
HOUSE BILL 1438

State of Washington

64th Legislature

2015 Regular Session

By Representatives Sawyer, Kirby, and Appleton

Read first time 01/21/15. Referred to Committee on Commerce & Gaming.

1 AN ACT Relating to permitting cities, towns, and counties to
2 prohibit the production, processing, and sale of marijuana under
3 Initiative Measure No. 502 only by public vote; amending RCW
4 69.50.325 and 69.50.334; adding new sections to chapter 69.50 RCW;
5 adding a new section to chapter 36.01 RCW; adding a new section to
6 chapter 35.21 RCW; and adding a new section to chapter 35A.21 RCW.

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

8 NEW SECTION. **Sec. 1.** A new section is added to chapter 69.50
9 RCW to read as follows:

10 (1) Except as provided in section 2 of this act and subsections
11 (2) through (4) of this section, the state of Washington fully
12 occupies and preempts the entire field of regulating the production,
13 processing, and retail sale of marijuana under this chapter.

14 (2) Cities, towns, and counties retain their existing zoning
15 authority regarding the siting of licensed marijuana producers,
16 processors, and retailers.

17 (3) No local comprehensive plan, development regulation, or
18 ordinance may preclude the siting of licensed marijuana retailers,
19 processors, or producers, except that:

1 (a) A local jurisdiction that does not permit the commercial
2 growing of plants anywhere in the jurisdiction is not required to
3 accommodate the siting of licensed marijuana producers;

4 (b) A local jurisdiction that does not permit the commercial
5 processing of plants, plant-based material, or food products anywhere
6 in the jurisdiction is not required to accommodate the siting of
7 licensed marijuana processors; and

8 (c) A local jurisdiction that does not permit retail uses
9 anywhere in the jurisdiction is not required to accommodate the
10 siting of licensed marijuana retailers.

11 (4) Nothing in this section is construed to prevent any city,
12 town, or county from applying ordinances of general application to
13 marijuana businesses.

14 NEW SECTION. **Sec. 2.** A new section is added to chapter 69.50
15 RCW to read as follows:

16 (1)(a) Any registered voter of a county, city, or town may submit
17 a petition calling for the county, city, or town to prohibit the
18 siting or operation of any business or facility to be used for the
19 production, processing, and retail sale of marijuana products under
20 this chapter. The petition must be signed by thirty percent or more
21 of the voters of the jurisdiction and must be filed with the
22 legislative authority of the applicable county, city, or town. With
23 respect to petitions to be filed with a county under this subsection,
24 only registered voters in the unincorporated area of the county may
25 initiate and sign the petition.

26 (b) If the legislative authority determines the petition to be
27 sufficient, it must, within sixty days of determining the petition to
28 be sufficient, hold a public hearing on the petition and an
29 implementing ordinance. Following the public hearing, the legislative
30 authority of the county, city, or town legislative body must submit
31 the question of prohibiting siting or operation of any business or
32 facility to be used for the production, processing, or retail sale of
33 marijuana products under this chapter to the voters of the
34 jurisdiction at a general or special election.

35 (c) If a majority of the voters of the county, city, or town
36 voting in the election approve the prohibition, the prohibition will
37 take effect on the date specified in the petition. If no effective
38 date is specified in the petition, the prohibition will take effect

1 on a date specified by the legislative authority which must be at
2 least thirty days but no later than sixty days after the election.

3 (2) As an alternative to the petition process established in
4 subsection (1) of this section, the legislative authority of any
5 city, town, or county may initiate an ordinance provided for in
6 subsection (1) of this section by submitting a ballot proposition at
7 a general or special election prohibiting the siting or operation of
8 any business or facility to be used for the production, processing,
9 or sale of marijuana under this chapter. If a majority of the voters
10 of the county, city, or town voting in the election approve the
11 prohibition, the prohibition will take effect on the date specified
12 in the ballot proposition. If no effective date is specified in the
13 ballot proposition, the prohibition will take effect on a date
14 specified by the legislative authority which must be at least thirty
15 days but no later than sixty days after the election.

16 (3) With respect to a county enacting an ordinance under this
17 section, the ordinance may only apply to unincorporated areas of the
18 county. No voters within the boundaries of an incorporated city or
19 town may participate in a county election under this section.

20 (4) Following the passage of an ordinance under subsections (1)
21 and (2) of this section, the state liquor control board may not issue
22 or renew any license under RCW 69.50.325 for the production,
23 processing, or retail sale of marijuana with respect to businesses
24 that are either located or proposed to be located within an area
25 subject to the ordinance.

26 (5) Nothing in this section may be construed to extend powers to
27 cities, counties, or towns beyond the power to prohibit the siting or
28 operation of any business or facility to be used for the production,
29 processing, or sale of marijuana.

30 NEW SECTION. **Sec. 3.** A new section is added to chapter 36.01
31 RCW to read as follows:

32 Notwithstanding any other provision of law, counties also have
33 the authority granted in section 2 of this act to prohibit by
34 ordinance the siting or operation of any business or facility to be
35 used for the production, processing, or sale of marijuana under
36 chapter 69.50 RCW.

37 NEW SECTION. **Sec. 4.** A new section is added to chapter 35.21
38 RCW to read as follows:

1 Notwithstanding any other provision of law, cities and towns also
2 have the authority granted in section 2 of this act to prohibit by
3 ordinance the siting or operation of any business or facility to be
4 used for the production, processing, or sale of marijuana under
5 chapter 69.50 RCW.

6 NEW SECTION. **Sec. 5.** A new section is added to chapter 35A.21
7 RCW to read as follows:

8 Notwithstanding any other provision of law, code cities also have
9 the authority granted in section 2 of this act to prohibit by
10 ordinance the siting or operation of any business or facility to be
11 used for the production, processing, or sale of marijuana under
12 chapter 69.50 RCW.

13 **Sec. 6.** RCW 69.50.325 and 2014 c 192 s 2 are each amended to
14 read as follows:

15 (1) There shall be a marijuana producer's license to produce
16 marijuana for sale at wholesale to marijuana processors and other
17 marijuana producers, regulated by the state liquor control board and
18 subject to annual renewal. The production, possession, delivery,
19 distribution, and sale of marijuana in accordance with the provisions
20 of chapter 3, Laws of 2013 and the rules adopted to implement and
21 enforce it, by a validly licensed marijuana producer, shall not be a
22 criminal or civil offense under Washington state law. Every marijuana
23 producer's license shall be issued in the name of the applicant,
24 shall specify the location at which the marijuana producer intends to
25 operate, which must be within the state of Washington, and the holder
26 thereof shall not allow any other person to use the license. The
27 application fee for a marijuana producer's license shall be two
28 hundred fifty dollars. The annual fee for issuance and renewal of a
29 marijuana producer's license shall be one thousand dollars. A
30 separate license shall be required for each location at which a
31 marijuana producer intends to produce marijuana.

32 (2) There shall be a marijuana processor's license to process,
33 package, and label marijuana concentrates, useable marijuana, and
34 marijuana-infused products for sale at wholesale to marijuana
35 processors and marijuana retailers, regulated by the state liquor
36 control board and subject to annual renewal. The processing,
37 packaging, possession, delivery, distribution, and sale of marijuana,
38 useable marijuana, marijuana-infused products, and marijuana

1 concentrates in accordance with the provisions of chapter 3, Laws of
2 2013 and the rules adopted to implement and enforce it, by a validly
3 licensed marijuana processor, shall not be a criminal or civil
4 offense under Washington state law. Every marijuana processor's
5 license shall be issued in the name of the applicant, shall specify
6 the location at which the licensee intends to operate, which must be
7 within the state of Washington, and the holder thereof shall not
8 allow any other person to use the license. The application fee for a
9 marijuana processor's license shall be two hundred fifty dollars. The
10 annual fee for issuance and renewal of a marijuana processor's
11 license shall be one thousand dollars. A separate license shall be
12 required for each location at which a marijuana processor intends to
13 process marijuana.

14 (3) There shall be a marijuana retailer's license to sell
15 marijuana concentrates, useable marijuana, and marijuana-infused
16 products at retail in retail outlets, regulated by the state liquor
17 control board and subject to annual renewal. The possession,
18 delivery, distribution, and sale of marijuana concentrates, useable
19 marijuana, and marijuana-infused products in accordance with the
20 provisions of chapter 3, Laws of 2013 and the rules adopted to
21 implement and enforce it, by a validly licensed marijuana retailer,
22 shall not be a criminal or civil offense under Washington state law.
23 Every marijuana retailer's license shall be issued in the name of the
24 applicant, shall specify the location of the retail outlet the
25 licensee intends to operate, which must be within the state of
26 Washington, and the holder thereof shall not allow any other person
27 to use the license. The application fee for a marijuana retailer's
28 license shall be two hundred fifty dollars. The annual fee for
29 issuance and renewal of a marijuana retailer's license shall be one
30 thousand dollars. A separate license shall be required for each
31 location at which a marijuana retailer intends to sell marijuana
32 concentrates, useable marijuana, and marijuana-infused products.

33 (4) The state liquor control board shall not issue or renew a
34 license under this section for any premises located within an area
35 subject to an ordinance enacted pursuant to section 2 of this act
36 prohibiting the siting or operation of any business or facility to be
37 used for the production, processing, or retail sale of marijuana.

38 **Sec. 7.** RCW 69.50.334 and 2013 c 3 s 7 are each amended to read
39 as follows:

1 (1) Except as provided under subsection (5) of this section, the
2 action, order, or decision of the state liquor control board as to
3 any denial of an application for the reissuance of a license to
4 produce, process, or sell marijuana, or as to any revocation,
5 suspension, or modification of any license to produce, process, or
6 sell marijuana, shall be an adjudicative proceeding and subject to
7 the applicable provisions of chapter 34.05 RCW.

8 ~~((+1))~~ (2) An opportunity for a hearing may be provided to an
9 applicant for the reissuance of a license prior to the disposition of
10 the application, and if no opportunity for a prior hearing is
11 provided then an opportunity for a hearing to reconsider the
12 application must be provided the applicant.

13 ~~((+2))~~ (3) An opportunity for a hearing must be provided to a
14 licensee prior to a revocation or modification of any license and,
15 except as provided in subsection ~~((+4))~~ (6) of this section, prior
16 to the suspension of any license.

17 ~~((+3))~~ (4) No hearing shall be required until demanded by the
18 applicant or licensee.

19 ~~((+4))~~ (5) The provisions of subsection (1) of this section do
20 not apply if the licensee's or applicant's designated premises is
21 located within an area subject to an ordinance enacted pursuant to
22 section 2 of this act, prohibiting the siting or operation of any
23 business or facility to be used for the production, processing, or
24 retail sale of marijuana.

25 (6) The state liquor control board may summarily suspend a
26 license for a period of up to one hundred eighty days without a prior
27 hearing if it finds that public health, safety, or welfare
28 imperatively require emergency action, and it incorporates a finding
29 to that effect in its order. Proceedings for revocation or other
30 action must be promptly instituted and determined. An administrative
31 law judge may extend the summary suspension period for up to one
32 calendar year from the first day of the initial summary suspension in
33 the event the proceedings for revocation or other action cannot be
34 completed during the initial one hundred eighty-day period due to
35 actions by the licensee. The state liquor control board's enforcement
36 division shall complete a preliminary staff investigation of the
37 violation before requesting an emergency suspension by the state
38 liquor control board.

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