HOUSE BILL REPORT
E2SSB 5073

As Reported by House Committee On:
Health Care & Wellness

Title: An act relating to medical use of cannabis.

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 History:
Committee Activity:
Health Care & Wellness: 3/14/11, 3/23/11 [DPA].

Brief Summary of Engrossed Second Substitute Bill
(As Amended by House)

- 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 protection from arrest and prosecution.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: Do pass as amended. Signed by 6 members: Representatives Cody, Chair; Jinkins, Vice Chair; Clibborn, Green, Moeller and Van De Wege.

Minority Report: Do not pass. Signed by 5 members: Representatives Schmick, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Bailey, Harris and Kelley.

Staff: Chris Blake (786-7392).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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, 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 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 States 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 Amended 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 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 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. Dispensers may not be located within 500 feet of a public school or another dispenser.

The DOH must also establish a maximum number of dispenser licenses that may be issued in each county based upon the number of qualifying patients and designated providers in the registry. Licenses shall be issued according to a random selection process. Dispenser licenses are not transferrable.

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. The registry shall be funded through fees charged to those who register.

Prohibitions and Protections.

It is neither a crime nor unprofessional conduct for, and arrest and prosecution protection is provided to, health care professionals advising patients regarding the 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; having a business that consists solely 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 have protection from search and arrest and 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 10 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 patient up to a maximum of 99 plants and 24 ounces of useable cannabis per patient up to a total of 150 ounces 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. Letters of intent are not subject to public disclosure. The transition period ends once the licensing programs are operational, 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.

The University of Washington and Washington State University 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.

Amended Bill Compared to Engrossed Second Substitute Bill:

The amended bill states that there is no right to health care coverage of medical cannabis by an insurer or state-purchased health care program.

Arrest and search protection is established for individuals who are not registered with the Department of Health (DOH), but have valid documentation and are in compliance with other aspects of the bill.

Statements that evidence of the presence of cannabis does not constitute probable cause for a search or arrest warrant or a warrantless search or arrest unless an inquiry is made that the person is registered are eliminated.

The requirement that licensed dispensers be not-for-profit is eliminated.

The prohibition against health care professionals examining patients solely or primarily for the purpose of authorizing the use of medical cannabis is eliminated and health care professionals may not have a business which consists solely, rather than "primarily," of authorizing the medical use of cannabis.

Law enforcement is exempt from having to pay a fee for accessing the DOH registry and requires that any costs for law enforcement access be paid by those registered with the registry.

The amended bill authorizes the DOH and the DOA to deny, suspend or revoke dispenser, producer, and processor licenses based on drug-related offenses other than cannabis or marijuana.

The number of patients that may participate in collective gardens is increased from 3 to 10, the total number of plants is increased from 45 to 99, and the total amount of useable cannabis is increased from 72 ounces to 150.

The National Guard is exempt from the medical cannabis laws.

The DOH must establish a maximum number of licenses that may be issued in each county based upon the number of qualifying patients and designated providers in the registry and issue licenses according to a random selection process. Dispenser licenses are not transferrable.

Licensed dispensers are prohibited from being located within 500 feet of either a public school or another dispenser. Dispensers are no longer required to be licensed by local governments.

Immunity from liability is provided for governments and their employees when they are acting in good faith and within the scope of their duties, rather than applying in all situations except for misconduct.

People under the supervision of a correctional agency are exempt from provisions related to collective gardens, noncommercial growing, and the registry if it is inconsistent with the terms of their supervision. People under the supervision of a correctional agency are prohibited from being licensed as a producer, processor, or dispenser if it is inconsistent with the terms of their supervision. The affirmative defense does not apply to people under supervision of a correctional agency in a supervision revocation or violation hearing.

Letters of intent and acknowledgement are exempt from public disclosure requirements. The expiration of the letter of intent provisions are extended from July 1, 2012, until the agencies establish the licensing programs and begin issuing licenses.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: 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.

Staff Summary of Public Testimony:

(In support) This bill has bi-partisan sponsorship and support in the Senate. The medical marijuana laws currently have many gray areas. Qualifying patients must have safe, secure, and reliable access to the medication that helps them. There needs to be a bright line for law enforcement to know who is a qualifying patient. This bill provides a safe system for regulating dispensaries, producers, and processors. The bill creates a registry for qualifying patients and dispensers to provide a voluntary, secure system of protecting legitimate participants in the medical marijuana system. There needs to be legitimate means for patients to access their source of medication. There has been a lot of frustration from both law enforcement and patients with the current system and there needs to be an open, public conversation about how to address dispensaries. This bill should be passed with an amendment to exempt qualifying patients from arrest even if they do not participate in the registry and to eliminate the restrictions on the relationship between health care providers and their patients. The bill's emphasis on the existence of a relationship between the patient and the authorizing physician is a good step, as are the restrictions on advertising. The bill's parenting protections for qualifying patients fixes a problem for parents who need medical marijuana. More physician education is needed. This legislation adds clarity and uniformity among local governments. While the dispensary model is not perfect, it is the only model that currently works. While the arrest protections are helpful, low-income patients may not have the resources to participate in the registry. Most communities do not welcome dispensaries and this bill will help establish dispensaries and cooperatives in places where patients are located. This bill will bring greater transparency and accountability.

(With concerns) The bill currently does not provide arrest protections for legitimate patients who are not on the registry and they will fear being arrested, booked, and prosecuted. There is no arrest protection until the registry is functioning, which will not be for several years. The DOA needs to have a director with expertise in medicinal marijuana. There needs to be more work on the time schedule. Medical marijuana is causing increasing conflicts between dispensaries and local governments because of the ambiguity in state law. The advertising ban on print media is constitutionally ambiguous. This bill needs to give clarification about dispensaries so that patients have safe places to get medical marijuana.

This bill goes a long way to providing clarity, especially through the licensing requirements which will reduce the black market. The provisions regarding local zoning and licensing are in conflict and need to be corrected. The bill prohibits the Department of Corrections from sanctioning an offender under community supervision for using, possessing, or growing in compliance with the bill which may be in conflict with the current process for allowing offenders to use medical marijuana.

(Opposed) This bill goes too far in providing protection from prosecution to producers by only allowing for prosecution as an unranked penalty. This is still a federal crime and the next time the federal administration changes, this system could be subject to criminal liability. Because this distribution system is outside of the traditional health system, there are not adequate safeguards for patients to ensure that they have high quality care. Pharmacists have years of training and they can recognize drug reactions and other potential concerns that dispensaries cannot protect against. This bill could reduce the perception among children that marijuana is harmful. This should be constructed as a medical model, rather than a

commercial model, and should be dispensed through pharmacies, not stores. The bill should include a study of the impacts on youth. The Legislature has recently reduced funding for substance abuse prevention in schools and communities. Contracts at the Department of Commerce contain federal restrictions that prevent a medical marijuana system from being effective. The Legislature should hold hearings to determine the correct scheduling of marijuana. The current law needs to be fixed, but this bill goes too far. This bill eliminates any chance of a doctor writing a recommendation for a patient. Medical marijuana should be viewed as a medical specialty. This bill wipes out existing dispensaries and does not create any new ones until July 2014. There is no need to rush this bill since it has the potential to harm communities. There is not a need for a registry as long as the state develops a standardized authorization form.

Persons Testifying: (In support) Senator Kohl-Welles, prime sponsor; Senator Delvin; Alison Holcomb, American Civil Liberties Union; John Schochet, Seattle City Attorney's Office; Charles Heaney, King County Medical Society; Sharon Blackford; Karen Hamilton; Randall Lewis, City of Tacoma; Loren Bailey; and Jeff Gilmore.

(With concerns) Rachel Kurtz, Cannabis Defense Coalition; Joanna Mckee; Ezra Eickmeyer, Philip Dawdy, and Laura Healy, Washington Cannabis Association; Anthony Gibbs; Brian Enslow, Washington State Association of Counties; and Anna Aylward, Department of Corrections.

(Opposed) Don Pierce, Washington Association of Sheriffs and Police Chiefs; Russ Hauge, Washington Association of Prosecuting Attorneys; Jeff Rochon, Washington State Pharmacy Association; Seth Dawson, Washington Association for Substance Abuse Prevention; John Worthington, American Alliance for Medical Cannabis; Ken Martin, Washington Association for Medical Cannabis Providers; Steve Sarich, Cannacare; Steve Mansfield, Lewis County Sheriff's Office; and Don Skakie, Cannabis Defense Coalition.

Persons Signed In To Testify But Not Testifying: More than 20 persons signed in. Please see committee staff for information.