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**SUBSTITUTE HOUSE BILL 1438**

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**State of Washington**

**64th Legislature**

**2016 Regular Session**

**By** House Commerce & Gaming (originally sponsored by Representatives Sawyer, Kirby, and Appleton)

READ FIRST TIME 01/21/16.

1 AN ACT Relating to permitting cities, towns, and counties to  
2 prohibit the production, processing, and sale of marijuana under  
3 Initiative Measure No. 502 only by public vote; amending RCW  
4 69.50.325 and 69.50.334; adding new sections to chapter 69.50 RCW;  
5 adding a new section to chapter 36.01 RCW; adding a new section to  
6 chapter 35.21 RCW; and adding a new section to chapter 35A.21 RCW.

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

8 NEW SECTION. **Sec. 1.** A new section is added to chapter 69.50  
9 RCW to read as follows:

10 (1) Except as provided in section 2 of this act and subsections  
11 (2) through (4) of this section, the state of Washington fully  
12 occupies and preempts the entire field of regulating the retail sale  
13 of marijuana under this chapter.

14 (2) Cities, towns, and counties retain their existing zoning  
15 authority regarding the siting of licensed marijuana retailers.

16 (3) No local comprehensive plan, development regulation, or  
17 ordinance may preclude the siting of licensed marijuana retailers,  
18 except that a local jurisdiction that does not permit retail uses  
19 anywhere in the jurisdiction is not required to accommodate the  
20 siting of licensed marijuana retailers.

1 (4) Nothing in this section is construed to prevent a city, town,  
2 or county from applying ordinances of general application to  
3 marijuana businesses.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 69.50  
5 RCW to read as follows:

6 (1)(a) A registered voter of a county, city, or town may submit a  
7 petition calling for the county, city, or town to prohibit the siting  
8 or operation of any business or facility to be used for the retail  
9 sale of marijuana products under this chapter. The petition must be  
10 signed by thirty percent or more of the voters of the jurisdiction  
11 and must be filed with the legislative authority of the applicable  
12 county, city, or town. With respect to petitions to be filed with a  
13 county under this subsection, only registered voters in the  
14 unincorporated area of the county may initiate and sign the petition.

15 (b) If the legislative authority determines the petition to be  
16 sufficient, the legislative authority must, within sixty days of  
17 determining the petition to be sufficient, hold a public hearing on  
18 the petition and an implementing ordinance. Following the public  
19 hearing, the legislative authority of the county, city, or town  
20 legislative body must submit the question of prohibiting siting or  
21 operation of any business or facility to be used for the retail sale  
22 of marijuana under this chapter to the voters of the jurisdiction at  
23 a general election.

24 (c) If a majority of the voters of the county, city, or town  
25 voting in the election approve the prohibition, the prohibition takes  
26 effect on the date specified in the petition. If no effective date is  
27 specified in the petition, the prohibition takes effect on a date  
28 specified by the legislative authority that must be at least thirty  
29 days and no later than sixty days after the election.

30 (2) As an alternative to the petition process established in  
31 subsection (1) of this section, the legislative authority of a city,  
32 town, or county may initiate an ordinance provided for in subsection  
33 (1) of this section by submitting a ballot proposition at a general  
34 election prohibiting the siting or operation of any business or  
35 facility to be used for the sale of marijuana under this chapter. If  
36 a majority of the voters of the county, city, or town voting in the  
37 election approve the prohibition, the prohibition takes effect on the  
38 date specified in the ballot proposition. If no effective date is  
39 specified in the ballot proposition, the prohibition takes effect on

1 a date specified by the legislative authority that must be at least  
2 thirty days and no later than sixty days after the election.

3 (3) With respect to a county enacting an ordinance under this  
4 section, the ordinance may apply only to unincorporated areas of the  
5 county. No voters within the boundaries of an incorporated city or  
6 town may participate in a county election under this section.

7 (4) Following the passage of an ordinance under subsection (1) or  
8 (2) of this section, the state liquor and cannabis board may not  
9 issue or renew a license under RCW 69.50.325(3) for the retail sale  
10 of marijuana with respect to a business that is either located or  
11 proposed to be located within an area subject to the ordinance.

12 (5) Nothing in this section may be construed to extend powers to  
13 cities, counties, or towns beyond the power to prohibit the siting or  
14 operation of a business or facility to be used for the sale of  
15 marijuana.

16 NEW SECTION. **Sec. 3.** A new section is added to chapter 36.01  
17 RCW to read as follows:

18 Notwithstanding any other provision of law, counties also have  
19 the authority granted in section 2 of this act to prohibit by  
20 ordinance the siting or operation of any business or facility to be  
21 used for the sale of marijuana under chapter 69.50 RCW.

22 NEW SECTION. **Sec. 4.** A new section is added to chapter 35.21  
23 RCW to read as follows:

24 Notwithstanding any other provision of law, cities and towns also  
25 have the authority granted in section 2 of this act to prohibit by  
26 ordinance the siting or operation of any business or facility to be  
27 used for the sale of marijuana under chapter 69.50 RCW.

28 NEW SECTION. **Sec. 5.** A new section is added to chapter 35A.21  
29 RCW to read as follows:

30 Notwithstanding any other provision of law, code cities also have  
31 the authority granted in section 2 of this act to prohibit by  
32 ordinance the siting or operation of any business or facility to be  
33 used for the sale of marijuana under chapter 69.50 RCW.

34 **Sec. 6.** RCW 69.50.325 and 2015 c 70 s 5 are each amended to read  
35 as follows:

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

18 (2) There shall be a marijuana processor's license to process,  
19 package, and label marijuana concentrates, useable marijuana, and  
20 marijuana-infused products for sale at wholesale to marijuana  
21 processors and marijuana retailers, regulated by the state liquor and  
22 cannabis board and subject to annual renewal. The processing,  
23 packaging, possession, delivery, distribution, and sale of marijuana,  
24 useable marijuana, marijuana-infused products, and marijuana  
25 concentrates in accordance with the provisions of this chapter and  
26 chapter 69.51A RCW and the rules adopted to implement and enforce  
27 these chapters, by a validly licensed marijuana processor, shall not  
28 be a criminal or civil offense under Washington state law. Every  
29 marijuana processor's license shall be issued in the name of the  
30 applicant, shall specify the location at which the licensee intends  
31 to operate, which must be within the state of Washington, and the  
32 holder thereof shall not allow any other person to use the license.  
33 The application fee for a marijuana processor's license shall be two  
34 hundred fifty dollars. The annual fee for issuance and renewal of a  
35 marijuana processor's license shall be one thousand dollars. A  
36 separate license shall be required for each location at which a  
37 marijuana processor intends to process marijuana.

38 (3) There shall be a marijuana retailer's license to sell  
39 marijuana concentrates, useable marijuana, and marijuana-infused  
40 products at retail in retail outlets, regulated by the state liquor

1 and cannabis board and subject to annual renewal. The possession,  
2 delivery, distribution, and sale of marijuana concentrates, useable  
3 marijuana, and marijuana-infused products in accordance with the  
4 provisions of this chapter and the rules adopted to implement and  
5 enforce it, by a validly licensed marijuana retailer, shall not be a  
6 criminal or civil offense under Washington state law. Every marijuana  
7 retailer's license shall be issued in the name of the applicant,  
8 shall specify the location of the retail outlet the licensee intends  
9 to operate, which must be within the state of Washington, and the  
10 holder thereof shall not allow any other person to use the license.  
11 The application fee for a marijuana retailer's license shall be two  
12 hundred fifty dollars. The annual fee for issuance and renewal of a  
13 marijuana retailer's license shall be one thousand dollars. A  
14 separate license shall be required for each location at which a  
15 marijuana retailer intends to sell marijuana concentrates, useable  
16 marijuana, and marijuana-infused products.

17 (4) The state liquor and cannabis board may not issue or renew a  
18 license under subsection (3) of this section for any premises located  
19 within an area subject to an ordinance enacted pursuant to section 2  
20 of this act prohibiting the siting or operation of any business or  
21 facility to be used for the retail sale of marijuana.

22 **Sec. 7.** RCW 69.50.334 and 2015 2nd sp.s. c 4 s 201 are each  
23 amended to read as follows:

24 (1) Except as provided under subsection (6) of this section, the  
25 action, order, or decision of the state liquor and cannabis board as  
26 to any denial of an application for the reissuance of a license to  
27 produce, process, or sell marijuana, or as to any revocation,  
28 suspension, or modification of any license to produce, process, or  
29 sell marijuana, or as to the administrative review of a notice of  
30 unpaid trust fund taxes under RCW 69.50.565, must be an adjudicative  
31 proceeding and subject to the applicable provisions of chapter 34.05  
32 RCW.

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

38 (3) An opportunity for a hearing must be provided to a licensee  
39 prior to a revocation or modification of any license and, except as

1 provided in subsection (~~(6)~~) (7) of this section, prior to the  
2 suspension of any license.

3 (4) An opportunity for a hearing must be provided to any person  
4 issued a notice of unpaid trust fund taxes under RCW 69.50.565.

5 (5) No hearing may be required under this section until demanded  
6 by the applicant, licensee, or person issued a notice of unpaid trust  
7 fund taxes under RCW 69.50.565.

8 (6) The provisions of subsection (1) of this section do not apply  
9 to an action, order, or decision of the state liquor and cannabis  
10 board as to any denial of an application for the reissuance of a  
11 license to sell marijuana or as to any revocation, suspension, or  
12 modification of any license to sell marijuana if the licensee or  
13 applicant's designated premises is located within an area subject to  
14 an ordinance enacted pursuant to section 2 of this act, prohibiting  
15 the siting or operation of any business or facility to be used for  
16 the retail sale of marijuana.

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

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