

70396-0

70396-0

NO. 70396-0-I

IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION ONE

STEVE SARICH, ARTHUR WEST, JOHN WORTHINGTON, and DEREK TSANG,

Appellants,

v.

CITY OF KENT, a local municipal corporation,

Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF KING COUNTY

The Honorable Jay White

APPELLANT'S BRIEF

JOSEPH L. BROADBENT
DOUGLAS A. HIATT
Attorneys for Appellant Steve Sarich
119 1st Ave. S., Suite 260
Seattle, WA 98104-3450
(206) 412-8807

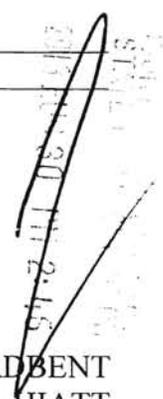


TABLE OF CONTENTS

I. INTRODUCTION.....1

II. ASSIGNMENTS OF ERROR.....2

 A. ASSIGNMENTS OF ERROR.....2

 B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.....2

III. STATEMENT OF THE CASE.....4

IV. SUMMARY OF ARGUMENT.....13

V. ARGUMENT.....15

 A. DE NOVO STANDARD OF REVIEW.....15

 B. THE SUPERIOR COURT ERRED BY CONCLUDING APPELLANT LACKED STANDING TO CHALLENGE THE ORDINANCE.....16

 C. CITIES DO NOT POSSESS LEGISLATIVE AUTHORITY OVER COLLECTIVE GARDENS.....21

 1) The Court Must Give Effect to a Statute’s Plain Language.....21

 2) SB 5073 Distinguished Collective Gardens from Licensed Producers and Dispensers22

 3) RCW 69.51A.085 Makes No Reference to Local Laws or Jurisdictions24

4)	<u>RCW 69.51A.140 Does Not Delegate Legislative Authority Over Collective Gardens to Local Jurisdictions</u>	25
5)	<u>Neither the Language Nor Intent of RCW 69.51A.140 Authorizes Cities to Ban Collective Gardens</u>	30
6)	<u>Conclusion</u>	32
D.	THE ORDINANCE CONFLICTS WITH STATE LAW IN VIOLATION OF ARTICLE XI, SECTION 11 OF THE WASHINGTON CONSTITUTION.....	32
1)	<u>The State Has Preempted the Field of Medical Marijuana</u>	33
2)	<u>The Ordinance Conflicts with Multiple State Laws</u>	38
3)	<u>The Ordinance’s Removal of Chapter 69.51A’s Affirmative Defense Conflicts with State Law</u> ...	42
E.	THE COURT ERRED BY ISSUING A PERMANENT INJUNCTION	42
VI.	CONCLUSION	45

APPENDICES

Appendix A: SB 5073

Appendix B: Kent Ordinance 4036

Appendix C: Relevant Sections of the Kent City Code

TABLE OF AUTHORITIES

	<u>Page</u>
<u>WASHINGTON CASES</u>	
<u>American Traffic Solutions, Inc. v. City of Bellingham,</u> 163 Wn.App. 427, 260 P.3d 245 (Div. I 2011)	17, 19
<u>Anthis v. Copland,</u> 173 Wn.2d 752, 270 P.3d 574 (2012)	21
<u>Bellingham v. Schampera,</u> 57 Wn.2d 106, 356 P.2d 292 (1960)	25, 26, 38
<u>Brown v. City of Yakima,</u> 116 Wn.2d 556, 807 P.2d 353 (1991)	33, 34, 35, 38
<u>Cerrillo v. Esparza,</u> 158 Wn.2d 194, 142 P.3d 155 (2006).....	21, 22
<u>City of Seattle v. Williams,</u> 128 Wn.2d 341, 908 P.2d 359 (1995)	15
<u>City of Spokane v. Portch,</u> 92 Wn.2d 342, 596 P.2d 1044 (1979)	36, 37
<u>City of Tacoma v. Luvene,</u> 118 Wn.2d 826, 827 P.2d 1374 (1992).....	33, 34, 35, 38
<u>City of Tacoma v. Taxpayers of Tacoma,</u> 49 Wn.2d 781, 307 P.2d 567 (1957).....	26
<u>Farris v. Munro,</u> 99 Wn.2d 326, 662 P.2d 821 (1983)	19
<u>Hallauer v. Spectrum Properties, Inc.,</u> 143 Wn.2d 126, 18 P.3d 540 (2001)	29

<u>Heinsma v. City of Vancouver,</u> 144 Wn.2d 556, 29 P.3d 709 (2001)	26, 27
<u>Kilian v. Atkinson,</u> 147 Wn.2d 16, 50 P.3d 638 (2002)	21, 22, 29
<u>Kucera v. Department of Transportation,</u> 140 Wn.2d 200, 995 P.2d 63 (2000)	42, 43
<u>Lawson v. City of Pasco,</u> 168 Wn.2d 675, 230 P.3d 1038 (2010)	34, 35
<u>Lenci v. City of Seattle,</u> 63 Wn.2d 664, 388 P.2d 926 (1964)	27
<u>Macias v. Saberhagen Holdings, Inc.,</u> 175 Wn.2d 402, 282 P.3d 1069 (2012)	15
<u>Massie v. Brown,</u> 84 Wn.2d 490, 527 P.2d 476 (1974)	27
<u>Nelson v. Appleway Chevrolet, Inc.,</u> 160 Wn.2d 173, 157 P.3d 847 (2007)	15, 16, 17
<u>Port of Seattle v. Washington Utilities and Transp. Commission,</u> 92 Wn.2d 789, 597 P.2d 383 (1979)	26
<u>Rabon v. City of Seattle,</u> 135 Wn.2d 278, 957 P.2d 621 (1998)	34, 35, 38
<u>Seattle School Dist. No. 1 of King County v. State,</u> 90 Wn.2d 476, 585 P.2d 71 (1978)	16, 19, 20
<u>State v. Delgado,</u> 148 Wn.2d 723, 63 P.3d 792 (2003)	29
<u>State v. Fisher,</u> 132 Wn.App. 26, 130 P.3d 382 (Div. I 2006), <i>rev. denied</i> , 158 Wn.2d 1021 (2006)	38, 39

<u>State v. Jones,</u> 168 Wn.2d 713, 230 P.3d 576 (2010)	21
<u>State v. Ralph Williams' N.W. Chrysler Plymouth, Inc.,</u> 87 Wn.2d 298, 553 P.2d 423 (1976)	43
<u>State v. Wright,</u> 84 Wn.2d 645, 529 P.2d 453 (1974)	29
<u>State ex rel. Schillberg v. Everett Dist. Justice Court,</u> 92 Wn.2d 106, 594 P.2d 448 (1979)	38, 39
<u>Sundquist Homes, Inc. v. Snohomish County Public Utility Dist. No. 1,</u> 140 Wn.2d 403, 997 P.2d 915 (2000)	26
<u>Wark v. Washington Nat. Guard,</u> 87 Wn.2d 864, 557 P.2d 844 (1976)	30

FEDERAL CASES

<u>Warth v. Seldin,</u> 422 U.S. 490, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975)	17, 19
---	--------

CONSTITUTIONAL PROVISIONS

Article XI, Section 11 of the Washington Constitution	15, 32, 33, 41
---	----------------

STATUTES

RCW 7.24.010	16
RCW 7.24.020	16, 19
RCW 7.24.120	16-17
RCW 69.51A.005	32, 36, 40, 41
RCW 69.51A.010	22

RCW 69.51A.025	40, 41
RCW 69.51A.040	36, 40, 41
RCW 69.51A.085	3, 6, 7, 10, 12, 13, 14, 15, 24, 25, 30, 32, 35, 37, 38, 39, 42
RCW 69.51A.140	2, 3, 7, 10, 14, 25, 27, 28, 29, 30, 31, 32, 40

KENT CITY CODE (attached as “Appendix C”):

KCC 1.04.030	11, 39
KCC 9.02.150	42
KCC 15.02.074	10
KCC 15.10.070	43
KCC 15.10.080.....	43

WASHINGTON COURT RULES

CR 1	17
CR 8(f).....	17

OTHER AUTHORITIES

Oxford English Dictionary.....	31
Black’s Law Dictionary.....	31

I. INTRODUCTION.

Ever since Initiative 692 was passed in 1998, RCW Chapter 69.51A has governed the field of medical marijuana, defining who qualified as an authorized patient or provider, establishing an affirmative defense to criminal prosecutions, and providing statewide protections for patients and providers. The definitions, and the protections afforded to those patients and providers, have always been exclusively governed by state law.

In 2011, the Legislature debated and passed SB 5073, which would have created an extensive regulatory system whereby the State would license and regulate the production, processing and dispensing of medical marijuana. One of the bill's sections authorized the formation of collective gardens, which were excluded from the licensing and regulatory scheme. Former Governor Gregoire vetoed the sections that would have created the State-run system, but not the collective gardens section.

This appeal involves the City of Kent's ban on collective gardens, which conflicts with multiple state laws and the legislative purpose and intent of Chapter 69.51A, and which penalizes conduct the Legislature has declared is not a crime and should not be subjected to criminal penalties or civil consequences. The City banned collective gardens in spite of its own acknowledgement that collective gardens were allowed by state law.

Neither statutory language nor legislative intent authorized the City to ban collective gardens and impose civil and criminal penalties for participating in them.

II. ASSIGNMENTS OF ERROR.

A. ASSIGNMENTS OF ERROR.

1. THE SUPERIOR COURT ERRED BY DISMISSING APPELLANT SARICH FOR LACK OF STANDING.
2. THE SUPERIOR COURT ERRED BY DENYING APPELLANT'S MOTION FOR SUMMARY JUDGMENT.
3. THE SUPERIOR COURT ERRED BY GRANTING THE CITY OF KENT'S MOTION FOR SUMMARY JUDGMENT.
4. THE SUPERIOR COURT ERRED BY GRANTING THE CITY OF KENT'S MOTION FOR A PERMANENT INJUNCTION.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. Whether the superior court erred by concluding Appellant lacked standing to challenge the City of Kent's ordinance where his rights and legal relations were affected by the ordinance, the courts have relaxed the standing requirement in declaratory judgment actions, and the ordinance applied to non-residents? (Assignment of Error #1)
2. Whether RCW 69.51A.140 delegates legislative authority over collective gardens to cities, where collective gardens are not

mentioned in the statute, the only state law governing collective gardens, RCW 69.51A.085, makes no reference to local jurisdictions, laws or regulations, and there is no evidence the Legislature intended to delegate such authority? (Assignments of Error #2 and 3)

3. Whether RCW 69.51A.140 authorizes cities to ban collective gardens allowed by RCW 69.51A.085? (Assignments of Error #2 and 3)

4. Whether the Legislature has preempted the field of medical marijuana, either expressly or by necessary implication? (Assignments of Error #2 and 3)

5. Whether the City's ordinance, which prohibits anyone from operating or participating in a collective garden, conflicts with RCW 69.51A.085, which states persons "may" operate collective gardens in the State of Washington? (Assignments of Error #2 and 3)

6. Whether the City's ordinance conflicts with RCW 69.51A.085 where it imposes additional conditions upon collective gardens not mentioned in the statute and eliminates other portions of the statutory language? (Assignments of Error #2 and 3)

7. Whether the City's ordinance, which subjects collective garden participants to criminal penalties and civil consequences, conflicts with state law, which states the medical use of cannabis in

accordance with Chapter 69.51A is not a crime, and which precludes imposition of such penalties on patients or providers for their medical use of cannabis? (Assignments of Error #2 and 3)

8. Whether the City's ordinance unconstitutionally eliminated the affirmative defense established by Chapter 69.51A? (Assignments of Error #2 and 3)

9. Whether the superior court erred by issuing a permanent injunction against Appellant where there were plain, speedy and adequate remedies at law and the City failed to meet the applicable standard? (Assignment of Error #4)

III. STATEMENT OF THE CASE.

A. A Very Brief History of Medical Marijuana in Washington State.

In 1998, Washington voters approved Initiative 692, later codified as RCW Chapter 69.51A, which authorized qualified patients and providers to produce, use and possess marijuana for medical purposes. The chapter defined who could qualify as a patient or provider, required that qualified patients receive an authorization to use marijuana from a qualified health care professional, and provided an affirmative defense to criminal prosecutions. Chapter 69.51A was amended in 2007 and 2010; however, no statute made any mention of local jurisdictions or local laws.

B. The Passage and Partial Veto of SB 5073 and Its Aftermath.

In 2011, the Legislature passed SB 5073 (enacted as Chapter 181, Laws of 2011), which would have created an extensive regulatory system whereby the State would license and regulate the production, processing and dispensing of medical marijuana.¹ CP 231-275 (“Appendix A” to Appellant’s Brief). The bill, entitled “AN ACT Relating to medical use of cannabis,” would have authorized the Department of Health to issue licenses for the production, processing and dispensing of medical marijuana. Fifty of the bill’s 58 sections would have created new statutes. Other than adding a new section to the Public Records Act, Chapter 42.56, and a new section authorizing the University of Washington to study the medical benefits of cannabis, Chapter 28B.20, all of the bill’s sections either amended an existing statute, or created a new section, within Chapter 69.51A.²

On April 29, 2011, then-Governor Gregoire vetoed 36 sections, including all the provisions that would have established the licensing and regulatory scheme. The effect of the Governor’s action was to leave a confusing patchwork of statutes, some of which reference sections that

¹ As both “marijuana” and “cannabis” have been used in Chapter 69.51A, both terms are used interchangeably in this brief.

² By contrast, recently-enacted I-502, which pertained to the recreational use of marijuana, did not amend or affect any statute within RCW 69.51A.

were never enacted into law and entities that do not exist. For instance, several current statutes refer to a voluntary State registry which does not exist because the Governor vetoed the sections that would have created the registry. Two of the enacted sections, Section 403 and Section 1102, are at the core of the underlying action.

Section 403, now codified as RCW 69.51A.085, dealt exclusively with collective gardens, and provided:

(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.

*Reviser's note: The section creating a registry, 2011 c 181 § 901, was vetoed by the governor.

Section 403 was the only portion of SB 5073 that made any mention of collective gardens.

Section 1102, now codified as RCW 69.51A.140, provided, 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 chapter 181, Laws of 2011 is intended to limit the authority of cities and towns to impose zoning requirements or other conditions upon licensed dispensers, so long as such requirements do not preclude the possibility of siting licensed dispensers within the jurisdiction. If the jurisdiction has no commercial zones, the jurisdiction is not required to adopt zoning to accommodate licensed dispensers.

Almost immediately, a din of confusion erupted with respect to whether Section 1102 applied to collective gardens. Some local jurisdictions believed, as Appellant contends, that it was only intended to apply to the proposed State-licensed producers, processors and dispensers, and not to collective gardens. Others, like the City of Kent, believed it was a blanket authorization to legislate and regulate collective gardens.

Many others candidly expressed they did not know and enacted moratoriums on collective gardens, essentially “punting” the issue until the Legislature clarified the law - clarification which never materialized. This confusion was expressed in a June, 2011 Risk Management Bulletin issued by a law firm representing the Washington Cities’ Insurance Authority (“WCIA”). CP 444-453.³ Of note in the Bulletin, the authors opined (CP 451-52; Section 3, p.8-9) (emphasis in original):

Should local jurisdictions get involved in the zoning, regulation or licensing of “collective gardens?”

* * *

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 [sic]⁴ 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.

As a result of the confusion, collective gardens, as well as a number of profit-oriented dispensaries purporting to be collective gardens, began sprouting up across the state, and cities and counties scrambled to

³ As the Bulletin was written by a law firm, it does not have the force of law. Appellant does not adopt or agree with other portions of the Bulletin’s analysis, but presents it to demonstrate the confusion about SB 5073, as well as the City of Kent’s notice of its admonition against banning collective gardens.

⁴ Section 403.

either embrace or reject them. This confusion still exists today, as cities like Kent ban collective gardens, cities like Seattle embrace them by taxing them and issuing business licenses (Seattle Ordinance 123661), cities like Olympia impose moratoriums against new collective gardens while allowing pre-existing ones to continue (Olympia Ordinance 6851), and other cities enact and re-enact moratoriums or allow collective gardens to operate subject to a variety of restrictions. The present appeal involves Kent’s complete ban on collective gardens.

C. The Passage of Kent Ordinance 4036.

In 2011, the City received more than one warning that cities could not ban collective gardens. In addition to the WCIA bulletin, another attorney consultant warned Kent that banning collective gardens was “risky” because SB 5073 “appears to allow collective gardens” and a ban could result “in a pre-emption lawsuit.” CP 97.

In spite of these admonitions, on June 5, 2012, the City of Kent passed Ordinance 4036 (hereinafter “the ordinance”), which was entitled, in relevant part, “AN ORDINANCE . . . specify[ing] that medical cannabis collective gardens are not permitted in any zoning district within the city of Kent.” CP 222-229 (a copy of the ordinance is attached as “Appendix B”). The ordinance, which specifically targeted collective gardens, admitted (Recital B):

Section 69.51A.085 RCW allows “qualifying patients” to create and participate in “collective gardens” for the purpose of producing, processing, transporting, and delivering cannabis for medical use, subject to certain conditions.

The ordinance asserted that RCW 69.51A.140 “delegates authority” to cities to adopt and enforce zoning restrictions for the production, processing or dispensing of medical cannabis within their jurisdictions (Recital C), and that the City was exercising “the authority granted pursuant to state law” by enacting the ordinance (Recital E).

Section One of the ordinance amended the Kent City Code (“KCC”) by creating a new section, KCC 15.02.074, which defined a collective garden. The code section differed from RCW 69.51A.085 in several respects: (a) although state law subjected collective gardens to five enumerated conditions, KCC 15.02.074 imposed additional conditions; namely, the requirement that separate areas for growing, processing and delivering marijuana be part of the same premises and located on the same parcel or lot, and that only one collective garden could be located on a single tax parcel, KCC 15.02.074 (F)-(G); (b) it eliminated RCW 69.51A.085(2) and (3), including (3)’s willfulness requirement and reference to the protections afforded by Chapter 69.51A; and (c) it eliminated the opening language of RCW 69.51A.085(1), which stated, “Qualifying patients may create and participate in collective gardens. . .”

Section Two of the ordinance prohibited collective gardens from all zoning districts, thereby prohibiting anyone from establishing a collective garden within the city limits, and declared that any violation could be enforced under KCC Chapter 1.04. KCC 1.04.030 makes each day, or portion thereof, the KCC is violated a separate violation and each violation a misdemeanor, meaning that anyone who established or operated a collective garden within the city limits could be imprisoned for up to 90 days for each day of operation. The effect of the ordinance was that (1) collective gardens were banned within the city limits; and (2) anyone forming, operating or participating in a collective garden was subject to civil penalties and imprisonment.

The ordinance made no mention of, or reference to, Chapter 69.51A's affirmative defense, or to any other defense to a charge instituted pursuant to KCC 1.04.030. In fact, RCW 69.51A's affirmative defense is not mentioned anywhere in the City Code. The apparent result of this combination of laws was that collective garden operators and their members could be imprisoned for up to 90 days per day of operation based on no more than a showing that they had operated or participated in a collective garden within the city limits.

D. The Legal Challenge to Kent Ordinance 4036.

On the day Ordinance 4036 was passed, several pro se plaintiffs, including Mr. Sarich, sued the City in King County Superior Court. CP 1-18.⁵ As set forth in the Amended Complaint (CP 19-34), the plaintiffs either already operated a collective garden within the city limits (Tsang) or were in the process of establishing and/or participating in collective gardens within the city limits (Sarich). CP 20, 25.

The Complaint asserted that state law allowed qualified persons to form and participate in collective gardens, that the City's ordinance was in conflict with RCW 69.51A.085 and the Washington Constitution, and that the Legislature did not authorize the City's action. CP 21-22. Plaintiffs sought a declaratory judgment that (a) the ordinance violated state law and the state constitution, and was therefore void, and (b) the City lacked authority to prohibit collective gardens. CP 23. The plaintiffs also sought a writ of mandamus to compel the City to vacate the ordinance and a writ of prohibition to prohibit any future bans. The City's Answer admitted that RCW 69.51A.085 allowed collective gardens, CP 665 (¶B.4), and that its ordinance prohibited collective gardens, CP 660 (¶3.3).

⁵ The plaintiffs also named additional parties as defendants, who were dismissed at summary judgment. The dismissals of the other defendants are not challenged in this appeal.

After numerous motions, declarations and other pleadings were filed by the respective parties, cross-motions for summary judgment were heard on October 5, 2012. The superior court denied the plaintiffs' motion for summary judgment and granted the City's motion for summary judgment. CP 558-62.

The court also issued a permanent injunction, albeit without findings of fact. CP 553-54. The injunction was not limited to Mr. Tsang, who had been operating a collective garden in Kent, but applied to all the plaintiffs, prohibiting them from taking any actions that might constitute "future non-compliance with Ordinance 4036."

After the court summarily denied the plaintiffs' motion for reconsideration, the plaintiffs appealed the superior court's orders to this Court, and simultaneously sought direct review by the Supreme Court. In December, 2012, the Supreme Court issued a temporary stay, based on the apparent conflict between the ordinance and RCW 69.51A.085. In June, 2013, the Supreme Court declined direct review and returned the matter to this Court.

IV. SUMMARY OF ARGUMENT.

The Uniform Declaratory Judgments Act has broad application and is liberally construed. Since Appellant's rights and legal relations were affected by the ordinance, and since standing requirements are relaxed in

declaratory judgment actions, the court erred by concluding he lacked standing.

As shown by the plain language of RCW 69.51A.085, as well as the fact that it is the only statute that mentions collective gardens, the Legislature viewed collective gardens as distinct from the proposed State-licensed entities. The language and purpose of SB 5073 demonstrate the intent of RCW 69.51A.140 was to provide authority over State-licensed producers, processors and dispensers (entities which do not exist due to the former Governor's partial veto), not collective gardens. The Legislature did not delegate legislative authority over collective gardens to local jurisdictions, and certainly did not authorize cities like Kent to ban the same entities it authorized.

The field of medical marijuana has historically been the exclusive province of state law. RCW 69.51A.085, the only state law which mentions collective gardens, permits collective gardens, and makes no reference to them being subject to local laws or regulations. Chapter 69.51A's "Purpose and Intent" section expresses the intent to facilitate access to medical marijuana without fear of civil or criminal penalties. There is no room for concurrent jurisdiction and state law preempts the field of collective gardens.

The City acknowledged in its ordinance that RCW 69.51A.085 allowed collective gardens, but then prohibited those same entities. The ordinance also defined collective gardens in a manner that contradicted state law, eliminated important portions of state law, and imposed criminal and civil penalties for conduct which is permissible under state law, apparently with no affirmative defense.

By banning collective gardens, eliminating entire sections of state law, and subjecting collective gardens participants to criminal sanctions and civil consequences, the ordinance conflicts with the language of RCW 69.51A.085 and the intent of Chapter 69.51A. Therefore, it violates Article XI, Section 11 of the Washington Constitution.

V. ARGUMENT.

A. DE NOVO STANDARD OF REVIEW.

Whether an ordinance is reasonable, local, or conflicts with a general law for purposes of Article XI, Section 11 of the Washington Constitution is purely a question of law subject to de novo review. See City of Seattle v. Williams, 128 Wn.2d 341, 346-47, 908 P.2d 359 (1995). De novo review also governs statutory construction, Nelson v. Appleway Chevrolet, Inc., 160 Wn.2d 173, 179, 157 P.3d 847 (2007), as well as orders granting or denying summary judgment, Macias v. Saberhagen Holdings, Inc., 175 Wn.2d 402, 282 P.3d 1069, 1073 (2012).

B. THE SUPERIOR COURT ERRED BY CONCLUDING APPELLANT LACKED STANDING TO CHALLENGE THE ORDINANCE.

The superior court's conclusion that Mr. Sarich lacked standing to challenge the City's ordinance failed to account for the nature of the relief being sought in the action, the language and liberal construction of the Uniform Declaratory Judgments Act (UDJA), and corresponding case law.

RCW 7.24.010 authorizes the courts "to declare rights, status and other legal relations whether or not further relief is or could be claimed."

RCW 7.24.020 further provides, in relevant part:

A person ... whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

Declaratory procedure "is peculiarly well suited to the judicial determination of controversies concerning constitutional rights and, as in this case, the constitutionality of legislative action or inaction." Seattle School Dist. No. 1 of King County v. State, 90 Wn.2d 476, 490, 585 P.2d 71 (1978). The Legislature intended that the UDJA be applied liberally. Nelson v. Appleway Chevrolet, Inc., supra, at 185; RCW 7.24.120 (UDJA's purpose "is to settle and to afford relief from uncertainty and

insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered”).

Standing requires a party to demonstrate (1) that it falls within the zone of interests that a statute or ordinance protects or regulates and (2) that it has or will suffer an injury in fact, economic or otherwise, from the proposed action. American Traffic Solutions, Inc. v. City of Bellingham, 163 Wn.App. 427, 432-33, 260 P.3d 245 (Div. I 2011) (quoting Nelson v. Appleway Chevrolet, Inc., supra). When ruling on a motion to dismiss for lack of standing, the courts “must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party.” Warth v. Seldin, 422 U.S. 490, 501, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). This is consistent with the liberal construction mandated by Washington’s civil rules. CR 8(f) (“All pleadings shall be so construed as to do substantial justice”); CR 1 (civil rules “shall be construed and administered to secure the just, speedy, and inexpensive determination of every action”).

The Complaint, which Mr. Sarich personally signed, stated: (1) the individual plaintiffs “have suffered specific and particular harm,” CP 22-23; (2) that their right to form and participate in collective gardens was affected by the controversy, CP 21-23; and (3) that “each of them are

involved in the process of establishing and/or joining collective gardens in the City of Kent, and are adversely impacted by the decision,” CP 25.

Standing does not require that a person violate the law in order to challenge it; rather, the plaintiff must demonstrate it had “or will” suffer an injury in fact, economic or otherwise. Construing the complaint in Mr. Sarich’s favor, he was in the process of establishing and/or participating in a collective garden in the City, an action which the City’s ordinance prohibited and made subject to both civil (economic) and criminal penalties. His participation in a collective garden certainly fell within the zone of interests the ordinance targeted. Although he did not reside in Kent, that did not deprive him of standing to challenge the ordinance, whose application was not limited to city residents, but applied to non-residents participating in collective gardens within the city limits. His standing was further supported by Mr. Tsang’s declaration (see CP 557):

This Ordinance adversely impacts the [sic] myself and the other plaintiffs because it completely bans collective gardens in the City of Kent, and we all intended to associate in this lawful manner within the City limits of Kent. . .

The UDJA allows any person whose “rights, status, or other legal relations are affected” by an ordinance to challenge it. Appellant’s statutory right to participate in a collective garden and his legal relations with other members of the garden were affected by the ordinance. In

declaratory judgment actions, “[p]ast unrealistically strict considerations of ‘standing’ have been eroded thus permitting broader factual ‘interests’ to give rise to standing.” Seattle School Dist. No. 1 of King County at 493. In light of Warth and the broad application of RCW 7.24.020, the Court should conclude the dismissal for lack of standing was erroneous.

Furthermore, for over 40 years, it has been well-established that, even if the issue of standing is debatable, the Washington courts will address the issues if they “involve significant and continuing matters of public importance that merit judicial resolution.” American Traffic Solutions at 433; *accord* Farris v. Munro, 99 Wn.2d 326, 330, 662 P.2d 821 (1983) (addressing challenge to state lottery even though plaintiff lacked standing, explaining, “[w]here a controversy is of serious public importance and immediately affects substantial segments of the population and its outcome will have a direct bearing on the commerce, finance, labor, industry or agriculture generally, questions of standing to maintain an action should be given less rigid and more liberal answer”); Seattle School Dist. No. 1 of King County at 490 (“[w]here the question is one of great public interest and has been brought to the court's attention with adequate argument and briefing, and where it appears that an opinion of the court will be beneficial to the public and to other branches of the

government, the court may exercise its discretion and render a declaratory judgment to resolve a question of constitutional interpretation”).

This appeal involves significant issues of public importance, immediately affects substantial segments of the population (medical marijuana patients and providers), and has a direct bearing on commerce and agriculture. Since the state laws at issue apply throughout Washington, the issues presented in this case affect anyone operating, or planning to operate, a collective garden, as well as any patients who obtain their medical marijuana from a collective garden. Whether state law allows counties and cities to ban collective gardens is an issue of public importance which impacts patients and providers throughout the state.

Declaratory relief should be provided where there is uncertainty about a law’s application, and the parties and the public will benefit from “clarification of the applicable constitutional and statutory provisions.” Seattle School Dist. No. 1 of King County at 490. In addition to the UCIA Bulletin quoted *supra*, which was issued to Kent and other cities to address the statewide confusion, the City of Kent’s Supreme Court brief conceded, “[t]here has been a significant amount of uncertainty throughout Washington” about SB 5073’s application. Brief of Respondent (3/18/13) at p.6; see also CP 143. Given the Legislature’s inaction since 2011, it should be beyond dispute that the parties in this appeal, the 39 counties

and countless cities throughout Washington, and the public will benefit from clarification of the applicable statutory and constitutional provisions involved in this action.

Finally, the City's claim that the plaintiffs lacked standing to challenge the ordinance was incongruous with its request for an injunction. Moreover, if the plaintiffs somehow lacked standing to challenge the ordinance when they filed the action, they certainly have standing now that they are permanently enjoined from taking any action that might violate that ordinance, with the attendant threat of civil and criminal penalties. For all the reasons set forth above, the Court should conclude Appellant had standing and decide this appeal on the merits.

C. CITIES DO NOT POSSESS LEGISLATIVE AUTHORITY OVER COLLECTIVE GARDENS.

1. The Court Must Give Effect to a Statute's Plain Language.

When interpreting a statute, the court must first look to its language. State v. Jones, 168 Wn.2d 713, 722, 230 P.3d 576 (2010); Cerrillo v. Esparza, 158 Wn.2d 194, 201, 142 P.3d 155 (2006). If a statute is clear on its face, "its meaning is to be derived from the language of the statute alone." Kilian v. Atkinson, 147 Wn.2d 16, 20, 50 P.3d 638 (2002). Where "the plain language of a statute is unambiguous and legislative intent is apparent, [the courts] will not construe the statute otherwise."

Anthis v. Copland, 173 Wn.2d 752, 756, 270 P.3d 574 (2012); Cerrillo at 201. An unambiguous statute is not subject to statutory construction and the courts have “declined to add language to an unambiguous statute even if it believes the Legislature intended something else but did not adequately express it.” Kilian at 20.

Courts may employ tools of statutory construction to ascertain its meaning only if the statute is ambiguous. A statute “is ambiguous if it can be reasonably interpreted in more than one way, but it is not ambiguous simply because different interpretations are conceivable.” Id. at 20-21.

Courts “may not read into a statute matters that are not in it and may not create legislation under the guise of interpreting a statute.” Id. at 21. As explained below, the plain language does not authorize the City’s ban on collective gardens.

2. SB 5073 Distinguished Collective Gardens from Licensed Producers and Dispensers.

SB 5073 made clear distinctions between “collective gardens” and “licensed” producers and dispensers. The two types of entities were not only defined and addressed in different sections, they were also treated very differently.

Section 201, which was intended to amend RCW 69.51A.010 (RCW 69.51A’s definition section), contained definitions of “dispense,”

“licensed dispenser,” “licensed processor of cannabis products,” “licensed producer,” “processing facility,” and “production facility.” These terms, and their grammatical variations, are the same terms used in Section 1102(1) [RCW 69.51A.140] and numerous other sections pertaining to the State-licensed entities. By contrast, collective gardens were defined and addressed in one, and only one, section: Section 403 [RCW 69.51A.085].

According to SB 5073, the only way to become a licensed producer, processor or dispenser was to obtain a license from the Department of Health.⁶ See Section 701. However, as a result of the Governor’s partial veto, no licenses were issued, nor will any be issued, by the department. Thus, because there is no such thing as a Department-issued license, there is no such thing as a licensed producer, licensed processor or licensed dispenser. Those entities simply do not exist under state law. Had the Governor signed the bill as passed, the law would have given cities legislative authority over those State-licensed businesses. However, there was no such intent in the case of collective gardens.

The two most important distinctions between collective gardens and the State-licensed entities were: (1) a separate law was created for collective gardens; and (2) collective gardens were excluded from the State licensing framework. Had the law been signed as passed, “licensed

⁶ The licenses to be issued pursuant to I-502 will be issued by a different agency, the Liquor Control Board.

dispensers” would have been required to obtain licenses from the Department of Health; collective gardens had no such licensing requirement. If the Legislature had intended to treat collective gardens the same way as the licensed businesses, it would not have created a section exclusively dealing with them and excluded them from the licensing requirement.

A further distinction between the two types of entities is provided by their nature. As reflected in the statute, collective gardens are a form of resource pooling by their members to provide medical marijuana among the limited number of contributing members. See RCW 69.51A.085(1)(e) (no useable cannabis may be delivered to anyone who is not a patient and garden member). By contrast, the licensed dispensers would have been at the end of the State-run retail chain with potentially unlimited customers.

3. RCW 69.51A.085 Makes No Reference to Local Laws or Jurisdictions.

The Legislature addressed, and imposed five specific conditions on, collective gardens in Section 403. The list is exhaustive; there is no reference to any other conditions or indication that “other applicable” rules or regulations would apply. Applying the principle of *expressio unius est exclusio alterius*, the enumeration of the five conditions means there are no other conditions or requirements for collective gardens.

RCW 69.51A.085 makes no reference to compliance with - or non-compliance with - applicable local laws or regulations; the statute is self-contained. It is worth noting that none of the earlier versions of Section 403 made any reference to local laws or jurisdictions either. As explained more fully in D.1, *infra*, the fact that RCW 69.51A.085 only refers to the enumerated conditions, and makes no reference to local laws or jurisdictions, means that it does not grant authority to local governments. See Bellingham v. Schampera, 57 Wn.2d 106, 113-14, 356 P.2d 292 (1960) (statute's reference to "violations of the provisions of this title" referred to state statutes, not municipal ordinances, so it did not grant legislative power to the cities).

RCW 69.51A.085 – the only law which addresses collective gardens - contains no language whatsoever that would grant cities or counties legislative authority over collective gardens. See discussion, D.1, *infra*. Thus, not only is there no positive grant of authority, the absence of any reference to local governments or laws in RCW 69.51A.085 precludes any possible authority.

4. RCW 69.51A.140 Does Not Delegate Legislative Authority Over Collective Gardens to Local Jurisdictions.

As the Supreme Court explained over 50 years ago, "a municipal corporation, being but a creature of the state, derives its existence, powers,

used in the vetoed regulatory scheme – “production, processing and dispensing” – further confirms that Section 1102 was dependent on the vetoed sections which defined the terms and spelled out the rights and obligations of the licensed entities.

In this regard, it is significant that the only context in which the phrase “producer, processor or dispenser” – or one of its grammatical variations - was used in SB 5073 was in reference to the State-licensed entities. See Sec. 301, 412, 801, 802, 804, 901, 902. In fact, Parts VIII and IX of the Act specified their provisions applied to “LICENSED PRODUCERS, PROCESSORS, AND DISPENSERS” (capitals in original).

The plain language of RCW 69.51A.140 shows the Legislature intended to give local governments legislative authority over those dispensaries the State would have licensed pursuant to the law’s regulatory scheme. However, the Legislature did not intend to allow local governments to regulate and impose additional conditions on collective gardens. Had that been the intent, the Legislature could easily have included “collective gardens” in Section 1102 or included a reference to Section 1102 in Section 403. By its language, the authority set forth in the statute only extends to “dispensers.” Since collective gardens do not

and duties from the legislative body of the state.” City of Tacoma v. Taxpayers of Tacoma, 49 Wn.2d 781, 796, 307 P.2d 567 (1957). A city, therefore, lacks power to legislate in a particular area absent a grant or delegation of such power by the Legislature. Sundquist Homes, Inc. v. Snohomish County Public Utility Dist. No. 1, 140 Wn.2d 403, 410, 997 P.2d 915 (2000) (municipal authorities cannot exercise powers except those expressly granted, or those necessarily implied from granted powers). If there is a doubt as to whether a power is granted to a municipal corporation, it must be denied. Port of Seattle v. Washington Utilities and Transp. Commission, 92 Wn.2d 789, 794-95, 597 P.2d 383 (1979).

A legislative grant to local governments may not be implied in the absence of language in the statute. For example, in Schampera, the Court refused to find a legislative grant of power to revoke driver’s licenses for violations of city ordinances because the statute at issue only gave municipal judges concurrent authority over violations of Title 46 (phrased in the statute as “this title”), which did not include municipal codes. Schampera at 113-14.

A first class city’s power to legislate “ends when the legislature adopts a law concerning a particular interest, unless the legislature has left room for concurrent jurisdiction.” Heinsma v. City of Vancouver, 144

Wn.2d 556, 560, 29 P.3d 709 (2001); Lenci v. City of Seattle, 63 Wn.2d 664, 669, 388 P.2d 926 (1964). When “the state’s interest is paramount or joint with the city’s interest, the city may not enact ordinances affecting the interest unless it has delegated authority.” Heinsma at 560; Massie v. Brown, 84 Wn.2d 490, 492, 527 P.2d 476 (1974). As explained in Section D.1, *infra*, the Legislature did not leave room for concurrent jurisdiction over collective gardens. As evidenced by the history of Chapter 69.51A, the State’s interest in medical marijuana is paramount.

While the Section 1102 mentions the ability of cities to adopt zoning, taxing and licensing requirements, the language demonstrates the section cannot be read in isolation. When read *in pari materia*, it is evident that this section was a part of the extensive regulatory system the bill sought to create, and was intended to apply to those entities that would have been licensed by the State to produce, process or dispense cannabis.

Section 1102 refers to imposing conditions or requirements upon “licensed dispensers.” That term, which as explained previously, has no meaning in Washington law due to the Governor’s partial veto, is used three separate times. The City must concede the second and third sentences of RCW 69.51A.140(1), which comprise more than half the statutory text, were only intended to apply to the proposed State-licensed entities. The fact that the first sentence uses the same three-word phrase

“dispense,” RCW 69.51A.140 does not delegate legislative authority over them.

In order to uphold the ordinance as authorized by state law, the Court would have to add “collective gardens” to the language of RCW 69.51A.140, even though the Legislature chose to omit collective gardens from Section 1102 and chose to address them separately in Section 403. The courts have consistently held that language may not be added to an unambiguous statute. State v. Delgado, 148 Wn.2d 723, 727, 63 P.3d 792 (2003) (“[w]e cannot add words or clauses to an unambiguous statute when the legislature has chosen not to include that language”); Killian at 20. Doing so would significantly change the language, meaning and scope of the statute by giving local jurisdictions authority over collective gardens when the language confers no such authority.

In ascertaining legislative purpose, statutes which stand *in pari materia* are to be read together as constituting a unified whole, to the end that a harmonious, total statutory scheme evolves which maintains the integrity of the respective statutes.” Hallauer v. Spectrum Properties, Inc., 143 Wn.2d 126, 146, 18 P.3d 540 (2001) (quoting State v. Wright, 84 Wn.2d 645, 650, 529 P.2d 453 (1974)). Courts also consider the sequence of all statutes relating to the same subject matter. Id.

As demonstrated by the language of the two statutes, RCW 69.51A.085 applies to collective gardens, while RCW 69.51A.140 would have applied to the State-licensed businesses. This is the only interpretation that will maintain the integrity of RCW 69.51A.085 and honor the pre-2011 sequence of statutes.

Where concurrent general and special acts are *in pari materia* and cannot be harmonized, the latter will prevail, unless it appears that the Legislature intended to make the general act controlling. Wark v. Washington Nat. Guard, 87 Wn.2d 864, 867, 557 P.2d 844 (1976). Where “the general statute, if standing alone, would include the same matter as the special act and thus conflict with it, the special act will be considered as an exception to, or qualification of, the general statute.” Id. In the present case, the City’s claim that RCW 69.51A.140 includes collective gardens creates a conflict with RCW 69.51A.085, which makes no mention of local laws or jurisdictions. Since there is no evidence the Legislature intended to make RCW 69.51A.140 controlling – if anything, the evidence is to the contrary - the specific statute must prevail.

5. Neither the Language Nor Intent of RCW 69.51A.140 Authorizes Cities to Ban Collective Gardens.

It is highly unlikely that the Legislature intended to allow cities to prohibit the same entities it authorized in another section of the same bill.

More importantly, there is absolutely nothing in the statutory language that would support the City's ban.

RCW 69.51A.140(1) enumerates four things that cities may adopt and enforce: “[z]oning requirements, business licensing requirements, health and safety requirements, and business taxes.” None of the enumerated options even hint that a ban is permissible; to the contrary, they are all requirements or conditions that may be imposed. The dictionary defines “requirement” as “something called for or demanded; a condition which must be complied with.” *Oxford English Dictionary*, Vol. 2, at 2542 (5th ed. 2002); *Black's Law Dictionary* at 904 (6th ed. 1991) (defining “require” as “[t]o ask for authoritatively or imperatively”). It seems illogical that a city could “require” something from a prohibited entity.

The City's ban is also at odds with pre-SB 5073 legislative intent. When the Legislature amended RCW 69.51A in 2007, its statement of intent provided:

The legislature intends to clarify the law on medical marijuana so that the lawful use of this substance is not impaired and medical practitioners are able to exercise their best professional judgment in the delivery of medical treatment, qualifying patients may fully participate in the medical use of marijuana, and designated providers may assist patients in the manner provided by this act without fear of state criminal prosecution. This act is also intended to provide clarification to law enforcement and to all participants in the judicial system.

Chapter 371, Laws of 2007, §1.

This statement of intent still appears after the text of RCW 69.51A.005, the chapter's "Purpose and Intent" section. Not only was the City's ban not authorized by the 2011 law, it is contrary to the pre-2011 legislative intent to "not impair[]" the lawful use of marijuana, allow patients to "fully participate in the medical use of marijuana," and allow providers to assist patients "without fear of state criminal prosecution."

6. Conclusion.

The plain language of RCW 69.51A.085 does not delegate legislative authority over collective gardens to local jurisdictions or subject them to local laws. The Legislature did not intend RCW 69.51A.140 to encompass collective gardens, as evidenced by their omission from its language and the specific language used. The specific statute, RCW 69.51A.085, must prevail over the general law. There is nothing in either statute that could support the City's ordinance banning collective gardens, and the ban is contrary to the intent of Chapter 69.51A.

D. THE ORDINANCE CONFLICTS WITH STATE LAW IN VIOLATION OF ARTICLE XI, SECTION 11 OF THE WASHINGTON CONSTITUTION.

Article XI, Section 11 of the Washington Constitution provides, "Any 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.” Article XI, section 11 requires a local law yield to a state statute on the same subject matter on either of two grounds: if the statute “preempts the field, leaving no room for concurrent jurisdiction, or if a conflict exists such that the two cannot be harmonized.” City of Tacoma v. Luvene, 118 Wn.2d 826, 833, 827 P.2d 1374 (1992); Brown v. City of Yakima, 116 Wn.2d 556, 559, 807 P.2d 353 (1991). If a city or county enacts a law which conflicts with state law, it is unconstitutional and of no effect.

1. The State Has Preempted the Field of Medical Marijuana.

Preemption occurs “when the Legislature states its intention expressly, or by necessary implication, to preempt the field.” Luvene at 833; Brown at 560. Where there is no expressly stated intention to preempt the field, “the court may look to the purposes of the statute and to the facts and circumstances upon which the statute was intended to operate.” Id.

In Brown, the Court considered a challenge to a municipal ordinance that was more restrictive than state law as to the dates and times fireworks may be sold or used. Brown at 558-59. The Court concluded the municipal ordinance was not preempted because state law expressly

granted municipalities concurrent jurisdiction over fireworks regulation. Id. at 560 (state law referred to “local rules adopted by local authorities”).

Similarly, in Luvene, the Court considered a challenge to the City’s “drug loitering” law and concluded that, while RCW 69.50.608 expressly preempted the field of setting penalties for violations of RCW 69.50, there was no intent to preempt local criminal laws because “the statute expressly grants some measure of concurrent jurisdiction to municipalities.” Luvene at 834. As in Brown, because the statute explicitly referenced “ordinances relating to controlled substances,” it expressly contemplated the existence of such ordinances. Id. As a result, the city was entitled to enact an ordinance prohibiting “drug loitering.”

In Rabon v. City of Seattle, 135 Wn.2d 278, 957 P.2d 621 (1998), the Court considered a challenge to a municipal ordinance pertaining to dangerous dogs. Again, the Court explained the state law “specifically provid[ed] that ‘potentially dangerous’ dogs are to be regulated locally,” and that state law “expressly provide[d] that sole jurisdiction over ‘potentially dangerous’ dogs lies with local government.” Rabon at 290. The law at issue stated dangerous dogs “shall be regulated only by local, municipal, and county ordinances.” Id. at 288.

Finally, in Lawson v. City of Pasco, 168 Wn.2d 675, 230 P.3d 1038 (2010), the Court held the MHLTA did not preempt a local

ordinance regulating mobile homes because “certain provisions of the MHLTA expressly contemplate some local regulation of manufactured/mobile home tenancies.” Lawson at 680. Thus, state law allowed for concurrent jurisdiction. Id. at 680-81.

RCW 69.51A.085 stands in stark contrast to the statutes in the aforementioned cases. Unlike the statutes in those cases, RCW 69.51A.085 makes no reference to local laws, local rules, or even to local governments. It, therefore, leaves no room for concurrent jurisdiction over collective gardens.

As stated *supra*, in the absence of express intent, the court may consider the purposes of the statute and its context. Brown; Luvane, *supra*. By making Section 403 the only provision addressing collective gardens, making no reference to local laws or other requirements, and omitting any mention of collective gardens in Section 1102, the Legislature made clear that Section 403 contains the only requirements for collective gardens. The same would be true had SB 5073 been signed into law as passed, as none of the vetoed sections imposed any additional requirements on, or even mentioned, collective gardens.

Medical marijuana has been exclusively governed by state law since 1998. State law provides the exclusive basis by which it can be determined whether a person qualifies as a patient or provider, and no

local jurisdiction may define whether a person is “authorized” to use medical marijuana. In addition, the availability of the affirmative defense to criminal prosecution is governed exclusively by state law. RCW 69.51A.040. A city or county could not pass an ordinance that altered the availability of the affirmative defense, such as requiring patients to register with the City or take other actions not required by the statute.

Preemption of medical marijuana is further evidenced by the SB 5073-created statutes precluding civil and criminal penalties for the medical use of cannabis. RCW 69.51A.005(2) provides that qualifying patients, designated providers and health care professionals “shall not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences under state law” for actions taken in accordance with Chapter 69.51A. Likewise, RCW 69.51A.040 states the medical use of cannabis “does not constitute a crime” and that qualified patients and providers “may not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences” for their medical use of cannabis. While this may not rise to the level of express preemption, it is strong evidence that the Legislature intended that those who participate in collective gardens should not fear civil or criminal penalties from cities like Kent.

In City of Spokane v. Portch, 92 Wn.2d 342, 596 P.2d 1044 (1979), the Court held that, although state law was silent on excluding

local government from legislating on the subject of obscenity, state obscenity laws preempted local law because uniform laws were necessary to avoid infringement of First Amendment rights. Portch at 347. While there is no constitutional right to use marijuana, uniformity in this area is necessary to avoid infringement of RCW 69.51A's statutory and constitutional rights, including the affirmative defense. It is evident from the language of RCW 69.51A.085, as well as the absence of any reference to local laws or jurisdictions, that collective gardens were intended to be governed by state law. Allowing cities to unilaterally ban or add more conditions to their operation would be contrary to the uniformity requirement and result in collective gardens being treated differently based solely on their location.

The field of medical marijuana has been governed by state law since its inception. Given the need for statewide uniformity, the constitutional right to the affirmative defense, and the legislative intent to preclude civil and criminal penalties for the medical use of marijuana, the Court should conclude that, absent a specific delegation of authority, the field of medical marijuana is preempted by state law. In addition, the Court should hold that, absent a reference to local laws or local jurisdictions in RCW 69.51A.085, there is no concurrent jurisdiction and legislation pertaining to collective gardens is preempted by state law.

2. The Ordinance Conflicts with Multiple State Laws.

There can be no doubt that the City's ordinance targets collective gardens, as it explicitly refers to them. Since there is a state law specifically covering collective gardens, if the ordinance conflicts with that law, it is without effect. Wash. Const., Art. XI, §11.

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." Luvene at 834-35 (quoting Bellingham v. Schampera, 57 Wn.2d 106, 356 P.2d 292 (1960)). In Luvene, the Court explained that, because the Tacoma ordinance did not prohibit the same conduct as the state law at issue, there was no irreconcilable conflict. Luvene at 835. In both Brown and Rabon, the Court found there was no conflict because both laws were prohibitive in nature and local laws could go further in their prohibition. Rabon at 292-93; Brown at 562-63. Unlike the statutes in those cases, RCW 69.51A.085 is not prohibitive in nature, it is permissive.

A local ordinance prohibiting certain behavior conflicts with a state law when the language of the state law expressly or implicitly permits the behavior. State v. Fisher, 132 Wn.App. 26, 32, 130 P.3d 382 (Div. I 2006), *rev. denied*, 158 Wn.2d 1021 (2006) (citing State ex rel. Schillberg v. Everett Dist. Justice Court, 92 Wn.2d 106, 108, 594 P.2d 448

(1979)). In contrast to Fisher and Schillberg, where there were “no express statement[s] nor words from which it could be fairly inferred” that the conduct at issue was permitted by state law, Id., here there is such language. RCW 69.51A.085 states that “[q]ualifying patients **may** create and participate in collective gardens. . .” (emphasis added).

State law permits participation in collective gardens. However, that same participation is forbidden in the City of Kent. In other words, what the state law permits is prohibited by the City of Kent’s ordinance. The conflict with state law is not limited to RCW 69.51A.085.

As detailed in the Statement of the Case section (p.10), the ordinance also altered the definition of collective garden in RCW 69.51A.085. CP 666 (¶B.12). Not only did it add new conditions not mentioned in the statute - which is curious, given that the City banned collective gardens – it eliminated (2) and (3) of the statute. The effect appears to be the elimination of the affirmative defense provided by Chapter 69.51A.

Another source of conflict with state law is evidenced by the City’s decision to penalize participation in a collective garden. The ordinance did not merely prohibit collective gardens; the City chose to go further and subject collective garden participants to both criminal penalties and civil consequences. Ord. 4036, Sec. 2; KCC 1.04.030. The threat of criminal

prosecution is very real, as evidenced by the City's prosecution of Mr. Tsang and its post-ordinance letters threatening civil and criminal penalties. CP 721-25, 732-33. Such penalties are contrary to the decriminalization and prohibition on criminal penalties and civil consequences established by the same bill the City cited as justification for its ordinance. RCW 69.51A.005(2); RCW 69.51A.040.

In fact, the prohibition on civil and criminal penalties amended RCW 69.51A.005(2), the "Purpose and Intent" section. It is difficult to imagine a clearer statement of legislative intent than having the second section of a bill amend the chapter's intent section, especially when coupled with the 2007 statement of intent quoted in C.5, *supra*. Consequently, the City's ordinance conflicts with the entire chapter's legislative intent.

Finally, the ordinance also conflicts with RCW 69.51A.025, which provides:

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.

The City's ordinance, however, asserts that one of the provisions of the chapter (RCW 69.51A.140) allows it to preclude patients and

providers from engaging in that very conduct. By doing so, the ordinance conflicts with RCW 69.51A.025.

Even though RCW 69.51A.040 states the medical use of cannabis in accordance with RCW 69.51A “does not constitute a crime,” and RCW 69.51A.005 states patients and providers “may not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences” for their medical use of cannabis, in the City of Kent, providers and patients are subjected to prosecution and both criminal sanctions and civil consequences for participating in a collective garden (the medical use of cannabis). This is contrary to the statutory language, and the purpose and intent, of Chapter 69.51A.

The language of the City’s ordinance creates an irreconcilable conflict with state law. As the ordinance admits, state law “allows ‘qualifying patients’ to create and participate in ‘collective gardens.’” By direct contrast, the ordinance specifies “that medical cannabis collective gardens are not permitted in any zoning district within the city of Kent.” The City admitted below that its ordinance bans collective gardens. CP 143, 660 (¶3.3). City law forbids what state law allows. Therefore, the ordinance conflicts with state law and violates Article XI, Section 11 of the Washington Constitution. The Court should hold the ordinance is void and without effect.

3. The Ordinance's Removal of Chapter 69.51A's Affirmative Defense Conflicts with State Law.

As explained *supra*, state law has afforded an affirmative defense for medical marijuana cases since 1998, leaving no room for concurrent jurisdiction. RCW 69.51A.085(3) references the protections of Chapter 69.51A, which includes the affirmative defense. However, the City's ordinance eliminated RCW 69.51A.085(3). The ordinance and resulting city code section do not allow, or even mention, the affirmative defense provided for in RCW 69.51A. In this regard, it is significant that the City has adopted a number of sections from RCW 69.50, but none from RCW 69.51A. See KCC 9.02.150. By eliminating the statute's mens rea requirement and reference to the chapter's protections, the ordinance conflicts with state law by depriving those charged – whether civilly or criminally – of the affirmative defense established by state law.

F. THE COURT ERRED BY ISSUING A PERMANENT INJUNCTION.

With respect to injunctions, the Supreme Court has explained: An injunction is distinctly an equitable remedy and is “frequently termed 'the strong arm of equity,' or a 'transcendent or extraordinary remedy,' and is a remedy which should not be lightly indulged in, but should be used sparingly and only in a clear and plain case.” Kucera v. Department of

Transportation, 140 Wn.2d 200, 209, 995 P.2d 63 (2000) (quoting 42 Am.Jur.2d Injunctions § 2, at 728 (1969)).

Accordingly, injunctive relief will not be granted where there is a plain, complete, speedy and adequate remedy at law. Id.; State v. Ralph Williams' N.W. Chrysler Plymouth, Inc., 87 Wn.2d 298, 312, 553 P.2d 423 (1976). A party seeking an injunction must show (1) that he has a clear legal or equitable right, (2) that he has a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of are either resulting in or will result in actual and substantial injury to him. Kucera at 209. A trial court's decision to grant an injunction is reviewed for abuse of discretion. Id. A trial court necessarily abuses its discretion "if the decision is based upon untenable grounds, or the decision is manifestly unreasonable or arbitrary." Id.

In the present case, the City failed to show there was no plain, complete, speedy and adequate remedy at law. In fact, the City had multiple remedies available if the ordinance was violated. In addition to referring the matter for state criminal charges, the City's own civil code provided multiple remedies: abatement under KCC 15.10.070-080, as well as imposition of civil and criminal penalties for each day of operation (KCC 1.04). The City availed itself of such a remedy when it prosecuted Mr. Tsang for operating a collective garden. Furthermore, the City

possessed additional remedies after the ordinance was passed, as evidenced by its June 22, 2012 letter to Tsang threatening those very remedies. CP 732-33.

Since the City lacked statutory authority to ban collective gardens permitted by state law, see discussion in IV.C., *supra*, it failed to establish a clear legal right to prohibit collective gardens. In that regard, the City's receipt of multiple admonitions that it could not ban collective gardens, CP 97, 451-52, arguably precluded a finding of a "clear legal right" to ban them. In addition, in the one page of the City's motion devoted to the injunction, the City failed to make any showing that Mr. Sarich's desire to open a collective garden would result in actual and substantial injury to the City. CP 167-68.

Finally, the scope of the injunction was manifestly unreasonable. According to its terms, Mr. Sarich is forever prohibited from taking any action that could constitute "non-compliance with Ordinance 4036." Since collective gardens may be located in private residences, the effect of the injunction is that, should he purchase property in the City of Kent, he is prohibited from exercising his rights as a property owner. See CP 452 (quoted at p. 8, *supra*). Even though state law affords him the right to operate a collective garden in his home, this injunction takes away that statutory right, thereby infringing upon his rights as a property owner.

VI. CONCLUSION.

For all the reasons set forth above, the Court should reverse the superior court and hold Ordinance 4036 is not authorized by SB 5073, is preempted by state law, and conflicts with state law. Appellant respectfully requests the Court declare the ordinance void and unconstitutional and dissolve the permanent injunction.

DATED: August 30, 2013. Respectfully submitted:



JOSEPH L. BROADBENT, WSBA #25339



DOUGLAS HIATT, WSBA #21017
Attorneys for Appellant Steve Sarich

DECLARATION OF SERVICE

I, Cynthia Grill, under penalty of perjury under the laws of the state of Washington, declare as follows:

On the date and in the manner indicated below, I caused Appellants Opening Brief to be served on:

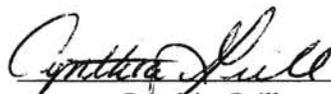
Kent City Attorney
Arthur (Pat) Fitzpatrick
Acting City Attorney
220 4th Avenue South
Kent, Washington 98032
[x] By U.S. Mail- First Class, Postage Pre-Paid

Arthur West
120 State Avenue N.E. #1497
Olympia, Washington 98501
[x] By U.S. Mail- First Class, Postage Pre-Paid

John Worthington
4500 S.E. 2nd Place
Renton, Washington 98059
[x] By U.S. Mail- First Class, Postage Pre-Paid

David Scott Mann
Gendler & Mann
1424 4th Avenue, Suite 715
Seattle, Washington 98101
(Attorney for Deryk Tsang)
[x] By U.S. Mail- First Class, Postage Pre-Paid

DATED this 30th day of August, 2013, at Seattle, Washington.



Cynthia Grill
Declarant

APPENDIX- A

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5073

Chapter 181, Laws of 2011

(partial veto)

62nd Legislature
2011 Regular Session

MEDICAL CANNABIS

EFFECTIVE DATE: 07/22/11

Passed by the Senate April 21, 2011
YEAS 27 NAYS 21

BRAD OWEN

President of the Senate

Passed by the House April 11, 2011
YEAS 54 NAYS 43

FRANK CHOPP

Speaker of the House of Representatives

Approved April 29, 2011, 3:00 p.m., 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, which are vetoed.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 5073** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

April 29, 2011

**Secretary of State
State of Washington**

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

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

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

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

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

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

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

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

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

25 (iii) Acute or chronic glaucoma;

26 (iv) Crohn's disease; and

27 (v) Some forms of intractable pain.

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

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

36 (a) Qualifying patients with terminal or debilitating ~~((illnesses))~~
37 medical conditions who, in the judgment of their health care

1 professionals, may benefit from the medical use of ((marijuana))
2 cannabis, shall not be ((~~found guilty of a crime under state law for~~
3 ~~their possession and limited use of marijuana~~)) arrested, prosecuted,
4 or subject to other criminal sanctions or civil consequences under
5 state law based solely on their medical use of cannabis,
6 notwithstanding any other provision of law;

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

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

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

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

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

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

1 PART II
2 DEFINITIONS

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

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

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

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

20 (3) "Cannabis products" means products that contain cannabis or
21 cannabis extracts, have a measurable THC concentration greater than
22 three-tenths of one percent, and are intended for human consumption or
23 application, including, but not limited to, edible products, tinctures,
24 and lotions. The term "cannabis products" does not include useable
25 cannabis. The definition of "cannabis products" as a measurement of
26 THC concentration only applies to the provisions of this chapter and
27 shall not be considered applicable to any criminal laws related to
28 marijuana or cannabis.

29 (4) "Correctional facility" has the same meaning as provided in RCW
30 72.09.015.

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

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

2 (a) Is eighteen years of age or older;

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

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

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

10 ~~(2)) in compliance with the terms and conditions set forth in RCW~~
11 69.51A.040.

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

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

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

19 (9) "Health care professional," for purposes of this chapter only,
20 means a physician licensed under chapter 18.71 RCW, a physician
21 assistant licensed under chapter 18.71A RCW, an osteopathic physician
22 licensed under chapter 18.57 RCW, an osteopathic physicians' assistant
23 licensed under chapter 18.57A RCW, a naturopath licensed under chapter
24 18.36A RCW, or an advanced registered nurse practitioner licensed under
25 chapter 18.79 RCW.

26 ~~((3))~~ (10) "Jail" has the same meaning as provided in RCW
27 70.48.020.

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

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

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

1 (14) "Licensed producer" means a person licensed by the department
2 of agriculture to produce cannabis for medical use for wholesale to
3 licensed dispensers and licensed processors of cannabis products in
4 accordance with rules adopted by the department of agriculture pursuant
5 to the terms of this chapter.

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

12 ~~((4))~~ (16) "Nonresident" means a person who is temporarily in the
13 state but is not a Washington state resident.

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

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

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

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

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

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

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

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

13 (25) "Public place" includes streets and alleys of incorporated
14 cities and towns; state or county or township highways or roads;
15 buildings and grounds used for school purposes; public dance halls and
16 grounds adjacent thereto; premises where goods and services are offered
17 to the public for retail sale; public buildings, public meeting halls,
18 lobbies, halls and dining rooms of hotels, restaurants, theatres,
19 stores, garages, and filling stations which are open to and are
20 generally used by the public and to which the public is permitted to
21 have unrestricted access; railroad trains, stages, buses, ferries, and
22 other public conveyances of all kinds and character, and the depots,
23 stops, and waiting rooms used in conjunction therewith which are open
24 to unrestricted use and access by the public; publicly owned bathing
25 beaches, parks, or playgrounds; and all other places of like or similar
26 nature to which the general public has unrestricted right of access,
27 and which are generally used by the public.

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

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

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

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

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

37 (e)) (v) Has been advised by that health care professional that

1 ((they)) he or she may benefit from the medical use of ((marijuana))
2 cannabis; and

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

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

10 ((+5)) (27) "Secretary" means the secretary of health.

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

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

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

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

18 ((+6)) (29) "Terminal or debilitating medical condition" means:

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

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

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

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

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

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

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

37 ((+7)) (30) "THC concentration" means percent of

1 tetrahydrocannabinol content per weight or volume of useable cannabis
2 or cannabis product.

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

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

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

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

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

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

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

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

29 (iii) In the case of a designated provider, the signed and dated
30 document valid for up to one year from the date of signature executed
31 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

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

36 ((A health care professional shall be excepted from the state's

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

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

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

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

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

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

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

37 (iv) Documenting other measures attempted to treat the terminal or

1 debilitating medical condition that do not involve the medical use of
2 cannabis.

3 (b) A health care professional shall not:

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

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

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

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

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

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

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

24 **PART IV**

25 **PROTECTIONS FOR QUALIFYING PATIENTS AND DESIGNATED PROVIDERS**

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

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

34 ~~(2) If charged with a violation of state law relating to marijuana,~~
35 ~~any qualifying patient who is engaged in the medical use of marijuana,~~
36 ~~or any designated provider who assists a qualifying patient in the~~

1 ~~medical use of marijuana, will be deemed to have established an~~
2 ~~affirmative defense to such charges by proof of his or her compliance~~
3 ~~with the requirements provided in this chapter. Any person meeting the~~
4 ~~requirements appropriate to his or her status under this chapter shall~~
5 ~~be considered to have engaged in activities permitted by this chapter~~
6 ~~and shall not be penalized in any manner, or denied any right or~~
7 ~~privilege, for such actions.~~

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

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

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

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

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

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

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

1 (ii) No more cannabis product than what could reasonably be
2 produced with no more than twenty-four ounces of useable cannabis; or
3 (iii) A combination of useable cannabis and cannabis product that
4 does not exceed a combined total representing possession and processing
5 of no more than twenty-four ounces of useable cannabis.

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

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

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

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

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

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

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

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

34 NEW SECTION. Sec. 402. (1) A qualifying patient or designated
35 provider who is not registered with the registry established in section
36 901 of this act may raise the affirmative defense set forth in
37 subsection (2) of this section, if:

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

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

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

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

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

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

16 (2) A qualifying patient or designated provider who is not
17 registered with the registry established in section 901 of this act,
18 but who presents his or her valid documentation to any peace officer
19 who questions the patient or provider regarding his or her medical use
20 of cannabis, may assert an affirmative defense to charges of violations
21 of state law relating to cannabis through proof at trial, by a
22 preponderance of the evidence, that he or she otherwise meets the
23 requirements of RCW 69.51A.040. A qualifying patient or designated
24 provider meeting the conditions of this subsection but possessing more
25 cannabis than the limits set forth in RCW 69.51A.040(1) may, in the
26 investigating peace officer's discretion, be taken into custody and
27 booked into jail in connection with the investigation of the incident.

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

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

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

36 (c) A collective garden may contain no more than twenty-four ounces

1 of useable cannabis per patient up to a total of seventy-two ounces of
2 useable cannabis;

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

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

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

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

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

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

32 NEW SECTION. **Sec. 405.** A qualifying patient or designated
33 provider in possession of cannabis plants, useable cannabis, or
34 cannabis product exceeding the limits set forth in RCW 69.51A.040(1)
35 but otherwise in compliance with all other terms and conditions of this
36 chapter may establish an affirmative defense to charges of violations

1 of state law relating to cannabis through proof at trial, by a
2 preponderance of the evidence, that the qualifying patient's necessary
3 medical use exceeds the amounts set forth in RCW 69.51A.040(1). An
4 investigating peace officer may seize cannabis plants, useable
5 cannabis, or cannabis product exceeding the amounts set forth in RCW
6 69.51A.040(1): PROVIDED, That in the case of cannabis plants, the
7 qualifying patient or designated provider shall be allowed to select
8 the plants that will remain at the location. The officer and his or
9 her law enforcement agency may not be held civilly liable for failure
10 to seize cannabis in this circumstance.

11 NEW SECTION. **Sec. 406.** A qualifying patient or designated
12 provider who is not registered with the registry established in section
13 901 of this act or does not present his or her valid documentation to
14 a peace officer who questions the patient or provider regarding his or
15 her medical use of cannabis but is in compliance with all other terms
16 and conditions of this chapter may establish an affirmative defense to
17 charges of violations of state law relating to cannabis through proof
18 at trial, by a preponderance of the evidence, that he or she was a
19 validly authorized qualifying patient or designated provider at the
20 time of the officer's questioning. A qualifying patient or designated
21 provider who establishes an affirmative defense under the terms of this
22 section may also establish an affirmative defense under section 405 of
23 this act.

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

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

35 ***(2) Is in compliance with all provisions of this chapter other than***

1 requirements relating to being a Washington resident or possessing
2 valid documentation issued by a licensed health care professional in
3 Washington;

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

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

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

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

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

28 *NEW SECTION. **Sec. 410.** (1) Except as provided in subsection (2)
29 of this section, a qualifying patient may not be refused housing or
30 evicted from housing solely as a result of his or her possession or use
31 of useable cannabis or cannabis products except that housing providers
32 otherwise permitted to enact and enforce prohibitions against smoking
33 in their housing may apply those prohibitions to smoking cannabis
34 provided that such smoking prohibitions are applied and enforced

1 equally as to the smoking of cannabis and the smoking of all other
2 substances, including without limitation tobacco.

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

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

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

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

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

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

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

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

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

34 NEW SECTION. Sec. 413. Nothing in this chapter or in the rules
35 adopted to implement it precludes a qualifying patient or designated

1 provider from engaging in the private, unlicensed, noncommercial
2 production, possession, transportation, delivery, or administration of
3 cannabis for medical use as authorized under RCW 69.51A.040.

4 **PART V**
5 **LIMITATIONS ON PROTECTIONS FOR QUALIFYING**
6 **PATIENTS AND DESIGNATED PROVIDERS**

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

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

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

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

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

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

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

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

1 purpose of having it accepted as, valid documentation under RCW
2 69.51A.010(~~((+7+))~~) (32)(a), or to backdate such documentation to a time
3 earlier than its actual date of execution.

4 (~~((+6+))~~) (8) No person shall be entitled to claim the (~~((affirmative~~
5 ~~defense—provided—in—RCW—69.51A.040))~~) protection from arrest and
6 prosecution under RCW 69.51A.040 or the affirmative defense under
7 section 402 of this act for engaging in the medical use of
8 (~~((marijuana))~~) cannabis in a way that endangers the health or well-being
9 of any person through the use of a motorized vehicle on a street, road,
10 or highway, including violations of RCW 46.61.502 or 46.61.504, or
11 equivalent local ordinances.

12 PART VI

13 LICENSED PRODUCERS AND LICENSED PROCESSORS OF CANNABIS PRODUCTS

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

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

29 ***NEW SECTION.** *Sec. 602. A person may not act as a licensed*
30 *processor without a license for each processing facility issued by the*
31 *department of agriculture and prominently displayed on the premises.*
32 *Provided they are acting in compliance with the terms of this chapter*
33 *and rules adopted to enforce and carry out its purposes, licensed*
34 *processors of cannabis products and their employees, members, officers,*
35 *and directors may possess useable cannabis and manufacture, produce,*

1 prepare, process, package, repackage, transport, transfer, deliver,
2 label, relabel, wholesale, or possess cannabis products intended for
3 medical use by qualifying patients, and may not be arrested, searched,
4 prosecuted, or subject to other criminal sanctions or civil
5 consequences under state law, or have real or personal property
6 searched, seized, or forfeited pursuant to state law, for such
7 activities, notwithstanding any other provision of law.

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

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

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

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

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

24 (3) If a representative sample of cannabis tested under this
25 section has a THC concentration of three-tenths of one percent or less,
26 the lot of cannabis the sample was taken from may not be sold for
27 medical use and must be destroyed or sold to a manufacturer of hemp
28 products.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (ii) THC concentration; and

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

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

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

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

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

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

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

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

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

30 (2) The property, books, records, accounts, papers, and proceedings
31 of every licensed producer and licensed processor of cannabis products
32 shall be subject to inspection by the department of agriculture at any
33 time during ordinary business hours. Licensed producers and licensed
34 processors of cannabis products shall maintain adequate records and
35 systems for the filing and accounting of crop production, product
36 manufacturing and processing, records of weights and measurements,

1 product testing, receipts, canceled receipts, other documents, and
2 transactions necessary or common to the medical cannabis industry.

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

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

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

14 *NEW SECTION. Sec. 610. (1) The department of agriculture may give
15 written notice to a licensed producer or processor of cannabis products
16 to furnish required reports, documents, or other requested information,
17 under such conditions and at such time as the department of agriculture
18 deems necessary if a licensed producer or processor of cannabis
19 products fails to:

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

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

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

26 (2) If the licensed producer or processor of cannabis products
27 fails to comply with the terms of the notice within seventy-two hours
28 from the date of its issuance, or within such further time as the
29 department of agriculture may allow, the department of agriculture
30 shall levy a fine of five hundred dollars per day from the final date
31 for compliance allowed by this section or the department of
32 agriculture. In those cases where the failure to comply continues for
33 more than seven days or where the director determines the failure to
34 comply creates a threat to public health, public safety, or a
35 substantial risk of diversion of cannabis to unauthorized persons or
36 purposes, the department of agriculture may, in lieu of levying further

1 fines, petition the superior court of the county where the licensee's
2 principal place of business in Washington is located, as shown by the
3 license application, for an order:

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

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

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

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

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

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

28 (2) A licensed processor of cannabis products may not sell or
29 deliver cannabis to any person other than a cannabis analysis
30 laboratory, licensed dispenser, or law enforcement officer except as
31 provided by court order. A licensed processor of cannabis products may
32 also sell or deliver cannabis to the University of Washington or
33 Washington State University for research purposes, as identified in
34 section 1002 of this act. Violation of this section is a class C
35 felony punishable according to chapter 9A.20 RCW.

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

1 PART VII
2 LICENSED DISPENSERS

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

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

17 ***NEW SECTION.** Sec. 702. (1) By January 1, 2013, taking into
18 consideration the security requirements described in 21 C.F.R. 1301.71-
19 1301.76, the secretary of health shall adopt rules:

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

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

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

27 (d) Establishing recordkeeping requirements for licensed
28 dispensers;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (i) Successful completion of a background check;
2 (ii) A plan to systematically verify qualifying patient and
3 designated provider status of clients;
4 (iii) Evidence of compliance with functional standards, such as
5 ventilation and security requirements; and
6 (iv) Evidence of compliance with facility standards, such as zoning
7 compliance and not using the facility as a residence.

8 (d) The secretary shall establish a schedule to:

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

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

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

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

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

20 ***NEW SECTION.** Sec. 703. A licensed dispenser may not sell cannabis
21 received from any person other than a licensed producer or licensed
22 processor of cannabis products, or sell or deliver cannabis to any
23 person other than a qualifying patient, designated provider, or law
24 enforcement officer except as provided by court order. A licensed
25 dispenser may also sell or deliver cannabis to the University of
26 Washington or Washington State University for research purposes, as
27 identified in section 1002 of this act. Before selling or providing
28 cannabis to a qualifying patient or designated provider, the licensed
29 dispenser must confirm that the patient qualifies for the medical use
30 of cannabis by contacting, at least once in a one-year period, that
31 patient's health care professional. Violation of this section is a
32 class C felony punishable according to chapter 9A.20 RCW.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 rules for the creation, implementation, maintenance, and timely
2 upgrading of a secure and confidential registration system that allows:

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

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

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

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

24 (4) Before seeking a nonvehicle search warrant or arrest warrant,
25 a peace officer investigating a cannabis-related incident must make
26 reasonable efforts to ascertain whether the location or person under
27 investigation is registered in the registration system, and include the
28 results of this inquiry in the affidavit submitted in support of the
29 application for the warrant. This requirement does not apply to
30 investigations in which:

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

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

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

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

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

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

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

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

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

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

37 (8) During the rule-making process, the department of health shall
38 consult with stakeholders and persons with relevant expertise, to

1 include, but not be limited to, qualifying patients, designated
2 providers, health care professionals, state and local law enforcement
3 agencies, and the University of Washington computer science and
4 engineering security and privacy research lab.

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

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

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

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

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

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

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

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

33 (ii) Authorized employees of state or local law enforcement
34 agencies, only as necessary to verify that the person or location is a
35 qualified patient, designated provider, licensed producer, licensed
36 processor of cannabis products, or licensed dispenser, and only after
37 the inquiring employee has provided adequate identification.
38 Authorized employees who obtain personally identifiable information

1 under this subsection may not release or use the information for any
2 purpose other than verification that a person or location is a
3 qualified patient, designated provider, licensed producer, licensed
4 processor of cannabis products, or licensed dispenser;

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

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

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

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

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

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

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

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

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

28 **PART X**
29 **EVALUATION**

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

34 (2) The evaluation of the implementation of this act and the rules

1 adopted to carry out its purposes shall include, but not necessarily be
2 limited to, consideration of the following factors:

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

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

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

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

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

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

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

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

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

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

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

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

32 The University of Washington and Washington State University may
33 conduct scientific research on the efficacy and safety of administering
34 cannabis as part of medical treatment. As part of this research, the
35 University of Washington and Washington State University may develop
36 and conduct studies to ascertain the general medical safety and

1 efficacy of cannabis and may develop medical guidelines for the
2 appropriate administration and use of cannabis.

3 **PART XI**
4 **CONSTRUCTION**

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

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

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

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

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

6 ****NEW SECTION. Sec. 1104. In the event that the federal government***
7 ***authorizes the use of cannabis for medical purposes, within a year of***
8 ***such action, the joint legislative audit and review committee shall***
9 ***conduct a program and fiscal review of the cannabis production and***
10 ***dispensing programs established in this chapter. The review shall***
11 ***consider whether a distinct cannabis production and dispensing system***
12 ***continues to be necessary when considered in light of the federal***
13 ***action and make recommendations to the legislature.***

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

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

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

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

31 (3) A person may not be licensed as a licensed producer, licensed
32 processor of cannabis products, or a licensed dispenser under section
33 601, 602, or 701 of this act if he or she is supervised for a criminal
34 conviction by a corrections agency or department, including local
35 governments or jails, that has determined that licensure is
36 inconsistent with and contrary to his or her supervision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 **NEW SECTION.** **Sec. 1204.** RCW 69.51A.080 (Adoption of rules by the
26 department of health--Sixty-day supply for qualifying patients) and
27 2007 c 371 s 8 are each repealed.

28 **NEW SECTION.** **Sec. 1205.** Sections 402 through 411, 413, 601
29 through 611, 701 through 705, 801 through 807, 901, 1001, 1101 through
30 1105, and 1201 of this act are each added to chapter 69.51A RCW.

31 ***NEW SECTION.** **Sec. 1206.** **Section 1002 of this act takes effect**
32 **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."

APPENDIX- B

ORDINANCE NO. 4036

AN ORDINANCE of the city council of the city of Kent, Washington, amending Title 15 of the Kent City Code, to specify that medical cannabis collective gardens are not permitted in any zoning district within the city of Kent.

RECITALS

A. Recent amendments to Chapter 69.51A RCW, relating to the medical use of cannabis, have expanded the scope of certain activities, involving the use of cannabis for medical purposes that are permitted under state law.

B. Section 69.51A.085 RCW allows "qualifying patients" to create and participate in "collective gardens" for the purpose of producing, processing, transporting, and delivering cannabis for medical use, subject to certain conditions.

C. Section 69.51A.140 RCW delegates authority, to cities and towns, to adopt and enforce zoning requirements, business licensing requirements, health and safety requirements, and business taxes, as

those requirements and taxes relate to the production, processing, or dispensing of medical cannabis within their jurisdictions.

D. The city council understands that approved medical uses of cannabis may provide relief to patients suffering from debilitating or terminal conditions, but potential secondary impacts from the establishment of facilities for the growth, production, and processing of medical cannabis are not appropriate for any zoning designation within the city.

E. The city council further understands that while the medical benefits of cannabis have been recognized by the state legislature, cannabis remains a Schedule I controlled substance under the federal Controlled Substances Act (CSA), and possession and use of cannabis is still a violation of federal law. The city council wishes to exercise the authority granted pursuant to state law in order to clarify that the establishment of a collective garden will be deemed to be a violation of city zoning ordinances, but the city council expressly disclaims any intent to exercise authority over collective gardens in a manner that would directly conflict with the CSA.

F. The city's State Environmental Policy Act (SEPA) official issued a Determination of Nonsignificance on September 26, 2011.

G. On September 23, 2011, notice was sent to the Washington State Department of Commerce requesting expedited review. On, October 10, 2011, the city was granted expedited review

and was informed that it had met the Growth Management Act notice requirements under RCW 36.70A.106.

H. The Economic and Community Development Committee considered this matter at its September 12, 2011 workshop, and held a public hearing on October 10, 2011. The matter was then considered at the Economic and Community Development Committee meetings on November 14, 2011, and December 12, 2011. The city council further considered this matter at its regular meeting on January 3, 2012, and the Economic and Community Development Committee again took up the matter at its May 14, 2012 meeting.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

ORDINANCE

SECTION 1. - Amendment. Chapter 15.02 of the Kent City Code is amended to add a new Section 15.02.074 to read as follows:

Sec. 15.02.074. Collective gardens.

Collective garden means the growing, production, processing, transportation, and delivery of cannabis, by qualifying patients, for medical use, as set forth in Chapter 69.51A RCW, and 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, including a copy of the patient's proof of identity, must be available at all times on the premises of the collective garden;
- E. No useable cannabis from the collective garden is delivered to anyone other than one of the qualifying patients participating in the collective garden;
- F. A collective garden may contain separate areas for growing, processing, and delivering to its qualified patients, provided that these separate areas must be physically part of the same premises, and located on the same parcel or lot. A location utilized solely for the purpose of distributing cannabis shall not be considered a collective garden; and
- G. No more than one collective garden may be established on a single tax parcel.

SECTION 2. - Amendment. Chapter 15.08 of the Kent City Code is amended by adding a new Section 15.08.290 to read as follows:

Sec. 15.08.290. Medical cannabis collective gardens.

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.

C. Nothing in this section is intended to authorize, legalize, or permit the establishment, operation, or maintenance of any business, building, or use which violates any city, state, or federal law or statute.

SECTION 3. - *Severability.* If any one or more sections, subsections, or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

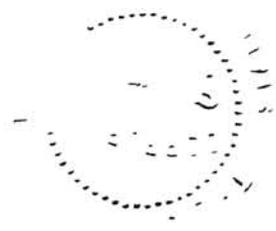
SECTION 4. - *Corrections by City Clerk or Code Reviser.* Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

SECTION 5. - *Effective Date.* This ordinance shall take effect and be in force five (5) days from and after its passage, approval and publication as provided by law. The City Clerk is directed to publish a summary of this ordinance at the earliest possible publication date.


SUZETTE COOKE, MAYOR

ATTEST:

Brenda Jacober
BRENDA JACOBER, CITY CLERK



APPROVED AS TO FORM:

Tom Brubaker
TOM BRUBAKER, CITY ATTORNEY

PASSED: 5 day of June, 2012.

APPROVED: 5 day of June, 2012.

PUBLISHED: 8 day of June, 2012.

I hereby certify that this is a true copy of Ordinance No. 4036 passed by the city council of the city of Kent, Washington, and approved by the Mayor of the city of Kent as hereon indicated.

Brenda Jacober (SEAL)
BRENDA JACOBER, CITY CLERK

P:\Civil\Ordinance\Med Cannabis Zoning-Final 3.docx



APPENDIX- C

1.04.030 Violation unlawful – Each day is separate violation – Misdemeanor.

The violation of any regulation shall be unlawful. Each day, or portion thereof, in which the violation continues constitutes a separate offense for which separate notices of violation may be issued. In addition, any violation of this chapter shall constitute a misdemeanor; and the city attorney, or the city attorney's designee, shall, at his or her discretion, have authority to file a violation as either a civil violation pursuant to this chapter, or as a criminal misdemeanor punishable by imprisonment in jail for a maximum term fixed by the court of not more than ninety (90) days, or by a fine in an amount fixed by the court of not more than one thousand dollars (\$1,000), or by both such imprisonment and fine. All criminal misdemeanor charges filed under this chapter shall be filed with the Kent municipal court. When the city files criminal misdemeanor charges pursuant to this chapter, the city shall have the burden of proving, beyond a reasonable doubt, that the violation occurred.

(Ord. No. 3880, § 2, 5-6-08)

9.02.150 RCW Title 69, entitled “Food, Drugs, Cosmetics, and Poisons” – Adoption by reference.

The following RCW sections, as currently enacted or as hereafter amended or recodified from time to time, are hereby adopted by reference and shall be given the same force and effect as if set forth herein in full:

RCW

- 69.41.010 Definitions.
- 69.41.030 Sale, delivery, or possession of legend drug without prescription or order prohibited – Exceptions – Penalty.
- 69.41.050 Labeling requirements.
- 69.41.060 Search and seizure.
- 69.41.072 Violations of Chapter 69.50 RCW not to be charged under Chapter 69.41 RCW – Exception.
- 69.41.320 Practitioners – Restricted use – Medical records.
- 69.41.350 Penalties.
- 69.43.010 Report to state board of pharmacy – List of substances – Modification of list – Identification of purchasers – Report of transactions – Penalties.
- 69.43.020 Receipt of substance from source outside state – Report – Penalty.
- 69.43.030 Exemptions.
- 69.43.035 Suspicious transactions – Report – Penalty.
- 69.43.040 Reporting form.
- 69.43.043 Recordkeeping requirements – Penalty.
- 69.43.048 Reporting and recordkeeping requirements – Submission of computer readable data, copies of federal reports.
- 69.43.090 Permit to sell, transfer, furnish, or receive substance – Exemptions – Application for permit – Fee – Renewal – Penalty.
- 69.43.110 Ephedrine, pseudoephedrine, phenylpropanolamine – Sales restrictions – Penalty.
- 69.43.120 Ephedrine, pseudoephedrine, phenylpropanolamine – Possession of more than fifteen grams – Penalty – Exceptions.
- 69.43.130 Exemptions – Pediatric products – Products exempted by the state board of pharmacy.
- 69.50.101 Definitions.
- 69.50.102 Drug paraphernalia – Definitions.
- 69.50.202 Nomenclature.
- 69.50.204 Schedule I.
- 69.50.206 Schedule II.
- 69.50.208 Schedule III.
- 69.50.210 Schedule IV.
- 69.50.212 Schedule V.
- 69.50.401 Prohibited acts: A – Penalties.
- 69.50.4013 Possession of controlled substance – Penalty.
- 69.50.4014 Possession of forty grams or less of marihuana – Penalty.
- 69.50.404 Penalties under other laws.
- 69.50.407 Conspiracy.
- 69.50.408 Second or subsequent offenses.

69.50.412 Prohibited acts: E – Penalties.

69.50.4121 Drug paraphernalia – Selling or giving – Penalty.

69.50.425 Misdemeanor violations – Minimum imprisonment.

69.50, I-502, Section 21

(Ord. No. 3621, § 2, 10-1-02; Ord. No. 3692, § 7, 6-1-04; Ord. No. 4068, § 1, 1-15-13)

15.02.074 Collective gardens.

Collective garden means the growing, production, processing, transportation, and delivery of cannabis, by qualifying patients, for medical use, as set forth in Chapter 69.51A RCW, and subject to the following conditions:

- A. No more than ten (10) qualifying patients may participate in a single collective garden at any time;
- B. A collective garden may contain no more than fifteen (15) plants per patient up to a total of forty-five (45) plants;
- C. A collective garden may contain no more than twenty-four (24) ounces of useable cannabis per patient up to a total of seventy-two (72) ounces of useable cannabis;
- D. A copy of each qualifying patient's valid documentation, including a copy of the patient's proof of identity, must be available at all times on the premises of the collective garden;
- E. No useable cannabis from the collective garden is delivered to anyone other than one (1) of the qualifying patients participating in the collective garden;
- F. A collective garden may contain separate areas for growing, processing, and delivering to its qualified patients; provided, that these separate areas must be physically part of the same premises, and located on the same parcel or lot. A location utilized solely for the purpose of distributing cannabis shall not be considered a collective garden; and
- G. No more than one (1) collective garden may be established on a single tax parcel.

(Ord. No. 4036, § 1, 6-5-12)

15.10.070 Violation – Penalty.

A. *Civil.* Any violation of any provision of this chapter constitutes a civil violation under Ch. 1.04 KCC for which a monetary penalty may be assessed and abatement may be required as provided therein.

B. *Criminal.* In addition or as an alternative to any other penalty provided in this chapter or by law, any person violating or failing to comply with any of the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punishable in accordance with the provisions of KCC 1.01.140 relating to criminal penalties for misdemeanors.

(Ord. No. 3032, § 2, 2-18-92; Ord. No. 3124, § 1, 6-15-93)

15.10.080 Additional relief.

The director may seek legal or equitable relief to enjoin any acts or practices and restore or abate any condition which constitutes or will constitute a violation of this title when civil or criminal penalties are inadequate to effect compliance.

(Ord. No. 3032, § 2, 2-18-92; Ord. No. 3124, § 1, 6-15-93)