SENATE BILL REPORT
E2SSB 5073

As Amended by House, April 11, 2011

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 & Long-Term Care: 1/20/11, 2/09/11 [DPS-WM, w/oRec].
Ways & Means: 2/23/11, 2/24/11 [DP2S, DNP, w/oRec].
Passed Senate: 3/02/11, 29-20.
Passed House: 4/11/11, 54-43.

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)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5073 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Murray, Chair; Baumgartner, Brown, Fraser, Hatfield, Hewitt, Keiser, Kohl-Welles, Pflug, Pridemore, Regala, Rockefeller and Tom.

Minority Report: Do not pass.

Signed by Senators Holmquist Newbry, Honeyford and Schoesler.

Minority Report: That it be referred without recommendation.

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.

Signed by Senators Parlette, Ranking Minority Member Capital; Baxter, Conway and Kastama.

Staff: Jenny Greenlee (786-7711)

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

Summary of Engrossed Second Substitute Bill: 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.

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 the Department of Agriculture (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.

Health Care Professionals. Health care professionals must have a documented relationship with the patient, complete a physical examination of the patient as appropriate, document the terminal or debilitating medical condition in the patient's medical record, and inform the patient of other options for treating the medical condition. Health care professionals may not accept remuneration from or hold an economic interest in a dispenser, producer, or processor; offer either a discount or an item of value to a patient to become a customer of a dispenser, producer, or processor; examine a patient at a location of a dispenser, producer, or processor; have a practice which consists primarily of authorizing the medical use of cannabis; or advertise cannabis. A violation of the health care professional's requirements constitutes unprofessional conduct.

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 may sell seeds, plants, usable cannabis, and cannabis products to qualifying patients. Dispensers must be nonprofit medical corporations and must be approved by the counties and cities in which they are located.

Licensees are prohibited from advertising 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 $1,000 civil penalty. Licensees must prominently display their licenses.

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; dispensary facility standards, including

equipment standards; and maximum amounts of cannabis that may be kept at a dispensary at any one time. 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. 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.

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.

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 (Health & Long-Term Care): 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 (Health & Long-Term Care): 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.

Staff Summary of Public Testimony on Recommended First Substitute (Ways & Means): PRO: This bill addresses many flaws in the current medical marijuana laws. It will bring a clear system of regulations to the procurement of medical marijuana giving true meaning to the medical marijuana laws. Patients are left in the dark as to what is permitted. Currently police and prosecutors have to spend time figuring out if someone is in compliance with the law. Additionally, cities may have to resolve lawsuits against police officers for wrongful arrest and related charges. All this costs cities and counties money. Cities and counties will benefit from sales tax collections on medical marijuana. The Obama Administration has given clear signals that it will not pursue action against states with medical marijuana laws. This bill is addressing an urgent need as conflicts between patients and law enforcement are increasing. Now is the time for the state to get a handle on the distribution of medical marijuana. The current approach is attracting a bad element to Washington State. The state stands to gain tax revenue as more transactions will be happening legally. Rough estimates for the increase in sales tax revenue are as high as $3 million per fiscal year. Prices would probably change once the sales come out of the dark. Collectives are operating now. This bill would allow dispensaries, and they could be licensed and regulated.

CON: The law does need to be changed but creating a commercial approach is not the answer. The Legislature should consider a medical approach to this issue. Could medical

marijuana be sold through pharmacies and produced by pharmaceutical companies? This bill sets up a large licensing program that is very costly. There should be small gardens or cooperatives rather than lots of regulated dispensary activity. Registration should be mandatory.

Persons Testifying (Ways & Means): PRO: Alison Holcomb, American Civil Liberties Union of Washington; Peter Holmes, Seattle City Attorney; Ezra Eickmeyer, Washington Cannabis Association.

CON: Don Pierce, Washington Association of Sheriffs and Police Chiefs; Tom McBride, Washington Association of Prosecuting Attorneys.

House Amendment(s): A patient or provider who is in compliance with the law on medical cannabis may not be arrested or prosecuted for the medical use of cannabis; however, the prohibition on searches is removed. In order to receive arrest and prosecution protection a person must be registered and acting within the scope of the medical cannabis law including presenting proof of registration to law enforcement when questioned; that the law enforcement officer does not possess evidence that the designated provider has converted cannabis obtained for a patient for the designated provider's personal use; that the law enforcement officer does not possess evidence that the patient has not converted cannabis for the patient's personal, non-medical use; and the law enforcement officer does not observe other indicators of criminal activity.

A person who is not registered but possesses valid documentation may raise an affirmative defense if the person is acting within the law on the medical use of cannabis; the investigating officer does not have probable cause to believe the person has committed a crime or has not observed evidence of an unlicensed cannabis operation, theft of electrical power, illegal use of drugs other than cannabis, or frequent and numerous short-term visits that are consistent with commercial activity.

Law enforcement does not have to pay a fee to access the registry and costs for law enforcement access must be paid by registrants. The registry must permit a law enforcement officer to verify at any time whether a health care professional has registered a person as either a qualifying patient or designated provider, but the law enforcement officer is not required to contact the subject of the inquiry before consulting the registry. Before seeking a non-vehicle search or arrest warrant, a law enforcement officer must make reasonable efforts to ascertain whether the location or person under investigation is registered. This requirement does not apply to investigations in which the officer has observed evidence of an apparent unlicensed cannabis operation, theft of electrical power, illegal use of drugs other than cannabis, frequent and numerous short-term visits over an extended period that are consistent with commercial activity, or violent crime of other demonstrated dangers to the community. This requirement also does not apply if the officer has probable cause to believe the subject has committed a crime in the officer's presence that does not relate to cannabis or the subject has an outstanding arrest warrant.

Ten qualifying patients may participate in a collective garden and grow up to a total of 45 plants.

Use or display of medical cannabis in a manner or place that is visible by the public is a class 3 civil infraction and cannabis in licensed dispensers may not be viewed from outside the facility.

Hotels and motels are not required to accommodate the on-site smoking of cannabis for medical use.

The National Guard is exempt and employers may establish drug free work places and those work places are not required to accommodate the medical use of cannabis of their employees. There is no right to health care coverage of medical cannabis by an insurer or state purchased health care program.

Licensed dispensers are not required to be nonprofits. The maximum number of dispensers in a county must be based on a ratio of 1 dispenser for every 20,000 residents; this number may be adjusted beginning January 1, 2016. Licensed dispensers may not be located within 500 feet of a community center, child care center, elementary or secondary school, or another licensed dispenser. Cities, counties, and towns may adopt zoning requirements, business licensing requirements, health and safety requirements, and business taxes but may not preclude the siting of licensed dispensers within the jurisdiction. The provision requiring dispensers be licensed by local governments is removed.

Law enforcement officers, may receive cannabis from licensed dispensers. These dispensers may provide cannabis to the University of Washington or Washington State University for research purposes.

People under the supervision of a correctional agency are exempt if the medical use of cannabis is inconsistent with the terms of their supervision; local governments and jails are included in this exemption. Protections from search, arrest, and prosecution does not apply in community supervision revocation or violation hearings.

DOH and DOA rulemaking is delayed to January 1, 2013. Letters of intent are not subject to public disclosure; these provisions are not to expire until the DOH and DOA rules are adopted and they begin issuing licenses.

On July 1, 2015, and annually thereafter, DOH is to report to the State Treasurer expenditures from the Health Professions Account and revenue deposited to this account under the medical cannabis program; shortages between expenditures and revenue are to be made up by the general fund. The Joint Legislative Audit and Review Committee must conduct a review of the cannabis production and dispensing system in the event that the federal government authorizes the medical use of cannabis.