

SENATE BILL REPORT

SB 5377

As Reported by Senate Committee On:
Labor & Commerce, February 14, 2023
Ways & Means, February 23, 2023

Title: An act relating to cannabis license ownership.

Brief Description: Concerning cannabis license ownership.

Sponsors: Senators Rivers, Stanford, Mullet and MacEwen.

Brief History:

Committee Activity: Labor & Commerce: 2/09/23, 2/14/23 [DPS-WM].
Ways & Means: 2/20/23, 2/23/23 [DPS (LC), DNP, w/oRec].

Brief Summary of First Substitute Bill

- Requires the Liquor and Cannabis Board (LCB) to suspend a cannabis producer's license if no business activity has been recorded on the license between July 1, 2021, and December 31, 2022, and for the license to be reissued to the licensee under certain conditions related to federal legalization of cannabis.
- Authorizes out-of-state ownership of licensed cannabis businesses.
- Modifies requirements regarding who must qualify for and be named on a cannabis license.
- Permits LCB to impose additional licensing fees to recover costs associated with investigating certain non-residents.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5377 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

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.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; King, Ranking Member; Braun, MacEwen, Robinson, Schoesler and Stanford.

Staff: Susan Jones (786-7404)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5377 as recommended by Committee on Labor & Commerce be substituted therefor, and the substitute bill do pass.

Signed by Senators Robinson, Vice Chair, Operating & Revenue; Mullet, Vice Chair, Capital; Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Rivers, Assistant Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Billig, Boehnke, Braun, Conway, Hunt, Keiser, Muzzall, Nguyen, Saldaña, Torres, Van De Wege, Wagoner and Wellman.

Minority Report: Do not pass.

Signed by Senators Dhingra, Hasegawa and Pedersen.

Minority Report: That it be referred without recommendation.

Signed by Senator Rolfes, Chair.

Staff: Corban Nemeth (786-7736)

Background: License Application. To apply for a cannabis producer, processor, or retailer license—collectively, cannabis license—there is a \$250 application fee, plus fees equivalent to \$1,381 for license issuance and annual renewal. When an application for a cannabis license is submitted, 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. LCB must conduct a financial investigation to determine the source of funding and a criminal history record information check.

License Suspension. LCB may, in its discretion and subject to applicable laws, suspend or cancel any cannabis license. LCB must notify all other licensees in the county where the licensee has its premises of the suspension or cancellation, and no other licensee or employee of another licensee may allow or cause any cannabis products to be delivered to or for any person at the premises of the subject licensee. In the case of license suspension, LCB must return the license to the licensee at the expiration or termination of the suspension period.

License Ownership. LCB may not issue a cannabis license to:

- a person under 21;
- a person doing business as a sole proprietor who has not lawfully resided in Washington for at least six months prior to applying for a license;
- a partnership, employee cooperative, association, nonprofit corporation, or

- corporation, unless the entity was formed under Washington laws and all members are qualified to obtain a license; or
- a person whose place of business is conducted by a manager or agent, unless the manager or agent possesses the same qualifications of the licensee.

Uniform Business Organizations Code. In the Uniform Business Organizations Code (UBOC), "entity" means a business or nonprofit corporation, limited liability partnership or company, limited partnership, or general cooperative association. "Interest" means a share in a business corporation, membership or share in a nonprofit corporation, partnership interest in a limited liability partnership or limited partnership, limited liability company interest, or share or membership in a general cooperative association.

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

Summary of Bill (First Substitute): License Suspension. Beginning July 1, 2023, LCB must suspend a cannabis producer's license if no business activity has been recorded on the license between July 1, 2021, and December 31, 2022. A suspended cannabis producer's license must be reissued to the licensee when federal law allows 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.

License Ownership. Beginning January 1, 2024, cannabis licensing requirements are modified. A person is not required to be a Washington resident, and an entity with a certificate is not required to be formed under Washington law to qualify for a cannabis license, subject to the following requirements:

- a natural person holding an ownership interest of more than 10 percent in the entity must qualify for and be named on the license;
- except as provided below, a natural person holding an ownership interest of 10 percent or less in the entity is not required to qualify for or be named on the license;
- if no natural person holds an ownership interest of more than 10 percent in the entity, the natural person with the largest ownership interest must qualify for and be named on the license;
- directors of the entity must possess the same qualifications required of the licensee; and
- the identification of a natural person holding an ownership interest of 10 percent or less but more than 1 percent in the entity, who is not otherwise required to qualify for and be named on the license must be disclosed to LCB.

LCB may impose additional licensing fees to recover costs incurred in investigating a nonresident. If, after reasonable efforts, LCB is unable to investigate a nonresident, in accordance with investigatory standards applicable to the investigation of a state resident, LCB must deny a license or renewal to an entity.

Other. Definitions of the terms entity and interest from the UBOC are referenced in the cannabis licensing statute.

EFFECT OF CHANGES MADE BY LABOR & COMMERCE COMMITTEE (First Substitute):

- Specifies that LCB must suspend a cannabis producer license if no activity has been recorded on the license between July 1, 2021, and December 31, 2022, instead of no activity occurring after July 1, 2021.
- Provides that no activity refers to a cannabis producer license with a Unified Business Identifier Number under which no business activity has been reported to DOR.
- Requires LCB to deny a license or renewal to an entity when LCB is unable to investigate a nonresident rather than granting LCB permission to deny.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill (Labor & Commerce): *The committee recommended a different version of the bill than what was heard.* PRO: Access to capital from other states is necessary. Washington is one of the only states that has limited entrepreneurs to engage, and if capital cannot be found in-state, there is no capital. The industry is limited in its banking options so it needs "angel investors." Many businesses struggle to make payroll and this bill could fix that. The Washington cannabis industry will be at a disadvantage when federal legalization occurs because of the six-month residency requirement. As the cannabis market grows into a global market, we have to fix this issue. Equity partnership is the only path forward. This bill is not about letting the big bad wolf into Washington but allowing Washington cannabis businesses to break out of the incubator and spread their wings. This legislation is particularly thoughtful in addressing out-of-state investments. The existing structure tells us the cannabis industry is not trusted. This bill would help individuals on the cusp of entering the market.

CON: There are no protections built in for small businesses. Family farmers were wiped out when big agriculture came in and conglomerated. We need to see social equity going

live before anything out-of-state is addressed, and can be looked at three-to-five years down the road. Current retailers have had a head-start, there has and is money in these businesses. This bill would hurt small, social equity individuals. I am not sure why the license suspension section is considered urgent. On the out-of-state investment piece, this is a get out of jail free card for folks who broke these laws over the past seven years.

OTHER: A licensee only has to sell to a licensed retailer for their license to remain operational. This bill will have the opposite effect than intended. Our industry is divided on whether to allow out-of-state investment.

Persons Testifying (Labor & Commerce): PRO: Senator Ann Rivers, Prime Sponsor; Lukas Hunter, Harmony Farms; Ezra Eickmeyer, Producers NW; Vicki Christophersen, Washington CannaBusiness Association; Eric Gaston, Evergreen Market; April Roth, Soulshine Cannabis; Andy Brassington, Evergreen Herbal; George Jordan, Artizen Cannabis Co.

CON: Shawn Wagenseller, Washington Bud Company; Peter Manning, Black Excellence In Cannabis; Mike Asai, Black Excellence In Cannabis; James MacRae, Self.

OTHER: Bethany Rondeaux; Burl Bryson, The Cannabis Alliance.

Persons Signed In To Testify But Not Testifying (Labor & Commerce): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): PRO: This bill is an important tool the cannabis industry needs to prepare for federal legalization and interstate commerce. More financial stability means more revenue to the state. This bill will ensure that any outside capital is directed at Washington businesses by deferring producer licenses that are inactive until there is federal legalization. This bill will provide a new avenue to research fair funding and will create competition in the retail sector that will force innovation.

CON: Those who have been harmed by the war on drugs should have opportunities to benefit from the legal cannabis industry. Current retailers who have monopolized this industry think social equity will weaken their investment. Allowing large out of state investments without addressing the needs of black and brown communities can undermine efforts to promote social equity and justice in the industry.

Persons Testifying (Ways & Means): PRO: Senator Ann Rivers, Prime Sponsor; Becca Burghardi, Northwest Cannabis Solutions; Ezra Eickmeyer, Producers NW; Brooke Davies, Washington CannaBusiness Association; Brandon Park, Hygge Farms Tier 1 Producer/Processor; Andy Brassington, Evergreen Herbal.

CON: Peter Manning, Black Excellence In Cannabis; Mike Asai, Black Excellence In Cannabis.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.