
**Consumer Protection & Business
Committee**

HB 1884

Brief Description: Concerning cannabis regulation.

Sponsors: Representatives Waters and Reeves.

Brief Summary of Bill

- Requires the Liquor and Cannabis Board (LCB), through a collaborative public process, to establish a hierarchy of enforcement priorities to guide the LCB's enforcement of cannabis laws and rules.
- Applies requirements for significant legislative rules under the Administrative Procedure Act to rules of the LCB, and requires the convening of a meeting of impacted parties related to the LCB's significant legislative rules.
- Directs the LCB to initiate a review of cannabis rules to identify rules to eliminate or appropriately modify as provided in the bill.
- Requires the LCB to regularly audit the data in the Cannabis Central Reporting System to identify outliers or anomalies in data, compare and consider other information, and identify and undertake enforcement against inversion and diversion of cannabis.

Hearing Date: 2/19/25

Staff: Peter Clodfelter (786-7127).

Background:

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.

Liquor and Cannabis Board Rules—Compliance and Enforcement.

The Liquor and Cannabis Board (LCB) must prescribe procedures for:

- the issuance of written warnings or notices to correct in lieu of penalties, sanctions, or other violations with respect to regulatory violations that have no direct or immediate relationship to public safety as defined by the LCB;
- waiving any fines, civil penalties, or administrative sanctions for violations, that have no direct or immediate relationship to public safety, and are corrected by the licensee within a reasonable amount of time as designated by the LCB; and
- a compliance program, whereby licensees may request compliance assistance and inspections without issuance of a penalty, sanction, or other violation provided that any noncompliant issues are resolved within a specified period of time.

The LCB must adopt rules prescribing penalties for violations of cannabis laws. The LCB:

- may establish escalating penalties for violations subject to limits;
- may not include cancellation of a license for a single violation, unless the LCB can prove by a preponderance of the evidence specified violations;
- may include cancellation of a license for cumulative violations only if a cannabis licensee commits at least four violations within a two-year period of time;
- must consider aggravating and mitigating circumstances and deviate from the prescribed penalties accordingly, subject to restrictions; and
- must give substantial consideration to mitigating any penalty imposed on a licensee when there is employee misconduct that led to the violation and the licensee established a compliance program designed to prevent the violation, performed meaningful training with employees designed to prevent the violation, and did not enable or ignore the violation or other similar violations in the past.

The LCB's current rules provide a penalty structure with seven categories of severity.

- Violations in category I are violations of a severity that would make a license eligible for cancellation for a first offense and include purchasing cannabis from, or selling cannabis to, an unlicensed source; transporting cannabis outside of Washington; and allowing a person to exercise ownership or control if the person would not have qualified based on affiliation with a criminal enterprise.
- Violations in category II are violations that create a direct or immediate threat to public health, safety, or both, and include furnishing cannabis to minors; transportation of cannabis without a manifest; failure to use and maintain traceability; and intentional use of unauthorized pesticides, soil amendments, fertilizers, other crop production aids.
- Violations in category III are violations that create a potential threat to public health, safety, or both, and include a driver transporting without a valid driver's license; exceeding maximum serving requirements for cannabis-infused products or exceeding transaction limits; failure to follow and maintain food processing facility requirements; and failure to maintain a required surveillance system.
- Violations in category IV are significant regulatory violations and include noncompliance with record keeping requirements; cannabis illegally given away, including being sold below the cost of acquisition, true value, or both; use of an unauthorized money transmitter

for retail sales; and violations of an LCB-approved operating plan.

- Violations in category V that are procedural and operational include violations for hours of service; advertising; conditional sales; licensee/employee failing to display identification badge; and failure to post required signs.
- Violations in category VI that are statutory violations like allowing a minor to frequent a retail store (\$1,000); employee under legal age (\$1,000); and opening or consuming cannabis on a licensed retail premises (\$1,000).

Administrative Procedure Act—Significant Legislative Rules.

A "significant legislative rule" in the Administrative Procedure Act (APA) is a rule other than a procedural or interpretive rule that:

- adopts substantive provisions of law pursuant to delegated legislative authority, the violation of which subjects a violator to a penalty or sanction;
- establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit; or
- adopts a new, or makes significant amendments to, a policy or regulatory program.

Before adopting a significant legislative rule, an agency subject to the requirements must:

- clearly state in detail the general goals and specific objectives of the statute that the rule implements;
- determine that the rule is needed to achieve the general goals and specific objectives, and analyze alternatives to rule making and the consequences of not adopting the rule;
- provide notifications related to cost-benefit analyses;
- determine that the probable benefits of the rule are greater than its probable costs;
- determine, after considering alternative versions of the rule and the above analysis, that the rule being adopted is the least burdensome alternative;
- determine that the rule does not require those to whom it applies to take an action that violates requirements of another federal or Washington law;
- determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or Washington law; and
- determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified because of circumstances identified in statute.

Before adopting significant legislative rules, an agency must place in the rule-making file a rule implementation plan for rules filed under each adopting order. The plan must describe how the agency intends to:

- implement and enforce the rule, including a description of the resources the agency intends to use;
- inform and educate affected persons about the rule;
- promote and assist voluntary compliance; and
- evaluate whether the rule achieves the purpose for which it was adopted, including, to the maximum extent practicable, the use of interim milestones to assess progress and the use

of objectively measurable outcomes.

After adopting a significant legislative rule regulating the same activity or subject matter as another provision of federal or state law, an agency must coordinate implementation and enforcement of the rule with the other federal and state entities regulating the same activity or subject matter by making every effort to defer to the other entity, designate a lead agency, and enter into an agreement with the other entities specifying how the agency and entities will coordinate implementation and enforcement.

If the agency is unable to do so, the agency must report to the Joint Administrative Rules Review Committee about the existence of any overlap or duplication of other federal or Washington laws, any differences from federal law, and any known overlap, duplication, or conflict with local laws, and make recommendations for any legislation that may be necessary to eliminate or mitigate any adverse effects of such overlap, duplication, or difference.

There are exceptions to the requirements for significant legislative rules for the following rules for agencies otherwise subject to the requirements:

- emergency rules;
- rules relating only to internal governmental operations that are not subject to violation by a nongovernment party;
- rules adopting or incorporating by reference without material change federal statutes or regulations, Washington statutes, rules of other Washington agencies, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
- rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and
- rules the content of which is explicitly and specifically dictated by statute.

Cannabis Central Reporting System.

The LCB uses a system called the Cannabis Central Reporting System (CCRS) for mandatory data reporting by cannabis licensees. This data reporting system created by the LCB has been used since Washington transitioned away from a previous version of a traceability system that relied on a third-party vendor.

Summary of Bill:

Liquor and Cannabis Board Rules—Compliance and Enforcement.

The LCB must prescribe procedures for the establishment of a hierarchy of enforcement priorities to guide the LCB's enforcement of cannabis laws and rules, which must be done within existing resources and through a collaborative public process including outreach to the regulated cannabis industry.

The highest enforcement priority in the hierarchy must be placed on youth prevention and prevention of inversion and diversion of cannabis and cannabis products into and out of

Washington's cannabis market. The hierarchy must place less emphasis on enforcement of administrative violations that are not the highest enforcement priority. The LCB must provide for the establishment of new programs for compliance education for licensed cannabis businesses and their employees.

Administrative Procedure Act—Significant Legislative Rules of the Liquor and Cannabis Board.

The APA's requirements for significant legislative rules are applied to rules of the LCB. Additionally, the LCB must prescribe procedures for the convening of a meeting of impacted parties, within existing resources, and no later than 20 business days before the effective date of any significant legislative rule, in order to:

- identify ambiguities and remaining areas of concern in the rule;
- coordinate education and public relations efforts by all parties;
- provide comments regarding internal LCB training and enforcement plans; and
- provide comments regarding appropriate evaluation mechanisms to determine the effectiveness of the new rule.

The meeting of impacted parties must include a balanced representation of licensees impacted, LCB personnel, and other agencies or key stakeholder groups as determined by the LCB. An existing advisory committee may be used if appropriate.

Review of the Liquor and Cannabis Board's Rules.

The LCB must perform a review of the LCB's rules regulating cannabis production, processing, sales, and other cannabis activities, to be initiated by October 1, 2025, within existing resources, to eliminate or appropriately modify rules found to:

- create an undue administrative burden on licensees after considering the relation and effectiveness of the rule to preventing youth access, the inversion and diversion of cannabis into and out of Washington's cannabis market, or furthering public safety efforts;
- duplicate areas of enforcement delegated to local control in other legal industries;
- have previously resulted in documented inconsistent or contradictory enforcement;
- duplicate authority granted by the Legislature to other agencies, including with respect to the accreditation of independent, third-party testing laboratories by the Department of Agriculture; or
- require business practices of license holders unrelated to youth access, the prevention of inversion and diversion of cannabis and cannabis products into and out of Washington's cannabis market, or public safety efforts including, but not limited to, requiring licensees or employees to use physical sign-in sheets and name tags.

Audit of Cannabis Central Reporting System and Related Information.

The LCB must regularly audit the data in the CCRS to identify outliers or anomalies in data for inconsistencies in reporting, for the purposes of identifying locations where either or both of the following activities are occurring, and undertaking enforcement to prevent their occurrence:

- inversion of cannabis or cannabis products into the regulated cannabis system involving a person licensed as a cannabis producer, processor, or retailer, purchasing or obtaining cannabis or cannabis products from an unauthorized person or source; or

- diversion of cannabis or cannabis products out of the regulated cannabis system involving a person licensed as a cannabis producer, processor, or retailer, selling or transferring cannabis or cannabis products to an unauthorized person or recipient.

In addition to data in the CCRS including reports of sales of cannabis and cannabis products, for the purpose of administering the law and preventing inversion and diversion of cannabis, the LCB may also consider and compare any books and records of cannabis licensees that the LCB has authority to inspect and must also consider and compare the following data or information:

- the status of a cannabis license issued by the LCB and whether it is active and valid or whether it has been suspended, revoked, canceled, or has otherwise not been active and valid during any applicable time;
- the status of a business license issued by the Department of Revenue (DOR) and whether it is active and valid or whether it has been suspended, revoked, canceled, or has otherwise not been active and valid during any applicable time; and
- if the LCB suspects inversion or diversion activities by a licensee, the LCB may require the licensee to submit water utility billing records, electricity and natural gas billing records, and filings and reports related to taxes or business activity submitted to the DOR.

Appropriation: None.

Fiscal Note: Requested on February 11, 2025.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.