Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Health Care & Wellness Committee

E2SSB 5073

Brief Description: Concerning the medical use of cannabis.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Kohl-Welles, Delvin, Keiser, Regala, Pflug, Murray, Tom, Kline, McAuliffe and Chase).

Brief Summary of Engrossed Second Substitute Bill

- Establishes a regulatory system for producing, processing, and dispensing cannabis intended for medical use.
- Establishes protections from criminal liability and arrest for qualifying patients, designated providers, health care professionals, licensed producers, licensed processors, and licensed dispensers.
- Establishes a voluntary registry in which qualifying patients and designated providers may enroll and receive arrest protection.

Hearing Date: 3/14/11

Staff: Chris Blake (786-7392).

Background:

Marijuana is classified as a Schedule I substance under the Controlled Substances Act (CSA). Schedule I substances are characterized as having a high potential for abuse, no currently accepted medical use, and no accepted safe means for using the drug under medical supervision. The manufacture, possession, or distribution of Schedule I substances is a criminal offense.

In 1998, Washington voters approved Initiative 692, the Medical Use of Marijuana Act (Act), which creates an affirmative defense to the violation of state laws relating to marijuana if the individual uses and possesses it for medicinal purposes. Qualifying patients, or their designated providers, may establish the defense if they only possess the amount of marijuana necessary for their personal use and if they present valid documentation to law enforcement officers. "Qualifying patients" are those who have been: (1) diagnosed with a terminal or debilitating

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medical condition; (2) advised by a physician about the risks and benefits of the medical use of marijuana; and (3) that they may benefit from such use.

Qualifying patients may grow medical marijuana for themselves or designate a provider to grow on their behalf. Designated providers may only provide medical marijuana to one patient at a time. Qualifying patients and their designated providers are limited to possession of an amount of marijuana that is necessary for the patient's personal medical use, and not exceeding 15 plants and 24 ounces of useable marijuana.

Washington is one of 15 states that have passed legislation allowing the use of marijuana for medicinal purposes. Under federal law, however, such activities violate the CSA. Absent congressional action, state laws permitting the use of marijuana for medicinal purposes will not protect an individual from legal action by the federal government. The United State Department of Justice has recently issued a statement of policy that it would not focus its resources on pursuing individuals who are in compliance with state laws for the medicinal use of marijuana.

Summary of Bill:

Generally.

The Washington State Medical Use of Marijuana Act is renamed the "Washington State Medical Use of Cannabis Act." All references to "marijuana" are changed to "cannabis." "Cannabis" is defined to include all parts of the plant *Cannabis*, seeds of the plant, resin extracted from the plant, and compounds of the plant, seeds, and resin.

Producers and Processors.

A regulatory system is established for the Department of Agriculture (DOA) to issue credentials to licensed producers (producers) and licensed processors of cannabis products (processors). "Producers" are licensed to plant, grow, or harvest cannabis for medical use for wholesale to licensed dispensers and processors. A producer may plant, grow, harvest, process, package, transport, label, wholesale, and possess cannabis for medical use.

"Processors" are licensed to manufacture, process, handle, and label cannabis products for wholesale to dispensers. A processor may possess, manufacture, produce, package, transport, label, or wholesale cannabis products intended for medical use by qualifying patients. Cannabis products include products that contain cannabis or cannabis extracts, have a tetrahydrocannabinol (THC) content greater than 0.3 percent, and are intended for human consumption or application.

The DOA shall administer the licensing program for producers and processors, including adopting rules, performing licensing functions, conducting inspections, and sanctioning license holders following a hearing. By July 1, 2012, the DOA must adopt rules related to medical cannabis intended for medical use including inspection and grading standards for cannabis analysis laboratories; standards for containers; labeling requirements; transportation requirements; security requirements for the facilities of producers and processors; and licensing and fee requirements for producers and processors. The DOA may also adopt rules on facility

standards, measurements for cannabis intended for medical use, and methods to identify cannabis intended for medical use.

Producers and processors must submit samples of cannabis that they have grown or processed to a cannabis analysis laboratory on a regular schedule. The samples must be analyzed for grade, condition, profile, THC concentration, and other measures and inspection standards.

Dispensers.

A regulatory system is established for the Department of Health (DOH) to issue credentials to licensed dispensers (dispensers). "Dispensers" are defined as nonprofit medical organizations that are licensed to dispense cannabis for medical use to qualifying patients and designated providers. Dispensing activities include delivering, distributing, transferring, packaging, labeling, selling at retail, and possessing cannabis for medical use by qualifying patients such as seeds, cuttings, plants, useable cannabis, or cannabis products.

By July 1, 2012, the DOH must adopt rules related to dispensers, including licensing standards, inspections, sanctioning procedures, recordkeeping requirements, standards for dispensing containers, storage and security requirements, labeling requirements, facility standards, maximum amounts for the premises, sanitary standards for facilities and dispensing equipment, and enforcement and fees.

Registration System.

By July 1, 2012, the DOH, in consultation with the DOA, shall establish a secure and confidential registration system in which health care professionals may register qualifying patients. Participation in the registry is voluntary for qualifying patients and their designated providers. Law enforcement must be able to consult the registry to verify whether a person or an address is registered. The registry must include producer, processor, and dispensary information.

Prohibitions and Protections.

It is neither a crime nor unprofessional conduct for, and arrest protection is provided to, health care professionals advising patients regarding medical use of cannabis and providing a patient with valid documentation. Health care professionals may only provide valid documentation or registration for patients with whom they have a documented relationship and only after performing a physical examination, informing the patient of other options, and documenting the medical condition and other attempted treatments. Several acts are considered unprofessional conduct for a health care professional including receiving payment from, or having a financial interest in, a producer, processor, or dispenser; examining a patient for the primary purpose of authorizing the use of medical cannabis; or using references to the medical use of cannabis in advertising.

Specific protections are established for qualifying patients and designated providers who engage in the medical use of cannabis and law enforcement agencies that fail to seize cannabis. The protections apply if the qualifying patient or designated provider: (1) possesses no more than 15 plants and 24 ounces of either useable cannabis, cannabis product, or a combination of the two; (2) presents proof of enrollment in the DOH registry to any peace officer; and (3) keeps a copy

of proof of registration next to any cannabis at the person's residence. In addition, the designated provider must not have served as a designated provider to more than one qualifying patient within a 15-day period and there must not be evidence that a designated provider has converted medical cannabis for his or her personal use or benefit. Qualifying patients and designated providers who are not enrolled in the DOH registry, but possess valid documentation may assert an affirmative defense at trial if all other elements of the protections have been met.

A qualifying patient may not be refused housing for possession or use of medical cannabis and the use of medical cannabis may not be the sole disqualifying factor in organ transplant decisions. Qualifying patients and designated providers may not have their parental rights limited due to their use of medical cannabis.

Up to three qualifying patients may participate in a collective garden to produce and process medical cannabis for medical use. The collective garden may have up to 15 plants per person and 24 ounces of useable cannabis per patient and may only be delivered to the other participating qualifying patients.

Producers are prohibited from selling or delivering cannabis to any person other than a cannabis analysis laboratory, a processor, a dispenser, or a law enforcement officer. Processors are prohibited from selling or delivering cannabis to any person other than a cannabis analysis laboratory, a licensed dispenser, or a law enforcement officer. Dispensers may only sell cannabis that they have received from producers or processors and they may only sell to qualifying patients, designated providers, or producers. Prior to selling or delivering cannabis to a patient or designated provider, the dispenser must contact the patient's health care provider to confirm the patient's qualification for obtaining cannabis for medical use. Violations of sales and delivery prohibitions by producers, processors, and dispensers are a class C felony.

Dispensaries and producers who are registered with the Secretary of State as of May 1, 2011, and who file a letter of intent to become licensed with either the DOH or the DOA may assert an affirmative defense if charged with a cannabis-related crime. The transition period ends July 1, 2012, and they must become licensed at that time to continue in business.

Advertising cannabis for sale to the general public in a way that promotes the use or abuse of cannabis is prohibited. Producers, processors, and dispensers may be fined for such advertising. Media sources are not subject to penalties for disseminating advertising in good faith without knowledge that the advertising promotes the use or abuse of cannabis.

Studies.

By July 1, 2014, the Washington State Institute for Public Policy shall conduct a cost-benefit evaluation of the bill. The evaluation must consider access to an adequate, safe, consistent, and secure source of cannabis for medical use; contact and involvement with law enforcement by qualifying patients and designated providers; diversion of cannabis for medical use to nonmedical uses; incidents of property crimes with qualifying patients accessing cannabis for medical use; and the authorizing practices of health professionals.

Washington State University and the University of Washington may conduct scientific research on the efficacy and safety of administering cannabis as part of medical treatment. The research

may study the medical safety of cannabis and include the development of medical guidelines for the use and administration of cannabis.

Appropriation: None.

Fiscal Note: Requested on March 4, 2011.

Effective Date: The bill takes effect 90 days after the adjournment of the session in which the bill is passed, except for section 1002 relating to research on the medical use of cannabis, which takes effect July 1, 2012.