

HOUSE BILL REPORT

HB 2194

As Reported by House Committee On:
Regulated Substances & Gaming

Title: An act relating to legalizing the home cultivation of cannabis by persons who are 21 years of age and older.

Brief Description: Legalizing the home cultivation of cannabis.

Sponsors: Representatives Kloba, Wylie, Doglio, Goodman, Macri, Berry, Reed, Ormsby, Peterson, Fitzgibbon, Simmons, Fosse and Waters.

Brief History:

Committee Activity:

Regulated Substances & Gaming: 1/16/24, 1/29/24 [DPS].

Brief Summary of Substitute Bill

- Legalizes the home production and possession of four cannabis plants and the cannabis and cannabis products derived from the plants.
- Creates a class 1 civil infraction for producing or knowingly possessing more than four but fewer than 11 plants, retains the class C felony for producing or knowingly possessing 11 or more plants, and modifies real property seizure and forfeiture provisions as they apply to cannabis.

HOUSE COMMITTEE ON REGULATED SUBSTANCES & GAMING

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Kloba, Co-Chair; Wylie, Co-Chair; Stearns, Vice Chair; Cheney, Morgan, Orwall and Waters.

Minority Report: Do not pass. Signed by 4 members: Representatives Chambers, Ranking Minority Member; Robertson, Assistant Ranking Minority Member; Caldier and Reeves.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Staff: Peter Clodfelter (786-7127).

Background:

It is legal under Washington law for an adult age 21 or over to purchase from a licensed cannabis retailer and possess any combination of the following types and amounts of cannabis products: (1) 1 ounce of useable cannabis; (2) 16 ounces of cannabis-infused product in solid form; (3) 72 ounces of cannabis-infused product in liquid form; and (4) 7 grams of cannabis concentrate. Adults age 21 or over may also legally transfer limited quantities of cannabis between each other for noncommercial purposes subject to restrictions.

Washington law does not authorize adults age 21 or over to possess any cannabis plants, and doing so is punishable as a class C felony under the Uniform Controlled Substances Act (UCSA). However, if a person is a qualifying patient or designated provider, the person may possess and grow a limited number of cannabis plants in their domicile and possess a limited amount of cannabis produced from those plants in accordance with the Washington State Medical Use of Cannabis Act (WSMUCA).

For certain purposes including a 15-plant limit per housing unit, the WSMUCA defines "housing unit" as a house, apartment, mobile home, group of rooms, or a single room occupied as separate living quarters, in which the occupants live and eat separately from any other persons in the building, and which have direct access from the outside of the building or through a common hall.

Pursuant to the UCSA, all real property, appurtenances, and improvements are subject to seizure and forfeiture if they are being used with the owner's knowledge for the manufacturing, compounding, processing, delivery, importing, or exporting of any controlled substances, including cannabis, so long as the activity is not less than a class C felony and a substantial nexus exists between the commercial production or sale of the controlled substance and the real property.

However, an exception provides that the possession of cannabis may not result in the forfeiture of real property unless the cannabis is possessed for commercial purposes that are unlawful under Washington law, the amount possessed is five or more plants or 1 pound or more of cannabis, and a substantial nexus exists between the possession of cannabis and the real property. In such a case, the intent of the offender is determined by the preponderance of the evidence, including prior criminal history, the amount of cannabis possessed, the sophistication of the activity or equipment, and other evidence that demonstrates intent to engage in unlawful commercial activity.

For a class 1 civil infraction, the maximum penalty and the default amount is \$250, not including statutory assessments, except for an infraction involving specific violations for which a greater monetary penalty is provided in law. A class C felony is generally

punishable by confinement in a state correctional institution for up to five years, or by a fine in an amount fixed by the court of \$10,000, or by both confinement and fine. For purposes of the drug offense sentencing grid, the unlawful manufacture, delivery, or possession with intent to deliver cannabis is a seriousness level I (the lowest of three levels).

Summary of Substitute Bill:

The production and possession by a person 21 years of age or older of no more than four cannabis plants and the cannabis and cannabis products derived from those plants, on the premises of the housing unit occupied by the person, is legalized and is not a violation of the UCSA or any other provision of Washington law. However, no more than 10 cannabis plants may be produced at any one time on the premises of a single housing unit, regardless of the number of residents living on the premises of the housing unit.

A class 1 civil infraction is created to penalize the production and knowing possession of more than four cannabis plants but fewer than 11 cannabis plants. The production and knowing possession of 11 or more cannabis plants remains a class C felony. Authority is provided to an investigating law enforcement officer or agency to seize and summarily destroy any plants produced or possessed by a person in excess of the four authorized plants, if the person is not authorized to produce and possess the additional plants under a commercial cannabis license or under the WSMUCA.

A safe harbor provision in the seizure and forfeiture statute in the UCSA is modified, to specify that the acquisition, delivery, production, or possession (instead of only the possession) of cannabis or cannabis products may not result in forfeiture of real property unless the cannabis is possessed for commercial purposes that are unlawful under Washington law, the amount possessed is 11 or more cannabis plants (instead of five or more cannabis plants) or, except as allowed by the bill, 1 pound or more of cannabis, and a substantial nexus exists between the possession of cannabis and the real property.

The term "commercial activity" is defined for purposes of the UCSA as an activity related to or connected with buying, selling, or bartering.

Substitute Bill Compared to Original Bill:

As compared to the original bill, the substitute bill:

- revises the proposed cannabis home grow authorization to allow the production and possession of no more than four cannabis plants, instead of no more than six plants;
- revises the proposed limit on the number of cannabis plants that may be produced at any one time on the premises of a single housing unit with multiple residents, to set a limit of 10 plants, instead of 15 plants;
- revises the proposed class 1 civil infraction so it would penalize a person who produces and knowingly possesses more than four cannabis plants but fewer than 11

- plants, instead of more than six plants but fewer than 16 plants;
- revises the proposed class C felony so it would apply (or continue to apply) to a person who produces and knowingly possesses 11 or more cannabis plants, instead of 16 or more plants;
- authorizes an investigating law enforcement officer or agency to seize and summarily destroy any cannabis plants in excess of four plants; and
- revises the proposed changes to real property seizure and forfeiture provisions, so a safe harbor for cannabis possession activities could cease applying if the amount possessed is 11 or more plants, instead of 16 or more plants.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Washington is an outlier in not allowing adults age 21 and over to home grow a limited number of cannabis plants for personal use. Legalizing home grows would not be an experiment. Hobby home grow is legal in 22 other states and territories, and all of Canada. Even traditionally conservative states like Montana and Ohio included home grow in their adult-use cannabis laws and states like New York and Maryland that legalized adult-use cannabis without home grow have since updated their laws to allow it. Other states have not seen cannabis tax revenue reductions or other problems. The activity will have negligible impact to consumer safety and the cannabis industry, and would formalize an already occurring practice. Public safety threats associated with cannabis retail stores do not translate to residential home grows. Allowing home grows is a matter of public health and allows consumers quality and purity control. There is distrust of the cannabis industry and regulators. Using pesticides is standard operating procedure for the industry, as well as irradiating cannabis flowers with ionizing radiation to make subpar crops salable. Banned pesticides are also used. When a person grows their own cannabis, these methods are unnecessary. Sponsors of Initiative Measure 502 (I-502) (2012) struggled with the home grow question. Home grows were left out of I-502 because sponsors wanted to understand the viability of a newly legal but heavily regulated and taxed cannabis industry. It has become clear that Washington consumers deserve the right to home grow cannabis. The intent of I-502 was to regulate cannabis like alcohol. Consumers can currently home brew beer and ferment wine, but most still opt for commercial products. The same will be true with cannabis. It is long time to remove the class C felony, an embarrassingly harsh penalty. It is unethical to continue criminalizing small private use cultivation while cannabis sales, consumption, and commercial production are legal. Affordable charcoal systems can mitigate odor. Cannabis seeds are less than 0.3 percent tetrahydrocannabinol

(THC), legal to obtain, and unregulated federally. For any safe storage provisions, cannabis should not be treated worse than firearms. Adding restrictions about daycares is not objectionable. However, other proponents emphasize that policies should not differ between cannabis and hemp, as hemp is also pungent and can be grown anywhere by anyone. No environmental concerns are anticipated that would not also apply to a neighbor's tomato plants. People's houses have been seized for home growing and everything people have has been taken over a few plants. This is unjust.

(Opposed) No limitations on where cannabis can be grown are included in this bill. For medical cannabis home grow authorization, there are limitations such as plants not being seen from the street, or readily smelled from a public place or the private property of another housing unit. The only limit in the bill is the numerical limit on plants, but that will be almost impossible to enforce. Local law enforcement does not have the officers and would need search warrants to monitor activities at home grows. Grow operations in homes could be in areas that are not regularly monitored and that are accessible to children. There could be opportunities for theft and illegal use by youth. Provisions should be stronger on preventing diversion of home grown cannabis through illicit sales or exchanges. Expanding home grows beyond what is currently authorized for medical patients is unnecessary and there are dozens of reasons why expansion should not be allowed.

(Other) Maintain the well-regulated commercial system established by I-502. Previous bills on this topic went into more detail and could be looked to for possible amendments. Add provisions to address issues like safe storage, the presence of daycares and foster family homes, the issue of landlords' rights to prohibit home grows on their property, and prohibitions on plants being visible within the ordinary public view or readily smelled. Additionally, to maintain a level of traceability, requirements should be added about marking plants, containers, and products. Home growing has worked fine in other states. Diversion of cannabis and youth access have not been problems. The bill enables people to live free and responsibly. The threat of felony charges in current law is unreasonable and inappropriate for such a benign activity. Adults who home grow are considerate of neighbors and the community.

Persons Testifying: (In support) Representative Shelley Kloba, prime sponsor; John Kingsbury; Caitlein Ryan, The Cannabis Alliance; Shawn DeNae; Vivian McPeak; David Heldreth; Lukas Hunter, Harmony Farms; Pete Holmes; Andrew Otwell; Keegan Skeate; Chad Westport; Bailey Hirschburg, National Organization For the Reform of Marijuana Laws—Washington Chapter; and Arthur West.

(Opposed) Scott Waller, Washington Association for Substance Misuse and Violence Prevention.

(Other) Don Skakie, Homegrow Washington; and Taylor Gardner, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.