-infused products available for sale to adults aged twenty-one and over. Retail sale of marijuana concentrates, useable marijuana, and marijuana-infused products in accordance with the provisions of chapter 3, Laws of 2013 and the rules adopted to implement and enforce it, by a validly licensed marijuana retailer or retail outlet employee, shall not be a criminal or civil offense under Washington state law.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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