



Senate Bill 5052: The Cannabis Patient Protection Act

On April 24, 2015, Governor Jay Inslee signed into law **SB 5052**, the cannabis patient protection act. The act establishes a medical marijuana oversight body, guidance for rules and regulation, licensing, and defines cooperatives and personal grows. The law has various enactment dates over the course of the next year and a half.

Oversight

SB 5052 establishes the Liquor Control Board as the regulatory agency overseeing medical marijuana, and renames the board the Liquor and Cannabis Board (LCB).

Regulation

Medical use of marijuana is regulated through the same structure as provided through Initiative 502 (legalization of recreational marijuana). The LCB shall adopt comprehensive rules and regulations similar to that of the recreational market to regulate the medical marijuana market.

To qualify for the "medical use" of marijuana, the terminal or debilitating conditions must be severe enough to significantly interfere with activities of daily living and must be able to be objectively assessed and evaluated.

A voluntary medical marijuana authorization database is created. Qualifying patients and designated providers who *do not* sign up for the database may grow marijuana for their medical use but are limited to four plants and six ounces of useable marijuana. They are provided an affirmative defense to charges of violating the law on medical use of marijuana.

Those who *do* register in the database may grow up to 15 plants for medical use, are provided arrest protection, and may possess a combination of the following:

- Forty-eight ounces of marijuana-infused product in solid form;
- Three ounces of useable marijuana;
- Two hundred sixteen ounces of marijuana-infused product in liquid form; or
- Twenty-one grams of marijuana concentrates.

Licensing

Marijuana retail establishments may apply for a medical marijuana endorsement through the LCB. The endorsement may be issued concurrently with the retail license and medical marijuana–endorsed

stores must carry products identified by the Department of Health (DOH) as beneficial to medical marijuana patients.

DOH must also adopt safe handling requirements for all marijuana products to be sold by endorsed stores and must adopt training requirements for retail employees.

The LCB must reopen the license period for retail stores and allow for additional licenses to be issued in order to address the needs of the medical market. The LCB must establish a merit based system for issuing retail licenses.

- First priority must be given to applicants that have applied for a marijuana retailer license before July 1, 2014, and who have operated or been employed by a collective garden before November 6, 2012.
- Second priority must be given to applicants who were operating or employed by a collective garden before November 6, 2012 but who have not previously applied for a marijuana license.

Use by minors

Minors may be authorized for the medical use of marijuana if the minor's parent or guardian agrees to the authorization. The parent or guardian must have sole control over the minor's marijuana. Minors may not grow marijuana, nor may they purchase from a retailer, but they may enter the premises of a medical marijuana retailer if they are accompanied by their parent or guardian who is serving as the designated provider. Patients who are between ages 18 and 21 may enter medical marijuana retail outlets.

Cooperatives and personal grows

Those who are registered in the medical marijuana database may grow marijuana in their domicile. No more than 15 plants may be grown in a housing unit, unless the housing unit is the location of a cooperative. No plants may be grown or processed if any portion of the activity may be viewed or smelled by the public or the private property of another housing unit.



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The provision authorizing collective gardens is repealed, effective July 1, 2016. In their place, four member cooperatives are permitted. A maximum of 60 plants (15 plants x 4 members) may be grown at the cooperative location.

Qualifying patients or designated providers may form a cooperative and share responsibility for acquiring and supplying the resources needed to produce and process marijuana only for the medical use of members of the cooperative. No more than four qualifying patients or designated providers may become members of a cooperative under this section and all members must hold valid recognition cards. All members of the cooperative must be at least 21 years old. The designated provider of a qualifying patient who is under 21 years old may be a member of a cooperative on the qualifying patient's behalf.

Cooperatives may not be located within one mile of a marijuana retailer and they must be registered with the LCB.

If a member of the cooperative leaves, he or she must notify the LCB within 15 days of the date he/she ceases participation. Additional qualifying patients or designated providers may not join the cooperative until 60 days has passed.

Cooperatives may not sell, donate or otherwise provide marijuana to a person not participating in the cooperative.

The location of the cooperative must be a domicile of one of the participants. Only one cooperative may be located per domicile.

The LCB may adopt rules regulating cooperatives, including a seed to sale traceability model that is similar to the model in the recreational market.

The LCB or law enforcement may inspect a cooperative.

Local authority

Cities, towns, counties, and other municipalities may create and enforce civil penalties, including abatement procedures, for the growing or processing of marijuana and for keeping marijuana plants

beyond or otherwise not in compliance with the rules and regulations of cooperatives.

Enactment

July 24, 2015, except for the following:

Immediately:

- Contracting with an entity to create, administer and maintain the patient database.
- Exempting disclosure of records in the database, including patient names and personally identifiable information.
- The LCB conducting controlled purchase programs to ensure marijuana is not being sold to minors, minors are not selling marijuana in retail and medical establishments and whether collective gardens and cooperatives are providing minors with marijuana.

July 1, 2016

- Minors, between the ages of 18-20, with recognition cards may begin buying medical marijuana.
- The amount of marijuana medical patients may acquire goes into effect.
- Health care professionals may begin authorizing qualifying patients under the age of 18 to use medical marijuana. Their parent or guardian shall act as their designated provider.
- Various provisions related to the security of the medical marijuana authorization database.
- Criminal protections for the medical use of marijuana.
- Group cooperatives are allowed.
- Collective gardens are eliminated.
- Allowing minors who are eligible to consume medical marijuana on school grounds.

FINAL BILL REPORT

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PARTIAL VETO

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Synopsis as Enacted

Brief Description: Establishing the cannabis patient protection act.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Rivers, Hatfield and Conway).

Senate Committee on Health Care

Senate Committee on Ways & Means

House Committee on Health Care & Wellness

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, changing who may authorize the medical use of marijuana, the definition of terminal or debilitating medical condition, what constitutes a 60-day supply of medical marijuana, and allowing qualifying patients and designated providers to participate in collective gardens.

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.

Qualifying patients who hold valid documentation may assert an affirmative defense at trial that they are authorized medical marijuana 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 marijuana 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. Qualifying patients and their designated providers may possess no more than 15 marijuana plants and 24 ounces of useable marijuana product.

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.

Up to ten qualifying patients may share responsibility for acquiring and supplying the resources required to produce, process, transport, and deliver marijuana for the medical use of its members. Collective gardens may contain up to 45 plants and 72 ounces of useable marijuana and no marijuana from the collective garden may be delivered to anyone other than one of the qualifying patients participating in the collective garden. No provision for the sale of marijuana from a collective garden or for the licensing of collective gardens is made in statute.

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.

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. The number of these licenses that may be issued is established by LCB. Persons over 21 years of age may purchase up to one ounce of useable marijuana, 16 ounces of solid marijuana-infused product, 72 ounces of liquid marijuana-infused product, or seven grams of marijuana concentrates at a licensed retailer.

Federal Response to State Marijuana Regulations. Washington is one of 33 states, and the District of Columbia, that have passed legislation allowing the use of marijuana for medicinal purposes – although some of these states permit the use of high cannabidiol products only. Washington is also one of four states, and the District of Columbia, that allow recreational use of marijuana. The use of marijuana remains illegal under federal law. However, Congress in its 2015 fiscal year funding bill provided that the United States Department of Justice (DOJ) may not use federal funds to prevent states from carrying out their medical marijuana laws. Additionally, the DOJ has issued several policy statements regarding state regulation of marijuana and describing when prosecutors may intervene. Federal prosecutors have been 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.

Summary: LCB is renamed to the Liquor and Cannabis Board (LCB).

Medical use of marijuana is regulated through the structure provided in Initiative 502. Specific provisions for the medical use of marijuana are included: the terminal or debilitating medical conditions that qualify a patient for the medical use of marijuana must be

severe enough to significantly interfere with activities of daily living and must be able to be objectively assessed and evaluated; and qualifying patients continue to be able to grow marijuana for their medical use. A medical marijuana authorization database (database) is created. Qualifying patients and designated providers who do not sign up with the database may grow marijuana for their medical use but are limited to four plants and 6 ounces of useable marijuana and are provided an affirmative defense to charges of violating the law on medical use of marijuana. Qualifying patients and designated providers who do sign up with the database may grow up to 15 plants for their medical use, are provided arrest protection, and may possess three times the amount of marijuana than what is permitted for the recreational user.

A medical marijuana endorsement to a marijuana retail license is established to be issued by LCB. The endorsement may be issued concurrently with the retail license and medical marijuana-endorsed stores must carry products identified by DOH as beneficial to medical marijuana patients. DOH must also adopt safe handling requirements for all marijuana products to be sold by endorsed stores and must adopt training requirements for retail employees. LCB must reopen the license period for retail stores and allow for additional licenses to be issued to address the needs of the medical market. LCB must establish a merit based system for issuing retail licenses. First priority must be given to applicants that have applied for a marijuana retailer license before July 1, 2014, and who have operated or been employed by a collective garden before November 6, 2012, and second priority to applicants who were operating or employed by a collective garden before November 6, 2012 but who have not previously applied for a marijuana license.

Beginning July 1, 2016 health care professionals who authorize the medical use of marijuana must use an authorization form developed by DOH. The authorization form must include the qualifying patient's or designated provider's name, address, and date of birth; the health care professional's name, address, and license number; the amount of marijuana recommended for the qualifying patient; a telephone number where the authorization can be verified; the dates of issuance and expiration; and a statement that the authorization does not provide protection from arrest unless the patient or provider is also entered into the database. Authorizations are valid for one year for adults and six months for minors.

Minors may be authorized for the medical use of marijuana if the minor's parent or guardian agrees to the authorization. The parent or guardian must have sole control over the minor's marijuana. Minors may not grow marijuana, nor may they purchase from a retailer. However, they may enter the premises of a medical marijuana retailer if they are accompanied by their parent or guardian who is serving as the designated provider. Patients who are between ages 18 and 21 may enter marijuana retail outlets that hold medical marijuana endorsements.

The database is to be administered by a third party under contract with DOH. The database must allow authorizing marijuana retailers with medical marijuana endorsements to enter the qualifying patient or designated provider into the database and, consequently, provide the patient or provider with a recognition card that may be used to confirm the authenticity of the patient or provider. Patients and providers who are entered into the database are provided protection from arrest so long as they are in compliance with the law on the medical use of marijuana. Patients and providers who are entered into the database

are permitted the following possession amounts: 3 ounces of useable marijuana, 48 ounces of marijuana-infused product in solid form, 216 ounces of marijuana-infused product in liquid form, 21 grams of marijuana concentrates, and 6 plants. The authorizing health care professional may authorize more than the six plants and 3 ounces of useable marijuana if the patient's medical needs require additional amounts, but no more than 8 ounces of useable marijuana and 15 plants.

No more than 15 plants may be grown in a housing unit, unless the housing unit is the location of a cooperative. No plants may be grown or processed if any portion of the activity may be viewed or smelled from the public or the private property of another housing unit.

The database is not subject to public disclosure. The database is accessible to only the following groups of people:

- The medical marijuana retailer with a medical marijuana endorsement, to add the patient or provider to the database.
- Persons authorized to prescribe or dispense controlled substances to access health care information on their patients to provide medical care to their patients.
- A qualifying patient or designated provider to request or receive his or her own health care information.
- Law enforcement officers who are engaged in a bona fide investigation relating to the use of marijuana.
- A marijuana retailer holding a medical marijuana endorsement to confirm the validity of a recognition card.
- The Department of Revenue to verify tax exemptions.
- The Department of Health to monitor compliance of health care professionals.

It is a class C felony for a person to access the database for an unauthorized purpose or to disclose any information obtained by accessing the database. Funding for the creation and maintenance of the database comes from the Health Professions Account which will be reimbursed from the Dedicated Marijuana Fund.

Qualifying patients and designated providers placed in the database must be issued recognition cards. Recognition cards must include a randomly generated number that will identify the patient or provider, a photograph of the patient or provider, the amount of marijuana for which the patient has been authorized, the effective and expiration dates of the card, the name of the health care professional who authorized the patient or provider, and other security features necessary to ensure its validity. Patients and providers will be charged \$1 for each initial and renewal recognition card issued with proceeds to be deposited into the Health Professions Account.

The provision authorizing collective gardens is repealed, effective July 1, 2016. Four member cooperatives are permitted. Up to four patients or designated providers may participate in a cooperative to share responsibility for the production and processing of marijuana for the medical use of its members. The location of the cooperative must be registered with LCB and is only permitted if it is at least 1 mile away from a marijuana retailer. The registration must include each member's name and copies of each member's recognition cards. Only registered members may participate in the cooperative or obtain marijuana from the cooperative. If a member leaves the cooperative, no new member may join for 60 days after

