

FINAL BILL REPORT

2SSB 5052

PARTIAL VETO C 70 L 15 Synopsis as Enacted

Brief Description: Establishing the cannabis patient protection act.

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

Senate Committee on Health Care
Senate Committee on Ways & Means
House Committee on Health Care & Wellness

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 allowing 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 marijuana 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 marijuana 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. Qualifying patients and their designated providers may possess no more than 15 marijuana plants and 24 ounces of useable marijuana product.

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.

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: 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; and qualifying patients continue to be able to grow marijuana for their medical use. A medical marijuana authorization database (database) is created. Qualifying patients and designated providers who do not sign up with the database may grow marijuana for their medical use but are limited to four plants and 6 ounces of useable marijuana and are provided an affirmative defense to charges of violating the law on medical use of marijuana. Qualifying patients and designated providers who do sign up with the database may grow up to 15 plants for their medical use, are provided arrest protection, and may possess three times the amount of marijuana than what is permitted for the recreational user.

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. LCB must establish a merit based system for issuing retail licenses. First priority must be given to applicants that have applied for a marijuana retailer license before July 1, 2014, and who have operated or been employed by a collective garden before November 6, 2012, and second priority to applicants who were operating or employed by a collective garden before November 6, 2012 but who have not previously applied for a marijuana license.

Beginning July 1, 2016 health care professionals who authorize the medical use of marijuana must use an authorization form developed by DOH. The authorization form must include the qualifying patient's or designated provider's name, address, and date of birth; the health care professional's name, address, and license number; the amount of marijuana recommended for the qualifying patient; a telephone number where the authorization can be verified; the dates of issuance and expiration; and a statement that the authorization does not provide protection from arrest unless the patient or provider is also entered into the database. Authorizations are valid for one year for adults and six months for minors.

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. 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 marijuana retail outlets that hold medical marijuana endorsements.

The database is to to be administered by a third party under contract with DOH. The database must allow authorizing marijuana retailers with medical marijuana endorsements to enter the qualifying patient or designated provider into the database and, consequently, provide the patient or provider with a recognition card that may be used to confirm the authenticity of the patient or provider. Patients and providers who are entered into the database are provided protection from arrest so long as they are in compliance with the law on the medical use of marijuana. Patients and providers who are entered into the database

are permitted the following possession amounts: 3 ounces of useable marijuana, 48 ounces of marijuana-infused product in solid form, 216 ounces of marijuana-infused product in liquid form, 21 grams of marijuana concentrates, and 6 plants. The authorizing health care professional may authorize more than the six plants and 3 ounces of useable marijuana if the patient's medical needs require additional amounts, but no more than 8 ounces of useable marijuana and 15 plants.

No more than 15 plants may be grown in a housing unit, unless the housing unit is the location of a cooperative. No plants may be grown or processed if any portion of the activity may be viewed or smelled from the public or the private property of another housing unit.

The database is not subject to public disclosure. The database is accessible to only the following groups of people:

- The medical marijuana retailer with a medical marijuana endorsement, to add the patient or provider to the database.
- Persons authorized to prescribe or dispense controlled substances to access health care information on their patients to provide medical care to their patients.
- A qualifying patient or designated provider to request or receive his or her own health care information.
- Law enforcement officers who are engaged in a bona fide investigation relating to the use of marijuana.
- A marijuana retailer holding a medical marijuana endorsement to confirm the validity of a recognition card.
- The Department of Revenue to verify tax exemptions.
- The Department of Health to monitor 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. Funding for the creation and maintenance of the database comes from the Health Professions Account which will be reimbursed from the Dedicated Marijuana Fund.

Qualifying patients and designated providers placed in the database must be issued recognition cards. Recognition cards must include a randomly generated number that will identify the patient or provider, a photograph of the patient or provider, the amount of marijuana for which the patient has been authorized, the effective and expiration dates of the card, the name of the health care professional who authorized the patient or provider, and other security features necessary to ensure its validity. Patients and providers will be charged \$1 for each initial and renewal recognition card issued with proceeds to be deposited into the Health Professions Account.

The provision authorizing collective gardens is repealed, effective July 1, 2016. Four member cooperatives are permitted. Up to four patients or designated providers may participate in a cooperative 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 1 mile away from a marijuana retailer. The registration must include each member's name and copies of each member's recognition 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 must develop a seed to sale traceability system to track all marijuana grown by the cooperative.

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.

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.

LCB may conduct controlled purchase programs in retail outlets, cooperatives, and, until they expire July 1, 2016 in collective gardens to ensure minors are not accessing marijuana. Retailers may conduct in-house controlled purchase programs.

Votes on Final Passage:

Senate	36	11	
House	60	36	(House amended)
Senate	41	8	(Senate concurred)

Effective: July 25, 2015
July 1, 2016 (Sec. 12, 19, 20, 23-26, 31, 35, 40, 49)
April 24, 2015 (Sec. 21, 22, 32, 33)

Partial Veto Summary: The Governor vetoed the section that prohibited employers of health care providers from limiting medical marijuana recommendations to patients. The sections that removed medical marijuana from Schedule I of the Controlled Substances Act and the resulting criminal penalties relating to the newly unscheduled medical products were also vetoed. Finally, the section that would make the bill contingent on House Bill 2136 passing was vetoed.