

HOUSE BILL REPORT

SHB 2021

As Passed House:
March 7, 2017

Title: An act relating to authorizing the sale of marijuana plants and seeds to qualifying patients and designated providers.

Brief Description: Authorizing the sale of marijuana plants and seeds to qualifying patients and designated providers.

Sponsors: House Committee on Commerce & Gaming (originally sponsored by Representatives Farrell and Macri).

Brief History:

Committee Activity:

Commerce & Gaming: 2/13/17, 2/14/17 [DPS];

Finance: 2/21/17, 2/23/17 [DPS(COG)].

Floor Activity:

Passed House: 3/7/17, 88-9.

Brief Summary of Substitute Bill

- Authorizes marijuana producers to produce and sell immature marijuana plants and marijuana seeds at retail, at the premises of the marijuana producer, to qualifying patients and designated providers with a valid authorization or valid recognition card.
- Grants the Liquor and Cannabis Board rule-making authority to establish an effective process for the sale of immature marijuana plants and marijuana seeds by marijuana producers to qualifying patients and designated providers.

HOUSE COMMITTEE ON COMMERCE & GAMING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Sawyer, Chair; Kloba, Vice Chair; Condotta, Ranking Minority Member; Vick, Assistant Ranking Minority Member; Barkis, Blake, Farrell, Jenkin, Kirby, Ryu and Young.

Staff: Peter Clodfelter (786-7127).

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.

HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill by Committee on Commerce & Gaming be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Lytton, Chair; Frame, Vice Chair; Nealey, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Condotta, Dolan, Pollet, Springer, Stokesbary, Wilcox and Wylie.

Staff: Rachele Harris (786-7137).

Background:

Qualifying Patients and Designated Providers.

Qualifying Patients. A qualifying patient is a person who: (1) is a patient of a health care professional; (2) has been diagnosed by that health care professional as having a terminal or debilitating medical condition; (3) is a Washington resident at the time of the diagnosis; (4) has been advised by that health care professional about the risks and benefits of the medical use of marijuana; (5) has been advised by that health care professional that they may benefit from the medical use of marijuana; and (6) has an authorization from the person's health care professional. An authorization is a form developed by the Department of Health (DOH) that is completed and signed by a qualifying patient's health care professional and printed on tamper-resistant paper.

Designated Providers. A designated provider is an adult who is designated in writing by a qualifying patient to serve as the designated provider for that patient, or, if the qualifying patient is under age 18, then is the qualifying patient's parent or guardian. A designated provider also must have an authorization from the qualifying patient's health care professional or be entered into the Medical Marijuana Authorization Database (Database) and hold a recognition card. Designated providers may serve as a designated provider for only one qualifying patient at a time and may not convert any of the marijuana for their personal use.

The Medical Marijuana Authorization Database.

Entered In Database. Qualifying patients may choose whether to receive a recognition card and be entered into the Database. A recognition card is a card issued to qualifying patients and designated providers by a marijuana retailer with a medical marijuana endorsement that has entered the qualifying patient or designated provider into the Database, and includes the qualifying patient or designated provider's photograph, the amount of marijuana products and plants the qualifying patient or designated provider may possess, the name of the health care professional who authorized the qualifying patient or designated provider, and other information.

Being entered into the Database means a qualifying patient or designated provider may purchase and possess three times the amounts of marijuana products at retail as a recreational adult consumer, and may grow up to six marijuana plants at their residence for the qualifying patient's personal use and possess up to 8 ounces of useable marijuana produced from those plants. Also, if a qualifying patient or designated provider in the Database has additional authorization from a health care professional to do so because of the qualifying patient's medical need, the qualifying patient or designated provider may grow up to 15 marijuana

plants at their residence and possess in their domicile up to 16 ounces of useable marijuana produced from those plants. There is an exemption from state and local sales taxes for retail purchases of marijuana products by a qualifying patient or designated provider, but the marijuana excise tax of 37 percent of the selling price applies to retail sales.

Not Entered In Database. If a qualifying patient or designated provider with a valid authorization from a healthcare professional decides not to be entered into the Database and not be issued a recognition card, the qualifying patient or designated provider may grow up to four marijuana plants at their domicile and possess up to 6 ounces of useable marijuana. At retail outlets, such qualifying patients are treated like adult recreational consumers and have the same possession limits, and pay both the marijuana excise tax and state and local sales taxes. And, instead of arrest protection, such a qualifying patient or designated provider has an affirmative defense to violations of state law relating to marijuana through proof at trial, by a preponderance of the evidence, that the qualifying patient or designated provider otherwise meets the requirements of the Washington State Medical Use of Cannabis Act.

Marijuana Cooperatives.

Qualifying patients or designated providers may form a cooperative and share responsibility for acquiring and supplying the resources needed to produce and process marijuana only for the medical use of members of the cooperative. No more than four qualifying patients or designated providers may become members of a cooperative and all members must hold valid recognition cards, which must be displayed at the premises. All members of the cooperative must be at least age 21. The designated provider of a qualifying patient who is under age 21 may be a member of a cooperative on the qualifying patient's behalf. All plants grown in the cooperative must be purchased or cloned from a plant purchased from a licensed marijuana producer.

Additional requirements include that the cooperative's location must be registered with the Liquor and Cannabis Board (LCB), the location must be within a participant's domicile, the location may not be within one mile of a marijuana retail outlet or within 1,000 feet of specific places including an elementary or secondary school, playground, recreation center or facility, child care center, or public park, with limited exception. Further, participants may not grow additional plants at their residence, may not divert marijuana out of the cooperative, and must participate in a seed-to-sale traceability system monitored by the LCB. Also, local governments may prohibit cooperatives through local zoning ordinances.

For purposes of marijuana statutes, the word "plant" is defined as a marijuana plant having at least three distinguishable and distinct leaves, each leaf being at least 3 centimeters in diameter, and a readily observable root formation consisting of at least two separate and distinct roots, each being at least 2 centimeters in length. Multiple stalks emanating from the same root ball or root system is considered part of the same single plant.

Summary of Substitute Bill:

The marijuana producer license is modified to authorize the production of immature marijuana plants and marijuana seeds for sale at retail at the premises of the marijuana producer, to qualifying patients age 18 and over and designated providers with a valid

authorization or recognition card. Marijuana producers may also sell seeds to marijuana cooperatives.

The LCB must adopt rules authorizing marijuana producers to produce, process, package, label, and sell immature plants and marijuana seeds at retail, at the premises of the marijuana producer, to qualifying patients and designated providers with a valid authorization or valid recognition card. The LCB is granted rule-making authority to adopt any rule that is necessary and appropriate to provide for an effective process for qualifying patients age 18 and over and designated providers with a valid authorization or recognition card to purchase immature plants and marijuana seeds from marijuana producers at retail, at the premises of the marijuana producer.

An immature marijuana plant is defined as a plant or clone of a plant that has no flowers, is less than 12 inches in height, and is less than 12 inches in diameter.

A minor under age 18 with a valid authorization for the medical use of marijuana is prohibited from purchasing immature marijuana plants or seeds from a marijuana producer.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Commerce & Gaming):

(In support) This will close a gap in the law so that qualifying patients and designated providers can lawfully purchase marijuana plants and seeds to home grow marijuana as authorized in the Cannabis Patient Protection Act in 2015. This gap in the law was an omission in the 2015 legislation, and is fueling the illicit market. Before the medical marijuana system merged with the recreational marijuana system, qualifying patients and designated providers purchased marijuana plants, clones, and seeds from medical marijuana dispensaries. Since the old medical marijuana dispensaries are all closed, and marijuana retail outlets cannot sell plants, clones, or seeds, there is no legal way for qualifying patients and designated providers to access marijuana plants, clones, and seeds. It is essential that qualifying patients and designated providers who have an authorization from a healthcare professional for the medical use of marijuana, but who choose to not be entered into the state Medical Marijuana Authorization Database (Database), have access to and the ability to purchase marijuana plants, clones, and seeds. Qualifying patients and designated providers have legitimate concerns about the privacy and security of their personal information that they must provide to marijuana retail outlets for entry into the Database, and need to have a lawful means of obtaining the plants they are allowed to home grow without participating in the Database.

(Opposed) None.

(Other) The bill should specify that the marijuana plants that may be sold must be immature marijuana plants, which are not flowering. Also, for consideration, the marijuana excise tax is not currently imposed on sales of plants to four-participant marijuana cooperatives, like it is imposed on the sale of plants and seeds in this bill.

Staff Summary of Public Testimony (Finance):

(In support) It can take years for medical patients to find the correct strains of marijuana to use for the management of their medical conditions. This bill is a big step in allowing access to effective products, as well as increasing control over what kinds of chemicals are used in the growing process. It would be even better if the policy could be expanded out to all adults over the age of 21.

(Opposed) None.

Persons Testifying (Commerce & Gaming): (In support) Representative Farrell, prime sponsor; John Novak and Kirk Ludden, VIPER Political Action Committee; and Lori Jackson, People for Medical Cannabis.

(Other) James Paribello, Liquor and Cannabis Board.

Persons Testifying (Finance): John Novak, Viper Political Action Committee.

Persons Signed In To Testify But Not Testifying (Commerce & Gaming): None.

Persons Signed In To Testify But Not Testifying (Finance): None.