

SENATE BILL REPORT

ESSB 5298

As Amended by House, April 16, 2019

Title: An act relating to labeling of marijuana products.

Brief Description: Regarding labeling of marijuana products.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Rivers, Palumbo and Wellman).

Brief History:

Committee Activity: Labor & Commerce: 1/31/19, 2/20/19 [DPS, w/oRec].

Floor Activity:

Passed Senate: 3/11/19, 40-8.

Passed House: 4/16/19, 88-10.

Brief Summary of Engrossed First Substitute Bill

- Allows additional information on labels for marijuana products to assist consumers in making purchases of marijuana products identified by the Department of Health as compliant products.
- Provides labels may include a structure or function claim describing the intended role of a product and specifies examples terms that may be used on labels.
- Prohibits labels from claiming to diagnose, mitigate, treat, cure, or prevent any disease, containing false or misleading statements, or being especially appealing to children.
- A marijuana product label may contain directions or recommended conditions of use, describe the product's psychoactive effect, or make a legal claim related to the nonmarijuana ingredients.
- Provides the state and its agencies with immunity from civil liability for a licensee's descriptions on the labels.

SENATE COMMITTEE ON LABOR & COMMERCE

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: That Substitute Senate Bill No. 5298 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña and Wellman.

Minority Report: That it be referred without recommendation.

Signed by Senators King, Ranking Member; Walsh.

Staff: Richard Rodger (786-7461)

Background: The Liquor and Cannabis Board (LCB) is required to adopt rules determining the nature, form, and capacity of all containers used by licensees to contain marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products, and their labeling requirements.

The LCB's rules must include but are not limited to the following labeling requirements for marijuana products sold at retail:

- the business or trade name and Unified Business Identifier number of the licensees producing and processing the marijuana, marijuana concentrates, useable marijuana, or marijuana-infused products;
- lot numbers of the marijuana, marijuana concentrates, useable marijuana, or marijuana-infused products;
- the tetrahydrocannabinol and cannabidiol concentrations of the marijuana, marijuana concentrates, useable marijuana, or marijuana-infused products;
- medically and scientifically accurate information about the health and safety risks posed by marijuana use; and
- the statement "Warning—May be habit forming" which is required pursuant to a separate state law on the misbranding of drugs.

Through rulemaking the LCB requires additional labeling information like product weight, a statement disclosing all pesticides applied to the marijuana plants and growing medium during production and processing, and all of the following warning statements:

- "Warning: This product has intoxicating effects and may be habit forming. Smoking is hazardous to your health;"
- "There may be health risks associated with consumption of this product;"
- "Should not be used by women that are pregnant or breast feeding;"
- "For use only by adults twenty-one and older. Keep out of reach of children;" and
- "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug."

There is a sales and use tax exemption on sales of marijuana concentrates, useable marijuana, or marijuana-infused products, identified by the Department of Health (DOH) to be beneficial for medical use, by marijuana retailers with medical marijuana endorsements to qualifying patients or designated providers who have been issued recognition cards.

Summary of Engrossed First Substitute Bill: The Legislature intends to allow additional information on the labels and labeling of marijuana products to assist consumers in making purchases of these products. The Legislature also recognizes it may be useful for a label or labeling to describe the intended role of a marijuana product.

Labels for marijuana products, identified by the DOH as compliant products, may include a structure or function claim describing the intended role of a product to maintain the structure or any function of the body. The label may also characterize the documented mechanism by which the product acts to maintain such structure or function. Any claims must be substantiated as truthful and not misleading.

In the context of describing the product's intended role in maintaining the structure or any function of the body, including the documented mechanism by which a product acts to maintain bodily structure or function, the label may include such terms as wellness, well-being, health, maintain, support, assist, promote, and relief.

The product labels may not claim to diagnose, mitigate, treat, cure, or prevent any disease. Additionally, the labels and labeling may not be false or misleading, or especially appealing to children.

A marijuana product is not in violation of any state law or administrative rule solely because its label contains directions or recommended conditions of use, describes the product's psychoactive effect, or makes a legal claim related to the nonmarijuana ingredients.

There is no civil liability on the part of the state, the liquor and cannabis board, any other state agency, officer, employee, or agent based on a marijuana licensee's description of a structure or function claim or the product's intended role.

Provides that the sales and use tax exemptions apply to marijuana products, identified in chapter 246-70 WAC, by the DOH as being compliant products.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill takes effect on January 1, 2020.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: We have solution to allow our businesses to promote their products to people who need them, within the constraints of our our legal system. This bill mirrors the federal guidelines about what is and is not a disease claim. It is critical for us to be able to work with our consumers and provide better and higher consumer safety and consumer confidence. The current rules prevent us from accurately characterizing our product for the public. Customers that come in to our store looking specifically for products to assist with sleep issues, pain, migraines, or fibromyalgia. Proper labeling will help us identify which products work well for the address the customer's concerns.

CON: The additional labeling can be confusing to the consumer. It dilutes the existing health warnings that are required. There are some definition issues concerning who determines what is and is not truthful.

OTHER: We have concerns with specific language about the relocation of rulemaking authority and see significant potential liability for the LCB. The sellers of these products are not responsible for claims or statements made on the label.

Persons Testifying: PRO: Senator Ann Rivers, Prime Sponsor; Mindon Win, Botanica Seattle; Wendy Hull, Fairwinds; Andy Brassington, Evergreen Herbal; Jim Mullen, The Herbery.

CON: Seth Dawson, Washington Association for Substance Abuse and Violence Prevention.

OTHER: Jim MacRae, Straight Line Analytics; Chris Thompson, Liquor and Cannabis Board.

Persons Signed In To Testify But Not Testifying: PRO: Vicki Christophersen, WACA.

EFFECT OF HOUSE AMENDMENT(S):

- Removes the requirement that claims on any DOH compliant marijuana product label be substantiated regarding: (1) a structure or function claim, or (2) a claim that describes a product's psychoactive effect.
- Requires the labels with product claims include a disclaimer stating the claims: (1) have not been evaluated by the State of Washington; and (2) are not intended to diagnose, treat, cure, or prevent any disease.
- Removes the list of examples of marijuana product label terms that may be used to describe the product's intended role in maintaining a structure or function of the body.
- Provides that a marijuana product is not in violation of any state law or rule solely because its label contains a warning, versus a claim, that describes the product's psychoactive effect.
- Removes the provision that product is not in violation if its label contains "a legal claim related to the non-marijuana ingredients."
- Exempts drug and pharmaceutical products approved by the United States Food and Drug Administration from the marijuana product labeling requirements in the section.