



## MEMORANDUM

**TO:** WPPA Members  
**FROM:** Brandi Vena, WPPA  
**DATE:** August 27, 2015  
**SUBJECT:** Recreational and Medical Marijuana Law: The Basics

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### Background

In 2012, the processing, production, sale, and use of recreational marijuana became legal in Washington State for persons 21 years of age and older through voter approval of Initiative 502. The law requires the substance to be heavily taxed and for the revenue generated from its sale to go to health care and substance abuse and prevention education. Growing or selling marijuana otherwise remains illegal under state law.

Use of marijuana for medical purposes has been legal in Washington since 1998. The law allowed patients with certain conditions to possess limited amounts of cannabis, provided these patients were able to secure a medical authorization certificate signed by a licensed medical professional.

The 2015 legislative session saw the passage of two bills that made changes to the underlying laws for both recreational and medical marijuana.

### State Law: The Basics

#### *General Licensing Guidelines*

Under RCW 69.50.331(1), the Washington State Liquor & Cannabis Control Board (WSLCCB) may do a full criminal history check on any applicant for a license to produce, process, research, transport, deliver, or sell useable marijuana, marijuana concentrates, or marijuana-infused products. Applicants who have experience operating or being employed in a collective garden and who have a history of paying all applicable taxes and fees are given priority when the WSLCCB grants the license.

Licenses will only be given to applicants who are at least 21 years old and have lived in Washington for at least 6 months. If a corporation, partnership, association, or the like is the applicant, it must have been formed under the laws of Washington in order to be eligible for a license.

The WSLCCB must inform the proper local jurisdiction in which the applicant seeks to site the marijuana establishment that there is an application pending. The local jurisdiction has the opportunity to object to the applicant or to the premises in writing.

### *Building Codes and Zoning*

The WSLCCB may not issue a license for any premises located within 1000 ft of a school or playground, recreation center, child care center, public park, public transit center, or library, BUT a city, county, or town can permit premises within 1000 ft, but no less than 100 ft, of any of those locations by enacting an ordinance authorizing such. The only exceptions are with regard to a school or playground; premises must remain at least 1000 ft from those locations. A city, county or town can also prohibit siting premises within areas that are zoned primarily residential or rural use with a minimum lot size of 5 acres or less<sup>1</sup>.

Building code enforcement will be done by the local government in charge of such enforcement and that local government must follow the procedures established in WAC 314-55. Signage for retail establishments is dictated by RCW 69.50.357(4).

### *State Taxation of Marijuana*

The legislature passed legislation during the 2015 legislative session which allowed for a portion of the excise tax on licensed marijuana to be shared with cities and counties that have licensed retail stores in their jurisdictions. The original law, passed in 2012, did not allow for this. The legislation also changed the tax structure of marijuana. Originally, marijuana was taxed at the production level, the processing level, and the retail level, each at 25%. In June 2015, that structure changed to a single tax of 37% at the retail level<sup>2</sup>.

### *Medical Marijuana*

Establishing the Cannabis Patient Protection Act was passed during the 2015 legislative session and revised several laws governing how medical marijuana is regulated. It went into effective on July 24, 2015. The Washington State Department of Health must now develop an authorization form for qualifying patients which will be issued by a doctor. Additionally, any authorized patient will be added to a database which allows for broader arrest protection

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<sup>1</sup> RCW 69.50.331(8) as amended by 2ESHB 2136 which went into effect on July 24, 2015.

<sup>2</sup> 2ESHB 2136, <http://lawfilesexternal.wa.gov/biennium/2015-16/Pdf/Bills/Session%20Laws/House/2136-S2.SL.pdf>

when the patient is in possession of certain amounts of plants, useable marijuana, or marijuana infused products. Those not in the database may still possess these products, but there are stricter limits on how much they can possess. The database is not subject to public disclosure<sup>3</sup>.

The WSLCCB will develop a medical marijuana endorsement for retail licensees which will allow retail establishments to carry and sell medical marijuana. Beginning in 2016, collective gardens will be banned and cooperatives are created instead. Cooperatives must be registered with WSLCCB, there are restrictions on the number of members of a cooperative, and a patient cannot participate in multiple cooperatives. Cooperatives are held to the same zoning restrictions as marijuana retail establishments.

#### *Employees and Personnel Issues*

Employers have the same rights under Washington laws as they did before cannabis became legal. Therefore employers can still test for marijuana so long as it is in accordance with their legally adopted personnel policies. Additionally, any employer that receives any federal funding must test under the Drug Free Workplace Act because marijuana remains illegal under federal law.

#### *Commercial Landlord/Tenant Lease Considerations*

State law has not been amended where landlord-tenant law and legal cannabis business operations intersect. There should be some consideration of the issue, however, given the potential of siting cannabis production facilities at public port districts. A separate memorandum on lease considerations can be found attached to this document.

### **Federal Law: The Basics**

In 2013, The United States Department of Justice issues a memorandum to its attorneys providing guidance on how marijuana-related crimes can be prosecuted. This document is called Cole Memo I. It reiterates that the use and possession of marijuana remains illegal under Federal Law. The memorandum also gives its attorneys discretion to refrain from pursuing prosecution against state regulated marijuana activities that do not interfere with the Department's 8 priorities:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale from going to criminal enterprises;

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<sup>3</sup> 2SSB 5052, <http://lawfilesexxt.leg.wa.gov/biennium/2015-16/Pdf/Bills/Session%20Laws/Senate/5052-S2.SL.pdf>

- Preventing the diversion of the drug from states where it is legal to those where it is not;
- Preventing state-authorized activity from being used as a pretext or cover for illegal activity;
- Preventing violence and use of firearms in the cultivating and use of the drug;
- Preventing adverse public health consequences;
- Preventing grows on federal public lands; and
- Preventing possession or use on federal property.

Where states and local governments in which marijuana is legal “implement strong and effective regulatory and enforcement systems that will address the threat . . . to public safety, public health, or other law enforcement interests,” the federal priorities are less likely to be threatened, and the federal government will let state and local enforcement bodies remain the primary means of addressing marijuana related activity.