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HOUSE BILL 2510

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State of Washington

63rd Legislature

2014 Regular Session

By Representative Klippert

Read first time 01/20/14. Referred to Committee on Government  
Accountability & Oversight.

1 AN ACT Relating to authorizing municipalities to prohibit the  
2 operation of commercial marijuana production, processing, and retail  
3 facilities within their jurisdictional boundaries; amending RCW  
4 69.50.325, 69.50.331, 69.50.334, and 69.50.354; adding a new section to  
5 chapter 69.50 RCW; creating new sections; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** This act may be known and cited as the local  
8 control over marijuana commerce act.

9 NEW SECTION. **Sec. 2.** Through its legalization of the production,  
10 sale, and possession of marijuana, Initiative Measure No. 502 has  
11 presented the state and local governments with a host of difficult and  
12 troubling public policy questions and engendered concerns in many  
13 communities that the ability of local governments to preserve public  
14 health and safety has been compromised. Although the initiative was  
15 passed by a majority of voters statewide, the simple truth is that the  
16 initiative was unpopular in a great many cities, counties, and regions  
17 of the state. Thus, while the passage of Initiative Measure No. 502  
18 might be regarded as a desirable step by the voters in some areas, in

1 many communities the initiative is seen as a threat to the ability of  
2 local governments to maintain public safety and protect the health of  
3 their citizens.

4 Those opposed to increasing the presence of marijuana in their  
5 communities pursuant to Initiative Measure No. 502 can find ample  
6 support for their concerns in the available statistical evidence. Over  
7 the last decade, there has been a notable upward trend in fatal  
8 automobile accidents related to drug use. In 2007, more drivers tested  
9 positive for drugs than for alcohol. Between 2009 and 2011, over forty  
10 percent of young, male drivers involved in fatality automobile  
11 accidents were found to be impaired by drug use. Sixteen and  
12 seventeen-year old drivers are twice as likely to be impaired by drugs  
13 than by alcohol, and the drug of choice is marijuana. And, in 2010,  
14 the number of accidental deaths involving drugs exceeded those  
15 involving alcohol.

16 Therefore, it is the intent of the legislature to provide local  
17 governments with a degree of self-determination regarding the  
18 implementation of Initiative Measure No. 502 and thus grant them the  
19 authority to prohibit the operation within their jurisdictional  
20 boundaries of any business or facility involved in the production,  
21 processing, or sale of marijuana.

22 NEW SECTION. **Sec. 3.** A new section is added to chapter 69.50 RCW  
23 to read as follows:

24 Through the enactment of an ordinance approved by the majority vote  
25 of its governing body, a county, city, or town may prohibit, within its  
26 jurisdictional boundaries, the siting or operation of any business or  
27 facility engaged in the production, processing, and/or retail sale of  
28 marijuana, products containing marijuana, or marijuana extracts.  
29 Following the passage of such ordinance, the state liquor control board  
30 shall not issue or renew any commercial marijuana license authorized  
31 under RCW 69.50.325 with respect to businesses that are either located  
32 or proposed to be located within the jurisdictional boundaries of a  
33 county, city, or town that has enacted the prohibition authorized under  
34 this section.

35 **Sec. 4.** RCW 69.50.325 and 2013 c 3 s 4 (Initiative Measure No.  
36 502) are each amended to read as follows:

1 (1) There shall be a marijuana producer's license to produce  
2 marijuana for sale at wholesale to marijuana processors and other  
3 marijuana producers, regulated by the state liquor control board and  
4 subject to annual renewal. The production, possession, delivery,  
5 distribution, and sale of marijuana in accordance with the provisions  
6 of chapter 3, Laws of 2013 and the rules adopted to implement and  
7 enforce it, by a validly licensed marijuana producer, shall not be a  
8 criminal or civil offense under Washington state law. Every marijuana  
9 producer's license shall be issued in the name of the applicant, shall  
10 specify the location at which the marijuana producer intends to  
11 operate, which must be within the state of Washington, and the holder  
12 thereof shall not allow any other person to use the license. The  
13 application fee for a marijuana producer's license shall be two hundred  
14 fifty dollars. The annual fee for issuance and renewal of a marijuana  
15 producer's license shall be one thousand dollars. A separate license  
16 shall be required for each location at which a marijuana producer  
17 intends to produce marijuana.

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

36 (3) There shall be a marijuana retailer's license to sell useable  
37 marijuana and marijuana-infused products at retail in retail outlets,  
38 regulated by the state liquor control board and subject to annual

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

16 (4) The state liquor control board is prohibited from issuing or  
17 renewing a commercial marijuana license, as authorized under this  
18 section, for an applicant or existing licensee whose place of business  
19 is located within the jurisdictional boundaries of any county, city, or  
20 town that has enacted, pursuant to section 3 of this act, an ordinance  
21 prohibiting the operation of any facility or business for the  
22 production, processing, or retail sale of marijuana.

23 **Sec. 5.** RCW 69.50.331 and 2013 c 3 s 6 (Initiative Measure No.  
24 502) are each amended to read as follows:

25 (1) For the purpose of considering any application for a license to  
26 produce, process, or sell marijuana, or for the renewal of a license to  
27 produce, process, or sell marijuana, the state liquor control board may  
28 cause an inspection of the premises to be made, and may inquire into  
29 all matters in connection with the construction and operation of the  
30 premises. For the purpose of reviewing any application for a license  
31 and for considering the denial, suspension, revocation, or renewal or  
32 denial thereof, of any license, the state liquor control board may  
33 consider any prior criminal conduct of the applicant including an  
34 administrative violation history record with the state liquor control  
35 board and a criminal history record information check. The state  
36 liquor control board may submit the criminal history record information  
37 check to the Washington state patrol and to the identification division

1 of the federal bureau of investigation in order that these agencies may  
2 search their records for prior arrests and convictions of the  
3 individual or individuals who filled out the forms. The state liquor  
4 control board shall require fingerprinting of any applicant whose  
5 criminal history record information check is submitted to the federal  
6 bureau of investigation. The provisions of RCW 9.95.240 and of chapter  
7 9.96A RCW shall not apply to these cases. Subject to the provisions of  
8 this section, the state liquor control board may, in its discretion,  
9 grant or deny the renewal or license applied for. Denial may be based  
10 on, without limitation, the existence of chronic illegal activity  
11 documented in objections submitted pursuant to subsections (7)(c) and  
12 (9) of this section. Authority to approve an uncontested or unopposed  
13 license may be granted by the state liquor control board to any staff  
14 member the board designates in writing. Conditions for granting this  
15 authority shall be adopted by rule. No license of any kind may be  
16 issued to:

17 (a) A person under the age of twenty-one years;

18 (b) A person doing business as a sole proprietor who has not  
19 lawfully resided in the state for at least three months prior to  
20 applying to receive a license;

21 (c) A partnership, employee cooperative, association, nonprofit  
22 corporation, or corporation unless formed under the laws of this state,  
23 and unless all of the members thereof are qualified to obtain a license  
24 as provided in this section; ((or))

25 (d) A person whose place of business is conducted by a manager or  
26 agent, unless the manager or agent possesses the same qualifications  
27 required of the licensee; or

28 (e) A person whose existing or proposed place of business is in a  
29 county, city, or town that has enacted an ordinance prohibiting the  
30 operation or siting of any facility or business for the production,  
31 processing, or retail sale of marijuana pursuant to section 3 of this  
32 act.

33 (2)(a) The state liquor control board may, in its discretion,  
34 subject to the provisions of RCW 69.50.334, suspend or cancel any  
35 license; and all protections of the licensee from criminal or civil  
36 sanctions under state law for producing, processing, or selling  
37 marijuana, useable marijuana, or marijuana-infused products thereunder  
38 shall be suspended or terminated, as the case may be.

1 (b) The state liquor control board shall immediately suspend the  
2 license of a person who has been certified pursuant to RCW 74.20A.320  
3 by the department of social and health services as a person who is not  
4 in compliance with a support order. If the person has continued to  
5 meet all other requirements for reinstatement during the suspension,  
6 reissuance of the license shall be automatic upon the state liquor  
7 control board's receipt of a release issued by the department of social  
8 and health services stating that the licensee is in compliance with the  
9 order.

10 (c) The state liquor control board may request the appointment of  
11 administrative law judges under chapter 34.12 RCW who shall have power  
12 to administer oaths, issue subpoenas for the attendance of witnesses  
13 and the production of papers, books, accounts, documents, and  
14 testimony, examine witnesses, and to receive testimony in any inquiry,  
15 investigation, hearing, or proceeding in any part of the state, under  
16 rules and regulations the state liquor control board may adopt.

17 (d) Witnesses shall be allowed fees and mileage each way to and  
18 from any inquiry, investigation, hearing, or proceeding at the rate  
19 authorized by RCW 34.05.446. Fees need not be paid in advance of  
20 appearance of witnesses to testify or to produce books, records, or  
21 other legal evidence.

22 (e) In case of disobedience of any person to comply with the order  
23 of the state liquor control board or a subpoena issued by the state  
24 liquor control board, or any of its members, or administrative law  
25 judges, or on the refusal of a witness to testify to any matter  
26 regarding which he or she may be lawfully interrogated, the judge of  
27 the superior court of the county in which the person resides, on  
28 application of any member of the board or administrative law judge,  
29 shall compel obedience by contempt proceedings, as in the case of  
30 disobedience of the requirements of a subpoena issued from said court  
31 or a refusal to testify therein.

32 (3) Upon receipt of notice of the suspension or cancellation of a  
33 license, the licensee shall forthwith deliver up the license to the  
34 state liquor control board. Where the license has been suspended only,  
35 the state liquor control board shall return the license to the licensee  
36 at the expiration or termination of the period of suspension. The  
37 state liquor control board shall notify all other licensees in the  
38 county where the subject licensee has its premises of the suspension or

1 cancellation of the license; and no other licensee or employee of  
2 another licensee may allow or cause any marijuana, useable marijuana,  
3 or marijuana-infused products to be delivered to or for any person at  
4 the premises of the subject licensee.

5 (4) Every license issued under chapter 3, Laws of 2013 shall be  
6 subject to all conditions and restrictions imposed by chapter 3, Laws  
7 of 2013 or by rules adopted by the state liquor control board to  
8 implement and enforce chapter 3, Laws of 2013. All conditions and  
9 restrictions imposed by the state liquor control board in the issuance  
10 of an individual license shall be listed on the face of the individual  
11 license along with the trade name, address, and expiration date.

12 (5) Every licensee shall post and keep posted its license, or  
13 licenses, in a conspicuous place on the premises.

14 (6) No licensee shall employ any person under the age of twenty-one  
15 years.

16 (7)(a) Before the state liquor control board issues a new or  
17 renewed license to an applicant it shall give notice of the application  
18 to the chief executive officer of the incorporated city or town, if the  
19 application is for a license within an incorporated city or town, or to  
20 the county legislative authority, if the application is for a license  
21 outside the boundaries of incorporated cities or towns.

22 (b) The incorporated city or town through the official or employee  
23 selected by it, or the county legislative authority or the official or  
24 employee selected by it, shall have the right to file with the state  
25 liquor control board within twenty days after the date of transmittal  
26 of the notice for applications, or at least thirty days prior to the  
27 expiration date for renewals, written objections against the applicant  
28 or against the premises for which the new or renewed license is asked.  
29 The state liquor control board may extend the time period for  
30 submitting written objections.

31 (c) The written objections shall include a statement of all facts  
32 upon which the objections are based, and in case written objections are  
33 filed, the city or town or county legislative authority may request,  
34 and the state liquor control board may in its discretion hold, a  
35 hearing subject to the applicable provisions of Title 34 RCW. If the  
36 state liquor control board makes an initial decision to deny a license  
37 or renewal based on the written objections of an incorporated city or  
38 town or county legislative authority, the applicant may request a

1 hearing subject to the applicable provisions of Title 34 RCW. If a  
2 hearing is held at the request of the applicant, state liquor control  
3 board representatives shall present and defend the state liquor control  
4 board's initial decision to deny a license or renewal.

5 (d) Upon the granting of a license under this title the state  
6 liquor control board shall send written notification to the chief  
7 executive officer of the incorporated city or town in which the license  
8 is granted, or to the county legislative authority if the license is  
9 granted outside the boundaries of incorporated cities or towns.

10 (8) The state liquor control board shall not issue a license for  
11 any premises within one thousand feet of the perimeter of the grounds  
12 of any elementary or secondary school, playground, recreation center or  
13 facility, child care center, public park, public transit center, or  
14 library, or any game arcade admission to which is not restricted to  
15 persons aged twenty-one years or older.

16 (9) In determining whether to grant or deny a license or renewal of  
17 any license, the state liquor control board shall give substantial  
18 weight to objections from an incorporated city or town or county  
19 legislative authority based upon chronic illegal activity associated  
20 with the applicant's operations of the premises proposed to be licensed  
21 or the applicant's operation of any other licensed premises, or the  
22 conduct of the applicant's patrons inside or outside the licensed  
23 premises. "Chronic illegal activity" means (a) a pervasive pattern of  
24 activity that threatens the public health, safety, and welfare of the  
25 city, town, or county including, but not limited to, open container  
26 violations, assaults, disturbances, disorderly conduct, or other  
27 criminal law violations, or as documented in crime statistics, police  
28 reports, emergency medical response data, calls for service, field  
29 data, or similar records of a law enforcement agency for the city,  
30 town, county, or any other municipal corporation or any state agency;  
31 or (b) an unreasonably high number of citations for violations of RCW  
32 46.61.502 associated with the applicant's or licensee's operation of  
33 any licensed premises as indicated by the reported statements given to  
34 law enforcement upon arrest.

35 **Sec. 6.** RCW 69.50.334 and 2013 c 3 s 7 (Initiative Measure No.  
36 502) are each amended to read as follows:

37 (1) Except as provided under subsection (5) of this section, the

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

7 ~~((+1))~~ (2) An opportunity for a hearing may be provided to an  
8 applicant for the reissuance of a license prior to the disposition of  
9 the application, and if no opportunity for a prior hearing is provided  
10 then an opportunity for a hearing to reconsider the application must be  
11 provided the applicant.

12 ~~((+2))~~ (3) An opportunity for a hearing must be provided to a  
13 licensee prior to a revocation or modification of any license and,  
14 except as provided in subsection ~~((+4))~~ (6) of this section, prior to  
15 the suspension of any license.

16 ~~((+3))~~ (4) No hearing shall be required until demanded by the  
17 applicant or licensee.

18 ~~((+4))~~ (5) The provisions of subsection (1) of this section  
19 authorizing an adjudicative proceeding do not apply if the licensee's  
20 business is located in a jurisdiction that has enacted an ordinance,  
21 pursuant to section 3 of this act, prohibiting the siting or operation  
22 of any business or facility for the production, processing, or retail  
23 sale of marijuana.

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

1           **Sec. 7.** RCW 69.50.354 and 2013 c 3 s 13 (Initiative Measure No.  
2 502) are each amended to read as follows:

3           Subject to the restrictions set forth in section 3 of this act and  
4 RCW 69.50.331, there may be licensed, in no greater number in each of  
5 the counties of the state than as the state liquor control board shall  
6 deem advisable, retail outlets established for the purpose of making  
7 useable marijuana and marijuana-infused products available for sale to  
8 adults aged twenty-one and over. Retail sale of useable marijuana and  
9 marijuana-infused products in accordance with the provisions of chapter  
10 3, Laws of 2013 and the rules adopted to implement and enforce it, by  
11 a validly licensed marijuana retailer or retail outlet employee, shall  
12 not be a criminal or civil offense under Washington state law.

13           NEW SECTION.   **Sec. 8.** This act is necessary for the immediate  
14 preservation of the public peace, health, or safety, or support of the  
15 state government and its existing public institutions, and takes effect  
16 immediately.

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