

HOUSE BILL REPORT

HB 1131

As Reported by House Committee On:
Commerce & Gaming

Title: An act relating to residential marijuana agriculture.

Brief Description: Allowing residential marijuana agriculture.

Sponsors: Representatives Blake, MacEwen, Dolan, Walsh, Kloba, Ryu, Appleton, Goodman, Stonier and Young.

Brief History:

Committee Activity:

Commerce & Gaming: 1/21/19, 1/21/20 [DP].

Brief Summary of Bill

- Legalizes adult recreational home cultivation of marijuana by authorizing adults to produce and possess up to six marijuana plants at their housing unit.
- Establishes production and possession limits for marijuana products derived from the plants, and establishes a 15-plant limit per housing unit.
- Requires marking of plants and marijuana produced from the plants with the person's name, date of birth, address, planting date, and harvest date.
- Retains the right of property owners to prohibit cultivation of marijuana by a renter or lessee under a rental agreement.
- Modifies the seizure and forfeiture statute as it applies to marijuana.

HOUSE COMMITTEE ON COMMERCE & GAMING

Majority Report: Do pass. Signed by 9 members: Representatives Peterson, Chair; Kloba, Vice Chair; MacEwen, Ranking Minority Member; Blake, Kirby, Morgan, Ramel, Vick and Young.

Minority Report: Do not pass. Signed by 1 member: Representative Jenkin.

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.

Minority Report: Without recommendation. Signed by 1 member: Representative Chambers, Assistant Ranking Minority Member.

Staff: Peter Clodfelter (786-7127).

Background:

It is legal for an adult age 21 or over to possess any combination of the following types and amounts of marijuana products:

- 1 ounce of useable marijuana;
- 16 ounces of marijuana-infused product in solid form;
- 72 ounces of marijuana-infused product in liquid form; and
- 7 grams of marijuana concentrate.

State law does not authorize adults age 21 or over to possess any marijuana plants, and doing so is punishable as a class C felony under the Controlled Substances Act. However, if a person is a qualifying patient or designated provider, the person may possess and grow a limited amount of marijuana plants and possess a limited amount of marijuana produced from those plants in accordance with the Washington State Medical Use of Cannabis Act. Such a qualifying patient or designated provider may extract or separate the resin from marijuana using noncombustible methods when done in compliance with the Liquor Control Board's rules governing this activity.

Generally, illegally manufacturing a controlled substance can result in seizure and forfeiture of the real property on which the manufacturing occurs. However, the possession of marijuana may not result in the forfeiture of real property unless the marijuana is possessed for commercial purposes that are unlawful under Washington law, the amount possessed is five or more plants or 1 pound or more of marijuana, and a substantial nexus exists between the possession of marijuana and the real property.

Summary of Bill:

Adults age 21 and over may legally produce and possess up to six marijuana plants on the premises of their housing unit, subject to restrictions. Generally, a person may possess useable marijuana in an amount not to exceed what is produced by the person's plants in addition to useable marijuana obtained at retail outlets.

However, a person may not possess marijuana capable of being processed into useable marijuana, marijuana-infused products, or marijuana concentrates, unless the person possesses fewer than 16 ounces of useable marijuana, irrespective of source. Additionally, a person may not produce or possess, irrespective of source, a total of more than:

- 16 ounces of marijuana-infused products in solid form;
- 72 ounces of marijuana-infused products in liquid form; and
- 7 grams of marijuana concentrates.

No more than 15 plants may be grown at any one time on the premises of a single housing unit. All plants must be clearly marked with the name, residential address, and date of birth of the person growing the plants, and the date on which the plants were planted. All marijuana capable of being processed into useable marijuana, marijuana-infused products, or marijuana concentrate must be clearly marked with the name, date of birth, and residential address of the person who grew the plants from which the marijuana is derived, the date the plants were planted, and the date the plants were harvested.

All containers containing more than 1 ounce of useable marijuana must be clearly marked with the name, date of birth, residential address of the person who grew the plants from which the useable marijuana is derived, the date the plants were planted, and the date the plants were harvested. Any containers containing 1 ounce or less of useable marijuana are not required to be labeled.

Any extraction or separation of resin from marijuana and any production or processing of any form of marijuana concentrates or marijuana-infused products must be performed in accordance with rules governing how qualifying patients and designated providers may currently engage in these activities.

It is provided that the new authorization does not restrict a property owner from prohibiting the cultivation of plants by a renter or lessee upon or within the property under the terms of a rental agreement, lease, or other contract.

The production, possession, delivery, and acquisition of plants or marijuana capable of being processed into useable marijuana, marijuana-infused products, or marijuana concentrate, and useable marijuana produced under the new authorization may not form the basis of a seizure or forfeiture action.

A person age 21 or older who possesses marijuana under the new authorization is considered an ultimate user who may not sell marijuana, useable marijuana, marijuana concentrates, or marijuana-infused products produced from the person's plants, and is not required to obtain a registration related to manufacturing, distributing, or dispensing controlled substances, and is not required to hold a marijuana license issued by the Liquor and Cannabis Board.

The acquisition, delivery, production, or possession of marijuana, useable marijuana, marijuana concentrates, or marijuana-infused products, including in accordance with the new authorization, may not result in forfeiture of real property under the forfeiture statutes that otherwise apply. A definition of "commercial activity" is added to the Controlled Substances Act. It means an activity related to or connected with buying, selling, or bartering. References to the Pharmacy Quality Assurance Commission are updated in the Uniform Controlled Substances Act.

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:

(In support) This is a common sense extension of current authorizations for producing wine or beer at home, and should be viewed more like home gardening than a felony crime. Serious public health and safety concerns justify this bill. Recent testing by the Washington State Department of Agriculture found a large percentage of samples tested were positive for an unlawful pesticide or pesticide level, and marijuana in the regulated market can be mislabeled. No one yet knows the science and long-term effects of pesticide use on cannabis. Home grows are needed so consumers know their cannabis is safe and guaranteed to be free of chemicals. There is also a lack of lower potency products in the regulated market. Black and brown people, and low-income communities, are disproportionately negatively impacted by the current criminalization of home grows. The medical community of qualifying patients and designated providers needs to see a home grow bill enacted. There is a moral duty to legalize home grows. All other states in which marijuana is sold at retail stores also allow for home grows. Because only limited home grows are allowed, law enforcement can continue to focus resources on investigating and prosecuting larger grows. Plant limits in other states include four, six, and 12 plant limits. The diversion comes from larger 100-plant farms, not small six-plant gardens. Noncommercial home grows will not disrupt the regulated market. Most people will choose not to home grow; it is difficult and expensive. Marijuana is convenient to purchase at retail outlets and relatively inexpensive. Extending the "ultimate user" status to all consumers is an important part of the bill. The bill also makes necessary updates to the seizure and forfeiture statute. Section 2 of the bill on forfeiture should be amended to raise the plant count from five plants to 15 plants. This was an error that this plant limit in the forfeiture statute was not previously increased when the state allowed 15-plant home grows for qualifying patients. This bill is a sensible policy and a logical outgrowth of Initiative 502 (2012).

(Opposed) Large-scale illicit grows have been a problem in the state, and this bill could add to the permissive environment in Washington exploited by large-scale illicit grows. This policy could result in diversion of marijuana across state lines, cash being laundered, and human trafficking. Law enforcement in Washington has encountered human trafficking operations connected to large-scale illicit marijuana grows. Illicit grows have negative effects felt by neighbors. There also continues to be low-level illicit marijuana production and sales, such as through hand-to-hand transactions on the street. It is worth asking whether this bill makes these current issues that law enforcement struggles with worse and whether it will make it harder for law enforcement to investigate and prosecute criminal activity. Currently, law enforcement generally uses discretion and does not prosecute small grows. There are concerns about how requirements for home grows will be enforced.

(Other) The Liquor and Cannabis Board (LCB) has concerns about the bill in several areas. Although it is true Washington is unlike other legal marijuana states in that Washington does not allow home grows, this has helped the LCB from a regulatory perspective in ensuring there is a well-regulated market as described by the federal guidance in the Cole Memorandum. Home growing on a wide scale has the potential to provide cover for larger illicit grows. This was a problem in Colorado, and Colorado reduced the number of plants

allowed to be grown. The LCB anticipates there will be complaints if the bill is enacted. It is unclear who would have enforcement responsibility. The LCB is concerned it would be assumed the LCB would enforce the home grow requirements; the LCB lacks the resources to exercise enforcement responsibilities in this area. Currently law enforcement and prosecutors use discretion in not prosecuting small-scale marijuana grows because there are more serious crimes on which to focus. Additionally, the new terms "acquisition" and "delivery" added by the bill to the seizure and forfeiture statute do not fit with the intent of personal home grows. Currently, medical patients can home grow marijuana and, generally, the public is well served by the regulated marketplace of retail stores.

Persons Testifying: (In support) Representative Blake, prime sponsor; Danica Noble, Washington National Organization for the Reform of Marijuana Laws and Women of Washington; Bailey Hirschburg, Washington National Organization for the Reform of Marijuana Laws; Don Skakie, Jedidiah Haney, and John Kingsbury, Home Grow Washington; Nik Grobins, Hefty Harvest; Jim MacRae, Straight Line Analytics; and Bob Costello.

(Opposed) Steve Strachan, Washington Association Sheriffs and Police Chiefs; Monica Alexander, Washington State Patrol; and Seth Dawson, Washington Association for Substance Abuse Prevention.

(Other) Chris Thompson, Liquor and Cannabis Board; Kirk Ludden, John Novak, and John Worthington, VIPER PAC.

Persons Signed In To Testify But Not Testifying: None.