

HOUSE BILL REPORT

HB 1159

As Reported by House Committee On:
Regulated Substances & Gaming

Title: An act relating to interstate cannabis agreements.

Brief Description: Allowing interstate cannabis agreements.

Sponsors: Representatives Wylie and Stonier.

Brief History:

Committee Activity:

Regulated Substances & Gaming: 1/10/23, 2/14/23 [DPS].

Brief Summary of Substitute Bill

- Authorizes the Governor to enter into interstate cannabis agreements with other states for cross-jurisdictional delivery of cannabis and for cross-jurisdictional coordination and enforcement.
- Provides a contingent effective date for the bill to become effective on the earlier of: (1) federal law amendments to allow for the interstate transfer of cannabis; or (2) the United States Department of Justice issuing an opinion or memorandum allowing or tolerating the interstate transfer of cannabis.

HOUSE COMMITTEE ON REGULATED SUBSTANCES & GAMING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Kloba, Co-Chair; Wylie, Co-Chair; Stearns, Vice Chair; Morgan, Orwall and Reeves.

Minority Report: Do not pass. Signed by 5 members: Representatives Chambers, Ranking Minority Member; Robertson, Assistant Ranking Minority Member; Cheney, Walsh and Waters.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Peter Clodfelter (786-7127).

Background:

The Washington State Liquor and Cannabis Board (LCB) licenses and regulates cannabis producers, processors, retailers, researchers, and transporters pursuant to Initiative 502 (2012) (I-502) and laws enacted by the Legislature over the last decade. In creating the legal structure for the adult-use cannabis market in Washington, I-502 established an intrastate cannabis program where all activities related to cannabis production, processing, distribution, and sales occur within Washington's borders by Washington licensed businesses. Other states in which voters or legislatures have since legalized adult-use cannabis and established commercial markets also structured their programs as intrastate programs.

In recent years, Congress has considered several bills to change cannabis's status at the federal level, including the Marijuana Opportunity Reinvestment and Expungement Act, the Cannabis Administration and Opportunity Act, and the Secure and Fair Enforcement Banking Act. Legislation to legalize cannabis under federal law has passed one chamber of Congress at different times but has not passed the other chamber.

Oregon enacted an interstate cannabis law in 2019 (Senate Bill 582), and California enacted an interstate cannabis law in 2022 (Senate Bill 1326), both of which have contingent effective dates based on federal law or policy changes. The laws would authorize the governors of Oregon and California to enter into interstate cannabis agreements with other states regarding cross-jurisdictional cannabis commerce and coordination.

Summary of Substitute Bill:

Subject to a contingent effective date, the Governor is authorized to enter into an agreement with another state or states for the purposes of: (1) cross-jurisdictional coordination and enforcement of cannabis-related businesses authorized to conduct business in Washington, the other state, or both; and (2) cross-jurisdictional delivery of cannabis between Washington and the other state.

An agreement must ensure enforceable public health and safety standards are met, and include a system to regulate and track the interstate delivery of cannabis. Any cannabis delivered into Washington, before sale to a consumer, must be tested in accordance with rules adopted by the Washington State Department of Agriculture, the Washington State Department of Health, and the Washington State Liquor and Cannabis Board (LCB). The cannabis must also be packaged and labeled in accordance with Washington law and the LCB's rules. An agreement must ensure that applicable taxes on the sale, delivery, and receipt of cannabis are collected.

In accordance with an agreement entered by the Governor, a cannabis producer, processor, researcher, or retailer licensed in Washington by the LCB may deliver cannabis to a person located in and authorized to receive cannabis by the other state, and may also receive cannabis from a person located in and authorized to export cannabis by the other state.

The coordination and enforcement of plans and actions in interstate cannabis agreements must be consistent with Washington's policies and programs to redress inequities that exist from past cannabis prohibition and drug enforcement laws and include steps to ensure equity in the application of agreements at all levels and in all jurisdictions that may interact with the licensed and unlicensed production and sale of cannabis.

If either of the two conditions arise causing the bill to take effect, then the LCB must provide written notice of the effective date of the bill to affected parties, the Chief Clerk of the House of Representatives, the Secretary of the Senate, the Office of the Code Reviser, and others as deemed appropriate by the LCB. The LCB must also provide written notice of statutory changes necessary to authorize the sale, delivery, and receipt of cannabis in accordance with an interstate cannabis agreement to the Governor and the appropriate committees of the Legislature.

Additionally, the LCB must provide notice of the effective date of the bill to all licensed cannabis producers, processors, retailers, researchers, and transporters and to persons who have a pending application for such a license, and inform them of how they may continue to be notified of activities related to interstate cannabis agreements as well as changes and proposed changes to laws and rules.

The LCB must adopt rules as necessary to authorize the sale, delivery, and receipt of cannabis in accordance with an interstate cannabis agreement.

Substitute Bill Compared to Original Bill:

A requirement is added that the coordination and enforcement of plans and actions related to interstate cannabis agreements must: (1) be consistent with Washington's policies and programs to redress inequities that exist from past cannabis prohibition and drug enforcement laws; and (2) include steps to ensure equity in the application of agreements at all levels and in all jurisdictions that may interact with the licensed and unlicensed production and sale of cannabis. The Liquor and Cannabis Board is required to provide notice of the effective date of the bill's authorization for the Governor to enter into agreements with other states concerning cross-jurisdictional cannabis activities to all cannabis licensees and pending applicants, and to inform them of how they may continue to be notified of activities and changes and proposed changes to laws and rules related to interstate cannabis agreements.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on the earlier of the date on which federal law is amended to allow for the interstate transfer of cannabis between authorized cannabis-related businesses or the United States Department of Justice issues an opinion or memorandum allowing or tolerating the interstate transfer of cannabis between authorized cannabis-related businesses.

Staff Summary of Public Testimony:

(In support) There is uncertainty on federal action related to cannabis law or policy changes, and this bill is important to have in place for when there is a change to cannabis's status federally. Eventually, there will be federal action on cannabis policy. This bill is one of several steps to take to prepare and ensure that Washington's cannabis market and businesses are not disrupted and negatively impacted. Oregon and California have enacted trigger laws on interstate cannabis. Washington needs to be ready for the range of options the federal government could take and for the potential for an interstate cannabis market. Washington cannabis businesses will be significantly disadvantaged relative to Oregon and California businesses if Washington does not enact a similar law. Washington should be a net exporter of cannabis and a leader in quality of products. The bill is essential to ensure Washington cannabis companies can compete on an even playing field, particularly if federal action occurs while the Legislature is not in session. Washington has rigorous packaging and labeling requirements for cannabis products that would continue to apply. California's approach has additional contingencies that can cause the bill to take effect and Washington should consider adding those to this bill. When federal legalization occurs, the Dormant Commerce Clause of the United States Constitution will apply and states with legal adult-use cannabis programs will be unable to prevent an interstate cannabis market. This is a forward-thinking policy so Washington does not find itself in a reactive position and already behind. No changes to how cannabis may be sold would occur under this bill for several years regardless of what scenario occurs. The bill would create a path for Washington cannabis producers to sell products to other states and for Washington retailers to also offer products produced in other legal adult-use states to Washington consumers.

(Opposed) Washington's cannabis market should not be opened until social equity is adequately addressed. The black and brown communities have been excluded from Washington's cannabis market for the last 10 years. There is not one black-owned cannabis producer or retailer in the Seattle area. There are only four retail licenses in Washington that are black-owned businesses. There is a similar problem in Oregon. Communities are losing out on generational wealth. How can there be discussion of creating another avenue for white wealth creation when the black and brown communities have been ignored. Do away with the illusion of inclusion. Black and brown people were arrested for cannabis offenses at three times the rate of white people in locations where white-owned stores now sell cannabis. Do not open the market to create new wealth for existing licensed cannabis businesses until Washington addresses social equity. The so-called merger of the medical

cannabis system with the recreational system in 2015 was a takeover that shut existing black and brown-owned dispensaries out of the legal market. These businesses should have had an opportunity to continue operating and are against this bill's policy of opening up Washington's market until past wrongs are adequately addressed. Three years after passing legislation on social equity in cannabis, no social equity licenses have been issued through the social equity program. This bill will hurt small cannabis growers as well as social equity applicants. Several years from now will be a better time to pass this bill after progress is made on social equity. Deal with one problem before moving to the next problem.

Persons Testifying: (In support) Representative Sharon Wylie, prime sponsor; Burl Bryson; Micah Sherman; and Brooke Davies, Washington CannaBusiness Association.

(Opposed) Peter Manning, Ahmed King, Tyler Conway, and Mike Asai, Black Excellence in Cannabis.

Persons Signed In To Testify But Not Testifying: None.