

HOUSE BILL REPORT

ESSB 5004

As Reported by House Committee On:
Finance

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

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

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Keiser, Warnick, Conway, Das, King, Kuderer, Saldaña and Wilson, C.).

Brief History:

Committee Activity:

Finance: 3/16/21, 3/25/21 [DPA], 2/22/22, 2/24/22 [DPA].

**Brief Summary of Engrossed Substitute Bill
(As Amended By Committee)**

- Exempts sales of medical marijuana products to qualifying patients from the 37 percent marijuana excise tax until June 30, 2027.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass as amended. Signed by 14 members: Representatives Frame, Chair; Berg, Vice Chair; Orcutt, Ranking Minority Member; Chase, Chopp, Harris-Talley, Morgan, Orwall, Ramel, Springer, Stokesbary, Thai, Vick and Wylie.

Minority Report: Do not pass. Signed by 1 member: Representative Dufault, Assistant Ranking Minority Member.

Minority Report: Without recommendation. Signed by 1 member: Representative Walen, Vice Chair.

Staff: Rachelle Harris (786-7137).

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.

Background:

Marijuana Excise Tax.

Retail sales of marijuana concentrates, usable marijuana, and marijuana-infused products are subject to an excise tax of 37 percent. The tax is in addition to state and local sales and use taxes. Revenues from this tax are deposited into the Dedicated Marijuana Account.

Qualifying Medical Marijuana Patients.

A Washington resident qualifies for medical marijuana use if they are a patient of a health care professional, have been diagnosed with a terminal or debilitating medical condition, have been advised of the benefits and risks of marijuana use, and have been advised they may benefit from the use of medical marijuana by their health care professional.

The qualifying patient must either have an authorization form from their health care professional, or must be entered into the medical marijuana authorization database and receive a recognition card.

All medical marijuana patients must pay the marijuana excise tax equal to 37 percent. Qualifying patients holding a recognition card are granted a sales tax exemption on the following products, when sold by a marijuana retailer who has a medical marijuana endorsement:

- marijuana concentrates, useable marijuana, or marijuana-infused products, identified by the Department of Health to be beneficial for medical use; and
- products containing tetrahydrocannabinol (THC) with a THC concentration of 0.3 percent or less.

Medical Marijuana Endorsement.

Marijuana retailers may apply to the Liquor and Cannabis Board (LCB) for an endorsement to sell marijuana for medical use to qualifying patients and designated providers.

To qualify for this endorsement, the retailer must:

- carry marijuana concentrates and infused products that have been identified as beneficial for medical use;
- enter qualifying patients and designated providers in a medical marijuana database;
- issue medical marijuana patient recognition cards;
- keep records of qualifying patients and designated providers' recognition cards;
- ensure all employees are trained on medical marijuana, including the ability to identify authorizations and recognition cards; and
- enter information about medical sales in the traceability system.

Tax Preference Performance Statement.

State law provides for a range of tax preferences that confer reduced tax liability upon a designated class of taxpayer. Tax preferences include tax exclusions, deductions, exemptions, preferential tax rates, deferrals, and credits. Currently, Washington has over

650 tax preferences, including a variety of sales and use tax exemptions. Legislation that establishes or expands a tax preference must include a Tax Preference Performance Statement that identifies the public policy objective of the preference, as well as specific metrics that the Joint Legislative Audit and Review Committee (JLARC) can use to evaluate the effectiveness of the preference. All new tax preferences automatically expire after 10 years unless an alternative expiration date is provided.

Summary of Amended Bill:

Sales of compliant medical marijuana products by a retailer with a medical marijuana endorsement to qualifying patients or designated providers are exempt from the 37 percent marijuana excise tax until June 30, 2027.

Each seller making exempt sales must maintain information establishing eligibility for the exemption in the form and manner required by the LCB. The LCB must provide a separate tax reporting line on the excise tax form for exemption amounts claimed. The LCB must consult with the JLARC to determine if there is additional information on sales that sellers must report to the LCB.

The JLARC must review the exemption to identify changes in consumer behavior and to determine whether the exemption results in an unanticipated decrease in state revenue. The JLARC must report its findings to the Legislature by December 1, 2025.

Amended Bill Compared to Engrossed Substitute Bill:

The bill as recommended by the Finance Committee adds a requirement that the LCB consult with the JLARC on relevant reporting information needed for JLARC review.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect on January 1, 2023.

Staff Summary of Public Testimony:

(In support) The 37 percent excise tax has resulted in a lot of market-avoidance by patients who need medical cannabis products. Many stores no longer carry medical products since the sales have decreased. The bill has a sunset clause and also a study to understand the budget impacts. No other medications have an excise tax imposed on them. More and more patients are staying out of the regulated market because it does not serve their needs.

Patients stay away because of cost, fear of inadequate testing, and the lack of relevant products in the market. Chronically ill patients are often poor but have much of the highest need for well-regulated products. Many retailers give patients an automatic 10 percent reduction on medical sales, but that doesn't guarantee the access to appropriate products. Medical marijuana is expensive to grow and expensive to test. Medical marijuana helps dramatically with brain cancer patients, but it can be a major financial strain. The LCB sees a substantial need to strengthen medical cannabis to help improve availability and reliability of products. This bill might help testing labs expand their capacity to do effective heavy metal testing.

(Opposed) None.

Persons Testifying: Senator Karen Keiser, prime sponsor; Lara Kaminsky, The Cannabis Alliance; Danielle Rosellison, Trail Blazin Productions; Hana Keefe-Guerrero; and Chris Thompson, Washington State Liquor and Cannabis Board.

Persons Signed In To Testify But Not Testifying: None.