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## Commerce & Gaming Committee

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### HB 1019

**Brief Description:** Allowing residential marijuana agriculture.

**Sponsors:** Representatives Kloba, MacEwen, Ryu, Wicks, Dolan, Fitzgibbon, Peterson, Goodman, Young, Harris, Vick, Ormsby, Springer, Stonier, Santos and Macri.

#### Brief Summary of Bill

- Authorizes adults age 21 and over to produce up to six marijuana plants on the premises of their housing unit, subject to production and possession limits and other restrictions
- Requires the marking of plants, marijuana, and containers containing over 1 ounce of useable marijuana, with information such as 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, and prohibits home cultivation of marijuana in a housing unit that is used to provide early childhood education and early learning services by a family day care provider or a foster family home.
- Establishes class 3 civil infractions for violations of new prohibitions on home cultivated marijuana plants or marijuana being visible within the ordinary public view or readily smelled.
- Prohibits the Liquor and Cannabis Board from investigating or enforcing compliance with the new requirements, and modifies the real property forfeiture statute as it applies to marijuana.

**Hearing Date:** 1/15/21

**Staff:** Peter Clodfelter (786-7127).

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

**Background:**

It is legal for an adult age 21 or over to purchase and 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 in their domicile and possess a limited amount of marijuana produced from those plants in accordance with the Washington State Medical Use of Cannabis Act (WSMUCA). 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.

For purposes of a 15-plant limit per housing unit, the WSMUCA defines "housing unit" as a house, apartment, mobile home, group of rooms, or a single room occupied as separate living quarters, in which the occupants live and eat separately from any other persons in the building, and which have direct access from the outside of the building or through a common hall.

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.

The maximum penalty and the default amount for a class 3 civil infraction is \$50, not including statutory assessments. Generally, district courts have jurisdiction over civil infractions.

**Summary of Bill:**

Adults age 21 and over may legally produce and possess up to six marijuana plants on the premises of the housing unit occupied by the person, 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 or other contract. Additionally, no production, processing, or possession of plants or marijuana from the plants may occur in a housing unit that is used to provide early childhood education and early learning services by a family day care provider or a foster family home.

A person age 21 or older who possesses marijuana under the new authorization is considered an ultimate user who may not sell marijuana or marijuana 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 (LCB).

It is a class 3 civil infraction for:

- the production, processing, or possession of plants or marijuana from those plants to result in marijuana being readily smelled from a public place or the private property of another housing unit; or
- a person to produce or possess plants or marijuana from those plants if the plants or marijuana are visible within the ordinary public view.

For purposes of the new class 3 civil infraction, the term "ordinary public view" is defined as within the sight line with normal visual range of a person, unassisted by any elevating devices,

visual aids, or manned or unmanned aircraft, from a public street or sidewalk adjacent to real property, or from within an adjacent property.

It is specified that the LCB has no authority or responsibility to investigate or enforce requirements related to the new marijuana home grow authorization. However, it is also provided that this does not limit the LCB's authority to enforce state laws related to commercial marijuana production, processing, or sales, when there is evidence of a violation of another provision of the Uniform Controlled Substances Act.

It is provided that the production, possession, delivery, and acquisition of plants or marijuana capable of being processed into useable marijuana or marijuana products under the new home grow authorization may not form the basis of a seizure and forfeiture action. The forfeiture statute is amended to provide that the acquisition, delivery, production, or possession of marijuana or marijuana products, including in accordance with the new authorization, may not result in forfeiture of real property unless the marijuana is possessed for commercial purposes that are unlawful under Washington state 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.

A definition of "commercial activity" is added to the Uniform Controlled Substances Act. It means an activity related to or connected with buying, selling, or bartering.

Outdated references to the State Board of Pharmacy are changed to the Medical Quality Assurance Commission in the Uniform Controlled Substances Act.

**Appropriation:** None.

**Fiscal Note:** Requested on 1/6/2021.

**Effective Date:** This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 4, which for technical reasons takes effect July 1, 2022, to account for previously enacted legislation that amended the statute in Section 4 with a delayed effective date of July 1, 2022.