

HOUSE BILL REPORT

SHB 1462

As Passed House:
March 2, 2017

Title: An act relating to adding authority to the department of agriculture to regulate sanitary processing of marijuana-infused edibles.

Brief Description: Adding authority to the department of agriculture to regulate sanitary processing of marijuana-infused edibles.

Sponsors: House Committee on Commerce & Gaming (originally sponsored by Representatives Kloba, Condotta, Sawyer, Appleton and Ormsby; by request of Department of Agriculture).

Brief History:

Committee Activity:

Commerce & Gaming: 1/30/17, 2/2/17 [DPS];
Appropriations: 2/13/17, 2/21/17 [DPS(COG)].

Floor Activity:

Passed House: 3/2/17, 98-0.

Brief Summary of Substitute Bill

- Authorizes the Washington State Department of Agriculture (Department) to participate in the regulation of the production and processing of marijuana-infused edibles under the Washington Food Processing Act.
- Establishes that the Liquor and Cannabis Board (LCB) and the Department have joint authority to regulate the production and processing of marijuana-infused edibles under their respective regulatory frameworks.
- Requires that producers and processors of marijuana-infused edibles be licensed through the business licensing system and to have a marijuana-infused edible license endorsement issued by the Department as required under the Washington Food Processing Act.
- Grants rule-making authority to the Department and authorizes the adoption of rules specific to marijuana-infused edibles, subject to the condition that such rules be consistent with those promulgated by the LCB and the Department of Health.

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.

HOUSE COMMITTEE ON COMMERCE & GAMING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Sawyer, Chair; Kloba, Vice Chair; Condotta, Ranking Minority Member; Vick, Assistant Ranking Minority Member; Barkis, Blake, Farrell, Jenkin, Kirby, Ryu and Young.

Staff: Thamas Osborn (786-7129).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Commerce & Gaming be substituted therefor and the substitute bill do pass. Signed by 32 members: Representatives Ormsby, Chair; Robinson, Vice Chair; Chandler, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Bergquist, Buys, Caldier, Cody, Condotta, Fitzgibbon, Haler, Hansen, Harris, Hudgins, Jinkins, Lytton, Manweller, Nealey, Pettigrew, Pollet, Sawyer, Schmick, Senn, Springer, Stanford, Sullivan, Taylor, Tharinger, Vick, Volz and Wilcox.

Staff: Dan Jones (786-7118).

Background:

Regulation of Marijuana-Infused Edible Products by the Liquor and Cannabis Board.

The Liquor and Cannabis Board (LCB) issues three categories of commercial marijuana licenses: (1) the marijuana producer's license entitles the holder to produce marijuana for sale at wholesale to licensed marijuana processors or other producers; (2) the marijuana processor's license entitles the holder to process, package, and label marijuana for sale at wholesale to marijuana retailers and other processors; and (3) the marijuana retailer's license entitles the holder to sell marijuana products at retail prices in retail outlets.

A marijuana processor license issued by the LCB authorizes the holder to process, package, and label useable marijuana, marijuana-infused products, and marijuana concentrates (collectively referred to as "marijuana products") for sale at wholesale to other marijuana processors and marijuana retailers. Marijuana-infused products include a wide variety of edible products, such as cookies, cakes, candies, lozenges, and chocolates. The Legislature delegates authority to the LCB to adopt rules regarding methods of packaging and labeling marijuana products.

The LCB's administrative rules require any container or packaging containing marijuana products to protect the product from contamination and to not impart any toxic or deleterious substance to the marijuana products.

All marijuana products sold at retail must include material that is attached to the package or provided separately to the consumer containing specific warnings and a statement disclosing all pesticides used during production and processing. In addition, labels affixed to the container or package containing marijuana products must include information about the

businesses that produced, processed, and sold the marijuana product, the product weight, and, if solvents were used, a statement disclosing the extraction method. For marijuana-infused products meant to be eaten or swallowed that are sold at retail, labels affixed to the container or package must additionally include information about the manufacture date, the best buy date, the serving size, and number of servings contained within the unit, potency, and other information.

The LCB is the only state agency with regulatory authority over the production, processing, storage, and sale of marijuana-infused food products by LCB licensees. However, the LCB does enter into contracts with the Washington State Department of Agriculture (Department) to provide food safety inspection services regarding marijuana-infused edibles. However, the entities subject to such contractually based inspections by the Department are not subject to licensure or direct regulation by the Department itself.

Regulation of Marijuana-Infused Edible Products by the Washington State Department of Agriculture.

The Department administers a Food Safety Program that authorizes it to license and regulate any business entity that processes, manufactures, stores, or handles any food product that is subject to wholesale or retail distribution within the state. This regulatory authority includes the authority to inspect and analyze food products, and to regulate food processing, handling, and storage establishments and practices. Food businesses licensed by the Department must comply with the food safety practices mandated by the Washington Food, Drug, and Cosmetic Act and the Washington Food Processing Act.

The Department has no direct regulatory authority regarding the safe production, processing, or storage of marijuana-infused edibles, except by contract with the LCB. Accordingly, under current law, LCB-licensed marijuana businesses are not subject to the Washington Food, Drug, and Cosmetic Act or the Washington Food Processing Act. Furthermore, there is no current statutory authority allowing a Department licensed food processor to produce marijuana-infused food products within a facility licensed by the Department.

Summary of Substitute Bill:

Regulatory Authority of the Washington State Department of Agriculture over Marijuana-Infused Edibles.

The Department is authorized to participate in the regulation of the production and processing of marijuana-infused edibles pursuant to the Washington Food Processing Act. The regulatory authority granted to the Department is in addition to the authority of the LCB regarding marijuana-infused edibles. The Department's regulatory authority is subject to the following provisions and requirements:

- The LCB and the Department have joint authority to regulate the production and processing of marijuana-infused edibles under their respective regulatory frameworks.
- The Department must adopt a penalty schedule specific to marijuana processors that are in addition to any penalties imposed under the penalty schedule adopted by the LCB.
- The Department must notify the LCB of regulatory violations by marijuana processors.

- Renewal of the Department's license endorsement must coincide with the renewal of the endorsement holder's marijuana processor license issued by the LCB.
- The Department may deny, suspend, or revoke a marijuana-infused edible license endorsement on the same grounds as the Department may deny, suspend, or revoke a food processor's license.
- Information about processors otherwise exempt from public inspection and copying under chapter 42.56 RCW is also exempt from public inspection and copying if submitted to or used by the Department.

Requirements Imposed on Marijuana Processors Subject to Regulation and Licensing by the Department.

Marijuana processors involved in the production and processing of marijuana-infused edibles are subject to the following provisions and requirements:

- A marijuana processor that processes, packages, or makes marijuana-infused edibles must obtain an annual marijuana-infused edible license endorsement from the Department.
- The initial issuance and renewal of the Department's license endorsement must be made through the the business licensing system under chapter 19.02 RCW.
- The marijuana processor must have a valid marijuana processor's license issued by the LCB before submitting an application for initial endorsement by the Department.
- The application and initial endorsement fees total \$895. The annual renewal fee is the same.
- Applicants for endorsement must meet the same requirements as applicants for a food processing license under the Washington Food Processing Act including, but not limited to, successful completion of inspection by the Department.
- Annual renewal of the Department-issued license endorsement must coincide with the renewal of the endorsement holder's marijuana processor's license issued by the LCB.
- A marijuana processor must obtain a separate license endorsement for each location at which the marijuana processor intends to process marijuana-infused edibles.

A marijuana processor subject to regulation by the Department is authorized to produce edible products containing no marijuana provided such marijuana-free products are produced solely for tasting samples or internal product testing.

Rule-Making Authority of the Washington State Department of Agriculture.

The Department is granted the authority to adopt rules necessary to implement the provisions of the act. Such rules must be consistent with those promulgated by the LCB and the Department of Health.

Appropriation: None.

Fiscal Note: Available.

Effective Date: This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 4, relating to the implementation of the Department of Agriculture's regulatory requirements for marijuana product processors, which takes effect on April 1, 2018.

Staff Summary of Public Testimony (Commerce & Gaming):

(In support) This bill closes a loophole in state law regarding the regulation of foods infused with marijuana. In addition to the role played by the LCB, it authorizes the Department to be directly involved in the regulation of marijuana-infused edible products. The Department has great expertise in regulating food products and this expertise needs to be applied to the edible products being produced by the marijuana industry. The Department already has an excellent history of collaborating with the LCB in regulating marijuana-infused products and this bill will formalize and strengthen this role. The fees imposed on licensees will cover all regulatory costs incurred by the Department.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations):

(In support) All of the costs of the bill would be covered by the fees charged, and the service level for traditional food processors would also be preserved. Adding authority for marijuana-infused edibles to the Department of Agriculture would create efficiencies for billing and enforcement.

(Opposed) None.

Persons Testifying (Commerce & Gaming): Representative Kloba, prime sponsor; Bailey Hirschburg, Washington National Organization for the Reform of Marijuana Laws Political Action Committee; Candace Jacobs, Washington State Department of Agriculture; and Amber Lewis, Db3.

Persons Testifying (Appropriations): Candace Jacobs, Washington State Department of Agriculture.

Persons Signed In To Testify But Not Testifying (Commerce & Gaming): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.