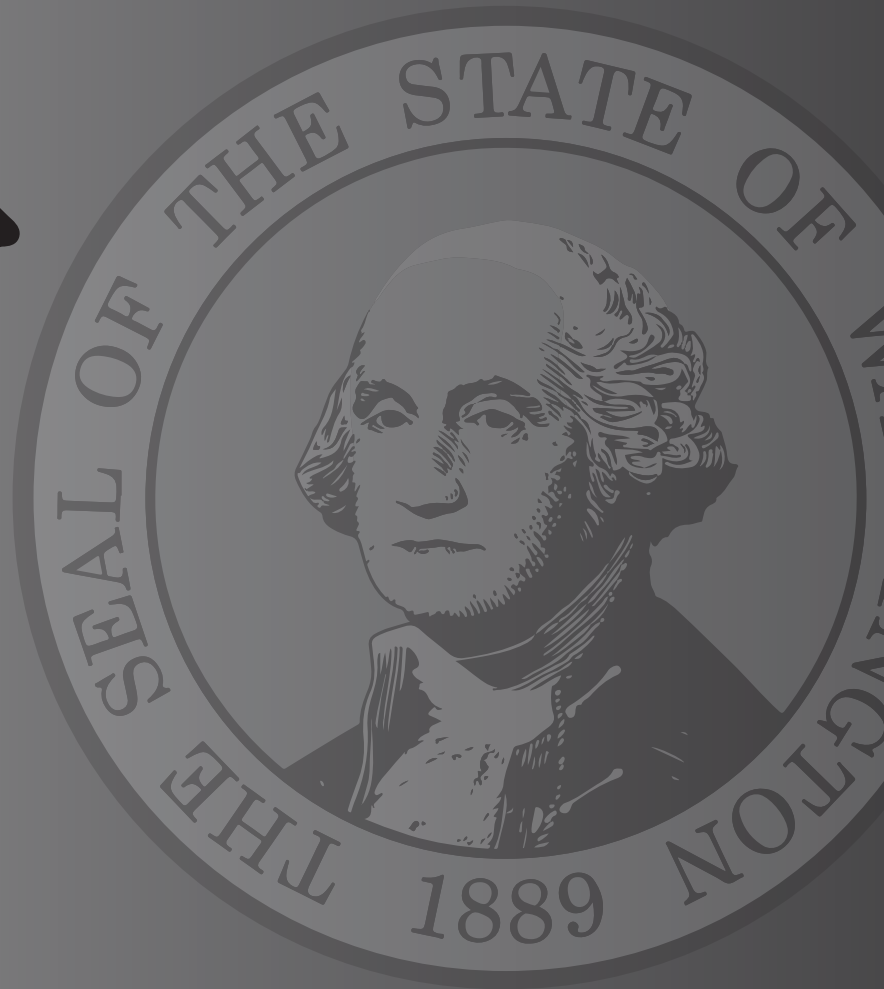




Washington State Liquor and Cannabis Board



Marijuana Legalization in Washington State

February 2018

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Contact Information

General Information	360-664-1600
Board Office	360-664-1717
Director's Office	360-664-1730
Enforcement and Education	360-664-1731
Licensing and Regulation	360-664-1718
Human Resources	360-664-1785
Information Technology	360-664-1744
Finance	360-664-1766



**Washington State
Liquor and Cannabis Board**

3000 Pacific Ave. S.E.
Olympia, WA 98501
(360) 664-1600 • lcb.wa.gov

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Washington State Liquor and Cannabis Board

February 2018

On November 12, 2012, Washington State voters enacted Initiative 502 regarding “marijuana reform” by a margin of 56 percent to 44 percent. By doing so, Washington and Colorado became the nation’s first two states to decriminalize the possession of limited amounts of marijuana and establishing a system for legally producing, processing, and retailing marijuana.

I-502 tasked the then-named Washington State Liquor Control Board to be the primary agency for creating the regulatory framework that would govern Washington’s system. The agency was chosen by the initiative drafters because it was based on Washington’s alcohol regulatory structure, a system the agency has regulated for over 80 years. While the agency’s experience with alcohol proved critical over time, there was no blueprint for creating a regulatory system that was federally illegal and subsequently lacking research and resources.

Washington’s system is centrally based on the guidance provided by a federal Department of Justice memo issued in August 2013. The “Cole Memo” outlined eight enforcement guidelines that specified the federal government’s interest in states that have legalized marijuana. Those eight guidelines could be further narrowed to three public safety themes: preventing youth access to marijuana, preventing the criminal element from participation in the system, and preventing diversion of product out of state.

In January 2018, the Department of Justice issued a new memo on federal marijuana enforcement policy announcing a “return to the rule of law and the rescission of previous guidance documents.” In the memorandum, United States Attorney General Jeff Sessions directed all U.S. Attorneys to “enforce the laws enacted by Congress and to follow well-established principles when pursuing prosecutions related to marijuana activities.”

Despite the rescission of the guidance memos, Washington State continues to carry out the public safety themes of the original Cole Memo. Despite tightly regulating a marketplace and generating needed revenue for the state, challenges remain. Most importantly, marijuana remains a Schedule 1 controlled substance by the federal government. The determination affects all aspects of state systems from banking to research to consumer safety.

Washington’s system continues to evolve and mature since the passage of I-502. State laws have reigned in the unregulated medical marijuana marketplace to align with the tightly regulated recreational market, new restrictions on advertising will lessen youth exposure, and the former Liquor Control Board is now named the Liquor and Cannabis Board to better represent the breadth of products under our purview. And, in April 2017, regulators from states that have legalized recreational marijuana – Washington, Oregon, Alaska, and Colorado – met for the first time to discuss common issues and to make plans for collaboration in the future.

It is our hope that this publication will provide an informative snapshot of Washington’s system today. Washington is a pioneer and national leader in many industry sectors, the marijuana sector is among the latest where our state can be an example.

Sincerely,

Rick Garza
Director

Jane Rushford
Board Chair

Ollie Garrett
Board Member

Russ Hauge
Board Member

Washington State Marijuana Legalization Timeline

1998

Medical Marijuana Initiative (I-692)

- Initiative 692: Created an affirmative defense to the violation of state laws relating to marijuana usage and possession for medicinal purposes.
- Qualifying patients or their designated primary caregivers may establish the defense if they possess only the amount of marijuana necessary for their personal use, up to a 60-day supply, and if they present valid documentation from a physician to law enforcement officers.

2011

Senate Bill 5073

- Senate Bill 5073: Established a regulatory system to license the production and distribution of marijuana intended for medicinal use.
- Many portions of the bill were vetoed because of concerns regarding potential federal prosecution of state employees involved with the system.
- The authorization for patient home grows and collective gardens was not vetoed, and that provision gave rise to the statewide expansion of an unregulated gray market.

2012

Initiative 502

- Established a comprehensive regulatory structure for the licensing and taxation of marijuana production, processing and retail access.
- Authorized possession of marijuana for personal use for persons age 21 and older:
 - 1 ounce of useable marijuana;
 - 16 ounces of marijuana in solid form;
 - 72 ounces in liquid form;
 - 7 grams of marijuana concentrate.

2016

Alignment of Medical and Recreational Markets

- Per the 2015 Cannabis Patient Protection Act (SB 5052), the largely unregulated medical marijuana system (gray market) aligns with the tightly regulated, state-licensed recreational market on July 1, 2016.
- Medical patients access the products that they want through multiple channels
 - Medically endorsed retail stores
 - Four-member co-ops registered with the WSLCB
 - Homegrown (Authorized patients may grow a limited number of plants at home)

Federal Enforcement Guidelines

Washington's system is centrally based on the guidance provided by a United States Department of Justice memo issued in August 2013. The "Cole Memo" outlined eight enforcement guidelines that specifies the federal government's interest in states that have legalized marijuana. Those eight guidelines could be further narrowed to three public safety themes: preventing youth access to marijuana, preventing the criminal element from participation in the system, and preventing diversion of product out of state.

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Eight Guidelines:

- 1 Preventing distribution to minors;
- 2 Preventing the revenue from going to criminal enterprises, gangs and cartels;
- 3 Preventing the diversion of marijuana from states where it is legal to other states;
- 4 Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- 5 Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- 6 Preventing drugged driving and other adverse public health consequences associated with marijuana use;
- 7 Preventing the growing of marijuana on public lands and the environmental dangers posed by marijuana production on public lands;
- 8 Preventing marijuana possession or use on federal property.

Elements of I-502

Initiative 502 was written to reduce the amount of law enforcement resources used on adults who use marijuana and redirect them towards bigger threats facing Washington's communities. To achieve this, a tightly regulated system was created to reduce the illicit market, take money away from criminal enterprises and generate tax revenue for state and local governments.



Agency Objective

- Create a tightly controlled and regulated marijuana market that reduces youth access and limits the black market.

Key Elements of the Initiative

- Establish a legalized system of producing, processing and retailing marijuana for adults age 21 and older.
- Decriminalizes possession of one ounce of marijuana:
 - One ounce of useable marijuana (flower);
 - Seven ounces marijuana concentrate/extract for inhalation;
 - 16 ounces in solid form; and
 - 72 ounces in liquid form.
- Creates three-tier system of licensing, regulation and taxation similar to alcohol:
 - Producer license (grower);
 - Processor license (prepares for retail); and
 - Retail license (marijuana only stores).
- Taxation:
 - Imposes excise tax rate of 37 percent on final marijuana sales.
- Public Safety and Education:
 - Establishes a THC bloodstream threshold for marijuana DUI's;
 - 21 and older – 5.0 nanograms;
 - Under 21 – 0.0 nanograms;
 - Limits on store locations, advertising and number of outlets to reduce exposure;
 - Prohibits public display/consumption of marijuana;
 - Prohibits home growing marijuana for recreational consumers; and
 - Earmarks revenue for healthcare, research and education.

State Government Funding

I-502 earmarked revenue for health and education resources. In 2016 the law was amended to allow the legislature to direct distribution amounts and recipients (recipients remain unchanged).

Key WSLCB Regulations

While the law itself provides the framework for Washington's system, the details are found in the regulations. The state's rules are crafted to meet the terms of the Cole Memo. They are constantly being modified to strike the balance between public safety and business needs of a maturing industry sector.

Estimated Net to Distribute		\$159,499,900	\$291,434,209	\$350,446,440
Agency	For	FY 16	FY 17	FY 18
Dept. of Social and Health Svcs.	Prevention and reduction of substance abuse	\$12,814,000 (8 percent)	\$27,786,000 (9.5 percent)	\$27,786,000 (7.9 percent)
Dept. of Health	Marijuana education and public health program	\$7,500,000 (4.7 percent)	\$7,500,000 (2.6 percent)	\$9,761,000 (2.8 percent)
University of Washington	Research on short- and long-term effects	\$207,000 (.13 percent)	\$207,000 (.07 percent)	\$227,000 (.08 percent)
Washington State University	Research on short- and long-term effects	\$138,000 (.09 percent)	\$138,000 (.05 percent)	\$138,000 (.04 percent)
	Basic Health Trust Fund Account	\$79,750,000 (50 percent)	\$145,717,000 (50 percent)	\$170,000,000 (48.5 percent)
WA Health Care Authority	Contracts with community health centers	\$7,791,000 (4.9 percent)	\$12,979,000 (4.5 percent)	\$16,205,000 (4.6 percent)
Supt. of Public Instruction	Drop-out prevention	\$251,000 (.16 percent)	\$511,000 (.18 percent)	\$513,000 (.15 percent)
General Fund		\$51,048,900 (32 percent)	\$96,596,209 (33.1 percent)	\$120,000,000 (34.2 percent)

Licensing Regulations

- All licensees must meet strictly controlled on-site security requirements:
 - Strict surveillance and transportation requirements; and
 - Robust traceability software system that tracks inventory from start to sale.
- Criminal history investigation:
 - All parties, including spouses; and
 - FBI background checks.
- Financial background check on all licensees:
 - Identifies source of funds.
- Residency investigation:
 - Applicants must be state residents for at least six months.
- Tough penalty guidelines for public safety violations including loss of license.
- Restricting certain advertising that may be targeted at children.
- Property must be more than 1,000 feet from: schools, child care centers, transit centers, game arcades, libraries, playgrounds, public parks:
 - With the exception of elementary and secondary schools and playgrounds, local jurisdictions may allow by ordinance a reduction in the 1000-foot buffer zone to a minimum 100 feet.

Consumer Safety Regulations

WSLCB regulations provide a heightened level of consumer safety than has previously existed.

- Packaging and label requirements including serving size and warnings;
- Child-resistant packaging for marijuana in solid and liquid forms;
- All products lab tested;
- Defined serving sizes and package limits;
- Store signage requirements to educate customers; and
- Partnered with the Washington State Department of Agriculture to establish a lab dedicated to WSLCB testing priorities.

Retail Marijuana Packaging, Labeling and Advertising Requirements

- All marijuana-infused products must be approved by a panel of WSLCB staff to determine if the product and/or packaging is especially appealing to children;
- Processors are limited in the types of food or drinks they may infuse with marijuana to create an infused edible product;
- Any food that requires refrigeration, freezing, or a hot holding unit to keep it safe for human consumption may not be infused with marijuana;
- All commercial kitchens for edible products must first be approved by the Washington State Department of Agriculture;
- Marijuana-infused products that are especially appealing to children, such as, but not limited to, gummy candies, lollipops, cotton candy, or brightly colored products, are prohibited.

Seed to Sale Traceability System

Washington uses a robust and comprehensive software system that traces product from start to sale. Licensees must report significant milestones and changes to the traceability system which allows the LCB to monitor and track any plant or product at any time. LCB enforcement can match records to actual product on hand.

Accurately tracking licensee transactions and products is a major public safety component of Washington's regulatory system.



Pesticide Testing Lab

Testing for pesticides is complex and costly. Laboratories need specialized equipment and highly-trained scientific staff to perform the tests. In 2016, the WSLCB partnered with the Washington State Department of Agriculture (WSDA) to test for illegal pesticides on marijuana.

The WSLCB purchased the specialized equipment for WSDA to test for pesticides and provided initial and ongoing funds for two WSDA employees and costs of operations. WSDA's lab will be dedicated to pesticide testing for the WSLCB.

Marijuana Servings and Transaction Limits

- 10 milligrams of active THC, or Delta 9, equals a single serving of a marijuana-infused product.
- The maximum number of servings in any one single unit of marijuana-infused product is 10 servings or 100 milligrams of active THC, or Delta 9.

Not for Kids Warning Symbol

The "Not for Kids" warning symbol was developed by the Washington Poison Center as a deterrent for children who may access adult-only products, such as edible marijuana products, purchased by adults in their home. The WSLCB requires all edible products carry the symbol on the main display area of the package.



Public Safety

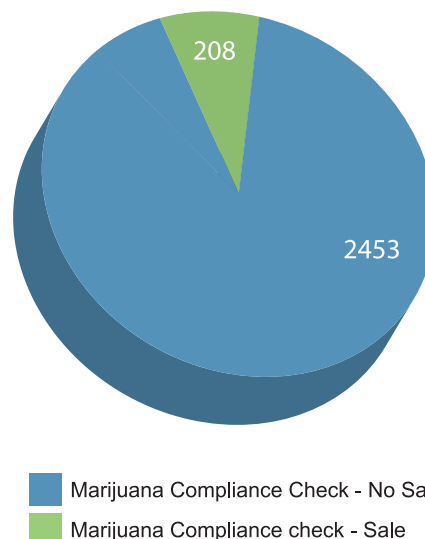
Public safety is the agency's number one priority when it comes to marijuana regulation. The Board utilizes a variety of tactics to ensure public safety, including compliance checks, unannounced premise checks, robust traceability system to monitor products and a tight regulatory structure.

Compliance Checks

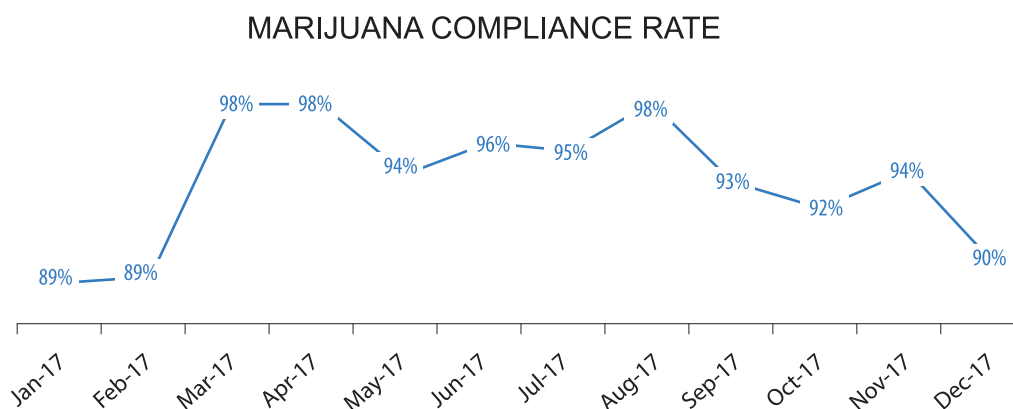
The WSLCB conducts compliance checks, using an underage investigative aide to attempt purchase of marijuana retailers. Compliance checks are a proven tool to reduce underage access.

Marijuana retailers have a 91 percent compliance rate, which compares favorably to the 83 percent compliance rate in the alcohol industry.

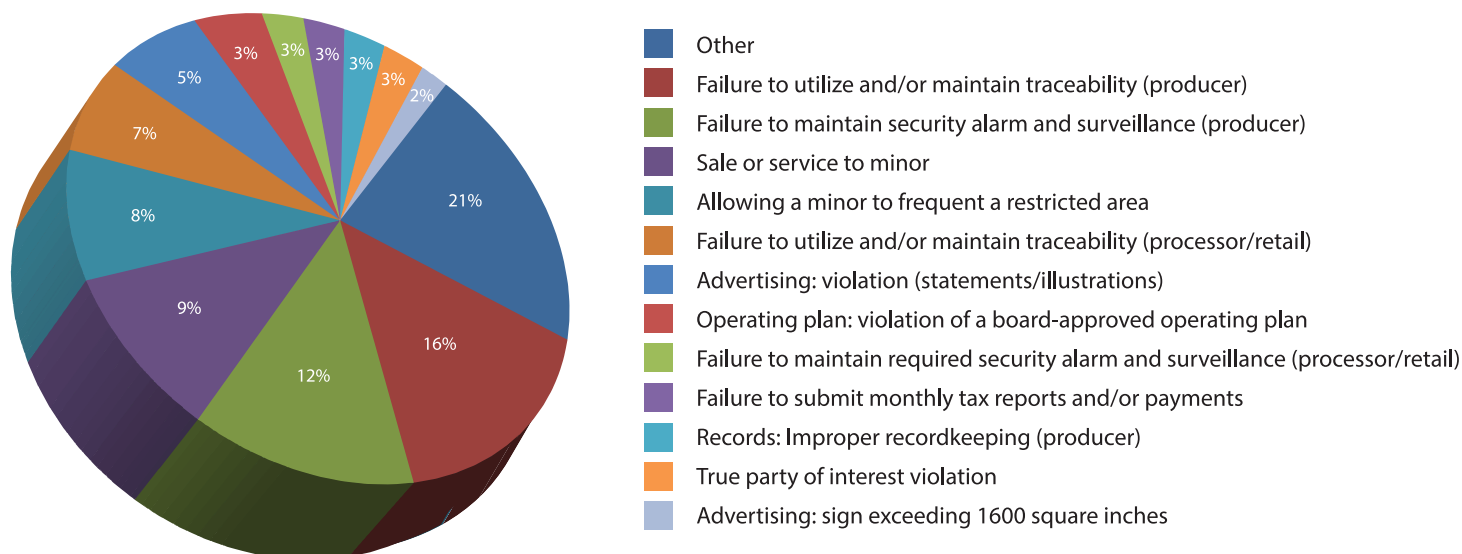
Total Compliance Check Results (since July 2015)



Marijuana Retailer Compliance Check Pass Rate by Month



Total Marijuana Violations by Type (since July 2015)



Public Safety Partnerships

The WSLCB's number one priority is public safety. In addition to enforcing marijuana laws and regulations at licensed businesses, the agency works closely with local law enforcement agencies to illegal grow operations.

Prior to the July 1, 2016 alignment of the tightly regulated recreational market with the unregulated medical market, the WSLCB teamed with county prosecutors, local law enforcement and other state agencies to ensure a smooth transition.

Preparations in place for July 1 alignment of medical and recreational marijuana systems

State and local government communicating in advance of deadline

OLYMPIA – Preparations made by state agencies, local government, law enforcement and prosecutors will help further a smooth merger of the unregulated medical marijuana market with the tightly regulated recreational system on July 1, 2016.

Representatives from the state Department of Health (Health), the state Liquor and Cannabis Board (WSLCB), the state Departments of Revenue, Agriculture, Financial Institutions as well as the state Attorney General's Office, state Treasurer, and Washington State Patrol have met regularly to communicate and prepare. In addition, representatives of the Washington State Association of Sheriffs and Police Chiefs, the Association of Washington Cities, and the Washington State Association of Prosecutors recently joined the conversations about coordinating plans before and after July 1.

Liquor and Cannabis Board Enforcement Officers seize marijuana from illegal grow in Tacoma

OLYMPIA – Washington State Liquor and Cannabis Board officers served a search warrant April 14, 2017 on a Tacoma residence that was growing marijuana without a license. The illegal grow was located at 5018 North 9th Street, Tacoma WA, less than three blocks from Wilson High School.

LCB Enforcement officers identified and seized 438 plants, nearly half of which were within days of harvest, dried flower, approximately five pounds of bubble hash, and other marijuana products being processed for sale. In addition to the marijuana products officers seized clones, grow lights, ballasts, fans, and a firearm with the serial number filed off.



Marijuana seized as evidence.



WSLCB officers seizing plants from an illegal marijuana grow site.



WSLCB evidence storage facility.



Local power utility addressing power theft at an illegal marijuana grow.

System Today

Washington's tightly regulated marijuana market is a billion dollar industry that generates hundreds of millions of dollars in revenue for the state. Sales, revenue and access to continue to increase, exceeding economic forecast projections. Revenue is distributed to a variety of places including health and prevention efforts; Washington has not seen an increase in the rate of youth consumption despite the increased availability of marijuana.

Sales

All retail licensees are required to remit an excise tax of 37 percent on all taxable sales of marijuana, non-retail sales are not taxed. Excise tax generated is distributed to public health, education and regulation efforts.



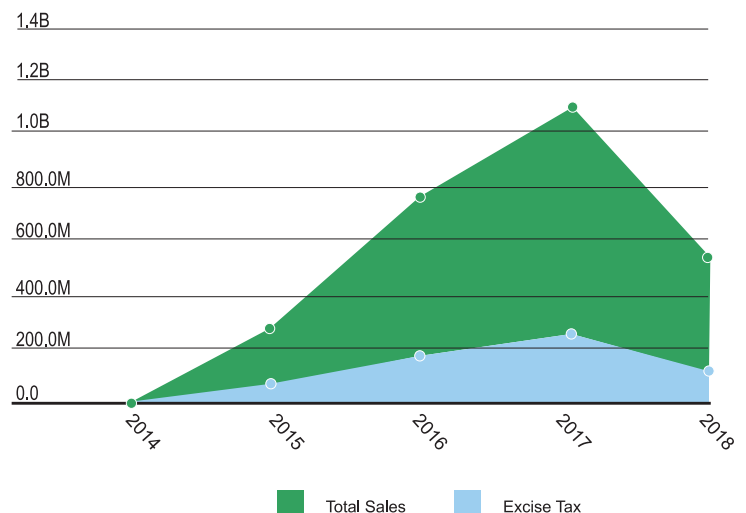
Enforcement officers work closely with licensees to ensure regulations are followed.

Marijuana Sales and Excise Tax (FY2014-2018)

Fiscal Years Run from July 1 to June 30

FY	Total Sales	Excise Tax
2014	6300	1,575
2015	259,524,430.41	64,881,111.46
2016	786,404,467.45	185,669,140.99
2017	1,371,862,186.37	314,839,660.49
2018	534,064,362.85	120,615,211.27

(Figures are current through Oct. 2017)



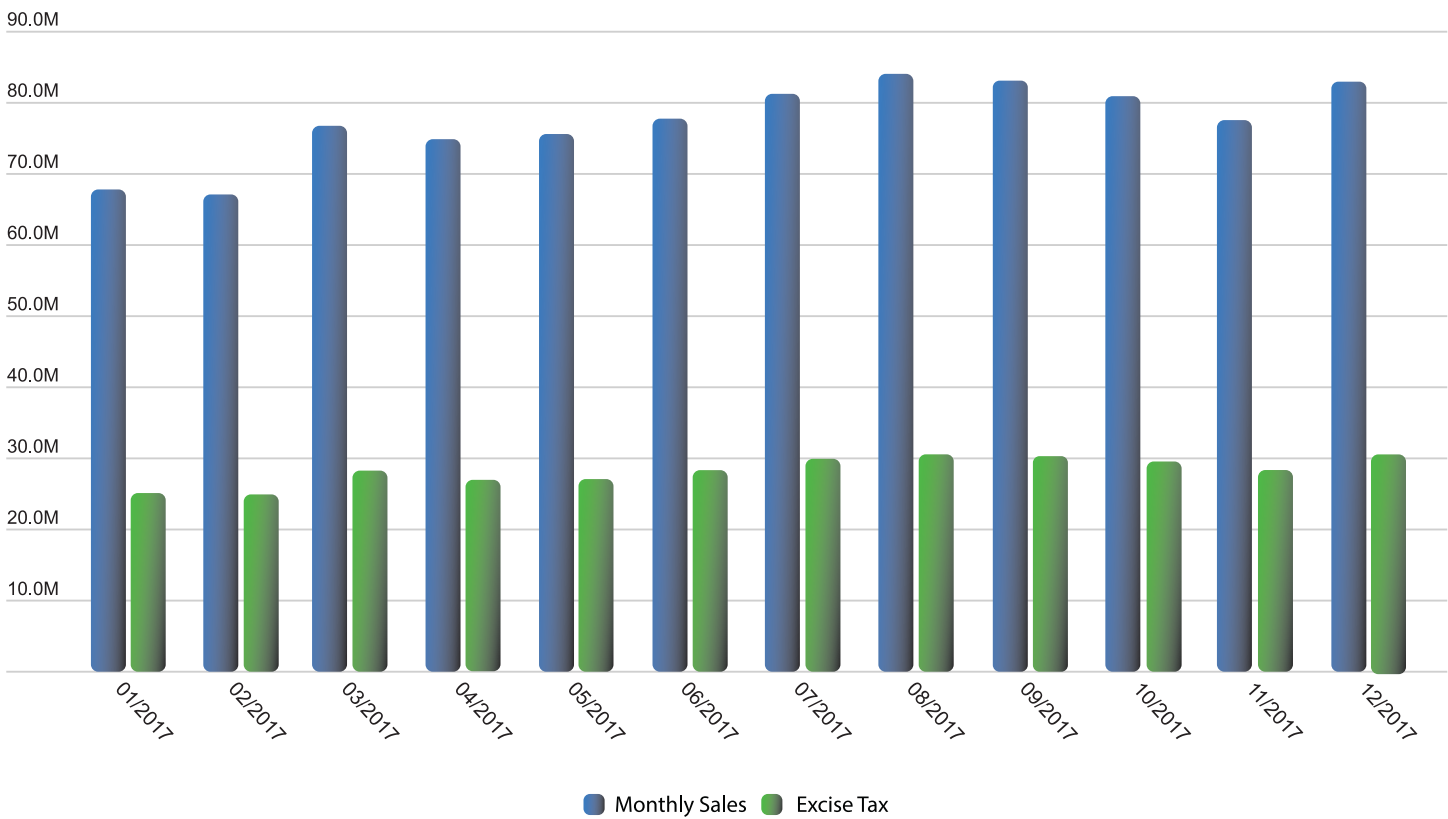


525 Retail locations (as of 2/21/18)



1377 Producers and Processors (as of 2/21/18)

Retail Marijuana Sales and Excise Tax (over last 12 months)

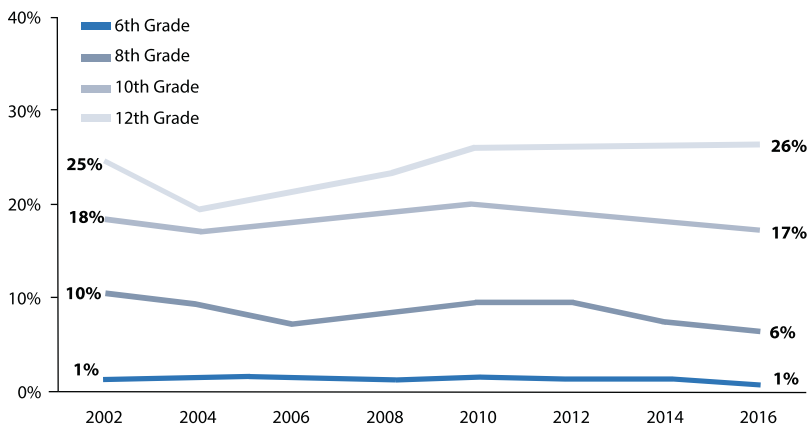


Healthy Youth Survey: Youth Marijuana Use

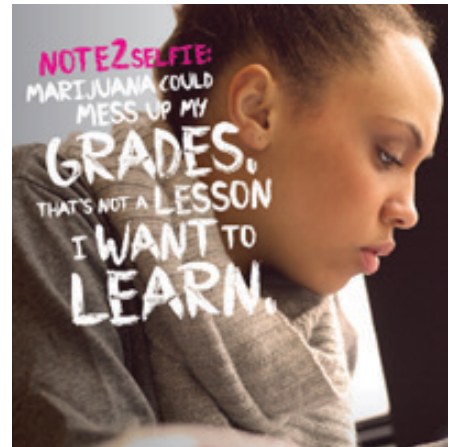
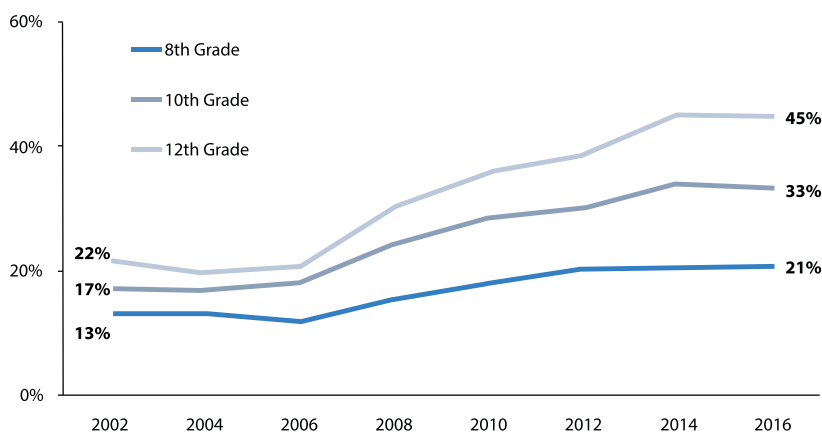
The Healthy Youth Survey is taken every two years by students in grades 6, 8, 10, and 12 in almost 1,000 public schools in Washington. More than 200,000 youth took part in the most recent survey by answering a wide variety of questions about their health and health behaviors.

- Based on the WA State Healthy Youth Survey, rates of youth marijuana use have remained mostly steady since legalization in 2012.
- Perception that regular use of marijuana has “no risk” or “slight risk” increased. (WA State Healthy Youth Survey).

Used marijuana during the past 30 days



Regular use of marijuana has “no risk” or “slight risk”



Prevention

Prevention and education efforts are very important to keep youth use rates low while access and exposure to advertising increases where marijuana is legal. At the same time, promoting responsible adult use aids in preventing other adverse health effects such as drugged driving, poisonings, etc.

Marijuana excise tax revenues have contributed to the ability to expand resources for both the Departments of Health and Social Health Services, including:

- Increased support for and expansion of community- and school-based services for youth prevention and education;
- Training in research-based prevention and treatment programs;
- Prevention and treatment grants to Tribes;
- Media-based educational campaigns;
- Drugged driving prevention media campaigns;
- Increase in youth treatment services;
- Expansion of a substance abuse hotline; and
- Development of resource materials for distribution.

Native American Tribes and Marijuana

When the United States Department of Justice rescinded the Cole Memo and previously issued guidance documents in January 2018, among those rescinded was “the Wilkinson Memo” that stated the federal government reserved the same enforcement priorities found in the Cole memo, within Indian Country. Washington State licensees and compacted tribes continue to operate under the principles of the former Cole Memo.

In 2015, a new state law authorized the Governor to enter into agreements with federally recognized Indian tribes concerning marijuana. The WSLCB was delegated the power to negotiate these agreements. Any marijuana agreement relating to the production, processing, and sale of marijuana on tribal lands, whether for recreational or medical purposes, must address the following issues:

- Preservation of health and safety;
- Ensuring the security of production, processing, retail and research facilities; and
- Cross-border commerce in marijuana.

All compacting agreements must include a tribal marijuana tax equal to 100 percent of state and local taxes on sales of marijuana to any non-tribal persons or entities.

Since the authorizing legislation nine compacts been reached between the state and tribes: the Suquamish Tribe, the Squaxin Island Tribe, the Puyallup Tribe, the Muckleshoot Tribe, the Port Gamble S’Klallam Tribe, Samish Tribe, the Swinomish Tribe, the Stillaguamish Tribe, and the Tulalip Tribe. As of February 2018, five additional tribes are negotiating for compacts.

Current Challenges

Washington State navigated uncharted territory in developing its marijuana regulation system. Despite the many challenges it faced, the system today is working.

Two goals of Initiative 502 were to bring tight regulation to the illicit marijuana market and generate needed revenue for the state. At last estimate, the marijuana industry has largely transformed from an illicit market enterprise to a legal functioning industry that has generated over \$730 million in revenue since July 2014. Over 30 states and nations have visited Washington to learn about our system as well as learn from our experience.

While Washington has been largely successful, challenges remain. Looking ahead, the below challenges present obstacles to public safety, youth exposure and continued inroads into eliminating the illicit market.



Nine compacts have been reached between the state and Washington Tribes.

Federal Law

Marijuana remains a Schedule 1 controlled substance at the federal level. Its designation as Schedule 1 restricts or prohibits many important services that are available to other industries.

For example:

- Federal banking laws prevent marijuana businesses from opening accounts. Without access to banks, many businesses must operate on a cash-only basis.
- Many federal agencies provide research and guidance to agriculture sectors. There is virtually no federally-funded research on marijuana crops and the use of pesticides due to the Schedule 1 designation.
- Further, with the rescinding of the federal guidance memos, without a change in law there is significant uncertainty surrounding federal enforcement priorities. I-502 created the opportunity for marijuana businesses to operate within a tightly regulated system, pay taxes, and conduct business with transparency. Yet, the industry faces the threat of federal prosecution at any time.



WSLCB and Dept. of Agriculture Pesticide Testing Facility in Yakima, WA.



Recreational marijuana retail environment.

Advertising

The number one complaint to the WSLCB regards advertising violations. Despite steady communication with industry members, enforcement officers spend an inordinate amount of time addressing advertising violations. A new advertising law was enacted by 2017 legislation further clarifying restrictions but it is still too early to determine its effect.

Bans and Moratoria

In 2015 Washington State Attorney General Robert Ferguson issued an official Attorney General's Opinion that because I-502 was silent on bans and moratoria of marijuana businesses, local governments have the option of banning marijuana businesses within their jurisdiction. Later, the courts agreed and upheld local bans. Today there are roughly 59 bans and 17 moratoria statewide. This patchwork of bans and moratoria furthers the ability of the illicit market to continue in places where legal avenues are not available.



Banking services remain limited for marijuana licensees.



Recently prohibited billboard in Washington State.

Washington State Liquor and Cannabis Board

Mission

Promote public safety and trust through fair administration and enforcement of liquor, cannabis, tobacco, and vapor laws.

lcb.wa.gov