

HOUSE BILL REPORT

HB 1614

As Reported by House Committee On:
Regulated Substances & Gaming

Title: An act relating to the home cultivation of cannabis.

Brief Description: Concerning the home cultivation of cannabis.

Sponsors: Representatives Kloba, Ormsby, Doglio, Goodman, Wylie, Fosse, Gregerson, Morgan and Reed.

Brief History:

Committee Activity:

Regulated Substances & Gaming: 2/2/23, 2/16/23 [DP].

Brief Summary of Bill

- Authorizes adults age 21 and over to produce up to six cannabis plants on the premises of their housing unit, subject to production and possession limits and other restrictions and conditions.
- Establishes class 3 civil infractions related to plants or cannabis being visible within the ordinary public view or readily smelled.
- Establishes class 1 civil infractions related to the unsafe storage of homegrown cannabis.
- Prohibits home grows by family day care providers and foster family homes, retains landlords' rights to prohibit home grows, and modifies the real property forfeiture statute as it applies to cannabis.
- Prohibits the investigation and enforcement of home grow requirements by the Liquor and Cannabis Board, except for mutual law enforcement assistance upon request in certain circumstances.

HOUSE COMMITTEE ON REGULATED SUBSTANCES & GAMING

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.

Majority Report: Do pass. Signed by 7 members: Representatives Kloba, Co-Chair; Wylie, Co-Chair; Stearns, Vice Chair; Morgan, Orwall, Reeves and Waters.

Minority Report: Do not pass. Signed by 2 members: Representatives Chambers, Ranking Minority Member; Robertson, Assistant Ranking Minority Member.

Minority Report: Without recommendation. Signed by 2 members: Representatives Cheney and Walsh.

Staff: Peter Clodfelter (786-7127).

Background:

It is legal for an adult age 21 or over to purchase and possess any combination of the following types and amounts of cannabis products:

- 1 ounce of useable cannabis;
- 16 ounces of cannabis-infused product in solid form;
- 72 ounces of cannabis-infused product in liquid form; and
- 7 grams of cannabis concentrate.

State law does not authorize adults age 21 or over to possess any cannabis plants, and doing so is punishable as a class C felony under the Controlled Substances Act. However, if a person is a qualifying patient or designated provider, the person may possess and grow a limited number of cannabis plants in their domicile and possess a limited amount of cannabis produced from those plants in accordance with the Washington State Medical Use of Cannabis Act (WSMUCA). A qualifying patient or designated provider may extract or separate the resin from cannabis using noncombustible methods when done in compliance with the Liquor Control Board's rules governing this activity.

For purposes of a 15-plant limit per housing unit, the WSMUCA defines "housing unit" as a house, apartment, mobile home, group of rooms, or a single room occupied as separate living quarters, in which the occupants live and eat separately from any other persons in the building, and which have direct access from the outside of the building or through a common hall.

In general, illegally manufacturing a controlled substance can result in seizure and forfeiture of the real property on which the manufacturing occurs. However, the possession of cannabis may not result in the forfeiture of real property unless the cannabis is possessed for commercial purposes that are unlawful under Washington law, the amount possessed is five or more plants or 1 pound or more of cannabis, and a substantial nexus exists between the possession of cannabis and the real property.

The maximum penalty and the default amount for a class 3 civil infraction is \$50, not including statutory assessments. The maximum penalty and the default amount for a class 1 civil infraction is \$250, not including statutory assessments, except for an infraction of state

law involving specified violations that include a larger monetary fine. Generally, district courts have jurisdiction over civil infractions.

Summary of Bill:

Adults age 21 and over may legally produce and possess up to six cannabis plants and cannabis from the plants on the premises of the housing unit occupied by the person, subject to restrictions. The quantity of cannabis and cannabis products a person may produce or possess is subject to the following limits:

- A person may not possess cannabis capable of being processed into useable cannabis, cannabis-infused products, or cannabis concentrates, unless the person possesses fewer than 16 ounces of useable cannabis, irrespective of source.
- A person may not produce or possess a total of more than 16 ounces of cannabis-infused products in solid form, irrespective of source.
- A person may not produce or possess a total of more than 72 ounces of cannabis-infused products in liquid form, irrespective of source.
- A person may not produce or possess a total of more than 7 grams of cannabis concentrates, irrespective of source.

No more than 15 plants may be grown at any one time on the premises of a single housing unit. All plants must be clearly marked with the name, residential address, and date of birth of the person growing the plants, and the date on which the plants were planted. All containers containing more than 1 ounce of useable cannabis, and all cannabis capable of being processed into useable cannabis, cannabis-infused products, or cannabis concentrate must be clearly marked with the name, date of birth, and residential address of the person who grew the plants from which the cannabis is derived, the date the plants were planted, and the date the plants were harvested. Any containers containing 1 ounce or less of useable cannabis are not required to be labeled.

Any extraction or separation of resin from cannabis and any production or processing of any form of cannabis concentrates or cannabis-infused products must be performed in accordance with rules governing how qualifying patients and designated providers may currently engage in these activities.

It is provided that the new authorization does not restrict a property owner from prohibiting the cultivation of plants by a renter or lessee upon or within the property under the terms of a rental agreement or other contract. Additionally, no production, processing, or possession of plants or cannabis from the plants may occur in a housing unit that is used to provide early childhood education and early learning services by a family day care provider or a foster family home.

A person age 21 or older who possesses cannabis under the new authorization is considered an ultimate user who may not sell cannabis or cannabis products produced from the person's

plants, and is not required to obtain a registration related to manufacturing, distributing, or dispensing controlled substances, and is not required to hold a cannabis license issued by the Liquor and Cannabis Board (LCB).

It is a class 3 civil infraction for:

- the production, processing, or possession of plants or cannabis from those plants to result in cannabis being readily smelled from a public place or the private property of another housing unit; or
- a person to produce or possess plants or cannabis from those plants if the plants or cannabis are visible within the ordinary public view.

For purposes of the new class 3 civil infraction, the term "ordinary public view" is defined as within the sight line with normal visual range of a person, unassisted by any elevating devices, visual aids, or manned or unmanned aircraft, from a public street or sidewalk adjacent to real property, or from within an adjacent property.

It is a class 1 civil infraction for a person who stores or leaves cannabis that was produced on the premises of the housing unit in a location where the person knows, or reasonably should know, that a person under age 21 may have access to the cannabis, if a person under age 21 obtains access and possession of the cannabis and is convicted of the crime of driving or being in physical control of a motor vehicle after consuming cannabis involving the consumption of the home-produced cannabis. This offense is classified as Community Endangerment Due to Unsafe Storage of Homegrown Cannabis in the first degree, with a maximum penalty and default amount of \$750.

It is also a class 1 civil infraction for a person who stores or leaves cannabis that was produced on the premises of the housing unit in a location where the person knows, or reasonably should know, that a person under age 21 may have access to the cannabis, if a person under age 21 obtains access and possession of the cannabis and the person under age 21 is found in possession of the cannabis off of the premises of the housing unit at which the cannabis was produced or the person under age 21 is found to have consumed the cannabis on or off the premises of the housing unit at which the cannabis was grown. This offense is classified as Community Endangerment Due to Unsafe Storage of Homegrown Cannabis in the second degree, with a maximum penalty and default amount of \$250.

However, neither of the new class 1 civil infractions for unsafe storage of home grown cannabis apply if either: (1) the cannabis was in a securely stored area, or secured in a locked, secured container; or (2) the cannabis was obtained by a person under age 21 who did not reside in the housing unit or have permission from the owner or lawful occupant to enter the housing unit. Additionally, a prosecuting attorney may decline to prosecute a violation even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose or would defeat the purpose of the law.

The LCB is granted authority to provide mutual law enforcement assistance to a law

enforcement agency with primary territorial jurisdiction investigating or enforcing requirements of the proposed home grow law, if such a law enforcement agency requests mutual law enforcement assistance under the authority of law. Otherwise, the LCB has no authority or responsibility to investigate or enforce requirements of the proposed home grow law. However, it is provided that nothing limits the LCB's authority to enforce Washington law related to commercial cannabis production, processing, or sales, when there is evidence of a violation of other provisions of the Uniform Controlled Substances Act (UCSA).

The production, possession, delivery, and acquisition of plants or cannabis capable of being processed into useable cannabis or cannabis products under the home grow authorization may not form the basis of a seizure and forfeiture action. The forfeiture statute is amended to provide that the acquisition, delivery, production, or possession of cannabis or cannabis products, including in accordance with the new authorization, may not result in forfeiture of real property unless the cannabis is possessed for commercial purposes that are unlawful under Washington law, the amount possessed is 16 or more plants or, except as allowed under the home grow authorization, more than 1 pound of cannabis, and a substantial nexus exists between the possession of cannabis and the real property.

A definition of "commercial activity" is added to the UCSA. It means an activity related to or connected with buying, selling, or bartering.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Washington was the first state to legalize cannabis, but did not include home grows. Almost all other states with legal adult-use cannabis do authorize home grows. These other states have conducted the experiment for Washington and proven home grows can safely be allowed without disrupting the commercial market, posing safety risks, or leading to youth harms. Most of these states allow adults to grow six plants, while a state allows 12 plants, and another three plants. This bill takes into account youth access and provides for responsibility for owners of cannabis plants. There are civil penalties proposed for unsafe storage of home produced cannabis, modeled on firearms laws, which gives a measure of responsibility to the owner. There is an exception to the safe storage firearm law related to access when a child is being supervised, which should be added to this context to not miss an education opportunity. The limit of six plants is a personal, noncommercial amount. Crime or youth use have not increased in other states. Colorado

allows home grows and still has higher per capita sales in the regulated cannabis market. People who will choose to grow cannabis are motivated by a love for growing the plant, not economics. Growing cannabis successfully is challenging, and only enthusiasts will undertake the activity. The bill is important for social equity. The current felony penalty for home growing cannabis is more likely to fall on persons of color. Stop criminalizing mundane user activity. The bill has necessary guardrails to safely allow the activity. The bill is overly restrictive, which is okay if that alleviates concerns to enable the policy. Many voters who supported Initiative 502 (2012) (I-502) wished I-502 had legalized home grows. Commercial cannabis farms do not grow lower yield varieties of cannabis preferred by some consumers and consumers seek to produce their own. Cannabis is relatively safe and less harmful than alternatives. It is legal to home brew beer. Home producing cannabis will allow the plant to be normalized once people can see and touch it. It is time to move past prohibition and into a new era.

(Opposed) The current framework of a well-regulated commercial market should be maintained. Public safety threats plague cannabis retailers and creating a way for those threats and crimes to possibly follow people home should be avoided. If a home grow policy advances, consider strengthening the proposal. Change the part about not mandating how or where home grown cannabis should be produced. Consider Nevada's law requiring home grown cannabis to be in an enclosed area with a lock or security device. Also consider Nevada's law not allowing home grows when a person is within 25 miles of a cannabis retailer, to deter home growing when someone has access to the regulated market. The prevention community has concerns with youth access and community safety. Voters wanted a regulated system by passing I-502 and the system is working. Cannabis-related bills continue to propose expansions, but people engaged with prevention and community wellness at the local level struggle to keep up with need for services.

(Other) Legalizing home grows is long past due and should have been in I-502. But the bill needs adjusting. Reduce the proposed \$750 civil penalty for unsafe storage of cannabis to below \$500, which is the amount of a civil penalty for a firearms-related violation.

Persons Testifying: (In support) Representative Shelley Kloba, prime sponsor; Kevin Oliver, National Organization for the Reform of Marijuana Laws; Burl Bryson and Caitlein Ryan, The Cannabis Alliance; John Kingsbury; Bailey Hirschburg; Micah Sherman, Raven; Arthur West; Branden Bond; and Jim MacRae.

(Opposed) Taylor Gardner, Washington Association of Sheriffs and Police Chiefs; and Linda Thompson, Washington Association for Substance Misuse and Violence Prevention.

(Other) Don Skakie, Homegrow Washington.

Persons Signed In To Testify But Not Testifying: None.