SENATE BILL REPORT
SB 5052

As Reported by Senate Committee On:
Health Care, January 29, 2015
Ways & Means, February 9, 2015

Title: An act relating to establishing the cannabis patient protection act.

Brief Description: Establishing the cannabis patient protection act.

Sponsors: Senators Rivers, Hatfield and Conway.

Brief History:
Committee Activity: Health Care: 1/22/15, 1/29/15 [DPS-WM, w/oRec].
Ways & Means: 2/03/15, 2/09/15 [DP2S, DNP, w/oRec].

SENATE COMMITTEE ON HEALTH CARE

Majority Report: That Substitute Senate Bill No. 5052 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Becker, Chair; Dammeier, Vice Chair; Frockt, Ranking Minority Member; Angel, Bailey, Baumgartner, Brown, Cleveland, Jayapal, Parlette and Rivers.

Minority Report: That it be referred without recommendation.

Signed by Senators Conway and Keiser.

Staff: Kathleen Buchli (786-7488)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5052 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Hill, Chair; Braun, Vice Chair; Dammeier, Vice Chair; Honeyford, Vice Chair, Capital Budget Chair; Bailey, Becker, Brown, Hatfield, Hewitt, O'Ban, Padden, Parlette and Schoesler.

Minority Report: Do not pass.

Signed by Senator Kohl-Welles.

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 Hargrove, Ranking Member; Keiser, Assistant Ranking Member on the Capital Budget; Billig, Conway, Fraser, Hasegawa, Rolfes and Warnick.

Staff: Dean Carlson (786-7305)

Background: Medical Use of Marijuana. In 1998 voters approved Initiative 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, 2010, and 2011, changing who may authorize the medical use of marijuana, the definition of terminal or debilitating medical condition, what constitutes a 60-day supply of medical marijuana, and authorized qualifying patients and designated providers to participate in collective gardens.

In order to qualify for the use of medical marijuana, patients must have a terminal or debilitating medical condition such as cancer, the human immunodeficiency virus, multiple sclerosis, intractable pain, glaucoma, Crohn's disease, hepatitis C, nausea or seizure diseases, or a disease approved by the Medical Quality Assurance Commission, and the diagnosis of this condition must be made by a health care professional. The health care professional who determines that a person would benefit from the medical use of marijuana must provide that patient with valid documentation written on tamper-resistant paper.

Qualifying patients who hold valid documentation may assert an affirmative defense at trial that they are authorized medical cannabis patients. These patients are not currently provided arrest protection.

Patients may grow medical marijuana for themselves or designate a provider to grow on their behalf. Designated providers may only provide for one patient at a time, must be 18 years of age, and must be designated in writing by the qualifying patient to serve in this capacity. There is no age limit for patients. Qualified patients and their designated providers may possess no more than 15 marijuana plants and 24 ounces of useable marijuana product.

Up to ten qualifying patients may share responsibility for acquiring and supplying the resources required to produce, process, transport, and deliver marijuana for the medical use of its members. Collective gardens may contain up to 45 plants and 72 ounces of useable marijuana and no marijuana from the collective garden may be delivered to anyone other than one of the qualifying patients participating in the collective garden. No provision for the sale of marijuana from a collective garden or for the licensing of collective gardens is made in statute.

No state agency is provided with regulatory oversight of medical marijuana. The Department of Health (DOH) does provide guidance to its licensees who recommend the medical use of marijuana, and is the disciplinary authority for its providers who authorize the medical use of marijuana in violation of the statutory requirements. DOH does not perform investigations until a complaint is made that someone is unlawfully authorizing the medical use of marijuana. There are no statutory licensing or production standards for medical marijuana and there are no provisions for taxation of medical marijuana.

Recreational Use of Marijuana. In 2012 voters approved Initiative 502 which established a regulatory system for the production, processing, and distribution of limited amounts of

marijuana for non-medical purposes. Under this system, the Liquor Control Board (LCB) issues licenses to marijuana producers, processors, and retailers, and adopts standards for the regulation of these operations. The number of these licenses that may be issued is established by LCB. Persons over 21 years of age may purchase up to one ounce of useable marijuana, 16 ounces of solid marijuana-infused product, 72 ounces of liquid marijuana-infused product, or seven grams of marijuana concentrates at a licensed retailer.

Federal Response to State Marijuana Regulations. Washington is one of 33 states, and the District of Columbia, that have passed legislation allowing the use of marijuana for medicinal purposes – although some of these states permit the use of high cannabidiol products only. Washington is also one of four states, and the District of Columbia, that allow recreational use of marijuana. The use of marijuana remains illegal under federal law. However, Congress in its 2015 fiscal year funding bill provided that the United States Department of Justice (DOJ) may not use federal funds to prevent states from carrying out their medical marijuana laws. Additionally the DOJ has issued several policy statements regarding state regulation of marijuana and describing when prosecutors may intervene. Federal prosecutors have been 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.

Summary of Bill (Recommended Second Substitute): LCB is renamed to the Liquor and Cannabis Board (LCB).

Medical use of marijuana is regulated through the structure provided in Initiative 502. Specific provisions for the medical use of marijuana are included: the terminal or debilitating medical conditions that qualify a patient for the medical use of marijuana must be severe enough to significantly interfere with activities of daily living and must be able to be objectively assessed and evaluated; qualifying patients continue to be able to grow marijuana for their medical use, although the number of plants they may possess is reduced from 15 to 6; qualifying patients may possess three times the amount of marijuana than what is permitted for the recreational user – 48 ounces of marijuana-infused products in solid form, 216 ounces of marijuana-infused products in liquid form, and 21 grams of marijuana concentrates; and qualifying patients may purchase marijuana concentrates, useable marijuana, and marijuana-infused products from medical marijuana retailers without paying sales and use tax.

A medical marijuana endorsement to a marijuana retail license is established to be issued by LCB. The endorsement may be issued concurrently with the retail license and medical marijuana–endorsed stores must carry products identified by DOH as beneficial to medical marijuana patients. DOH must also adopt safe handling requirements for all marijuana products to be sold by endorsed stores and must adopt training requirements for retail employees. LCB must reopen the license period for retail stores and allow for additional licenses to be issued to address the needs of the medical market.

Licensed marijuana producers may be permitted to increase the amount of their production space if the additional amount is to be used to grow plants identified as appropriate for medical use.

Extractions by any person without a license is prohibited. LCB must adopt rules on non-combustible methods of extractions that may be used by qualifying patients or designated providers.

A medical marijuana consultant certificate is established to be issued by DOH. Certificate holders must meet education requirements relating to the medical use of marijuana and the laws and rules implementing the recreational and medical systems. DOH must also make recommendations on whether medical marijuana specialty clinics may be permitted.

A medical marijuana database (database) is established to be administered by a third party under contract with DOH. The database must allow authorizing health care professionals to enter the patient or provider into the database and then provide the patient or provider with an authorization card. Authorization cards are used to confirm that the holder is a validly authorized patient or provider and are valid for one year for adults and six months for minors. Patients and providers with authorization cards and who are compliant with the law on the medical use of marijuana are provided protection from arrest. Authorization cards permit holders to grow marijuana in their own domicile for their personal medical use and permit them to purchase from medical marijuana retail stores without paying sales and use tax. Authorization cards must include a randomly generated number that identifies the patient or provider, a photograph of the patient or provider, the amount of marijuana for which the patient or provider is authorized, and effective and expiration dates of the card.

The database is not subject to public disclosure. Only the following people may access the database: health care professionals, to add or remove a patient or provider from the database; law enforcement officers who are engaged in a bona fide investigation relating to the use of marijuana and seek to confirm the validity of an authorization card; persons who are authorized to prescribe or dispense controlled substances to access health care information on their patients for the purpose of providing medical or pharmaceutical care; medical marijuana retailers; the Department of Revenue to verify tax exemptions; and DOH as part of its role in monitoring compliance of health care professionals. It is a class C felony for a person to access the database for an unauthorized purpose or to disclose any information obtained by accessing the database.

The current method for authorizing patients expires July 1, 2016, at which time the medical marijuana database must be operational. Beginning July 1, 2016, health care professionals must add patients and providers to the database in order to authorize the medical use of marijuana. The health care professional must have a documented relationship with the patient as a primary care provider or specialist and may only authorize the medical use of marijuana at the permanent physical location of the health care professional's practice. If the health care professional believes that the terminal or debilitating medical condition of the patient requires more marijuana than what can be produced by six plants, the professional may authorize the patient to have up to 15 plants.

Minors may be authorized for the medical use of marijuana if the minor's parent or guardian agrees to the authorization. The parent or guardian must have sole control over the minor's marijuana but the minor may possess the amount of marijuana that is necessary for the minor's next dose. Minors may not grow marijuana, nor may they purchase from a retailer. However, they may enter the premises of a medical marijuana retailer if they are accompanied by their parent or guardian who is serving as the designated provider. Patients who are between ages 18 and 21 may enter medical marijuana retail outlets.

The provision authorizing collective gardens is repealed, effective July 1, 2016. Up to four patients or designated providers may participate in cooperatives to share responsibility for the production and processing of marijuana for the medical use of its members. The location of the cooperative must be registered with LCB and is only permitted if it is at least 15 miles away from a marijuana retailer. The registration must include each member's names and copies of each member's authorization cards. Only registered members may participate in the cooperative or obtain marijuana from the cooperative. If a member leaves the cooperative, no new member may join for 60 days after LCB has been notified of the change in membership. All members of the cooperative must provide labor; monetary assistance is not permitted. Marijuana grown at a cooperative is only for the medical use of its members and may not be sold or donated to another. Minors may not participate in cooperatives.

LCB may conduct controlled purchase programs in retail outlets, cooperatives, and, until they expire December 31, 2015, in collective gardens to ensure minors are not accessing marijuana. Retailers may conduct in-house controlled purchase programs.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Second Substitute):

- Removes the modification to local authority over zoning of marijuana retailers.
- States that LCB must adopt rules on permitted pesticides and pesticide testing requirements.
- Removes criminal penalties relating to I-502 retailers.
- Removes the distribution from revenues generated by the excise tax under I-502 to local public health districts.
- Requires LCB to adopt rules on non-combustible methods of extraction that qualifying patients and designated providers may use in their homes.
- Requires DOH to make a recommendation on whether medical specialty clinics should be permitted.

EFFECT OF CHANGES MADE BY HEALTH CARE COMMITTEE (Recommended First Substitute): LCB must develop a merit-based license system that takes into account experience of people running dispensaries and allow credit for those businesses that have business licenses and pay sales tax. A medical marijuana endorsement is created to marijuana retailer licenses to allow endorsed retail outlets to sell to qualifying patients and designated providers. In-home extractions are prohibited. Patient cooperatives may not be located within 15 miles of any retail outlet and products are subject to the same traceability requirements of licensees. If a patient leaves a cooperative, no new member may join the cooperative for 60 days. Patients cooperatives must allow law enforcement officers and LCB representatives on the premises at any time. Current collective gardens expire July 1, 2016.

All licensed retail outlets may sell products that may be smoked. Removes medical marijuana retail outlets, adds marijuana retail outlets with medical marijuana endorsements.

A medical marijuana consultant certificate is established. Certificate holders must meet education requirements relating to the medical use of marijuana and the laws and rules implementing the recreational and medical systems.

Ten percent of the funds provided to the general fund under distributions from the dedicated marijuana fund must be provided to local health districts to develop youth education and prevention programs. These programs must include outreach activities to vulnerable youth.

Authorizations are limited to one year for adults and six months for minors. Health care professionals must discuss the use of marijuana and what products the patient should seek from a retail outlet.

Local governments may adopt ordinances to prohibit the siting of licensees from within 1000 feet of houses of worship.

It is a gross misdemeanor to resell marijuana purchased from a licensed retailer or to deliver marijuana concentrates that were not purchased from a retailer. It is a misdemeanor to be in possession of up to four times the possession limit provided for the recreational market and it is a misdemeanor for a person under the age of 21 to possess marijuana.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains several effective dates and an emergency clause. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill (Health Care): PRO: We have seen a proliferation of gray market dispensaries open across the state after the passage of I-502. We know that many of these dispensaries provide easy availability of marijuana to people whether or not they have authorization cards. The products in these dispensaries are not tested, even though they are intended for use by legitimate patients. The bill will ensure that patients have access to products that are safe and are held to the same safety and security standards of the recreational markets. Lack of regulation has created doubt and uncertainty for medical users. They need guidance and solid law to rest on. We need to create a pathway for good actors to carry on in the new system developed by this bill. The licensed and law-abiding businesses in this state strongly support this bill because it ensures safe access for patients and this should be the number one goal for the state. There are no requirements in current law that medical marijuana products be regulated. No other medication enjoys this lack of regulation. This bill will stop products from being marketed and sold to children and some current gray market dispensaries are marketing to children. This will ensure a level playing field for licensees. It is critical to establish a single, enforceable system that is fair to

all licensed businesses and consumers in this state. Licensed businesses educate and inform their customers about the science behind their products; our customers have confidence in their products. Medical consumers do not benefit from the safety measures put in place for the recreational market and will not until there is a uniform system. Lack of oversight over the medical market adversely impacts licensed businesses. Licensed businesses have spent a great deal of time and money to enter the market and they are not on a level playing field with their peers who are free from paying taxes and free from testing requirements on their products. Our prices are reasonable and are going down. These prices will help medical consumers get the products they need. The cities strongly support reconciling the medical and recreational markets. We are concerned about patient safety, where the money is going, and whether the money is supporting criminal activity. The status quo provides a confusing legal landscape. We need a system that provides clarity to law enforcement. We also seek flexibility in allowing local governments to mitigate the impacts of siting businesses in clusters. We request tools to disburse these clusters and want it clarified that hash oil may not be produced in the home and without a license. The current unregulated medical marijuana system is unworkable and provides challenges to law enforcement. We support making modifications to the criminal offenses and lowering some offenses to misdemeanors. We need consistent application of the law as endorsed by voters. Licensees can offer the medical products requested by legitimate patients. Medical products need quality control. This will provide for clean, reliable, and safe access to consumers and patients.

CON: Washington State is contractually obligated to eradicate marijuana based on contacts it has with the federal government. It has signed three federal grants to eradicate marijuana and has seized marijuana for the Drug Enforcement Administration. The state needs to make a decision to either eradicate or sell marijuana. This bill is about revenue and regulatory capture. The government is creating a monopoly, regulating it, and causing prices to increase. Patients do not trust this bill and don't believe the bill or LCB is acting in their interest. Patients want to preserve their right to grow. I have purchased marijuana in a recreational store and it contained pesticides and made me sick. Patients should not be forced into the recreational system. This bill takes away patients rights. We do not have a long growing season and we cannot grow outdoors year round. Growing indoors is a financial burden and would require patients to decide whether to grow their marijuana or pay their bills. Please consider the whole state in how medicine is regulated and made. We need the dried flowers. The dried herb is used to make butters and salves and is a quick remedy for pain. We need to be able to purchase smokeable flowers in stores because not all people can grow or find a designated provider. I need to smoke for instant pain relief. Studies dispute that smoking causes lung damage; some say it is good for your lungs. Flowers have a different effect on the body that other marijuana products. We cannot afford medical marijuana through a highly regulated system. Don't make patients felons for sharing. I rely on free medication. LCB should not be the regulating agency; it should be locally controlled. There are more compounds in cannabis other than THC and CBD. Every patient and treatment is different. Limiting the components of the plants available for medical use is short sighted. The plants need to be grown organically and outdoors. The bill does not consider the need of the patient and all households should be able to grow this herb. No other medical patients are part of a database. This proposes to create a parallel system of medical-only stores. If that second set of stores have any competitive advantage it will encourage abuse and increase costs. There may not be enough demand for medical-only stores. We need to create medical grade products and consultants and create certifications for

underage patients. The registry is of concern for patients because the activity remains a crime under federal law. We suggest that all people be able to grow small amounts of marijuana for their personal use. The recreational stores will not be able to help medical patients. Look at the collectives and the differences between those people and the people who go to recreational stores. This will result in increase costs to the state in the medical system. Keep this an open market.

OTHER: The current medical market does not have quality control or dosing standards. In investigating products sold at dispensaries, we find that the same strain has wide variation in CBD levels depending on where it was sold. We also know from testing products in dispensaries that they have contaminants. We need to test for microbial species. Patients have no guarantees that the products they are ingesting are free from molds and toxins. Medical marijuana should be held to at least the standard of the recreational market if not higher. Regulations used for I-502 were not created by LCB, the knowledge base came from the medial cannabis community. The basis of the I-502 regulations comes from the medical community. We want a separate system. Patients should not have to go to a recreational store to get their medicine. The recreational store may not be able to provide the products or expertise. The intent of the voters in I-502 was to protect medical cannabis patients from regulation through the I-502 market.

Persons Testifying (Health Care): PRO: Senator Rivers, prime sponsor; Scott Pusquellec, city of Seattle; John Schocet, Seattle City Attorney's Office; Vicki Christophersen, Washington CannaBusiness Assn.; Eric Cooper, Monkey Grass Farms; Ian Eisenburg, Uncle Ikes; Michelle Grogan, Angela Jayo, Green America; Candice Bock, Assn. of WA Cities; Ryan Day, John Branch; Rick Garza, LCB.

CON: John Worthington, Arthur West, James Barber, Cannabis Action Coalition, American Alliance for Medical Cannabis; Gina Garcia, Erin Palmer, Michael Mazetti, The People for Medical Cannabis; Alison Holcomb, American Civil Liberties Union of WA; Jason Duck, Blue Eye Collective.

OTHER: Steph Sherer, Americans for Safe Access; Jessica Tonani, Verda Bio.

Signed In, Unable to Testify & Submitted Written Testimony: CON: Derek Franklin, WA Assn. for Substance Abuse and Violence Prevention.

OTHER: Dr. Jake Felice, Americans for Safe Access; Sharon Ness, United Food and Commercial Workers #367; Jeremy Kaufman, Center for Pallative Care, Coalition for Cannabis Standards and Ethics.

Staff Summary of Public Testimony on Substitute (Ways & Means): PRO: This bill will ensure that high-quality marijuana will be provided to patients. It will keep marijuana out of kids' hands. It will eliminate the black and gray markets. The bill assures a safe industry for adult use and ends the competition licensed businesses now must have with the black market. The system will be safe, and will provide tested and labeled products for medical users. Currently there are zero protections for patients. This bill is necessary to level the playing field. We need stability for patients who use marijuana for medical purposes. Licensed

processors are ready to expand their canopies to grow products that are needed by patients. Medical users need tested and labeled products.

CON: This bill is the product of the Association of Washington Cities and law enforcement. It is not for patients. I-502 promised that it would be revenue neutral. This authorizes the state to become a revenue center. The fiscal note doesn't indicate the fiscal impact on law enforcement. This is not fiscally sound policy. People who previously could use marijuana to treat themselves may turn to opiates which will be paid for by the state. LCB is not the appropriate regulatory agency for medical marijuana. We are concerned that a registry is vulnerable to access by the Department of Justice. Under the bill, I will not be able to grow enough for my needs. I-502 stores will charge more than what I can afford. People will go to Oregon to purchase marijuana. Marijuana will not kill you. Doctors may not wish to enter patients into the registry from their office; this may lead to an access issue for patients. I will die if I do not have access to marijuana for my medical needs. We need to consider risk management issues because lawsuits are likely to result from this bill. The registry is inconsistent with the controlled substances act and interferes with the doctor patient relationship.

OTHER: We have concerns with the registry and patients do not support it. We are growing for people who are unable to grow for themselves, these people will go to the black market and we do not want them to go to I-502 stores. This bill will close 11,000 successful businesses. These businesses have paid $14 million in taxes. Further taxation will drive the industry underground. Medical dispensaries are making a positive financial impact in the market. Patients must be able to possess the amounts they are able to possess today. The state needs to develop a distinct regulatory framework for medical marijuana. Marijuana helps the extremely sick and disabled to function in society. People on fixed incomes will not be able to afford to purchase marijuana; they will turn to the black market. It is an economic issue if people become so sick that they cannot work. Allowing only four people to participate in collective gardens is class discrimination. This will make people sicker which will lead to more costs to the state. DOH does not want to work with patients. Marijuana needs to be subsidized to keep the costs of production down. Cannabis is safe and we should support independent production. Not all patients can provide labor to a cooperative. We do not support the bill because it does not include posttraumatic stress disorder as a qualifying medical condition. We provide free medication to our members and we want to be able to continue to do so. Taking people off marijuana will cause them to seek medical care in emergency rooms which will increase costs to the state.

Persons Testifying (Ways & Means): PRO: Senator Rivers, prime sponsor; Vicki Christophersen, John Branch, WA CannaBusiness Assn.; Drew Shirk, Department of Revenue; Chris Kealy, Spinning Heads; Ryan Day, Eric Dobry, citizens.

CON: John Worthington, Cannabis Action Coalition, American Alliance for Medical Cannabis; Arthur West, Kirk Ludden, James Barber Sr., Cannabis Action Coalition; Kathleen Zinno, Director of Media Relations for Cannalogix Foundation; Brian Stone, Mark Nelson, Adam Assenberg, John Kingsbury, citizens.

OTHER: Jennifer Estroff, Americans for Safe Access; Lukas Barfield, Kari Boiter, Kevin Heiderich, WA Chapter, Americans for Safe Access; Dale Rogers, Compassion in Action;

Catharine Jeter, Independent Cannabis Producers Cooperative; Tyler Markwart, Allele Seeds Research, Director; Patrick Seifert, Veterans for Medical Cannabis Access; Kandace Sutherland, Rainier Xpress; Nick Brown, Mud Bay Meds; Kristie Choate, Erin Palmer, John Worthington, Allison Bigelow, Dawn Darington, citizens.