

SENATE BILL REPORT

SB 5367

As of February 18, 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, 2/13/23 [DPS-WM, w/oRec].
Ways & Means: 2/18/23.

Brief Summary of First Substitute Bill

- Differentiates between certain hemp and cannabis products intended to be consumed or absorbed inside the body based on tetrahydrocannabinol concentration.
- Creates a new definition of "hemp consumable" in the hemp statutes, "tetrahydrocannabinol" or "THC" in the Uniform Controlled Substances Act (UCSA), and amends the definitions of "cannabis," "cannabis products," "isomer," and "THC concentration" in the UCSA.
- 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, and products containing hemp consumables to conform to applicable federal and state labeling laws and be labeled to disclose that hemp consumables are included.
- Prohibits any person from manufacturing, selling, or distributing cannabis products without a valid state-issued license.

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.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: That Substitute Senate Bill No. 5367 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; King, Ranking Member; Robinson, Schoesler and Stanford.

Minority Report: That it be referred without recommendation.

Signed by Senators Braun and MacEwen.

Staff: Matt Shepard-Koningsor (786-7627)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Corban Nemeth (786-7736)

Background: Cannabinoids Generally. Cannabinoids are chemical compounds that bind to certain cannabinoid receptors in the body, producing physiological effects. The cannabis 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 Work Group (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 nutraceuticals, pharmaceuticals, or dietary supplements. The work group first met on December 1, 2022, and again on 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 (First Substitute): 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. Tetrahydrocannabinol or THC includes any isomers, esters, ethers, alkyl homologues, carboxylic acids, hydrogenations, and metabolites of such substances, but does not include Cannabigerol, Cannabidiol, or Cannabichromene. 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. 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 also include any product with only THC content. Cannabis products do not include health and beauty aids or the newly-defined hemp consumables. When referring to THC and THC concentration, isomer includes any optical, positional, and geometric isomers. Postharvest test is no longer limited to delta-9 THC. THC concentration is no longer limited to delta-9 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. All products containing hemp consumables must conform to applicable federal and state

labeling laws and be labeled to disclose that hemp consumables are included.

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.

Other. Nothing in the act must be construed to require any agency to purchase a liquid chromatography-mass spectrometry instrument.

**EFFECT OF CHANGES MADE BY LABOR AND COMMECE COMMITTEE
(First Substitute):**

- Defines tetrahydrocannabinol or THC to include any isomers, esters, ethers, alkyl homologues, carboxylic acids, hydrogenations, and metabolites of such substances, and excludes Cannabigerol, Cannabidiol, and Cannabichromene from the definition.
- Amends the definition of cannabis products to also include any product containing only THC content.
- Amends the definition of isomer to specify that, when referring to the definitions of THC and THC concentration, the term includes any optical, positional, and geometric isomers.
- Specifies that all products containing hemp consumables must confirm to applicable federal and state labeling laws and be labeled to disclose that hemp consumables are included.
- Provides that nothing in the act must be construed to require any agency to purchase a liquid chromatography-mass spectrometry instrument.

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.

Staff Summary of Public Testimony on Original Bill (Labor & Commerce): *The committee recommended a different version of the bill than what was heard.* PRO: This bill is significantly scaled back from last year's and is primarily focused on limiting youth access. The bill addresses all THC's not just delta-9. Similar to alcohol, this is not about what impairs someone, it is about what should be regulated. The one and three mg thresholds were developed based on what is currently on the market and scientific studies. The bill clarifies those who are not licensed by LCB may not sell this product. The goal here is to protect consumers and limit youth access to these products. It is always hard to set

strict limits. Intoxicating substances should only be available in state-licensed cannabis stores. Delta-8 and delta-10 gummies are being sold near the candy sections in stores. When the Initiative passed, people assumed all cannabis products would be sold in a closed system, and did not consider delta8, delta-10, etc. Unregulated products pose a serious health risk to both youth and adults. The bill needs to clearly restrict the chemical creation of THC products. We need to approach this from a place of prevention.

CON: The bill's THC limits are too low and do not allow for full-spectrum hemp products. This is deleterious to Washington hemp farmers. California took a similar approach and squelched their hemp industry. As written, this bill would eliminate about half of my business in selling full-spectrum CBD products and would force my customers to go buy them at cannabis stores instead of online. I have only heard one story of a child hospitalized or hurt by a CBD product, and that product came from out-of-state.

OTHER: The hemp and cannabis industry is innovating quicker than policy can keep up with, and we are at a critical public health juncture. The bill should include proper labeling of products that will be on the open market. Similar to kombucha, synthetic hemp-derived THC products in this bill should have a label indicating pregnant individuals should not consume. This bill gets close to finding the equilibrium, but the one and three mg limits should be reduced and make sure other cannabinoids are required in the products. We do not want products potentially intoxicating sold to youth. Three mg is a lot of THC, we suggest none should be allowed outside of the regulated system. LCB needs to be held accountable for their existing enforcement requirements regarding testing and labeling.

Persons Testifying (Labor & Commerce): PRO: Senator June Robinson, Prime Sponsor; Justin Nordhorn, Washington State Liquor and Cannabis Board; Scott Waller, WASAVP - Prevention First! for Safe and Healthy Communities; Sarah Ross-Viles, King County; Lacy Fehrenbach, Washington State Department of Health; Linda Thompson, Washington Association for Substance Misuse and Violence Prevention (WASAVP); Bob Cooper, WA Association on Substance Abuse & Violence Prevention.

CON: Bonny Jo Peterson, Industrial Hemp Association of WA; Azmyth Kaminski, Science Under Nature; Joshua Schneider, Association of Western Hemp Professionals; Adan Espino Jr, Craft Cannabis Coalition; Kristofer Plunkett, Cascadia Hemp Co..

OTHER: Megan Moore, WA State Public Health Association; Ezra Eickmeyer, Producers NW; Vicki Christophersen, Washington CannaBusiness Association; Nick Mosely, Confidence Analytics.

Persons Signed In To Testify But Not Testifying (Labor & Commerce): No one.

Staff Summary of Public Testimony (Ways & Means): PRO: This bill gives the Liquor and Cannabis Board (LCB) regulatory authority over cannabinoids, which we support. We need to continue to be able to wrangle products under regulation from the open market. We want to make sure these products are as safe as possible. Any product in the open market

will not generate cannabis excise tax revenue, so bringing products under regulation increases state funds in addition to funding for substance use disorder prevention. This bill keeps the sideboards up and makes sure products are sold in licensed retailers. This bill is lower cost than previous legislation on this topic. Products sold outside of the regulated system cost the state money. If we can get the THC threshold to zero, that's where it should be.

CON: This bill does not regulate products or solve the problem. The standards in the bill are not testable or enforceable. Our issue is Delta 9 THC being included in the definitions under this bill. If you pass this bill, there will be a lot more law enforcement activity. Don't make cannabis more illegal here than under federal regulation. Our company sells high quality CBD products for individuals suffering from epilepsy. We will not be able to sell these therapeutic products to thousands of Washington consumers if this bill passes. Please review the Colorado task force approach.

OTHER: We support the intent of the bill to keep intoxicating products in the regulated market. The industry has seen a decrease of sales in recent months and this is due to unregulated market sales, reducing industry and state revenue.

Persons Testifying (Ways & Means): PRO: Senator June Robinson, Prime Sponsor; Lukas Hunter, Harmony Farms; Megan Moore, WA State Public Health Association; Ezra Eickmeyer, Producers NW; Justin Nordhorn, Washington State Liquor and Cannabis Board; Scott Waller, WASAVP - Prevention First! for Safe and Healthy Communities.

CON: Bonny Jo Peterson, Industrial Hemp Association of WA; Adan Espino Jr, Craft Cannabis Coalition; James MacRae, Self; Jared Stanley, Charlottes Web.

OTHER: Brooke Davies, Washington CannaBusiness Association.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.