

HOUSE BILL REPORT

ESSB 5403

As Passed House - Amended:

April 11, 2025

Title: An act relating to limiting financial interest agreements for licensed cannabis retailers.

Brief Description: Limiting financial interest agreements for licensed cannabis retailers.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Saldaña, Krishnadasan and Nobles).

Brief History:

Committee Activity:

Consumer Protection & Business: 3/26/25, 4/1/25 [DPA].

Floor Activity:

Passed House: 4/11/25, 57-37.

Brief Summary of Engrossed Substitute Bill (As Amended by House)

- Prohibits a retail cannabis licensee from entering into certain agreements that confer a financial interest across more than five retail cannabis licenses, defines financial interest for purposes of the prohibition, and applies the bill retroactively and prospectively.

HOUSE COMMITTEE ON CONSUMER PROTECTION & BUSINESS

Majority Report: Do pass as amended. Signed by 11 members: Representatives Walen, Chair; Berry, Donaghy, Fosse, Kloba, Morgan, Reeves, Ryu, Santos, Steele and Volz.

Minority Report: Without recommendation. Signed by 3 members: Representatives McClintock, Ranking Minority Member; Abbarno and Corry.

Staff: Peter Clodfelter (786-7127).

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.

Background:

Five License Limit for Cannabis Retailers.

An individual retail cannabis licensee 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 cannabis licenses.

Managers and Agents.

A person may be issued a cannabis license and their place of business may be conducted by a manager or agent if the manager or agent meets the qualifications required of the licensee.

Authorized Agreements.

A licensed cannabis business may enter into an agreement with any person, business, or other entity for:

- any goods or services that are registered as a trademark under federal law, Washington law, or international trademark law;
- any unregistered trademark, trade name, or trade dress; or
- any trade secret, technology, or proprietary information used to manufacture a cannabis product or used to provide a service related to any cannabis business.

Any of these types of agreements entered into by a licensed cannabis business must be disclosed to the Liquor and Cannabis Board (LCB) and may include:

- a royalty fee or flat rate calculated based on the sales of each product that includes the intellectual property or was manufactured or sold using the licensed intellectual property or service, provided that the royalty fee is no greater than 10 percent of the licensed cannabis business's gross sales derived from the sale of the product;
- a flat rate or lump sum calculated based on time or milestones;
- terms giving either party exclusivity or qualified exclusivity as it relates to use of the intellectual property;
- quality control standards as necessary to protect the integrity of the intellectual property;
- enforcement obligations to be undertaken by the licensed cannabis business;
- covenants to use the licensed intellectual property; and
- assignment of licensor improvements of the intellectual property.

A person, business, or entity that enters into an agreement with a licensed cannabis business, where both parties to the agreement are in compliance with the terms of these requirements, is exempt from the requirement to qualify for a cannabis license for purposes of the agreements.

Summary of Amended Bill:

A retail cannabis licensee and all other persons or entities with a financial or other ownership interest may not enter into any management agreement or any agreement

otherwise authorized and required by law to be disclosed to the LCB relating to trademarks, trade names, trade dress, trade secrets, technology, or proprietary information, if the agreement confers a financial interest across more than five retail cannabis licenses. This prohibition applies whether or not payment is exchanged.

For the purposes of this prohibition, financial interest includes, but is not limited to:

- any sharing of profits or revenue;
- any assistance, coordination, or recommendation for the purchase of cannabis products whereupon pricing is coordinated or discounted;
- the common use of intellectual property assets such as branding, trade names, logos, social media accounts, or websites;
- any operational control over the business or operational support for typical day-to-day business operations, including core business or executive functions of the retail cannabis licensee;
- any sharing or coordination of marketing and advertising efforts or expenses; and
- any coordinated sharing of employment or hiring decisions, including the shared employment of individuals.

The bill applies retroactively to agreements entered before the effective date of the bill and prospectively to agreements entered or renewed on or after the effective date of the bill.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on January 1, 2026.

Staff Summary of Public Testimony:

(In support) There is widespread support for this bill. The five-license limit for cannabis retailers in current law was supposed to prevent monopolies by large chains and support small- and medium-sized businesses, but unfortunately this has not worked. A loophole is being exploited by using management agreements to enable some retailers to control far more than five retail licenses. There has been a rise in chain operations with 10 or more stores, against the spirit and intent of current law and rules. Chain retail stores are causing significant market disruptions to both other cannabis retailers and in the producer tier of the industry. Chain store operators demand lower prices from producers and even threaten to remove a producer's products from shelves. Small retailers cannot compete with the discounts offered by chain retail operators, and are losing sales and partnerships. The race to the bottom is eliminating jobs and businesses and impacting tax revenues. The bill closes the loophole to allow small businesses to remain open and ensure Washington's revenues are better protected. The underlying problem has been a problem for years that people are afraid to discuss because of fear of retaliation. Management agreements do serve legitimate purposes in the industry, but they are objectionable if they are used to control more than

five retail licenses. Women- and minority-owned businesses are often small and medium sized and are negatively impacted by the control chain store operators have taken in the market. There are hundreds of stories about the harm of predatory pricing practices. Without a change, it is no longer financially feasible for owners of single stores to compete in the market and continue business. Under federal antitrust law, states that provide for controlled monopolistic markets must ensure that there is fair market access and that prices are not manipulated. Washington has a legal obligation to act. While the bill is supported, caution should be taken because when interstate cannabis markets open in the future, restrictions in Washington's laws that currently serve to protect the small-business nature of the industry will then work against Washington operators in a national market.

(Opposed) None.

Persons Testifying: Brandon Park; Vicki Christophersen, Washington CannaBusiness Association; Caitlein Ryan, The Cannabis Alliance; Shea Hynes, Lux Pot Shop; Jerina Pillert, Hashtag Cannabis; Trent Matson, Washington Cannabis Licensee Association; Anna Shreeve, The Bakeree; Amy Ross, OZ Gardenz; Nate Loving, Loving Farms; Micah Sherman; and Ezra Eickmeyer, Producers NW.

Persons Signed In To Testify But Not Testifying: None.