

FINAL BILL REPORT

E2SSB 5367

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Synopsis as Enacted

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).

Senate Committee on Labor & Commerce

Senate Committee on Ways & Means

House Committee on Regulated Substances & Gaming

House Committee on Appropriations

Background: Cannabinoids. 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.

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.

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,

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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.

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 Act 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. 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 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 lab in accordance with applicable testing standards.

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: Definitions. *New Definitions.* Hemp consumable means a product that is sold or provided to another person, that is made of hemp; not a cannabis product; and intended to be consumed or absorbed inside the body by any means, including inhalation, ingestion, or insertion. 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. 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 any amount of THC. Cannabis products also includes any product with only THC content but does not include cannabis health and beauty aids or products approved by the U.S. Food and Drug Administration (FDA). Postharvest test and THC concentration are 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 synthetic cannabinoid; and
- has been tested for contaminants and toxins by an accredited testing lab in accordance with applicable testing standards.

Product Labels. The product labeling requirements are amended to reference a cannabis product package instead of a cannabis product container.

Violations of Law. Except as permitted under a cannabis agreement between the state and a federally-recognized Indian tribe, 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. The producing, processing, manufacturing, or sale of any synthetically derived, or completely synthetic, cannabinoid is prohibited, except for products approved by the FDA.

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

Votes on Final Passage:

Senate	49	0	
House	93	3	(House amended)
House	90	6	(House reconsidered)
Senate	47	1	(Senate concurred)

Effective: July 23, 2023