

HOUSE BILL REPORT

HB 1236

As Reported by House Committee On: Commerce & Gaming

Title: An act relating to the ability of business and nonprofit entities to obtain a marijuana license.

Brief Description: Concerning the ability of business and nonprofit entities to obtain a marijuana license.

Sponsors: Representatives Stanford, MacEwen, Vick, Blake and Appleton.

Brief History:

Committee Activity:

Commerce & Gaming: 1/28/19, 2/18/19 [DPS].

Brief Summary of Substitute Bill

- Requires natural persons owning more than 10 percent of the business to qualify for and be named on the marijuana license, while generally natural persons owning 10 percent or less of the business are not required to qualify for or be named on the license.
- Requires disclosure to the Washington State Liquor and Cannabis Board (LCB) of the identification of the owners of 10 percent or less but more than 1 percent of the business who are not named on the license, and requires all owners of marijuana businesses that do not have in effect a labor peace agreement to be Washington residents.
- Creates an exception to the residency requirement for marijuana businesses with labor peace agreements in effect, to authorize out-of-state ownership of these marijuana businesses, and authorizes the LCB to impose additional licensing fees to recover any additional costs incurred in investigating a nonresident requiring investigation.
- Authorizes marijuana retailers with a labor peace agreement in effect to hold a collective total of seven marijuana retail licenses (opposed to five), and marijuana producers or processors to hold up to two additional licenses than any license limit otherwise applicable under the LCB's rules.
- Includes provisions addressing inheritance of a business with a marijuana license, and adds definitions, including "labor peace agreement."

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.

HOUSE COMMITTEE ON COMMERCE & GAMING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Stanford, Chair; Reeves, Vice Chair; MacEwen, Ranking Minority Member; Blake, Kirby, Kloba, Morgan and Vick.

Minority Report: Do not pass. Signed by 3 members: Representatives Chambers, Assistant Ranking Minority Member; Jenkin and Young.

Staff: Peter Clodfelter (786-7127).

Background:

Initiative 502 is implemented to require all owners of licensed marijuana businesses to have lawfully resided in Washington for at least six months prior to applying for a marijuana license from the Washington State Liquor and Cannabis Board (LCB). Additionally, no marijuana license may be issued to a person under the age of 21 years, or to a partnership, employee cooperative, association, nonprofit corporation, or corporation unless formed under Washington law and unless all of the members thereof are qualified to obtain a license. If a manager or agent conducts the business of a licensed marijuana establishment, the manager or agent must possess the same qualifications required of the licensee.

To apply for a marijuana producer, processor, or retailer license there is a \$250 application fee, plus fees equivalent to \$1,480 for license issuance and annually for license renewal. When an application for a marijuana license is submitted to the LCB, the LCB may inspect the premises proposed to be licensed, and may inquire into all matters in connection with the construction and operation of the premises. When reviewing applications for a license, and for considering the denial, suspension, revocation, or renewal or denial of any license or license renewal, the LCB may consider any prior criminal conduct of the applicants, including an administrative violation history record with the LCB and a criminal history record information check.

The LCB may submit the criminal history record information check to the Washington State Patrol (WSP) and to the identification division of the Federal Bureau of Investigation (FBI) so the WSP and FBI may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The LCB must require fingerprinting of any applicant whose criminal history record information check is submitted to the FBI. The LCB has discretion in granting or denying the license or license renewal applied for by an applicant or licensee. Denial may be based on, without limitation, the existence of chronic illegal activity documented in objections submitted to the LCB from the relevant local government.

Individual marijuana retailer licensees and all other persons or entities with a financial or other ownership interest in the business operating under the license are limited, in the aggregate, to holding a collective total of not more than five retail marijuana licenses.

In the Uniform Business Organizations Code, the following terms have the following definitions: (1) "entity" means a business corporation, a nonprofit corporation, a limited

liability partnership, a limited partnership, a limited liability company, or a general cooperative association; (2) "interest" means a share in a business corporation, a membership or share in a nonprofit corporation, a partnership interest in a limited liability partnership, a partnership interest in a limited partnership, a limited liability company interest, or a share or membership in a general cooperative association; and (3) "interest holder" means a shareholder of a business corporation, a member or shareholder of a nonprofit corporation, a partner of a limited liability partnership, a general or limited partner of a limited partnership, a member of a limited liability company, or a shareholder or member of a general cooperative association.

The Secretary of State issues a certificate of registration to foreign entities registered in Washington. A certificate of registration contains information including the foreign entity's name, as well as statements such as that the entity is registered to do business in the state and that the most recent annual report has been delivered to the Secretary of State for filing. A certificate of registration issued by the Secretary of State may be relied upon as conclusive evidence of the facts stated in the certificate, and that as of the date of its issuance, in the case of a foreign entity, it is registered and authorized to do business in Washington.

Summary of Substitute Bill:

It is provided that for any marijuana license issued by the Washington State Liquor and Cannabis Board (LCB), all natural persons holding an ownership interest of more than 10 percent of the business or nonprofit entity licensed or proposed to be licensed must qualify for and be named on the license. If no natural person owns more than 10 percent of the entity, the natural person with the largest ownership interest must qualify for and be named on the license. Officers and directors must possess the same qualifications as the licensee.

Generally, any natural person holding an ownership interest of 10 percent or less of the entity is not required to qualify for or be named on the license. A natural person holding an ownership interest of 10 percent or less of the entity must still be a Washington resident, unless the applicant or marijuana licensee has in effect a labor peace agreement with a bona fide labor organization. The identification of any natural person holding an ownership interest of 10 percent or less but more than 1 percent of the entity, who is not otherwise required to qualify for and be named on the license, must be disclosed to the LCB.

The term "labor peace agreement" is defined for purposes of the Controlled Substances Act as an agreement between an employer and a bona fide labor organization in which the employer agrees to remain neutral or otherwise agrees to work with or provide information to the bona fide labor organization for the purpose of unionizing employees.

For marijuana licensees and applicants relying on authorization tied to labor peace agreements, the licensee or applicant must submit to the LCB, an attestation signed by a bona fide labor organization stating the licensee or applicant has entered into a labor peace agreement with the bona fide labor organization. Submission of the attestation and the maintenance of the labor peace agreement is an ongoing material condition of the establishment's license for licensees relying on the new authorization.

Having and maintaining a labor peace agreement is required in order for a marijuana business to do any of the following: (1) be formed under the laws of another state or have any or all owners who are not Washington residents; (2) hold a collective total of up to seven marijuana retailer licenses (as opposed to a collective total of five marijuana retailer licenses); or (3) hold up to two additional marijuana producer or processor licenses than any limit established in the LCB's rules on the number of marijuana producer or processor licenses that may be collectively held.

Any business entity or nonprofit entity not formed under Washington law must hold a certificate of registration from the Secretary of State. Additionally, the LCB must suspend, cancel, or revoke the marijuana license of an establishment for which the LCB determines there is no longer a labor peace agreement in effect and for which a labor peace agreement is required. The LCB may impose additional licensing fees to recover any additional costs incurred in investigating any nonresident required to be investigated and may deny a license or license renewal to an entity if, after reasonable effort, the LCB is unable to investigate any nonresident requiring investigation.

It is provided that nothing in the Controlled Substances Act prevents an interest in a business with a marijuana producer, processor, retailer, or transportation license from transferring, upon the death or incapacity of the owner, to an heir or assign of the owner in accordance with the Uniform Transfers to Minors Act, or otherwise, even if the heir or assign is under age 21.

Definitions of the terms "entity," "interest," and "interest holder" from the Uniform Business Organizations Code are added to the marijuana licensing statute, and terms related to business and nonprofit entities are updated.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes to the original bill:

- The six-month residency requirement for marijuana licenses is restored, and a new exception to the six-month residency requirement is created for businesses with labor peace agreements in effect.
- An exception to the five-license limit for marijuana retailer licenses is created, to authorize retailers with labor peace agreements to be eligible for up to seven total licenses.
- A similar exception is required to any license limit established by Washington State Liquor and Cannabis Board (LCB) rule for individual marijuana producers or processors, for producers or processors with labor peace agreements in effect (to hold up to two additional licenses than otherwise allowed under LCB rule).
- The LCB's rulemaking authority regarding businesses with labor peace agreements in effect is limited in certain respects.
- It is specified that, for applicants and licensees with labor peace agreements in effect, natural persons who are not required to qualify for or be named on a marijuana license are not required to be Washington residents.
- The identification of natural persons owning 10 percent or less of the business but more than 1 percent of the business must be disclosed to the LCB.

- Provisions are added addressing inheritance of a business with a marijuana license.
 - Terms are defined including "labor peace agreement," "entity," "interest," and "interest holder."
 - A savings clause is added.
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Appropriation: None.

Fiscal Note: Available.

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) The marijuana industry strongly supports this bill. Current restrictions on access to capital in the marijuana industry are strangling businesses. These unreasonable restrictions must be loosened if Washington is to maintain its competitive edge in what is becoming a global industry. Employees of marijuana businesses deserve an opportunity to become owners, which this bill makes easier. Some licensees may employ people who live just across Washington's state line, and this bill would also give them an opportunity to become an owner of up to 10 percent of the business. Washington is an outlier of states with legal marijuana in requiring residency and full vetting for all owners. Other states like Colorado, California, Nevada, and Oregon all have better approaches to this issue, and Washington is losing ground and discouraging investment in the industry. In Canada, marijuana companies are going public. Washington marijuana businesses are currently stuck competing within a mature in-state market, and this bill will allow Washington businesses to compete nationally. This bill will create jobs in both small and large companies.

(Opposed) There is a need to loosen financial restrictions on marijuana businesses, but this does not go far enough to address structural issues with the regulatory framework. The original bill does not include language addressing inheritance rights related to marijuana businesses and language relating to the use of holding companies. If out-of-state ownership of marijuana businesses is to be expanded, it should also include considerations to improve workplace standards. There are hidden ownership issues that would arise with the 10 percent language. Existing licensees had to go through an application process including a fingerprint-based background check, disclosing years of tax returns, months of bank records, and many licensees invested their life savings. The way the bill will open up out-of-state ownership and not require this same review process for people who own 10 percent or less of the business is unfair to people who had to go through this process, and a bad idea. There is a need to know who is controlling licensees, otherwise people can be hidden on multiple licenses. Making the changes in this bill could lead to significant industry consolidation, like historical changes in the beer industry. Oversupply is already an issue, this will cause prices to drop dramatically. Citizens voted for the current restrictions on out-of-state ownership in Initiative 502, and there is no need to change them. This is a step in the direction of large businesses taking over the industry. If more capital is needed, look at in-state sources.

(Other) In recent legislative sessions, the Washington State Liquor and Cannabis Board (LCB) worked with the Legislature and industry on relaxing the current ownership restrictions. A House bill advanced, but no law was enacted. The LCB is not opposed in principle to the bill, but it may go too far in original form. There is the potential for hidden ownership issues when people are not vetted who own up to 9 percent of the licensed business. This could raise concerns associated with the Cole Memorandum and criminal elements. Owners who are not vetted should be identified. There could be social equity issues associated with concentration of ownership if someone could own 9 percent of many businesses without being vetted or named on the license. An approach is preferred that requires majority in-state ownership of licensed marijuana businesses.

Persons Testifying: (In support) Vicki Christophersen, Washington CannaBusiness Association; Chris Masse, Miller Nash; Scott Atkinson, Canna 4 Life; Tammi Hill, Cannex; Andy Brassington, Evergreen Herbal; Mike Redman, Green Lady; and Shawn Wagenseller, Washington Bud Company.

(Opposed) Philip Dawdy, Have A Heart; Arthur West; and Alden Linn, World of Weed.

(Other) Chris Thompson, Washington State Liquor and Cannabis Board; Bryan McConaughy, Washington Sun growers Industry Association.

Persons Signed In To Testify But Not Testifying: None.