
HOUSE BILL 2826

State of Washington

66th Legislature

2020 Regular Session

By Representatives Peterson and Pollet; by request of Liquor and Cannabis Board

Read first time 01/23/20. Referred to Committee on Commerce & Gaming.

1 AN ACT Relating to clarifying the authority of the liquor and
2 cannabis board to regulate marijuana vapor products; amending RCW
3 69.50.342; reenacting and amending RCW 69.50.101; adding a new
4 section to chapter 69.50 RCW; creating a new section; and declaring
5 an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The legislature finds that recent reports
8 of lung illnesses associated with vapor products demand serious
9 attention by the state in the interest of protecting public health
10 and preventing youth access. While state law grants the liquor and
11 cannabis board broad authority to regulate vapor products containing
12 marijuana, the legislature finds that risks to public health and
13 youth access can be mitigated by clarifying that the board is granted
14 specific authority to prohibit the use of any additive, solvent,
15 ingredient, or compound in marijuana vapor product production and
16 processing and to prohibit any device used in conjunction with a
17 marijuana vapor product.

18 **Sec. 2.** RCW 69.50.101 and 2019 c 394 s 9, 2019 c 158 s 12, and
19 2019 c 55 s 11 are each reenacted and amended to read as follows:

1 The definitions in this section apply throughout this chapter
2 unless the context clearly requires otherwise.

3 (a) "Administer" means to apply a controlled substance, whether
4 by injection, inhalation, ingestion, or any other means, directly to
5 the body of a patient or research subject by:

6 (1) a practitioner authorized to prescribe (or, by the
7 practitioner's authorized agent); or

8 (2) the patient or research subject at the direction and in the
9 presence of the practitioner.

10 (b) "Agent" means an authorized person who acts on behalf of or
11 at the direction of a manufacturer, distributor, or dispenser. It
12 does not include a common or contract carrier, public
13 warehouseperson, or employee of the carrier or warehouseperson.

14 (c) "Board" means the Washington state liquor and cannabis board.

15 (d) "CBD concentration" has the meaning provided in RCW
16 69.51A.010.

17 (e) "CBD product" means any product containing or consisting of
18 cannabidiol.

19 (f) "Commission" means the pharmacy quality assurance commission.

20 (g) "Controlled substance" means a drug, substance, or immediate
21 precursor included in Schedules I through V as set forth in federal
22 or state laws, or federal or commission rules, but does not include
23 hemp or industrial hemp as defined in RCW 15.140.020.

24 (h) (1) "Controlled substance analog" means a substance the
25 chemical structure of which is substantially similar to the chemical
26 structure of a controlled substance in Schedule I or II and:

27 (i) that has a stimulant, depressant, or hallucinogenic effect on
28 the central nervous system substantially similar to the stimulant,
29 depressant, or hallucinogenic effect on the central nervous system of
30 a controlled substance included in Schedule I or II; or

31 (ii) with respect to a particular individual, that the individual
32 represents or intends to have a stimulant, depressant, or
33 hallucinogenic effect on the central nervous system substantially
34 similar to the stimulant, depressant, or hallucinogenic effect on the
35 central nervous system of a controlled substance included in Schedule
36 I or II.

37 (2) The term does not include:

38 (i) a controlled substance;

39 (ii) a substance for which there is an approved new drug
40 application;

1 (iii) a substance with respect to which an exemption is in effect
2 for investigational use by a particular person under Section 505 of
3 the federal food, drug, and cosmetic act, 21 U.S.C. Sec. 355, or
4 chapter 69.77 RCW to the extent conduct with respect to the substance
5 is pursuant to the exemption; or

6 (iv) any substance to the extent not intended for human
7 consumption before an exemption takes effect with respect to the
8 substance.

9 (i) "Deliver" or "delivery" means the actual or constructive
10 transfer from one person to another of a substance, whether or not
11 there is an agency relationship.

12 (j) "Department" means the department of health.

13 (k) "Designated provider" has the meaning provided in RCW
14 69.51A.010.

15 (l) "Dispense" means the interpretation of a prescription or
16 order for a controlled substance and, pursuant to that prescription
17 or order, the proper selection, measuring, compounding, labeling, or
18 packaging necessary to prepare that prescription or order for
19 delivery.

20 (m) "Dispenser" means a practitioner who dispenses.

21 (n) "Distribute" means to deliver other than by administering or
22 dispensing a controlled substance.

23 (o) "Distributor" means a person who distributes.

24 (p) "Drug" means (1) a controlled substance recognized as a drug
25 in the official United States pharmacopoeia/national formulary or the
26 official homeopathic pharmacopoeia of the United States, or any
27 supplement to them; (2) controlled substances intended for use in the
28 diagnosis, cure, mitigation, treatment, or prevention of disease in
29 individuals or animals; (3) controlled substances (other than food)
30 intended to affect the structure or any function of the body of
31 individuals or animals; and (4) controlled substances intended for
32 use as a component of any article specified in (1), (2), or (3) of
33 this subsection. The term does not include devices or their
34 components, parts, or accessories.

35 (q) "Drug enforcement administration" means the drug enforcement
36 administration in the United States Department of Justice, or its
37 successor agency.

38 (r) "Electronic communication of prescription information" means
39 the transmission of a prescription or refill authorization for a drug
40 of a practitioner using computer systems. The term does not include a

1 prescription or refill authorization verbally transmitted by
2 telephone nor a facsimile manually signed by the practitioner.

3 (s) "Immature plant or clone" means a plant or clone that has no
4 flowers, is less than twelve inches in height, and is less than
5 twelve inches in diameter.

6 (t) "Immediate precursor" means a substance:

7 (1) that the commission has found to be and by rule designates as
8 being the principal compound commonly used, or produced primarily for
9 use, in the manufacture of a controlled substance;

10 (2) that is an immediate chemical intermediary used or likely to
11 be used in the manufacture of a controlled substance; and

12 (3) the control of which is necessary to prevent, curtail, or
13 limit the manufacture of the controlled substance.

14 (u) "Isomer" means an optical isomer, but in subsection (gg)(5)
15 of this section, RCW 69.50.204(a) (12) and (34), and 69.50.206(b)(4),
16 the term includes any geometrical isomer; in RCW 69.50.204(a) (8) and
17 (42), and 69.50.210(c) the term includes any positional isomer; and
18 in RCW 69.50.204(a)(35), 69.50.204(c), and 69.50.208(a) the term
19 includes any positional or geometric isomer.

20 (v) "Lot" means a definite quantity of marijuana, marijuana
21 concentrates, useable marijuana, or marijuana-infused product
22 identified by a lot number, every portion or package of which is
23 uniform within recognized tolerances for the factors that appear in
24 the labeling.

25 (w) "Lot number" must identify the licensee by business or trade
26 name and Washington state unified business identifier number, and the
27 date of harvest or processing for each lot of marijuana, marijuana
28 concentrates, useable marijuana, or marijuana-infused product.

29 (x) "Manufacture" means the production, preparation, propagation,
30 compounding, conversion, or processing of a controlled substance,
31 either directly or indirectly or by extraction from substances of
32 natural origin, or independently by means of chemical synthesis, or
33 by a combination of extraction and chemical synthesis, and includes
34 any packaging or repackaging of the substance or labeling or
35 relabeling of its container. The term does not include the
36 preparation, compounding, packaging, repackaging, labeling, or
37 relabeling of a controlled substance:

38 (1) by a practitioner as an incident to the practitioner's
39 administering or dispensing of a controlled substance in the course
40 of the practitioner's professional practice; or

1 (2) by a practitioner, or by the practitioner's authorized agent
2 under the practitioner's supervision, for the purpose of, or as an
3 incident to, research, teaching, or chemical analysis and not for
4 sale.

5 (y) "Marijuana" or "marihuana" means all parts of the plant
6 *Cannabis*, whether growing or not, with a THC concentration greater
7 than 0.3 percent on a dry weight basis; the seeds thereof; the resin
8 extracted from any part of the plant; and every compound,
9 manufacture, salt, derivative, mixture, or preparation of the plant,
10 its seeds or resin. The term does not include:

11 (1) The mature stalks of the plant, fiber produced from the
12 stalks, oil or cake made from the seeds of the plant, any other
13 compound, manufacture, salt, derivative, mixture, or preparation of
14 the mature stalks (except the resin extracted therefrom), fiber, oil,
15 or cake, or the sterilized seed of the plant which is incapable of
16 germination; or

17 (2) Hemp or industrial hemp as defined in RCW 15.140.020, seeds
18 used for licensed hemp production under chapter 15.140 RCW.

19 (z) "Marijuana concentrates" means products consisting wholly or
20 in part of the resin extracted from any part of the plant *Cannabis*
21 and having a THC concentration greater than ten percent.

22 (aa) "Marijuana processor" means a person licensed by the (~~state~~
23 ~~liquor and cannabis~~) board to process marijuana into marijuana
24 concentrates, useable marijuana, and marijuana-infused products,
25 package and label marijuana concentrates, useable marijuana, and
26 marijuana-infused products for sale in retail outlets, and sell
27 marijuana concentrates, useable marijuana, and marijuana-infused
28 products at wholesale to marijuana retailers.

29 (bb) "Marijuana producer" means a person licensed by the (~~state~~
30 ~~liquor and cannabis~~) board to produce and sell marijuana at
31 wholesale to marijuana processors and other marijuana producers.

32 (cc) "Marijuana products" means useable marijuana, marijuana
33 concentrates, and marijuana-infused products as defined in this
34 section.

35 (dd) "Marijuana researcher" means a person licensed by the
36 (~~state liquor and cannabis~~) board to produce, process, and possess
37 marijuana for the purposes of conducting research on marijuana and
38 marijuana-derived drug products.

1 (ee) "Marijuana retailer" means a person licensed by the ((state
2 ~~liquor and cannabis~~)) board to sell marijuana concentrates, useable
3 marijuana, and marijuana-infused products in a retail outlet.

4 (ff) "Marijuana-infused products" means products that contain
5 marijuana or marijuana extracts, are intended for human use, are
6 derived from marijuana as defined in subsection (y) of this section,
7 and have a THC concentration no greater than ten percent. The term
8 "marijuana-infused products" does not include either useable
9 marijuana or marijuana concentrates.

10 (gg) "Narcotic drug" means any of the following, whether produced
11 directly or indirectly by extraction from substances of vegetable
12 origin, or independently by means of chemical synthesis, or by a
13 combination of extraction and chemical synthesis:

14 (1) Opium, opium derivative, and any derivative of opium or opium
15 derivative, including their salts, isomers, and salts of isomers,
16 whenever the existence of the salts, isomers, and salts of isomers is
17 possible within the specific chemical designation. The term does not
18 include the isoquinoline alkaloids of opium.

19 (2) Synthetic opiate and any derivative of synthetic opiate,
20 including their isomers, esters, ethers, salts, and salts of isomers,
21 esters, and ethers, whenever the existence of the isomers, esters,
22 ethers, and salts is possible within the specific chemical
23 designation.

24 (3) Poppy straw and concentrate of poppy straw.

25 (4) Coca leaves, except coca leaves and extracts of coca leaves
26 from which cocaine, ecgonine, and derivatives or ecgonine or their
27 salts have been removed.

28 (5) Cocaine, or any salt, isomer, or salt of isomer thereof.

29 (6) Cocaine base.

30 (7) Ecgonine, or any derivative, salt, isomer, or salt of isomer
31 thereof.

32 (8) Any compound, mixture, or preparation containing any quantity
33 of any substance referred to in ((subparagraphs)) (1) through (7) of
34 this subsection.

35 (hh) "Opiate" means any substance having an addiction-forming or
36 addiction-sustaining liability similar to morphine or being capable
37 of conversion into a drug having addiction-forming or addiction-
38 sustaining liability. The term includes opium, substances derived
39 from opium (opium derivatives), and synthetic opiates. The term does
40 not include, unless specifically designated as controlled under RCW

1 69.50.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan
2 and its salts (dextromethorphan). The term includes the racemic and
3 levorotatory forms of dextromethorphan.

4 (ii) "Opium poppy" means the plant of the species *Papaver*
5 *somniferum* L., except its seeds.

6 (jj) "Person" means individual, corporation, business trust,
7 estate, trust, partnership, association, joint venture, government,
8 governmental subdivision or agency, or any other legal or commercial
9 entity.

10 (kk) "Plant" has the meaning provided in RCW 69.51A.010.

11 (ll) "Poppy straw" means all parts, except the seeds, of the
12 opium poppy, after mowing.

13 (mm) "Practitioner" means:

14 (1) A physician under chapter 18.71 RCW; a physician assistant
15 under chapter 18.71A RCW; an osteopathic physician and surgeon under
16 chapter 18.57 RCW; an osteopathic physician assistant under chapter
17 18.57A RCW who is licensed under RCW 18.57A.020 subject to any
18 limitations in RCW 18.57A.040; an optometrist licensed under chapter
19 18.53 RCW who is certified by the optometry board under RCW 18.53.010
20 subject to any limitations in RCW 18.53.010; a dentist under chapter
21 18.32 RCW; a podiatric physician and surgeon under chapter 18.22 RCW;
22 a veterinarian under chapter 18.92 RCW; a registered nurse, advanced
23 registered nurse practitioner, or licensed practical nurse under
24 chapter 18.79 RCW; a naturopathic physician under chapter 18.36A RCW
25 who is licensed under RCW 18.36A.030 subject to any limitations in
26 RCW 18.36A.040; a pharmacist under chapter 18.64 RCW or a scientific
27 investigator under this chapter, licensed, registered or otherwise
28 permitted insofar as is consistent with those licensing laws to
29 distribute, dispense, conduct research with respect to or administer
30 a controlled substance in the course of their professional practice
31 or research in this state.

32 (2) A pharmacy, hospital or other institution licensed,
33 registered, or otherwise permitted to distribute, dispense, conduct
34 research with respect to or to administer a controlled substance in
35 the course of professional practice or research in this state.

36 (3) A physician licensed to practice medicine and surgery, a
37 physician licensed to practice osteopathic medicine and surgery, a
38 dentist licensed to practice dentistry, a podiatric physician and
39 surgeon licensed to practice podiatric medicine and surgery, a
40 licensed physician assistant or a licensed osteopathic physician

1 assistant specifically approved to prescribe controlled substances by
2 his or her state's medical commission or equivalent and his or her
3 supervising physician, an advanced registered nurse practitioner
4 licensed to prescribe controlled substances, or a veterinarian
5 licensed to practice veterinary medicine in any state of the United
6 States.

7 (nn) "Prescription" means an order for controlled substances
8 issued by a practitioner duly authorized by law or rule in the state
9 of Washington to prescribe controlled substances within the scope of
10 his or her professional practice for a legitimate medical purpose.

11 (oo) "Production" includes the manufacturing, planting,
12 cultivating, growing, or harvesting of a controlled substance.

13 (pp) "Qualifying patient" has the meaning provided in RCW
14 69.51A.010.

15 (qq) "Recognition card" has the meaning provided in RCW
16 69.51A.010.

17 (rr) "Retail outlet" means a location licensed by the ((state
18 ~~liquor and cannabis~~) board for the retail sale of marijuana
19 concentrates, useable marijuana, and marijuana-infused products.

20 (ss) "Secretary" means the secretary of health or the secretary's
21 designee.

22 (tt) "State," unless the context otherwise requires, means a
23 state of the United States, the District of Columbia, the
24 Commonwealth of Puerto Rico, or a territory or insular possession
25 subject to the jurisdiction of the United States.

26 (uu) "THC concentration" means percent of delta-9
27 tetrahydrocannabinol content per dry weight of any part of the plant
28 *Cannabis*, or per volume or weight of marijuana product, or the
29 combined percent of delta-9 tetrahydrocannabinol and
30 tetrahydrocannabinolic acid in any part of the plant *Cannabis*
31 regardless of moisture content.

32 (vv) "Ultimate user" means an individual who lawfully possesses a
33 controlled substance for the individual's own use or for the use of a
34 member of the individual's household or for administering to an
35 animal owned by the individual or by a member of the individual's
36 household.

37 (ww) "Useable marijuana" means dried marijuana flowers. The term
38 "useable marijuana" does not include either marijuana-infused
39 products or marijuana concentrates.

1 (xx) "Youth access" means the level of interest persons under the
2 age of twenty-one may have in a vapor product, as well as the degree
3 to which the product is available or appealing to such persons, and
4 the likelihood of initiation, use, or addiction by adolescents and
5 young adults.

6 **Sec. 3.** RCW 69.50.342 and 2019 c 394 s 4 are each amended to
7 read as follows:

8 (1) For the purpose of carrying into effect the provisions of
9 chapter 3, Laws of 2013 according to their true intent or of
10 supplying any deficiency therein, the (~~state liquor and cannabis~~)
11 board may adopt rules not inconsistent with the spirit of chapter 3,
12 Laws of 2013 as are deemed necessary or advisable. Without limiting
13 the generality of the preceding sentence, the (~~state liquor and~~
14 ~~cannabis~~) board is empowered to adopt rules regarding the following:

15 (a) The equipment and management of retail outlets and premises
16 where marijuana is produced or processed, and inspection of the
17 retail outlets and premises where marijuana is produced or processed;

18 (b) The books and records to be created and maintained by
19 licensees, the reports to be made thereon to the (~~state liquor and~~
20 ~~cannabis~~) board, and inspection of the books and records;

21 (c) Methods of producing, processing, and packaging marijuana,
22 useable marijuana, marijuana concentrates, and marijuana-infused
23 products; conditions of sanitation; safe handling requirements;
24 approved pesticides and pesticide testing requirements; and standards
25 of ingredients, quality, and identity of marijuana, useable
26 marijuana, marijuana concentrates, and marijuana-infused products
27 produced, processed, packaged, or sold by licensees;

28 (d) Security requirements for retail outlets and premises where
29 marijuana is produced or processed, and safety protocols for
30 licensees and their employees;

31 (e) Screening, hiring, training, and supervising employees of
32 licensees;

33 (f) Retail outlet locations and hours of operation;

34 (g) Labeling requirements and restrictions on advertisement of
35 marijuana, useable marijuana, marijuana concentrates, cannabis health
36 and beauty aids, and marijuana-infused products for sale in retail
37 outlets;

38 (h) Forms to be used for purposes of this chapter and chapter
39 69.51A RCW or the rules adopted to implement and enforce these

1 chapters, the terms and conditions to be contained in licenses issued
2 under this chapter and chapter 69.51A RCW, and the qualifications for
3 receiving a license issued under this chapter and chapter 69.51A RCW,
4 including a criminal history record information check. The (~~state~~
5 ~~liquor and cannabis~~) board may submit any criminal history record
6 information check to the Washington state patrol and to the
7 identification division of the federal bureau of investigation in
8 order that these agencies may search their records for prior arrests
9 and convictions of the individual or individuals who filled out the
10 forms. The (~~state liquor and cannabis~~) board must require
11 fingerprinting of any applicant whose criminal history record
12 information check is submitted to the federal bureau of
13 investigation;

14 (i) Application, reinstatement, and renewal fees for licenses
15 issued under this chapter and chapter 69.51A RCW, and fees for
16 anything done or permitted to be done under the rules adopted to
17 implement and enforce this chapter and chapter 69.51A RCW;

18 (j) The manner of giving and serving notices required by this
19 chapter and chapter 69.51A RCW or rules adopted to implement or
20 enforce these chapters;

21 (k) Times and periods when, and the manner, methods, and means by
22 which, licensees transport and deliver marijuana, marijuana
23 concentrates, useable marijuana, and marijuana-infused products
24 within the state;

25 (l) Identification, seizure, confiscation, destruction, or
26 donation to law enforcement for training purposes of all marijuana,
27 marijuana concentrates, useable marijuana, and marijuana-infused
28 products produced, processed, sold, or offered for sale within this
29 state which do not conform in all respects to the standards
30 prescribed by this chapter or chapter 69.51A RCW or the rules adopted
31 to implement and enforce these chapters;

32 (m) The prohibition of any type of device used in conjunction
33 with a marijuana vapor product and the prohibition of the use of any
34 type of additive, solvent, ingredient, or compound in the production
35 and processing of marijuana products, including marijuana vapor
36 products, when the board determines, following consultation with the
37 department of health or any other authority the board deems
38 appropriate, that the device, additive, solvent, ingredient, or
39 compound may pose a risk to public health or youth access; and

1 (n) Requirements for processors to submit under oath to the
2 department of health a complete list of all constituent substances
3 and the amount and sources thereof in each marijuana vapor product,
4 including all additives, thickening agents, preservatives, compounds,
5 and any other substance used in the production and processing of each
6 marijuana vapor product.

7 (2) Rules adopted on retail outlets holding medical marijuana
8 endorsements must be adopted in coordination and consultation with
9 the department.

10 (3) The board must adopt rules to perfect and expand existing
11 programs for compliance education for licensed marijuana businesses
12 and their employees. The rules must include a voluntary compliance
13 program created in consultation with licensed marijuana businesses
14 and their employees. The voluntary compliance program must include
15 recommendations on abating violations of this chapter and rules
16 adopted under this chapter.

17 NEW SECTION. Sec. 4. A new section is added to chapter 69.50
18 RCW to read as follows:

19 (1) Except as provided in subsection (2) of this section,
20 marijuana processors may incorporate in marijuana vapor products a
21 characterizing flavor if the characterizing flavor is derived from
22 botanical terpenes naturally occurring in the cannabis plant,
23 regardless of source, and if the characterizing flavor mimics the
24 terpene profile found in a cannabis plant. Characterizing flavors
25 authorized under this section do not include any synthetic terpenes.

26 (2) If the board determines a characterizing flavor otherwise
27 authorized under this section may pose a risk to public health or
28 youth access, the board may, by rule adopted under RCW 69.50.342,
29 prohibit the use in marijuana vapor products of such a characterizing
30 flavor.

31 NEW SECTION. Sec. 5. This act is necessary for the immediate
32 preservation of the public peace, health, or safety, or support of
33 the state government and its existing public institutions, and takes
34 effect immediately.

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