

SENATE BILL REPORT

SB 5367

As of January 27, 2023

Title: An act relating to the regulation of products containing THC.

Brief Description: Concerning the regulation of products containing THC.

Sponsors: Senators Robinson, Schoesler, Conway, Dozier, Keiser, Saldaña and Wellman; by request of Liquor and Cannabis Board.

Brief History:

Committee Activity: Labor & Commerce: 1/30/23.

Brief Summary of Bill

- Differentiates between certain hemp and cannabis products intended to be consumed or absorbed inside the body based on tetrahydrocannabinol concentration.
- Modifies the permitted activities of licensed cannabis producers and processors regarding the enhancement of cannabidiol (CBD) concentration in certain cannabis products.
- Requires certain cannabis products to include a label indicating the amount of any synthetically-derived CBD in the product.
- Prohibits any person from manufacturing, selling, or distributing cannabis products without a valid state-issued license.

SENATE COMMITTEE ON LABOR & COMMERCE

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

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plant contains over 100 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, and delta-10 THC.

Hemp, Cannabis, and Federal Law. Both hemp and cannabis—or marijuana, the term used in federal law—are derived from the cannabis plant and both contain THC and CBD, in varying concentrations. Based on these concentrations, there is a legal distinction between hemp and cannabis. 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 THC's 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. The Washington State Department of Agriculture (WSDA) regulates hemp and the Washington State Liquor and Cannabis Board (LCB) regulates adult-use, recreational cannabis. LCB and the Washington State Department of Health (DOH) jointly regulate medical cannabis.

State Uniform Controlled Substances Definitions. Cannabis 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 and refers to seeds, resin, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. Cannabis does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalk—except resin extracted, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. Cannabis does not include hemp or industrial hemp. Cannabis products mean useable cannabis, cannabis concentrates, and cannabis-infused products. 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.

Hemp in Food Task Force. In the 2022 supplemental operating budget, the Legislature created a hemp in food task force (task force) and required WSDA to appoint task force members representing relevant state agencies, the scientific community, and stakeholder

organizations. The task force submitted its final report to the Legislature in December 2022 regarding its recommendations for regulating hemp in food.

Cannabinoid Science Workgroup. In fall 2022, LCB established a Cannabinoid Science Workgroup (work group). The stated objective of the work group is to collaboratively and transparently explore and build foundational understanding of the cannabis plant and synthetic equivalents of the substances contained in the plant. The work group is comprised of LCB's Policy and Rules Manager and experts in the following fields: pharmacology; toxicology; organic chemistry; cannabis research; cannabis product testing; and regulatory affairs in nutraceutical, pharmaceuticals, or dietary supplements. The work group first met on December 1, 2022, and the second meeting is scheduled for February 1, 2023.

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

Product Labels. The label on a cannabis product container sold at retail must include:

- the business or trade name and Washington State unified business identifier number of the cannabis producer and processor;
- the lot numbers of the product;
- the THC concentration and CBD concentration of the product;
- medically and scientifically accurate and reliable information about the health and safety risks posed by cannabis use;
- language regarding use of the product may be habit-forming; and
- specified disclaimers based on whether the product is a medical cannabis product.

State statutes and regulations contain additional cannabis product labeling requirements.

Summary of Bill: Definitions. *New Definitions.* A definition of hemp consumable is added to the hemp production statutes, and means a product that is not a cannabis product and is intended to be consumed or absorbed inside the body by any means, including inhalation, ingestion, or insertion, that is sold or provided to another person with a THC concentration of not more than one milligram (mg) THC per unit; and three mg THC in a package of product. Package means a container that has a single unit or group of units. 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.

Amended Definitions. Cannabis is amended to mean all parts of the plant *Cannabis*, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight

basis during the growing cycle through harvest and usable cannabis, but does not include hemp, industrial hemp, or seeds used for licensed hemp production. The term "cannabis products" is amended to include any product intended to be consumed or absorbed inside the body by any means including inhalation, ingestion, or insertion, with a THC concentration of more than one mg THC per unit, and three mg THC in a package of product. Cannabis products do not include health and beauty aids or the newly-defined hemp consumables. Postharvest test is no longer limited to delta-9 THC. THC concentration is no longer limited to delta-9 THC and includes any hydrogenated or structural isomer forms of THC. The bill does not separately define THC.

Product Additives. Licensed cannabis producers and licensed cannabis processors may use a CBD product obtained from a source outside of the regulated system if the CBD product:

- is not cannabis or a cannabis product;
- is not a hemp consumable; and
- has been tested for contaminants and toxins by an accredited testing lab in accordance with applicable testing standards.

Product Labels. The label on a cannabis product package, including cannabis concentrates, usable cannabis, or cannabis-infused products, sold at retail must include the amount of any synthetically-derived CBD in the product sold or provided to the ultimate user.

Violations of Law. No person may manufacture, sell, or distribute cannabis, cannabis concentrates, usable cannabis, or cannabis-infused products, or any cannabis products without a valid license issued by LCB or the Pharmacy Quality Assurance Commission. Any person performing any act requiring a license, and without having such a license, is in violation of state law.

Appropriation: None.

Fiscal Note: Available.

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

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