**5298-S.E AMH COG H2727.1 - NOT FOR FLOOR USE**

**ESSB 5298** - H COMM AMD

By Committee on Commerce & Gaming

**ADOPTED AS AMENDED 04/16/2019**

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec.**  The legislature intends to allow additional information on the labels and labeling of marijuana products to assist consumers in making purchases of these products.

The legislature declares that labels and labeling should not make any disease claim indicating the product is intended for use in the diagnosis, treatment, cure, or prevention of any disease.

The legislature recognizes that it may be useful for a label or labeling to describe the intended role of a marijuana product that contains nutrients or other dietary ingredients, including herbs and other botanicals, to maintain a structure or function of the body, or characterize the documented mechanism by which the product acts to maintain such structure or function, provided that the claim is truthful and not misleading.

**Sec.**  RCW 69.50.345 and 2018 c 43 s 2 are each amended to read as follows:

The state liquor and cannabis board, subject to the provisions of this chapter, must adopt rules that establish the procedures and criteria necessary to implement the following:

(1) Licensing of marijuana producers, marijuana processors, and marijuana retailers, including prescribing forms and establishing application, reinstatement, and renewal fees.

(a) Application forms for marijuana producers must request the applicant to state whether the applicant intends to produce marijuana for sale by marijuana retailers holding medical marijuana endorsements and the amount of or percentage of canopy the applicant intends to commit to growing plants determined by the department under RCW 69.50.375 to be of a THC concentration, CBD concentration, or THC to CBD ratio appropriate for marijuana concentrates, useable marijuana, or marijuana-infused products sold to qualifying patients.

(b) The state liquor and cannabis board must reconsider and increase limits on the amount of square feet permitted to be in production on July 24, 2015, and increase the percentage of production space for those marijuana producers who intend to grow plants for marijuana retailers holding medical marijuana endorsements if the marijuana producer designates the increased production space to plants determined by the department under RCW 69.50.375 to be of a THC concentration, CBD concentration, or THC to CBD ratio appropriate for marijuana concentrates, useable marijuana, or marijuana-infused products to be sold to qualifying patients. If current marijuana producers do not use all the increased production space, the state liquor and cannabis board may reopen the license period for new marijuana producer license applicants but only to those marijuana producers who agree to grow plants for marijuana retailers holding medical marijuana endorsements. Priority in licensing must be given to marijuana producer license applicants who have an application pending on July 24, 2015, but who are not yet licensed and then to new marijuana producer license applicants. After January 1, 2017, any reconsideration of the limits on the amount of square feet permitted to be in production to meet the medical needs of qualifying patients must consider information contained in the medical marijuana authorization database established in RCW 69.51A.230;

(2) Determining, in consultation with the office of financial management, the maximum number of retail outlets that may be licensed in each county, taking into consideration:

(a) Population distribution;

(b) Security and safety issues;

(c) The provision of adequate access to licensed sources of marijuana concentrates, useable marijuana, and marijuana-infused products to discourage purchases from the illegal market; and

(d) The number of retail outlets holding medical marijuana endorsements necessary to meet the medical needs of qualifying patients. The state liquor and cannabis board must reconsider and increase the maximum number of retail outlets it established before July 24, 2015, and allow for a new license application period and a greater number of retail outlets to be permitted in order to accommodate the medical needs of qualifying patients and designated providers. After January 1, 2017, any reconsideration of the maximum number of retail outlets needed to meet the medical needs of qualifying patients must consider information contained in the medical marijuana authorization database established in RCW 69.51A.230;

(3) Determining the maximum quantity of marijuana a marijuana producer may have on the premises of a licensed location at any time without violating Washington state law;

(4) Determining the maximum quantities of marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products a marijuana processor may have on the premises of a licensed location at any time without violating Washington state law;

(5) Determining the maximum quantities of marijuana concentrates, useable marijuana, and marijuana-infused products a marijuana retailer may have on the premises of a retail outlet at any time without violating Washington state law;

(6) In making the determinations required by this section, the state liquor and cannabis board shall take into consideration:

(a) Security and safety issues;

(b) The provision of adequate access to licensed sources of marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products to discourage purchases from the illegal market; and

(c) Economies of scale, and their impact on licensees' ability to both comply with regulatory requirements and undercut illegal market prices;

(7) Determining the nature, form, and capacity of all containers to be used by licensees to contain marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products, and their labeling requirements((~~, to include but not be limited to:~~

~~(a) The business or trade name and Washington state unified business identifier number of the licensees that produced and processed the marijuana, marijuana concentrates, useable marijuana, or marijuana-infused product;~~

~~(b) Lot numbers of the marijuana, marijuana concentrates, useable marijuana, or marijuana-infused product;~~

~~(c) THC concentration and CBD concentration of the marijuana, marijuana concentrates, useable marijuana, or marijuana-infused product;~~

~~(d) Medically and scientifically accurate information about the health and safety risks posed by marijuana use; and~~

~~(e) Language required by RCW 69.04.480~~));

(8) In consultation with the department of agriculture and the department, establishing classes of marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products according to grade, condition, cannabinoid profile, THC concentration, CBD concentration, or other qualitative measurements deemed appropriate by the state liquor and cannabis board;

(9) Establishing reasonable time, place, and manner restrictions and requirements regarding advertising of marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products that are not inconsistent with the provisions of this chapter, taking into consideration:

(a) Federal laws relating to marijuana that are applicable within Washington state;

(b) Minimizing exposure of people under twenty-one years of age to the advertising;

(c) The inclusion of medically and scientifically accurate information about the health and safety risks posed by marijuana use in the advertising; and

(d) Ensuring that retail outlets with medical marijuana endorsements may advertise themselves as medical retail outlets;

(10) Specifying and regulating the time and periods when, and the manner, methods, and means by which, licensees shall transport and deliver marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products within the state;

(11) In consultation with the department and the department of agriculture, establishing accreditation requirements for testing laboratories used by licensees to demonstrate compliance with standards adopted by the state liquor and cannabis board, and prescribing methods of producing, processing, and packaging marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products; conditions of sanitation; and standards of ingredients, quality, and identity of marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products produced, processed, packaged, or sold by licensees;

(12) Specifying procedures for identifying, seizing, confiscating, destroying, and donating to law enforcement for training purposes all marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products produced, processed, packaged, labeled, or offered for sale in this state that do not conform in all respects to the standards prescribed by this chapter or the rules of the state liquor and cannabis board.

**Sec.**  RCW 69.50.346 and 2018 c 43 s 1 are each amended to read as follows:

(1) The label on a marijuana product container, including marijuana concentrates, useable marijuana, or marijuana-infused products, sold at retail((~~:~~

~~(1)~~)) must include:

(a) The business or trade name and Washington state unified business identifier number of the marijuana producer and processor ((~~that produced and processed the marijuana as required pursuant to RCW 69.50.345(7); and~~

~~(2) Is~~));

(b) The lot numbers of the product;

(c) The THC concentration and CBD concentration of the product;

(d) Medically and scientifically accurate and reliable information about the health and safety risks posed by marijuana use;

(e) Language required by RCW 69.04.480; and

(f) A disclaimer, subject to the following conditions:

(i) Where there is one statement made under subsection (2) of this section, or as described in subsection (5)(b) of this section, the disclaimer must state "This statement has not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."; and

(ii) Where there is more than one statement made under subsection (2) of this section, or as described in subsection (5)(b) of this section, the disclaimer must state "These statements have not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

(2)(a) For marijuana products that have been identified by the department in rules adopted under RCW 69.50.375(4) in chapter 246-70 WAC as being a compliant marijuana product, the product label and labeling may include a structure or function claim describing the intended role of a product to maintain the structure or any function of the body, or characterize the documented mechanism by which the product acts to maintain such structure or function, provided that the claim is truthful and not misleading.

(b) In the context of describing the product's intended role in maintaining the structure or any function of the body, including the documented mechanism by which a product acts to maintain bodily structure or function, the label and labeling may include such terms as, but not limited to, "wellness," "well-being," "health," "maintain," "support," "assist," and "promote," and derivatives of any such terms.

(c) A statement made under (a) and (b) of this subsection may not claim to diagnose, mitigate, treat, cure, or prevent any disease.

(3) The labels and labeling may not be:

(a) False or misleading; or

(b) Especially appealing to children.

(4) The label is not required to include the business or trade name or Washington state unified business identifier number of, or any information about, the marijuana retailer selling the marijuana product.

(5) A marijuana product is not in violation of any Washington state law or rule of the Washington state liquor and cannabis board solely because its label or labeling contains:

(a) Directions or recommended conditions of use;

(b) A claim describing the psychoactive effects of the marijuana product, provided that the claim is truthful and not misleading; or

(c) An otherwise legal claim related to the nonmarijuana ingredients.

(6) This section does not create any civil liability on the part of the state, the liquor and cannabis board, any other state agency, officer, employee, or agent based on a marijuana licensee's description of a structure or function claim or the product's intended role under subsection (2) of this section.

(7) Nothing in this section shall apply to a drug, as defined in RCW 69.50.101, or a pharmaceutical product approved by the United States food and drug administration.

**Sec.**  RCW 82.08.9998 and 2015 2nd sp.s. c 4 s 207 are each amended to read as follows:

(1) ((~~Beginning July 1, 2016,~~)) The tax levied by RCW 82.08.020 does not apply to:

(a) Sales of marijuana concentrates, useable marijuana, or marijuana-infused products, identified by the department of health in rules adopted under RCW ((~~69.50.375 to be beneficial for medical use~~)) 69.50.375(4) in chapter 246-70 WAC as being a compliant marijuana product, by marijuana retailers with medical marijuana endorsements to qualifying patients or designated providers who have been issued recognition cards;

(b) Sales of products containing THC with a THC concentration of 0.3 percent or less to qualifying patients or designated providers who have been issued recognition cards by marijuana retailers with medical marijuana endorsements;

(c) Sales of marijuana concentrates, useable marijuana, or marijuana-infused products, identified by the department of health under RCW 69.50.375 to have a low THC, high CBD ratio, and to be beneficial for medical use, by marijuana retailers with medical marijuana endorsements, to any person;

(d) Sales of topical, noningestible products containing THC with a THC concentration of 0.3 percent or less by health care professionals under RCW 69.51A.280;

(e)(i) Marijuana, marijuana concentrates, useable marijuana, marijuana-infused products, or products containing THC with a THC concentration of 0.3 percent or less produced by a cooperative and provided to its members; and

(ii) Any nonmonetary resources and labor contributed by an individual member of the cooperative in which the individual is a member. However, nothing in this subsection (1)(e) may be construed to exempt the individual members of a cooperative from the tax imposed in RCW 82.08.020 on any purchase of property or services contributed to the cooperative.

(2) ((~~From July 1, 2015, until July 1, 2016, the tax levied by RCW 82.08.020 does not apply to sales of marijuana, marijuana concentrates, useable marijuana, marijuana-infused products, or products containing THC with a THC concentration of 0.3 percent or less, by collective gardens under RCW 69.51A.085 to qualifying patients or designated providers, if such sales are in compliance with chapter 69.51A RCW.~~

~~(3)~~)) Each seller making exempt sales under subsection (1) ((~~or (2)~~)) of this section must maintain information establishing eligibility for the exemption in the form and manner required by the department.

((~~(4)~~)) (3) The department must provide a separate tax reporting line for exemption amounts claimed under this section.

((~~(5)~~)) (4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Cooperative" means a cooperative authorized by and operating in compliance with RCW 69.51A.250.

(b) "Marijuana retailer with a medical marijuana endorsement" means a marijuana retailer permitted under RCW 69.50.375 to sell marijuana for medical use to qualifying patients and designated providers.

(c) "Products containing THC with a THC concentration of 0.3 percent or less" means all products containing THC with a THC concentration not exceeding 0.3 percent and that, when used as intended, are inhalable, ingestible, or absorbable.

(d) "THC concentration," "marijuana," "marijuana concentrates," "useable marijuana," "marijuana retailer," and "marijuana-infused products" have the same meanings as provided in RCW 69.50.101 and the terms "qualifying patients," "designated providers," and "recognition card" have the same meaning as provided in RCW 69.51A.010.

**Sec.**  RCW 82.12.9998 and 2015 2nd sp.s. c 4 s 208 are each amended to read as follows:

(1) ((~~From July 1, 2015, until July 1, 2016, the provisions of this chapter do not apply to the use of marijuana, marijuana concentrates, useable marijuana, marijuana-infused products, or products containing THC with a THC concentration of 0.3 percent or less, by a collective garden under RCW 69.51A.085, and the qualifying patients or designated providers participating in the collective garden, if such use is in compliance with chapter 69.51A RCW.~~

~~(2) Beginning July 1, 2016,~~)) The provisions of this chapter do not apply to:

(a) The use of marijuana concentrates, useable marijuana, or marijuana-infused products, identified by the department of health in rules adopted under RCW ((~~69.50.375 to be beneficial for medical use~~)) 69.50.375(4) in chapter 246-70 WAC as being a compliant marijuana product, by qualifying patients or designated providers who have been issued recognition cards and have obtained such products from a marijuana retailer with a medical marijuana endorsement.

(b) The use of products containing THC with a THC concentration of 0.3 percent or less by qualifying patients or designated providers who have been issued recognition cards and have obtained such products from a marijuana retailer with a medical marijuana endorsement.

(c)(i) Marijuana retailers with a medical marijuana endorsement with respect to:

(A) Marijuana concentrates, useable marijuana, or marijuana-infused products; or

(B) Products containing THC with a THC concentration of 0.3 percent or less;

(ii) The exemption in this subsection ((~~(2)~~)) (1)(c) applies only if such products are provided at no charge to a qualifying patient or designated provider who has been issued a recognition card. Each such retailer providing such products at no charge must maintain information establishing eligibility for this exemption in the form and manner required by the department.

(d) The use of marijuana concentrates, useable marijuana, or marijuana-infused products, identified by the department of health under RCW 69.50.375 to have a low THC, high CBD ratio, and to be beneficial for medical use, purchased from marijuana retailers with a medical marijuana endorsement.

(e) Health care professionals with respect to the use of products containing THC with a THC concentration of 0.3 percent or less provided at no charge by the health care professionals under RCW 69.51A.280. Each health care professional providing such products at no charge must maintain information establishing eligibility for this exemption in the form and manner required by the department.

(f) The use of topical, noningestible products containing THC with a THC concentration of 0.3 percent or less by qualifying patients when purchased from or provided at no charge by a health care professional under RCW 69.51A.280.

(g) The use of:

(i) Marijuana, marijuana concentrates, useable marijuana, marijuana-infused products, or products containing THC with a THC concentration of 0.3 percent or less, by a cooperative and its members, when produced by the cooperative; and

(ii) Any nonmonetary resources and labor by a cooperative when contributed by its members. However, nothing in this subsection ((~~(2)~~)) (1)(g) may be construed to exempt the individual members of a cooperative from the tax imposed in RCW 82.12.020 on the use of any property or services purchased by the member and contributed to the cooperative.

((~~(3)~~)) (2) The definitions in RCW 82.08.9998 apply to this section.

NEW SECTION. **Sec.**  This act takes effect January 1, 2020."

Correct the title.

EFFECT: (1) Removes the requirement that a structure or function claim included on any Department of Health (DOH) compliant marijuana product label, or a claim that describes a product's psychoactive effect included on any marijuana product label, be substantiated.

(2) Requires a structure or function claim included on any DOH compliant marijuana product label, or a claim that describes a product's psychoactive effect included on any marijuana product label, to include a disclaimer that states such claims: (a) have not been evaluated by the State of Washington; and (b) are not intended to diagnose, treat, cure, or prevent any disease.

(3) Removes "relief" from the list of example marijuana product label terms that may be used to describe the product's intended role in maintaining a structure or function of the body.

(4) Exempts drug and pharmaceutical products approved by the United States Food and Drug Administration from the marijuana product labeling requirements in the section.