S-0721.2

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SENATE BILL 5546**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 68th Legislature 2023 Regular Session**

**By** Senators Shewmake, Lovick, Keiser, King, Stanford, Conway, and C. Wilson

AN ACT Relating to establishing a Washington state cannabis commission; amending RCW 41.06.070; adding a new section to chapter 69.50 RCW; and adding a new chapter to Title 15 RCW.

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

NEW SECTION. **Sec.**  The legislature finds that the Washington state liquor and cannabis board exists to promote safe communities and public safety. However, there is no agency to oversee research and education of the cannabis industry within the state. The legislature therefore declares:

(1) The Washington state cannabis commission is established to benefit the people of the state of Washington and its economy;

(2) The general welfare of the people of the state will be served by the research and development of best practices surrounding safe cultivation and processing activities of cannabis. The industry is therefore affected with the public welfare; and

(3) Creation of a Washington state cannabis commission for the public purpose of administering the revenue of the commission will materially advance the producing and processing of cannabis, improve sustainability in the producing and processing sectors, and thereby the public interest.

NEW SECTION. **Sec.**  To complement the development of a comprehensive regulatory scheme to regulate the production and processing of cannabis and cannabis products, the legislature declares that:

(1) It is in the overriding public interest that state government support responsible agricultural production of cannabis in order to:

(a) Protect the public by providing research and education in reference to the quality, care, and methods used in the production of cannabis and cannabis products; and

(b) Support and engage in programs or activities that benefit the safe production, handling, processing, and uses of cannabis and cannabis products; and

(2) The production of cannabis is a highly regulated industry. Other laws applicable to the cannabis industry include:

(a) Chapter 15.130 RCW, the food safety and security act;

(b) Chapter 15.125 RCW, cannabis and cannabis products;

(c) Title 69 RCW, food, drugs, cosmetics, and poisons; and

(d) Chapter 82.08 RCW, retail sales tax.

NEW SECTION. **Sec.**  This chapter and the rules adopted under this chapter are for the purpose of fostering responsible and orderly agricultural production of cannabis. The legislature has granted authority to other state agencies to regulate the cannabis industry and nothing in this chapter should be interpreted to conflict with or supersede that other overriding regulatory authority.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the Washington state liquor and cannabis board.

(2) "Cannabis" has the meaning provided in RCW 69.50.101.

(3) "Commission" means the Washington state cannabis commission established by this chapter.

(4) "Cooperative" means a group of qualified medical cannabis patients as provided in RCW 69.51A.250.

(5) "Department" means the Washington state department of agriculture.

(6) "Director" means the director of the Washington state department of agriculture or the director's designee.

(7) "District" means each of the geographical divisions of the state of Washington established under section 8 of this act.

(8) "Fiscal year" means the 12-month period beginning July 1st of any year and ending June 30th.

(9) "Interested parties" means governmental departments, agencies, and bodies at the federal, state, or local levels including tribal governments, as well as universities, national and international associations, and other public and private sector organizations with an interest in cannabis-related matters.

(10) "Processor" means any person or legal entity holding in its name a cannabis processor license issued by the board. This license type does not also hold a producer license.

(11) "Producer" means any person or legal entity holding in its name a cannabis producer license issued by the board. This license type does not also own a processor license.

(12) "Producer/processor" means any person or legal entity holding in its name both a producer and processor license.

(13) "Retailer" means any person or legal entity holding a cannabis retail license issued by the board.

(14) "Testing laboratory" means any laboratory accredited to conduct cannabis-related analysis.

(15) "Tier" means any of the production licensing categories established by rule of the board.

NEW SECTION. **Sec.**  The Washington state cannabis commission is established to:

(1) Plan and conduct programs for cannabis-related matters;

(2) Provide for conducting research as provided in commission rules;

(3) Cooperate with and act in an advisory capacity to local, state, and federal agencies or other interested parties with respect to cannabis-related matters within the scope of the powers and purposes of the commission and as described in commission rules;

(4) Cooperate with other interested parties toward standardizing methods by which to identify and determine the genetics, strains, cultivars, phenotypes, standards, and grades of cannabis and advise on packaging and labeling requirements with respect to the same;

(5) Conduct reviews, surveys, and inquiries regarding market metrics and analytics, including trends, revenues, profitability, projections, production, business practices, and other economic drivers of the industry;

(6) Inform and advise producers and producer/processors in all matters regarding cannabis including, but not limited to, educational information on its cultivation, usage, risks, and related technical and scientific developments;

(7) Provide cannabis-related education and training to producers, producer/processors, researchers, and their employees, including health and safety information;

(8) Provide information and services for meeting resource conservation objectives of producers and producer/processors;

(9) Assist and cooperate with local, state, or federal government agencies in the investigation and control of pests, diseases, and other factors that could adversely affect the cultivation, quality, or safety of Washington-produced cannabis;

(10) Advance knowledge and practice of the production of cannabis in this state through the research and testing of methods to improve pest management, worker protection and safety training, energy efficiency, and environmental protection;

(11) Foster conditions favorable to investment in the production of Washington cannabis consistent with state and federal laws;

(12) Limit youth access and youth exposure to cannabis;

(13) Enable cannabis producers and producer/processors of this state, in cooperation with the commission to:

(a) Develop and engage in research including, but not limited to, discovering better and more efficient production, irrigation, odor mitigation, processing, transportation, handling, packaging, and use of cannabis and cannabis products; and

(b) Discover and develop new and improved cultivars for the reliable and economical production of cannabis in the state;

(14) Establish the uniform grading and proper preparation of cannabis products for market;

(15) Protect the interest of consumers and the state by advising on the overall production of cannabis to assure a balanced and sufficient supply of cannabis and cannabis products of good quality at all seasons and times; and

(16) Advance knowledge and the practices of processing cannabis in the state.

NEW SECTION. **Sec.**  The commission may:

(1) Elect a chair and other officers by a majority vote of the commission or as contained in bylaws adopted by the commission;

(2) Adopt, rescind, and amend bylaws and other internal rules of governance necessary for the administration and operation of the commission and for carrying out its duties under this chapter;

(3) Administer, enforce, direct, and control the provisions of this chapter;

(4) Employ and discharge at its discretion such administrators, staff, professional consultants and service providers, and other persons and firms that it may deem appropriate;

(5) Designate a public records officer, rules coordinator, and other representatives required by the laws governing state agencies and commissions;

(6) Comply with all other laws applicable to state agencies and commissions;

(7) Acquire personal property and purchase or lease office space and other necessary real property and transfer and convey the same;

(8) Institute and maintain in its own name any and all legal actions, including actions by injunction, mandatory injunction, or civil recovery, or proceedings before administrative tribunals or other governmental authorities necessary to carry out this chapter;

(9) Keep accurate records of all its receipts and disbursements, which records must be open to inspection and audit by the state auditor or private auditor designated by the state auditor at least every five years and at any time by a duly appointed internal auditor upon a majority vote of the commission;

(10) Make necessary disbursements for routine operating expenses;

(11) Expend funds for all activities, projects, and undertakings of the commission permitted under this chapter;

(12) Cooperate with other interested parties for the purposes of this chapter;

(13) Serve as liaison with the board and all other interested parties on behalf of the commission and not for any individual producer or producer/processor;

(14) Enter into contracts or cooperative agreements for research as provided in this chapter;

(15) Enter into contracts or interagency agreements with any other interested parties to carry out this chapter in accordance with applicable provisions of Title 39 RCW;

(16) Solicit, accept, and expend or retain any gifts, bequests, contributions, or grants from private persons or public agencies to carry out this chapter;

(17) Retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission, provided that the retention of a private attorney is subject to the appointment or approval by the office of the state attorney general;

(18) Engage in appropriate activities and events for the purpose of supporting activities of the commission authorized by this chapter;

(19) Participate in international, federal, state, and local hearings, meetings, and other proceedings in all matters relating to cannabis, including without limitation the production, irrigation, manufacture, regulation, transportation, distribution, sale, or use of cannabis including activities authorized under RCW 42.17A.635, and the reporting of those activities to the public disclosure commission;

(20) Obtain from the board a list of the names and addresses of producers, processors, producer/processors, and retailers, and such other available data from the state as requested by the commission with respect to the discharge of the duties of the commission;

(21) Acquire, create, develop, and own intellectual property rights, licenses, and patents and to collect royalties resulting from the sale or licensing of commission-funded research, provided all results and recommendations from research conducted or funded by the commission must be available to all producers and producer/processors without charge, except for reasonable out-of-pocket costs as the commission may determine;

(22) Speak on behalf of the Washington state government with regard to agricultural production of cannabis in the state, subject to oversight of the director;

(23) Possess cannabis products for the limited purposes of section 5 of this act;

(24) Subject to section 7 of this act, adopt rules to implement this chapter; and

(25) Exercise other powers and duties necessary to carry out this chapter.

NEW SECTION. **Sec.**  The department shall serve as the commission's rules coordinator. The commission's rules are subject to the director's approval.

NEW SECTION. **Sec.**  (1) The commission shall consist of 13 voting members: Eight producer or producer/processor members from the districts; one statewide at large producer or producer/processor member; one statewide tier one or equally small producer or producer/processor member; one statewide tier two or equally medium producer or producer/processor member; one statewide tier three or equally large producer or producer/processor member; and the director.

(2)(a) A nonvoting advisory council is created to assist the commission. The director must appoint the following to the advisory council: One stand alone processor member and one testing laboratory member.

(b) The advisory members must be considered from a pool of self-nominated active business representatives from each business type under this section.

(3) Each member of the commission and the advisory council other than the director must:

(a) Be 21 years of age or older;

(b) Be a citizen and resident of this state;

(c) Directly hold or be a named owner in whole or in majority part of an entity holding the relevant business license issued by the board. This license must not be suspended at the time of nomination, election, or appointment and must not be suspended at any time during the member's term;

(d) Be engaged in the production of cannabis within the state of Washington for a period of three years and have, during that period, derived a substantial portion of their income therefrom. Any assignee by a licensee must be and have been, either individually or as an officer or employee of a corporation, firm, partnership, association, or cooperative, actually engaged in producing cannabis within the state of Washington for a period of three years and have, during that period, derived a substantial portion of their income therefrom; and

(e) Continue to meet all membership qualifications throughout the member's term.

(4) Producer or producer/processor members in voting positions must be producers or producer/processors with production facilities in the district in which they are nominated and elected. Producer or producer/processor members elected to at large positions may be from any district.

(a) District one, positions one and two, comprises the counties of Clallam, Island, Jefferson, King, San Juan, Skagit, Snohomish, and Whatcom.

(b) District two, positions three and four, comprises the counties of Chelan, Douglas, Ferry, Grant, Kittitas, Okanogan, Pend Oreille, and Stevens.

(c) District three, positions five and six, comprises the counties of Adams, Asotin, Benton, Columbia, Franklin, Garfield, Lincoln, Spokane, Walla Walla, Whitman, and Yakima.

(d) District four, positions seven and eight, comprises the counties of Clark, Cowlitz, Grays Harbor, Kitsap, Klickitat, Lewis, Mason, Pacific, Pierce, Skamania, Thurston, and Wahkiakum.

(5) The initial commission members shall be appointed by the director.

(a) Four must be appointed for a one-year term.

(b) Four must be appointed for a two-year term.

(c) Four must be appointed by the director for a three-year term.

(d) The initial members must be considered from a pool of self-nominated qualified producers or producer/processor from each district under this section.

(e) Thereafter, commission members other than the director must be elected by a vote of qualified producers or producer/processors in each district for three-year terms.

(6) If a member vacancy occurs, at the board's first meeting after the position becomes vacant, the remaining board members shall recommend to the director a qualified person for appointment to the vacant position. The director must appoint a replacement from those nominations within 14 days.

(7) When making initial appointments and replacement appointments, the director may give priority to persons who represent the diverse communities of the state in order to maintain a balanced representation of members where practicable.

(8) Seven voting members of the commission constitute a quorum for the transaction of any commission business.

(9) Each member of the commission shall be reimbursed for expenses incurred in the performance of their duties in accordance with RCW 43.03.050 and 43.03.060.

(10) Within 90 days after the effective date of this section, the director must appoint the initial members of the commission.

(11) The commission shall meet regularly as determined by the members.

NEW SECTION. **Sec.**  (1) The commission, before the beginning of its fiscal year, must prepare and submit its budget for that fiscal year to the director for approval.

(2) The director must review and approve or disapprove all submissions described in this section in a timely manner.

(3) The commission must develop and submit to the director for approval any plans concerning, but not limited to, the following:

(a) The establishment, issuance, effectuation, and administration of commission governance issues; and

(b) The initiation or establishment of any rule making.

(4) The director must review the commission's education program to ensure that they are in keeping with state and federal laws.

NEW SECTION. **Sec.**  The commission shall deposit moneys collected under this chapter and section 15 of this act in a separate account in the name of the commission in any bank that is a state depositary. All expenditures and disbursements made from this account under this chapter may be made without the necessity of a specific legislative appropriation. Chapter 69.50 RCW does not apply to this account or to the moneys received, collected, or expended as provided in this chapter or section 15 of this act.

NEW SECTION. **Sec.**  The fee levied under section 15 of this act constitutes a personal debt of every person charged or who otherwise owes the fee, and the fee is due and payable to the commission.

NEW SECTION. **Sec.**  (1) Financial and commercial information and records submitted to either the board or the commission to administer this chapter may be shared between the board and the commission. They may also be used, if required, in any suit or administrative hearing involving this chapter.

(2) This section does not prohibit:

(a) The issuance of general statements based upon the reports of producers or producer/processors subject to this chapter if the statements do not identify a specific producer or licensee; or

(b) The publication by the director or the commission of the name of a producer or producer/processor violating this chapter and a statement of the manner of the violation by that producer.

NEW SECTION. **Sec.**  Obligations incurred by the commission and any other liabilities or claims against the commission must be enforced only against the assets of the commission and, except to the extent of such assets, no liability for the debts or actions of the commission exists against either the state of Washington or any subdivision or instrumentality thereof or against any member, employee, or agent of the commission or the state of Washington in the person's individual capacity. Except as otherwise provided in this chapter, neither the commission members, nor its employees, may be held individually responsible for errors in judgment, mistakes, or other acts either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No person or employee may be held individually responsible for any act or omission of any other commission members. The liability of the commission members shall be several and not joint, and no member is liable for the default of any other member. This section confirms that commission members have been, and continue to be, state officers or volunteers for purposes of RCW 4.92.075 and are entitled to the defenses, indemnifications, limitations of liability, and other protections and benefits of chapter 4.92 RCW.

NEW SECTION. **Sec.**  (1) All costs incurred by the department, including staff support and the adoption of rules and other actions necessary to carry out this chapter, must be fully reimbursed by the commission. All costs incurred by the board for activities under this chapter must also be fully reimbursed by the commission.

(2) Costs incurred under this section must include initial estimates of work and line item accounting of the costs incurred.

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

(1) To provide for permanent funding of the Washington state cannabis commission, agricultural commodity assessments must be levied by the board on cannabis producers and cannabis producer/processors as follows:

(a) The commission may, by a majority vote of the elected/appointed members, request the board to reduce, increase, or suspend the effective assessment based on the approved projects and activities of the commission within a given fiscal year;

(b) After the initial fiscal year, the commission must set assessment rates at a regular meeting by May 1st of each year, to become effective for the next fiscal year;

(c) The commission must give notice to producers and processors of the assessment rate before the beginning of the fiscal year in which it is effective;

(d) The initial rate will be as follows:

(i) Beginning on October 31, 2023, except as provided in subsection (3) of this section, the assessment on each producer licensee is 0.29 percent of all sales revenues conducted by the producer license.

(ii) Beginning on October 31, 2023, except as provided in subsection (3) of this section, the assessment on each producer/processor licensee is 0.145 percent of all sales revenues conducted by the processor license.

(2) Assessments collected under this section must be disbursed quarterly to the Washington state cannabis commission for use in carrying out the purposes of chapter 15.--- RCW (the new chapter created in section 17 of this act).

(3) Until October 31, 2028, the assessments on producers and producer/processors in this section do not apply to a producer or producer/processor who is licensed through the cannabis social equity program created under this chapter.

**Sec.**  RCW 41.06.070 and 2019 c 146 s 3 are each amended to read as follows:

(1) The provisions of this chapter do not apply to:

(a) The members of the legislature or to any employee of, or position in, the legislative branch of the state government including members, officers, and employees of the legislative council, joint legislative audit and review committee, statute law committee, and any interim committee of the legislature;

(b) The justices of the supreme court, judges of the court of appeals, judges of the superior courts or of the inferior courts, or to any employee of, or position in the judicial branch of state government;

(c) Officers, academic personnel, and employees of technical colleges;

(d) The officers of the Washington state patrol;

(e) Elective officers of the state;

(f) The chief executive officer of each agency;

(g) In the departments of employment security and social and health services, the director and the director's confidential secretary; in all other departments, the executive head of which is an individual appointed by the governor, the director, his or her confidential secretary, and his or her statutory assistant directors;

(h) In the case of a multimember board, commission, or committee, whether the members thereof are elected, appointed by the governor or other authority, serve ex officio, or are otherwise chosen:

(i) All members of such boards, commissions, or committees;

(ii) If the members of the board, commission, or committee serve on a part-time basis and there is a statutory executive officer: The secretary of the board, commission, or committee; the chief executive officer of the board, commission, or committee; and the confidential secretary of the chief executive officer of the board, commission, or committee;

(iii) If the members of the board, commission, or committee serve on a full-time basis: The chief executive officer or administrative officer as designated by the board, commission, or committee; and a confidential secretary to the chair of the board, commission, or committee;

(iv) If all members of the board, commission, or committee serve ex officio: The chief executive officer; and the confidential secretary of such chief executive officer;

(i) The confidential secretaries and administrative assistants in the immediate offices of the elective officers of the state;

(j) Assistant attorneys general;

(k) Commissioned and enlisted personnel in the military service of the state;

(l) Inmate, student, and temporary employees, and part-time professional consultants, as defined by the director;

(m) Officers and employees of the Washington state fruit commission;

(n) Officers and employees of the Washington apple commission;

(o) Officers and employees of the Washington state dairy products commission;

(p) Officers and employees of the Washington tree fruit research commission;

(q) Officers and employees of the Washington state beef commission;

(r) Officers and employees of the Washington grain commission;

(s) Officers and employees of any commission formed under chapter 15.66 RCW;

(t) Officers and employees of agricultural commissions formed under chapter 15.65 RCW;

(u) Executive assistants for personnel administration and labor relations in all state agencies employing such executive assistants including but not limited to all departments, offices, commissions, committees, boards, or other bodies subject to the provisions of this chapter and this subsection shall prevail over any provision of law inconsistent herewith unless specific exception is made in such law;

(v) In each agency with fifty or more employees: Deputy agency heads, assistant directors or division directors, and not more than three principal policy assistants who report directly to the agency head or deputy agency heads;

(w) Staff employed by the department of commerce to administer energy policy functions;

(x) The manager of the energy facility site evaluation council;

(y) A maximum of ten staff employed by the department of commerce to administer innovation and policy functions, including the three principal policy assistants exempted under (v) of this subsection;

(z) Staff employed by Washington State University to administer energy education, applied research, and technology transfer programs under RCW 43.21F.045 as provided in RCW 28B.30.900(5);

(aa) Officers and employees of the consolidated technology services agency created in RCW 43.105.006 that perform the following functions or duties: Systems integration; data center engineering and management; network systems engineering and management; information technology contracting; information technology customer relations management; and network and systems security;

(bb) The executive director of the Washington statewide reentry council; and

(cc) Officers and employees of the Washington state cannabis commission under chapter 15.--- RCW (the new chapter created in section 17 of this act).

(2) The following classifications, positions, and employees of institutions of higher education and related boards are hereby exempted from coverage of this chapter:

(a) Members of the governing board of each institution of higher education and related boards, all presidents, vice presidents, and their confidential secretaries, administrative, and personal assistants; deans, directors, and chairs; academic personnel; and executive heads of major administrative or academic divisions employed by institutions of higher education; principal assistants to executive heads of major administrative or academic divisions; other managerial or professional employees in an institution or related board having substantial responsibility for directing or controlling program operations and accountable for allocation of resources and program results, or for the formulation of institutional policy, or for carrying out personnel administration or labor relations functions, legislative relations, public information, development, senior computer systems and network programming, or internal audits and investigations; and any employee of a community college district whose place of work is one which is physically located outside the state of Washington and who is employed pursuant to RCW 28B.50.092 and assigned to an educational program operating outside of the state of Washington;

(b) The governing board of each institution, and related boards, may also exempt from this chapter classifications involving research activities, counseling of students, extension or continuing education activities, graphic arts or publications activities requiring prescribed academic preparation or special training as determined by the board: PROVIDED, That no nonacademic employee engaged in office, clerical, maintenance, or food and trade services may be exempted by the board under this provision;

(c) Printing craft employees in the department of printing at the University of Washington.

(3) In addition to the exemptions specifically provided by this chapter, the director may provide for further exemptions pursuant to the following procedures. The governor or other appropriate elected official may submit requests for exemption to the office of financial management stating the reasons for requesting such exemptions. The director shall hold a public hearing, after proper notice, on requests submitted pursuant to this subsection. If the director determines that the position for which exemption is requested is one involving substantial responsibility for the formulation of basic agency or executive policy or one involving directing and controlling program operations of an agency or a major administrative division thereof, or is a senior expert in enterprise information technology infrastructure, engineering, or systems, the director shall grant the request. The total number of additional exemptions permitted under this subsection shall not exceed one percent of the number of employees in the classified service not including employees of institutions of higher education and related boards for those agencies not directly under the authority of any elected public official other than the governor, and shall not exceed a total of twenty-five for all agencies under the authority of elected public officials other than the governor.

(4) The salary and fringe benefits of all positions presently or hereafter exempted except for the chief executive officer of each agency, full-time members of boards and commissions, administrative assistants and confidential secretaries in the immediate office of an elected state official, and the personnel listed in subsections (1)(j) through (t) and (2) of this section, shall be determined by the director. Changes to the classification plan affecting exempt salaries must meet the same provisions for classified salary increases resulting from adjustments to the classification plan as outlined in RCW 41.06.152.

(5)(a) Any person holding a classified position subject to the provisions of this chapter shall, when and if such position is subsequently exempted from the application of this chapter, be afforded the following rights: If such person previously held permanent status in another classified position, such person shall have a right of reversion to the highest class of position previously held, or to a position of similar nature and salary.

(b) Any classified employee having civil service status in a classified position who accepts an appointment in an exempt position shall have the right of reversion to the highest class of position previously held, or to a position of similar nature and salary.

(c) A person occupying an exempt position who is terminated from the position for gross misconduct or malfeasance does not have the right of reversion to a classified position as provided for in this section.

NEW SECTION. **Sec.**  Sections 1 through 14 of this act constitute a new chapter in Title 15 RCW.

**--- END ---**