

FILED  
Court of Appeals  
Division II  
State of Washington  
8/19/2021 1:10 PM

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
8/19/2021  
BY ERIN L. LENNON  
CLERK

No. 100098-7

---

**IN THE SUPREME COURT FOR  
STATE OF WASHINGTON**

---

U4IK GARDENS, LLP, a Washington limited liability partnership,

Petitioner,

v.

STATE OF WASHINGTON, THE WASHINGTON STATE LIQUOR  
CONTROL BOARD, KENDRA OGRAN and JOHN DOE NOS. 1-6,

Respondents,

---

Court of Appeals Case No. 54492-0-II  
Appeal from the Superior Court of the  
State of Washington for Thurston County

---

**PETITION FOR REVIEW**

---

James L. Buchal, WSB No. 31369  
MURPHY & BUCHAL LLP  
P.O. Box 86620  
Portland, OR 97286  
Tel: 503-227-1011  
Fax: 503-573-1939  
*Attorney for Petitioner*

August 19, 2021

**TABLE OF CONTENTS**

Preliminary Statement.....1

A. IDENTITY OF PETITIONER.....1

B. COURT OF APPEALS DECISION.....1

C. ISSUES PRESENTED FOR REVIEW .....1

D. STATEMENT OF THE CASE.....2

Argument .....4

I. PETITIONER’S UNTAGGED PLANTS WERE NOT  
LAWFULLY DESTROYED .....5

    A. The Board’s Rules Need Not Be Construed to allow  
    Summary Destruction of Licensee Inventory .....6

    B. The Governing Statutes Need Not Be Constructed to  
    Allow Summary Destruction of Licensee Inventory .....9

II. IF THE LEGISLATURE INDEED AUTHORIZED THE  
BOARD TO BEHAVE IN THIS FASHION, THIS COURT  
SHOULD PROVIDE A CONSTITUTIONAL DAMAGE  
REMEDY .....12

Conclusion .....19

APPENDIX

## TABLE OF AUTHORITIES

### Cases

<i>Benjamin v. Wash. State Bar Ass'n</i> , 138 Wn.2d 506, 980 P.2d 742 (1999).....	18
<i>Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics</i> , 403 U.S. 388 (1971).....	17
<i>Blinka v. Wash. State Bar Ass'n</i> , 109 Wn. App. 575 (2001) .....	18
<i>Everett v. Slade</i> , 83 Wn.2d 80, 515 P.2d 1295 (1973).....	14, 15, 16
<i>In re Pers. Restraint of Dyer</i> , 164 Wash. 2d 274 (2008).....	19
<i>Marbury v. Madison</i> , 5 U.S. 137, 1 Cranch 137, 2 L. Ed. 60 (1803). .....	17
<i>Potter v. Wash. State Patrol</i> , 165 Wn.2d 67, 196 P.3d 691 (2008).....	13
<i>Reid v. Pierce County</i> , 136 Wn.2d 195 (1998) .....	18
<i>Spurrell v. Block</i> , 40 Wn. App. 854 (1985) .....	18
<i>State v. Crediford</i> , 130 Wash. 2d 747 (1996).....	8
<i>State v. Gunwall</i> , 106 Wn.2d 54, 720 P.2d 808 (1986).....	14
<i>State v. One 1972 Mercury Capri</i> , 85 Wn.2d 620 (1975) .....	16
<i>Systems Amusement, Inc. v. State of Washington</i> , 7 Wn. App. 516 (1972) .....	17, 18

<i>United States v. James Daniel Good Real Prop.</i> , 510 U.S. 43, 114 S. Ct. 492 (1993).....	16
---	----

**State Statutes**

RCW 4.24.630 .....	13
RCW 69.50.325(1).....	10, 11
RCW 69.50.342(1)(l).....	11
RCW 69.50.345(12).....	11
RCW 69.50.366 .....	11
RCW 69.50.505 .....	1, 3, 9, 11
RCW 69.50.505(11).....	9
RCW 69.50.505(12).....	7, 9, 10, 11
RCW 69.50.505(13).....	9, 10

**State Rules**

WAC 314-55-083(3).....	11, 6
WAC 314-55-083(1)(b) .....	11
WAC 314-55-083(4)(f).....	2
WAC 314-55-210.....	1, 3, 7
WAC 314-55-210(1).....	7
WAC 314-55-210(2).....	8
WAC 314-55-210(5).....	6, 8
WAC 314-55-210(6).....	7

WAC 314-55-220.....	7
WAC 314-55-230.....	8
WAC 314-55-230(2).....	8
WAC 314-55-521.....	6
WAC 314-55-525.....	6
<b>Other Authorities</b>	
2019 Laws, Chapter 394, § 1 .....	12
Washington State Constitution,	
Art. I, § 3.....	13
Art. I, § 7.....	13
Art. I, § 12.....	13
Art. I, § 29.....	13

## **Preliminary Statement**

### **A. IDENTITY OF PETITIONER**

Petitioner is U4IK Gardens LLP, a Washington limited liability partnership, held a Tier 1 recreational marijuana producer/processor license from the Washington Liquor and Cannabis Board (“Board”) until an officer of the Board destroyed its business, giving rise to this Petition. (See CP54.)

### **B. COURT OF APPEALS DECISION**

The Court of Appeals opinion affirming the trial court’s grant of summary judgment dismissing all claims of Petitioner was filed July 20, 2021. A copy of the opinion is set forth in the Appendix at pages A1-A12.

### **C. ISSUES PRESENTED FOR REVIEW**

1. Whether RCW 69.50.505 and WAC 314-55-210 allowed the Board’s officer to arrive unannounced at the business of Petitioner and destroy its inventory of growing marijuana plants (and thus its entire business) with no notice, opportunity to be heard, or other due process of law.

2. If the foregoing statutes and rules must be construed in so obviously unconstitutional a manner, whether this Court should establish a constitutional cause of action for damages when Washington officials

arbitrarily destroy property of Washington citizens without notice or opportunity to be heard.

**D. STATEMENT OF THE CASE**

Following a bitter dispute between owners of Petitioner resolved by binding arbitration, in which the Board's enforcement officer was aligned with the losing side (*see* CP25-26), the officer visited the premises of Petitioner without prior notice and observed 411 marijuana plants not tagged with identification labels (CP55), a violation of a violation of WAC 314-55-083(4)(f), which declares that "[a]ll marijuana plants eight or more inches in height or width must be physically tagged and tracked individually . . .". (CP106.)

While not "physically tagged," the plants were "tracked individually" through entry into the Board's traceability system. (CP55; *see also* CP180-192 (list of batch identification numbers for the plants).) The reason for the tagging violation was that Petitioner had been unable to get its printer to print out the labels generated by the traceability system. (CP55.)

The officer cut every plant down, severing the main stalks at the base where they met the growing medium and killing them, put them in garbage bags and took them away, leaving Petitioner a receipt for the 411

plants. (CP55; CP57.) Petitioner had no opportunity to save the plants or its business by any process of appeal or law. (CP56.)

Before the trial court, all parties recognized the essential legal question was whether the Board might, through its agents, lawfully destroy Petitioner's inventory (and thus its business) without prior notice or opportunity to be heard, on account of a regulatory violation identified by the Enforcement Officer. On November 22, 2019, Petitioner moved for summary judgment on the issue of liability on its claims for trespass, conversion, takings and an (as yet unrecognized) direct remedy under the Washington Constitution for substantive and procedural due process violations (CP42-53.) On December 20, 2019, Respondents cross-moved for summary judgment dismissing the claims.

On February 21, 2020, the Thurston County Court entered its Order Denying Plaintiff's Motion for Partial Summary Judgment and Granting Defendants' Cross-Motion for Summary Judgment on February 21, 2020, which simply recited the record reviewed, offering no rationale for the decision, and dismissed Petitioner's amended complaint with prejudice. (CP193-95). A timely appeal was filed, and on July 20, 2021, the Court of Appeals, Division II, issued an opinion holding that "the Board had authority under RCW 69.50.505 and WAC 314-55-210 to immediately seize and destroy [Petitioner's] untagged marijuana plants". (Opinion at 4.) The Court



of Appeals then stated that it would “decline to depart from . . . prior cases [refusing to recognize an implied cause of action for constitutional violations] absent guidance from the legislature or Supreme Court as to the parameters of a constitutional cause of action for damages”. (*Id.* at 11.) While the opinion is unpublished, it is known to the Board, which may now interpret its governing statutes to allow it to dispense entirely with all procedural protections before the Board in violation cases.

### **Argument**

The legalization of marijuana in Washington means it can no longer be considered traditional “contraband” subject to immediate seizure and destruction upon detection by law enforcement authority. It is now a form of personal property that supports a large industry in Washington. The statute and rules governing the Board contain detailed procedures for addressing violations of the Board’s rules, and when and how marijuana may be seized and destroyed. The Legislature specifically required adoption of these rules, but the Court of Appeals found them essentially irrelevant. The Court held that a statute and rule saying officials “may destroy” marijuana, without regard to the statutory and regulatory procedures for doing so, allowed the enforcement officer to act as investigator, prosecutor, judge and executioner with no process of law

whatsoever. The statutes and rules, read in context, need not be twisted to reach such an obviously unconstitutional result.

If the Court of Appeals correctly construed the statutes, then Petitioner's only remedy is a direct action under the Washington Constitution. This Court has previously declined to create such a cause of action where conventional tort remedies offered an adequate substitute, or a litigant has otherwise had his "day in court". The Petition presents the opportunity for this Court to join the many other state supreme courts that have given effect to critical due process provisions when justice so requires because no other remedy is available.

**I. PETITIONER'S UNTAGGED PLANTS WERE NOT LAWFULLY DESTROYED.**

The severity of the punishment inflicted on Petitioner, in comparison to the guidelines established in the Board's own rules, cannot be understated. The Board's detailed rules address the treatment of regulatory violations, procedures for charging and resolving such violations, and sets of presumptive punishments for violation of the rules. *See generally* WAC 314-55-505 through 525.

Months after the summary destruction of the business, Petitioner was charged by the Board for violation of the tagging requirement with an Administrative Complaint (CP81-82), which noted that the charge was "Licensee's first Group 2 regulatory violation and the standard penalty for this

is a \$2,500 monetary fine under WAC 314-55-525."<sup>1</sup> Even this presumptive penalty was for a general “failure to utilize and/or maintain traceability,” rather than a mere tagging violation. Later, WAC 314-55-525 was amended to reduce the presumptive penalty to only \$1,250. WAC 314-55-521.

By contrast, the value of the plants destroyed that day was approximately \$500,000, two hundred times the presumptive penalty at the time (CP26), with greater consequences in the destruction of the business.

**A. The Board’s Rules Need Not Be Construed to allow Summary Destruction of Licensee Inventory.**

The officer’s summary destruction of Petitioner’s inventory bypassed all the procedures set forth in Board regulations for resolving such violations, but the Court of Appeals declined to require the Board and its officer to follow such procedures. The Court of Appeals isolated WAC 314-55-210(5), which declares:

“The WSLCB *may* destroy any marijuana, marijuana concentrate, usable marijuana, and/or marijuana-infused products in its possession that is not identifiable through the Washington marijuana traceability system or otherwise in a form that is not compliant with Washington's marijuana statutes or rules, chapters 69.50 RCW and 314-55 WAC.” (Emphasis added.)

A reasonable officer would have simply allowed Petitioner time to print out the labels and attach them to the plants, because they were entered into the traceability system and “identifiable” in that sense. But even if they were not

---

<sup>1</sup> This charge, and an additional baseless charge, were later settled by payment of the \$2,500 fine. (CP85; CP86.)

“identifiable” within the meaning of the rule, the rule merely authorizes *possible* destruction of untagged plants, and does not purport to specify the procedures to be utilized to do so. Compliance with the procedures would have permitted Petitioner to be heard concerning a reasonable response to the circumstances. In mandating the adoption of rules “specifying procedures for “identifying, seizing, confiscating [and] destroying” non-compliant marijuana (RCW 69.50.505(12)), the Legislature intended the procedures to be followed.

The most applicable procedure is specifically designed to “permit[] a licensee to retain its inventory pending further investigation.” WAC 314-55-210(6). It provides for an order for administrative hold on the non-compliant marijuana, and that “[f]ollowing an investigation, the [Board] may lift the administrative hold, order the continuation of the administrative hold, or seek of final agency order for the destruction of the marijuana . . .”.

In truly exigent circumstances, a special summary procedure is provided in WAC 314-55-220, which provides that the Board itself—and not a single officer—“may issue an order to summarily destroy marijuana . . . after the [Board’s] enforcement division has completed a preliminary staff investigation and upon a determination that immediate destruction is necessary for the protection or preservation of the public health, safety or welfare”. WAC 314-55-210(1). Destruction is to proceed only after “personal service on the licensee or employee thereof of the summary

destruction order . . .”. WAC 314-55-210(2). No such procedure was used in this case, and no summary destruction order was issued. A third procedure in WAC 314-55-230 provides for destruction after “case adjudication”. WAC 314-55-230(2).

The Court of Appeals held, in substance, that the “may destroy” language in WAC 314-55-210(5) made all the procedures optional; any agent might simply destroy any quantity of marijuana deemed to be not identifiable through the traceability system, in a non-compliant form on the spot, or indeed, based on its construction of the related statute, *by reason of any regulatory violation whatsoever*. (See *infra* at 11 n.2.)

While this was the construction urged by the Board, it was not consistent with the longstanding rule that courts should generally construe a legislative enactment “in a way that is consistent with its underlying purpose and avoids constitutional deficiencies”. *State v. Crediford*, 130 Wash. 2d 747, 755, 927 P.2d 1129, 1133 (1996). Requiring the Board to utilize at least one of the three procedures above would obviously vindicate the purpose of the rule without making each and every Board officer the investigator, prosecutor, judge and executioner fully empowered to destroy Board licensees with no due process.

**B. The Governing Statutes Need Not Be Constructed to Allow Summary Destruction of Licensee Inventory.**

The Court of Appeals also found authority for the officer's summary destruction in RCW 69.50.505(12), which is properly understood by putting it in context between subsections (11) and (13):

“(11) Controlled substances listed in Schedule I, II, III, IV, and V that are *possessed, transferred, sold, or offered for sale in violation of this chapter* are contraband and *shall be seized and summarily forfeited* to the state. Controlled substances listed in Schedule I, II, III, IV, and V, which are seized or come into the possession of the board, the owners of which are unknown, are contraband and shall be summarily forfeited to the board.

“(12) Species of plants from which controlled substances in Schedules I and II may be derived *which have been planted or cultivated in violation of this chapter*, or of which the owners or cultivators are unknown, or which are wild growths, *may be seized and summarily forfeited* to the board

“(13) The failure, upon demand by a board inspector or law enforcement officer, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration or proof that he or she is the holder thereof constitutes authority for the seizure and forfeiture of the plants.” (Emphasis added.)

The legislature regarded plants (which *may* be destroyed in subsection (12)) as different than contraband controlled substances (which *shall* be destroyed (11)). A constitutional interpretation of the statute would recognize that the word “may” referred Board officials to the procedures to be utilized, which are set forth in RCW 69.50.505 itself, as refined in the Board's rules. There is no dispute that none of these procedures were used here.

The obvious meaning of producing marijuana “in violation of this chapter” is established in the specific provision concerning when growing marijuana plants *may* be “seized and summarily forfeited to the Board”. RCW 69.50.505(12). Subsection (13), by making proof of “an appropriate registration” to grow plants a defense to seizure and forfeiture, makes it clear that what a “violation of this chapter” means is growing plants without a license. The Legislature never intended to authorize the Board to summarily cut down its licensees' plants, where, as here, licensees have "an appropriate registration or proof that he or she is the holder thereof".

That is why any seizure and summary forfeiture requires a “violation of this chapter,” which is not the same thing as any “violation of a Board rule”. RCW 69.50.325(1), pursuant to which Petitioner got its license, distinguishes the two:

"[t]he production, possession, delivery, distribution, and sale of marijuana *in accordance with the provisions of this chapter and the rules adopted to implement and enforce it*, by a validly licensed marijuana producer, shall not be a criminal or civil offense under Washington state law."

(Emphasis added.)<sup>2</sup> Similarly, RCW 69.50.345(12) provides that the Board "must" adopt rules

"Specifying procedures for identifying, seizing, confiscating, destroying, and donating to law enforcement for training purposes all marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products produced, processed, packaged, labeled, or offered for sale in this state that do not conform in all respects to *the standards prescribed by this chapter or the rules of the state liquor and cannabis board.*"

See also RCW 69.50.342(1)(l). Given the scope and detail of rules the Board has promulgated may promulgate, a distinction between regulatory violations and statutory violations is vital.

Had the Legislature intended that the "Seizure and Forfeiture" provisions of RCW 69.50.505 be invoked for any regulatory violation, they would have put some reference to the Board's rules in RCW 69.50.505, rather than repeatedly referring throughout the statute to a "violation of this chapter". Indeed, elsewhere the Legislature has expressed its concern that

---

<sup>2</sup> The Court of Appeals invoked a related provision to equate violations of any rule with "a violation this Chapter". Specifically, the Court held that "failure to comply with the Board's regulations violates RCW 69.50.366 and therefore constitutes of violation of Chapter 69.50 RCW" (Opinion at 5.)

RCW 69.50.366, like RCW 60.50.325(1), is a "safe harbor" provision against protecting licensees against "criminal or civil offenses under Washington state law". It is not reasonably construed as making any and all regulatory violations a "violation of this Chapter" for seizure purposes. Were that the case, the officer would be entitled to destroy all inventory every time a surveillance camera failed (*see* WAC 314-55-083(3)), or a visitor forgot to put the time of departure on a log (WAC 314-55-083(1)(b)).



“[t]he risk taking entrepreneurs who are trying to comply with board regulations should not face punitive consequences for mistakes made during this initial phase of the industry that did not pose a direct threat to public health and safety.”

(2019 Laws, Chapter 394, § 1.)

In short, like the Board’s rules, the governing statute may be easily construed to avoid the serious constitutional problems arising from the notion that licensed businesses may be destroyed for minor regulatory violations with no due process whatsoever.

The Court of Appeals ruled as if the fundamental statutory decision to authorize the cultivation of marijuana plants under license had never been made, and they were "contraband" that may be destroyed at will by the Board's officers. To the contrary, the non-compliant plants "may"—or "may not"—be seized and forfeited only after application of the procedures set forth in the statute and rule.

**II. IF THE LEGISLATURE INDEED AUTHORIZED THE BOARD TO BEHAVE IN THIS FASHION, THIS COURT SHOULD PROVIDE A CONSTITUTIONAL DAMAGE REMEDY.**

The Court of Appeals suggested that Petitioner did not bring any action for injunctive relief, or seek to invalidate the statute or rules as unconstitutional, instead seeking damages. (Opinion at 2 & 3 n.1.) But it was too late for declaratory or injunctive relief to provide any remedy for Petitioner, because the 411 plants were dead and gone. Moreover, because the statutes and rules could and should have been construed to find the officer’s

conduct unauthorized, supporting Petitioner's trespass and conversion claims,<sup>3</sup> there was no cause to bring claims against the statute and rules. Petitioner could not have imagined the Legislature to have authorized the Board's officers to behave in this fashion, but if this Court finds that the Legislature did so, the remaining remedy is damages for breach of the due process guarantee of the Washington Constitution.

The Washington Constitution takes care to pronounce that: "The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise." Wash. Const. Art. I, § 29. Among the most important of those provisions is that: "No person shall be deprived of life, liberty or property without due process of law." *Id.* § 3. In addition, Article I, § 7 provides: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." And § 12 provides: "No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities

---

<sup>3</sup> The trespass statute under which Petitioner sued, RCW 4.24.630, provided a remedy "if the person intentionally and unreasonably commits the act or acts while knowing, or having reason to know, that he or she lacks authorization to so act." Washington officials cannot reasonably expect that they can serve as judge, jury and executioner of a business that has committed a minor regulatory offense. Similarly, conversion requires unjustified, willful interference with a chattel which deprives a person entitled to the property of possession." *Potter v. Wash. State Patrol*, 165 Wn.2d 67, 78, 196 P.3d 691, 696 (2008) (internal citations omitted). With no compliance with the regulatory procedures, the destruction here was plainly unjustified.

which upon the same terms shall not equally belong to all citizens, or corporations."<sup>4</sup>

The idea that Enforcement Officers may visit licensees of the Board and destroy their businesses at will without any standards, guidance or any process other than the Enforcement Officer serving as judge, jury and executioner cannot be reconciled with these fundamental and mandatory protections of the Washington Constitution. Indeed, the officer's conduct here should shock the conscience of the Court.

This Court made it clear that such conduct was blatantly unconstitutional long ago, in holding a prior version of RCW 69.50.505(b)(4) unconstitutional on its face for failure "to provide for any notice or opportunity for a hearing prior to actual seizure of the property." *Everett v. Slade*, 83 Wn.2d 80, 85, 515 P.2d 1295, 1298 (1973). There, the police officer seized appellant's car for selling a controlled substance, averring that drug violation "involved the use of a vehicle". *Id.* at 82.

---

<sup>4</sup> Petitioner eschews the assertion of any federal constitutional rights in this action because federal marijuana policy differs from Washington's, and hence extended discussion of the "*Gunwall*" factors for "whether, in a given situation, the constitution of the State of Washington should be considered as extending broader rights to its citizens than does the United States Constitution," *State v. Gunwall*, 106 Wn.2d 54, 61, 720 P.2d 808, 812 (1986), should not be necessary. Petitioner does not propose to extend the protections of Washington's constitution beyond the federal one except insofar as the marijuana-related nature of its business should not disqualify it from the protection of the Washington Constitution.

That the law might ultimately allow the forfeiture of the car was of no moment. This Court's extended discussion of the nature of due process rights in this context is controlling:

It is said that the questioned provision falls within the "extraordinary situations" exception recognized in various federal due process cases. We do not agree.

Unlimited power of "seizure" is not authorized by the suggested exception. Even there, due process requires that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest except, as stated by *Boddie v. Connecticut*, 401 U.S. 371, 379, 28 L. Ed. 2d 113, 91 S. Ct. 780 (1971), "for extraordinary situations where some valid governmental interest is at stake that justifies postponing the hearing until after the event." Further, the "opportunity" for a hearing must be granted "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552, 14 L. Ed. 2d 62, 85 S. Ct. 1187 (1965). The hearing must be "appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313, 94 L. Ed. 865, 70 S. Ct. 652 (1950).

Recognizing that "extraordinary situations" may justify the postponement of notice and hearing, the United States Supreme Court recently stated that such situations must be "truly unusual" and that ordinary costs in time, effort, and expense incurred by providing a hearing cannot outweigh the constitutional right. *Fuentes v. Shevin*, 407 U.S. 67, 90, 32 L. Ed. 2d 556, 92 S. Ct. 1983 (1972). Regarding such situations, the court had this to say:

Only in a few limited situations has this Court allowed outright seizure without opportunity for a prior hearing. First, in each case, the seizure has been directly necessary to secure an important governmental or general public interest. Second, there has been a special need for very prompt action. Third, the state has kept strict control over its monopoly of legitimate force: the person initiating the seizure has been a government official responsible for determining, under the standards of a narrowly drawn

statute, that it was necessary and justified in the particular instance.

*Everett*, 83 Wn.2d at 83-84 (footnote omitted); *see also State v. One 1972 Mercury Capri*, 85 Wn.2d 620 (1975) (striking down seizure under state and federal constitution).

There was nothing extraordinary about Petitioner’s circumstances to justify not merely the lack of any pre-seizure hearing, but any hearing whatsoever before the total destruction of the plants and business. This was a business operating under extensive regulatory restrictions, including ongoing video recording of all its operations (WAC 314-55-083(3))—the growing marijuana plants posed no immediate threat to anyone. While Petitioner might be, and was, sanctioned a \$2,500 fine for the lack of tagging, “the right to prior notice and a hearing is central to the Constitution's command of due process” and is intended to ““minimize substantively unfair or mistaken deprivations of property’”. *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 53, 114 S. Ct. 492, 500-01 (1993) (quoting *Fuentes v. Shevin*, 407 U.S. 67, 81, 92 S. Ct. 1983, 1994 (1972)).

To the extent that no tort remedy is available—and it should be—the Washington Constitution should be invoked to afford a remedy. As Chief Justice John Marshall declared: “[t]he very essence of civil liberty certainly consists in the right of every individual to claim the protection of

the laws, whenever he receives an injury.” *Marbury v. Madison*, 5 U.S. 137, 163, 1 Cranch 137, 2 L. Ed. 60 (1803). And the provisions of the Washington Constitution can hardly be said to be "mandatory" if the Board's agents are privileged to ignore them entirely at whim.

In *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), the U.S. Supreme Court created a direct remedy for damage where federal agents violated citizens' Fourth Amendment rights against unreasonable searches and seizures. This Court has thus far declined to follow *Bivens* and establish a direct, constitutionally-based damage claim where agents of the State of Washington have violated rights guaranteed under the Washington State Constitution, but each of those cases is distinguished because this Court's fundamental rationale for declining to create the cause of action in those cases has no application in here.

As the initial case on this issue explained:

“ . . . plaintiff's counsel candidly invites us to create a ‘cause of action’ based solely upon an alleged violation of a constitutionally guaranteed right: ‘No person shall be deprived of life, liberty, or property, without due process of law.’ Const. art. 1, § 3.

“Plaintiff misconstrues the basic nature of the due process clause. The clause is a protection against arbitrary action by the state; but if a person has his day in court, he has not been deprived of due process.

*Systems Amusement, Inc. v. State of Washington*, 7 Wn. App. 516, 518 (1972); *see also Spurrell v. Block*, 40 Wn. App. 854, 861 (1985) (“Plaintiffs' rights are adequately protected by recognized causes of action; they have had their day in court”). The theme of this entire line of cases is where there is an existing cause of action, no constitutional remedy need be created. *E.g., Reid v. Pierce County*, 136 Wn.2d 195, 213-14 (1998) (common law invasion of privacy action); *Blinka v. Wash. State Bar Ass'n*, 109 Wn. App. 575, 594 (2001) (wrongful discharge claim).

If no tort remedy lies here, this is the archetypical case in which a constitutional remedy should be created, for there was a blatant violation of Petitioner’s substantive and procedural due process rights resulting in damage. Many, many other states have taken this step where, as here, no other law provides a remedy. *See Benjamin v. Wash. State Bar Ass'n*, 138 Wn.2d 506, 548 n.119, 980 P.2d 742, 764 (1999) (Sanders, J., dissenting) (concluding that “[m]any states have recognized that citizens have a remedy for violation of state constitutional rights” and listing cases across the country).

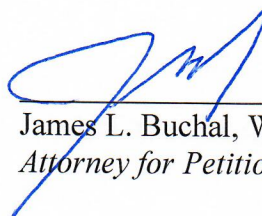
Substantively, Respondents put Petitioner out of business for conduct that was a first offense and presumptively (and later actually) addressed with a small fine. Procedurally, there was not even a fig leaf of notice or opportunity to be heard, clearly violating the most fundamental

due process provisions in the Washington Constitution. Insofar as the officer's conduct should shock the conscience of the Court, a substantive due process is established as well. *In re Pers. Restraint of Dyer*, 164 Wash. 2d 274, 296, 189 P.3d 759, 770 (2008) ("Executive action that shocks the court's conscience violates substantive due process").

### **Conclusion**

For the foregoing reasons, the Court of Appeals decision should be reversed.

DATED: August 19, 2021.



---

James L. Buchal, WSB No. 31369  
*Attorney for Petitioner*



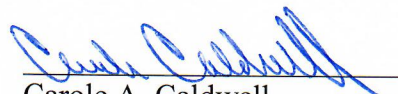
**DECLARATION OF SERVICE**

The undersigned declares under penalty of perjury under the laws of the State of Washington as follows: That on August 19, 2021, I served the foregoing document on counsel for the State of Washington by causing a true and correct copy of said document to be delivered at the address shown below in the manner indicated.

Jennifer D. Loynd, WSB No. 33129  
Assistant Attorney General  
Attorney General's Office, Torts Division  
P.O. Box 40126  
Olympia, WA 98504-0126  
Tel: (360) 586-6404  
E-mail: Jennifer.Loynd@ATG.WA.GOV  
Laurel.Deforest@ATG.WA.GOV  
Angie.SmithBabbit@ATG.WA.GOV  
TOROlyEF@ATG.WA.GOV

( ) (BY FEDERAL EXPRESS)  
(X) (BY FIRST CLASS US MAIL)  
(X) (BY E-MAIL)  
( ) (BY FAX)  
( ) (BY HAND)

Dated this 19<sup>th</sup> day of August 2021 at Portland, Oregon.

  
Carole A. Caldwell

# APPENDIX

July 20, 2021

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

U4IK GARDENS, LLP, a Washington limited  
liability partnership,

Appellant,

v.

STATE OF WASHINGTON; WASHINGTON  
STATE LIQUOR AND CANNABIS BOARD;  
KENDRA OGREN; and JOHN DOE NOS. 1-  
6,

Respondents.

No. 54492-0-II

UNPUBLISHED OPINION

Glasgow, J.—The Washington Liquor and Cannabis Board seized and immediately destroyed 411 marijuana plants cultivated by U4IK Gardens LLP because the plants were larger than 8 inches in height or width but were not tagged with unique identification labels. U4IK argued it is entitled to damages under the Washington Constitution’s due process clause, the trespass statute, and common law conversion. The superior court granted summary judgment to the Board and denied summary judgment to U4IK, dismissing all claims.

U4IK appeals, arguing that the Board was not authorized to immediately seize and destroy its plants without some process or hearing and, as a result, the Board must pay damages. We affirm the superior court’s grant of summary judgment dismissing U4IK’s claims because U4IK failed to raise any viable cause of action in its complaint.

## FACTS

U4IK was a licensed marijuana producer growing marijuana for sale. Acting on a tip, enforcement officers with the Board conducted an unannounced visit to U4IK's grow facility. The officers discovered 411 marijuana plants over 8 inches in height or width that lacked the unique identification labels required under the Board's traceability regulations. In an uncontested report, an enforcement officer explained that some of the plants were as much as 4 to 5 feet tall, and some were full grown plants with buds. The report also explained that marijuana plants can take 3 months or more to mature to the point where they grow buds. Thus, it is possible many of the plants had been improperly lacking unique identification labels for some time.

The officers determined the lack of labeling posed a threat to health and safety, and they seized and killed the 411 plants by cutting them at the base of each plant and removing them from U4IK's facility. The plants were eventually destroyed. The officers did not destroy plants that were less than 8 inches in height or width or plants whose unique identification labels were improperly attached to their containers rather than the plant itself.

U4IK filed a complaint against the Board and the officers involved seeking damages for its destroyed plants under 42 U.S.C. § 1983, statutory trespass, conversion, and the takings clause of the Washington Constitution. The only remedy that U4IK sought was monetary damages; it did not seek injunctive or declaratory relief, nor did it ask the trial court to declare any statute or regulation invalid. U4IK later amended its complaint, eliminating its § 1983 claim and replacing that claim with an allegation that the Board violated U4IK's state constitutional rights to equal protection and procedural and substantive due process. The amended complaint retained the remaining claims and still sought only damages, not injunctive or declaratory relief.

The parties filed cross motions for summary judgment. The superior court granted the Board's motion for summary judgment and dismissed all of U4IK's claims. U4IK appeals.

#### ANALYSIS

We review the superior court's order granting summary judgment de novo. *Vargas v. Inland Wash., LLC*, 194 Wn.2d 720, 728, 452 P.3d 1205 (2019). Summary judgment is appropriate when the pleadings, affidavits, depositions, and admissions on file demonstrate the absence of any genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). When determining whether a genuine issue of material fact exists, we consider all the evidence and reasonable inferences in the light most favorable to the nonmoving party. *Vargas*, 194 Wn.2d at 728. Summary judgment is proper if, after reviewing all the evidence, a reasonable person could reach only one conclusion. *Id.*

##### A. Board's Authority to Seize and Destroy Plants

Several of U4IK's claims depend on U4IK's underlying argument that the enforcement officers lacked authority to immediately seize and destroy the marijuana plants under chapter 69.50 RCW and chapter 314-55 WAC. Specifically, U4IK contends that the Board had to first conduct a proceeding under WAC 314-55-220(3) before killing or destroying the plants. U4IK also argues that the Board should have imposed an administrative hold, allowing the plants to survive and be cultivated while the appropriate penalty was determined. Alternatively, U4IK argues that the Board should have engaged in forfeiture proceedings before destroying the plants. Finally, U4IK asserts that the appropriate remedy was a monetary fine, not destruction of the untagged plants.<sup>1</sup>

---

<sup>1</sup> As the trial court astutely recognized below, U4IK did not argue that the statute or Board regulations are unconstitutional on their face or as applied. Nor does U4IK argue on appeal that any applicable statute or regulation is invalid.

The Board responds that its immediate seizure and destruction of the plants was authorized by RCW 69.50.505 and WAC 314-55-210 because the untagged plants were cultivated in violation of chapter 69.50 RCW. The Board also contends that U4IK did not have a valid property interest in the plants under chapter 69.50 RCW and that the plants could be immediately destroyed, in part because untagged plants present a risk to public health and safety.

We conclude that the Board had authority under RCW 69.50.505 and WAC 314-55-210 to immediately seize and destroy U4IK's untagged marijuana plants.

1. Relevant statutes and regulations
  - a. Marijuana plant tagging requirement

RCW 69.50.345 mandates that the Board promulgate regulations to oversee the production of marijuana.

Producers of marijuana must comply with the statutory and regulatory provisions of chapter 69.50 RCW and chapter 314-55 WAC. RCW 69.50.401 makes it illegal to possess controlled substances with the intent to manufacture or deliver except as authorized by chapter 69.50 RCW. RCW 69.50.401(3) states that “[t]he production . . . of marijuana in compliance with the terms set forth in RCW . . . 69.50.366 shall not constitute a violation of this section, this chapter, or any other provision of Washington state law.”

RCW 69.50.366 clarifies that marijuana production by a licensed marijuana producer does not constitute a criminal or civil offense if done in compliance with the rules adopted by the Board. RCW 69.50.366(1) also states that “[p]roduction or possession of quantities of marijuana that do not exceed the maximum amounts established by the [Board] under RCW 69.50.345(3)” “do not constitute criminal or civil offenses under Washington . . . law” so long as the marijuana producer

complies “with rules adopted by the [Board] to implement and enforce [chapter 69.50 RCW].”<sup>2</sup> Thus, failure to comply with the Board’s regulations violates RCW 69.50.366 and therefore constitutes a violation of chapter 69.50 RCW.

One of the Board’s regulations requires marijuana plants larger than 8 inches in height or width to be precisely traced. WAC 314-55-083(4)(f). Licensed producers like U4IK must affix a unique identification label to each plant that includes detailed information. WAC 314-55-083(4). WAC 314-55-083(4) provides in relevant part:

To prevent diversion *and to promote public safety*, marijuana licensees must track marijuana from seed to sale. . . . The following information is required and must be kept completely up-to-date in a system specified by the [Board]:

....

(f) All marijuana plants eight or more inches in height or width must be physically tagged and tracked individually.

(Emphasis added.)

In sum, failure to comply with the tagging and traceability requirements in WAC 314-55-083(4) makes possession of untagged plants a violation of chapter 69.50 RCW under RCW 69.50.366.

b. Board enforcement

RCW 69.50.500(a) authorizes the Board to enforce the provisions of chapter 69.50 RCW: “It is hereby made the duty of . . . the [Board], and [its] officers, agents, inspectors and representatives, and all law enforcement officers within the state, and of all prosecuting attorneys, to enforce all provisions of this chapter.” (Reviser’s note omitted.)

---

<sup>2</sup> RCW 69.50.360 and .363 apply to retailers and processors, and these statutes contain similar language.

Violations of chapter 69.50 RCW trigger the Board’s authority to undertake seizure and forfeiture actions. RCW 69.50.505. RCW 69.50.505(2)(c) authorizes the Board to seize property *without process* if “[a] board inspector or law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety.” (Reviser’s note omitted.) In the event of a seizure under RCW 69.50.505(2), “proceedings for forfeiture shall be deemed commenced by the seizure.” RCW 69.50.505(3). The statute then provides for a forfeiture procedure under which a party can obtain a hearing. RCW 69.50.505(3)-(5).

In addition, RCW 69.50.505(12) separately authorizes the Board to seize and *summarily* forfeit marijuana plants that were cultivated in violation of chapter 69.50 RCW:

Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the board.

(Reviser’s note omitted.) Marijuana is a Schedule I drug. RCW 69.50.204(c)(22).<sup>3</sup>

Under RCW 69.50.345(12), the Board is empowered to adopt rules “[s]pecifying procedures for . . . destroying . . . all marijuana . . . that do[es] not conform in all respects to the standards prescribed by this chapter or the rules of the [Board].” In turn, WAC 314-55-210(5) provides that the Board may destroy plants that do not comply with the traceability requirements under WAC 314-55-083(4):

---

<sup>3</sup> The Board also relies on RCW 69.50.505(11), but that subsection is not specific to plants, while (12) is. As a result, we rely on (12) as the specifically applicable subsection. The Board argues that the language in (11) creates a *mandatory duty* to seize contraband controlled substances that are not possessed in compliance with chapter 69.50 RCW, but we do not need to address that issue to resolve this case. Similarly, U4IK’s argument that untagged plants are not contraband if held by a licensee relies on the word “contraband” that appears in (11), but not (12) of RCW 69.50.505. We also do not address that argument.



The [Board] may seize, *destroy*, confiscate, *or* place an administrative hold on marijuana, usable marijuana, marijuana concentrates, and marijuana-infused products under the following circumstances:

....

(5) The [Board] *may destroy any marijuana*, marijuana concentrate, usable marijuana, and/or marijuana-infused products in its possession that is not identifiable through the Washington marijuana traceability system or otherwise in a form that is not compliant with Washington’s marijuana statutes or rules, chapters 69.50 RCW and 314-55 WAC.

(Emphasis added.) This regulation also establishes a process to be followed should the Board opt to place an administrative hold on the marijuana in question, allowing marijuana plants to continue to be cultivated pending resolution of an investigation. WAC 314-55-210(6).

The Board may also summarily order a producer to destroy plants after completing a preliminary investigation that shows destruction is necessary “for the protection or preservation of the public health, safety, or welfare.” WAC 314-55-220(1). Destruction under WAC 314-55-220(2) requires the Board to serve notice on the producer. WAC 314-55-220 provides:

(1) The [Board] may issue an order to summarily destroy marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products after the [Board’s] enforcement division has completed a preliminary staff investigation of the violation and upon a determination that immediate destruction of marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products is necessary for the protection or preservation of the public health, safety, or welfare.

(2) Destruction of any marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products under this provision shall take effect immediately upon personal service on the licensee or employee thereof of the summary destruction order unless otherwise provided in the order.

Finally, WAC 314-55-230(2) addresses procedures for destroying marijuana after “case adjudication.”

In sum, the legislature contemplated destruction of marijuana plants that were not maintained in compliance with chapter 69.50 RCW or Board regulations. The legislature also

required the Board to adopt regulations regarding the procedures for destroying marijuana plants that were out of compliance. RCW 69.50.345(12). In its regulations, the Board provided for multiple options, including immediate destruction, administrative hold, summary destruction after a preliminary investigation, and destruction after case adjudication. WAC 314-55-210, -220, -230.

2. Immediate destruction was authorized under chapter 69.50 RCW and chapter 314-55 WAC

We conclude, as a matter of law, that the Board was authorized to seize and destroy U4IK's 411 plants that were larger than 8 inches and not tagged with a unique identification label.

U4IK does not dispute that it violated WAC 314-55-083(4) by failing to tag its marijuana plants. The record contains uncontested evidence that some of the plants were large enough that noncompliance with the tagging requirements had probably been going on for some time. Because U4IK failed to comply with the Board's traceability regulations, it also necessarily failed to comply with RCW 69.50.366, the statute that requires licensed marijuana producers to comply with all Board regulations. Thus, to the extent U4IK asserts it did not violate chapter 69.50 RCW, that argument fails.

At the summary judgment hearing, U4IK also conceded that the seizure of the untagged plants was authorized under RCW 69.50.505(2)(c). U4IK argues on appeal, however, that the Board had no authority to destroy the plants until it satisfied the summary destruction process under WAC 314-55-220 or completed a case adjudication under WAC 314-55-230.

U4IK is dismissive of RCW 69.50.505(12), but that subsection expressly authorizes seizure and summary forfeiture of marijuana plants cultivated in violation of chapter 69.50 RCW. Once the Board seized the plants, it was authorized to destroy them under WAC 314-55-210(5) because the plants were noncompliant with the Board's traceability requirements. Although other portions

of the regulations provided other avenues to destruction, involving an administrative hold or case adjudication for example, the plain language of WAC 314-55-210(5) provides for the destruction of plants not identifiable through the Board's tracing system, without reference to any delay or predestruction proceeding.

U4IK contends that the Board could only invoke WAC 314-55-210(5) to destroy the plants *after* the Board had taken the plants into its possession. But U4IK conceded below that seizure of the untagged plants was justified and it does not explain why the plants could not be destroyed on site to the extent they had to be cut from their roots for the Board to confiscate them.

U4IK also asserts that an administrative hold was required. But that is contrary to the plain language of WAC 314-55-210(6), which allows for, but does not require, an administrative hold. WAC 314-55-210(6) says only that the Board "*may* order an administrative hold."

Finally, U4IK argues that all of the Board's regulations regarding destruction must be read together, and WAC 314-55-210(5) only contemplates destruction of untagged plants using the procedures outlined in the other regulations discussed above—*forfeiture proceedings, summary forfeiture after investigation, or case adjudication*. U4IK also contends that ignoring the predestruction procedures established in other regulations undermines those procedures. But both of these arguments ignore that the legislature and the Board intended to treat untagged plants and other untraceable marijuana as particularly likely to threaten health and safety of marijuana consumers, as well as present a danger for diversion into the black market, something the Board must prevent. *See* WAC 314-55-521 (categorizing traceability violations as an immediate threat to public health and safety). Reading WAC 314-55-210(5) as an independent basis for destruction in the limited circumstances where marijuana is not being traced is consistent with these purposes.

We conclude that the Board and its agents operated under the authority of RCW 69.50.505(12) and WAC 314-55-210(5) when they seized and destroyed U4IK's untagged plants.

B. Damages Under Trespass and Conversion

U4IK argues that the Board is liable for statutory trespass and common law conversion. Both of these claims depend upon U4IK's argument that the Board lacked authority to immediately seize and destroy the untagged plants.

To prevail under the trespass statute, U4IK must show that the Board intentionally and unreasonably went onto its land to remove crops while knowing or having reason to know it lacked authority to do so. RCW 4.24.630. Similarly, “[c]onversion is the *unjustified*, willful interference with a chattel which deprives a person entitled to the property of possession.” *Potter v. Wash. State Patrol*, 165 Wn.2d 67, 78-79, 196 P.3d 691 (2008) (emphasis added) (alteration in original) (quoting *In re Marriage of Langham & Kolde*, 153 Wn.2d 553, 564, 106 P.3d 212 (2005)). Because the Board was authorized to immediately seize and destroy the untagged marijuana plants under RCW 69.50.505(12) and WAC 314-55-210(5), the Board and its agents did not act without authority, nor was the seizure of the plants unjustified.

U4IK relies on *Potter*, where the plaintiff was permitted to proceed with a common law conversion claim against the State Patrol based on the impoundment of Potter's car. 165 Wn.2d 78-79. But the claim in *Potter* arose *after* the regulation the State Patrol had relied on for the impoundment was declared invalid. *Id.* at 75. Here, there has been no such holding invalidating the relevant Board regulations, nor has U4IK sought declaratory judgment invalidating the regulations in this case. Thus, the Board's actions here were not unjustified in the way that the impoundment of Potter's car was unjustified.

For these reasons, we conclude that U4IK may not recover under trespass or conversion.

C. Due Process Claim Under the Washington Constitution

U4IK argues that destroying the untagged plants without any prior notice and opportunity to be heard violated its procedural and substantive due process rights and, as a result, U4IK is entitled to damages.<sup>4</sup> U4IK explains that a person cannot be deprived of a property interest without notice and an opportunity to be heard. The Board responds that U4IK seeks only damages, and there is no private right of action for damages in Washington based on state constitutional claims.

In *Blinka v. Washington State Bar Association*, Division One explained that Washington courts have declined to recognize an implied cause of action for constitutional violations. 109 Wn. App. 575, 36 P.3d 1094 (2001). U4IK urges us to be the first to recognize such a claim. On at least one prior occasion, the Washington Supreme Court has declined this invitation. *See Reid v. Pierce County*, 136 Wn.2d 195, 213-14, 961 P.2d 333 (1998). We decline to depart from these prior cases absent guidance from the legislature or the Supreme Court as to the parameters of a constitutional cause of action for damages.

Because U4IK seeks only damages and there is no constitutional basis for a damages claim, it has failed to raise a viable cause of action and is therefore not entitled to relief.

CONCLUSION

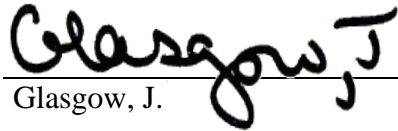
We affirm summary judgment in the Board's favor because the Board and its officers acted within their statutory and regulatory authority. U4IK has not raised a viable cause of action.

---

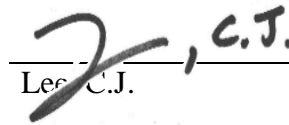
<sup>4</sup> U4IK does not mention its equal protection or takings claims on appeal, and we therefore treat those claims as abandoned.

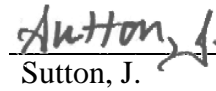
No. 54492-0-II

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

  
Glasgow, J.

We concur:

  
Lee, C.J.

  
Sutton, J.

## THE REVISED CODE OF WASHINGTON

### RCW 4.24.630

#### **Liability for damage to land and property—Damages—Costs—Attorneys' fees—Exceptions.**

(1) Every person who goes onto the land of another and who removes timber, crops, minerals, or other similar valuable property from the land, or wrongfully causes waste or injury to the land, or wrongfully injures personal property or improvements to real estate on the land, is liable to the injured party for treble the amount of the damages caused by the removal, waste, or injury. For purposes of this section, a person acts "wrongfully" if the person intentionally and unreasonably commits the act or acts while knowing, or having reason to know, that he or she lacks authorization to so act. Damages recoverable under this section include, but are not limited to, damages for the market value of the property removed or injured, and for injury to the land, including the costs of restoration. In addition, the person is liable for reimbursing the injured party for the party's reasonable costs, including but not limited to investigative costs and reasonable attorneys' fees and other litigation-related costs.

(2) This section does not apply in any case where liability for damages is provided under RCW 64.12.030, \* 79.01.756, 79.01.760, 79.40.070, or where there is immunity from liability under RCW 64.12.035.

### RCW 69.50.325

#### **Marijuana producer's license, marijuana processor's license, marijuana retailer's license.**

(1) There shall be a marijuana producer's license regulated by the board and subject to annual renewal. The licensee is authorized to produce: (a) Marijuana for sale at wholesale to marijuana processors and other marijuana producers; (b) immature plants or clones and seeds for sale to cooperatives as described under RCW 69.51A.250; and (c) immature plants or clones and seeds for sale to qualifying patients and designated providers as provided under RCW 69.51A.310. The production, possession, delivery, distribution, and sale of marijuana in accordance with the provisions of this chapter and the rules adopted to implement and enforce it, by a validly licensed marijuana producer, shall not be a criminal or civil offense under Washington state law. Every marijuana producer's license shall be issued in the name of the applicant, shall specify the location at which the marijuana producer intends to operate, which must be within the state of Washington, and the holder thereof shall not allow any other person to use the license. The application fee for a marijuana producer's license shall be two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana producer's license shall be one thousand three hundred eighty-one dollars. A separate license shall be required for each location at which a marijuana producer intends to produce marijuana.

(2) There shall be a marijuana processor's license to process, package, and label marijuana concentrates, useable marijuana, and marijuana-infused products for sale at wholesale to

marijuana processors and marijuana retailers, regulated by the board and subject to annual renewal. The processing, packaging, possession, delivery, distribution, and sale of marijuana, useable marijuana, marijuana-infused products, and marijuana concentrates in accordance with the provisions of this chapter and chapter 69.51A RCW and the rules adopted to implement and enforce these chapters, by a validly licensed marijuana processor, shall not be a criminal or civil offense under Washington state law. Every marijuana processor's license shall be issued in the name of the applicant, shall specify the location at which the licensee intends to operate, which must be within the state of Washington, and the holder thereof shall not allow any other person to use the license. The application fee for a marijuana processor's license shall be two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana processor's license shall be one thousand three hundred eighty-one dollars. A separate license shall be required for each location at which a marijuana processor intends to process marijuana.

(3)(a) There shall be a marijuana retailer's license to sell marijuana concentrates, useable marijuana, and marijuana-infused products at retail in retail outlets, regulated by the board and subject to annual renewal. The possession, delivery, distribution, and sale of marijuana concentrates, useable marijuana, and marijuana-infused products in accordance with the provisions of this chapter and the rules adopted to implement and enforce it, by a validly licensed marijuana retailer, shall not be a criminal or civil offense under Washington state law. Every marijuana retailer's license shall be issued in the name of the applicant, shall specify the location of the retail outlet the licensee intends to operate, which must be within the state of Washington, and the holder thereof shall not allow any other person to use the license. The application fee for a marijuana retailer's license shall be two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana retailer's license shall be one thousand three hundred eighty-one dollars. A separate license shall be required for each location at which a marijuana retailer intends to sell marijuana concentrates, useable marijuana, and marijuana-infused products.

(b) An individual retail licensee and all other persons or entities with a financial or other ownership interest in the business operating under the license are limited, in the aggregate, to holding a collective total of not more than five retail marijuana licenses.

(c)(i) A marijuana retailer's license is subject to forfeiture in accordance with rules adopted by the board pursuant to this section.

(ii) The board shall adopt rules to establish a license forfeiture process for a licensed marijuana retailer that is not fully operational and open to the public within a specified period from the date of license issuance, as established by the board, subject to the following restrictions:

(A) No marijuana retailer's license may be subject to forfeiture within the first nine months of license issuance; and

(B) The board must require license forfeiture on or before twenty-four calendar months of license issuance if a marijuana retailer is not fully operational and open to the public, unless the board determines that circumstances out of the licensee's control are preventing the licensee from becoming fully operational and



that, in the board's discretion, the circumstances warrant extending the forfeiture period beyond twenty-four calendar months.

(iii) The board has discretion in adopting rules under this subsection (3)(c).

(iv) This subsection (3)(c) applies to marijuana retailer's licenses issued before and after July 23, 2017. However, no license of a marijuana retailer that otherwise meets the conditions for license forfeiture established pursuant to this subsection (3)(c) may be subject to forfeiture within the first nine calendar months of July 23, 2017.

(v) The board may not require license forfeiture if the licensee has been incapable of opening a fully operational retail marijuana business due to actions by the city, town, or county with jurisdiction over the licensee that include any of the following:

(A) The adoption of a ban or moratorium that prohibits the opening of a retail marijuana business; or

(B) The adoption of an ordinance or regulation related to zoning, business licensing, land use, or other regulatory measure that has the effect of preventing a licensee from receiving an occupancy permit from the jurisdiction or which otherwise prevents a licensed marijuana retailer from becoming operational.

(d) The board may issue marijuana retailer licenses pursuant to this chapter and RCW 69.50.335.

### **RCW 69.50.325**

#### **Marijuana producer's license, marijuana processor's license, marijuana retailer's license.**

(1) There shall be a marijuana producer's license regulated by the board and subject to annual renewal. The licensee is authorized to produce: (a) Marijuana for sale at wholesale to marijuana processors and other marijuana producers; (b) immature plants or clones and seeds for sale to cooperatives as described under RCW 69.51A.250; and (c) immature plants or clones and seeds for sale to qualifying patients and designated providers as provided under RCW 69.51A.310. The production, possession, delivery, distribution, and sale of marijuana in accordance with the provisions of this chapter and the rules adopted to implement and enforce it, by a validly licensed marijuana producer, shall not be a criminal or civil offense under Washington state law. Every marijuana producer's license shall be issued in the name of the applicant, shall specify the location at which the marijuana producer intends to operate, which must be within the state of Washington, and the holder thereof shall not allow any other person to use the license. The application fee for a marijuana producer's license shall be two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana producer's license shall be one thousand three hundred eighty-one dollars. A separate license shall be required for each location at which a marijuana producer intends to produce marijuana.

(2) There shall be a marijuana processor's license to process, package, and label marijuana concentrates, useable marijuana, and marijuana-infused products for sale at wholesale to marijuana processors and marijuana retailers, regulated by the board and subject to annual

renewal. The processing, packaging, possession, delivery, distribution, and sale of marijuana, useable marijuana, marijuana-infused products, and marijuana concentrates in accordance with the provisions of this chapter and chapter 69.51A RCW and the rules adopted to implement and enforce these chapters, by a validly licensed marijuana processor, shall not be a criminal or civil offense under Washington state law. Every marijuana processor's license shall be issued in the name of the applicant, shall specify the location at which the licensee intends to operate, which must be within the state of Washington, and the holder thereof shall not allow any other person to use the license. The application fee for a marijuana processor's license shall be two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana processor's license shall be one thousand three hundred eighty-one dollars. A separate license shall be required for each location at which a marijuana processor intends to process marijuana.

(3)(a) There shall be a marijuana retailer's license to sell marijuana concentrates, useable marijuana, and marijuana-infused products at retail in retail outlets, regulated by the board and subject to annual renewal. The possession, delivery, distribution, and sale of marijuana concentrates, useable marijuana, and marijuana-infused products in accordance with the provisions of this chapter and the rules adopted to implement and enforce it, by a validly licensed marijuana retailer, shall not be a criminal or civil offense under Washington state law. Every marijuana retailer's license shall be issued in the name of the applicant, shall specify the location of the retail outlet the licensee intends to operate, which must be within the state of Washington, and the holder thereof shall not allow any other person to use the license. The application fee for a marijuana retailer's license shall be two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana retailer's license shall be one thousand three hundred eighty-one dollars. A separate license shall be required for each location at which a marijuana retailer intends to sell marijuana concentrates, useable marijuana, and marijuana-infused products.

(b) An individual retail licensee and all other persons or entities with a financial or other ownership interest in the business operating under the license are limited, in the aggregate, to holding a collective total of not more than five retail marijuana licenses.

(c)(i) A marijuana retailer's license is subject to forfeiture in accordance with rules adopted by the board pursuant to this section.

(ii) The board shall adopt rules to establish a license forfeiture process for a licensed marijuana retailer that is not fully operational and open to the public within a specified period from the date of license issuance, as established by the board, subject to the following restrictions:

(A) No marijuana retailer's license may be subject to forfeiture within the first nine months of license issuance; and

(B) The board must require license forfeiture on or before twenty-four calendar months of license issuance if a marijuana retailer is not fully operational and open to the public, unless the board determines that circumstances out of the licensee's control are preventing the licensee from becoming fully operational and

that, in the board's discretion, the circumstances warrant extending the forfeiture period beyond twenty-four calendar months.

(iii) The board has discretion in adopting rules under this subsection (3)(c).

(iv) This subsection (3)(c) applies to marijuana retailer's licenses issued before and after July 23, 2017. However, no license of a marijuana retailer that otherwise meets the conditions for license forfeiture established pursuant to this subsection (3)(c) may be subject to forfeiture within the first nine calendar months of July 23, 2017.

(v) The board may not require license forfeiture if the licensee has been incapable of opening a fully operational retail marijuana business due to actions by the city, town, or county with jurisdiction over the licensee that include any of the following:

(A) The adoption of a ban or moratorium that prohibits the opening of a retail marijuana business; or

(B) The adoption of an ordinance or regulation related to zoning, business licensing, land use, or other regulatory measure that has the effect of preventing a licensee from receiving an occupancy permit from the jurisdiction or which otherwise prevents a licensed marijuana retailer from becoming operational.

(d) The board may issue marijuana retailer licenses pursuant to this chapter and RCW 69.50.335.

## **RCW 69.50.342**

### **State liquor and cannabis board—Rules.**

(1) For the purpose of carrying into effect the provisions of chapter 3, Laws of 2013 according to their true intent or of supplying any deficiency therein, the board may adopt rules not inconsistent with the spirit of chapter 3, Laws of 2013 as are deemed necessary or advisable. Without limiting the generality of the preceding sentence, the board is empowered to adopt rules regarding the following:

(a) The equipment and management of retail outlets and premises where marijuana is produced or processed, and inspection of the retail outlets and premises where marijuana is produced or processed;

(b) The books and records to be created and maintained by licensees, the reports to be made thereon to the board, and inspection of the books and records;

(c) Methods of producing, processing, and packaging marijuana, useable marijuana, marijuana concentrates, and marijuana-infused products; conditions of sanitation; safe handling requirements; approved pesticides and pesticide testing requirements; and standards of ingredients, quality, and identity of marijuana, useable marijuana, marijuana concentrates, and marijuana-infused products produced, processed, packaged, or sold by licensees;

(d) Security requirements for retail outlets and premises where marijuana is produced or processed, and safety protocols for licensees and their employees;

(e) Screening, hiring, training, and supervising employees of licensees;

(f) Retail outlet locations and hours of operation;

(g) Labeling requirements and restrictions on advertisement of marijuana, useable marijuana, marijuana concentrates, cannabis health and beauty aids, and marijuana-infused products for sale in retail outlets;

(h) Forms to be used for purposes of this chapter and chapter 69.51A RCW or the rules adopted to implement and enforce these chapters, the terms and conditions to be contained in licenses issued under this chapter and chapter 69.51A RCW, and the qualifications for receiving a license issued under this chapter and chapter 69.51A RCW, including a criminal history record information check. The board may submit any criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The board must require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation;

(i) Application, reinstatement, and renewal fees for licenses issued under this chapter and chapter 69.51A RCW, and fees for anything done or permitted to be done under the rules adopted to implement and enforce this chapter and chapter 69.51A RCW;

(j) The manner of giving and serving notices required by this chapter and chapter 69.51A RCW or rules adopted to implement or enforce these chapters;

(k) Times and periods when, and the manner, methods, and means by which, licensees transport and deliver marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products within the state;

(l) Identification, seizure, confiscation, destruction, or donation to law enforcement for training purposes of all marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products produced, processed, sold, or offered for sale within this state which do not conform in all respects to the standards prescribed by this chapter or chapter 69.51A RCW or the rules adopted to implement and enforce these chapters;

(m) The prohibition of any type of device used in conjunction with a marijuana vapor product and the prohibition of the use of any type of additive, solvent, ingredient, or compound in the production and processing of marijuana products, including marijuana vapor products, when the board determines, following consultation with the department of health or any other authority the board deems appropriate, that the device, additive, solvent, ingredient, or compound may pose a risk to public health or youth access; and

(n) Requirements for processors to submit under oath to the department of health a complete list of all constituent substances and the amount and sources thereof in each marijuana

vapor product, including all additives, thickening agents, preservatives, compounds, and any other substance used in the production and processing of each marijuana vapor product.

(2) Rules adopted on retail outlets holding medical marijuana endorsements must be adopted in coordination and consultation with the department.

(3) The board must adopt rules to perfect and expand existing programs for compliance education for licensed marijuana businesses and their employees. The rules must include a voluntary compliance program created in consultation with licensed marijuana businesses and their employees. The voluntary compliance program must include recommendations on abating violations of this chapter and rules adopted under this chapter.

### **RCW 69.50.345**

#### **State liquor and cannabis board—Rules—Procedures and criteria. (Effective until July 1, 2024.)**

The state liquor and cannabis board, subject to the provisions of this chapter, must adopt rules that establish the procedures and criteria necessary to implement the following:

(1) Licensing of marijuana producers, marijuana processors, and marijuana retailers, including prescribing forms and establishing application, reinstatement, and renewal fees.

(a) Application forms for marijuana producers must request the applicant to state whether the applicant intends to produce marijuana for sale by marijuana retailers holding medical marijuana endorsements and the amount of or percentage of canopy the applicant intends to commit to growing plants determined by the department under RCW 69.50.375 to be of a THC concentration, CBD concentration, or THC to CBD ratio appropriate for marijuana concentrates, useable marijuana, or marijuana-infused products sold to qualifying patients.

(b) The state liquor and cannabis board must reconsider and increase limits on the amount of square feet permitted to be in production on July 24, 2015, and increase the percentage of production space for those marijuana producers who intend to grow plants for marijuana retailers holding medical marijuana endorsements if the marijuana producer designates the increased production space to plants determined by the department under RCW 69.50.375 to be of a THC concentration, CBD concentration, or THC to CBD ratio appropriate for marijuana concentrates, useable marijuana, or marijuana-infused products to be sold to qualifying patients. If current marijuana producers do not use all the increased production space, the state liquor and cannabis board may reopen the license period for new marijuana producer license applicants but only to those marijuana producers who agree to grow plants for marijuana retailers holding medical marijuana endorsements. Priority in licensing must be given to marijuana producer license applicants who have an application pending on July 24, 2015, but who are not yet licensed and then to new marijuana producer license applicants. After January 1, 2017, any reconsideration of the limits on the amount of square feet permitted to be in production to meet the medical needs of qualifying patients must consider information contained in the medical marijuana authorization database established in RCW 69.51A.230;

(2) Determining, in consultation with the office of financial management, the maximum number of retail outlets that may be licensed in each county, taking into consideration:

(a) Population distribution;

(b) Security and safety issues;

(c) The provision of adequate access to licensed sources of marijuana concentrates, useable marijuana, and marijuana-infused products to discourage purchases from the illegal market; and

(d) The number of retail outlets holding medical marijuana endorsements necessary to meet the medical needs of qualifying patients. The state liquor and cannabis board must reconsider and increase the maximum number of retail outlets it established before July 24, 2015, and allow for a new license application period and a greater number of retail outlets to be permitted in order to accommodate the medical needs of qualifying patients and designated providers. After January 1, 2017, any reconsideration of the maximum number of retail outlets needed to meet the medical needs of qualifying patients must consider information contained in the medical marijuana authorization database established in RCW 69.51A.230;

(3) Determining the maximum quantity of marijuana a marijuana producer may have on the premises of a licensed location at any time without violating Washington state law;

(4) Determining the maximum quantities of marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products a marijuana processor may have on the premises of a licensed location at any time without violating Washington state law;

(5) Determining the maximum quantities of marijuana concentrates, useable marijuana, and marijuana-infused products a marijuana retailer may have on the premises of a retail outlet at any time without violating Washington state law;

(6) In making the determinations required by this section, the state liquor and cannabis board shall take into consideration:

(a) Security and safety issues;

(b) The provision of adequate access to licensed sources of marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products to discourage purchases from the illegal market; and

(c) Economies of scale, and their impact on licensees' ability to both comply with regulatory requirements and undercut illegal market prices;

(7) Determining the nature, form, and capacity of all containers to be used by licensees to contain marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products, and their labeling requirements;

(8) In consultation with the department of agriculture and the department, establishing classes of marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products according

to grade, condition, cannabinoid profile, THC concentration, CBD concentration, or other qualitative measurements deemed appropriate by the state liquor and cannabis board;

(9) Establishing reasonable time, place, and manner restrictions and requirements regarding advertising of marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products that are not inconsistent with the provisions of this chapter, taking into consideration:

(a) Federal laws relating to marijuana that are applicable within Washington state;

(b) Minimizing exposure of people under twenty-one years of age to the advertising;

(c) The inclusion of medically and scientifically accurate information about the health and safety risks posed by marijuana use in the advertising; and

(d) Ensuring that retail outlets with medical marijuana endorsements may advertise themselves as medical retail outlets;

(10) Specifying and regulating the time and periods when, and the manner, methods, and means by which, licensees shall transport and deliver marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products within the state;

(11) In consultation with the department and the department of agriculture, establishing accreditation requirements for testing laboratories used by licensees to demonstrate compliance with standards adopted by the state liquor and cannabis board, and prescribing methods of producing, processing, and packaging marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products; conditions of sanitation; and standards of ingredients, quality, and identity of marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products produced, processed, packaged, or sold by licensees;

(12) Specifying procedures for identifying, seizing, confiscating, destroying, and donating to law enforcement for training purposes all marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products produced, processed, packaged, labeled, or offered for sale in this state that do not conform in all respects to the standards prescribed by this chapter or the rules of the state liquor and cannabis board.

### **RCW 69.50.366**

#### **Marijuana producers, employees—Certain acts not criminal or civil offenses.**

The following acts, when performed by a validly licensed marijuana producer or employee of a validly licensed marijuana producer in compliance with rules adopted by the state liquor and cannabis board to implement and enforce this chapter, do not constitute criminal or civil offenses under Washington state law:

(1) Production or possession of quantities of marijuana that do not exceed the maximum amounts established by the state liquor and cannabis board under RCW 69.50.345(3);

(2) Delivery, distribution, and sale of marijuana to a marijuana processor or another marijuana producer validly licensed under this chapter;

(3) Delivery, distribution, and sale of immature plants or clones and marijuana seeds to a licensed marijuana researcher, and to receive or purchase immature plants or clones and seeds from a licensed marijuana researcher; and

(4) Delivery, distribution, and sale of marijuana or useable marijuana to a federally recognized Indian tribe as permitted under an agreement between the state and the tribe entered into under RCW 43.06.490.

## **RCW 69.50.505**

### **Seizure and forfeiture.**

(1) The following are subject to seizure and forfeiture and no property right exists in them:

(a) All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or chapter 69.41 or 69.52 RCW, and all hazardous chemicals, as defined in RCW 64.44.010, used or intended to be used in the manufacture of controlled substances;

(b) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW;

(c) All property which is used, or intended for use, as a container for property described in (a) or (b) of this subsection;

(d) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, in any manner to facilitate the sale, delivery, or receipt of property described in (a) or (b) of this subsection, except that:

(i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter or chapter 69.41 or 69.52 RCW;

(ii) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;

(iii) No conveyance is subject to forfeiture under this section if used in the receipt of only an amount of marijuana for which possession constitutes a misdemeanor under RCW 69.50.4014;

(iv) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(v) When the owner of a conveyance has been arrested under this chapter or chapter 69.41 or 69.52 RCW the conveyance in which the person is arrested may not be



subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;

(e) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter or chapter 69.41 or 69.52 RCW;

(f) All drug paraphernalia\*21 other than paraphernalia possessed, sold, or used solely to facilitate marijuana-related activities that are not violations of this chapter;

(g) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter or chapter 69.41 or 69.52 RCW. A forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission. No personal property may be forfeited under this subsection (1)(g), to the extent of the interest of an owner, by reason of any act or omission which that owner establishes was committed or omitted without the owner's knowledge or consent; and

(h) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements which are being used with the knowledge of the owner for the manufacturing, compounding, processing, delivery, importing, or exporting of any controlled substance, or which have been acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, if such 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:

(i) No property may be forfeited pursuant to this subsection (1)(h), to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent;

(ii) The bona fide gift of a controlled substance, legend drug, or imitation controlled substance shall not result in the forfeiture of real property;

(iii) The possession of marijuana shall not result in the forfeiture of real property unless the marijuana is possessed for commercial purposes that are unlawful under Washington state law, the amount possessed is five or more plants or one pound or more of marijuana, and a substantial nexus exists between the possession of marijuana and the real property. In such a case, the intent of the offender shall be determined by the preponderance of the evidence, including the offender's prior criminal history, the amount of marijuana possessed by the offender, the sophistication of the activity or equipment

used by the offender, whether the offender was licensed to produce, process, or sell marijuana, or was an employee of a licensed producer, processor, or retailer, and other evidence which demonstrates the offender's intent to engage in unlawful commercial activity;

(iv) The unlawful sale of marijuana or a legend drug shall not result in the forfeiture of real property unless the sale was forty grams or more in the case of marijuana or one hundred dollars or more in the case of a legend drug, and a substantial nexus exists between the unlawful sale and the real property; and

(v) A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party, at the time the security interest was created, neither had knowledge of nor consented to the act or omission.

(2) Real or personal property subject to forfeiture under this chapter may be seized by any \*\*board inspector or law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of real property shall include the filing of a lis pendens by the seizing agency. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later: PROVIDED, That real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security interest. Seizure of personal property without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) A \*\*board inspector or law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The \*\*board inspector or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(3) In the event of seizure pursuant to subsection (2) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a

party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9A RCW, or a certificate of title, shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(4) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1)(d), (g), or (h) of this section within forty-five days of the service of notice from the seizing agency in the case of personal property and ninety days in the case of real property, the item seized shall be deemed forfeited. The community property interest in real property of a person whose spouse or domestic partner committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(5) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this section within forty-five days of the service of notice from the seizing agency in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The notice of claim may be served by any method authorized by law or court rule including, but not limited to, service by first-class mail. Service by mail shall be deemed complete upon mailing within the forty-five day period following service of the notice of seizure in the case of personal property and within the ninety-day period following service of the notice of seizure in the case of real property. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal of any matter involving personal property may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of personal property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In all cases, the burden of proof is upon the law enforcement agency to establish, by a preponderance of the evidence, that the property is subject to forfeiture.

The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this section.

(6) In any proceeding to forfeit property under this title, where the claimant substantially prevails, the claimant is entitled to reasonable attorneys' fees reasonably incurred by the claimant. In addition, in a court hearing between two or more claimants to the article or articles involved, the prevailing party is entitled to a judgment for costs and reasonable attorneys' fees.

(7) When property is forfeited under this chapter the \*\*board or seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the provisions of this chapter;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public;

(c) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law; or

(d) Forward it to the drug enforcement administration for disposition.

(8)(a) When property is forfeited, the seizing agency shall keep a record indicating the identity of the prior owner, if known, a description of the property, the disposition of the property, the value of the property at the time of seizure, and the amount of proceeds realized from disposition of the property.

(b) Each seizing agency shall retain records of forfeited property for at least seven years.

(c) Each seizing agency shall file a report including a copy of the records of forfeited property with the state treasurer each calendar quarter.

(d) The quarterly report need not include a record of forfeited property that is still being held for use as evidence during the investigation or prosecution of a case or during the appeal from a conviction.

(9)(a) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ten percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the state general fund.

(b) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents, and the cost of any valid landlord's claim for damages under subsection (15) of this section.

(c) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing for valuation of motor vehicles. A seizing agency may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

(10) Forfeited property and net proceeds not required to be paid to the state treasurer shall be retained by the seizing law enforcement agency exclusively for the expansion and improvement of controlled substances related law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources.

(11) Controlled substances listed in Schedule I, II, III, IV, and V that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, II, III, IV, and V, which are seized or come into the possession of the \*\*board, the owners of which are unknown, are contraband and shall be summarily forfeited to the \*\*board.

(12) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the \*\*board.

(13) The failure, upon demand by a \*\*board inspector or law enforcement officer, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration or proof that he or she is the holder thereof constitutes authority for the seizure and forfeiture of the plants.

(14) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. Orders for the forfeiture of real property shall be entered by the superior court, subject to court rules. Such an order shall be filed by the seizing agency in the county auditor's records in the county in which the real property is located.

(15)(a) A landlord may assert a claim against proceeds from the sale of assets seized and forfeited under subsection (7)(b) of this section, only if:

(i) A law enforcement officer, while acting in his or her official capacity, directly caused damage to the complaining landlord's property while executing a search of a tenant's residence; and

(ii) The landlord has applied any funds remaining in the tenant's deposit, to which the landlord has a right under chapter 59.18 RCW, to cover the damage directly caused by a law enforcement officer prior to asserting a claim under the provisions of this section;

(A) Only if the funds applied under (a)(ii) of this subsection are insufficient to satisfy the damage directly caused by a law enforcement officer, may the landlord seek compensation for the damage by filing a claim against the governmental entity under whose authority the law enforcement agency operates within thirty days after the search;

(B) Only if the governmental entity denies or fails to respond to the landlord's claim within sixty days of the date of filing, may the landlord collect damages under this subsection by filing within thirty days of denial or the expiration of the sixty-day period, whichever occurs first, a claim with the seizing law enforcement agency. The seizing law enforcement agency must notify the landlord of the status of the claim by the end of the thirty-day period. Nothing in this section requires the claim to be paid by the end of the sixty-day or thirty-day period.

(b) For any claim filed under (a)(ii) of this subsection, the law enforcement agency shall pay the claim unless the agency provides substantial proof that the landlord either:

(i) Knew or consented to actions of the tenant in violation of this chapter or chapter 69.41 or 69.52 RCW; or

(ii) Failed to respond to a notification of the illegal activity, provided by a law enforcement agency under RCW 59.18.075, within seven days of receipt of notification of the illegal activity.

(16) The landlord's claim for damages under subsection (15) of this section may not include a claim for loss of business and is limited to:

(a) Damage to tangible property and clean-up costs;

(b) The lesser of the cost of repair or fair market value of the damage directly caused by a law enforcement officer;

(c) The proceeds from the sale of the specific tenant's property seized and forfeited under subsection (7)(b) of this section; and

(d) The proceeds available after the seizing law enforcement agency satisfies any bona fide security interest in the tenant's property and costs related to sale of the tenant's property as provided by subsection (9)(b) of this section.

(17) Subsections (15) and (16) of this section do not limit any other rights a landlord may have against a tenant to collect for damages. However, if a law enforcement agency satisfies a landlord's claim under subsection (15) of this section, the rights the landlord has against the tenant for damages directly caused by a law enforcement officer under the terms of the landlord and tenant's contract are subrogated to the law enforcement agency.

# WASHINGTON ADMINISTRATIVE CODE

## WAC 314-55-083

### **Security and traceability requirements for marijuana licensees.**

The security requirements for a marijuana licensee are as follows:

(1) Display of identification badge. All licensees and employees on the licensed premises shall be required to hold and properly display an identification badge issued by the licensed employer at all times while on the licensed premises and engaged in the transportation of marijuana. The identification badge must list the licensee's trade name and include the person's full and legal name and photograph. All licensees and employees must have their state issued identification available to verify the information on their badge is correct.

(a) All nonemployee visitors to the licensed premises, other than retail store customers, shall be required to hold and properly display an identification badge issued by the licensee at all times while on the licensed premises.

(b) A log must be kept and maintained showing the full name of each visitor entering the licensed premises, badge number issued, the time of arrival, time of departure, and the purpose of the visit.

(c) All log records must be maintained on the licensed premises for a period of three years and are subject to inspection by any WSLCB employee or law enforcement officer, and must be copied and provided to the WSLCB or law enforcement officer upon request.

(d) Employees, visitors, and other persons at a marijuana licensed premises, including persons engaged in the transportation of marijuana, must provide identification to a WSLCB enforcement officer upon request.

(2) Alarm systems. At a minimum, each licensed premises must have a security alarm system on all perimeter entry points and perimeter windows. Motion detectors, pressure switches, duress, panic, and hold-up alarms may also be used.

(3) Surveillance system. At a minimum, a licensed premises must have a complete video surveillance system with minimum camera resolution of 640 x 470 pixels or pixel equivalent for analog. The surveillance system storage device and/or the cameras must be internet protocol (IP) compatible. All cameras must be fixed and placement must allow for the clear and certain identification of any person and activities in controlled areas of the licensed premises. All entrances and exits to an indoor facility must be recorded from both indoor and outdoor, or ingress and egress vantage points. All cameras must record continuously twenty-four hours per day and at a minimum of ten frames per second. The surveillance system storage device must be secured on the licensed premises in a lockbox, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft. All surveillance recordings must be kept for a minimum of forty-five days on the licensee's recording device. All videos are subject to inspection by any WSLCB employee or law enforcement officer, and must be copied and

provided to the WSLCB or law enforcement officer upon request. All recorded images must clearly and accurately display the time and date. Time is to be measured in accordance with the U.S. National Institute Standards and Technology standards. Controlled areas include:

(a) Any area within an indoor, greenhouse or outdoor room or area where marijuana is grown, or marijuana or marijuana waste is being moved within, processed, stored, or destroyed. Rooms or areas where marijuana or marijuana waste is never present are not considered control areas and do not require camera coverage.

(b) All point-of-sale (POS) areas.

(c) Twenty feet of the exterior of the perimeter of all required fencing and gates enclosing an outdoor grow operation. Any gate or other entry point that is part of the required enclosure for an outdoor growing operation must be lighted in low-light conditions. A motion detection lighting system may be employed to light the gate area in low-light conditions.

(d) Any room or area storing a surveillance system storage device.

(4) Traceability: To prevent diversion and to promote public safety, marijuana licensees must track marijuana from seed to sale. Licensees must provide the required information on a system specified by the WSLCB. All costs related to the reporting requirements are borne by the licensee. Marijuana seedlings, clones, plants, lots of useable marijuana or trim, leaves, and other plant matter, batches of extracts, marijuana-infused products, samples, and marijuana waste must be traceable from production through processing, and finally into the retail environment including being able to identify which lot was used as base material to create each batch of extracts or infused products. The following information is required and must be kept completely up-to-date in a system specified by the WSLCB:

(a) Key notification of "events," such as when a plant enters the system (moved from the seedling or clone area to the vegetation production area at a young age);

(b) When plants are to be partially or fully harvested or destroyed;

(c) When a lot or batch of marijuana, marijuana extract, marijuana concentrates, marijuana-infused product, or marijuana waste is to be destroyed;

(d) When useable marijuana, marijuana concentrates, or marijuana-infused products are transported;

(e) Any theft of useable marijuana, marijuana seedlings, clones, plants, trim or other plant material, extract, infused product, seed, plant tissue or other item containing marijuana;

(f) All marijuana plants eight or more inches in height or width must be physically tagged and tracked individually;



(g) A complete inventory of all marijuana, seeds, plant tissue, seedlings, clones, all plants, lots of useable marijuana or trim, leaves, and other plant matter, batches of extract, marijuana concentrates, marijuana-infused products, and marijuana waste;

(h) All marijuana, useable marijuana, marijuana-infused products, marijuana concentrates, seeds, plant tissue, clone lots, and marijuana waste must be physically tagged with the unique identifier generated by the traceability system and tracked;

(i) All point-of-sale records;

(j) Marijuana excise tax records;

(k) All samples sent to an independent testing lab, any sample of unused portion of a sample returned to a licensee, and the quality assurance test results;

(l) All vendor samples provided to another licensee for purposes of education or negotiating a sale;

(m) All samples used for testing for quality by the producer or processor;

(n) Samples containing useable marijuana provided to retailers;

(o) Samples provided to the WSLCB or their designee for quality assurance compliance checks; and

(p) Other information specified by the board.

## **WAC 314-55-210**

### **Will the WSLCB seize or confiscate marijuana, marijuana concentrates, usable marijuana, and marijuana-infused products?**

The WSLCB may seize, destroy, confiscate, or place an administrative hold on marijuana, usable marijuana, marijuana concentrates, and marijuana-infused products under the following circumstances:

(1) During an unannounced or announced administrative search or inspection of licensed locations, areas of unlicensed locations used for business or commercial purposes, or vehicles involved in the transportation of marijuana products, where any product was found to be in excess of product limitations set forth in WAC 314-55-075, 314-55-077, and 314-55-079.

(2) Any product not properly logged in inventory records or untraceable product required to be in the traceability system.

(3) Marijuana, marijuana concentrates, usable marijuana, and marijuana-infused product that are altered or not properly packaged and labeled in accordance with WAC 314-55-105.

(4) During a criminal investigation, officers shall follow seizure laws detailed in RCW 69.50.505 and any other applicable criminal codes.

(5) The WSLCB may destroy any marijuana, marijuana concentrate, usable marijuana, and/or marijuana-infused products in its possession that is not identifiable through the Washington marijuana traceability system or otherwise in a form that is not compliant with Washington's marijuana statutes or rules, chapters 69.50 RCW and 314-55 WAC.

(6) WSLCB officers may order an administrative hold of marijuana, usable marijuana, marijuana concentrates, and marijuana-infused products to prevent destruction of evidence, diversion or other threats to public safety, while permitting a licensee to retain its inventory pending further investigation, pursuant to the following procedure:

(a) If during an investigation or inspection of a licensee, a WSLCB officer develops reasonable grounds to believe certain marijuana, usable marijuana, marijuana concentrates, and marijuana-infused products constitute evidence of acts in violation of the state laws or rules, or otherwise constitute a threat to public safety, the WSLCB officer may issue a notice of administrative hold of any such marijuana, usable marijuana, marijuana concentrate, or marijuana-infused products. The notice of administrative hold shall provide a documented description of the marijuana, usable marijuana, marijuana concentrate, or marijuana-infused products to be subject to the administrative hold.

(b) The licensee shall completely and physically segregate the marijuana, usable marijuana, marijuana concentrate, and marijuana-infused products subject to the administrative hold in a limited access area of the licensed premises under investigation, where it shall be safeguarded by the licensee. Pending the outcome of the investigation and any related disciplinary proceeding, the licensee is prohibited from selling, giving away, transferring, transporting, or destroying the marijuana, usable marijuana, marijuana concentrate, and marijuana-infused products subject to the administrative hold.

(c) Nothing herein shall prevent a licensee from the continued cultivation or harvesting of the marijuana subject to the administrative hold. All marijuana, usable marijuana, marijuana concentrate, and marijuana-infused products subject to the administrative hold must be put into separate harvest batches from product not subject to the administrative hold.

(d) Following an investigation, the WSLCB may lift the administrative hold, order the continuation of the administrative hold, or seek a final agency order for the destruction of the marijuana, usable marijuana, marijuana concentrate, and marijuana-infused products.

## **WAC 314-55-220**

**What is the process once the WSLCB summarily orders marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products of a marijuana licensee to be destroyed?**

(1) The WSLCB may issue an order to summarily destroy marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products after the WSLCB's enforcement division has completed a preliminary staff investigation of the violation and upon a determination that immediate destruction of marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products is necessary for the protection or preservation of the public health, safety, or welfare.

(2) Destruction of any marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products under this provision shall take effect immediately upon personal service on the licensee or employee thereof of the summary destruction order unless otherwise provided in the order.

(3) When a license has been issued a summary destruction order by the WSLCB, an adjudicative proceeding for the associated violation or other action must be promptly instituted before an administrative law judge assigned by the office of administrative hearings. If a request for an administrative hearing is timely filed by the licensee, then a hearing shall be held within ninety days of the effective date of the summary destruction ordered by the WSLCB.

## **WAC 314-55-230**

**What are the procedures the WSLCB will use to destroy or donate marijuana, usable marijuana, marijuana concentrates, and marijuana-infused products to law enforcement?**

(1) The WSLCB may require a marijuana licensee to destroy marijuana, usable marijuana, marijuana concentrates, and marijuana-infused products found in a licensed establishment to be in excess of product limits set forth in WAC 314-55-075, 314-55-077, and 314-55-079.

(2) Destruction of seized marijuana, usable marijuana, marijuana concentrates, marijuana-infused products, or confiscated marijuana after case adjudication, will conform with the WSLCB evidence policies, to include the option of donating marijuana, usable marijuana, marijuana concentrates, and marijuana-infused products, set for destruction, to local and state law enforcement agencies for training purposes only.

(3) Marijuana, usable marijuana, marijuana concentrates, and marijuana-infused products set for destruction shall not reenter the traceability system or market place.

**WAC 314-55-521 (Former WAC 314-55-521, revised after the events giving rise to appeal)**

Category II

Violations That Create a Direct or Immediate Threat to Public Health, Safety, or Both

Violation Type	1st Violation	2nd Violation in a Two-year Window	3rd Violation in a Two-year Window	4th Violation in a Two-year Window
Furnishing to persons under twenty-one years of age, except as allowed in RCW 60.50.357. RCW 69.50.354 WAC 314-55-079(1)	5-day suspension or \$1,250 monetary option	10-day suspension or \$7,500 monetary option	30-day suspension	License cancellation
Conduct violations: Criminal conduct: Permitting or engaging in criminal conduct, or both. Disorderly conduct, or apparent intoxication of a licensee or employee, or permitting on premises. Title 9 RCW Title 9A RCW WAC 314-55-110 (4)(b)	5-day suspension or \$1,250 monetary option	10-day suspension or \$7,500 monetary option	30-day suspension	License cancellation
Operating an unapproved CO2 or hydrocarbon extraction system. WAC 314-55-104	\$10,000 monetary fine	License cancellation		
Intentional use of unauthorized pesticides, soil amendments, fertilizers, other crop production aids. RCW 69.50.342 WAC 314-55-084	Tier 1: \$2,500 Tier 2: \$5,000 Tier 3: \$7,500 monetary fine and destruction of affected marijuana	Tier 1: \$7,500 Tier 2: \$15,000 Tier 3: \$22,500 monetary fine and destruction of affected marijuana	License cancellation	
Adulterated usable marijuana with organic or nonorganic chemical or other compound. WAC 314-55-077 (5)(b) WAC 314-55-101	Tier 1: \$2,500 Tier 2: \$5,000 Tier 3: \$7,500 monetary fine and destruction of affected marijuana	Tier 1: \$7,500 Tier 2: \$15,000 Tier 3: \$22,500 monetary fine and destruction of affected marijuana	License cancellation	
Transportation of marijuana without a manifest. WAC 314-55-085(3)	Retail/transporter: \$1,250 monetary fine Producer/processor:	Retail/transporter:	License cancellation	

WAC 314-55-096 (1) and (2) WAC 314-55-105(2) WAC 314-55-310(3)	Tier 1: \$1,250 Tier 2: \$2,500 Tier 3: \$5,000 monetary fine	5-day suspension or \$2,500 monetary option Producer/processor: Tier 1: \$2,500 Tier 2: \$5,000 Tier 3: \$10,000 monetary fine		
Obstruction: Misrepresentation of fact; not permitting physical presence. WAC 314-55-185	10-day suspension or \$7,500 monetary option	30-day suspension	License cancellation	
Failure to use and maintain traceability, or both: Including, but not limited to, failure to maintain records for flowering plant, finished product, any post-harvest product, any plant not on approved floor-plan, or not tagged, reusing identifier. WAC 314-55-083(4)	\$1,250 monetary fine	5-day suspension or \$2,500 monetary fine	10-day suspension or \$5,000 monetary fine	License cancellation
Pickup, unload, or delivery at an unauthorized location. WAC 314-55-085 (5)(f) WAC 314-55-310	Retail/transportation: 30-day suspension Producer/processor: Tier 1: \$10,000 Tier 2: \$20,000 Tier 3: \$30,000 monetary fine	Retail/transporter: 60-day suspension Producer/processor: Tier 1: \$20,000 Tier 2: \$40,000 Tier 3: \$60,000 monetary fine	License cancellation	

**WAC 314-55-525 (Former WAC 314-55-525, revised after the events giving rise to appeal)**

**WAC 314-55-525 Group 2 regulatory violations.** Group 2 violations are violations involving general regulation and administration of retail or nonretail licenses. Group 2 penalties imposed on a producer and/or processor license will not include license suspension. Penalties for a producer and/or processor license will be restricted to monetary fines, destruction of inventory, and/or license cancellation only.

<b>Violation Type</b>	<b>1st Violation</b>	<b>2nd Violation in a three-year window</b>	<b>3rd Violation in a three-year window</b>	<b>4th Violation in a three-year window</b>
<b>Hours of service:</b> Sales of marijuana between 12:00 a.m. and 8:00 a.m. Chapter 314-55 WAC	5-day suspension or \$1,000 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
<b>General advertising:</b> Violations Chapter 314-55 WAC	Retailer/transporter: 5-day suspension or \$1,000 monetary option  Producer/processor: \$1,000 monetary fine	Retailer/transporter: 10-day suspension or \$2,500 monetary option  Producer/processor: Tier 1: \$2,500 Tier 2: \$5,000 Tier 3: \$7,500 monetary fine	Retailer/transporter: 30-day suspension  Producer/processor: Tier 1: \$15,000 Tier 2: \$30,000 Tier 3: \$60,000 monetary fine	Cancellation of license
<b>Engaging in conditional retail sales.</b> Chapter 314-55 WAC Chapter 69.50 RCW	5-day suspension or \$1,000 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
<b>Licensee/employee failing to display required security badge.</b> Chapter 314-55 WAC	Retailer/transporter: 5-day suspension or \$500 monetary option  Producer/processor: \$500 monetary fine	Retailer/transporter: 10-day suspension or \$1,500 monetary option  Producer/processor: All tiers: \$1,500 monetary fine	Retailer/transporter: 30-day suspension  Producer/processor: All tiers: \$5,000 monetary fine	Cancellation of license
<b>Failure to maintain required security alarm and surveillance systems.</b> Chapter 314-55 WAC	Retailer/transporter: 5-day suspension or \$2,500 monetary option  Producer/processor: \$2,500 monetary fine	Retailer/transporter: 10-day suspension or \$5,000 monetary fine  Producer/processor: Tier 1: \$5,000 Tier 2: \$10,000 Tier 3: \$15,000 monetary fine	Retailer/transporter: 30-day suspension  Producer/processor: Tier 1: \$15,000 Tier 2: \$30,000 Tier 3: \$60,000 monetary fine	Cancellation of license
<b>Records: Improper recordkeeping.</b> Chapter 314-55 WAC	Retailer/transporter: 5-day suspension or \$1,000 monetary option  Producer/processor: \$1,000 monetary fine	Retailer/transporter: 10-day suspension or \$2,500 monetary option  Producer/processor: Tier 1: \$2,500 Tier 2: \$5,000 Tier 3: \$7,500 monetary fine	Retailer/transporter: 30-day suspension  Producer/processor: Tier 1: \$15,000 Tier 2: \$30,000 Tier 3: \$60,000 monetary fine	Cancellation of license

<b>Failure to submit monthly tax payments.</b> Chapter 69.50 RCW Chapter 314-55 WAC	Retailer: 5-day suspension or \$1,000 monetary option	Retailer: 10-day suspension or \$2,500 monetary option	Retailer: 30-day suspension	Cancellation of license
<b>Violation Type</b>	<b>1st Violation</b>	<b>2nd Violation in a three-year window</b>	<b>3rd Violation in a three-year window</b>	<b>4th Violation in a three-year</b>
<b>Signs:</b> Failure to post required signs. Chapter 69.50 RCW Chapter 314-55 WAC	Retailer/transporter: 5-day suspension or \$500 monetary option Producer/processor: \$500 monetary fine	Retailer/transporter: 10-day suspension or \$1,500 monetary option Producer/processor: All tiers: \$1,500 monetary fine	Retailer/transporter: 15-day suspension or \$5,000 monetary option Producer/processor: All tiers: \$5,000 monetary fine	Cancellation of license
<b>Failure to utilize and/or maintain traceability.</b> Chapter 314-55 WAC	5-day suspension or \$2,500 monetary option Producer/processor: \$2,500 monetary fine	Retailer: 10-day suspension or \$5,000 monetary fine Producer/processor: Tier 1: \$5,000 Tier 2: \$10,000 Tier 3: \$15,000 monetary fine	Retailer: 30-day suspension Producer/processor: Tier 1: \$15,000 Tier 2: \$30,000 Tier 3: \$60,000 monetary fine	Cancellation of license
<b>Violation of transportation requirements.</b> Chapter 314-55 WAC	Retailer: 5-day suspension or \$2,500 monetary option Producer/processor: \$2,500 monetary fine	Retailer: 10-day suspension or \$5,000 monetary fine Producer/processor: Tier 1: \$5,000 Tier 2: \$10,000 Tier 3: \$15,000 monetary fine	Retailer: 30-day suspension Producer/processor: Tier 1: \$15,000 Tier 2: \$30,000 Tier 3: \$60,000 monetary fine	Cancellation of license
<b>Marijuana sold below cost of acquisition, true value, or illegally given away.</b>	Retailer: 5-day suspension or \$1,000 monetary option Producer/processor: \$2,500 monetary fine	Retailer: 10-day suspension or \$5,000 monetary option Producer/processor: Tier 1: \$5,000 Tier 2: \$10,000 Tier 3: \$15,000 monetary fine	Retailer: 30-day suspension Producer/processor: Tier 1: \$15,000 Tier 2: \$30,000 Tier 3: \$60,000 monetary fine	Cancellation of license
<b>Retail sales: Use of an unauthorized money transmitter.</b> Chapter 314-55 WAC	5-day suspension or \$1,000 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
<b>Retail outlet selling unauthorized products.</b> Chapter 69.50 RCW	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine
<b>Retailer displaying products in a manner visible to the general public from a public right of way.</b> Chapter 69.50 RCW	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine

<b>Retail sales: Unauthorized marijuana-infused products, internet sales, and accepting returns.</b> Chapter 314-55 WAC	5-day suspension or \$1,000 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
--	---	--	-------------------	----------------------------

## **OTHER AUTHORITIES**

### **2019 LAWS, CHAPTER 394, § 1**

#### **Sec. 1. The legislature finds that:**

(1) In the years since the creation of a legal and regulated marketplace for adult use of cannabis, the industry, stakeholders, and state agencies have collaborated to develop a safe, fully regulated marketplace.

(2) As the regulated marketplace has been developing, Washington residents with a strong entrepreneurial spirit have taken great financial and personal risk to become licensed and part of this nascent industry.

(3) It should not be surprising that mistakes have been made both by licensees and regulators, and that both have learned from these mistakes leading to a stronger, safer industry.

(4) While a strong focus on enforcement is an important component of the regulated marketplace, a strong focus on compliance and education is also critically necessary to assist licensees who strive for compliance and in order to allow the board to focus its enforcement priorities on those violations that directly harm public health and safety.

(5) The risk taking entrepreneurs who are trying to comply with board regulations should not face punitive consequences for mistakes made during this initial phase of the industry that did not pose a direct threat to public health and safety.

## **WASHINGTON STATE CONSTITUTION**

### **Article I, § 3**

**PERSONAL RIGHTS.** No person shall be deprived of life, liberty, or property, without due process of law.

### **Article I, § 7**

**INVASION OF PRIVATE AFFAIRS OR HOME PROHIBITED.** No person shall be disturbed in his private affairs, or his home invaded, without authority of law.



**Article I, § 12**

SPECIAL PRIVILEGES AND IMMUNITIES PROHIBITED. No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

**Article I, § 29**

CONSTITUTION MANDATORY. The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.

**MURPHY & BUCHAL LLP**

**August 19, 2021 - 1:10 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 54492-0  
**Appellate Court Case Title:** U4IK Gardens LLP, Appellant v State Liquor Control Board, ET AL, Respondent  
**Superior Court Case Number:** 19-2-04529-6

**The following documents have been uploaded:**

- 544920\_Petition\_for\_Review\_20210819130903D2514818\_0426.pdf  
This File Contains:  
Petition for Review  
*The Original File Name was Petition for Review Final 8-19-21.pdf*

**A copy of the uploaded files will be sent to:**

- Jennifer.Loynd@atg.wa.gov
- TorSeaEF@atg.wa.gov

**Comments:**

---

Sender Name: James Buchal - Email: jbuchal@mblp.com

Address:

PO BOX 86620

PORTLAND, OR, 97286-0620

Phone: 503-227-1011

**Note: The Filing Id is 20210819130903D2514818**