SENATE BILL REPORT
SB 5519

As Reported by Senate Committee On:
Commerce & Labor, February 16, 2015

Title: An act relating to the comprehensive marijuana reform act.

Brief Description: Enacting the comprehensive marijuana reform act.

Sponsors: Senators Kohl-Welles, Habib, Keiser, Hasegawa, Conway, Pedersen, Darneille, Chase and Mullet.

Brief History:
Committee Activity: Commerce & Labor: 2/13/15, 2/16/15 [DP-WM].

Brief Summary of Bill

A comprehensive marijuana reform act including the following:
- qualifying terminal or debilitating medical conditions;
- authority of health care professionals;
- age requirements for medical marijuana;
- Department of Health waiver cards;
- authorized possession amounts;
- affirmative defense and arrest protection;
- who may grow marijuana;
- who may sell medical marijuana;
- eliminating collective gardens;
- duties of regulating agencies;
- tax treatment for medical marijuana;
- license requirements for medical marijuana;
- creating research, distribution, and delivery licenses;
- medical specialty clinics;
- medical marijuana consultants;
- local government authority regarding 1000-foot buffers; and
- requiring a vote for local government bans.

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass and be referred to Committee on Ways & Means.

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 Braun, Vice Chair; Hasegawa, Ranking Minority Member; Conway, Keiser, King and Warnick.

Staff: Richard Rodger (786-7461)

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 or older, 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 age 21 years or older may purchase up to 1 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: Qualifying Terminal or Debilitating Medical Conditions. The definition for terminal or debilitating medical condition is clarified to mean a condition severe enough to significantly interfere with the patient's activities of daily living and ability to function, which can be objectively assessed and evaluated.

Posttraumatic stress disorder (PTSD) is added to the list of qualifying medical conditions. The Medical Quality Assurance Commission has 210 days to act on a petition and may make preliminary findings before a public hearing is held on whether to add new qualifying medical conditions.

Health Care Professionals. Health care professionals may confirm a patient's terminal or debilitating medical condition with DOH, as needed to verify an applicant's request for a medical marijuana waiver. Health care professionals may advertise marijuana in conjunction with their medical practice, accept remuneration from a licensee, and hold an economic interest in a marijuana enterprise.

Age Requirements. Adults ages 18 to 20 may use medical marijuana if they obtain a DOH waiver. Minors under the age of 18 may use medical marijuana with parental consent and a DOH waiver. Designated providers must be age 21 or older, and be the parent or listed on

the DOH waiver. Persons ages 18 to 20, with a DOH waiver card, may be on the premises of a medical marijuana retailer without a parent.

Minors may not purchase or grow plants, but a parent or designated provider may grow the marijuana for them.

DOH Waiver Card. A qualifying patient may seek a DOH waiver card if the patient has been diagnosed with a terminal or debilitating medical condition. The waiver card allows the following: the holder to possess medical amounts of product; 18–20 year olds to purchase from retailers with a medical endorsement; and medical purchases to be exempt from sales and use taxes. No medical provider note is necessary, but DOH may confirm the diagnosis.

The waiver card must include the following: (1) the name of the qualified patient or designated provider; (2) amounts of marijuana, products, or plants authorized for, if higher than recreational levels; and (3) the expiration date. Cards are valid for one year and must be renewed with a new application.

It is a class C felony if knowingly or intentionally: (1) a person creates or presents an unauthorized card or tampers with a card; (2) a designated provider sells marijuana produced for a qualifying patient or gives more than 1 ounce of their product away; or (3) a qualifying patient sells marijuana produced by the patient or donates more than 1 ounce of product produced for the patient.

Possession Amounts. The recreational limit of 1 ounce of useable marijuana, with exceptions for those who grow and those with waiver cards, is retained. Individuals may have up to six plants for personal use or, with a waiver, up to 15 plants for medical use, and up to 8 ounces of usable marijuana if they grow their own plants.

With a medical DOH waiver, an individual may possess up to a combination of 3 ounces of useable marijuana; 48 ounces of marijuana-infused product in solid form; 216 ounces of marijuana-infused product in liquid form; or 21 grams of marijuana concentrates; and 15 plants.

Adults may obtain a medical waiver for additional amounts or for high THC products. Minors with medical waivers may only possess the amount necessary for their next dose.

Affirmative Defense and Arrest Protection. Patients and designated providers who have DOH waiver cards and are in compliance with the law on medical marijuana are provided arrest protection. Patients and designated providers with a DOH waiver card may assert an affirmative defense for possession in amounts greater than those allowed for recreational use.

Who May Grow Marijuana. Individuals age 21 or older may grow up to six plants in their home and share up to 1 ounce with another person. It is illegal to sell homegrown marijuana.

Patients with a waiver may grow up to 15 plants for themselves or designate a provider to grow on their behalf. Patients who grow for themselves may also act as a designated provider for another patient.

LCB must reopen the licensing application process for producers and reconsider the amount of growing space needed to meet the product needs of medical patients. LCB may issue new licenses if existing producers cannot meet the medical needs.

Who May Sell Medical Marijuana. Licensed retail stores may obtain a medical endorsement to sell products to qualifying patients. The Office of Financial Management and LCB must determine the number of retail outlets holding medical endorsements that are needed to meet the medical need. A greater number of outlets must be authorized.

Retail outlets may advertise their medical endorsements. Retail outlets may sell immature plants and items such as t-shirts and topical products, but may not sell alcohol. Employees at a store with a medical endorsement must take a DOH-approved class regarding medical use of marijuana.

Individuals may give, but not sell, up to 1 ounce of marijuana, regardless of the source, to an individual age 21 or older.

Collective Gardens. Collective gardens are eliminated effective August 1, 2016. Current businesses operating as collective gardens must close or become licensed by LCB.

Regulating Agencies. The Liquor Control Board is renamed the Liquor and Cannabis Board (LCB). LCB must adopt a competitive, merit-based licensing application system. Experience operating a collective garden, possession of a business license, and a history of paying sales taxes are factors to be considered. LCB must reopen the licensing application process, and reconsider the amount of growing space needed to meet the product needs of medical patients. LCB may issue new licenses if existing producers cannot meet the medical needs.

DOH develops a waiver application process and a waiver card. DOH certifies medical marijuana consultants. LCB and DOH establish medical-grade marijuana standards, adopt standards for safe handling, and testing of products for medical use.

Taxes. There is no sales or use tax on low-THC, high-CBD ratio products, as defined by DOH. There is no sales or use tax on medical-grade products, high-THC products, or products with a THC level of 0.3 or less, if sold by a retailer with a medical endorsement to a patient or designated provider with a DOH waiver card.

Licenses. Producers, processors, and retailers of medical marijuana must be licensed under the system created for the recreational market. A medical marijuana endorsement is created to sell to medical patients.

Research License. LCB creates a marijuana research license for testing marijuana; conducting clinical investigations of marijuana-derived drug products; researching the efficacy and safety of administering marijuana for medical treatment; and conducting genomic or agricultural research. Research license applicants must have projects approved by the Life Sciences Discovery Fund Authority. The University of Washington and Washington State University may contract with licensed researchers.

Distribution License. LCB creates a distribution license to allow third-party carriers to transport products from producers and processors to retailers. They may also transport money earned in the marijuana market to financial institutions.

Delivery License. LCB creates a delivery license for the transportation of marijuana from retail outlets to consumers.

Medical Specialty Clinics. DOH must develop by December 1, 2015, recommendations regarding medical specialty clinics that could authorize and dispense or sell marijuana to patients of DOH-certified health care professionals who work on site.

Medical Marijuana Consultants. DOH must create a medical marijuana consultant certificate and adopt rules on training and educational requirements.

1000-Foot Buffers. Local governments may adopt ordinances to decrease the buffer zone to 500 feet for recreation centers or facilities, child care centers, public parks, public transit centers, or libraries, or any game arcade for those age 21 or older. Local governments may add churches to the buffer zones.

Local Government Bans. Local governments may only ban marijuana licensees by an ordinance submitted to the voters in their jurisdictions. Only voter-approved marijuana bans may go into effect.

Appropriation: None.

Fiscal Note: Available.
[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony: PRO: The home-grow provisions will assist medical patients who cannot afford the high prices. The home grow provisions provide law enforcement with clarity. The right to grow will create parity with Oregon, Alaska, and Colorado and will help defeat the black market. Allowing the gifting of marijuana makes sense. Legislating a delivery system provides legal protections from potential federal action and makes the public safer. The bill encourages real competition, will reduce the cost of marijuana, and lower its stigma. The local government flexibility in zoning is greatly needed for the city of Seattle to avoid clustering of stores. The current medical system ranges from a gray market to an illegal market and this bill provides the clarity that is needed.

OTHER: Collective gardens should be allowed to continue serving medical patients. The home-grow provisions are too much and will reduce tax revenues to state. The DOH waiver provisions need a verification system. The waiver system data base creates privacy concerns. The proposed competitive merit-based licensing system relies too much on an individual's statements and should have a verification process. Medical patients need an independent, stable, high-quality safety net and should not be forced to buy at recreational marijuana

stores. The existing seed-to-sale tracking system is flawed, provides no technical support, and has no testing options. There should not be a waiver card system and no reductions in the number of plants allowed for medical purposes. The bill is missing a key component – the vertical integration of the businesses, which is necessary to keep the 502 industry viable.

Persons Testifying: PRO: John Worthington, Cannabis Action Coalition, Assn. of American Medical Colleges; Muraco Kyashna-tocha, Green Buddha Patient Co-op; Chris Maxwell, Cloud Market; Lisa Hayden, patient; Dominic Corva, Center for the Study of Cannabis and Social Policy; Eric Ogden, WeedTraQR, CoFounder; Angel Swanson, Five Points of Pierce County LLC; Jedidiah Haney, CAUSE-M; Jeremy Kaufman, Coalition for Cannabis Standards and Ethics; Jeff Gilmore, jd llc; James Paribello, Liquor Control Board; Scott Plusquellec, city of Seattle; John Scochet, Seattle City Attorney's Office; Andrew Seitz, Dutch Brothers Farms; Andy Seitz, citizen.

OTHER: John Worthington, Hugh Newmark, John Kingsbury, The People for Medical Cannabis; Vicki Christophersen, WA CannaBusiness Assn.; Patrick Seifert, Jennifer Estroff, Patrick Seifert, Allison Bigelow, Americans for Safe Access; Kristi Weeks, DOH; Steve Mohr, Olympia Alternative Medicine; Cory Kemp, Americans for Safe Access, Rainier Xpress; Kandace Sutherland, Ryan Day, citizens.