

NO. 81210-1

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
2008 NOV 26 A 9-36

BY RONALD R. CARPENTER

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

CLERK *RyH*

STATE OF WASHINGTON, RESPONDENT

v.

JASON L. FRY, APPELLANT

Appeal from the Superior Court of Stevens County

No. 05-1-00023-1

Brief of Amicus Curiae
Washington Association of Prosecuting Attorneys

For the Washington Association of Prosecuting Attorneys, Amicus Curiae

GERALD A. HORNE
Prosecuting Attorney

By
Steve Trinen
Deputy Prosecuting Attorney
WSB # 30925

930 Tacoma Avenue South
Room 946
Tacoma, WA 98402
PH: (253) 798-7400

FILED AS
ATTACHMENT TO EMAIL

Table of Contents

A. INTEREST OF AMICUS CURIAE..... 1

B. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR..... 1

 1. Whether a defendant has the burden to establish the elements of the affirmative defense by a preponderance of the evidence..... 1

 2. Whether the defendant failed to establish that he has an approved terminal or debilitating medical condition that qualifies for the medical marijuana affirmative defense..... 1

 3. Whether the defendant failed to establish that he provided valid documentation where he did not present valid identification..... 1

 4. Whether the court ruled correctly when it refused to allow the defendant to present a medical marijuana defense where the defendant did not qualify for the defense..... 1

 5. Whether the officer had probable cause to conduct the search notwithstanding the defendant's presentation of a medical marijuana certificate 1

C. STATEMENT OF THE CASE. 2

D. ARGUMENT..... 2

 1. AS THE STATUTORY MEDICAL MARIJUANA DEFENSE DOES NOT NEGATE AN ELEMENT OF THE CRIME, THE DEFENDANT IS REQUIRED TO ESTABLISH THE ELEMENTS OF THE DEFENSE BY A PREPONDERANCE OF THE EVIDENCE..... 2

 2. THE COURT DID NOT ERR BY REFUSING TO ALLOW THE DEFENDANT TO PRESENT A DEFENSE OF MEDICAL MARIJUANA WHERE THE DEFENDANT DID NOT QUALIFY FOR THE DEFENSE 11

3. THE DEFENDANT'S PRESENTATION OF A MEDICAL MARIJUANA CERTIFICATE TO THE OFFICER AT THE SCENE DID NOT DEFEAT PROBABLE CAUSE FOR THE OFFICERS TO SEARCH THE PROPERTY ..12

E. CONCLUSION.14

Table of Authorities

State Cases

<i>City of Seattle v. Edwards</i> , 87 Wn. App. 305, 310, 941 P.2d 697 (1997)	2, 3
<i>Enterprise Leasing, Inc v. City of Tacoma</i> , 139 Wn.2d 546, 552, 988 P.2d 961 (1999)	5
<i>McBride v. Walla Walla Co.</i> , 95 Wn. App. 33, 40, 975 P.2d 1029 (1999)	12, 13
<i>Millay v. Cam</i> , 135 Wn.2d 193, 198, 955 P.2d 791 (1998)	4
<i>Rettkowski v. Department of Ecology</i> , 128 Wn.2d 508, 515, 910 P.2d 462 (1996)	5
<i>State v. Balzer</i> , 91 Wn. App. 44, 68, 945 P.2d 931 (1998)	4
<i>State v. Fry</i> , 142 Wn. App. 456, 458, 174 P.3d 1258 (2008).....	7, 8
<i>State v. Ginn</i> , 128 Wn. App. 872, 879, 117 P.3d 1155 (2005)	11
<i>State v. Hundley</i> , 126 Wn.2d 418, 419, 895 P.2d 403 (1995)	4
<i>State v. Hundley</i> , 72 Wn. App. 746, 866 P.2d 56 (1994)	3
<i>State v. Hutchins</i> , 73 Wn App. 211, 218 P.2d 196 (1994)	7
<i>State v. Jones</i> , 25 Wn. App. 746, 749-50, 610 P.2d 934 (1980).....	7
<i>State v. Lawson</i> , 37 Wn. App. 539, 541, 681 P.2d 867 (1984).....	2, 3
<i>State v. Magana</i> , 62 Wn. App. 34, 42, 813 P.2d 588 (1991)	2
<i>State v. Mullins</i> , 128 Wn. Ap. 633, 642, 116 P.3d 441 (2005).....	5
<i>State v. Riker</i> , 123 Wn.2d 351, 869 P.2d 43 (1994)	3, 4

State v. Shepherd, 110 Wn. App. 544, 550,
41 P.3d 1235 (2002)2, 4, 6, 7, 10, 11

State v. Sweet, 138 Wn.2d 466, 477-78, 980 P.2d 1223 (1999).....4

State v. Tracy, 158 Wn.2d 683, 689, 147 P.3d 559 (2006)2

State v. Wiley, 79 Wn. App. 117, 122, 900 P.2d 1116 (1995)2, 4

Vashon Island Comm. For Self-Gov't v. State Boundary Review Bd.,
127 Wn.2d 759, 771, 903 P.2d 953 (1995).....5

Federal and Other Jurisdictions

Baker v. McCollan, 443 U.S. 137, 145-46, 99 S. Ct. 2689,
61 L.Ed.2d 433 (1979)..... 12

Martin v. Ohio, 480 U.S. 228, 107 S. Ct. 1098, 94 L. Ed. 2d 267 (1987)..3

Montana v. Egelhoff, 518 U.S 37, 44, 116 S. Ct. 2013,
135 L.Ed.2d 361 (1996)..... 11

Statutes

RCW 69.51A4, 5, 7, 10, 11

RCW 69.51A.010(3).....7

RCW 69.51A.010(4).....7, 8

RCW 69.51A.010(4)(a)-(c)8

RCW 69.51A.010(5).....10

RCW 69.51A.0406

RCW 69.51A.040(2)(c)10

RCW 69.51A.1018

Other Authorities

Washington Laws 2007 c 3715
Washington State Medical Use of Marijuana Act4

A. INTEREST OF AMICUS CURIAE

The Washington Association of Prosecuting Attorneys (“WAPA”) represents the elected prosecuting attorneys of Washington State. Those persons are responsible by law for the prosecution of all felony cases in this state and of all gross misdemeanors and misdemeanors charged under state statutes. WAPA has filed this brief at the request of the court.

B. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Whether a defendant has the burden to establish the elements of the affirmative defense by a preponderance of the evidence.
2. Whether the defendant failed to establish that he has an approved terminal or debilitating medical condition that qualifies for the medical marijuana affirmative defense.
3. Whether the defendant failed to establish that he provided valid documentation where he did not present valid identification.
4. Whether the court ruled correctly when it refused to allow the defendant to present a medical marijuana defense where the defendant did not qualify for the defense.
5. Whether the officer had probable cause to conduct the search notwithstanding the defendant’s presentation of a medical marijuana certificate.

C. STATEMENT OF THE CASE

We defer to the statement of the case made by the parties, and especially by the respondent.

D. ARGUMENT.

1. AS THE STATUTORY MEDICAL MARIJUANA DEFENSE DOES NOT NEGATE AN ELEMENT OF THE CRIME, THE DEFENDANT IS REQUIRED TO ESTABLISH THE ELEMENTS OF THE DEFENSE BY A PREPONDERANCE OF THE EVIDENCE

Affirmative defenses, or statutory exceptions to a crime, must be proved by the defendant. *State v. Magana*, 62 Wn. App. 34, 42, 813 P.2d 588 (1991) (citing *State v. Lawson*, 37 Wn. App. 539, 541, 681 P.2d 867 (1984); *State v. Tracy*, 158 Wn.2d 683, 689, 147 P.3d 559 (2006)). A defendant has the burden of proving an affirmative defense by a preponderance of the evidence. *State v. Wiley*, 79 Wn. App. 117, 123, 900 P.2d 1116 (1995). This is because an affirmative defense is generally one that is uniquely within the defendant's knowledge and ability to establish. *City of Seattle v. Edwards*, 87 Wn. App. 305, 310, 941 P.2d 697 (1997). A preponderance of the evidence means that, considering all the evidence, the proposition asserted must be more probably true than not true. *State v. Shepherd*, 110 Wn. App. 544, 550, 41 P.3d 1235 (2002).

However, because the State has the burden of proving every element of the crime beyond a reasonable doubt, a defense that negates an element of the crime cannot properly be considered an affirmative defense. *City of Seattle v. Edwards*, 87 Wn. App. 305, 310-11, 941 P.2d 697 (1997). Therefore, the State has the burden to prove the absence of those defenses that negates an element of the crime. *Lawson*, 37 Wn. App. at 541; *see also, Martin v. Ohio*, 480 U.S. 228, 107 S. Ct. 1098, 94 L.Ed.2d 267 (1987).

For a time there was a line of cases in Washington that deviated from the standard that the defendant had the burden to prove an affirmative defense by a preponderance of the evidence. However, those cases have since been rejected. In *State v. Hundley*, the court held that a defendant need only create a reasonable doubt as to the guilt of the defendant in order to establish an affirmative defense. *State v. Hundley*, 72 Wn. App. 746, 866 P.2d 56 (1994). Hundley in turn relied upon a series of earlier cases. However, when *Hundley* reached the Supreme Court, while affirming the case on other grounds, the Supreme Court criticized the Court of Appeals' opinion, noting that it pre-dated the Supreme Court's opinion in *State v. Riker*, 123 Wn.2d 351, 869 P.2d 43 (1994), and that *Riker* either distinguished or disapproved of the cases the Court of Appeals relied on in *Hundley*. *See State v. Wiley*, 79 Wn. App.

117, 122, 900 P.2d 1116 (1995) (especially n. 2, citing *State v. Hundley*, 126 Wn.2d 418, 419, 895 P.2d 403 (1995), and *Riker*, 123 Wn.2d 351 at 368-69 (especially n. 8)). Indeed, even Division II (which authored *Hundley* and its predecessors) has rejected the *Hundley* line of analysis as no longer current. See, *State v. Balzer*, 91 Wn. App. 44, 68, 945 P.2d 931 (1998).

The use of medical marijuana is an affirmative defense in which the defendant has the burden of showing by a preponderance of the evidence that he has met the requirements of the Washington State Medical Use of Marijuana Act. *State v. Shepherd*, 110 Wn. App. 544, 550, 41 P.3d 1235 (2002) (relying upon 69.51A RCW). The requirements to assert the medical marijuana defense are established in 69.51A RCW. (Copy attached as Exhibit A).

Interpretation of a statute is a question of law reviewed de novo. *Millay v. Cam*, 135 Wn.2d 193, 198, 955 P.2d 791 (1998). "[T]he fundamental object of statutory interpretation is to ascertain and give effect to the intent of the legislature' which is done by 'first look[ing] to the plain meaning of words used in a statute.'" *State v. Sweet*, 138 Wn.2d 466, 477-78, 980 P.2d 1223 (1999). When words in a statute are plain and unambiguous, further statutory construction is not necessary and the statute is applied as written. *Sweet*, 138 Wn.2d at 478; *Enterprise*

Leasing, Inc v. City of Tacoma, 139 Wn.2d 546, 552, 988 P.2d 961 (1999). If the statute does not define a term, the plain and ordinary meaning should be determined from a standard dictionary. *State v. Mullins*, 128 Wn. Ap. 633, 642, 116 P.3d 441 (2005). However, if a statute is ambiguous, the court refers to methods of statutory construction. *Rettkowski v. Department of Ecology*, 128 Wn.2d 508, 515, 910 P.2d 462 (1996). A statute is ambiguous if it is susceptible to more than one reasonable interpretation. *Vashon Island Comm. For Self-Gov't v. State Boundary Review Bd.*, 127 Wn.2d 759, 771, 903 P.2d 953 (1995). But it is not ambiguous simply because different interpretations are conceivable and the court does not search for ambiguity by imagining a variety of alternative interpretations. *Mullins*, 128 Wn. App. at 642.

In 2007, the legislature made significant changes to the medical marijuana statute that affected the elements a defendant must prove. *See* 69.51A RCW (2008). (Copy of *Washington Laws 2007 c 371* attached as Exhibit B. The session law is included because it most clearly identifies the changes to the statute.) However, those changes occurred after both the date of the offense in this case, as well as the trial date. (CP ____; RP ____.) Accordingly, this case should be considered under the pre-2007 version of the 69.51A RCW. Moreover, because the 2007 changes did not modify the qualifying medical conditions in a way that implicates this

case, nor change the requirement that valid ID be presented, the argument which follows is equally applicable under the 2007 version of the statute.

The statutory affirmative defense provides as follows:

69.51A.040 Qualifying patient's affirmative defense.

- (1) If charged with a violation of state law relating to marijuana, any qualifying patient who is engaged in the medical use of marijuana, or any designated primary caregiver who assists a qualifying patient in the medical use of marijuana, will be deemed to have established an affirmative defense to such charges by proof of his or her compliance with the requirements provided in this chapter. Any person meeting the requirements appropriate to his or her status under this chapter shall be considered to have engaged in activities permitted by this chapter and shall not be penalized in any manner, or denied any right or privilege, for such actions.
- (2) The qualifying patient, if eighteen years of age or older, shall:
 - (a) Meet all criteria for status as a qualifying patient;
 - (b) Possess no more marijuana than is necessary for the patient's personal, medical use, not exceeding the amount necessary for a sixty-day supply; and
 - (c) Present his or her valid documentation to any law enforcement official who questions the patient regarding his or her medical use of marijuana.

[...]

[RCW 69.51A.040 (1999-2007).]

Among the requirements of the Chapter that are relevant here are that the defendant is a qualifying patient, and that the defendant's documentation satisfy the requirements of the Chapter. *Shepherd*, 110 Wn. App. at 550-51. As will be discussed below, the appellant fails as to both of these requirements.

Here, the affirmative defense does not negate an element of the crime. Fry was convicted of possession of over forty grams of marijuana.

See, State v. Fry, 142 Wn. App. 456, 458, 174 P.3d 1258 (2008). The elements of his crime are: 1) the defendant possessed; 2) more than forty grams 3) of marijuana. *See State v. Hutchins*, 73 Wn App. 211, 218 P.2d 196 (1994); *State v. Jones*, 25 Wn. App. 746, 749-50, 610 P.2d 934 (1980). The affirmative defense is a statutory defense created by 69.51A RCW. It does not negate any of those elements. *See Shepherd*, 110 Wn. App. at 550. Rather, it provides an exception for the illegality of the possession of marijuana when it is for medical purposes and where the defendant has complied with the various requirements set forth in 69.51A RCW. In what follows those requirements are analyzed in greater detail as they apply to the facts of this case, however, the relevant point here is that none act to negate an element of the crime.

a. The Defendant Failed To Establish That He Has An Approved Terminal Or Debilitating Medical Condition That Qualifies For The Medical Marijuana Affirmative Defense

RCW 69.51A.010(3) defines a “qualifying patient” as a person who: (1) is under the care of a licensed physician [...]; and (2) has been diagnosed by that physician as having a terminal or debilitating medical condition. RCW 69.51A.010(4) defines “terminal or debilitating medical condition” as: (a) cancer, HIV, multiple sclerosis, epilepsy, or other seizure disorder, or spasticity disorders; or (b) intractable pain, which is

pain unrelieved by standard medical treatments and medications; or (c) glaucoma; or (d) any other medical condition approved by the Washington State medical quality assurance board. RCW 69.51A.010(4)(1999 to 2007).

The physicians statement in this case apparently indicates that the documented medical condition from a previous healthcare provider was “severe anxiety, rage & depression related to childhood.” *See* Br. Resp. p. 5 (citing CP 15, 8-11, 20-23 with copies of the documents also attached to the Br. Resp.); *See also* the Court of Appeals’ opinion in this case, *State v. Fry*, 142 Wn. App. at 462-63. It also apparently states that Dr. Orvald was treating the patient for “a terminal illness or debilitating condition as defined in RCW 69.51A.101.” Before the Court of Appeals, the appellant conceded that Dr. Orvald appeared to adopt the prior diagnosis of severe anxiety, rage and depression. Br. App. 25524-7-III, p. 3.

Severe anxiety, rage, and depression are not conditions that fall under the express statutory definitions of terminal or debilitating conditions under RCW 69.51A.010(4)(a)-(c). Thus, the only way it could be an eligible condition is if it is one that has been approved as such by the Washington State Medical Quality Assurance Commission (Commission). There is nothing to indicate, however, that anxiety, rage or depression have been approved by the Commission. The only relevant record found

showed that the Commission considered whether chronic depression (and manic depression) were terminal or debilitating conditions and concluded in an order that they were not.

[...]

On October 4, 2000 the Medical Quality Assurance Commission held a hearing to consider a petition to include manic or chronic depression as terminal or debilitating medical conditions under RCW 69.51A RCW. On November 22, 2000 the commission issued an order that determined manic depression (bipolar disorder) and chronic depression do not constitute "terminal or debilitating medical conditions(s) within the meaning of RCW 69.51A.010(4).

[Washington Register 01-20, October 17, 2001. (See Misc. section, p. 12.) A copy of this order is attached as Exhibit C.]

Depression was expressly rejected by the Commission as a qualifying condition. There is nothing to indicate that severe anxiety or rage would be treated any differently. As the Supplemental Brief of the Respondent indicates, the internet page for the Medical Quality Assurance Commission indicates that qualifying condition status was also denied to depression and severe anxiety, as well as diseases resulting in symptoms of insomnia or post-traumatic stress disorder. Supp. Br. Resp., p. 3, Exhibit A-1. The web page identifies the dates of the orders. (Although the Commission's web page lists the dates of the orders, no entries were located for them in a search of the Washington Register.)

The appellant has failed to meet his burden to prove by a preponderance of the evidence that he had a terminal illness or debilitating condition. He has therefore failed to prove that he complied with the requirements of Chapter 69.51A RCW.

b. The Defendant Failed To Provide Valid Documentation

In order to qualify for the affirmative defense, a qualifying patient must present valid documentation to a law enforcement officer inquiring about medical use of marijuana. RCW 69.51A.040(2)(c). “Valid documentation is defined as: (a) a statement or medical record which states that in the physician’s professional opinion the potential benefits of the medical use of marijuana would likely outweigh the health risks for a particular qualifying patient; and (b) proof of identity, such as a Washington Driver’s license or identicard. RCW 69.51A.010(5).

There are four requirements for the documentation to be valid: (1) A statement; signed by a qualifying patient’s physician (or a copy of the qualifying patient’s pertinent medical records) which states; (3) that in the physician’s professional opinion; (4) the potential benefits of the medical use of marijuana would likely outweigh the health risks for a particular qualifying patient. *Shepherd*, 110 Wn. App. at 551. As to the fourth element, it is insufficient to say that the potential benefits of the medical marijuana may outweigh the health risks for a particular patient.

Shepherd, 110 Wn. App. at 551. Rather than mere conjecture or speculation, the physician's testimony must express a reasonable probability that more likely than not the potential benefits of medical marijuana *would likely outweigh* the health risks for a particular patient.

Shepherd, 110 Wn. App. at 551.

Here, the appellant failed to provide valid identification. For that reason, he failed to meet his burden to show by a preponderance of the evidence that he complied with the requirements of Chapter 69.51A RCW.

2. THE COURT DID NOT ERR BY REFUSING TO ALLOW THE DEFENDANT TO PRESENT A DEFENSE OF MEDICAL MARIJUANA WHERE THE DEFENDANT DID NOT QUALIFY FOR THE DEFENSE.

Defendants have the right to present a defense, but that does not permit them to present evidence that is irrelevant or otherwise inadmissible. *State v. Ginn*, 128 Wn. App. 872, 879, 117 P.3d 1155 (2005); *Montana v. Egelhoff*, 518 U.S 37, 44, 116 S. Ct. 2013, 135 L.Ed.2d 361 (1996). A defendant who seeks to raise an affirmative defense must present sufficient admissible evidence to justify the defense. *Ginn*, 128 Wn. App. at 879. In evaluating whether there is sufficient evidence to permit the defendant to argue the affirmative defense, the court must interpret the evidence most strongly in favor of the defendant. *Ginn*, 128 Wn. App. at 879.

Here, the court did not err. The appellant failed to put forth any evidence as to two of the requirements necessary to permit him to present the affirmative defense that he was allowed to use medical marijuana. First, he failed to show that he was a qualifying patient where there was no evidence to show that he suffered from a qualifying terminal illness or debilitating condition. Second, he put forth no evidence that he provided valid documentation where there was no evidence to show that he provided the officer with his valid identification.

For both these reasons, it was proper for the court to refuse to consider the affirmative defense that he was a lawful user of medical marijuana.

3. THE DEFENDANT'S PRESENTATION OF A MEDICAL MARIJUANA CERTIFICATE TO THE OFFICER AT THE SCENE DID NOT DEFEAT PROBABLE CAUSE FOR THE OFFICERS TO SEARCH THE PROPERTY.

An officer is not the person to evaluate or weigh whether the legal standard for a self defense is met, and therefore, the assertion of an affirmative defense does not act to negate probable cause on the part of an officer. *McBride v. Walla Walla Co.*, 95 Wn. App. 33, 40, 975 P.2d 1029 (1999); *see also Baker v. McCollan*, 443 U.S. 137, 145-46, 99 S. Ct. 2689, 61 L.Ed.2d 433 (1979).

This case presents an ideal example of why the court should affirm the rule established in *McBride*. Here, as established in sections two and three above, the defendant has failed to properly establish the medical marijuana affirmative defense, in part because the condition for which he seeks to use marijuana is not eligible for the defense. If the court were to adopt a rule contrary to that established in *McBride*, suspects would be able to use defective, and/or fraudulent medical marijuana certificates to defeat the ability of law enforcement to search for evidence of crimes. There is nothing in the Act to suggest that it was intended to enable suspects to use documentation that is not valid, to frustrate legitimate investigation of crime by law enforcement.

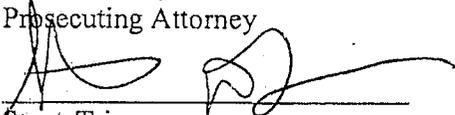
Moreover, an affirmative defense that does not apply to a defendant cannot serve to defeat probable cause.

E. CONCLUSION.

The court should hold that defendants who do not suffer from an approved condition who fail to provide valid documentation are not entitled to assert the affirmative defense of medical marijuana. The court should also hold that the possible application of the medical marijuana affirmative defense to a defendant does not act to negate probable cause.

DATED: November 26, 2008

GERALD A. HORNE
Pierce County
Prosecuting Attorney

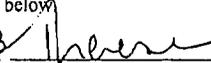


Steve Trinen
Deputy Prosecuting Attorney
WSB # 30925

For the Washington Association of Prosecuting Attorneys, Amicus Curiae

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

11-26-08 

Date Signature

APPENDIX "A"

RCW 69.51A

(4) "Practitioner" means a physician licensed pursuant to chapter 18.71 or 18.57 RCW. [1989 1st ex.s. c 9 § 438; 1979 c 136 § 3.]

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

69.51.040 Controlled substances therapeutic research program. (1) There is established in the board the controlled substances therapeutic research program. The program shall be administered by the department. The board shall promulgate rules necessary for the proper administration of the Controlled Substances Therapeutic Research Act. In such promulgation, the board shall take into consideration those pertinent rules promulgated by the United States drug enforcement agency, the food and drug administration, and the national institute on drug abuse.

(2) Except as provided in RCW 69.51.050(4), the controlled substances therapeutic research program shall be limited to cancer chemotherapy and radiology patients and glaucoma patients, who are certified to the patient qualification review committee by a practitioner as being involved in a life-threatening or sense-threatening situation. No patient may be admitted to the controlled substances therapeutic research program without full disclosure by the practitioner of the experimental nature of this program and of the possible risks and side effects of the proposed treatment in accordance with the informed consent provisions of chapter 7.70 RCW.

(3) The board shall provide by rule for a program of registration with the department of bona fide controlled substance therapeutic research projects. [1989 1st ex.s. c 9 § 439; 1979 c 136 § 4.]

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

69.51.050 Patient qualification review committee. (1) The board shall appoint a patient qualification review committee to serve at its pleasure. The patient qualification review committee shall be comprised of:

(a) A physician licensed to practice medicine in Washington state and specializing in the practice of ophthalmology;

(b) A physician licensed to practice medicine in Washington state and specializing in the subspecialty of medical oncology;

(c) A physician licensed to practice medicine in Washington state and specializing in the practice of psychiatry; and

(d) A physician licensed to practice medicine in Washington state and specializing in the practice of radiology.

Members of the committee shall be compensated at the rate of fifty dollars per day for each day spent in the performance of their official duties, and shall receive reimbursement for their travel expenses as provided in RCW 43.03.050 and 43.03.060.

(2) The patient qualification review committee shall review all applicants for the controlled substance therapeutic research program and their licensed practitioners and certify their participation in the program.

(3) The patient qualification review committee and the board shall insure that the privacy of individuals who participate in the controlled substance therapeutic research program is protected by withholding from all persons not connected

(2006 Ed.)

with the conduct of the research the names and other identifying characteristics of such individuals. Persons authorized to engage in research under the controlled substance therapeutic research program may not be compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was granted, except to the extent necessary to permit the board to determine whether the research is being conducted in accordance with the authorization.

(4) The patient qualification review committee may include other disease groups for participation in the controlled substances therapeutic research program after pertinent medical data have been presented by a practitioner to both the committee and the board, and after approval for such participation has been granted pursuant to pertinent rules promulgated by the United States drug enforcement agency, the food and drug administration, and the national institute on drug abuse. [1979 c 136 § 5.]

69.51.060 Sources and distribution of marijuana. (1) The board shall obtain marijuana through whatever means it deems most appropriate and consistent with regulations promulgated by the United States food and drug administration, the drug enforcement agency, and the national institute on drug abuse, and pursuant to the provisions of this chapter.

(2) The board may use marijuana which has been confiscated by local or state law enforcement agencies and has been determined to be free from contamination.

(3) The board shall distribute the analyzed marijuana to approved practitioners and/or institutions in accordance with rules promulgated by the board. [1979 c 136 § 6.]

69.51.080 Cannabis and related products considered Schedule II substances. (1) The enumeration of tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols in RCW 69.50.204 as a Schedule I controlled substance does not apply to the use of cannabis, tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols by certified patients pursuant to the provisions of this chapter.

(2) Cannabis, tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols shall be considered Schedule II substances as enumerated in RCW 69.50.206 only for the purposes enumerated in this chapter. [1979 c 136 § 8.]

Chapter 69.51A RCW MEDICAL MARIJUANA

Sections

69.51A.005	Purpose and intent.
69.51A.010	Definitions.
69.51A.020	Construction of chapter.
69.51A.030	Physicians excepted from state's criminal laws.
69.51A.040	Qualifying patients' affirmative defense.
69.51A.050	Medical marijuana, lawful possession—State not liable.
69.51A.060	Crimes—Limitations of chapter.
69.51A.070	Addition of medical conditions.
69.51A.900	Short title—1999 c 2.
69.51A.901	Severability—1999 c 2.
69.51A.902	Captions not law—1999 c 2.

69.51A.005 Purpose and intent. The people of Washington state find that some patients with terminal or debilitat-

[Title 69 RCW—page 91]

ing illnesses, under their physician's care, may benefit from the medical use of marijuana. Some of the illnesses for which marijuana appears to be beneficial include chemotherapy-related nausea and vomiting in cancer patients; AIDS wasting syndrome; severe muscle spasms associated with multiple sclerosis and other spasticity disorders; epilepsy; acute or chronic glaucoma; and some forms of intractable pain.

The people find that humanitarian compassion necessitates that the decision to authorize the medical use of marijuana by patients with terminal or debilitating illnesses is a personal, individual decision, based upon their physician's professional medical judgment and discretion.

Therefore, the people of the state of Washington intend that:

Qualifying patients with terminal or debilitating illnesses who, in the judgment of their physicians, would benefit from the medical use of marijuana, shall not be found guilty of a crime under state law for their possession and limited use of marijuana;

Persons who act as primary caregivers to such patients shall also not be found guilty of a crime under state law for assisting with the medical use of marijuana; and

Physicians also be excepted from liability and prosecution for the authorization of marijuana use to qualifying patients for whom, in the physician's professional judgment, medical marijuana may prove beneficial. [1999 c 2 § 2 (Initiative Measure No. 692, approved November 3, 1998).]

69.51A.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Medical use of marijuana" means the production, possession, or administration of marijuana, as defined in RCW 69.50.101(q), for the exclusive benefit of a qualifying patient in the treatment of his or her terminal or debilitating illness.

(2) "Primary caregiver" means a person who:

(a) Is eighteen years of age or older;

(b) Is responsible for the housing, health, or care of the patient;

(c) Has been designated in writing by a patient to perform the duties of primary caregiver under this chapter.

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

(a) Is a patient of a physician licensed under chapter 18.71 or 18.57 RCW;

(b) Has been diagnosed by that physician as having a terminal or debilitating medical condition;

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

(d) Has been advised by that physician about the risks and benefits of the medical use of marijuana; and

(e) Has been advised by that physician that they may benefit from the medical use of marijuana.

(4) "Terminal or debilitating medical condition" means:

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

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

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

(d) Any other medical condition duly approved by the Washington state medical quality assurance board [commission] as directed in this chapter.

(5) "Valid documentation" means:

(a) A statement signed by a qualifying patient's physician, or a copy of the qualifying patient's pertinent medical records, which states that, in the physician's professional opinion, the potential benefits of the medical use of marijuana would likely outweigh the health risks for a particular qualifying patient; and

(b) Proof of identity such as a Washington state driver's license or identicaid, as defined in RCW 46.20.035. [1999 c 2 § 6 (Initiative Measure No. 692, approved November 3, 1998).]

69.51A.020 Construction of chapter. Nothing in this chapter shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale, or use of marijuana for nonmedical purposes. [1999 c 2 § 3 (Initiative Measure No. 692, approved November 3, 1998).]

69.51A.030 Physicians excepted from state's criminal laws. A physician licensed under chapter 18.71 or 18.57 RCW shall be excepted from the state's criminal laws and shall not be penalized in any manner, or denied any right or privilege, for:

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

(2) Providing a qualifying patient with valid documentation, based upon the physician's assessment of the qualifying patient's medical history and current medical condition, that the potential benefits of the medical use of marijuana would likely outweigh the health risks for the particular qualifying patient. [1999 c 2 § 4 (Initiative Measure No. 692, approved November 3, 1998).]

69.51A.040 Qualifying patients' affirmative defense.

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

(2) The qualifying patient, if eighteen years of age or older, shall:

(a) Meet all criteria for status as a qualifying patient;

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

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

(3) The qualifying patient, if under eighteen years of age, shall comply with subsection (2)(a) and (c) of this section. However, any possession under subsection (2)(b) of this section, as well as any production, acquisition, and decision as to dosage and frequency of use, shall be the responsibility of the parent or legal guardian of the qualifying patient.

(4) The designated primary caregiver shall:

(a) Meet all criteria for status as a primary caregiver to a qualifying patient;

(b) Possess, in combination with and as an agent for the qualifying patient, no more marijuana than is necessary for the patient's personal, medical use, not exceeding the amount necessary for a sixty-day supply;

(c) Present a copy of the qualifying patient's valid documentation required by this chapter, as well as evidence of designation to act as primary caregiver by the patient, to any law enforcement official requesting such information;

(d) Be prohibited from consuming marijuana obtained for the personal, medical use of the patient for whom the individual is acting as primary caregiver; and

(e) Be the primary caregiver to only one patient at any one time. [1999 c 2 § 5 (Initiative Measure No. 692, approved November 3, 1998).]

69.51A.050 Medical marijuana, lawful possession—State not liable. (1) The lawful possession or manufacture of medical marijuana as authorized by this chapter shall not result in the forfeiture or seizure of any property.

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

(3) The state shall not be held liable for any deleterious outcomes from the medical use of marijuana by any qualifying patient. [1999 c 2 § 7 (Initiative Measure No. 692, approved November 3, 1998).]

69.51A.060 Crimes—Limitations of chapter. (1) It shall be a misdemeanor to use or display medical marijuana in a manner or place which is open to the view of the general public.

(2) Nothing in this chapter requires any health insurance provider to be liable for any claim for reimbursement for the medical use of marijuana.

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

(4) Nothing in this chapter requires any accommodation of any medical use of marijuana in any place of employment, in any school bus or on any school grounds, or in any youth center.

(5) It is a class C felony to fraudulently produce any record purporting to be, or tamper with the content of any record for the purpose of having it accepted as, valid documentation under RCW 69.51A.010(5)(a).

(6) No person shall be entitled to claim the affirmative defense provided in RCW 69.51A.040 for engaging in the medical use of marijuana in a way that endangers the health

(2006 Ed.)

or well-being of any person through the use of a motorized vehicle on a street, road, or highway. [1999 c 2 § 8 (Initiative Measure No. 692, approved November 3, 1998).]

69.51A.070 Addition of medical conditions. The Washington state medical quality assurance board [commission], or other appropriate agency as designated by the governor, shall accept for consideration petitions submitted by physicians or patients to add terminal or debilitating conditions to those included in this chapter. In considering such petitions, the Washington state medical quality assurance board [commission] shall include public notice of, and an opportunity to comment in a public hearing upon, such petitions. The Washington state medical quality assurance board [commission] shall, after hearing, approve or deny such petitions within one hundred eighty days of submission. The approval or denial of such a petition shall be considered a final agency action, subject to judicial review. [1999 c 2 § 9 (Initiative Measure No. 692, approved November 3, 1998).]

69.51A.900 Short title—1999 c 2. This chapter may be known and cited as the Washington state medical use of marijuana act. [1999 c 2 § 1 (Initiative Measure No. 692, approved November 3, 1998).]

69.51A.901 Severability—1999 c 2. 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. [1999 c 2 § 10 (Initiative Measure No. 692, approved November 3, 1998).]

69.51A.902 Captions not law—1999 c 2. Captions used in this chapter are not any part of the law. [1999 c 2 § 11 (Initiative Measure No. 692, approved November 3, 1998).]

Chapter 69.52 RCW

IMITATION CONTROLLED SUBSTANCES

Sections

69.52.010	Legislative findings.
69.52.020	Definitions.
69.52.030	Violations—Exceptions.
69.52.040	Seizure of contraband.
69.52.045	Seizure at rental premises—Notification of landlord.
69.52.050	Injunctive action by attorney general authorized.
69.52.060	Injunctive or other legal action by manufacturer of controlled substances authorized.
69.52.070	Violations—Juvenile driving privileges.
69.52.900	Severability—1982 c 171.
69.52.901	Effective date—1982 c 171.

Drug nuisances—Injunctions: Chapter 7.43 RCW.

69.52.010 Legislative findings. The legislature finds that imitation controlled substances are being manufactured to imitate the appearance of the dosage units of controlled substances for sale to school age youths and others to facilitate the fraudulent sale of controlled substances. The legislature further finds that manufacturers are endeavoring to profit from the manufacture of these imitation controlled substances while avoiding liability by accurately labeling the containers or packaging which contain these imitation con-

APPENDIX “B”

Laws of Washington 2007 c371

~~restaurant-licensed hotel, property owned or controlled by leasehold interest by that hotel for use as a conference or convention center or banquet facility open to the general public for special events in the same metropolitan area, at the discretion of the board and a duplicate license may be issued for each additional place. The holder of the master license for the dining place shall not offer alcoholic beverages for sale, service, and consumption at the additional place unless food service is available at both the location of the master license and the duplicate license. An additional license fee of twenty dollars shall be required for such duplicate licenses.)~~

(2) The board, so far as in its judgment is reasonably possible, shall confine spirits, beer, and wine restaurant licenses to the business districts of cities and towns and other communities, and not grant such licenses in residential districts, nor within the immediate vicinity of schools, without being limited in the administration of this subsection to any specific distance requirements.

(3) The board shall have discretion to issue spirits, beer, and wine restaurant licenses outside of cities and towns in the state of Washington. The purpose of this subsection is to enable the board, in its discretion, to license in areas outside of cities and towns and other communities, establishments which are operated and maintained primarily for the benefit of tourists, vacationers and travelers, and also golf and country clubs, and common carriers operating dining, club and buffet cars, or boats.

(4) The total number of spirits, beer, and wine restaurant licenses issued in the state of Washington by the board, not including spirits, beer, and wine private club licenses, shall not in the aggregate at any time exceed one license for each one thousand four hundred fifty of population in the state, determined according to the yearly population determination developed by the office of financial management pursuant to RCW 43.62.030.

(5) Notwithstanding the provisions of subsection (4) of this section, the board shall refuse a spirits, beer, and wine restaurant license to any applicant if in the opinion of the board the spirits, beer, and wine restaurant licenses already granted for the particular locality are adequate for the reasonable needs of the community.

(6)(a) The board may issue a caterer's endorsement to this license to allow the licensee to remove the liquor stocks at the licensed premises, for use as liquor for sale and service at event locations at a specified date and, except as provided in subsection (7) of this section, place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred fifty dollars.

(b) The holder of this license with catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(7) Licensees under this section that hold a caterer's endorsement are allowed to use this endorsement on a domestic winery premises or on the premises of a passenger vessel under the following conditions:

(a) Agreements between the domestic winery or passenger vessel, as the case may be, and the retail licensee shall be in writing, contain no exclusivity clauses regarding the alcohol beverages to be served, and be filed with the board; and

(b) The domestic winery or passenger vessel, as the case may be, and the retail licensee shall be separately contracted and compensated by the persons sponsoring the event for their respective services.

Sec. 20. RCW 66.24.440 and 1998 c 126 s 8 are each amended to read as follows:

Each spirits, beer, and wine restaurant, spirits, beer, and wine private club, hotel, and sports entertainment facility licensee shall be entitled to purchase any spirituous liquor items salable under such license from the board at a discount of not less than fifteen percent from the retail price fixed by the board, together with all taxes.

NEW SECTION. Sec. 21. Sections 4 and 6 of this act expire June 30, 2008.

NEW SECTION. Sec. 22. Sections 5 and 7 of this act take effect June 30, 2008.

NEW SECTION. Sec. 23. Sections 10 through 20 of this act take effect July 1, 2008.

Passed by the Senate April 16, 2007.

Passed by the House April 6, 2007.

Approved by the Governor May 8, 2007.

Filed in Office of Secretary of State May 10, 2007.

CHAPTER 371

[Engrossed Substitute Senate Bill 6032]

MARIJUANA—MEDICAL USE

AN ACT Relating to medical use of marijuana; amending RCW 69.51A.005, 69.51A.010, 69.51A.030, 69.51A.040, 69.51A.060, and 69.51A.070; adding a new section to chapter 69.51A RCW; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature intends to clarify the law on medical marijuana so that the lawful use of this substance is not impaired and medical practitioners are able to exercise their best professional judgment in the delivery of medical treatment, qualifying patients may fully participate in the medical use of marijuana, and designated providers may assist patients in the manner provided by this act without fear of state criminal prosecution. This act is also intended to provide clarification to law enforcement and to all participants in the judicial system.

Sec. 2. RCW 69.51A.005 and 1999 c 2 s 2 are each amended to read as follows:

The people of Washington state find that some patients with terminal or debilitating illnesses, under their physician's care, may benefit from the medical use of marijuana. Some of the illnesses for which marijuana appears to be beneficial include chemotherapy-related nausea and vomiting in cancer patients; AIDS wasting syndrome; severe muscle spasms associated with multiple sclerosis and other spasticity disorders; epilepsy; acute or chronic glaucoma; and some forms of intractable pain.

The people find that humanitarian compassion necessitates that the decision to authorize the medical use of marijuana by patients with terminal or debilitating illnesses is a personal, individual decision, based upon their physician's professional medical judgment and discretion.

Therefore, the people of the state of Washington intend that:

Qualifying patients with terminal or debilitating illnesses who, in the judgment of their physicians, ~~(would)~~ may benefit from the medical use of marijuana, shall not be found guilty of a crime under state law for their possession and limited use of marijuana;

Persons who act as ~~(primary-caregivers)~~ designated providers to such patients shall also not be found guilty of a crime under state law for assisting with the medical use of marijuana; and

Physicians also be exempted from liability and prosecution for the authorization of marijuana use to qualifying patients for whom, in the physician's professional judgment, medical marijuana may prove beneficial.

Sec. 3. RCW 69.51A.010 and 1999 c 2 s 6 are each amended to read as follows:

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

- (1) "Designated provider" means a person who:
 - (a) Is eighteen years of age or older;
 - (b) Has been designated in writing by a patient to serve as a designated provider under this chapter;
 - (c) Is prohibited from consuming marijuana obtained for the personal medical use of the patient for whom the individual is acting as designated provider; and
 - (d) Is the designated provider to only one patient at any one time.
- (2) "Medical use of marijuana" means the production, possession, or administration of marijuana, as defined in RCW 69.50.101(q), for the exclusive benefit of a qualifying patient in the treatment of his or her terminal or debilitating illness.
- ~~((2)) "Primary-caregiver" means a person who:~~
 - ~~(a) Is eighteen years of age or older;~~
 - ~~(b) Is responsible for the housing, health, or care of the patient;~~
 - ~~(c) Has been designated in writing by a patient to perform the duties of primary-caregiver under this chapter;~~
- (3) "Qualifying patient" means a person who:
 - (a) Is a patient of a physician licensed under chapter 18.71 or 18.57 RCW;
 - (b) Has been diagnosed by that physician as having a terminal or debilitating medical condition;
 - (c) Is a resident of the state of Washington at the time of such diagnosis;

(d) Has been advised by that physician about the risks and benefits of the medical use of marijuana; and

(e) Has been advised by that physician that they may benefit from the medical use of marijuana.

(4) "Terminal or debilitating medical condition" means:

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

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

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

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

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

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

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

(5) "Valid documentation" means:

(a) A statement signed by a qualifying patient's physician, or a copy of the qualifying patient's pertinent medical records, which states that, in the physician's professional opinion, the ~~((potential-benefits-of-the-medical-use-of-marijuana-would-likely-outweigh-the-health-risks-for-a-particular-qualifying))~~ patient may benefit from the medical use of marijuana; ~~((and))~~

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

(c) A copy of the physician statement described in (a) of this subsection shall have the same force and effect as the signed original.

Sec. 4. RCW 69.51A.030 and 1999 c 2 s 4 are each amended to read as follows:

A physician licensed under chapter 18.71 or 18.57 RCW shall be exempted from the state's criminal laws and shall not be penalized in any manner, or denied any right or privilege, for:

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

(2) Providing a qualifying patient with valid documentation, based upon the physician's assessment of the qualifying patient's medical history and current medical condition, that the ~~((potential-benefits-of-the))~~ medical use of marijuana ~~((would-likely-outweigh-the-health-risks-for-the))~~ may benefit a particular qualifying patient.

Sec. 5. RCW 69.51A.040 and 1999 c 2 s 5 are each amended to read as follows:

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

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

~~((2)-The))~~ (3) A qualifying patient, if eighteen years of age or older, or a designated provider shall:

(a) Meet all criteria for status as a qualifying patient or designated provider;
 (b) Possess no more marijuana than is necessary for the patient's personal, medical use, not exceeding the amount necessary for a sixty-day supply; and
 (c) Present his or her valid documentation to any law enforcement official who questions the patient or provider regarding his or her medical use of marijuana.

~~((3)-The))~~ (4) A qualifying patient, if under eighteen years of age at the time he or she is alleged to have committed the offense, shall (empty) demonstrate compliance with subsection ((2)) (3)(a) and (c) of this section. However, any possession under subsection ((2)) (3)(b) of this section, as well as any production, acquisition, and decision as to dosage and frequency of use, shall be the responsibility of the parent or legal guardian of the qualifying patient.

~~((4)-The designated primary-caregiver shall:~~

(a) Meet all criteria for status as a primary caregiver to a qualifying patient;
 (b) Possess, in combination with and as an agent for the qualifying patient, no more marijuana than is necessary for the patient's personal, medical use, not exceeding the amount necessary for a sixty-day supply;

(c) Present a copy of the qualifying patient's valid documentation required by this chapter, as well as evidence of designation to act as primary caregiver by the patient, to any law enforcement official requesting such information;

(d) Be prohibited from consuming marijuana obtained for the personal, medical use of the patient for whom the individual is acting as primary caregiver; and

(e) Be the primary caregiver to only one patient at any one time.)

Sec. 6. RCW 69.51A.060 and 1999 c 2 s 8 are each amended to read as follows:

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

(2) Nothing in this chapter requires any health insurance provider to be liable for any claim for reimbursement for the medical use of marijuana.

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

[1712]

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

(5) It is a class C felony to fraudulently produce any record purporting to be, or tamper with the content of any record for the purpose of having it accepted as, valid documentation under RCW 69.51A.010((5)) (6)(a).

(6) No person shall be entitled to claim the affirmative defense provided in RCW 69.51A.040 for engaging in the medical use of marijuana in a way that endangers the health or well-being of any person through the use of a motorized vehicle on a street, road, or highway.

Sec. 7. RCW 69.51A.070 and 1999 c 2 s 9 are each amended to read as follows:

The Washington state medical quality assurance ~~((board-(re)commission))~~ commission in consultation with the board of osteopathic medicine and surgery, or other appropriate agency as designated by the governor, shall accept for consideration petitions submitted ~~((by physicians or patients))~~ to add terminal or debilitating conditions to those included in this chapter. In considering such petitions, the Washington state medical quality assurance ~~((board-(re)commission))~~ commission in consultation with the board of osteopathic medicine and surgery shall include public notice of, and an opportunity to comment in a public hearing upon, such petitions. The Washington state medical quality assurance ~~((board-(re)commission))~~ commission in consultation with the board of osteopathic medicine and surgery shall, after hearing, approve or deny such petitions within one hundred eighty days of submission. The approval or denial of such a petition shall be considered a final agency action, subject to judicial review.

NEW SECTION. Sec. 8. A new section is added to chapter 69.51A RCW to read as follows:

(1) By July 1, 2008, the department of health shall adopt rules defining the quantity of marijuana that could reasonably be presumed to be a sixty-day supply for qualifying patients; this presumption may be overcome with evidence of a qualifying patient's necessary medical use.

(2) As used in this chapter, "sixty-day supply" means that amount of marijuana that qualifying patients would reasonably be expected to need over a period of sixty days for their personal medical use. During the rule-making process, the department shall make a good faith effort to include all stakeholders identified in the rule-making analysis as being impacted by the rule.

(3) The department of health shall gather information from medical and scientific literature, consulting with experts and the public, and reviewing the best practices of other states regarding access to an adequate, safe, consistent, and secure source, including alternative distribution systems, of medical marijuana for qualifying patients. The department shall report its findings to the legislature by July 1, 2008.

Passed by the Senate April 20, 2007.

Passed by the House April 18, 2007.

[1713]

Approved by the Governor May 8, 2007.
Filed in Office of Secretary of State May 10, 2007.

CHAPTER 372

[House Bill 1371]

RENTAL VEHICLES—TRAFFIC INFRACTIONS

AN ACT Relating to traffic infractions involving rental vehicles; and amending RCW 46.63.073, 46.63.160, and 46.63.170.

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

Sec. 1. RCW 46.63.073 and 2005 c 331 s 2 are each amended to read as follows:

(1) In the event a traffic infraction is based on a vehicle's identification, and the registered owner of the vehicle is a rental car business, the law enforcement agency shall, before a notice of infraction may be issued, provide a written notice to the rental car business that a notice of infraction may be issued to the rental car business if the rental car business does not, within thirty days of receiving the written notice, provide to the issuing agency by return mail:

(a) A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred; or

(b) A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred because the vehicle was stolen at the time of the infraction. A statement provided under this subsection must be accompanied by a copy of a filed police report regarding the vehicle theft.

Timely mailing of this statement to the issuing law enforcement agency relieves a rental car business of any liability under this chapter for the notice of infraction. In lieu of identifying the vehicle operator, the rental car business may pay the applicable penalty. ~~((2))~~ For the purpose of this ~~((section))~~ subsection, a "traffic infraction based on a vehicle's identification" includes, but is not limited to, parking infractions, high-occupancy toll lane violations, and violations recorded by automated traffic safety cameras.

(2) In the event a parking infraction is issued by a private parking facility and is based on a vehicle's identification, and the registered owner of the vehicle is a rental car business, the parking facility shall, before a notice of infraction may be issued, provide a written notice to the rental car business that a notice of infraction may be issued to the rental car business if the rental car business does not, within thirty days of receiving the written notice, provide to the parking facility by return mail:

(a) A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred; or

(b) A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred because the vehicle was stolen at the time of the infraction. A statement provided under this subsection must be accompanied by a copy of a filed police report regarding the vehicle theft.

Timely mailing of this statement to the parking facility relieves a rental car business of any liability under this chapter for the notice of infraction. In lieu of identifying the vehicle operator, the rental car business may pay the applicable

[1714]

penalty. For the purpose of this subsection, a "parking infraction based on a vehicle's identification" is limited to parking infractions occurring on a private parking facility's premises.

Sec. 2. RCW 46.63.160 and 2004 c 231 s 6 are each amended to read as follows:

(1) This section applies only to traffic infractions issued under RCW 46.61.690 for toll collection evasion.

(2) Nothing in this section prohibits a law enforcement officer from issuing a notice of traffic infraction to a person in control of a vehicle at the time a violation occurs under RCW 46.63.030(1) (a), (b), or (c).

(3) Toll collection systems include manual cash collection, electronic toll collection, and photo enforcement systems.

(4) "Electronic toll collection system" means a system of collecting tolls or charges that is capable of charging the account of the toll patron the appropriate toll or charge by electronic transmission from the motor vehicle to the toll collection system, which information is used to charge the appropriate toll or charge to the patron's account.

(5) "Photo enforcement system" means a vehicle sensor installed to work in conjunction with an electronic toll collection system that automatically produces one or more photographs, one or more microphotographs, a videotape, or other recorded images of a vehicle operated in violation of an infraction under this chapter.

(6) The use of a toll collection system is subject to the following requirements:

(a) The department of transportation shall adopt rules that allow an open standard for automatic vehicle identification transponders used for electronic toll collection to be compatible with other electronic payment devices or transponders from the Washington state ferry system, other public transportation systems, or other toll collection systems to the extent that technology permits. The rules must also allow for multiple vendors providing electronic payment devices or transponders as technology permits.

(b) The department of transportation may not sell, distribute, or make available in any way, the names and addresses of electronic toll collection system account holders.

(7) The use of a photo enforcement system for issuance of notices of infraction is subject to the following requirements:

(a) Photo enforcement systems may take photographs, digital photographs, microphotographs, videotapes, or other recorded images of the vehicle and vehicle license plate only.

(b) A notice of infraction must be mailed to the registered owner of the vehicle or to the renter of a vehicle within sixty days of the violation. The law enforcement officer issuing the notice of infraction shall include with it a certificate or facsimile thereof, based upon inspection of photographs, microphotographs, videotape, or other recorded images produced by a photo enforcement system, stating the facts supporting the notice of infraction. This certificate or facsimile is prima facie evidence of the facts contained in it and is admissible in a proceeding charging a violation under this chapter. The photographs, digital photographs, microphotographs, videotape, or other recorded images evidencing the violation must be available for inspection and

[1715]

APPENDIX "C"

Washington State Register 01-20-118

