

## Cannabis Business Blog

# Washington to Become the First State to Certify Organic Cannabis

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On May 16, 2017, Washington Governor Jay Inslee signed GOP-sponsored Senate Bill 5131 to allow Washington State to be the first state in the nation to create a program to certify cannabis products as organic. The new law creates a voluntary program for the certification and regulation of organic cannabis products (both recreational and medicinal) to be administered by the Washington State Department of Agriculture (WSDA). The WSDA is now working on creating the rules for the new program and has stated that it will likely take several months to as long as a year before the rules are complete and certifications are handed out.

The legislation also requires the Washington State Liquor and Cannabis Board (LCB) to adopt rules and regulations for certifying organic cannabis in a manner similar to how other products are currently certified as organic under federal regulations. Although the LCB is to adopt rules and regulations similar to current federal requirements, it is unknown at this time what will be used in place of the term “organic” in official marketing and packaging of the certified cannabis products. Currently, labelling of a product as “organic” requires certification granted and regulated by the U.S. Department of Agriculture (USDA). As cannabis is still illegal under federal law, the USDA does not deem it as a product eligible for organic certification. Therefore, on a state level, Washington may have to seek an alternative term to use for marketing and packaging of certified products.

The new legislation may prove to be beneficial to both state licensed producers as well as consumers. Primarily, it will allow consumers to purchase cannabis that has been tested and certified to be pesticide, fungicide and otherwise chemical free. As such, organic producers may promote and sell their products at a premium. For example, organic raspberry farmers in Washington can sell their product at a 15-20% premium above their non-organic competitors. Finally, organic cannabis products may seem to be more “normalized” to consumers of other organic products.

**Warning Regarding Federal Law:** The possession, distribution, and manufacturing of marijuana is illegal under federal law, regardless of state law which may, in some jurisdictions, decriminalize such activity under certain circumstances. Penalties for violating federal drug laws are very serious. For example, a conviction on a charge of conspiracy to sell drugs carries a mandatory minimum prison term of five years for a first offense and, depending on the quantity of marijuana involved, the fine for such a conviction could be as high as \$10 million. In addition, the federal government may seize, and seek the civil forfeiture of, the real or personal property used to facilitate the sale of marijuana as well as the money or other proceeds from the sale. Although the U.S. Department of Justice (DOJ) recently

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rescinded its guidance regarding prioritization of criminal prosecutions of individuals and entities operating in compliance with effective state regulatory systems, DOJ left in place long standing guidance to federal prosecutors regarding how to exercise this discretion. Individuals and companies are cautioned to consult with experienced attorneys regarding their exposure to potential criminal prosecution before establishing business operations in reliance upon the passage of state laws which may decriminalize such activity. Federal authority to prosecute violations of federal law as crimes or through seizures and forfeiture actions is not diminished by state law. Indeed, due to the federal government's jurisdiction over interstate commerce, when businesses provide services to marijuana producers, processors or distributors located in multiple states, they potentially face a higher level of scrutiny from federal authorities than do their customers with local operations.

**Tags:** certified organic cannabis products, LCB, medicinal cannabis products, organic cannabis products, recreational cannabis products, Senate Bill 5131, U.S. Department of Agriculture, USDA, Washington Governor Jay Inslee, Washington State Department of Agriculture, Washington State Liquor and Cannabis Board, WSDA, WSLCB