
ENGROSSED SECOND SUBSTITUTE HOUSE BILL 2334

State of Washington

65th Legislature

2018 Regular Session

By House Appropriations (originally sponsored by Representatives Sawyer and Kloba)

READ FIRST TIME 02/06/18.

1 AN ACT Relating to the regulation of the use of cannabinoid
2 additives in marijuana products; reenacting and amending RCW
3 69.50.101 and 69.50.325; adding a new section to chapter 69.50 RCW;
4 and providing an effective date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 69.50
7 RCW to read as follows:

8 (1) Licensed marijuana producers and licensed marijuana
9 processors may use a CBD product as an additive for the purpose of
10 enhancing the cannabidiol concentration of any product authorized for
11 production, processing, and sale under this chapter. Except as
12 otherwise provided in subsection (2) of this section, such CBD
13 product additives must be lawfully produced by, or purchased from, a
14 producer or processor licensed under this chapter.

15 (2) Subject to the requirements set forth in (a) and (b) of this
16 subsection, and for the purpose of enhancing the cannabidiol
17 concentration of any product authorized for production, processing,
18 or sale under this chapter, licensed marijuana producers and licensed
19 marijuana processors may use a CBD product obtained from a source not
20 licensed under this chapter, provided the CBD product:

1 (a) Has a THC level of 0.3 percent or less on a dry weight basis;
2 and

3 (b) Has been tested for contaminants and toxins by a testing
4 laboratory accredited under this chapter and in accordance with
5 testing standards established under this chapter and the applicable
6 administrative rules.

7 (3) Subject to the requirements of this subsection (3), the
8 liquor and cannabis board may enact rules necessary to implement the
9 requirements of this section. Such rule making is limited to
10 regulations pertaining to laboratory testing and product safety
11 standards for those cannabidiol products used by licensed producers
12 and processors in the manufacture of marijuana products marketed by
13 licensed retailers under chapter 69.50 RCW. The purpose of such rule
14 making must be to ensure the safety and purity of cannabidiol
15 products used by marijuana producers and processors licensed under
16 chapter 69.50 RCW and incorporated into products sold by licensed
17 recreational marijuana retailers. This rule-making authority does not
18 include the authority to enact rules regarding either the production
19 or processing practices of the industrial hemp industry or any
20 cannabidiol products that are sold or marketed outside of the
21 regulatory framework established under chapter 69.50 RCW.

22 **Sec. 2.** RCW 69.50.101 and 2017 c 317 s 5, 2017 c 212 s 11, and
23 2017 c 153 s 1 are each reenacted and amended to read as follows:

24 The definitions in this section apply throughout this chapter
25 unless the context clearly requires otherwise.

26 (a) "Administer" means to apply a controlled substance, whether
27 by injection, inhalation, ingestion, or any other means, directly to
28 the body of a patient or research subject by:

29 (1) a practitioner authorized to prescribe (or, by the
30 practitioner's authorized agent); or

31 (2) the patient or research subject at the direction and in the
32 presence of the practitioner.

33 (b) "Agent" means an authorized person who acts on behalf of or
34 at the direction of a manufacturer, distributor, or dispenser. It
35 does not include a common or contract carrier, public
36 warehouseperson, or employee of the carrier or warehouseperson.

37 (c) "CBD concentration" has the meaning provided in RCW
38 69.51A.010.

39 (d) "Commission" means the pharmacy quality assurance commission.

1 (e) "Controlled substance" means a drug, substance, or immediate
2 precursor included in Schedules I through V as set forth in federal
3 or state laws, or federal or commission rules, but does not include
4 industrial hemp as defined in RCW 15.120.010.

5 (f)(1) "Controlled substance analog" means a substance the
6 chemical structure of which is substantially similar to the chemical
7 structure of a controlled substance in Schedule I or II and:

8 (i) that has a stimulant, depressant, or hallucinogenic effect on
9 the central nervous system substantially similar to the stimulant,
10 depressant, or hallucinogenic effect on the central nervous system of
11 a controlled substance included in Schedule I or II; or

12 (ii) with respect to a particular individual, that the individual
13 represents or intends to have a stimulant, depressant, or
14 hallucinogenic effect on the central nervous system substantially
15 similar to the stimulant, depressant, or hallucinogenic effect on the
16 central nervous system of a controlled substance included in Schedule
17 I or II.

18 (2) The term does not include:

19 (i) a controlled substance;

20 (ii) a substance for which there is an approved new drug
21 application;

22 (iii) a substance with respect to which an exemption is in effect
23 for investigational use by a particular person under Section 505 of
24 the federal food, drug, and cosmetic act, 21 U.S.C. Sec. 355, or
25 chapter 69.77 RCW to the extent conduct with respect to the substance
26 is pursuant to the exemption; or

27 (iv) any substance to the extent not intended for human
28 consumption before an exemption takes effect with respect to the
29 substance.

30 (g) "Deliver" or "delivery" means the actual or constructive
31 transfer from one person to another of a substance, whether or not
32 there is an agency relationship.

33 (h) "Department" means the department of health.

34 (i) "Designated provider" has the meaning provided in RCW
35 69.51A.010.

36 (j) "Dispense" means the interpretation of a prescription or
37 order for a controlled substance and, pursuant to that prescription
38 or order, the proper selection, measuring, compounding, labeling, or
39 packaging necessary to prepare that prescription or order for
40 delivery.

1 (k) "Dispenser" means a practitioner who dispenses.

2 (l) "Distribute" means to deliver other than by administering or
3 dispensing a controlled substance.

4 (m) "Distributor" means a person who distributes.

5 (n) "Drug" means (1) a controlled substance recognized as a drug
6 in the official United States pharmacopoeia/national formulary or the
7 official homeopathic pharmacopoeia of the United States, or any
8 supplement to them; (2) controlled substances intended for use in the
9 diagnosis, cure, mitigation, treatment, or prevention of disease in
10 individuals or animals; (3) controlled substances (other than food)
11 intended to affect the structure or any function of the body of
12 individuals or animals; and (4) controlled substances intended for
13 use as a component of any article specified in (1), (2), or (3) of
14 this subsection. The term does not include devices or their
15 components, parts, or accessories.

16 (o) "Drug enforcement administration" means the drug enforcement
17 administration in the United States Department of Justice, or its
18 successor agency.

19 (p) "Electronic communication of prescription information" means
20 the transmission of a prescription or refill authorization for a drug
21 of a practitioner using computer systems. The term does not include a
22 prescription or refill authorization verbally transmitted by
23 telephone nor a facsimile manually signed by the practitioner.

24 (q) "Immature plant or clone" means a plant or clone that has no
25 flowers, is less than twelve inches in height, and is less than
26 twelve inches in diameter.

27 (r) "Immediate precursor" means a substance:

28 (1) that the commission has found to be and by rule designates as
29 being the principal compound commonly used, or produced primarily for
30 use, in the manufacture of a controlled substance;

31 (2) that is an immediate chemical intermediary used or likely to
32 be used in the manufacture of a controlled substance; and

33 (3) the control of which is necessary to prevent, curtail, or
34 limit the manufacture of the controlled substance.

35 (s) "Isomer" means an optical isomer, but in subsection (ee)(5)
36 of this section, RCW 69.50.204(a) (12) and (34), and 69.50.206(b)(4),
37 the term includes any geometrical isomer; in RCW 69.50.204(a) (8) and
38 (42), and 69.50.210(c) the term includes any positional isomer; and
39 in RCW 69.50.204(a)(35), 69.50.204(c), and 69.50.208(a) the term
40 includes any positional or geometric isomer.

1 (t) "Lot" means a definite quantity of marijuana, marijuana
2 concentrates, useable marijuana, or marijuana-infused product
3 identified by a lot number, every portion or package of which is
4 uniform within recognized tolerances for the factors that appear in
5 the labeling.

6 (u) "Lot number" must identify the licensee by business or trade
7 name and Washington state unified business identifier number, and the
8 date of harvest or processing for each lot of marijuana, marijuana
9 concentrates, useable marijuana, or marijuana-infused product.

10 (v) "Manufacture" means the production, preparation, propagation,
11 compounding, conversion, or processing of a controlled substance,
12 either directly or indirectly or by extraction from substances of
13 natural origin, or independently by means of chemical synthesis, or
14 by a combination of extraction and chemical synthesis, and includes
15 any packaging or repackaging of the substance or labeling or
16 relabeling of its container. The term does not include the
17 preparation, compounding, packaging, repackaging, labeling, or
18 relabeling of a controlled substance:

19 (1) by a practitioner as an incident to the practitioner's
20 administering or dispensing of a controlled substance in the course
21 of the practitioner's professional practice; or

22 (2) by a practitioner, or by the practitioner's authorized agent
23 under the practitioner's supervision, for the purpose of, or as an
24 incident to, research, teaching, or chemical analysis and not for
25 sale.

26 (w) "Marijuana" or "marihuana" means all parts of the plant
27 *Cannabis*, whether growing or not, with a THC concentration greater
28 than 0.3 percent on a dry weight basis; the seeds thereof; the resin
29 extracted from any part of the plant; and every compound,
30 manufacture, salt, derivative, mixture, or preparation of the plant,
31 its seeds or resin. The term does not include:

32 (1) The mature stalks of the plant, fiber produced from the
33 stalks, oil or cake made from the seeds of the plant, any other
34 compound, manufacture, salt, derivative, mixture, or preparation of
35 the mature stalks (except the resin extracted therefrom), fiber, oil,
36 or cake, or the sterilized seed of the plant which is incapable of
37 germination; or

38 (2) Industrial hemp as defined in RCW 15.120.010.

1 (x) "Marijuana concentrates" means products consisting wholly or
2 in part of the resin extracted from any part of the plant *Cannabis*
3 and having a THC concentration greater than ten percent.

4 (y) "Marijuana processor" means a person licensed by the state
5 liquor and cannabis board to process marijuana into marijuana
6 concentrates, useable marijuana, and marijuana-infused products,
7 package and label marijuana concentrates, useable marijuana, and
8 marijuana-infused products for sale in retail outlets, and sell
9 marijuana concentrates, useable marijuana, and marijuana-infused
10 products at wholesale to marijuana retailers.

11 (z) "Marijuana producer" means a person licensed by the state
12 liquor and cannabis board to produce and sell marijuana at wholesale
13 to marijuana processors and other marijuana producers.

14 (aa) "Marijuana products" means useable marijuana, marijuana
15 concentrates, and marijuana-infused products as defined in this
16 section.

17 (bb) "Marijuana researcher" means a person licensed by the state
18 liquor and cannabis board to produce, process, and possess marijuana
19 for the purposes of conducting research on marijuana and marijuana-
20 derived drug products.

21 (cc) "Marijuana retailer" means a person licensed by the state
22 liquor and cannabis board to sell marijuana concentrates, useable
23 marijuana, and marijuana-infused products in a retail outlet.

24 (dd) "Marijuana-infused products" means products that contain
25 marijuana or marijuana extracts, are intended for human use, are
26 derived from marijuana as defined in subsection (w) of this section,
27 and have a THC concentration no greater than ten percent. The term
28 "marijuana-infused products" does not include either useable
29 marijuana or marijuana concentrates.

30 (ee) "Narcotic drug" means any of the following, whether produced
31 directly or indirectly by extraction from substances of vegetable
32 origin, or independently by means of chemical synthesis, or by a
33 combination of extraction and chemical synthesis:

34 (1) Opium, opium derivative, and any derivative of opium or opium
35 derivative, including their salts, isomers, and salts of isomers,
36 whenever the existence of the salts, isomers, and salts of isomers is
37 possible within the specific chemical designation. The term does not
38 include the isoquinoline alkaloids of opium.

39 (2) Synthetic opiate and any derivative of synthetic opiate,
40 including their isomers, esters, ethers, salts, and salts of isomers,

1 esters, and ethers, whenever the existence of the isomers, esters,
2 ethers, and salts is possible within the specific chemical
3 designation.

4 (3) Poppy straw and concentrate of poppy straw.

5 (4) Coca leaves, except coca leaves and extracts of coca leaves
6 from which cocaine, ecgonine, and derivatives or ecgonine or their
7 salts have been removed.

8 (5) Cocaine, or any salt, isomer, or salt of isomer thereof.

9 (6) Cocaine base.

10 (7) Ecgonine, or any derivative, salt, isomer, or salt of isomer
11 thereof.

12 (8) Any compound, mixture, or preparation containing any quantity
13 of any substance referred to in subparagraphs (1) through (7).

14 (ff) "Opiate" means any substance having an addiction-forming or
15 addiction-sustaining liability similar to morphine or being capable
16 of conversion into a drug having addiction-forming or addiction-
17 sustaining liability. The term includes opium, substances derived
18 from opium (opium derivatives), and synthetic opiates. The term does
19 not include, unless specifically designated as controlled under RCW
20 69.50.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan
21 and its salts (dextromethorphan). The term includes the racemic and
22 levorotatory forms of dextromethorphan.

23 (gg) "Opium poppy" means the plant of the species *Papaver*
24 *somniferum* L., except its seeds.

25 (hh) "Person" means individual, corporation, business trust,
26 estate, trust, partnership, association, joint venture, government,
27 governmental subdivision or agency, or any other legal or commercial
28 entity.

29 (ii) "Plant" has the meaning provided in RCW 69.51A.010.

30 (jj) "Poppy straw" means all parts, except the seeds, of the
31 opium poppy, after mowing.

32 (kk) "Practitioner" means:

33 (1) A physician under chapter 18.71 RCW; a physician assistant
34 under chapter 18.71A RCW; an osteopathic physician and surgeon under
35 chapter 18.57 RCW; an osteopathic physician assistant under chapter
36 18.57A RCW who is licensed under RCW 18.57A.020 subject to any
37 limitations in RCW 18.57A.040; an optometrist licensed under chapter
38 18.53 RCW who is certified by the optometry board under RCW 18.53.010
39 subject to any limitations in RCW 18.53.010; a dentist under chapter
40 18.32 RCW; a podiatric physician and surgeon under chapter 18.22 RCW;

1 a veterinarian under chapter 18.92 RCW; a registered nurse, advanced
2 registered nurse practitioner, or licensed practical nurse under
3 chapter 18.79 RCW; a naturopathic physician under chapter 18.36A RCW
4 who is licensed under RCW 18.36A.030 subject to any limitations in
5 RCW 18.36A.040; a pharmacist under chapter 18.64 RCW or a scientific
6 investigator under this chapter, licensed, registered or otherwise
7 permitted insofar as is consistent with those licensing laws to
8 distribute, dispense, conduct research with respect to or administer
9 a controlled substance in the course of their professional practice
10 or research in this state.

11 (2) A pharmacy, hospital or other institution licensed,
12 registered, or otherwise permitted to distribute, dispense, conduct
13 research with respect to or to administer a controlled substance in
14 the course of professional practice or research in this state.

15 (3) A physician licensed to practice medicine and surgery, a
16 physician licensed to practice osteopathic medicine and surgery, a
17 dentist licensed to practice dentistry, a podiatric physician and
18 surgeon licensed to practice podiatric medicine and surgery, a
19 licensed physician assistant or a licensed osteopathic physician
20 assistant specifically approved to prescribe controlled substances by
21 his or her state's medical quality assurance commission or equivalent
22 and his or her supervising physician, an advanced registered nurse
23 practitioner licensed to prescribe controlled substances, or a
24 veterinarian licensed to practice veterinary medicine in any state of
25 the United States.

26 (ll) "Prescription" means an order for controlled substances
27 issued by a practitioner duly authorized by law or rule in the state
28 of Washington to prescribe controlled substances within the scope of
29 his or her professional practice for a legitimate medical purpose.

30 (mm) "Production" includes the manufacturing, planting,
31 cultivating, growing, or harvesting of a controlled substance.

32 (nn) "Qualifying patient" has the meaning provided in RCW
33 69.51A.010.

34 (oo) "Recognition card" has the meaning provided in RCW
35 69.51A.010.

36 (pp) "Retail outlet" means a location licensed by the state
37 liquor and cannabis board for the retail sale of marijuana
38 concentrates, useable marijuana, and marijuana-infused products.

39 (qq) "Secretary" means the secretary of health or the secretary's
40 designee.

1 (rr) "State," unless the context otherwise requires, means a
2 state of the United States, the District of Columbia, the
3 Commonwealth of Puerto Rico, or a territory or insular possession
4 subject to the jurisdiction of the United States.

5 (ss) "THC concentration" means percent of delta-9
6 tetrahydrocannabinol content per dry weight of any part of the plant
7 *Cannabis*, or per volume or weight of marijuana product, or the
8 combined percent of delta-9 tetrahydrocannabinol and
9 tetrahydrocannabinolic acid in any part of the plant *Cannabis*
10 regardless of moisture content.

11 (tt) "Ultimate user" means an individual who lawfully possesses a
12 controlled substance for the individual's own use or for the use of a
13 member of the individual's household or for administering to an
14 animal owned by the individual or by a member of the individual's
15 household.

16 (uu) "Useable marijuana" means dried marijuana flowers. The term
17 "useable marijuana" does not include either marijuana-infused
18 products or marijuana concentrates.

19 (vv) "CBD product" means any product containing or consisting of
20 cannabidiol.

21 **Sec. 3.** RCW 69.50.325 and 2017 c 317 s 1 and 2017 c 316 s 2 are
22 each reenacted and amended to read as follows:

23 (1) There shall be a marijuana producer's license regulated by
24 the state liquor and cannabis board and subject to annual renewal.
25 The licensee is authorized to produce: (a) Marijuana for sale at
26 wholesale to marijuana processors and other marijuana producers; (b)
27 immature plants or clones and seeds for sale to cooperatives as
28 described under RCW 69.51A.250; and (c) immature plants or clones and
29 seeds for sale to qualifying patients and designated providers as
30 provided under RCW 69.51A.310. The production, possession, delivery,
31 distribution, and sale of marijuana in accordance with the provisions
32 of this chapter and the rules adopted to implement and enforce it, by
33 a validly licensed marijuana producer, shall not be a criminal or
34 civil offense under Washington state law. Every marijuana producer's
35 license shall be issued in the name of the applicant, shall specify
36 the location at which the marijuana producer intends to operate,
37 which must be within the state of Washington, and the holder thereof
38 shall not allow any other person to use the license. The application
39 fee for a marijuana producer's license shall be two hundred fifty

1 dollars. The annual fee for issuance and renewal of a marijuana
2 producer's license shall be one thousand three hundred eighty-one
3 dollars. A separate license shall be required for each location at
4 which a marijuana producer intends to produce marijuana.

5 (2) There shall be a marijuana processor's license to process,
6 package, and label marijuana concentrates, useable marijuana, and
7 marijuana-infused products for sale at wholesale to marijuana
8 processors and marijuana retailers, regulated by the state liquor and
9 cannabis board and subject to annual renewal. The processing,
10 packaging, possession, delivery, distribution, and sale of marijuana,
11 useable marijuana, marijuana-infused products, and marijuana
12 concentrates in accordance with the provisions of this chapter and
13 chapter 69.51A RCW and the rules adopted to implement and enforce
14 these chapters, by a validly licensed marijuana processor, shall not
15 be a criminal or civil offense under Washington state law. Every
16 marijuana processor's license shall be issued in the name of the
17 applicant, shall specify the location at which the licensee intends
18 to operate, which must be within the state of Washington, and the
19 holder thereof shall not allow any other person to use the license.
20 The application fee for a marijuana processor's license shall be two
21 hundred fifty dollars. The annual fee for issuance and renewal of a
22 marijuana processor's license shall be one thousand three hundred
23 eighty-one dollars. A separate license shall be required for each
24 location at which a marijuana processor intends to process marijuana.

25 (3)(a) There shall be a marijuana retailer's license to sell
26 marijuana concentrates, useable marijuana, and marijuana-infused
27 products at retail in retail outlets, regulated by the state liquor
28 and cannabis board and subject to annual renewal. The possession,
29 delivery, distribution, and sale of marijuana concentrates, useable
30 marijuana, and marijuana-infused products in accordance with the
31 provisions of this chapter and the rules adopted to implement and
32 enforce it, by a validly licensed marijuana retailer, shall not be a
33 criminal or civil offense under Washington state law. Every marijuana
34 retailer's license shall be issued in the name of the applicant,
35 shall specify the location of the retail outlet the licensee intends
36 to operate, which must be within the state of Washington, and the
37 holder thereof shall not allow any other person to use the license.
38 The application fee for a marijuana retailer's license shall be two
39 hundred fifty dollars. The annual fee for issuance and renewal of a
40 marijuana retailer's license shall be one thousand three hundred

1 eighty-one dollars. A separate license shall be required for each
2 location at which a marijuana retailer intends to sell marijuana
3 concentrates, useable marijuana, and marijuana-infused products.

4 (b) An individual retail licensee and all other persons or
5 entities with a financial or other ownership interest in the business
6 operating under the license are limited, in the aggregate, to holding
7 a collective total of not more than five retail marijuana licenses.

8 (c)(i) A marijuana retailer's license is subject to forfeiture in
9 accordance with rules adopted by the state liquor and cannabis board
10 pursuant to this section.

11 (ii) The state liquor and cannabis board shall adopt rules to
12 establish a license forfeiture process for a licensed marijuana
13 retailer that is not fully operational and open to the public within
14 a specified period from the date of license issuance, as established
15 by the state liquor and cannabis board, subject to the following
16 restrictions:

17 (A) No marijuana retailer's license may be subject to forfeiture
18 within the first nine months of license issuance; and

19 (B) The state liquor and cannabis board must require license
20 forfeiture on or before twenty-four calendar months of license
21 issuance if a marijuana retailer is not fully operational and open to
22 the public, unless the board determines that circumstances out of the
23 licensee's control are preventing the licensee from becoming fully
24 operational and that, in the board's discretion, the circumstances
25 warrant extending the forfeiture period beyond twenty-four calendar
26 months.

27 (iii) The state liquor and cannabis board has discretion in
28 adopting rules under this subsection (3)(c).

29 (iv) This subsection (3)(c) applies to marijuana retailer's
30 licenses issued before and after July 23, 2017. However, no license
31 of a marijuana retailer that otherwise meets the conditions for
32 license forfeiture established pursuant to this subsection (3)(c) may
33 be subject to forfeiture within the first nine calendar months of
34 July 23, 2017.

35 (v) The state liquor and cannabis board may not require license
36 forfeiture if the licensee has been incapable of opening a fully
37 operational retail marijuana business due to actions by the city,
38 town, or county with jurisdiction over the licensee that include any
39 of the following:

1 (A) The adoption of a ban or moratorium that prohibits the
2 opening of a retail marijuana business; or

3 (B) The adoption of an ordinance or regulation related to zoning,
4 business licensing, land use, or other regulatory measure that has
5 the effect of preventing a licensee from receiving an occupancy
6 permit from the jurisdiction or which otherwise prevents a licensed
7 marijuana retailer from becoming operational.

8 NEW SECTION. **Sec. 4.** Section 3 of this act takes effect July 1,
9 2018.

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