

# SENATE BILL REPORT

## SB 5547

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As of January 20, 2022

**Title:** An act relating to expanding regulatory authority over cannabinoids that may be impairing and providing for enhanced product safety and consumer information disclosure about marijuana products.

**Brief Description:** Expanding regulatory authority over cannabinoids that may be impairing and providing for enhanced product safety and consumer information disclosure about marijuana products.

**Sponsors:** Senators Keiser, Schoesler, Conway, Mullet, Robinson and Wilson, C.; by request of Liquor and Cannabis Board.

**Brief History:**

**Committee Activity:** Labor, Commerce & Tribal Affairs: 1/20/22.

**Brief Summary of Bill**

- Authorizes the Washington State Liquor and Cannabis Board (LCB) to regulate products containing cannabis compounds, with limited exceptions, that may be impairing or marketed as impairing.
- Requires LCB to adopt rules, in consultation with the state departments of Health and Agriculture, relative to the regulation of synthetically derived cannabinoids.
- Expands the permitted activities of licensed marijuana producers, processors, and retailers regarding synthetically derived cannabinoids.
- Permits licensed marijuana producers and licensed marijuana processors to use certain non-impairing cannabinoids as additives to authorized marijuana products.

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**SENATE COMMITTEE ON LABOR, COMMERCE & TRIBAL AFFAIRS**

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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.*

**Staff:** Matt Shepard-Koningsor (786-7627)

**Background:** Cannabinoids Generally. Cannabinoids are chemical compounds that bind to certain cannabinoid receptors in the body, producing physiological effects. The cannabis plant contains many different cannabinoids, of which tetrahydrocannabinol (THC) and cannabidiol (CBD) are most common. Both THC and CBD have the same molecular structure but a different arrangement of individual atoms—referred to as isomers in chemistry—which results in differing effects on the body. THC has a number of individual isomers, such as delta-8 THC, delta-9 THC, delta-10 THC. THC is often understood as being only delta-9 THC, however, the cannabis plant contains over 80 different cannabinoids.

Hemp, Marijuana, and Federal Law. Both hemp and marijuana are derived from the cannabis plant and both contain THC and CBD, in varying concentrations. The distinction between hemp and marijuana is a legal one. The Agriculture Improvement Act of 2018 (Farm Bill) defined hemp as cannabis with a THC concentration of 0.3 percent or less, and marijuana as cannabis with a THC concentration of more than 0.3 percent THC. The Farm Bill also removed hemp from the definition of marijuana in the federal Controlled Substances Act (CSA). In 2020, the federal Drug Enforcement Administration (DEA) issued an interim final rule to align the Farm Bill with the CSA. DEA stated that all synthetically-derived THCs remain Schedule I controlled substances under the CSA.

Conversion by Chemical Synthesis. One isomer can be converted into another by chemical synthesis through the use of a catalyst. For example, CBD can be converted into THC, whether delta-8, 9, or otherwise. In addition, delta-8 THC can be converted into delta-9 THC.

Washington Law. In Washington State, the Washington State Department of Agriculture (WSDA) regulates hemp and the Washington State Liquor and Cannabis Board (LCB) regulates adult-use, recreational marijuana. LCB and the Washington State Department of Health (DOH) jointly regulate medical marijuana.

*Definitions.* "THC concentration" means the percent of delta-9 THC content per dry weight of any part of the plant *Cannabis*, or per volume or weight of marijuana product, or the combined percent of delta-9 THC and THC-acid in any part of the plant *Cannabis* regardless of moisture content. THC is not separately defined under state law. The state law definition of "marijuana" includes only the concentration of delta-9 THC. "CBD product" means any product containing or consisting of CBD.

*Washington State Liquor and Cannabis Board Regulation.* On April 28, 2021, LCB adopted a policy statement outlining its position on the regulation of THC, other than delta-9, and the conversion of CBD, hemp, or both to delta-8, 9 THC, or any other cannabis compounds not contained in state law. Based on the unknown health implications, LCB prohibited delta-8 THC and its derivatives, extracts, cannabinoids, isomers, and hemp CBD

isolate that are genetically or chemically altered into compounds from being produced or processed in LCB-licensed facilities, or being sold in licensed marijuana retail stores. On May 3, 2021, LCB issued a statement clarifying the April 28, 2021 policy was only advisory until it completed rulemaking. On January 5, 2022, LCB approved permanent rules allowing the agency to evaluate additives, solvents, ingredients, or compounds used in the production of marijuana products and prohibiting the use of substances determined to pose a risk to public health or youth access.

*License Authorizations.* A marijuana producer licensee may produce, harvest, trim, dry, cure, and package marijuana into lots for sale at wholesale to marijuana processor licensees and to other marijuana producer licensees. The licensee may also produce and sell certain marijuana plants and seeds, immature plants, clones, and seeds to other marijuana producer licensees, registered cooperatives, qualifying patients, designated providers, and licensed cannabis researchers, under certain circumstances. Producer licenses are designated by tier, which relates to the size of marijuana production. A marijuana processor licensee may process, dry, cure, package, and label usable marijuana, marijuana concentrates, and marijuana-infused products for sale at wholesale to marijuana processors and retailers. A marijuana retailer licensee may sell usable marijuana, marijuana concentrates, marijuana-infused products, marijuana paraphernalia, and lockable boxes to store marijuana at retail in outlets to individuals 21 or older, unless authorized by the Washington State Medical Use of Cannabis Act (Cannabis Act).

Other States. Twenty states are explicitly regulating delta-8 THC—for example, California, Idaho, and Oregon—whether through agency oversight, restriction, or complete prohibition. Other states are reviewing the legality of delta-8 THC, such as Alabama, Oklahoma, and Illinois. Delta-8 THC remains legal under state law in many others, such as Massachusetts, Texas, and Virginia.

Product Additives. State licensed marijuana producers and processors are unrestricted in their use of CBD products for the purpose of enhancing the CBD content of regulated marijuana products, provided such CBD products are lawfully produced by, or purchased from, an in-state producer or processor licensed by the LCB. Licensees may also use CBD products for CBD enhancement purposes even if imported or otherwise produced outside of the LCB regulatory system provided the CBD product has:

- a THC level of 0.3 percent or less; and
- been tested for contaminants and toxins by an accredited testing laboratory licensed by the LCB.

Safe Harbor. State law provides certain protections from criminal and civil liability for authorized activities performed by licensed marijuana producers, processors, and retailers. These protections are also extended to the employees of such licensees.

**Summary of Bill: Definitions.** *New Definitions.* "Plant Cannabis" means all plants of the genus *Cannabis*, including marijuana and hemp. "Artificial cannabinoid" means a solely

chemically created substance that does not originate from the plant cannabis but is structurally the same or substantially similar to the molecular structure of any chemical substance derived from the plant cannabis. "Cannabinoid" means any of the chemical compounds that are the active constituents of the plant cannabis, including several listed examples. "Catalyst" means a substance that increases the rate of a chemical reaction without itself undergoing any permanent chemical change. "Distillate" means an extract from the plant *Cannabis* where a segment of one or more cannabinoids from an initial extraction are selectively concentrated through a mechanical or chemical process, or both, with all impurities removed. "Extract" means a solid, viscid, or liquid substance extracted from a plant, or the like, containing its essence in concentrated or isolated form. "Extraction" means the process to separate or obtain a solid, viscid, or liquid substance from a plant or parts of a plant, by pressure, distillation, treatment with solvents, or the like. "Isolate" means extract from the plant *Cannabis* of 95 percent or more of a single cannabinoid compound. "Synthetically derived cannabinoid" means any cannabinoid altered by a chemical reaction that changes the molecular structure of any natural cannabinoid derived from the plant cannabis to another cannabinoid found naturally in the plant cannabis. "Tetrahydrocannabinol" or "THC" includes all THC's that are artificially, synthetically, or naturally derived, including, but not limited to, delta-8 THC, delta-9 THC, delta-10 THC, and isomers of THC cannabinoids. "Total THC" means the sum of the percentage, by weight or volume measurement of THC-acid multiplied by 0.877, plus, the percentage by weight or volume measurement of THC.

*Amended Definitions.* "CBD product" means CBD that does not exceed 0.3 percent THC on a dry weight basis or that does not contain more than 0.5 milligrams (mg) or 2 mg total of a cannabinoid that may be impairing in the packaged product. "Marijuana" is amended to include concentrated resins, cannabinoids, and their products. "THC concentration" is no longer limited to delta-9 THC. "Marijuana processor" is amended to include processing marijuana of natural origin into legal marijuana products directly, indirectly, or by extraction from the plant cannabis. "Marijuana producer" is amended to specify the licensee may produce, prepare, and propagate marijuana directly from a natural origin. "Marijuana products" is expanded to include any product with 0.5 mg or more per serving or 2 mg or more per package of a cannabinoid that may be impairing or marketed as such.

LCB Regulation. LCB is authorized to regulate all products containing or consisting of cannabinoids produced and processed for any type of human consumption, whether marketed as such or not, if the product:

- exceeds 0.3 percent THC on a dry weight basis; and
- contains more than 0.5 mg per serving or 2 mg total per package of a cannabinoid that may be impairing.

Products authorized as a drug by the federal Food and Drug Administration (FDA) are outside the scope of LCB's regulatory authority.

LCB is authorized to adopt rules on the production, processing, transportation, delivery,

sale, and purchase of naturally derived cannabinoids or synthetically derived cannabinoids, with the exception of hemp and products authorized as a drug by the FDA. LCB must revise rules as appropriate to conform to the bill's new or amended terminology.

Authorized Sales. The following products may only be sold by a licensed marijuana producer, processor, or retailer unless the product is authorized as a drug by the FDA and such products may only be sold if the sale is in compliance with rules adopted by LCB after consultation with the state departments of Health and Agriculture:

- products containing cannabinoids that may be impairing;
- products that contain greater than 0.3 percent THC on a dry weight basis; and
- products that contain 0.5 or more mg per serving or 2 or more mg total per package of any cannabinoid that may be impairing.

*Exceptions.* The products above may not be sold to any person under 21 years of age unless authorized by the Medical Cannabis Act. Neither delta-9 THC products approved by LCB before January 1, 2022, nor cannabis health and beauty aids compliant with state law are included in the authorized sale provisions. Manufacturing and sales of artificial cannabinoids are prohibited.

License Authorizations. The marijuana producer's license is expanded to authorize the preparation and propagation of marijuana grown from seeds or clones of natural origin. The marijuana processor's license is expanded to authorize:

- processing of marijuana from the plant cannabis of natural origin and grown by a licensed producer;
- compounding or converting marijuana products from marijuana grown by a licensed producer as specified by the board in rule; and
- preparing marijuana concentrates, usable marijuana, and marijuana-infused products, which contain greater than 0.5 mg per serving of a cannabinoid that may be impairing.

The marijuana retailer's license is expanded to authorize the retail sale of products containing greater than 0.5 mg per serving of a cannabinoid that may be impairing.

Product Additives. Licensed marijuana producers and licensed marijuana processors may use CBD, other non-impairing cannabinoids, or non-impairing plant *Cannabis* isolates as additives to enhance the non-impairing cannabinoid concentration of any authorized product, provided such cannabinoid products or isolates are lawfully produced by a licensed marijuana producer, or purchased from a LCB-licensed producer or processor.

Licensed marijuana producers and licensed marijuana processors may use a non-impairing cannabinoid product obtained from a source not licensed by LCB, if the product:

- has a THC level of 0.3 percent or less on a dry weight basis and does not contain greater than 0.5 mg per serving of any cannabinoid that may be impairing;
- has passed certain pesticide, heavy metals, contaminants, and toxins testing by an

- accredited testing lab;
- is accompanied by a disclosure statement; and
- is only added to an authorized product and not further processed or converted into a substance that may be impairing.

Licensed marijuana producers and licensed marijuana processors may not use any artificial cannabinoids as an additive to any authorized product. All synthetically derived cannabinoids contained in products must be disclosed on the package or label and may not claim such cannabinoids are a natural substance.

Safe Harbor. The protections from criminal and civil liability are extended to cover the bill's authorized activities relative to licensed marijuana processors, however, the provisions do not authorize compounding or converting hemp into cannabinoids that may be impairing for creation of marijuana products from hemp, except as an authorized additive.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill takes effect on July 1, 2022.

**Staff Summary of Public Testimony:** PRO: This is agency requested legislation that brings all cannabinoids into the regulated market and prevents sales to underage persons. This bill also allows LCB to assess cannabis concentrates beyond the 0.3 percent THC on a dry weight basis. This bill has come a long way after robust conversation. We believe there is a path forward with further refinement and urge you to pass this bill. This bill addresses consumer safety through its provisions and gives LCB authority to assess the safety. Delta-8 gummies sold in gas stations need to be brought into the regulated market, and this bill does that.

CON: This bill wants to regulate cannabinoids without considering science. This bill would stifle innovation in the industry. The bill leaves much to be desired, especially with the definitions of "CBD product" and "impairing cannabinoid." This is a short-sighted bill that intends to interfere with innovation. We need a scientific definition of what a regulated cannabinoid is. We all agree that no products with impairing properties should be sold over the internet or in convenience stores. All products must be tested for safety and Washington is an outlier on this. This bill leaves critical terms undefined.

OTHER: We have mild concerns about the bill and will work hard with LCB to improve. This is the vehicle to get the cannabis industry what it needs.

**Persons Testifying:** PRO: Dr. Gillian Schauer, Cannabis Regulators Association; Justin

Nordhorn, Liquor and Cannabis Board; Lukas Hunter, Harmony Farms; Bob Cooper, WA Assoc on Substance Abuse & Violence Prevention; Rick Garza, WSLCB; Adán Espino Jr, Craft Cannabis Coalition; Ezra Eickmeyer, Producers NW; Paula Sardinias, FMS Global Strategies.

CON: Dylan Summers, Lazarus Naturals; Jessica Tonani, Verda Bio; Bonny Jo Peterson, Industrial Hemp Association of WA; Vicki Christophersen, Washington CannaBusiness Association; Joseph DuPuis, Doc and Yeti; Mark Tegen, Cleen Technology Inc; Kent Haehl, Unicorn/Atlas Global.

OTHER: Micah Sherman, Washington Sun and Craft Growers; CAITLEIN RYAN, THE CANNABIS ALLIANCE; Jeremy Moberg, Washington Sun and Craft association.

**Persons Signed In To Testify But Not Testifying:** No one.