

HOUSE BILL REPORT

EHB 2056

As Passed Legislature

Title: An act relating to correcting the definition of THC concentration as adopted by Initiative Measure No. 502 to avoid an implication that conversion, by combustion, of tetrahydrocannabinol acid into delta-9 tetrahydrocannabinol is not part of the THC content that differentiates marijuana from hemp

Brief Description: Correcting the definition of THC concentration as adopted by Initiative Measure No. 502 to avoid an implication that conversion, by combustion, of tetrahydrocannabinol acid into delta-9 tetrahydrocannabinol is not part of the THC content that differentiates marijuana from hemp.

Sponsors: Representatives Hurst and Condotta.

Brief History:

Committee Activity:

Government Accountability & Oversight: 4/25/13 [DPA].

Floor Activity:

Passed House: 4/26/13, 95-1.

Passed Senate: 4/27/13, 47-0.

Passed Legislature.

Brief Summary of Engrossed Bill

- Amends the definition of "THC concentration" to include the *total* THC content (both delta-9 tetrahydrocannabinol and tetrahydrocannabinolic acid), for the purposes of determining whether a substance is marijuana.

HOUSE COMMITTEE ON GOVERNMENT ACCOUNTABILITY & OVERSIGHT

Majority Report: Do pass as amended. Signed by 6 members: Representatives Hurst, Chair; Wylie, Vice Chair; Blake, Kirby, Moscoso and Smith.

Minority Report: Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Holy, Assistant Ranking Minority Member; Shea.

Staff: Trudes Tango (786-7384).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Two chemical compounds that are naturally present in the cannabis plant are delta-9 tetrahydrocannabinol (delta-9 THC) and tetrahydrocannabinolic acid (THCA). Delta-9 THC is the compound that provides the psychoactive effects of marijuana. In the cannabis plant THCA is the precursor of delta-9 THC.

To some degree, the THCA converts to delta-9 THC over time with drying. However, progressive conversion of the THCA to delta-9 THC occurs under intense heating, such as when the plant is smoked or baked.

Initiative 502 (I-502) changed the definition of marijuana under the Uniform Controlled Substances Act to specify that marijuana means all parts of the cannabis plant "*with a THC concentration greater than 0.3 percent on a dry weight basis.*" The I-502 then defined "THC concentration" to mean the percent of *delta-9 THC content* per dry weight of any part of the cannabis plant. Therefore, based on the definitions, marijuana means a plant with a delta-9 THC greater than 0.3 percent.

The definition of the THC concentration does not take into account the total THC content, which means it is possible that some plants with high total THC content (delta-9 THC plus THCA) would not meet the definition of marijuana.

Summary of Engrossed Bill:

The definition of "THC concentration" is amended to include the combined percent of delta-9 THC and the THCA, regardless of moisture content. Therefore, when determining whether a substance is marijuana the *total* THC concentration could be considered.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) Initiative 502 (I-502) changed what prosecutors have to show and what the crime lab has to test when it comes to proving that a substance is marijuana. The new definition created by the I-502 requires a qualitative test in order to distinguish the types of THC in the plant. The crime lab does not currently have the capacity to conduct the qualitative test, and it would require a significant investment of state money and a lot more time to do that test. The bill would allow for the testing of total THC and as long as that total was over 0.3 percent it would be distinguished from hemp. This bill brings integrity to the process of implementing the I-502. Prosecutors still need to hold people accountable who are breaking the law. There is a need to assure the federal government that we have a system where we can enforce the law. Currently, prosecutors cannot prove in court that the substance is in fact marijuana. The bill does not impact the spirit and intent of the I-502. The bill would bring Washington law in alignment with international law and Canadian law. Traditionally, the 0.3

percent figure has been the cutoff between what is hemp and what is marijuana. The language in the I-502 reflects the intent to align the state with international law.

(Neutral) The bill may not be entirely necessary, but the prosecutors' concerns are understandable. It was never the intention of the I-502 to make it more difficult for prosecutors to go after people who are operating outside the law. When drafting the I-502, the authors looked at other countries' laws and the hemp bills currently in Congress. The THC issue was not on the radar when drafting the initiative. For cases in which fresh plants are seized, it would be difficult for the crime lab to say how much delta-9 THC is in the plant at that point. It is possible to make those cases, but it would require additional time and money.

(Opposed) The I-502 usurps the authority of the Board of Pharmacy (Board) to hand out licenses. Marijuana is not in the criminal code and it cannot be regulated by any body except the Board. The definition of the THC is the same worldwide. Washington would have the only law in the world that adds the non-psychoactive THC into the definition. The only reason for the bill is to save the state money. Under the bill everything will be considered marijuana, even hemp. The technology is available, the cost is not overwhelming, and the state is simply trying to get around the costs.

Persons Testifying: (In support) Dan Satterburg, King County Prosecuting Attorney; and James Tarver and Ingrid Dearmore, Washington State Patrol.

(Neutral) Alison Holcomb, American Civil Liberties Union of Washington.

(Opposed) John Worthington, American Alliance for Medical Cannabis; and Steve Sarich, Cannacare.

Persons Signed In To Testify But Not Testifying: None.