
Regulated Substances & Gaming Committee

HB 1614

Brief Description: Concerning the home cultivation of cannabis.

Sponsors: Representatives Kloba, Ormsby, Doglio, Goodman, Wylie, Fosse, Gregerson, Morgan and Reed.

Brief Summary of Bill

- Authorizes adults age 21 and over to produce up to six cannabis 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 cannabis being visible within the ordinary public view or readily smelled.
- Establishes class 1 civil infractions related to the unsafe storage of home grown cannabis.
- 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 cannabis.
- Prohibits the investigation and enforcement of home grow requirements by the Liquor and Cannabis Board, except for mutual law enforcement assistance upon request in certain circumstances.

Hearing Date: 2/2/23

Staff: Peter Clodfelter (786-7127).

Background:

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.

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

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

State law does not authorize adults age 21 or over to possess any cannabis 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 number of cannabis plants in their domicile and possess a limited amount of cannabis 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 cannabis 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 cannabis may not result in the forfeiture of real property unless the cannabis 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 cannabis, and a substantial nexus exists between the possession of cannabis and the real property.

The maximum penalty and the default amount for a class 3 civil infraction is \$50, not including statutory assessments. The maximum penalty and the default amount for a class 1 civil infraction is \$250, not including statutory assessments, except for an infraction of state law involving specified violations that include a larger monetary fine. Generally, district courts have jurisdiction over civil infractions.

Summary of Bill:

Adults age 21 and over may legally produce and possess up to six cannabis plants and cannabis from the plants on the premises of the housing unit occupied by the person, subject to restrictions. The quantity of cannabis and cannabis products a person may produce or possess is subject to the following limits:

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

- products in solid form, irrespective of source.
- A person may not produce or possess a total of more than 72 ounces of cannabis-infused products in liquid form, irrespective of source.
- A person may not produce or possess a total of more than 7 grams of cannabis concentrates, irrespective of source.

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 cannabis, and all cannabis capable of being processed into useable cannabis, cannabis-infused products, or cannabis concentrate must be clearly marked with the name, date of birth, and residential address of the person who grew the plants from which the cannabis is derived, the date the plants were planted, and the date the plants were harvested. Any containers containing 1 ounce or less of useable cannabis are not required to be labeled.

Any extraction or separation of resin from cannabis and any production or processing of any form of cannabis concentrates or cannabis-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 cannabis 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 cannabis under the new authorization is considered an ultimate user who may not sell cannabis or cannabis 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 cannabis 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 cannabis from those plants to result in cannabis being readily smelled from a public place or the private property of another housing unit; or
- a person to produce or possess plants or cannabis from those plants if the plants or cannabis 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 a class 1 civil infraction for a person who stores or leaves cannabis that was produced on the premises of the housing unit in a location where the person knows, or reasonably should know, that a person under age 21 may have access to the cannabis, if a person under age 21 obtains access and possession of the cannabis and is convicted of the crime of driving or being in physical control of a motor vehicle after consuming cannabis involving the consumption of the home-produced cannabis. This offense is classified as community endangerment due to unsafe storage of homegrown cannabis in the first degree, with a maximum penalty and default amount of \$750.

It is also a class 1 civil infraction for a person who stores or leaves cannabis that was produced on the premises of the housing unit in a location where the person knows, or reasonably should know, that a person under age 21 may have access to the cannabis, if a person under age 21 obtains access and possession of the cannabis and the person under age 21 is found in possession of the cannabis off of the premises of the housing unit at which the cannabis was produced or the person under age 21 is found to have consumed the cannabis on or off the premises of the housing unit at which the cannabis was grown. This offense is classified as community endangerment due to unsafe storage of cannabis in the second degree, with a maximum penalty and default amount of \$250.

A safe harbor is provided and neither of the new class 1 civil infractions for unsafe storage of home grown cannabis apply if either: (1) the cannabis was in a securely stored area, or secured in a locked, secured container; or (2) the cannabis was obtained by a person under age 21 who did not reside in the housing unit or have permission from the owner or lawful occupant to enter the housing unit. Additionally, a prosecuting attorney may decline to prosecute a violation even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose or would defeat the purpose of the law.

The LCB is granted authority to provide mutual law enforcement assistance to a law enforcement agency with primary territorial jurisdiction investigating or enforcing requirements of the proposed home grow law, if such a law enforcement agency requests mutual law enforcement assistance under the authority of law. Otherwise, the LCB has no authority or responsibility to investigate or enforce requirements of the proposed home grow law. However, it is provided that nothing limits the LCB's authority to enforce Washington law related to commercial cannabis production, processing, or sales, when there is evidence of a violation of other provisions of the Uniform Controlled Substances Act (UCSA).

It is provided that the production, possession, delivery, and acquisition of plants or cannabis capable of being processed into useable cannabis or cannabis 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 cannabis or cannabis products, including in accordance with the new authorization, may not result in forfeiture of real property unless the cannabis 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 cannabis, and a substantial nexus exists between the possession of cannabis and the real property.

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

Appropriation: None.

Fiscal Note: Requested on 01/26/2023.

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