

SENATE BILL REPORT

SB 5887

As of January 21, 2014

Title: An act relating to the medical use of cannabis.

Brief Description: Concerning the medical use of cannabis.

Sponsors: Senators Rivers, Tom and Litzow.

Brief History:

Committee Activity: Ways & Means: 4/16/13, 1/16/14 [w/oRec-HLTH].

Health Care: 1/21/14.

SENATE COMMITTEE ON WAYS & MEANS

Staff: Dean Carlson (786-7305)

SENATE COMMITTEE ON HEALTH CARE

Staff: Kathleen Buchli (786-7488)

Background: Medical Use of Marijuana. In 1998 voters approved Initiative 692 which permitted the use of marijuana for medical purposes by qualifying patients. The Legislature subsequently amended the chapter on medical use of marijuana in 2007, 2010, and 2011. In order to qualify for the use of medical marijuana, patients must have a terminal or debilitating medical condition such as cancer, the human immunodeficiency virus, multiple sclerosis, intractable pain, glaucoma, Crohn's disease, hepatitis C, nausea or seizure diseases, or a disease approved by the Medical Quality Assurance Commission, and the diagnosis of this condition must be made by a health care professional. The health care professional who determines that a person would benefit from the medical use of marijuana must provide that patient with valid documentation written on tamper-resistant paper.

Qualifying patients who hold valid documentation may assert an affirmative defense at trial that they are authorized medical cannabis patients. These patients are not currently provided arrest protection.

Patients may grow medical marijuana for themselves or designate a provider to grow on their behalf. Designated providers may only provide for one patient at a time, must be 18 years of age, and must be designated in writing by the qualifying patient to serve in this capacity.

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.

There is no age limit for patients. Qualified patients and their designated providers may possess no more than 15 marijuana plants and 24 ounces of useable marijuana product. Up to ten qualified patients may pool resources and grow marijuana for their personal medical use by creating and participating in collective gardens.

No state agency is provided with regulatory oversight of medical marijuana. The Department of Health (DOH) does provide guidance to its licensees who recommend the medical use of marijuana, and is the disciplinary authority for its providers who authorize the medical use of marijuana in violation of the statutory requirements. DOH does not perform investigations until a complaint is made that someone is unlawfully authorizing the medical use of marijuana. There are no statutory licensing or production standards for medical marijuana and there are no provisions for taxation of medical marijuana sales.

Recreational Use of Marijuana. In 2012 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 (LCB) issues licenses to marijuana producers, processors, and retailers and adopts standards for the regulation of these operations. Persons over 21 years of age 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.

The operating budget passed in the 2013 legislative session contains a proviso that requires LCB to work with DOH and the Department of Revenue (DOR) to address medical use of cannabis in light of legalization of the recreational use of cannabis and develop recommendations for the Legislature regarding the interaction of medical marijuana regulations and the provisions of Initiative 502. As requested, recommendations on age limits, collective gardens, taxation issues, oversight of health care professionals, and possession amounts were developed. In general the recommendations integrated the medical and recreational systems into one licensing system. LCB must retain authority over licensees and develop a medical marijuana endorsement for those licensees who choose to provide medical products to qualifying patients. DOH must retain authority over the health care professionals and will develop a registry to verify qualifying patients and designated providers. Patients and providers must be entered into the registry by their authorizing health care professional, but the recommendations suggest that they be provided with additional benefits not available to those people in the recreational market. These include the ability to possess up to three ounces of useable marijuana, to be able to grow up to six plants in their own homes, and the ability to purchase marijuana without paying sale and use taxes.

Other recommendations of the workgroup include allowing 18 to 20 year olds to have access to medical marijuana; allowing access to medical marijuana for children under 18 years old with parent or guardian consent; allowing access to the registry for law enforcement, DOR, and health professions disciplining authorities; requiring DOH to define debilitating and intractable pain; and eliminating collective gardens.

Federal Response to State Marijuana Regulations. Washington is one of 20 states that have passed legislation allowing the use of marijuana for medicinal purposes, and one of two 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 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 bill as referred to committee not considered.

Summary of Bill: DOH must develop a Medical Marijuana Registry (Registry) and issue authorization cards to qualifying patients and their designated providers. The Registry must allow health care professionals to enter qualifying patients or designated providers; law enforcement officers and marijuana retailers to confirm the validity of authorization cards; DOR to verify tax-exempt purchases; and DOH to monitor entries and ensure health care professional compliance. After a health care professional enters a qualifying patient or designated provider into the Registry, DOH must issue an authorization card to that person. Authorization cards are valid for one year and when they expire, the patient or provider must seek reauthorization and reentry into the Registry. Authorization cards must include the patient or provider's name, the name of the patient the provider is assisting, the effective and expiration dates of the verification card, and the name of the health care professional who entered the patient in the Registry. The Registry must ensure patient and provider privacy, and ensure that patient information is not subject to the Public Disclosure Act.

A qualifying patient or designated provider who holds an authorization card is provided with arrest protection; may possess up to 8 ounces of useable marijuana, 48 ounces of marijuana-infused product in solid form, and 216 ounces of marijuana-infused product in liquid form; and may grow up to six marijuana plants for the personal medical use of the qualifying patient or up to 15 marijuana plants if those plants are certified as having a tetrahydrocannabinol concentration of less than .5 percent. Marijuana retailers who hold an endorsement and sell to patients are exempt from the 25 percent excise tax collected at the point of sale, and patients and providers with valid authorization cards are provided a sales and use tax exemption.

Collective gardens are eliminated as of July 30, 2016.

LCB must develop a medical marijuana endorsement to retail licenses. A licensed marijuana retailer who holds a marijuana endorsement may sell to qualifying patients 18 years of age and older and designated providers 21 years of age or older; and sell up to three ounces of useable marijuana, 48 ounces of marijuana-infused product in solid form, and 216 ounces of marijuana-infused product in liquid form. The retailer must also carry useable marijuana and marijuana-infused products with a cannabidiol level identified by LCB as appropriate for medical use. Marijuana retailers who hold a medical marijuana endorsement may indicate on their retail sign that they hold an endorsement by adding a green cross to the sign.

In issuing retail licenses, LCB must consider the number of marijuana retail stores holding medical endorsements necessary to meet the medical needs of qualifying patients and allowing for a number of such stores to be solely medical. In determining how licenses will be allocated to applicants, LCB must include a preference for those stores that are applying for a medical marijuana endorsement and that intend to be solely medical. Marijuana retailers who apply for a medical marijuana endorsement must indicate in their application whether they intend to sell recreational and medical, or solely medical.

Thirty percent of the excise tax collected from marijuana retailers at the point of sale must be distributed to counties and towns for the purposes of law enforcement and public safety activities. Revenue from marijuana excise taxes that had been directed to the Basic Health Plan are redirected as follows: 16 percent to the University of Washington and 16 percent to Washington State University to fund research; and 15 percent to DOH to fund the Registry.

Health care professionals may authorize the medical use of marijuana to persons under the age of 18 if the minor's parent or guardian participates in the minor's treatment and agrees to the medical use by the minor, and the parent or guardian has sole control over the minor's medical marijuana. However, the minor may possess up to the amount of that minor's next dose. Minors may not grow plants nor may they purchase from a marijuana retailer. Health care professionals who authorize the medical use of marijuana for a minor must consult with other health care providers involved in the child's treatment as medically indicated and reexamine the child at least once per year or more frequently as medically indicated.

DOH must convene a workgroup including the Medical Quality Assurance Commission, the Board of Osteopathic Medicine and Surgery, the Nursing Care Quality Assurance Committee, and the Board of Naturopathy. The workgroup must develop practice guidelines for health care professionals to consider when authorizing the medical use of marijuana. DOH must make these practice guidelines broadly available to health care professionals.

It is a class C felony to produce any record purporting to be valid documentation or backdate valid documentation; produce a verification card or tamper with a verification card; or sell, donate, or otherwise provide marijuana obtained for a qualifying patient to another person.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on January 19, 2014.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony (Ways & Means): None.

Persons Testifying (Ways & Means): No one.