

HOUSE BILL REPORT

HB 1105

As Passed House:

March 1, 2021

Title: An act relating to arrest protections for the medical use of cannabis.

Brief Description: Concerning arrest protections for the medical use of cannabis.

Sponsors: Representatives Kloba, Simmons, Fitzgibbon, Dolan, Ortiz-Self, Goodman, Vick, Ormsby, Riccelli, Santos, Macri and Davis.

Brief History:

Committee Activity:

Health Care & Wellness: 2/4/21, 2/10/21 [DP].

Floor Activity:

Passed House: 3/1/21, 69-29.

Brief Summary of Bill

- Provides criminal and civil protections, rather than an affirmative defense, to qualifying patients and designated providers who have a valid authorization for the medical use of marijuana.
- Specifies the marijuana possession limit for a person who is both a qualifying patient and a designated provider for another qualifying patient.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: Do pass. Signed by 10 members: Representatives Cody, Chair; Bateman, Vice Chair; Bronoske, Davis, Macri, Riccelli, Rude, Simmons, Stonier and Tharinger.

Minority Report: Do not pass. Signed by 3 members: Representatives Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Maycumber.

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.

Minority Report: Without recommendation. Signed by 2 members: Representatives Harris and Ybarra.

Staff: Corey Patton (786-7388).

Background:

Medical Use of Marijuana.

State law allows persons over 21 years of age to possess and purchase limited quantities of marijuana products and plants from a licensed retailer for recreational use. Specific types of healthcare professionals may authorize a qualifying patient's medical use of marijuana, which increases the patient's possession limit, permits home cultivation of marijuana plants, and provides certain legal protections not afforded to recreational users.

A qualifying patient is a person who: (1) is a patient of a health care professional; (2) has been diagnosed by the health care professional as having a terminal or debilitating medical condition; (3) is a Washington resident at the time of diagnosis; (4) has been advised by the health care professional about the risks and benefits of the medical use of marijuana; (5) has been advised by the health care professional that the person may benefit from the medical use of marijuana; and (6) has an authorization from the health care professional.

A designated provider is a person who: (1) is at least 21 years old; (2) is designated in writing by a qualifying patient to serve as the designated provider for the patient or, if the qualifying patient is under age 18, is the qualifying patient's parent or guardian; and (3) has an authorization from the qualifying patient's health care professional.

An authorization is a form developed by the Department of Health that is completed and signed by the health care professional and printed on tamper-resistant paper.

Medical Marijuana Authorization Database and Recognition Card.

A qualifying patient or designated provider who has a valid authorization may choose whether to enter into the Medical Marijuana Authorization Database (Database) and receive a recognition card. The recognition card 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 relevant information.

A qualifying patient or designated provider who is entered into the Database and has a recognition card may not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences for certain violations of state law relating to use and possession of marijuana. To receive these protections, the qualifying patient or designated provider must: (1) possess no more than the authorized amount of marijuana products and plants; (2) present the recognition card upon the request of any investigating law enforcement officer; and (3) have a copy of the recognition card and the qualifying patient or designated

provider's contact information posted prominently next to any marijuana products and plants. A person who is both a qualifying patient and a designated provider for another qualifying patient may possess no more than twice the authorized amount of marijuana product for the qualifying patient and designated provider.

A qualifying patient or designated provider who has a valid authorization but is not entered into the Database and does not have a recognition card is not granted the same criminal and civil protections but may, under certain conditions, raise an affirmative defense at trial for certain violations of state law relating to use and possession of marijuana. A qualifying patient or designated provider asserting the affirmative defense must prove, by a preponderance of the evidence, compliance with all other provisions of state law governing medical use of marijuana by a qualifying patient or designated provider.

Summary of Bill:

A qualifying patient or designated provider who has a valid authorization but is not entered into the Medical Marijuana Authorization Database (Database) and does not have a recognition card may not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences for certain violations of state law relating to use and possession of marijuana. To receive these protections, the qualifying patient or designated provider must: (1) possess no more than the authorized amount of marijuana products and plants; (2) present the authorization upon the request of any investigating law enforcement officer; and (3) have a copy of the authorization and the qualifying patient or designated provider's contact information posted prominently next to any marijuana products and plants. A person who is both a qualifying patient and a designated provider for another qualifying patient may possess no more than 15 marijuana plants located in any one housing unit other than an authorized cooperative.

The affirmative defense afforded to qualifying patients and designated providers who have a valid authorization but are not entered into the Database and do not have a recognition card is eliminated.

Appropriation: None.

Fiscal Note: Not requested.

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 bill ensures the equal treatment of qualifying patients regardless of whether they choose to be entered in the Medical Marijuana Authorization Database (Database). There are many reasons why a patient would not want to be in the Database,

including fear of various consequences under federal law. Without criminal and civil protections, a patient's garden may be dismantled and seized and the patient may be arrested and ordered to appear at court. By the time the patient has an opportunity to raise an affirmative defense at trial, irreversible damage has been done. The patient's life may be turned upside down even if the patient is not ultimately prosecuted. It does not make sense to withhold protections based on the patient's voluntary entry in the Database. Possessing a valid authorization is essentially the same as having a prescription for any other controlled substance, such as opioids or tranquilizers. The vetting process for patients to receive an authorization is extremely thorough. Patients deserve empathy and respect for their choice of medical treatment options.

(Opposed) None.

Persons Testifying: Representative Kloba, prime sponsor; Lisa Buchanan; John Kingsbury; Sunil Aggarwal, Aims Institute; and Steven Field.

Persons Signed In To Testify But Not Testifying: None.