BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: S-0870.3/13 3rd draft

ATTY/TYPIST: AI:seg

BRIEF DESCRIPTION: Concerning the medical use of cannabis.

AN ACT Relating to the medical use of cannabis but only relating to making technical corrections necessary to address the partial veto of Engrossed Second Substitute Senate Bill No. 5073 by restoring definitions, removing references to the vetoed provisions, providing qualifying patients and their designated providers with arrest protection, and requesting the liquor control board to study the feasibility of issuing a qualifying patient identification card; amending RCW 69.51A.010, 69.51A.020, 69.51A.030, 69.51A.040, 69.51A.047, 69.51A.055, 69.51A.060, 69.51A.085, and 69.51A.140; creating a new section; repealing RCW 69.51A.043; and providing an expiration date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 69.51A.010 and 2010 c 284 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Cannabis" means all parts of the plant *Cannabis,* whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture,

or preparation of the plant, its seeds, or resin. For the purposes of this chapter, "cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. "Cannabis" includes cannabis products and useable cannabis.

(2) "Cannabis products" means products that contain cannabis or cannabis extracts, have a measurable THC concentration greater than three-tenths of one percent, and are intended for human consumption or application, including, but not limited to, edible products, tinctures, and lotions. "Cannabis products," does not include useable cannabis. "Cannabis products," as a measurement of THC concentration, only applies to the provisions of this chapter and is not considered applicable to any criminal laws related to marijuana or cannabis.

(3) "Collective garden" means qualifying patients sharing responsibility for acquiring and supplying the resources required to produce and process cannabis for medical use such as, for example, a location for a collective garden; equipment, supplies, and labor necessary to plant, grow, and harvest cannabis; cannabis plants, seeds, and cuttings; and equipment, supplies, and labor necessary for proper construction, plumbing, wiring, and ventilation of a garden of cannabis plants.

(4) "Correctional facility" has the same meaning as provided in RCW 72.09.015.

(5) "Corrections agency or department" means any agency or department in the state of Washington, including local governments or jails, that is vested with the responsibility to manage those individuals who are being supervised in the community for a criminal conviction and has established a written policy for determining when the medical use of cannabis, including possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, is inconsistent with and contrary to the person's supervision.

(6)(a) "Designated provider" means a person who:

((~~(a)~~)) (i) Is eighteen years of age or older;

((~~(b)~~)) (ii) Has been designated in ((~~writing~~)) a written document

signed and dated by a qualifying patient to serve as a designated provider under this chapter; and

((~~(c)~~)) (iii) Is ((~~prohibited from consuming marijuana obtained for the personal, medical use of the patient for whom the individual is acting as designated provider; and~~

~~(d) Is the designated provider to only one patient at any one time.~~

~~(2)~~)) in compliance with the terms and conditions set forth in RCW 69.51A.040.

(b) A qualifying patient may be the designated provider for another qualifying patient and be in possession of both patients' cannabis at the same time.

(7) "Health care professional," for purposes of this chapter only, means a physician licensed under chapter 18.71 RCW, a physician assistant licensed under chapter 18.71A RCW, an osteopathic physician licensed under chapter 18.57 RCW, an osteopathic physicians' assistant licensed under chapter 18.57A RCW, a naturopath licensed under chapter 18.36A RCW, or an advanced registered nurse practitioner licensed under chapter 18.79 RCW.

((~~(3)~~)) (8) "Medical use of ((~~marijuana~~)) cannabis" means the manufacture, production, possession, transportation, delivery, ingestion, application, or administration of ((~~marijuana, as defined in RCW 69.50.101(q),~~)) cannabis for the exclusive benefit of a qualifying patient in the treatment of his or her terminal or debilitating ((~~illness~~)) medical condition.

((~~(4)~~)) (9) "Peace officer" means any law enforcement personnel as defined in RCW 43.101.010.

(10) "Person" means an individual or an entity.

(11) "Plant" means an organism having at least three distinguishable and distinct leaves, each leaf being at least three centimeters in diameter, and a readily observable root formation consisting of at least two separate and distinct roots, each being at least two centimeters in length. Multiple stalks emanating from the same root ball or root system is considered part of the same single plant.

(12) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; premises where goods and services are offered

to the public for retail sale; public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages, and filling stations that are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, buses, ferries, and other public conveyances of all kinds and character, and the depots, stops, and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and that are generally used by the public.

(13) "Qualifying patient" means a person who:

(a)(i) Is a patient of a health care professional;

((~~(b)~~)) (ii) Has been diagnosed by that health care professional as having a terminal or debilitating medical condition;

((~~(c)~~)) (iii) Is a resident of the state of Washington at the time of such diagnosis;

((~~(d)~~)) (iv) Has been advised by that health care professional about the risks and benefits of the medical use of ((~~marijuana~~)) cannabis; ((~~and~~

~~(e)~~)) (v) Has been advised by that health care professional that ((~~they~~)) he or she may benefit from the medical use of ((~~marijuana~~)) cannabis; and

(vi) Is otherwise in compliance with the terms and conditions established in this chapter.

(b) "Qualifying patient" does not include a person who is actively being supervised for a criminal conviction by a corrections agency or department that has determined that the terms of this chapter are inconsistent with and contrary to his or her supervision and all related processes and procedures related to that supervision.

((~~(5)~~)) (14) "Tamper-resistant paper" means paper that meets one or more of the following industry-recognized features:

(a) One or more features designed to prevent copying of the paper;

(b) One or more features designed to prevent the erasure or modification of information on the paper; or

(c) One or more features designed to prevent the use of counterfeit valid documentation.

((~~(6)~~)) (15) "Terminal or debilitating medical condition" means:

(a) Cancer, human immunodeficiency virus (HIV), multiple sclerosis, epilepsy or other seizure disorder, or spasticity disorders; or

(b) Intractable pain, limited for the purpose of this chapter to mean pain unrelieved by standard medical treatments and medications; or

(c) Glaucoma, either acute or chronic, limited for the purpose of this chapter to mean increased intraocular pressure unrelieved by standard treatments and medications; or

(d) Crohn's disease with debilitating symptoms unrelieved by standard treatments or medications; or

(e) Hepatitis C with debilitating nausea or intractable pain unrelieved by standard treatments or medications; or

(f) Diseases, including anorexia, which result in nausea, vomiting, wasting, appetite loss, cramping, seizures, muscle spasms, or spasticity, when these symptoms are unrelieved by standard treatments or medications; or

(g) Any other medical condition duly approved by the Washington state medical quality assurance commission in consultation with the board of osteopathic medicine and surgery as directed in this chapter.

((~~(7)~~)) (16) "THC concentration" means percent of tetrahydrocannabinol content per weight or volume of useable cannabis or cannabis product.

(17) "Useable cannabis" means dried flowers of the *Cannabis* plant having a THC concentration greater than three-tenths of one percent. Useable cannabis excludes stems, stalks, leaves, seeds, and roots. For purposes of this subsection, "dried" means containing less than fifteen percent moisture content by weight. "Useable cannabis" does not include cannabis products.

(18) "Valid documentation" means:

(a) A statement signed and dated by a qualifying patient's health care professional written on tamper-resistant paper, which states that, in the health care professional's professional opinion, the patient may benefit from the medical use of ((~~marijuana~~)) cannabis; and

(b) Proof of identity such as a Washington state driver's license or identicard, as defined in RCW 46.20.035.

Sec. 2. RCW 69.51A.020 and 2011 c 181 s 103 are each amended to read as follows:

((~~Nothing in this chapter shall be construed to supersede~~

~~Washington state law prohibiting the acquisition, possession, manufacture, sale, or use of cannabis for nonmedical purposes.~~)) Criminal penalties created under this chapter ((~~181, Laws of 2011~~)) do not preclude the prosecution or punishment for other crimes, including other crimes involving the manufacture or delivery of cannabis for nonmedical purposes.

Sec. 3. RCW 69.51A.030 and 2011 c 181 s 301 are each amended to read as follows:

(1) The following acts do not constitute crimes under state law or unprofessional conduct under chapter 18.130 RCW, and a health care professional may not be arrested, searched, prosecuted, disciplined, or subject to other criminal sanctions or civil consequences or liability under state law, or have real or personal property searched, seized, or forfeited pursuant to state law, notwithstanding any other provision of law as long as the health care professional complies with subsection (2) of this section:

(a) Advising a qualifying patient about the risks and benefits of medical use of cannabis or that the qualifying patient may benefit from the medical use of cannabis; or

(b) Providing a qualifying patient ((~~meeting the criteria established under RCW 69.51A.010(26)~~)) with valid documentation, based upon the health care professional's assessment of the patient's medical history and current medical condition, where such use is within a professional standard of care or in the individual health care professional's medical judgment.

(2)(a) A health care professional may only provide a qualifying patient with valid documentation authorizing the medical use of cannabis ((~~or register the patient with the registry established in section 901 of this act~~)) if he or she has a newly initiated or existing documented relationship with the qualifying patient, as a primary care provider or a specialist, relating to the diagnosis and ongoing treatment or monitoring of the qualifying patient's terminal or debilitating medical condition, and only after:

(i) Completing a physical examination of the patient as appropriate, based on the patient's condition and age;

(ii) Documenting the terminal or debilitating medical condition of

the qualifying patient in the patient's medical record and that the patient may benefit from treatment of this condition or its symptoms with medical use of cannabis;

(iii) Informing the qualifying patient of other options for treating the terminal or debilitating medical condition; and

(iv) Documenting other measures attempted to treat the terminal or debilitating medical condition that do not involve the medical use of cannabis.

(b) A health care professional shall not:

(i) ((~~Accept, solicit, or offer any form of pecuniary remuneration from or to a licensed dispenser, licensed producer, or licensed processor of cannabis products;~~

~~(ii) Offer a discount or any other thing of value to a qualifying patient who is a customer of, or agrees to be a customer of, a particular licensed dispenser, licensed producer, or licensed processor of cannabis products;~~

~~(iii) Examine or offer to examine a patient for purposes of diagnosing a terminal or debilitating medical condition at a location where cannabis is produced, processed, or dispensed;~~

~~(iv)~~)) Have a business or practice which consists solely of authorizing the medical use of cannabis;

((~~(v)~~)) (ii) Include any statement or reference, visual or otherwise, on the medical use of cannabis in any advertisement for his or her business or practice; or

((~~(vi)~~)) (iii) Hold an economic interest in an enterprise that produces, processes, or dispenses cannabis if the health care professional authorizes the medical use of cannabis.

(3) A violation of any provision of subsection (2) of this section constitutes unprofessional conduct under chapter 18.130 RCW.

Sec. 4. RCW 69.51A.040 and 2011 c 181 s 401 are each amended to read as follows:

The medical use of cannabis in accordance with the terms and conditions of this chapter does not constitute a crime and a qualifying patient or designated provider in compliance with the terms and conditions of this chapter may not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences, for possession, manufacture, or delivery of, or for possession with intent to

manufacture or deliver, cannabis under state law, or have real or personal property seized or forfeited for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, cannabis under state law, and investigating peace officers and law enforcement agencies may not be held civilly liable for failure to seize cannabis in this circumstance, if:

(1)(a) The qualifying patient or designated provider possesses no more than fifteen cannabis plants and:

(i) No more than twenty-four ounces of useable cannabis;

(ii) No more cannabis product than what could reasonably be produced with no more than twenty-four ounces of useable cannabis; or

(iii) A combination of useable cannabis and cannabis product that does not exceed a combined total representing possession and processing of no more than twenty-four ounces of useable cannabis.

(b) If a person is both a qualifying patient and a designated provider for another qualifying patient, the person may possess no more than twice the amounts described in (a) of this subsection, whether the plants, useable cannabis, and cannabis product are possessed individually or in combination between the qualifying patient and his or her designated provider;

(2) The qualifying patient or designated provider presents his or her ((~~proof of registration with the department of health,~~)) valid documentation to any peace officer who questions the patient or provider regarding his or her medical use of cannabis;

(3) ((~~The qualifying patient or designated provider keeps a copy of his or her proof of registration with the registry established in section 901 of this act and the qualifying patient or designated provider's contact information posted prominently next to any cannabis plants, cannabis products, or useable cannabis located at his or her residence;~~

~~(4)~~)) The investigating peace officer does not possess evidence that:

(a) The designated provider has converted cannabis produced or obtained for the qualifying patient for his or her own personal use or benefit; or

(b) The qualifying patient has converted cannabis produced or obtained for his or her own medical use to the qualifying patient's personal, nonmedical use or benefit; and

((~~(5)~~)) (4) The investigating peace officer does not possess evidence that the designated provider has served as a designated provider to more than one qualifying patient within a fifteen-day period((~~; and~~

~~(6) The investigating peace officer has not observed evidence of any of the circumstances identified in section 901(4) of this act~~)).

Sec. 5. RCW 69.51A.047 and 2011 c 181 s 406 are each amended to read as follows:

A qualifying patient or designated provider who ((~~is not registered with the registry established in section 901 of this act or~~)) does not present his or her valid documentation to a peace officer who questions the patient or provider regarding his or her medical use of cannabis but is in compliance with all other terms and conditions of this chapter may establish an affirmative defense to charges of violations of state law relating to cannabis through proof at trial, by a preponderance of the evidence, that he or she was a validly authorized qualifying patient or designated provider at the time of the officer's questioning. A qualifying patient or designated provider who establishes an affirmative defense under the terms of this section may also establish an affirmative defense under RCW 69.51A.045.

Sec. 6. RCW 69.51A.055 and 2011 c 181 s 1105 are each amended to read as follows:

(1)(a) The arrest and prosecution protections established in RCW 69.51A.040 may not be asserted in a supervision revocation or violation hearing by a person who is supervised by a corrections agency or department, including local governments or jails, that has determined that the terms of this section are inconsistent with and contrary to his or her supervision.

(b) The affirmative defenses established in RCW ((~~69.51A.043,~~)) 69.51A.045((~~,~~)) and 69.51A.047((~~, and section 407 of this act~~)) may not be asserted in a supervision revocation or violation hearing by a person who is supervised by a corrections agency or department, including local governments or jails, that has determined that the terms of this section are inconsistent with and contrary to his or her supervision.

(2) The provisions of RCW 69.51A.040, 69.51A.085, and 69.51A.025 do not apply to a person who is supervised for a criminal conviction by a corrections agency or department, including local governments or jails, that has determined that the terms of this chapter are inconsistent with and contrary to his or her supervision.

((~~(3) A person may not be licensed as a licensed producer, licensed processor of cannabis products, or a licensed dispenser under section 601, 602, or 701 of this act if he or she is supervised for a criminal conviction by a corrections agency or department, including local governments or jails, that has determined that licensure is inconsistent with and contrary to his or her supervision.~~))

Sec. 7. RCW 69.51A.060 and 2011 c 181 s 501 are each amended to read as follows:

(1) It shall be a class 3 civil infraction to use or display medical cannabis in a manner or place which is open to the view of the general public.

(2) Nothing in this chapter establishes a right of care as a covered benefit or requires any state purchased health care as defined in RCW 41.05.011 or other health carrier or health plan as defined in Title 48 RCW to be liable for any claim for reimbursement for the medical use of cannabis. Such entities may enact coverage or noncoverage criteria or related policies for payment or nonpayment of medical cannabis in their sole discretion.

(3) Nothing in this chapter requires any health care professional to authorize the medical use of cannabis for a patient.

(4) Nothing in this chapter requires any accommodation of any on-site medical use of cannabis in any place of employment, in any school bus or on any school grounds, in any youth center, in any correctional facility, or smoking cannabis in any public place or hotel or motel.

(5) Nothing in this chapter authorizes the use of medical cannabis by any person who is subject to the Washington code of military justice in chapter 38.38 RCW.

(6) Employers may establish drug-free work policies. Nothing in this chapter requires an accommodation for the medical use of cannabis if an employer has a drug-free work place.

(7) It is a class C felony to fraudulently produce any record purporting to be, or tamper with the content of any record for the

purpose of having it accepted as, valid documentation ((~~under RCW 69.51A.010(32)(a)~~)), or to backdate such documentation to a time earlier than its actual date of execution.

(8) No person shall be entitled to claim the protection from arrest and prosecution under RCW 69.51A.040 ((~~or the affirmative defense under RCW 69.51A.043~~)) for engaging in the medical use of cannabis in a way that endangers the health or well-being of any person through the use of a motorized vehicle on a street, road, or highway, including violations of RCW 46.61.502 or 46.61.504, or equivalent local ordinances.

Sec. 8. RCW 69.51A.085 and 2011 c 181 s 403 are each amended to read as follows:

(1) Qualifying patients may create and participate in collective gardens for the purpose of producing, processing, transporting, and delivering cannabis for medical use subject to the following conditions:

(a) No more than ten qualifying patients may participate in a single collective garden at any time;

(b) A collective garden may contain no more than fifteen plants per patient up to a total of forty-five plants;

(c) A collective garden may contain no more than twenty-four ounces of useable cannabis per patient up to a total of seventy-two ounces of useable cannabis;

(d) A ((~~copy of each qualifying patient's valid documentation or proof of registration with the registry established in section 901 of this act, including a~~)) copy of the patient's proof of identity((~~,~~)) must be available at all times on the premises of the collective garden; and

(e) No useable cannabis from the collective garden is delivered to anyone other than one of the qualifying patients participating in the collective garden.

(2) ((~~For purposes of this section, the creation of a "collective garden" means qualifying patients sharing responsibility for acquiring and supplying the resources required to produce and process cannabis for medical use such as, for example, a location for a collective garden; equipment, supplies, and labor necessary to plant, grow, and~~

~~harvest cannabis; cannabis plants, seeds, and cuttings; and equipment, supplies, and labor necessary for proper construction, plumbing, wiring, and ventilation of a garden of cannabis plants.~~

~~(3)~~)) A person who knowingly violates a provision of subsection (1) of this section is not entitled to the protections of this chapter.

Sec. 9. RCW 69.51A.140 and 2011 c 181 s 1102 are each amended to read as follows:

(1) Cities and towns may adopt and enforce any of the following pertaining to ((~~the production, processing, or dispensing of~~)) medical cannabis or cannabis products within their jurisdiction: Zoning requirements, business licensing requirements, health and safety requirements, and business taxes. ((~~Nothing in chapter 181, Laws of 2011 is intended to limit the authority of cities and towns to impose zoning requirements or other conditions upon licensed dispensers, so long as such requirements do not preclude the possibility of siting licensed dispensers within the jurisdiction. If the jurisdiction has no commercial zones, the jurisdiction is not required to adopt zoning to accommodate licensed dispensers.~~))

(2) Counties may adopt and enforce any of the following pertaining to ((~~the production, processing, or dispensing of~~)) medical cannabis or cannabis products within their jurisdiction in locations outside of the corporate limits of any city or town: Zoning requirements, business licensing requirements, and health and safety requirements. ((~~Nothing in chapter 181, Laws of 2011 is intended to limit the authority of counties to impose zoning requirements or other conditions upon licensed dispensers, so long as such requirements do not preclude the possibility of siting licensed dispensers within the jurisdiction. If the jurisdiction has no commercial zones, the jurisdiction is not required to adopt zoning to accommodate licensed dispensers.~~))

NEW SECTION. **Sec. 10.** (1) The liquor control board must study and provide recommendations on the feasibility of the liquor control board issuing a medical cannabis authorization card that would be used as valid documentation for qualifying patients and their designated providers. The study should include a timetable for current qualifying patients and their designated providers to transition from valid documentation issued on tamper-resistant paper to the liquor control

board issued card. The study should include protections for the card to ensure that it cannot be duplicated or altered, that the card would identify qualifying patients and distinguish them from other persons legally using marijuana in this state, and suggested renewal periods for the medical cannabis authorization card. The liquor control board must report their findings to the health care committees of the senate and house of representatives by December 1, 2013.

(2) This section expires December 31, 2013.

NEW SECTION. **Sec. 11.** RCW 69.51A.043 (Failure to register--Affirmative defense) and 2011 c 181 s 402 are each repealed.

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