

HOUSE BILL REPORT

HB 2494

As Passed House:
February 15, 2016

Title: An act relating to penalties for marijuana offenses.

Brief Description: Concerning penalties for marijuana offenses.

Sponsors: Representatives Tarleton, Santos and Gregerson.

Brief History:

Committee Activity:

Commerce & Gaming: 1/19/16, 2/1/16 [DP].

Floor Activity:

Passed House: 2/15/16, 73-24.

Brief Summary of Bill

- Authorizes the noncommercial transfer of marijuana and marijuana products in amounts equal to half of the current possession limits by a person 21 years of age or older to another person(s) 21 years of age or older.
- Reduces the penalties for possession and delivery of marijuana and marijuana products in certain circumstances.
- Requires the marijuana concentrates that a person may lawfully possess or transfer for noncommercial purposes to have been purchased from a marijuana retailer and be accompanied by packaging showing that the marijuana concentrates were purchased from a marijuana retailer.

HOUSE COMMITTEE ON COMMERCE & GAMING

Majority Report: Do pass. Signed by 9 members: Representatives Hurst, Chair; Wylie, Vice Chair; Condotta, Ranking Minority Member; Holy, Assistant Ranking Minority Member; Blake, Kirby, Scott, Van De Wege and Vick.

Staff: Peter Clodfelter (786-7127).

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.

Overview of Initiative 502.

Initiative 502 (I-502) was a ballot measure approved by Washington voters in November 2012 that: (1) legalized the production, processing, sale, possession, and personal use of marijuana and marijuana-derived products; (2) created a framework for a regulatory scheme to be further developed by the Liquor and Cannabis Board (LCB) through its rule-making authority; and (3) implemented a taxation system for commercial marijuana enterprises. Accordingly, the delivery, possession, or personal use of marijuana is not a violation of Washington law only if the delivery, possession, or personal use of marijuana in compliance with the legal framework created by and pursuant to I-502.

Possession of Marijuana.

Without violating any provision of Washington law, a person 21 years of age or older may possess any combination of the following amounts of marijuana products:

- 1 ounce of useable marijuana;
- 16 ounces of marijuana-infused product in solid form;
- 72 ounces of marijuana-infused product in liquid form; and
- 7 grams of marijuana concentrates.

Under law existing prior to the passage of I-502, a person found guilty of possession of 40 grams or less of marijuana is guilty of a misdemeanor. Otherwise, the possession of marijuana or marijuana products in excess of the above amounts is punishable as a class C felony. However, qualifying patients may possess more.

Delivery of Marijuana or Possession with Intent to Deliver.

The delivery of marijuana and marijuana products is unlawful other than by a licensed marijuana producer, processor, or retailer acting consistent with the legal framework created by and pursuant to I-502, or by an Indian tribe acting in accordance with an agreement with the state. A person of any age found guilty of delivering or possessing marijuana in any amount with the intent to deliver is subject to a class C felony.

"Delivery" does not require an exchange of money and means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship. There are certain exceptions to the general prohibition on the delivery of marijuana and marijuana products for qualifying patients.

Summary of Bill:

Possession of Marijuana.

The existing possession limits for useable marijuana, marijuana-infused products, and marijuana concentrates by a person 21 years of age or older are maintained. However, the 7 grams of marijuana concentrates that a person 21 years of age or older may lawfully possess must have been purchased from a marijuana retailer and must be accompanied by packaging showing that the marijuana concentrates were purchased from a marijuana retailer.

A person in possession of marijuana concentrates that were not purchased from a marijuana retailer or are not accompanied by packaging showing that the marijuana concentrates were purchased from a marijuana retailer commits the following crimes or infractions:

- a class 2 civil infraction if the person is in possession of not more than 7 grams of marijuana concentrates;
- a misdemeanor if the person is in possession of more than 7 grams but not more than 14 grams of marijuana concentrates; or
- a class C felony if the person is in possession of more than 14 grams of marijuana concentrates and does not have a license issued by the LCB permitting the person to possess more than 14 grams of marijuana concentrates.

Certain conduct that would otherwise be punishable as a misdemeanor or class C felony is given a reduced penalty:

- A person in possession of marijuana, useable marijuana, marijuana-infused products, or marijuana concentrates in excess of the statutory limits, but not in excess of two times the statutory limits, is guilty of a misdemeanor.
- A person in possession of not more than 15 marijuana plants is guilty of a misdemeanor.
- A person under 21 years of age in possession of marijuana, useable marijuana, marijuana-infused products, or marijuana concentrates not in excess of the possession limits for a person 21 years of age or older is guilty of a misdemeanor.

Delivery of Marijuana or Possession with Intent to Deliver.

Certain noncommercial deliveries of marijuana and marijuana products by a person 21 years of age or older to another person(s) 21 years of age or older are made legal or are given reduced penalties. Also, certain sales or commercial deliveries of marijuana products to a person 21 years of age or older are given reduced penalties.

The delivery or possession with intent to deliver, during a 24-hour period, for noncommercial purposes and not dependent or conditioned upon or done in connection with the provision or receipt of financial consideration, of the following amounts of marijuana products by a person 21 years of age or older to another person(s) 21 years of age or older is not a violation of any provision of Washington law:

- 0.5 ounce of useable marijuana;
- 8 ounces of marijuana-infused product in solid form;
- 36 ounces of marijuana-infused product in liquid form; or
- 3.5 grams of marijuana concentrates that were purchased from a marijuana retailer and are accompanied by packaging showing that the marijuana concentrates were purchased from a marijuana retailer.

The delivery or possession with intent to deliver, during a 24-hour period, for noncommercial purposes and not dependent or conditioned upon or done in connection with the provision or receipt of financial consideration, of not more than 3.5 grams of marijuana concentrates that were not purchased from a marijuana retailer or are not accompanied by packaging showing that the marijuana concentrates were purchased from a marijuana retailer is punishable as a gross misdemeanor.

"Financial consideration" is defined as value that is given or received directly or indirectly through a sale, barter, trade, fee, charge, due, contribution, or donation.

The delivery or possession with intent to deliver, during a 24-hour period, for commercial purposes, of the following amounts of marijuana products to a person 21 years of age or older is punishable as a gross misdemeanor:

- 0.5 ounce of useable marijuana;
- 8 ounces of marijuana-infused product in solid form;
- 36 ounces of marijuana-infused product in liquid form; or
- 3.5 grams of marijuana concentrates that were purchased from a marijuana retailer and are accompanied by packaging showing that the marijuana concentrates were purchased from a marijuana retailer.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill would realign the penalties for marijuana offenses with the possession limits established by I-502 and make logical distinctions between misdemeanor and felony marijuana offenses. None of the possession limits in I-502 would change. Currently, transferring and possessing marijuana outside of the I-502 system is a class C felony. The existing statute making possession of 40 grams of marijuana or less a misdemeanor is outdated, because it does not distinguish between the different types of marijuana. Adding the packaging requirement to the possession of marijuana concentrates is designed to further deter illegal production of hash oil. Currently, there are enforcement problems related to marijuana offenses. A noncommercial transfer of marijuana between adults is analogous to sharing a bottle of wine over dinner, but it is punishable as a class C felony. The bill legalizes sharing small amounts of marijuana and marijuana products from adult to adult. It also makes low-level sales misdemeanors, which would otherwise be felonies. County prosecutors do not want to prosecute low-level marijuana sales as felonies. Under the bill, large-scale distribution would remain a felony offense, and sales and transfers to minors remain illegal. The Mayor of Seattle supports this bill. The LCB could adopt rules regarding the concentrate packaging requirement.

(Opposed) Adding the packaging requirement to the possession of marijuana concentrates is good, but noncommercial transfers of marijuana outside of the I-502 system should remain illegal. The parts of the bill reducing the penalties on low-level sales of marijuana should also be removed. Youth often obtain marijuana through social contacts, and this bill could increase the amount of marijuana available to youth. The bill could help further normalize marijuana use in everyday activities.

(Other) Making some marijuana offenses civil penalties and other marijuana offenses criminal offenses could create confusion for law enforcement. Additionally, enforcement officers will be required to carry scales.

Persons Testifying: (In support) John Scochet, Seattle City Attorney's Office; David Mendoza, City of Seattle; Lew McMurrin, Cannabis Organization of Retail Establishments; Logan Bowers, Hashtag; and Ezra Eickmeyer, E&A Strategic Consulting.

(Opposed) Seth Dawson, Washington Association for Substance Abuse Prevention.

(Other) Justin Nordhorn, Washington State Liquor and Cannabis Board.

Persons Signed In To Testify But Not Testifying: None.