
SENATE BILL 5467

State of Washington 64th Legislature 2015 Regular Session

By Senators Hatfield, Rivers, and Kohl-Welles

Read first time 01/22/15. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to providing a single point of excise taxation on
2 sales of recreational marijuana; amending RCW 69.50.535 and
3 69.50.334; adding a new section to chapter 69.50 RCW; providing an
4 effective date; and declaring an emergency.

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

6 **Sec. 1.** RCW 69.50.535 and 2014 c 192 s 7 are each amended to
7 read as follows:

8 (1) ~~((There is levied and collected a marijuana excise tax equal~~
9 ~~to twenty-five percent of the selling price on each wholesale sale in~~
10 ~~this state of marijuana by a licensed marijuana producer to a~~
11 ~~licensed marijuana processor or another licensed marijuana producer.~~
12 ~~This tax is the obligation of the licensed marijuana producer.~~

13 ~~(2) There is levied and collected a marijuana excise tax equal to~~
14 ~~twenty-five percent of the selling price on each wholesale sale in~~
15 ~~this state of marijuana concentrates, useable marijuana, and~~
16 ~~marijuana-infused products by a licensed marijuana processor to a~~
17 ~~licensed marijuana retailer. This tax is the obligation of the~~
18 ~~licensed marijuana processor.~~

19 ~~(3))~~ There is levied and collected a marijuana excise tax
20 ~~((equal to twenty-five percent of the selling price))~~ on each retail

1 sale in this state of marijuana concentrates, useable marijuana, and
2 marijuana-infused products, equal to the following rates:

3 (a) Until July 1, 2017, thirty-seven percent of the selling
4 price;

5 (b) Beginning July 1, 2017, through June 30, 2019, thirty percent
6 of the selling price; and

7 (c) Beginning July 1, 2019, and thereafter, twenty-five percent
8 of the selling price.

9 ~~((This tax is the obligation of the licensed marijuana~~
10 ~~retailer,)) (2) The tax imposed under this section is separate and in
11 addition to general state and local sales and use taxes that apply to
12 retail sales of tangible personal property, and is not part of the
13 total retail price to which general state and local sales and use
14 taxes apply.~~

15 ~~((+4))~~ (3) All revenues collected from the marijuana excise
16 taxes imposed under ~~((subsections (1) through (3) of))~~ this section
17 ~~((shall))~~ must be deposited each day in a depository approved by the
18 state treasurer and transferred to the state treasurer to be credited
19 to the dedicated marijuana fund.

20 ~~((+5))~~ (4) The taxes imposed in this section must be paid by the
21 buyer to the seller. Each seller must collect from the buyer the full
22 amount of the tax payable on each taxable sale. The taxes collected
23 as required by this section are deemed to be held in trust by the
24 seller until paid to the board. If any seller fails to collect the
25 taxes imposed in this section, or having collected the tax, fails to
26 pay it as prescribed by the board, whether such failure is the result
27 of the seller's own acts, or the result of acts or conditions beyond
28 the seller's control, the seller is, nevertheless, personally liable
29 to the state for the amount of the tax.

30 (5) The tax to be collected by the seller under this section must
31 be stated separately from the selling price, and separately from any
32 other tax collected from the buyer, in any sales invoice or other
33 instrument of sale. For purposes of determining the tax due from the
34 buyer under this section, it must be conclusively presumed that the
35 selling price quoted in any price list, sales document, contract, or
36 other agreement between the parties does not include the tax imposed
37 under this section.

38 (6) The definitions in this subsection apply throughout this
39 section unless the context clearly requires otherwise.

40 (a) "Board" means the Washington state liquor control board.

1 (b) "Retail sale" has the same meaning as in RCW 82.08.010.

2 (c) "Selling price" has the same meaning as in RCW 82.08.010,
3 except that when the product is sold under circumstances where the
4 total amount of consideration paid for the product is not indicative
5 of its true value, "selling price" means the true value of the
6 product sold as determined or agreed to by the board. For purposes of
7 this subsection:

8 (i) "Product" means marijuana, marijuana concentrates, useable
9 marijuana, and marijuana-infused products; and

10 (ii) "True value" means market value based on sales at comparable
11 locations in this state of the same or similar product of like
12 quality and character sold under comparable conditions of sale to
13 comparable purchasers. However, in the absence of such sales of the
14 same or similar product, true value means the value of the product
15 sold as determined by all of the seller's direct and indirect costs
16 attributable to the product.

17 (7) The (~~state liquor control~~) board (~~shall~~) must regularly

18 review the tax levels established under this section and make

19 recommendations to the legislature as appropriate regarding

20 adjustments that would further the goal of discouraging use while

21 undercutting illegal market prices.

22 **Sec. 2.** RCW 69.50.334 and 2013 c 3 s 7 are each amended to read

23 as follows:

24 (1) The action, order, or decision of the state liquor control
25 board as to any of the following is an adjudicative proceeding and
26 subject to the applicable provisions of chapter 34.05 RCW:

27 (a) Any denial of an application for the reissuance of a license
28 to produce, process, or sell marijuana(~~, or as to~~);

29 (b) Any revocation, suspension, or modification of any license to
30 produce, process, or sell marijuana(~~, shall be an adjudicative~~
31 proceeding and subject to the applicable provisions of chapter 34.05
32 RCW)); or

33 (c) The administrative review of a notice of unpaid trust fund
34 taxes under section 3 of this act.

35 (~~1~~) (2) An opportunity for a hearing may be provided to an
36 applicant for the reissuance of a license prior to the disposition of
37 the application, and if no opportunity for a prior hearing is
38 provided then an opportunity for a hearing to reconsider the
39 application must be provided the applicant.

1 ~~((+2))~~ (3) An opportunity for a hearing must be provided to a
2 licensee prior to a revocation or modification of any license and,
3 except as provided in subsection ~~((+4))~~ (6) of this section, prior
4 to the suspension of any license.

5 ~~((+3) No hearing shall be required)~~ (4) An opportunity for a
6 hearing must be provided to any person issued a notice of unpaid
7 trust fund taxes under section 3 of this act.

8 (5) A hearing may not be required under this section until
9 demanded by the applicant or licensee or person issued a notice of
10 unpaid trust fund taxes under section 3 of this act.

11 ~~((+4))~~ (6) The state liquor control board may summarily suspend
12 a license for a period of up to one hundred eighty days without a
13 prior hearing if it finds that public health, safety, or welfare
14 imperatively require emergency action, and it incorporates a finding
15 to that effect in its order. Proceedings for revocation or other
16 action must be promptly instituted and determined. An administrative
17 law judge may extend the summary suspension period for up to one
18 calendar year from the first day of the initial summary suspension in
19 the event the proceedings for revocation or other action cannot be
20 completed during the initial one hundred eighty-day period due to
21 actions by the licensee. The state liquor control board's enforcement
22 division ~~((shall))~~ must complete a preliminary staff investigation of
23 the violation before requesting an emergency suspension by the state
24 liquor control board.

25 NEW SECTION. **Sec. 3.** A new section is added to chapter 69.50
26 RCW under the subchapter heading "Article V" to read as follows:

27 (1) Whenever the board determines that a limited liability
28 business entity has collected trust fund taxes and has failed to
29 remit those taxes to the board and that business entity has been
30 terminated, dissolved, or abandoned, or is insolvent, the board may
31 pursue collection of the entity's unpaid trust fund taxes, including
32 penalties on those taxes, against any or all of the responsible
33 individuals. For purposes of this subsection, "insolvent" means the
34 condition that results when the sum of the entity's debts exceeds the
35 fair market value of its assets. The board may presume that an entity
36 is insolvent if the entity refuses to disclose to the board the
37 nature of its assets and liabilities.

38 (2)(a) For a responsible individual who is the current or a
39 former chief executive or chief financial officer, liability under

1 this section applies regardless of fault or whether the individual
2 was or should have been aware of the unpaid trust fund tax liability
3 of the limited liability business entity.

4 (b) For any other responsible individual, liability under this
5 section applies only if he or she willfully failed to pay or to cause
6 to be paid to the board the trust fund taxes due from the limited
7 liability business entity.

8 (3)(a) Except as provided in this subsection (3)(a), a
9 responsible individual who is the current or a former chief executive
10 or chief financial officer is liable under this section only for
11 trust fund tax liability accrued during the period that he or she was
12 the chief executive or chief financial officer. However, if the
13 responsible individual had the responsibility or duty to remit
14 payment of the limited liability business entity's trust fund taxes
15 to the board during any period of time that the person was not the
16 chief executive or chief financial officer, that individual is also
17 liable for trust fund tax liability that became due during the period
18 that he or she had the duty to remit payment of the limited liability
19 business entity's taxes to the board but was not the chief executive
20 or chief financial officer.

21 (b) All other responsible individuals are liable under this
22 section only for trust fund tax liability that became due during the
23 period he or she had the responsibility or duty to remit payment of
24 the limited liability business entity's taxes to the board.

25 (4) Persons described in subsection (3)(b) of this section are
26 exempt from liability under this section in situations where
27 nonpayment of the limited liability business entity's trust fund
28 taxes was due to reasons beyond their control as determined by the
29 board by rule.

30 (5) Any person having been issued a notice of unpaid trust fund
31 taxes under this section is entitled to an administrative hearing
32 under RCW 69.50.334 and any such rules the board may adopt.

33 (6) This section does not relieve the limited liability business
34 entity of its trust fund tax liability or otherwise impair other tax
35 collection remedies afforded by law.

36 (7) The definitions in this subsection apply throughout this
37 section unless the context clearly requires otherwise.

38 (a) "Board" means the Washington state liquor control board.

39 (b) "Chief executive" means: (i) For a corporation, the
40 president; or (ii) for an entity or organization other than a

1 corporation or if the corporation does not have a president as one of
2 its officers, the highest ranking executive manager or administrator
3 in charge of the management of the company or organization.

4 (c) "Chief financial officer" means: (i) For a corporation, the
5 treasurer; or (ii) for an entity or organization other than a
6 corporation or if a corporation does not have a treasurer as one of
7 its officers, the highest senior manager who is responsible for
8 overseeing the financial activities of the entire company or
9 organization.

10 (d) "Limited liability business entity" means a type of business
11 entity that generally shields its owners from personal liability for
12 the debts, obligations, and liabilities of the entity, or a business
13 entity that is managed or owned in whole or in part by an entity that
14 generally shields its owners from personal liability for the debts,
15 obligations, and liabilities of the entity. Limited liability
16 business entities include corporations, limited liability companies,
17 limited liability partnerships, trusts, general partnerships and
18 joint ventures in which one or more of the partners or parties are
19 also limited liability business entities, and limited partnerships in
20 which one or more of the general partners are also limited liability
21 business entities.

22 (e) "Manager" has the same meaning as provided in RCW 25.15.005.

23 (f) "Member" has the same meaning as provided in RCW 25.15.005,
24 except that the term only includes members of member-managed limited
25 liability companies.

26 (g) "Officer" means any officer or assistant officer of a
27 corporation, including the president, vice president, secretary, and
28 treasurer.

29 (h)(i) "Responsible individual" includes any current or former
30 officer, manager, member, partner, or trustee of a limited liability
31 business entity with unpaid trust fund tax liability.

32 (ii) "Responsible individual" also includes any current or former
33 employee or other individual, but only if the individual had the
34 responsibility or duty to remit payment of the limited liability
35 business entity's unpaid trust fund tax liability.

36 (iii) Whenever any taxpayer has one or more limited liability
37 business entities as a member, manager, or partner, "responsible
38 individual" also includes any current and former officers, members,
39 or managers of the limited liability business entity or entities or
40 of any other limited liability business entity involved directly in

1 the management of the taxpayer. For purposes of this subsection
2 (7)(h)(iii), "taxpayer" means a limited liability business entity
3 with unpaid trust fund taxes.

4 (i) "Trust fund taxes" means taxes collected from buyers and
5 deemed held in trust under RCW 69.50.535.

6 (j) "Willfully failed to pay or to cause to be paid" means that
7 the failure was the result of an intentional, conscious, and
8 voluntary course of action.

9 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
10 preservation of the public peace, health, or safety, or support of
11 the state government and its existing public institutions, and takes
12 effect July 1, 2015.

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