

SENATE BILL REPORT

SB 5767

As of January 20, 2022

Title: An act relating to regulating hemp-derived cannabinoids.

Brief Description: Regulating hemp-derived cannabinoids.

Sponsors: Senators Stanford, Rivers and Hasegawa.

Brief History:

Committee Activity: Labor, Commerce & Tribal Affairs: 1/20/22.

Brief Summary of Bill

- Authorizes a marijuana processor to process and use hemp-derived cannabinoids, and add such cannabinoids to authorized marijuana products.
- Extends civil and criminal protection under state law to marijuana processors performing certain authorized activities.
- Requires marijuana licensees to comply with provided marijuana testing requirements.

SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS

Staff: Matt Shepard-Koningsor (786-7627)

Background: Cannabinoids Generally. Cannabinoids are chemical compounds that bind to certain cannabinoid receptors in the body, producing physiological effects. The cannabis plant contains many different cannabinoids, of which tetrahydrocannabinol (THC) and cannabidiol (CBD) are most common. Both THC and CBD have the same molecular structure, but a different arrangement of individual atoms - referred to as isomers in chemistry - which results in differing effects on the body. THC has a number of individual isomers, such as delta-8 THC, delta-9 THC, delta-10 THC. THC is often understood as

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.

being only delta-9 THC, however, the cannabis plant contains over 80 different cannabinoids.

Hemp, Marijuana, and Federal Law. Both hemp and marijuana are derived from the cannabis plant and both contain THC and CBD, in varying concentrations. There is a legal distinction between hemp and marijuana. The Agriculture Improvement Act of 2018 (Farm Bill) defined hemp as cannabis with a THC concentration of 0.3 percent or less, and marijuana as cannabis with a THC concentration of more than 0.3 percent THC. The Farm Bill also removed hemp from the definition of marijuana in the federal Controlled Substances Act (CSA). In 2020, the federal Drug Enforcement Administration (DEA) issued an interim final rule to align the Farm Bill with the CSA. DEA stated that all synthetically-derived THCs remain Schedule I controlled substances under the CSA.

Conversion by Chemical Synthesis. One isomer can be converted into another by chemical synthesis through the use of a catalyst. For example, CBD can be converted into THC, whether delta-8, 9, or otherwise. In addition, delta-8 THC can be converted into delta-9 THC.

Washington Law. In Washington State, the Washington State Department of Agriculture (WSDA) regulates hemp and the Washington State Liquor and Cannabis Board (LCB) regulates adult-use, recreational marijuana. LCB and the Washington State Department of Health (DOH) jointly regulate medical marijuana.

Definitions. "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 THC-acid in any part of the plant *Cannabis* regardless of moisture content. THC is not separately defined under state law. The state law definition of "marijuana" includes only the concentration of delta-9 THC. "CBD product" means any product containing or consisting of CBD.

Liquor and Cannabis Board Regulation. On April 28, 2021, LCB adopted a policy statement outlining its position on the regulation of THC, other than delta-9, and the conversion of CBD, hemp, or both to delta-8, 9 THC, or any other cannabis compounds not contained in state law. Based on the unknown health implications, LCB prohibited delta-8 THC and its derivatives, extracts, cannabinoids, isomers, and hemp CBD isolate that are genetically or chemically altered into compounds from being produced or processed in LCB-licensed facilities, or being sold in licensed marijuana retail stores. On May 3, 2021, LCB issued a statement clarifying the April 28, 2021, policy was only advisory until it completed rulemaking. On January 5, 2022, LCB approved permanent rules allowing the agency to evaluate additives, solvents, ingredients, or compounds used in the production of marijuana products and prohibiting the use of substances determined to pose a risk to public health or youth access.

License Authorizations. A marijuana producer licensee may produce, harvest, trim, dry,

cure, and package marijuana into lots for sale at wholesale to marijuana processor licensees and to other marijuana producer licensees. The licensee may also produce and sell certain marijuana plants and seeds, immature plants, clones, and seeds to other marijuana producer licensees, registered cooperatives, qualifying patients, designated providers, and licensed cannabis researchers, under certain circumstances. Producer licenses are designated by tier, which relates to the size of marijuana production. A marijuana processor licensee may process, dry, cure, package, and label usable marijuana, marijuana concentrates, and marijuana-infused products for sale at wholesale to marijuana processors and retailers. A marijuana retailer licensee may sell usable marijuana, marijuana concentrates, marijuana-infused products, marijuana paraphernalia, and lockable boxes to store marijuana at retail in outlets to individuals 21 or older, unless authorized by the Washington State Medical Use of Cannabis Act.

Quality Control Testing. State law requires every licensed marijuana producer and licensed marijuana processor to submit representative samples of marijuana, usable marijuana, and marijuana products produced or processed by the licensee to an independent, third-party testing laboratory meeting certain accreditation requirements, for inspection and testing to certify compliance with specified quality assurance and product standards. If the product sample fails one or more tests, the entire lot from which the sample was taken must be destroyed. LCB rules outline laboratory certification and accreditation, quality assurance sampling protocols, and quality assurance testing. On December 8, 2021, LCB indicated a public hearing will be held on February 2, 2022, relative to proposed amended rules on testing.

Product Additives. State licensed marijuana producers and processors are unrestricted in their use of CBD products for the purpose of enhancing the CBD content of regulated marijuana products, provided such CBD products are lawfully produced by or purchased from an in-state producer or processor licensed by the LCB. Licensees may also use CBD products for CBD enhancement purposes even if imported or otherwise produced outside of the LCB regulatory system provided the CBD product has:

- a THC level of 0.3 percent or less; and
- been tested for contaminants and toxins by an accredited testing laboratory licensed by the LCB.

Safe Harbor. State law provides certain protections from criminal and civil liability for authorized activities performed by licensed marijuana producers, processors, and retailers. These protections are also extended to the employees of such licensees.

Summary of Bill: New Definitions. "Cannabinoid" means any of the chemical compounds that are the active constituents of the plant cannabis, including several listed examples. Definitions are provided for a number of individual cannabinoids, such as delta-7 THC, delta-8 THC, delta-9 THC, delta-10 THC, and others.

"Artificial cannabinoid" means a cannabinoid that possesses either a similar chemical

structure to any naturally occurring cannabinoid or exhibits agonist activity at one or more cannabinoid receptors and is not found in nature.

"Naturally occurring cannabinoid" means a cannabinoid found in the plant *Cannabis*.

"Impairing cannabinoid" means a substance containing a similar structural backbone to THC_s and THC-similar molecules, which possesses significant binding activity to the human body's cannabinoid receptors, and results in reliable functional impairment.

Amended Definitions. The definition of "manufacture" is amended to exempt licensed marijuana processors performing authorized activities in the bill.

"Marijuana processor" is amended to authorize the conversion of cannabinoids derived from the plant *Cannabis* into naturally occurring cannabinoids.

License Authorizations. The marijuana processor's license is expanded to authorize processing and use of cannabinoids derived from hemp and hemp derivatives, which are then added to marijuana products authorized for production, processing, and sale under the Washington State Uniform Controlled Substances Act (UCSA). Licensed marijuana processors may use hemp and hemp derivatives obtained from a source not licensed by LCB if the hemp and hemp derivatives:

- have a delta-9 THC concentration of 0.3 percent or less on a dry weight basis, excluding in-process hemp;
- are tested in accordance with applicable rules and accompanied by a certificate of analysis; and
- were produced by:
 - a licensed hemp producer, handler, or processor in a state or country with a legal status and product safety protocols or any other plan or program authorized by the federal Department of Agriculture (USDA);
 - a federally recognized Indian Tribe with an approved USDA hemp plan or pilot program; or
 - a producer or supplier in compliance with any future federal or state hemp program or in compliance with laws regarding the manufacture or importation of food in the United States.

Safe Harbor. The bill's authorized use, possession, processing, packaging, labeling, delivery, distribution, and sale of hemp and hemp derivatives is not a criminal or civil offense under state law.

Quality Control Testing. All marijuana producers, processors, certified labs, and certified lab employees must comply with specified marijuana testing requirements that include potency testing, residual solvent screening, heavy metals screening, and pesticide screening. Certain marijuana products require additional testing, such as potency analysis, moisture analysis, foreign matter screening, microbiological screening, mycotoxin

screening, pesticide screening, and heavy metals screening. Usable marijuana, marijuana concentrates, and marijuana-infused products may not be sold or transported until the required testing is completed and passed. Exceptions are provided for certain business entities, and wholesale sales and transfers of certain products.

Liquor and Cannabis Board Rulemaking. LCB may adopt rules pertaining to laboratory testing, product safety standards, and labeling for hemp and hemp derivatives used by licensed marijuana processors. Other limitations on rulemaking are provided. LCB must adopt rules regarding statistical sampling procedures and to provide a remediation process for licensees when their marijuana products fail required quality control tests.

Appropriation: None.

Fiscal Note: Requested on January 11, 2022.

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

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony: PRO: The goals of this bill are to prevent any impairing cannabinoid from being sold outside the regulated market, to prevent the sale of artificial cannabinoids, to allow naturally-occurring cannabinoids in the regulated market, to codify safety testing regulations, and to do all of this clearly. Many problems in the cannabis industry come from lack of clarity. This bill provides clear regulatory authority to LCB and defines the concept of "impairing cannabinoid." This bill is designed to regulate the unfolding cannabis market that includes important testing requirements. This bill is the appropriate science-based approach for cannabinoid regulation this session. This bill recognizes that hemp and cannabis come from the same plant.

CON: This bill had no industry outreach. Synthetic cannabinoids are not cannabis and consumers are not asking for this. Allowing CBD to be brought in from outside the regulated market would be devastating to our bottom line. This bill will not accomplish what it intends to do, however, it will allow a cannabinoid to be made in a lab rather than derived from the cannabis plant. This bill is a real assault to farmers at a time when we are already struggling. This bill brings synthetic drug development techniques into the cannabis industry. All artificial cannabinoids are synthetic but not all synthetic cannabinoids are artificial. The conversion process is what is important, not where the isolated molecule originated from. We created a closed system in Washington and this bill opens it up. LCB saw the draft of this bill six days ago and the agency-request bill was developed over months. This bill creates apple juice without apples.

Persons Testifying: PRO: Senator Derek Stanford, Prime Sponsor; Dylan Summers, Lazarus Naturals; Brad Douglass; Joseph DuPuis, Doc and Yeti; Andy Brassington, Evergreen Herbal; Jessica Tonani, Verda Bio; Mark Tegen, Cleen Technology Inc; Kent

Haehl, Unicorn/Atlas Global; Vicki Christophersen, Washington CannaBusiness Association; Bonny Jo Peterson, Industrial Hemp Association of WA; Rick Dimmer, The Happy Cafe; Robyn Tucker, The Happy Cafe.

CON: Lukas Hunter, Harmony Farms; Shawn DeNae Wagenseller, Washington Sun & Craft Growers Asso; Justin Nordhorn, Liquor and Cannabis Board; Micah Sherman, Washington Sun and Craft Growers Association (WSCA); Caitlein Ryan, The Cannabis Alliance; Jeremy Moberg, Washington Sun and Craft association; Gillian Schauer, The Cannabis Regulators Association; Ezra Eickmeyer, Producers NW; Taylor Balduff.

Persons Signed In To Testify But Not Testifying: No one.