

Legalized Cannabis in Washington State

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WSLCB implemented I-502

- Nov 2012 – I-502 passed
- Jan-Feb 2013 – Board held statewide public forums
- Oct 6, 2013 – rules adopted
- Nov-Dec 2013 – 7,000+ applications received in 30-day window
- April 2014 – lotteries for 334 store licenses
- March 5, 2014 – 1st producer licenses issued
- July 7, 2014 – 1st store licenses issued

Federal Response

Department of Justice Memorandum to United States Attorneys (Aug. 2013-Jan. 2018)

- Applies to all states.
- 8 priorities “will continue to guide the Department’s enforcement of the CSA against marijuana-related conduct.”
- “If state enforcement efforts are not sufficiently robust to protect against the harms, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.”

Federal Priorities

1. Preventing the distribution of marijuana to minors
2. Preventing revenue from going to drug gangs
3. Preventing diversion of marijuana to other states
4. Preventing cover operations for trafficking other drugs



Federal Priorities

5. Preventing violence
and use of firearms



6. Preventing drugged driving and adverse health
effects

7. Preventing growing
on public lands



8. Preventing marijuana possession or use on federal
property

Public Health

- Quality assurance testing
 - WSLCB accredited 3rd party testing labs
- THC extraction
 - Professionally certified closed loop systems
- Food safety
 - WSDA / FDA / USDA food safety rules inapplicable – adulterated
 - WSLCB rules: hazardous foods may not be infused
- Edibles
 - Limited to 10 mg THC per serving & 10 servings per product
 - Each serving must be individually packaged

Litigation

Administrative appeals of license denials

- Admin hearings mostly on denials for all license types, involving issues such as:
 - criminal history
 - 1000' buffers
 - prioritization of applications for processing
 - changes of ownership

Administrative appeals of enforcement actions

- Admin hearings on citations to licensees issued by WSLCB Enforcement Officers
 - traceability violations
 - security cameras not on
 - sale or service to minor
 - other violations

Challenge to taxes

- *Nickerson v. Dep't of Revenue*, 196 Wn.App. 1054 (2016)
- COA Div. II held in unpublished opinion:
 - “(1) the CSA does not preempt DOR’s collection of retail and B&O taxes for medical marijuana sales because such tax collection does not create a positive conflict with the purpose of the CSA as required for preemption under 21 U.S.C. § 903”
 - “(2) filing tax returns and paying retail sales and B&O taxes does not violate Nickerson’s Fifth Amendment right against self-incrimination because those actions do not require Nickerson to divulge any incriminating information”

Challenge to DUI threshold

- *City of Kent v. Cobb*, 196 Wn. App. 1043 (2016)
 - Cobb convicted of driving w/>5.0 ng/ml THC
 - Cobb appealed, alleging DUI THC standard violates due process
 - WA AGO filed amicus brief
 - COA Div. II affirmed conviction in unpublished opinion, holding THC standard not impermissibly vague
 - State Supreme Court denied pet for review

Challenges to WSLCB rules

- Many unsuccessful challenges to rules
- Examples - 2 mirror-image lawsuits:
- Licensed retail stores challenged WSLCB licensing process for new stores as too lenient
- In a mirror-image lawsuit, applicants challenged WSLCB licensing process for new stores as too strict

Local government / neighbor challenges to WSLCB licenses

- Local governments challenged WSLCB licenses
 - alleged parks w/in 1000'
 - local licensing/zoning ordinances require compliance with fed. law
- Neighbor challenged WSLCB license
 - alleged youth center w/in 1000'

Thank you

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