

HOUSE BILL REPORT

HB 2802

As Reported by House Committee On:
Commerce & Gaming

Title: An act relating to the provision of personal services and promotional items by cannabis producers and processors.

Brief Description: Concerning the provision of personal services and promotional items by cannabis producers and processors.

Sponsors: Representatives Wylie, Vick, Blake and Harris.

Brief History:

Committee Activity:

Commerce & Gaming: 2/1/16, 2/2/16 [DPS].

Brief Summary of Substitute Bill

- Authorizes marijuana producers and processors to provide branded promotional items of nominal value and certain personal services to marijuana retailers, similar to the existing authorization for liquor industry members.
- Authorizes marijuana producers, processors, and retailers to link to one another's Internet websites and produce brochures related to Washington State tourism, similar to the existing authorization for liquor industry members.

HOUSE COMMITTEE ON COMMERCE & GAMING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Hurst, Chair; Wylie, Vice Chair; Condotta, Ranking Minority Member; Holy, Assistant Ranking Minority Member; Blake, Kirby, Scott, Van De Wege and Vick.

Staff: Peter Clodfelter (786-7127).

Background:

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.

Overview of Initiative 502 and the Relationship between Marijuana Producers, Processors, and Retailers.

Initiative 502 (I-502) was a ballot measure approved by Washington in November 2012 that: (1) legalized the production, processing, sale, possession, and personal use of marijuana and marijuana-derived products; (2) created a framework for a regulatory scheme to be further developed by the Liquor and Cannabis Board (LCB) through its rule-making authority; and (3) implemented a taxation system for commercial marijuana enterprises. Under this regulatory scheme, a separate license is needed in order to produce, process, or sell at retail marijuana and marijuana-derived products. A licensed marijuana producer or processor may not also be a licensed marijuana retailer.

The LCB's rules prohibit marijuana producers, processors, and retailers from entering into an agreement that causes undue influence over another marijuana producer, processor, or retailer. Additionally, no marijuana producer or processor may advance and no marijuana retailer may receive moneys or moneys' worth under an agreement, written or unwritten, or by means of any other business practice or arrangement, including gifts, discounts, loans of money, premiums, rebates, free products, or services other than those services specifically authorized.

Alcohol Industry: Branded Promotional Items, Personal Services, Internet Websites, and Brochures.

The three tiers of the liquor industry are manufacturers, distributors, and retailers. Tied-house laws regulate how liquor is marketed and are intended to prevent the vertical integration of the three tiers of the liquor industry. The general rule is that no industry member (manufacturer or distributor) may advance and no retailer may receive moneys or moneys' worth under an agreement or by means of any other business practice or arrangement. There are numerous exceptions to the general rule.

Branded Promotional Items. An industry member may provide retailers branded promotional items that are of nominal value (\$30 dollars or less), singly or in the aggregate. Such branded promotional items include, but are not limited to, trays, lighters, blotters, postcards, pencils, coasters, menu cards, meal checks, napkins, clocks, mugs, glasses, bottles or can openers, corkscrews, matches, printed recipes, shirts, hats, visors, and other similar items. The branded promotional items must:

- be used exclusively by the retailer or the retailer's employees in a manner consistent with the retailer's license;
- bear imprinted advertising matter of the industry member only, except imprinted advertising matter may include the logo of a professional sports team that the industry member is licensed to use;
- be provided by industry members only to retailers and retailers' employees and may not be provided by or through retailers or their employees to retail customers; and
- not target or appeal principally to youth.

An industry member or retailer or any other person asserting that the provision of branded promotional items has resulted or is more likely than not to result in undue influence or an adverse impact on public health and safety or is otherwise inconsistent with the requirements applicable to branded promotional items may file a complaint with the LCB. Upon receipt of a complaint, the LCB may conduct an appropriate investigation. If the investigation reveals

the provision of branded promotional items has resulted in or is more likely than not to result in undue influence, or has resulted or is more likely than not to result in an adverse impact on public health and safety, or is otherwise inconsistent with the requirements that apply to branded promotional items, the LCB may issue an administrative violation notice to the industry member, to the retailer, or both. The recipient of the administrative violation notice may request a hearing under the state Administrative Procedure Act.

Personal Services. Consistent with the tied-house laws, wineries and breweries may perform personal services to certain retailers if the personal services are conducted at a licensed premises and intended to inform, educate, or enhance customers' knowledge or experience of the manufacturer's products. The personal services may include pourings, bottle-signing events, and other similar informational or educational activities. Wineries and breweries are not required to perform personal services.

Internet Websites and Brochures. Alcohol industry members may also list information on the industry members' Internet websites related to retailers that sell the industry members' products, and retailers may list information on the retailers' Internet websites about industry members whose products the retailers sell. Also, industry members and retailers may produce, jointly or together with regional, state, or local industry associations, brochures and materials promoting tourism in Washington that contain information regarding retailers, industry members, and their products.

Summary of Substitute Bill:

Marijuana Industry: Branded Promotional Items, Personal Services, Internet Websites, and Brochures.

Branded Promotional Items. Consistent with the legal framework created by and pursuant to I-502, a licensed marijuana producer (producer) or licensed marijuana processor (processor) may provide a licensed marijuana retailer (retailer) with branded promotional items that are of nominal value (\$30 dollars or less), singly or in the aggregate. Such branded promotional items include, but are not limited to, lighters, postcards, pencils, matches, shirts, hats, visors, and other similar items. Branded promotional items must:

- be used exclusively by the retailer or the retailer's employees in a manner consistent with the retailer's license;
- bear imprinted advertising matter of the producer or processor only;
- be provided by a producer or processor only to retailers and their employees and may not be provided by or through retailers or their employees to retail customers; and
- not target or appeal principally to youth. This includes any: (1) statement, picture, or illustration that depicts a child or other person under legal age for consuming cannabis; (2) objects, such as toys or characters, suggesting the presence of a child or any other depiction designed in any manner to be especially appealing to children or other persons under legal age to consume cannabis; (3) advertising designed in any manner that would be especially appealing to children or other persons under 21 years of age; or (4) advertising implying that the consumption of cannabis is fashionable or the accepted course of behavior for persons under 21 years of age.

A producer or processor is not obligated to provide any branded promotional items to a retailer and a retailer may not require a producer or processor to provide any branded promotional items as a condition for selling cannabis to the retailer.

A producer, processor, or retailer or any other person asserting that the provision of branded promotional items has resulted or is more likely than not to result in undue influence or an adverse impact on public health and safety or is otherwise inconsistent with the requirements that apply to the provision of branded promotional items may file a complaint with the LCB. Upon receipt of a complaint, the LCB may conduct an appropriate investigation. If the investigation reveals the provision of branded promotional items has resulted in or is more likely than not to result in undue influence, or has resulted or is more likely than not to result in an adverse impact on public health and safety, or is otherwise inconsistent with the requirements that apply to the provision of branded promotional items, the LCB may issue an administrative violation notice to the producer, processor, or retailer. The recipient of the administrative violation notice may request a hearing under the state Administrative Procedure Act.

Personal Services. A producer or processor may perform personal services to retailers when the personal services are conducted at a licensed premise and intended to inform, educate, or enhance customers' knowledge or experience of the manufacturer's products. The performance of personal services may include participation in events and the use of informational or educational activities at a retailer's premises. A producer or processor is not obligated to perform any personal services and a retailer may not require a producer or processor to perform any personal service as a condition for selling cannabis to the retailer.

Internet Websites and Brochures. Producers and processors may list on their Internet websites information related to retailers that sell or promote the producers' or processors' products, including direct links to the retailers' Internet websites. Likewise, retailers may list on their Internet websites information related to producers or processors whose products the retailers sell or promote, including direct links to the producers' or processors' websites. Additionally, producers, processors, and retailers may produce, jointly or together with regional, state, or local industry associations, brochures and materials promoting tourism in Washington that contain information regarding producers, processors, and retailers, and their products.

Substitute Bill Compared to Original Bill:

Certain promotional items, such as coasters, bottle openers, and corkscrews, which are more commonly associated with alcohol-related products, are removed from the list of authorized promotional items. The prohibition on promotional items being principally targeted toward or appealing to youth is clarified and strengthened. Expressly prohibited is any branded promotional item that includes any: (1) statement, picture, or illustration that depicts a child or other person under legal age for consuming cannabis; (2) objects, such as toys or characters, suggesting the presence of a child or any other depiction designed in any manner to be especially appealing to children or other persons under legal age to consume cannabis; (3) advertising designed in any manner that would be especially appealing to children or other persons under 21 years of age; or (4) advertising implying that the consumption of cannabis is fashionable or the accepted course of behavior for persons under 21 years of age.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) It is important that marijuana businesses are able to market and promote their products and educate customers and retailers regarding the wide variety of available products. Currently, marijuana producers and processors are not able to communicate information about their products to customers, patients, or retail employees as they would like to do. Customers, patients, and retail employees are interested in learning about available products, such as information about the production and processing processes, as well as the relative potencies and effects of different products. Producers and processors want to receive feedback about their products, which this bill would allow. The authorization in this bill is especially important for smaller businesses competing against larger businesses in the marijuana marketplace. There are two amendments to the bill that stakeholders have worked out. One amendment clarifies and strengthens the requirement that promotional items must not appeal to youth. The other amendment eliminates the authorization for certain promotional items that are more related to alcohol than marijuana.

(Opposed) None.

(Other) Although the prevention community is concerned about the potential for promotional items to appeal to youth, the described amendment seems to sufficiently strengthen the prohibition.

Persons Testifying: (In support) Representative Wylie, prime sponsor; Sara Stewart, Washington CannaBusiness Association; Jerry Derevyanny, Northwest Cannabis Solutions; Lori Lizotte, Polygenix; Susan Gress, Vashon Velvet; and Lew McMurrin, Cannabis Organization of Retail Establishments.

(Other) Seth Dawson, Washington Association for Substance Abuse Prevention.

Persons Signed In To Testify But Not Testifying: None.