

HOUSE BILL REPORT

SB 6271

As Reported by House Committee On:
Regulated Substances & Gaming

Title: An act relating to modifying the cannabis excise tax to consider THC concentration.

Brief Description: Modifying the cannabis excise tax to consider THC concentration.

Sponsors: Senators Keiser, Stanford, Kuderer and Mullet.

Brief History:

Committee Activity:

Regulated Substances & Gaming: 2/14/24, 2/19/24 [DP].

Brief Summary of Bill

- Requires the Liquor and Cannabis Board (LCB) to collect data on sales of cannabis products, including the amount of products sold in each category and the average tetrahydrocannabinol (THC) concentration of products sold in each category, with a report due in November 2025.
- Requires the LCB to formulate a recommended approach and implementation plan for modifying the cannabis excise tax, which must be revenue neutral and propose a higher tax on products with a higher THC concentration relative to other products in the same category, with a report due in September 2026.

HOUSE COMMITTEE ON REGULATED SUBSTANCES & GAMING

Majority Report: Do pass. Signed by 11 members: Representatives Kloba, Co-Chair; Wylie, Co-Chair; Stearns, Vice Chair; Chambers, Ranking Minority Member; Robertson, Assistant Ranking Minority Member; Caldier, Cheney, Morgan, Orwall, Reeves and Waters.

Staff: Peter Clodfelter (786-7127).

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.

Background:

Washington levies and collects a cannabis excise tax equal to 37 percent of the selling price on each retail sale of cannabis products. This tax is separate and in addition to general state and local sales and use taxes, and is not part of the total retail price to which general state and local sales and use taxes apply. The cannabis excise tax must be reflected in the price list or quoted shelf price in the store and in any advertising. All revenues collected from the cannabis excise tax are deposited each day in the Dedicated Cannabis Account.

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 concentrate" is defined as products consisting wholly or in part of the resin extracted from any part of the plant Cannabis and having a tetrahydrocannabinol (THC) concentration greater than 10 percent.
- "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 THC concentration no greater than 10 percent. "Cannabis-infused product" does not include either useable cannabis or cannabis concentrates.

The Liquor and Cannabis Board's (LCB) rules establish that a single serving of a cannabis-infused product may not exceed 10 milligrams of active THC, and a package is limited to 10 servings or 100 milligrams of active THC.

Summary of Bill:

Beginning December 1, 2024, the LCB must collect data on the following information on cannabis products sold within Washington and report to the Legislature by November 14, 2025:

- the amount of products being sold in the three product categories of useable cannabis, cannabis concentrates, and cannabis-infused products;
- the average THC concentration in useable cannabis and cannabis concentrates, and the average milligrams of THC per unit in cannabis-infused products; and
- the range of THC concentration in useable cannabis and cannabis concentrates.

Additionally, the LCB must formulate a recommended approach and implementation plan for modifying the cannabis excise tax, which may include recommended alternative approaches and plans for the Legislature to consider. This plan must be submitted to the Legislature with findings and recommendations by September 18, 2026.

The proposed modifications must be revenue neutral and propose a higher tax on products with a higher THC concentration relative to other products in the same category for each of the three product categories of useable cannabis, cannabis concentrates, and cannabis-

infused products.

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) This is a first step to change how high-THC cannabis products are sold. There is currently no definition of high-THC cannabis products, and that needs to be discerned and set. After data is collected about product sales and THC levels, the excise tax rate can be changed. The current excise tax of 37 percent is the highest in the United States, and is more than double the rate in some other states. This incentivizes illicit market sales. If revenue-neutral adjustments can be made to reduce the rate on low THC cannabis products, and increase the rate on high THC cannabis products, Washington will be better off. The current rate is arbitrary. It resulted from a problem with the original tax structure in Initiative 502 (2012) and the desire around 2015 and 2016 for a revenue neutral alternative. There are concerns about impacts of high-THC on all people, but especially younger people. Increasing the cigarette tax resulted in reducing sales of cigarettes, and taxes on alcohol, sweetened beverages, and other products are shown to work to reduce consumption. Policy solutions that tax products differently opposed to creating prohibitions on certain products best serve public policy goals. Frequent use of high-THC products can trigger outcomes like addiction, cannabis hyperemesis syndrome, anxiety, depression, and long-term mental health diseases. Youth use of these products is rising, and youth who do use cannabis report increased use of dabs, shatter, and vapes. Adults age 21 to 25 are also using these products. Changes to the bill are needed to ensure the study is robust. The LCB conducted a feasibility study on taxing cannabis by potency in 2019 and the Research and Development (RAND) Corporation also conducted a study in 2017 on the variation in cannabis potency and prices in Washington. Three years is not needed to complete the proposed study. Proponents of the bill would like to ensure that the study is analyzed through a public health lens, and that data collection about cannabis vapor products is added. Additionally, to provide fresh perspective, the oversight of the study should be conducted by the Department of Commerce. Further, suggesting only revenue neutral options locks policy options into a narrow box. Revenue generating options would pay for implementation, like administrative changes and ongoing retailer training. If the continuing research proves the claim that high-THC cannabis is harmful is true, then there will be a health crisis the state had a hand in creating. If higher-THC products have higher tax rates, they will be purchased less than products with less THC, presumably lowering overall health risks. This is a common sense start to deal with an emerging public health threat.

(Opposed) There are objections to the proposed time for the LCB to complete the data collection and to the estimated cost of the data collection. Washington has spent millions of dollars on the cannabis traceability system and used various vendors. It is believed that detailed transaction data already exists including to the level of retail sales to consumers. Also, cannabis concentrates have been sold for nine or ten years in the regulated system, and were available in the 1970s in the Northwest, called honey oil at the time. There has not been a death from it. Studies linking cannabis to psychosis have not been the tightest science. Some people use cannabis concentrate as medicine and this must be taken into account in policy.

(Other) The data collection and goal of defining high-THC cannabis is supported. The term metered dosing should be considered. The amount of THC a consumer is consuming should be considered. Based on data from cannabis sales in January 2024, cannabis flower represented about 53 percent of the market, concentrates represented about 31 percent, edibles were about 16 percent, and topicals were about 1 percent. Because cannabis flower is the majority of the market share and is a relatively lower-THC product, look at how changing the tax structure would affect overall cost to end consumers. For every one percent reduction in the tax to flower, there needs to be a 1.7 percent increase on concentrates. That is okay, but it could potentially have a larger effect when looking at a vape cartridge that is 80 or 90 percent THC versus flower that is 20 percent THC. Taking into account the value of flower and flower being used to make concentrates, a situation should be avoided where flower is further devalued and the price of concentrates rises. Cannabis prices have continued to drop in the face of inflation elsewhere.

Persons Testifying: (In support) Senator Karen Keiser, prime sponsor; Vicki Christophersen, Washington CannaBusiness Association; Megan Moore, Washington State Public Health Association; Caitlein Ryan, The Cannabis Alliance; and Scott Waller, Washington Association for Substance Misuse and Violence Prevention.

(Opposed) James MacRae.

(Other) Lukas Hunter, Harmony Farms.

Persons Signed In To Testify But Not Testifying: None.