

HOUSE BILL REPORT

HB 2826

As Passed House:
February 18, 2020

Title: An act relating to clarifying the authority of the liquor and cannabis board to regulate marijuana vapor products.

Brief Description: Clarifying the authority of the liquor and cannabis board to regulate marijuana vapor products.

Sponsors: Representatives Peterson and Pollet; by request of Liquor and Cannabis Board.

Brief History:

Committee Activity:

Commerce & Gaming: 2/3/20, 2/6/20 [DP];
Appropriations: 2/8/20 [DP].

Floor Activity:

Passed House: 2/18/20, 95-1.

Brief Summary of Bill

- Authorizes the Liquor and Cannabis Board (LCB) to adopt rules prohibiting any type of marijuana vapor product device, or prohibiting the use of any type of additive, solvent, ingredient, or compound in the production and processing of marijuana products, including marijuana vapor products.
- Requires the LCB to first have determined, following consultation with the Department of Health or another authority, that the device, additive, solvent, ingredient, or compound may pose a risk to public health or youth access.
- Authorizes the LCB to require marijuana processors to submit, under oath, to the Department of Health, a complete list of all constituent substances and the amount and sources of all constituent substances in each marijuana vapor product.
- Addresses the use of certain characterizing flavors in marijuana vapor products.

HOUSE COMMITTEE ON COMMERCE & GAMING

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.

Majority Report: Do pass. Signed by 11 members: Representatives Peterson, Chair; Kloba, Vice Chair; MacEwen, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Blake, Jenkin, Kirby, Morgan, Ramel, Vick and Young.

Staff: Peter Clodfelter (786-7127).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 31 members: Representatives Ormsby, Chair; Robinson, 1st Vice Chair; Bergquist, 2nd Vice Chair; Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Chandler, Chopp, Cody, Dolan, Dye, Fitzgibbon, Hansen, Hoff, Hudgins, Kilduff, Kraft, Macri, Mosbrucker, Pettigrew, Pollet, Ryu, Schmick, Senn, Steele, Sullivan, Sutherland, Tarleton, Tharinger and Ybarra.

Staff: Linda Merelle (786-7092).

Background:

The Liquor and Cannabis Board (LCB) regulates the production, processing, and retail sale of marijuana and marijuana products. From licensed retail outlets, retailers may sell limited amounts of useable marijuana, marijuana-infused products, and marijuana concentrates to adults age 21 and over, and to certain qualifying patients under age 21 if the retailer holds a medical endorsement. Marijuana products sold are intended for human consumption, and some marijuana products may be intended for consumption through vaporization.

Generally, in legalizing marijuana, Initiative Measure No. 502 (2012) (Initiative) granted the LCB significant rule-making authority in order to establish a regulatory system for the new industry. In addition to granting the LCB general rule-making authority, the Initiative authorized the LCB to adopt rules on the following specific topics, among numerous others: (1) methods of producing, processing, and packaging marijuana and marijuana products; (2) conditions of sanitation; (3) safe handling requirements; (4) approved pesticides and pesticide-testing requirements; (5) standards of ingredients, quality, and identity of marijuana and different marijuana products produced, processed, and sold by licensees; and (6) provisions for identification, seizure, confiscation, destruction, or donation to law enforcement for training purposes of all marijuana and marijuana products produced, processed, or sold within Washington that do not conform to legal requirements.

Summary of Bill:

The Liquor and Cannabis Board (LCB) may adopt rules prohibiting any type of device used in conjunction with a marijuana vapor product. The LCB may also adopt rules prohibiting the use of any type of additive, solvent, ingredient, or compound in the production and processing of marijuana products, including marijuana vapor products. Before adopting either of these types of rules, the LCB must have determined, following consultation with the Department of Health (DOH) or any other authority the LCB deems appropriate, that the device, additive, solvent, ingredient, or compound may pose a risk to public health or youth access.

The LCB may also adopt rules requiring marijuana processors to submit, under oath, to the DOH, a complete list of all constituent substances and the amount and sources of all constituent substances in each marijuana vapor product, including all additives, thickening agents, preservatives, compounds, and any other substance used in the production and processing of each marijuana vapor product.

It is provided that marijuana processors may incorporate a characterizing flavor in marijuana vapor products if the characterizing flavor is derived from botanical terpenes naturally occurring in the *Cannabis* plant, regardless of source, and if the characterizing flavor mimics the terpene profile found in a *Cannabis* plant. Characterizing flavors do not include any synthetic terpenes. If the LCB determines that a characterizing flavor otherwise authorized for use may pose a risk to public health or youth access, the LCB may adopt rules prohibiting the use of the characterizing flavor.

A definition for the term "youth access" is added to the Uniform Controlled Substances Act. "Youth access" means the level of interest persons under the age of 21 may have in a vapor product, as well as the degree to which the product is available or appealing to persons under the age of 21, and the likelihood of initiation, use, or addiction by adolescents and young adults.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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

Staff Summary of Public Testimony (Commerce & Gaming):

(In support) The work of the Liquor and Cannabis Board (LCB) and the Office of the Governor regarding vapor products and this legislation is appreciated. Businesses in the cannabis industry support the legislation, and appreciate the significant work the Office of the Governor performed in working with industry to ensure public health and safety issues around vapor products are adequately addressed. The emergence of vaping-related lung injury illnesses has made clear there are significant health risks with vapor products, including marijuana vapor products. As of January 2020, over 2,700 hospitalizations related to vapor-product lung injury cases have been reported nationwide with 23 in Washington. State law already grants the LCB authority to regulate vapor products containing marijuana, but science and safety data about materials used in vapor products and impacts on health are incomplete and emerging. This bill provides clarification by granting the LCB specific authority related to marijuana vapor products as new data emerges. This is a priority bill for the stakeholders who focus on substance abuse and prevention issues.

(Opposed) None.

(Other) Some marijuana producer and processor licensees are concerned that synthetic terpenes are not included as permitted types of terpenes for use by marijuana processors. There are some very expensive and rare botanically sourced terpenes, and banning synthetic

terpenes could result in increased product prices and some products could become unavailable. It is worth rethinking the proposed restriction on synthetic terpenes. If that restriction is stricken from the bill, the underlying concerns related to terpenes can be addressed through rulemaking. For example, rulemaking could prevent certain terpenes from being mixed together to create a bubble gum flavor.

Staff Summary of Public Testimony (Appropriations):

(In support) None.

(Opposed) None.

Persons Testifying (Commerce & Gaming): (In support) Representative Peterson, prime sponsor; Vicki Christophersen, Washington CannaBusiness Association; Sara Cooley Broschart, Liquor and Cannabis Board; and Seth Dawson, Washington Association for Substance Abuse Prevention.

(Other) Philip Dawdy, Washington Cannabis Association.

Persons Testifying (Appropriations): None.

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

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