

# HOUSE BILL REPORT

## E2SSB 5367

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**As Passed House - Amended:**

April 7, 2023

**Title:** An act relating to the regulation of products containing THC.

**Brief Description:** Concerning the regulation of products containing THC.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Robinson, Schoesler, Conway, Dozier, Keiser, Saldaña and Wellman; by request of Liquor and Cannabis Board).

**Brief History:**

**Committee Activity:**

Regulated Substances & Gaming: 3/13/23, 3/20/23 [DPA];

Appropriations: 3/31/23, 4/3/23 [DPA(RSG)].

**Floor Activity:**

Passed House: 4/7/23, 90-6.

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

- Modifies definitions in, and adds definitions to, the Uniform Controlled Substances Act (UCSA) and hemp statutes, including amending the term "cannabis products" in the UCSA to include any product intended to be consumed or absorbed inside the body with any detectable amount of tetrahydrocannabinol.
- Prohibits the manufacture, sale, or distribution of cannabis or cannabis products without a state-issued license.
- Prohibits the production, processing, manufacturing, or sale of any cannabinoid that is synthetically derived or completely synthetic.
- Modifies authorized activities of licensed cannabis producers and processors regarding enhancement of cannabidiol concentration in

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

cannabis products.

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## HOUSE COMMITTEE ON REGULATED SUBSTANCES & GAMING

**Majority Report:** Do pass as amended. Signed by 9 members: Representatives Kloba, Co-Chair; Wylie, Co-Chair; Stearns, Vice Chair; Chambers, Ranking Minority Member; Robertson, Assistant Ranking Minority Member; Cheney, Orwall, Reeves and Waters.

**Minority Report:** Without recommendation. Signed by 2 members: Representatives Morgan and Walsh.

**Staff:** Peter Clodfelter (786-7127).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** Do pass as amended by Committee on Regulated Substances & Gaming. Signed by 29 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Berg, Chopp, Connors, Davis, Dye, Fitzgibbon, Hansen, Harris, Lekanoff, Pollet, Riccelli, Rude, Ryu, Sandlin, Schmick, Senn, Simmons, Slatter, Springer, Steele, Stonier and Tharinger.

**Staff:** Matt Mazur-Hart (786-7139).

### **Background:**

#### Definitions in the Uniform Controlled Substances Act and Hemp Statutes.

The following definitions currently apply in the Uniform Controlled Substances Act (UCSA):

- "Cannabis" is defined as all parts of the plant *Cannabis*, whether growing or not, with a tetrahydrocannabinol (THC) concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. The term does not include the following:
  1. the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination; or
  2. hemp or industrial hemp and seeds used for licensed hemp production.
- "Cannabis products" is defined as useable cannabis, cannabis concentrates, and cannabis-infused products, as those terms are further defined.

- "CBD product" is defined as any product containing or consisting of cannabidiol (CBD).
- "THC concentration" is defined as the percent of delta-9 THC content per dry weight of any part of the plant *Cannabis*, or per volume or weight of cannabis product, or the combined percent of delta-9 THC and tetrahydrocannabinolic acid in any part of the plant *Cannabis* regardless of moisture content.

In hemp statutes, "hemp" is defined as the plant *Cannabis sativa L.* and any part of that plant, including the seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 THC concentration of not more than 0.3 percent on a dry weight basis. Additionally, the term "postharvest test" is defined as a test of delta-9 THC concentration levels of hemp after being harvested based on: (1) ground whole plant samples without heat applied; or (2) other approved testing methods.

#### Manufacturing, Distributing, or Selling Controlled Substances.

The Washington State Liquor and Cannabis Board (LCB) licenses and regulates cannabis producers, processors, and retailers who may engage in specific activities related to producing, processing, or selling cannabis pursuant to Initiative 502 (2012) and the UCSA. Cannabis is a controlled substance under the UCSA. Both the LCB and the Pharmacy Quality Assurance Commission (Commission) are granted authority in the UCSA over different activities. The LCB is the primary regulatory agency of the commercial cannabis market. Under the UCSA, the Commission has general authority to adopt rules and the Department of Health may charge reasonable fees, relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within Washington. Separate from the UCSA, a 2015 law authorizes the Governor to enter agreements with federally recognized Indian tribes concerning cannabis activities conducted by tribes in Indian country, to address any cannabis-related issue that involves both state and tribal interests or otherwise impacts tribal-state relations.

#### Cannabidiol Additives in Regulated Cannabis Products.

A 2018 law authorizes licensed cannabis producers and processors to use a CBD product as an additive for the purpose of enhancing the CBD concentration of a product. Such a CBD product must be lawfully produced by, or purchased from, a licensed cannabis producer or processor, or may be obtained from an unlicensed source provided the CBD product has a THC level of 0.3 percent or less on a dry weight basis and has been tested for contaminants and toxins by an accredited testing laboratory. The LCB has rule-making authority to adopt rules pertaining to laboratory testing and product safety standards for CBD products used by licensed producers and processors.

#### Hemp Legalization.

Hemp became federally legal pursuant to the federal Agriculture Improvement Act of 2018. The law removed hemp from the federal Controlled Substances Act, declared hemp a legal commodity, and authorized state and tribal hemp programs. Federal law defines "hemp" as the plant *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all

derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 THC concentration of not more than 0.3 percent on a dry weight basis. In 2019, Washington enacted a state hemp law to require the Washington State Department of Agriculture (WSDA) to develop an agricultural commodity program regulating hemp production. The WSDA licenses hemp producers and registers hemp processors under the law.

### **Summary of Amended Bill:**

#### Definitions in the Uniform Controlled Substances Act and Hemp Statutes.

The following definitions are modified or added to the Uniform Controlled Substances Act (UCSA):

- The definition of "cannabis" in the UCSA is modified to remove references to seeds, resin, compounds, and derivatives, to define "cannabis" as all parts of the plant *Cannabis*, whether growing or not, with a tetrahydrocannabinol (THC) concentration greater than 0.3 percent on a dry weight basis during the growing cycle through harvest and useable cannabis. The term "cannabis" does not include hemp, industrial hemp, or seeds used for licensed hemp production.
- The definition of "cannabis products" in the UCSA is modified to also include any product intended to be consumed or absorbed inside the body by any means including inhalation, ingestion, or insertion, with any detectable amount of THC. It is specified that cannabis products also include any product containing only THC content. However, cannabis products do not include cannabis health and beauty aids or products approved by the United States Food and Drug Administration (FDA).
- The definition of "THC concentration" in the UCSA is modified to: (1) remove the restriction that delta-9 THC is the only form of THC for purposes of determining THC concentration; and (2) remove the requirement that THC concentration means the percent of THC content "per dry weight."
- Definitions of "package" and "unit" are added to the UCSA. The term "package" is defined as a container that has a single unit or group of units. The term "unit" is defined as an individual consumable item within a package of one or more consumable items in solid, liquid, gas, or any form intended for human consumption.

The following definitions are added to or modified in hemp statutes:

- A definition of "hemp consumable" is added and the term is defined as a product that is sold or provided to another person, that is: (1) made of hemp; (2) not a cannabis product; and (3) intended to be consumed or absorbed inside the body by any means.
- The definition of "postharvest test" is modified to eliminate the restriction that delta-9 THC is the only type of THC tested for in a postharvest test of hemp.

#### Prohibition on Unlicensed Sales of Cannabis and Cannabis Products.

Unless otherwise authorized in law or permitted under a cannabis agreement between Washington and a tribe, no person may manufacture, sell, or distribute cannabis or cannabis

products without a valid license issued by the Washington State Liquor and Cannabis Board or the Pharmacy Quality Assurance Commission. Violating this requirement is a violation of the UCSA.

Prohibition on Synthetically Derived or Completely Synthetic Cannabinoids.

The producing, processing, manufacturing, or sale of any synthetically derived, or completely synthetic, cannabinoid, is prohibited under the UCSA, except for products approved by the FDA.

Cannabidiol Additives in Cannabis Products.

The authorization for licensed cannabis producers and processors to, subject to laboratory testing, use a cannabidiol (CBD) additive from an unlicensed source for the purpose of enhancing the CBD concentration of a product is modified, to specify that an additive must not be cannabis or a cannabis product and may not be a synthetic cannabinoid, instead of specifying that an additive must have a THC level of 0.3 percent or less on a dry weight basis.

Labeling Requirements for Cannabis Products.

Terminology is changed from "product container" to "product package" in the context of cannabis labeling requirements.

Clarifying Effect of Bill.

It is provided that nothing in the bill may be construed to require an agency to purchase a liquid chromatography-mass spectrometry instrument.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony (Regulated Substances & Gaming):**

(In support) This bill takes a public health and consumer protection approach to products containing tetrahydrocannabinol (THC), which are currently being sold outside of regulations. The federal legalization of hemp created a loophole for non-psychoactive compounds from hemp to be converted into impairing THC compounds and sold outside of state cannabis regulatory frameworks. It is important to address impacts of these products on persons who consume them, especially youth, who can consume these products without being aware of the effects. This bill gives the Liquor and Cannabis Board (LCB) the tools it needs to regulate intoxicating THC products. The heart of the bill is to prevent youth access to intoxicating products containing THC that currently fall into a regulatory gap. Products are sold without age restrictions or labeling in gas stations, grocery stores, and online. The

intent is not to prevent cannabis health and beauty aids, which are not ingested, or other hemp-derived products that are federally allowable or non-intoxicating. As the cannabis industry innovates, the regulatory environment must adapt. Similar to how alcohol is defined using a 0.5 percent alcohol threshold for regulation and age restrictions, there should be a similar threshold for THC products. A 10 parts-per-million threshold for hemp products is used in certain contexts federally and in other countries. It should be clear that hemp cannot be added to food until that activity is regulated. Currently, it is generally federally illegal to put hemp in food. The bill strikes a good balance to differentiate between products inside and outside of the regulatory framework. The THC limit for products sold outside of the regulated market should be zero, or effectively zero, for consumer safety and to avoid subverting the regulated market. Many chemically derived THC products have intoxicating effects that are as great or greater than delta-9 THC (the primary psychoactive substance currently regulated in the state cannabis system). It does not matter where the THC comes from, Initiative 502 (2012) (I-502) meant for it to be regulated and to prevent youth access. The bill maximizes revenue potential for Washington by ensuring all sales are at licensed retail stores. The bill would prevent sales of currently unregulated intoxicating products without including a mechanism for the sale of these products at licensed cannabis retail stores. Proponents of this bill and the hemp industry share goals, and there should be room for agreement on a regulatory approach.

(Opposed) The bill should be worked on further to ensure it does not prevent the sale of various cannabidiol (CBD) supplement and hemp food products that are not associated with the problem of sales of unregulated THC products to youth. The bill is overly broad and more restrictive than necessary. Instead of banning products, require labeling of the products. There is concern the bill could cause in-state businesses to close, yet not prevent sales of hemp-derived products into Washington from out of state. Out-of-state businesses will not comply with this proposed law and there is no methodology to track sales into Washington. Work of the Hemp in Food Task Force should be used to craft informed policies. A ratio-based approach of CBD to THC should be considered. The higher CBD content can mitigate impairing effects of THC. The public safety goals of the legislation can be achieved through another means, while enabling the hemp industry to remain profitable. The approach should be to ban chemically transformed synthetic cannabinoids and remove these products from the general market. There should also be a two-year pilot program through which the Washington State Department of Agriculture (WSDA), the Washington State Department of Health, and the LCB set limitations. For laboratories, a zero-threshold for THC is unworkable for testing and at least a small concentration limit is required for a laboratory to say it cannot detect THC above that number. Colorado previously attempted a zero-threshold standard for pesticide testing, which did not work. This bill will destroy the hemp industry. The bill would ban the sale of popular products, including products used by professional sports teams in Washington. Washington should enact limits on hemp products based on safety data. Recent legislation from Colorado on intoxicating cannabinoids should be studied. The current bill cannot be effectively enforced.

(Other) Taking the THC threshold in the bill to zero may have gone too far. The bill should not ban the sale of hemp seeds, hemp seed oils, or CBD isolates commonly found at grocery stores that are not intoxicating. Most things coming from the hemp plant will have trace amounts of THC. Important goals the bill must achieve are banning synthetic products in the I-502 market, and preventing intoxicating THC products on shelves outside of the I-502 market. The engrossed second substitute senate bill is likely to reduce hemp production by as much as 90 percent in Washington. It is not possible to get to a THC level of zero in a full-spectrum hemp product. The bill would remove hemp hearts and hemp seed oils from grocery store shelves despite being legally identified under federal law as food. There is an estimated 75 percent reduction in funding to the hemp program under this bill that would render the WSDA's program insolvent. The bill does not include a pathway to sell hemp products in I-502 retail stores. Without a bridge to the I-502 market or age restrictions for product sales outside of the I-502 market, hemp production for consumption will not be viable in Washington. Pathways should be identified to protect the public and restrict access to compounds containing THC while also finding ways for hemp to continue to exist. Care should be taken to not authorize synthetic cannabinoids for use in the I-502 market. The federal Drug Enforcement Administration recently confirmed that synthetic cannabinoid products are not federally legal. There is concern the bill will not solve the problems it seeks to solve, but will cause more confusion and create ways for synthesized products to be brought into the I-502 market.

**Staff Summary of Public Testimony (Appropriations):**

(In support) This bill has been adjusted well as it has made its way through the legislative process and the adjustments target the main policy purpose behind the bill. The bill prohibits selling synthetic cannabinoids, including the Delta-8 gummies that are now being sold in convenience stores outside of the regulated market and getting kids sick. There are concerns with the word 'detectable' and what that means for testing labs. However, the Liquor and Cannabis Board (LCB) can write rules around that concern to address real-world constraints. The Legislature has made a clear statement of intent and state agencies can iron out the details of that intent. The bill is also inexpensive to implement.

The bill strikes the right balance between the regulated cannabis marketplace and the largely unregulated hemp marketplace. The bill has been improved with contributions from the industry and the LCB. Products sold outside of the regulated market are not subject to the state's 37 percent cannabis excise tax and therefore reduces the revenue the state would otherwise receive. The bill is narrowly focused on ingestible products derived from hemp. It does not apply to the Food and Drug Administration-approved products or health and beauty products.

This bill would close a loophole in cannabis regulation. When cannabis sales were first permitted no one could foresee future innovation. But now growers have figured out how to create tetrahydrocannabinol (THC) from cannabidiol using chemical processes. The regulated market needs to evolve to keep up with these innovations. The regulated market

already puts safety limits on cannabis sales through things like age limits, packaging and labeling requirements, dosing limits, and advertising restrictions. These new products are not subject to any of those safeguards.

(Opposed) This bill threatens the hemp-derived wellness products industry. The bill would also nearly cripple the Washington hemp farming sector. The Washington State Department of Agriculture is predicting a 75 percent decline in the number of registrations to grow hemp in the state. It would be more beneficial to establish a pilot program with rulemaking to create reasonable hemp-derived THC limits in order to protect the industry. This pilot program would allow for the continued sale of products with very small amounts of THC outside of the regulated market.

The bill is bad for farmers and consumers. For farmers it narrows the market to only regulated cannabis retail shops, even for raw hemp flour. The bill would also impose a 37 percent excise tax on these products, making consumers pay more money for nonintoxicating products.

There is a fundamental misunderstanding of the health benefits of hemp-derived products, and many people will lose access to these products under this bill, thereby jeopardizing their health. Hemp is a federally-approved product, whereas getting access to a cannabis license is very expensive and challenging.

**Persons Testifying (Regulated Substances & Gaming):** (In support) Senator June Robinson, prime sponsor; Lukas Hunter, Harmony Farms; Cora Breuner, Washington Chapter of the American Academy of Pediatrics; Amy Brackenbury, Public Health Roundtable; Adán Espino Jr, Craft Cannabis Coalition; Marc Webster and Justin Nordhorn, Washington State Liquor and Cannabis Board; Scott Waller, Washington Association for Substance Abuse and Violence Prevention - Prevention First! for Safe and Healthy Communities; and Vicki Christophersen, Washington Cannabusiness Association.

(Opposed) Azmyth Kaminski; C.J. Montgomery; Dylan Summers, Lazarus Naturals; John Worthington; Bonny Jo Peterson, Industrial Hemp Association of Washington; Joshua Schneider, Association of Western Hemp Professionals; Amber Wise; Jared Stanley, Charlotte's Web; and Patrick Hyland, NeXtraction Incorporated.

(Other) Ezra Eickmeyer, Producers Northwest; Kelly McLain, Washington State Department of Agriculture; and Micah Sherman, Washington Sun and Craft Growers Association.

**Persons Testifying (Appropriations):** (In support) Marc Webster, Washington State Liquor and Cannabis Board; Megan Moore, Washington State Public Health Association; Tony Sermonti, Craft Cannabis Coalition; Scott Waller, Washington Association for Substance Misuse and Violence Prevention - Prevention First! for Safe and Healthy Communities; and Jessica Hostetler, Washington Cannabusiness Association.



(Opposed) Bonny Jo Peterson, Industrial Hemp Association of Washington; Azmyth Kaminski, Science Under Nature; Dylan Summers, Lazarus Naturals; Michael Bernstein, Laurelcrest Capital; Scott Wheat, Wheat Family Farm, Limited Liability Company; and Owen Ashley.

**Persons Signed In To Testify But Not Testifying (Regulated Substances & Gaming):**  
(In support) Lacy Fehrenbach, Washington State Department of Health.

(Opposed) Scott Wheat, Wheat Family Farm, Limited Liability Company; Floyd Beaman; Owen Ashley; and Jessica Tonani.

(Other) Burl Bryson, The Cannabis Alliance.

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