

SENATE BILL REPORT

SB 5951

As of February 1, 2022

Title: An act relating to agricultural hemp products to ensure the safe implementation of Washington state's industrial hemp program.

Brief Description: Concerning agricultural hemp products to ensure the safe implementation of Washington state's industrial hemp program.

Sponsors: Senators Hasegawa and Van De Wege.

Brief History:

Committee Activity: Agriculture, Water, Natural Resources & Parks: 2/01/22.

Brief Summary of Bill

- Establishes that no person may knowingly sell or offer for sale any hemp cannabinoid product that is marketed or labeled as "CBD" if the hemp cannabinoid product has less than the marketed or labeled concentration of CBD or does not contain CBD.
- Makes the sale or offer for sale of these mislabeled products a violation of the Consumer Protection Act.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Staff: Karen Epps (786-7424)

Background: Hemp. The federal Agriculture Improvement Act of 2018, changed certain federal authorities relating to producing and marketing hemp, defined as cannabis—*Cannabis sativa L.*— and derivatives of cannabis with extremely low—less than 0.3 percent on a dry weight basis—concentrations of the psychoactive compound delta-9-tetrahydrocannabinol (THC). These changes include allowing hemp cultivation with certain

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regulations and removing hemp from the Federal Controlled Substances Act.

In 2019, the Legislature created a new agricultural commodity program for commercial hemp production in Washington. The Washington State Department of Agriculture (WSDA) developed the state's hemp plan which includes elements required in the Agriculture Improvement Act of 2018, including testing and enforcement. WSDA administers the program and licenses hemp producers and registers hemp processors.

Washington Consumer Protection Act. The Consumer Protection Act (CPA) prohibits unfair methods of competition or unfair or deceptive practices in the conduct of any trade or commerce. The attorney general (AG) is authorized to investigate and prosecute claims under the CPA on behalf of the state or individuals in the state. A person injured by a violation of the CPA may bring a civil action for injunctive relief, recovery of actual damages, and reasonable attorneys' fees. The courts may increase awarded damages up to three times the actual damages sustained.

Summary of Bill: No person may knowingly sell or offer for sale any hemp cannabinoid product that is marketed or labeled as "CBD" or any other class B cannabinoid if the hemp cannabinoid product has less than the marketed or labeled concentration of CBD or any other class B cannabinoid, or does not contain CBD or any other class B cannabinoid. Representation can be made verbally or in writing, or on signs, marks, insignias, or simulations.

The sale or offer for sale of these mislabeled products is a violation of the Consumer Protection Act. These provisions do not apply to products sold at a licensed marijuana retail outlet.

Terms, such as CBD, Class A cannabinoid, Class B cannabinoid, and hemp cannabinoid product, are defined.

Appropriation: None.

Fiscal Note: Requested on January 26, 2022.

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

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill provides protection for the consumer because there are CBD products being sold that do not have CBD in them. This bill is necessary as a consumer protection measure until regulations are established. It is important to ensure that safety and labeling are accurate and products comply with federal dietary supplement and cosmetic requirements. This bill defines class A and class B cannabinoids and would require products to have clear, transparent labeling. This bill is a

necessary step forward to protect consumers and ensure diligent, accurate, and safe manufacturing and marketing of non-impairing hemp-derived cannabinoid products. Hemp is a fledgling industry so consumer confidence is important and this bill will help ensure that the labels are accurate on the products consumers are buying.

CON: This bill will not protect consumers in a meaningful way around hemp-extract products. This bill will allow a consumer to bring a cause of action against a distributor under the state consumer protection act for inaccurate or misleading labeling, but the act already protects the consumer for inaccurate or misleading advertising.

OTHER: There are opportunities to further refine this bill to address concerns about products available to the general public. There is no way to know whether a product contains cannabinoids unless truth in labeling occurs. CBD products should be accurately described in terms of their content and concentration in labeling and marketing. The class A cannabinoid definition includes many of the unregulated THC and novel cannabinoid products that have raised public safety concerns. The bill allows these cannabinoids to enter the market without regulation, product testing, or enforcement authority.

Persons Testifying: PRO: Senator Bob Hasegawa, Prime Sponsor; Bonny Jo Peterson, Industrial Hemp Association of WA; Dylan Summers, Lazarus Naturals; Patrick Hyland, NeXtraction Inc; JOHN HUNT, 405 Labs LLC -Full Cycle Extraction.

CON: Joy Beckerman, Hemp Ace International.

OTHER: Kelly McLain, Washington State Department of Agriculture; Chris Thompson, Liquor and Cannabis Board.

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