
Regulated Substances & Gaming Committee

E2SSB 5367

Brief Description: Concerning the regulation of products containing THC.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Robinson, Schoesler, Conway, Dozier, Keiser, Saldaña and Wellman; by request of Liquor and Cannabis Board).

Brief Summary of Engrossed Second Substitute Bill

- Modifies definitions in the Uniform Controlled Substances Act (UCSA) and hemp statutes, including amending the term "cannabis products" in the UCSA to include any product intended to be consumed or absorbed inside the body with any amount of tetrahydrocannabinol.
- Prohibits the manufacture, sale, or distribution of cannabis or cannabis products without a state-issued license.
- Modifies authorized activities of licensed cannabis producers and processors regarding enhancement of cannabidiol (CBD) concentration in cannabis products.
- Requires the label on a cannabis product package to include the amount of any synthetically derived CBD in the product sold or provided to the ultimate user.

Hearing Date: 3/13/23

Staff: Peter Clodfelter (786-7127).

Background:

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.

Definitions in the Uniform Controlled Substances Act and Hemp Statutes.

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

- "Cannabis" means all parts of the plant *Cannabis*, whether growing or not, with a tetrahydrocannabinol (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.
- "Cannabis products" means useable cannabis, cannabis concentrates, and cannabis-infused products, as those terms are further defined.
- "CBD product" means any product containing or consisting of cannabidiol (CBD).
- "Isomer" mean an optical isomer, and for certain purposes in the UCSA the term also includes any geometrical isomer or positional isomer.
- "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 cannabis product, or the combined percent of delta-9 THC and tetrahydrocannabinolic acid in any part of the plant *Cannabis* regardless of moisture content.

In hemp statutes, "hemp" is defined as the plant *Cannabis sativa L.* and any part of that plant, including the seeds 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. Additionally, the term "postharvest test" means a test of delta-9 THC concentration levels of hemp after being harvested based on: (1) ground whole plant samples without heat applied; or (2) other approved testing methods.

Manufacturing, Distributing, or Selling Controlled Substances.

The Washington State Liquor and Cannabis Board (LCB) licenses and regulates cannabis producers, processors, and retailers who may engage in specific activities related to producing, processing, or selling cannabis pursuant to Initiative 502 (2012) and the UCSA. Cannabis is a controlled substance under the UCSA. Both the LCB and the Pharmacy Quality Assurance Commission (Commission) are granted authority in the UCSA over different activities. The LCB is the primary regulatory agency of the commercial cannabis market. Under the UCSA, the Commission has general authority to adopt rules and the Department of Health may charge reasonable fees, relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within Washington.

Cannabidiol Additives in Regulated Cannabis Products.

A 2018 law authorizes licensed cannabis producers and processors to use a 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.

Labeling Requirements for Cannabis Products.

The label on a cannabis product container must include the business or trade name and Washington Unified Business Identifier Business Number of the producer and processor, the lot numbers of the product, the THC and CBD concentration of the product, medically and scientifically accurate and reliable information about the health and safety risks posed by cannabis use, the statement "Warning—May be habit forming," other warnings required by the LCB, and if a structure or function claim is made then a disclaimer that the statement has not been evaluated by the State of Washington and that the product is not intended to diagnose, treat, cure, or prevent any disease.

Hemp Legalization.

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. In 2019, Washington enacted a state hemp law to require the Washington State Department of Agriculture (WSDA) to develop an agricultural commodity program regulating hemp production. The WSDA licenses hemp producers and registers hemp processors under the law.

Summary of Bill:

Definitions in the Uniform Controlled Substances Act and Hemp Statutes.

The following definitions are modified or added to the Uniform Controlled Substances Act (UCSA):

- The definition of "cannabis" in the UCSA is modified to remove references to seeds, resin, compounds, and derivatives, to define "cannabis" as all parts of the plant *Cannabis*, whether growing or not, with a tetrahydrocannabinol (THC) concentration greater than 0.3 percent on a dry weight basis during the growing cycle through harvest and useable cannabis. The term "cannabis" does not include hemp, industrial hemp, or seeds used for licensed hemp production.
- The definition of "cannabis products" in the UCSA is modified to also include any product intended to be consumed or absorbed inside the body by any means including inhalation, ingestion, or insertion, with any amount of THC. It is specified that cannabis products also include any product containing only THC content. However, cannabis products do not include cannabis health and beauty aids.
- The definition of "THC concentration" in the UCSA is modified to: (1) remove the

restriction that delta-9 THC is the only form of THC for purposes of determining THC concentration; and (2) remove the requirement that THC concentration means the percent of THC content "per dry weight."

- A definition of "tetrahydrocannabinol" or "THC" is added to the UCSA. The term is defined to include any isomers, esters, ethers, alkyl homologues, carboxylic acids, hydrogenations, and metabolites of such substances but does not include cannabigerol, cannabidiol, or cannabichromene.
- The definition of "isomer" in the UCSA is modified to specify that any positional or geometric isomer is included for purposes of the definitions of "THC" and "THC concentration."
- Definitions of "package" and "unit" are added to the UCSA. The term "package" means a container that has a single unit or group of units. The term "unit" means an individual consumable item within a package of one or more consumable items in solid, liquid, gas, or any form intended for human consumption.

In hemp statutes, the definition of "postharvest test" is modified to eliminate the restriction that delta-9 THC is the only type of THC tested for in a postharvest test of hemp.

Prohibition on Unlicensed Sales of Cannabis and Cannabis Products.

Unless otherwise authorized in law, no person may manufacture, sell, or distribute cannabis or cannabis products without a valid license issued by the Washington State Liquor and Cannabis Board or the Pharmacy Quality Assurance Commission. Violating this requirement is a violation of the UCSA.

Cannabidiol Additives in Cannabis Products.

The authorization for licensed cannabis producers and processors to, subject to laboratory testing, use a cannabidiol (CBD) additive from an unlicensed source for the purpose of enhancing the CBD concentration of a product is modified, to specify that an additive must not be cannabis or a cannabis product, instead of specifying that an additive must have a THC level of 0.3 percent or less on a dry weight basis.

Labeling Requirements for Cannabis Products.

The label on a cannabis product package must include the amount of any synthetically derived CBD in the product sold or provided to the ultimate user. Terminology is changed from "product container" to "product package" in the context of cannabis labeling requirements.

Clarifying Effect of Bill.

It is provided that nothing in the bill may be construed to require an agency to purchase a liquid chromatography-mass spectrometry instrument.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.