

SENATE BILL REPORT

SHB 1453

As Reported by Senate Committee On:
Labor & Commerce, February 19, 2024
Ways & Means, February 26, 2024

Title: An act relating to providing a tax exemption for medical cannabis patients.

Brief Description: Providing a tax exemption for medical cannabis patients.

Sponsors: House Committee on Finance (originally sponsored by Representatives Wylie, Chapman and Kloba).

Brief History: Passed House: 2/9/24, 85-12.

Committee Activity: Labor & Commerce: 2/19/24, 2/19/24 [DP-WM, w/oRec].
Ways & Means: 2/22/24, 2/26/24 [DPA, DNP].

Brief Summary of Amended Bill

- Provides a tax exemption from the 37 percent cannabis excise tax for qualifying patients and designated providers with a recognition card on purchases of cannabis products that are labeled as Department of Health (DOH)-compliant product and tested in accordance with the DOH's rules.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; King, Ranking Member; Hansen and Stanford.

Minority Report: That it be referred without recommendation.

Signed by Senators Braun, MacEwen and Schoesler.

Staff: Susan Jones (786-7404)

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.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Robinson, Chair; Mullet, Vice Chair, Capital; Nguyen, Vice Chair, Operating; Billig, Conway, Dhingra, Hasegawa, Hunt, Keiser, Pedersen, Randall, Saldaña, Van De Wege and Wellman.

Minority Report: Do not pass.

Signed by Senators Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Rivers, Assistant Ranking Member, Capital; Boehnke, Braun, Muzzall, Torres and Wagoner.

Staff: Alia Kennedy (786-7405)

Background: There is a cannabis excise tax equal to 37 percent of the selling price on each retail sale in Washington of cannabis concentrates, useable cannabis, and cannabis-infused products. This tax is separate and in addition to general state and local sales and use taxes that apply to retail sales of tangible personal property, and is not part of the total retail price to which general state and local sales and use taxes apply.

The tax must be reflected in the price list or quoted shelf price in the licensed cannabis retail store and in any advertising that includes prices for all cannabis products. All revenues collected from the cannabis excise tax must be deposited each day in the Dedicated Cannabis Account.

Qualifying patients and designated providers, who have opted to participate in the Medical Cannabis Authorization Database and be issued a recognition card, have an exemption from sales and use taxes on purchases of cannabis products identified by the Department of Health (DOH) as being a compliant cannabis product, but do not have an exemption from the 37 percent cannabis excise tax.

Cannabis products are subject to several mandatory fields of testing pursuant to Liquor and Cannabis Board (LCB) rules. Cannabis producers and processors may voluntarily opt to submit their products for additional testing for compliance with another layer of quality assurance standards established by the DOH and, if passing, may be labeled as a DOH compliant product bearing a label logo developed by the DOH. For example, heavy metal screening is required for all DOH-compliant product. Heavy metal screening is optional for a non-DOH-compliant product; however, heavy metal limits apply to all products and any product exceeding the provided limits are subject to recall and destruction.

When legislation creates a new tax preference, the new tax preference is required to include a tax preference performance statement and the tax preference expires after ten years unless another expiration date is specified. However, legislation may exempt a new tax preference from these requirements in order to continue the tax preference indefinitely and to not

include a tax preference performance statement.

Summary of Amended Bill: A tax exemption is provided to qualifying patients and designated providers who hold a recognition card, from the 37 percent cannabis excise tax, on their purchases of cannabis products that are labeled as a DOH-compliant product and tested in accordance with the DOH's rules.

Each seller making exempt sales must maintain information establishing eligibility for the exemption in the form and manner required by LCB. LCB must provide a separate tax reporting line on the excise tax form for exemption amounts claimed.

The tax exemption expires January 1, 2034.

The Joint Legislative Audit and Review Committee must conduct a tax preference performance review and submit an initial report to the Legislature by December 1, 2029.

EFFECT OF WAYS & MEANS COMMITTEE AMENDMENT(S):

- Removes the section making the act exempt from tax preference performance review and ten-year automatic expiration.
- Expires the tax exemption on January 1, 2034.
- Requires the Joint Legislative Audit and Review Committee to review the tax exemption and submit an initial report to the Legislature by December 1, 2029.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Substitute House Bill (Labor & Commerce):

PRO: This bill has passed the Senate three times in the past with increasing support each time. Registered patients are spending between \$500 and \$1,000 per month, taxed at 37 percent. They end up having to make up gaps in the illicit market. Medically compliant products are held to a higher standard and are at a higher price point. There is no incentive to game the system.

We need to incentive people to create these products and do R&D.

A person discussed her medical issues. After surgery, she had limited income and discovered cannabis helped with her issues, including chemo. After changes in the law, a testifier had to start buying products at recreational stores. She had to go to other

medications with side effects. There is an exorbitant sin tax.

Medical cannabis products make up less than one and a half percent of the cannabis products in the marketplace. The bill would allow for better and additional products to be made and bring in illicit cannabis sales. This is medicine and we should not be taxing medicine to the degree that we are.

Persons Testifying (Labor & Commerce): PRO: Lukas Hunter, Harmony Farms; Bri Crofton; Caitlein Ryan, The Cannabis Alliance; Hana Keefe-Guerrero, Patient; Ezra Eickmeyer, Producers NW.

Persons Signed In To Testify But Not Testifying (Labor & Commerce): PRO: Jay Hix Jones.

Staff Summary of Public Testimony on Substitute House Bill (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: Medical cannabis makes up about one percent of all cannabis products on the shelves. There is not a lot of development in the medical cannabis space. The bill allows low-income individuals to access a medical product without paying the excise tax. Incentivizing people to buy medical products on the legal market would encourage cannabis retailers to provide products that meet the necessary compliance standards. There is concern that passing this bill would lead to a surge in registration in the cannabis database and cause significant tax loss but that will not happen because of how hard it is to register with the program in the first place. Only a limited number of qualifying conditions are eligible for medical cannabis products and patients must first exhaust conventional therapies and find a doctor that will approve use of medical cannabis. Medical cannabis, even without the excise tax, is priced higher than non-medical cannabis products. Medical products are often not strong enough or sold in small quantities for excessive cost. The loss of tax revenue will be minimal compared to the tax revenue gain.

Persons Testifying (Ways & Means): PRO: Lukas Hunter, Harmony Farms; Hana Keefe-Guerrero, Patient; John Kingsbury, Authorized cannabis patient; Sean O’Leary.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.