



CR 101 Memorandum

Regarding Implementation of Engrossed Second Substitute Senate Bill (E2SSB 5367) (chapter 365, Laws of 2023) concerning the regulation of products containing tetrahydrocannabinol (THC)

Date: June 21, 2023
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Background

The federal [Agriculture Improvement Act of 2018 \("2018 Farm Bill"\)](#) authorized the production of hemp and removed hemp and hemp seeds from the Drug Enforcement Administration's (DEA) schedule of Controlled Substances. In 2019, the state legislature enacted equivalent legislation, Engrossed Second Substitute Senate Bill ([E2SSB 5276](#)), to align Washington's regulatory framework for hemp production with the 2018 Farm Bill. Consequently, legislation related to hemp production led to uncertainty regarding the legal status of tetrahydrocannabinol (THC).

In 2021, the Washington State Liquor and Cannabis Board (LCB) initiated [House Bill \(HB\) 1668](#) and its companion, [Senate Bill \(SB\) 5547](#), which aimed to expand regulatory authority over "impairing" cannabinoids and enhance product safety and consumer information. Although, the legislation was unsuccessful, in 2023 the agency introduced [HB 1612](#) and its companion, [SB 5367](#) to once again address the legal status of THC. Subsequently, the legislation was enacted during the 2023 legislative session as [Engrossed Second Substitute Senate Bill \(E2SSB\) 5367 \(chapter 365, Laws of 2023\)](#), relating to the regulation of products containing THC. The law will become effective on July 23, 2023.

Reasons Why Rulemaking Is Needed

Rules may be needed to implement the following provisions of E2SSB 5367:

- Amending the definition of "cannabis", "cannabis products", and "THC concentration" in the Uniform Controlled Substances Act (UCSA);
- Adding new definitions of "package" and "unit" to the UCSA and amending other definitions;

- Modifying the permitted activities regarding the enhancement of cannabidiol (CBD) concentration in certain cannabis products;
- Amending the product labeling requirements to reference cannabis product “package” instead of container;
- Prohibiting any person from manufacturing, selling, or distributing cannabis products without a valid state-issued license;
- Prohibiting the production, processing, manufacturing, or sale of any synthetically derived, or completely synthetic cannabinoid, with limited exceptions; and
- Other relevant provisions as necessary to align the current rules within the scope of E2SSB 5367.

Process

The rulemaking process begins by announcing the Board’s intent to consider changes to existing rules, add new rule sections, or both by filing a pre-proposal statement of inquiry (CR 101) form with the Office of the Code Reviser. This allows staff, stakeholders, industry partners, and all members of the authorizing environment to begin discussing possible rule changes.

At the CR 101 stage of the rulemaking process, no proposed language is offered. Any interested person may comment on this possible rulemaking during the designated comment period. Notice will be sent to all who have indicated that they want to receive notice of rule activity related to this pre-proposal statement of inquiry. The notice will identify the public comment period and where comments can be sent.