

# FINAL BILL REPORT

## HB 2000

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Synopsis as Enacted

**Brief Description:** Authorizing the governor to enter into agreements with federally recognized Indian tribes in the state of Washington concerning marijuana.

**Sponsors:** Representatives Hurst, Condotta and Tarleton.

**House Committee on Commerce & Gaming**

**House Committee on Finance**

**Senate Committee on Commerce & Labor**

**Senate Committee on Ways & Means**

### **Background:**

#### Tribal-State Compacts.

Where authorized by statute, the Governor may enter into compacts and agreements with the Indian tribes of this state regarding matters of mutual interest or concern. Many such compacts have been implemented regarding gambling and various taxation issues, including those regarding cigarette taxes and gasoline taxes. In 2001 legislation was enacted allowing the Governor to enter into contracts with the tribes concerning the sale of cigarettes. Such contracts must be for renewable terms of eight years or less. Cigarettes sold on Indian lands during the contracts' term are subject to a tribal cigarette tax and are exempt from state cigarette, sales, and use taxes.

#### Regulation of Marijuana Commerce under the State Controlled Substances Act.

Initiative Measure No. 502 (I-502) was a ballot measure approved by Washington voters in November of 2012 that: (1) legalized the production, processing, possession, and personal use of marijuana; (2) created a framework for a regulatory scheme to be further developed by the Liquor Control Board (LCB) through its rule-making authority; and (3) revised provisions in criminal statute to accommodate such legalization.

Under the CSA, the LCB may issue three categories of commercial marijuana licenses: (1) the marijuana producer's license entitles the holder to produce marijuana for sale at wholesale to licensed marijuana processors or other producers; (2) the marijuana processor's license entitles the holder to process, package, and label marijuana for sale at wholesale to marijuana retailers and other processors; and (3) the marijuana retailer's license entitles the holder to sell marijuana products at retail prices in retail outlets.

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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 a part of the legislation nor does it constitute a statement of legislative intent.*

### Federal Response to State Marijuana Legalization.

In recent years, the United States Department of Justice (DOJ) has issued several policy statements regarding state regulation of legalized marijuana. In August of 2013, Deputy Attorney General James Cole issued a memorandum (Cole Memorandum) in response to the legalization of marijuana in Washington and Colorado. This memorandum acknowledges that enforcement of state law by state and local enforcement agencies should remain the primary means of addressing marijuana-related activity and indicates that federal authorities will not interfere with state legalization efforts provided the state implements strong and effective regulatory and enforcement systems. The Cole memorandum establishes the following eight enforcement priorities that the federal government will consider in evaluating the adequacy of the regulatory systems implemented by states that have legalized marijuana:

1. preventing the distribution of marijuana to minors;
2. preventing marijuana sales revenue from being directed to criminal enterprises;
3. preventing marijuana from being diverted from states where it is legal to states in which it is illegal;
4. preventing state-authorized marijuana activity from being used as a cover for trafficking other illegal drugs or other illegal activity;
5. preventing violence and the use of firearms in the production and distribution of marijuana;
6. preventing drugged driving and other marijuana-related public health consequences;
7. preventing the growth of marijuana on public lands; and
8. preventing marijuana possession or use on federal property.

The Cole Memorandum also affirms the continuing authority of the federal government to challenge state regulatory systems and to take enforcement actions where state enforcement efforts are inadequate.

### Marijuana Commerce in Indian Country.

In October of 2014, another federal memorandum (Wilkinson Memorandum) was issued regarding the legalization of marijuana by Indian tribes. Its substantive provisions are largely identical to the Cole Memorandum, insofar as it indicates that federal authorities will not interfere with tribal legalization efforts provided the tribe implements strong and effective regulatory and enforcement systems consistent with federal law enforcement priorities. The Wilkinson Memorandum also acknowledges that the tribes are sovereign nations and thus directs the DOJ to consult with affected tribes on a government-to-government basis on matters relating to the regulation of legalized marijuana.

### **Summary:**

The Governor may enter into agreements with federally recognized Indian tribes concerning marijuana. Such agreements may address any marijuana-related issue that involves both state and tribal interests or otherwise has an impact on tribal-state relations. Such agreements may include the following subject matter:

- criminal and civil law enforcement;
- regulatory issues related to the commercial production, processing, sale, and possession of marijuana and processed marijuana products;
- medical and pharmaceutical research involving marijuana;

- taxation; and
- dispute resolution, including the use of mediation or other nonjudicial process.

Any marijuana agreement relating to the production, processing, and sale of marijuana in Indian country, whether for recreational or medical purposes, must address the following issues:

- preservation of public health and safety;
- ensuring the security of production, processing, retail, and research facilities; and
- cross-border commerce in marijuana.

The Governor may delegate the power to negotiate marijuana agreements to the LCB. In conducting such negotiations, the LCB must, when necessary, consult with the Governor or the Department of Revenue.

Any tribal-state marijuana agreement must include a requirement that the tribe impose a tribal marijuana tax in an amount that is at least 100 percent of state and local excise, sales, and use taxes on sales of marijuana. However, tribal marijuana sales to the tribe, tribal entities, or tribal members are exempt from this taxation requirement to the extent such sales are exempt from such taxation under state and federal law.

State licensed marijuana retailers may purchase and receive marijuana and processed marijuana products from a federally recognized Indian tribe as permitted by a tribal-state agreement.

State licensed marijuana producers and processors may sell and distribute marijuana and processed marijuana products to a federally recognized Indian tribe as permitted by a tribal-state agreement.

**Votes on Final Passage:**

House	80	18	
Senate	36	13	(Senate amended)
House			(House refused to concur)
Senate			(Senate receded)
Senate	46	0	(Senate amended)
House	79	17	(House concurred)

**Effective:** July 24, 2015