SENATE BILL REPORT
SB 5073

As Reported by Senate Committee On:
Health & Long-Term Care, February 9, 2011

Title: An act relating to medical use of cannabis.

Brief Description: Concerning the medical use of cannabis.

Sponsors: Senators Kohl-Welles, Delvin, Keiser, Regala, Pflug, Murray, Tom, Kline, McAuliffe and Chase.

Brief History:
Committee Activity: Health & Long-Term Care: 1/20/11, 2/09/11 [DPS-WM, w/oRec].

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: That Substitute Senate Bill No. 5073 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.
Signed by Senators Keiser, Chair; Conway, Vice Chair; Carrell, Kline, Murray, Pflug and Pridemore.

Minority Report: That it be referred without recommendation.
Signed by Senators Becker, Ranking Minority Member; Parlette.

Staff: Kathleen Buchli (786-7488)

Background: In 1998 voters approved I-692 which permitted the use of marijuana for medical purposes by qualifying patients. The Legislature subsequently amended the chapter on medical use of marijuana in 2007 and in 2010. In order to qualify for the use of medical marijuana, patients must have a terminal or debilitating medical condition (cancer, HIV, multiple sclerosis, intractable pain, glaucoma, Crohn's disease, hepatitis C, nausea/seizure diseases, or a disease approved by the Medical Quality Assurance Commission) and the diagnosis of this condition must have been made by a health care professional. Patients are not provided arrest protection. Instead, patients are permitted to assert an affirmative defense at trial with proof of compliance with the medical marijuana law.

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. Patients and their designated providers are limited to possession of an amount of marijuana

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that is necessary for the patient's personal medical use, and not exceeding 15 plants and 24 ounces of useable marijuana.

Summary of Bill (Recommended Substitute): Patient protections. Qualifying patients and their designated providers are provided with arrest protection if they possess no more than 15 cannabis plants and 24 ounces of useable cannabis; are registered with the Department of Health (DOH); post a copy of their authorization next to cannabis at their residence; and, in the case of designated providers, have not converted cannabis for personal use. Health care professionals may only authorize the medical use of cannabis as part of a treatment plan. Over authorization of cannabis by health care professionals constitutes unprofessional conduct.

Qualifying patients and their designated providers are provided with protection from warrantless search and arrest if they are registered with DOH. Law enforcement officers may seek a search or arrest warrant if the officer: determines that the person is not registered with DOH or licensed by DOH or DOA; is unable to ascertain, after making reasonable efforts, that the person or location is registered or licensed; believes that the person or location is disqualified from the protections of the law on the medical use of cannabis; or believes that a cannabis-related traffic offense is being committed.

Qualifying patients with or without valid documentation or proof of registration may assert an affirmative defense at trial if they possess more than the permitted amount of cannabis and are able to demonstrate that this amount is necessary for the patient's medical use; provide evidence that they were qualifying patients at the time of the arrest; or are nonresidents of the state and are authorized by another state to engage in the medical use of cannabis and are otherwise within the provisions of the medical cannabis law.

Parental rights may not be restricted solely due to the medical use of cannabis unless this results in long-term impairment that interferes with the performance of parenting functions. Qualifying patients may not be refused housing, so long as that housing is not drug or alcohol free housing, nor can they be denied an organ transplant solely because of medical cannabis use.

Methods of Obtaining Cannabis. Qualifying patients may grow cannabis for their own use, designate a provider to grow on their behalf, participate in a collective garden with other qualifying patients, or purchase from a licensed dispensary. Collective gardens may consist of up to three qualifying patients and contain no more than 15 plants per person and up to 45 plants total.

Licenses. Three types of business licenses are created to license producers, processors of cannabis products, and dispensaries. Producers are licensed to produce cannabis for medical use for wholesale to licensed dispensers and licensed processors of cannabis products. Processors of cannabis products are licensed to manufacture cannabis products including edible products and lotions for wholesale to licensed dispensers. Dispensers must be nonprofit corporations and may sell seeds, plants, usable cannabis, and cannabis products to qualifying patients.

Licensees are prohibited from advertising cannabis on television, radio, or billboards if the advertisement promotes the use or abuse of cannabis. Licensees who sell to unauthorized persons are subject to a class C felony and failure to comply with the law on medical cannabis may result in a $1000 civil penalty.

Department of Agriculture. The Department of Agriculture (DOA) licenses producers and processors of cannabis products. Licensed producers and processors must use cannabis analysis laboratories to test their products on a schedule determined by DOA. Cannabis will be tested for grade, condition, and cannabinoid profile. DOA must adopt rules addressing facility standards, including security requirements; size and security features on containers used for medical cannabis; labeling requirements; licensing requirements, including fees; record keeping; and methods to identify cannabis intended for medical use. DOA may contract with a cannabis analysis laboratory to conduct independent inspections and testing of cannabis. DOA must create and maintain a confidential list of producers and processors, with names to be released only to authorized DOA employees or to law enforcement as necessary to verify licensed producer or processor status.

Department of Health. DOH must adopt rules on licensing requirements, including fees, suspension, and revocation of licenses; inspection requirements; safety standards for containers used to dispense medical cannabis; cannabis storage requirements, including security requirements; labeling requirements; and dispensary facility standards, including equipment standards. DOH must create and maintain a confidential list of dispensaries, with names to be released only to authorized DOH employees as necessary to verify licensed status.

DOH Registry. DOH must establish a secure registration system in which health care professionals may register qualifying patients. Participation in the registry is voluntary for qualifying patients and their designated providers and fees must be established on an income-based sliding scale. Law enforcement must be able to consult the registry to verify whether a person or an address is registered.

Research and Evaluation. The Washington State Institute for Public Policy must conduct a cost-benefit evaluation of the implementation of the law on medical cannabis. The University of Washington and Washington State University are permitted to conduct scientific research on the safety of administering cannabis as part of a medical treatment and may develop guidelines for the appropriate administration of cannabis.

Transition. 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 DOH or 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.

EFFECT OF CHANGES MADE BY HEALTH & LONG-TERM CARE COMMITTEE (Recommended Substitute): The number of patients who may participate in a collective garden is changed from 25 to three. The section providing employment protections to medical cannabis patients is removed. The section on housing protections is modified to permit housing providers who enact smoke free housing provisions to apply those prohibitions to smoking cannabis and to permit drug and alcohol free housing to prohibit

medical use of cannabis. DOA's role in cannabis testing and inspection is limited to adopting rules on outside cannabis analysis laboratories. DOA may seize books, records, and property and may request law enforcement to assist as needed to ensure employee safety. Removes a sales tax exemption for purchases at dispensaries. Law enforcement may access the registry when they have an articulated individualized suspicion of criminal activity or of the possession, use or production of cannabis, whether criminal or noncriminal. Civil penalties for law enforcement officers and others who allow inspection of the registry are removed. Local governments may adopt reasonable zoning requirements, business licensing requirements, and business taxes. Patients may only receive arrest protection by registering with DOH, but may assert an affirmative defense with valid documentation. Health care professional may only authorize the medical use of cannabis as part of a treatment plan. Health care professionals must report quarterly to DOH on the number of authorizations made in the last quarter and inappropriate authorization of cannabis constitutes unprofessional conduct.

Appropriation: None.

Fiscal Note: Available.
[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: This bill is a result of two years of work, multiple stakeholder meetings, and addresses a bipartisan issue. Pain is not a partisan issue. Most of us know a person or know of a person who has suffered from a very serious condition that could have been assisted by medical marijuana. We need to ensure that people suffering from terminal illnesses get a secure, safe, and reliable source of the plant that helps them. This is a Catch 22 situation; patients are permitted to use marijuana but they have to grow it for themselves and they have no place to buy seeds or plants. We need to ensure public safety. We need a regulated system in which local jurisdictions enact zoning laws determining where these businesses may be located. We need arrest protection for legally qualifying patients. Law enforcement needs clarity to determine who really is a qualifying patient. We need a method to provide the means for public safety through licensed businesses. Patient privacy and confidentiality are protected by the registry provided for in the bill. We need to have a rational system of delivery which involves a way to regulate growers, producers, and processers so we know that what is delivered to dispensers is safe. Farmers would like to grow a crop they can make money on. Dispensaries that provide marijuana are as close to pharmacies as we can get until the federal government changes the scheduling of marijuana. Dispensaries should be like pharmacies and should be nonprofit. We are at a point where we can go down two roads; we can have accountability, or we can do nothing. Law enforcement is frustrated with what is going on in this area and we have an underground program going on. It is time to bring light to the problem. This bill is a good start and this is the time to have some certainty and some regulation. We do not want the dispensary mess that they have in California. This is an opportune time to address this because the federal government has provided that states may establish rational regulatory systems for medical marijuana in their state. We need to

restructure the search and seizure provisions and statutorily redefine probable cause which would eliminate the need for civil penalties. Washington voters continue to support the use of medical cannabis by people with terminal or debilitating conditions. The patient registry will be designed to protect patient privacy. We want clarity for patients and law enforcement with real arrest protections that also protect patient privacy. Dispensaries should be permitted to be incorporated under any business model and the limitation for nonprofit only dispensaries should be removed. Nonprofits do not work for smaller dispensaries or all operations. If people want to run businesses under each license, they will be required to set up multiple corporate structures. It is not about profit margins but about allowing businesses with less overhead.

CON: The employment provision is problematic for small businesses. The employment section is vague and would lead to litigation. It is unclear if employees must reasonably accommodate medical use of marijuana. This would require that employers not take action against employees who take part in an illegal act and employers would face liability by sending an employee home if impaired. This would make Washington a less competitive state in the national business environment. We are concerned with the section relating to advertising which signals out radio, television, and billboards but does not address other areas of advertising. If marijuana is being moved into a medicine category, it should be treated as any new medicine would be and should be tested in clinical trials. This bill encompasses more than pain management for people dying of cancer. The provision relating to designated providers serving one patient at a time should not be implemented until the dispensary system is put in place. The bill removes the presumptive nature of the law and does not provide arrest protection if your doctor recommends more than the amount permitted by the state currently. The registry is voluntary but this is not voluntary if you can get arrested by not signing up on it. Other states with registries have released records showing confidential addresses and patient information. This information can be used to prevent people from purchasing firearms. Evidence shows that cannabis may not be safe. Marijuana can cause the acceleration or aggravation of the very issue it is aimed to treat. Marijuana causes mental health disorders and accidents, vehicular and otherwise.

OTHER: Medical cannabis patients who grow for themselves put themselves at risk for home invasion and with law enforcement. The currently operating dispensaries should be protected but the date when those protections take place should be moved from January 1, 2011, to after the bill takes effect or change the provisions for the one dispenser at a time to take effect when the rules regulating dispensaries are adopted. Posting a patient's authorization by the plants or products would cause a patient to post in multiple places around their homes and this is not practical for patients; at the most, the authorization should be posted where plants are growing. Cannabis limits for dry weight are concerning. By and large, plant counts do not accommodate the needs of patients who do not smoke and who use products that require more plant matter. Patient registry databases are being surrendered to law enforcement regardless of safety measures and law enforcement can already confirm patient status with clinics and authorizers. The registry's database will be broken eventually. Collective gardens should be permitted to continue to exist and to not be limited to 25 patients. The bill needs to address what patients can do with excess product if they have grown more than 15 plants and 24 ounces. Chronic pain patients need to be included.

Persons Testifying: PRO: Senator Kohl-Welles, prime sponsor; Senator Delvin, sponsor; Deputy Mayor Lauren Walker, City of Tacoma; Sheryl Gordon McCloud; John Schochet, Seattle City Attorney's Office; Alison Holcomb, American Civil Liberties Union of Washington; Melissa Lunsford, CBR Medical, Inc.; Dr. Gil Mobley; Kent Underwood, Attorney; Matt McCally, Law Enforcement Against Prohibition; Pam Woodard, Urban Garden; Ezra Eickmeyer, Washington Cannabis Association; Jeff Gilmore, Olympia Medical Group.

CON: Dave Harris, Washington State Association of Independent Outpatient Programs; Steve Sarich, Cannacare; Evelyn Bowen- Crawford; Mark Allen, Washington State Association of Broadcasters; Tim O'Connell, Association of Washington Business; Stoel Rives, Patrick Connor, National Federation of Independent Business.

OTHER: Rachel Kurtz; Brian Stone, Northern Waters; Ben Livingston, Cannabis Defense Coalition; Stuart Ostergard, Eastside Medical Cooperative; Richard Zaharie, Martin Martinez, court-appointed expert witnesses; Justin Prince, Tacoma Hempfest; Alison Bigelow, Member of Collective.

Signed In, Unable to Testify & Submitted Written Testimony: PRO: George Rohrbacher, Former Washington State Senator.

CON: John Worthington, American Alliance for Medical Cannabis.