



Washington State Liquor and Cannabis Board

To: David Postman, Board Chair
Ollie Garrett, Board Member
Russ Hauge, Board Member

From: Kathy Hoffman, Policy and Rules Manager

Date: July 7, 2021

Copy: Rick Garza, Agency Director
Toni Hood, Deputy Director
Justin Nordhorn, Director of Policy and External Affairs
Chandra Brady, Director of Enforcement and Education
Becky Smith, Licensing Director

Subject: Request for approval to rescind Board Interim Policy (BIP) 04-2018 regarding Title Certificates for retail cannabis [marijuana] licensees in jurisdictions where ordinances prohibit cannabis sales

In April 2018, Board Interim Policy (BIP) 04-2018 was approved to allow retail cannabis licensees who are legally prohibited from opening stores in jurisdictions where local ordinances prohibit cannabis sales to apply for a Title Certificate. Since the legalization of cannabis by the passage of Initiative 502 in 2012, some local jurisdictions have passed moratoria, bans, restrictive zoning laws, reduced allocations, and placed other prohibitions on the retail sale of cannabis. In some areas, these local ordinances have prevented retail licensees from opening.

Washington state law requires retail cannabis licensees to follow all license requirements whether able to open or not, such as having a qualifying location and fulfilling security requirements, reporting sales, and maintaining insurance. BIP 04-2018 was created to allow retail cannabis licensees who are located in jurisdictions where local authorities prohibit stores from opening to apply for a Title Certificate instead. Under the BIP, Title Certificate holders are not required to maintain certain retail cannabis license requirements related to maintaining a physical location, security, traceability, annual license fees, insurance, and sales reporting, as long as other requirements are met. Title Certificate holders are also required to reinstate their license within 6 months of their jurisdiction allowing retail cannabis licensees to open stores.

This BIP was designed to be rescinded upon the adoption of permanent rules. It also contains a statement that the agency will reevaluate the need for Title Certificates after four years of the date of BIP 04-2018 approval, or on or before 04-2022. The agency has reviewed the existing BIP, and determined that converting it to a policy statement was appropriate. While the majority of the policy statement renews BIP 04-2018, it primarily removes the Title Certificate maximum validity date of four years. Other revisions include streamlining and clarification. As a result, BIP 04-2018 is no longer necessary.

If the Board approves rescission of BIP 04-2018, the agency will file Policy Statement PS21-03 with the Office of the Code Reviser to supersede and replace previous agency guidance concerning this topic.

The Board approves/disapproves the rescission of BIP 04-2018.

Approve Disapprove



David Postman, Chair

7.7.2021

Date

Approve Disapprove



Ollie Garrett, Board Member

7.7.2021

Date

Approve Disapprove



Russ Hauge, Board Member

7.7.2021

Date



Liquor and Cannabis Board Interim Policy BIP-04-2018

Subject: Title Certificates for retail cannabis licensees in jurisdictions where ordinances prohibit cannabis sales

Effective Date:

Ending Date: Upon adoption of rules to implement this policy

Approved:



Jane Rushford, Board Chair

NOT PRESENT

Russ Hauge, Board Member



Ollie Garrett, Board Member

Purpose:

Since the legalization of cannabis by the passage of Initiative 502 in 2012, some local jurisdictions have passed moratoria, bans, restrictive zoning laws, reduced allocations, and placed other prohibitions on the retail sale of cannabis. In some areas, these ordinances have prevented cannabis retail licensees from opening. Washington state law requires all cannabis licensees to have a qualifying location, security requirements, report sales, and maintain insurance.

Local authorities prohibit these stores from opening. State law requires the stores to follow all license requirements, whether they are able to open or not. To reduce the costs of maintaining license requirements, the Board will allow retail cannabis licensees who are legally prohibited from opening anywhere within their allotted jurisdiction to apply for a Title Certificate. Title Certificate holders will not be required to maintain **all** license requirements, but must meet the conditions specified in this Interim Policy. The Board will open rulemaking in conjunction with this Interim Policy, to establish permanent rules for Title Certificates.

Policy Statement:

Until superseded by rule, retail cannabis licensees who are located in jurisdictions that meet the following criteria may apply for a Title Certificate:

- A ban or moratorium that applies to the entire jurisdiction;
- Zoning rules that prohibit retail cannabis licensees from opening throughout the entire jurisdiction;
- Ordinances that prohibit retail cannabis licensees from opening without federal approval; or
- Ordinances with an allotment smaller than that of the WSLCB, and the jurisdiction met their allotment prior to the licensee being issued the license.

The Title Certificate eliminates the following license requirements for retail cannabis licensees to maintain:

- A physical location;
- Security cameras;
- Traceability;
- Annual license fees;
- Insurance requirements; and
- Sales reporting.

Applicants for the Title Certificate must maintain all license requirements until the WSLCB issues the Title Certificate. Licensees who fail to continue to meet all license requirements under chapter 69.50 RCW and 314-55 WAC prior to being issued a Title Certificate are subject to enforcement violations.

Title Certificates will be valid for a maximum of four years. After four years, the Board will reevaluate the need for Title Certificates.

Title Certificate requirements:

- The applicant must provide a letter to the WSLCB from their license jurisdiction attesting that there is no legal location available for retail cannabis licensees within the jurisdiction.
- The Board will confirm that there is no cannabis on the licensed premises before issuing a Title Certificate.
- The Title Certificate holder may only reinstate a cannabis license in the jurisdiction where the license was originally issued.
- Before the Board reinstates the license, the licensee must meet all license requirements under chapter 69.50 RCW and chapter 314-55 WAC.
- A Title Certificate holder may only hold a maximum of five retail licenses and Title Certificates combined.
- Title Certificate holders may not hold or have any interest in a producer or processor license.
- Title Certificate holders must continue to submit all changes to the business entity structure (ownership changes, adding or removing members) to the WSLCB for approval before making changes to the structure. Failure to report changes in the business entity structure may result in cancellation of your Title Certificate.
- The Title Certificate is not a license and the holder does not have the authority to sell or purchase cannabis until the holder reinstates license.
- Title Certificate holders may not sell cannabis. If a Title Certificate holder sells cannabis, they will be selling cannabis without a license. In addition to the criminal penalties for selling cannabis without a license, the WSLCB will revoke the Title Certificate.
- Title Certificate holders are required to have their license reinstated within 6 months of the jurisdiction allowing retail cannabis licensees, or they forfeit their Title Certificate.
- Title Certificate holders must immediately notify the WSLCB of any changes in the jurisdiction that would allow them to begin operating.

Transferring Titles:

- Title Certificates cannot be leased. Title Certificate holders may transfer their title to a qualified applicant with prior approval from the WSLCB. The certificate transfer applicant must apply to obtain the Title Certificate with the WSLCB Licensing and Regulation Division prior to the transfer and meet all qualifications in chapter 69.50 RCW and chapter 314-55 WAC for holding a license.
- All true parties of interest involved in the transfer must pass a background check, financial investigation, be up to date on all WSLCB taxes and fees, and meet residency requirements.
- Transferring the title does not extend the four-year period for the certificate.
- Title transfer applicants are required to pay any applicable fees (e.g. fingerprinting costs) related to the title transfer.
- Title transfer applicants must provide evidence from the Washington Secretary of State's Office that the business entity seeking to obtain the Title Certificate was formed in Washington State.
- Before the Board will approve a Title Certificate transfer, the transfer applicant must submit a notarized bill of sale that includes:
 - The type of property sold;
 - The purchase price and any other monies exchanged related to the transfer of the Title Certificate;
 - Signatures and dates for all true parties of interest on the original Title Certificate; and
 - All true parties of interest seeking to obtain the title.
- The WSLCB will conduct an investigation of all applicants, including all true parties of interest, cannabis law or rule administrative violation history. In accordance with WAC chapter 314-55-045, the WSLCB will not issue a Title Certificate to a person, or to an entity with a true party of interest who has:
 - Three or more safety violations;
 - Four or more regulatory violations; or
 - A pattern of disregard for license violations or for laws and rules.

Reinstating the license:

- Title Certificate holders must reinstate their license within 6 months of their assigned jurisdiction allowing retail cannabis licensees, or they forfeit their Title Certificate.
- Title Certificate holders may only reinstate their license within the jurisdiction where they were originally licensed.
- Title Certificate holders must meet all license requirements outlined in chapter 69.50 RCW and chapter 314-55 WAC before the WSLCB will reinstate the license.

The Title Certificates for applicants who are issued new licenses will be invalidated. Title Certificate holders cannot transfer the Title Certificate during the license application process.