

# HOUSE BILL REPORT

## HB 1668

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**As Reported by House Committee On:**  
Commerce & Gaming

**Title:** An act relating to expanding regulatory authority over cannabinoids that may be impairing and providing for enhanced product safety and consumer information disclosure about marijuana products.

**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 History:**

**Committee Activity:**

Commerce & Gaming: 1/13/22, 1/25/22 [DPS].

**Brief Summary of Substitute Bill**

- Adds and amends definitions in the Uniform Controlled Substances Act, including expanding the definition of "Marijuana" to include other tetrahydrocannabinols (THCs) in addition to delta-9 THC.
- Prohibits the sale of certain cannabinoid products except when sold by licensed cannabis producers, processors, and retailers, and adds new age restrictions to the purchase of certain cannabinoid products.
- Expands the Liquor and Cannabis Board's regulatory and rulemaking authority over cannabinoids that may be impairing or that are marketed as having impairing effects.
- Includes provisions on: (1) adding non-impairing cannabinoids to cannabis products; (2) prohibiting artificial cannabinoids and requiring rules before the sale of any synthetically derived cannabinoids; (3) prohibiting synthetically derived cannabinoids in Department of Health-approved cannabis products; and (4) requiring disclosures.

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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.*

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## HOUSE COMMITTEE ON COMMERCE & GAMING

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Kloba, Chair; Wicks, Vice Chair; Kirby, Morgan and Wylie.

**Minority Report:** Do not pass. Signed by 1 member: Representative Vick.

**Minority Report:** Without recommendation. Signed by 3 members: Representatives MacEwen, Ranking Minority Member; Robertson, Assistant Ranking Minority Member; Chambers.

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

### **Background:**

#### General Information.

The 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 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.

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 (UCSA):

- "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.

- "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.

Additional terms currently defined in the UCSA include "Marijuana concentrates," "Marijuana processor," "Marijuana producer," "Marijuana products," and "Marijuana-infused products."

#### 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 rulemaking authority to adopt rules pertaining to laboratory testing and product safety standards for CBD products used by licensed producers and processors.

#### 2015 Synthetic Cannabinoid Law.

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.

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### **Summary of Substitute 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. Specific exceptions to the definition are also included.

- "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 that 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 specify 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 that the processing activity authorized under the license is for processing marijuana 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 the production activity authorized under the license is for producing, preparing, and propagating 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 include 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 Liquor and Cannabis Board (LCB). An exception is included for any product authorized as a drug by the United States 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 the 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 under the license is for producing, preparing, and propagating marijuana grown from seeds or clones of natural origin. The marijuana processor license is amended to specify that the processing activity authorized under the license is for processing marijuana from the plant *Cannabis* of natural origin grown by a licensed producer, unless sourced and used as an additive in accordance with law. Authorized activities of processors 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 cannabinoid 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 product 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, or sale in the 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 natural substances.

#### Additional Grant of Rulemaking Authority to the Liquor and Cannabis Board.

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. However, this rulemaking authority does not include authority to adopt rules on these activities related to: (1) hemp or products derived from hemp, except products intended for use by a licensee as provided in law; or (2) 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.

#### 2015 Synthetic Cannabinoid Law.

The 2015 law that makes it an unfair or deceptive act to manufacture, distribute, sell, or take certain other actions related to "synthetic cannabinoids" is amended to specify the 2015 law does not prohibit any activities of cannabis licensees that may be authorized pursuant to the bill and the LCB's rules with respect to separately defined "synthetically derived cannabinoids."

#### Department of Health Product Requirements.

Artificial cannabinoids and synthetically derived cannabinoids are prohibited in the marijuana products that may be approved, labeled, or represented as complying with the additional product requirements adopted by the Department of Health for marijuana products sold or provided to qualifying patients and designated providers by retailers with a medical marijuana endorsement. The retail sales and use tax exemption for qualifying

patients and designated providers with a recognition card purchasing marijuana products is limited so the tax exemption applies only when the marijuana products do not contain any artificial cannabinoids or synthetically derived cannabinoids.

**Substitute Bill Compared to Original Bill:**

The substitute bill makes the following changes compared to the original bill:

- specifies that artificial cannabinoids and synthetically derived cannabinoids are prohibited in the marijuana products that may be approved, labeled, or represented as complying with the additional product requirements adopted by the Department of Health for marijuana products sold or provided to qualifying patients and designated providers by retailers with a medical marijuana endorsement;
- limits the retail sales and use tax exemption for qualifying patients and designated providers purchasing marijuana products so the tax exemption applies only when the marijuana products do not contain any artificial cannabinoids or synthetically derived cannabinoids;
- eliminates a reference to "artificial cannabinoids" being also defined in Schedules I through V of the Uniform Controlled Substances Act, while retaining the new definition of "artificial cannabinoid" included in the bill;
- amends a 2015 law that makes it an unfair or deceptive act to manufacture, distribute, sell, or take certain other actions related to "synthetic cannabinoids" in order to specify the 2015 law does not prohibit any activities of cannabis licensees that may be authorized pursuant to the bill and the Liquor and Cannabis Board's (LCB) rules with respect to separately defined "synthetically derived cannabinoids"; and
- changes the scope of a proposed grant of rulemaking authority to the LCB over the production, processing, transportation, delivery, sale, and purchase of naturally derived cannabinoids or synthetically derived cannabinoids, to specify that this grant of rulemaking authority does not include authority to adopt rules on these activities related to: (1) hemp or products derived from hemp, except products intended for use by a cannabis licensee as authorized in law; or (2) products authorized as a drug by the United States Food and Drug Administration.

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**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on January 26, 2022.

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

**Staff Summary of Public Testimony:**

(In support) The bill focuses on public health, safety, and consumer disclosures. Currently, compounds like delta-8 tetrahydrocannabinol (THC) and other synthetic cannabinoids are being included in products sold outside of any regulations and are available to persons



under age 21 and youth. The current legal framework uses only delta-9 THC to define "marijuana" and is too limited. The federal legalization of hemp in 2018 unexpectedly led to delta-8 THC products, including impairing candy gummy products, being sold at gas stations and elsewhere. This bill will ensure that impairing THC products can be sold only at licensed cannabis retail outlets. The cannabinoid cannabidiol (CBD) can be derived from hemp, which can be synthetically converted to other cannabinoids. The hemp industry is, relatively, less regulated than the cannabis industry, enabling hemp-derived impairing cannabinoids to be produced for pennies on the dollar relative to the cost to licensed cannabis producers. This is undermining the regulated cannabis market. This bill ends the scattershot emergence of untested and unsafe products and gives consumers access to safe products. Federal regulators have not acted or signaled they will act. State action is urgently needed. Hemp products are not subject to packaging, labeling, testing, and disclosure requirements such as about their risk of intoxication and about avoiding driving. States have issued alerts following overconsumption, or accidental consumption by children, of these unregulated products. The federal Centers for Disease Control and Prevention reported about 660 adverse events related to delta-8 THC in the first seven months of 2021; of these 18 needed hospitalization and 39 were under age 18. Products being sold through this gap in the law have unknown byproducts and unknown safety profiles. Various business concerns may be raised in relation to this bill, but do not let a simple public safety decision seem overly complicated. The bill sets public safety guideposts so the market can move forward. Medical cannabis patients appreciate the provisions in the bill about labeling, transparency, and consumer choice. Medical cannabis patients support the bill but ask to add safety protections to separate medical cannabis from these emerging forms of synthetically derived cannabinoids. In the last year, there was close to a hostile takeover of the legal cannabis market by unregulated operators; this bill prevents this from happening and should be supported. Even if hemp-derived synthetic cannabinoid products are proven safe, allowing them in the legal cannabis market would lead to market disruption, undermining Initiative 502 (2012). Initiative 502 promised a safe market for cannabis and keeping cannabis away from kids and this bill supports those goals.

(Opposed) There is agreement that urgent state action is needed to stop the sale of impairing cannabinoid products at gas stations and vape stores. That problem should be separated from the second question of how the state should regulate cannabinoids broadly. The plant *Cannabis* is one plant, which can be grown for hemp or cannabis. It is possible to safely derive cannabinoids from hemp and that should be possible when there is transparency and products undergo laboratory testing to ensure safety. All cannabinoids should be allowed in the regulated market. The bill prohibits a large number of cannabinoids that could be safely brought into the regulated market. The bill references impairing cannabinoids many times but never defines that term, which would create an ambiguous statutory framework. There are examples of cannabinoids that are not impairing but that the Liquor and Cannabis Board(LCB) views as impairing. There are better approaches to this issue included in separate pending legislation. The bill will create chaos in the cannabis market and further set Washington back as a leader in the rapidly evolving legal cannabis industry. The bill's

regulatory approach is flawed and not based in science. Delta-8 THC is only one of over 100 other cannabinoids in the *Cannabis* plant, many of which are not impairing or intoxicating. The bill has good components, but needs a definition of "impairing." The lack of definition allows for selective enforcement. There are ways to define "impairing" by reference to defined structure and function. There are strong concerns with the retroactive provisions of the bill in section 5(3). Retroactive provisions should not stop cannabis licensees from producing and selling legal hemp-derived products in good faith under existing laws. Questions over existing law should be addressed in court and not through retroactive legislation.

(Other) There is industry support for and agreement with this bill to bring more cannabinoids under the LCB's authority, and only a slight divergence on wanting to better define the separation between natural cannabinoids and synthetic cannabinoids. The distinctions should not be whether a cannabinoid is from hemp or marijuana, which is a legal but not biological distinction, but should be to draw a clear line between naturally derived and synthetically derived. Cannabidiol from hemp is isolated into a single molecule and, through a chemical process, is converted into another molecule; the product is then no longer hemp-derived but is derived from that synthetic process. The approach in this bill is better, relative to approaches that widely open the cannabis market to cannabinoids produced from synthetic processes. The appropriate process for bringing synthetic cannabinoids from hemp into products is through the drug development process and the United States Food and Drug Administration. There should be a cautious approach to proceeding with agency rules that may authorize synthetically derived cannabinoids because shifting from the current approach would be premature. Patients' needs should also be considered. Synthetic and artificial cannabinoids from outside the licensed cannabis system undermine the intent of a well-regulated system and further hurt already suffering producers by bypassing them entirely. There is agreement on moving the bill forward and continuing to refine technical details.

**Persons Testifying:** (In support) Representative Shelley Kloba, prime sponsor; John Kingsbury; Amy Brackenbury, Public Health Roundtable; Rick Garza and Justin Nordhorn, Liquor and Cannabis Board; Gillian Schauer; Adán Espino, Jr., Craft Cannabis Coalition; Bob Cooper, Washington Association on Substance Abuse and Violence Prevention; Ezra Eickmeyer, Producers Alliance NW; and Lukas Hunter, Harmony Farms.

(Opposed) Vicki Christophersen, Washington CannaBusiness Association; Wendy Hull; Jessica Tonani, Verda Bio; Bonny Jo Peterson, Industrial Hemp Association of Washington; Dylan Summers, Lazarus Naturals; Joseph DuPuis, Doc and Yeti; Greg Haynes; Andy Brassington, Evergreen Herbal; and Christine Masse.

(Other) Micah Sherman, Washington Sun and Craft Growers Association; and Caitlein Ryan, The Cannabis Alliance.

**Persons Signed In To Testify But Not Testifying:** None.