

HOUSE BILL REPORT

HB 2198

As Reported by House Committee On: Finance

Title: An act relating to providing tax relief to qualifying patients for purchases of marijuana for medical use.

Brief Description: Providing tax relief to qualifying patients for purchases of marijuana for medical use.

Sponsors: Representatives Carlyle, Appleton, Cody and Haigh.

Brief History:

Committee Activity:

Finance: 1/15/14, 1/30/14 [DPS].

Brief Summary of Substitute Bill

- Provides a sales and use tax exemption for 10 years for qualified patients who purchase marijuana for medical use.
- Includes a tax preference performance statement describing the specific public policy objective of the legislation as well as the data and metrics for measuring the legislation's effectiveness in achieving the public policy objective.

HOUSE COMMITTEE ON FINANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Carlyle, Chair; Tharinger, Vice Chair; Nealey, Ranking Minority Member; Orcutt, Assistant Ranking Minority Member; Condotta, Fitzgibbon, Hansen, Lytton, Reykdal, Springer, Vick and Wilcox.

Minority Report: Do not pass. Signed by 1 member: Representative Pollet.

Staff: Richelle Geiger (786-7175).

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 for Medical Use.

Marijuana is classified as a Schedule I substance under the Controlled Substances Act (CSA). Under the 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 under federal law.

In 1998 Washington voters approved Initiative 692 to allow certain patients to use limited amounts of marijuana for medicinal purposes. To become a "qualifying patient," a person must have been: (1) diagnosed with a terminal or debilitating condition; (2) advised by a health care professional about the risks and benefits of the medical use of marijuana; and (3) advised by a health care professional that he or she may benefit from the medical use of marijuana.

Qualifying patients and designated providers are protected from arrest or prosecution under state laws relating to marijuana if the individual uses and possesses it for medicinal purposes, does not exceed specified amounts, and meets other criteria. Qualifying patients may grow marijuana themselves or designate a provider to grow on their behalf. They may also obtain marijuana through collective gardens, which consist of groups of up to 10 qualifying patients who share in the responsibilities of producing and processing marijuana for medical use.

Marijuana for Recreational Use.

In 2012 Washington voters approved Initiative 502 (I-502), which established a regulatory system for the production, processing, and distribution of limited amounts of marijuana for nonmedical purposes. Under this system, the Liquor Control Board issues licenses to marijuana producers, processors, and retailers and adopts standards for the regulation of these operations. Persons over 21 years old may purchase up to one ounce of useable marijuana, 16 ounces of solid marijuana-infused product, and 72 ounces of liquid marijuana-infused product.

Initiative 502 established a marijuana excise tax at each level of production. These excise taxes are in addition to the state's business and occupation tax and retail sales tax.

Retail sales taxes are imposed on retail sales of most articles of tangible personal property, digital products and some services. A retail sale is a sale to the final consumer or end user of the property, digital product or service. If retail sales taxes were not collected when the user acquired the property, digital products or services, then use taxes apply to the value of property, digital product or service when used in this state. The state, most cities and all counties levy retail sales and use taxes. The state sales and use tax rate is 6.5 percent; local sales and use tax rates vary from 0.5 percent to 3.1 percent, depending on the location.

Liquor Control Board Work Group.

Section 141, Chapter 4, Laws of 2013, 2nd sp.s. (3ESSB 5034) directed the Liquor Control Board to work with the Department of Health and the Department of Revenue (DOR) to develop recommendations related to the interaction between the regulation of recreational marijuana and medical marijuana. The recommendations must address: age limits; authorization requirements for medical marijuana; regulation of health care professionals; collective gardens; possession amounts; location requirements; licensing requirements for

medical marijuana production, processing, and retailing; taxation of medical marijuana; and the appropriate regulatory agency.

The Liquor Control Board submitted its recommendations to the Legislature in December 2013. The recommendations include:

- allowing those 18 to 20 years old to have access to medical marijuana;
- allowing access to medical marijuana for children under 18 years old with parent or guardian consent;
- establishing a mandatory registry for qualifying patients and designated providers and cards that are issued from the registry;
- requiring registry information to be entered by the authorizing health care professional;
- allowing access to the registry for law enforcement, the DOR, and health professions disciplining authorities;
- requiring the Department of Health to define "debilitating" and "intractable pain";
- eliminating collective gardens;
- reducing possession amounts from 24 ounces of useable marijuana to three ounces;
- allowing qualifying patients and designated providers to possess up to six marijuana plants;
- integrating medical and recreational marijuana producers, processors, and retailers into a single licensing system; and
- exempting purchases by qualifying patients from sales and use taxes.

Tax Preferences.

In 2013 the Legislature passed Chapter 13, Laws of 2013, 2nd sp.s. (ESSB 5882), which requires all new tax preference legislation to include a tax preference performance statement. Tax preferences include deductions, exemptions, preferential tax rates, and tax credits. The performance statement must clearly specify the public policy objectives of the tax preference, and the specific metrics and data that will be used by the Joint Legislative Audit and Review Committee to evaluate the efficacy of the tax preference.

Engrossed Substitute Senate Bill 5882 also establishes an automatic 10-year expiration date for new tax preferences if an alternate expiration date is not provided in the new tax preference legislation.

Summary of Substitute Bill:

A sales and use tax exemption is created for qualified patients that purchase marijuana or marijuana-infused products for medical use from authorized retail outlets licensed by the Liquor Control Board.

The substitute bill's tax preference performance statement specifies that the public policy objective is to provide tax relief to qualified patients purchasing marijuana for medical use. The tax preference performance statement requires the Joint Legislative Audit and Review Committee to use data collected from the DOR on exempt sales of marijuana to evaluate the

actual fiscal impact of the bill compared to the fiscal note provided to the Legislature prior to the enactment of the legislation.

The bill provides an expiration date for the sales and use tax exemption of July 1, 2024.

Substitute Bill Compared to Original Bill:

The substitute bill clarifies that a designated provider qualifies for the sales and use tax exemption when obtaining marijuana for a qualifying patient for medical use.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect on July 1, 2014.

Staff Summary of Public Testimony:

(In support) This bill is an appropriate tax policy and the DOR would have no issues with administration of this legislation. The DOR believes there is no current statute to allow an exemption for marijuana sold for medical use, therefore, the legislation is necessary.

(Neutral with concerns) There is already a tax exemption in law. Cannabis is now defined as a botanical medicine so the exemption for natural botanical medicines should apply to the sale of cannabis.

The recreational stores might not be able to supply qualified patients with the medicine they need.

(Concerns) This bill is well intentioned; however, it will draw opposition because patients don't want their medicine incorporated with I-502 and will not buy their medicine from recreational stores. Medical patients should be exempt from sales tax on the purchase of their medical marijuana, but not under the I-502 model.

(Opposed) When I-502 was proposed, medical marijuana patients were told the legislation would have no impact on their use of medical marijuana. This bill and others impact medical marijuana patients. Patients should not be required to purchase their medicine from recreational stores. Full implementation of I-502 is necessary before the Legislature considers taxation options for medical marijuana use.

This bill is ineffective because the federal government classifies marijuana as a Schedule I drug, therefore marijuana remains illegal.

The state needs revenue to ensure there isn't abuse of marijuana by young people so there shouldn't be a tax exemption for any marijuana users, including medical marijuana patients.

Persons Testifying: (In support) Drew Shirk, Department of Revenue.

(Neutral with concerns) Dawn Darington, Choice Wellness Center; and David Mesford.

(Concerns) Arthur West.

(Opposed) Jerry Dierker; Steve Sarich, Cannabis Action Coalition; Seth Dawson, Washington Association for Substance Abuse Prevention; Rowan Wilson; Adam Assenberg; John Novak; Cat Jeter, Independent Cannabis Producer Cooperation; and Jeremy Robbins.

Persons Signed In To Testify But Not Testifying: None.