

ESSB 5298 - H COMM AMD

By Committee on Commerce & Gaming

ADOPTED AS AMENDED 04/16/2019

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature intends to allow
4 additional information on the labels and labeling of marijuana
5 products to assist consumers in making purchases of these products.

6 The legislature declares that labels and labeling should not make
7 any disease claim indicating the product is intended for use in the
8 diagnosis, treatment, cure, or prevention of any disease.

9 The legislature recognizes that it may be useful for a label or
10 labeling to describe the intended role of a marijuana product that
11 contains nutrients or other dietary ingredients, including herbs and
12 other botanicals, to maintain a structure or function of the body, or
13 characterize the documented mechanism by which the product acts to
14 maintain such structure or function, provided that the claim is
15 truthful and not misleading.

16 **Sec. 2.** RCW 69.50.345 and 2018 c 43 s 2 are each amended to read
17 as follows:

18 The state liquor and cannabis board, subject to the provisions of
19 this chapter, must adopt rules that establish the procedures and
20 criteria necessary to implement the following:

21 (1) Licensing of marijuana producers, marijuana processors, and
22 marijuana retailers, including prescribing forms and establishing
23 application, reinstatement, and renewal fees.

24 (a) Application forms for marijuana producers must request the
25 applicant to state whether the applicant intends to produce marijuana
26 for sale by marijuana retailers holding medical marijuana
27 endorsements and the amount of or percentage of canopy the applicant
28 intends to commit to growing plants determined by the department
29 under RCW 69.50.375 to be of a THC concentration, CBD concentration,
30 or THC to CBD ratio appropriate for marijuana concentrates, useable
31 marijuana, or marijuana-infused products sold to qualifying patients.

1 (b) The state liquor and cannabis board must reconsider and
2 increase limits on the amount of square feet permitted to be in
3 production on July 24, 2015, and increase the percentage of
4 production space for those marijuana producers who intend to grow
5 plants for marijuana retailers holding medical marijuana endorsements
6 if the marijuana producer designates the increased production space
7 to plants determined by the department under RCW 69.50.375 to be of a
8 THC concentration, CBD concentration, or THC to CBD ratio appropriate
9 for marijuana concentrates, useable marijuana, or marijuana-infused
10 products to be sold to qualifying patients. If current marijuana
11 producers do not use all the increased production space, the state
12 liquor and cannabis board may reopen the license period for new
13 marijuana producer license applicants but only to those marijuana
14 producers who agree to grow plants for marijuana retailers holding
15 medical marijuana endorsements. Priority in licensing must be given
16 to marijuana producer license applicants who have an application
17 pending on July 24, 2015, but who are not yet licensed and then to
18 new marijuana producer license applicants. After January 1, 2017, any
19 reconsideration of the limits on the amount of square feet permitted
20 to be in production to meet the medical needs of qualifying patients
21 must consider information contained in the medical marijuana
22 authorization database established in RCW 69.51A.230;

23 (2) Determining, in consultation with the office of financial
24 management, the maximum number of retail outlets that may be licensed
25 in each county, taking into consideration:

26 (a) Population distribution;

27 (b) Security and safety issues;

28 (c) The provision of adequate access to licensed sources of
29 marijuana concentrates, useable marijuana, and marijuana-infused
30 products to discourage purchases from the illegal market; and

31 (d) The number of retail outlets holding medical marijuana
32 endorsements necessary to meet the medical needs of qualifying
33 patients. The state liquor and cannabis board must reconsider and
34 increase the maximum number of retail outlets it established before
35 July 24, 2015, and allow for a new license application period and a
36 greater number of retail outlets to be permitted in order to
37 accommodate the medical needs of qualifying patients and designated
38 providers. After January 1, 2017, any reconsideration of the maximum
39 number of retail outlets needed to meet the medical needs of
40 qualifying patients must consider information contained in the

1 medical marijuana authorization database established in RCW
2 69.51A.230;

3 (3) Determining the maximum quantity of marijuana a marijuana
4 producer may have on the premises of a licensed location at any time
5 without violating Washington state law;

6 (4) Determining the maximum quantities of marijuana, marijuana
7 concentrates, useable marijuana, and marijuana-infused products a
8 marijuana processor may have on the premises of a licensed location
9 at any time without violating Washington state law;

10 (5) Determining the maximum quantities of marijuana concentrates,
11 useable marijuana, and marijuana-infused products a marijuana
12 retailer may have on the premises of a retail outlet at any time
13 without violating Washington state law;

14 (6) In making the determinations required by this section, the
15 state liquor and cannabis board shall take into consideration:

16 (a) Security and safety issues;

17 (b) The provision of adequate access to licensed sources of
18 marijuana, marijuana concentrates, useable marijuana, and marijuana-
19 infused products to discourage purchases from the illegal market; and

20 (c) Economies of scale, and their impact on licensees' ability to
21 both comply with regulatory requirements and undercut illegal market
22 prices;

23 (7) Determining the nature, form, and capacity of all containers
24 to be used by licensees to contain marijuana, marijuana concentrates,
25 useable marijuana, and marijuana-infused products, and their labeling
26 requirements (~~(, to include but not be limited to:~~

27 ~~(a) The business or trade name and Washington state unified~~
28 ~~business identifier number of the licensees that produced and~~
29 ~~processed the marijuana, marijuana concentrates, useable marijuana,~~
30 ~~or marijuana-infused product;~~

31 ~~(b) Lot numbers of the marijuana, marijuana concentrates, useable~~
32 ~~marijuana, or marijuana-infused product;~~

33 ~~(c) THC concentration and CBD concentration of the marijuana,~~
34 ~~marijuana concentrates, useable marijuana, or marijuana-infused~~
35 ~~product;~~

36 ~~(d) Medically and scientifically accurate information about the~~
37 ~~health and safety risks posed by marijuana use; and~~

38 ~~(e) Language required by RCW 69.04.480));~~

39 (8) In consultation with the department of agriculture and the
40 department, establishing classes of marijuana, marijuana

1 concentrates, useable marijuana, and marijuana-infused products
2 according to grade, condition, cannabinoid profile, THC
3 concentration, CBD concentration, or other qualitative measurements
4 deemed appropriate by the state liquor and cannabis board;

5 (9) Establishing reasonable time, place, and manner restrictions
6 and requirements regarding advertising of marijuana, marijuana
7 concentrates, useable marijuana, and marijuana-infused products that
8 are not inconsistent with the provisions of this chapter, taking into
9 consideration:

10 (a) Federal laws relating to marijuana that are applicable within
11 Washington state;

12 (b) Minimizing exposure of people under twenty-one years of age
13 to the advertising;

14 (c) The inclusion of medically and scientifically accurate
15 information about the health and safety risks posed by marijuana use
16 in the advertising; and

17 (d) Ensuring that retail outlets with medical marijuana
18 endorsements may advertise themselves as medical retail outlets;

19 (10) Specifying and regulating the time and periods when, and the
20 manner, methods, and means by which, licensees shall transport and
21 deliver marijuana, marijuana concentrates, useable marijuana, and
22 marijuana-infused products within the state;

23 (11) In consultation with the department and the department of
24 agriculture, establishing accreditation requirements for testing
25 laboratories used by licensees to demonstrate compliance with
26 standards adopted by the state liquor and cannabis board, and
27 prescribing methods of producing, processing, and packaging
28 marijuana, marijuana concentrates, useable marijuana, and marijuana-
29 infused products; conditions of sanitation; and standards of
30 ingredients, quality, and identity of marijuana, marijuana
31 concentrates, useable marijuana, and marijuana-infused products
32 produced, processed, packaged, or sold by licensees;

33 (12) Specifying procedures for identifying, seizing,
34 confiscating, destroying, and donating to law enforcement for
35 training purposes all marijuana, marijuana concentrates, useable
36 marijuana, and marijuana-infused products produced, processed,
37 packaged, labeled, or offered for sale in this state that do not
38 conform in all respects to the standards prescribed by this chapter
39 or the rules of the state liquor and cannabis board.

1 **Sec. 3.** RCW 69.50.346 and 2018 c 43 s 1 are each amended to read
2 as follows:

3 (1) The label on a marijuana product container, including
4 marijuana concentrates, useable marijuana, or marijuana-infused
5 products, sold at retail((÷

6 ~~(1))~~ must include:

7 (a) The business or trade name and Washington state unified
8 business identifier number of the marijuana producer and processor
9 ((that produced and processed the marijuana as required pursuant to
10 RCW 69.50.345(7); and

11 ~~(2) is))~~;

12 (b) The lot numbers of the product;

13 (c) The THC concentration and CBD concentration of the product;

14 (d) Medically and scientifically accurate and reliable
15 information about the health and safety risks posed by marijuana use;

16 (e) Language required by RCW 69.04.480; and

17 (f) A disclaimer, subject to the following conditions:

18 (i) Where there is one statement made under subsection (2) of
19 this section, or as described in subsection (5)(b) of this section,
20 the disclaimer must state "This statement has not been evaluated by
21 the State of Washington. This product is not intended to diagnose,
22 treat, cure, or prevent any disease."; and

23 (ii) Where there is more than one statement made under subsection
24 (2) of this section, or as described in subsection (5)(b) of this
25 section, the disclaimer must state "These statements have not been
26 evaluated by the State of Washington. This product is not intended to
27 diagnose, treat, cure, or prevent any disease."

28 (2)(a) For marijuana products that have been identified by the
29 department in rules adopted under RCW 69.50.375(4) in chapter 246-70
30 WAC as being a compliant marijuana product, the product label and
31 labeling may include a structure or function claim describing the
32 intended role of a product to maintain the structure or any function
33 of the body, or characterize the documented mechanism by which the
34 product acts to maintain such structure or function, provided that
35 the claim is truthful and not misleading.

36 (b) In the context of describing the product's intended role in
37 maintaining the structure or any function of the body, including the
38 documented mechanism by which a product acts to maintain bodily
39 structure or function, the label and labeling may include such terms
40 as, but not limited to, "wellness," "well-being," "health,"

1 "maintain," "support," "assist," and "promote," and derivatives of
2 any such terms.

3 (c) A statement made under (a) and (b) of this subsection may not
4 claim to diagnose, mitigate, treat, cure, or prevent any disease.

5 (3) The labels and labeling may not be:

6 (a) False or misleading; or

7 (b) Especially appealing to children.

8 (4) The label is not required to include the business or trade
9 name or Washington state unified business identifier number of, or
10 any information about, the marijuana retailer selling the marijuana
11 product.

12 (5) A marijuana product is not in violation of any Washington
13 state law or rule of the Washington state liquor and cannabis board
14 solely because its label or labeling contains:

15 (a) Directions or recommended conditions of use;

16 (b) A claim describing the psychoactive effects of the marijuana
17 product, provided that the claim is truthful and not misleading; or

18 (c) An otherwise legal claim related to the nonmarijuana
19 ingredients.

20 (6) This section does not create any civil liability on the part
21 of the state, the liquor and cannabis board, any other state agency,
22 officer, employee, or agent based on a marijuana licensee's
23 description of a structure or function claim or the product's
24 intended role under subsection (2) of this section.

25 (7) Nothing in this section shall apply to a drug, as defined in
26 RCW 69.50.101, or a pharmaceutical product approved by the United
27 States food and drug administration.

28 **Sec. 4.** RCW 82.08.9998 and 2015 2nd sp.s. c 4 s 207 are each
29 amended to read as follows:

30 (1) ~~((Beginning July 1, 2016,))~~ The tax levied by RCW 82.08.020
31 does not apply to:

32 (a) Sales of marijuana concentrates, useable marijuana, or
33 marijuana-infused products, identified by the department of health in
34 rules adopted under RCW ((69.50.375 to be beneficial for medical
35 use)) 69.50.375(4) in chapter 246-70 WAC as being a compliant
36 marijuana product, by marijuana retailers with medical marijuana
37 endorsements to qualifying patients or designated providers who have
38 been issued recognition cards;

1 (b) Sales of products containing THC with a THC concentration of
2 0.3 percent or less to qualifying patients or designated providers
3 who have been issued recognition cards by marijuana retailers with
4 medical marijuana endorsements;

5 (c) Sales of marijuana concentrates, useable marijuana, or
6 marijuana-infused products, identified by the department of health
7 under RCW 69.50.375 to have a low THC, high CBD ratio, and to be
8 beneficial for medical use, by marijuana retailers with medical
9 marijuana endorsements, to any person;

10 (d) Sales of topical, noningestible products containing THC with
11 a THC concentration of 0.3 percent or less by health care
12 professionals under RCW 69.51A.280;

13 (e)(i) Marijuana, marijuana concentrates, useable marijuana,
14 marijuana-infused products, or products containing THC with a THC
15 concentration of 0.3 percent or less produced by a cooperative and
16 provided to its members; and

17 (ii) Any nonmonetary resources and labor contributed by an
18 individual member of the cooperative in which the individual is a
19 member. However, nothing in this subsection (1)(e) may be construed
20 to exempt the individual members of a cooperative from the tax
21 imposed in RCW 82.08.020 on any purchase of property or services
22 contributed to the cooperative.

23 ~~(2) ((From July 1, 2015, until July 1, 2016, the tax levied by~~
24 ~~RCW 82.08.020 does not apply to sales of marijuana, marijuana~~
25 ~~concentrates, useable marijuana, marijuana-infused products, or~~
26 ~~products containing THC with a THC concentration of 0.3 percent or~~
27 ~~less, by collective gardens under RCW 69.51A.085 to qualifying~~
28 ~~patients or designated providers, if such sales are in compliance~~
29 ~~with chapter 69.51A RCW.~~

30 ~~(3))~~ Each seller making exempt sales under subsection (1) ~~((~~
31 ~~(2))~~) of this section must maintain information establishing
32 eligibility for the exemption in the form and manner required by the
33 department.

34 ~~((4))~~ (3) The department must provide a separate tax reporting
35 line for exemption amounts claimed under this section.

36 ~~((5))~~ (4) The definitions in this subsection apply throughout
37 this section unless the context clearly requires otherwise.

38 (a) "Cooperative" means a cooperative authorized by and operating
39 in compliance with RCW 69.51A.250.

1 (b) "Marijuana retailer with a medical marijuana endorsement"
2 means a marijuana retailer permitted under RCW 69.50.375 to sell
3 marijuana for medical use to qualifying patients and designated
4 providers.

5 (c) "Products containing THC with a THC concentration of 0.3
6 percent or less" means all products containing THC with a THC
7 concentration not exceeding 0.3 percent and that, when used as
8 intended, are inhalable, ingestible, or absorbable.

9 (d) "THC concentration," "marijuana," "marijuana concentrates,"
10 "useable marijuana," "marijuana retailer," and "marijuana-infused
11 products" have the same meanings as provided in RCW 69.50.101 and the
12 terms "qualifying patients," "designated providers," and "recognition
13 card" have the same meaning as provided in RCW 69.51A.010.

14 **Sec. 5.** RCW 82.12.9998 and 2015 2nd sp.s. c 4 s 208 are each
15 amended to read as follows:

16 (1) (~~From July 1, 2015, until July 1, 2016, the provisions of~~
17 ~~this chapter do not apply to the use of marijuana, marijuana~~
18 ~~concentrates, useable marijuana, marijuana-infused products, or~~
19 ~~products containing THC with a THC concentration of 0.3 percent or~~
20 ~~less, by a collective garden under RCW 69.51A.085, and the qualifying~~
21 ~~patients or designated providers participating in the collective~~
22 ~~garden, if such use is in compliance with chapter 69.51A RCW.~~

23 ~~(2) Beginning July 1, 2016,~~) The provisions of this chapter do
24 not apply to:

25 (a) The use of marijuana concentrates, useable marijuana, or
26 marijuana-infused products, identified by the department of health in
27 rules adopted under RCW (~~69.50.375 to be beneficial for medical~~
28 ~~use~~) 69.50.375(4) in chapter 246-70 WAC as being a compliant
29 marijuana product, by qualifying patients or designated providers who
30 have been issued recognition cards and have obtained such products
31 from a marijuana retailer with a medical marijuana endorsement.

32 (b) The use of products containing THC with a THC concentration
33 of 0.3 percent or less by qualifying patients or designated providers
34 who have been issued recognition cards and have obtained such
35 products from a marijuana retailer with a medical marijuana
36 endorsement.

37 (c) (i) Marijuana retailers with a medical marijuana endorsement
38 with respect to:

1 (A) Marijuana concentrates, useable marijuana, or marijuana-
2 infused products; or
3 (B) Products containing THC with a THC concentration of 0.3
4 percent or less;
5 (ii) The exemption in this subsection (~~((2))~~) (1)(c) applies only
6 if such products are provided at no charge to a qualifying patient or
7 designated provider who has been issued a recognition card. Each such
8 retailer providing such products at no charge must maintain
9 information establishing eligibility for this exemption in the form
10 and manner required by the department.
11 (d) The use of marijuana concentrates, useable marijuana, or
12 marijuana-infused products, identified by the department of health
13 under RCW 69.50.375 to have a low THC, high CBD ratio, and to be
14 beneficial for medical use, purchased from marijuana retailers with a
15 medical marijuana endorsement.
16 (e) Health care professionals with respect to the use of products
17 containing THC with a THC concentration of 0.3 percent or less
18 provided at no charge by the health care professionals under RCW
19 69.51A.280. Each health care professional providing such products at
20 no charge must maintain information establishing eligibility for this
21 exemption in the form and manner required by the department.
22 (f) The use of topical, noningestible products containing THC
23 with a THC concentration of 0.3 percent or less by qualifying
24 patients when purchased from or provided at no charge by a health
25 care professional under RCW 69.51A.280.
26 (g) The use of:
27 (i) Marijuana, marijuana concentrates, useable marijuana,
28 marijuana-infused products, or products containing THC with a THC
29 concentration of 0.3 percent or less, by a cooperative and its
30 members, when produced by the cooperative; and
31 (ii) Any nonmonetary resources and labor by a cooperative when
32 contributed by its members. However, nothing in this subsection
33 (~~((2))~~) (1)(g) may be construed to exempt the individual members of a
34 cooperative from the tax imposed in RCW 82.12.020 on the use of any
35 property or services purchased by the member and contributed to the
36 cooperative.
37 (~~((3))~~) (2) The definitions in RCW 82.08.9998 apply to this
38 section.

1 NEW SECTION. **Sec. 6.** This act takes effect January 1, 2020."

2 Correct the title.

EFFECT: (1) Removes the requirement that a structure or function claim included on any Department of Health (DOH) compliant marijuana product label, or a claim that describes a product's psychoactive effect included on any marijuana product label, be substantiated.

 (2) Requires a structure or function claim included on any DOH compliant marijuana product label, or a claim that describes a product's psychoactive effect included on any marijuana product label, to include a disclaimer that states such claims: (a) have not been evaluated by the State of Washington; and (b) are not intended to diagnose, treat, cure, or prevent any disease.

 (3) Removes "relief" from the list of example marijuana product label terms that may be used to describe the product's intended role in maintaining a structure or function of the body.

 (4) Exempts drug and pharmaceutical products approved by the United States Food and Drug Administration from the marijuana product labeling requirements in the section.

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