

# SENATE BILL REPORT

## SB 5983

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As of March 3, 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.

**Sponsors:** Senators Keiser, Schoesler, Conway and Saldaña.

**Brief History:**

**Committee Activity:** Ways & Means: 3/05/22.

### Brief Summary of Bill

- Adds and amends definitions in the Uniform Controlled Substances Act, including expanding the definition of marijuana to include other tetrahydrocannabinols (THCs) in addition to delta-9 THC, and adds a definition of impairing in relation to a cannabinoid.
- Prohibits the sale of certain cannabinoid products except when sold by licensed cannabis producers, processors, and retailers, and adds new age restrictions to the purchase of certain cannabinoid products.
- Expands the Liquor and Cannabis Board's (LCB) regulatory and

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rulemaking authority over cannabinoids that may be impairing or marketed as impairing.

- Directs LCB to collect a temporary \$25 surcharge on certain licenses allowing the sale of tobacco and vapor products at retail, and to enforce sales of products containing cannabinoids that may be impairing or marketed as impairing.
- Includes provisions on adding non-impairing cannabinoids to cannabis products; prohibiting artificial cannabinoids and requiring rules before the sale of any synthetically derived cannabinoids; prohibiting synthetically derived cannabinoids in Department of Health-approved cannabis products; and requiring disclosures.

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## SENATE COMMITTEE ON WAYS & MEANS

**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.

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 producer 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 years-of-age or older, unless authorized by the Washington State Medical Use of Cannabis Act (Medical Cannabis Act).

Authorized Product Additives. Licensed cannabis producers and processors may use a CBD product as an additive for enhancing the CBD concentration of a product. The CBD product must be lawfully produced by, or purchased from, a licensed marijuana producer or processor, or may be obtained from an unlicensed source if the product has a THC level of 0.3 percent or less on a dry weight basis and has been tested for contaminants and toxins by an accredited testing laboratory. LCB has rulemaking authority to adopt rules pertaining to laboratory testing and product safety standards for CBD products used by licensed producers and processors.

Synthetic Cannabinoid Law. It is an unfair or deceptive practice and a violation of the state Consumer Protection Act to distribute, dispense, manufacture, display for sale, offer for sale, attempt to sell, or sell to a purchaser any products that contains any amount of any synthetic cannabinoid. For purposes of this prohibition, the term synthetic cannabinoid includes synthetic equivalents of THC's and related chemical compounds listed in Schedule I of the UCSA in addition to any chemical compound identified by the Pharmacy Quality Assurance Commission.

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

Cigarettes, Tobacco, and Vapor Product Licenses. To sell cigarettes, other tobacco products, and vapor products in the state, one or more licenses is needed. LCB issues licenses to sell cigarettes, other tobacco products, and vapor products at retail. Each of the retailer licenses are subject to a \$175 annual fee, however, the annual fee for a combination of licenses is \$250. Separate licenses are required for each location at which the retailer operates.

**Summary of Bill:** Uniform Controlled Substances Act Definitions. The following new definitions are added to the Uniform Controlled Substances Act (UCSA):

- "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 substance derived from the plant *Cannabis* that may be a cannabinoid receptor agonist and includes, but is not limited to, any material, compound, mixture, or preparation that is not listed as a controlled substance in Schedules I through V of the UCSA—specific exceptions are also included;
- "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;
- "impairing" in relation to a cannabinoid means a psychotropic constituent of the plant *Cannabis* which may diminish a person's cognitive, mental, or physical function or ability—LCB is authorized to further revise this definition by rule for specified, limited purposes provided in the bill;
- "isolate" means extract from the plant *Cannabis* of 95 percent or more of a single cannabinoid compound;
- "plant *Cannabis*" means all plants of the genus *Cannabis*, including marijuana and hemp;
- "synthetically derived cannabinoid" means any cannabinoid that is 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, THCv tetrahydrocannabivarin, THCP tetrahydrocannabipheryl, THC-O-Acetate, and the optical isomers of THC cannabinoids;
  - the term includes concentrated resins or cannabinoids, and their products, produced from the plant *Cannabis*, whether or not the cannabinoids were derived from a marijuana plant containing a THC concentration greater than 0.3 percent THC on a dry weight basis; and
- "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.

The following UCSA definitions are amended:

- CBD product is amended to specify that a CBD product may not exceed 0.3 percent THC on a dry weight basis and may not contain more than 0.5 milligrams (mg) per serving or 2 mg total in the packaged product of a cannabinoid that may be impairing;
- marijuana is amended to reference the new, broader definition of THC; to specify that the THC concentration limit of not more than 0.3 percent on a dry weight basis applies whether the cannabis is growing or not; to expressly include concentrated resins, cannabinoids, and their products in the definition; and to specify that the exclusion in the definition for hemp, industrial hemp, and seeds used for licensed hemp production does not apply if the THC concentration is greater than 0.3 percent on a dry weight basis;
- marijuana concentrates is amended to use the newly defined term total THC and to

expressly provide that the definition includes kief, live resin, rosin, hash, or bubble hash;

- marijuana processor is amended to specify that the processing activity authorized under the license is for processing marijuana of natural origin, grown by a licensed producer, either directly or indirectly or by extraction from the plant *Cannabis*, unless sourced and used as an additive in accordance with law;
- marijuana producer is amended to specify the production activity authorized under the license is for producing, preparing, and propagating marijuana directly from a natural origin;
- marijuana products is amended 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 that is marketed as such;
- marijuana infused products is amended to expressly include isolates and distillates and to use the newly defined term total THC; and
- THC concentration is amended to use the new, broader definition of THC rather than referencing only delta-9 THC.

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, except for hemp, unless intended for use by a marijuana licensee, and products authorized as a drug by the FDA. LCB rulemaking authority regarding cannabinoid additives is expanded and expressly includes authority for rules pertaining to laboratory testing and product safety standards for naturally and synthetically derived CBD or other non-impairing cannabinoid products used by licensed producers and processors. LCB must consult with the state departments of Health and Agriculture for any rules pertaining to synthetically derived cannabinoids and revise rules as appropriate to conform to the new or amended terminology. LCB must notify the chairs and ranking minority members of both the House Commerce and Gaming Committee and Senate Labor, Commerce, and Tribal Affairs Committee when a proposed rule relating to cannabinoids that may be impairing or synthetically derived cannabinoids is noticed.

Until July 1, 2024, LCB must conduct enforcement operations regarding products containing cannabinoids that may be impairing or are marketed as impairing including, but not limited to, products containing delta-8 THC, and not authorized for sale under the

UCSA. Enforcement operations includes efforts to attain compliance, prevent non-compliance, and the removal of products containing cannabinoids that may be impairing or marketed as impairing not authorized for sale under the UCSA.

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 compliant 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, cannabis health and beauty aids compliant with state law, nor unprocessed, unadulterated hemp flower 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 LCB 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.

Authorized 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 an LCB-licensed producer or processor.

For the sole purpose of enhancing the non-impairing cannabinoid concentration of an authorized product, 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 laboratory;
- is accompanied by a disclosure statement describing production methods; 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 natural substances.

Safe Harbor. The protections from criminal and civil liability are extended to cover authorized activities relative to licensed marijuana processors and their employees. However, the provisions do not authorize compounding or converting hemp into cannabinoids that may be impairing to create marijuana products from hemp, except as an authorized additive.

Department of Health Product Requirements. Artificial cannabinoids and synthetically derived cannabinoids are prohibited in the marijuana products that may be approved, labeled, or represented as complying with the additional product requirements adopted by the Department of Health for marijuana products sold or provided to qualifying patients and designated providers by retailers with a medical marijuana endorsement. The retail sales and use tax exemption for qualifying patients and designated providers with a recognition card purchasing marijuana products is limited so the tax exemption only applies when the marijuana products do not contain any artificial cannabinoids or synthetically derived cannabinoids.

Cigarettes, Tobacco, and Vapor Product Licenses Surcharge. Beginning July 1, 2022, and ending June 30, 2024, LCB must collect a \$25 surcharge on initial license applications and annual renewals of the following licenses:

- any vapor product retailer's license; and
- any entity licensed to sell cigarettes, tobacco, and other tobacco products at retail.

*Exceptions.* The surcharge does not apply to businesses classified as supermarkets and other grocery stores and convenience stores described in the North American Industry Classification System. No business may be required to pay a surcharge on more than one license type.

Other. The bill contains a severability clause and takes effect July 1, 2022.

**Appropriation:** None.



**Fiscal Note:** Requested on February 26, 2022.

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

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