

SENATE BILL REPORT

SB 5983

As Reported by Senate Committee On:
Ways & Means, March 7, 2022

Title: An act relating to protecting consumers from untested and unregulated cannabinoid products by expanding agency regulatory authority over cannabinoids that may be impairing, modifying definitions in the uniform controlled substances act, prohibiting the sale of certain cannabinoid products except by licensed cannabis businesses, regulating the use of additives in cannabis products, requiring product testing and disclosures, prohibiting the manufacture and sale of artificial cannabinoids, requiring agency rules before the manufacture and sale of synthetically derived cannabinoids, prohibiting artificial cannabinoids and synthetically derived cannabinoids in products labeled as compliant with department of health product standards and available for an existing sales and use tax exemption, and establishing a temporary license fee surcharge on certain licensees of the liquor and cannabis board and enforcing sales of cannabinoid products that may be impairing or are marketed as impairing.

Brief Description: Concerning untested and unregulated cannabinoid products. [**Revised for 1st Substitute:** Concerning cannabinoid products.]

Sponsors: Senators Keiser, Schoesler, Conway and Saldaña.

Brief History:

Committee Activity: Ways & Means: 3/05/22, 3/07/22 [DPS, w/oRec].

Brief Summary of First Substitute Bill

- Adds and amends definitions in the Uniform Controlled Substances Act, including expanding the definition of THC concentration to include all tetrahydrocannabinols (THCs) instead of only referencing delta-9 THC.
- Prohibits the sale of certain cannabinoid products with a THC concentration exceeding 0.3 percent except when sold by licensed cannabis producers, processors, or retailers (cannabis licensees).

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.

- Allows the sale of certain cannabinoid products with a THC concentration of 0.3 percent or less by persons other than cannabis licensees if the product contains a 20:1 ratio of cannabidiol or other non-THC cannabinoid to THC.
- Establishes a scientific panel, contingent on funding, to research information in other jurisdictions relative to cannabinoids and make recommendations to the Legislature by December 1, 2022.
- Directs the Department of Health, contingent on funding, to create a grant program to assist local health departments enforce unauthorized sales of cannabinoid products.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5983 be substituted therefor, and the substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Schoesler, Assistant Ranking Member, Capital; Honeyford, Ranking Minority Member, Capital; Billig, Braun, Carlyle, Gildon, Hasegawa, Hunt, Mullet, Muzzall, Pedersen, Rivers, Van De Wege, Wagoner, Warnick and Wellman.

Minority Report: That it be referred without recommendation.

Signed by Senators Conway, Dhingra and Keiser.

Staff: Amanda Cecil (786-7460) and 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 several individual isomers, such as delta-8 THC, delta-9 THC, and delta-10 THC. THC is often understood as being only delta-9 THC; however, the cannabis plant contains over 80 different cannabinoids. The emergence of new products containing cannabinoids that may be impairing, other than delta-9 THC, has raised questions nationwide about the legality and possible health impacts of these new products.

Conversion by Chemical Synthesis. One isomer can be converted into another by chemical synthesis using 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.

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. 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 THC's remain Schedule I controlled substances under the CSA.

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

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.

Other States. Many 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.

Uniform Controlled Substances Act 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 definition of marijuana includes only the concentration of delta-9 THC. "CBD product" means any product containing or consisting of CBD. Additional terms currently defined in the state Uniform Controlled Substances Act (UCSA) include marijuana concentrates, marijuana processor, marijuana producer, marijuana products, and marijuana-infused products.

Summary of Bill (First Substitute): Uniform Controlled Substances Act Definitions. A new definition for Plant *Cannabis* is added to the UCSA, which means all plants of the genus *Cannabis*, including cannabis and hemp. A new definition is added for tetrahydrocannabinol or THC, which includes all THCs that are artificially, synthetically, or naturally derived including, but not limited to, delta-8 THC, delta-9 THC, delta-10 THC, tetrahydrocannabivarin (THCv), tetrahydrocannabiphoral (THCP), THC-O-Acetate, and the optical isomers of THC cannabinoids. The definition of THC concentration is amended to include all THCs instead of only referencing delta-9.

Authorized Sales. Products containing or consisting of cannabinoids produced and processed for any type of human consumption, whether marketed as such or not, exceeding a THC concentration of 0.3 percent, may only be sold by a cannabis producer, processor, or retailer (cannabis licensee) licensed by LCB, unless the product is authorized as a drug by the federal Food and Drug Administration. Products containing a THC concentration of 0.3 percent or less sold by any person other than a cannabis licensee must contain a 20:1 ratio of CBD or other non-THC cannabinoids to THC, and must not exceed two milligrams of THC per serving. Unadulterated hemp flower that is not further processed into extracts, infused products, or concentrates is exempt from these provisions.

Scientific Panel. Subject to funding provided by June 30, 2022, the Washington State University (WSU) Center for Cannabis Policy, Research, and Outreach must convene a scientific panel (panel) consisting of the following members:

- an expert in pharmacology;
- an expert in toxicology;
- an expert with regulatory affairs experience in nutraceutical, pharmaceutical, or dietary supplements; and
- an expert in cannabis research.

At least one of the members must be a representative of the University of Washington and one must be a representative of WSU. The WSU representative must serve as chair, forming and overseeing the panel. The panel must review available research, data, and regulations of other jurisdictions related to cannabinoids including, but not limited to:

- defining impairing, artificial cannabinoid, and synthetically derived cannabinoid; and
- recommending potential guidelines for safe methods of manufacturing, extracting, and synthesizing cannabinoids.

The panel must make recommendations to the Legislature by December 1, 2022, and it expires January 1, 2023.

Department of Health Grant Program. Subject to funding provided by June 30, 2022, the Department of Health (DOH) must establish a grant program to assist local health departments with enforcing and ensuring compliance with the authorized sales provisions. When funded, local health departments and agencies may apply for grants. Each grant applicant must:

- show a significant local problem relative to unauthorized sales of certain cannabinoid products by businesses other than cannabis licensees;
- verify grant awards are sufficient to cover increased costs associated with undertaking enforcement and compliance activities;
- design an enforcement and compliance program suited to the specific, local problems;
- demonstrate community coordination efforts on prevention, intervention, and suppression of unauthorized sales; and
- collect data on performance.

DOH is authorized administrative expenses up to the greater of \$60,000 or 3 percent of appropriated funding. Grant awards may not be used to supplant preexisting funding sources for special enforcement targeting enforcement of laws that prohibit the sale of certain cannabinoid products.

Other. The bill contains a severability clause and a null and void clause regarding the provisions on the scientific panel and DOH grants.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (First Substitute):

Strikes the underlying bill and replaces it with language from Senate Bill 5981, which specifically:

- Adds a definition of Plant *Cannabis* in the UCSA, which means all plants of the genus *Cannabis*, including cannabis and hemp.
- Removes proposed qualifying language in the definition of tetrahydrocannabinol or THC that stated THC included concentrated resins or cannabinoids and their products, produced from the plant *Cannabis*, whether or not the cannabinoids were derived from a cannabis plant containing a THC concentration greater than 0.3 percent on a dry weight basis.
- Amends the definition of THC concentration in the UCSA to include all tetrahydrocannabinols instead of only delta-9 THC.
- Provides that products containing or consisting of cannabinoids produced and processed for human consumption, whether marketed as such or not, exceeding a THC concentration of 0.3 percent, may only be sold by a licensed cannabis producer, processor, or retailer unless authorized as a drug by the federal Food and Drug Administration. Unadulterated and unprocessed hemp flower is exempt.
- Provides that products containing a THC concentration of 0.3 percent or less sold by any person other than a state cannabis licensee must contain a 20:1 ratio of CBD or other non-THC cannabinoids to THC, and must not exceed two milligrams of THC per serving. Unadulterated and unprocessed hemp flower is exempt.
- Requires the WSU Center for Cannabis Policy, Research, and Outreach, contingent on funding, to convene a panel that will review available research, data, and regulations of other jurisdictions relative to defining the terms impairing, artificial cannabinoids, and synthetically derived cannabinoids, in addition to making

- recommendations on safe manufacturing, extracting, and synthesizing of cannabinoids. The panel must report to the Legislature by December 1, 2022.
- Directs DOH, contingent on funding, to establish a grant program to assist local health departments enforce unauthorized sales of cannabinoids.
 - Contains a severability and an emergency clause in certain sections in the bill.
 - Changes the term marijuana to cannabis in the new bill language.
 - Modifies the title and intent section language.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: These are synthetically derived drugs, not plant derived. All impairing cannabinoids by synthetically derived products should be under regulation of LCB. This is a big public health issue that needs to be addressed. Washington is behind in regulating products beyond delta 9 to ensure that these products are sold exclusively to adults. Cannabis tax revenue is being shorted by these products not being captured. These products are dangerous and they are being sold in convenient stores to young people. This is a public safety issue. These products are causing an increase in impaired driving. It is urgent that a bill be passed this year. There has been an explosion of synthetically derived products. This bill has bipartisan support, industry and agency support. New hemp derived products that are unregulated need to be kept out of the hands of kids.

CON: This bill has imprecise language capturing health and wellness products and this needs to be addressed in an amendment. Natural products derived from the hemp products that are for health and not recreation. There is a conflation of two different issues. Everyone agrees that the sale of products outside the regulated market should stop but there needs to be a scientific panel to bring back recommendation. The definition of impairing lacks clarity and definition and is not based on scientific evidence. The term psychotropic is a broad term that applies to coffee, sugar and nutmeg. This bill will stifle innovation around hemp that can become a better and safer products.

Persons Testifying: PRO: Micah Sherman, Washington Sun and Craft Growers Association (WSCA); Caitlein Ryan, THE CANNABIS ALLIANCE; Jason Poll, Plenus llc / Gorge Gold ; Lukas Hunter, Harmony Farms; Jeff Ketchel, Washington State Public Health Association; Shawn DeNae Wagenseller, WA Sun & Craft Growers Association; Linda Thompson, Washington Association for Substance Abuse and Violence Prevention (WASAVP); Rick Garza, Liquor and Cannabis Board; Sheri Sawyer, Office of the

Governor; Justin Nordhorn, Liquor and Cannabis Board; Ezra Eickmeyer; Adán Espino Jr, Craft Cannabis Coalition.

CON: Dylan Summers, Lazarus Naturals; Vicki Christophersen, Washington CannaBusiness Association; Wendy Hull, Fairwinds Manufacturing; Jessica Tonani, Verda Bio Research; Joy Beckerman, Hemp Ace International; Kent Haehl, Cleen Technology; Dr. Rusty Sutterlin, PhD; David Brown , Pot Townsend; Brad Tower, Industrial Hemp Association of Washington; Greg Haynes, Rio Nine Eleven ; Bonny Jo Peterson, Industrial Hemp Association of WA; Jim MacRae; Kristofer Plunkett, Cascadia Hemp Co..

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