

SENATE BILL REPORT

HB 1563

As of March 20, 2023

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

Brief Description: Concerning arrest protections for the medical use of cannabis.

Sponsors: Representatives Kloba, Simmons, Cheney, Peterson, Ramel, Ormsby, Reeves, Reed, Macri, Fitzgibbon, Gregerson, Rude and Wylie.

Brief History: Passed House: 3/3/23, 63-32.

Committee Activity: Labor & Commerce: 3/20/23.

Brief Summary of Bill

- Extends criminal and civil protections, rather than an affirmative defense, to qualifying patients or designated providers holding a valid authorization for the medical use of cannabis.
- Specifies the cannabis possession limit for an individual who is both a qualifying patient and designated provider for another qualifying patient.

SENATE COMMITTEE ON LABOR & COMMERCE

Staff: Matt Shepard-Koningsor (786-7627)

Background: Medical Use of Cannabis. State law allows persons 21 years of age or older to purchase limited quantities of cannabis from a licensed retailer for recreational use. Specific types of health care professionals may authorize a qualifying patient's medical use of cannabis, which increases the patient's possession limit, permits home cultivation of cannabis plants, and provides certain legal protections not afforded to recreational users. An authorization is a form developed by the Department of Health that is completed and signed by the health care professional and printed on tamper-resistant paper. An authorization is not a prescription.

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.

A qualifying patient is a person who:

- is a patient of a health care professional who has been diagnosed by the health care professional as having a terminal or debilitating medical condition;
- is a Washington resident at the time of diagnosis;
- has been advised by the health care professional about the risks and benefits of the medical use of cannabis and that the person may benefit from the medical use of cannabis;
- has an authorization from the health care professional, or has been entered into the medical cannabis authorization database (database) and has been provided a recognition card; and
- is otherwise in compliance with the Medical Use of Cannabis Act.

A designated provider is a person who:

- is at least 21 years old;
- is designated in writing by a qualifying patient to serve as the designated provider for the patient or, if the qualifying patient is under age 18, is the qualifying patient's parent or legal guardian; and
- has an authorization from the qualifying patient's health care provider.

Medical Cannabis Authorization Database. *Qualifying Patient or Designated Provider with a Recognition Card.* A qualifying patient or designated provider who has a valid authorization may choose whether to enter into the database and receive a recognition card. The recognition card includes the qualifying patient or designated provider's photograph, the amount of cannabis the qualifying patient or designated provider may possess, the name of the health care professional who provided the authorization, and other relevant information.

A qualifying patient or designated provider who is entered into the database may purchase or obtain a combination of:

- 48 ounces of cannabis-infused product in solid form;
- three ounces of usable cannabis;
- 216 ounces of cannabis-infused product in liquid form; or
- 21 grams of cannabis concentrates.

The qualifying patient or designated provider who is entered into the database and holds a recognition card may also grow, in their domicile, up to six plants for their personal medical use and possess up to eight ounces of usable cannabis produced from such plants. A health care professional may specify additional amounts are recommended, which allows the patient to grow up to 15 plants, except as allowed for medical cannabis cooperatives, and possess up to 16 ounces of usable cannabis from such plants. The number of plants must be noted in the database and specified on the recognition card. If a person is both a qualifying patient and a designated provider for another qualifying patient, the person may possess no more than twice the amounts described above, regardless of whether the cannabis products

are possessed individually or in combination between the patient and their provider.

A qualifying patient or designated provider who is entered into the database and has a recognition card may not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences for certain violations of state law relating to the use and possession of cannabis. These protections apply if:

- the qualifying patient or designated provider:
 1. is entered into the database, holds a valid recognition card, and possesses no more than the authorized amounts of cannabis products and plants;
 2. presents their recognition card, upon request, to any investigating law enforcement officer;
 3. keeps a copy of the recognition card and relevant contact information posted prominently next to any cannabis products and plants; and
- an investigating law enforcement officer does not have evidence indicating the qualifying patient or designated provider violated certain enumerated requirements.

The protections also apply if the qualifying patient or designated provider participates in a medical cannabis cooperative.

Qualifying Patient or Designated Provider without a Recognition Card. A qualifying patient or designated provider with a valid authorization but not entered into the database and without a recognition card is not granted the same criminal and civil protections. However, under certain circumstances, such a qualifying patient or designated provider may raise an affirmative defense at trial for certain violations of state law regarding the use and possession of cannabis. A qualifying patient or designated provider must prove, by a preponderance of the evidence, they otherwise meet relevant requirements under state law.

A qualifying patient or designated provider with a valid authorization but not entered into the database and without a recognition card may only purchase the amounts of cannabis allowed to be purchased by a recreational cannabis user under the Uniform Controlled Substances Act. Such a qualifying patient or designated provider may grow, in their domicile, up to four plants for their personal medical use, and possess up to six ounces of usable cannabis in their domicile.

Summary of Bill: A qualifying patient or designated provider who has a valid authorization, but is not entered into the database and does not have a recognition card may not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences for certain violations of state law regarding the use and possession of cannabis. To receive these protections, the qualifying patient or designated provider must:

- possess no more than the authorized amount of cannabis products and plants;
- present the authorization, upon request, to any investigating law enforcement officer; and
- have a copy of the authorization and relevant contact information posted prominently next to any cannabis products and plants.

A person who is both a qualifying patient and a designated provider for another qualifying patient may possess no more than 15 cannabis plants located in any one housing unit that is not an authorized medical cannabis cooperative.

The affirmative defense afforded to qualifying patients and designated providers who have a valid authorization, but are not entered into the database and do not have a recognition card, is eliminated.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony: PRO: This bill attempts to correct an inequity where two qualifying patients have an authorization for the medical use of cannabis but where one chooses to be in the registry and the other does not, different protections apply. This bill extends arrest protections to individuals outside of the registry, which are not currently allowed because of the time when Washington only had a medical cannabis system. After Initiative 502, the medical cannabis system was left behind and is in jeopardy today. We can help save the patients by providing this protection. An affirmative defense must still be asserted at trial. Patients' gardens are being seized and destroyed, and patients are being arrested even though they possess a valid authorization and are following the law. Some patients choose not to be on the registry because of jobs or other reasons. I have benefitted from the medical use of cannabis and should not be treated as a criminal for using medical cannabis.

Persons Testifying: PRO: Representative Shelley Kloba, Prime Sponsor; Burl Bryson, The Cannabis Alliance; John Kingsbury, cannabis patient - Cannabis Alliance; Mary Brown, MA Ed, SMJ Consulting, AIMS Institute; Lisa Buchanan, RN, OCN; Steven Field, MS patient; John Worthington, AAMC.

Persons Signed In To Testify But Not Testifying: No one.