

HOUSE BILL REPORT

HB 2726

As Reported by House Committee On: Commerce & Gaming

Title: An act relating to the types of marijuana-infused edible products that may be lawfully processed and sold in the regulated marijuana market, including products requiring refrigeration.

Brief Description: Regarding marijuana-infused edible products.

Sponsors: Representatives Tharinger, Appleton, Chapman and Robinson.

Brief History:

Committee Activity:

Commerce & Gaming: 1/30/20, 2/4/20 [DP].

Brief Summary of Bill

- Provides that marijuana-infused edible products requiring refrigeration, freezing, retorting, or pasteurization in order to remain shelf stable, are authorized types of marijuana products that may be processed and sold by marijuana licensees under the terms of their marijuana license.
- Requires agency rulemaking to establish standards applicable to marijuana processors and marijuana retailers for the processing, storing, transferring, and selling of marijuana-infused edible products requiring refrigeration, freezing, retorting, or pasteurization.

HOUSE COMMITTEE ON COMMERCE & GAMING

Majority Report: Do pass. Signed by 9 members: Representatives Peterson, Chair; Kloba, Vice Chair; MacEwen, Ranking Minority Member; Blake, Kirby, Morgan, Ramel, Vick and Young.

Minority Report: Do not pass. Signed by 1 member: Representative Chambers, Assistant Ranking Minority Member.

Minority Report: Without recommendation. Signed by 1 member: Representative Jenkin.

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.

Staff: Peter Clodfelter (786-7127).

Background:

State laws regulating marijuana production, processing, and sales establish the following three primary categories of marijuana products: (1) marijuana-infused products in solid and liquid form; (2) useable marijuana (dried marijuana flowers); and (3) marijuana concentrates. Marijuana-infused products are products that contain marijuana or marijuana extracts, are intended for human use, are derived from marijuana, and have a delta-9 tetrahydrocannabinol (THC) concentration no greater than 10 percent. Pursuant to the Liquor and Cannabis Board's (LCB) rules, a single serving of a marijuana-infused product must not exceed 10 milligrams active THC.

Rules adopted by the LCB provide that potentially hazardous foods and any food that requires refrigeration, freezing, or a hot holding unit to keep it safe for human consumption may not be infused with marijuana. Other food items that may not be infused with marijuana to be sold at retail include the following: (1) any food that has to be acidified to make it shelf stable; (2) food items made shelf stable by canning or retorting; (3) fruit or vegetable juices; (4) pumpkin pies, custard pies, or any pies that contain egg; and (5) dairy products of any kind such as butter, cheese, ice cream, or milk.

The Department of Agriculture (Department) issues an endorsement for marijuana-infused edible processors. The Department will not approve a marijuana-infused edible product for commercial sale unless it complies with the LCB's requirements for permissible marijuana-infused foods and is a low hazard food that typically does not support bacterial or toxigenic growth. The Department's rules prohibit approval of marijuana-infused edibles that, among other things, require pasteurization to remain stable.

Summary of Bill:

It is established that marijuana-infused edible products that, in order to remain shelf stable, require refrigeration, freezing, retorting, or pasteurization, are authorized types of marijuana products that may be processed and sold by marijuana licensees under the terms of their marijuana license. The Liquor and Cannabis Board and the Department of Agriculture must adopt rules establishing standards applicable to marijuana processors and marijuana retailers for the processing, storing, transferring, and selling of marijuana-infused edible products requiring refrigeration, freezing, retorting, or pasteurization to protect public health and safety while providing consumers with reasonable access to a variety of these product types.

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:

(In support) Licensed cannabis producers and processors want to produce a wider variety of products for which there is consumer demand. Licensees have attempted to work with state agencies to change rules to allow greater product variety, but have been unsuccessful. Pasteurization is an established method for safely preserving foods. Most states with recreational marijuana programs allow products to be sold in the regulated market that require pasteurization and refrigeration. Colorado, California, and Oregon are states that chose to allow these products. California conducted an extensive safety study to investigate concerns and then allowed these products. Washington is falling behind. This is a friendly nudge to state agencies to engage in rulemaking to allow for greater product variety while still maintaining health and safety. These products can be effectively regulated without banning them. This bill could help some producers stay in business and will allow entrepreneurs to be creative. The bill would also benefit medical marijuana patients who feel left behind after the 2015 changes to the law. Some patients get significant relief through juicing cannabis, which is currently illegal for marijuana retailers to sell. This bill could legalize cannabis juicing, which is a good policy.

(Opposed) None.

(Other) Stakeholders generally support the bill, although it may be unnecessary to grant the agencies additional rulemaking authority. There are established food practices and standards for refrigerated, pasteurized, and frozen foods, which can be applied to these same foods containing cannabis. A desired change to an otherwise good bill is to strike the current law on page two that prohibits facilities used for processing marijuana-infused edibles from being used to process other types of foods. Eliminating that restriction would allow a facility to process multiple types of products, which is a standard manufacturing practice. The Department of Agriculture (Department) and the Liquor and Cannabis Board have concerns about the bill. When the agencies originally regulated marijuana-infused edibles, they established a program that regulates, from a food-safety perspective, low-risk foods. This bill would allow foods that are, from a food-safety perspective, high-risk foods. This includes acidified foods, dairy, frozen food, and low-acid canned foods. These foods are classified as hazardous foods by the federal government and the state, due to known increased risk to public health. The federal Food and Drug Administration currently regulates pasteurization, so completing federal reviews for marijuana products requiring pasteurization may be problematic. There are significant fiscal impacts from the bill due to the added need for agency expertise. The agencies would need to hire additional staff. An alternative approach could be to include a budget proviso for the Department to conduct stakeholder outreach to identify the food products that, within the higher-risk category of foods, have a relatively lower risk to public health and safety. Expanding permitted food options in this smaller way could be a way to move slowly into permitting higher-risk foods to be sold in the marijuana system.

Persons Testifying: (In support) Representative Tharinger, prime sponsor; David Brown, Central Business District; Mark Ambler, Tier 1 Producer Association; and Jeff Wilhoit.

(Opposed) None.

(Other) Kristin Baldwin, The Cannabis Alliance; Ezra Eickmeyer, Producers Alliance Northwest; and Kelly McLain, Washington State Department of Agriculture.

Persons Signed In To Testify But Not Testifying: Chris Thompson, Liquor and Cannabis Board.