

HOUSE BILL REPORT

E3SSB 5887

As of Second Reading

Title: An act relating to merging the medical marijuana system with the recreational marijuana system.

Brief Description: Merging the medical marijuana system with the recreational marijuana system.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Rivers, Tom and Litzow).

Brief History:

Committee Activity:

None.

Brief Summary of Engrossed Third Substitute Bill

- Reduces the amount of useable marijuana that a qualifying patient or designated provider may possess from 24 ounces to 3 ounces or 8 ounces, if authorized by the qualifying patient's health care professional.
- Requires health care professionals to register qualifying patients and designated providers with the Department of Health.
- Eliminates collective gardens and allows for the establishment of cooperatives for up to four qualifying patients and designated providers.
- Establishes a medical marijuana endorsement that licensed marijuana retailers may obtain to sell marijuana to qualifying patients and designated providers in amounts greater than those available to nonmedical customers.
- Provides a sales and use tax exemption for qualified patients and designated providers who purchase marijuana for medical use.

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.

Regulation of Marijuana.

Marijuana is classified as a Schedule I substance under the Controlled Substances Act (CSA). Under the 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 under federal law.

In 1998 Washington voters approved Initiative 692 to allow qualifying patients to use limited amounts of marijuana for medicinal purposes. To become a qualifying patient, a person must be: (1) diagnosed with a terminal or debilitating condition; (2) advised by a health care professional about the risks and benefits of the medical use of marijuana; and (3) advised by a health care professional that he or she may benefit from the medical use of marijuana. A qualifying patient may authorize a designated provider to obtain medical marijuana and perform other responsibilities on behalf of the qualifying patient.

Qualifying patients and designated providers are protected from arrest or prosecution under state laws relating to marijuana if the individual uses and possesses it for medicinal purposes, does not exceed specified amounts, and meets other criteria. Qualifying patients may grow marijuana themselves or have a designated provider grow on their behalf. They may also obtain marijuana through collective gardens which consist of up to 10 qualifying patients who share in the responsibilities of producing and processing marijuana for medical use.

In 2012 Washington voters approved Initiative 502 which established a regulatory system for the production, processing, and distribution of limited amounts of marijuana for nonmedical purposes. Under this system, the Liquor Control Board (Board) issues licenses to marijuana producers, processors, and retailers and adopts standards for the regulation of these operations. Persons over 21 years old may purchase up to 1 ounce of useable marijuana, 16 ounces of solid marijuana-infused product, and 72 ounces of liquid marijuana-infused product at a licensed retailer. The initiative also established a marijuana excise tax at each level of production. These excise taxes are in addition to the state's business and occupation tax and retail sales tax.

Liquor Control Board Work Group.

In 2013 the Legislature directed the Board to work with the Department of Health (Department) and the Department of Revenue to develop recommendations related to the interaction between the regulation of recreational marijuana compared to medical marijuana. The recommendations must address age limits; authorization requirements for medical marijuana; health care professional regulations; collective gardens; possession amounts; location requirements; licensing requirements for medical marijuana production, processing, and retailing; taxation of medical marijuana; and a designated agency as the appropriate regulatory entity.

The Board submitted its recommendations to the Legislature in December 2013. The recommendations relate to:

- allowing 18- to 20-year-olds to have access to medical marijuana;
- allowing access to medical marijuana for children under 18 years old with parent or guardian consent;

- establishing a mandatory registry for qualifying patients and designated providers and issuing cards to persons on the registry;
- requiring registry information to be entered by the authorizing health care professional;
- allowing access to the registry for law enforcement, the Department of Revenue, and health professions disciplining authorities;
- requiring the Department to define "debilitating" and "intractable pain;"
- eliminating collective gardens;
- reducing possession amounts from 24 ounces of useable marijuana to 3 ounces;
- allowing qualifying patients and designated providers to possess up to six marijuana plants;
- integrating medical and recreational marijuana producers, processors, and retailers into a single licensing system; and
- exempting purchases for qualifying patients from sales and use taxes.

Federal Response to State Marijuana Regulations.

Washington is one of 20 states that have passed legislation allowing the use of marijuana for medicinal purposes and one of two states that allow its recreational use. These activities, however, remain illegal under federal law. Absent of congressional action, state laws permitting the use of marijuana will not protect a person from legal action by the federal government.

In recent years, the United States Department of Justice (DOJ) has issued several policy statements regarding state regulation of marijuana. The latest of these was issued in August 2013. In this memorandum, federal prosecutors were instructed to focus investigative and prosecutorial resources related to marijuana on specific enforcement priorities to prevent:

- the distribution of marijuana to minors;
- marijuana sales revenue from being directed to criminal enterprises;
- marijuana from being diverted from states where it is legal to states in which it is illegal;
- state-authorized marijuana activity from being used as a cover for trafficking other illegal drugs or other illegal activity;
- violence and the use of firearms in the production and distribution of marijuana;
- drugged driving and other marijuana-related public health consequences;
- the growth of marijuana on public lands; and
- marijuana possession or use on federal property.

The memorandum maintains that the DOJ has not historically prosecuted individuals in cases that pertain to the possession of small amounts of marijuana for personal use on private property. With respect to state laws that authorize marijuana production, distribution, and possession, the memorandum asserts that when these activities are conducted in compliance with strong and effective regulatory and enforcement systems, there is a reduced threat to federal priorities. In those instances, the memorandum provides that state and local law enforcement should be the primary means of regulation. The memorandum, however, continues to affirm its authority to challenge the regulatory system and to bring individual enforcement actions in cases in which state enforcement efforts are inadequate.

Summary of Bill:

Possession Amounts of Marijuana.

A qualifying patient or designated provider who holds a valid authorization card may assert protections from arrest and prosecution under state marijuana laws if:

- he or she is in compliance with possession amount limitations;
- he or she presents the authorization card to any law enforcement officer upon request;
- he or she maintains a copy of the authorization card by marijuana plants, useable marijuana, marijuana-infused products, or marijuana concentrates at his or her residence;
- the law enforcement officer does not have evidence that marijuana has been converted to the qualifying patient's or designated provider's own personal, nonmedical use or sold or donated to another person;
- the designated provider has not been a designated provider to more than one qualifying patient within a 15-day period; and
- qualifying patients or designated providers participate in a registered cooperative.

The amount of marijuana that qualifying patients and designated providers may possess is reduced from a combination of useable marijuana and marijuana product that does not exceed 24 ounces to a combination of useable marijuana and marijuana product that does not exceed 3 ounces of useable marijuana, 48 ounces of solid marijuana-infused product, 216 ounces of liquid marijuana-infused product, or 21 grams of marijuana concentrates. The number of marijuana plants that qualifying patients and designated providers may possess is reduced from 15 plants to six plants.

A health care professional may approve an extraordinary amount of marijuana for a qualifying patient for more than 3 ounces of useable marijuana and more than six plants, but the amount may not exceed 8 ounces of useable marijuana or 15 plants. The health care professional must enter the approved amount in the medical marijuana registry at the time of authorization.

Medical Marijuana Registry and Authorization Cards.

By July 1, 2015, the Department of Health (Department) must adopt rules to create, implement, and maintain a secure and confidential medical marijuana registry that allows health care professionals to register individuals that they have determined meet the standards as qualifying patients or designated providers. The registry must include any amounts of useable marijuana, marijuana-infused products, marijuana concentrates, or marijuana plants that the health care professional has recommended.

After a qualifying patient or designated provider is placed on the medical marijuana registry, he or she must receive a receipt of registration and an authorization card. The receipt of registration must be provided at the time the health care professional registers the patient and is valid for 60 days or until an authorization card is received by the qualifying patient or designated provider. The receipt of registration has the legal effect of an authorization card until the authorization card is received. Authorization cards are valid for one year from the date of registration. Both receipts of registration and authorization cards must contain the name of the qualifying patient or designated provider; the amount of authorized useable marijuana, marijuana-infused products, marijuana concentrates, or marijuana plants; the

effective date and expiration date; the name of the authorizing health care professional; and, for authorization cards, security features to ensure the card's validity.

Personally identifiable information in the registry must remain confidential and exempt from public disclosure. Information may only be disclosed:

- to prescribers or dispensers of controlled substances for purposes of caring for their patients;
- to the qualifying patient or designated provider as related to his or her own information.
- to law enforcement and prosecutorial officials engaged in a specific investigation to confirm the validity of an authorization card;
- to a marijuana retailer that holds a medical marijuana endorsement to confirm the validity of an authorization card;
- to a health care professional licensing, certification, or regulatory agency or entity;
- to Department of Revenue employees to determine tax exemptions; and
- in an aggregated form that does not allow for individual card holders to be identified.

Medical Marijuana Endorsements.

As of July 1, 2015, licensed marijuana retailers may apply to the Liquor and Cannabis Board (Board) for a medical marijuana endorsement. An endorsement allows the marijuana retailer to sell useable marijuana, marijuana-infused products, and marijuana concentrates to qualifying patients and designated providers who have authorization cards in greater amounts and with a lower tetrahydrocannabinol (THC) concentration than other customers may receive. The amounts that may be sold may not exceed 3 ounces of useable marijuana or the amount indicated on a patient's authorization card, 48 ounces of solid marijuana-infused product, 216 ounces of liquid marijuana-infused product, or 21 grams of marijuana concentrates. The THC concentration of items that may be sold may be less than the 0.3 percent currently allows for other customers.

To obtain an endorsement, a marijuana retailer must indicate whether the retailer intends to sell to both recreational and medical markets or only the medical market. In addition, they must carry items with cannabidiol (CBD) concentrations and THC to CBD ratios as identified by the Board. Marijuana retailers with a medical marijuana endorsement may not stock products that are labeled or marketed toward minors or recreational marijuana users and may not allow patient authorization activities to be conducted on the premises. Marijuana retailers with a medical marijuana endorsement must retain copies of authorization cards as required by the Board or the Department of Revenue.

When establishing the maximum number of marijuana retailers, the Board must consider the number of marijuana retailers with a medical marijuana endorsement that are needed to meet the needs of qualifying patients and allow for some locations to be solely medical retailers. If the Board determines that the needs of qualifying patients are not being met by the number of marijuana retailers, the Board shall establish a preference for those license applicants who are applying for a medical marijuana endorsement to sell to only qualifying patients and designated providers.

The prohibition against individuals under 21 years old entering a marijuana retail outlet is modified for those marijuana retailers with a medical marijuana endorsement. Marijuana

retailers with a medical marijuana endorsement may allow qualifying patients with an authorization card who are over 18 years old to enter the premises. In addition, those marijuana retailers with a medical marijuana endorsement who only sell to medical market may also allow qualifying patients with an authorization card who are younger than 18 years old on the premises if they are accompanied by a parent or guardian who also holds an authorization card.

Marijuana Cooperatives.

As of September 1, 2015, the authority for qualifying patients to establish and operate collective gardens is eliminated.

Groups of up to four qualifying patients or designated providers may form a cooperative for producing and processing marijuana for members of the cooperative. The location and the names of the members of the cooperative must be registered with the Board. The location must be the residence of one of the participants. Members of the cooperative may not sell or donate marijuana, useable marijuana, marijuana-infused products, or marijuana concentrates to persons who are not members of the cooperative.

If a qualifying patient or designated provider terminates his or her participation in the cooperative, he or she must inform the Board. The cooperative may not replace a departing qualifying patient or designated provider until at least 15 days after notification to the Board of his or her termination of participation in the cooperative.

Requirements for Health Care Professionals.

Prior to renewing a qualifying patient's registration, a health care professional must complete a physical examination of the qualifying patient. In addition to existing physical examination and advising procedures, if a patient is less than 18 years old, the health care professional must reexamine the minor qualifying patient annually, or more frequently if medically indicated, and consult with other health care providers treating the minor qualifying patient before authorizing the medical use of marijuana.

Health care professionals must maintain a permanent physical location for their practice or business. Health care professionals may sell or donate topical noningestible products with a THC concentration of less than 0.3 percent to qualifying patients.

The Department must convene a work group of members of the Medical Quality Assurance Commission, the Board of Osteopathic Medicine and Surgery, the Nursing Care Quality Assurance Commission, the Board of Naturopathy, and the medical marijuana community. The work group must develop practice guidelines for health care professionals to consider when authorizing the medical use of marijuana for patients. The practice guidelines must address patient assessments, patient examinations, dosing criteria, treatment plans, patient communications, record maintenance, and other patient care issues identified by the work group. The work group must also consider training and practice standards for employees of marijuana retailers that hold a medical marijuana endorsement. The standards must identify practices for advising qualifying patients and designated providers in selection of a type of marijuana, product use, order fulfillment, and safe handling of products. In addition, the work group must adopt a definition of "medical-grade marijuana."

When considering the approval of additional terminal or debilitating conditions that apply to the determination of a person as a qualifying patient, the Medical Quality Assurance Commission and Board of Osteopathic Medicine and Surgery may make a preliminary finding of good cause before the public hearing. The time to approve or deny a petition is extended from 180 days to 210 days.

Locations for the Use of Marijuana for Medical Purposes.

The prohibition on smoking marijuana for medical use in a public place is clarified by defining the term "public place." A public place includes streets; school buildings and grounds; retail stores open to the public; public buildings; public areas of hotels, restaurants, theaters, and stores; public transportation vehicles and waiting areas; public parks; and similar places where the general public has an unrestricted right of access and that are generally used by the public. The medical use of marijuana on federal property is not authorized.

The prohibition against the medical use of marijuana on school grounds does not prohibit a qualifying patient who is a minor from consuming marijuana for medical use on school grounds in accordance with school policies related to using medications.

Criminal Acts.

A person is guilty of a class C felony if he or she knowingly or intentionally:

- accesses the medical marijuana registry for an unauthorized purpose;
- discloses information in the medical marijuana registry without authorization;
- produces or tampers with an authorization card for purposes of having it accepted at a marijuana retailer or to grow plants;
- while serving as a designated provider, sells, donates, or uses marijuana produced or obtained for a qualifying patient for the personal use or benefit of the designated provider; or
- while classified as a qualifying patient, sells, donates, or supplies marijuana to another person.

Taxes Applicable to Marijuana.

Sales of useable marijuana, marijuana-infused products, and marijuana concentrates to qualifying patients and designated providers who hold an authorization card are exempt from the state retail sales tax and use tax.

A tax preference performance statement is provided for the retail sales and use tax exemptions for useable marijuana, marijuana-infused products, and marijuana concentrates purchased by qualifying patients.

Medical Marijuana Advisory Group.

The Governor must appoint a medical marijuana advisory group to advise and assist the Board in adopting rules related to the medical use of marijuana. The members must include three health care professionals who authorize the medical use of marijuana, two pharmacists, one licensed marijuana producer with medical marijuana experience, one licensed marijuana processor with medical marijuana experience, one licensed marijuana retailer with medical marijuana experience, and one qualifying patient.

Marijuana Concentrates.

"Marijuana concentrates" are the separated resins obtained from marijuana. In addition to permissible amounts for sale to qualifying patients and designated providers, up to 7 grams of marijuana concentrates may be sold to nonmedical customers.

Referential Changes.

The name of the Washington State Liquor Control Board is changed to the Washington State Liquor and Cannabis Board. References to "cannabis" are changed to "marijuana." References to previously vetoed provisions are eliminated.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 6, 8, 11, 17, 18, 20, 24 through 26, 28, 29, 31, and 39, which take effect July 1, 2015.

Staff Summary of Public Testimony:

(In support) None.

(Opposed) None.

Persons Testifying: None.

Persons Signed In To Testify But Not Testifying: None.