

SENATE BILL REPORT

HB 1105

As of March 16, 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: Passed House: 3/1/21, 69-29.

Committee Activity: Law & Justice: 3/16/21.

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.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Alicia Kinne-Clawson (786-7407)

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.

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.

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

Medical Marijuana Authorization Database. In 2015, the Department of Health developed and implemented the Medical Marijuana Authorization database (database). Information about a qualifying patient or their provider may be placed in the database at a marijuana retailer with a medical marijuana endorsement. If information is placed in the database, the patient or provider must be provided a recognition card that contains certain identifiers, including a randomly generated and unique identifying number, a photograph, an effective date, and an expiration date.

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:

- possess no more than the authorized amount of marijuana products and plants;
- present the recognition card upon the request of any investigating law enforcement officer; and
- 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 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:

- possess no more than the authorized amount of marijuana products and plants;
- present the authorization upon the request of any investigating law enforcement officer; and
- 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: 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: PRO: We were one of the first states to regulate our cannabis industry and over time are evolving. One thing that has become clear is the unequal treatment of patients with regard to their treatment under the law. In order to be deemed a qualified patient there are a number of steps you have to take and it is no small hurdle. And if the patient also enters the voluntary registry than they have protection from arrest and prosecution. If they choose not to then all they have is the affirmative defense at a trial. The difference between these two types of qualified patients is a voluntary piece of paper. We should not be treating people differently because of the lack of this piece of paper. There was a time before we had a recreational market where people may have been gaming the system. But now every person over 21 can walk into a store and access what they need. Our current system subjects people of an unnecessary level of vulnerability. By the spirit and the letter of Washington State law I am a qualified patient. Even with these credentials Washington State law begins with the assumption I am committing a crime. For some reason an officer comes into contact with a patient. The officer checks the garden and the patient presents their paperwork. What this law does is says if this patient is acting within the law then they can not be arrested. When I write an authorization for a patient I do not want one of my patients getting arrested and current law puts them at undue risk. The physicians signature should protect the patient from risk. These patients are not criminals and we need not start with the assumption that they are. I am a medical cannabis user who would like to grow the plant without fear of costly legal consequences.

Persons Testifying: PRO: Representative Shelley Kloba, Prime Sponsor; John Kingsbury, Authorized Patient; Sunil Aggarwal, AIMs Institute/MD; Lisa Buchanan, Cancer Lifeline, Puget Sound Oncology Nurses/RN OCN; Steven Fields, MS patient.

Persons Signed In To Testify But Not Testifying: No one.