# HOUSE BILL REPORT
# E2SSB 5073

**As Passed House - Amended:**
April 11, 2011

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

**Brief Description**: Concerning the medical use of cannabis.

**Sponsors**: Senate Committee on Ways & Means (originally sponsored by Senators Kohl-Welles, Delvin, Keiser, Regala, Pflug, Murray, Tom, Kline, McAuliffe and Chase).

**Brief History:**
**Committee Activity:**
Health Care & Wellness: 3/14/11, 3/23/11 [DPA];
Ways & Means: 3/30/11, 3/31/11 [DPA(WAYS w/o HCW)].
**Floor Activity:**
Passed House - Amended: 4/11/11, 54-43.

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

- Establishes a regulatory system for producing, processing, and dispensing cannabis intended for medical use.
- Establishes protections from criminal liability, including arrest and prosecution protection, and an affirmative defense for certain qualifying patients, designated providers, health care professionals, licensed producers, licensed processors, and licensed dispensers.
- Establishes a voluntary registry in which qualifying patients and designated providers may enroll and receive protection from arrest and prosecution.

## HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

**Majority Report**: Do pass as amended. Signed by 6 members: Representatives Cody, Chair; Jinkins, Vice Chair; Clibborn, Green, Moeller and Van De Wege.

**Minority Report**: Do not pass. Signed by 5 members: Representatives Schmick, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Bailey, Harris and Kelley.

---

*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.*

**Staff**: Chris Blake (786-7392).

## HOUSE COMMITTEE ON WAYS & MEANS

**Majority Report**: Do pass as amended by Committee on Ways & Means and without amendment by Committee on Health Care & Wellness. Signed by 14 members: Representatives Hunter, Chair; Darneille, Vice Chair; Hasegawa, Vice Chair; Carlyle, Cody, Dickerson, Haigh, Hunt, Kagi, Kenney, Ormsby, Pettigrew, Springer and Sullivan.

**Minority Report**: Do not pass. Signed by 13 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Chandler, Haler, Hinkle, Hudgins, Parker, Ross, Schmick, Seaquist and Wilcox.

**Staff**: Amy Skei (786-7109).

**Background**:

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, 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 providers, may establish the defense if they only possess the amount of marijuana necessary for their personal use 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.

Qualifying patients may grow medical marijuana for themselves or designate a provider to grow on their behalf. Designated providers may only provide medical marijuana to one patient at a time. Qualifying patients and their designated providers are limited to possession of an amount of marijuana that is necessary for the patient's personal medical use, and not exceeding 15 plants and 24 ounces of useable marijuana.

Washington is one of 15 states that have 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. The United States Department of Justice has recently issued a statement of policy that it would not focus its resources on pursuing individuals who are in compliance with state laws for the medicinal use of marijuana.

**Summary of Amended Bill**:

Generally.

The Washington State Medical Use of Marijuana Act is renamed the "Washington State Medical Use of Cannabis Act." All references to "marijuana" are changed to "cannabis." "Cannabis" is defined to include all parts of the plant *Cannabis*, seeds of the plant, resin extracted from the plant, and compounds of the plant, seeds, and resin.

Producers and Processors.

A regulatory system is established for the Department of Agriculture (DOA) to issue credentials to licensed producers (producers) and licensed processors of cannabis products (processors). "Producers" are licensed to plant, grow, or harvest cannabis for medical use for wholesale to licensed dispensers and processors. A producer may plant, grow, harvest, process, package, transport, label, wholesale, and possess cannabis for medical use.

"Processors" are licensed to manufacture, process, handle, and label cannabis products for wholesale to dispensers. A processor may possess, manufacture, produce, package, transport, label, or wholesale cannabis products intended for medical use by qualifying patients. Cannabis products include products that contain cannabis or cannabis extracts, have a tetrahydrocannabinol (THC) content greater than 0.3 percent, and are intended for human consumption or application.

The DOA shall administer the licensing program for producers and processors, including adopting rules, performing licensing functions, conducting inspections, and sanctioning license holders following a hearing. By January 1, 2013, the DOA must adopt rules related to medical cannabis intended for medical use including inspection and grading standards for cannabis analysis laboratories; standards for containers; labeling requirements; transportation requirements; security requirements for the facilities of producers and processors; and licensing and fee requirements for producers and processors. The DOA may also adopt rules on facility standards, measurements for cannabis intended for medical use, and methods to identify cannabis intended for medical use.

Producers and processors must submit samples of cannabis they have grown or processed to a cannabis analysis laboratory on a regular schedule. The samples must be analyzed for grade, condition, profile, THC concentration, and other measures and inspection standards.

Dispensers.

A regulatory system is established for the Department of Health (DOH) to issue credentials to licensed dispensers (dispensers). "Dispensers" are defined as persons that are licensed to dispense cannabis for medical use to qualifying patients and designated providers. Dispensing activities include delivering, distributing, transferring, packaging, labeling, selling at retail, and possessing cannabis for medical use by qualifying patients such as seeds, cuttings, plants, useable cannabis, or cannabis products.

By January 1, 2013, the DOH must adopt rules related to dispensers, including licensing standards, inspections, sanctioning procedures, recordkeeping requirements, standards for dispensing containers, storage and security requirements, labeling requirements, facility

standards, maximum amounts for the premises, sanitary standards for facilities and dispensing equipment, and enforcement and fees. Dispensers may not be located within 500 feet of a community center, child care center, elementary or secondary school, or another dispenser.

The DOH must also establish a maximum number of dispenser licenses that may be issued in each county. The initial maximum number shall be established according to a ratio of one dispenser for every 20,000 people. After January 1, 2016, the DOH may base the number upon other factors, including the number of qualifying patients and designated providers enrolled in the registry. If the number of applicants exceeds the maximum number of allowable dispensers for the county, the licenses shall be issued according to a random selection process for those applicants that meet established screening criteria. Dispenser licenses are not transferrable.

Registration System.

By January 1, 2013, the DOH, in consultation with the DOA, shall establish a secure and confidential registration system in which health care professionals may register qualifying patients. Participation in the registry is voluntary for qualifying patients and their designated providers. Law enforcement must be able to consult the registry to verify whether a person or an address is registered. Prior to seeking a nonvehicle search warrant or arrest warrant, an investigating law enforcement officer must make reasonable efforts to determine whether or not the person or location under investigation is in the registry. The consultation requirement does not apply to situations involving an unlicensed cannabis operation, the observation of other illegal drugs, the theft of electrical power, the commission of a noncannabis-related felony, the existence of an outstanding warrant, or the observation of activity consistent with commercial activity by an unlicensed dispenser. The registry must include producer, processor, and dispensary information. The registry shall be funded through fees charged to those who register.

Prohibitions and Protections.

It is neither a crime nor unprofessional conduct for health care professionals to advise patients regarding the medical use of cannabis and provide a patient with valid documentation. In addition, health care professionals are provided protection from search, arrest, and prosecution when conducting these activities. Health care professionals may only provide valid documentation or registration for patients with whom they have a documented relationship and only after performing a physical examination, informing the patient of other options, and documenting the medical condition and other attempted treatments. Several acts are considered unprofessional conduct for a health care professional including receiving payment from, or having a financial interest in, a producer, processor, or dispenser; having a business that consists solely of authorizing the use of medical cannabis; or using references to the medical use of cannabis in advertising.

Specific protections from arrest and prosecution are established for qualifying patients and designated providers who engage in the medical use of cannabis and law enforcement agencies that fail to seize cannabis. The protections apply if the qualifying patient or designated provider: (1) possesses no more than 15 plants and 24 ounces of either useable

cannabis, cannabis product, or a combination of the two; (2) presents proof of enrollment in the DOH registry to any peace officer; and (3) keeps a copy of proof of registration next to any cannabis at the person's residence. In addition, the designated provider must not have served as a designated provider to more than one qualifying patient within a 15-day period and there must not be evidence that a designated provider has converted medical cannabis for his or her personal use or benefit. Qualifying patients and designated providers who are not enrolled in the DOH registry, but possess valid documentation may assert an affirmative defense at trial if all other elements of the protections have been met.

A qualifying patient may not be refused housing for possession or use of medical cannabis and the use of medical cannabis may not be the sole disqualifying factor in organ transplant decisions. Qualifying patients and designated providers may not have their parental rights limited due to their use of medical cannabis.

Up to 10 qualifying patients may participate in a collective garden to produce and process medical cannabis for medical use. The collective garden may have up to 15 plants per patient up to a maximum of 45 plants and 24 ounces of useable cannabis per patient up to a total of 72 ounces and may only be delivered to the other participating qualifying patients.

Producers are prohibited from selling or delivering cannabis to any person other than a cannabis analysis laboratory, a processor, a dispenser, or a law enforcement officer. Processors are prohibited from selling or delivering cannabis to any person other than a cannabis analysis laboratory, a licensed dispenser, or a law enforcement officer. Dispensers may only sell cannabis that they have received from producers or processors and they may only sell to qualifying patients, designated providers, producers, or law enforcement officers. Prior to selling or delivering cannabis to a patient or designated provider, the dispenser must contact the patient's health care provider to confirm the patient's qualification for obtaining cannabis for medical use. Violations of sales and delivery prohibitions by producers, processors, and dispensers are a class C felony.

Until the DOH and DOA licensing programs begin, dispensaries and producers that are registered with the Secretary of State as of May 1, 2011, and file a letter of intent to become licensed with either the DOH or the DOA may assert an affirmative defense if charged with a cannabis-related crime. Letters of intent are not subject to public disclosure. The transition period ends once the licensing programs are operational, and they must become licensed at that time to continue in business.

Advertising cannabis for sale to the general public in a way that promotes the use or abuse of cannabis is prohibited. Producers, processors, and dispensers may be fined for such advertising. Media sources are not subject to penalties for disseminating advertising in good faith without knowledge that the advertising promotes the use or abuse of cannabis.

Studies.

By July 1, 2014, the Washington State Institute for Public Policy shall conduct a cost-benefit evaluation of the bill. The evaluation must consider access to an adequate, safe, consistent, and secure source of cannabis for medical use; contact and involvement with law enforcement by qualifying patients and designated providers; diversion of cannabis for

medical use to nonmedical uses; incidents of property crimes with qualifying patients accessing cannabis for medical use; and the authorizing practices of health professionals.

In the event that the federal government takes action to authorize the medical use of cannabis the Joint Legislative Audit and Review Committee must conduct a review of the cannabis production and dispensing system. The study shall be provided to the Legislature within a year of the federal action and shall address whether or not the state's cannabis production and dispensing system is necessary under the federal system.

The University of Washington and Washington State University may conduct scientific research on the efficacy and safety of administering cannabis as part of medical treatment. The research may study the medical safety of cannabis and include the development of medical guidelines for the use and administration of cannabis.

**Appropriation**: None.

**Fiscal Note**: Available.

**Effective Date of Amended Bill**: The bill takes effect 90 days after the adjournment of the session in which the bill is passed, except for section 1002, relating to research on the medical use of cannabis, which takes effect January 1, 2013.

**Staff Summary of Public Testimony** (Health Care & Wellness):

(In support) This bill has bi-partisan sponsorship and support in the Senate. The medical marijuana laws currently have many gray areas. Qualifying patients must have safe, secure, and reliable access to the medication that helps them. There needs to be a bright line for law enforcement to know who is a qualifying patient. This bill provides a safe system for regulating dispensaries, producers, and processors. The bill creates a registry for qualifying patients and dispensers to provide a voluntary, secure system of protecting legitimate participants in the medical marijuana system. There needs to be legitimate means for patients to access their source of medication. There has been a lot of frustration from both law enforcement and patients with the current system and there needs to be an open, public conversation about how to address dispensaries. This bill should be passed with an amendment to exempt qualifying patients from arrest even if they do not participate in the registry and to eliminate the restrictions on the relationship between health care providers and their patients. The bill's emphasis on the existence of a relationship between the patient and the authorizing physician is a good step, as are the restrictions on advertising. The bill's parenting protections for qualifying patients fixes a problem for parents who need medical marijuana. More physician education is needed. This legislation adds clarity and uniformity among local governments. While the dispensary model is not perfect, it is the only model that currently works. While the arrest protections are helpful, low-income patients may not have the resources to participate in the registry. Most communities do not welcome dispensaries and this bill will help establish dispensaries and cooperatives in places where patients are located. This bill will bring greater transparency and accountability.

(With concerns) The bill currently does not provide arrest protections for legitimate patients who are not on the registry and they will fear being arrested, booked, and prosecuted. There

is no arrest protection until the registry is functioning, which will not be for several years. The DOA needs to have a director with expertise in medicinal marijuana. There needs to be more work on the time schedule. Medical marijuana is causing increasing conflicts between dispensaries and local governments because of the ambiguity in state law. The advertising ban on print media is constitutionally ambiguous. This bill needs to give clarification about dispensaries so that patients have safe places to get medical marijuana.

This bill goes a long way to providing clarity, especially through the licensing requirements which will reduce the black market. The provisions regarding local zoning and licensing are in conflict and need to be corrected. The bill prohibits the Department of Corrections from sanctioning an offender under community supervision for using, possessing, or growing in compliance with the bill which may be in conflict with the current process for allowing offenders to use medical marijuana.

(Opposed) This bill goes too far in providing protection from prosecution to producers by only allowing for prosecution as an unranked penalty. This is still a federal crime and the next time the federal administration changes, this system could be subject to criminal liability. Because this distribution system is outside of the traditional health system, there are not adequate safeguards for patients to ensure that they have high quality care. Pharmacists have years of training and they can recognize drug reactions and other potential concerns that dispensaries cannot protect against. This bill could reduce the perception among children that marijuana is harmful. This should be constructed as a medical model, rather than a commercial model, and should be dispensed through pharmacies, not stores. The bill should include a study of the impacts on youth. The Legislature has recently reduced funding for substance abuse prevention in schools and communities. Contracts at the Department of Commerce contain federal restrictions that prevent a medical marijuana system from being effective. The Legislature should hold hearings to determine the correct scheduling of marijuana. The current law needs to be fixed, but this bill goes too far. This bill eliminates any chance of a doctor writing a recommendation for a patient. Medical marijuana should be viewed as a medical specialty. This bill wipes out existing dispensaries and does not create any new ones until July 2014. There is no need to rush this bill since it has the potential to harm communities. There is not a need for a registry as long as the state develops a standardized authorization form.

**Staff Summary of Public Testimony** (Ways & Means):

(In support) This bill has bipartisan sponsorship and support. The bill is necessary to remove several ambiguities in the current medical cannabis laws for both patients and law enforcement. There are currently many dispensaries around the state that are unregulated. This bill is a necessary starting point for bringing the medical cannabis system into the light. The current system regarding the production and distribution of medical cannabis lacks clarity. Dispensaries are stuck in a legal gray area which costs local government money. This bill will create a rational regulatory system and support local governments. Local governments are shutting down dispensaries because the current law is not clear. This bill will support a stable and sustainable system for obtaining medical cannabis. Dispensaries should not be for profit entities. Medical cannabis patients are willing to pay to support the system. There will likely be an immediate increase in revenue once the bill passes and dispensaries are legitimate. The patient registry will generate savings to law enforcement.

Patients should not be required to register with the state in order to avoid criminal liability. The state has an obligation to ensure safe access to cannabis. There is a lot of money in medical cannabis, and within two years this bill will balance the state's budget. There needs to be safe and legal access to medical cannabis. Doctors need to be able to advertise, so that patients can be informed. There should not be a cap on the number of dispensaries, but if there must be a cap it would be better to base the number on the population of the county.

(In support with concerns) If this is a medicine, then pharmacies should be the dispensaries through a prescription to minimize the abuse by youth. In Colorado there were too many dispensaries and too strong of an impact on youth. Medical marijuana is extremely promising when it comes to pain control and is a cost-effective treatment. The provisions regarding the doctor-patient relationship are not workable.

(With concerns) It is inappropriate to use the Health Professions Account for this purpose since licensed dispensers are not health professions. If the start-up funds do not come back to the Health Professions Account, it could cause problems for the funding of small health professions. The first year funding and the fees are necessary for proper implementation. There should be a more robust definition of "cannabis analysis laboratories" and standards for the disposal of excess samples. The definition of a "designated provider" remains vague. The timing of the rulemaking is problematic. The random selection process for dispensaries will be challenging and costly to implement because of the lack of data regarding the sales of cannabis. The random selection process should be removed because there is a need for experienced people running the dispensaries. There are an estimated 100,000 patients in Washington using medical cannabis; however, the current ambiguity is causing chaos. If this bill does not pass, the industry will be driven further underground. The provisions limiting the number of dispensaries and the lottery to select them could leave high quality dispensary candidates out in the cold.

(Opposed) Law enforcement should not be exempt from having to pay for the registry. Washington can determine which drugs should be controlled substances. This bill will only raise the price of medical marijuana. The numbers and the dates in the fiscal note do not match up. The Department of Health's fiscal note is unreasonably high. The bill needs to allow specialized health care professionals to see patients. All patients should receive arrest protection regardless of their registration status. Scarce law enforcement resources can be maximized by encouraging the use of the registry. The number of dispensaries should not be based on the number of people on the registry because there is little incentive to register.

**Persons Testifying** (Health Care & Wellness): (In support) Senator Kohl-Welles, prime sponsor; Senator Delvin; Alison Holcomb, American Civil Liberties Union; John Schochet, Seattle City Attorney's Office; Charles Heaney, King County Medical Society; Sharon Blackford; Karen Hamilton; Randall Lewis, City of Tacoma; Loren Bailey; and Jeff Gilmore.

(With concerns) Rachel Kurtz, Cannabis Defense Coalition; Joanna Mckee; Ezra Eickmeyer, Philip Dawdy, and Laura Healy, Washington Cannabis Association; Anthony Gibbs; Brian Enslow, Washington State Association of Counties; and Anna Aylward, Department of Corrections.

(Opposed) Don Pierce, Washington Association of Sheriffs and Police Chiefs; Russ Hauge, Washington Association of Prosecuting Attorneys; Jeff Rochon, Washington State Pharmacy Association; Seth Dawson, Washington Association for Substance Abuse Prevention; John Worthington, American Alliance for Medical Cannabis; Ken Martin, Washington Association for Medical Cannabis Providers; Steve Sarich, Cannacare; Steve Mansfield, Lewis County Sheriff's Office; and Don Skakie, Cannabis Defense Coalition.

**Persons Testifying** (Ways & Means): (In support) Senator Kohl-Welles, prime sponsor; Senator Delvin; John Schochet, City of Seattle; Layla Bush; Alison Holcomb, American Civil Liberties Union of Washington; Ivan Schwarz; Jeff Gilmore; Melissa Lunsford, CBR Medical, Inc.; and Kent Underwood, Washington Defenders Association and Washington Association of Criminal Defense Lawyers.

(In support with concerns) Seth Dawson, Washington Association of Substance Abuse Prevention; and Robert Billings, American Heritage.

(With concerns) Lori Bulinski, Washington State Chiropractors Association; Melissa Johnson, Washington State Nurses Association; Carolyn Logue, Washington Denturist Association; Tom Davis and Mary Toohey, Washington Department of Agriculture; Brian Peyton, Department of Health; Dale Rogers, Greta Carter, and Ezra Eickmeyer, Washington Cannabis Association.

(Opposed) Valtino M. Hicks, Northwest Alliance for the Healing Cure; John Worthington, American Alliance for Medical Cannabis; Steve Sarich, Cannacare; Matthew Smith, Washington Health, Inc.; Jo Arlow, Washington Association of Sheriffs and Police Chiefs; and Don Skakie, Cannabis Defense Coalition.

**Persons Signed In To Testify But Not Testifying** (Health Care & Wellness): More than 20 persons signed in. Please see committee staff for information.

**Persons Signed In To Testify But Not Testifying** (Ways & Means): None.