

SENATE BILL REPORT

SB 6178

As Reported by Senate Committee On:
Health Care, January 23, 2014

Title: An act relating to aligning the medical marijuana system with the recreational marijuana system.

Brief Description: Aligning the medical marijuana system with the recreational marijuana system.

Sponsors: Senators Kohl-Welles, Litzow, Keiser, Pedersen, Cleveland and Kline.

Brief History:

Committee Activity: Health Care: 1/21/14, 1/23/14 [DPS-CL, w/oRec].

SENATE COMMITTEE ON HEALTH CARE

Majority Report: That Substitute Senate Bill No. 6178 be substituted therefor, and the substitute bill do pass and be referred to Committee on Commerce & Labor.

Signed by Senators Becker, Chair; Dammeier, Vice Chair; Pedersen, Ranking Member; Angel, Bailey, Cleveland and Keiser.

Minority Report: That it be referred without recommendation.

Signed by Senator Parlette.

Staff: Kathleen Buchli (786-7488)

Background: Medical Use of Marijuana. In 1998 voters approved Initiative 692 which permitted the use of marijuana for medical purposes by qualifying patients. The Legislature subsequently amended the chapter on medical use of marijuana in 2007, 2010, and 2011. In order to qualify for the use of medical marijuana, patients must have a terminal or debilitating medical condition such as cancer, the human immunodeficiency virus, multiple sclerosis, intractable pain, glaucoma, Crohn's disease, hepatitis C, nausea or seizure diseases, or a disease approved by the Medical Quality Assurance Commission, and the diagnosis of this condition must be made by a health care professional. The health care professional who determines that a person would benefit from the medical use of marijuana must provide that patient with valid documentation written on tamper-resistant paper.

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.

Qualifying patients who hold valid documentation may assert an affirmative defense at trial that they are authorized medical cannabis patients. These patients are not currently provided arrest protection.

Patients may grow medical marijuana for themselves or designate a provider to grow on their behalf. Designated providers may only provide for one patient at a time, must be 18 years of age, and must be designated in writing by the qualifying patient to serve in this capacity. There is no age limit for patients. Qualified patients and their designated providers may possess no more than 15 marijuana plants and 24 ounces of useable marijuana product. Up to ten qualified patients may pool resources and grow marijuana for their personal medical use by creating and participating in collective gardens.

No state agency is provided with regulatory oversight of medical marijuana. The Department of Health (DOH) does provide guidance to its licensees who recommend the medical use of marijuana, and is the disciplinary authority for its providers who authorize the medical use of marijuana in violation of the statutory requirements. DOH does not perform investigations until a complaint is made that someone is unlawfully authorizing the medical use of marijuana. There are no statutory licensing or production standards for medical marijuana and there are no provisions for taxation of medical marijuana sales.

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

The operating budget passed in the 2013 legislative session contains a proviso that requires LCB to work with DOH and the Department of Revenue (DOR) to address medical use of cannabis in light of legalization of the recreational use of cannabis and develop recommendations for the Legislature regarding the interaction of medical marijuana regulations and the provisions of Initiative 502. As requested, recommendations on age limits, collective gardens, taxation issues, oversight of health care professionals, and possession amounts were developed. In general the recommendations integrated the medical and recreational systems into one licensing system. LCB must retain authority over licensees and develop a medical marijuana endorsement for those licensees who choose to provide medical products to qualifying patients. DOH must retain authority over the health care professionals and will develop a registry to verify qualifying patients and designated providers. Patients and providers must be entered into the registry by their authorizing health care professional, but the recommendations suggest that they be provided with additional benefits not available to those people in the recreational market. These include the ability to possess up to three ounces of useable marijuana, to be able to grow up to six plants in their own homes, and the ability to purchase marijuana without paying sale and use taxes.

Other recommendations of the workgroup include allowing 18 to 20 year olds to have access to medical marijuana; allowing access to medical marijuana for children under 18 years old with parent or guardian consent; allowing access to the registry for law enforcement, DOR,

and health professions disciplining authorities; requiring DOH to define debilitating and intractable pain; and eliminating collective gardens.

Federal Response to State Marijuana Regulations. Washington is one of 20 states that have passed legislation allowing the use of marijuana for medicinal purposes, and one of two states that allow its recreational use. These activities, however, remain illegal under federal law. Absent congressional action, state laws permitting the use of marijuana will not protect a person from legal action by the federal government. In recent years, the United States Department of Justice (DOJ) has issued several policy statements regarding state regulation of marijuana. The latest of these was issued in August 2013. In this memorandum, federal prosecutors were instructed to focus investigative and prosecutorial resources related to marijuana on specific enforcement priorities to prevent the distribution of marijuana to minors; marijuana sales revenue from being directed to criminal enterprises; marijuana from being diverted from states where it is legal to states in which it is illegal; state-authorized marijuana activity from being used as a cover for trafficking other illegal drugs or other illegal activity; violence and the use of firearms in the production and distribution of marijuana; drugged driving and other marijuana-related public health consequences; the growth of marijuana on public lands; and marijuana possession or use on federal property.

The memorandum maintains that DOJ has not historically prosecuted individuals in cases that pertain to the possession of small amounts of marijuana for personal use on private property. With respect to state laws that authorize marijuana production, distribution, and possession, the memorandum asserts that when these activities are conducted in compliance with strong and effective regulatory and enforcement systems, there is a reduced threat to federal priorities. In those instances, the memorandum provides that state and local law enforcement should be the primary means of regulation. The memorandum, however, continues to affirm its authority to challenge the regulatory system and to bring individual enforcement actions in cases in which state enforcement efforts are inadequate.

Summary of Bill (Recommended Substitute): DOH must develop a Medical Marijuana Verification Program (Program) and issue verification cards to qualifying patients and their designated providers. The Program must allow health care professionals to enter qualifying patients or designated providers; law enforcement officers and marijuana retailers to confirm the validity of verification cards; LCB to verify tax-exempt purchases; and DOH to monitor entries and ensure health care professional compliance. After a health care professional enters a qualifying patient or designated provider into the Program, DOH must issue an verification card to that person. Verification cards are valid for one year and when they expire, the patient or provider must seek reauthorization and reentry into the Program. Verification cards must include the patient or provider's name, the name of the patient the provider is assisting, the effective and expiration dates of the verification card, the name of the health care professional who entered the patient in the Program, and the amount of useable marijuana and plants for which the patient is authorized. The Program must ensure patient and provider privacy and ensure that patient information is not subject to the Public Disclosure Act.

A qualifying patient or designated provider who holds a verification card is provided with arrest protection; may possess up to eight ounces of useable marijuana, 48 ounces of marijuana-infused product in solid form, and 216 ounces of marijuana-infused product in

liquid form; and may grow up to 15 marijuana plants for the personal medical use of the qualifying patient. Marijuana retailers who hold an endorsement and sell to patients are exempt from the 25 percent excise tax collected at the point of sale.

Collective gardens are eliminated as of July 1, 2015.

Qualifying patients who are provided with valid documentation by their health care professional that those patients would benefit from the medical use of marijuana, but who do not sign up in the Program, may not possess greater amounts of marijuana than the amount allowed recreationally or grow for their medical use. However, valid documentation does allow a person to assert an affirmative defense to charges of violating the laws on medical marijuana by demonstrating that the person is a qualifying patient. An affirmative defense may also be asserted by qualifying patients or designated providers who exceed the statutory possession amounts if they are able to demonstrate that this greater amount is necessary for the patient's medical care.

LCB must develop a medical marijuana endorsement to retail licenses. A licensed marijuana retailer who holds a marijuana endorsement may: sell to qualifying patients 18 years of age and older and designated providers 21 years of age or older; and sell up to eight ounces of useable marijuana, 48 ounces of marijuana-infused product in solid form, and 216 ounces of marijuana-infused product in liquid form. In order to receive a medical marijuana endorsement, the retailer must ensure that there is one employee or volunteer on the premises of the retail store who is able to provide assistance to qualifying patients in the medical use of marijuana. The retailer must also carry useable marijuana and marijuana-infused products with a cannabidiol level identified by LCB as appropriate for medical use.

Marijuana excise taxes that had been directed to the Basic Health Plan are redirected to low-income health care services and mental health services.

Health care professionals may authorize the medical use of marijuana to persons under the age of 18 if the minor's parent or guardian participates in the minor's treatment and agrees to the medical use by the minor, and the parent or guardian has sole control over the minor's medical marijuana. However, the minor may possess up to the amount of that minor's next dose. Minors may not grow plants nor may they purchase from a marijuana retailer. Health care professionals who authorize the medical use of marijuana for a minor must consult with other health care providers involved in the child's treatment, and reexamine the child at least once per year or more frequently as medically indicated.

DOH must convene a workgroup to include the University of Washington, Washington State University, the Medical Quality Assurance Commission, the Board of Osteopathic Medicine and Surgery, the Nursing Care Quality Assurance Committee, the Board of Naturopathy, and persons able to demonstrate through experience and education expertise in the medical use of marijuana. The workgroup must develop evidence-based practice guidelines for health care professionals to consider when authorizing the medical use of marijuana and make these guidelines available to health care professionals.

It is a class C felony to produce any record purporting to be valid documentation or backdate valid documentation; produce a verification card or tamper with a verification card; or sell, donate, or otherwise provide marijuana obtained for a qualifying patient to another person.

The Washington State Institute for Public Policy must study access issues for qualifying patients and consult with other states to learn of their experiences relating to allowing patients and providers to grow in their homes. The study is due July 1, 2016. LCB, in conjunction with DOH, must report on the number of medical marijuana endorsements issued by LCB; the number of purchases made by qualifying patients or designated providers at marijuana retailers holding medical marijuana endorsements; the location of retail stores holding endorsements in relation to other non-endorsed stores; the need for medical-only stores; the experience of patients and providers in purchasing marijuana for their medical needs at retail stores; and recommendations to improve patient access. The LCB report is due January 1, 2016.

EFFECT OF CHANGES MADE BY HEALTH CARE COMMITTEE (Recommended Substitute): Any savings the retailer receives in the excise tax exemption must be passed to the purchaser. The requirement that health care professionals take a training established by DOH before they are able to add people to the Program is removed. DOH must develop practice guidelines and make them available to health care professionals. The amount of useable marijuana and the number of plants a patient may possess is modified: unless a health care professional recommends otherwise, a patient may purchase three ounces of useable marijuana and may grow six plants. The patient may also possess as much marijuana as may be made from three plants; a health care professional may recommend up to eight ounces and 15 plants if the professional determines that the patient requires the additional amounts. The additional amounts must be included in the Program and the amount authorized for the patient must be on the verification card. DOH must retain Program records for five years to assist in verifying tax exempt purchases. The process whereby a patient could appeal to DOH for authorization for a greater amount of marijuana than what is permitted in statute is removed.

Revenue directed under I-502 to the Basic Health Plan will be directed toward low-income health care and mental health care rather than funding research, local government law enforcement activities, the Program, and regional support networks. The section permitting group grows is removed.

Appropriation: None.

Fiscal Note: Requested on January 16, 2014.
[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill: PRO: It is important to align the recreational system with the unregulated medical marijuana system. We need to preserve access for legitimate patients to a source of medication that is safe, reliable, and secure, and

that also ensures public safety. Regulations must be based on what is rational, reasonable, and realistic. Home growing and small group grows are important, but collective gardens need to be repealed. Currently the medical cannabis market is completely unregulated which means that no one is checking to see if the medical cannabis is contaminated with pesticides, bacteria, and molds, or that the person selling the product understands how the product will impact the patient. This approach is patient focused and preserves small, legitimate collectives; preserves patient grows; and preserves affirmative defense for patients. It does not protect unregulated medical cannabis sales. Patients need to be protected, not dispensaries. This bill will allow me to grow enough to treat my son. Many people will not be able to afford marijuana from a dispensary and are also concerned that they will not be able to find the products they need in an I-502 store. In order to achieve the will expressed by the voters in passing I-502, we must reconcile the medical marijuana system to the recreational market. The medical marijuana system is so lacking in regulation that it has become a commercial marketplace, which is not consistent with the intent expressed by the voters in passing I-692. LCB and local governments share concerns about the provision that allows small collective gardens. Collective gardens will not be needed in a legitimate medical market. I-502 prevents the sale of high CBD medication in recreational stores; this is the medicine needed for patients. People will die if CBD is banned. We support the alignment of the recreational and the medical systems that include mechanisms for patient access. We support the approaches that share revenue with local governments; it is imperative that local governments be provided resources to help implement these systems. We believe the federal government will be watching closely and the state and the local governments will need to develop a partnership to ensure regulation of these markets is successful.

CON: The federal reasons for these bills do not add up; the federal government does not make a distinction between medical and recreational marijuana. I-502 was not written to work. These bills keep the shortcomings in I-502 in place. The tax structure should be modified to allow for profitability. Physicians are punished by these proposals. Decisions must be based on public process and stakeholder involvement, which has not happened here. These bills are products of a secret workgroup, and this is not what the public voted for in passing I-502. These bills will cost jobs and create a minor economic disaster in those cities with dispensaries that will be eliminated. It is appropriate to wait until next session and move forward with input from stakeholders. The Pharmacy Board says that marijuana is an herbal medicine and we already have an exemption for medical cannabis determined by the Board. If you want to get rid of recommendation mills, you can do it with two sentences. You do not need to interfere relationships between patients and doctors. People will die if they cannot get their medicine. The bills do not address the issues of patients who need more medicine from plants and who do not have the funds to spend on medicine. These bills are taking patients' vested Constitutional and civil rights. These bills are not patient friendly and go against the intent of I-692 and I-502. There is no need for a registry when possession of small amounts of marijuana is permitted. LCB is not equipped to address medical marijuana.

OTHER: We want to make sure that patients have safe, reliable, and affordable access to products that will actually help them. The recreational system is being created and the medical system is being squeezed into the recreational system without considering the needs of medical patients. We are concerned that the medical interests of patients will be overrun. We believe that a deregulated medical system will not be able to stand side by side with a

recreational system and we want to provide assistance in developing this legislation. The Legislature must get this right this year and there is no more time for delay. The I-502 system is not ready to incorporate the medical system. We need a transition period for collective gardens. We support appropriated regulation that provides a practical approach and appropriate methodology in regulating the medical system. I-502 stores will underserve the recreational users and we are concerned about levels of care for the medical patients.

Persons Testifying: PRO: Senator Kohl-Welles, prime sponsor; Muraco Kyashna-tocha, Green Buddha Patient Cooperative; Ryan Day; Brian Enslow, WA State Assn. of Counties; Candice Bock, Assn. of WA Cities; Elaynee Eden; Rick Garza, LCB.

CON: John Worthington, American Alliance for Medical Cannabis, Cannabis Action Coalition; Steve Sarich, Arthur West, Cannabis Action Coalition; Adam Assenberg, Adam 4 Sheriff; Jerry Dierker, Kirk Ludden, citizens.

OTHER: Craig Engelking, Kari Boiter, Health Before Happy Hour; Philip Dawdy, WA Cannabis Assn.; Alex Cooley, Solstice, Coalition for Cannabis Standards and Ethics.