

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,

Appellant,

v.

ALEX R. BUCKINGHAM,

Respondent.

MR
COURT OF APPEALS
STATE OF WASHINGTON
2013 JUL 30 PM 1:33

BRIEF OF APPELLANT

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I. INTRODUCTION

The issue in this case is whether a search warrant affidavit for a marijuana grow must affirmatively show that the grower is not complying with the medical cannabis laws. The Supreme Court has already held that probable cause is not negated by the possible existence of an affirmative defense under those laws.

The defendant has argued that this analysis was overturned by the 2011 amendments to the medical cannabis. The trial court appears to have accepted that argument. This was error. Although the Legislature did attempt to create broader protections, those protections are limited to providers who are listed in a state registry. The Governor vetoed the statutory provision that would have created the registry. As a result, no one qualifies for the protections conferred on registered providers. Absent registration, a provider is only entitled to an affirmative defense – which does not negate a showing of probable cause.

II. ASSIGNMENTS OF ERROR

(1) The trial court erred in suppressing evidence seized pursuant to a search warrant.

(2) The trial court erred in dismissing the case.

(3) The trial court erred in entering the following legal conclusions:

That within the four corners of the warrant probable cause has not been established and therefore all the evidence in this case is suppressed. Under the medical marijuana law of 2011, an affirmative defense does not come into play until after probable cause is established, this is not the situation in this case. In this case there was nothing in the warrant in which the affiant addressed the issue of whether the provisions of the medical marijuana law were being broken and therefore there was no probable cause that a crime was being committed in the 4 corners of the warrant.

III. ISSUE

A search warrant affidavit established probable cause that marijuana was being grown at a particular residence. The affidavit provided no evidence on whether the grow might comply with the laws relating to qualified providers of medical cannabis. Did the affidavit establish probable cause?

IV. STATEMENT OF THE CASE

The defendant (respondent), Alex Buckingham, was charged with manufacture of a controlled substance.¹ CP 216. These

¹ Ashley Byrne was charged with the same crime. The court dismissed the charges against him on the same basis as the dismissal in the present case. The State's appeal from that dismissal is pending in this court under cause no. 69919-9-I.

charges stemmed from a search at a residence in Everett, which was carried out on November 22, 2011. The trial court held that this search was based on an invalid warrant. It therefore suppressed the evidence and dismissed the case. CP 5-7. (These orders are set out in Appendix A.) The State has appealed from the suppression and dismissal.

The affidavit in support of the search warrant is attached as Appendix B. CP 58-62. The affidavit begins by setting out a prior search at the same address, which occurred on March 12, 2009. That discovered an active marijuana growing operation with a total of 418 plants. As a result of this search, Daniel Dean pleaded guilty to conspiracy to manufacture marijuana. Alex Buckingham and Ashley Byrne both pleaded guilty to misdemeanor marijuana charges. CP 58. (Mr. Buckingham is the defendant and respondent in the present case.)

On October 27, 2011, an officer with the Snohomish Regional Gang and Drug Task Force went to the property to determine whether it was still occupied. As he approached the front door, he smelled fresh or growing marijuana. Parked in the driveway, there was a Kia registered to Ashley Byrne at an address

in Edmonds. This Edmonds address is the residence of Daniel Dean. CP 58.

The next day (October 28), two other officers returned to the property. One of them smelled fresh or growing marijuana. On November 18, an officer observed a Toyota 4-Runner under the carport. This 4-Runner was registered to Mr. Buckingham. On November 22, both the 4-Runner and the Kia were parked there. CP 58-59.

Police checked P.U.D. records regarding the property. The subscriber was listed as Daniel Dean. The bi-monthly power usage averaged 10,903 kwh. This is a very high amount that indicates the presence of an indoor marijuana growing operation. CP 59.

Based on this information, the Everett District Court issued a search warrant. According to the prosecutor's Affidavit of Probable Cause, the search found a grow operation with four grow rooms, which held a total of 275 plants. The search also found 70 grams of processed marijuana and over 2000 grams of shake. CP 214.

The trial court ruled that the search warrant affidavit was insufficient. To show probable cause, the affidavit had to establish

that the grow violated the statutes relating to medical cannabis.² Because the affidavit failed to show this, the court suppressed the evidence and dismissed the case. In view of this decision, the court did not consider other grounds that had been asserted for suppression and dismissal. RP 18-20; CP 5-7.

V. ARGUMENT

A. THE SUPREME COURT HAS ALREADY HELD THAT A SEARCH WARRANT AFFIDAVIT FOR MARIJUANA IS NOT REQUIRED TO NEGATE A POSSIBLE AFFIRMATIVE DEFENSE RELATING TO MEDICAL USE.

The trial court concluded that a search warrant for growing marijuana is invalid unless it establishes a failure to comply with the laws dealing with medical cannabis. The court therefore held that the warrant was not supported by probable cause. CP 6-7. The legal conclusion of whether evidence meets the probable cause standard is reviewed de novo. In re Petersen, 145 Wn.2d 789, 799, 42 P.3d 952 (2002).

Under a prior version of the statute, the Supreme Court held that the possible existence of an affirmative defense under the medical cannabis laws did not defeat probable cause. State v. Fry,

² The trial court's decision refers to "medical marijuana." The 2011 statute discussed below changed this term to "medical cannabis." RCW 69.51A.005, as amended by Laws of 2011, ch. 181, § 102.

168 Wn.2d 1, 228 P.3d 1 (2010). According to Fry, probable cause is not defeated when a user presents documentation showing that he is a qualifying patient.

As an affirmative defense, the [medical cannabis] defense does not eliminate probable cause where a trained officer detects the odor of marijuana. A doctor's authorization does not indicate that the presenter is totally complying with the Act: e.g., the amounts may be excessive. An affirmative defense does not per se legalize an activity and does not negate probable cause that a crime has been committed.

Id. at 10 ¶ 22 (plurality opinion). (This opinion was signed by four justices. An additional four justices concurred in result only. Id. at 20 ¶ 44 (Chambers, J., concurring).) Under this reasoning, the search warrant in the present case was valid.

B. THE 2011 LEGISLATURE CREATED EXPANDED PROTECTIONS FOR SOME PRODUCERS OF MEDICAL CANNABIS, BUT ONLY IF THEY WERE LISTED IN A STATE REGISTRY.

In the trial court, the defendant argued that Fry is "no longer applicable" because of the 2011 amendments to the medical cannabis statute, Laws of 2011, ch. 181. CP 20. The trial court appears to have accepted this argument. RP 18-20. Determining the validity of this ruling requires a careful analysis of chapter 181. (The complete text of this statute, along with the Governor's veto message, is set out in Appendix C.)

In enacting chapter 181, the Legislature attempted to establish a registry for qualified medical marijuana users:

By January 1, 2013, the department of health shall, in consultation with the department of agriculture, adopt rules for the creation, implementation, maintenance, and timely upgrading of a secure and confidential registration system that allows:

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

Ch. 181, § 901(1) (vetoed). Police officers were to be required (with some exceptions) to search the registry before seeking an arrest or search warrant for a cannabis-related incident. Id. § 901(4) (vetoed).

The Legislature did not intend to make it mandatory for patients or providers to list themselves on the registry. Id. § 901(6). The Legislature did, however, intend to provide special protections for patients and providers who chose to use the registry:

The legislature intends to amend and clarify the law on the medical use of cannabis so that:

(a) Qualifying patients and designated providers complying with the terms of this act and registering with the department of health will no longer be subject to arrest or prosecution, other criminal sanctions, or civil consequences based solely on their medical use of cannabis. . .

Id. § 101(1)(a) (vetoed).

In keeping with this intent, the Legislature provided two sets of protections for qualified patients and designated providers. Under one statutory provision, patients and providers were protected from arrest, prosecution, and other criminal sanctions and civil consequences. These protections, however, only applied to patients and providers who were listed on the registry:

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

- (1) The qualifying patient or designated provider possesses no more than [specified amounts of cannabis];
- (2) The qualifying patient or designated provider presents his or her proof of registration with the department of health, to any peace officer who questions the patient or provider regarding his or her medical use of cannabis;
- (3) **The qualifying patient or designated provider keeps a copy of his or her proof of registration with the registry established in section 901 of this act and the qualifying patient or designated provider's contact information posted prominently next to any cannabis plants, cannabis products, or useable cannabis located at his or her residence;**
- (4) The investigating peace officer does not possess evidence that [the patient or provider has violated various other statutory requirements relating to medical cannabis].

Id. § 401, codified as RCW 69.51A.040 (emphasis added).

A weaker set of protections was established for patients and providers who were not listed on the registry:

A qualifying patient or designated provider who is not registered with the registry established in section 901 of this act, but who presents his or her valid documentation to any peace officer who questions the patient or provider regarding his or her medical use of cannabis, may assert an affirmative defense to charges of violations of state law relating to cannabis through proof at trial, by a preponderance of the evidence, that he or she otherwise meets the requirements of RCW 69.51A.040.

Id. § 402(2), codified as RCW 69.51A.043(2).

Under this weaker provision, there is no bar against prosecution. There is only an affirmative defense that can be raised at trial. This is largely identical to the protection that existed before the 2011 statute was enacted. It thus falls squarely within the reasoning of Fry: when only an affirmative defense is involved, a showing of probable cause need not negate that defense. Fry, 168 Wn.2d at 10 ¶ 22.

**C. BY VETOING THE PROVISION CREATING THE REGISTRY,
THE GOVERNOR MADE IT IMPOSSIBLE FOR ANYONE TO
ENJOY THE EXPANDED PROTECTIONS**

The above discussion explains the intent of the bill as passed by the Legislature. The Governor, however, vetoed large portions of the bill. Her intent must also be considered:

When referring to what the legislature intended, we must not forget that the governor, when acting upon bills passed by both houses of the legislature, is a part of the legislature, and acting in a legislative capacity, and we cannot therefore consider the intent of the house and the senate apart from the intent of the governor. . . In exercising the veto power, the Governor acts as a part of the legislative bodies and the act is to be considered now just as it would have been if the vetoed provisions had never been written into the bill at any stage of the proceedings.

Shelton Hotel Co. v. Bates, 4 Wn.2d 498, 506, 104 P.2d 478 (1940).

The Governor was concerned that the bill passed by the Legislature would have public employees licensing activities that violate federal law. She therefore vetoed all the licensure provisions of the bill. With regard to the registry provisions, the Governor explained:

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... 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.

Ch. 181, Governor's Veto Message (her emphasis).

The Governor's veto left intact the two sets of statutory protections: the protection against arrest and prosecution for registered patients and providers set out in RCW 69.51A.040, and the affirmative defense for unregistered patients and providers set out in RCW 69.51A.043. Nevertheless, because the registry has been eliminated, RCW 69.51A.040 has no practical effect. The class of people that this section protects – those who are registered under section 901 – has no members.

In a general sense, this result is not unusual. Whenever a new registry is created, it will take time for people to become registered. During the period before this occurs, the benefits of registration will be unavailable, because no one will qualify for them. Even without the Governor's veto, chapter 181 would have created this effect. The Department of Health was given until January 1, 2013, to adopt rules governing the registry. Ch. 181, § 901(1) (vetoed). The search in the present case occurred in November, 2011. No registry was going to exist by that time. The only protection that would be available at that time would be the

provision for *unregistered* providers. Like anyone else in November, 2011, the defendant in this case was only entitled to a possible affirmative defense – which need not be negated to establish probable cause.

D. THE MAGISTRATE WHO ISSUED THE SEARCH WARRANT COULD INFER THAT THE GROWERS DID NOT QUALIFY FOR THE PROTECTION AGAINST ARREST AND PROSECUTION UNDER RCW 69.51A.043.

The ultimate issue in the present case is whether the affidavit established probable cause for issuance of a search warrant. In deciding whether to issue a warrant, a magistrate is entitled to draw commonsense and reasonable inferences from the facts and circumstances set forth in the affidavit. State v. Helmka, 86 Wn.2d 91, 93, 542 P.2d 115 (1975).

The defendant has argued that a search warrant affidavit must negate the possibility that the defendant qualifies for statutory protection against arrest and prosecution. To qualify for such protection, a marijuana grower must “keep[] a copy of his or her proof of registration with the registry established in section 901 of this act ... posted prominently next to any cannabis plants.” RCW 69.51A.040(3). The magistrate could reasonably infer that the growers in this case had not satisfied this statutory requirement.

Since there was *no* registry established in section 901, there could be no proof of registration with that registry. Therefore the non-existent proof could not be posted prominently next to any cannabis plants.

When the affidavit is construed in a commonsense manner, it necessarily negates the possibility that the suspects qualified for the statutory protection against arrest and prosecution set out in RCW 69.51A.040 – because no one qualified for that protection. At most, the growers might have an affirmative defense *at trial* under RCW 69.51A.043. The possible existence of such a defense does not defeat probable cause to search.

In short, the trial court was wrong in concluding that a showing of probable cause requires negating the possibility of an affirmative defense. The Supreme Court held exactly the opposite in Fry. Although the 2011 statute creates the possibility of broader statutory protections, the preconditions for those protections do not exist in this case (or in any other case, until the statute is amended). The order of suppression should be reversed.

The order of dismissal was predicated solely on the suppression order. CP 5. The dismissal should therefore be reversed as well.

VI. CONCLUSION

The orders suppressing evidence and dismissing the case should be reversed. The case should be remanded for further proceedings.

Respectfully submitted on July 29, 2013.

MARK K. ROE
Snohomish County Prosecuting Attorney

By: *Seth A. Fine*
SETH A. FINE, WSBA # 10937
Deputy Prosecuting Attorney
Attorney for Appellant

APPENDICES

Appendix A – Orders of suppression and dismissal (CP 5-7)

Appendix B -- Affidavit for Search Warrant (CP 58-62)

Appendix C – 2011 Medical Cannabis Statute (Laws 2011, ch. 181)

2013 JAN 18 PM 12:05

LONIA KRASH
COUNTY CLERK
SNOHOMISH CO. WA



CL15599469

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

State

PLAINTIFF / PETITIONER

and

DEFENDANT / RESPONDENT

Alex Buckingham

NO. *12-1-00377-1*

ORDER

IT IS HEREBY ORDERED:

That within the four corners of the warrant, probable cause has not been established and therefore all the evidence in this case is suppressed. Under the medical marijuana law of 2011, an affirmative defense does not come into play until after the search warrant is executed, this is not the situation in this case. In this case there was nothing in the warrant

DONE IN OPEN COURT this date: _____

Presented By:

JUDGE / COURT COMMISSIONER

Copy Received:

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Case Name State v Buckingham

Case No. 12-1-00377-1

in which the affiant addressed the issue of whether the provisions of the medical marijuana law were being broken and therefore there was no probable cause that a crime was being committed in the 4 corners of the warrant.

② The issue of Franks v Delaware is reserved

③ The CrR 8.3 issue is also reserved.

DONE IN OPEN COURT this date: Jan 18, 2013

Presented By:

Neal Friedman

[Signature]
JUDGE / COURT COMMISSIONER

Copy Received:

[Signature] 1986V

2013 JAN 18 PM 12:05



CL15599468

JUNYA KRASNIK
COUNTY CLERK
SNOHOMISH COUNTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

State

PLAINTIFF/PETITIONER

Alex Buckingham

and
DEFENDANT/RESPONDENT

NO. *12-1-00377-1*
ORDER

IT IS HEREBY ORDERED: *that since all the evidence in this case is suppressed and therefore the state cannot proceed and the case is dismissed*

DONE IN OPEN COURT this date: *Jan 18, 2013*

Presented By: *Neal Fueder*

[Signature]
JUDGE/COURT COMMISSIONER

Copy Received: *[Signature]* 19845

CLOSED

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5050 # 3820

-1-
Affidavit in 2012 case

EVERETT DISTRICT COURT FOR SNOHOMISH COUNTY

STATE OF WASHINGTON NO.

COUNTY OF SNOHOMISH AFFIDAVIT FOR SEARCH WARRANT

Your affiant, Daniel Rucker, a Detective with the Snohomish Regional Drug & Gang Task Force, being first duly sworn on oath, complain, depose and say:

That your affiant has probable cause to believe, and in fact does believe, that in violation of the laws of the State of Washington, that the crime(s) of **Manufacturing/Delivery/Possession of a Controlled Substance With Intent to Deliver - Marijuana** has been committed and that evidence of that crime; or contraband, the fruits of the crime, or things otherwise criminally possessed; or weapons or other things by means of which a crime has been committed or reasonably appears about to be committed; or a person for whose arrest there is probable cause, or who is unlawfully restrained are concealed in, or on the following described premises, vehicle, or person, designated and described as follows: **the single family residence located at 1330 Kossuth Ave., Everett, WA., within Snohomish County. The residence is further described as a single-story, brick house, with white trim. A detached carport is located on the north side of the house, between the house and Kossuth Ave. "1330" is clearly displayed horizontally on a wooden sign, to the left of the front door.**

**AFFIANT'S BELIEF, IN PART, IS BASED UPON THE FOLLOWING TRAINING,
KNOWLEDGE, AND EXPERIENCE**

I am a Detective for the City of Everett, Washington, currently assigned to the Snohomish Regional Drug & Gang Task Force (SRDGTF). I have been employed as a Police Officer since September of 1995, and have been assigned to the Snohomish Regional Drug & Gang Task Force since July of 2001. As a member of the SRDGTF, I have the responsibility of carrying out drug investigations and asset seizure/forfeiture investigations.

My training as a Law Enforcement Officer has included attending and successfully completing numerous schools and seminars to include:

- Washington State Criminal Justice Training Commission's Basic Law Enforcement Academy (440 hours);
- Drug Enforcement Administration Basic Drug Investigator's Course (80 hours);
- Narcotics Recognition and Investigation (50 hours);
- two US Customs "Blue Lightning" Cross-Designation Courses (16 hours and 8 hours);
- Cannabis Investigation (24 hours);
- Indoor Marijuana Grow Investigations (16 hours);
- Aerial Marijuana Spotter Training (24 hours);
- Asset Forfeiture Investigations (FH Consulting sponsored - 24 hours);
- Money Laundering: Tracing Illicit Funds (AFCE sponsored - 16 hours);
- Analytical Investigation Methods (ANACAPA sponsored - 40 hours);
- Money Laundering and Asset Forfeiture Training (FLETC sponsored - 36 hours);
- Follow the Money: Asset Forfeiture and Money Laundering (DEA sponsored - 24 hours);
- Basic Criminal Investigation (40 hours);
- I have also been trained by a certified instructor in the use of the NIK System of Narcotics Investigation/Identification, and have used the NIK field testing system hundreds of times;

APPENDIX B

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- In addition, I have attended training from the Washington State Narcotics Investigators Association, California Narcotic Officers' Association and the Western States Intelligence Network.

During my employment as a Law Enforcement Officer, I have been involved in numerous drug investigations resulting in the issuance of search warrants, seizures of controlled substances, seizures of real and personal property and arrests of drug traffickers. Those cases have involved marijuana, cocaine, ecstasy, heroin, methamphetamine, OxyContin and other controlled substances. As a result, I am very familiar with the use, packaging and sales of controlled substances; with the methods used by drug traffickers to attempt to conceal their identity, actions and illicit activity; and with the methods in which drug traffickers use businesses, convoluted money transfers, real estate purchases and investments to conceal or launder money derived from drug trafficking. I have also been involved in the investigation of hundreds of indoor and outdoor marijuana growing operations and am familiar with the odor of fresh and growing marijuana, with the equipment used and with the methods of which the grow operations are conducted.

Also as a result of previous investigations and training, I know that individuals involved in the distribution of illegal controlled substances profit from the sale of illegal controlled substances and attempt to legitimize those profits. I know that to accomplish this task, these individuals often utilize false and fictitious business records, cashier's checks, money orders, stored credit cards, accounts in foreign and domestic banks, and often transfer to third persons or purchase in another person's name, real and personal property. Drug traffickers may also use legitimate businesses to launder drug proceeds through. Also, since the government's efforts at seizing and forfeiting drug-related assets have been widely publicized, individuals involved in the cultivation and distribution of illegal controlled substances, often place assets in the names of others to avoid detection and subsequent asset seizure.

Through my training and experience, I know that individuals involved in the distribution of illegal controlled substances almost always maintain amounts of money, financial instruments, jewelry, and valuables that are proceeds from, or intended to be used to facilitate drug transactions. All such items, in addition to being evidence of drug trafficking violations, are forfeitable under the law.

Through my training and experience, I know that it is common for drug traffickers to deposit cash from drug proceeds into bank accounts in even numbered denominations.

Through my training and experience, I know that drug traffickers maintain records, books, notes, ledgers, computer disks, money orders, and other papers relating to the transportation, ordering, possession, sale and distribution of drugs, and that these records are sometimes maintained on computers and on communication devices. The aforementioned are usually maintained in a suspect's residence, including its outbuildings and vehicles.

Through my training and experience, I know that drug traffickers commonly use various types of communication devices (cell phones, pagers, direct-connect phones, text messaging devices, etc.) to conduct their drug trafficking. Cell phones and text-messaging devices are regularly used to avoid detection by Law Enforcement. Drug traffickers commonly use multiple communication devices to communicate with customers, and multiple, other communication devices to communicate with their sources of supply and transporters.

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DETECTIVE SPELLMAN'S TRAINING, KNOWLEDGE, AND EXPERIENCE

Your Affiant has been a commissioned police officer with the Everett Police Department since June 2002. She graduated from the Washington Criminal Justice Training Commission police academy consisting of over 720 hours of training in 2002. She is certified in the use of the NIK Field Test to identify types of dangerous drugs. She also attended Drug Enforcement Administration (DEA) Basic Investigations (80 hours) and Rolling Surveillance (40 hours). While employed as a Law Enforcement Officer, she has performed and assisted with investigations relating to the trafficking, manufacturing, packaging, and/or possession of marijuana, cocaine, heroin, methamphetamine, and other controlled substances. Through her training and experience, she is familiar with the appearance of these drugs and their related paraphernalia and packaging for possession, possession with intent to deliver, and delivery. She has assisted in the service of search warrants for dangerous drugs that have proven to be fruitful. She has been assigned to the Snohomish Regional Drug Task Force as a narcotics detective since July 2010.

AFFIANT'S BELIEF, IN PART, IS BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCES

On March 12th, 2009, Detectives from the Snohomish Regional Drug & Gang Task Force served a search warrant at the residence located at 1330 Kossuth Ave., Everett, WA., for evidence of an indoor marijuana growing operation (see attached, unsigned copy of the search warrant, incorporated herein by reference). As a result, an active, indoor marijuana growing operation was discovered in the basement of the residence. A total of 418 marijuana plants were recovered, along with grow operation equipment (high intensity lights, ballasts, fans, etc.), digital scales, US currency, processed marijuana and three firearms.

The owner of the residence, Daniel E. Dean, pleaded guilty to a felony charge of Conspiracy to Manufacturing – Marijuana. The two people found living inside the residence, and appearing to be tending the growing operation, Ashley Byrne and Alex Buckingham, both pleaded guilty to a misdemeanor marijuana charge. The property was subject to seizure and forfeiture pursuant to RCW 69.50.505, as the property was used to facilitate the manufacturing of controlled substances, in direct violation of RCW 69.50.401.

On October 27th, 2011, I had a phone conversation with Snohomish Regional Drug & Gang Task Force (SRDGTF) Commander Pat Slack. Commander Slack told me that as part of the still active and ongoing seizure process regarding the property located at 1330 Kossuth Ave., Everett, WA., he had gone to the property on the afternoon of this same date, to attempt to determine whether or not it was occupied. As he approached the front door of the property, he smelled the odor of what he recognized to be fresh, and/or growing marijuana. Commander Slack noted a vehicle that was parked in the driveway of the residence, a white, 1999 Kia, WA license 953XHG. The vehicle is currently registered to Ashley E. Byrne, at 8511 218th St. SW, Edmonds, WA. This Edmonds, WA. address is the residence of Daniel Dean.

Based on this information, Detective Spellman and I drove to the residence, the following day. We arrived at about 1330 hours. Detective Spellman approached the front door on foot. Within about five feet of the front door, and next to the carport located on the north side of the residence, Detective Spellman smelled the odor of what she recognized, based on her training and experience, to be fresh and/or growing marijuana.

On the afternoon of November 18th, 2011, I drove past the Kossuth Ave. residence. I observed a white Toyota 4-Runner, WA license 599WUY, parked under the carport. On the morning of

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November 22nd, 2011, I drove past the Kossuth Ave. residence and again observed a white Toyota 4-Runner, WA license 599WUY, parked under the carport. I also observed a white Kia, WA license 953XHG, parked in the driveway. The Toyota 4-Runner was associated with, and registered to Alex Buckingham at the time of the search warrant in 2009. It is still registered to Alex Buckingham, at an Edmonds address. The Kia was associated with, and registered to Ashley Byrne at the time of the search warrant in 2009, and as noted above, still is.

SNOHOMISH COUNTY PUD #1

On November 9th, 2011, I received records from the Snohomish County PUD #1, regarding the power consumption and subscriber information for the property at 1330 Kossuth Ave., Everett, WA. The PUD report showed that the subscriber, or account holder, is "Daniel E. Dean", at 8511 218th St. SW, Edmonds, WA. The report listed "Additional Responsible Parties" as "Jacqueline Dean", "spouse". The "Start Date" for the account was listed as August 9th, 2004. The bi-monthly power consumption readings taken by the PUD since April of 2010, have averaged 10,903 kwh. The highest reading of 12,571 kwh was taken during the most recent reading, on October 5th, 2011. This average amount, in my training and experience, is very high considering the size of this residence, and its single electric meter, and indicates the presence of an indoor marijuana growing operation.

SNOHOMISH COUNTY ASSESSOR'S OFFICE

The Snohomish County Assessor's Office provided the following information regarding the property at 1330 Kossuth Ave., Everett, WA. (Parcel #00394100200501):

- A single-family residence built in 1946, consisting of 1,488 finished square feet on the main floor, and 1,488 unfinished square feet in the basement. There is a detached, 572 square foot carport.
- Total current Assessed Property Value (for tax year 2011) is \$230,500.00.
- The Taxpayer and Owner is listed as Dustin Ruffner, 8511 218th St. SW, Edmonds, WA.
- Daniel E. & Jackie S. Dean purchased the property in August of 2004, for \$221,500.00.
- Dan & Jackie Dean Quit Claimed the property to Dustin Ruffner, in March of 2009.

23

Based upon the above information, your affiant requests the authorization of a search warrant for the residence located at 1330 Kossuth Ave., Everett, WA., within Snohomish County, for evidence of Manufacturing/ Delivery/ Possession of a Controlled Substance With Intent to Deliver – Marijuana.

Your affiant certifies (or declares) under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct this 22nd day of November, 2011, at 0930 hours, in Marysville, County of Snohomish, Washington.

AFFIANT

[Signature] #TF226

Daniel Rucker - #TF226

Detective, Snohomish Regional Drug & Gang Task Force

Certified (or declared) to me as true and correct under the penalty of perjury under the laws of the State of Washington this day of , 2011.

Subscribed and Sworn to before me this 22nd day of November, 2011

[Signature]

Judge or Commissioner

Tam T. Bry

Print Name

Issuance of Warrant Approved:

Janice Albert, WSBA #19865

Deputy Prosecuting Attorney

24

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

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

12 *NEW SECTION. Sec. 807. The department of agriculture or the
13 department of health, as the case may be, must suspend the
14 certification of licensure of any person who has been certified by a
15 lending agency and reported to the appropriate department for
16 nonpayment or default on a federally or state-guaranteed educational
17 loan or service-conditional scholarship. Prior to the suspension, the
18 department of agriculture or the department of health, as the case may
19 be, must provide the person an opportunity for a brief adjudicative
20 proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of
21 nonpayment or default on a federally or state-guaranteed educational
22 loan or service-conditional scholarship. The person's license may not
23 be reissued until the person provides the appropriate department a
24 written release issued by the lending agency stating that the person is
25 making payments on the loan in accordance with a repayment agreement
26 approved by the lending agency. If the person has continued to meet
27 all other requirements for certification or registration during the
28 suspension, reinstatement is automatic upon receipt of the notice and
29 payment of any reinstatement fee.

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

PART IX

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

33 *NEW SECTION. Sec. 901. (1) By January 1, 2013, the department of
34 health shall, in consultation with the department of agriculture, adopt

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."