



Summary of Initiative 502

Prepared for members of the Washington House of Representatives by the House Office of Program Research.

This information has been prepared in response to various requests for a summary of Initiative 502. It is provided for analytical and legislative policy purposes only. It is not provided as an expression of support for or opposition to any ballot measure. These materials are intended to provide general information and are not intended to be an exhaustive analysis of all issues presented by the measure.

BRIEF SUMMARY

- Establishes a system, overseen by the Washington State Liquor Control Board, to license, regulate, and tax the production, processing, and wholesale and retail sales of marijuana.
- Provides that actions compliant with this regulatory system shall not constitute criminal or civil offenses under Washington law.
- Creates the dedicated marijuana fund, consisting of excise taxes, license fees, penalties, and forfeitures, and specifies the disbursement of these moneys for a variety of health, education, and research purposes, with the remainder distributed to the state general fund.
- Amends implied consent laws to specifically provide that any person who operates a motor vehicle in the state is deemed to have given consent to a test to determine the concentration of THC, the main active chemical in marijuana.
- Adds provisions to driving under the influence laws, making it criminal to drive a motor vehicle and:
 - have a THC concentration of 5.0 or higher; or,
 - if the person is under 21 years of age, have a THC concentration above 0.00.

BACKGROUND

Initiative 502

Initiative 502 was filed in 2011 as an initiative to the Legislature. Once certified, an initiative to the Legislature is submitted to the Legislature at its next regular session, at which time the Legislature must take one of three actions:

- adopt the initiative as proposed, in which case it becomes law without a vote of the people;
- reject or take no action on the proposed initiative, in which case the initiative must be placed on the ballot at the next state general election; or
- approve an alternative to the proposed initiative, in which case both the original proposal and the Legislature's alternative must be placed on the ballot at the next state general election.

The Legislature did not act on Initiative 502 during its 2012 Regular Session. This initiative is, therefore, being submitted to the people for approval or rejection at the November 2012 general election.

The ballot title and ballot measure summary are as follows:

Ballot Title

Statement of Subject: Initiative Measure No. 502 concerns marijuana.

Concise Description: This measure would license and regulate marijuana production, distribution, and possession for persons over twenty-one; remove state-law criminal and civil penalties for activities that it authorizes; tax marijuana sales; and earmark marijuana-related revenues.

Should this measure be enacted into law? Yes [] No []

Ballot Measure Summary

This measure would remove state-law prohibitions against producing, processing, and selling marijuana, subject to licensing and regulation by the liquor control board; allow limited possession of marijuana by persons aged twenty-one and over; and impose 25% excise taxes on wholesale and retail sales of marijuana, earmarking revenue for purposes that include substance-abuse prevention, research, education, and healthcare. Laws prohibiting driving under the influence would be amended to include maximum thresholds for THC blood concentration.

Overview of Marijuana Laws

Uniform Controlled Substances Act. Marijuana is one of many substances defined as a controlled substance under Washington's Uniform Controlled Substances Act (UCSA). Generally, it is illegal for a person to possess controlled substances except as authorized by law.

Under the UCSA, the degree of restriction exercised over a controlled substance is dependent on the potential for abuse and the degree of psychic or physical dependency which may be caused by the substance. Controlled substances are placed in five different schedules to reflect the amount of control necessary, with Schedule I being the most controlled, and Schedule V being the least restricted.

Marijuana is a Schedule I controlled substance. Possession of 40 grams (1.41095 oz.) or less of marijuana is a misdemeanor offense. The maximum punishment for this offense is imprisonment in the county jail for not more than 90 days, a fine of \$1,000, or both. Possession of more than 40 grams, and offenses relating to the manufacture, delivery, or possession with intent to manufacture or deliver marijuana are class C felony offenses. The maximum punishment for a class C felony offense is five years imprisonment, a \$10,000 fine, or both.

Medical Use of Marijuana. Washington's medical marijuana laws originated with a 1998 initiative, I-692. Protection from state criminal sanctions is provided for qualified patients and designated caregivers who comply with the laws' provisions.

Federal Laws Related to Marijuana. Marijuana is listed as a Schedule I controlled substance under federal law. Generally, growing, distributing, and possessing marijuana is a violation of federal law regardless of whether state laws permit such activities.

Implied Consent

A person who operates a motor vehicle within the state is deemed to have given consent to breath or blood tests for the purpose of determining alcohol concentration or the presence of any drug if, at the time of arrest, the arresting officer has reasonable grounds to believe that the person was driving under the influence of intoxicating liquor or any drug. Refusal to take the test results in revocation or denial of the driver's license for at least one year.

If a driver 21 years of age or older submits to the test, and the test indicates an alcohol concentration of 0.08 or more, the driver's license is suspended for at least 90 days. A similar penalty is imposed if the driver is under 21 years of age and the alcohol concentration is 0.02 or more. License denial or revocation may also result, depending upon the circumstances.

Driving Under the Influence

A person commits the crime of driving under the influence (DUI) when he or she drives a motor vehicle while:

1. under the influence of or affected by intoxicating liquor or a drug;
2. under the combined influence of or affected by intoxicating liquor and a drug; or
3. having an alcohol concentration of 0.08 or higher within two hours after driving as shown by a test of the driver's breath or blood.

With respect to either of the first two methods, it must be proven that the person's ability to drive a motor vehicle was lessened in an appreciable degree. The fact that a person is lawfully entitled to use a drug is not a defense to the charge. The third method, sometimes referred to as the *per se* DUI violation, requires proof of at least 0.08 alcohol concentration, without also having to prove that the driver was under the influence or affected by the liquor or drug.

Another separate, but related, driving offense pertains only to persons under 21 years of age. A person under the age of 21 commits the crime of operating a motor vehicle after having consumed alcohol when he or she operates a motor vehicle while having an alcohol concentration of at least 0.02 and less than 0.08.

Washington State Liquor Control Board

The Washington State Liquor Control Board (WSLCB) has licensing and enforcement responsibilities with respect to liquor and tobacco. The WSLCB is composed of three members appointed by the Governor to six-year terms.

SUMMARY

Marijuana Laws

The definition of marijuana in the UCSA is amended, new definitions for "useable marijuana" and "marijuana-infused products" are created, and a framework for these products to be processed, produced, sold, and subjected to excise taxes is established. "Useable marijuana" is defined as dried marijuana flowers. "Marijuana-infused products" are products that contain marijuana or marijuana extracts and are intended for human use. Purchase, receipt, processing, producing, possession, delivery, and sale in accordance with these new laws are not criminal or civil offenses under state law.

The WSLCB is charged with administration and must, by December 1, 2013, adopt rules establishing the procedures and criteria for the following licenses:

- Producer's license to produce marijuana to sell at wholesale to marijuana processors and other marijuana producers.
- Processor's license to process, package, and label marijuana and marijuana-infused products to sell at wholesale to marijuana retailers.
- Retailer's license to sell useable marijuana, marijuana-infused products, and marijuana paraphernalia at retail in retail outlets to persons 21 years or older.

For each license, there is a \$250 application fee and a \$1,000 annual issuance and renewal fee. Separate licenses are required for each individual location.

An excise tax of 25 percent of the sales price is imposed upon each wholesale sale from producer to processor and on each wholesale sale from processor to retailer. A separate 25 percent excise tax is also imposed on each retail sale, and is in addition to general state and local sales and use taxes that apply to retail sales of tangible personal property. The WSLCB is charged with regularly reviewing the excise tax levels and making recommendations to the Legislature, as appropriate, regarding adjustments that would further the goal of discouraging use while undercutting illegal market prices.

A number of requirements, restrictions, and qualifications are spelled out. For instance:

- A retail buyer may purchase no more than one ounce of useable marijuana, or 16 ounces of marijuana-infused product in solid form, or 72 ounces of marijuana-infused product in liquid form.
- Retail outlets may sell no products or services other than useable marijuana, marijuana-infused products, and paraphernalia intended for its storage or use.
- Certain advertising restrictions are applicable to signage and displays.
- Opening and consuming on retail premises, or in view of the general public, is not allowed.
- Neither a producer nor a processor may have a direct or indirect financial interest in a retailer.
- No license of any kind may be issued:

- to a person under 21 years of age;
- to a person doing business as a sole proprietor who has not lawfully resided in the state for at least three months; or
- unless, in the case of a partnership, employee cooperative, association, nonprofit corporation, or corporation, the entity has been formed under the laws of Washington and all of the members are qualified to obtain a license.
- No license may be issued for any premises within 1,000 feet of a school, playground, recreation center, child care center, public park, public transit center, library, or game arcade that admits persons under 21 years of age.
- Every licensed producer and processor must submit representative samples to an independent testing laboratory for inspection and testing to certify compliance with standards.

Other requirements are left to the WSLCB to determine via rulemaking, including rules related to:

- Maximum numbers of retail outlets permitted in each county.
- Maximum quantities of marijuana a producer, processor, or retailer may have on the premises at one time.
- The nature, form, and capacity of containers and labeling, which must include lot numbers, THC concentration, and medically and scientifically accurate information about health and safety risks.
- Classes of marijuana, useable marijuana, and marijuana-infused products according to grade, condition, cannabinoid profile, THC concentration, or other qualitative measurements deemed appropriate.
- Reasonable time, place, and manner advertising restrictions not inconsistent with the initiative but taking into consideration federal laws relating to marijuana that are applicable within Washington and minimizing the exposure of persons under 21 years to such advertising.
- Transportation and delivery times, periods, manner, and means.
- Accrediting requirements for independent testing laboratories.
- Procedures for identifying, seizing, confiscating, and destroying marijuana that does not conform to standards.

Dedicated Marijuana Fund

The dedicated marijuana fund is created, consisting of all marijuana excise taxes, license fees, penalties, forfeitures, and all other moneys, income, or revenue received by the WSLCB from marijuana-related activities. The state treasurer is the custodian of the fund. The WSLCB or its duly authorized representative is charged with authorizing disbursements from the fund.

Disbursements must be made every three months as follows:

- \$125,000 to the Department of Social and Health Services (DSHS) for the Washington State Healthy Youth Survey;
- \$50,000 to the DSHS to contract with the Washington State Institute of Public Policy for cost-benefit evaluation of the initiative's implementation;
- \$5,000 to the University of Washington Alcohol and Drug Abuse Institute for public education materials regarding the health and safety risks posed by marijuana; and
- an amount not exceeding \$1.25 million to the WSLCB for administration.

Funds remaining are to be distributed as follows:

- fifteen percent to the DSHS for prevention and reduction of substance abuse among middle and high school age students;
- ten percent to the Department of Health for marijuana education and public health programs;
- six-tenths of 1 percent to the University of Washington and four-tenths of 1 percent to the Washington State University for research on short and long-term effects of marijuana use;
- fifty percent to the Basic Health Plan Trust Account;
- five percent to the Health Care Authority for primary health and dental care services, migrant health services, and maternity health care services;
- three-tenths of 1 percent to the Office of the Superintendent of Public Instructions for the Building Bridges program; and
- the remainder to the general fund.

Implied Consent

Implied consent laws are amended to specifically provide that any person who operates a motor vehicle in the state is deemed to have given consent to a test to determine the concentration of THC. Refusal to take the test results in revocation or denial of the driver's license for at least one year.

If a driver 21 years of age or older submits to the test and the THC concentration of the driver's blood is 5.00 or more, the driver's license must be suspended for at least 90 days. For a driver under 21 years of age, suspension for at least 90 days results if the test indicates that the THC concentration is above 0.00. License denial or revocation may also result, depending upon the circumstances.

Driving Under the Influence of Marijuana

A *per se* violation with respect to marijuana is created. A person is guilty of driving while under the influence if, within two hours after driving, the person has a THC concentration of 5.00 or higher as shown by analysis of the person's blood. Additionally, a person under 21 years of age is guilty of driving after consuming marijuana if the THC concentration, as shown by blood analysis, is above 0.00 but less than 5.0.

Effective Date: The initiative takes effect 30 days after the election at which it is approved.

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