

BILL REQ. #:

ATTY/TYPIST:

BRIEF DESCRIPTION: Regulating hemp as a food ingredient.

DRAFT

AN ACT Relating to regulating hemp as a food ingredient; amending RCW 15.140.020, 15.140.040, and 69.07.220; reenacting and amending RCW 69.07.010; adding a new section to chapter 15.140 RCW; adding new sections to chapter 69.07 RCW; adding a new section to chapter 69.50 RCW; creating new sections; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.** The legislature finds that hemp cannabinoid-containing food and beverage products, including those that contain cannabidiol, are readily available in Washington state despite being wholly unregulated at the state or federal level. This presents a significant safety concern for consumers who may assume that regulatory oversight exists when in fact it is lacking. The federal food and drug administration contends that cannabidiol and other hemp cannabinoids are ineligible as food ingredients despite the passage of the federal agriculture improvement act of 2018. Other states have established hemp in food regulatory programs because of this lack of action at the federal level. This has resulted in Washington farmers and businesses leaving Washington state to grow hemp elsewhere. In addition, unsafe chemically transformed delta-8-THC (delta-8), hexahydrocannabinol (HHC), tetrahydrocannabinol-O-acetate (THCO) and other forms of THC-like molecules are in products that need to be removed from shelves due to safety concerns, but no regulatory framework to remove them exists.

Therefore, it is the intent of this act to:

(1) Authorize and establish a new pilot program for the processing and sale of hemp consumable products in Washington state;

(2) Authorize naturally occurring hemp and hemp extract to be used as a food and dietary supplement ingredient, establish that hemp is not considered an adulterant and that it be regulated by the state's department of agriculture in coordination with the department of health;

(1) Maximum THC quantities shall be specified under the pilot program in conjunction with the WSDA, DOH and LCB with consultation with stakeholders and the scientific community.

(3) Establish standards for labeling for hemp consumable products; ~~and~~

(4) Establish standards for the manufacture of hemp consumable products; and

(5) Authorize removal and enforcement of chemically transformed ~~Class A~~ cannabinoids such as delta-8, HHC and THCO.

Sec. RCW 15.140.020 and 2022 c 16 s 19 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agriculture improvement act of 2018" means sections 7605, 10113, 10114, and 12619 of the agriculture improvement act of 2018, P.L. 115-334.

(2) "Cannabis" has the meaning provided in RCW 69.50.101.

~~(3) "Class A cannabinoid" means a substance that meets any of the following structural and functional criteria:~~

~~(a) The substance exhibits the structural backbone of tetrahydrocannabinols and tetrahydrocannabinol like (THC like) molecules that include the interconnected three ring system of a six-carbon aromatic ring; a pyran ring; and a cyclohexene/cyclohexane ring. Known compounds that fit the description provided in this subsection (3)(a) include:~~

~~(i) Tetrahydrocannabinols -- a single double bond in the C ring:~~

~~(A) Delta 10 THC and isomers;~~

~~(B) Delta 9 THC and isomers;~~

~~(C) Delta 8 THC and isomers;~~

~~(D) Delta 7 THC and isomers;~~

~~(E) Delta 6a THC and isomers; and~~

~~(F) Delta 10a THC and isomers;~~

~~(ii) Hexahydrocannabinol -- no double bonds in the C ring;~~

~~(iii) Carboxylates (C-2 and C-4) of tetrahydrocannabinols or hexahydrocannabinol:~~

~~(A) Delta 9 THC acid (Delta 9 THCA);~~

~~(B) Similar carboxylates of Delta 9 THCA for tetrahydrocannabinols in (a) (i) (A) through (F) of this subsection; and~~

~~(C) Carboxylate esters in (a) (i) (A) through (F) of this subsection;~~

~~(iv) Alkyl analogues (C-3) of tetrahydrocannabinols or hexahydrocannabinol:~~

~~(A) Delta 9-THCP (Delta 9-tetrahydrocannabiphorol) and n alkyl analogues; and~~

~~(B) Similar alkylated analogues of Delta 9 THC for tetrahydrocannabinols in (a) (i) (A) through (F) of this subsection; and~~

~~(v) Hydroxylated analogues of tetrahydrocannabinols or hexahydrocannabinol:~~

~~(A) 11-hydroxy-delta-9-THC and 8- and 10-hydroxy analogues; and~~

~~(B) Similar hydroxylated analogues of Delta 9-THC for tetrahydrocannabinols in (a) (i) (A) through (F) of this subsection;~~

~~(b) Possesses significant CB1 agonist activity as demonstrable by binding affinity to the CB1 receptors at less than 200 nanomolar (nM).~~

~~(4) "Class B cannabinoid" means all cannabinoids including, but not limited to, those in isolate form arising from hemp extract purification, that do not meet the form and function of class A cannabinoids.~~

(5) "Crop" means hemp grown as an agricultural commodity.

~~((+4))~~ (6) "Cultivar" means a variation of the plant *Cannabis sativa* L. that has been developed through cultivation by selective breeding.

~~((+5))~~ (7) "Department" means the Washington state department of agriculture.

~~((+6))~~ (8) "Food" has the same meaning as defined in RCW 69.07.010.

~~((+7))~~ (9) "Hemp" means the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

~~((+8))~~ (10) "Hemp consumable" means a hemp food or dietary supplement ingredient from any part of a naturally occurring hemp plant to be added to a product that is not a cannabis product, as defined in RCW 69.50.101, that is intended to be consumed, that is sold or provided to another person, that has a THC concentration of not more than 0.3 percent or such THC concentration permitted by 7 U.S.C. Sec. 1649o(1), and that is in compliance with all applicable laws and rules of the state of Washington.

(11) "Hemp consumable product" means a product that contains a hemp consumable.

(12)(a) "Hemp extract" means a substance, compound, isolate, or mixture of compounds and cannabinoid isolates intended for human oral consumption that is extracted from hemp. Extracts may be diluted, concentrated, isolated, or more purified compared to the original form.

(b) "Hemp extract" does not include:

(i) Compounds that are produced solely by chemical transformation, excluding those that result from the application of heat, light, or pressure;

(ii) Any food, including hemp seeds, food ingredient, or food additive that is categorized as "generally recognized as safe" pursuant to federal law; or

(iii) Any extract derived from hemp that is not intended for human consumption.

(13) "Hemp processor" means a person who takes possession of raw hemp material with the intent to modify, package, or sell a transitional or finished hemp product.

~~((19))~~ (14)(a) "Industrial hemp" means all parts and varieties of the genera *Cannabis*, cultivated or possessed by a grower, whether growing or not, that contain a tetrahydrocannabinol concentration of 0.3 percent or less by dry weight that was grown under the industrial hemp research program as it existed on December 31, 2019.

(b) "Industrial hemp" does not include plants of the genera *Cannabis* that meet the definition of "cannabis" under RCW 69.50.101.

~~((110))~~ (15) "Postharvest test" means a test of delta-9 tetrahydrocannabinol concentration levels of hemp after being harvested based on:

(a) Ground whole plant samples without heat applied; or

(b) Other approved testing methods.

~~((11))~~ (16) "Process" means the processing, compounding, or conversion of hemp into hemp commodities or products.

~~((12))~~ (17) "Produce" or "production" means the planting, cultivation, growing, or harvesting of hemp including hemp seed.

~~(18) "THC" means tetrahydrocannabinol.~~

NEW SECTION. **Sec.** A new section is added to chapter 15.140 RCW to read as follows:

(1) Hemp and hemp extract is permitted as a legal ingredient in food ~~when there is a:~~

~~(a) Maximum of 100 milligrams per serving and 300 milligrams per package of class B cannabinoids;~~

~~(b) Minimum ratio of class B to permissible class A cannabinoids of 20:1; and~~

~~(c) Maximum of 2.5 milligrams per serving and 5 milligrams per package of permissible class A cannabinoids.~~

~~(2) Hemp and hemp extract is permitted as an ingredient in dietary supplement products, including full spectrum hemp essential oils, tinctures, capsules, or soft gels when there is a:~~

~~(a) Maximum of 100 milligrams per serving and 6,000 milligrams per package of class B cannabinoids;~~

~~(b) Minimum ratio of class B to permissible class A cannabinoids of 20:1; and~~

~~(c) Maximum of 2.5 milligrams per serving of permissible class A cannabinoids, with milligrams per package of permissible class A cannabinoids to be determined in rules.~~

Sec. RCW 15.140.040 and 2019 c 158 s 4 are each amended to read as follows:

(1) The department must develop the state's hemp plan to conform to the agriculture improvement act of 2018, to include consultation with the governor and the attorney general and the plan elements required in the agriculture improvement act of 2018.

(2) Consistent with subsection (1) of this section, the state's hemp plan must include the following elements:

(a) A practice for hemp producers to maintain relevant information regarding land on which hemp is produced, including a legal description of the land, for a period of not less than three calendar years;

(b) A procedure for testing, using postdecarboxylation or other similarly reliable methods, delta-9 tetrahydrocannabinol concentration levels of hemp, without the application of heat;

(c) A procedure for the effective disposal of plants, whether growing or not, that are produced in violation of this chapter, and products derived from such plants;

(d) A procedure for enforcement of violations of the plan and for corrective action plans for licensees as required under the agriculture improvement act of 2018;

(e) A procedure for conducting annual inspections of, at a minimum, a random sample of hemp producers to verify hemp is not produced in violation of this chapter; and

(f) A certification that the state has the resources and personnel to carry out the practices and procedures described in this section.

(3) The proposal for the state's plan may include any other practice or procedure established to the extent the practice or procedure is consistent with the agriculture improvement act of 2018.

(4) Hemp and processed hemp produced in accordance with this chapter or produced lawfully under the laws of another state, tribe, or country may be transferred and sold within this state, outside of this state, and internationally.

(5) ~~((The whole))~~ Any part of the hemp plant may be used as food and may not be considered an adulterant when added to food. The department and the department of health shall regulate the processing of hemp for ~~((food))~~ hemp consumable products, ~~((that are allowable under federal law,))~~ in the same manner as other food processing under chapters 15.130 and 69.07 RCW and may adopt rules as necessary to properly regulate the processing of hemp for food and hemp consumable products including, but not limited to, establishing standards for creating hemp extracts used for or in food.

Sec. RCW 69.07.010 and 2022 c 16 s 48 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the state liquor and cannabis board.

(2) "Cannabis" has the definition in RCW 69.50.101.

(3) "Cannabis-infused edible" has the same meaning as "cannabis-infused products" as defined in RCW 69.50.101, but limited to products intended for oral consumption.

(4) "Cannabis-infused edible processing" means processing, packaging, or making cannabis-infused edibles using cannabis, cannabis extract, or cannabis concentrates as an ingredient. The term does not include preparation of cannabis as an ingredient including, but not limited to, processing cannabis extracts or cannabis concentrates.

(5) "Cannabis processor" has the definition in RCW 69.50.101.

(6) "Department" means the department of agriculture of the state of Washington.

(7) "Director" means the director of the department.

(8) "Food" means any substance used for food or drink by any person, including ice, bottled water, and any ingredient used for components of any such substance regardless of the quantity of such component.

(9) "Food processing" means the handling or processing of any food in any manner in preparation for sale for human consumption: PROVIDED, That it shall not include fresh fruit or vegetables merely washed or trimmed while being prepared or packaged for sale in their natural state.

(10) "Food processing plant" includes but is not limited to any premises, plant, establishment, building, room, area, facilities and the appurtenances thereto, in whole or in part, where food is prepared, handled or processed in any manner for distribution or sale for resale by retail outlets, restaurants, and any such other facility selling or distributing to the ultimate consumer: PROVIDED, That, as set forth herein, establishments processing foods in any manner for resale shall be considered a food processing plant as to such processing.

(11) "Food service establishment" shall mean any fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail lounge, night club, roadside stand, industrial-feeding establishment, retail grocery, retail food market, retail meat market, retail bakery, private, public, or nonprofit organization routinely serving food, catering kitchen, commissary or similar place in which food or drink is prepared for sale or for service on

the premises or elsewhere, and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

For the purpose of this chapter any custom cannery or processing plant where raw food products, food, or food products are processed for the owner thereof, or the food processing facilities are made available to the owners or persons in control of raw food products or food or food products for processing in any manner, shall be considered to be food processing plants.

(12) "Hemp consumable" has the same meaning as defined in RCW 15.140.020.

(13) "Hemp consumable product" has the same meaning as defined in RCW 15.140.020.

(14) "Hemp extract" means a substance or compound intended for human ingestion that is derived from, or made by, processing hemp. The term does not include hemp seeds or hemp seed-derived ingredients that are generally recognized as safe by the United States food and drug administration.

~~((113))~~ (15) "Hemp extract certification" means a certification issued by the department to a hemp processor manufacturing hemp extract for export to other states, which certifies the hemp processor's compliance with Washington state's inspection and sanitation requirements.

~~((114))~~ (16) "Hemp processor" has same meaning as defined in RCW 15.140.020.

~~((115))~~ (17) "In-process hemp" means intermediate hemp, hemp concentrates, or hemp extracts that temporarily exceed 0.3 percent THC concentration between the preharvest test and final product generation, during processing, manufacturing, or transport. In-process hemp is not considered a controlled substance.

(18) "Person" means an individual, partnership, corporation, or association.

~~((16))~~ (19) "Preharvest test" means a test conducted by the department to determine the THC concentration of hemp within 30 days prior to the expected harvest.

(20) "Sale" means selling, offering for sale, holding for sale, preparing for sale, trading, bartering, offering a gift as an inducement for sale of, and advertising for sale in any media.

Sec. RCW 69.07.220 and 2021 c 104 s 6 are each amended to read as follows:

(1) Until such time as hemp extract is federally authorized for use as a food ingredient, hemp extract ~~((is not an approved food ingredient in Washington state))~~ must be regulated as an approved food ingredient in Washington state by the department and the department of health. A hemp processor who wishes to engage in the production of hemp extract for use as a food ingredient in another state that allows its use as a food ingredient may apply for a hemp extract certification to certify the hemp processor's compliance with Washington's inspection and good manufacturing practices requirements. The department shall regulate hemp extract processing the same as other food processing under chapters 15.130, 69.07, and 69.22 RCW with the exceptions contained in subsections (2) through (6) of this section.

(2) The department's oversight is limited to certifying a hemp processor's compliance with applicable inspection and good manufacturing practices requirements as adopted by the department under chapter 15.130 RCW.

(3) The department must issue a hemp extract certification in lieu of a food processing license under RCW 69.07.040 to a hemp

processor who meets the application requirements described in subsection (4) of this section. A hemp processor holding a hemp extract certification must apply for renewal of the certification annually.

(4) The application, initial certification, and renewal fees must be in an amount established by the department. Applicants for certification otherwise must meet the same requirements as applicants for a food processing license under chapter 69.07 RCW including, but not limited to, successful completion of an inspection by the department, or accredited third-party auditor's inspection certifying the processor's compliance with Washington's inspection and good manufacturing practices requirements adopted by the department under chapter 15.130 RCW.

(5) The department may deny, suspend, or revoke a hemp extract certification on the same grounds as the department may deny, suspend, or revoke a food processor's license under this chapter.

(6) At such time as federal authorization of hemp extracts as a food ingredient occurs, the department must cease issuance of certifications under this chapter. At renewal, hemp processors certified under this section must apply for a food processor license in accordance with RCW 69.07.040.

NEW SECTION. **Sec.** A new section is added to chapter 69.07 RCW to read as follows:

(1) The department, in consultation with the department of health, shall establish a pilot program to regulate the processing of hemp consumable products in the same manner as other food processing under this chapter and chapters 15.130 and 69.22 RCW, and may adopt rules as necessary to properly regulate the processing of hemp food ~~for food~~ ingredients and hemp consumable products. The

program must continue until May 1, 2025, or a later date as determined by the department, or such earlier date as the department and the department of health have adopted rules to replace the pilot program. During the period of the hemp consumable pilot program, the provisions of this act and consistent rules adopted by the department and the department of health govern the program.

(a) A temporary maximum THC concentration milligram per serving and package sizes shall be determined in conjunction by the department, Washington State Department of Health and Washington State Liquor and Cannabis Board in consultation with the relevant scientific community and stakeholders no later than 6 months from this when legislation becomes law as part of the Hemp Consumable Pilot Program. A standard THC concentration serving and package sizes shall be set in rules in conjunction with the department, Washington State Department of Health and Washington State Liquor and Cannabis Board by May 1, 2025, or such later date as determined by the department., or such earlier date as the department and the Washington State Department of Health have established laws and regulations to replace the Pilot Program.

(2) The department may not consider hemp consumable products to be adulterated when produced in compliance with chapter 69.50 RCW and the rules adopted by the board.

(3) Initial issuance and renewal for an annual hemp consumable product manufacturer endorsement in lieu of a food processing license under RCW 69.07.040 shall be made upon the department or an accredited third-party auditor's inspection certifying the processor's compliance with Washington's inspection and good manufacturing practices requirements adopted by the department under chapter 15.130 RCW.

(4) The department must issue a producer of hemp consumable products a food processing license to a processor who meets the application requirements described in subsection (5) of this section.

(5) The application, initial certification, and renewal fees must be in an amount established by the department. Applicants for certification otherwise must meet the same requirements as applicants for a food processing license under this chapter, including successful completion of an inspection by the department or an accredited third-party auditor.

(6) The department may deny, suspend, or revoke a hemp consumable product endorsement on the same grounds as the department may deny, suspend, or revoke a food processing license under this chapter.

NEW SECTION. **Sec.** A new section is added to chapter 69.07 RCW to read as follows:

(1) The department, in consultation with the department of health, shall develop a test protocol for testing hemp consumable products under this chapter for compliance and end-user safety which may include, but not be limited to, heavy metals, pesticides, residual solvents, and microbials.

(2) Such products must be tested by a testing laboratory accredited to conduct food safety audits or a Washington state certified cannabis testing lab and issue certifications in accordance with testing standards and rules adopted under this chapter.

(3) Subject to the requirements of subsection (2) of this section, the board may enact rules necessary to implement the requirements of this section related to laboratory testing and product safety standards for hemp consumable products.

NEW SECTION. **Sec.** A new section is added to chapter 69.07 RCW to read as follows:

(1) All hemp consumable products must conform to applicable federal and state labeling laws including, but not limited to, 21 C.F.R. Sec. 101, 21 C.F.R. Sec. 111, and 21 C.F.R. Sec. 117.

(2) Label information must include:

(a) The common name of the food or, absent a common name, an adequately descriptive identity statement;

(b) If made from two or more ingredients, a list of ingredients in descending order of predominance by weight, including a declaration of artificial color or flavor and chemical preservatives, if contained in the food;

(c) An accurate declaration of the quantity of contents;

(d) Net weight or volume in United States customary and metric units;

(e) Serving size and number of servings per container;

(f) The name and place of business of the manufacturer, packer, or distributor; and

(g) Warnings that state:

(i) "Keep out of reach of children"; and

(ii) "This product should not be consumed if you are pregnant or nursing."

(3) The label of a hemp consumable product may not contain a claim indicating the product is intended for diagnosis, cure, mitigation, treatment, or prevention of disease, or otherwise indicates that the product is a drug, as that term is defined in 21 U.S.C. Sec. 321(g)(1). A hemp consumable product with a label that contains a claim indicating the product is intended for diagnosis, cure, mitigation, treatment, or prevention of disease is not a food and is considered misbranded.

(4) Hemp consumable products may not contain any statement, depiction, or illustration that is especially appealing to persons under 21 years old.

NEW SECTION. **Sec.** A new section is added to chapter 69.50 RCW to read as follows:

In-process hemp, as defined in RCW 69.07.010, is not a controlled substance under this chapter.

NEW SECTION. **Sec.** The departments of agriculture and health may adopt emergency rules to implement this act.

NEW SECTION. **Sec.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

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