

FILED
Court of Appeals
Division II
State of Washington
9/1/2020 4:22 PM

NO. 54492-0

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

U4IK GARDENS, LLP, a Washington limited liability partnership,

Appellant,

v.

STATE OF WASHINGTON, THE WASHINGTON STATE LIQUOR
CONTROL BOARD, et al,

Respondents.

RESPONDENTS' ANSWERING BRIEF

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I. INTRODUCTION

Appellant U4IK Gardens, LLP, (U4IK Gardens) obtained a marijuana producer and processor license from Respondent Washington State Liquor and Cannabis Board (Board) in 2015. The license permitted U4IK Gardens to possess and process marijuana only to the extent it remained in compliance with the rules and regulations governing Washington State's marijuana industry. The Board's authority to monitor and enforce licensees' compliance is clearly and unambiguously set out in Washington's Uniform Controlled Substances Act, RCW 69.50, and rules adopted by the Board, WAC 314-55.

To prevent diversion and promote public safety, marijuana must be tracked "from seed to sale." Producers must track key events including when plants mature from the seedling or clone stage and when each is harvested. Producers must attach individual tags with unique traceability identifiers to each plant that reaches eight inches in height. Untagged marijuana plants create serious risks to health and safety of the public because there is no way to verify the source or quality of the plants. Failure to comply with the Board's traceability requirements through all stages of production and processing renders a producer's marijuana unsuitable for further processing or retail sale.

Pursuant to RCW 69.50.505(11), the Board has a mandatory responsibility to seize and summarily forfeit "contraband" marijuana possessed in violation of RCW 69.50. Additionally, RCW 69.50.505(12)

authorizes the Board to seize and summarily forfeit plants from which controlled substances may be derived cultivated in violation of RCW 69.50. Marijuana licensees that fail to properly track marijuana through production, processing, and retail sale have no property right in the noncompliant, contraband marijuana. Although forfeiture hearings may be appropriate following seizure of certain property, including equipment, containers, or conveyances, administrative hearings are not required when the Board seizes and summarily forfeits only contraband controlled substances or plants from which they were derived.

During an unannounced inspection of U4IK Gardens' facility in 2018, Respondent Kendra Ogren (an enforcement officer with the Board) observed a large number of live marijuana plants with no traceability tags attached. U4IK Gardens admits it failed to maintain traceability identifiers on 411 marijuana plants. Pursuant to statutory authority granted by RCW 69.50.505(2), (11), and (12), and WAC 34-55-210, Officer Ogren and other officers cut each untagged plant at its base, confiscated, and inventoried them. Later, the Board destroyed the plants by incineration.

U4IK Gardens alleges Respondents' seizure and destruction of the marijuana plants from its facility violated U4IK Gardens' due process and equal protection rights and was a taking under the Washington Constitution. U4IK Gardens also alleges the Board is liable for violating the timber trespass

statute (RCW 4.24.630) and tortious conversion. Because there is no dispute that U4IK Gardens cultivated the marijuana plants in violation of RCW 69.50, Respondents acted within their statutory enforcement authority to seize and summarily forfeited the contraband. This Court should affirm the trial court's summary judgment dismissal of each of U4IK Gardens' claims.

II. COUNTERSTATEMENT OF ISSUES

1. Did Respondents have authority to seize, summarily forfeit, and destroy marijuana plants removed from U4IK Gardens' premises when there is no dispute that U4IK Gardens failed to attach traceability identifiers required by WAC 314-55-083(4), and Officer Ogren had probable cause to believe the untraceable plants endangered public health and safety?

2. Does U4IK Gardens' statutory trespass claim fail as a matter of law when RCW 69.50.505 and WAC 314-55-210 authorized Respondents to enter the facility and to seize, confiscate, summarily forfeit, and destroy the untraceable, contraband marijuana plants identified there?

3. Does U4IK Gardens' conversion claim fail as a matter of law when Respondents had statutory authority to seize and destroy untraceable marijuana plants and RCW 69.50.505 expressly states a licensee has no property rights in contraband marijuana?

4. Is the sole cause of U4IK Gardens' inventory losses its own failure to comply with Board rules and regulations including traceability requirements set out in WAC 314-55-083(4) and not any unauthorized or unlawful conduct by Respondents?

5. Are U4IK Gardens' claims for relief under the Washington Constitution properly dismissed when Washington does not recognize private causes of action for damages based upon constitutional violations?

III. COUNTERSTATEMENT OF CASE

A. Businesses Interested in Joining Washington's Marijuana Industry Must Obtain Licenses From the Board

In 2012, voters approved Initiative 502 legalizing recreational marijuana use by adults in Washington State. The people's passage of I-502 showed an intention to end criminality of adults using marijuana and "a new approach that . . . takes marijuana out of the hands of illegal drug organizations and brings it under a tightly regulated, state-licensed system similar to that for controlling hard alcohol." *See* Laws of 2013, ch. 3, § 1. The law that created a legal marijuana industry in Washington State also authorized the Board to adopt rules to regulate and control marijuana at each stage from production through retail sales. RCW 69.50.342(1). RCW 69.50 authorized the Board to issue licenses for marijuana producers, processors, and retailers. Each

license type had specific qualifications, application processes, and rules for maintaining licensure. CP 130; RCW 69.50.325; WAC 314-55-005-079.

Protection of public health and safety remains the Board's fundamental purpose now that its responsibilities have expanded from liquor control to regulation of a safe and consistent marijuana marketplace. *See* Laws of 2015, ch. 70, § 2. To accomplish that goal, the Board maintains strict control over growth and sale of marijuana. This requires compliance with license requirements so marijuana products produced in Washington are trackable from seed to sale. *Id.* The Board is authorized and required to inspect licensees' operations and impose warnings, penalties, and/or sanctions for regulatory violations. *See* RCW 69.50.562-.563; WAC 314-55-185-540.

As both the marijuana industry and the Board's responsibilities have developed, protection of public health and safety continues to be a top priority. Compliance enforcement by the Board remains an important component of the regulated marketplace. *See* Laws of 2019, ch. 394, § 1.

B. The Board Issued a Marijuana Producer and Processor License to U4IK Gardens in 2015

The Board approved U4IK Gardens' application for a Marijuana Producer (Tier 1) and Marijuana Processor license in October of 2015. CP 131. To maintain a valid license, U4IK Gardens was required to remain in compliance with the rules and regulations applicable to marijuana producers

and processors. *Id.*; *see also* RCW 69.50.363-.366. This included compliance with the important traceability requirements used to track marijuana from seed to sale. CP 131; *see also* WAC 314-55-083(4).

C. During a 2018 Inspection of U4IK Gardens' Premises, Officer Ogren Identified Numerous Regulatory Violations Including Over 400 Plants With No Traceability Tags

In response to several complaints about conduct occurring at U4IK Gardens' production facility, and as authorized by statute, the Board planned an unannounced inspection of U4IK Gardens' premises. CP 131-133, 137-141; RCW 69.50.500, .505; WAC 314-55-210(1). Officer Ogren coordinated support and assistance with other enforcement officers and members of the Vancouver Police Department. CP 131, 137-141.

On July 11, 2018, Officer Ogren arrived at U4IK Gardens' premises and identified herself to owner Mr. Christopher Ste. Marie (Ste. Marie). Ste. Marie indisputably granted permission for the officers to enter the premises. CP 131-132. The inspection included U4IK Gardens' premises, marijuana plants and products, paperwork, and video surveillance footage. CP 132, 137-141. Officers identified several violations including the following:

- a. Bags of cannabis flower that displayed labels indicating product names and weights, but not showing the required 16-digit traceability numbers as required by WAC 314-55-083(4) Traceability;

- b. The labelled weight displayed on bags of cannabis product did not match the actual weight when measured on a scale which indicated unaccounted cannabis product in violation of WAC 314-55-083(4) Traceability;
- c. The time displayed on U4IK Gardens' camera surveillance was inaccurate in violation of WAC 314-55-083(3);
- d. Over 400 live marijuana plants did not display the required 16-digit traceability numbers on the individual plants themselves in violation of WAC 314-55-083(4) Traceability; and,
- e. Two unmarked totes and multiple tier drying hoops containing dried unmarked marijuana leaves and stems were observed. Use of a dehumidifier to dry the material indicated to me the material was being processed, not being disposed as waste as Ste. Marie stated. Five small plastic bottles containing various amounts of kief¹ were identified. None of the containers were marked with traceability numbers.

CP 132-133. Additionally, Officer Ogren observed Ste. Marie engaging in hostile behavior and other inappropriate conduct (i.e., approaching her in a sudden, aggressive manner; grabbing paperwork out of her hands). CP 133. Officer Ogren noted Ste. Marie appeared to be under the influence of a controlled substance. *Id.*

¹ "Kief" refers to sticky, pollen crystals harvested from hair-like trichomes protruding from the cannabis plant. Trichomes contain higher concentrations of the psychoactive compounds tetrahydrocannabinol (THC) and cannabidiol (CBD) than any other part of the cannabis plant.

D. Licensee's Failure to Comply with the Traceability Requirements Creates Serious Public Health and Safety Risks and Opportunities for Criminal Involvement

Failure to comply with the Board's traceability requirements creates serious public health and safety risks because the source and quality of a licensee's marijuana cannot be verified. CP 133; *see also* WAC 314-55-083(4). Pesticides or other contaminants identified on an untagged plant or product cannot be traced to identify other potentially impacted plants or products. CP 133. Additionally, missing tracking information creates an opportunity for introduction of black market marijuana into the regulated retail stream or vice versa. CP 133; *see also* WAC 314-55-083(4).

Unregulated marijuana creates health and safety risks for potential consumers as well as opportunities for criminal involvement. Illegal drug trafficking proceeds often fund other criminal activities like human trafficking. CP 133. Improperly tagged marijuana plants and products are considered contraband. CP 133; RCW 69.50.505(11), (12). Licensees are not authorized to possess contraband or other unlawful materials. *Id.*

E. Officers Seized and Later Destroyed the Contraband, Untraceable Marijuana in U4IK Gardens' Possession

Officer Ogren and the accompanying officers inventoried and seized 411 marijuana plants not tagged with traceability identifiers in violation of WAC 314-55-083(4)(f) in addition to other untagged marijuana products.

CP 134, 143. Although officers also identified a large number of smaller plants not individually tagged, they only seized plants eight inches or taller. CP 134. The requirement that marijuana plants are “physically tagged and tracked individually” begins once plants reach eight inches in height. WAC 314-55-083(4)(f). Additionally, a number of potted plants had traceability numbers attached to container pots, but not the plants themselves. Although tagging the pot but not plant is a regulatory violation, officers did not seize any plants that had traceability identifiers attached to their containers. *Id.*

Officers cut the main stalk of each plant at its base near the growing medium so they could confiscate the plants but not the containers, watering lines, or other equipment. The Board later destroyed the plants by incineration. CP 55, 134, 143. Ste. Marie admits that all 411 marijuana plants seized during the Board’s inspection lacked traceability labels which U4IK Gardens was required to attach. CP 55.

F. The Board Charged U4IK Gardens With Traceability and Conduct Violations and Issued Two \$2,500 Penalties

As a result of Respondents’ July 11, 2018, inspection, the Education and Enforcement Division of the Board (Enforcement) charged U4IK Gardens with two violations: (1) a regulatory failure to utilize or maintain traceability of marijuana in violation of WAC 314-55-083(4); and (2) a public safety/conduct violation for disorderly conduct and/or intoxication

of an employee on the premises in violation of WAC 314-55-110(4). CP 81. In November 2018, Enforcement sanctioned U4IK Gardens by issuing two penalties of \$2,500 each.² CP 81-82.

G. The Board and U4IK Gardens Resolved the Violations and Penalties in a Stipulated Settlement Agreement

U4IK Gardens appealed the two \$2,500 sanctions to the Office of Administrative Hearings. CP 84-86. While its appeal progressed, U4IK Gardens was evicted from its premises and allowed its producer/processor license to expire. CP 85, 134. The Board discontinued U4IK Gardens' license near the end of 2018. CP 134. Without a valid license, U4IK Gardens was prohibited from possessing, producing, processing, or selling marijuana in any form. *Id.*; *see also* RCW 69.50.363, 366.

In early 2019, the Board and U4IK Gardens entered into a Stipulated Settlement Agreement. CP 84-86. U4IK Gardens stipulated to the traceability violation and agreed to pay the associated \$2,500 fine. CP 85. U4IK Gardens also agreed it would not seek renewal of its producer/processor license. Ste. Marie also agreed to a two-year restriction on applying for any marijuana license. *Id.* Enforcement stipulated to

² The standard penalty for a first Category 2 regulatory violation was \$2,500 in 2018. *See* WAC 314-55-525. A revised penalty structure went into effect in 2020 which reduced penalties for first Category 2 violations to \$1,250. *See* WAC 314-55-509, -521 (2020).

dismissal of the conduct violation. CP 86. The Board then approved the Stipulated Settlement Agreement in March 2019. CP 88.

H. U4IK Gardens Alleges as a Result of Their Conduct, Respondents Violated the Washington State Constitution and are Liable for Trespass and Conversion

After submitting the requisite Tort Claim, U4IK Gardens filed a Complaint against Respondents in Thurston County Superior Court. CP 1-7, 78. After reviewing Respondents' Answer, U4IK Gardens amended its Complaint and abandoned allegations of civil rights violations under the U.S. Constitution. CP 14-22, 24-30. U4IK Gardens' Amended Complaint asserts four causes of action: (1) violation of due process, equal protection, and freedom from arbitrary seizures under article I, sections 3, 7 and 12 of the Washington Constitution; (2) destruction of marijuana plants in violation of RCW 4.24.630; (3) destruction of marijuana plants in violation of RCW 4.92.090; and (4) seizure and destruction of marijuana plants in violation of article I, section 16 of the Washington Constitution. CP 28-30.

There are no disputed material facts related to Respondents' investigation, U4IK Gardens' failure to tag over 400 live marijuana plants with traceability identifiers, Respondents' seizure and summary forfeiture of the untagged plants without further proceedings, and the Board's destruction of the contraband marijuana plants it took into its possession. CP 55, 131-135, 137-141, 143. Additionally, U4IK Gardens does not

dispute Officer Ogren had probable cause to believe the untagged marijuana plants were directly or indirectly dangerous to health or safety. VRP 27; *see also* RCW 69.50.505(2)(c).

Prior to engaging in discovery in this case, U4IK Gardens and Respondents filed cross motions for summary judgment. CP 42-53, 59-75. U4IK Gardens asked the trial court to find in its favor on each of its four causes of action leaving only the question of damages for the jury. CP 42-43. Respondents' response and cross-motion requested denial of U4IK Gardens' motion and dismissal of each of U4IK Gardens' claims. CP 75.

The trial court denied U4IK Gardens' motion, granted Respondents' cross-motion, and dismissed all claims asserted in U4IK Gardens' First Amended Complaint, with prejudice. CP 193-195. U4IK Gardens submitted a timely appeal of the trial court's decision. CP 198-199.

IV. STANDARD OF REVIEW

Summary judgment rulings are reviewed de novo. *Potter v. Wash. State Patrol*, 165 Wn.2d 67, 78, 196 P.3d 691 (2008). Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). All facts and reasonable inferences must be viewed in the light most favorable to the nonmoving party. *Wilson Court Ltd. P'ship v. Tony Maroni's, Inc.*, 134 Wn.2d 692, 698, 952 P.2d 590 (1998). Questions of law are reviewed de

novo. *Id.* The reviewing court may affirm the trial court on “any theory established in the pleadings and supported by proof,” even where the trial court did not rely on the theory. *Id.*

“A moving defendant meets the initial burden of demonstrating no genuine issue of material fact by pointing out that there is an absence of evidence to support the plaintiff’s case.” *Friends of Moon Creek v. Diamond Lake Improvement, Ass’n, Inc.*, 2 Wn. App. 2d 484, 494, 409 P.3d 1084 (2018) (citing *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989), *overruled in part on other grounds by* 130 Wn.2d 160, 922 P.2d 59 (1996)). “If a moving defendant makes this initial showing, then the plaintiff must set forth specific facts demonstrating a genuine issue for trial.” *Id.* The “complete failure of proof concerning an essential element . . . renders all other facts immaterial.” *Id.* (quoting *Young*, 112 Wn.2d at 225 (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-323 (1986))).

The meaning and application of a statute is a legal question that the court reviews de novo. *Matter of K.J.B.*, 187 Wn.2d 592, 596-97, 387 P.3d 1072 (2017). The “fundamental goal” is to “discern and implement the legislature’s intent.” *Id.* (quoting *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007)). Where “the statute’s meaning is plain on its face, then the court must give effect to that plain meaning.” *Dep’t of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). Courts

discern plain meaning “from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.” *Id.* at 11. “[I]f, after this inquiry, the statute remains susceptible to more than one reasonable meaning, the statute is ambiguous and it is appropriate to resort to aids to construction, including legislative history.” *Id.* at 12. “Plain language that is not ambiguous does not require construction.” *Matter of K.J.B.*, 187 Wn.2d at 597.

V. ARGUMENT

A. **The Board has a Mandatory Duty to Seize and Summarily Forfeit Controlled Substances Produced and Possessed in Violation of RCW 69.50**

In order to maintain a safe and consistent marketplace and to protect the health and safety of all members of the public, the rules and regulations governing Washington’s marijuana industry empower the Board to oversee licensees’ compliance and, when necessary, take enforcement action. *See* RCW 69.50.500; WAC 314-55-185. In certain situations, this can include seizure, confiscation, forfeiture, and/or destruction of property from licensees. *See* RCW 69.50.505; WAC 314-55-210.

Respondents indisputably had both statutory authority and permission from owner Ste. Marie to conduct an unannounced inspection of U4IK Gardens’ premises. CP 132; RCW 69.50.342; WAC 314-55-185(1)(a). U4IK Gardens has admitted it had 411 marijuana plants eight inches in height or

more in its possession that were not tagged with individual traceability identifiers as required by WAC 314-55-083(4)(f). CP 43. With assistance of other law enforcement officers, Officer Ogren confiscated 411 untagged marijuana plants from U4IK Gardens' production facility. The Board later incinerated the plants without conducting any additional forfeiture proceedings between seizure and destruction. The single issue that each of U4IK Gardens' four causes of action relies upon is whether the Board had authority to seize and destroy noncompliant marijuana plants identified during the Board's inspection without additional forfeiture process. Because RCW 69.50 and WAC 314-55 expressly granted Respondents authority to seize and destroy the plants at issue in the manner in which they did, each of U4IK Gardens' claims fails as a matter of law.

Matters that can be at issue when determining whether property is "subject to forfeiture" under RCW 69.50.505 include whether the property can be seized and whether it was seized for forfeiture in a lawful manner. RCW 69.50.505(2); *City of Walla Walla v. \$401,333.44*, 164 Wn. App. 236, 244-45, 262 P.3d 1239 (2011); *State v. Clark*, 68 Wn. App. 592, 607-608, 844 P.2d 1029 (1993), *aff'd*, 124 Wn.2d 90, 875 P.2d 613 (1994). In *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 62 (1993), the Supreme Court held that unless exigent circumstances exist, due process requires notice and a meaningful opportunity to be heard before seizure of

real property subject to civil forfeiture. The Washington Supreme Court affirmed this standard in *Tellevik v. Real Prop.*, 125 Wn.2d 364, 370, 884 P.2d 1319 (1994) (*Tellevik II*), when revisiting the constitutionality of Washington's drug forfeiture statute in light of *Good*.

However, the drafters of RCW 69.50.505 specifically addressed situations where exigent circumstances do exist. Most of the lengthy language in RCW 69.50.505 covers seizure and forfeiture process for property ranging from production materials and equipment, to paperwork, money and other negotiable instruments, up to and including vehicles, vessels, aircraft, and real property. RCW 69.50.505(1)-(8), (14)-(17). But when controlled substances possessed in violation of the chapter are discovered, an exigent circumstance requiring immediate action exists and specific rules apply. RCW 69.50.505(11)-(12).

Controlled substances that have been produced in violation of RCW 69.50, in addition to raw materials and equipment used during the manufacturing processing, are included in the list of items subject to seizure and forfeiture. RCW 69.50.505(1)(a), (b). RCW 69.50.505(2) identifies certain situations where the Board is permitted to seize personal property without forfeiture process. This includes circumstances where an officer "has probable cause to believe that the property is directly or indirectly dangerous to health or safety." RCW 69.50.505(2)(c). However, for

noncompliant controlled substances – as opposed to other personal property addressed elsewhere in RCW 69.50.505 – seizure and summary forfeiture by the Board is mandatory:

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

RCW 69.50.505(11) (emphasis added). Additionally, the Board can seize and summarily forfeit plants cultivated in violation of the chapter:

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

RCW 69.50.505(12) (emphasis added).

Violations of either RCW 69.50 or the Board’s regulations set out in WAC 314-55 will render a controlled substance contraband and thus subject to seizure and summary forfeiture by the Board. As a licensed marijuana producer/processor, U4IK Gardens’ right to possess marijuana was entirely dependent on running its production facility “in compliance with the terms set forth in . . . RCW 69.50.363, or RCW 69.50.366” *See* RCW 69.50.401(3).

RCW 69.50.363 permits marijuana processors to possess marijuana only if their business remains licensed and “in compliance with rules adopted

by [the Board] to implement and enforce chapter 3, Laws of 2013.” Likewise, producers must maintain valid licenses and operate “in compliance with rules adopted by [the Board] to implement and enforce this chapter.” U4IK Gardens’ own failure to comply with the Board’s traceability requirements set out in WAC 314-55-083(4) rendered the marijuana plants at issue contraband and, further, resulted in its loss of the rights to possess marijuana.

U4IK Gardens does not dispute Officer Ogren had probable cause to believe the untagged marijuana plants were a danger to health or safety. *See* VRP 27. Thus, Respondents’ seizure of the untagged plants without process was proper under RCW 69.50.505(2)(c). The Board also had permissive authority to seize and summarily forfeit the live marijuana plants under RCW 69.50.505(12). Most importantly, RCW 69.50.505(11) imposed a mandatory duty on the Board to seize and summarily forfeit the untagged plants in U4IK Gardens’ possession.

Marijuana is a Schedule 1 controlled substance. Marijuana not physically tagged with traceability identifiers as required by WAC 314.55.083(4) is a controlled substance possessed in violation of the chapter. RCW 69.50.505(11) Removing contraband like these untraceable marijuana plants from a licensee’s possession is necessary to ensure only safe marijuana products are sold to consumers, to restrict diversion to or

from the black market, and to circumvent a variety of other related criminal activities. CP 133; RCW 69.50.505(11).

U4IK argues because Respondents did not issue a “summary destruction order” per WAC 314-55-220, follow seizure laws applicable to criminal investigations as described in WAC 314-55-210(4), order an administrative hold as permitted by WAC 314-55-210(6), or follow procedures for destruction of marijuana after case adjudication in WAC 314-55-230(2), the Board’s seizure and destruction was improper. But those regulations do not apply here, where the Board seized contraband. The applicable regulation is WAC 314.55.210(5) authorizing the Board to “destroy any marijuana . . . that is not identifiable through the Washington marijuana traceability system” Here, under the undisputed facts of this case, the Board had statutory authority under RCW 69.50.505(11) to seize and summarily forfeit the untraceable marijuana plants and then, after taking possession, RCW 69.50.345(12) and WAC 314.55.210(5) authorized the Board to destroy the contraband materials.

B. Because the Board Had Authority to Seize the Contraband Marijuana, U4IK Gardens Cannot Recover Damages Under Theories of Trespass or Conversion

U4IK Gardens’ claims for statutory trespass and conversion both fail as a matter of law because Respondents had statutory authority both to enter U4IK Gardens’ premises and to confiscate the contraband marijuana

discovered there. *See* RCW 69.50.505; WAC 314-55-210. U4IK Gardens concedes the 411 marijuana plants seized and destroyed by the Board and its agents (including Officer Ogren) were not tagged with traceability identifiers as required by WAC 314-55-083(4). CP 43, 55. “There is no dispute that [U4IK Gardens] had failed to comply with a WSLCB regulation requiring identification labels to be affixed to the plants.” CP 43. Despite its own failure to comply with Board regulations, U4IK Gardens seeks damages associated with seizure of untagged marijuana plants under theories of statutory trespass (per RCW 4.24.630) and/or conversion (RCW 4.92.090). However, the trial court properly determined U4IK Gardens is not entitled to relief under either theory. CP 193-195.

1. U4IK Gardens has no property right in any untagged, untraceable marijuana plants

U4IK Gardens’ admitted failure to conduct its operations in compliance with all applicable provisions of RCW 69.50 and regulations adopted by the Board rendered the 411 plants contraband and subject to seizure and destruction. The Uniform Controlled Substance Act, RCW 69.50, provides as follows:

Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

See RCW 69.50.401(1). A person or entity cannot lawfully sell, process, or produce marijuana and marijuana products except in compliance with RCW 69.50.360 (retailers), RCW 69.50.363 (processors), or RCW 69.50.366 (producers). The key is RCW 69.50.505(1), which states that “all controlled substances” acquired or possessed in violation of RCW 69.50 are “subject to seizure and forfeiture and no property rights exists in them.” Marijuana is a Schedule 1 controlled substance as defined in RCW 69.50.101(g) and 69.50.204(c)(22). Accordingly, to avoid seizure of an otherwise contraband controlled substances, U4IK Gardens must produce, process, and/or possess marijuana in compliance with RCW 69.50.363 and/or 69.50.366. That means U4IK Gardens must conduct its operations in compliance with all applicable provisions of RCW 69.50 and regulations adopted by the Board to implement and enforce marijuana laws enacted by the legislature. *See* RCW 69.50.363, .366; WAC 314-55-005. Here, U4IK Gardens failed to comply with rules promulgated and adopted by the Board.

Any licensee that fails to meet any of the traceability requirements set out in WAC 314-55 is in violation of RCW 69.50 and, therefore, not operating legally within Washington’s marijuana regulatory structure. Failure to trace marijuana from production through processing constitutes a violation of the traceability provisions of WAC 314-55-083(4). The Board is authorized to seize, confiscate, and destroy marijuana and marijuana

products under a variety of circumstances including situations where marijuana (including live plants) are “not identifiable through the Washington marijuana traceability system or otherwise in a form that is not compliant with Washington’s statutes or rules, chapters 69.50 RCW and 314-55 WAC.” *See* WAC 314-55-210(5).

Failure to track marijuana from seed to sale creates serious public health and safety risks. CP 133. Ensuring consumers purchase safe marijuana products requires accurate verification of the source and quality of marijuana. Additionally, failure to comply with traceability regulations allows diversion to or from the black market thus creating health and safety risks as well as opportunities for related criminal activities. *Id.* Improperly tagged marijuana plants are considered contraband and licensees like U4IK Gardens are not authorized to possess such materials. *Id.*

By possessing untagged marijuana plants, U4IK Gardens failed to maintain its operations in compliance with rules adopted by the Board as required by RCW 69.50.363-366. WAC 314-55-210(5) provides as follows:

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

WAC 314-55-210(5) (emphasis added). When the violation is related to traceability, as it is here, the WAC does not require an administrative hold or hearing. *Compare* WAC 314-55-210(6).

U4IK Gardens characterizes Respondents' seizure and forfeiture without process as an extreme overstep of their authority. Yet, U4IK Gardens asks this Court to ignore the extreme risk 400 untagged plants pose to public health and safety as recognized in WAC 314-55-210(5) despite conceding to the trial court that at least an indirect danger existed. VRP 27. An administrative hearing was not appropriate in this case because untraceable marijuana must be removed from the production sequence to avoid potential diversion or introduction of marijuana whose quality, strain, and potency cannot be verified. CP 133; WAC 314-55-083(4). While removal of a large number of plants may have dire consequences for a licensee's business, this mandatory action is not a penalty intended to punish the producer. *See State v. Catlett*, 133 Wn.2d 355, 368, 945 P.2d 700 (1997) (civil forfeiture is not punitive.) The seizure was necessary to protect the public. The losses U4IK Gardens' sustained as a result of its own failure to comply with applicable rules and regulations are not unfair punishment meted out by the Board any more than losses vegetable farmers or meat packers might incur following food recalls. Furthermore, the Board's seizure was not a penalty imposed without due process for U4IK's other regulatory

violations or sanctions U4IK Gardens appealed to the Office of Administrative Hearings. CP 84-86, 132-133.

Because the untagged marijuana plants identified at U4IK Gardens' facility were contraband and subject to confiscation, seizure, and destruction by the Board, U4IK Gardens had no property right in the seized and later destroyed plants. *See* RCW 69.50.505(1); *State v. Alaway*, 64 Wn. App. 796, 799, 828 P.2d 591 (1992) (citing *One 1958 Plymouth Sedan v. Pennsylvania.*, 380 U.S. 693, 699 (1965) (“‘Contraband’ has been defined by the United States Supreme Court as ‘an object, the possession of which, without more, constitutes crime.’”) U4IK Gardens has no valid cause of action against Respondents arising from removal of contraband marijuana.

Colorado and Oregon courts have dealt with similar property rights issues related to marijuana. In *People v. Crouse*, 2017 Colo. 5, 388 P.3d 39, 40 (Colo. 2017), Robert Crouse was arrested and charged with cultivating and possessing marijuana with intent to manufacture in violation of Colorado state law. Colorado Springs police officers seized 55 live marijuana plants and 2.9 kg of marijuana product from Crouse's home at the time of his arrest. *Id.* At trial, Crouse asserted he was a registered medical marijuana patient and his cultivation and possession was authorized under the Colorado medical marijuana laws. The jury acquitted him of both

charges. *Id.* After his trial, Crouse sought an order requiring the police department to return his marijuana plants and product. *Id.* at 41.

On appeal, the Colorado Supreme Court determined that a provision of the Colorado Constitution requiring return of seized medical marijuana after an individual's acquittal of marijuana-related charges conflicted with the federal Controlled Substances Law (CSA) prohibiting distribution of marijuana. *Id.* at 41-42. The Colorado Supreme Court found that because compliance with the return provision set out in the Colorado Constitution would necessarily require law enforcement officers to violate the CSA, the return provision was preempted and rendered void. *Id.* at 40. As a result, Crouse had no valid cause of action against the law enforcement officers for not returning his marijuana plants and products.

The Oregon Court of Appeals entered a similar ruling in *State v. Ehrensing*, 255 Or. App. 402, 296 P.3d 1279 (Or. 2013). Dwight Ehrensing was registered under the Oregon Medical Marijuana Act (OMMA) to grow marijuana for himself and others. 255 Or. App. at 404. Law enforcement officers searched his home, seized live plants and product, and charged Ehrensing with unlawful manufacture and delivery of marijuana. After the charges were dismissed on speedy trial grounds, Ehrensing sought return of the plants and products arguing he had a property interest in the seized marijuana. *Id.* The sheriff opposed Ehrensing's request on the grounds that

returning the materials would require law enforcement officers to violate the federal CSA. *Id.* at 407.

The Oregon Supreme Court’s analysis focused on the Oregon statute requiring return of seized property that the owner had a “valid claim to rightful possession thereof.” *Id.* at 412. Because Ehrensing could not “lawfully possess” marijuana under federal law, he had no valid claim to rightful possession of the marijuana plants and products and no right return of the materials. *Id.* at 404.

Similarly, U4IK Gardens did not have a valid claim or lawful right to possess untagged, and therefore contraband, marijuana. For that reason, U4IK Gardens has no cause of action against Respondents arising from the seizure or destruction of the marijuana plants.

2. No trespass or conversion occurred when the officers seized contraband marijuana

Both U4IK Gardens’ claims for trespass and conversion fail because the enforcement officers had statutory authority to remove the seized plants. RCW 4.24.630 prohibits any person from going onto the land for another and removing timber, crops, minerals, or other similar valuable property from the land, causing waste or injury to the land or wrongfully injuring personal property. For the purposes of the statute, a person acts “wrongfully” if the person “intentionally and unreasonably commits the acts or acts while

knowing or having reason to know, that he or she lacks authorization to so act.” RCW 4.24.630.

There is no dispute that Officer Ogren and other enforcement officers intentionally cut and removed 411 plants from U4IK Gardens’ facility on July 11, 2018. CP 134. U4IK Gardens’ failure to attach traceability identifiers to those plants rendered the plants illegally possessed contraband. *Id.* U4IK Gardens had no property right in the contraband marijuana and the officers had authority to seize and destroy the plants under RCW 69.50.505 and WAC 314-55-210. This Court should affirm the trial court’s decision to dismiss U4IK Gardens’ statutory trespass claim as a matter of law.

Likewise, a tort claim against Respondents under RCW 4.92.090, which holds the State of Washington and its agents liable for damages arising out of tortious conduct to the same extent as private citizens, can only succeed if U4IK Gardens is entitled to possession of the property at issue. *See Potter*, 165 Wn.2d at 78 (“[c]onversion is the unjustified, willful interference with a chattel which deprives a person entitled to the property of possession.”). In *Potter*, a driver cited for driving with a suspended license was permitted to bring a conversion claim against the Washington State Patrol for damages related to his impounded vehicle. Invalidity of his driver’s license had no impact on his right to ownership of the vehicle itself. *Id.* at 89. The same is not true here, where U4IK Gardens had no right to possess contraband marijuana

and no right to possess any marijuana since November 2018 when it voluntarily allowed its producer/processor license to expire. This Court should affirm the trial court's dismissal of U4IK Gardens' conversion claim.

C. The Washington Constitution Does Not Provide a Private Right of Action

U4IK Gardens' request for relief for claimed due process and equal protection violations and alleged unlawful seizures under the Washington Constitution fail as a matter of law because Washington does not recognize causes of action for damages based upon constitutional violations. *Blinka v. Wash. State Bar Ass'n*, 109 Wn. App. 575, 591, 36 P.3d 1094 (2001), review denied, 146 Wn.2d 1021, 52 P.3d 520 (2002); see also *Reid v. Pierce County*, 136 Wn.2d 195, 213-14, 961 P.2d 333 (1998) (declining to recognize civil action for damages premised on violation of state constitutional right to privacy). The trial court correctly dismissed U4IK Gardens' claims of due process and equal protection violations and purportedly unlawful seizures because the Washington State Constitution does not provide a private right of action.

Furthermore, by voluntarily engaging in the tightly regulated marijuana industry, U4IK Gardens implicitly agreed to permit the Board to conduct unannounced inspections. See *Dodge City Saloon, Inc., v. Liquor Control Bd.*, 168 Wn. App. 388, 396, 288 P.3d 343 (2012) (Division II rejected

nightclub's allegation that a warrantless underage compliance check violated constitutional protections against unreasonable searches and seizures because the check was not a search under the meaning of the Fourth Amendment or the Washington Constitution and no privacy interest was violated.). Moreover, Ste. Marie gave express permission for the officers to enter the premises. CP 132. Once its owner granted permission for the officers to enter, U4IK Gardens lost any privacy interest it may have had. *See Dodge City*, 168 Wn. App. at 398-99, quoting *United States v. Bramble*, 103 F.3d 1475, 1478 (9th Cir. 1996) ("Once consent has been obtained from one with authority to give it, any expectation of privacy is lost.").

Additionally, the property seized and forfeited was contraband, not any property U4IK Gardens had a right to possess. The lengthy discussion of what property may be seized and the procedures to follow set out in RCW 69.50.505(1)-(8), (14)-(17), compared with the succinct direction that controlled substances in violation of the chapter must be seized and summarily forfeited, clearly explains Respondents' authority to remove the contraband from U4IK Gardens' facility in the manner in which they did. For these additional reasons, U4IK Gardens' claims under the Washington Constitution fail as a matter of law.

VI. CONCLUSION

U4IK Gardens' claims against the Board and Officer Ogren are each premised on a theory that U4IK Gardens was entitled to forfeiture process before Respondents destroyed marijuana plants removed during their inspection of U4IK Gardens' production facility. There is no dispute that the marijuana plants Respondents seized and confiscated were not tagged with traceability identifiers and, therefore, had been cultivated by U4IK Gardens in violation of the Uniform Controlled Substances Act, RCW 69.50. U4IK Gardens' own failure to ensure its plants were in compliance with applicable rules and regulations resulted in the materials becoming contraband for which U4IK Gardens has no right to possess. Respondents had statutory authority to seize and destroy the plants at issue pursuant to RCW 69.50.505 and WAC 314-55-210. For these reasons, U4IK Gardens' four causes of action fail as a matter of law. This Court should affirm the trial court's dismissal of each.

RESPECTFULLY SUBMITTED this 1st day of September, 2020.

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s/Jennifer Loynd

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CERTIFICATE OF SERVICE

I certify under penalty of perjury in accordance with the laws of the State of Washington that the Respondent's Answering Brief was electronically filed with the Court of Appeals as follows:

<http://www.coa2filings@courts.wa.gov>

And that one copy was e-served via the parties Eservice Agreement as follows:

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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 1st day of September, 2020.

s/Jennifer Loynd

JENNIFER LOYND
Assistant Attorney General

APPENDIX

RESPONDENTS' ANSWERING BRIEF

U4IK Gardens, LLP v. State of Washington, et al.
Court of Appeals, Division II Case No. 54492-0

APPENDIX

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RCW 69.50.101**Definitions.**

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

- (a) "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:
- (1) a practitioner authorized to prescribe (or, by the practitioner's authorized agent); or
 - (2) the patient or research subject at the direction and in the presence of the practitioner.
- (b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseperson, or employee of the carrier or warehouseperson.
- (c) "Board" means the Washington state liquor and cannabis board.
- (d) "CBD concentration" has the meaning provided in RCW **69.51A.010**.
- (e) "CBD product" means any product containing or consisting of cannabidiol.
- (f) "Commission" means the pharmacy quality assurance commission.
- (g) "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal or state laws, or federal or commission rules, but does not include hemp or industrial hemp as defined in RCW **15.140.020**.
- (h)(1) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II and:
- (i) that has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II; or
 - (ii) with respect to a particular individual, that the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II.
- (2) The term does not include:
- (i) a controlled substance;
 - (ii) a substance for which there is an approved new drug application;
 - (iii) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the federal food, drug, and cosmetic act, 21 U.S.C. Sec. 355, or chapter **69.77** RCW to the extent conduct with respect to the substance is pursuant to the exemption; or
 - (iv) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.
- (i) "Deliver" or "delivery" means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.
- (j) "Department" means the department of health.
- (k) "Designated provider" has the meaning provided in RCW **69.51A.010**.
- (l) "Dispense" means the interpretation of a prescription or order for a controlled substance and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.
- (m) "Dispenser" means a practitioner who dispenses.
- (n) "Distribute" means to deliver other than by administering or dispensing a controlled substance.
- (o) "Distributor" means a person who distributes.
- (p) "Drug" means (1) a controlled substance recognized as a drug in the official United States pharmacopoeia/national formulary or the official homeopathic pharmacopoeia of the United States, or any supplement to them; (2) controlled substances intended for use in the diagnosis, cure, mitigation,

treatment, or prevention of disease in individuals or animals; (3) controlled substances (other than food) intended to affect the structure or any function of the body of individuals or animals; and (4) controlled substances intended for use as a component of any article specified in (1), (2), or (3) of this subsection. The term does not include devices or their components, parts, or accessories.

(q) "Drug enforcement administration" means the drug enforcement administration in the United States Department of Justice, or its successor agency.

(r) "Electronic communication of prescription information" means the transmission of a prescription or refill authorization for a drug of a practitioner using computer systems. The term does not include a prescription or refill authorization verbally transmitted by telephone nor a facsimile manually signed by the practitioner.

(s) "Immature plant or clone" means a plant or clone that has no flowers, is less than twelve inches in height, and is less than twelve inches in diameter.

(t) "Immediate precursor" means a substance:

(1) that the commission has found to be and by rule designates as being the principal compound commonly used, or produced primarily for use, in the manufacture of a controlled substance;

(2) that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance; and

(3) the control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

(u) "Isomer" means an optical isomer, but in subsection (gg)(5) of this section, RCW **69.50.204(a)** (12) and (34), and **69.50.206(b)(4)**, the term includes any geometrical isomer; in RCW **69.50.204(a)** (8) and (42), and **69.50.210(c)** the term includes any positional isomer; and in RCW **69.50.204(a)(35)**, **69.50.204(c)**, and **69.50.208(a)** the term includes any positional or geometric isomer.

(v) "Lot" means a definite quantity of marijuana, marijuana concentrates, useable marijuana, or marijuana-infused product identified by a lot number, every portion or package of which is uniform within recognized tolerances for the factors that appear in the labeling.

(w) "Lot number" must identify the licensee by business or trade name and Washington state unified business identifier number, and the date of harvest or processing for each lot of marijuana, marijuana concentrates, useable marijuana, or marijuana-infused product.

(x) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation, compounding, packaging, repackaging, labeling, or relabeling of a controlled substance:

(1) by a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(y) "Marijuana" or "marihuana" means all parts of the plant *Cannabis*, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include:

(1) The mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination; or

(2) Hemp or industrial hemp as defined in RCW **15.140.020**, seeds used for licensed hemp production under chapter **15.140** RCW.

(z) "Marijuana concentrates" means products consisting wholly or in part of the resin extracted from any part of the plant *Cannabis* and having a THC concentration greater than ten percent.

(aa) "Marijuana processor" means a person licensed by the state liquor and cannabis board to process marijuana into marijuana concentrates, useable marijuana, and marijuana-infused products, package and label marijuana concentrates, useable marijuana, and marijuana-infused products for sale in retail outlets, and sell marijuana concentrates, useable marijuana, and marijuana-infused products at wholesale to marijuana retailers.

(bb) "Marijuana producer" means a person licensed by the state liquor and cannabis board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

(cc) "Marijuana products" means useable marijuana, marijuana concentrates, and marijuana-infused products as defined in this section.

(dd) "Marijuana researcher" means a person licensed by the state liquor and cannabis board to produce, process, and possess marijuana for the purposes of conducting research on marijuana and marijuana-derived drug products.

(ee) "Marijuana retailer" means a person licensed by the state liquor and cannabis board to sell marijuana concentrates, useable marijuana, and marijuana-infused products in a retail outlet.

(ff) "Marijuana-infused products" means products that contain marijuana or marijuana extracts, are intended for human use, are derived from marijuana as defined in subsection (y) of this section, and have a THC concentration no greater than ten percent. The term "marijuana-infused products" does not include either useable marijuana or marijuana concentrates.

(gg) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium, opium derivative, and any derivative of opium or opium derivative, including their salts, isomers, and salts of isomers, whenever the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation. The term does not include the isoquinoline alkaloids of opium.

(2) Synthetic opiate and any derivative of synthetic opiate, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation.

(3) Poppy straw and concentrate of poppy straw.

(4) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives or ecgonine or their salts have been removed.

(5) Cocaine, or any salt, isomer, or salt of isomer thereof.

(6) Cocaine base.

(7) Ecgonine, or any derivative, salt, isomer, or salt of isomer thereof.

(8) Any compound, mixture, or preparation containing any quantity of any substance referred to in subparagraphs (1) through (7).

(hh) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term includes opium, substances derived from opium (opium derivatives), and synthetic opiates. The term does not include, unless specifically designated as controlled under RCW **69.50.201**, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes the racemic and levorotatory forms of dextromethorphan.

(ii) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

(jj) "Person" means individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(kk) "Plant" has the meaning provided in RCW **69.51A.010**.

(ll) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(mm) "Practitioner" means:

(1) A physician under chapter **18.71** RCW; a physician assistant under chapter **18.71A** RCW; an osteopathic physician and surgeon under chapter **18.57** RCW; an osteopathic physician assistant under chapter **18.57A** RCW who is licensed under RCW **18.57A.020** subject to any limitations in RCW

18.57A.040; an optometrist licensed under chapter **18.53** RCW who is certified by the optometry board under RCW **18.53.010** subject to any limitations in RCW **18.53.010**; a dentist under chapter **18.32** RCW; a podiatric physician and surgeon under chapter **18.22** RCW; a veterinarian under chapter **18.92** RCW; a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter **18.79** RCW; a naturopathic physician under chapter **18.36A** RCW who is licensed under RCW **18.36A.030** subject to any limitations in RCW **18.36A.040**; a pharmacist under chapter **18.64** RCW or a scientific investigator under this chapter, licensed, registered or otherwise permitted insofar as is consistent with those licensing laws to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of their professional practice or research in this state.

(2) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

(3) A physician licensed to practice medicine and surgery, a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, a licensed physician assistant or a licensed osteopathic physician assistant specifically approved to prescribe controlled substances by his or her state's medical commission or equivalent and his or her supervising physician, an advanced registered nurse practitioner licensed to prescribe controlled substances, or a veterinarian licensed to practice veterinary medicine in any state of the United States.

(nn) "Prescription" means an order for controlled substances issued by a practitioner duly authorized by law or rule in the state of Washington to prescribe controlled substances within the scope of his or her professional practice for a legitimate medical purpose.

(oo) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

(pp) "Qualifying patient" has the meaning provided in RCW **69.51A.010**.

(qq) "Recognition card" has the meaning provided in RCW **69.51A.010**.

(rr) "Retail outlet" means a location licensed by the state liquor and cannabis board for the retail sale of marijuana concentrates, useable marijuana, and marijuana-infused products.

(ss) "Secretary" means the secretary of health or the secretary's designee.

(tt) "State," unless the context otherwise requires, means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(uu) "THC concentration" means percent of delta-9 tetrahydrocannabinol content per dry weight of any part of the plant *Cannabis*, or per volume or weight of marijuana product, or the combined percent of delta-9 tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant *Cannabis* regardless of moisture content.

(vv) "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

(ww) "Useable marijuana" means dried marijuana flowers. The term "useable marijuana" does not include either marijuana-infused products or marijuana concentrates.

[**2019 c 394 § 9**; **2019 c 158 § 12**; **2019 c 55 § 11**. Prior: **2018 c 132 § 2**; prior: **2017 c 317 § 5**; **2017 c 212 § 11**; **2017 c 153 § 1**; prior: **2015 2nd sp.s. c 4 § 901**; **2015 c 70 § 4**; **2014 c 192 § 1**; prior: **2013 c 276 § 2**; **2013 c 116 § 1**; **2013 c 12 § 2**; prior: **2013 c 3 § 2** (Initiative Measure No. 502, approved November 6, 2012); **2012 c 8 § 1**; **2010 c 177 § 1**; **2003 c 142 § 4**; **1998 c 222 § 3**; **1996 c 178 § 18**; **1994 sp.s. c 9 § 739**; **1993 c 187 § 1**; prior: **1990 c 248 § 1**; **1990 c 219 § 3**; **1990 c 196 § 8**; **1989 1st ex.s. c 9 § 429**; **1987 c 144 § 2**; **1986 c 124 § 1**; **1984 c 153 § 18**; **1980 c 71 § 2**; **1973 2nd ex.s. c 38 § 1**; **1971 ex.s. c 308 § 69.50.101**.]

NOTES:

Reviser's note: (1) The definitions in this section have been alphabetized pursuant to RCW **1.08.015(2)(k)**.

(2) This section was amended by 2019 c 55 § 11, 2019 c 158 § 12, and by 2019 c 394 § 9, without reference to one another. All amendments are incorporated in the publication of this section under RCW **1.12.025(2)**. For rule of construction, see RCW **1.12.025(1)**.

Findings—2019 c 394: See note following RCW **69.50.563**.

Effective date—2019 c 158: See RCW **15.140.900**.

Findings—Application—2017 c 317: See notes following RCW **69.50.325**.

Findings—Intent—Effective dates—2015 2nd sp.s. c 4: See notes following RCW **69.50.334**.

Short title—Findings—Intent—References to Washington state liquor control board—Draft legislation—2015 c 70: See notes following RCW **66.08.012**.

Effective date—2013 c 116: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 1, 2013]." [**2013 c 116 § 2**.]

Intent—2013 c 3 (Initiative Measure No. 502): "The people intend to stop treating adult marijuana use as a crime and try a new approach that:

- (1) Allows law enforcement resources to be focused on violent and property crimes;
- (2) Generates new state and local tax revenue for education, health care, research, and substance abuse prevention; and
- (3) Takes marijuana out of the hands of illegal drug organizations and brings it under a tightly regulated, state-licensed system similar to that for controlling hard alcohol.

This measure authorizes the state liquor control board to regulate and tax marijuana for persons twenty-one years of age and older, and add a new threshold for driving under the influence of marijuana." [2013 c 3 § 1 (Initiative Measure No. 502, approved November 6, 2012).]

Severability—2003 c 142: See note following RCW **18.53.010**.

Effective date—1996 c 178: See note following RCW **18.35.110**.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW **18.79.900** through **18.79.902**.

Finding—1990 c 219: See note following RCW **69.41.030**.

Effective date—Severability—1989 1st ex.s. c 9: See RCW **43.70.910** and **43.70.920**.

Severability—1973 2nd ex.s. c 38: "If any of the provisions of this amendatory act, or its application to any person or circumstance is held invalid, the remainder of the amendatory act, or the application of the provision to other persons or circumstances, or the act prior to its amendment is not affected." [**1973 2nd ex.s. c 38 § 3**.]

patient would be compromised by the requirements of this section and documents such basis for the determination in the patient's health care record; or

(b) Administration of an opioid in an inpatient or outpatient treatment setting.

(7) This section does not apply to practitioners licensed under chapter 18.92 RCW.

(8) The department shall review this section by March 31, 2026, and report to the appropriate committees of the legislature on whether this section should be retained, repealed, or amended. [2019 c 314 § 17.]

Declaration—2019 c 314: See note following RCW 18.22.810.

69.50.320 Registration of department of fish and wildlife for use in chemical capture programs—Rules. The department of fish and wildlife may apply to the department of health for registration pursuant to the applicable provisions of this chapter to purchase, possess, and administer controlled substances for use in chemical capture programs. The department of fish and wildlife must not permit a person to administer controlled substances unless the person has demonstrated adequate knowledge of the potential hazards and proper techniques to be used in administering controlled substances.

The department of health may issue a limited registration to carry out the provisions of this section. The commission may adopt rules to ensure strict compliance with the provisions of this section. The commission, in consultation with the department of fish and wildlife, must by rule add or remove additional controlled substances for use in chemical capture programs. The commission shall suspend or revoke registration upon determination that the person administering controlled substances has not demonstrated adequate knowledge as required by this section. This authority is granted in addition to any other power to suspend or revoke registration as provided by law. [2013 c 19 § 106; 2003 c 175 § 2.]

Findings—2003 c 175: "The legislature finds that the department of fish and wildlife is responsible for the proper management of the state's diverse wildlife resources. Wildlife management often requires the department of fish and wildlife to immobilize individual animals in order for the animals to be moved, treated, examined, or for other legitimate purposes. The legislature finds that it is often necessary for the department to use certain controlled substances to accomplish these purposes. Therefore, the legislature finds that the department of fish and wildlife, in coordination with the *board of pharmacy, must be enabled to use approved controlled substances in order to accomplish its legitimate wildlife management goals." [2003 c 175 § 1.]

***Reviser's note:** Chapter 19, Laws of 2013 changed "board of pharmacy" to "pharmacy quality assurance commission."

69.50.325 Marijuana producer's license, marijuana processor's license, marijuana retailer's license. (1) There shall be a marijuana producer's license regulated by the state liquor and cannabis board and subject to annual renewal. The licensee is authorized to produce: (a) Marijuana for sale at wholesale to marijuana processors and other marijuana producers; (b) immature plants or clones and seeds for sale to cooperatives as described under RCW 69.51A.250; and (c) immature plants or clones and seeds for sale to qualifying patients and designated providers as provided under RCW 69.51A.310. The production, possession, delivery, distribution, and sale of marijuana in accordance with the provisions of this chapter and the rules adopted to implement and

enforce it, by a validly licensed marijuana producer, shall not be a criminal or civil offense under Washington state law. Every marijuana producer's license shall be issued in the name of the applicant, shall specify the location at which the marijuana producer intends to operate, which must be within the state of Washington, and the holder thereof shall not allow any other person to use the license. The application fee for a marijuana producer's license shall be two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana producer's license shall be one thousand three hundred eighty-one dollars. A separate license shall be required for each location at which a marijuana producer intends to produce marijuana.

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

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

(b) An individual retail licensee and all other persons or entities with a financial or other ownership interest in the business operating under the license are limited, in the agree-

gate, to holding a collective total of not more than five retail marijuana licenses.

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

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

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

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

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

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

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

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

(B) The adoption of an ordinance or regulation related to zoning, business licensing, land use, or other regulatory measure that has the effect of preventing a licensee from receiving an occupancy permit from the jurisdiction or which otherwise prevents a licensed marijuana retailer from becoming operational. [2018 c 132 § 3. Prior: 2017 c 317 § 1; 2017 c 316 § 2; 2016 c 170 § 1; 2015 c 70 § 5; 2014 c 192 § 2; 2013 c 3 § 4 (Initiative Measure No. 502, approved November 6, 2012).]

Effective date—2018 c 132 § 3: "Section 3 of this act takes effect July 1, 2018." [2018 c 132 § 4.]

Findings—2017 c 317: "The legislature finds that protecting the state's children, youth, and young adults under the legal age to purchase and consume marijuana, by establishing limited restrictions on the advertising of marijuana and marijuana products, is necessary to assist the state's efforts to discourage and prevent underage consumption and the potential risks associated with underage consumption. The legislature finds that these restrictions assist the state in maintaining a strong and effective regulatory and enforcement system as specified by the federal government. The legislature finds this act leaves ample opportunities for licensed marijuana businesses to market their products to those who are of legal age to purchase them, without infringing on the free speech rights of business owners. Finally, the legislature finds that the state has a substantial and compelling interest in enacting this act aimed at protecting Washington's children, youth, and young adults." [2017 c 317 § 12.]

Application—2017 c 317: "This act applies prospectively only and not retroactively. It applies only to causes of action that arise (if change is sub-

stantive) or that are commenced (if change is procedural) on or after July 23, 2017." [2017 c 317 § 25.]

Effective date—2017 c 316 §§ 2 and 3: "Sections 2 and 3 of this act take effect July 1, 2018." [2017 c 316 § 4.]

Effective date—2016 c 170: "This act takes effect July 1, 2016." [2016 c 170 § 3.]

Short title—Findings—Intent—References to Washington state liquor control board—Draft legislation—2015 c 70: See notes following RCW 66.08.012.

Intent—2013 c 3 (Initiative Measure No. 502): See note following RCW 69.50.101.

69.50.326 Marijuana producers, processors—Use of additives to enhance CBD concentration of authorized products—Rules. (1) Licensed marijuana producers and licensed marijuana processors may use a CBD product as an additive for the purpose of enhancing the cannabidiol concentration of any product authorized for production, processing, and sale under this chapter. Except as otherwise provided in subsection (2) of this section, such CBD product additives must be lawfully produced by, or purchased from, a producer or processor licensed under this chapter.

(2) Subject to the requirements set forth in (a) and (b) of this subsection, and for the purpose of enhancing the cannabidiol concentration of any product authorized for production, processing, or sale under this chapter, licensed marijuana producers and licensed marijuana processors may use a CBD product obtained from a source not licensed under this chapter, provided the CBD product:

(a) Has a THC level of 0.3 percent or less on a dry weight basis; and

(b) Has been tested for contaminants and toxins by a testing laboratory accredited under this chapter and in accordance with testing standards established under this chapter and the applicable administrative rules.

(3) Subject to the requirements of this subsection (3), the liquor and cannabis board may enact rules necessary to implement the requirements of this section. Such rule making is limited to regulations pertaining to laboratory testing and product safety standards for those cannabidiol products used by licensed producers and processors in the manufacture of marijuana products marketed by licensed retailers under chapter 69.50 RCW. The purpose of such rule making must be to ensure the safety and purity of cannabidiol products used by marijuana producers and processors licensed under chapter 69.50 RCW and incorporated into products sold by licensed recreational marijuana retailers. This rule-making authority does not include the authority to enact rules regarding either the production or processing practices of the industrial hemp industry or any cannabidiol products that are sold or marketed outside of the regulatory framework established under chapter 69.50 RCW. [2018 c 132 § 1.]

69.50.328 Marijuana producers, processors—No direct or indirect financial interest in licensed marijuana retailers. Neither a licensed marijuana producer nor a licensed marijuana processor shall have a direct or indirect financial interest in a licensed marijuana retailer. [2013 c 3 § 5 (Initiative Measure No. 502, approved November 6, 2012).]

Intent—2013 c 3 (Initiative Measure No. 502): See note following RCW 69.50.101.

RCW 69.50.342

State liquor and cannabis board—Rules.

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

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

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

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

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

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

(f) Retail outlet locations and hours of operation;

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

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

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

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

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

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

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

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

[**2019 c 394 § 4**; **2015 2nd sp.s. c 4 § 1601**; **2015 c 70 § 7**; 2013 c 3 § 9 (Initiative Measure No. 502, approved November 6, 2012).]

NOTES:

Findings—2019 c 394: See note following RCW **69.50.563**.

Findings—Intent—Effective dates—2015 2nd sp.s. c 4: See notes following RCW **69.50.334**.

Short title—Findings—Intent—References to Washington state liquor control board—Draft legislation—2015 c 70: See notes following RCW **66.08.012**.

Intent—2013 c 3 (Initiative Measure No. 502): See note following RCW **69.50.101**.

***Reviser's note:** The "state liquor control board" was renamed the "state liquor and cannabis board" by 2015 c 70 § 3.

Intent—2013 c 3 (Initiative Measure No. 502): See note following RCW 69.50.101.

69.50.342 State liquor and cannabis board—Rules.

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

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

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

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

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

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

(f) Retail outlet locations and hours of operation;

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

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

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

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

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

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

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

(3) The board must adopt rules to perfect and expand existing programs for compliance education for licensed marijuana businesses and their employees. The rules must include a voluntary compliance program created in consultation with licensed marijuana businesses and their employees. The voluntary compliance program must include recommendations on abating violations of this chapter and rules adopted under this chapter. [2019 c 394 § 4; 2015 2nd sp.s. c 4 § 1601; 2015 c 70 § 7; 2013 c 3 § 9 (Initiative Measure No. 502, approved November 6, 2012).]

Findings—2019 c 394: See note following RCW 69.50.563.

Findings—Intent—Effective dates—2015 2nd sp.s. c 4: See notes following RCW 69.50.334.

Short title—Findings—Intent—References to Washington state liquor control board—Draft legislation—2015 c 70: See notes following RCW 66.08.012.

Intent—2013 c 3 (Initiative Measure No. 502): See note following RCW 69.50.101.

69.50.345 State liquor and cannabis board—Rules—Procedures and criteria. (Effective until January 1, 2020.)

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

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

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

(b) The state liquor and cannabis board must reconsider and increase limits on the amount of square feet permitted to be in production on July 24, 2015, and increase the percentage of production space for those marijuana producers who intend to grow plants for marijuana retailers holding medical marijuana endorsements if the marijuana producer designates

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

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

(a) Population distribution;

(b) Security and safety issues;

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

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

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

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

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

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

(a) Security and safety issues;

(b) The provision of adequate access to licensed sources of marijuana, marijuana concentrates, useable marijuana, and

marijuana-infused products to discourage purchases from the illegal market; and

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

(7) Determining the nature, form, and capacity of all containers to be used by licensees to contain marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products, and their labeling requirements, to include but not be limited to:

(a) The business or trade name and Washington state unified business identifier number of the licensees that produced and processed the marijuana, marijuana concentrates, useable marijuana, or marijuana-infused product;

(b) Lot numbers of the marijuana, marijuana concentrates, useable marijuana, or marijuana-infused product;

(c) THC concentration and CBD concentration of the marijuana, marijuana concentrates, useable marijuana, or marijuana-infused product;

(d) Medically and scientifically accurate information about the health and safety risks posed by marijuana use; and

(e) Language required by RCW 69.04.480;

(8) In consultation with the department of agriculture and the department, establishing classes of marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products according to grade, condition, cannabinoid profile, THC concentration, CBD concentration, or other qualitative measurements deemed appropriate by the state liquor and cannabis board;

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

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

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

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

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

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

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

(12) Specifying procedures for identifying, seizing, confiscating, destroying, and donating to law enforcement for training purposes all marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products produced, processed, packaged, labeled, or offered for sale in this state that do not conform in all respects to the standards prescribed by this chapter or the rules of the state liquor and cannabis board. [2018 c 43 § 2; 2015 c 70 § 8; 2013 c 3 § 10 (Initiative Measure No. 502, approved November 6, 2012).]

Short title—Findings—Intent—References to Washington state liquor control board—Draft legislation—2015 c 70: See notes following RCW 66.08.012.

Intent—2013 c 3 (Initiative Measure No. 502): See note following RCW 69.50.101.

69.50.345 State liquor and cannabis board—Rules—Procedures and criteria. (Effective January 1, 2020, until July 1, 2024.) The state liquor and cannabis board, subject to the provisions of this chapter, must adopt rules that establish the procedures and criteria necessary to implement the following:

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

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

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

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

(a) Population distribution;

(b) Security and safety issues;

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

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

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

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

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

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

(a) Security and safety issues;

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

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

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

(8) In consultation with the department of agriculture and the department, establishing classes of marijuana, marijuana concentrates, useable marijuana, and marijuana-infused products according to grade, condition, cannabinoid profile, THC concentration, CBD concentration, or other qualitative measurements deemed appropriate by the state liquor and cannabis board;

(9) Establishing reasonable time, place, and manner restrictions and requirements regarding advertising of marijuana, marijuana concentrates, useable marijuana, and mari-

RCW 69.50.363**Marijuana processors, employees—Certain acts not criminal or civil offenses.**

The following acts, when performed by a validly licensed marijuana processor or employee of a validly licensed marijuana processor in compliance with rules adopted by the *state liquor control board to implement and enforce chapter 3, Laws of 2013, do not constitute criminal or civil offenses under Washington state law:

- (1) Purchase and receipt of marijuana that has been properly packaged and labeled from a marijuana producer validly licensed under chapter 3, Laws of 2013;
- (2) Possession, processing, packaging, and labeling of quantities of marijuana, useable marijuana, and marijuana-infused products that do not exceed the maximum amounts established by the *state liquor control board under RCW **69.50.345(4)**;
- (3) Delivery, distribution, and sale of useable marijuana or marijuana-infused products to a marijuana retailer validly licensed under chapter 3, Laws of 2013; and
- (4) Delivery, distribution, and sale of useable marijuana, marijuana concentrates, or marijuana-infused products to a federally recognized Indian tribe as permitted under an agreement between the state and the tribe entered into under RCW **43.06.490**.

[**2015 c 207 § 7**; 2013 c 3 § 16 (Initiative Measure No. 502, approved November 6, 2012).]

NOTES:

***Reviser's note:** The "state liquor control board" was renamed the "state liquor and cannabis board" by **2015 c 70 § 3**.

Intent—Finding—2015 c 207: See note following RCW **43.06.490**.

Intent—2013 c 3 (Initiative Measure No. 502): See note following RCW **69.50.101**.

RCW 69.50.366**Marijuana producers, employees—Certain acts not criminal or civil offenses.**

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

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

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

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

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

[**2017 c 317 § 6**; **2015 c 207 § 8**; 2013 c 3 § 17 (Initiative Measure No. 502, approved November 6, 2012).]

NOTES:

Findings—Application—2017 c 317: See notes following RCW **69.50.325**.

Intent—Finding—2015 c 207: See note following RCW **43.06.490**.

Intent—2013 c 3 (Initiative Measure No. 502): See note following RCW **69.50.101**.

RCW 69.50.401**Prohibited acts: A—Penalties.**

(1) Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

(2) Any person who violates this section with respect to:

(a) A controlled substance classified in Schedule I or II which is a narcotic drug or flunitrazepam, including its salts, isomers, and salts of isomers, classified in Schedule IV, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, or (i) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (ii) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine;

(b) Amphetamine, including its salts, isomers, and salts of isomers, or methamphetamine, including its salts, isomers, and salts of isomers, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, or (i) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (ii) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine. Three thousand dollars of the fine may not be suspended. As collected, the first three thousand dollars of the fine must be deposited with the law enforcement agency having responsibility for cleanup of laboratories, sites, or substances used in the manufacture of the methamphetamine, including its salts, isomers, and salts of isomers. The fine moneys deposited with that law enforcement agency must be used for such clean-up cost;

(c) Any other controlled substance classified in Schedule I, II, or III, is guilty of a class C felony punishable according to chapter **9A.20** RCW, except as provided in RCW **69.50.475**;

(d) A substance classified in Schedule IV, except flunitrazepam, including its salts, isomers, and salts of isomers, is guilty of a class C felony punishable according to chapter **9A.20** RCW; or

(e) A substance classified in Schedule V, is guilty of a class C felony punishable according to chapter **9A.20** RCW.

(3) The production, manufacture, processing, packaging, delivery, distribution, sale, or possession of marijuana in compliance with the terms set forth in RCW **69.50.360**, **69.50.363**, or **69.50.366** shall not constitute a violation of this section, this chapter, or any other provision of Washington state law.

(4) The fines in this section apply to adult offenders only.

[**2019 c 379 § 2**; **2015 c 265 § 34**; 2013 c 3 § 19 (Initiative Measure No. 502, approved November 6, 2012); **2005 c 218 § 1**; **2003 c 53 § 331**. Prior: **1998 c 290 § 1**; **1998 c 82 § 2**; **1997 c 71 § 2**; **1996 c 205 § 2**; **1989 c 271 § 104**; **1987 c 458 § 4**; **1979 c 67 § 1**; **1973 2nd ex.s. c 2 § 1**; **1971 ex.s. c 308 § 69.50.401**.]

NOTES:

Finding—Intent—2015 c 265: See note following RCW **13.50.010**.

Intent—2013 c 3 (Initiative Measure No. 502): See note following RCW **69.50.101**.

Intent—Effective date—2003 c 53: See notes following RCW **2.48.180**.

Application—1998 c 290: "This act applies to crimes committed on or after July 1, 1998." [**1998 c 290 § 9.**]

Effective date—1998 c 290: "This act takes effect July 1, 1998." [**1998 c 290 § 10.**]

Severability—1998 c 290: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [**1998 c 290 § 11.**]

Application—1989 c 271 §§ 101-111: See note following RCW **9.94A.510.**

Severability—1989 c 271: See note following RCW **9.94A.510.**

Severability—1987 c 458: See note following RCW **48.21.160.**

*Serious drug offenders, notice of release or escape: RCW **72.09.710.***

Short title—Findings—Intent—References to Washington state liquor control board—Draft legislation—2015 c 70: See notes following RCW 66.08.012.

69.50.455 Synthetic cannabinoids—Unfair or deceptive practice under RCW 19.86.020. (1) It is an unfair or deceptive practice under RCW 19.86.020 for any person or entity to distribute, dispense, manufacture, display for sale, offer for sale, attempt to sell, or sell to a purchaser any product that contains any amount of any synthetic cannabinoid. The legislature finds that practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Violations of this section are not reasonable in relation to the development and preservation of business.

(2) "Synthetic cannabinoid" includes any chemical compound identified in RCW 69.50.204(c)(30) or by the pharmacy quality assurance commission under RCW 69.50.201. [2015 2nd sp.s. c 4 § 1201.]

Findings—Intent—Effective dates—2015 2nd sp.s. c 4: See notes following RCW 69.50.334.

69.50.460 Cathinone or methcathinone—Unfair or deceptive practice under RCW 19.86.020. It is an unfair or deceptive practice under RCW 19.86.020 for any person or entity to distribute, dispense, manufacture, display for sale, offer for sale, attempt to sell, or sell to a purchaser any product that contains any amount of any cathinone or methcathinone as identified in RCW 69.50.204(e) (3) and (5). The legislature finds that practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Violations of this section are not reasonable in relation to the development and preservation of business. [2015 2nd sp.s. c 4 § 1202.]

Findings—Intent—Effective dates—2015 2nd sp.s. c 4: See notes following RCW 69.50.334.

69.50.465 Conducting or maintaining marijuana club—Penalty. (1) It is unlawful for any person to conduct or maintain a marijuana club by himself or herself or by associating with others, or in any manner aid, assist, or abet in conducting or maintaining a marijuana club.

(2) It is unlawful for any person to conduct or maintain a public place where marijuana is held or stored, except as provided for a licensee under this chapter, or consumption of marijuana is permitted.

(3) Any person who violates this section is guilty of a class C felony punishable under chapter 9A.20 RCW.

(4) The following definitions apply throughout this section unless the context clearly requires otherwise.

(a) "Marijuana club" means a club, association, or other business, for profit or otherwise, that conducts or maintains a premises for the primary or incidental purpose of providing a location where members or other persons may keep or consume marijuana on the premises.

(b) "Public place" means, in addition to the definition provided in RCW 66.04.010, any place to which admission is charged or for which any pecuniary gain is realized by the owner or operator of such place. [2015 2nd sp.s. c 4 § 1401.]

Findings—Intent—Effective dates—2015 2nd sp.s. c 4: See notes following RCW 69.50.334.

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69.50.470 Medication disposal, no penalty for compliance. It is not a violation of this chapter to possess or deliver a controlled substance in compliance with chapter 69.48 RCW. [2018 c 196 § 23.]

69.50.475 Marijuana retail outlets—Sale to persons under the age of twenty-one—Penalty. (1) Except as otherwise authorized in this chapter and as provided in subsection (2) of this section, an employee of a retail outlet who sells marijuana products to a person under the age of twenty-one years in the course of his or her employment is guilty of a gross misdemeanor.

(2) An employee of a retail outlet may be prosecuted under RCW 69.50.401 or 69.50.406 or any other applicable provision, if the employee sells marijuana products to a person the employee knows is under the age of twenty-one and not otherwise authorized to purchase marijuana products under this chapter, or if the employee sells or otherwise provides marijuana products to a person under the age of twenty-one outside of the course of his or her employment. [2019 c 379 § 1.]

ARTICLE V ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

69.50.500 Powers of enforcement personnel. (a) It is hereby made the duty of the *state board of pharmacy, the department, the **state liquor control board, and their officers, agents, inspectors and representatives, and all law enforcement officers within the state, and of all prosecuting attorneys, to enforce all provisions of this chapter, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and all other states, relating to controlled substances as defined in this chapter.

(b) Employees of the department of health, who are so designated by the *board as enforcement officers are declared to be peace officers and shall be vested with police powers to enforce the drug laws of this state, including this chapter. [2013 c 3 § 24 (Initiative Measure No. 502, approved November 6, 2012); 1989 1st ex.s. c 9 § 437; 1971 ex.s. c 308 § 69.50.500.]

Reviser's note: *(1) Chapter 19, Laws of 2013 changed "state board of pharmacy" to "pharmacy quality assurance commission."

***(2) The "state liquor control board" was renamed the "state liquor and cannabis board" by 2015 c 70 § 3.

Intent—2013 c 3 (Initiative Measure No. 502): See note following RCW 69.50.101.

Additional notes found at www.leg.wa.gov

69.50.501 Administrative inspections. The commission may make administrative inspections of controlled premises in accordance with the following provisions:

(1) For purposes of this section only, "controlled premises" means:

(a) places where persons registered or exempted from registration requirements under this chapter are required to keep records; and

(b) places including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under this chapter

(2019 Ed.)

RCW 69.50.501

Administrative inspections.

The commission may make administrative inspections of controlled premises in accordance with the following provisions:

(1) For purposes of this section only, "controlled premises" means:

(a) places where persons registered or exempted from registration requirements under this chapter are required to keep records; and

(b) places including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

(2) When authorized by an administrative inspection warrant issued pursuant to RCW **69.50.502** an officer or employee designated by the commission, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(3) When authorized by an administrative inspection warrant, an officer or employee designated by the commission may:

(a) inspect and copy records required by this chapter to be kept;

(b) inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in subsection (5) of this section, all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this chapter; and

(c) inventory any stock of any controlled substance therein and obtain samples thereof.

(4) This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with chapter **34.05** RCW, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:

(a) if the owner, operator, or agent in charge of the controlled premises consents;

(b) in situations presenting imminent danger to health or safety;

(c) in situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(d) in any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or,

(e) in all other situations in which a warrant is not constitutionally required.

(5) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing.

[**2013 c 19 § 108; 1971 ex.s. c 308 § 69.50.501.**]

RCW 69.50.505

Seizure and forfeiture.

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

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

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

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

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

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

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

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

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

(v) When the owner of a conveyance has been arrested under this chapter or chapter **69.41** or **69.52** RCW the conveyance in which the person is arrested may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;

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

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

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

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

exchanges in violation of this chapter or chapter **69.41** or **69.52** RCW, if such activity is not less than a class C felony and a substantial nexus exists between the commercial production or sale of the controlled substance and the real property. However:

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

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

(iii) The possession of marijuana shall not result in the forfeiture of real property unless the marijuana is possessed for commercial purposes that are unlawful under Washington state law, the amount possessed is five or more plants or one pound or more of marijuana, and a substantial nexus exists between the possession of marijuana and the real property. In such a case, the intent of the offender shall be determined by the preponderance of the evidence, including the offender's prior criminal history, the amount of marijuana possessed by the offender, the sophistication of the activity or equipment used by the offender, whether the offender was licensed to produce, process, or sell marijuana, or was an employee of a licensed producer, processor, or retailer, and other evidence which demonstrates the offender's intent to engage in unlawful commercial activity;

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

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

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

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

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

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

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

(3) In the event of seizure pursuant to subsection (2) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter

62A.9A RCW, or a certificate of title, shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

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

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

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

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

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

- (a) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the provisions of this chapter;
- (b) Sell that which is not required to be destroyed by law and which is not harmful to the public;
- (c) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law; or
- (d) Forward it to the drug enforcement administration for disposition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[2013 c 3 § 25 (Initiative Measure No. 502, approved November 6, 2012). Prior: **2009 c 479 § 46**; **2009 c 364 § 1**; **2008 c 6 § 631**; **2003 c 53 § 348**; **2001 c 168 § 1**; **1993 c 487 § 1**; **1992 c 211 § 1**; prior: (1992 c 210 § 5 repealed by 1992 c 211 § 2); **1990 c 248 § 2**; **1990 c 213 § 12**; **1989 c 271 § 212**; **1988 c 282 § 2**; **1986 c 124 § 9**; **1984 c 258 § 333**; **1983 c 2 § 15**; prior: **1982 c 189 § 6**; **1982 c 171 § 1**; prior: **1981 c 67 § 32**; **1981 c 48 § 3**; **1977 ex.s. c 77 § 1**; **1971 ex.s. c 308 § 69.50.505.**]

NOTES:

Reviser's note: *(1) The number 21 was inadvertently added in the document filed with the secretary of state's office.

** (2) Chapter 19, Laws of 2013 changed "state board of pharmacy" to "pharmacy quality assurance commission."

Intent—2013 c 3 (Initiative Measure No. 502): See note following RCW **69.50.101**.

Effective date—2009 c 479: See note following RCW **2.56.030**.

Part headings not law—Severability—2008 c 6: See RCW **26.60.900** and **26.60.901**.

Intent—Effective date—2003 c 53: See notes following RCW [2.48.180](#).

Severability—2001 c 168: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [[2001 c 168 § 5](#).]

Effective date—1990 c 213 §§ 2 and 12: See note following RCW [64.44.010](#).

Findings—1989 c 271: "The legislature finds that: Drug offenses and crimes resulting from illegal drug use are destructive to society; the nature of drug trafficking results in many property crimes and crimes of violence; state and local governmental agencies incur immense expenses in the investigation, prosecution, adjudication, incarceration, and treatment of drug-related offenders and the compensation of their victims; drug-related offenses are difficult to eradicate because of the profits derived from the criminal activities, which can be invested in legitimate assets and later used for further criminal activities; and the forfeiture of real assets where a substantial nexus exists between the commercial production or sale of the substances and the real property will provide a significant deterrent to crime by removing the profit incentive of drug trafficking, and will provide a revenue source that will partially defray the large costs incurred by government as a result of these crimes. The legislature recognizes that seizure of real property is a very powerful tool and should not be applied in cases in which a manifest injustice would occur as a result of forfeiture of an innocent spouse's community property interest." [[1989 c 271 § 211](#).]

Severability—1989 c 271: See note following RCW [9.94A.510](#).

Severability—1988 c 282: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [[1988 c 282 § 3](#).]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW [3.30.010](#).

Intent—1984 c 258: See note following RCW [3.34.130](#).

Severability—1983 c 2: See note following RCW [18.71.030](#).

Effective date—1982 c 189: See note following RCW [34.12.020](#).

Effective date—1982 c 171: See RCW [69.52.901](#).

Severability—1981 c 48: See note following RCW [69.50.102](#).

(5) Rules adopted under RCW 69.50.562 must provide that violations with a direct or immediate relationship to public safety discovered during the consultation visit must be corrected within a specified period of time and an inspection must be conducted at the end of that time period.

(6) All licensees requesting consultative services must be advised of this section and the rules adopted by the board relating to the voluntary compliance program. Valuable formulae or financial or proprietary commercial information records received during a consultative visit or while providing consultative services in accordance with this section are not subject to inspection pursuant to chapter 42.56 RCW.

(7) The board may adopt rules on the frequency, manner, and method of providing consultative services to licensees. Rules may include scheduling of consultative services and prioritizing requests for the services while maintaining the enforcement requirements of this chapter. [2019 c 394 § 5.]

Findings—2019 c 394: See note following RCW 69.50.563.

69.50.562 Licensed marijuana businesses—Written warnings—Waiver of sanctions with no relationship to public safety—Compliance program—Penalties—Rules.

(1) The board must prescribe procedures for the following:

(a) Issuance of written warnings or notices to correct in lieu of penalties, sanctions, or other violations with respect to regulatory violations that have no direct or immediate relationship to public safety as defined by the board;

(b) Waiving any fines, civil penalties, or administrative sanctions for violations, that have no direct or immediate relationship to public safety, and are corrected by the licensee within a reasonable amount of time as designated by the board; and

(c) A compliance program in accordance with chapter 43.05 RCW and RCW 69.50.342, whereby licensees may request compliance assistance and inspections without issuance of a penalty, sanction, or other violation provided that any noncompliant issues are resolved within a specified period of time.

(2) The board must adopt rules prescribing penalties for violations of this chapter. The board:

(a) May establish escalating penalties for violation of this chapter, provided that the cumulative effect of any such escalating penalties cannot last beyond two years and the escalation applies only to multiple violations that are the same or similar in nature;

(b) May not include cancellation of a license for a single violation, unless the board can prove by a preponderance of the evidence:

(i) Diversion of marijuana product to the illicit market or sales across state lines;

(ii) Furnishing of marijuana product to minors;

(iii) Diversion of revenue to criminal enterprises, gangs, cartels, or parties not qualified to hold a marijuana license based on criminal history requirements;

(iv) The commission of nonmarijuana-related crimes; or

(v) Knowingly making a misrepresentation of fact to the board, an officer of the board, or an employee of the board related to conduct or an action that is, or alleged to be, any of the violations identified in (b)(i) through (b)(iv) of this subsection (2);

(2019 Ed.)

(c) May include cancellation of a license for cumulative violations only if a marijuana licensee commits at least four violations within a two-year period of time;

(d) Must consider aggravating and mitigating circumstances and deviate from the prescribed penalties accordingly, and must authorize enforcement officers to do the same, provided that such penalty may not exceed the maximum escalating penalty prescribed by the board for that violation; and

(e) Must give substantial consideration to mitigating any penalty imposed on a licensee when there is employee misconduct that led to the violation and the licensee:

(i) Established a compliance program designed to prevent the violation;

(ii) Performed meaningful training with employees designed to prevent the violation; and

(iii) Had not enabled or ignored the violation or other similar violations in the past.

(3) The board may not consider any violation that occurred more than two years prior as grounds for denial, suspension, revocation, cancellation, or nonrenewal, unless the board can prove by a preponderance of the evidence that the prior administrative violation evidences:

(a) Diversion of marijuana product to the illicit market or sales across state lines;

(b) Furnishing of marijuana product to minors;

(c) Diversion of revenue to criminal enterprises, gangs, cartels, or parties not qualified to hold a marijuana license based on criminal history requirements;

(d) The commission of nonmarijuana-related crimes; or

(e) Knowingly making a misrepresentation of fact to the board, an officer of the board, or an employee of the board related to conduct or an action that is, or is alleged to be, any of the violations identified in (a) through (d) of this subsection (3). [2019 c 394 § 6.]

Findings—2019 c 394: See note following RCW 69.50.563.

69.50.563 Licensed marijuana businesses—Civil penalty—Rules. (1) The liquor and cannabis board may issue a civil penalty without first issuing a notice of correction if:

(a) The licensee has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule or has been given previous notice of the same or similar type of violation of the same statute or rule;

(b) Compliance is not achieved by the date established by the liquor and cannabis board in a previously issued notice of correction and if the board has responded to a request for review of the date by reaffirming the original date or establishing a new date; or

(c) The board can prove by a preponderance of the evidence:

(i) Diversion of marijuana product to the illicit market or sales across state lines;

(ii) Furnishing of marijuana product to minors;

(iii) Diversion of revenue to criminal enterprises, gangs, cartels, or parties not qualified to hold a marijuana license based on criminal history requirements;

(iv) The commission of nonmarijuana-related crimes; or

(v) Knowingly making a misrepresentation of fact to the board, an officer of the board, or an employee of the board related to conduct or an action that is, or is alleged to be, any of the violations identified in (c)(i) through (c)(iv) of this subsection (1).

(2) The liquor and cannabis board may adopt rules to implement this section and RCW 43.05.160. [2019 c 394 § 3.]

Findings—2019 c 394: "The legislature finds that:

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

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

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

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

(5) The risk taking entrepreneurs who are trying to comply with board regulations should not face punitive consequences for mistakes made during this initial phase of the industry that did not pose a direct threat to public health and safety." [2019 c 394 § 1.]

69.50.564 Licensed marijuana businesses—Settlement agreement. (1) This section applies to the board's issuance of administrative violations to licensed marijuana producers, processors, retailers, transporters, and researchers, when a settlement conference is held between a hearing officer or designee of the board and the marijuana licensee that received a notice of an alleged administrative violation or violations.

(2) If a settlement agreement is entered between a marijuana licensee and a hearing officer or designee of the board at or after a settlement conference, the terms of the settlement agreement must be given substantial weight by the board.

(3) For the purposes of this section:

(a) "Settlement agreement" means the agreement or compromise between a licensed marijuana producer, processor, retailer, researcher, transporter, or researcher and the hearing officer or designee of the board with authority to participate in the settlement conference, that:

(i) Includes the terms of the agreement or compromise regarding an alleged violation or violations by the licensee of this chapter, chapter 69.51A RCW, or rules adopted under either chapter, and any related penalty or licensing restriction; and

(ii) Is in writing and signed by the licensee and the hearing officer or designee of the board.

(b) "Settlement conference" means a meeting or discussion between a licensed marijuana producer, processor, retailer, researcher, transporter, researcher, or authorized representative of any of the preceding licensees, and a hearing officer or designee of the board, held for purposes such as discussing the circumstances surrounding an alleged violation of law or rules by the licensee, the recommended penalty, and any aggravating or mitigating factors, and that is intended to resolve the alleged violation before an administrative hearing or judicial proceeding is initiated. [2019 c 394 § 8.]

Findings—2019 c 394: See note following RCW 69.50.563.

69.50.565 Unpaid trust fund taxes—Limited liability business entities—Liability of responsible individuals—Administrative hearing. (1) Whenever the board determines that a limited liability business entity has collected trust fund taxes and has failed to remit those taxes to the board and that business entity has been terminated, dissolved, or abandoned, or is insolvent, the board may pursue collection of the entity's unpaid trust fund taxes, including penalties on those taxes, against any or all of the responsible individuals. For purposes of this subsection, "insolvent" means the condition that results when the sum of the entity's debts exceeds the fair market value of its assets. The board may presume that an entity is insolvent if the entity refuses to disclose to the board the nature of its assets and liabilities.

(2)(a) For a responsible individual who is the current or a former chief executive or chief financial officer, liability under this section applies regardless of fault or whether the individual was or should have been aware of the unpaid trust fund tax liability of the limited liability business entity.

(b) For any other responsible individual, liability under this section applies only if he or she willfully failed to pay or to cause to be paid to the board the trust fund taxes due from the limited liability business entity.

(3)(a) Except as provided in this subsection (3)(a), a responsible individual who is the current or a former chief executive or chief financial officer is liable under this section only for trust fund tax liability accrued during the period that he or she was the chief executive or chief financial officer. However, if the responsible individual had the responsibility or duty to remit payment of the limited liability business entity's trust fund taxes to the board during any period of time that the person was not the chief executive or chief financial officer, that individual is also liable for trust fund tax liability that became due during the period that he or she had the duty to remit payment of the limited liability business entity's taxes to the board but was not the chief executive or chief financial officer.

(b) All other responsible individuals are liable under this section only for trust fund tax liability that became due during the period he or she had the responsibility or duty to remit payment of the limited liability business entity's taxes to the board.

(4) Persons described in subsection (3)(b) of this section are exempt from liability under this section in situations where nonpayment of the limited liability business entity's trust fund taxes was due to reasons beyond their control as determined by the board by rule.

(5) Any person having been issued a notice of unpaid trust fund taxes under this section is entitled to an administrative hearing under RCW 69.50.334 and any such rules the board may adopt.

(6) This section does not relieve the limited liability business entity of its trust fund tax liability or otherwise impair other tax collection remedies afforded by law.

(7) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Board" means the state liquor and cannabis board.

(b) "Chief executive" means: The president of a corporation or for other entities or organizations other than corpora-

WAC 314-55-005 What is the purpose of this chapter? The purpose of this chapter is to outline the application process, qualifications and requirements to obtain and maintain a marijuana license and the reporting requirements for a marijuana licensee.

[Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-005, filed 10/21/13, effective 11/21/13.]

WAC 314-55-083 Security and traceability requirements for marijuana licensees. The security requirements for a marijuana licensee are as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) All point-of-sale records;

(j) Marijuana excise tax records;

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

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

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

(n) Samples containing useable marijuana provided to retailers;

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

(p) Other information specified by the board.

[Statutory Authority: RCW 69.50.325, 69.50.342, 69.50.345, and 69.50.369. WSR 18-22-055, § 314-55-083, filed 10/31/18, effective 12/1/18. Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-083, filed 5/18/16, effective 6/18/16; WSR 15-11-107, § 314-55-083, filed 5/20/15, effective 6/20/15; WSR 14-07-116, § 314-55-083, filed 3/19/14, effective 4/19/14. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-083, filed 10/21/13, effective 11/21/13.]

WAC 314-55-110 What are my responsibilities as a marijuana licensee? (1) Marijuana licensees are responsible for the operation of their licensed business in compliance with the marijuana laws and rules of the WSLCB, chapters 69.50 and 69.51A RCW, 314-55 WAC, and any other applicable state laws and rules.

(2) The penalties for violations of marijuana laws or rules are in WAC 314-55-515 through 314-55-535, as now or hereafter amended. The rules also outline aggravating and mitigating circumstances that may affect what penalty is applied if a licensee or employee violates a marijuana law or rule.

(3) Licensees and their employees must conduct the business and maintain the licensed premises, surrounding area, and vehicles transporting product, in compliance with the following laws, as they now exist or may later be amended:

- (a) Titles 9 and 9A RCW, the criminal code;
- (b) Title 66 RCW, the liquor laws;
- (c) Chapters 70.155, 82.24, and 82.26 RCW and RCW 26.28.080, the tobacco laws;
- (d) Chapter 69.50 RCW, the uniform controlled substances laws; and
- (e) Chapter 69.51A RCW, the medical marijuana laws.

(4) Licensees have the responsibility to control their conduct and the conduct of employees, customers, and visitors on the licensed premises at all times. Except as otherwise provided by law, licensees or employees may not:

- (a) Be disorderly or apparently intoxicated by liquor, marijuana, or controlled substances on the licensed premises;
- (b) Permit any disorderly person to remain on the licensed premises;
- (c) Engage in or allow behavior on the licensed premises that provokes conduct which presents a threat to public safety;
- (d) Engage, or permit any employee or other person to engage in, conduct on the licensed premises which is prohibited by any portion of Title 9, 9A, or 66 RCW, or chapters 69.50 and 69.51A RCW;
- (e) Engage in or permit any employee or other person to engage in the consumption of any type of marijuana, usable marijuana, marijuana concentrate, or marijuana-infused product on the licensed premises.

[Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-110, filed 5/18/16, effective 6/18/16.]

WAC 314-55-185 WSLCB right to inspect premises or vehicles associated with a license to produce, process, sell, research, or transport marijuana. (1) The following must be available for inspection at all times by an enforcement officer of the WSLCB:

(a) All licensed premises used in the production, processing, storage, transportation, research, or sale of marijuana, useable marijuana, marijuana concentrates, marijuana-infused products, or any premises or parts of premises used or in any way connected, physically or otherwise, with the licensed business;

(b) Any vehicle assigned for the purpose of transporting marijuana, useable marijuana, marijuana concentrates, or marijuana-infused products at any licensed location, or while en route during transportation;

(c) Records as outlined in this chapter; and

(d) Marijuana, useable marijuana, marijuana concentrates, or marijuana-infused products on the licensed premises for the purpose of analyzing samples (the licensee will be given a receipt for any product removed from the premises for this purpose).

(2) Every person being on a licensed premises or within a transporting vehicle, or having charge thereof, must admit an enforcement officer of the WSLCB demanding to enter therein in pursuance of this section in the execution of his/her duty, and must not obstruct or attempt to obstruct the entry of such officer, or refuse to allow an officer to examine the premises, vehicles, records, and products subject to this section of the licensee.

[Statutory Authority: RCW 69.50.325, 69.50.342, 69.50.345, and 69.50.369. WSR 18-22-055, § 314-55-185, filed 10/31/18, effective 12/1/18. Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-185, filed 5/18/16, effective 6/18/16.]

WAC 314-55-210 Will the WSLCB seize or confiscate marijuana, marijuana concentrates, usable marijuana, and marijuana-infused products? The WSLCB may seize, destroy, confiscate, or place an administrative hold on marijuana, usable marijuana, marijuana concentrates, and marijuana-infused products under the following circumstances:

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

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

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

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

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

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

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

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

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

(d) Following an investigation, the WSLCB may lift the administrative hold, order the continuation of the administrative hold, or

seek a final agency order for the destruction of the marijuana, usable marijuana, marijuana concentrate, and marijuana-infused products.

[Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-210, filed 5/18/16, effective 6/18/16; WSR 15-11-107, § 314-55-210, filed 5/20/15, effective 6/20/15; WSR 14-07-116, § 314-55-210, filed 3/19/14, effective 4/19/14.]

WAC 314-55-220 What is the process once the WSLCB summarily orders marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products of a marijuana licensee to be destroyed? (1) The WSLCB may issue an order to summarily destroy marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products after the WSLCB's enforcement division has completed a preliminary staff investigation of the violation and upon a determination that immediate destruction of marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products is necessary for the protection or preservation of the public health, safety, or welfare.

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

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

[Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-220, filed 5/18/16, effective 6/18/16; WSR 14-07-116, § 314-55-220, filed 3/19/14, effective 4/19/14.]

WAC 314-55-230 What are the procedures the WSLCB will use to destroy or donate marijuana, usable marijuana, marijuana concentrates, and marijuana-infused products to law enforcement? (1) The WSLCB may require a marijuana licensee to destroy marijuana, usable marijuana, marijuana concentrates, and marijuana-infused products found in a licensed establishment to be in excess of product limits set forth in WAC 314-55-075, 314-55-077, and 314-55-079.

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

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

[Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-230, filed 5/18/16, effective 6/18/16; WSR 14-07-116, § 315-55-230 (codified as WAC 314-55-230), filed 3/19/14, effective 4/19/14.]

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

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

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

[Statutory Authority: RCW 69.50.325, 69.50.342, 69.50.345, and 69.50.369. WSR 18-22-055, § 314-55-525, filed 10/31/18, effective 12/1/18. Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-525, filed 5/18/16, effective 6/18/16; WSR

15-11-107, § 314-55-525, filed 5/20/15, effective 6/20/15. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-525, filed 10/21/13, effective 11/21/13.]

WAC 314-55-509 Penalty structure. (1) The board determines if a penalty will be imposed. Penalties are based on the severity of the violation in the following categories:

(a) Category I: Violations of a severity that would make a license eligible for cancellation on a first offense;

(b) Category II: Violations that create a direct or immediate threat to public health, safety, or both;

(c) Category III: Violations that create a potential threat to public health, safety, or both;

(d) Category IV: Significant regulatory violations;

(e) Category V: Procedural and operational violations;

(f) Category VI: Statutory violations.

(2) For purposes of assessing penalties, only violations occurring in the two-year time period immediately preceding the date of the violation will be considered unless otherwise provided in this chapter.

(3) The board may, at its discretion, deviate from the prescribed penalties herein. Such deviations will be determined on a case-by-case basis, considering mitigating and aggravating factors.

(a) Mitigating factors may result in a waiving or lowering of fines, civil penalties, imposition of a fine in lieu of suspension, or fewer days of suspension. Mitigating factors may include demonstrated business policies and practices that may reduce risk to public health and safety.

(b) Aggravating factors may result in increased days of suspension, increased monetary penalties, cancellation, or nonrenewal of a marijuana license. Aggravating factors may include obstructing an investigation, business operations, behaviors, or both, that increase risk to public health and safety.

(4) For violations that occurred before the effective date of these rules, enforcement action will be based on the rules that were in effect on the date the violation occurred. Subsection (2) of this section shall apply to all enforcement actions regardless of the date the violation occurred.

[Statutory Authority: RCW 69.50.342, 69.50.345, and 2019 c 394. WSR 20-03-177, § 314-55-509, filed 1/22/20, effective 2/22/20.]

WAC 314-55-521 Category II. Violations that create a direct or immediate threat to public health, safety, or both.

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

Violation Type	1st Violation	2nd Violation in a Two-year Window	3rd Violation in a Two-year Window	4th Violation in a Two-year Window
Furnishing to persons under twenty-one years of age, except as allowed in RCW 60.50.357. RCW 69.50.354 WAC 314-55-079(1)	5-day suspension or \$1,250 monetary option	10-day suspension or \$7,500 monetary option	30-day suspension	License cancellation
Conduct violations: Criminal conduct: Permitting or engaging in criminal conduct, or both. Disorderly conduct, or apparent intoxication of a licensee or employee, or permitting on premises. Title 9 RCW Title 9A RCW WAC 314-55-110 (4)(b)	5-day suspension or \$1,250 monetary option	10-day suspension or \$7,500 monetary option	30-day suspension	License cancellation
Operating an unapproved CO² or hydrocarbon extraction system. WAC 314-55-104	\$10,000 monetary fine	License cancellation		
Intentional use of unauthorized pesticides, soil amendments, fertilizers, other crop production aids. RCW 69.50.342 WAC 314-55-084	Tier 1: \$2,500 Tier 2: \$5,000 Tier 3: \$7,500 monetary fine and destruction of affected marijuana	Tier 1: \$7,500 Tier 2: \$15,000 Tier 3: \$22,500 monetary fine and destruction of affected marijuana	License cancellation	
Adulterated usable marijuana with organic or nonorganic chemical or other compound. WAC 314-55-077 (5)(b) WAC 314-55-101	Tier 1: \$2,500 Tier 2: \$5,000 Tier 3: \$7,500 monetary fine and destruction of affected marijuana	Tier 1: \$7,500 Tier 2: \$15,000 Tier 3: \$22,500 monetary fine and destruction of affected marijuana	License cancellation	
Transportation of marijuana without a manifest. WAC 314-55-085(3) WAC 314-55-096 (1) and (2) WAC 314-55-105(2) WAC 314-55-310(3)	Retail/transporter: \$1,250 monetary fine Producer/processor: Tier 1: \$1,250 Tier 2: \$2,500 Tier 3: \$5,000 monetary fine	Retail/transporter: 5-day suspension or \$2,500 monetary option Producer/processor: Tier 1: \$2,500 Tier 2: \$5,000 Tier 3: \$10,000 monetary fine	License cancellation	
Obstruction: Misrepresentation of fact; not permitting physical presence. WAC 314-55-185	10-day suspension or \$7,500 monetary option	30-day suspension	License cancellation	

Violation Type	1st Violation	2nd Violation in a Two-year Window	3rd Violation in a Two-year Window	4th Violation in a Two-year Window
Failure to use and maintain traceability, or both: Including, but not limited to, failure to maintain records for flowering plant, finished product, any post-harvest product, any plant not on approved floor-plan, or not tagged, reusing identifier. WAC 314-55-083(4)	\$1,250 monetary fine	5-day suspension or \$2,500 monetary fine	10-day suspension or \$5,000 monetary fine	License cancellation
Pickup, unload, or delivery at an unauthorized location. WAC 314-55-085 (5)(f) WAC 314-55-310	Retail/transportation: 30-day suspension Producer/processor: Tier 1: \$10,000 Tier 2: \$20,000 Tier 3: \$30,000 monetary fine	Retail/transporter: 60-day suspension Producer/processor: Tier 1: \$20,000 Tier 2: \$40,000 Tier 3: \$60,000 monetary fine	License cancellation	

[Statutory Authority: RCW 69.50.342, 69.50.345, and 2019 c 394. WSR 20-03-177, § 314-55-521, filed 1/22/20, effective 2/22/20.]

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September 01, 2020 - 4:22 PM

Transmittal Information

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

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