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“We change laws.”

I-502: An Overview of Washington’s New Approach to Marijuana

On November 6, 2012, voters in Washington chose a new approach to their state’s marijuana policies. By a margin of 56 – 44%, Washington voters replaced marijuana prohibition with a model that legalizes marijuana for adults and taxes and regulates it like alcohol. The new law took effect on December 6, 2012, and the Washington State Liquor Control Board spent much of 2013 drafting rules and regulations for the operation of marijuana businesses and the issuance of business licenses to three types of marijuana establishments: marijuana producers, marijuana processors, and marijuana retailers. The first retailers opened on July 8, 2014. Below is a detailed overview of the new law and regulations.

At a glance: The 30,000-foot view of the new law is fairly straightforward. I-502 removed all penalties — criminal and civil — for the use and possession of a limited amount of marijuana by adults 21 and older. Unlike Colorado’s law, Washington’s law does not allow adults to cultivate marijuana for their own personal use. However, the law directs the Washington Liquor Control Board to develop rules to regulate marijuana businesses. It made no changes to the medical marijuana law, and laws prohibiting the possession, use, and cultivation of marijuana by individuals under 21 remain intact.

Marijuana laws for those 21 and over: Adults 21 and over in Washington can now possess and use up to one ounce of marijuana without violating state law. In addition to allowing marijuana possession and use, I-502 allows adults 21 and older to purchase up to an ounce of marijuana, 16 ounces of marijuana-infused products in edible form, and 72 ounces of marijuana products in liquid form from licensed marijuana retailers. I-502 did not alter federal law. The federal government has made it clear it intends to enforce its prohibition on use, possession, cultivation, distribution, and transportation of marijuana on federal lands.

Cultivation, testing, and retail sales of marijuana: I-502 required the Washington Liquor Control Board to develop regulations governing the commercial manufacture, cultivation, and sale of marijuana. The number of retail store licenses issued was determined by a formula that distributes the number of locations in proportion to the populous cities within each county. There were no limits on producer and processor licenses. As of July 8, 2014, 25 retail licenses, 86 producer licenses, and 73 processor licenses have been issued. The department’s extensive rules govern everything from the process for issuing a new license to a marijuana business to signage requirements. Below is an overview of the most vital rules, organized by topic. To read the full rules, please visit the [Washington Liquor Control Board’s website](#).¹

¹ <http://lcb.wa.gov/marijuana/I-502>

General information

- The Washington State Liquor Control Board oversees the application process for all types of marijuana business licenses. The first retail stores opened in July 2014.
- All applicants and employees working in a licensed marijuana establishment must be at least 21 years old.
- Minors are not allowed on licensed premises. Signage declaring that minors are restricted must be posted at all licensed premises.
- Marijuana establishment licenses may not be approved for any location where unannounced law enforcement access is limited. For example, licenses will not be issued for private residences.
- The board may not approve marijuana retail licenses for locations within another business. Businesses may share buildings, but there must be physical separation, and they must have individual entrances.
- Marijuana processors and retailers who process, store, and sell marijuana-infused products must maintain clean and sanitary facilities and adhere to rules prescribed by the Washington State Department of Agriculture.
- Marijuana licensees may not allow onsite consumption of marijuana or marijuana-infused products.

Marijuana license qualifications and application process

- Each marijuana license application is unique and is investigated individually, even if the same applicant applies for multiple licenses. The board may inquire and request documents regarding all matters in connection with the marijuana license application. Application requirements include, but are not limited to:
 - Notifying the locality where the applicant seeks to do business. The locality has 20 days to respond with a recommendation to approve or deny the license.
 - Conducting a criminal and administrative history background investigation on all applicants and financiers, which must be paid for by the applicants and financiers. As part of the background check, applicants' fingerprints are sent to the Washington State Patrol and the Federal Bureau of Investigation. The regulations detail the criminal and administrative rule violation history that may prevent the applicant from receiving a license. Each type of criminal and administrative violation is assigned a point value. The board normally does not issue a license or renewal to an applicant who has amassed a total of eight points. For example, a felony conviction within the past 10 years is assigned 12 points and will prevent licensure. A gross misdemeanor within three years is assigned five points, so lacking any other criminal conviction or administrative violation, the licensure will not be denied solely on the results of the background check. An applicant who would otherwise be

disqualified by having two misdemeanor convictions in the past three years will not be disqualified if both convictions were for possession only.

- Conducting a financial investigation to verify the source of start-up funds.
- Inspecting the proposed premises.
- All applicants for, and managers and agents of, licensed marijuana establishments must have resided in the state of Washington for at least three months before applying or starting employment. All marijuana businesses must be formed in Washington. All members of the business (such as a partnership) must meet the three-month residency requirement.
- Applicants must submit an operating plan that must include details on security and seed-to-sale product tracking, employee qualifications and training, and transportation of product.
- Applicants must be up-to-date with any tax obligations owed to the Washington State Department of Revenue.

Reasons the board may deny, suspend, or cancel a marijuana licensee's application or license

- The board is granted broad discretionary authority to approve or deny a marijuana license for reasons including:
 - Failure to meet licensure requirements.
 - Failure or refusal to submit requested information or documentation.
 - Failure to meet the criminal history or administrative rule violation history standards.
 - If the source of the start-up funds is questionable, unverifiable, or was obtained in an illegal manner.
 - When a locality submits a substantial objection to issuance of a license.
 - If the proposed location of the marijuana business is within 1,000 feet of any school, playground, child care center, library, or arcade, or other enumerated location.
- If a license is denied, an applicant may request an administrative hearing to contest the denial and/or reapply for the license no sooner than the date of the final order of denial.

Marijuana producer license, requirements, and fees

- A licensed marijuana producer may cultivate marijuana to sell at wholesale to licensed marijuana processors and other licensed marijuana producers. Marijuana may be grown indoors in a fully enclosed facility, in a greenhouse, or outdoors. Outdoor cultivation must not be visible to the public, and outdoor grows must be fully enclosed by a fence that is at least eight feet high.
- The producer license application fee is \$250 in addition to the cost of background checks.
- The issuance and annual renewal fees for a marijuana producer license are \$1,000.
- Entities and principals within an entity are limited to no more than three marijuana producer licenses.

- The board limited the total amount of marijuana cultivation to a maximum of two million square feet statewide. Applicants must specify the size category of the production premises and the amount of actual square footage on the premises designated as plant canopy. The three categories are:
 - Tier 1 – less than 2,000 square feet of canopy
 - Tier 2 – 2,000 square feet to 10,000 square feet of canopy
 - Tier 3 – 10,000 square feet to 30,000 square feet of canopy
- Licensed producers are required to maintain records detailing current production and inventory on hand, sales by product type, and lost and destroyed product. They are also required to report purchases from other producers.
- For information on the application process for marijuana producer licenses, please visit the Liquor Control Board’s website.²

Marijuana processor license, requirements, and fees

- A licensed marijuana processor may process, package, and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers.
- Marijuana processors are allowed to blend tested usable marijuana from multiple lots into a single package so long as the labeling requirements, including net weight from each lot, are met.
- The types of food that processors may infuse with marijuana are limited. For instance, food defined under state law as “potentially dangerous” and food that requires refrigeration, freezing, or a “hot holding unit” to keep it safe for human consumption may not be infused with marijuana to create edible or potable products.
- Producers must keep on file, and make available for inspection, the recipe for any food infused with marijuana.
- The processor license application fee is \$250 in addition to the cost of background checks.
- The issuance and annual renewal fees for a marijuana processor license are \$1,000.
- Entities and principals within an entity are limited to no more than three marijuana processor licenses.
- Marijuana processor license holders are allowed to have a maximum of six months of their average usable marijuana and six months of their average total production on the licensed premises at any given time.
- Processors are required to accept returns of their products from marijuana retailers for destruction but are not required to provide a refund.
- Licensed producers are required to maintain records and submit monthly reports detailing production of marijuana concentrates and infused products, sales by product type to retailers and other processors, lost or destroyed product, and purchases from licensed producers and other processors.
- For information on the application process for marijuana processor licenses, please visit the Liquor Control Board’s website.³

² http://lcb.wa.gov/mjlicense/apply_for_a_marijuana_license

Marijuana retailer license, requirements, and fees

- A licensed marijuana retailer may sell usable marijuana, marijuana-infused products, and marijuana paraphernalia to persons who are 21 and older.
- Marijuana extracts, including but not limited to hash, shatter, and wax, may be infused in products sold at retail, but cannot be sold as stand-alone products.
- Internet sales and delivery of marijuana is prohibited.
- The retail license application fee is \$250 in addition to the cost of background checks.
- There is a \$1,000 annual fee for each marijuana retailer license.
- Marijuana retailers may not sell products at prices that are lower than their acquisition costs.
- Marijuana retailers are allowed to have four months of their average inventory on their licensed premises at any given time.
- The Liquor Control Board has capped the number of retail marijuana stores at 334 statewide. The number of stores is also capped per county, based on population. For example, 61 will be allowed in King County and 35 in Snohomish County.
- Entities and entities' principals are limited to no more than three marijuana retailer licenses. Any entity or principal that holds multiple retailer licenses is limited to no more than 33% of the allowed licenses in any county or city.
- For information on the application process for marijuana retail licenses, please visit the Liquor Control Board's website.⁴

Insurance requirements

- Marijuana licensees are required to have at least one million dollars of insurance coverage. The purpose of the insurance coverage is to protect the consumer.

Security requirements

- All employees on the licensed premises are required to have and display an ID badge issued by their employer at all times while on the premises.
- At a minimum, each licensed premises must have a security alarm system on all perimeter entry points and perimeter windows.
- Licensed entities must install a complete video surveillance system that meets the standards put in place by the Liquor Control Board.
- Marijuana licensees must track marijuana from seed to sale. The tracking must include when marijuana is transported, any theft of marijuana, and point of sale records.
- A producer is given 15 days from the start of production to bring non-flowering marijuana plants onto their licensed premises. After that, only cultivation of plants

³ *Id.*

⁴ *Id.*

that began as seeds or clones of a marijuana plant already on the premises are allowed.

- Free samples of usable marijuana and marijuana products may be provided by producers or processors to processors or retailers for the purposes of negotiating sales. Samples are limited in quantity and must be tracked. Additionally, samples may be given for testing purposes, but only in limited amounts and under certain circumstances. Retailers may not provide free samples to customers.

Fertilizers and other soil amendments

- Only specifically listed fertilizers, soil amendments (materials added to improve the physical properties of the soil so as to create a better environment for roots), crop production aids, and pesticides may be used in the production of marijuana.

Signage

- Marijuana license holders must place signs at each entrance point stating: “Persons under twenty-one years of age are not permitted on these premises.”
- Marijuana retailers must post signs explaining that opening or using a package of marijuana or marijuana-infused products is prohibited in public.
- Marijuana license holders must post their licenses.

Record-keeping

- Marijuana license holders must keep certain records that clearly reflect all financial transactions and the financial condition of the entity. Records must be kept and maintained on the licensed premises for three years and made available for inspection if requested by an employee of the board.
- A marijuana business’s financial information, including account identification data, is exempt from public records requests.

Tax and reporting requirements

- On or before the 20th day of each month, marijuana licensees must file tax reports for the prior month with the Liquor Control Board. These reports must be submitted with payments due.
- Licensed marijuana producers must remit to the board an excise tax of 25% of the selling price on each wholesale sale to a licensed marijuana processor.
- Licensed marijuana processors must remit to the board an excise tax of 25% of the selling price on each wholesale sale of usable marijuana or marijuana-infused products to a retailer.
- Licensed marijuana retailers must remit to the board a marijuana excise tax of 25% of the selling price on each retail sale of usable marijuana and marijuana-infused products.

Marijuana servings and transaction limitations

- The board defines a single serving of a marijuana-infused product as having 10 milligrams of active THC in it.
- No single unit of marijuana-infused product that is meant to be eaten or swallowed may have more than 10 servings or 100 milligrams of active THC. A single unit of marijuana-infused extract for inhalation cannot exceed one gram.
- A single transaction is limited to one ounce of usable marijuana, 16 ounces of marijuana-infused product in solid form, seven grams of marijuana-infused extract for inhalation, and 72 ounces of marijuana-infused product in liquid form for persons 21 years of age or older.

Marijuana waste disposal

- Solid and liquid waste, as well as wastewater, generated during the marijuana production or processing process must be managed, stored, and disposed of according to all applicable state and local laws and regulations.

Quality assurance testing

- Individuals with a financial interest in an accredited third party testing facility may not have a direct or indirect financial interest in a licensed marijuana business for which they are conducting quality assurance tests.
- The board specifies certain tests that must be performed on marijuana and the various marijuana products. For example, usable marijuana must be tested for moisture content, potency, foreign matter, and microbes.
- Labs meeting the board's accreditation requirements can retrieve samples from a marijuana licensee's licensed premises and transport the sample back to the lab for testing. However, no other lot of usable marijuana or batch of marijuana-infused product may be sold or transported until the completion of all required quality assurance testing.

Extraction requirements

- Marijuana processors are limited to certain methods, equipment, solvents, gases, and mediums when creating marijuana extracts.

Packaging and labeling

- All usable marijuana and marijuana products must be stored behind a counter or other barrier to ensure a customer does not have direct access to the products.
- Solid or liquid marijuana-infused products and concentrates meant to be eaten, swallowed, or inhaled must be packaged in child-resistant packaging.

- A marijuana producer or processor may not treat or otherwise adulterate usable marijuana with any organic or nonorganic chemical or other compound to alter the color, appearance, weight, or smell.
- All usable marijuana sold at retail must include accompanying materials that contain the following warnings:
 - “Warning: This product has intoxicating effects and may be habit forming. Smoking is hazardous to your health.”
 - “There may be health risks associated with consumption of this product.”
 - “Should not be used by women that are pregnant or breast feeding.”
 - “For use by adults twenty-one and older. Keep out of reach of children.”
 - “Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug.”
 - A statement that discloses any pesticides applied to the marijuana plants.
- In addition to the warnings above, all marijuana-infused products must include these additional warnings:
 - “This product is infused with marijuana or active compounds of marijuana.”
 - “Caution: When eaten or swallowed, the intoxicating effects of this drug may be delayed by two or more hours.”
 - A statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce the extract.
- Usable marijuana sold at retail must contain a label with the following information:
 - Business or trade name of the licensed businesses that produced, processed, and sold the usable marijuana.
 - Lot number.
 - The potency profile of all active cannabinoids (expressed by concentration percentage per cannabinoid, including THC and CBD) of the usable marijuana.
 - Net weight.
 - Required warnings.
 - A statement reading: “This product may be unlawful outside of Washington state.”
 - The harvest date.
- Marijuana-infused products sold at retail must contain a label with all of the above information, along with the following:
 - Batch number.
 - Date manufactured.
 - Best by date.
 - Recommended serving size and servings contained within the packaged product.
 - List of all ingredients and any allergens.
- In addition to the labeling requirements for marijuana-infused products, concentrates sold at retail must be labeled with statements warning the purchaser that marijuana can impair judgment and concentration; that intoxicating effects

may be delayed by two or more hours; that any pesticides were applied during growing; and stating what solvents, chemicals, or components were used in the extraction process.

Changes to business structure

- Licensees must have approval by the LCB before making certain ownership changes.
- License holders must submit an application in order to change the location of their business.
- Change to the business name requires filing an application for a change of trade name with the Department of Revenue. If a business wishes to change the corporation or limited liability company name, it must apply for a change of name with the Secretary of State.
- A business must notify the LCB's enforcement and education division if it will discontinue operation for 30 days or more.

Hours of operation

- Marijuana retailers cannot open before 8:00 a.m. and must close by midnight.
- Retailers must verify that a consumer is 21 or older before selling marijuana products to him or her. The board has detailed what types of ID may be accepted; among them are driver's licenses from any state.

Advertising

- Retailers are limited to one sign identifying the retail outlet by the business name. It may be affixed to or hanging from the premises.
- Advertising and labels may not contain any statement or illustration that:
 - Is false or misleading.
 - Promotes over consumption.
 - Suggests the use of marijuana has curative or therapeutic effects.
 - Depicts a child or other person under 21 or is designed in a manner that would be especially appealing to children.
- No licensed business may advertise through any medium whatsoever:
 - Within 1,000 feet of a school, park, recreational center, childcare center, public park, library, or game arcade.
 - On or in a public transit vehicle or shelter.
 - On or in publicly owned or operated property.
- Giveaways, coupons, and distribution of branded merchandise are banned.
- All advertising must contain warnings about the intoxicating effects of marijuana, the possible health risks, and that it is for use only by adults 21 or older.

Objections to marijuana licenses

- The board is required to notify cities, counties, tribal governments, and port authorities of marijuana license applications that have been filed to operate within their jurisdictions. The board gives “substantial weight” to the input from local governmental jurisdictions. If a license is granted or denied over the objection of a locality, either the locality or applicant may challenge that decision.
- Local governments are also consulted when marijuana license holders seek renewal of their licenses.

Administrative enforcement procedures

- The regulations created by the board contain the procedures to be followed if and when the board or its agents believe a license holder has violated a law, rule, or regulation. Among others, these procedures specify when the board may seize marijuana and marijuana products from licensees, how the board can destroy marijuana and marijuana products, notification requirements when a licensee is alleged to violate the rules, what board officers must do to file grievances, and the redress available to license holders if and when they receive notice of violation.
- Penalties for violations of laws or rules are based on the severity of the violation, with violations that result in threats to public safety being the most severe. For example, a first violation for selling marijuana or marijuana products to an individual under 21 will result in either a 10-day license suspension or a \$2,500 fine. A second violation within three years will result in a 30-day license suspension, and a third violation within three years will result in cancellation of the license.

Taxes

- Washington law imposes a 25% excise tax on each level: wholesale transactions from producer to processor or other producer, wholesale transactions from processor to retailer or other processor, and retail transactions from retailer to customer.
- Business and occupation taxes on the production and local retail sales taxes also apply.
- Marijuana excise taxes, licensing fees, and any penalties or forfeitures resulting from licensees violating the law or regulations must be distributed every three months as follows:
 - \$185,000 to the Department of Social and Health Services to design and administer the Washington State Healthy Youth Survey. This survey shall be conducted at least every two years.
 - \$50,000 to the Department of Social and Health Services to pay for a cost-benefit evaluation and other reports mandated by I-502.
 - \$5,000 to the University of Washington Alcohol and Drug Abuse Institute to create and maintain online public education materials.

- Up to \$1,250,000 to the Liquor Control Board to pay for administration of the program.
- After all of the above allocations are made, the remainder will be distributed as follows:
 - Fifteen percent will go toward implementing and maintaining programs and practices aimed at preventing or reducing substance abuse among young people.
 - Ten percent to create, implement, operate, and manage a marijuana education and public health program.
 - Six-tenths of one percent to the University of Washington and four-tenths of one percent to Washington State University to research the short and long term effects of marijuana use.
 - Fifty percent to the state basic health plan trust account.
 - Five percent to provide health and dental care.
 - Three-tenths of one percent to fund grants to building bridges programs.
 - The remainder to the general fund.