NO. 90204-6

SUPREME COURT
OF THE STATE OF WASHINGTON

CANNABIS ACTION COALITION, ARTHUR WEST,

Plaintiffs,

STEVE SARICH, JOHN WORTHINGTON, and DERYCK TSANG,

Appellants,

v.

CITY OF KENT, et al.,

Respondents.

DERYCK TSANG'S PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

Deryck Tsang asks this Court to accept review of the decision of the Court of Appeals, Division I, designated in Part II.

II. COURT OF APPEALS DECISION

Deryck Tsang asks this Court to review the Court of Appeal's Decision in *Cannabis Action Coalition et al. v. City of Kent*, ___ Wn. App. ___, 322 P.3d 1246 (2014)(Appendix 1).

III. ISSUES PRESENTED FOR REVIEW

1. RCW 69.51A.085 creates an express right for qualifying patients to create and participate in "collective gardens" for the purpose of producing, processing, and transporting cannabis for medical use. The City of Kent has adopted zoning regulations that prohibit collective gardens anywhere within the City limits. Is the City pre-empted from banning collective gardens throughout the City?

2. RCW 69.51A.040 prohibits both criminal prosecution and civil enforcement against the medical use of cannabis by qualifying patients so long as the use is consistent with Ch. 69.51A RCW. The City of Kent declares a violation of its zoning code a "public nuisance" and threatens violators with civil and criminal liability. Is the City preempted

from subjecting qualifying patients to criminal or civil liability for creating or participating in collective gardens within the City?

IV. STATEMENT OF THE CASE

A. A Brief History of Washington's Law on Medical Cannabis

On November 3, 1998, the people of Washington overwhelmingly approved Initiative 692 allowing for the medical use of marijuana for patients with certain terminal or debilitating conditions.[1] By approving Initiative 692, the people specifically found:

> [t]hat humanitarian compassion necessitates that the decision to authorize the medical use of marijuana by patients with terminal or debilitating illnesses is a personal, individual decision, based upon their physicians' professional medical judgment and discretion.

Laws of 1999, ch. 2, § 2, codified at RCW 69.51A.005. As originally enacted, Initiative 692 excepted licensed physicians from the state's criminal laws, prohibited penalties of any manner, and prohibited the denial of any rights or privileges for physicians advising qualifying

[1] Initiative 692 identified a list of some of the illnesses for which marijuana appears to be beneficial including "chemotherapy-related nausea and vomiting in cancer patients, AIDS wasting syndrome, severe muscle spasms associated with multiple sclerosis and other spasticity disorders; epilepsy; acute or chronic glaucoma; and some forms of intractable pain." RCW 69.51A.005, RCW 69.51A.010(4) (definition of "terminal or debilitating medical condition[s]"); Laws of 1999, ch. 2, §§ 2, 6.

patients about the risks and benefits of medical use of marijuana as well as providing valid documentation to those patients. Laws of 1999, ch. 2, § 4, codified at RCW 69.51A.030. Initiative 692 also created an affirmative defense for any "qualifying patient" or "designated primary caregiver" charged with violation of state law related to marijuana. Laws of 1999, ch. 2, § 5, codified at RCW 69.51A.040.[2]

In April 2011 the Legislature passed Engrossed Second Substitute Senate Bill 5073, Laws of 2011, ch. 181 ("ESSSB 5073), ESSSB 5073 substantially amending Initiative 692 and Ch. 69.51A RCW. The bill, as originally passed by the Legislature, would have set up a state regulatory licensing scheme for the growth and production of medical marijuana (renamed in the bill as "medical cannabis") through commercial "licensed producers" and then distribution of the medical cannabis, including seeds,

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[2] A "Qualifying patient" means a person who:

> (a) Is a patient of a health care professional;
> (b) Has been diagnosed by that health care professional as having a terminal or debilitating medical condition;
> (c) Is a resident of the state of Washington at the time of such diagnosis;
> (d) Has been advised by that health care professional about the risks and benefits of the medical use of marijuana; and
> (e) Has been advised by that health care professional that they may benefit from the medical use of marijuana.

Laws of 1999, ch. 2, § 6, codified at RCW 69.51A.010.

plants, usable cannabis and cannabis products, through commercial "licensed dispensaries." *See* ESSSB 5073, Parts VI and VII.[3] The bill also would have established a state registration system through the Department of Health for qualifying patients, designated providers, licensed producers, processors and dispensers. *Id.*, Part IX.

Before the Governor could sign the bill, the U.S. Attorneys in Seattle and Spokane sent the Governor an advisory letter warning that state employees who participated in the authorizing and licensing of commercial businesses that produce, process or dispense cannabis might not be protected from federal prosecution for facilitating the violation of federal law. As a result, Governor Gregoire vetoed all of the licensing and registration processes set up in Parts VI-IX of ESSSB 5073. *See* Laws 2011, ch. 181, pp 1374-76.

Relevant to this appeal, however, the Governor did not veto ESSSB 5073, § 403, codified at RCW 69.51A.085, which established for the first time the right for qualifying patients to create and participate in "collective gardens for the purpose of producing, processing, transporting, and delivering cannabis for medical use" so long as each "collective

[3] A copy of ESSSB 5073, Laws 2011, ch. 181, including Governor Gregoire's explanation of her partial veto is attached as Appendix 3.

garden:" (a) is limited to no more than ten qualifying patients; (b) contains no more than 15 plants per person or up to a total of 45 plants; (c) contains no more than 24 ounces of usable cannabis per patient; (d) keeps a copy of each qualifying patient's "valid documentation *or* proof of registration;[4] and (e) ensures that no usable cannabis from the collective garden is delivered to anyone other than the qualifying patients participating in the collective garden.

The Governor also did not veto ESSSB 5073 § 401. While previously RCW 69.51A.040 provided only an affirmative defense against charges of violating state law, ESSSB 5073 § 401 amended RCW 69.51A.040 and declared that qualifying patients acting in compliance with Washington's medical cannabis laws are exempt from prosecution for criminal or civil consequences.

B. Appellant Deryck Tsang Participates in a Collective Garden in Kent

Appellant Deryck Tsang is a resident of the City of Kent and a qualifying patient as defined by RCW 69.51A.040. Mr. Tsang created and participates in a "collective garden," as defined by RCW 69.51A.085,

[4] Because the registration process was vetoed, the collective garden must keep a copy of each qualifying patient's "valid documentation" as defined by ESSSB 5073, § 103, codified at RCW 69.51A.010(32)(a).

within the City of Kent. *Id.* The collective garden is located within leased property at the north end of West Valley Business Park in an area zoned M1 for Industrial Park. The building is safe and secured with 24-hour video surveillance, alarm monitoring, electric striking door, and neighbors Washington Patrol Unit, a private security firm. The collective garden is minutes from Valley Medical Hospital, walking distance to bus routes, ADA accessible and was in compliance with all zoning laws prior to the City's adoption of Ordinance 4036.

C. City of Kent Ordinance 4036

On June 5, 2012, the City of Kent adopted Ordinance 4036 (codified as part of Kent City Code "KCC" Title 15). Ordinance 4036 outright prohibits collective gardens in all zoning districts within the City of Kent. *See* KCC 15.08.290.A. Ordinance 4036 declares also that violation of the prohibition against collective gardens is a "public nuisance" and subject to mandatory abatement, as well as civil and criminal penalties. KCC 15.08.290.B.

D. Procedural History

On June 5, 2012, appellant Deryck Tsang, along with three other individuals and a partnership, filed a complaint with the King County Superior Court challenging the City of Kent's adoption of Ordinance

4036. CP 1-10. An Amended Complaint was filed June 21, 2012. CP 19-34.[5] Among several causes of action, Tsang et al. sought declaratory judgment and an order declaring Ordinance 4036, as it relates to collective gardens, contrary to law and null and void. CP 26.

On October 5, 2012, King County Superior Court Judge Jay White granted the City's motion for summary judgment. CP 558-60. Relevant to this appeal, the superior court dismissed Tsang et al.'s action for declaratory judgment, finding that City was not pre-empted by state law from passing Ordinance 4036. CP 559. The superior court also issued a permanent injunction prohibiting plaintiffs, including Deryck Tsang, from violating Ordinance 4036. CP 553-554. The superior court subsequently denied plaintiffs' Motion for Reconsideration. CP 643.

Deryck Tsang filed a timely appeal of the superior court's orders with the Court of Appeals, Division I. CP 644-651. Because the other plaintiffs, acting *pro se*, filed a notice of appeal with the Washington Supreme Court, Deryck Tsang's appeal was transferred to the Supreme Court on November 13, 2012. On December 5, 2012, Supreme Court

[5] Plaintiffs' original and amended complaints were filed *pro se.*

Commissioner Goff granted Deryck Tsang's Motion and stayed the superior court's October 5, 2012, orders pending appeal.

This Court subsequently transferred the appeal back to Division I. After briefing and argument, on March 31, 2014, the Court of Appeals, Division I, issued its decision in *Cannabis Action Coalition et al. v. City of Kent*, ___ Wn. App. ____, 322 P.3d 1246 (2014). The Court of Appeals affirmed the superior court's decision upholding the City of Kent's ban on collective gardens. The decision contains three significant holdings; (1) that ESSSB 5073 and RCW 69.51A.085 did not legalize medical marijuana or collective gardens; (2) that the protections against criminal sanctions or civil consequences provided by ESSSB 5073 § 401 and RCW 69.51A.040 were of no effect; and (3) that RCW 69.51A.140 provided authority for cities and counties to ban collective gardens despite the Legislature leaving non-commercial collective gardens out of the statute.

Deryck Tsang filed a timely Motion for Reconsideration. The Court of Appeals denied Tsang's Motion for Reconsideration on April 25, 2014. (Appendix 2).

On May 1, 2014, the City of Kent filed a motion with Division I seeking an order lifting Commissioner Goff's December 5, 2011, order

staying the superior court's decision. On May 14, 2014, Division I denied the City's motion. The stay remains in place pending this Court's review.

This Petition for Review follows.

V. ARGUMENT

A. Introduction

The City of Kent's action banning collective gardens throughout the City should be pre-empted by State law. Preemption may occur when the Legislature states its intention by necessary implication to preempt the regulated field. *Kennedy v. City of Seattle*, 94 Wn.2d 376, 383, 617 P.2d 713 (1980). The test for whether an ordinance is in conflict with a general law promulgated by the Legislature is simply whether the ordinance permits that which the statute forbids or forbids what is permitted by the statute. *Weden v. San Juan Cy*, 135 Wn.2d 678, 693, 958 P.2d 273 (1998). In determining the intent of the Legislature, the Court will look the plain language of the statute. *State v. Keller*, 98 Wn. App. 381, 383-84, 990 P.2d 423 (1999), *cert. denied*, 534 U.S. 1130, 122 S.Ct. 1070, 151 L.Ed.2d 972 (2002).

Even with the Governor's partial veto, ESSSB 5073 contains at least three significant new provisions that collectively confirm a right for

qualified patients to establish collective gardens and prohibit local governments from banning their existence. First, RCW 69.51A.085[6] expressly authorizes qualified patients the right to establish collective gardens:

> (1) Qualifying patients may create and participate in collective gardens for the purpose of producing, processing, transporting, and delivering cannabis for medical use subject to the following conditions:
>
> ***
>
> (2) For purposes of this section, the creation of a "collective garden" means qualifying patients sharing responsibility for acquiring and supplying the resources required to produce and process cannabis for medical use such as, for example, a location for a collective garden; equipment, supplies, and labor necessary to plant, grow, and harvest cannabis; cannabis plants, seeds, and cuttings; and equipment, supplies, and labor necessary for proper construction, plumbing, wiring, and ventilation of a garden of cannabis plants.

RCW 69.51A.085. Because RCW 69.51.085 establishes the right to create and participate in a collective garden, the City of Kent is not authorized to outright ban their existence.

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[6] ESSB 5073, § 403.

Second, the legislative intent as stated in RCW 69.51A.005(2)(a)[7] declares that:

> [q]ualifying patients with terminal or debilitating medical conditions who, in the judgment of their health care professionals, may benefit from the medical use of cannabis, shall not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences under state law based solely on their medical use of cannabis, notwithstanding any other provision of law.

And finally, the Legislature confirmed that:

> *[t]he medical use of cannabis in accordance with the terms and conditions of this chapter does not constitute a crime and a qualifying patient or designated provider in compliance with the terms and conditions of this chapter may not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences*, for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, cannabis under state law, or have real or personal property seized or forfeited for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, cannabis under state law, and investigating peace officers and law enforcement agencies may not be held civilly liable for failure to seize cannabis in this circumstance, ...

[7] ESSB 5073 § 102.

RCW 69.51A.040,[8] (emphasis added).

Thus, so long as Mr. Tsang (or any other qualified patient) complies with Chapter 69.51A RCW, and specifically the requirements for collective gardens set out in RCW 69.51A.085, they may not be subject to criminal or civil consequences. The City of Kent's Ordinance 4063, however, directly conflicts with RCW 69.51A.005, .040, and .085 by banning collective gardens within the City limits and declaring any violation a "public nuisance" subject to both civil and criminal liability.[9]

B. The Court Should Accept Review Under RAP 13.4(b)(1)

This Court should accept review because the decision of the Court of Appeals is in direct conflict with a decision of this court. RAP 13.4(b)(1).

Division I's decision in *Cannabis Action Coalition* is premised in large part on its conclusion that "medical marijuana use, including collective gardens, was not legalized by the 2011 amendments to [Ch.

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[8] ESSSB 5073, § 401.

[9] KCC 15.08.290.B declares any violation of the zoning code to be a public nuisance subject to mandatory abatement under KCC Chapter 1.04. KCC 1.04.030 declares any violation of a City regulation to be unlawful and subject to both civil and criminal liability.

69.51A]." Opinion at 14. This conclusion is in direct conflict with this Court's interpretation of Ch. 69.51A in *State v. Kurtz:*

> Moreover, *in 2011 the legislature amended the Act making qualifying marijuana use a legal use, not simply an affirmative defense.* RCW 69.51A.040. A necessity defense arises only when an individual acts contrary to law. Under RCW 69.51A.005(2)(a), a qualifying patient "shall not be arrested, prosecuted, or subject to other criminal actions or civil consequences under state law based solely on their medical use of cannabis, notwithstanding any other provision of law." One who meets the specific requirements expressed by the legislature may not be charged with committing a crime and has no need for the necessity defense. Only where one's conduct falls outside of the legal conduct of the Act, would a medical necessity defense be necessary. The 2011 amendment legalizing qualifying marijuana use strongly suggests that the Act was not intended to abrogate or supplant the common law necessity defense.

178 Wash.2d 466, 476, 309 P.3d 472 (2013) (Emphasis added).

Division I's opinion dismissed *Kurtz* as *dicta* based largely on its belief that this Court's reliance on the legislative intent section in RCW 69.51A.005 was misplaced. According to Division I, the Governor's veto message effectively over-rode the plain language in the intent section.

Opinion at 14, fn. 13. But a critical review of the Governor's Veto Statement supports this Court's interpretation of the effect of ESSSB 5073 – that the Bill legalized qualified medical marijuana use.

First, and foremost, while RCW 69.51A.005 was amended by the legislature adding the language in RCW 69.51A.005(2)(a), *supra* at 5, this statement of intent was *not* vetoed by the Governor. Moreover the Governor's message fully supports the Legislature's intent:

> Today, I have signed sections of]ESSSB 5073) that retain the provisions of Initiative 692 *and provide additional state law protections.* Qualifying patients or their designated providers may grow cannabis for the patient's use *or participate in a collective garden* without fear of state law criminal prosecutions. Qualifying patients or their designated providers are also protected from certain state civil law consequences.

Laws of 2011, ch. 181, governor's veto message at 1374-75 (emphasis added).

Thus, not only did the Governor leave untouched the stated legislative intent in RCW 69.51A.005, she affirmatively supported it. The Governor confirmed that, even as vetoed, ESSSB 5073 added "additional" protection over that provided by the original Initiative, and confirmed that

qualifying patients and collective gardens could operate "without fear" of criminal or civil consequences. Division I erred in concluding that use of qualifying medical marijuana, including collective gardens, was not a legal use. Division I's decision is in direct conflict with a decision of this Court.

A. The Court Should Accept Review Under RAP 13.4(b)(4)

This Court should also accept review of the Court of Appeal's decision because this matter involves an issue of substantial public interest that should be determined by this Court. RAP 13.4(b)(4).

First, as discussed above, the Court of Appeal's ruling that private non-commercial use of medical marijuana and operation of collective gardens are illegal activities and that the protections against criminal prosecution and civil liability provided by RCW 69.51A.040 are of no effect is a matter of significant public concern.

The 2011 amendments to RCW 69.51A.040 changed the pre-existing statute --which provided only an affirmative defense – to expressly allowing qualified use. The Legislature expressly confirmed that:

> *[t]he medical use of cannabis in accordance with the terms and conditions of this chapter*

> *does not constitute a crime and a qualifying patient or designated provider in compliance with the terms and conditions of this chapter may not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences*, for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, cannabis under state law, or have real or personal property seized or forfeited for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, cannabis under state law, and investigating peace officers and law enforcement agencies may not be held civilly liable for failure to seize cannabis in this circumstance, ...

RCW 69.51A.040,[10] (emphasis added).

Despite this significant change to the preexisting law, the Governor did not veto this amendment. Moreover, as discussed above, the governor expressly recognized that the act, as vetoed, provided "additional" protections and allowed qualifying patients, designated providers, *and participation in collective gardens* to operate "without fear" of criminal prosecutions or civil law consequences. Laws of 2011, ch. 181, governor's veto message, at 1374-75.

[10] ESSB 5073, § 401.

By nullifying RCW 69.51A.040, Division I eliminated the "additional" protections intended by the Legislature and Governor. The decision directly contradicts the Legislatures intent as well as the Governor's intent through her partial veto. Division I's decision now leaves qualified medical marijuana patients in limbo as to whether they may be prosecuted under criminal or civil laws. A timely decision by this Court will clarify the intent of the law.

Second, there should be no dispute that cities and counties throughout Washington are struggling with what, if anything, they can do with respect to zoning or other control of medical marijuana, including collective gardens. For example, this question is the topic of a 2011 Risk Management Bulletin issued by the General Counsel for the Washington Cities' Insurance Authority. *See* Mark R. Bucklin, Risk Management Bulletin #46: Medical Marijuana Law: Post 2011 Washington Legislative Session (WCIA, June, 2011).[11] This Bulletin confirms that the question of whether local jurisdictions should get involved in the zoning of collective

[11] A copy is attached as Appendix 4. WCIA Bulletin #46 is publicly available for download at: http://www.wciapool.org/communications/risk-bulletins. The WCIA Bulletin confirms that "there does not appear to be any express authority or provision in the new act that would allow the outright banning of collective gardens by local jurisdictions." *Id.* at 9.

gardens is "a difficult one." *Id.* at 8. A timely decision by this Court will clarify the limits that a local jurisdiction can apply through zoning.

VI. CONCLUSION

For the foregoing reasons, this Court should accept review of the Court of Appeal's decision.

Respectfully submitted this 23rd day of May, 2014.

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I caused this document to be filed with the Washington Supreme Court via email at supreme@courts.wa.gov and to be served on the following individuals in the manner listed below:

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Dated this 23rd day of May, 2014, in Seattle, Washington

David S. Mann

APPENDIX 1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

CANNABIS ACTION COALITION, ARTHUR WEST,	)	DIVISION ONE
Plaintiffs,	)	No. 70396-0-I (Consolidated with No. 69457-0-I)
STEVE SARICH, JOHN WORTHINGTON, and DERYCK TSANG,	)	
Appellants,	)	
v.	)	
CITY OF KENT, a local municipal corporation,	)	PUBLISHED OPINION
Respondent.	)	FILED: March 31, 2014

DWYER, J. — The Washington Constitution grants the governor the power to veto individual sections of a bill. The governor may exercise this power even when doing so changes the meaning or effect of the bill from that which the legislature intended. As a corollary of this power, when the governor's sectional veto alters the intent of the bill and the legislature does not override the veto, the governor's veto message becomes the exclusive statement of legislative intent that speaks directly to the bill as enacted into law.

In this case, the governor vetoed over half of the sections in a 2011 bill amending the Washington State Medical Use of Cannabis Act[1] (MUCA), substantially changing the meaning, intent, and effect of the bill. Although Engrossed Second Substitute Senate Bill (ESSSB) 5073 was originally designed to legalize medical marijuana through the creation of a state registry of lawful users, as enacted it provides medical marijuana users with an affirmative defense to criminal prosecution.

Following the governor's sectional veto and the new law's effective date, the City of Kent enacted a zoning ordinance which defined medical marijuana "collective gardens" and prohibited such a use in all zoning districts. By so doing, Kent banned collective gardens.

An organization and several individuals (collectively the Challengers) brought a declaratory judgment action challenging the ordinance. The Challengers claimed that ESSSB 5073 legalized collective gardens and that Kent was thus without authority to regulate or ban collective gardens. In response, Kent sought an injunction against the individual challengers enjoining them from violating the ordinance. The superior court ruled in favor of Kent, dismissed the Challengers' claims for relief, and granted the relief sought by Kent.

We hold that neither the plain language of the statute nor the governor's intent as expressed in her veto message supports a reading of ESSSB 5073 that legalizes collective gardens. The Kent city council acted within its authority by enacting the ordinance banning collective gardens. Accordingly, the trial court

[1] Ch. 69.51A RCW.

did not err by dismissing the Challengers' actions and granting relief to Kent.

I

In 2011, the Washington legislature adopted ESSSB 5073, which was intended to amend the MUCA.[2] The bill purported to create a comprehensive regulatory scheme, whereby—with regard to medical marijuana—all patients, physicians, processors, producers, and dispensers would be registered with the state Department of Health. The legislature's intended purpose in amending the statute, as stated in section 101 of the bill, was so that

> (a) Qualifying patients and designated providers complying with the terms of this act and registering with the department of health will no longer be subject to arrest or prosecution, other criminal sanctions, or civil consequences based solely on their medical use of cannabis;
>
> (b) Qualifying patients will have access to an adequate, safe, consistent, and secure source of medical quality cannabis; and
>
> (c) Health care professionals may authorize the medical use of cannabis in the manner provided by this act without fear of state criminal or civil sanctions.

ENGROSSED SECOND SUBSTITUTE S. B. (ESSSB) 5073, § 101, 62nd Leg., Reg. Sess. (Wash. 2011) (italics and boldface omitted). The legislature also amended RCW 69.51A.005, the MUCA's preexisting purpose and intent provision, to state, in relevant part:

> Qualifying patients with terminal or debilitating medical conditions who, in the judgment of their health care professionals, may benefit from the medical use of cannabis, shall not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences under state law based solely on their medical use of

[2] The MUCA, as it existed prior to the 2011 legislative session, was a product of Initiative Measure No. 692 passed by the voters in the 1998 general election and subsequently codified as chapter 69.51A RCW. The MUCA was amended in 2007 and 2010 in manners not pertinent to the issues presented herein. LAWS OF 2007, ch. 371; LAWS OF 2010, ch. 284.

cannabis, notwithstanding any other provision of law.

ESSSB 5073, § 102.

As drafted by the legislature, ESSSB 5073 established a state-run registry system for qualified patients and providers. Significantly, section 901 of the bill required the state Department of Health, in conjunction with the state Department of Agriculture, to "adopt rules for the creation, implementation, maintenance, and timely upgrading of a secure and confidential registration system." ESSSB 5073, § 901(1). Patients would not be required to register; rather, the registry would be "optional for qualifying patients." ESSSB 5073, § 901(6). On the one hand, if a patient was registered with the Department of Health, he or she would not be subject to prosecution for marijuana-related offenses.[3] ESSSB 5073, § 405. On the other hand, if a patient did not register, he or she would be entitled only to an affirmative defense to marijuana-related charges.[4] ESSSB 5073, § 406.

The bill also allowed qualified patients to establish collective gardens for the purpose of growing medical marijuana for personal use.[5] ESSSB 5073,

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[3] This section of the bill is now codified as follows:

> The medical use of cannabis in accordance with the terms and conditions of this chapter does not constitute a crime and a qualifying patient or designated provider in compliance with the terms and conditions of this chapter may not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences, for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, cannabis under state law, or have real or personal property seized or forfeited for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, cannabis under state law, and investigating peace officers and law enforcement agencies may not be held civilly liable for failure to seize cannabis in this circumstance.

RCW 69.51A.040.

[4] This section is now codified as RCW 69.51A.043(1), which states, "A qualifying patient or designated provider who is not registered with the registry established in *section 901 of this act may raise the affirmative defense."

[5] Now codified as RCW 69.51A.085, this section provides:

§ 403. Furthermore, even though the bill purported to legalize medical marijuana for registered patients and providers, it nevertheless granted authority to municipalities to regulate medical marijuana use within their territorial confines. Section 1102, now codified as RCW 69.51A.140, provides in relevant part:

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

ESSSB 5073, § 1102.

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

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

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

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

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

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

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

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

The bill was passed by both houses of the legislature and sent to Governor Gregoire for her signature.

On April 14, 2011, the United States Attorneys for the Eastern and Western Districts of Washington wrote an advisory letter to Governor Gregoire regarding ESSSB 5073. Therein, the district attorneys explained the Department of Justice's position on the bill:

> The Washington legislative proposals will create a licensing scheme that permits large-scale marijuana cultivation and distribution. This would authorize conduct contrary to federal law and thus, would undermine the federal government's efforts to regulate the possession, manufacturing, and trafficking of controlled substances. . . . In addition, state employees who conducted activities mandated by the Washington legislative proposals would not be immune from liability under the CSA.[6] Potential actions the Department could consider include injunctive actions to prevent cultivation and distribution of marijuana and other associated violations of the CSA; civil fines; criminal prosecution; and the forfeiture of any property used to facilitate a violation of the CSA.

After receiving this missive, Governor Gregoire vetoed all sections of the bill which might have subjected state employees to federal charges. The governor vetoed 36 sections[7] of the bill that purported to establish a state registry, including section 901, and including section 101, the legislature's statement of intent. LAWS OF 2011, ch. 181. The governor left intact those sections of the bill that did not create or were not wholly dependent on the creation of a state registry. LAWS OF 2011, ch. 181. In her official veto message, Governor Gregoire explained her decision to leave parts of the bill intact:

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[6] Controlled Substances Act, Title 21 U.S.C., Ch. 13.

[7] The bill contained 58 sections as passed by the legislature. The governor vetoed 36 of those sections.

> Today, I have signed sections of Engrossed Second Substitute Bill 5073 that retain the provisions of Initiative 692 and provide additional state law protections. Qualifying patients or their designated providers may grow cannabis for the patient's use or participate in a collective garden without fear of state law criminal prosecutions. Qualifying patients or their designated providers are also protected from certain state civil law consequences.

LAWS OF 2011, ch. 181, governor's veto message at 1374-75.

The governor recognized that her extensive exercise of the sectional veto power rendered meaningless any of the bill's provisions that were dependent upon the state registry, noting that "[b]ecause I have vetoed the licensing provisions, I have also vetoed" numerous other sections. LAWS OF 2011, ch. 181, governor's veto message at 1375. However, the governor also recognized that—after her extensive vetoes—portions of some sections would remain meaningful even though references to the registry within those sections would not. Importantly, in one particular example, the governor stated:

> I am not vetoing Sections 402 or 406, which establish affirmative defenses for a qualifying patient or designated provider who is not registered with the registry established in section 901. Because these sections govern those who have not registered, this section is meaningful even though section 901 has been vetoed.

LAWS OF 2011, ch. 181, governor's veto message at 1376. Another section that the governor believed to have meaning, even though it referenced registered entities, was section 1102. With respect to this section, the governor stated:

> Section 1102 sets forth local governments' authority pertaining to the production, processing or dispensing of cannabis or cannabis products within their jurisdictions. The provisions in Section 1102 that local governments' zoning requirements cannot "preclude the possibility of siting licensed dispensers within the jurisdiction" are without meaning in light of the vetoes of sections providing for such licensed dispensers. It is with this understanding that I approve

section 1102.

LAWS OF 2011, ch. 181, governor's veto message at 1375. The bill, now consisting only of the 22 sections not vetoed by the governor, was signed into law and codified in chapter 69.51A RCW. The legislature did not override the governor's veto.

Subsequently, Kent sought to exercise its zoning power to regulate collective gardens. On July 5, 2011 and January 3, 2012, Kent issued six month moratoria prohibiting collective gardens within the city limits. On June 5, 2012, Kent enacted Ordinance No. 4036 (the Ordinance), defining collective gardens and banning them within the city limits. The Ordinance states, in relevant part:

> A. *Collective gardens*, as defined in KCC 15.02.074, are prohibited in the following zoning districts:
>
> 1. All agricultural districts, including A-10 and AG;
>
> 2. All residential districts, including SR-1, SR-3, SR-4.5, SR-6, SR-8, MR-D, MR-T12, MR-T16, MR-G, MR-M, MR-H, MHP, PUD, MTC-1, MTC-2, and MCR;
>
> 3. All commercial/office districts, including: NCC, CC, CC-MU, DC, DCE, DCE-T, CM-1, CM-2, GC, GC-MU, O, O-MU, and GWC;
>
> 4. All industrial districts, including: MA, M1, M1-C, M2, and M3; and
>
> 5. Any new district established after June 5, 2012.
>
> B. Any violation of this section is declared to be a public nuisance per se, and shall be abated by the city attorney under applicable provisions of this code or state law, including, but not limited to, the provisions of KCC Chapter 1.04.

Thereafter, the Cannabis Action Coalition, Steve Sarich, Arthur West, John Worthington, and Deryck Tsang filed suit against Kent, seeking declaratory,

injunctive, and mandamus relief.[8] Worthington, Sarich, and West stated in their complaint that they intended to participate in a collective garden in Kent. None of the three, however, actually resided in, owned or operated a business in, or participated in a collective garden in Kent. Tsang, on the other hand, is a resident of Kent and currently participates in a collective garden in the city limits.

In the superior court proceeding, the parties filed competing motions for summary judgment. After considering all documentation submitted by the parties, the trial court ruled in favor of Kent. The trial court dismissed the claims of Cannabis Action Coalition, Sarich, West, and Worthington for lack of standing.[9] On the merits of Tsang's claims, the trial court held that "[t]he Kent City Council had authority to pass Ordinance 4036, Ordinance 4036 is not preempted by state law, and Ordinance 4036 does not violate any constitutional rights of Plaintiffs." The trial court also granted Kent's request for a permanent injunction against all plaintiffs, prohibiting them from violating the Ordinance.

The Challengers appealed to the Washington Supreme Court and requested a stay of the injunction. The Supreme Court Commissioner granted the stay. While the appeal was pending, Kent filed a motion to strike portions of Worthington's reply brief, which Worthington countered with a motion to waive Rule of Appellate Procedure (RAP) 10.3(c).[10] The Supreme Court transferred

[8] The Cannabis Action Coalition is no longer a party to this matter. Although West filed a notice of appeal, he never filed an appellate brief; he has thus abandoned his appeal.

[9] However, the trial court stated that "even if all plaintiffs do have standing," its motion granting summary judgment in favor of Kent was "dispositive as to all plaintiffs."

[10] Kent asserts that the majority of Worthington's reply brief should be stricken because they contain arguments not raised in the trial court, they contain arguments not raised in Worthington's opening brief, and they are not in response to Kent's brief. Worthington contends

the appeal to this court, along with the two unresolved motions.

II

A

The Challengers contend that the plain language of the MUCA legalizes collective gardens.[11] This is so, they assert, because the MUCA provides that

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that this court should waive RAP 10.3(c) and that his entire reply brief should be considered in order to "meet the ends of justice and facilitate a ruling on the merits."

RAP 10.3(c) provides that, "[a] reply brief should conform with subsections (1), (2), (6), (7), and (8) of section (a) and be limited to a response to the issues in the brief to which the reply brief is directed." "A reply brief is generally not the proper forum to address new issues because the respondent does not get an opportunity to address the newly raised issues." City of Spokane v. White, 102 Wn. App. 955, 963, 10 P.3d 1095 (2000) (citing RAP 10.3(c); Dykstra v. Skagit County, 97 Wn. App. 670, 676, 985 P.2d 424 (1999)).

Sections A, C, G, and I of Worthington's reply brief all consist of arguments not previously raised or are premised on facts not in the record. Kent's motion is granted with respect to these sections. Kent's motion is denied with respect to sections B, D, and H.

Kent additionally moved to strike all appendices to Worthington's reply brief. "An appendix may not include materials not contained in the record on review without permission from the appellate court, except as provided in rule 10.4(c)." RAP 10.3(a)(8).

Appendix D does not appear in the record, nor did Worthington seek permission from the Supreme Court to include materials not contained in the record. We therefore grant Kent's motion to strike appendix D. Kent's motion is denied with respect to Appendices A and C.

Appendix B is a copy of an unpublished federal district court decision, which Worthington cited in support of his argument in section G. As we have already stricken section G, we have no basis to consider the material in Appendix B. Kent's motion with respect to this appendix is thus moot.

Worthington contends that we should waive RAP 10.3(c) and nevertheless consider sections A, C, G, I, and Appendices B and D. RAP 18.8(a) allows this court to waive any of the RAPs "in order to serve the ends of justice." In addition to Worthington's opening brief, this court has received briefing from Sarich, Tsang, Kent, and two amici curiae. Accordingly, it is not necessary to consider Worthington's new arguments "in order to serve the ends of justice" in this case. Worthington's motion is denied.

[11] As an initial matter, Kent claims that Sarich and Worthington lack standing to assert these arguments. However, in the trial court, Kent sought and was granted affirmative relief against all plaintiffs, including Sarich and Worthington. Because Sarich and Worthington are now subject to a permanent injunction, they both have standing on appeal. Orion Corp. v. State, 103 Wn.2d 441, 455, 693 P.2d 1369 (1985); see also Casey v. Chapman, 123 Wn. App. 670, 676, 98 P.3d 1246 (2004) ("Parties whose financial interests are affected by the outcome of a declaratory judgment action have standing."). Moreover, as soon as Kent sought affirmative relief against them in the trial court, their standing was established. Vovos v. Grant, 87 Wn.2d 697, 699, 555 P.2d 1343 (1976) ("A person has standing to challenge a court order or other court action if his protectable interest is adversely affected thereby.") The critical question is whether "if the relief requested is granted," will the litigants' protectable interests be affected. Herrold v. Case, 42 Wn.2d 912, 916, 259 P.2d 830 (1953); cf. Snohomish County Bd. of Equalization v. Dep't of Revenue, 80 Wn.2d 262, 264-64, 493 P.2d 1012 (1972) ("Without a decision of this court, [the

"[q]ualifying patients may create and participate in collective gardens." RCW 69.51A.085(1). Kent, in response, contends that the plain language of the MUCA did not legalize collective gardens because collective gardens would only have been legalized in circumstances wherein the participating patients were duly registered, and the registry does not exist. The trial court properly ruled that Kent is correct.

We review issues of statutory interpretation de novo. Fiore v. PPG Indus., Inc., 169 Wn. App. 325, 333, 279 P.3d 972 (2012). "The goal of statutory interpretation is to discern and carry out legislative intent." Bennett v. Seattle Mental Health, 166 Wn. App. 477, 483, 269 P.3d 1079, review denied, 174 Wn.2d 1009 (2012). "The court must give effect to legislative intent determined 'within the context of the entire statute.'" Whatcom County v. City of Bellingham, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996) (quoting State v. Elgin, 118 Wn.2d 551, 556, 825 P.2d 314 (1992)). "If the statute's meaning is plain on its face, we give effect to that plain meaning as the expression of what was intended." TracFone Wireless, Inc. v. Dep't of Revenue, 170 Wn.2d 273, 281, 242 P.3d 810 (2010) (citing Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002)). "In approving or disapproving legislation, the governor acts in a legislative capacity and as part of the legislative branch of government." Hallin v. Trent, 94 Wn.2d 671, 677, 619 P.2d 357 (1980). Accordingly, when the governor

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plaintiffs] were placed in a position of making a determination of a difficult question of constitutional law with the *possibility of facing both civil and criminal penalties* if they made the wrong choice. One of the purposes of declaratory judgment laws is to give relief from such situations." (emphasis added) (footnotes omitted)).

vetoes sections of a bill, the governor's veto message is considered a statement of legislative intent. Dep't of Ecology v. Theodoratus, 135 Wn.2d 582, 594, 957 P.2d 1241 (1998).

The plain language of ESSSB 5073, as enacted, does not legalize medical marijuana or collective gardens. Subsection (1) of RCW 69.51A.085 delineates the requirements for collective gardens. RCW 69.51A.085 further provides that "[a] person who knowingly violates a provision of subsection (1) of this section is not entitled to the protections of this chapter." RCW 69.51A.085(3).

The "protections of this chapter" to which RCW 69.51A.085(3) refers are found in RCW 69.51A.040 and 69.51A.043. RCW 69.51A.040 provides that "[t]he medical use of cannabis in accordance with the terms and conditions of this chapter does not constitute a crime" if the patient meets the six listed requirements. One of the listed requirements is that

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

RCW 69.51A.040(3) (emphasis added). Therefore, in order to obtain the protections provided by RCW 69.51A.040, the patient must be registered with the state.

RCW 69.51A.043, on the other hand, delineates the protections for patients who are not registered:

> *(1) A qualifying patient or designated provider who is not registered with the registry established in *section 901 of this act*

> *may raise the affirmative defense set forth in subsection (2) of this section, if:*
>
> (a) The qualifying patient or designated provider presents his or her valid documentation to any peace officer who questions the patient or provider regarding his or her medical use of cannabis;
>
> (b) The qualifying patient or designated provider possesses no more cannabis than the limits set forth in RCW 69.51A.040(1);
>
> (c) The qualifying patient or designated provider is in compliance with all other terms and conditions of this chapter;
>
> . . .
>
> (2) *A qualifying patient or designated provider who is not registered with the registry established in *section 901 of this act, but who presents his or her valid documentation to any peace officer who questions the patient or provider regarding his or her medical use of cannabis, may assert an affirmative defense to charges of violations of state law relating to cannabis through proof at trial, by a preponderance of the evidence, that he or she otherwise meets the requirements of RCW 69.51A.040.* A qualifying patient or designated provider meeting the conditions of this subsection but possessing more cannabis than the limits set forth in RCW 69.51A.040(1) may, in the investigating peace officer's discretion, be taken into custody and booked into jail in connection with the investigation of the incident.

(Emphasis added.) Section 901 of ESSSB 5073, referred to in both RCW 69.51A.040 and 69.51A.043, was vetoed. As a result of the governor's veto, the state registry does not exist. Thus, it is impossible for an individual to be registered with the registry. Accordingly, no individual is able to meet the requirements of RCW 69.51A.040.

Pursuant to RCW 69.51A.043, patients who are *not registered* may be entitled to an affirmative defense. As we hold today in State v. Reis, No. 69911-3-I, slip op. at 11 (Wash. Ct. App. Mar. 31, 2014), "by default, qualifying patients and designated providers are entitled only to an affirmative defense." As such, the only available "protection" to which collective garden participants are entitled pursuant to RCW 69.51A.085(3) is an affirmative

defense to prosecution.

Although such a reading may appear to render RCW 69.51A.040 meaningless, it does not, in fact, do so. RCW 69.51A.040 delineates the non-registry related conditions for possessing medical marijuana. These conditions are referenced in RCW 69.51A.043[12] and are essential components of the affirmative defense. Thus, the plain language of the statute does not legalize the use of medical marijuana.[13] Instead, it provides a defense to an assertion that state criminal laws were violated. As such, medical marijuana use, including collective gardens, was not legalized by the 2011 amendments to the MUCA.

B

All parties contend that the legislative history of ESSSB 5073 supports their reading of the Act. In order to analyze the legislative history of ESSSB 5073 as enacted, however, we must first determine which sources of legislative intent are proper for us to consider. For the reasons that follow, we hold that the

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[12] "(b) The qualifying patient or designated provider possesses no more cannabis than the limits set forth in RCW 69.51A.040(1); (c) The qualifying patient or designated provider is in compliance with all other terms and conditions of this chapter." RCW 69.51A.043(1).

[13] In State v. Kurtz, 178 Wn.2d 466, 476, 309 P.3d 472 (2013), the Supreme Court briefly stated in dicta, "[I]n 2011 the legislature amended the Act making qualifying marijuana use a legal use, not simply an affirmative defense." As authority for this assertion, the court cited RCW 69.51A.005. RCW 69.51A.005, a preexisting provision entitled "Purpose and intent," was amended by the legislature in ESSSB 5073, section 102. Section 102 was included in the bill as passed by both houses of the legislature and accurately expresses the intent of the original bill. While the governor did not veto section 102, the governor's veto of numerous other sections of the bill significantly changed the bill's purpose. Additionally, the governor *did* veto section 101, a new statement of legislative purpose quoted, supra, at 3. Moreover, the parties in Kurtz did not address this question in their briefing to the Supreme Court and the court's footnoted statement was not important to its holding. Thus, we do not view this statement in Kurtz as controlling the outcome of this litigation. In our decision in Reis, No. 69911-3-I, we further explain our view in this regard.

governor's veto message is the sole source of relevant legislative history on the 2011 amendments to the MUCA, as enacted.

Article III, section 12 of the Washington Constitution allows for the governor to veto "one or more sections . . . while approving other portions of the bill." Prior to 1984, the long-standing rule governing the governor's sectional veto power was that the governor could only use the executive veto power in a "negative" manner, and not in an "affirmative" manner. Wash. Fed'n of State Employees, AFL-CIO, Council 28 AFSCME v. State, 101 Wn.2d 536, 545, 682 P.2d 869 (1984). Phrased another way,

> "[T]he Governor may use the veto power to prevent some act or part of an act of the legislature from becoming law. Likewise, the Governor may not use the veto power to reach a new or different result from what the legislature intended. In other words, the veto power must be exercised in a destructive and not a creative manner."

State Employees, 101 Wn.2d at 545 (alteration in original) (quoting Wash. Ass'n of Apartment Ass'ns v. Evans, 88 Wn.2d 563, 565-66, 564 P.2d 788 (1977)).

In State Employees, the Supreme Court disavowed that rule, holding that, "[i]ts use by the judiciary is an intrusion into the legislative branch, contrary to the separation of powers doctrine, and substitutes judicial judgment for the judgment of the legislative branch." 101 Wn.2d at 546 (citations omitted). From then on, "[t]he Governor [was] free to veto 'one or more sections or appropriation items', without judicial review." State Employees, 101 Wn.2d at 547. Thus, the current analytical approach is that the governor is free to veto sections of a bill even

when doing so changes the meaning of the bill from that which the legislature originally intended.

Significantly, the Supreme Court characterized the veto process as follows:

> "In approving or disapproving legislation, the Governor acts in a legislative capacity and as part of the legislative branch of government." Hallin v. Trent, 94 Wn.2d 671, 677, 619 P.2d 357 (1980). In effect, the Governor holds one-third of the votes. The veto is upheld if the Legislature fails to override it. Fain v. Chapman, 94 Wn.2d 684, 688, 619 P.2d 353 (1980). To override the Governor's veto, the Senate and House must agree by a two-thirds vote. Const. art. 3, § 12 (amend. 62).

State Employees, 101 Wn.2d at 544. The legislature's power to override, the Supreme Court held, serves as an adequate "check" on the governor's veto power. State Employees, 101 Wn.2d at 547. Thus, if the legislature disapproves of the new meaning or effect of the bill resulting from the governor's veto, it can vote to override the veto and restore the bill to its original meaning or effect.

Here, Governor Gregoire vetoed 36 of the 58 sections of ESSSB 5073. This veto significantly altered the meaning and effect of the sections that remained for enactment. When returning the bill to the Senate, the governor provided a formal veto message expressing her opinion as to the meaning and effect of the bill after her veto. See Wash. State Grange v. Locke, 153 Wn.2d 475, 490, 105 P.3d 9 (2005) ("The expression of [an opinion as to the statute's interpretation] is within the governor's prerogative.") Had the legislature objected to the governor's veto, it could have overturned it by a two-thirds vote. CONST.

art. III, § 12. A legislative override would also have nullified the governor's veto message. By not overriding the veto, the legislature failed to provide an interpretation of the MUCA contrary to that articulated by Governor Gregoire. Cf. Rozner v. City of Bellevue, 116 Wn.2d 342, 349, 804 P.2d 24 (1991) (legislature's actions in not overriding veto, but later amending parts of the statute, functioned as legislative approval of governor's veto message with respect to unamended portions of the statute).

All parties urge us to consider the intent of the legislature in passing ESSSB 5073. However, ESSSB 5073, as passed by both houses of the legislature, was not the bill that was enacted. Rather, the bill that was enacted was that which existed after the governor's veto. Thus, the governor's veto message is the only legislative history that speaks directly to the law as it was enacted. It is the paramount source for us to refer to in order to discern the legislative intent behind the enacted law.

The governor's intent in vetoing a significant portion of ESSSB 5073 was that there should not be a state registry, and that medical marijuana should not be legalized. In her veto message, Governor Gregoire stated:

> *I have been open, and remain open, to legislation to exempt qualifying patients and their designated providers from state criminal penalties* when they join in nonprofit cooperative organizations to share responsibility for producing, processing and dispensing cannabis for medical use. Such exemption from criminal penalties should be conditioned on compliance with local government location and health and safety specifications.

LAWS OF 2011, ch. 181, governor's veto message at 1376 (emphasis added). By stating that she was open to future legislation that would exempt patients from

criminal penalties, the governor indicated that she did not read *this* bill as creating any such exemptions.

Further, the governor concluded her veto message by stating:

> I am not vetoing Sections 402 or 406, which establish affirmative defenses for a qualifying patient or designated provider who is not registered with the registry established in section 901. Because these sections govern those who have not registered, this section is meaningful even though section 901 has been vetoed.

LAWS OF 2011, ch. 181, governor's veto message at 1376. This statement indicates that the governor realized that her veto would preclude the legislature's attempt to legalize certain medical marijuana uses. The governor affirmatively stated her understanding that only affirmative defenses to criminal prosecutions survived her veto.

These two statements, read in conjunction, demonstrate that the governor did not intend for ESSSB 5073 to legalize medical marijuana. The governor did not read the bill as enacted as exempting medical marijuana users from prosecution. Significantly, although the MUCA provides for an affirmative defense, "[a]n affirmative defense does not per se legalize an activity." State v. Fry, 168 Wn.2d 1, 10, 228 P.3d 1 (2010). Thus, the plain language of the statute, which does not read so as to legalize medical marijuana, is consonant with the governor's expressed intent in signing the bill, as amended by her vetoes.

The governor's statement regarding collective gardens does not suggest otherwise. In her veto message, Governor Gregoire stated, "Qualifying patients or their designated providers may grow cannabis for the patient's use or

participate in a collective garden without fear of state law criminal prosecutions."[14] LAWS OF 2011, ch. 181, governor's veto message at 1374-75. Two paragraphs earlier, Governor Gregoire stated, "In 1998, Washington voters made the compassionate choice to remove the fear of state criminal prosecution for patients who use medical marijuana for debilitating or terminal conditions." LAWS OF 2011, ch. 181, governor's veto message at 1374. The governor's use of the phrase "state criminal prosecution[s]" in both sentences indicates that she intended for the bill to extend the *existing* legal protections to collective gardens. The 1998 ballot initiative (I-692) provided qualifying patients with an affirmative defense to drug charges. Former RCW 69.51A.040 (1999). I-692 did not legalize medical marijuana, but the governor nevertheless described it as "remov[ing] the fear of state criminal prosecution." Her use of the same phrase when describing ESSSB 5073 must be read in this light. The governor plainly did not intend for ESSSB 5073, after her vetoes, to legalize medical marijuana. The plain language of the MUCA is consonant with the governor's expressed intent.

III

A

The Challengers nevertheless contend that the plain language of the MUCA does not allow Kent to regulate collective gardens. This is so, they assert, because RCW 69.51A.085, which deals with collective gardens, is a stand-alone statute that does not grant any regulatory authority to municipalities.

[14] Kent characterizes this statement as errant. As stated above, the governor was not saying that she intended to legalize marijuana. As the bill did add an affirmative defense relating to collective gardens, the governor's statement was not errant.

We disagree.

Although RCW 69.51A.085 does not itself grant powers to municipalities, this statutory provision cannot be read in isolation. "We construe an act as a whole, giving effect to all the language used. Related statutory provisions are interpreted in relation to each other and all provisions harmonized." C.J.C. v. Corp. of Catholic Bishop of Yakima, 138 Wn.2d 699, 708, 985 P.2d 262 (1999) (citing State v. S.P., 110 Wn.2d 886, 890, 756 P.2d 1315 (1988)). RCW 69.51A.085 was passed as part of a comprehensive bill amending the MUCA. This provision must therefore be read in conjunction with the other enacted provisions of ESSSB 5073.

Importantly, ESSSB 5073, as enacted, includes a section specifically granting regulatory powers to municipalities. RCW 69.51A.140 states:

> *Cities and towns may adopt and enforce any of the following pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction: Zoning requirements, business licensing requirements, health and safety requirements, and business taxes.* Nothing in chapter 181, Laws of 2011 is intended to limit the authority of cities and towns to impose zoning requirements or other conditions upon licensed dispensers, so long as such requirements do not preclude the possibility of siting licensed dispensers within the jurisdiction.

(Emphasis added.) The plain language of this section allows municipalities to regulate the production, processing, and dispensing of medical marijuana. Only "licensed dispensers" are listed as users that a city may not exclude. This necessarily implies that a city retains its traditional authority to regulate

all other uses of medical marijuana.[15] Thus, the MUCA expressly authorizes cities to enact zoning requirements to regulate or exclude collective gardens.

B

The Challengers contend that the legislative history of ESSSB 5073 does not support a reading of RCW 69.51A.140 that would allow a city to regulate or exclude collective gardens. To the contrary, it is the Challengers' interpretation of the statute that is not supported by the legislative history.

In enacting the 2011 amendments to the MUCA, the governor provided some insight into a locality's ability to regulate medical marijuana. In her veto message, the governor stated:

> Section 1102 sets forth local governments' authority pertaining to the production, processing or dispensing of cannabis or cannabis products within their jurisdictions. The provisions in Section 1102 that local governments' zoning requirements cannot "preclude the possibility of siting licensed dispensers within the jurisdiction" are without meaning in light of the vetoes of sections providing for such licensed dispensers. It is with this understanding that I approve Section 1102.

LAWS OF 2011, ch. 181, governor's veto message at 1375. This statement indicates that the governor intended section 1102 to have meaning even though one provision therein was meaningless. Accordingly, the governor's understanding of section 1102 of the bill was that municipalities would be able to regulate medical marijuana production, processing or dispensing within their territorial confines.

[15] A city's traditional authority is defined by the state constitution as the power to "make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws." CONST. art. XI, § 11.

Further, the governor stated:

> I have been open, and remain open, to legislation to exempt qualifying patients and their designated providers from state criminal penalties when they join in nonprofit cooperative organizations to share responsibility for producing, processing and dispensing cannabis for medical use. *Such exemption from state criminal penalties should be conditioned on compliance with local government location and health and safety specifications.*

LAWS OF 2011, ch. 181, governor's veto message at 1376 (emphasis added). "[L]ocation and health and safety specifications" are precisely what the Washington Constitution anticipates municipalities will address by enacting ordinances. "Municipalities derive their authority to enact ordinances in furtherance of the *public safety*, morals, *health* and welfare from article 11, section 11 of our state constitution." City of Tacoma v. Vance, 6 Wn. App. 785, 789, 496 P.2d 534 (1972) (emphasis added); accord Hass v. City of Kirkland, 78 Wn.2d 929, 932, 481 P.2d 9 (1971). The governor's message thus indicated her understanding that, in the future, if a bill succeeded in legalizing medical marijuana, municipalities should continue to retain their ordinary regulatory powers, such as zoning.

Nonetheless, the Challengers contend that the phrase "production, processing, or dispensing of cannabis or cannabis products" in RCW 69.51A.140 refers only to commercial production, processing, or dispensing. The Challengers' interpretation would render all of RCW 69.51A.140 a nullity. Commercial producers, processors, and dispensers are those producers, processors, and dispensers that would have been licensed by the Department of Health. ESSSB 5073, § 201(12), (13), (14). As a result of the governor's veto of

all sections creating a licensing system, commercial producers, processors, and dispensers do not exist. If "producers, processors, and dispensers" referred only to those commercial licensed entities, all of section 1102 would be meaningless. However, the governor did not veto section 1102 along with the other sections creating licensed producers, processors, and dispensers. Rather, the governor stated in her veto message that only those "provisions in Section 1102 that local governments' zoning requirements cannot 'preclude the possibility of siting licensed dispensers within the jurisdiction' are without meaning." LAWS OF 2011, ch. 181, governor's veto message at 1375. The governor's veto did not leave municipalities without the ability to regulate. In this regard, the Challengers' interpretation of the amended MUCA is contrary to the legislative history of the bill.

The governor clearly understood the bill to allow cities to use their zoning power to regulate medical marijuana use within their city limits. The governor's understanding is consistent with the plain language of the MUCA.

IV

The Challengers next contend that the Ordinance is invalid because, they assert, the MUCA preempts local regulation of medical marijuana and because the Ordinance conflicts with state law.[16] We disagree.

[16] The Challengers also contend that RCW 69.51A.025 precludes cities from banning collective gardens. This provision states, "Nothing in this chapter or in the rules adopted to implement it precludes a qualifying patient or designated provider from engaging in the private, unlicensed, noncommercial production, possession, transportation, delivery, or administration of cannabis for medical use as authorized under RCW 69.51A.040." RCW 69.51A.025. Contrary to the Challengers' assertion, a city zoning ordinance is not a "rule adopted to implement" the MUCA. The cited provision refers to anticipated Department of Health regulations which would

Generally, municipalities possess constitutional authority to enact zoning ordinances as an exercise of their police power. CONST. art. XI, § 11. However, a municipality may not enact a zoning ordinance which is either preempted by or in conflict with state law. HJS Dev., Inc. v. Pierce County ex rel. Dep't of Planning & Land Servs., 148 Wn.2d 451, 477, 61 P.3d 1141 (2003).

State law preempts a local ordinance when "the legislature has expressed its intent to preempt the field or that intent is manifest from necessary implication." HJS Dev., 148 Wn.2d at 477 (citing Rabon v. City of Seattle, 135 Wn.2d 278, 289, 957 P.2d 621 (1998); Brown v. City of Yakima, 116 Wn.2d 556, 560, 807 P.2d 353 (1991)). Otherwise, municipalities will have concurrent jurisdiction over the subject matter. HJS Dev., 148 Wn.2d at 477. The MUCA does not express the intent to preempt the field of medical marijuana regulation. To the contrary, as previously discussed in section III, the MUCA explicitly recognizes a role for municipalities in medical marijuana regulation. As the MUCA explicitly contemplates its creation, the Ordinance is not directly preempted by state law.

A local ordinance that is not directly preempted may nevertheless be invalid if it conflicts with state law. Pursuant to article XI, section 11 of the Washington Constitution, "[a]ny county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws." A city ordinance is unconstitutional under

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have been adopted as rules contained within the Washington Administrative Code, had the governor not vetoed the regulatory scheme.

article XI, section 11 if "(1) the ordinance conflicts with some general law; (2) the ordinance is not a reasonable exercise of the city's police power; or (3) the subject matter of the ordinance is not local." Edmonds Shopping Ctr. Assocs. v. City of Edmonds, 117 Wn. App. 344, 351, 71 P.3d 233 (2003). Whether a local ordinance is valid under the state constitution is a pure question of law, which this court reviews de novo. Edmonds Shopping Ctr., 117 Wn. App. at 351.

Here, the Challengers contend that the Ordinance is unconstitutional because it conflicts with the MUCA.[17] Ordinances are presumed to be constitutional. HJS Dev., 148 Wn.2d at 477. As the party challenging the Ordinance, the burden is on the Challengers to prove beyond a reasonable doubt that it is unconstitutional. Edmonds Shopping Ctr., 117 Wn. App. at 355. "'In determining whether an ordinance is in "conflict" with general laws, the test is whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa.'" City of Tacoma v. Luvene, 118 Wn.2d 826, 834-35, 827 P.2d 1374 (1992) (internal quotation marks omitted) (quoting City of Bellingham v. Schampera, 57 Wn.2d 106, 111, 356 P.2d 292 (1960)). "The conflict must be direct and irreconcilable with the statute, and the ordinance must yield to the statute if the two cannot be harmonized." Luvene, 118 Wn.2d at 835.

"The scope of [a municipality's] police power is broad, encompassing all those measures which bear a reasonable and substantial relation to promotion of the general welfare of the people." State v. City of Seattle, 94 Wn.2d 162, 165, 615 P.2d 461 (1980). Generally speaking, a municipality's police powers are

[17] The Challengers do not contend that the Ordinance is unreasonable or not local.

coextensive with those possessed by the State. City of Seattle, 94 Wn.2d at 165. Without question, a municipality's plenary powers include the power to "enact ordinances prohibiting and punishing the same acts which constitute an offense under state laws." Schampera, 57 Wn.2d at 109; accord State v. Kirwin, 165 Wn.2d 818, 826-27, 203 P.3d 1044 (2009). As the plain language of the statute and the governor's veto message indicate, collective gardens are not legal activity. The Ordinance, by prohibiting collective gardens, prohibits an activity that constitutes an offense under state law. As it prohibits an activity that is also prohibited under state law, the Ordinance does not conflict with the MUCA.[18] The trial court did not err by so holding.[19]

Affirmed.

We concur:

[18] To decide this case, we need not determine whether the Ordinance would be valid had the MUCA actually legalized medical marijuana. Therefore, we decline to further address this subject.

[19] The Challengers additionally assert that the trial court erred by issuing a permanent injunction against them. We review the trial court's decision to grant a permanent injunction for an abuse of discretion. Wash. Fed'n of State Emps. v. State, 99 Wn.2d 878, 887, 665 P.2d 1337 (1983). "A party seeking an injunction must show (1) a clear legal or equitable right, (2) a well-grounded fear of immediate invasion of that right, and (3) actual and substantial injury as a result." Resident Action Council v. Seattle Hous. Auth., 177 Wn.2d 417, 445-46, 300 P.3d 376 (2013). In their pleadings, each plaintiff expressed an intention to violate Kent's ordinance. Thus, the trial court did not abuse its discretion by granting the injunction.

APPENDIX 2

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

CANNABIS ACTION COALITION, ARTHUR WEST, Plaintiffs, STEVE SARICH, JOHN WORTHINGTON, and DERYCK TSANG, Appellants, v. CITY OF KENT, a local municipal corporation, Respondent.	DIVISION ONE No. 70396-0-I (Consolidated with No. 69457-0-I) ORDER DENYING MOTION FOR RECONSIDERATION

Pro se appellant, Deryck Tsang, having filed a motion for reconsideration herein, and a majority of the panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration be, and the same is, hereby denied.

Dated this 25th day of April, 2014.

FOR THE COURT:

Deryck, J.

APPENDIX 3

(c) Explains why the resources in (b) of this subsection were chosen and, if the resources chosen are not renewable resources or conservation and efficiency resources, why such a decision was made.

(3) An electric utility that is required to develop a resource plan under this section must complete its initial plan by September 1, 2008.

(4) Resource plans developed under this section must be updated on a regular basis, at a minimum on intervals of two years.

(5) Plans shall not be a basis to bring legal action against electric utilities.

(6) Each electric utility shall publish its final plan either as part of an annual report or as a separate document available to the public. The report may be in an electronic form.

NEW SECTION. **Sec. 306.** A new section is added to chapter 80.70 RCW to read as follows:

(1) An applicant for a natural gas-fired generation plant to be constructed in a county with a coal-fired electric generation facility subject to RCW 80.80.040(3)(c) is exempt from this chapter if the application is filed before December 31, 2025.

(2) For the purposes of this section, an applicant means the owner of a coal-fired electric generation facility subject to RCW 80.80.040(3)(c).

(3) This section expires December 31, 2025, or when the station-generating capability of all natural gas-fired generation plants approved under this section equals the station-generating capability from a coal-fired electric generation facility subject to RCW 80.80.040(3)(c).

NEW SECTION. **Sec. 307.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed by the Senate April 21, 2011.
Passed by the House April 11, 2011.
Approved by the Governor April 29, 2011.
Filed in Office of Secretary of State April 29, 2011.

CHAPTER 181

[Engrossed Second Substitute Senate Bill 5073]

MEDICAL CANNABIS

AN ACT Relating to medical use of cannabis; amending RCW 69.51A.005, 69.51A.020, 69.51A.010, 69.51A.030, 69.51A.040, 69.51A.050, 69.51A.060, and 69.51A.900; adding new sections to chapter 69.51A RCW; adding new sections to chapter 42.56 RCW; adding a new section to chapter 28B.20 RCW; creating new sections; repealing RCW 69.51A.080; prescribing penalties; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

PART I
LEGISLATIVE DECLARATION AND INTENT

**NEW SECTION. Sec. 101. (1) The legislature intends to amend and clarify the law on the medical use of cannabis so that:*

(a) Qualifying patients and designated providers complying with the terms of this act and registering with the department of health will no longer be

subject to arrest or prosecution, other criminal sanctions, or civil consequences based solely on their medical use of cannabis;

(b) Qualifying patients will have access to an adequate, safe, consistent, and secure source of medical quality cannabis; and

(c) Health care professionals may authorize the medical use of cannabis in the manner provided by this act without fear of state criminal or civil sanctions.

(2) This act is not intended to amend or supersede Washington state law prohibiting the acquisition, possession, manufacture, sale, or use of cannabis for nonmedical purposes.

(3) This act is not intended to compromise community safety. State, county, or city correctional agencies or departments shall retain the authority to establish and enforce terms for those on active supervision.

***Sec. 101 was vetoed. See message at end of chapter.**

Sec. 102. RCW 69.51A.005 and 2010 c 284 s 1 are each amended to read as follows:

(1) The ((~~people of Washington state~~)) legislature finds that:

(a) There is medical evidence that some patients with terminal or debilitating ((~~illnesses~~)) medical conditions may, under their health care professional's care, ((~~may~~)) benefit from the medical use of ((~~marijuana~~)) cannabis. Some of the ((~~illnesses~~)) conditions for which ((~~marijuana~~)) cannabis appears to be beneficial include ((~~chemotherapy-related~~)), but are not limited to:

(i) Nausea ((~~and~~)), vomiting ((~~in cancer patients; AIDS wasting syndrome~~)), and cachexia associated with cancer, HIV-positive status, AIDS, hepatitis C, anorexia, and their treatments;

(ii) Severe muscle spasms associated with multiple sclerosis, epilepsy, and other seizure and spasticity disorders; ((~~epilepsy;~~))

(iii) Acute or chronic glaucoma;

(iv) Crohn's disease; and

(v) Some forms of intractable pain.

((~~The people find that~~)) (b) Humanitarian compassion necessitates that the decision to ((~~authorize the medical~~)) use ((~~of marijuana~~)) cannabis by patients with terminal or debilitating ((~~illnesses~~)) medical conditions is a personal, individual decision, based upon their health care professional's professional medical judgment and discretion.

(2) Therefore, the ((~~people of the state of Washington~~)) legislature intends that:

(a) Qualifying patients with terminal or debilitating ((~~illnesses~~)) medical conditions who, in the judgment of their health care professionals, may benefit from the medical use of ((~~marijuana~~)) cannabis, shall not be ((~~found guilty of a crime under state law for their possession and limited use of marijuana~~)) arrested, prosecuted, or subject to other criminal sanctions or civil consequences under state law based solely on their medical use of cannabis, notwithstanding any other provision of law;

(b) Persons who act as designated providers to such patients shall also not be ((~~found guilty of a crime under state law for~~)) arrested, prosecuted, or subject to other criminal sanctions or civil consequences under state law, notwithstanding any other provision of law, based solely on their assisting with the medical use of ((~~marijuana~~)) cannabis; and

(c) Health care professionals shall also ((~~be excepted from liability and prosecution~~)) not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences under state law for the proper authorization of ((~~marijuana~~)) medical use ((~~to~~)) of cannabis by qualifying patients for whom, in the health care professional's professional judgment, the medical ((~~marijuana~~)) use of cannabis may prove beneficial.

(3) Nothing in this chapter establishes the medical necessity or medical appropriateness of cannabis for treating terminal or debilitating medical conditions as defined in RCW 69.51A.010.

(4) Nothing in this chapter diminishes the authority of correctional agencies and departments, including local governments or jails, to establish a procedure for determining when the use of cannabis would impact community safety or the effective supervision of those on active supervision for a criminal conviction, nor does it create the right to any accommodation of any medical use of cannabis in any correctional facility or jail.

Sec. 103. RCW 69.51A.020 and 1999 c 2 s 3 are each amended to read as follows:

Nothing in this chapter shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale, or use of ((~~marijuana~~)) cannabis for nonmedical purposes. Criminal penalties created under this act do not preclude the prosecution or punishment for other crimes, including other crimes involving the manufacture or delivery of cannabis for nonmedical purposes.

PART II
DEFINITIONS

Sec. 201. RCW 69.51A.010 and 2010 c 284 s 2 are each amended to read as follows:

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

(1) "Cannabis" means all parts of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. For the purposes of this chapter, "cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. The term "cannabis" includes cannabis products and useable cannabis.

(2) "Cannabis analysis laboratory" means a laboratory that performs chemical analysis and inspection of cannabis samples.

(3) "Cannabis products" means products that contain cannabis or cannabis extracts, have a measurable THC concentration greater than three-tenths of one percent, and are intended for human consumption or application, including, but not limited to, edible products, tinctures, and lotions. The term "cannabis products" does not include useable cannabis. The definition of "cannabis products" as a measurement of THC

concentration only applies to the provisions of this chapter and shall not be considered applicable to any criminal laws related to marijuana or cannabis.

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

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

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

(a) Is eighteen years of age or older;

(b) Has been designated in ((~~writing~~)) a written document signed and dated by a qualifying patient to serve as a designated provider under this chapter; and

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

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

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

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

(7) "Director" means the director of the department of agriculture.

(8) "Dispense" means the selection, measuring, packaging, labeling, delivery, or retail sale of cannabis by a licensed dispenser to a qualifying patient or designated provider.

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

(((~~3~~))) (10) "Jail" has the same meaning as provided in RCW 70.48.020.

(11) "Labeling" means all labels and other written, printed, or graphic matter (a) upon any cannabis intended for medical use, or (b) accompanying such cannabis.

(12) "Licensed dispenser" means a person licensed to dispense cannabis for medical use to qualifying patients and designated providers by the department of health in accordance with rules adopted by the department of health pursuant to the terms of this chapter.

(13) "Licensed processor of cannabis products" means a person licensed by the department of agriculture to manufacture, process, handle, and label cannabis products for wholesale to licensed dispensers.

(14) "Licensed producer" means a person licensed by the department of agriculture to produce cannabis for medical use for wholesale to licensed

dispensers and licensed processors of cannabis products in accordance with rules adopted by the department of agriculture pursuant to the terms of this chapter.

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

((~~(4)~~)) (16) "Nonresident" means a person who is temporarily in the state but is not a Washington state resident.

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

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

(19) "Personally identifiable information" means any information that includes, but is not limited to, data that uniquely identify, distinguish, or trace a person's identity, such as the person's name, date of birth, or address, either alone or when combined with other sources, that establish the person is a qualifying patient, designated provider, licensed producer, or licensed processor of cannabis products for purposes of registration with the department of health or department of agriculture. The term "personally identifiable information" also means any information used by the department of health or department of agriculture to identify a person as a qualifying patient, designated provider, licensed producer, or licensed processor of cannabis products.

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

(21) "Process" means to handle or process cannabis in preparation for medical use.

(22) "Processing facility" means the premises and equipment where cannabis products are manufactured, processed, handled, and labeled for wholesale to licensed dispensers.

(23) "Produce" means to plant, grow, or harvest cannabis for medical use.

(24) "Production facility" means the premises and equipment where cannabis is planted, grown, harvested, processed, stored, handled, packaged, or labeled by a licensed producer for wholesale, delivery, or transportation to a licensed dispenser or licensed processor of cannabis products, and all vehicles and equipment used to transport cannabis from a licensed producer to a licensed dispenser or licensed processor of cannabis products.

(25) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; premises where goods and services are offered to the public for retail sale; public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages, and filling stations which are

open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, buses, ferries, and other public conveyances of all kinds and character, and the depots, stops, and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

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

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

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

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

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

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

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

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

(((5))) (27) "Secretary" means the secretary of health.

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

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

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

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

(((6))) (29) "Terminal or debilitating medical condition" means:

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

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

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

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

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

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

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

(((~~7~~))) (30) "THC concentration" means percent of tetrahydrocannabinol content per weight or volume of useable cannabis or cannabis product.

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

(32)(a) Until January 1, 2013, "valid documentation" means:

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

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

(iii) In the case of a designated provider, the signed and dated document valid for one year from the date of signature executed by the qualifying patient who has designated the provider; and

(b) Beginning July 1, 2012, "valid documentation" means:

(i) An original statement signed and dated by a qualifying patient's health care professional written on tamper-resistant paper and valid for up to one year from the date of the health care professional's signature, which states that, in the health care professional's professional opinion, the patient may benefit from the medical use of cannabis;

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

(iii) In the case of a designated provider, the signed and dated document valid for up to one year from the date of signature executed by the qualifying patient who has designated the provider.

***Sec. 201 was vetoed. See message at end of chapter.**

PART III
PROTECTIONS FOR HEALTH CARE PROFESSIONALS

Sec. 301. RCW 69.51A.030 and 2010 c 284 s 3 are each amended to read as follows:

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

(((~~(1)~~))) (a) Advising a ((~~qualifying~~)) patient about the risks and benefits of medical use of ((~~marijuana~~)) cannabis or that the ((~~qualifying~~)) patient may benefit from the medical use of ((~~marijuana where such use is within a professional standard of care or in the individual health care professional's medical judgment~~)) cannabis; or

(((~~(2)~~))) (b) Providing a ((~~qualifying~~)) patient meeting the criteria established under RCW 69.51A.010(26) with valid documentation, based upon the health care professional's assessment of the ((~~qualifying~~)) patient's medical history and current medical condition, ((~~that the medical use of marijuana may benefit a particular qualifying patient~~)) where such use is within a professional standard of care or in the individual health care professional's medical judgment.

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

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

(ii) Documenting the terminal or debilitating medical condition of the patient in the patient's medical record and that the patient may benefit from treatment of this condition or its symptoms with medical use of cannabis;

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

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

(b) A health care professional shall not:

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

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

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

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

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

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

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

PART IV
PROTECTIONS FOR QUALIFYING PATIENTS AND DESIGNATED PROVIDERS

Sec. 401. RCW 69.51A.040 and 2007 c 371 s 5 are each amended to read as follows:

~~(((1) If a law enforcement officer determines that marijuana is being possessed lawfully under the medical marijuana law, the officer may document the amount of marijuana, take a representative sample that is large enough to test, but not seize the marijuana. A law enforcement officer or agency shall not be held civilly liable for failure to seize marijuana in this circumstance.~~

~~(2) If charged with a violation of state law relating to marijuana, any qualifying patient who is engaged in the medical use of marijuana, or any designated provider who assists a qualifying patient in the medical use of marijuana, will be deemed to have established an affirmative defense to such charges by proof of his or her compliance with the requirements provided in this chapter. Any person meeting the requirements appropriate to his or her status under this chapter shall be considered to have engaged in activities permitted by this chapter and shall not be penalized in any manner, or denied any right or privilege, for such actions.~~

~~(3) A qualifying patient, if eighteen years of age or older, or a designated provider shall:~~

~~(a) Meet all criteria for status as a qualifying patient or designated provider;~~

~~(b) Possess no more marijuana than is necessary for the patient's personal, medical use, not exceeding the amount necessary for a sixty-day supply; and~~

~~(c) Present his or her valid documentation to any law enforcement official who questions the patient or provider regarding his or her medical use of marijuana.~~

~~(4) A qualifying patient, if under eighteen years of age at the time he or she is alleged to have committed the offense, shall demonstrate compliance with subsection (3)(a) and (c) of this section. However, any possession under subsection (3)(b) of this section, as well as any production, acquisition, and decision as to dosage and frequency of use, shall be the responsibility of the parent or legal guardian of the qualifying patient.~~)) The medical use of cannabis in accordance with the terms and conditions of this chapter does not constitute a crime and a qualifying patient or designated provider in compliance with the terms and conditions of this chapter may not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences, for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, cannabis under state law, or have real or personal property seized or forfeited for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, cannabis under state law, and investigating peace officers and law enforcement agencies may not be held civilly liable for failure to seize cannabis in this circumstance, if:

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

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

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

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

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

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

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

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

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

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

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

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

NEW SECTION. **Sec. 402.** (1) A qualifying patient or designated provider who is not registered with the registry established in section 901 of this act may raise the affirmative defense set forth in subsection (2) of this section, if:

(a) The qualifying patient or designated provider presents his or her valid documentation to any peace officer who questions the patient or provider regarding his or her medical use of cannabis;

(b) The qualifying patient or designated provider possesses no more cannabis than the limits set forth in RCW 69.51A.040(1);

(c) The qualifying patient or designated provider is in compliance with all other terms and conditions of this chapter;

(d) The investigating peace officer does not have probable cause to believe that the qualifying patient or designated provider has committed a felony, or is committing a misdemeanor in the officer's presence, that does not relate to the medical use of cannabis;

(e) No outstanding warrant for arrest exists for the qualifying patient or designated provider; and

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

(2) A qualifying patient or designated provider who is not registered with the registry established in section 901 of this act, but who presents his or her valid documentation to any peace officer who questions the patient or provider regarding his or her medical use of cannabis, may assert an affirmative defense

to charges of violations of state law relating to cannabis through proof at trial, by a preponderance of the evidence, that he or she otherwise meets the requirements of RCW 69.51A.040. A qualifying patient or designated provider meeting the conditions of this subsection but possessing more cannabis than the limits set forth in RCW 69.51A.040(1) may, in the investigating peace officer's discretion, be taken into custody and booked into jail in connection with the investigation of the incident.

NEW SECTION. **Sec. 403.** (1) Qualifying patients may create and participate in collective gardens for the purpose of producing, processing, transporting, and delivering cannabis for medical use subject to the following conditions:

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

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

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

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

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

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

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

NEW SECTION. **Sec. 404.** (1) A qualifying patient may revoke his or her designation of a specific provider and designate a different provider at any time. A revocation of designation must be in writing, signed and dated. The protections of this chapter cease to apply to a person who has served as a designated provider to a qualifying patient seventy-two hours after receipt of that patient's revocation of his or her designation.

(2) A person may stop serving as a designated provider to a given qualifying patient at any time. However, that person may not begin serving as a designated provider to a different qualifying patient until fifteen days have elapsed from the date the last qualifying patient designated him or her to serve as a provider.

NEW SECTION. **Sec. 405.** A qualifying patient or designated provider in possession of cannabis plants, useable cannabis, or cannabis product exceeding the limits set forth in RCW 69.51A.040(1) but otherwise in compliance with all other terms and conditions of this chapter may establish an affirmative defense to charges of violations of state law relating to cannabis through proof at trial, by

a preponderance of the evidence, that the qualifying patient's necessary medical use exceeds the amounts set forth in RCW 69.51A.040(1). An investigating peace officer may seize cannabis plants, useable cannabis, or cannabis product exceeding the amounts set forth in RCW 69.51A.040(1): PROVIDED, That in the case of cannabis plants, the qualifying patient or designated provider shall be allowed to select the plants that will remain at the location. The officer and his or her law enforcement agency may not be held civilly liable for failure to seize cannabis in this circumstance.

NEW SECTION. **Sec. 406.** A qualifying patient or designated provider who is not registered with the registry established in section 901 of this act or does not present his or her valid documentation to a peace officer who questions the patient or provider regarding his or her medical use of cannabis but is in compliance with all other terms and conditions of this chapter may establish an affirmative defense to charges of violations of state law relating to cannabis through proof at trial, by a preponderance of the evidence, that he or she was a validly authorized qualifying patient or designated provider at the time of the officer's questioning. A qualifying patient or designated provider who establishes an affirmative defense under the terms of this section may also establish an affirmative defense under section 405 of this act.

****NEW SECTION.** *Sec. 407. A nonresident who is duly authorized to engage in the medical use of cannabis under the laws of another state or territory of the United States may raise an affirmative defense to charges of violations of Washington state law relating to cannabis, provided that the nonresident:*

(1) Possesses no more than fifteen cannabis plants and no more than twenty-four ounces of useable cannabis, no more cannabis product than reasonably could be produced with no more than twenty-four ounces of useable cannabis, or a combination of useable cannabis and cannabis product that does not exceed a combined total representing possession and processing of no more than twenty-four ounces of useable cannabis;

(2) Is in compliance with all provisions of this chapter other than requirements relating to being a Washington resident or possessing valid documentation issued by a licensed health care professional in Washington;

(3) Presents the documentation of authorization required under the nonresident's authorizing state or territory's law and proof of identity issued by the authorizing state or territory to any peace officer who questions the nonresident regarding his or her medical use of cannabis; and

(4) Does not possess evidence that the nonresident has converted cannabis produced or obtained for his or her own medical use to the nonresident's personal, nonmedical use or benefit.

***Sec. 407 was vetoed. See message at end of chapter.**

NEW SECTION. **Sec. 408.** A qualifying patient's medical use of cannabis as authorized by a health care professional may not be a sole disqualifying factor in determining the patient's suitability for an organ transplant, unless it is shown that this use poses a significant risk of rejection or organ failure. This section does not preclude a health care professional from requiring that a patient abstain from the medical use of cannabis, for a period of time determined by the health

care professional, while waiting for a transplant organ or before the patient undergoes an organ transplant.

NEW SECTION. **Sec. 409.** A qualifying patient or designated provider may not have his or her parental rights or residential time with a child restricted solely due to his or her medical use of cannabis in compliance with the terms of this chapter absent written findings supported by evidence that such use has resulted in a long-term impairment that interferes with the performance of parenting functions as defined under RCW 26.09.004.

*NEW SECTION. *Sec. 410. (1) Except as provided in subsection (2) of this section, a qualifying patient may not be refused housing or evicted from housing solely as a result of his or her possession or use of useable cannabis or cannabis products except that housing providers otherwise permitted to enact and enforce prohibitions against smoking in their housing may apply those prohibitions to smoking cannabis provided that such smoking prohibitions are applied and enforced equally as to the smoking of cannabis and the smoking of all other substances, including without limitation tobacco.*

(2) Housing programs containing a program component prohibiting the use of drugs or alcohol among its residents are not required to permit the medical use of cannabis among those residents.

***Sec. 410 was vetoed. See message at end of chapter.**

*NEW SECTION. *Sec. 411. In imposing any criminal sentence, deferred prosecution, stipulated order of continuance, deferred disposition, or dispositional order, any court organized under the laws of Washington state may permit the medical use of cannabis in compliance with the terms of this chapter and exclude it as a possible ground for finding that the offender has violated the conditions or requirements of the sentence, deferred prosecution, stipulated order of continuance, deferred disposition, or dispositional order. This section does not require the accommodation of any medical use of cannabis in any correctional facility or jail.*

***Sec. 411 was vetoed. See message at end of chapter.**

**Sec. 412. RCW 69.51A.050 and 1999 c 2 s 7 are each amended to read as follows:*

(1) The lawful possession, delivery, dispensing, production, or manufacture of ((~~medical marijuana~~)) cannabis for medical use as authorized by this chapter shall not result in the forfeiture or seizure of any real or personal property including, but not limited to, cannabis intended for medical use, items used to facilitate the medical use of cannabis or its production or dispensing for medical use, or proceeds of sales of cannabis for medical use made by licensed producers, licensed processors of cannabis products, or licensed dispensers.

(2) No person shall be prosecuted for constructive possession, conspiracy, or any other criminal offense solely for being in the presence or vicinity of ((~~medical marijuana~~)) cannabis intended for medical use or its use as authorized by this chapter.

(3) The state shall not be held liable for any deleterious outcomes from the medical use of ((~~marijuana~~)) cannabis by any qualifying patient.

***Sec. 412 was vetoed. See message at end of chapter.**

NEW SECTION. **Sec. 413.** Nothing in this chapter or in the rules adopted to implement it precludes a qualifying patient or designated provider from engaging in the private, unlicensed, noncommercial production, possession, transportation, delivery, or administration of cannabis for medical use as authorized under RCW 69.51A.040.

PART V
LIMITATIONS ON PROTECTIONS FOR QUALIFYING PATIENTS AND DESIGNATED PROVIDERS

Sec. 501. RCW 69.51A.060 and 2010 c 284 s 4 are each amended to read as follows:

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

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

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

(4) Nothing in this chapter requires any accommodation of any on-site medical use of ((~~marijuana~~)) cannabis in any place of employment, in any school bus or on any school grounds, in any youth center, in any correctional facility, or smoking ((~~medical marijuana~~)) cannabis in any public place ((~~as that term is defined in RCW 70.160.020~~)) or hotel or motel.

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

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

(7) It is a class C felony to fraudulently produce any record purporting to be, or tamper with the content of any record for the purpose of having it accepted as, valid documentation under RCW 69.51A.010(((~~(7)~~))) (32)(a), or to backdate such documentation to a time earlier than its actual date of execution.

(((~~(6)~~))) (8) No person shall be entitled to claim the ((~~affirmative defense provided in RCW 69.51A.040~~)) protection from arrest and prosecution under RCW 69.51A.040 or the affirmative defense under section 402 of this act for engaging in the medical use of ((~~marijuana~~)) cannabis in a way that endangers the health or well-being of any person through the use of a motorized vehicle on a street, road, or highway, including violations of RCW 46.61.502 or 46.61.504, or equivalent local ordinances.

PART VI
LICENSED PRODUCERS AND LICENSED PROCESSORS OF CANNABIS PRODUCTS

NEW SECTION. Sec. 601. A person may not act as a licensed producer without a license for each production facility issued by the department of agriculture and prominently displayed on the premises. Provided they are acting in compliance with the terms of this chapter and rules adopted to enforce and carry out its purposes, licensed producers and their employees, members, officers, and directors may manufacture, plant, cultivate, grow, harvest, produce, prepare, propagate, process, package, repackage, transport, transfer, deliver, label, relabel, wholesale, or possess cannabis intended for medical use by qualifying patients, including seeds, seedlings, cuttings, plants, and useable cannabis, and may not be arrested, searched, prosecuted, or subject to other criminal sanctions or civil consequences under state law, or have real or personal property searched, seized, or forfeited pursuant to state law, for such activities, notwithstanding any other provision of law.

***Sec. 601 was vetoed. See message at end of chapter.**

NEW SECTION. Sec. 602. A person may not act as a licensed processor without a license for each processing facility issued by the department of agriculture and prominently displayed on the premises. Provided they are acting in compliance with the terms of this chapter and rules adopted to enforce and carry out its purposes, licensed processors of cannabis products and their employees, members, officers, and directors may possess useable cannabis and manufacture, produce, prepare, process, package, repackage, transport, transfer, deliver, label, relabel, wholesale, or possess cannabis products intended for medical use by qualifying patients, and may not be arrested, searched, prosecuted, or subject to other criminal sanctions or civil consequences under state law, or have real or personal property searched, seized, or forfeited pursuant to state law, for such activities, notwithstanding any other provision of law.

***Sec. 602 was vetoed. See message at end of chapter.**

NEW SECTION. Sec. 603. The director shall administer and carry out the provisions of this chapter relating to licensed producers and licensed processors of cannabis products, and rules adopted under this chapter.

***Sec. 603 was vetoed. See message at end of chapter.**

NEW SECTION. Sec. 604. (1) On a schedule determined by the department of agriculture, licensed producers and licensed processors must submit representative samples of cannabis grown or processed to a cannabis analysis laboratory for grade, condition, cannabinoid profile, THC concentration, other qualitative measurements of cannabis intended for medical use, and other inspection standards determined by the department of agriculture. Any samples remaining after testing must be destroyed by the laboratory or returned to the licensed producer or licensed processor.

(2) Licensed producers and licensed processors must submit copies of the results of this inspection and testing to the department of agriculture on a form developed by the department.

(3) If a representative sample of cannabis tested under this section has a THC concentration of three-tenths of one percent or less, the lot of cannabis

the sample was taken from may not be sold for medical use and must be destroyed or sold to a manufacturer of hemp products.

***Sec. 604 was vetoed. See message at end of chapter.**

**NEW SECTION. Sec. 605. The department of agriculture may contract with a cannabis analysis laboratory to conduct independent inspection and testing of cannabis samples to verify testing results provided under section 604 of this act.*

***Sec. 605 was vetoed. See message at end of chapter.**

**NEW SECTION. Sec. 606. The department of agriculture may adopt rules on:*

(1) Facility standards, including scales, for all licensed producers and licensed processors of cannabis products;

(2) Measurements for cannabis intended for medical use, including grade, condition, cannabinoid profile, THC concentration, other qualitative measurements, and other inspection standards for cannabis intended for medical use; and

(3) Methods to identify cannabis intended for medical use so that such cannabis may be readily identified if stolen or removed in violation of the provisions of this chapter from a production or processing facility, or if otherwise unlawfully transported.

***Sec. 606 was vetoed. See message at end of chapter.**

**NEW SECTION. Sec. 607. The director is authorized to deny, suspend, or revoke a producer's or processor's license after a hearing in any case in which it is determined that there has been a violation or refusal to comply with the requirements of this chapter or rules adopted hereunder. All hearings for the denial, suspension, or revocation of a producer's or processor's license are subject to chapter 34.05 RCW, the administrative procedure act, as enacted or hereafter amended.*

***Sec. 607 was vetoed. See message at end of chapter.**

**NEW SECTION. Sec. 608. (1) By January 1, 2013, taking into consideration, but not being limited by, the security requirements described in 21 C.F.R. Sec. 1301.71-1301.76, the director shall adopt rules:*

(a) On the inspection or grading and certification of grade, grading factors, condition, cannabinoid profile, THC concentration, or other qualitative measurement of cannabis intended for medical use that must be used by cannabis analysis laboratories in section 604 of this act;

(b) Fixing the sizes, dimensions, and safety and security features required of containers to be used for packing, handling, or storing cannabis intended for medical use;

(c) Establishing labeling requirements for cannabis intended for medical use including, but not limited to:

(i) The business or trade name and Washington state unified business identifier (UBI) number of the licensed producer of the cannabis;

(ii) THC concentration; and

(iii) Information on whether the cannabis was grown using organic, inorganic, or synthetic fertilizers;

(d) Establishing requirements for transportation of cannabis intended for medical use from production facilities to processing facilities and licensed dispensers;

(e) Establishing security requirements for the facilities of licensed producers and licensed processors of cannabis products. These security requirements must consider the safety of the licensed producers and licensed processors as well as the safety of the community surrounding the licensed producers and licensed processors;

(f) Establishing requirements for the licensure of producers, and processors of cannabis products, setting forth procedures to obtain licenses, and determining expiration dates and renewal requirements; and

(g) Establishing license application and renewal fees for the licensure of producers and processors of cannabis products.

(2) Fees collected under this section must be deposited into the agricultural local fund created in RCW 43.23.230.

(3) During the rule-making process, the department of agriculture shall consult with stakeholders and persons with relevant expertise, to include but not be limited to qualifying patients, designated providers, health care professionals, state and local law enforcement agencies, and the department of health.

***Sec. 608 was vetoed. See message at end of chapter.**

**NEW SECTION. Sec. 609. (1) Each licensed producer and licensed processor of cannabis products shall maintain complete records at all times with respect to all cannabis produced, processed, weighed, tested, stored, shipped, or sold. The director shall adopt rules specifying the minimum recordkeeping requirements necessary to comply with this section.*

(2) The property, books, records, accounts, papers, and proceedings of every licensed producer and licensed processor of cannabis products shall be subject to inspection by the department of agriculture at any time during ordinary business hours. Licensed producers and licensed processors of cannabis products shall maintain adequate records and systems for the filing and accounting of crop production, product manufacturing and processing, records of weights and measurements, product testing, receipts, canceled receipts, other documents, and transactions necessary or common to the medical cannabis industry.

(3) The director may administer oaths and issue subpoenas to compel the attendance of witnesses, or the production of books, documents, and records anywhere in the state pursuant to a hearing relative to the purposes and provisions of this chapter. Witnesses shall be entitled to fees for attendance and travel, as provided in chapter 2.40 RCW.

(4) Each licensed producer and licensed processor of cannabis products shall report information to the department of agriculture at such times and as may be reasonably required by the director for the necessary enforcement and supervision of a sound, reasonable, and efficient cannabis inspection program for the protection of the health and welfare of qualifying patients.

***Sec. 609 was vetoed. See message at end of chapter.**

**NEW SECTION. Sec. 610. (1) The department of agriculture may give written notice to a licensed producer or processor of cannabis products to furnish required reports, documents, or other requested information, under*

such conditions and at such time as the department of agriculture deems necessary if a licensed producer or processor of cannabis products fails to:

(a) Submit his or her books, papers, or property to lawful inspection or audit;

(b) Submit required laboratory results, reports, or documents to the department of agriculture by their due date; or

(c) Furnish the department of agriculture with requested information.

(2) If the licensed producer or processor of cannabis products fails to comply with the terms of the notice within seventy-two hours from the date of its issuance, or within such further time as the department of agriculture may allow, the department of agriculture shall levy a fine of five hundred dollars per day from the final date for compliance allowed by this section or the department of agriculture. In those cases where the failure to comply continues for more than seven days or where the director determines the failure to comply creates a threat to public health, public safety, or a substantial risk of diversion of cannabis to unauthorized persons or purposes, the department of agriculture may, in lieu of levying further fines, petition the superior court of the county where the licensee's principal place of business in Washington is located, as shown by the license application, for an order:

(a) Authorizing the department of agriculture to seize and take possession of all books, papers, and property of all kinds used in connection with the conduct or the operation of the licensed producer or processor's business, and the books, papers, records, and property that pertain specifically, exclusively, and directly to that business; and

(b) Enjoining the licensed producer or processor from interfering with the department of agriculture in the discharge of its duties as required by this chapter.

(3) All necessary costs and expenses, including attorneys' fees, incurred by the department of agriculture in carrying out the provisions of this section may be recovered at the same time and as part of the action filed under this section.

(4) The department of agriculture may request the Washington state patrol to assist it in enforcing this section if needed to ensure the safety of its employees.

***Sec. 610 was vetoed. See message at end of chapter.**

**NEW SECTION. Sec. 611. (1) A licensed producer may not sell or deliver cannabis to any person other than a cannabis analysis laboratory, licensed processor of cannabis products, licensed dispenser, or law enforcement officer except as provided by court order. A licensed producer may also sell or deliver cannabis to the University of Washington or Washington State University for research purposes, as identified in section 1002 of this act. Violation of this section is a class C felony punishable according to chapter 9A.20 RCW.*

(2) A licensed processor of cannabis products may not sell or deliver cannabis to any person other than a cannabis analysis laboratory, licensed dispenser, or law enforcement officer except as provided by court order. A licensed processor of cannabis products may also sell or deliver cannabis to the University of Washington or Washington State University for research

purposes, as identified in section 1002 of this act. Violation of this section is a class C felony punishable according to chapter 9A.20 RCW.

***Sec. 611 was vetoed. See message at end of chapter.**

PART VII
LICENSED DISPENSERS

**NEW SECTION. Sec. 701. A person may not act as a licensed dispenser without a license for each place of business issued by the department of health and prominently displayed on the premises. Provided they are acting in compliance with the terms of this chapter and rules adopted to enforce and carry out its purposes, licensed dispensers and their employees, members, officers, and directors may deliver, distribute, dispense, transfer, prepare, package, repackage, label, relabel, sell at retail, or possess cannabis intended for medical use by qualifying patients, including seeds, seedlings, cuttings, plants, useable cannabis, and cannabis products, and may not be arrested, searched, prosecuted, or subject to other criminal sanctions or civil consequences under state law, or have real or personal property searched, seized, or forfeited pursuant to state law, for such activities, notwithstanding any other provision of law.*

***Sec. 701 was vetoed. See message at end of chapter.**

**NEW SECTION. Sec. 702. (1) By January 1, 2013, taking into consideration the security requirements described in 21 C.F.R. 1301.71-1301.76, the secretary of health shall adopt rules:*

(a) Establishing requirements for the licensure of dispensers of cannabis for medical use, setting forth procedures to obtain licenses, and determining expiration dates and renewal requirements;

(b) Providing for mandatory inspection of licensed dispensers' locations;

(c) Establishing procedures governing the suspension and revocation of licenses of dispensers;

(d) Establishing recordkeeping requirements for licensed dispensers;

(e) Fixing the sizes and dimensions of containers to be used for dispensing cannabis for medical use;

(f) Establishing safety standards for containers to be used for dispensing cannabis for medical use;

(g) Establishing cannabis storage requirements, including security requirements;

(h) Establishing cannabis labeling requirements, to include information on whether the cannabis was grown using organic, inorganic, or synthetic fertilizers;

(i) Establishing physical standards for cannabis dispensing facilities. The physical standards must require a licensed dispenser to ensure that no cannabis or cannabis paraphernalia may be viewed from outside the facility;

(j) Establishing maximum amounts of cannabis and cannabis products that may be kept at one time at a dispensary. In determining maximum amounts, the secretary must consider the security of the dispensary and the surrounding community;

(k) Establishing physical standards for sanitary conditions for cannabis dispensing facilities;

(l) Establishing physical and sanitation standards for cannabis dispensing equipment;

(m) Establishing a maximum number of licensed dispensers that may be licensed in each county as provided in this section;

(n) Enforcing and carrying out the provisions of this section and the rules adopted to carry out its purposes; and

(o) Establishing license application and renewal fees for the licensure of dispensers in accordance with RCW 43.70.250.

(2)(a) The secretary shall establish a maximum number of licensed dispensers that may operate in each county. Prior to January 1, 2016, the maximum number of licensed dispensers shall be based upon a ratio of one licensed dispenser for every twenty thousand persons in a county. On or after January 1, 2016, the secretary may adopt rules to adjust the method of calculating the maximum number of dispensers to consider additional factors, such as the number of enrollees in the registry established in section 901 of this act and the secretary's experience in administering the program. The secretary may not issue more licenses than the maximum number of licenses established under this section.

(b) In the event that the number of applicants qualifying for the selection process exceeds the maximum number for a county, the secretary shall initiate a random selection process established by the secretary in rule.

(c) To qualify for the selection process, an applicant must demonstrate to the secretary that he or she meets initial screening criteria that represent the applicant's capacity to operate in compliance with this chapter. Initial screening criteria shall include, but not be limited to:

(i) Successful completion of a background check;

(ii) A plan to systematically verify qualifying patient and designated provider status of clients;

(iii) Evidence of compliance with functional standards, such as ventilation and security requirements; and

(iv) Evidence of compliance with facility standards, such as zoning compliance and not using the facility as a residence.

(d) The secretary shall establish a schedule to:

(i) Update the maximum allowable number of licensed dispensers in each county; and

(ii) Issue approvals to operate within a county according to the random selection process.

(3) Fees collected under this section must be deposited into the health professions account created in RCW 43.70.320.

(4) During the rule-making process, the department of health shall consult with stakeholders and persons with relevant expertise, to include but not be limited to qualifying patients, designated providers, health care professionals, state and local law enforcement agencies, and the department of agriculture.

Sec. 702 was vetoed. See message at end of chapter.

**NEW SECTION. Sec. 703. A licensed dispenser may not sell cannabis received from any person other than a licensed producer or licensed processor of cannabis products, or sell or deliver cannabis to any person other than a qualifying patient, designated provider, or law enforcement officer except as*

provided by court order. A licensed dispenser may also sell or deliver cannabis to the University of Washington or Washington State University for research purposes, as identified in section 1002 of this act. Before selling or providing cannabis to a qualifying patient or designated provider, the licensed dispenser must confirm that the patient qualifies for the medical use of cannabis by contacting, at least once in a one-year period, that patient's health care professional. Violation of this section is a class C felony punishable according to chapter 9A.20 RCW.

***Sec. 703 was vetoed. See message at end of chapter.**

**NEW SECTION. Sec. 704. A license to operate as a licensed dispenser is not transferrable.*

***Sec. 704 was vetoed. See message at end of chapter.**

**NEW SECTION. Sec. 705. The secretary of health shall not issue or renew a license to an applicant or licensed dispenser located within five hundred feet of a community center, child care center, elementary or secondary school, or another licensed dispenser.*

***Sec. 705 was vetoed. See message at end of chapter.**

PART VIII
MISCELLANEOUS PROVISIONS APPLYING TO ALL LICENSED PRODUCERS, PROCESSORS, AND DISPENSERS

**NEW SECTION. Sec. 801. All weighing and measuring instruments and devices used by licensed producers, processors of cannabis products, and dispensers shall comply with the requirements set forth in chapter 19.94 RCW.*

***Sec. 801 was vetoed. See message at end of chapter.**

**NEW SECTION. Sec. 802. (1) No person, partnership, corporation, association, or agency may advertise cannabis for sale to the general public in any manner that promotes or tends to promote the use or abuse of cannabis. For the purposes of this subsection, displaying cannabis, including artistic depictions of cannabis, is considered to promote or to tend to promote the use or abuse of cannabis.*

(2) The department of agriculture may fine a licensed producer or processor of cannabis products up to one thousand dollars for each violation of subsection (1) of this section. Fines collected under this subsection must be deposited into the agriculture local fund created in RCW 43.23.230.

(3) The department of health may fine a licensed dispenser up to one thousand dollars for each violation of subsection (1) of this section. Fines collected under this subsection must be deposited into the health professions account created in RCW 43.70.320.

(4) No broadcast television licensee, radio broadcast licensee, newspaper, magazine, advertising agency, or agency or medium for the dissemination of an advertisement, except the licensed producer, processor of cannabis products, or dispenser to which the advertisement relates, is subject to the penalties of this section by reason of dissemination of advertising in good faith without knowledge that the advertising promotes or tends to promote the use or abuse of cannabis.

***Sec. 802 was vetoed. See message at end of chapter.**

**NEW SECTION. Sec. 803. (1) A prior conviction for a cannabis or marijuana offense shall not disqualify an applicant from receiving a license to produce, process, or dispense cannabis for medical use, provided the conviction did not include any sentencing enhancements under RCW 9.94A.533 or analogous laws in other jurisdictions. Any criminal conviction of a current licensee may be considered in proceedings to suspend or revoke a license.*

(2) Nothing in this section prohibits either the department of health or the department of agriculture, as appropriate, from denying, suspending, or revoking the credential of a license holder for other drug-related offenses or any other criminal offenses.

(3) Nothing in this section prohibits a corrections agency or department from considering all prior and current convictions in determining whether the possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, is inconsistent with and contrary to the person's supervision.

***Sec. 803 was vetoed. See message at end of chapter.**

**NEW SECTION. Sec. 804. A violation of any provision or section of this chapter that relates to the licensing and regulation of producers, processors, or dispensers, where no other penalty is provided for, and the violation of any rule adopted under this chapter constitutes a misdemeanor.*

***Sec. 804 was vetoed. See message at end of chapter.**

**NEW SECTION. Sec. 805. (1) Every licensed producer or processor of cannabis products who fails to comply with this chapter, or any rule adopted under it, may be subjected to a civil penalty, as determined by the director, in an amount of not more than one thousand dollars for every such violation. Each violation shall be a separate and distinct offense.*

(2) Every licensed dispenser who fails to comply with this chapter, or any rule adopted under it, may be subjected to a civil penalty, as determined by the secretary, in an amount of not more than one thousand dollars for every such violation. Each violation shall be a separate and distinct offense.

(3) Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated this chapter and may be subject to the penalty provided for in this section.

***Sec. 805 was vetoed. See message at end of chapter.**

**NEW SECTION. Sec. 806. The department of agriculture or the department of health, as the case may be, must immediately suspend any certification of licensure issued under this chapter if the holder of the certificate has been certified under RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for certification during the suspension, reissuance of the certificate of licensure shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the person is in compliance with the order.*

***Sec. 806 was vetoed. See message at end of chapter.**

**NEW SECTION. Sec. 807. The department of agriculture or the department of health, as the case may be, must suspend the certification of*

licensure of any person who has been certified by a lending agency and reported to the appropriate department for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the department of agriculture or the department of health, as the case may be, must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's license may not be reissued until the person provides the appropriate department a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for certification or registration during the suspension, reinstatement is automatic upon receipt of the notice and payment of any reinstatement fee.

***Sec. 807 was vetoed. See message at end of chapter.**

PART IX
SECURE REGISTRATION OF QUALIFYING PATIENTS, DESIGNATED PROVIDERS, AND LICENSED PRODUCERS, PROCESSORS, AND DISPENSERS

**NEW SECTION. Sec. 901. (1) By January 1, 2013, the department of health shall, in consultation with the department of agriculture, adopt rules for the creation, implementation, maintenance, and timely upgrading of a secure and confidential registration system that allows:*

(a) A peace officer to verify at any time whether a health care professional has registered a person as either a qualifying patient or a designated provider; and

(b) A peace officer to verify at any time whether a person, location, or business is licensed by the department of agriculture or the department of health as a licensed producer, licensed processor of cannabis products, or licensed dispenser.

(2) The department of agriculture must, in consultation with the department of health, create and maintain a secure and confidential list of persons to whom it has issued a license to produce cannabis for medical use or a license to process cannabis products, and the physical addresses of the licensees' production and processing facilities. The list must meet the requirements of subsection (9) of this section and be transmitted to the department of health to be included in the registry established by this section.

(3) The department of health must, in consultation with the department of agriculture, create and maintain a secure and confidential list of the persons to whom it has issued a license to dispense cannabis for medical use that meets the requirements of subsection (9) of this section and must be included in the registry established by this section.

(4) Before seeking a nonvehicle search warrant or arrest warrant, a peace officer investigating a cannabis-related incident must make reasonable efforts to ascertain whether the location or person under investigation is registered in the registration system, and include the results of this inquiry in the affidavit

submitted in support of the application for the warrant. This requirement does not apply to investigations in which:

(a) The peace officer has observed evidence of an apparent cannabis operation that is not a licensed producer, processor of cannabis products, or dispenser;

(b) The peace officer has observed evidence of theft of electrical power;

(c) The peace officer has observed evidence of illegal drugs other than cannabis at the premises;

(d) The peace officer has observed frequent and numerous short-term visits over an extended period that are consistent with commercial activity, if the subject of the investigation is not a licensed dispenser;

(e) The peace officer has observed violent crime or other demonstrated dangers to the community;

(f) The peace officer has probable cause to believe the subject of the investigation has committed a felony, or a misdemeanor in the officer's presence, that does not relate to cannabis; or

(g) The subject of the investigation has an outstanding arrest warrant.

(5) Law enforcement may access the registration system only in connection with a specific, legitimate criminal investigation regarding cannabis.

(6) Registration in the system shall be optional for qualifying patients and designated providers, not mandatory, and registrations are valid for one year, except that qualifying patients must be able to remove themselves from the registry at any time. For licensees, registrations are valid for the term of the license and the registration must be removed if the licensee's license is expired or revoked. The department of health must adopt rules providing for registration renewals and for removing expired registrations and expired or revoked licenses from the registry.

(7) Fees, including renewal fees, for qualifying patients and designated providers participating in the registration system shall be limited to the cost to the state of implementing, maintaining, and enforcing the provisions of this section and the rules adopted to carry out its purposes. The fee shall also include any costs for the department of health to disseminate information to employees of state and local law enforcement agencies relating to whether a person is a licensed producer, processor of cannabis products, or dispenser, or that a location is the recorded address of a license producer, processor of cannabis products, or dispenser, and for the dissemination of log records relating to such requests for information to the subjects of those requests. No fee may be charged to local law enforcement agencies for accessing the registry.

(8) During the rule-making process, the department of health shall consult with stakeholders and persons with relevant expertise, to include, but not be limited to, qualifying patients, designated providers, health care professionals, state and local law enforcement agencies, and the University of Washington computer science and engineering security and privacy research lab.

(9) The registration system shall meet the following requirements:

(a) Any personally identifiable information included in the registration system must be "nonreversible," pursuant to definitions and standards set forth by the national institute of standards and technology;

(b) Any personally identifiable information included in the registration system must not be susceptible to linkage by use of data external to the registration system;

(c) The registration system must incorporate current best differential privacy practices, allowing for maximum accuracy of registration system queries while minimizing the chances of identifying the personally identifiable information included therein; and

(d) The registration system must be upgradable and updated in a timely fashion to keep current with state of the art privacy and security standards and practices.

(10) The registration system shall maintain a log of each verification query submitted by a peace officer, including the peace officer's name, agency, and identification number, for a period of no less than three years from the date of the query. Personally identifiable information of qualifying patients and designated providers included in the log shall be confidential and exempt from public disclosure, inspection, or copying under chapter 42.56 RCW: PROVIDED, That:

(a) Names and other personally identifiable information from the list may be released only to:

(i) Authorized employees of the department of agriculture and the department of health as necessary to perform official duties of either department; or

(ii) Authorized employees of state or local law enforcement agencies, only as necessary to verify that the person or location is a qualified patient, designated provider, licensed producer, licensed processor of cannabis products, or licensed dispenser, and only after the inquiring employee has provided adequate identification. Authorized employees who obtain personally identifiable information under this subsection may not release or use the information for any purpose other than verification that a person or location is a qualified patient, designated provider, licensed producer, licensed processor of cannabis products, or licensed dispenser;

(b) Information contained in the registration system may be released in aggregate form, with all personally identifying information redacted, for the purpose of statistical analysis and oversight of agency performance and actions;

(c) The subject of a registration query may appear during ordinary department of health business hours and inspect or copy log records relating to him or her upon adequate proof of identity; and

(d) The subject of a registration query may submit a written request to the department of health, along with adequate proof of identity, for copies of log records relating to him or her.

(11) This section does not prohibit a department of agriculture employee or a department of health employee from contacting state or local law enforcement for assistance during an emergency or while performing his or her duties under this chapter.

(12) Fees collected under this section must be deposited into the health professions account under RCW 43.70.320.

***Sec. 901 was vetoed. See message at end of chapter.**

**NEW SECTION. Sec. 902. A new section is added to chapter 42.56 RCW to read as follows:*

Records containing names and other personally identifiable information relating to qualifying patients, designated providers, and persons licensed as producers or dispensers of cannabis for medical use, or as processors of cannabis products, under section 901 of this act are exempt from disclosure under this chapter.

***Sec. 902 was vetoed. See message at end of chapter.**

PART X
EVALUATION

NEW SECTION. **Sec. 1001.** (1) By July 1, 2014, the Washington state institute for public policy shall, within available funds, conduct a cost-benefit evaluation of the implementation of this act and the rules adopted to carry out its purposes.

(2) The evaluation of the implementation of this act and the rules adopted to carry out its purposes shall include, but not necessarily be limited to, consideration of the following factors:

(a) Qualifying patients' access to an adequate source of cannabis for medical use;

(b) Qualifying patients' access to a safe source of cannabis for medical use;

(c) Qualifying patients' access to a consistent source of cannabis for medical use;

(d) Qualifying patients' access to a secure source of cannabis for medical use;

(e) Qualifying patients' and designated providers' contact with law enforcement and involvement in the criminal justice system;

(f) Diversion of cannabis intended for medical use to nonmedical uses;

(g) Incidents of home invasion burglaries, robberies, and other violent and property crimes associated with qualifying patients accessing cannabis for medical use;

(h) Whether there are health care professionals who make a disproportionately high amount of authorizations in comparison to the health care professional community at large;

(i) Whether there are indications of health care professionals in violation of RCW 69.51A.030; and

(j) Whether the health care professionals making authorizations reside in this state or out of this state.

(3) For purposes of facilitating this evaluation, the departments of health and agriculture will make available to the Washington state institute for public policy requested data, and any other data either department may consider relevant, from which all personally identifiable information has been redacted.

NEW SECTION. **Sec. 1002.** A new section is added to chapter 28B.20 RCW to read as follows:

The University of Washington and Washington State University may conduct scientific research on the efficacy and safety of administering cannabis as part of medical treatment. As part of this research, the University of Washington and Washington State University may develop and conduct studies to ascertain the general medical safety and efficacy of cannabis and may develop medical guidelines for the appropriate administration and use of cannabis.

PART XI
CONSTRUCTION

NEW SECTION. **Sec. 1101.** (1) No civil or criminal liability may be imposed by any court on the state or its officers and employees for actions taken in good faith under this chapter and within the scope of their assigned duties.

(2) No civil or criminal liability may be imposed by any court on cities, towns, and counties or other municipalities and their officers and employees for actions taken in good faith under this chapter and within the scope of their assigned duties.

NEW SECTION. **Sec. 1102.** (1) Cities and towns may adopt and enforce any of the following pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction: Zoning requirements, business licensing requirements, health and safety requirements, and business taxes. Nothing in this act is intended to limit the authority of cities and towns to impose zoning requirements or other conditions upon licensed dispensers, so long as such requirements do not preclude the possibility of siting licensed dispensers within the jurisdiction. If the jurisdiction has no commercial zones, the jurisdiction is not required to adopt zoning to accommodate licensed dispensers.

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

NEW SECTION. **Sec. 1103.** If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

NEW SECTION.** ***Sec. 1104.** ***In the event that the federal government authorizes the use of cannabis for medical purposes, within a year of such action, the joint legislative audit and review committee shall conduct a program and fiscal review of the cannabis production and dispensing programs established in this chapter. The review shall consider whether a distinct cannabis production and dispensing system continues to be necessary

when considered in light of the federal action and make recommendations to the legislature.

***Sec. 1104 was vetoed. See message at end of chapter.**

NEW SECTION. **Sec. 1105.** (1)(a) The arrest and prosecution protections established in section 401 of this act may not be asserted in a supervision revocation or violation hearing by a person who is supervised by a corrections agency or department, including local governments or jails, that has determined that the terms of this section are inconsistent with and contrary to his or her supervision.

(b) The affirmative defenses established in sections 402, 405, 406, and 407 of this act may not be asserted in a supervision revocation or violation hearing by a person who is supervised by a corrections agency or department, including local governments or jails, that has determined that the terms of this section are inconsistent with and contrary to his or her supervision.

(2) The provisions of RCW 69.51A.040 and sections 403 and 413 of this act do not apply to a person who is supervised for a criminal conviction by a corrections agency or department, including local governments or jails, that has determined that the terms of this chapter are inconsistent with and contrary to his or her supervision.

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

Sec. 1106. RCW 69.51A.900 and 1999 c 2 s 1 are each amended to read as follows:

This chapter may be known and cited as the Washington state medical use of ((~~marijuana~~)) cannabis act.

PART XII
MISCELLANEOUS

**NEW SECTION. Sec. 1201. (1) The legislature recognizes that there are cannabis producers and cannabis dispensaries in operation as of the effective date of this section that are unregulated by the state and who produce and dispense cannabis for medical use by qualifying patients. The legislature intends that these producers and dispensaries become licensed in accordance with the requirements of this chapter and that this licensing provides them with arrest protection so long as they remain in compliance with the requirements of this chapter and the rules adopted under this chapter. The legislature further recognizes that cannabis producers and cannabis dispensaries in current operation are not able to become licensed until the department of agriculture and the department of health adopt rules and, consequently, it is likely they will remain unlicensed until at least January 1, 2013. These producers and dispensary owners and operators run the risk of arrest between the effective date of this section and the time they become licensed. Therefore, the legislature intends to provide them with an affirmative defense if they meet the requirements of this section.*

(2) If charged with a violation of state law relating to cannabis, a producer of cannabis or a dispensary and its owners and operators that are engaged in the production or dispensing of cannabis to a qualifying patient or who assists a qualifying patient in the medical use of cannabis is deemed to have established an affirmative defense to such charges by proof of compliance with this section.

(3) In order to assert an affirmative defense under this section, a cannabis producer or cannabis dispensary must:

(a) In the case of producers, solely provide cannabis to cannabis dispensaries for the medical use of cannabis by qualified patients;

(b) In the case of dispensaries, solely provide cannabis to qualified patients for their medical use;

(c) Be registered with the secretary of state as of May 1, 2011;

(d) File a letter of intent with the department of agriculture or the department of health, as the case may be, asserting that the producer or dispenser intends to become licensed in accordance with this chapter and rules adopted by the appropriate department; and

(e) File a letter of intent with the city clerk if in an incorporated area or to the county clerk if in an unincorporated area stating they operate as a producer or dispensary and that they comply with the provisions of this chapter and will comply with subsequent department rule making.

(4) Upon receiving a letter of intent under subsection (3) of this section, the department of agriculture, the department of health, and the city clerk or county clerk must send a letter of acknowledgment to the producer or dispenser. The producer and dispenser must display this letter of acknowledgment in a prominent place in their facility.

(5) Letters of intent filed with a public agency, letters of acknowledgement sent from those agencies, and other materials related to such letters are exempt from public disclosure under chapter 42.56 RCW.

(6) This section expires upon the establishment of the licensing programs of the department of agriculture and the department of health and the commencement of the issuance of licenses for dispensers and producers as provided in this chapter. The department of health and the department of agriculture shall notify the code reviser when the establishment of the licensing programs has occurred.

***Sec. 1201 was vetoed. See message at end of chapter.**

**NEW SECTION. Sec. 1202. A new section is added to chapter 42.56 RCW to read as follows:*

The following information related to cannabis producers and cannabis dispensers are exempt from disclosure under this section:

(1) Letters of intent filed with a public agency under section 1201 of this act;

(2) Letters of acknowledgement sent from a public agency under section 1201 of this act;

(3) Materials related to letters of intent and acknowledgement under section 1201 of this act.

***Sec. 1202 was vetoed. See message at end of chapter.**

**NEW SECTION. Sec. 1203. (1)(a) On July 1, 2015, the department of health shall report the following information to the state treasurer:*

(i) The expenditures from the health professions account related to the administration of chapter 69.51A RCW between the effective date of this section and June 30, 2015; and

(ii) The amounts deposited into the health professions account under sections 702, 802, and 901 of this act between the effective date of this section and June 30, 2015.

(b) If the amount in (a)(i) of this subsection exceeds the amount in (a)(ii) of this subsection, the state treasurer shall transfer an amount equal to the difference from the general fund to the health professions account.

(2)(a) Annually, beginning July 1, 2016, the department of health shall report the following information to the state treasurer:

(i) The expenditures from the health professions account related to the administration of chapter 69.51A RCW for the preceding fiscal year; and

(ii) The amounts deposited into the health professions account under sections 702, 802, and 901 of this act during the preceding fiscal year.

(b) If the amount in (a)(i) of this subsection exceeds the amount in (a)(ii) of this subsection, the state treasurer shall transfer an amount equal to the difference from the general fund to the health professions account.

***Sec. 1203 was vetoed. See message at end of chapter.**

NEW SECTION. **Sec. 1204.** RCW 69.51A.080 (Adoption of rules by the department of health—Sixty-day supply for qualifying patients) and 2007 c 371 s 8 are each repealed.

NEW SECTION. **Sec. 1205.** Sections 402 through 411, 413, 601 through 611, 701 through 705, 801 through 807, 901, 1001, 1101 through 1105, and 1201 of this act are each added to chapter 69.51A RCW.

**NEW SECTION. Sec. 1206. Section 1002 of this act takes effect January 1, 2013.*

***Sec. 1206 was vetoed. See message at end of chapter.**

Passed by the Senate April 21, 2011.
Passed by the House April 11, 2011.
Approved by the Governor April 29, 2011, with the exception of certain items that were vetoed.
Filed in Office of Secretary of State April 29, 2011.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Sections 101, 201, 407, 410, 411, 412, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 701, 702, 703, 704, 705, 801, 802, 803, 804, 805, 806, 807, 901, 902, 1104, 1201, 1202, 1203 and 1206, Engrossed Second Substitute Senate Bill 5073 entitled:

"AN ACT Relating to medical use of cannabis."

In 1998, Washington voters made the compassionate choice to remove the fear of state criminal prosecution for patients who use medical marijuana for debilitating or terminal conditions. The voters also provided patients' physicians and caregivers with defenses to state law prosecutions.

I fully support the purpose of Initiative 692, and in 2007, I signed legislation that expanded the ability of a patient to receive assistance from a designated provider in the medical use of marijuana, and added conditions and diseases for which medical marijuana could be used.

Today, I have signed sections of Engrossed Second Substitute Senate Bill 5073 that retain the provisions of Initiative 692 and provide additional state law protections. Qualifying patients or their

designated providers may grow cannabis for the patient's use or participate in a collective garden without fear of state law criminal prosecutions. Qualifying patients or their designated providers are also protected from certain state civil law consequences.

Our state legislature may remove state criminal and civil penalties for activities that assist persons suffering from debilitating or terminal conditions. While such activities may violate the federal Controlled Substances Act, states are not required to enforce federal law or prosecute people for engaging in activities prohibited by federal law. However, absent congressional action, state laws will not protect an individual from legal action by the federal government.

Qualifying patients and designated providers can evaluate the risk of federal prosecution and make choices for themselves on whether to use or assist another in using medical marijuana. The United States Department of Justice has made the wise decision not to use federal resources to prosecute seriously ill patients who use medical marijuana.

However, the sections in Part VI, Part VII, and Part VIII of Engrossed Second Substitute Senate Bill 5073 would direct employees of the state departments of Health and Agriculture to authorize and license commercial businesses that produce, process or dispense cannabis. These sections would open public employees to federal prosecution, and the United States Attorneys have made it clear that state law would not provide these individuals safe harbor from federal prosecution. No state employee should be required to violate federal criminal law in order to fulfill duties under state law. For these reasons, I have vetoed Sections 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 701, 702, 703, 704, 705, 801, 802, 803, 804, 805, 806 and 807 of Engrossed Second Substitute Senate Bill 5073.

In addition, there are a number of sections of Engrossed Second Substitute Senate Bill 5073 that are associated with or dependent upon these licensing sections. Section 201 sets forth definitions of terms. Section 412 adds protections for licensed producers, processors and dispensers. Section 901 requires the Department of Health to develop a secure registration system for licensed producers, processors and dispensers. Section 1104 would require a review of the necessity of the cannabis production and dispensing system if the federal government were to authorize the use of cannabis for medical purposes. Section 1201 applies to dispensaries in current operation in the interim before licensure, and Section 1202 exempts documents filed under Section 1201 from disclosure. Section 1203 requires the department of health to report certain information related to implementation of the vetoed sections. Because I have vetoed the licensing provisions, I have also vetoed Sections 201, 412, 901, 1104, 1201, 1202 and 1203 of Engrossed Second Substitute Senate Bill 5073.

Section 410 would require owners of housing to allow the use of medical cannabis on their property, putting them in potential conflict with federal law. For this reason, I have vetoed Section 410 of Engrossed Second Substitute Senate Bill 5073.

Section 407 would permit a nonresident to engage in the medical use of cannabis using documentation or authorization issued under other state or territorial laws. This section would not require these other state or territorial laws to meet the same standards for health care professional authorization as required by Washington law. For this reason, I have vetoed Section 407 of Engrossed Second Substitute Senate Bill 5073.

Section 411 would provide that a court may permit the medical use of cannabis by an offender, and exclude it as a ground for finding that the offender has violated the conditions or requirements of the sentence, deferred prosecution, stipulated order of continuance, deferred disposition or dispositional order. The correction agency or department responsible for the person's supervision is in the best position to evaluate an individual's circumstances and medical use of cannabis. For this reason, I have vetoed Section 411 of Engrossed Second Substitute Senate Bill 5073.

I am approving Section 1002, which authorizes studies and medical guidelines on the appropriate administration and use of cannabis. Section 1206 would make Section 1002 effective January 1, 2013. I have vetoed Section 1206 to provide the discretion to begin efforts at an earlier date.

Section 1102 sets forth local governments' authority pertaining to the production, processing or dispensing of cannabis or cannabis products within their jurisdictions. The provisions in Section 1102 that local governments' zoning requirements cannot "preclude the possibility of siting licensed dispensers within the jurisdiction" are without meaning in light of the vetoes of sections providing for such licensed dispensers. It is with this understanding that I approve Section 1102.

I have been open, and remain open, to legislation to exempt qualifying patients and their designated providers from state criminal penalties when they join in nonprofit cooperative organizations to share responsibility for producing, processing and dispensing cannabis for medical use. Such exemption from state criminal penalties should be conditioned on compliance with local government location and health and safety specifications.

I am also open to legislation that establishes a secure and confidential registration system to provide arrest and seizure protections under state law to qualifying patients and those who assist them. Unfortunately, the provisions of Section 901 that would provide a registry for qualifying patients and designated providers beginning in January 2013 are intertwined with requirements for registration of licensed commercial producers, processors and dispensers of cannabis. Consequently, I have vetoed section 901 as noted above. Section 101 sets forth the purpose of the registry, and Section 902 is contingent on the registry. Without a registry, these sections are not meaningful. For this reason, I have vetoed Sections 101 and 902 of Engrossed Second Substitute Senate Bill 5073. I am not vetoing Sections 402 or 406, which establish affirmative defenses for a qualifying patient or designated provider who is not registered with the registry established in section 901. Because these sections govern those who have not registered, this section is meaningful even though section 901 has been vetoed.

With the exception of Sections 101, 201, 407, 410, 411, 412, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 701, 702, 703, 704, 705, 801, 802, 803, 804, 805, 806, 807, 901, 902, 1104, 1201, 1202, 1203 and 1206, Engrossed Second Substitute Senate Bill 5073 is approved."

CHAPTER 182

[House Bill 1031]

BALLOT ENVELOPES

AN ACT Relating to ballot envelopes; and amending RCW 29A.40.091.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 29A.40.091 and 2010 c 125 s 1 are each amended to read as follows:

The county auditor shall send each voter a ballot, a security envelope in which to ((~~seal~~)) conceal the ballot after voting, a larger envelope in which to return the security envelope, and instructions on how to mark the ballot and how to return it to the county auditor. The instructions that accompany a ballot for a partisan primary must include instructions for voting the applicable ballot style, as provided in chapter 29A.36 RCW. The voter's name and address must be printed on the larger return envelope, which must also contain a declaration by the voter reciting his or her qualifications and stating that he or she has not voted in any other jurisdiction at this election, together with a summary of the penalties for any violation of any of the provisions of this chapter. The declaration must clearly inform the voter that it is illegal to vote if he or she is not a United States citizen; it is illegal to vote if he or she has been convicted of a felony and has not had his or her voting rights restored; and, except as otherwise provided by law, it is illegal to cast a ballot or sign a return envelope on behalf of another voter. The return envelope must provide space for the voter to indicate the date on which the ballot was voted and for the voter to sign the oath. It must also contain a space so that the voter may include a telephone number. A summary of the applicable penalty provisions of this chapter must be printed on the return envelope immediately adjacent to the space for the voter's signature. The signature of the voter on the return envelope must affirm and attest to the statements regarding the qualifications of that voter and to the validity of the ballot. The return envelope may provide secrecy for the voter's signature and

APPENDIX 4

Risk Management Bulletin
Administration #46
June, 2011

Medical Marijuana Law: Post 2011 Washington Legislative Session

By Mark R. Bucklin, WCIA General Counsel
Keating Bucklin & McCormack, Inc. P.S.

A WCIA Risk Management Bulletin was issued 12/28/2010 addressing the then existing state of the law regarding medical marijuana in Washington and the rise of business license applications for medical marijuana "Dispensaries" across the state. In short, the Bulletin concluded that such "dispensaries" were not legal under the law at that time as they inevitably involved the possession and sale of marijuana not allowed by law. It was recommended that business license applications for dispensaries be denied or revoked. The Bulletin predicted that the topic would be addressed in the 2011 Washington State Legislative Session and changes could occur. The topic did arise, legislation was passed and then the legislation was partially vetoed by the Governor. This Bulletin Supplement will address the law as it now exists, post 2011 Legislative Session.

In April 2011, the Washington State Legislature passed Engrossed Second Substitute Senate Bill 5073 through both houses amending Initiative 692 and sent it on to the Governor for signature into law. The bill, as passed, offered sweeping changes to the medical marijuana law in Washington and would have put in place a regulatory licensing scheme for the growth and distribution of medical marijuana through licensed dispensaries to "qualified patients" who had been designated as such by their "health care professionals." The production and sale of medical cannabis and the dispensing standards would have been under regulation by the State Department of Health. Dispensers could sell seeds, plants, usable cannabis, and cannabis products directly to qualifying patients. The bill also provided for optional "collective gardens" where individuals who were qualified patients, or their individual providers, could grow for their own use medical marijuana collectively so long as the participants did not exceed 10 in number or more that 15 plants per person and up to 45 plants total.

Before the Governor could sign the bill, the U.S. Attorney's in Seattle and Spokane sent the Governor an advisory letter, (which she had solicited) approved by U.S. Attorney General Holder, warning and advising the Governor that substantial portions of the bill approved by the Legislature was in direct conflict with Federal Drug Laws and that state employees could be at risk of federal prosecution for aiding and abetting illegal drug possession and sale if they processed licenses for production and sale of medical cannabis under the proposed new bill. The letter of April 14, 2011 to Governor Gregoire signed by U.S Attorney Jenny Durkin and U.S. Attorney Michael Ormsby stated, in part:

"The Washington legislative proposals will create a licensing scheme that permits large-scale marijuana cultivation and distribution. This would authorize conduct contrary to federal law and thus, would undermine the federal government's efforts to regulate the possession, manufacturing and trafficking of controlled substance. Accordingly, the Department could consider civil and criminal legal remedies regarding those who set up

marijuana growing facilities and dispensaries as they will be doing so in violation of federal law. Others who knowingly facilitate the action of the licensees, including property owners, landlords, and financier should also know that their conduct violates federal law. In addition, state employees who conducted activities mandated by the Washington legislative proposals would not be immune from liability under the CSA (controlled substances act)." (emphasis added). [1]

Citing this letter, Governor Gregoire issued a partial veto of ESSSB 5073 on April 29, 2011. The Governor vetoed all the new sections dealing with the state licensing of production and licensed dispensing of medical marijuana.[2] The portions of the bill not vetoed and signed by Governor Gregoire amend the original medical marijuana Initiative 692 passed by the people. So, the question becomes: What is left of ESSSB 5073 after the line item veto of the Governor?

What Are the Significant Changes in the Law Under ESSSB 5073 as Signed?

1. **New stronger protections to qualified medical marijuana users and providers from criminal arrest, prosecution and conviction.**

Previously qualified users and providers were given an affirmative defense to assert at trial if they were charged with a marijuana crime. Now, sec. 401 of the new act provides:

> "Sec. 401 The medical use of cannabis in accordance with the terms and conditions of this chapter **does not constitute a crime** and a qualifying patient or designated provider in compliance with the terms and conditions of this chapter **may not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences, for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, cannabis under state law,** or have real or personal property seized or forfeited ..."

Section 102 of the new act states:

> "(a) Qualifying patients with terminal or debilitating ((illnesses)) medical conditions who, in the judgment of their health care professionals, may benefit from the medical use of ((marijuana)) cannabis, **shall not be ((found guilty of a crime under state law for their possession and limited use of marijuana)) arrested, prosecuted, or subject to other criminal sanctions or civil consequences** under state law based solely on their medical use of cannabis, notwithstanding any other provision of law;
>
> (b) Persons who act as designated providers to such patients shall also not be ((found guilty of a crime under state law for)) arrested, prosecuted, or subject to other criminal sanctions or civil consequences under state law, notwithstanding any other provision of law, based solely on their assisting with the medical use of ((marijuana)) cannabis;..."

[1] Letter attached
[2] Partial veto letter attached

Author's Supplemental Note: Did the act, as partially vetoed, really make medical marijuana possession and use exempt from arrest and prosecution? It has been pointed out that section 401 may have been intended to only relate to those qualified users who obtained registry cards provided in Sec. 401(2) and Sec. 901. The Governor vetoed Sec. 901 which would have created the State Registry system. Does the Sec. 102's similar language stand alone and reach the same result? If not, then the language of Sec. 402(1) and (2) which provides an affirmative defense to criminal arrest and charges for qualified patients who do not have registry cards may be the operative law. Court decisions may have to clarify this issue.

2. **Health Care Professionals are given greater protection but with greater restrictions regarding issuing "valid documentation" to qualifying patients authorizing medical use of cannabis.**

   a. Health Care Professionals have been given the same protections as qualifying patients and providers as noted above. (Sec 301(1))

   b. The new act states:

   "Sec. 301(2)(a) A health care professional may only provide a patient with valid documentation authorizing the medical use of cannabis or register the patient with the registry established in section 901 of this act if he or she has a newly initiated or existing documented relationship with the patient, as a primary care provider or a specialist, relating to the diagnosis and ongoing treatment or monitoring of the patient's terminal or debilitating medical condition, and only after:

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

   (ii) Documenting the terminal or debilitating medical condition of the patient in the patient's medical record and that the patient may benefit from treatment of this condition or its symptoms with medical use of cannabis;

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

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

   (b) A health care professional shall not:

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

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

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

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

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

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

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

3. **Use of medical cannabis at work or in jails requires no accommodation and may be prohibited. Drug free work places may be continued. Medical insurance is not required to cover medical cannabis. Medical cannabis may not be smoked in public but it is now an infraction, not a crime. Persons under supervised probation or parole may be prohibited from the use medical cannabis. The use of medical cannabis is not a defense to Driving Under the Influence.**

"**Sec. 501.** RCW 69.51A.060 and 2010 c 284 s 4 are each amended to read as follows:

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

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

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

(4) Nothing in this chapter requires any accommodation of any on- site medical use of ((marijuana)) cannabis in any place of employment, in any school bus or on any school grounds, in any youth center, in any correctional facility, or smoking ((medical marijuana)) cannabis in any public place ((as that term is defined in RCW 70.160.020)) or hotel or motel.

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

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

"**Sec. 1105.** (1)(a) The arrest and prosecution protections established in section 401 of this act may not be asserted in a supervision revocation or violation hearing by a person who is supervised by a corrections agency or department, including local governments or jails, that has determined that the terms of this section are inconsistent with and contrary to his or her supervision.

(b) The affirmative defenses established in sections 402, 405, 406, and 407 of this act may not be asserted in a supervision revocation or violation hearing by a person who is supervised by a corrections agency or department, including local governments or jails, that has determined that the terms of this section are inconsistent with and contrary to his or her supervision.
(2) The provisions of RCW 69.51A.040 and sections 403 and 413 of this act do not apply to a person who is supervised for a criminal conviction by a corrections agency or department, including local governments or jails, that has determined that the terms of this chapter are inconsistent with and contrary to his or her supervision.
(3) A person may not be licensed as a licensed producer, licensed processor of cannabis products, or a licensed dispenser under section 601, 602, or 701 of this act if he or she is supervised for a criminal conviction by a corrections agency or department, including local governments or jails, that has determined that licensure is inconsistent with and contrary to his or her supervision."

"Sec. 501(8) (8) No person shall be entitled to claim the ((affirmative defense provided in RCW 69.51A.040)) protection from arrest and prosecution under RCW 69.51A.040 or the affirmative defense under section 402 of this act for engaging in the medical use of ((marijuana)) cannabis in a way that endangers the health or well-being of any person through the use of a motorized vehicle on a street, road, or highway, including violations of RCW 46.61.502 or 46.61.504, or equivalent local ordinances."

4. **A "designated provider" who has been terminated by a "qualified patient" cannot become a designated provider for another qualified patient until 15 days have elapsed.**

"Sec. 404. (1) A qualifying patient may revoke his or her designation of a specific provider and designate a different provider at any time. A revocation of designation must be in writing, signed and dated. The protections of this chapter cease to apply to a person who has served as a designated provider to a qualifying patient seventy-two hours after receipt of that patient's revocation of his or her designation.
(2) A person may stop serving as a designated provider to a given qualifying patient at any time. **However, that person may not begin serving as a designated provider to a different qualifying patient until fifteen days have elapsed from the date the last qualifying patient designated him or her to serve as a provider."**

5. **Qualifying patients may, under restrictions, create "collective gardens" to produce medical cannabis.**

"Sec. 403. (1) **Qualifying patients** may create and participate in collective gardens for the purpose of producing, processing, transporting, and delivering cannabis for medical use subject to the following conditions:

(a) **No more than ten qualifying patients may participate in a single collective garden at any time;**
(b) A collective garden may **contain no more than fifteen plants per patient up to a total of forty-five plants;**
(c) A collective garden may contain **no more than twenty-four ounces of useable cannabis per patient up to a total of seventy-two ounces of useable cannabis;**
(d) A copy of each qualifying patient's valid documentation or proof of registration with the registry established in section 901 of this act, including a **copy of the patient's proof of identity, must be available at all times on the premises of the collective garden;** and
(e) No useable cannabis from the collective garden is delivered to anyone other than one of the qualifying patients participating in the collective garden.
(2) For purposes of this section, the creation of a "collective garden" means qualifying patients sharing responsibility for acquiring and supplying the resources required to produce and process cannabis for medical use such as, for example, a location for a collective garden; equipment, supplies, and labor necessary to plant, grow, and harvest cannabis; cannabis plants, seeds, and cuttings; and equipment, supplies, and labor necessary for proper construction, plumbing, wiring, and ventilation of a garden of cannabis plants.
(3) A person who knowingly violates a provision of subsection (1) of this section is not entitled to the protections of this chapter."

(Author's Note: Sec 501(1) makes the <u>public display of medical cannabis a civil infraction</u> and this would presumably apply to the display of medical cannabis in a collective garden hence some sort of screening from public view seems to be built into the act.)

6. **Cities and Counties <u>may</u>, but are not required to, zone, license, regulate and tax the production, processing and dispensing of cannabis. This would appear to be now limited to collective gardens since that is the only new activity allowed under the act and individual single production of medical cannabis by a qualified user or provider.**

"Sec. 1102. (1) Cities and towns may adopt and enforce any of the following pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction: Zoning requirements, business licensing requirements, health and safety requirements, and business taxes. Nothing in this act is intended to limit the authority of cities and towns to impose zoning requirements or other conditions upon licensed dispensers, so long as such requirements do not preclude the possibility of siting licensed dispensers within the jurisdiction. If the jurisdiction has no commercial zones, the jurisdiction is not required to adopt zoning to accommodate licensed dispensers.
(2) Counties may adopt and enforce any of the following pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction in locations outside of the corporate limits of any city or town:

Zoning requirements, business licensing requirements, and health and safety requirements. Nothing in this act is intended to limit the authority of counties to impose zoning requirements or other conditions upon licensed dispensers, so long as such requirements do not preclude the possibility of siting licensed dispensers within the jurisdiction. If the jurisdiction has no commercial zones, the jurisdiction is not required to adopt zoning to accommodate licensed dispensers."

(Author's Note: The Governor vetoed all other sections of the act that would have created legal licensed dispensers of medical cannabis so presumably the language in this section addressing the zoning of licensed dispensers is null and void.)

7. **Police and local jurisdictions are given limited immunity under the act for good faith actions.**

"Sec. 1101. (1) No civil or criminal liability may be imposed by any court on the state or its officers and employees for actions taken in good faith under this chapter and within the scope of their assigned duties.
(2) No civil or criminal liability may be imposed by any court on cities, towns, and counties or other municipalities and their officers and employees for actions taken in good faith under this chapter and within the scope of their assigned duties."

Challenges and Issues for Local Government Under the New Act

1. **What to do with existing medical marijuana/cannabis dispensaries and business license applications for the same?**

As previously noted, the Governor's line item veto took out all provisions of the law that would have made dispensaries licensed and legal. Hence the law remains the same as before and there is no credible argument that medical cannabis dispensaries that sell cannabis are legal under state or federal law. (See prior WCIA Bulletin of 12/28 /2010-Medical Marijuana Dispensaries-Are They Legal?). **The sale of marijuana in the State of Washington remains illegal and subject to criminal prosecution. (RCW 69.50.401 & 410.)** Nothing in the new act makes the sale of medical marijuana/cannabis legal.

Existing dispensaries that are selling marijuana/cannabis are subject to police investigation, arrest and prosecution. Priority of enforcement is up to the local jurisdictions and decisions on resource allocation.

Pending or new applications for business licenses dispensaries of medical cannabis should be denied as illegal businesses if there is any evidence that the sale of cannabis is part of the operational scheme or business plan.

2. **Should local governmental entities do zoning or zoning moratoriums regarding medical marijuana/cannabis dispensaries?**

There does not appear to be any current urgency to do so as the legislation that would have allowed legal dispensaries starting in 2012 has been vetoed. However, the political backers of ESSSB 5073 have vowed they will come back with a new proposal in the next legislative session. Preemptive zoning in anticipation that someday dispensaries may become legal under state law is a consideration for local jurisdictions that may be concerned about a future applicant becoming vested to a site that is inconsistent with the overall zoning scheme of the jurisdiction.

3. **Should local jurisdictions get involved in the zoning, regulation or licensing of "collective gardens"?**

This is a difficult issue. The new act does not require any local action but does allow it under Sec. 1102. The possession of marijuana for any reason under federal law may be a crime and the federal law does not recognize exceptions for medical use of cannabis and marijuana except in authorized clinical situations. Hence, an argument can be made that if local jurisdictions specifically allow, license and regulate collective marijuana gardens they and the employees executing the laws could run a fowl of the U.S. Attorney warnings expressed in letter of April 14, 201 delivered to Governor Gregoire. They could be viewed as aiding and abetting a violation of the federal controlled substances act. Some may argue the threat is remote but no one can say it is impossible.

The other side of the argument is that unregulated and uncontrolled collective gardens could become a public safety threat and therefore regulation and licensing is a means of reducing the threat. Under the new law collective gardens may be planted and marijuana grown by qualified patients of up to ten in number. There are no provisions in the state law as to where in a local jurisdiction such gardens may be started nor is there any provisions for fencing, screening, security or safety. It is easy to envision that such collective gardens could become the locus of thefts of marijuana plants and finished product and potentially violent confrontations could occur. Collective gardens could be started next to schools and churches. Some citizens may not appreciate relatively large scale open marijuana cultivation next to their back yards, businesses, churches or schools. There could be political pressure on local elected officials to regulate and license cannabis production via "collective gardens." They may demand regulation and licensing under the authority of Sec. 1102 – **"Cities and towns may adopt and enforce any of the following pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction: Zoning requirements, business licensing requirements, health and safety requirements, and business taxes."**

(Author's Note: Business taxes on collective gardens is likely not legal as "sales" of medical cannabis is not authorized by the partially vetoed act.)

Local police authorities may feel that zoning, licensing and regulation of collective gardens would assist them in tracking and distinguishing legal grow operations from illegal ones.

There does not appear to be any express authority or provision in the new act that would allow the outright banning of collective gardens by local jurisdictions. Sec. 401 of the act directly empowers qualified users to start and maintain collective gardens. This would appear to preempt local authorities from doing outright bans on collective gardens on private property. Likewise, local jurisdictions could not ban individual qualified patients or their providers from cultivation of medical marijuana/cannabis on private property or at their homes so long as they have the proper documentation and limit their possession to 15 plants or 24 ounces of useable cannabis.

If the decision is made to zone, license and regulate collective gardens by the local jurisdiction care will be need to make sure that an appropriate legislative history is developed to document the negative impacts of unregulated collective gardens and to narrowly fashion regulations tailored to address those negative impacts. Failure to do so could lead to challenges that the regulations or zoning violated substantive due process protections under the Constitution. Members are advised to work closely with their legal counsel on these issues.

If Members think that zoning regulation and licensing of collective gardens is in their best interest they may wish to quickly impose a moratorium prohibiting their establishment for a brief period of time to develop the necessary legislative history and to adopt appropriate ordinances for zoning, licensing and regulating collective gardens.

WCIA strongly advises against Members allowing use of public property or public "pea patches" for use as "collective gardens" where medical marijuana/cannabis is grown. It would expose the jurisdiction to unnecessary liability claims as a landlord under premises liability law if other legal users of the public lands were injured due to criminal activity/thefts potentially associated with the production of the cannabis products.

Conclusion

The truncated and partially vetoed version of ESSSB 5073 signed into law by Governor Gregoire becomes **effective on July 22, 2011.** Medical marijuana/cannabis dispensaries that sell cannabis products remain illegal. The fact that the Legislature went to great lengths to try and make them legal and then failed by virtue of the Governor's veto; re-enforces the argument that they were never legal. Nevertheless, proponents of medical cannabis will continue to argue to the contrary and will continue to urge novel schemes and models for the distribution of medical cannabis to local jurisdictions in hopes of obtaining business licenses and therefore apparent legitimacy. It is suggested that any such new model be closely analyzed to determine where the profit may be

made in the business model. If it ultimately involves a sale of marijuana or cannabis products it is likely illegal under both state and federal law.

The political battle promises to be carried on in the future. Governor Gregoire's signing letter partially vetoing ESSSB 5073 states she remains open to legislation that would exempt qualifying patients and their providers from criminal penalties when they join a cooperative to distribute medical marijuana. The proponents of ESSSB 5073 promise to return in the next legislative session to have another go at it. It is not clear how any future effort will have success as long as the federal law remains intact and continues to criminalize possession and sale of marijuana regardless of its designation as for medical treatment. Future case law may also clarify or further obscure the picture. It appears the only certainty is more uncertainty as to what future law in this area may develop.

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Sent: Friday, May 23, 2014 3:08 PM
To: 'David S. Mann'; Arthur West; Brubaker, Tom; dunne@aclu.com; mark cooke; Kathleen@pfrwa.com; Fitzpatrick, Pat; dgalazin@kentwa.gov; JVanKirk@gslaw.com; tdonaldson@wallawallawa.gov; tim@pfrwa.com; pfred@ci.walla-walla.wa.us; john worthington; Deryck Tsang; Steve Sarich
Subject: RE: Cannabis Action Coalition et al v. City of Kent, No 90204-6

Rec'd 5-23-14

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Subject: Cannabis Action Coalition et al v. City of Kent, No 90204-6

Attached for filing please find Deryck Tsang's Petition for Review with appendices

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