

HOUSE BILL REPORT

ESSB 6032

As Reported by House Committee On:
Health Care & Wellness

Title: An act relating to medical use of marijuana.

Brief Description: Concerning the medical use of marijuana.

Sponsors: Senate Committee on Health & Long-Term Care (originally sponsored by Senators Kohl-Welles, McCaslin, Kline, Regala and Keiser).

Brief History:

Committee Activity:

Health Care & Wellness: 3/26/07, 3/28/07 [DPA].

Brief Summary of Engrossed Substitute Bill
(As Amended by House Committee)

- Authorizes law enforcement officers to obtain no more than a representative sample of a patient's marijuana when possessed in accordance with medical marijuana laws.
- Directs the Department of Health to adopt rules to define a presumptive quantity of marijuana for medical use.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: Do pass as amended. Signed by 10 members: Representatives Cody, Chair; Morrell, Vice Chair; Barlow, Campbell, Curtis, Green, Moeller, Pedersen, Schual-Berke and Seaquist.

Minority Report: Do not pass. Signed by 3 members: Representatives Hinkle, Ranking Minority Member; Alexander, Assistant Ranking Minority Member and Condotta.

Staff: Chris Blake (786-7392).

Background:

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.

Marijuana is classified as a Schedule I substance under the Controlled Substances Act (CSA). Schedule I substances are characterized as having a high potential for abuse, no 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.

In 1998, Washington voters approved Initiative 692, the Medical Use of Marijuana Act (Act), which creates an affirmative defense to the violation of state laws relating to marijuana if the individual uses and possesses it for medicinal purposes. Qualifying patients, or their designated primary caregivers, may establish the defense if they only possess the amount of marijuana necessary for their personal use, up to a 60-day supply, and if they present valid documentation to law enforcement officers. "Qualifying patients" are those who have been: (1) diagnosed with a terminal or debilitating medical condition; (2) advised by a physician about the risks and benefits of the medical use of marijuana; and (3) that they may benefit from such use. "Primary caregivers" are individuals who are responsible for the housing, health, or care of a patient and they may assist the patient with the medical use of the patient's marijuana.

Washington is one of 11 states that has passed legislation allowing the use of marijuana for medicinal purposes. Under federal law, however, such activities violate the CSA. Absent congressional action, state laws permitting the use of marijuana for medicinal purposes will not protect an individual from legal action by the federal government.

Summary of Amended Bill:

The term "primary caregiver" is replaced with "designated provider." The difference between the two terms is that "designated providers" are not expressly responsible for the housing, health, or care of a patient. Designated providers no longer have to present evidence of their designation as a primary caregiver to establish a defense for violations of state marijuana laws, however, the written designation is still an element of the definition of "designated provider."

The Department of Health (Department) is directed to adopt rules by January 1, 2008 to define the quantity of marijuana that could be presumed to constitute a 60-day supply for qualifying patients. The presumption can be overcome with evidence of the necessary medical use required by an individual qualifying patient. The Department must also submit a report to the Legislature regarding efficient access to an adequate, safe, consistent, and secure source of medical marijuana for qualifying patients.

If a law enforcement officer determines that a person's possession of marijuana is lawful under the Act, the officer may document the amount, but not seize the marijuana except for a representative sample for testing. Law enforcement officers are not to be held civilly liable for not seizing the marijuana.

The requirement that a physician statement declare that the potential benefits of the medical use of marijuana would likely outweigh the health risks for the patient is reduced to a statement by the physician that the patient may benefit from the medical use of marijuana. A copy of the physician statement has the same force and effect as the signed original.

The term "terminal or debilitating medical condition" is expanded to expressly include:

- Crohn's disease with debilitating symptoms that cannot be relieved by standard treatments or medications;
- Hepatitis C with debilitating nausea or intractable pain unrelieved by standard treatments or medications; or
- diseases which result in nausea, vomiting, wasting, appetite loss, cramping, seizures, muscle spasms, or spasticity when the symptoms cannot be relieved by standard treatments.

Any determination by the Medical Quality Assurance Commission (Commission) of which other conditions should be considered "terminal or debilitating medical conditions," shall be made in consultation with the Board of Osteopathic Medicine and Surgery. Petitions to the Commission may be made by any individual, not just patients and physicians.

Correctional facilities are added to the list of places where the on-site medical use of marijuana does not need to be accommodated.

Amended Bill Compared to Engrossed Substitute Bill:

The amended bill removes the definition of "production." The Department report regarding access to medical marijuana is due on January 1, 2008 instead of July 1, 2008. It is clarified that the 60-day supply would be applied to patients generally instead of individual patients. It specifies that designated providers may not consume marijuana obtained for the patient.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony:

(In support) Polls show strong support for the use of medical marijuana. It is compassionate to allow those who are very sick or dying to have access to the benefits of medical marijuana. This bill clarifies several ambiguities in the current law. There have been several cases that have weakened the state's medical marijuana laws and this bill will solidify protections for the sick and dying to relieve their suffering. This will help clarify the law for physicians so that they may understand how much medical marijuana they may recommend for their patients. Science demonstrates that marijuana can be beneficial for relieving the pain of some patients. Patients should feel assured to know that they will not face jail time for taking the

medications that they need. This bill does not expand or restrict current law, but it clarifies it to help patients comply. Defining what constitutes a 60-day supply of medical marijuana will provide statewide consistency for law enforcement and patients.

(With concerns) Patients need to be able to medicate without feeling like a criminal.

(Opposed) There is no safe place for patients to receive their supply of medical marijuana and this bill does nothing to protect patients from inappropriate acts of law enforcement. This bill takes decision-making away from physicians. This bill does not do anything meaningful for patients. Patients need protections for group growing because there is no other way for patients to access medical marijuana. Collectives should be provided for in the bill so that people know where to go to receive marijuana.

Persons Testifying: (In support) Senator Kohl-Welles, prime sponsor; Senator McCaslin; Tim Killian; Martin Martinez, Washington League of Patients; Bill Robertson, Washington Poison Center; and Tom McBride, Washington Association of Prosecuting Attorneys.

(With concerns) Michelle Smith and Joanna McKee, Greencross; Richard Brender; and Joan Legaspi.

(Opposed) Steve Sarich, Cannacare; Doug Hiatt; Allison Bigelow; and Don Hogan.

Persons Signed In To Testify But Not Testifying: Ric Smith; Jim Flynn; Dr. Greg Carter; Jon Graves; Jeff Gimore; Kristie Choate; Ron Vicjuie; Michael Graybill, Tiffany O'Connor; Steve Newman; Ronald Mivec, Greencross; Peewee Herandy, Lifevine; Sunil Aggarwal; Margrett Denny, Greencross; Frank Bayley; Robert Whorton; Marcos Chavez; Greg West; Rodney Gardewhitel; Kelley Akins; Steve Duboque; J. Magic Ferguson; Grammas for Ganja; and Brian Narruhu.