

HOUSE BILL REPORT

HB 2198

As Reported by House Committee On:

Finance
Appropriations

Title: An act relating to providing tax relief to qualifying patients for purchases of marijuana for medical use.

Brief Description: Providing tax relief to qualifying patients for purchases of marijuana for medical use.

Sponsors: Representatives Carlyle, Appleton, Cody and Haigh.

Brief History:

Committee Activity:

Finance: 1/15/14, 1/30/14 [DPS];

Appropriations: 2/7/14, 2/10/14 [DP2S(w/o sub FIN)].

Brief Summary of Second Substitute Bill

- Provides a sales and use tax exemption for 10 years for qualified patients who purchase marijuana for medical use.
- Includes a tax preference performance statement describing the specific public policy objective of the legislation as well as the data and metrics for measuring the legislation's effectiveness in achieving the public policy objective.

HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Carlyle, Chair; Tharinger, Vice Chair; Nealey, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Condotta, Fitzgibbon, Hansen, Lytton, Reykdal, Springer, Vick and Wilcox.

Minority Report: Do not pass. Signed by 1 member: Representative Pollet.

Staff: Richelle Geiger (786-7175).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Marijuana for Medical Use.

Marijuana is classified as a Schedule I substance under the Controlled Substances Act (CSA). Under the CSA, Schedule I substances are characterized as having a high potential for abuse, no currently accepted medical use, and no accepted safe means for using the drug under medical supervision. The manufacture, possession, or distribution of Schedule I substances is a criminal offense under federal law.

In 1998 Washington voters approved Initiative 692 to allow certain patients to use limited amounts of marijuana for medicinal purposes. To become a "qualifying patient," a person must have been: (1) diagnosed with a terminal or debilitating condition; (2) advised by a health care professional about the risks and benefits of the medical use of marijuana; and (3) advised by a health care professional that he or she may benefit from the medical use of marijuana.

Qualifying patients and designated providers are protected from arrest or prosecution under state laws relating to marijuana if the individual uses and possesses it for medicinal purposes, does not exceed specified amounts, and meets other criteria. Qualifying patients may grow marijuana themselves or designate a provider to grow on their behalf. They may also obtain marijuana through collective gardens, which consist of groups of up to 10 qualifying patients who share in the responsibilities of producing and processing marijuana for medical use.

Marijuana for Recreational Use.

In 2012 Washington voters approved Initiative 502 (I-502), which established a regulatory system for the production, processing, and distribution of limited amounts of marijuana for nonmedical purposes. Under this system, the Liquor Control Board issues licenses to marijuana producers, processors, and retailers and adopts standards for the regulation of these operations. Persons over 21 years old may purchase up to one ounce of useable marijuana, 16 ounces of solid marijuana-infused product, and 72 ounces of liquid marijuana-infused product.

Initiative 502 established a marijuana excise tax at each level of production. These excise taxes are in addition to the state's business and occupation tax and retail sales tax.

Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products and some services. A retail sale is a sale to the final consumer or end user of the property, digital product or service. If retail sales taxes were not collected when the user acquired the property, digital products or services, then use taxes apply to the value of property, digital product or service when used in this state. The state, most cities and all counties levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent; local sales and use tax rates vary from 0.5 percent to 3.1 percent, depending on the location.

Liquor Control Board Work Group.

Section 141, Chapter 4, Laws of 2013, 2nd sp.s. (3ESSB 5034) directed the Liquor Control Board to work with the Department of Health and the Department of Revenue (DOR) to develop recommendations related to the interaction between the regulation of recreational marijuana and medical marijuana. The recommendations must address: age limits;

authorization requirements for medical marijuana; regulation of health care professionals; collective gardens; possession amounts; location requirements; licensing requirements for medical marijuana production, processing, and retailing; taxation of medical marijuana; and the appropriate regulatory agency.

The Liquor Control Board submitted its recommendations to the Legislature in December 2013. The recommendations include:

- allowing those 18 to 20 years old to have access to medical marijuana;
- allowing access to medical marijuana for children under 18 years old with parent or guardian consent;
- establishing a mandatory registry for qualifying patients and designated providers and cards that are issued from the registry;
- requiring registry information to be entered by the authorizing health care professional;
- allowing access to the registry for law enforcement, the DOR, and health professions disciplining authorities;
- requiring the Department of Health to define "debilitating" and "intractable pain";
- eliminating collective gardens;
- reducing possession amounts from 24 ounces of useable marijuana to three ounces;
- allowing qualifying patients and designated providers to possess up to six marijuana plants;
- integrating medical and recreational marijuana producers, processors, and retailers into a single licensing system; and
- exempting purchases by qualifying patients from sales and use taxes.

Tax Preferences.

In 2013 the Legislature passed Chapter 13, Laws of 2013, 2nd sp.s. (ESSB 5882), which requires all new tax preference legislation to include a tax preference performance statement. Tax preferences include deductions, exemptions, preferential tax rates, and tax credits. The performance statement must clearly specify the public policy objectives of the tax preference, and the specific metrics and data that will be used by the Joint Legislative Audit and Review Committee to evaluate the efficacy of the tax preference.

Engrossed Substitute Senate Bill 5882 also establishes an automatic 10-year expiration date for new tax preferences if an alternate expiration date is not provided in the new tax preference legislation.

Summary of Substitute Bill:

A sales and use tax exemption is created for qualified patients that purchase marijuana or marijuana-infused products for medical use from authorized retail outlets licensed by the Liquor Control Board.

The substitute bill's tax preference performance statement specifies that the public policy objective is to provide tax relief to qualified patients purchasing marijuana for medical use. The tax preference performance statement requires the Joint Legislative Audit and Review

Committee to use data collected from the DOR on exempt sales of marijuana to evaluate the actual fiscal impact of the bill compared to the fiscal note provided to the Legislature prior to the enactment of the legislation.

The bill provides an expiration date for the sales and use tax exemption of July 1, 2024.

Substitute Bill Compared to Original Bill:

The substitute bill clarifies that a designated provider qualifies for the sales and use tax exemption when obtaining marijuana for a qualifying patient for medical use.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on July 1, 2014.

Staff Summary of Public Testimony:

(In support) This bill is an appropriate tax policy and the DOR would have no issues with administration of this legislation. The DOR believes there is no current statute to allow an exemption for marijuana sold for medical use, therefore, the legislation is necessary.

(Neutral with concerns) There is already a tax exemption in law. Cannabis is now defined as a botanical medicine so the exemption for natural botanical medicines should apply to the sale of cannabis.

The recreational stores might not be able to supply qualified patients with the medicine they need.

(Concerns) This bill is well intentioned; however, it will draw opposition because patients don't want their medicine incorporated with I-502 and will not buy their medicine from recreational stores. Medical patients should be exempt from sales tax on the purchase of their medical marijuana, but not under the I-502 model.

(Opposed) When I-502 was proposed, medical marijuana patients were told the legislation would have no impact on their use of medical marijuana. This bill and others impact medical marijuana patients. Patients should not be required to purchase their medicine from recreational stores. Full implementation of I-502 is necessary before the Legislature considers taxation options for medical marijuana use.

This bill is ineffective because the federal government classifies marijuana as a Schedule I drug, therefore marijuana remains illegal.

The state needs revenue to ensure there isn't abuse of marijuana by young people so there shouldn't be a tax exemption for any marijuana users, including medical marijuana patients.

Persons Testifying: (In support) Drew Shirk, Department of Revenue.

(Neutral with concerns) Dawn Darington, Choice Wellness Center; and David Mesford.

(Concerns) Arthur West.

(Opposed) Jerry Dierker; Steve Sarich, Cannabis Action Coalition; Seth Dawson, Washington Association for Substance Abuse Prevention; Rowan Wilson; Adam Assenberg; John Novak; Cat Jeter, Independent Cannabis Producer Cooperation; and Jeremy Robbins.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Finance. Signed by 27 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Ross, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Carlyle, Cody, Dunshee, Fagan, Green, Haigh, Haler, Harris, Hudgins, S. Hunt, Jinkins, Kagi, Lytton, Morrell, Parker, Pettigrew, Schmick, Seaquist, Springer, Sullivan, Taylor and Tharinger.

Minority Report: Do not pass. Signed by 3 members: Representatives Chandler, Ranking Minority Member; Christian and G. Hunt.

Staff: Melissa Palmer (786-7388).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Finance:

Language is added to clarify that sales to qualified patients or their designated providers and the use of marijuana by a qualified patient or designated provider obtained from a licensed retail store are exempt from the sales and use tax.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 12, 2014.

Effective Date of Second Substitute Bill: The bill takes effect on July 1, 2014.

Staff Summary of Public Testimony:

(In support) None.

(With concerns) Medical cannabis is part of an overall medical approach with a patient. Most patients do not use marijuana recreationally because they do not tolerate the effects of Tetrahydrocannabinol (THC), which is the compound that causes impairment. Patients usually use products with concentrated levels of cannabidiol, which does not have intoxicating properties. These components allow patients' conditions to improve. Some

patients are able to improve and reduce their opiate doses. Cannabis is safer than many of the pharmaceutical prescriptions that are provided to patients. There is no lethal or toxic dose of cannabis. Medical patients do not belong in I-502 outlets where they cannot discuss their medical needs. Patients do not belong in registry. The cannabis limits contained in the bill will not provide enough product for patients who prefer to juice their cannabis or those who use extracts. Patients need safe, consistent, and affordable access to cannabis. A system needs to be created that allows patients to have safe and reliable access to the cannabis they need.

Cannabis patients have conditions, such as genetic issues, that are not apparent simply by looking at them. You cannot see a person's DNA to understand their condition. A variety of products are used to treat pain, such as creams, lotions, and extracts. A lot of details need to be worked out with this policy. For example, there is no a definition for a "plant," or "flowering" versus "non-flowering." It is unclear whether lotions are "liquids" or "solids." Additionally, there is still the conflict with federal law. The federal government spends \$180,000 per day to interfere with state legal medical programs. There is mandatory minimum sentencing and people who follow state law will spend time in jail.

(Opposed) It is unlikely that patients would access their medicine through shops licensed under I-502. The economic impacts of the bill need to be reviewed as thousands of people will lose jobs. This revenue is not being sent out of state. These are commodities that are currently being produced in state. If local governments are provided funding, they will use it for more enforcement. More people will be prosecuted, which is not what the voters supported when they passed I-502. Overall, this would increase costs to the state.

Currently, medical cannabis clients have not received sales tax letters. The medical community wants to find a way to help patients. Fear is leading to misinformation. There is now peer-reviewed science refuting the lies perpetrated through this prohibition. Washington has enough moxie to end the prohibition. The U.S. Deputy Drug Czar did not dispute the fact that other legal and illegal drugs are a greater public health threat than cannabis.

Persons Testifying: (With concerns) Dr. Vivian Blanco; and Kari Boiter, Americans for Safe Access.

(Opposed) Arthur West, Cannabis Action Coalition; and Cat Jeter.

Persons Signed In To Testify But Not Testifying: None.