
Regulated Substances & Gaming Committee

HB 1641

Brief Description: Addressing public health challenges of high-potency cannabis products.

Sponsors: Representatives Davis, Dent, Leavitt, Harris, Callan, Eslick, Walen, Ortiz-Self, Ramel, Rule, Gregerson and Pollet.

Brief Summary of Bill

- Restructures the 37 percent cannabis excise tax to a tax of 37 percent, 50 percent, or 65 percent of the selling price, based on product type and tetrahydrocannabinol (THC) concentration.
- Establishes marketing and advertising prohibitions on advertising a product that contains greater than 35 percent total THC.
- Prohibits cannabis retail outlets from selling a cannabis product with greater than 35 percent total THC to a person who is under age 25 who is not a qualifying patient or designated provider.
- Requires cannabis retailers to provide point-of-sale information to consumers who purchase certain cannabis products and requires the Liquor and Cannabis Board to develop optional training for retail staff.
- Requires mandatory health warning labels for cannabis products that contain greater than 35 percent total THC.
- Requires cannabis products to be labeled with the number of serving units of THC included in the package, and with an expression of a standard THC unit in volume or amount of product.
- Directs \$1 million annually from the Dedicated Cannabis Account for targeted public health messages and social marketing campaigns.

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.

Hearing Date: 2/2/23

Staff: Peter Clodfelter (786-7127).

Background:

The commercial cannabis market in Washington is regulated by the Washington State Liquor and Cannabis Board (LCB), which issues licenses for cannabis producers, processors, retailers, researchers, and transporters. Cannabis retailers may sell certain quantities of cannabis products to adults age 21 and over and to qualifying patients who are at least age 18 if they are entered in the Medical Cannabis Authorization Database (Database) and hold a valid recognition card.

Cannabis retailers may sell to a purchaser any combination of the following types and amounts of cannabis products: (1) 1 ounce of useable cannabis; (2) 16 ounces of cannabis-infused product in solid form; (3) 72 ounces of cannabis-infused product in liquid form; and (4) 7 grams of cannabis concentrate. Qualifying patients and designated providers in the Database with a valid recognition card may purchase three times those limits from a cannabis retailer.

The cannabis product types are defined as follows:

- "Useable cannabis" is defined as dried cannabis flowers. The term "useable cannabis" does not include either cannabis-infused products or cannabis concentrates.
- "Cannabis-infused product" is defined as products that contain cannabis or cannabis extracts, are intended for human use, are derived from cannabis, and have a tetrahydrocannabinol (THC) concentration no greater than 10 percent. "Cannabis-infused product" does not include either useable cannabis or cannabis concentrates.
- "Cannabis concentrate" is defined as products consisting wholly or in part of the resin extracted from any part of the plant *Cannabis* and having a THC concentration greater than 10 percent.

There is a cannabis excise tax of 37 percent of the selling price on all cannabis products. Sales and use taxes also apply, except that qualifying patients and designated providers in the Database with a valid recognition card have an exemption from sales and use taxes. Cannabis excise taxes are deposited in the Dedicated Cannabis Account and allocated to specified recipients, accounts, funds, and uses.

The 2021-23 Operating Budget directed the Health Care Authority to contract with the University of Washington's Addictions, Drug & Alcohol Institute to develop policy solutions in response to public health challenges of high-THC potency cannabis. An initial report was required in December 2021 and a final report required in December 2022 making recommendations for policy changes to reduce negative impacts of high potency cannabis.

Summary of Bill:

Cannabis Excise Tax Based on Product Type and THC Content.

The cannabis excise tax is restructured to apply the following three tax rates based on product type and THC concentration:

- 37 percent of the selling price on each retail sale of cannabis-infused products, useable cannabis with a THC concentration less than 35 percent, and cannabis concentrates with a THC concentration less than 35 percent;
- 50 percent of the selling price on each retail sale of cannabis concentrates and useable cannabis with a THC concentration of 35 percent or greater but less than 60 percent; and
- 65 percent of the selling price on each retail sale of cannabis concentrates and useable cannabis with a THC concentration greater than 60 percent.

Marketing and Advertising Prohibition.

No person including, but not limited to, a cannabis producer, processor, researcher, transporter, or retailer may place, maintain, or distribute, or cause to be placed, maintained, or distributed, any advertisement or marketing material, in any form or through any medium, for a product that contains greater than 35 percent total THC.

Age 25 Restriction on Certain Cannabis Products.

Retail outlets may not sell a cannabis product with greater than 35 percent total THC to a person who is under age 25 who is not a qualifying patient or designated provider. Violations of this requirement are subject to the following penalties: (1) a five-day suspension or \$500 penalty for a first violation; (2) a seven-day suspension for a second violation during a two-year period; (3) a 30-day suspension for a third violation in a two-year period; and (4) cancellation of license for a fourth violation in a two-year period.

Point-of-Sale Materials by Cannabis Retailers.

Cannabis retailers must provide point-of-sale information to consumers who purchase any cannabis products, except for useable cannabis, that must include accurate information about the potential harms of consuming high-THC products, including cannabis use disorder, psychotic disorders, and cannabinoid hyperemesis syndrome, populations at elevated risk of experiencing such potential harms, comparative dosing, how to read a label on a cannabis product, where to find help if the consumer feels negative effects, and resources for quitting or reducing cannabis consumption. The LCB must develop optional training for cannabis retail staff who want to better understand the point-of-sale information required to be provided to consumers. In developing the optional training, the LCB must consult with cannabis retail staff, consumers, persons who have been harmed from high-THC products, prevention professionals, behavioral health treatment providers, and youth advocates.

Mandatory Health Warning Label.

A cannabis product that contains greater than 35 percent total THC must include a mandatory health warning label on the product container, in addition to other label information required by law. The mandatory health warning label must be in a font size no smaller than 10-point font, use contrasting colors, and be placed in a prominent location that occupies at least 40 percent of the product container. The University of Washington's Addictions, Drug & Alcohol institute, in consultation with the LCB and persons with expertise in public health, must develop the content

of the mandatory health warning label. The content must be tested for comprehension and clarity among persons between the ages of 21 and 24 years old, persons reporting mental health challenges, and persons who identify with historically marginalized groups. The content must include language enumerating the risks associated with the use of high-THC cannabis products such as acute psychotic symptoms, development of psychotic disorders, cannabinoid hyperemesis syndrome, and cannabis use disorder.

Serving Unit Labeling.

All cannabis products offered or sold to a consumer must be labeled with the number of serving units of THC included in the package. A single serving unit of THC is 10 milligrams of total THC for purposes of the labeling requirements. A cannabis product offered or sold in a package that contains more than a single serving unit of THC must be labeled with text stating "CONTAINS MULTIPLE SERVINGS" and identify the number of total serving units in the container. The required label information must be displayed on the cannabis product container in black ink with a white background and in a minimum font size of 10-point font.

Expression of Standard Unit in Volume or Amount of Product.

In addition to other labeling requirements in law, all cannabis products offered or sold to a consumer must be labeled with an expression of a standard THC unit in volume or amount of product to help a consumer understand or visualize how much of the product to consume for a single serving unit of THC. The LCB must establish permissible text or images that cannabis licensees may include on product packages to comply with this requirement. By way of example, a permissible expression of a standard THC unit in volume or amount of product for a cannabis product intended to be consumed by inhalation could specify that a serving size should not exceed one inhalation lasting two seconds per serving.

Funding for Public Health Messaging.

\$1,000,000 must be annually appropriated to the Department of Health from the Dedicated Cannabis Account to contract for targeted public health messages and social marketing campaigns directed toward individuals most likely to suffer negative impacts of high-THC products including persons under age 25, persons reporting poor mental health, and persons living with mental health disorders. Messages and media campaigns funded through this subsection must include information about risks, comparative dosing of cannabis products, and resources for persons seeking support for quitting or decreasing their intake of THC. The content of public health messages and social marketing campaigns must be developed in partnership with persons targeted by the messages and campaigns and in consultation with professionals proficient in public health communication and in cannabis research.

Appropriation: None.

Fiscal Note: Requested on 01/26/2023.

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