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NO. 88079-4

SUPREME COURT
OF THE STATE OF WASHINGTON

CANNABIS ACTION COALITION, STEVE SARICH,
ARTHUR WEST, JOHN WORTHINGTON,

and

DERYCK TSANG,

Appellants,

v.

CITY OF KENT, et al.,

Respondents.

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STATE OF WASHINGTON
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D/S

BRIEF OF APPELLANT TSANG

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I. INTRODUCTION

This case asks whether a local government is pre-empted by state law from banning “collective gardens” despite their being expressly authorized under Washington’s medical cannabis laws, Ch. 69.51A RCW.

In 2011, the Washington Legislature adopted Engrossed Second Substitute Senate Bill 5073 (“ESSSB 5073”) amending Washington’s voter approved laws on the medical use of cannabis. While portions of ESSSB 5073 were vetoed because of concern over the creation of a state registration and licensing system, two significant provisions were left intact and form the basis for this appeal.

First, ESSSB 5073, § 403 (codified at RCW 69.51A.085) created the express right for qualifying patients to participate in non-commercial “community gardens” for the purpose of producing, processing, transporting and delivering cannabis for their diagnosed and documented medical conditions. Qualifying patients participating in collective gardens are strictly limited in terms of number of participants, quantity of cannabis produced and stored, and valid documentation. Importantly, collective gardens are not commercial operations or commercial dispensaries –

medical cannabis produced by the collective garden can only be delivered to the qualifying patients participating in the collective garden.

Second, ESSSB 5073, § 401 amended RCW 69.51A.040 and declared that qualifying patients acting in compliance with Washington's medical cannabis laws are exempt from prosecution for criminal or civil consequences. As it relates to this case, so long as a qualifying patient participating in a collective garden operates in full compliance with RCW 69.51A.085 he is afforded the statutory protection against criminal and civil liability.

On June 5, 2012, the City of Kent adopted Ordinance 4036. Ordinance 4036 outright prohibits collective gardens within the City of Kent. Ordinance 4036 also declares that violation of the prohibition against collective gardens is a "public nuisance" and subject to mandatory abatement, as well as civil and criminal penalties. By outright banning collective gardens in all areas of the City and imposing potential criminal and civil liability for operating a collective garden within the City, Ordinance 4036 directly conflicts with ESSSB 5073, §§ 401 and 403. The City has banned what is expressly allowed under state law.

Appellant Deryck Tsang, a qualifying patient, is a participant in a collective garden within the City of Kent. On October 5, 2012, the King County Superior Court, Judge Jay White, dismissed Deryck Tsang's action seeking declaratory judgment and permanently enjoined Tsang and anyone else from operating a collective garden within the City of Kent. Deryck Tsang now asks this Court to find that Ordinance 4036 is pre-empted by state law and therefore null and void. While local jurisdictions may adopt reasonable zoning restrictions, they may not outright ban collective gardens within their jurisdiction. Nor may they impose civil or criminal liability for activities declared legal under state law. The superior court's orders dismissing Tsang's action and imposing a permanent injunction should be reversed.

II. ASSIGNMENTS OF ERROR

1. The superior court erred in granting the City of Kent's Motion for Summary Judgment and dismissing Deryck Tsang's action for declaratory judgment challenging the validity of the City's Ordinance 4036.

2. The superior court erred in granting the City of Kent's Motion for Permanent Injunction enjoining Deryck Tsang from

participating in a medical cannabis collective garden within the City of Kent.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

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

2. RCW 69.51A.040 prohibits both criminal prosecution and civil enforcement against the medical use of cannabis by qualifying patients so long as the use is consistent with Ch. 69.51A RCW. The City of Kent declares a violation of its zoning code a “public nuisance” and threatens violators with civil and criminal liability. Is the City preempted from subjecting qualifying patients to criminal or civil liability for creating or participating in collective gardens anywhere within the City? [Assignment of Error 1]

3. Did the superior court abuse its discretion in entering a permanent injunction against the otherwise legal operation of a collective garden by a qualifying patient? [Assignment of Error 2]

IV. STATEMENT OF THE CASE

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

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

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

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

Laws of 1999, ch. 2, § 2, codified at RCW 69.51A.005.² As originally enacted, Initiative 692 excepted licensed physicians from the state's criminal laws, prohibited penalties of any manner, and prohibited the denial of any rights or privileges for physicians advising qualifying patients about the risks and benefits of medical use of marijuana as well as providing valid documentation to those patients. Laws of 1999, ch. 2, § 4, codified at RCW 69.51A.030. Initiative 692 also created an affirmative defense for any "qualifying patient" or "designated primary caregiver" charged with violation of state law related to marijuana. Laws of 1999, ch. 2, § 5, codified at RCW 69.51A.040.³

In April 2011 the Legislature passed Engrossed Second Substitute Senate Bill 5073 through both houses substantially amending

² A copy of Initiative 692 is attached as Appendix 1.

³ A "Qualifying patient" means a person who:

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

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

Initiative 692 and Ch. 69.51A RCW. ESSSB 5073, as originally passed by the Legislature, would have set up a state regulatory licensing scheme for the growth and production of medical marijuana (renamed in the bill as “medical cannabis”) through commercial “licensed producers” and then distribution of the medical cannabis, including seeds, plants, usable cannabis and cannabis products, through commercial “licensed dispensaries.” See ESSSB 5073, Parts VI and VII.⁴ The bill also would have established a state registration system through the Department of Health for qualifying patients, designated providers, licensed producers, processors and dispensers. *Id.*, Part IX.

Before the Governor could sign the bill, the U.S. Attorneys in Seattle and Spokane sent the Governor an advisory letter warning that state employees who participated in the authorizing and licensing of commercial businesses that produce, process or dispense cannabis might not be protected from federal prosecution for facilitating the violation of federal law. As a result, Governor Gregoire vetoed all of the licensing and

⁴ A copy of ESSSB 5073, including Governor Gregoire’s explanation of her partial veto is attached as Appendix 2.

registration processes set up in Parts VI-IX of ESSSB 5073. *See* Governor's explanation of partial veto. Appendix 2.

Relevant to this appeal, the Governor did not veto ESSSB 5073, § 403, codified at RCW 69.51A.085, which established for the first time the right for qualifying patients to create and participate in "collective gardens for the purpose of producing, processing, transporting, and delivering cannabis for medical use" so long as each "collective garden:" (a) is limited to no more than ten qualifying patients; (b) contains no more than 15 plants per person or up to a total of 45 plants; (c) contains no more than 24 ounces of usable cannabis per patient; (d) keeps a copy of each qualifying patient's "valid documentation *or* proof of registration;⁵ and (e) ensures that no usable cannabis from the collective garden is delivered to anyone other than the qualifying patients participating in the collective garden.

The Governor also did not veto ESSSB 5073, § 401. While previously RCW 69.51A.040 provided only an affirmative defense against charges of violating state law, ESSSB 5073, § 401 amended

⁵ Because the registration process was vetoed, the collective garden must keep a copy of each qualifying patient's "valid documentation" as defined by ESSSB 5073, § 103, codified at RCW 69.51A.010(32)(a).

RCW 69.51A.040 and declared that qualifying patients acting in compliance with Washington’s medical cannabis laws are exempt from prosecution for criminal or civil consequences.

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

Appellant Deryck Tsang is a resident of the City of Kent and a qualifying patient as defined by RCW 69.51A.040. Mr. Tsang created and participates in a “collective garden,” as defined by RCW 69.51A.085, within the City of Kent. *Id.* The collective garden is located within leased property at the north end of West Valley Business Park in an area zoned M1 for Industrial Park. The building is safe and secured with 24-hour video surveillance, alarm monitoring, electric striking door, and neighbors Washington Patrol Unit. The collective garden is minutes from Valley Medical Hospital, walking distance to bus routes, ADA accessible and was in compliance with all zoning laws prior to the City’s adoption of Ordinance 4036.

C. City of Kent Ordinance 4036

On June 5, 2012, the City of Kent adopted Ordinance 4036 (codified as part of Kent City Code “KCC” Title 15). Ordinance 4036 outright prohibits collective gardens in all zoning districts within the City

of Kent. *See* KCC 15.08.290.A.⁶ Ordinance 4036 declares also that violation of the prohibition against collective gardens is a “public nuisance” and subject to mandatory abatement, as well as civil and criminal penalties. KCC 15.08.290.B.

D. Procedural History

On June 5, 2012, appellant Deryck Tsang, along with three other individuals and a partnership, filed a complaint with the King County Superior Court challenging the City of Kent’s adoption of Ordinance 4036. CP 1-10. An Amended Complaint was filed June 21, 2012. CP 19-34.⁷ Among several causes of action, Tsang et al. sought declaratory judgment and an order declaring Ordinance 4036, as it relates to collective gardens, contrary to law and null and void. CP 26.

On October 5, 2012, King County Superior Court Judge Jay White granted the City’s motion for summary judgment. CP 558-60. Relevant to this appeal, the superior court dismissed Tsang et al.’s action for declaratory judgment, finding that City was not pre-empted by state law

⁶ A copy of Ordinance 4036 is attached as Appendix 3. Cited provisions from the Kent City Code are attached as Appendix 4.

⁷ Plaintiffs’ original and amended complaints were filed *pro se*.

from passing Ordinance 4036. CP 559.⁸ The superior court also issued a permanent injunction prohibiting plaintiffs, including Deryck Tsang, from violating Ordinance 4036. CP 553-554. The superior court subsequently denied plaintiffs' Motion for Reconsideration. CP 643.

Deryck Tsang filed a timely appeal of the superior court's orders with the Court of Appeals, Division I. CP 644-651. Because the other plaintiffs, acting *pro se*, filed a notice of appeal with the Washington Supreme Court, Deryck Tsang's appeal was transferred to the Supreme Court on November 13, 2012. Deryck Tsang filed a timely Statement of Grounds for Direct Review on November 20, 2012. On December 5, 2012, Supreme Court Commissioner Goff granted Deryck Tsang's Motion and stayed the superior court's October 5, 2012, orders pending appeal.

V. ARGUMENT

A. Standard of Review

This court reviews the trial court's decision on summary judgment *de novo*. *Campbell v. Reed*, 124 Wn. App. 349, 356, 139 P.3d 419 (2006); *Ret. Pub. Employees Council of Wash. v. Charles*, 148

⁸ The superior court also dismissed several other causes of action, including causes of action seeking a writ of mandamus, writ of prohibition and Land Use Petition. Tsang is appealing only the dismissal of the declaratory judgment action. CP 558-560.

Wn.2d 602, 612, 62 P.3d 470 (2003). Summary judgment is appropriate only if the pleadings, affidavits, depositions, and admissions before the court demonstrate the absence of any genuine issues of material fact *and that the moving party is entitled to judgment as a matter of law*. CR 56(c); *id.*

Here, the trial court erred as a matter of law in concluding that the City of Kent had authority to ban collective gardens in all zones and impose criminal and civil liability for operating a collective garden within the City.

B. The Ban on Collective Gardens in Ordinance 4036 is Pre-Empted by State Law

Contrary to the superior court's ruling, the City of Kent's action banning collective gardens from the entirety of the City and subjecting their participants to civil or criminal liability is pre-empted by state law. Pre-emption may occur when the Legislature states its intention by necessary implication to pre-empt the regulated field. *Kennedy v. City of Seattle*, 94 Wn.2d 376, 383, 617 P.2d 713 (1980). The test for whether an ordinance is in conflict with a general law promulgated by the Legislature is simply whether the ordinance permits that which the statute forbids or forbids what is permitted by the statute. *Weden v. San Juan Cy.*, 135

Wn.2d 678, 693, 958 P.2d 273 (1998). In determining the intent of the Legislature, the Court looks at the plain language of the statute. *State v. Keller*, 98 Wn. App. 381, 383-84, 990 P.2d 423 (1999), *cert. denied*, 534 U.S. 1130 (2002).

As discussed above, in 2011, the Legislature adopted ESSSB 5073 amending Washington's laws pertaining to the medical use of cannabis. While partially vetoed by Governor Gregoire, the Governor let stand RCW 69.51A.085⁹ which expressly empowers qualifying patients with the right to participate in collective gardens:

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

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

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

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

⁹ ESSSB 5073, § 403.

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

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

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

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

RCW 69.51A.085.

The City's Ordinance 4036 directly conflicts with RCW 69.51A.085. RCW 69.51A.085 establishes the right for qualifying patients to create and participate in collective gardens as long as they

comply with the terms of the statute. Because RCW 69.51A.085 establishes the right to create and participate in a collective garden, the City of Kent is pre-empted from outright banning their existence. Ordinance 4036 expressly forbids what RCW 69.51A.085 expressly permits.

C. RCW 69.51A.140 Does Not Grant Express or Implied Authority for the City to Ban Collective Gardens

The City argued below, and in response to Tsang's Motion to Stay Enforcement of Judgment, that it had express authority to zone for collective gardens, including authority to prohibit collective gardens in *all* zones, pursuant to RCW 69.51A.140.¹⁰ The City's argument necessarily fails. RCW 69.51A.140 provides:

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

¹⁰ ESSB 5073, § 1102.

possibility of siting licensed dispensers within the jurisdiction. If the jurisdiction has no commercial zones, the jurisdiction is not required to adopt zoning to accommodate licensed dispensers.

While RCW 69.51A.140(a) authorizes cities and towns to adopt and enforce zoning regulations for the production, processing or dispensing of cannabis, it does not expressly authorize the outright banning of collective gardens. More importantly, RCW 69.51A.025 declares that:

[n]othing in this chapter or in the rules adopted to implement it precludes a qualifying patient or designated provider from engaging in the private, unlicensed, noncommercial production, possession, transportation, delivery, or administration of cannabis for medical use as authorized under RCW 69.51A.040.

But by prohibiting collective gardens in all zones, the City of Kent has done just that – adopted “rules” precluding what the Legislature expressly allowed – the private, noncommercial production and possession of medical cannabis through collective gardens.

Nor does RCW 69.51A.140(a) create implied authority for the City to ban collective gardens in all zones. While the City has asserted that the Legislature’s specific language prohibiting the banning of “licensed

dispensaries” creates the implication that the City *can* ban collective gardens, the City ignores that the Legislature also expressly granted authority for collective gardens in RCW 69.51A.085 *and* expressly prohibited the adoption of rules that would preclude a qualifying patient from engaging in the private, unlicensed, noncommercial production, possession, transportation, delivery, or administration of cannabis for medical use – such as a collective garden. RCW 69.51A.025.

When interpreting a statute, the court should read it in its entirety, and each provision must be harmonized with other provisions, if at all possible. *Jackson v. Fenix Underground*, 142 Wn. App. 141, 145-056, 173 P.3d 977 (2007). Statutes “must be construed so that all the language is given effect and no portion is rendered meaningless or superfluous.” *Id.*, quoting *Kilian v. Atkinson*, 147 Wn.2d 16, 21, 50 P.3d 638 (2002).

Because RCW 69.51A.085 expressly authorizes collective gardens, it would make no sense for the Legislature to then turn around and grant authority for local jurisdictions to deny their operation through zoning. Rather than impliedly granting authority to ban collective gardens through zoning, it is far more likely, when read in the context of the entire act, and specifically RCW 69.51A.025 and .085, that the Legislature presumed

jurisdictions might attempt to ban highly controversial “licensed dispensaries,” but would not attempt to ban collective gardens – which by definition are *not* dispensaries, but are limited to producing, processing, transporting and delivery of cannabis for medical use to the participating qualifying patients.¹¹ The Legislature more likely concluded that additional protective language directed specifically at licensed dispensaries might be necessary.¹²

For example, RCW 69.51A.140 applies to the production, processing, “*or dispensing*” of cannabis and indicates an express concern by the Legislature that local governments might try to ban dispensaries. In contrast, RCW 69.51A.085, the provision establishing “collective gardens,” limits collective gardens to “producing, processing, transporting and delivering cannabis for medical use.” Collective gardens, by

¹¹ It is notable that RCW 69.51A.140 applies to production, processing, “*or dispensing*” of cannabis, while the savings clause in RCW 69.51A.025 does not mention “dispensing” but includes only “private, unlicensed, noncommercial production, possession, transportation, delivery, or administration of cannabis for medical use” – terms more applicable to collective gardens. See RCW 69.51A.085 (which limits collective gardens to “producing, processing, transporting and delivering cannabis for medical use” and excludes “dispensing”).

¹² Because the provisions allowing for commercial licensed dispensaries were vetoed, RCW 69.51A.140 may be of no effect, or at most simply grants authority for local government to enact provisions such as zoning. In either event, RCW 69.51A.140 does not grant authority for local governments to ban otherwise legal collective gardens.

definition do not include dispensing. Similarly, RCW 69.51A.025, the provision prohibiting the adoption of rules that might preclude otherwise legal actions, leaves out the term “dispensing” and is instead limited to the “private, unlicensed, noncommercial production, possession, transportation, delivery, or administration of cannabis for medical use” – terms more applicable to collective gardens.

When read in the context of the entire Chapter 69.51A RCW, a logical reading is that RCW 69.51A.140 was concerned primarily with commercial production of medical cannabis by dispensaries. In contrast, RCW 69.51A.085 and RCW 69.51A.025 are concerned primarily with non-commercial production, including specifically collective gardens. RCW 69.51A.140 cannot be read to explicitly or impliedly grant authority for local governments to adopt zoning restrictions that outright ban collective gardens in all zones. The more logical reading is that local governments may adopt zoning restrictions for collective gardens, but may not ban them outright in all zones.

D. The City is Also Pre-empted From Subjecting Collective Gardeners to Civil or Criminal liability

In addition to creating the right to participate in and operate collective gardens, ESSSB 5073 created significant new and stronger

protections for qualifying patients. While previously RCW 69.51A.040 provided only an affirmative defense against charges of violating state law, ESSSB 5073, § 401 amended RCW 69.51A.040 and declared that qualifying patients acting in compliance with Washington's medical cannabis laws are exempt from prosecution for criminal or civil consequences:

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

RCW 69.51A.040 (emphasis added).

Thus, so long as Mr. Tsang (or any other qualifying patient) complies with Chapter 69.51A RCW, he may not be subject to either

criminal or civil consequences. As it relates to this case, so long as Mr. Tsang is participating in a collective garden operating in full compliance with RCW 69.51A.085, he is afforded the statutory protection against criminal and civil liability.

Ordinance 4036, however, directly conflicts with RCW 69.51A.040. Section 2 of Ordinance 4036, codified at KCC 15.08.290.B, declares that any violation of the City's ban on collective gardens is "a public nuisance per se" and subject to abatement under city code or state law, including Chapter 1.04 KCC. KCC 1.04.030 declares that the violation of any regulation is unlawful and subject to both civil and criminal sanctions.

Because RCW 69.51A.040 protects participation in lawful collective gardens from civil or criminal liability the City of Kent is pre-empted from outright banning their existence and imposing both civil and criminal liability for their operation. Ordinance 4036 expressly allows what RCW 69.51A.040 forbids and is pre-empted by state law.

E. The Governor's Veto of the Registration System did not Eliminate Protection from Criminal and Civil Liability under RCW 69.51A.040

In response to Tsang's Motion to Stay Enforcement, the City also argued that the Governor's veto of the proposed registration system effectively nullified the protection against civil and criminal liability afforded by RCW 69.51A.040. Indeed, the City asserts specifically that the elimination of the registration system "eliminated the ability of one to comply with RCW 69.51A.040, and thus, *eliminated the ability of one to participate in collective gardens in a non-criminal manner.*" City's Response at 11-12 (underline removed, italics added). But because RCW 69.51A.040 can be given effect without a registration system, the City's argument fails. Simply because the registration system was vetoed does not mean that the entirety of RCW 69.51A.040 is void.

Once again, RCW 69.51A.040 provides that:

[t]he medical use of cannabis in accordance with the terms and conditions of this chapter does not constitute a crime *and a qualifying patient* or designated provider *in compliance with the terms and conditions of this chapter* may not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences,

(emphasis added). Thus, the plain language of RCW 69.51A.040 protects “qualifying patients” who are “in compliance with” Ch. 69.51A from civil or criminal liability. The vetoed registration system is not required in order to be in compliance with the collective garden statute. Indeed, for collective gardens, RCW 69.51A.085(1) makes clear that the qualifying patient must maintain *either* valid documentation *or* proof of registration at the premises of the collective garden. *See* RCW 69.51A.010(7) (defining valid documentation for a qualifying patient). Thus, RCW 69.51A.040 can be given full effect if, instead of the invalid registration, the qualifying patients are able to present their otherwise valid documentation.¹³

Further, even if somehow RCW 69.51A.040 could be read to be dependent on the vetoed registration system, because the statute can still be given effect for collective gardens that do not require the registration system, it should be given full effect. Indeed, by including an express

¹³ The City asserts in its Response at 11, that “[n]o exception to this registration requirement appears anywhere [sic] Chapter 69.51A RCW, and specifically, no exception to registration is contained in the collective garden statute (RCW 69.51A.085).” To the contrary, RCW 69.51A.085 does not require qualifying patients to register before creating or participating in a collective garden. Instead, RCW 69.51A.085 requires *either* “valid documentation *or* proof.”

severability clause, the Legislature made abundantly clear that that statute should be given effect if it can be without any invalid provisions:

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

RCW 69.51A.903 (emphasis added). Here, full effect can be given the protection afforded by RCW 69.51A.040 even without a registration system.

This interpretation is fully supported by the Governor's veto message:

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

See Appendix 2 (ESSSB 5073), p. 42.

The Governor's veto statement is a part of legislative intent. *Dep't of Ecology v. Theodoratus*, 135 Wn.2d 582, 594, 957 P.2d 1241 (1998);

New Castle Investments v. City of LaCenter, 98 Wn. App. 224, 231, 989 P.2d 569 (1999). Through the veto statement the Governor thus confirmed the legislative intent, that even without the vetoed registration process, the criminal and civil protection provided in RCW 69.51A.040 remains in effect for collective gardens. The City's argument that qualifying patients operating collective gardens are committing a criminal act under Washington law, and that collective gardens are not legal under Washington law, is without basis. Under RCW 69.51A.085, the operation of collective gardens by qualifying patients is an allowed use. The City is pre-empted from banning outright activities expressly allowed by state law and from imposing criminal or civil liability for legal collective gardens.

F. The Superior Court Erred In Issuing a Permanent Injunction

A trial court's decision to grant an injunction is reviewed for abuse of discretion. *Washington Fed'n of State Employees v. State*, 99 Wn.2d 878, 887, 665 P.2d 1337 (1983). "A trial court necessarily abuses its discretion if the decision is based on untenable ground" *Kucera v. Dept. of Transportation*, 140 Wn.2d 200, 209, 995 P.2d 63 (2000).

It is well settled law that an applicant for a permanent or temporary injunction must establish first that they have "a clear legal or equitable

right to relief.” *Id.* at 209, quoting *Tyler Pipe Indus., Inc. v. Department of Revenue*, 96 Wn.2d 785, 792, 638 P.2d 1213 (1982); see also RCW 7.40.020 (grounds for issuance of preliminary injunction). If a party seeking a preliminary injunction fails to establish any one of the necessary requirements, including a clear legal or equitable right, the requested relief must be denied. *Washington Fed’n*, 99 Wn.2d at 888.

As discussed above, because the City of Kent’s Ordinance 4036 is preempted by state law, the City cannot establish a clear right to relief and the permanent injunction must be reversed.

VI. CONCLUSION

For the foregoing reasons, this Court should reverse the superior court’s October 5, 2012, orders dismissing Tsang et al.’s action for declaratory judgment and declare the City of Kent’s Ordinance 4036 preempted by state law and null and void. Further, because the superior court’s permanent injunction was based on an error of law, the Court should also reverse the superior court’s injunction.

Respectfully submitted this 14th day of February, 2013.

GENDLER & MANN, LLP

A handwritten signature in black ink, appearing to read 'D. S. Mann', written over a horizontal line.

David S. Mann, WSBA No. 21068
Attorneys for Deryck Tsang

\\Supreme Ct 88079-4\20130214 Tsang's Opening Brief

APPENDIX 1

1998 ELECTION: STATE BALLOT MEASURES - INITIATIVE MEASURE 692

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Official Ballot Title and Explanatory Statement

The ballot title and explanatory statement were written by the State Attorney General as required by law.

Ballot Title

Shall the medical use of marijuana for certain terminal or debilitating conditions be permitted, and physicians authorized to advise patients about medical use of marijuana?

Explanatory Statement

The Law As It Presently Exists

Washington has adopted the Uniform Controlled Substances Act (Chapter 69.50 RCW), in which drugs and other controlled substances are classified into several "schedules" numbered Schedule I through Schedule V. Marijuana is classified as a Schedule I or Schedule II substance, depending on its use. It is a crime to possess, dispense, or transfer controlled substances except as specifically authorized by law.

There is currently only one program permitting the use of marijuana. Chapter 69.51 RCW authorizes the use of marijuana for purposes of research into its possible therapeutic value. This law is administered by the state department of health. Cancer patients in chemotherapy and radiology and glaucoma patients may apply to participate in this research program. Patient qualification review is performed by a committee of specialist physicians, who may add other disease groups to the program upon review of pertinent medical data and approval of the federal government. Patients in the research program may receive marijuana from the state board of pharmacy and may use it as part of the research program. Any other use of marijuana remains a crime.

The Effect Of The Measure If Approved Into Law

This measure would authorize the use of marijuana to treat patients with certain terminal or debilitating illnesses, including: cancer; HIV virus (AIDS); multiple sclerosis; epilepsy or other seizure disorders; spasticity disorders; glaucoma; pain which is not relieved by standard medical treatments and medications;

and other medical conditions approved by the state medical quality assurance board. These patients would be defined as "qualifying patients".

Licensed physicians would be exempted from criminal laws or other penalties for advising qualifying patients about the risks and benefits of marijuana use. Physicians could lawfully provide documentation, based on the physician's assessment of the qualifying patient's medical history and medical condition, that the potential benefits of the medical use of marijuana would likely outweigh the health risks for that patient. Qualifying patients and their primary caregivers would be authorized to acquire and possess marijuana if they possessed no more than a sixty day supply for the patient's personal, medical use and if they could present valid documentation of authorization by a physician. Parents or guardians could possess marijuana solely for the medical use of qualifying patients under eighteen years of age.

The measure would not authorize the acquisition, possession, or use of marijuana for any other purpose. Possession, sale, or use of marijuana for non-medical purposes would remain a crime. It would be a felony to fraudulently produce or to alter any documents relating to the medical use of marijuana. It would be a misdemeanor to use or display medical marijuana in public view. Health insurance providers would not be required to pay claims for the medical use of marijuana. No physician would be required to authorize the use of medical marijuana. The measure would not require the accommodation of any medical use of marijuana in any place of employment, school bus or school grounds, or youth center. No person would be authorized to engage in the medical use of marijuana in such a way as to endanger the health or well-being of any person through the use of a motorized vehicle on a street, road, or highway. The state could not be held liable for any damaging effects from permitted marijuana use.

Washington Secretary of State
520 Union Ave SE
PO BOX 40229, OLYMPIA WA 98504-0229
(360) 902-4180

FORMATTING NOTE:

In initiatives, legislative bills and other proposed measures, language that is to be deleted from current statutes is represented by a "strikethrough" character and language that is to be added is underlined. Because these special characters cannot be formatted in all Internet browsers, a different set of symbols is used for presenting these proposals on-line. The symbols are as follows:

- Text that is surrounded by (({- text here -})) is text that will be DELETED FROM the existing statute if the proposed measure is approved.
- Text that is surrounded by {+ text here +} is text that will be ADDED TO the existing statute if the proposed measure is approved.
- {+ NEW SECTION+} (found at the beginning of a section or paragraph) indicates that ALL of the text in that section will become law if the proposed measure is approved.

* * *

INITIATIVE 692

AN ACT Relating to the medical use of marijuana; adding a new chapter to Title 69 RCW; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION: Sec. 1. TITLE.

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

NEW SECTION. Sec. 2. PURPOSE AND INTENT.

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 physicians' 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.

NEW SECTION. Sec. 3. NON-MEDICAL PURPOSES PROHIBITED.

Nothing in this chapter shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale, or use of marijuana for non-medical purposes.

NEW SECTION. Sec. 4. PROTECTING PHYSICIANS AUTHORIZING THE USE OF MEDICAL MARIJUANA.

A physician licensed under chapter 18.71 RCW or chapter 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.

NEW SECTION. Sec. 5. PROTECTING QUALIFYING PATIENTS AND PRIMARY CAREGIVERS.

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 act, 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.

NEW SECTION. Sec. 6. 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 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 identicard, as defined in RCW 46.20.035.

NEW SECTION. Sec. 7. ADDITIONAL PROTECTIONS.

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.

NEW SECTION. Sec. 8. RESTRICTIONS, AND LIMITATIONS REGARDING THE MEDICAL USE OF MARIJUANA.

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 section 6 (5) (a) of this act.
6. No person shall be entitled to claim the affirmative defense provided in Section 5 of this act 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.

NEW SECTION. Sec. 9. ADDITION OF MEDICAL CONDITIONS.

The Washington state medical quality assurance board, 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 shall include public notice of, and an opportunity to comment in a public hearing upon, such petitions. The Washington state medical quality assurance board 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. 10. SEVERABILITY.

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.

NEW SECTION. Sec. 11. CAPTIONS NOT LAW.

Captions used in this chapter are not any part of the law.

NEW SECTION. Sec. 12.

Sections 1 through 11 of this act constitute a new chapter in Title 69 RCW.

APPENDIX 2

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

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

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

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

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

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

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

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

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

25 (iii) Acute or chronic glaucoma;

26 (iv) Crohn's disease; and

27 (v) Some forms of intractable pain.

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

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

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

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

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

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

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

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

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

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

1 PART II
2 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

9 ~~(d) Is the designated provider to only one patient at any one time.~~
10 ~~(2))~~ in compliance with the terms and conditions set forth in RCW
11 69.51A.040.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART III

PROTECTIONS FOR HEALTH CARE PROFESSIONALS

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

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

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

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

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

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

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

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

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

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

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

3 (b) A health care professional shall not:

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

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

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

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

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

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

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

24 **PART IV**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 PART VI

13 LICENSED PRODUCERS AND LICENSED PROCESSORS OF CANNABIS PRODUCTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (ii) THC concentration; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 PART VII
2 LICENSED DISPENSERS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 9 (i) Update the maximum allowable number of licensed dispensers in
10 each county; and
11 (ii) Issue approvals to operate within a county according to the
12 random selection process.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Passed by the Senate April 21, 2011.

Passed by the House April 11, 2011.

Approved by the Governor April 29, 2011, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State April 29, 2011.

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

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

"AN ACT Relating to medical use of cannabis."

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

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

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

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

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

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

In addition, there are a number of sections of Engrossed Second Substitute Senate Bill 5073 that are associated with or dependent upon these licensing sections. Section 201 sets forth definitions of terms. Section 412 adds protections for licensed producers, processors and dispensers. Section 901 requires the Department of Health to develop a secure registration system for licensed producers,

processors and dispensers. Section 1104 would require a review of the necessity of the cannabis production and dispensing system if the federal government were to authorize the use of cannabis for medical purposes. Section 1201 applies to dispensaries in current operation in the interim before licensure, and Section 1202 exempts documents filed under Section 1201 from disclosure. Section 1203 requires the department of health to report certain information related to implementation of the vetoed sections. Because I have vetoed the licensing provisions, I have also vetoed Sections 201, 412, 901, 1104, 1201, 1202 and 1203 of Engrossed Second Substitute Senate Bill 5073.

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

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

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

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

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

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

I am also open to legislation that establishes a secure and confidential registration system to provide arrest and seizure protections under state law to qualifying patients and those who assist them. Unfortunately, the provisions of Section 901 that would provide a registry for qualifying patients and designated providers beginning in January 2013 are intertwined with requirements for

registration of licensed commercial producers, processors and dispensers of cannabis. Consequently, I have vetoed section 901 as noted above. Section 101 sets forth the purpose of the registry, and Section 902 is contingent on the registry. Without a registry, these sections are not meaningful. For this reason, I have vetoed Sections 101 and 902 of Engrossed Second Substitute Senate Bill 5073. I am not vetoing Sections 402 or 406, which establish affirmative defenses for a qualifying patient or designated provider who is not registered with the registry established in section 901. Because these sections govern those who have not registered, this section is meaningful even though section 901 has been vetoed.

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

APPENDIX 3

Ordinance No. 4036

(Amending or Repealing Ordinances)

CFN=1320 - Medical Marijuana-Cannabis

Passed 6/5/2012

Medical Cannabis Collective Garden Zoning Amend KCC Title 15

Adding New Section 15.02.074

ORDINANCE NO. 4036

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

RECITALS

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

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

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

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

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

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

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

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

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

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

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

ORDINANCE

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

Sec. 15.02.074. Collective gardens.

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

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

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

Sec. 15.08.290. Medical cannabis collective gardens.

A. *Collective gardens*, as defined in KCC 15.02.074, are prohibited in the following zoning districts:

1. All agricultural districts, including A-10 and AG;
2. All residential districts, including SR-1, SR-3, SR-4.5, SR-6, SR-8, MR-D, MR-T12, MR-T16, MR-G, MR-M, MR-H, MHP, PUD, MTC-1, MTC-2, and MCR;
3. All commercial/office districts, including: NCC, CC, CC-MU, DC, DCE, DCE-T, CM-1, CM-2, GC, GC-MU, O, O-MU, and GWC;
4. All industrial districts, including: MA, M1, M1-C, M2, and M3; and
5. Any new district established after June 5, 2012.

B. Any violation of this section is declared to be a public nuisance per se, and shall be abated by the city attorney under applicable provisions of this code or state law, including, but not limited to, the provisions of KCC Chapter 1.04.

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

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

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

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


SUZETTE COOKE, MAYOR

ATTEST:

Brenda Jacober
BRENDA JACOBER, CITY CLERK

APPROVED AS TO FORM:

Tom Brubaker
TOM BRUBAKER, CITY ATTORNEY

PASSED: 5 day of June, 2012.

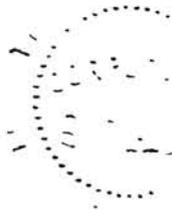
APPROVED: 5 day of June, 2012.

PUBLISHED: 8 day of June, 2012.

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

Brenda Jacober (SEAL)
BRENDA JACOBER, CITY CLERK

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APPENDIX 4

15.08.290 Medical cannabis collective gardens.

A. *Collective gardens*, as defined in KCC 15.02.074, are prohibited in the following zoning districts:

1. All agricultural districts, including A-10 and AG;
2. All residential districts, including SR-1, SR-3, SR-4.5, SR-6, SR-8, MR-D, MR-T12, MR-T16, MR-G, MR-M, MR-H, MHP, PUD, MTC-1, MTC-2, and MCR;
3. All commercial/office districts, including: NCC, CC, CC-MU, DC, DCE, DCE-T, CM-1, CM-2, GC, GC-MU, O, O-MU, and GWC;
4. All industrial districts, including: MA, M1, M1-C, M2, and M3; and
5. Any new district established after June 5, 2012.

B. Any violation of this section is declared to be a public nuisance per se, and shall be abated by the city attorney under applicable provisions of this code or state law, including, but not limited to, the provisions of Chapter 1.04 KCC.

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

(Ord. No. 4036, § 2, 6-5-12)

Chapter 1.04 CODE ENFORCEMENT

Sections:

- 1.04.010 Purpose.
- 1.04.020 Definitions.
- 1.04.030 Violation unlawful – Each day is separate violation – Misdemeanor.
- 1.04.040 Joint and several responsibility and liability.
- 1.04.050 Interference with code enforcement unlawful – Misdemeanor.
- 1.04.060 Methods of service.
- 1.04.070 Voluntary correction – Correction notice.
- 1.04.080 Notice of violation.
- 1.04.090 Stop work order – Violation a misdemeanor.
- 1.04.100 Stop use order – Violation a misdemeanor.
- 1.04.110 Removal of stop work or stop use order – Misdemeanor.
- 1.04.120 Response to notice of violation.
- 1.04.130 Failure to respond.
- 1.04.140 Scheduling of hearing to contest or mitigate – Correction prior to hearing.
- 1.04.150 Contested hearing – Procedure.
- 1.04.160 Contested hearing – Decision of the hearing examiner.
- 1.04.170 Mitigation hearing – Procedure.
- 1.04.180 Mitigation hearing – Decision of the hearing examiner.
- 1.04.190 Failure to appear – Default order.
- 1.04.200 Monetary penalty.
- 1.04.210 Appeal.
- 1.04.220 Repeat violation or failure to abate – Misdemeanor.
- 1.04.230 Abatement.
- 1.04.240 Additional enforcement procedures.
- 1.04.250 Conflicting code provisions.
- 1.04.260 Duty not creating liability.

1.04.010 Purpose.

The purpose of this chapter is to establish an efficient system of enforcing city regulations that will enable violations to be promptly resolved wherever possible, while providing both appropriate penalties and a full opportunity for alleged violators to have a hearing to contest the violations. This chapter shall apply to all regulations as defined in KCC 1.04.020; provided, that a violation of any regulation of the Kent City Code may be prosecuted as a criminal violation at the city's discretion, pursuant to KCC 1.01.140.

(Ord. No. 3880, § 2, 5-6-08)

1.04.020 Definitions.

As used in this chapter, the following words, terms, and phrases shall have the meanings ascribed to them in this section, unless a different meaning is plainly required:

A. *Abate* means to act to stop an activity, and/or to repair, replace, remove, or otherwise remedy a condition, where such activity or condition constitutes a violation of a regulation; provided, the actions must resolve the violation to the satisfaction of the city, or the hearing examiner if the matter has been mitigated or contested and found committed, and the actions taken and the manner in which they are performed must not endanger the general health, safety, and welfare of the community. For the purposes of this chapter, the verbs "abate" and "correct" shall be interchangeable and have the same meaning.

B. *Act* means doing or performing something.

C. *City* means city of Kent, Washington.

D. *Code enforcement officer* means any person or persons authorized by statute, ordinance, regulation, written city policy, or interlocal agreement, or designated by the mayor or his or her designee, to enforce any of the regulations subject to the enforcement and penalty provisions of this chapter, and shall expressly include the city's code enforcement officers; the city attorney, or his or her designee; the chief of the Kent police department, or his or her designee; the director of the community development department, or his or her designee; the director of the public works department, or his or her designee; building inspectors; construction inspectors; the chief of the Kent fire department, or his or her designee; fire code official, and fire inspectors.

E. *Correction notice* means a written statement, issued by a code enforcement officer, notifying a person that property under his or her control, is in violation of one (1) or more regulations, and informing such person that a notice of violation may be issued and/or criminal charges filed if the violations are not abated.

F. *Day or days*, as used in this chapter, shall mean calendar days unless expressly stated otherwise in a given section or subsection. In addition, any portion of a twenty-four (24) hour day shall constitute a full calendar day.

G. *Hearing examiner* means the Kent hearing examiner and the office thereof established pursuant to Ch. 2.32 KCC.

H. *Notice of violation or notice of civil violation* means a written statement, issued by a code enforcement officer, which contains the information required under KCC 1.04.080, and which notifies a person that he or she is responsible for one (1) or more violations of the Kent City Code.

I. *Omission* means a failure to act.

J. *Person* means any individual, firm, business, association, partnership, corporation or other legal entity, public or private, however organized. Because "person" shall include both human and non-human entities, any of the following pronouns may be used to describe a person: he, she, or it.

K. *Person responsible for the violation* means any of the following: a person who has titled ownership or legal control of the property or structure that is subject to the regulation; an occupant or other person in control of the property or structure that is subject to the regulation; a developer, builder, business operator, or owner who is developing, building, or operating a business on the property or in a structure that is subject to the regulation; or any person who created, caused, or has allowed the violation to occur.

L. *Regulation* means and includes any of the following, as now enacted or hereafter amended:

1. All Kent City Code provisions making reference to this chapter;
2. All standards, regulations, and procedures adopted by the city that make reference to this chapter; and
3. The terms and conditions of any permit or approval issued by the city, or any concomitant agreement with the city pursuant to code provisions that make reference to this chapter.

M. *Repeat violation* means, as evidenced by the prior issuance of a correction notice or a notice of violation, that a violation has occurred on the same property within a two (2) year period, or a person responsible for a violation has committed a violation elsewhere within the city of Kent within a two (2) year period. To constitute a repeat violation, the violation need not be the same violation as the prior violation.

N. *Violation or civil violation* means an act or omission contrary to a regulation as defined in subsection (L) of this section. A violation continues to exist until abated to the satisfaction of the city, with each day or portion thereof in which the violation continues constituting a separate violation.

(Ord. No. 3880, § 2, 5-6-08)

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

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

(Ord. No. 3880, § 2, 5-6-08)

1.04.040 Joint and several responsibility and liability.

Responsibility for violations of the codes enforced under this chapter is joint and several, and the city is not prohibited from taking action against a party where other persons may also be potentially responsible for a violation, nor is the city required to take action against all persons potentially responsible for a violation.

(Ord. No. 3880, § 2, 5-6-08)