



NOTICE OF ADOPTION OF AN INTERPRETIVE STATEMENT

Title of Interpretive Statement: CBD Retail Sales in Licensed I-502 Stores – Interpretive Statement Number IS-21-01.

Issuing Entity: Washington State Liquor and Cannabis Board.

Subject Matter: Clarifies and confirms the way that cannabidiol (CBD) products may be sold in licensed retail locations.

Effective Date: January 26, 2021.

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Interpretive Statement

Title:	CBD Retail Sales in Licensed I-502 Stores	Number: IS21-01
References:	RCW 69.50.357 RCW 69.50.375 RCW 69.50.378 RCW 69.50.575 WAC 314-55-109	
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This interpretive statement is intended to clarify and confirm current rule, WAC 314-55-109, concerning cannabinoid additives – requirements, restrictions, and quality assurance testing, including the ways that cannabidiol (CBD) ¹ product obtained from a source not licensed under chapter 314-55 WAC may be sold in licensed retail locations.

This interpretive statement supersedes and replaces previous agency guidance concerning this topic.

BACKGROUND

The Washington State Liquor and Cannabis Board (LCB) has received multiple inquiries over a protracted period of time regarding whether CBD products can be sold in licensed I-502 stores, even if the CBD product comes from outside the regulated system, including outside the state of Washington.

Washington State statute and rules that implement those statutes describe prohibitions for cannabis retail licensees. Initiative 502 (I-502) required a regulatory framework to establish exceptions to illicit cannabis sales by providing allowances for licensees to produce, process, and sell cannabis products at retail within the state.

STATUTORY AUTHORITY

RCW 69.50.101(e) provides that “CBD product” means any product containing or consisting of cannabidiol.

¹ See RCW 69.50.101(a)(2)(e): "CBD product" means any product containing or consisting of cannabidiol.

RCW 69.50.101(y) defines marijuana as:

all parts of the plant *Cannabis*, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include:

- (1) The mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination; or
- (2) Hemp or industrial hemp as defined in RCW [15.140.020](#), seeds used for licensed hemp production under chapter [15.140](#) RCW.

(Emphasis added)

RCW 69.50.357 provides that retail outlets may not sell products or services other than marijuana concentrates, useable marijuana, marijuana-infused products, or paraphernalia intended for the storage or use of marijuana concentrates, useable marijuana, or marijuana-infused products. They may also sell lockable boxes for storage of marijuana.

RCW 69.50.378 provides that a marijuana retailer or marijuana retailer holding a medical marijuana endorsement may sell products with a THC concentration of 0.3 percent or less. Marijuana retailers holding a medical marijuana endorsement may also provide these products at no charge to qualifying patients or designated providers.

ANALYSIS

A plain reading of **RCW 69.50.357** indicates that a licensed cannabis retailer may *only* sell marijuana concentrates, usable marijuana, marijuana-infused products or paraphernalia, and selling unregulated CBD products, or products that do not fall within those specific categories and are not defined as marijuana consistent with **RCW 69.50.101(y)**, is out of compliance with statutory requirements.

In 2015, Senate Bill (SB) 5052 established the Cannabis Patient Protection Act. This legislation provides access to medical cannabis that is safe for patients who need additional quality control beyond the standards for recreational products. In addition, the law provided that a marijuana retailer or a marijuana retailer holding a medical endorsement may sell products with a THC concentration of 0.3 percent or less. This is codified in **RCW 69.50.378**, and expands the opportunity for retailers (with or without a medical marijuana endorsement) to sell products beyond the allowances of RCW 69.50.357.

SB 5052 also created a medical marijuana endorsement for cannabis retailers, codified in **RCW 69.50.375**. This statutory provision directed the Department of Health and the LCB to adopt rules on requirements for authorized products detailed in **RCW 69.50.357**, which includes only marijuana concentrates, useable marijuana, and marijuana-infused products intended for medical patients that contain in part, low THC (intended to mean products with a THC concentration of 0.3 percent or less)-high CBD ratios for those identified products. This statutory change did not deviate or depart from the basic allowable products for retail sale of marijuana concentrates, useable marijuana, and marijuana-infused products.

Also in 2015, the legislature passed Senate House Bill (SHB) 2136 further removing prohibitions for sales of Cannabis Health and Beauty Aids (CHABA). **RCW 69.50.575** identifies CHABA as not subject to regulations and penalties that apply to marijuana, as follows:

(2) For purpose of this section, “cannabis health and beauty aid” means a product containing parts of the cannabis plant and which:

(a) Is intended for use only as a topical application to provide therapeutic benefit or to enhance appearance;

(b) Contains a THC concentration of not more than 0.3 percent;

(c) Does not cross the blood-brain barrier; and

(d) Is not intended for ingestion by humans or animals.

Thus, **RCW 69.50.575** expanded allowances for product derived from a cannabis plant to be sold without regulation, but only as long as the product was CHABA, and contained a THC concentration of not more than 0.3 percent.

In 2018, the legislature passed a bill providing a framework for regulation of CBD that was not produced by licensed cannabis businesses in Washington State. **RCW 69.50.326** only allows the use of CBD product as an additive for the purpose of enhancing the cannabidiol concentration, and for this purpose licensees may obtain CBD not sourced under the chapter provided it:

(a) Has a THC level of 0.3 percent or less on a dry weight basis; and

(b) Has been tested for contaminants and toxins by a testing laboratory accredited under this chapter . . .

Other than statutes related to CHABA, and CBD added to products entering the I-502 system only for the purposes of enhancing cannabidiol concentration, state law limits legal sales in licensed I-502 stores to only three product types: marijuana concentrates, useable marijuana, and marijuana-infused products.

Stand-alone CBD products, regardless of concentration or origin, are not expressly authorized for sale in licensed I-502 stores. CBD may only enter the I-502 system if it is used as an additive for the sole purpose of enhancing cannabidiol concentration and meets product testing

standards consistent with RCW 69.50.326 and WAC 314-55-109, or if the product meets the definition of a CHABA product under RCW 69.50.575.

Although outside of the I-502 system, another reference point to consider is RCW 70.345.030, which expressly prohibits the sale of CBD in vapor products in Washington State:

(4) No person engaged in or conducting business as a [vapor products] retailer, distributor, or delivery seller in this state may sell or give, or permit to sell or give, a product that contains any amount of any cannabinoid, synthetic cannabinoid, cathinone, or methcathinone, unless otherwise provided by law. A violation of this subsection (4) is punishable according to RCW [69.50.401](#).

SUMMARY

RCW 69.50.357 and RCW 69.50.378 show a legislative intent to focus on safe access for ingestible products, consumable products, or both. I-502 and the legislature expressed strong interest in addressing legal sales of cannabis products in licensed businesses. This is evidenced by the allowance of non-ingestible products, such as CHABA, on the one hand, and the prohibition of CBD in general non-THC vapor products, on the other hand. RCW 69.50.375 (medically-compliant products) provided consistency with product types originally authorized in RCW 69.50.357 (retail sales of marijuana). Further, RCW 69.50.378 did not amend I-502, therefore the allowances created in RCW 69.50.378 only provide sales opportunities for medically compliant products.

CONCLUSION

CBD may only enter the I-502 system as an additive for the purposes of enhancing cannabidiol concentration in marijuana concentrates, useable marijuana, and marijuana-infused products consistent with RCW 69.50.326 and WAC 314-55-109, or if the product meets the definition of a CHABA product.

Stand-alone CBD products, regardless of concentration or origin, are not expressly authorized for sale in licensed I-502 stores, unless they meet the definition of a CHABA product consistent with RCW 69.50.575.

Therefore RCW 69.50.357 governs allowable sales in licensed cannabis retail stores, and any products not covered in this statute, other than CHABA products, are prohibited from, and may not be sold from, LCB licensed locations.