

# HOUSE BILL REPORT

## HB 1019

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**As Reported by House Committee On:**  
Commerce & Gaming

**Title:** An act relating to residential marijuana agriculture.

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

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

**Brief History:**

**Committee Activity:**

Commerce & Gaming: 1/15/21, 1/22/21 [DPS].

**Brief Summary of Substitute 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 and conditions.
- Establishes class 3 civil infractions related to plants or marijuana being visible within the ordinary public view or readily smelled.
- Prohibits investigation and enforcement by the Liquor and Cannabis Board, prohibits home grows by family day care providers and foster family homes, retains landlords' rights to prohibit home grows, and modifies the real property forfeiture statute as it applies to marijuana.

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### HOUSE COMMITTEE ON COMMERCE & GAMING

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Kloba, Chair; Wicks, Vice Chair; MacEwen, Ranking Minority Member; Kirby, Morgan, Vick and Wylie.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Robertson,

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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.*

Assistant Ranking Minority Member; Chambers.

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

**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.

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**Summary of Substitute 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 containers containing more than 1 ounce of useable marijuana, and 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. 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 law, the amount possessed is 16 or more plants or, except as allowed under the home grow authorization, more than 1 pound 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.

#### **Substitute Bill Compared to Original Bill:**

The substitute bill also amends the real property seizure and forfeiture statute in the Uniform Controlled Substances Act to increase the minimum number of marijuana plants from five to 16, and to increase the minimum quantity of marijuana, from 1 pound or more of marijuana to more than 1 pound of marijuana, that must be possessed for commercial purposes that are unlawful under state law, in order for real property to be seized and forfeited when there is a substantial nexus between the possession of the marijuana and the real property. A reference to an exception to forfeiture is moved so it applies only with respect to possessing more than 1 pound of marijuana pursuant to the new home grow authorization.

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**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on January 25, 2021.

**Effective Date of Substitute Bill:** This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 4, relating to definitions, which due to a delayed effective date in prior legislation takes effect July 1, 2022.

**Staff Summary of Public Testimony:**

(In support) This is a bipartisan proposal to improve the state's policies regarding adult-use cannabis. The cannabis industry has matured since voters passed Initiative Measure No. 502 (I-502) in 2012, and original fears about cannabis legalization did not materialize.

Authorizing home grows will help undo harms born disproportionately by communities of color. Prohibiting home grows is an antiquated policy. About 12 states authorize adults age 21 and over to home grow cannabis, and Washington is one of the few exceptions in legal adult-use states. Even in states that do not allow home grows, the penalty is a civil infraction, not a felony. In the states that allow home grows, cannabis tax revenues did not fall, crime rates did not explode, the federal government did not intervene, and their policies work. The commercial cannabis industry supports the bill and believes it will help the state's market mature. Home brewing beer is allowed and does not disrupt the commercial beer market. Home producing cannabis will lead to more informed consumers. Retail outlets predominantly sell cheap, high-potency cannabis products not all consumers want. Some consumers want the option to grow their own cannabis so they know what went into the growing process.

Growing cannabis is difficult. Even with the option, most people will continue to purchase cannabis at retail. In jurisdictions that ban cannabis retailers, this bill provides consumers with access to cannabis. Much opposition to cannabis home grows conflates problems associated with large-scale illegal grows with the limited six plant home grows authorized by the bill. If the bill becomes law, law enforcement will still have the ability to obtain a search warrant when there is probable cause of illegal activity. Parents have the responsibility to keep their children safe from a variety of potential dangers that are presently in many homes, and parents also can do so with respect to cannabis in their homes. Some supporters have concerns about the ability for people to obtain seeds, clones, or immature plants, which is not addressed. Other supporters view that as a separate area of law, but may be open to addressing it in this bill. Initiative Measure No. 502 was a new approach to cannabis, not the final answer. The most common complaint about I-502 is that it did not allow for home grows. This bill will help Washington's cannabis policies evolve and is another step to end the criminal prohibition on cannabis.

(Opposed) Opponents of the bill recognize the arguments, statements, and experiences offered in support of the home grow policy. Law enforcement remains uncomfortable with the public safety issues involved with cannabis home grows. Law enforcement has seen violent home invasion robberies involving home grown cannabis. Diversion of cannabis to the illicit market is another concern. Additionally, there are great concerns over exposing

children to cannabis in the home. Law enforcement cautions about how the home growing requirements could be enforced. Proactive law enforcement of the requirements is unlikely. Law enforcement would have limited ability to know of violations, and could generally enter a home only if invited or with a search warrant, which would be rare. Stakeholders who focus on issues related to youth and substance abuse prevention oppose the bill, although appreciate the inclusion of the child protections. However, youth will get more access to cannabis if home grows are allowed. Additionally, it would decrease youth's perception of the harms associated with cannabis use. Together, these effects will lead to more youth using cannabis. The relative lack of enforcement and regulation around home grows is also troubling. A Canadian study identifies several negative health impacts associated cannabis home grows. There are historical differences between beer and cannabis in the law, which makes the home production of beer and cannabis different issues. When voters passed I-502, it did not include home grows. There would be less opposition to expanding the law if the change was coupled with restoring uses of marijuana tax revenues promised by I-502, particularly with respect to prevention.

(Other) The unintended consequences of allowing cannabis home grows are concerning. There is a lack of ability for local enforcement around the home grow authorization's requirements. No license is required to home grow cannabis. There are no training requirements or other safeguards. The Liquor and Cannabis Board's rules would not apply to adults home growing cannabis. Authorizing home grows will undermine the state's commercial cannabis industry and put youth at risk.

**Persons Testifying:** (In support) Representative Kloba, prime sponsor; Danica Noble, National Organization for the Reform of Marijuana Laws Women of Washington; Lara Kaminsky, The Cannabis Alliance; Timothy Nadreau, Washington State University; Stanley Garnett, Brownstein Hyatt Farber Schreck; John Kingsbury and Don Skakie, Homegrow Washington; M. Bailey Hirschburg, Washington National Organization for the Reform of Marijuana Laws; and Lukas Hunter, Harmony Farms.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs; and Seth Dawson, Washington Association for Substance Abuse and Violence Prevention.

(Other) Jesse Jimenez, Prevent Coalition.

**Persons Signed In To Testify But Not Testifying:** None.