
Health Care & Wellness Committee

2SSB 5052

Brief Description: Establishing the cannabis patient protection act.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Rivers, Hatfield and Conway).

Brief Summary of Second Substitute Bill

- Requires licensed marijuana retailers to obtain a medical marijuana endorsement to allow them to sell medical-grade marijuana to qualifying patients and designated providers.
- Reduces the amount of marijuana that a qualifying patient may possess from 24 ounces and 15 plants to three ounces of useable marijuana, 48 ounces of solid marijuana-infused product, 216 ounces of liquid marijuana-infused product, 21 grams of marijuana concentrates, and six plants, unless a health care professional has authorized more.
- Requires qualifying patients and designated providers to be entered into the Medical Marijuana Authorization Database, established by an administrator under contract with the Department of Health, and to obtain an authorization card.
- Eliminates collective gardens and replaces them with cooperatives which may only have four qualifying patients or designated providers and must be registered with the Liquor and Cannabis Board.

Hearing Date: 3/5/15

Staff: Chris Blake (786-7392).

Background:

Regulation of Marijuana.

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

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.

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 qualifying patients to use limited amounts of marijuana for medicinal purposes. To become a qualifying patient, a person must be: (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. A qualifying patient may authorize a designated provider to obtain medical marijuana and perform other responsibilities on behalf of the qualifying patient.

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 have a designated provider grow on their behalf. They may also obtain marijuana through collective gardens which consist of up to 10 qualifying patients who share in the responsibilities of producing and processing marijuana for medical use.

In 2012 Washington voters approved Initiative 502 which established a regulatory system for the production, processing, and distribution of limited amounts of marijuana for non-medical 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 at a licensed retailer.

Federal Response to State Marijuana Regulations.

Washington is one of 23 states that have passed legislation allowing the use of marijuana for medicinal purposes and one of four states that allow its recreational use. These activities, however, remain illegal under federal law. Absent congressional action, state laws permitting the use of marijuana will not protect a person from legal action by the federal government.

In recent years, the United States Department of Justice (DOJ) has issued several policy statements regarding state regulation of marijuana. The latest of these was issued in August 2013. In this memorandum, federal prosecutors were instructed to focus investigative and prosecutorial resources related to marijuana on specific enforcement priorities to prevent:

- the distribution of marijuana to minors;
- marijuana sales revenue from being directed to criminal enterprises;
- marijuana from being diverted from states where it is legal to states in which it is illegal;
- state-authorized marijuana activity from being used as a cover for trafficking other illegal drugs or other illegal activity;
- violence and the use of firearms in the production and distribution of marijuana;
- drugged driving and other marijuana-related public health consequences;
- the growth of marijuana on public lands; and
- marijuana possession or use on federal property.

The memorandum maintains that the DOJ has not historically prosecuted individuals in cases that pertain to the possession of small amounts of marijuana for personal use on private property. With respect to state laws that authorize marijuana production, distribution, and possession, the memorandum asserts that when these activities are conducted in compliance with strong and effective regulatory and enforcement systems, there is a reduced threat to federal priorities. In those instances, the memorandum provides that state and local law enforcement should be the primary means of regulation. The memorandum, however, continues to affirm its authority to challenge the regulatory system and to bring individual enforcement actions in cases in which state enforcement efforts are inadequate.

Summary of Bill:

The name of the Liquor Control Board is changed to the Liquor and Cannabis Board (LCB).

Licensed Medical Marijuana Producers, Processors, and Retailers.

Application forms for marijuana producers must ask the applicant if he or she intends to produce marijuana for marijuana retailers with a medical marijuana endorsement. The LCB must reconsider the limits on the amount of space permitted for marijuana production and increase the size to account for marijuana producers that intend to produce marijuana for qualifying patients for purchase through marijuana retailers with a medical marijuana endorsement. If currently licensed marijuana producers do not participate at a level sufficient to meet the new production limit, the LCB may accept applications from new applicants who agree to grow marijuana for qualifying patients for purchase through marijuana retailers with a medical marijuana endorsement.

A licensed marijuana retailer may receive a medical marijuana endorsement to allow the marijuana retailer to sell marijuana for medical use to qualifying patients and designated providers. The LCB must reconsider the maximum number of marijuana retail outlets and accept applications from new applicants if necessary to accommodate the medical needs of qualifying patients and designated providers. A marijuana retailer with a medical marijuana endorsement:

- may not allow authorization activities to occur at the retail outlet;
- must carry marijuana concentrates and marijuana-infused products that meet Department of Health (DOH) requirements for sale to qualifying patients and designated providers;
- may not use labels or marketing for marijuana products in ways that make them intentionally attractive to minors; and
- must comply with LCB and Department of Revenue requirements for keeping qualifying patient and designated provider records for tax exemption purposes.

The LCB's licensing process for marijuana producer, processor, and retailer licenses must be comprehensive, fair, and impartial evaluations of applications. The LCB must develop a competitive, merit-based application process that allows applicants to demonstrate experience and qualifications in the marijuana industry, including operating a collective garden, having a business license, and remitting sales tax.

The DOH must establish requirements for marijuana products to be sold in marijuana retailers with a medical marijuana endorsement. The standards must address tetrahydrocannabinol (THC) and cannabidiol (CBD) concentrations and ratios appropriate for qualifying patients, testing and patient needs, labeling, safe handling, and employee training.

Marijuana retailers with a medical marijuana endorsement may allow qualifying patients between 18 and 21 years of age to enter and remain in the retail outlet and to purchase products for their own medical use. Qualifying patients who are under 18 years of age may enter and remain in the retail outlet, but not make purchases, if accompanied by their designated providers. The LCB may conduct controlled purchase programs to determine whether marijuana retailers, marijuana retailers with medical marijuana endorsements, collective gardens, and cooperatives are in compliance with applicable age requirements. Marijuana retailers may conduct in-house controlled purchase programs. A person under 21 years of age who purchases or attempts to purchase marijuana is guilty of a misdemeanor. The misdemeanor provision does not apply to a person who is between 18 and 21 years old who: (1) has an authorization card and is purchasing at a marijuana retailer with a medical marijuana endorsement; or (2) is participating in a controlled purchase program.

Marijuana retailers with a medical marijuana endorsement must train employees on the general legal requirements of LCB regulations, the recognition of valid authorization cards, and the identification of persons under 21 years of age. Employees must also be trained to assist customers with the selection of marijuana products through the recognition of strains, varieties, THC concentration, CBD concentration, and THC to CBD ratios.

Marijuana concentrates must be covered in the LCB's rules related to production, processing, and packaging; standards for ingredients and quality; labeling and advertising; transportation; and seizure, confiscation, and destruction methods.

By December 1, 2015, the DOH must develop recommendations regarding the establishment of medical marijuana specialty clinics that both authorize and dispense marijuana for medical use.

Authorization to Use Marijuana for Medical Purposes.

As of July 1, 2016, qualifying patients and designated providers must obtain an authorization card and be entered into the Medical Marijuana Authorization Database (Database). Qualifying patients or designated providers must present their authorization cards to law enforcement officers to receive arrest protection. The age to be a designated provider is increased from 18 to 21. Parents and guardians of qualifying patients who are under age 18 will be the youth's designated provider once they receive an authorization card and are entered into the Database.

The amount of marijuana that qualifying patients and designated providers may possess is reduced from 15 marijuana plants and a combination of useable marijuana and marijuana product that does not exceed 24 ounces to an amount specified by the qualifying patient's health care professional, but not to exceed 15 plants and 16 ounces of useable cannabis. In the absence of a specifically recommended amount, a qualifying patient or designated provider may purchase a combination of up to 48 ounces of solid marijuana-infused product, 216 ounces of liquid marijuana-infused product, 21 grams of marijuana concentrates, three ounces of useable cannabis, six marijuana plants, and eight ounces of usable marijuana derived from their plants.

As of July 1, 2016, valid documentation will no longer be used to determine proof of authorization to use marijuana for medical purposes and will be replaced with authorization cards. Authorization cards are issued by health care professionals in accordance with DOH requirements. The requirements must include a unique identifying number; a photograph of the

cardholder; the amount of marijuana concentrates, useable marijuana, marijuana-infused products, or plants that have been authorized; the effective date and expiration date; the name of the authorizing health care professional; and security measures. Authorization cards are valid for one year for qualifying patients 18 years of age or older and six months for qualifying patients under 18 years of age. Qualifying patients may not be reentered into the Database unless they have been reexamined by a health care professional and issued a new authorization card.

The DOH must contract with an administrator to establish and maintain the Database. The administrator must consult with the DOH, stakeholders, and others with relevant experience, such as qualifying patients, designated providers, health care professionals, law enforcement, and the Security and Privacy Laboratory at the University of Washington or other cyber security firms. The Database must be secure and confidential. The Database must be operational by July 1, 2016. The Database must allow health care professionals to add qualifying patients and designated providers and the amount of authorized marijuana concentrates, useable marijuana, marijuana-infused products, and plants.

Information in the Database may only be shared with:

- persons authorized to prescribe or dispense controlled substances for the purpose of providing medical care to their patients;
- qualifying patients and designated providers for the purpose of accessing their own information or information about any person or entity that has asked for their information;
- local, state, tribal, and federal law enforcement or prosecutorial officials for the purpose of confirming the validity of a qualifying patient's or designated provider's authorization card pursuant to a specific investigation;
- marijuana retailers holding a medical marijuana endorsement for the purpose of confirming the validity of an authorization card;
- the Department of Revenue for the purpose of verifying tax exemptions; and
- the DOH and health professions' boards and commission acting as disciplining authorities for the purpose of monitoring authorizations and compliance by health care professionals.

The Database is exempt from the Public Records Act. Information from the Database may only be released in aggregate form with all personally identifiable information redacted.

Until the Database is operation, health care professionals who issue authorizations to more than 30 patients per month must report the number of authorizations to the DOH.

Standards for Health Care Professional Authorization Activities.

Health care professionals may only provide services related to authorizing the medical use of marijuana in their permanent physical location of business and physical examinations must be conducted in person. Health care professionals must advise qualifying patients on the types of marijuana products to look for and how to use the marijuana product. Health care professionals may not sell marijuana products, except for the sale or donation of topical, noningestable products with a THC concentration less than 0.3 percent to qualifying patients.

A health care professional may authorize marijuana for a qualifying patient who is less than 18 years old if the minor's parent or guardian agrees and participates in the minor's treatment and the parent or guardian is the minor's designated provider and has control over the minor's supply

of marijuana. The health care professional must reexamine the minor qualifying patient at least every six months and consult with other health care providers treating the minor qualifying patient.

Cooperatives and Home-Based Activities.

Collective gardens may continue to exist until July 1, 2016, however, no person under 21 years old may participate in them or receive marijuana from them. As of July 1, 2016, the authority to establish collective gardens is eliminated and replaced with cooperatives. A cooperative may have up to four qualifying patients or designated providers who share responsibility for acquiring and supplying resources to produce and process marijuana for their medical use. All members of the cooperative must hold authorization cards and may only participate in one cooperative. Members who grow plants as part of a cooperative may not grow plants anywhere else.

Members of a cooperative may only grow as much as the combined total number of plants that all of the members are authorized to grow, up to a maximum of 60 plants. Nothing produced or processed by a cooperative may be sold or donated to any person who is not a member of the cooperative.

The location of the cooperative must be registered with the LCB and the cooperative members may only grow and process marijuana at that location. The location of the cooperative must be the domicile of one of the members and be more than 15 miles from a marijuana retailer. If a qualifying patient or designated provider withdraws from the cooperative, the former member must notify the LCB within 15 days and no new members may join that cooperative for 60 days.

The LCB may adopt rules related to security at cooperatives and traceability of marijuana grown in cooperatives. The LCB may inspect cooperatives to determine compliance.

Qualifying patients or designated providers growing marijuana plants at home are limited to only 15 plants at the address. None of the activities may occur if the public or another private residence can view or smell the marijuana. The LCB must adopt rules to allow qualifying patients and designated providers to extract or separate resin from marijuana using noncombustible methods.

Certified Medical Marijuana Consultants.

A certificate program is established by the DOH for medical marijuana consultants. A medical marijuana consultant may practice in a marijuana retailer with a medical marijuana endorsement. A medical marijuana consultant may assist customers with the selection of marijuana products to benefit particular terminal or debilitating medical conditions, describe the risks and benefits of those products and different methods of administration, and advise customers about the safe handling and storage of those products. The DOH must approve training and education programs that address: medical conditions that constitute a terminal or debilitating condition, short- and long-term effects of the use of cannabinoids, products that may benefit qualifying patients, risks and benefits of various methods of administration, safe handling and storage of marijuana products, and subjects required to ensure the ability to provide evidence-based and medically accurate advice.

Tax Exemptions Related to Certain Marijuana Products.

Sales and use tax exemptions are created for certain marijuana concentrates, useable marijuana, and marijuana-infused products. The exemptions apply to:

- the sale or use of products that meet the DOH's standards for marijuana for medical use or have a low THC concentration when a qualifying patient or designated provider purchases them from or is provided them at no charge by a marijuana retailer with a medical marijuana endorsement;
- the sale or use of products that have low THC to high CBD ratio that are sold by a marijuana retailer to a customer;
- the sale or use of topical, noningestable products with low THC concentration when purchased from or provided at no charge by a health care professional;
- the sale of products with low THC concentration that are sold by a collective garden; and
- the use of products with low THC concentration that are used by a cooperative.

Cooperatives are exempt from the business and occupations tax. A tax preference performance statement is made related to the policy for exempting sales of marijuana for medical use when authorized by a health care professional and purchased at a marijuana retailer that holds a medical marijuana endorsement.

Appropriation: None.

Fiscal Note: Requested on 2/27/2015.

Effective Date: The bill takes effect 90 days after the adjournment of the session in which the bill is passed, except for sections 21, 22, 32, and 33 relating to the Medical Marijuana Authorization Database, collective gardens, and controlled purchase programs which take effect immediately; and sections 12, 19, 20, 23, 24, 25, 30, 34, and 44 relating to age restrictions and employee training in marijuana retailers with a medical marijuana endorsement, authorization activities by health care professionals, unlawful activity, arrest protection, revocation of designated provider status, and the repeal of collective gardens and affirmative defense provisions which take effect July 1, 2016.