

SENATE BILL REPORT

SB 6265

As Reported by Senate Committee On:
Health & Long-Term Care, January 30, 2012

Title: An act relating to regulating the medical use of cannabis through nonprofit patient cooperatives, collective gardens, local government regulation of nonprofit patient cooperatives and collective gardens, security requirements for the transportation of cannabis, affirmative defense and arrest and prosecution protections, establishing a voluntary registry within the department of health, modifying the Washington state institute for public policy study, and providing technical corrections.

Brief Description: Addressing the medical use of cannabis.

Sponsors: Senators Kohl-Welles, Delvin, Keiser, Pflug and Regala.

Brief History:

Committee Activity: Health & Long-Term Care: 1/18/12, 1/30/12 [DPS-WM, w/oRec].

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: That Substitute Senate Bill No. 6265 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; Frockt, Kline, Pflug and Pridemore.

Minority Report: That it be referred without recommendation.

Signed by Senators Becker, Ranking Minority Member; Parlette.

Staff: Veronica Warnock (786-7490)

Background: In 1998 voters approved Initiative 692 which permitted the use of cannabis for medical purposes by qualifying patients. The Legislature subsequently amended the chapter on medical use of cannabis in 2007, 2010, and 2011. In order to qualify for the use of medical cannabis, 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 may grow medical cannabis for themselves or designate a provider to grow it on their behalf. Designated providers may only provide medical cannabis to one patient at a time. Qualified patients and their designated providers may possess no more than 15 cannabis plants and 24

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ounces of useable cannabis product. Up to ten qualified patients may pool resources and grow cannabis for their personal medical use by creating and participating in collective gardens. The Governor vetoed the following provisions of the 2011 medical cannabis legislation: providing for arrest protection for patients who voluntarily register with the Department of Health (DOH) and the licensing of producers, processors and dispensaries.

Summary of Bill (Recommended Substitute): Nonprofit Patient Cooperatives (NPC). Permits NPCs with opt-in and opt-out options based on population. Counties with a population of less than 200,000 and the cities and towns within these counties must enact ordinances providing that NPCs are allowed, otherwise NPCs are prohibited within those jurisdictions. Counties with a population of more than 200,000 and the cities and towns within these counties must enact ordinances prohibiting NPCs from operating, otherwise NPCs will be allowed.

NPCs are nonprofit corporations that distribute cannabis for the medical use of their members who must be qualified patients or their designated providers. Before accepting a member, an NPC must verify that the member is a qualified patient or a designated provider for a qualified patient. NPCs must keep patient records including a copy of each member's valid documentation or registration card and proof of identity. City, town, county, or state employees may access patient records while engaged in administering and enforcing the requirements of local ordinances or state law. NPCs may obtain cannabis from collective gardens or may grow up to 99 plants and keep up to 144 ounces of useable cannabis on the premises. Plant and useable cannabis limits may be further limited by local government ordinance. NPCs must not advertise to the general public in any manner that promotes the use of cannabis; allow cannabis or artistic depictions of cannabis to be viewed from outside the facility; permit cannabis to be consumed on the premises; or allow the general public on its premises. Each NPC must be operated as an independent entity and shall not share or exchange resources. NPCs may hire staff to assist in its operation who may establish an affirmative defense at trial with proof of compliance with the law. NPCs may not be located within 500 feet of community centers, child care centers, or schools. Local jurisdictions may increase or decrease this requirement.

Local Government. Local governments are not preempted from imposing zoning requirements, licensing requirements, permitting requirements, health and safety requirements, taxes or other conditions upon any entity producing, processing, or dispensing cannabis within their jurisdictions. In addition, local governments may adopt requirements relating to collective gardens including but not limited to: security requirements, number of members, duration of membership, and proximity to other uses such as schools and other collective gardens. However such regulation may not preclude the siting of collective gardens. Local governments may adopt requirements relating to NPCs including but not limited to security requirements; inspection standards; limits on square footage; and limits on the number of plants and amounts of useable cannabis.

Voluntary Registry. A secure confidential voluntary registration system (registry) is established for qualifying patients, designated providers, collective gardens and NPCs. DOH must work in conjunction with the University of Washington Computer Science and Engineering Security and Privacy Research Lab, and a stakeholder advisory committee to create rules for the creation; implementation; maintenance; and upgrading of this registry.

DOH may administer this registry or contract out its operation in accordance with the Department of Enterprise Services' requirements under chapter 43.19 RCW. Law enforcement may only access the registry in connection with a specific legitimate criminal investigation. Prior to seeking a nonvehicle search warrant or arrest warrant law enforcement must make reasonable efforts to ascertain whether the person or location under investigation is registered. Qualified patients and designated providers who are registered and in compliance with state law are provided with arrest protection. Patients and providers who do not register may establish an affirmative defense at trial if they otherwise comply with the law. Records containing personal identifiable information relating to qualifying patients, designated providers, collective gardens and NPCs are exempt from disclosure under the Public Records Act.

Other Provisions. References to licensed dispensaries and other obsolete terms are removed. The Washington State Institute for Public Policy evaluation of the implementation of the law on medical cannabis is modified to focus on activities of local governments. Designated providers may participate in collective gardens. In most cases cannabis exceeding twenty-four ounces must be transported in a locked metal box that is bolted to the transporting vehicle. The provisions of the act amending collective gardens only go into effect if nonprofit patient cooperatives are enacted into law.

EFFECT OF CHANGES MADE BY HEALTH & LONG-TERM CARE COMMITTEE (Recommended Substitute): Removes provision limiting collective gardens to one per dwelling or commercial building unit. Clarifies that local jurisdictions may adopt and enforce regulations for collective gardens including but not limited to security requirements, number of members, duration of membership, and proximity to other uses. Provisions amending collective gardens only go into effect if nonprofit patient cooperatives are enacted into law. Removes provision stating that a DUI conviction cannot be based solely on the presence of cannabis in a patient's system. Language stating that local jurisdiction which allows NPCs may regulate the size and duration of membership was replaced with the term square footage.

Appropriation: None.

Fiscal Note: Available.

[OFM requested 10-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: Yes.

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

Staff Summary of Public Testimony on Original Bill: PRO: The Governor's partial veto created ambiguity in the law. This lack of clear guidelines has created problems for local jurisdictions and qualified patients. Collective Gardens have become the centerpiece of the 2011 legislation - this was not the intent. The registry is voluntary. People who desire arrest protection should be able to register. If the status quo is maintained patients may have to engage in the black market to obtain their medicine and local jurisdictions will have less control over access points. Access points are not going anywhere. The best way to obtain predictability for patients and local jurisdictions is to put more clarity in state law. There is no

need for the registry. Currently there is no issue with authorizations being forged; the tamper proof system is working. Patients need safe reliable access across the state. The current medical cannabis law has created a grey market. Multiple collective gardens are operating under one roof. The proposed NPCs would bring these points of access out of the grey market. Collective gardens should be allowed in outbuildings. A uniform state authorization form would remove the need for a registry. Language needs to be added to clarify what proof of impairment means. The opt-in/out provision puts burdens on patients in rural areas. Cannabis provides pain relief and in high concentrations can cure cancer. This is not a partisan issue. Patients need safe access to a high quality product. Cannabis is a safe effective medicine. The only thing not safe about medical cannabis is obtaining it. Cities and towns should not be able to opt-out of providing safe access; patients are not able to opt-out of pain and adverse medical conditions.

CON: Today, in practice, patients and providers are provided with arrest protection - law enforcement does not arrest those who present valid documentation. If a voluntarily registry is put in place law enforcement will start citing people who are not on the registry. The registry will be subject to a federal subpoena. Law enforcement needs to know what the rules are so they can do the right thing. The voluntary registry will make things clearer and result in fewer qualified patients being arrested. The creation of NPCs will result in more marijuana being diverted for illegitimate purposes. The collective garden statute needs to be cleaned up. Cannabis needs to be rescheduled at the federal level. Each community in Washington State needs the flexibility to find its own path. Cities should be allowed to prohibit collective gardens within their jurisdiction. Cities have been struggling with how to deal with collective gardens. The legislature needs to draw bright line rules for collective gardens. No one is profiting from medical marijuana coops. Theses coops are a public service that donate medicine to qualified patients and help keep patients in compliance with the law. They should not be burdened with taxation. There is no registry for patients who use other types of medicine. The registry is not voluntary; if patients do not register they will be arrested. If patients register they are giving up their right against self-incrimination and their right to privacy. This bill creates dry areas across the state hindering patient's access to medical cannabis.

Persons Testifying: PRO: Senator Kohl-Welles, prime sponsor; Dawn Darington, Coalition for Cannabis Standards and Ethics; Philip Dawdy, Ezra Eickmeyer, WA Alternative Medicine Alliance; Don Skakie, Yes End Penalties WA; Kelsey Beck, City of Seattle; Renata Rollins.

CON: Candice Bock, Assn. of WA Cities; James Lathrop, Advanced Holistic Heath; Michael Lick, Urban Roots Co-op; Don Pierce, WA Assn. of Sheriffs and Police Chiefs; Steve Sarich, CannaCare.