
SECOND SUBSTITUTE HOUSE BILL 2334

State of Washington 65th Legislature 2018 Regular Session

By House Appropriations (originally sponsored by Representatives Sawyer and Kloba)

READ FIRST TIME 02/06/18.

1 AN ACT Relating to the regulation of the use of cannabinoid
2 additives in marijuana products; reenacting and amending RCW
3 69.50.101 and 69.50.325; adding a new section to chapter 69.50 RCW;
4 and providing an effective date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 69.50
7 RCW to read as follows:

8 (1) Licensed marijuana producers and licensed marijuana
9 processors may use a CBD product as an additive for the purpose of
10 enhancing the cannabidiol concentration of any product authorized for
11 production, processing, and sale under this chapter. Except as
12 otherwise provided in subsection (2) of this section, such CBD
13 product additives must be lawfully produced by, or purchased from, a
14 producer or processor licensed under this chapter.

15 (2) Subject to the requirements set forth in (a) and (b) of this
16 subsection, and for the purpose of enhancing the cannabidiol
17 concentration of any product authorized for production, processing,
18 or sale under this chapter, licensed marijuana producers and licensed
19 marijuana processors may use a CBD product obtained from a source not
20 licensed under this chapter, provided the CBD product:

1 (a) Has a THC level of 0.3 percent or less on a dry weight basis;
2 and

3 (b) Has been tested for contaminants and toxins by a testing
4 laboratory accredited under this chapter and in accordance with
5 testing standards established under this chapter and the applicable
6 administrative rules.

7 (3) The liquor and cannabis board may enact rules necessary to
8 implement the requirements of this section.

9 **Sec. 2.** RCW 69.50.101 and 2017 c 317 s 5, 2017 c 212 s 11, and
10 2017 c 153 s 1 are each reenacted and amended to read as follows:

11 The definitions in this section apply throughout this chapter
12 unless the context clearly requires otherwise.

13 (a) "Administer" means to apply a controlled substance, whether
14 by injection, inhalation, ingestion, or any other means, directly to
15 the body of a patient or research subject by:

16 (1) a practitioner authorized to prescribe (or, by the
17 practitioner's authorized agent); or

18 (2) the patient or research subject at the direction and in the
19 presence of the practitioner.

20 (b) "Agent" means an authorized person who acts on behalf of or
21 at the direction of a manufacturer, distributor, or dispenser. It
22 does not include a common or contract carrier, public
23 warehouseperson, or employee of the carrier or warehouseperson.

24 (c) "CBD concentration" has the meaning provided in RCW
25 69.51A.010.

26 (d) "Commission" means the pharmacy quality assurance commission.

27 (e) "Controlled substance" means a drug, substance, or immediate
28 precursor included in Schedules I through V as set forth in federal
29 or state laws, or federal or commission rules, but does not include
30 industrial hemp as defined in RCW 15.120.010.

31 (f)(1) "Controlled substance analog" means a substance the
32 chemical structure of which is substantially similar to the chemical
33 structure of a controlled substance in Schedule I or II and:

34 (i) that has a stimulant, depressant, or hallucinogenic effect on
35 the central nervous system substantially similar to the stimulant,
36 depressant, or hallucinogenic effect on the central nervous system of
37 a controlled substance included in Schedule I or II; or

38 (ii) with respect to a particular individual, that the individual
39 represents or intends to have a stimulant, depressant, or

1 hallucinogenic effect on the central nervous system substantially
2 similar to the stimulant, depressant, or hallucinogenic effect on the
3 central nervous system of a controlled substance included in Schedule
4 I or II.

5 (2) The term does not include:

6 (i) a controlled substance;

7 (ii) a substance for which there is an approved new drug
8 application;

9 (iii) a substance with respect to which an exemption is in effect
10 for investigational use by a particular person under Section 505 of
11 the federal food, drug, and cosmetic act, 21 U.S.C. Sec. 355, or
12 chapter 69.77 RCW to the extent conduct with respect to the substance
13 is pursuant to the exemption; or

14 (iv) any substance to the extent not intended for human
15 consumption before an exemption takes effect with respect to the
16 substance.

17 (g) "Deliver" or "delivery" means the actual or constructive
18 transfer from one person to another of a substance, whether or not
19 there is an agency relationship.

20 (h) "Department" means the department of health.

21 (i) "Designated provider" has the meaning provided in RCW
22 69.51A.010.

23 (j) "Dispense" means the interpretation of a prescription or
24 order for a controlled substance and, pursuant to that prescription
25 or order, the proper selection, measuring, compounding, labeling, or
26 packaging necessary to prepare that prescription or order for
27 delivery.

28 (k) "Dispenser" means a practitioner who dispenses.

29 (l) "Distribute" means to deliver other than by administering or
30 dispensing a controlled substance.

31 (m) "Distributor" means a person who distributes.

32 (n) "Drug" means (1) a controlled substance recognized as a drug
33 in the official United States pharmacopoeia/national formulary or the
34 official homeopathic pharmacopoeia of the United States, or any
35 supplement to them; (2) controlled substances intended for use in the
36 diagnosis, cure, mitigation, treatment, or prevention of disease in
37 individuals or animals; (3) controlled substances (other than food)
38 intended to affect the structure or any function of the body of
39 individuals or animals; and (4) controlled substances intended for
40 use as a component of any article specified in (1), (2), or (3) of

1 this subsection. The term does not include devices or their
2 components, parts, or accessories.

3 (o) "Drug enforcement administration" means the drug enforcement
4 administration in the United States Department of Justice, or its
5 successor agency.

6 (p) "Electronic communication of prescription information" means
7 the transmission of a prescription or refill authorization for a drug
8 of a practitioner using computer systems. The term does not include a
9 prescription or refill authorization verbally transmitted by
10 telephone nor a facsimile manually signed by the practitioner.

11 (q) "Immature plant or clone" means a plant or clone that has no
12 flowers, is less than twelve inches in height, and is less than
13 twelve inches in diameter.

14 (r) "Immediate precursor" means a substance:

15 (1) that the commission has found to be and by rule designates as
16 being the principal compound commonly used, or produced primarily for
17 use, in the manufacture of a controlled substance;

18 (2) that is an immediate chemical intermediary used or likely to
19 be used in the manufacture of a controlled substance; and

20 (3) the control of which is necessary to prevent, curtail, or
21 limit the manufacture of the controlled substance.

22 (s) "Isomer" means an optical isomer, but in subsection (ee)(5)
23 of this section, RCW 69.50.204(a) (12) and (34), and 69.50.206(b)(4),
24 the term includes any geometrical isomer; in RCW 69.50.204(a) (8) and
25 (42), and 69.50.210(c) the term includes any positional isomer; and
26 in RCW 69.50.204(a)(35), 69.50.204(c), and 69.50.208(a) the term
27 includes any positional or geometric isomer.

28 (t) "Lot" means a definite quantity of marijuana, marijuana
29 concentrates, useable marijuana, or marijuana-infused product
30 identified by a lot number, every portion or package of which is
31 uniform within recognized tolerances for the factors that appear in
32 the labeling.

33 (u) "Lot number" must identify the licensee by business or trade
34 name and Washington state unified business identifier number, and the
35 date of harvest or processing for each lot of marijuana, marijuana
36 concentrates, useable marijuana, or marijuana-infused product.

37 (v) "Manufacture" means the production, preparation, propagation,
38 compounding, conversion, or processing of a controlled substance,
39 either directly or indirectly or by extraction from substances of
40 natural origin, or independently by means of chemical synthesis, or

1 by a combination of extraction and chemical synthesis, and includes
2 any packaging or repackaging of the substance or labeling or
3 relabeling of its container. The term does not include the
4 preparation, compounding, packaging, repackaging, labeling, or
5 relabeling of a controlled substance:

6 (1) by a practitioner as an incident to the practitioner's
7 administering or dispensing of a controlled substance in the course
8 of the practitioner's professional practice; or

9 (2) by a practitioner, or by the practitioner's authorized agent
10 under the practitioner's supervision, for the purpose of, or as an
11 incident to, research, teaching, or chemical analysis and not for
12 sale.

13 (w) "Marijuana" or "marihuana" means all parts of the plant
14 *Cannabis*, whether growing or not, with a THC concentration greater
15 than 0.3 percent on a dry weight basis; the seeds thereof; the resin
16 extracted from any part of the plant; and every compound,
17 manufacture, salt, derivative, mixture, or preparation of the plant,
18 its seeds or resin. The term does not include:

19 (1) The mature stalks of the plant, fiber produced from the
20 stalks, oil or cake made from the seeds of the plant, any other
21 compound, manufacture, salt, derivative, mixture, or preparation of
22 the mature stalks (except the resin extracted therefrom), fiber, oil,
23 or cake, or the sterilized seed of the plant which is incapable of
24 germination; or

25 (2) Industrial hemp as defined in RCW 15.120.010.

26 (x) "Marijuana concentrates" means products consisting wholly or
27 in part of the resin extracted from any part of the plant *Cannabis*
28 and having a THC concentration greater than ten percent.

29 (y) "Marijuana processor" means a person licensed by the state
30 liquor and cannabis board to process marijuana into marijuana
31 concentrates, useable marijuana, and marijuana-infused products,
32 package and label marijuana concentrates, useable marijuana, and
33 marijuana-infused products for sale in retail outlets, and sell
34 marijuana concentrates, useable marijuana, and marijuana-infused
35 products at wholesale to marijuana retailers.

36 (z) "Marijuana producer" means a person licensed by the state
37 liquor and cannabis board to produce and sell marijuana at wholesale
38 to marijuana processors and other marijuana producers.

1 (aa) "Marijuana products" means useable marijuana, marijuana
2 concentrates, and marijuana-infused products as defined in this
3 section.

4 (bb) "Marijuana researcher" means a person licensed by the state
5 liquor and cannabis board to produce, process, and possess marijuana
6 for the purposes of conducting research on marijuana and marijuana-
7 derived drug products.

8 (cc) "Marijuana retailer" means a person licensed by the state
9 liquor and cannabis board to sell marijuana concentrates, useable
10 marijuana, and marijuana-infused products in a retail outlet.

11 (dd) "Marijuana-infused products" means products that contain
12 marijuana or marijuana extracts, are intended for human use, are
13 derived from marijuana as defined in subsection (w) of this section,
14 and have a THC concentration no greater than ten percent. The term
15 "marijuana-infused products" does not include either useable
16 marijuana or marijuana concentrates.

17 (ee) "Narcotic drug" means any of the following, whether produced
18 directly or indirectly by extraction from substances of vegetable
19 origin, or independently by means of chemical synthesis, or by a
20 combination of extraction and chemical synthesis:

21 (1) Opium, opium derivative, and any derivative of opium or opium
22 derivative, including their salts, isomers, and salts of isomers,
23 whenever the existence of the salts, isomers, and salts of isomers is
24 possible within the specific chemical designation. The term does not
25 include the isoquinoline alkaloids of opium.

26 (2) Synthetic opiate and any derivative of synthetic opiate,
27 including their isomers, esters, ethers, salts, and salts of isomers,
28 esters, and ethers, whenever the existence of the isomers, esters,
29 ethers, and salts is possible within the specific chemical
30 designation.

31 (3) Poppy straw and concentrate of poppy straw.

32 (4) Coca leaves, except coca leaves and extracts of coca leaves
33 from which cocaine, ecgonine, and derivatives or ecgonine or their
34 salts have been removed.

35 (5) Cocaine, or any salt, isomer, or salt of isomer thereof.

36 (6) Cocaine base.

37 (7) Ecgonine, or any derivative, salt, isomer, or salt of isomer
38 thereof.

39 (8) Any compound, mixture, or preparation containing any quantity
40 of any substance referred to in subparagraphs (1) through (7).

1 (ff) "Opiate" means any substance having an addiction-forming or
2 addiction-sustaining liability similar to morphine or being capable
3 of conversion into a drug having addiction-forming or addiction-
4 sustaining liability. The term includes opium, substances derived
5 from opium (opium derivatives), and synthetic opiates. The term does
6 not include, unless specifically designated as controlled under RCW
7 69.50.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan
8 and its salts (dextromethorphan). The term includes the racemic and
9 levorotatory forms of dextromethorphan.

10 (gg) "Opium poppy" means the plant of the species *Papaver*
11 *somniferum* L., except its seeds.

12 (hh) "Person" means individual, corporation, business trust,
13 estate, trust, partnership, association, joint venture, government,
14 governmental subdivision or agency, or any other legal or commercial
15 entity.

16 (ii) "Plant" has the meaning provided in RCW 69.51A.010.

17 (jj) "Poppy straw" means all parts, except the seeds, of the
18 opium poppy, after mowing.

19 (kk) "Practitioner" means:

20 (1) A physician under chapter 18.71 RCW; a physician assistant
21 under chapter 18.71A RCW; an osteopathic physician and surgeon under
22 chapter 18.57 RCW; an osteopathic physician assistant under chapter
23 18.57A RCW who is licensed under RCW 18.57A.020 subject to any
24 limitations in RCW 18.57A.040; an optometrist licensed under chapter
25 18.53 RCW who is certified by the optometry board under RCW 18.53.010
26 subject to any limitations in RCW 18.53.010; a dentist under chapter
27 18.32 RCW; a podiatric physician and surgeon under chapter 18.22 RCW;
28 a veterinarian under chapter 18.92 RCW; a registered nurse, advanced
29 registered nurse practitioner, or licensed practical nurse under
30 chapter 18.79 RCW; a naturopathic physician under chapter 18.36A RCW
31 who is licensed under RCW 18.36A.030 subject to any limitations in
32 RCW 18.36A.040; a pharmacist under chapter 18.64 RCW or a scientific
33 investigator under this chapter, licensed, registered or otherwise
34 permitted insofar as is consistent with those licensing laws to
35 distribute, dispense, conduct research with respect to or administer
36 a controlled substance in the course of their professional practice
37 or research in this state.

38 (2) A pharmacy, hospital or other institution licensed,
39 registered, or otherwise permitted to distribute, dispense, conduct

1 research with respect to or to administer a controlled substance in
2 the course of professional practice or research in this state.

3 (3) A physician licensed to practice medicine and surgery, a
4 physician licensed to practice osteopathic medicine and surgery, a
5 dentist licensed to practice dentistry, a podiatric physician and
6 surgeon licensed to practice podiatric medicine and surgery, a
7 licensed physician assistant or a licensed osteopathic physician
8 assistant specifically approved to prescribe controlled substances by
9 his or her state's medical quality assurance commission or equivalent
10 and his or her supervising physician, an advanced registered nurse
11 practitioner licensed to prescribe controlled substances, or a
12 veterinarian licensed to practice veterinary medicine in any state of
13 the United States.

14 (ll) "Prescription" means an order for controlled substances
15 issued by a practitioner duly authorized by law or rule in the state
16 of Washington to prescribe controlled substances within the scope of
17 his or her professional practice for a legitimate medical purpose.

18 (mm) "Production" includes the manufacturing, planting,
19 cultivating, growing, or harvesting of a controlled substance.

20 (nn) "Qualifying patient" has the meaning provided in RCW
21 69.51A.010.

22 (oo) "Recognition card" has the meaning provided in RCW
23 69.51A.010.

24 (pp) "Retail outlet" means a location licensed by the state
25 liquor and cannabis board for the retail sale of marijuana
26 concentrates, useable marijuana, and marijuana-infused products.

27 (qq) "Secretary" means the secretary of health or the secretary's
28 designee.

29 (rr) "State," unless the context otherwise requires, means a
30 state of the United States, the District of Columbia, the
31 Commonwealth of Puerto Rico, or a territory or insular possession
32 subject to the jurisdiction of the United States.

33 (ss) "THC concentration" means percent of delta-9
34 tetrahydrocannabinol content per dry weight of any part of the plant
35 *Cannabis*, or per volume or weight of marijuana product, or the
36 combined percent of delta-9 tetrahydrocannabinol and
37 tetrahydrocannabinolic acid in any part of the plant *Cannabis*
38 regardless of moisture content.

39 (tt) "Ultimate user" means an individual who lawfully possesses a
40 controlled substance for the individual's own use or for the use of a

1 member of the individual's household or for administering to an
2 animal owned by the individual or by a member of the individual's
3 household.

4 (uu) "Useable marijuana" means dried marijuana flowers. The term
5 "useable marijuana" does not include either marijuana-infused
6 products or marijuana concentrates.

7 (vv) "CBD product" means any product containing or consisting of
8 cannabidiol.

9 **Sec. 3.** RCW 69.50.325 and 2017 c 317 s 1 and 2017 c 316 s 2 are
10 each reenacted and amended to read as follows:

11 (1) There shall be a marijuana producer's license regulated by
12 the state liquor and cannabis board and subject to annual renewal.
13 The licensee is authorized to produce: (a) Marijuana for sale at
14 wholesale to marijuana processors and other marijuana producers; (b)
15 immature plants or clones and seeds for sale to cooperatives as
16 described under RCW 69.51A.250; and (c) immature plants or clones and
17 seeds for sale to qualifying patients and designated providers as
18 provided under RCW 69.51A.310. The production, possession, delivery,
19 distribution, and sale of marijuana in accordance with the provisions
20 of this chapter and the rules adopted to implement and enforce it, by
21 a validly licensed marijuana producer, shall not be a criminal or
22 civil offense under Washington state law. Every marijuana producer's
23 license shall be issued in the name of the applicant, shall specify
24 the location at which the marijuana producer intends to operate,
25 which must be within the state of Washington, and the holder thereof
26 shall not allow any other person to use the license. The application
27 fee for a marijuana producer's license shall be two hundred fifty
28 dollars. The annual fee for issuance and renewal of a marijuana
29 producer's license shall be one thousand three hundred eighty-one
30 dollars. A separate license shall be required for each location at
31 which a marijuana producer intends to produce marijuana.

32 (2) There shall be a marijuana processor's license to process,
33 package, and label marijuana concentrates, useable marijuana, and
34 marijuana-infused products for sale at wholesale to marijuana
35 processors and marijuana retailers, regulated by the state liquor and
36 cannabis board and subject to annual renewal. The processing,
37 packaging, possession, delivery, distribution, and sale of marijuana,
38 useable marijuana, marijuana-infused products, and marijuana
39 concentrates in accordance with the provisions of this chapter and

1 chapter 69.51A RCW and the rules adopted to implement and enforce
2 these chapters, by a validly licensed marijuana processor, shall not
3 be a criminal or civil offense under Washington state law. Every
4 marijuana processor's license shall be issued in the name of the
5 applicant, shall specify the location at which the licensee intends
6 to operate, which must be within the state of Washington, and the
7 holder thereof shall not allow any other person to use the license.
8 The application fee for a marijuana processor's license shall be two
9 hundred fifty dollars. The annual fee for issuance and renewal of a
10 marijuana processor's license shall be one thousand three hundred
11 eighty-one dollars. A separate license shall be required for each
12 location at which a marijuana processor intends to process marijuana.

13 (3)(a) There shall be a marijuana retailer's license to sell
14 marijuana concentrates, useable marijuana, and marijuana-infused
15 products at retail in retail outlets, regulated by the state liquor
16 and cannabis board and subject to annual renewal. The possession,
17 delivery, distribution, and sale of marijuana concentrates, useable
18 marijuana, and marijuana-infused products in accordance with the
19 provisions of this chapter and the rules adopted to implement and
20 enforce it, by a validly licensed marijuana retailer, shall not be a
21 criminal or civil offense under Washington state law. Every marijuana
22 retailer's license shall be issued in the name of the applicant,
23 shall specify the location of the retail outlet the licensee intends
24 to operate, which must be within the state of Washington, and the
25 holder thereof shall not allow any other person to use the license.
26 The application fee for a marijuana retailer's license shall be two
27 hundred fifty dollars. The annual fee for issuance and renewal of a
28 marijuana retailer's license shall be one thousand three hundred
29 eighty-one dollars. A separate license shall be required for each
30 location at which a marijuana retailer intends to sell marijuana
31 concentrates, useable marijuana, and marijuana-infused products.

32 (b) An individual retail licensee and all other persons or
33 entities with a financial or other ownership interest in the business
34 operating under the license are limited, in the aggregate, to holding
35 a collective total of not more than five retail marijuana licenses.

36 (c)(i) A marijuana retailer's license is subject to forfeiture in
37 accordance with rules adopted by the state liquor and cannabis board
38 pursuant to this section.

39 (ii) The state liquor and cannabis board shall adopt rules to
40 establish a license forfeiture process for a licensed marijuana

1 retailer that is not fully operational and open to the public within
2 a specified period from the date of license issuance, as established
3 by the state liquor and cannabis board, subject to the following
4 restrictions:

5 (A) No marijuana retailer's license may be subject to forfeiture
6 within the first nine months of license issuance; and

7 (B) The state liquor and cannabis board must require license
8 forfeiture on or before twenty-four calendar months of license
9 issuance if a marijuana retailer is not fully operational and open to
10 the public, unless the board determines that circumstances out of the
11 licensee's control are preventing the licensee from becoming fully
12 operational and that, in the board's discretion, the circumstances
13 warrant extending the forfeiture period beyond twenty-four calendar
14 months.

15 (iii) The state liquor and cannabis board has discretion in
16 adopting rules under this subsection (3)(c).

17 (iv) This subsection (3)(c) applies to marijuana retailer's
18 licenses issued before and after July 23, 2017. However, no license
19 of a marijuana retailer that otherwise meets the conditions for
20 license forfeiture established pursuant to this subsection (3)(c) may
21 be subject to forfeiture within the first nine calendar months of
22 July 23, 2017.

23 (v) The state liquor and cannabis board may not require license
24 forfeiture if the licensee has been incapable of opening a fully
25 operational retail marijuana business due to actions by the city,
26 town, or county with jurisdiction over the licensee that include any
27 of the following:

28 (A) The adoption of a ban or moratorium that prohibits the
29 opening of a retail marijuana business; or

30 (B) The adoption of an ordinance or regulation related to zoning,
31 business licensing, land use, or other regulatory measure that has
32 the effect of preventing a licensee from receiving an occupancy
33 permit from the jurisdiction or which otherwise prevents a licensed
34 marijuana retailer from becoming operational.

35 NEW SECTION. **Sec. 4.** Section 3 of this act takes effect July 1,
36 2018.

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