

HOUSE BILL REPORT

ESSB 5298

As Reported by House Committee On:
Commerce & Gaming

Title: An act relating to labeling of marijuana products.

Brief Description: Regarding labeling of marijuana products.

Sponsors: Senate Committee on Labor & Commerce (originally sponsored by Senators Rivers, Palumbo and Wellman).

Brief History:

Committee Activity:

Commerce & Gaming: 3/19/19, 4/2/19 [DPA].

**Brief Summary of Engrossed Substitute Bill
(As Amended by Committee)**

- Allows Department of Health (DOH) compliant marijuana product labels to include claims and terms that provide the product's intended role in maintaining a structure or function of the body.
- Prohibits labels from: containing claims that marijuana products diagnose, mitigate, treat, cure, or prevent any disease; including false or misleading statements; or being especially appealing to children.
- Allows marijuana product labels to contain directions or recommended conditions of use, describe the product's psychoactive effect, or make a legal claim related to the nonmarijuana ingredients.
- Provides the state and its agencies immunity from civil liability based on a licensee's description included on a DOH compliant marijuana product label.

HOUSE COMMITTEE ON COMMERCE & GAMING

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

Staff: Kyle Raymond (786-7190).

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:

The Liquor and Cannabis Board (LCB) is required to adopt rules determining the nature, form, and capacity of all containers used by licensees that contain marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products (collectively, "marijuana products").

The LCB must adopt labeling requirement rules for marijuana products sold at retail that include the following business and product information:

- the processor and retailer licensee's business or trade name and Unified Business Identifier number;
- the marijuana product's lot number;
- the marijuana product's tetrahydrocannabinol (THC) concentration and cannabidiol (CBD) concentration;
- available medical and scientific information about the health and safety risks posed by marijuana use; and
- the statement "Warning—May be habit forming", which is required pursuant to a separate state law on the misbranding of drugs.

By rule, the LCB requires additional information to be included on marijuana product labels, including the product's weight, a statement disclosing all pesticides applied to the marijuana plants, and information about the growing medium during production and processing. The LCB also requires the following standard warnings to be included on marijuana product labels:

- "Unlawful outside Washington State";
- "It is illegal to operate a motor vehicle while under the influence of marijuana"; and
- the marijuana universal warning symbol that displays the marijuana product use age requirement.

There is a sales and use tax exemption on sales of marijuana concentrates, useable marijuana, or marijuana-infused products, identified by the Department of Health (DOH) to be beneficial for medical use, by marijuana retailers with medical marijuana endorsements to qualifying patients or designated providers who have been issued recognition cards.

Summary of Amended Bill:

The labels of DOH compliant marijuana products may include claims that describe the product's intended role in maintaining a structure or function of the body. The labels may also characterize the documented mechanism by which the product maintains a bodily structure or function. In addition, labels may include terms that describe the product's intended effect on a structure or function of the body, including, but not limited to "wellness," "well-being," "health," "maintain," "support," "assist," "promote," and derivatives of any such terms.

A marijuana product is not in violation of any state law or administrative rule solely because its label: (1) contains directions or recommended conditions of use; (2) describes the product's psychoactive effect; or (3) makes a claim related to the nonmarijuana ingredients.

Labels describing how a marijuana product maintains a structure or function of the body may not claim to diagnose, mitigate, treat, cure, or prevent any disease. In addition, marijuana product label claims may not be false, misleading, or especially appealing to children.

Marijuana product labels that contain a claim allowed under this act must include the disclaimer: "This statement has not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

Any marijuana product approved by the United States Food and Drug Administration (FDA) as a drug or pharmaceutical product is exempt from these marijuana product labeling requirements.

There is no civil liability on the part of the state, the LCB, any other state agency, officer, employee, or agent based on a marijuana licensee's description of the product's intended role or a structure or function claim.

The sales and use tax exemptions apply to DOH compliant marijuana products identified in chapter 246-70 WAC.

Amended Bill Compared to Engrossed Substitute Bill:

The amended bill removes the requirement that claims allowed under the act be substantiated, and requires these labels to include the following disclaimer: "This statement has not been evaluated by the State of Washington. This product is not intended to diagnose, treat, cure, or prevent any disease."

The amended bill also adds a provision exempting drug and pharmaceutical products approved by the FDA from the marijuana product label requirements. The term "relief" is removed 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.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect on January 1, 2020.

Staff Summary of Public Testimony:

(In support) The FDA separates health claims from structure or function claims when it regulates supplement labels, and this bill takes a similar approach towards marijuana product labels. Only DOH compliant products would be allowed to identify structure or function

claims authorized under this bill. In the adult use market, labels would be authorized to describe the psychoactive effect of the product, such as "uplifting" or "relaxing." The labels in the adult use market would also be authorized to describe other ingredients in the product. For example, if the product contained ginseng, the label could use the term "energizing" to describe the ginseng in the product. All claims have to be substantiated as true and not misleading.

Marijuana manufacturers that are DOH compliant are not allowed to include claims that describe a product's intended effect on the product label. Until recently, marijuana companies have been able to describe the intent of their product in the title. However, the LCB passed a rule eliminating marijuana companies' ability to describe or imply any wellness benefit that a product may provide. A marijuana product's effect can vary widely, so marijuana companies not having the ability to describe a product's intent is a public safety issue. For example, the formulation of a deep-sleep marijuana product is extremely different than an indica marijuana product. Fairwinds Manufacturing has not had one complaint of a false or misleading accusation on its products.

Marijuana manufacturers and processors need to be able to communicate the differences between products and members of the public need to better understand what they are consuming. This bill helps processors more accurately explain the effect a cannabis product is going to have on a person's mind or body. This bill will help people consuming marijuana in the regulated market find products that work for them.

The Washington State Association for Substance Abuse Prevention (Association) supports the bill as amended. This version of the bill restores the LCB's rulemaking authority over labels, more clearly defines what products and labels are included under the bill, and includes some contraindicators. The Association believes these are improvements over previous versions of the bill, and the Association would likely support additional changes to the bill if recommended by the DOH.

(Opposed) None.

Persons Testifying: Senator Rivers, prime sponsor; Brooke Davies, Washington CannaBusiness Association; Chris Masse, Miller Nash Graham & Dunn, LLP; Wendy Hull, Fairwinds Manufacturing; Mindon Win, Botanica Seattle; and Seth Dawson, Washington State Association for Substance Abuse Prevention.

Persons Signed In To Testify But Not Testifying: None.