



Memorandum

Date: 12/20/2010

To: Senator Kohl-Welles

From: Kathy Buchli, Health and Long-Term Care Committee

Re: Medical cannabis bill draft

This memorandum describes the bill draft entitled, AN ACT Relating to medical use of cannabis. It provides background on the current law relating to medical use of marijuana and summarizes the bill draft which, among many changes to the current law, changes the term marijuana to cannabis.

Background

In 1998, voters approved I-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 and in 2010. In order to qualify for the use of medical marijuana, patients must have a terminal or debilitating medical condition (cancer, HIV, multiple sclerosis, intractable pain, glaucoma, Crohn's disease, hepatitis C, nausea/seizure diseases, or a disease approved by the Medical Quality Assurance Commission) and the diagnosis of this condition must have been made by a health care professional. Patients are not provided arrest protection. Instead, patients are permitted to assert an affirmative defense at trial with proof of compliance with the medical marijuana law.

Patients may grow medical marijuana for themselves or designate a provider to grow on their behalf. Designated providers may only provide medical marijuana to one patient at a time. Patients and their designated providers are limited to possession of an amount of marijuana that is necessary for the patient's personal medical use, and not exceeding fifteen plants and twenty-four ounces of useable marijuana.

Bill Draft Summary

The bill draft provides for arrest protection for medical cannabis patients, rather than the affirmative defense currently available to them. The bill draft provides for a system by which patients may purchase medical cannabis. They may continue to grow for themselves or have a designated provider grow for them, or they may purchase cannabis from a licensed dispenser, regulated by the Department of Health. Dispensers may purchase cannabis at wholesale from licensed producers or licensed processors of cannabis products. Both producers and processors are regulated by the Department of Agriculture.

The patient is permitted to show compliance with the law by possessing valid documentation that he or she is authorized to use medical cannabis. A voluntary registry system is also created within the Department of Health with which law enforcement must consult before conducting a warrantless search or arrest or seeking a search or arrest warrant. Valid documentation and registrations are valid for a one year period.

Terminal or debilitating conditions. The use of cannabis by patients who have a terminal or debilitating medical condition is permitted. Terminal or debilitating medical conditions remain as defined in current law except that the requirement that the condition be unrelieved by standard treatments or medications is removed.

Arrest/search protection.

- Medical cannabis patients and their designated providers are protected from arrest, search, prosecution, and other civil or criminal consequences for use of medical cannabis if:
 - The patient or provider possesses no more than 15 cannabis plants and no more than 24 ounces of useable cannabis. Cannabis products are permitted and a patient or provider may possess no more than the amount of product that can be produced with up to 24 ounces of useable cannabis.
 - The patient or provider presents valid documentation to law enforcement when questioned about medical use of cannabis.
 - A copy of the health care professional's authorization and the patient or provider's contact information must be posted prominently next to cannabis at the residence.
 - The designated provider has not converted medical cannabis for personal use and has not served as a designated provider to another patient for at least fifteen days.
- Medical cannabis patients and their designated providers may sign up on the Department of Health registry. Before making a warrantless arrest or search or before seeking a search warrant or arrest warrant based on a cannabis-related incident, law enforcement officers must consult with the registry and determine whether the person is a registered medical cannabis patient.
 - Registered persons may not be arrested or searched and registered locations may not be searched or seized unless there is evidence of conduct that would disqualify the person or location from the protections of the medical cannabis law or there exists probable cause that another criminal offense has been or is being committed.

Affirmative defense. Qualified patients or designated providers who do not qualify for arrest protection may assert an affirmative defense at trial if:

- The amount of cannabis in the patient's possession exceeds 15 plants or 24 ounces of useable cannabis and the patient establishes that the excess amount is necessary for the patient's medical use.
- The patient does not provide law enforcement with valid documentation that he or she is a qualified patient or does not provide evidence that he or she is a registered patient, but is able to establish at trial that he or she was a qualifying patient at the time of arrest.
- The patient is a nonresident of the state, is authorized to engage in the medical use of cannabis under the laws of another state, is otherwise within the provisions of the medical cannabis law, and presents the documentation of authorization required under the patient's authorizing state law to law enforcement when questioned about the use of cannabis.

Collective gardens. Up to 25 patients may participate in a collective garden. Collective gardens permit these patients to grow cannabis cooperatively but they may contain no more than 15 plants per patient and up to 99 plants total.

Designated providers. A designated provider is a person who has been designated by a patient to serve as a provider of cannabis. A designated provider may grow cannabis for only one patient at a time during a 15 day period. The patient may revoke the designation of a specific provider and designate a different provider at any time.

Other patient and provider provisions.

- Parental rights may not be restricted solely due to medical use of cannabis unless this use results in a long-term impairment that interferes with the performance of parenting functions.
- A patient may not be refused, discharged, or discriminated against in employment solely as a result of off-site medical use of cannabis so long as this use does not violate federal law and the work does not involve public safety or involve the handling of hazardous materials or heavy equipment.
- A patient may not be refused or evicted from housing.
- A patient awaiting an organ transplant may not have his or her use of medical cannabis used as the sole disqualifier for an organ transplant.

Department of Corrections. In imposing a criminal sentence, deferred prosecution, order of continuance, deferred disposition, or dispositional order a court may permit the medical use of cannabis and exclude it as a reason for finding the offender has violated the terms of his or her sentence or order.

Limitations on use of medical cannabis.

- Patients may not use medical cannabis in a public place in a manner that would cause another person to identify the substance as cannabis.
- Health insurance providers are not required to reimburse a patient for the medical use of cannabis nor are health care professions required to authorize the medical use of cannabis.
- Employers are not required to make an accommodation for the on-site use of cannabis.

Licensed producers and processors of cannabis products.

- Licensed producers and processors of cannabis products may be non-profit or for-profit businesses and must be licensed through the Department of Agriculture.
- Producers and processors are subject to the Business and Occupation tax.

Department of Agriculture. The Director may adopt rules on the licensing of producers and processors of cannabis products, including monitoring and inspecting the production of medical cannabis, the approval of facilities of producers and processors, grades and standards suitable for inspection of medical cannabis, and security requirements for these businesses.

Licensed dispensers.

- Licensed dispensers must be non-profit corporations and must be licensed by the Department of Health.
- Dispensers may sell seeds, seedlings, cuttings, plants, useable cannabis, and cannabis products to medical cannabis patients. These products must be purchased from licensed producers or processors.
- Patients purchasing at dispensing facilities are not subject to sales tax.
- Licensed dispensers are subject to the Business and Occupation tax.

Department of Health. The Secretary of the Department of Health must adopt rules on licensing dispensers of cannabis, including requirements for inspection and recordkeeping and standards for the dispensing facility and equipment.

Advertising. Producers, processors and dispensers may not advertise cannabis on broadcast television, radio or on billboards in a manner that promotes or tends to promote the use or abuse of cannabis.

Registration - patients and designated providers.

- The Department of Health must adopt rules establishing a secure and confidential registration system. The registration system must permit law enforcement to verify whether a

health care professional has registered a person as a qualifying patient or a designated provider.

- Patients are not required to sign up on the registry. Those who do will pay a registration fee which is established on an income-based sliding scale.

List of producers and processors.

- The Department of Agriculture must create and maintain a confidential list of producers and processors.
- Names and personally identifiable information may be released only to authorized Department of Agriculture employees or to authorized law enforcement employees as necessary to verify that a person is a producer or processor or that a location is the address of a production or processing facility.

List of dispensers.

- The Department of Health must create and maintain a confidential list of persons who have a license to dispense medical cannabis.
- Names and personally identifiable information may be released only to authorized Department of Health employees as necessary to verify that a person is a dispenser or that a location is the recorded address of a licensed dispenser.