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## Commerce & Gaming Committee

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### HB 1668

**Brief Description:** Expanding regulatory authority over cannabinoids that may be impairing and providing for enhanced product safety and consumer information disclosure about marijuana products.

**Sponsors:** Representatives Kloba, Wylie and Young; by request of Liquor and Cannabis Board.

#### Brief Summary of Bill

- Adds new definitions to, and amends existing definitions in, the Uniform Controlled Substances Act related to cannabis and cannabinoids.
- Prohibits persons other than cannabis licensees from selling products for human consumption exceeding 0.3 percent tetrahydrocannabinol that contain more than 0.5 milligrams per serving or 2 milligrams total in the package of a cannabinoid that may be impairing.
- Expands the Washington State Liquor and Cannabis Board's regulatory and rulemaking authority over cannabinoids that may be impairing or that are marketed as having impairing effects.
- Specifies that cannabinoid products that may be impairing may not be sold to persons under age 21, with an exception for qualifying patients.
- Authorizes cannabis producers and processors to use non-impairing cannabinoids as additives in cannabis products subject to requirements including testing and disclosures.
- Prohibits the manufacture and sale of artificial cannabinoids including as additives in cannabis products, and requires disclosure on cannabis packaging and labeling of any synthetically derived cannabinoids.

**Hearing Date:** 1/13/22

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

**Staff:** Peter Clodfelter (786-7127)

## **Background:**

### General Information.

The Washington State Liquor and Cannabis Board (LCB) licenses and regulates cannabis producers, processors, and retailers through the legal framework created by Initiative 502 (2012) and subsequent legislation. In creating the legal structure for adult-use cannabis, Initiative 502 added several cannabis-related definitions to the Uniform Controlled Substances Act, including defining the term "marijuana" in part by reference to the percent of delta-9 tetrahydrocannabinol content. However, delta-9 tetrahydrocannabinol (THC) is only one of many cannabinoids that are found within the plant *Cannabis*. The emergence of new products containing cannabinoids that may be impairing, other than delta-9 THC, has raised questions nationwide about the legality and possible health impacts of these new products.

### The 2018 Federal Farm Bill Legalizing Hemp.

In 2018, hemp became federally legal pursuant to the federal Agriculture Improvement Act of 2018. The law removed hemp from the federal Controlled Substances Act, declared hemp a legal commodity, and authorized state and tribal hemp programs. Federal law defines "hemp" as the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 THC concentration of not more than 0.3 percent on a dry weight basis.

### Definitions in the Uniform Controlled Substances Act.

The following definitions currently apply in the Uniform Controlled Substances Act:

- "CBD product" means any product containing or consisting of cannabidiol.
- "Marijuana" or "marihuana" means all parts of the plant *Cannabis*, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. The term does not include the following: (1) the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination; or (2) hemp or industrial hemp and seeds used for licensed hemp production.
- "Marijuana concentrates" means products consisting wholly or in part of the resin extracted from any part of the plant *Cannabis* and having a THC concentration greater than 10 percent.
- "Marijuana processor" means a person licensed by the LCB to process marijuana into marijuana products, package and label marijuana products for sale in retail outlets, and sell marijuana products at wholesale to marijuana retailers.
- "Marijuana producer" means a person licensed by the LCB to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.
- "Marijuana products" means useable marijuana, marijuana concentrates, and marijuana-

infused products.

- "Marijuana-infused products" means products that contain marijuana or marijuana extracts, are intended for human use, are derived from marijuana, and have a THC concentration no greater than 10 percent. The term "marijuana-infused products" does not include either useable marijuana or marijuana concentrates.
- "THC concentration" means the percent of delta-9 THC content per dry weight of any part of the plant *Cannabis*, or per volume or weight of marijuana product, or the combined percent of delta-9 THC and tetrahydrocannabinolic acid in any part of the plant *Cannabis* regardless of moisture content.

#### Cannabinoid Additives in Regulated Cannabis Products.

A 2018 law authorizes licensed cannabis producers and processors to use a cannabidiol (CBD) product as an additive for the purpose of enhancing the CBD concentration of a product. Such a CBD product must be lawfully produced by, or purchased from, a licensed cannabis producer or processor, or may be obtained from an unlicensed source provided the CBD product has a THC level of 0.3 percent or less on a dry weight basis and has been tested for contaminants and toxins by an accredited testing laboratory. The LCB has rule-making authority to adopt rules pertaining to laboratory testing and product safety standards for CBD products used by licensed producers and processors.

#### Synthetic Cannabinoids.

Pursuant to a 2015 law, it is an unfair or deceptive practice and a violation of the State Consumer Protection Act to distribute, dispense, manufacture, display for sale, offer for sale, attempt to sell, or sell to a purchaser any product that contains any amount of any synthetic cannabinoid. For purposes of this prohibition, the term "synthetic cannabinoid" includes synthetic equivalents of tetrahydrocannabinols and related chemical compounds listed in Schedule 1 of the Uniform Controlled Substances Act as well as any chemical compound identified by the Pharmacy Quality Assurance Commission.

### **Summary of Bill:**

#### New and Amended Definitions in the Uniform Controlled Substances Act.

The following new definitions are added to the Uniform Controlled Substances Act:

- "Artificial cannabinoid" means a solely chemically created substance that does not originate from the plant *Cannabis* but is structurally the same or substantially similar to the molecular structure of any substance derived from the plant *Cannabis* that may be a cannabinoid receptor agonist and includes, but is not limited to, any material, compound, mixture, or preparation that is not listed as a controlled substance in Schedules I through V of the Uniform Controlled Substances Act. Artificial cannabinoids do not include the following: (1) a naturally occurring chemical substance that is separated from the plant *Cannabis* by a chemical or mechanical extraction process; (2) cannabinoids that are produced by decarboxylation from a naturally occurring cannabinoid acid without the use of a chemical catalyst; or (3) any other chemical substance resembling in any manner a compound found in the plant *Cannabis* that is identified by the LCB in consultation with

the Department of Health, by rule.

- "Cannabinoid" means any of the chemical compounds that are the active constituents of the plant *Cannabis* and their acids including, but not limited to, tetrahydrocannabinol, tetrahydrocannabinolic acid, cannabidiol, cannabidiolic acid, cannabinol, cannabigerol, cannabichromene, cannabicyclol, cannabivarin, tetrahydrocannabivarin, cannabidivarin, cannabichromevarin, cannabigerovarin, cannabigerol monomethyl ether, cannabielsoin, and cannabicitran. Cannabinoids do not include artificial cannabinoids.
- "Catalyst" means a substance that increases the rate of a chemical reaction without itself undergoing any permanent chemical change.
- "Distillate" means an extract from the plant *Cannabis* where a segment of one or more cannabinoids from an initial extraction are selectively concentrated through a mechanical or chemical process, or both, with all impurities removed.
- "Extract" means a solid, viscid, or liquid substance extracted from a plant, or the like, containing its essence in concentrated or isolated form.
- "Extraction" means the process to separate or obtain a solid, viscid, or liquid substance from a plant or parts of a plant, by pressure, distillation, treatment with solvents, or the like.
- "Isolate" means extract from the plant *Cannabis* of 95 percent or more of a single cannabinoid compound.
- "Plant *Cannabis*" means all plants of the genus *Cannabis*, including marijuana and hemp.
- "Synthetically derived cannabinoid" means any cannabinoid that is altered by a chemical reaction that changes the molecular structure of any natural cannabinoid derived from the plant *Cannabis* to another cannabinoid found naturally in the plant *Cannabis*.
- "Tetrahydrocannabinol" or "THC" includes all tetrahydrocannabinols that are artificially, synthetically, or naturally derived, including but not limited to: delta-8 THC, delta-9 THC, delta-10 THC, THCv tetrahydrocannabivarin, THCP tetrahydrocannabiphorol, THC-O-Acetate, and the optical isomers of THC cannabinoids. Additionally, the term includes concentrated resins or cannabinoids, and the products thereof, produced from the plant *Cannabis*, whether or not the cannabinoids were derived from a marijuana plant containing a THC concentration greater than 0.3 percent on a dry weight basis.
- "Total THC" means the sum of the percentage, by weight or volume measurement of tetrahydrocannabinolic acid multiplied by 0.877, plus, the percentage by weight or volume measurement of THC.

The following definitions in the Uniform Controlled Substances Act are amended:

- The definition of "CBD product" is amended to specify a cannabidiol (CBD) product may not exceed 0.3 percent THC on a dry weight basis and may not contain more than 0.5 milligrams per serving or 2 milligrams total in the packaged product of a cannabinoid that may be impairing.
- The definition of "Marijuana" or "marihuana" is amended as follows: (1) to reference the new, broader definition of THC; (2) to clarify that the THC concentration limit of not more than 0.3 percent on a dry weight basis applies whether the cannabis is growing or not; (3) to expressly include concentrated resins, cannabinoids, and products thereof in the definition; and (4) to specify that the exclusion in the definition for hemp, industrial hemp, and seeds

used for licensed hemp production applies only unless the THC concentration is greater than 0.3 percent on a dry weight basis.

- The definition of "Marijuana concentrates" is amended to use the newly defined term "total THC" and to expressly provide that the definition includes kief, live resin, rosin, hash, or bubble hash.
- The definition of "Marijuana processor" is amended to specify the marijuana that may be processed by a licensed processor is of natural origin, grown by a licensed producer, either directly or indirectly or by extraction from the plant *Cannabis*, unless sourced and used as an additive in accordance with law.
- The definition of "Marijuana producer" is amended to specify a producer may prepare and propagate marijuana directly from a natural origin.
- The definition of "Marijuana products" is amended to include any product with 0.5 milligrams or more per serving or 2 milligrams or more per package of a cannabinoid that may be impairing or that is marketed as such.
- The definition of "Marijuana-infused products" is amended to expressly included isolates and distillates and to use the newly defined term "total THC."
- The definition of "THC concentration" is expanded to use the new, broader definition of THC rather than referencing only delta-9 THC.

#### Sales Restrictions on Certain Cannabinoid Products.

Products containing or consisting of cannabinoids produced and processed for any type of consumption into a human body, whether marketed as such or not, exceeding 0.3 percent THC on a dry weight basis, that contain more than 0.5 milligrams per serving or 2 milligrams total in the packaged product of a cannabinoid that may be impairing, may only be sold by a marijuana producer, marijuana processor, or marijuana retailer licensed by the Washington State Liquor and Cannabis Board (LCB). An exception is included for any product authorized as a drug by the federal Food and Drug Administration (FDA).

All products containing cannabinoids that may be impairing, as well as cannabinoid products marketed as having impairing effects, are expressly within the regulatory authority of the LCB, unless a product is authorized as a drug by the FDA. Products meeting any of the following criteria may only be sold if the sale is in compliance with rules adopted by the LCB after consultation with Department of Health and the Department of Agriculture: (1) products containing cannabinoids that may be impairing; (2) products that contain greater than 0.3 percent THC on a dry weight basis; and (3) products that contain 0.5 or more milligrams per serving or 2 or more milligrams total in the packaged product of any cannabinoid that may be impairing.

It is provided that selling any of these types of products to a person under age 21 is prohibited, except in compliance with the Washington State Medical Use of Cannabis Act.

Exceptions to the new restrictions on selling certain cannabinoid products are provided for delta-9 THC products approved by the LCB prior to January 1, 2022, as well as for cannabis health and beauty aids.

Manufacturing and sales of artificial cannabinoids are prohibited.

#### Cannabis Licensing.

The marijuana producer license is amended to specify the production activity authorized is for producing, preparing, and propagating marijuana grown from seeds or clones of natural origin.

The marijuana processor license is amended to specify the processing activity authorized is for marijuana from the plant *Cannabis* of natural origin grown by a licensed producer, unless sourced and used as an additive in accordance with law. Additionally, authorized activities also include compounding or converting marijuana products from marijuana grown by a licensed marijuana producer and preparing marijuana products, which contain greater than 0.5 milligrams per serving of a cannabinoid that may be impairing, for sale at wholesale.

The marijuana retailer license is amended to authorize the sale of other products containing greater than 0.5 milligrams per serving of a cannabinoid that may be impairing.

#### Cannabinoid Additives in Regulated Cannabis Products.

The 2018 law authorizing cannabis producers and processors to use a CBD product as an additive for enhancing the CBD concentration of a product is amended to also authorize the use of other non-impairing cannabinoids, or non-impairing plant *Cannabis* isolates, as additives for the purpose of enhancing the non-impairing cannabinoid concentration of a product. Such cannabinoids products or isolates must be lawfully produced by a licensed marijuana producer or sourced as described next.

For the sole purpose of enhancing the non-impairing cannabinoid concentration of an authorized product, licensed producers and processors may use a CBD or other non-impairing cannabinoid product obtained from an unlicensed source, provided the CBD or other non-impairing cannabinoid product meets the following requirements:

- it has a THC level of 0.3 percent or less on a dry weight basis and does not contain greater than 0.5 milligrams per serving of any cannabinoid that may be impairing;
- it has passed pesticide, heavy metals, contaminants, and toxins testing by an accredited testing laboratory;
- it is accompanied by a disclosure statement describing production methods including, but not limited to, solvent use, catalyst use, and synthesis methods; and
- it is only added to a product authorized for production, processing, or sale in the regulated cannabis market, and is not further processed or converted into a substance that may be impairing.

The rulemaking authority of the LCB related to CBD additives is expanded and expressly includes authority for rules pertaining to laboratory testing and products safety standards for naturally and synthetically derived CBD or other non-impairing cannabinoid products used by licensed producers and processors.

Any synthetically derived cannabinoid used by licensed producers and processors in the

manufacture of marijuana products marketed by licensed retailers must be in compliance with rules adopted by the LCB, prior to manufacturing and sale to other licensees. Rulemaking by the LCB pertaining to any synthetically derived cannabinoid must be in consultation with the Department of Health and the Department of Agriculture.

Licensed marijuana producers and processors may not use any artificial cannabinoids as an additive to any product authorized for production, processing, and sale in cannabis market. Licensed marijuana producers and processors must disclose on packaging and labeling all synthetically derived cannabinoids contained in products, and may not make any statements or claims on packaging, labeling, or advertising, indicating those cannabinoids are a natural substance.

Additional Grant of Rulemaking Authority to the LCB.

The LCB is granted new rulemaking authority to adopt rules on the production, processing, transportation, delivery, sale, and purchase of naturally derived cannabinoids or synthetically derived cannabinoids, with the exception of hemp and products authorized as a drug by the FDA.

Criminal and Civil Liability Protection.

The protection from criminal and civil liability that applies to licensed marijuana processors and their employees when in compliance with law and rules is expanded to also provide protection to licensed processors and their employees for the activities of compounding or converting marijuana products from marijuana grown by a licensed marijuana producer, as specified by the LCB by rule.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect on July 1, 2022.