

70300-5

70300-5

No. 70300-5

**COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON, Respondent,

v.

DENNIS CROWLEY AND JENNIFER DETERMING,

Appellants.

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2014 MAR -7 PM 1:18

BRIEF OF RESPONDENT

**DAVID S. McEACHRAN,
Whatcom County Prosecuting Attorney
By HILARY A. THOMAS
Appellate Deputy Prosecutor
Attorney for Respondent
WSBA #22007 / ADMIN. #91075**

**Whatcom County Prosecutor's Office
311 Grand Avenue, Second Floor
Bellingham, WA 98225
(360) 676-6784**

TABLE OF CONTENTS

A. ASSIGNMENTS OF ERROR 1

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

C. FACTS 1

D. ARGUMENT 6

1. Even assuming the 2011 amendments to the Medical Cannabis Act provided for a prosecution immunity exception, there was probable cause to support issuance of the search warrant because the defendants didn’t qualify as a “collective garden” where it appeared that more than 10 persons had purchased marijuana at KGB and where KGB had 51 strains of marijuana on the premises, in addition to 45 plants, and where some of the strains came from other vendors.....8

 a. *The evidence before the magistrate sufficiently refuted the possibility that KGB was operating as a “collective garden” under the probable cause standard.....9*

 b. *The trial court did not misinterpret the 10 person limitation on a “collective garden.”..... 13*

2. The State wasn’t required to address whether KGB met the requirements of a “collective garden” under the MCA in its application for a search warrant because the Act as passed only provided for an affirmative defense, not immunity from searches.....19

 a. *Search warrant applications do not need to refute possible affirmative defenses..... 20*

 b. *The legislative intent of 2011 amendments to the MCA was not to provide unconditional immunity for medical marijuana..... 22*

c. *Statutory construction does not support Crowley's interpretation of the legislation as enacted*.....27

d. *The statutory language is not ambiguous*.....34

E. CONCLUSION 36

TABLE OF AUTHORITIES

Washington Court of Appeals

<u>In re Vasquez,</u> 108 Wn. App. 307, 31 P.3d 16 (2001).....	28
<u>McBride v. Walla Walla Cnty.,</u> 95 Wn. App. 33, 975 P.2d 1029 (1999).....	21
<u>Snoqualmie Valley Sch. Dist. No. 410 v. Van Eyk,</u> 130 Wn. App. 806, 125 P.3d 208 (2005).....	34
<u>State v. Brasel,</u> 28 Wn. App. 303, 623 P.2d 696 (1981).....	30
<u>State v. Ellis,</u> 315 P.3d 1170 (2014).....	passim
<u>State v. K.R.,</u> 169 Wn. App. 742, 282 P.3d 1112 (2012).....	34
<u>State v. Mullins,</u> 128 Wn. App. 633, 116 P.3d 441 (2005).....	34
<u>State v. Rice,</u> 116 Wn. App. 96, 64 P.3d 651 (2003).....	28
<u>State v. Shupe,</u> 172 Wn. App. 341289 P.3d 741 (2012),.....	passim
<u>State v. Silva,</u> 106 Wn. App. 586, 24 P.3d 477.....	15

Washington Supreme Court

<u>Amburn v. Daly,</u> 81 Wn.2d 241, 501 P.2d 178 (1972).....	16
<u>Hallin v. Trent,</u> 94 Wn.2d 671, 619 P.2d 357 (1980).....	29
<u>In re Pers. Restraint of Adams,</u> 178 Wn.2d 417, 307 P.3d 451 (2013).....	29
<u>John H. Sellen Const. Co. v. State Dep't of Revenue,</u> 87 Wn.2d 878, 558 P.2d 1342 (1976).....	15
<u>Shelton Hotel Co. v. Bates,</u> 4 Wn.2d 498, 104 P.2d 478 (1940).....	29

<u>State ex rel. Stiner v. Yelle,</u> 174 Wash. 402, 25 P.2d 91 (1933).....	29
<u>State v. Bobic,</u> 140 Wn.2d 250, 996 P.2d 610 (2000)	20
<u>State v. Bunker,</u> 169 Wn.2d 571, 238 P.3d 487 (2010).....	29
<u>State v. Chapman,</u> 140 Wn.2d 436, 998 P.2d 282 (2000).....	28
<u>State v. Fry,</u> 168 Wn.2d 1, 228 P.3d 1 (2010).....	9, 10, 20, 21
<u>State v. Hill,</u> 123 Wn.2d 641, 870 P.2d 313 (1994).....	9
<u>State v. Kurtz,</u> 178 Wn.2d 466, 309 P.3d 472 (2013).....	35, 36
<u>State v. Maddox,</u> 152 Wn. 2d 499, 98 P.3d 1199 (2004).....	9, 10
<u>State v. Neth,</u> 165 Wn.2d 177, 196 P. 3d 658 (2008).....	10
<u>State v. O'Neill,</u> 148 Wn.2d 564, 62 P.3d 489 (2003).....	9
<u>State v. Roggenkamp,</u> 153 Wn.2d 614, 106 P.3d 196 (2005).....	24
<u>State v. Tili,</u> 139 Wn.2d 107, 985 P.2d 365 (1999).....	17, 34

Other Authorities

Governor's Partial Veto Message on E2SSB 5073 (April 29, 2011).....	26
Laws of 2011, ch. 181.....	22, 23, 27

Rules and Statutes

RCW 69.50.040	33
RCW 69.50.042	33
RCW 69.50.204(c)(22)	22
RCW 69.50.401(1).....	22, 30
RCW 69.50.401(2)(c)	2
RCW 69.51A.005.....	22
RCW 69.51A.005(2)(a)	35
RCW 69.51A.010.....	14
RCW 69.51A.010(1).....	5

RCW 69.51A.010(d) (2010)	14
RCW 69.51A.030(1)	24
RCW 69.51A.040	passim
RCW 69.51A.040(1)	31
RCW 69.51A.043	25, 27, 33
RCW 69.51A.045	25
RCW 69.51A.085	passim
RCW 69.51A.085(1)	passim
RCW 69.51A.085(1)(c)	5
RCW 69.51A.085(2)	11, 13

A. ASSIGNMENTS OF ERROR

None.

B. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR

1. Whether there was probable cause to support issuance of the search warrant, even assuming the State had to rebut a medical marijuana exception, where the facts and circumstances supported a reasonable inference that the dispensary defendants were operating was not a "collective garden" and was otherwise illegal under Chapter 69.50 RCW.
2. Whether the 2011 Amendments decriminalized medical marijuana such that search warrant affidavits must rebut all possible medical marijuana exceptions to the general criminal prohibition on the possession, manufacture and delivery of marijuana where the intent of the Legislature was to create a medical marijuana exception contingent on the existence of a registry that could easily be checked by law enforcement and where the Governor intended to eliminate the registry provision and to leave intact the affirmative defense provisions, thus rendering the medical marijuana exception of no practical effect.

C. FACTS

In July 2011, Appellants Dennis Crowley and Jennifer Detmering (hereinafter "Crowley"¹) opened a dispensary, KGB Collective ("KGB"), in Bellingham which sold marijuana to people who provided documentation from a health care provider stating that they may benefit from the medical use of marijuana and operated the dispensary until

¹ Detmering did not file a separate brief, but joined in the opening brief filed by Crowley.

March 15, 2012. CP 7-8, 101 (FF 1²). In November, 2011, the Bellingham Police Department opened an investigation into Crowley's marijuana sales activities. CP 37, 102 (FF 2). On March 14, 2012, the State filed an information charging Crowley with four counts of Unlawful Delivery of Marijuana and one count of Unlawful Possession of Marijuana with Intent to Deliver, contrary to RCW 69.50.401(2)(c). CP 4-6. The first four counts were alleged to have occurred on January 17th, January 20th, February 14th, February 21st, 2012 and the fifth count on or about January 17, 2012 through March 13, 2012. Id.

Later on the 14th of March, 2012, the Bellingham Police sought and obtained a search warrant from Whatcom County Superior Court Commissioner Martha Gross. The Commissioner was presented with the affidavit of probable cause previously filed as well as testimonial evidence from two officers. CP 35-45, 102 (FF 5).

The information presented to the Commissioner established that undercover detectives purchased marijuana from KGB, a business co-owned by Crowley and Detmering, on seven different occasions from January 17, 2012 through March 13, 2012. CP 7, 42, 44, 101-02 (FF 1, 3). Commissioner Gross was also presented with evidence that during the

² The Findings of Fact and Conclusions of Law are attached as Appendix A.

investigation it appeared that KGB was selling marijuana to more than ten individuals, based on video surveillance and observations of detectives during the controlled purchases. CP 8, 102 (FF 5a). The evidence presented also included that KGB had 51 strains of marijuana for sale, only ten of which had been grown on site, and that KGB's additional retail marijuana came from third party "vendors" in Tacoma, Sequim, and elsewhere in Whatcom County. CP 40-41, 44, 102 (FF 5b). The information before the Commissioner also included that the undercover officers were required to sign an agreement to be members of KGB, but did not need to designate a provider; that field tests for the purchased marijuana came back positive for marijuana; that there were two counters holding mason jars with marijuana product in them, which jars had tags indicating the strain and price; that there were about 45 mature plants on site and there were no papers posted anywhere with information about KGB, nor any postings next to the growing marijuana; that Detmering had discussed with the undercover officers about the process for "donating" marijuana to KGB on more than one occasion, but told one of the officers to check back in a couple weeks because they were "short on cash, had plenty of marijuana, and were experiencing difficulties with the City of

Bellingham;” and that KGB had a business license³ and had been charging sales tax. CP 8, 38-39, 40-43.

Commissioner Gross found probable cause and issued the search warrant, noting that KGB appeared to be operating as a dispensary and not a growing collective, which she concluded was when [up to] “10 persons pool their resources to grow the limited number of plants that are allowed in the statute.” CP 45. She also concluded that she didn’t believe the protections for medical marijuana applied under these circumstances because of the numerous strains of marijuana, the large quantity of marijuana, and the purchasing of marijuana from different locations and then the dispensing of it. CP 45.

Upon execution of the warrant, investigators discovered inside the KGB premises approximately 45 growing marijuana plants, 10.5 pounds of marijuana, and approximately 104 agreements similar to the ones the officers had signed. CP 102 (FF 7). Subsequent to service of the search warrant, the State filed an amended information adding two additional counts of Unlawful Delivery of Marijuana, alleged to have occurred on February 14 and 21st, 2012, one count of Maintaining a Place for

³ KGB was served with a cease and desist notice from the City of Bellingham on March 9, 2012. CP 8.

Controlled Substance and one count of Conspiracy to Deliver Marijuana, alleged to have occurred on January 17 to March 15, 2012.⁴ CP 11-14.

On October 3, 2012, Crowley filed a motion to suppress evidence under CrR 3.6 and the State responded. CP 20-100. The trial court denied the motion and entered Findings of Fact and Conclusions of Law on April 9, 2013. CP 101-04. The court concluded that the sale of marijuana that did not meet all the provisions of the Chapter 69.51A RCW was a criminal offense and that there was probable cause to believe that KGB did not meet those requirements because: (a) it appeared that KGB was exceeding the ten patient maximum under RCW 69.51A.085(1) and therefore was not a “collective garden;” (b) the serving of more than 10 persons indicated that KGB was not acting as “designated providers” as defined by RCW 69.51A.010(1); and (c) that the statement regarding 51 strains indicated that the quantity of marijuana being sold likely exceeded the maximum permitted by RCW 69.51A.085(1)(c). CP 103. The trial court entered an order certifying its ruling regarding the Motion to Suppress, and this Court accepted discretionary review over the State’s objection. CP 101-105.

⁴ Count V of the original information, Unlawful Possession with Intent to Deliver, became count VII of the amended information.

D. ARGUMENT

Crowley asserts that the Medical Cannabis Act (“MCA”) amendments passed in 2011 decriminalized medical marijuana such that KGB’s possession and delivery of marijuana did not violate state law that at the time prohibited the possession, manufacture and delivery of marijuana. He therefore asserts that the affidavits and testimony did not support probable cause for issuance of the search warrant because the information did not refute that KGB was operating as a “collective garden,” as defined by RCW 69.51A.085. This Court need not address, as the trial court did not, whether the 2011 amendments “decriminalized” medical marijuana should it find that facts and circumstances presented to the magistrate established a reasonable inference that KGB was not operating as a “collective garden,” but was operating outside the terms of the MCA and therefore was involved in criminal activity. The evidence presented established a probability that KGB was operating outside the legal requirements for a “collective garden” because of the number of members served, the number of marijuana strains on site and the type of operation it was running.

Should this Court determine that the trial court erred in finding that the search warrant was supported by probable cause, the State asserts that the 2011 amendments of the MCA did not “decriminalize” medical

marijuana as an alternative basis for upholding the denial of the motion to suppress.⁵ It is clear that neither the Legislature in passing the bill it did, nor the Governor in vetoing the registry provisions of the bill, intended to “decriminalize” medical marijuana as Crowley asserts. Rather the intent of the Legislature was to provide a regulated scheme for medical marijuana in which prosecution immunity was contingent upon compliance with the other requirements of the MCA and specifically upon registering with a state-run registry. The Governor’s intent was to eliminate the possibility of a state-run registry, while maintaining the other, affirmative defense, protections of the legislation. Crowley’s interpretation of legislative intent hypothesizes a new intent to decriminalize all medical marijuana, a result that was not desired by either the Legislature or the Governor. The result of the Governor’s veto and the Legislature’s decision not to override the veto was to leave intact only the affirmative defense provisions for medical marijuana. As the State is not required to disprove potential affirmative defenses in seeking a search warrant, the search warrant here did not have to refute any possible medical marijuana defenses and was supported by probable cause.

⁵ This issue is directly before this Court in State v. Buckingham, No. 69853-2-I and State v. Reis, No. 69911-3-I.

- 1. Even assuming the 2011 amendments to the Medical Cannabis Act provided for a prosecution immunity exception, there was probable cause to support issuance of the search warrant because the defendants didn't qualify as a "collective garden" where it appeared that more than 10 persons had purchased marijuana at KGB and where KGB had 51 strains of marijuana on the premises, in addition to 45 plants, and where some of the strains came from other vendors.**

Even if the conditional prosecution immunity legislation had survived the Governor's veto and Crowley had met all the other statutory requirements, there was still probable cause for issuance of the search warrant because KGB does not meet the requirements for a "collective garden." Crowley operated KGB as a medical marijuana dispensary outside the regulatory scheme passed by the Legislature. Crowley asserts that the trial court misinterpreted the legal requirement regarding the ten patient limitation on a collective garden, and otherwise asserts that the remainder of the evidence presented did not establish probable cause. The trial court did not err in interpreting the 10 patient limitation on a collective garden: Crowley's interpretation would lead to the limitation being superfluous, a result that obviously would not have been intended by the Legislature. Moreover, the record before the magistrate supported a finding of probable cause because the activity at KGB exceeded the quantity and type of activity permitted by RCW 69.51A.085. The trial

court did not abuse its discretion in finding that the information before the magistrate established a reasonable inference that the activity occurring at KGB was criminal.

A trial court's decision regarding a CrR 3.6 motion is reviewed to determine whether substantial evidence supports the findings of fact, and whether those findings of fact support the trial court's conclusions of law. State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). Unchallenged findings of fact are verities on appeal. Id. Challenged findings of fact supported by substantial evidence are binding. State v. O'Neill, 148 Wn.2d 564, 571, 62 P.3d 489 (2003). The determination regarding probable cause is reviewed for abuse of discretion and the magistrate's determination is "given great deference by the reviewing court." State v. Maddox, 152 Wn. 2d 499, 509, 98 P.3d 1199 (2004). A trial court's conclusions of law regarding a suppression motion are reviewed de novo. State v. Fry, 168 Wn.2d 1, 5, 228 P.3d 1 (2010).

- a. *The evidence before the magistrate sufficiently refuted the possibility that KGB was operating as a "collective garden" under the probable cause standard.*

"The probable cause requirement is a fact-based determination that represents a compromise between the competing interests of enforcing the law and protecting the individual's right to privacy." Fry, 168 Wn.2d at 6

(quoting State v. Neth, 165 Wn.2d 177, 182, 196 P. 3d 658 (2008)).

Probable cause requires sufficient facts and circumstances to establish a “reasonable inference that the defendant is involved in criminal activity and that evidence of the criminal activity can be found at the place to be searched.” Id.(quoting Maddox, 152 Wn.2d at 505). A prima facie showing is not necessary, only the probability of criminal activity. Id. A magistrate may make reasonable inferences from the facts and circumstances set forth in the affidavit. Maddox, 152 Wn.2d at 505. “In determining probable cause, the magistrate makes a practical, commonsense decision, taking into account all the circumstances set forth in the affidavit and drawing commonsense inferences.” Id. at 509. The experience and expertise of a police officer can be considered in determining whether probable cause has been established. Id. at 511.

The existence of a possible affirmative defense does not negate probable cause to issue a search warrant. Fry, 168 Wn.2d at 6, 13. Crowley does not appear to dispute this. However, *assuming* Crowley is correct in asserting that the 2011 amendments to Chapter 69.51A RCW, “decriminalized” possession of medical marijuana that was compliant with the terms of the MCA, the information before the magistrate still sufficiently demonstrated the probability of criminal activity. Specifically the evidence and circumstances presented to the magistrate sufficiently

showed, for purposes of probable cause, that the activity occurring at KGB was not compliant with all the terms of the MCA because KGB did not qualify as a “collective garden.”

RCW 69.51A.085 places limitations on “collective gardens:”

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

- (a) *No more than ten qualifying patients may participate in a single collective garden at any time;*
- (b) *A collective garden may contain no more than fifteen plants per patient up to a total of forty-five plants;*
- (c) *A collective garden may contain no more than twenty-four ounces of useable cannabis per patient up to a total of seventy-two ounces of useable cannabis;*
- (d) A copy of each qualifying patient's valid documentation or proof of registration with the registry established in *section 901 of this act, including a copy of the patient's proof of identity, must be available at all times on the premises of the collective garden; and
- (e) No useable cannabis from the collective garden is delivered to anyone other than one of the qualifying patients participating in the collective garden.

RCW 69.51A.085(1) (emphasis added). The statute further provides that:

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

RCW 69.51A.085(2).

Crowley has not assigned error to any of the court's findings of fact, so therefore they are verities on appeal. Here, the magistrate was provided with evidence that KGB was not conducting their business within the terms for and scope of a "collective garden." The magistrate was informed that it appeared that KGB was selling marijuana to more than ten individuals⁶. While KGB did not have more than 45 growing plants on site, it had 51 strains of marijuana for sale, only ten of which had been grown on site. This means that 41 of the strains came from third parties. Detmering had said that KGB sold marijuana they had acquired from other "vendors," and some of the strains had come from Tacoma, Sequim and elsewhere in Whatcom County. Additional evidence presented to the magistrate further demonstrated that KGB was attempting to operate not as a collective garden, but as an unlawful dispensary⁷ engaged in buying wholesale marijuana from third party vendors, then retailing it on to customers: KGB had obtained a business license, was collecting sales tax from customers, and had discussed with detectives prices for purchasing "donated" marijuana from the detectives. As a

⁶ The number of individuals observed, i.e., the number of qualified patients being served, did not include the officers who made the controlled buys, nor the defendants themselves, who would have had to be qualifying patients themselves to participate in the "collective garden."

⁷ It is interesting to note that the legislation as originally passed in 2011 provided for licensed dispensaries: E2SSB 5073 §701 would have allowed "licensed dispensers and their employees" to "engage in retail marijuana sales, subject to the stringent rules set forth in E2SSB 5073, §702. 2011 Laws of Washington Ch. 181 §§701, 702.

“collective garden” KGB was not permitted to have more than ten qualifying patients at any time, *and* it was not permitted to act as a retailer for the sale of other vendors’ marijuana. KGB’s activities clearly violated RCW 69.51A.085(1) and they do not fall within the scope of activity permitted a “collective garden” under RCW 69.51A.085(2).

b. The trial court did not misinterpret the 10 person limitation on a “collective garden.”

Crowley asserts that the court misinterpreted the ten person limitation on collective gardens. Relying on State v. Shupe, Crowley argues that probable cause required the officers to show that there were more than ten people inside the KGB buying marijuana simultaneously. He argues that “at any time” means a single transaction. The State submits that the portion of Shupe relied upon by Crowley is distinguishable, not binding on this court as dicta, and wrongly decided as contrary to statutory construction principles. The reasonable reading of the 10 person limitation is that there couldn’t be more than 10 persons participating in the collective garden, or in KGB terms, 10 members of a collective garden, at a time.

Crowley’s reliance on State v. Shupe, 172 Wn. App. 341, 289 P.3d 741 (2012), *rev. den.*, 177 Wn.2d 1010 (2013), is misplaced. The court in Shupe construed the predecessor to 69.51A.010, *not* 69.51A.085, and the

court's analysis is not persuasive given the differences between 69.51A.010 and 69.51.085. Id. at 353. Former RCW 69.51A.010 defined (in relevant part) a designated provider as a person who "is the designated provider to *only one patient at any one time.*" RCW 69.51A.010(d) (2010) (emphasis added). The language at issue here is contained in RCW 69.51A.085(1) which states in relevant part: "No more than ten qualifying patients may participate in a single collective garden at any time." The language in the statutes is not identical, and the statutes do not address the same circumstances. On this basis alone, Shupe is not dispositive.

Second, as noted by the dissent in Shupe, the court's discussion of the definition of "at any one time" was dicta as it was not essential to the court's decision in the case. In the first two sections of the Shupe opinion, the Court invalidated the search warrant and held that the evidence was insufficient to support charges of delivery of marijuana. Shupe, 172 Wn. App. at 349-52. These issues disposed of the case completely. As such, all of the additional language was surplusage. As Judge Korsmo noted in his dissent "The opinion could have stopped there. There is no reason to address any additional issues." Id. at 361 (J. Korsmo dissenting). Therefore the court's discussion of the definition of the phrase "at any one time" is dicta.

Moreover, the construction Crowley would have this Court give to the phrase “at any time,” and the construction that was given to the phrase “at any one time” in Shupe, is contrary to statutory construction principles because it renders the words meaningless in the statute and therefore counter to legislative intent.

In determining the meaning of a word as it appears in a statute, this Court should not employ “[a] mechanistic use of statutory construction rules [that] would lead [it] astray from [its] paramount duty, which is ‘to ascertain and give expression to the intent of the Legislature.’ ” *When faced with determining “the meaning of words used but not defined within a statute,” this Court should “give careful consideration to the subject matter involved, the context in which the words are used, and the purpose of the statute.” If statutory language is susceptible to two constructions, one of which will promote the purpose of the statute and the second of which will defeat it, this Court will adopt the former construction.* Moreover, this Court must construe statutes to avoid strained or absurd results.

State v. Silva, 106 Wn. App. 586, 592, 24 P.3d 477, *rev. den.*, 145 Wn.2d 1012 (2001) (footnote references omitted) (emphasis added). Statutes are not to be interpreted in a manner as to nullify a portion of the statute. John H. Sellen Const. Co. v. State Dep't of Revenue, 87 Wn.2d 878, 883, 558 P.2d 1342 (1976). In construing legislative actions “(t)he courts, in pursuance of giving effect to the intention of the legislature, are not controlled by the literal meaning of the statute, but the spirit or intention of the law prevails over the letter thereof, and no construction should be

given to a statute which leads to gross injustice or absurdity.” Amburn v. Daly, 81 Wn.2d 241, 246, 501 P.2d 178 (1972).

The court’s construction of the phrase “only one patient at any one time” in Shupe was divorced from any meaningful contextual language. As such, though the court conceded that the term designated provider implied some kind of ongoing relationship, it found that the word “at” implied a sense of immediacy. Shupe, 172 Wn. App. at 354. Therefore, it concluded that the phrase was ambiguous and under the rule of lenity it was bound to adopt the construction advocated by the defendant, despite its somewhat absurd result. Id. at 354-355. The court opined that the proper construction of the phrase meant a designated provider could be a provider for a limitless number of persons, as long as the marijuana was only delivered to one person per transaction, so that each patient received individual care. Id. at 355-356. The court’s construction results in no meaningful limitation on the number of persons that a designated provider could be a provider for, that the only restriction was that a provider couldn’t deliver marijuana to more than one person in the same transaction. If the legislature had intended no limitation on the number of patients a provider could serve, it would not have included the restrictive phrase “at any one time” in the definition of the term “designated provider.”

Similarly, Crowley’s interpretation of the phrase “at any time” would result in no limitation on the number of qualified patients who could participate in a collective garden at any given time, and therefore would render the limitation to ten patients meaningless. “Washington courts have consistently interpreted the word ‘any’ to mean ‘every’ and ‘all.’” State v. Tili, 139 Wn.2d 107, 115, 985 P.2d 365 (1999). Moreover, the phrase “at any time” should be interpreted within the context of the rest of the statute. Subsection (1) states that “[q]ualifying patients *may create and participate in* collective gardens for the purpose of producing, processing, transporting, and delivering cannabis ...” RCW 69.51A.085(1) (emphasis added). The phrase is also given immediate context and meaning by subsection (2), which describes patients coming together to participate in a host of agrarian activities involved in planting, growing, and harvesting marijuana. This language contemplates some active participation in the collective garden, rather than the passive receipt of marijuana in exchange for money. “[A]t any time” means “at all times” or “at every time.” The phrase is not ambiguous, and therefore the rule of lenity applied in Shupe should not be applied here.

Crowley’s interpretation would mean that participation in a collective garden rolls over from one member to another as they exit and enter the building. This sort of “rolling” membership is a strained and

absurd construction of RCW 69.51A.085. A rolling membership interpretation would defeat the intent of the law to restrict the number of persons in a collective garden by completely allowing essentially unlimited membership. The legislature did not intend the phrase “at any time,” to consist of the moment necessary to exchange currency for marijuana. This would allow businesses like KGB to become de facto dispensaries, without the necessary regulatory oversight and scrutiny.

Crowley also asserts that the City of Bellingham should have addressed its concerns through local ordinances instead of law enforcement. That argument is of no moment. The only issue before this Court is whether the information before the magistrate established a reasonable inference that criminal activity was occurring at KGB.

Crowley also argues that it could be that there was more than one collective garden operating on KGB’s premises. However, there was nothing before the magistrate to indicate that was the case, and there apparently was no such information given to the officers when they signed up to be members of KGB. KGB never purported to be more than one collective. No one asked the officers when they entered the premises which collective they were visiting or wanted to become members of.

Crowley’s argument is a hyper-technical approach to determining whether there was probable cause in this case. That is not the relevant

standard: the magistrate is permitted to make a practical, commonsense decision, taking into account all the facts and circumstances before him or her and to draw commonsense inferences from those facts and circumstances. The magistrate did that in this case and concluded that the marijuana activity occurring at KGB was not in compliance with Chapter 69.51A RCW and was criminal in nature.

2. **The State wasn't required to address whether KGB met the requirements of a "collective garden" under the MCA in its application for a search warrant because the Act as passed only provided for an affirmative defense, not immunity from searches.**

Crowley does not appear to contest that affidavits in support of search warrants need not rebut potential affirmative defenses. Instead, he asserts that the legislation as enacted decriminalized medical marijuana. Therefore, he asserts, in order to establish probable cause for a search warrant, the affidavit must refute all permutations of the conditional medical marijuana exception to the general criminal prohibition on the possession, manufacture and delivery of marijuana. The legislative intent of both the Governor and the Legislature was not to decriminalize medical marijuana without the insurance of a registry or some similar mechanism by which law enforcement could easily ascertain compliance with the MCA. The legislation as enacted left only the affirmative defense

provisions intact and effective. Therefore, the evidence presented to the magistrate here did not need to address potential medical marijuana exceptions to the general criminal liability under Chapter 69.50 RCW.

While the trial court did not reach this issue because it found probable cause had been established at the time the search warrant was issued, the State presents this argument alternatively should this Court find that probable cause was not established. *See, State v. Bobic*, 140 Wn.2d 250, 257-258, 996 P.2d 610 (2000) (trial court's denial of a motion to suppress may be upheld on an alternative ground supported by the record). This issue was fully litigated below.

- a. *Search warrant applications do not need to refute possible affirmative defenses.*

Law enforcement need not refute possible affirmative defenses, including affirmative defenses regarding the possession or use of medical marijuana, in applications for search warrants. In *State v. Fry*, the Supreme Court addressed the question of whether the defendant's production of his medical authorization, pursuant to the Medical Marijuana Act of 1999⁸, at the time of the search negated the probable cause for the search warrant. *Fry*, 168 Wn.2d. at 6. The Court found it didn't. *Id.* The court found that the affirmative defense did not negate any

⁸ The 2011 amendments changed the name of the Act to the Medical Cannabis Act.

of the elements of the offense of possession, which was still a crime at the time. Id. at 7-8. The Court reasoned, “It is difficult to imagine how a law enforcement officer, having been presented with a medical marijuana authorization, would be able to determine that the marijuana is otherwise being lawfully possessed ... without some kind of search.” Id. at 6. An officer does not need to assess the relative strength of the suspect’s affirmative defense because “[t]he officer is not judge or jury.” Id. at 8 (quoting McBride v. Walla Walla Cnty., 95 Wn. App. 33, 40, 975 P.2d 1029 (1999)).

The rule that probable cause does not require law enforcement to disprove affirmative defenses in search warrant applications is particularly apt with regard to the MCA. The facts that make possession fall within the medical marijuana exceptions and/or affirmative defenses are uniquely in the user or grower’s possession and are subject to important health care privileges, such that gathering those facts would be nearly impossible for police. Thus, officers cannot know by normal investigative techniques whether a grow is medical or illicit. It is difficult to imagine how officers would obtain access to such information without first searching the grow operation itself.

- b. *The legislative intent of 2011 amendments to the MCA was not to provide unconditional immunity for medical marijuana.*

Under RCW 69.50.204(c)(22), marijuana is a Schedule I unlawful controlled substance, and possession or cultivation is prohibited. RCW 69.50.401(1). Thus, the possession and use of marijuana is, and has been, generally prohibited under Washington law.

In 1999, however, the Legislature passed the Medical Use of Marijuana Act (“MMA”) to allow people suffering from serious medical conditions to use marijuana medicinally. The purpose of the MMA was to allow qualifying patients whose physicians had determined they might benefit from the medical use of marijuana, and their designated primary caregivers, an affirmative defense to prosecution. RCW 69.51A.005, .040 (1999). Thus, Washington law provided that marijuana possession and cultivation remained presumptively illegal, but it gave qualified patients and their designated providers an affirmative defense to prosecution.

In 2011, the Legislature voted to approve amendments to Chapter 69.51A RCW that were intended to broaden protections for patients and providers of medical marijuana. *See* 2011 Laws of Washington Ch. 181 (Appendix C). The stated intent was to shield users from arrest,

prosecution and criminal sanctions. *Id.* §101(1)(a) (vetoed).⁹ The bill attempted to establish licensing requirements and a registry for qualified medical marijuana patients and providers, and to require that police check the registry before obtaining a search warrant. *Id.* at §901(1), (4) (vetoed). The registry was necessary, of course, to allow police a means of quickly distinguishing between qualified patients and designated providers, on the one hand, and illicit users and illegal providers, on the other hand. Participation in the registry was not to be mandatory. *Id.* § 901(6) (vetoed). People who participated in the registry would, however, have the highest level of protection. Registrants were to be protected from arrest, prosecution, and other criminal sanctions as long as they were compliant with the rest of the MCA:

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

⁹“(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.”

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).

Registered qualified patients and designated providers were not, however, to be immune from searches. The legislature did not include the term “search” within the §401 (RCW 69.51A.040) immunity provisions, while it did provide that protection for health care providers under §301 (RCW 69.51A.030(1)). The legislation as passed by the legislature *and as enacted* does not provide immunity from searches for qualified patients and designated providers. *See, State v. Roggenkamp*, 153 Wn.2d 614, 625, 106 P.3d 196 (2005) (“legislature is deemed to intend a different meaning when it uses different terms”); *see also, State v. Ellis*, 315 P.3d 1170, 1173 (2014) (legislative history shows that “the MUCA exception applies to marijuana-based arrests, prosecutions, and criminal sanction, but not searches”). Moreover, nothing in the collective garden statute

provided the garden itself from immunity from searches or prosecution.

RCW 69.51A.085.

The Legislature provided lesser protection, an affirmative defense, for those qualified patients and designated 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. Under this provision, those who were not registered, for whatever reason, did not receive protection from arrest and prosecution, they could only assert an affirmative defense at trial.¹⁰ This is very similar to the protection that existed in 2010. *See, Ellis*, 315 P.3d at 1173 (“Because the MUCA did not per se legalize marijuana or alter the established elements of a CSA violation, the thrust of Fry survived Laws of 2011, ch. 181, §401”).

The Governor vetoed, however, large sections of the bill, including key provisions that would have established licensing of medical marijuana

¹⁰ Affirmative defenses were also provided for those qualifying patients or designated providers who failed to meet all the requirements for the affirmative defense under RCW 69.51A.043. RCW 69.51A.045, .047 (2011).

patients and providers.¹¹ The Governor feared that a registry with licensing and authorization requirements would compel state employees to violate federal law prohibiting marijuana use under any circumstances, and would “open public employees to federal prosecution,” particularly because “the United States Attorneys have made it clear that state law would not provide these individuals with a safe harbor from federal prosecution.” Governor’s Partial Veto Message on E2SSB 5073 (April 29, 2011) (App. C at “1375”). She was, however, “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.” Id.(App. C at “1376”). Because the registry of patients and providers was “intertwined with requirements for registration of licensed commercial producers, processors and dispensers of cannabis,” the Governor vetoed the registry provisions too. Id. The Legislature did not override the veto. Neither the Legislature nor the Governor ever intended to “decriminalize” medical marijuana without the enforcement protections of a registry or some other efficient mechanism to insure compliance with all the medical marijuana provisions in the MCA.

¹¹ The following sections were vetoed: §§ 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.

As it is currently impossible to register as a “qualified patient” or “designated provider,” so it is also impossible for police to check a registry before obtaining a search warrant. The premise for what Crowley describes as the presumptively legal use of medical marijuana – assuming, *arguendo* that any such presumption existed – depended on the ability of patients and providers to readily demonstrate to police that they were acting within the law. Once that premise was defeated by the veto of the registry provisions, however, the concept of immune medicinal use became impossible to effect. What remains is the retention of the provision allowing qualified patients and designated providers to present an affirmative defense in response to charges of unlawful marijuana possession, the same affirmative defense that would have been available to a patient or provider until the registry came into existence¹². See RCW 69.51A.043, .045, .047.

c. Statutory construction does not support Crowley’s interpretation of the legislation as enacted.

Crowley argues that because the “plain language” of RCW 69.51A.040 says, “the medical use of cannabis . . . does not constitute a

¹² Even without a governor’s veto, qualified patients and designated providers would have been forced to rely on the affirmative defense provisions while a registry was being compiled. See Ch. 181, 901(1) (vetoed) (allowing the Department of Health until January 1, 2013 to adopt rules governing the registry).

crime,” it follows that possession of marijuana for medical use is presumptively legal. He further maintains that because medical marijuana is presumptively legal, law enforcement bears the burden of proving that a suspect does not have a medical reason for possessing or cultivating marijuana. Alternatively, he argues that if the language is ambiguous, then under the rule of lenity his interpretation must be accepted. Crowley is incorrect. The statutory language is not ambiguous: the only reasonable interpretation is that the legislation as enacted did not decriminalize marijuana, but provided an affirmative defense for those did not and/or could not register with the registry that never came into existence.

The purpose of statutory construction is to give effect to legislative intent. The construction of a statute is a question of law that is reviewed de novo. State v. Rice, 116 Wn. App. 96, 99-100, 64 P.3d 651 (2003). The primary objective in interpreting a statute is to give effect to the intent of the legislature, and the “spirit and intent of the law should prevail over the letter of the law.” In re Vasquez, 108 Wn. App. 307, 312, 31 P.3d 16 (2001) *rev. denied*, 152 Wn.2d 1035 (2004). Generally, if statutes are clear on their face, the courts give effect to the plain meaning of the language. State v. Chapman, 140 Wn.2d 436, 450, 998 P.2d 282 (2000) *cert. denied*, 531 U.S. 984 (2000).

The plain meaning of a statute may be discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question. Further, “[a]n act must be construed as a whole, considering all provisions in relation to one another and harmonizing all rather than rendering any superfluous. Finally, we employ traditional rules of grammar in discerning the plain language of the statute.

State v. Bunker, 169 Wn.2d 571, 577-78, 238 P.3d 487 (2010) (internal citations and quotation marks omitted). Especially when interpreting exceptions to a general statutory prohibition, the entire legislative scheme must be considered so that the exceptions are analyzed in the context of the general prohibition. In re Pers. Restraint of Adams, 178 Wn.2d 417, 424-25, 307 P.3d 451 (2013) (analyzing exceptions to a statutory time bar on the filing of collateral attacks on a judgment).

Legislative intent includes the intent of the Governor when the Governor vetoes a bill. When a Governor vetoes a bill voted on by both houses of the legislature, the Governor acts in a legislative capacity, and therefore the intent of the legislature cannot be considered apart from the Governor’s intent. Shelton Hotel Co. v. Bates, 4 Wn.2d 498, 506, 104 P.2d 478 (1940); Hallin v. Trent, 94 Wn.2d 671, 677, 619 P.2d 357 (1980).

The Governor’s veto of a portion of a measure, if the veto is not overridden, removes the vetoed material from the legislation as effectively as though it had never been considered by the legislature. State ex rel. Stiner v. Yelle, 174 Wash. 402, 408, 25 P.2d 91 (1933).

When vetoing bills passed by the legislature, the Governor acts in a legislative capacity and as part of the legislative branch of state government. ... Therefore, we cannot consider the intent of the legislature apart from the intent of the Governor. ... Our Supreme Court often has stated that we are not authorized to read into a statute those things which we conceive the legislature may have left out unintentionally. ... Occasionally, however, the literal expression of legislation may be inconsistent with the obvious objectives or policy behind it, and in such circumstances the spirit or intention of the law must prevail over the letter of the law. ... As stated in 2A C. Sands, Statutes and Statutory Construction s 47.38 (4th ed. 1973):

Although some courts have been hesitant to supply or insert words, the better practice requires that a court enforce the legislative intent or evident statutory meaning where it is clearly manifested. The inclusion of words necessary to clear expression of the intent or meaning is in aid of the legislative authority; the denial of the power to insert when the intent or meaning is clear is more nearly a usurpation of legislative power for it results in destruction of the legislative purpose.

State v. Brasel, 28 Wn. App. 303, 309, 623 P.2d 696 (1981) (internal citations omitted).

As an exception to the general prohibition against the possession and cultivation of marijuana in RCW 69.50.401(1), the medical marijuana provisions must be considered in the context of the general prohibition and the rest of the statutory provisions of the MCA. The court in Ellis compared the general prohibition on the manufacture of marijuana under the Chapter 69.50 RCW and RCW 69.51A.040 and concluded the MCA “created a potential medical use exception to the CSA’s general rule criminalizing marijuana manufacturing.” *See, State v. Ellis*, 315 P.3d

1170, 1173 (2014). It further concluded that for the purposes of probable cause, the MCA exception provided the same protection as the affirmative defense in former RCW 69.51A.040(1). Id. Ultimately it determined that “an affidavit supporting a search warrant presents probable cause to believe a suspect committed a CSA violation where, as here, it sets forth enough details to reasonably infer the suspect is growing marijuana on his or her property. The affidavit need not also show the MUCA exception’s inapplicability.” Id. at 1173-1174.

The intent of the Legislature in passing the bill was to create a tight regulatory scheme that would make marijuana more available to those persons who had been determined could benefit from its medical use and to create immunity from arrest and prosecution for a narrow class of qualifying patients who opted into the medical marijuana registry. The Legislature’s intent was not to create blanket decriminalization of medical marijuana, but to provide immunity from prosecution and arrest only if those qualifying patients were compliant with all the rest of the terms of the MCA *and* could show proof they were registered with the registry to be established under §901. The Governor’s intent was to eliminate the registry and the licensing provisions because of the legal complications associated with a state-run registry, but to allow the additional affirmative defense protections for qualified patients and their providers to remain:

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.

Governor's Partial Veto Message (April 29, 2011) (App. C at "1376").

Neither the Legislature nor the Governor intended to decriminalize medical marijuana under any and all circumstances. The Legislature's scheme for immunity from prosecution was contingent upon the existence of a registry, and the Governor desired to maintain the affirmative defense provisions despite feeling compelled to veto the registry and licensing provisions.

Crowley asserts though the enacted legislation has the effect of decriminalizing medical marijuana. To arrive at this result, Crowley must delete the references to §901 in the legislation that survived the Governor's veto. He asserts he can do so because such references are "manifestly obsolete," but provides no authority for asserting that those references are "manifestly obsolete." The fact that the registry never came into existence does not render the references to the registry obsolete, particularly in the context of the legislation. The plain language of the statute makes the arrest and prosecution immunity provisions contingent upon a registry, although that registry will never come into existence. The legislation clearly addresses the situation in which qualifying patients and

designated providers are not registered, for whatever reason, and provides them an affirmative defense.

Crowley's interpretation ignores the existence of RCW 69.51A.043 and the other affirmative defenses in .045 and .047, and would render those provisions meaningless if medical marijuana was truly decriminalized. If possession of medical marijuana is legal, and if police and prosecutors have the burden to prove otherwise, then there would be no need for an affirmative defense. Both the legislation passed by the Legislature and that surviving the Governor's veto included affirmative defense provisions for qualified patients and designated providers. Crowley's plain language interpretation would render superfluous those sections of the legislation.

Additionally, Crowley's "plain language" argument that medical marijuana was decriminalized ignores the language stating that "medical use of cannabis *in accordance with the terms and conditions of this chapter* does not constitute a crime." (emphasis added). As noted above, whether use is "in accordance with the terms and conditions" of the MCA depends on a myriad of factors that police will never know through ordinary investigation. As argued above, it is incongruous to claim that the legislative intent was to create an affirmative defense while simultaneously presuming use of medical marijuana is legal, and while

requiring the State to disprove facts that are uniquely within the patient's knowledge. Thus, to ignore "in accordance with the terms and conditions of this chapter" is simply not a reasonable interpretation of the statute.

d. The statutory language is not ambiguous.

Alternatively, Crowley asserts that if the statutory language is ambiguous, the rule of lenity applies, and/or as a remedial statute, it should be construed in his favor. A statute, however, is not ambiguous merely because it is capable of two interpretations.

A statute is ambiguous if it is susceptible to two or more *reasonable* interpretations, it is not ambiguous merely because different interpretations are conceivable." State v. Tili, 139 Wn.2d 107, 115, 985 P.2d 365 (1999). "A court should not be hasty in finding an ambiguity because the result may be a construction of the statute that does not accurately reflect legislative intent." Snoqualmie Valley Sch. Dist. No. 410 v. Van Eyk, 130 Wn. App. 806, 811, 125 P.3d 208 (2005).

State v. K.R., 169 Wn. App. 742, 748, 282 P.3d 1112 (2012) (emphasis added). "A statute is ambiguous if it can be *reasonably* interpreted in more than one way. ... However, it is not ambiguous simply because different interpretations are conceivable." State v. Mullins, 128 Wn. App. 633, 642, 116 P.3d 441 (2005) (internal citations omitted).

For the reasons explained above, it is not reasonable to conclude from the statutory language that the legislature intended to decriminalize marijuana. Thus, the statute is not subject to liberal construction under the

rule of lenity or as remedial legislation. The only reasonable interpretation of the legislation is the one that recognizes the legislative intent to balance law enforcement's need to investigate illicit cultivation, while still protecting the rights of medical providers by allowing an affirmative defense to prosecution.

Crowley also relies upon statements in the case of State v. Kurtz to support his interpretation. The issue in Kurtz was whether the common law necessity defense for marijuana was inconsistent with the Medical Use of Marijuana Act. In finding that the Act did not abrogate the common law, the court observed:

Moreover, in 2011 the legislature amended the Act, making qualifying marijuana use a legal use, not simply an affirmative defense. RCW 69.51A.040. A necessity defense arises only when an individual acts contrary to law. Under RCW 69.51A.005(2)(a), a qualifying patient "shall not be arrested, prosecuted, or subject to other criminal actions or civil consequences under state law based solely on their medical use of cannabis, notwithstanding any other provision of law." One who meets the specific requirements expressed by the legislature may not be charged with committing a crime and has no need for the necessity defense. Only where one's conduct falls outside of the legal conduct of the Act, would a medical necessity defense be necessary. The 2011 amendment legalizing qualifying marijuana use strongly suggests that the Act was not intended to abrogate or supplant the common law necessity defense.

State v. Kurtz, 178 Wn.2d 466, 476, 309 P.3d 472 (2013). This passing reference to legislative intent is dicta and does not resolve the issue before

this Court. The parties in Kurtz cited RCW 69.51A.040 but without any discussion of the legislative history or the Governor's veto of the registry provisions. Thus, the court in Kurtz assumed that a medical marijuana user will not be prosecuted under the Act, without recognizing that arrest and prosecution will be avoided only if a person could demonstrate that he or she had *registered*. It was sufficient for the court's purposes in Kurtz – showing that the Act was not inconsistent with a common law defense – for the court to note a general legislative intent to allow greater use of marijuana for medical purposes. The court had no occasion to decide the precise meaning of the statute, i.e., whether it decriminalized medical marijuana possession. Thus, Kurtz does not control the analysis in this case.

The MCA as enacted did not decriminalize medical marijuana, but provided qualified patients affirmative defenses they could assert at trial. The State therefore was not required to provide evidence addressing whether KGB fell within the definition of a collective garden in the search warrant application.

E. CONCLUSION

For the foregoing reasons, the State requests this Court affirm the trial court's decision denying Crowley's motion to suppress and permit this matter to proceed to trial.

Respectfully submitted this 6th day of March, 2014.



HILARY A. THOMAS, WSBA #22007

Appellate Deputy Prosecutor

Attorney for Respondent

Admin. No. 91075

CERTIFICATE

I certify that on this date I placed in the U.S. mail with proper postage thereon, or otherwise caused to be delivered, a true and correct copy of the foregoing document to this Court, and appellant's counsel of record, addressed as follows:

Law Office of Kurt Boehl
8420 Dayton Ave N, Suite 102
Seattle, WA 98103

Legal Assistant

Date

APPENDIX A

1 2. In late 2011, several undercover Bellingham police officers visited defendants'
2 dispensary and asked to purchase marijuana. They were told that they would have to
3 produce the required medical documentation, and were referred to a physician for this
4 purpose.

5 3. Each of the officers returned to the dispensary with the required documentation,
6 and each was required to sign an agreement that he was now a member of the Kind
7 Green Botanicals collective (herein "KGB") and would abide by its rules. Each of the
8 officers then purchased marijuana, for a total of seven purchases during January and
9 February 2012.

10 4. Based on the officers' purchases and observations, the State sought a warrant
11 to search the dispensary premises for evidence that defendants were selling marijuana
12 on the premises, in violation of the Uniform Controlled Substances Act, RCW 69.50.010
13 *et seq.*

14 5. The information considered by the judicial officer who issued the warrant
15 included:

- 16 a. The probable cause affidavit of March 14, 2012, incorporated by reference in
17 the application for the warrant, which stated that video surveillance and the
18 observations of the several undercover officers who had purchased
19 marijuana at Defendants' dispensary indicated more than ten purchasers at
20 the dispensary;
- 21 b. The statement of Ms. Detmering to one of the officers that the dispensary
22 offered fifty-one strains of marijuana for sale.

23 6. A search warrant was issued on March 14, 2012, and a search was conducted on
24 March 15, 2012, at the dispensary premises.

25 7. Items recovered in the search included approximately 10.5 pounds of marijuana,
forty-five marijuana plants, and copies of approximately 104 agreements which were
substantially similar to those signed by the police officers, each signed by a different
individual.

1 8. Defendants were charged with several counts of delivering, possessing with
2 intent to deliver, and conspiring to deliver, marijuana, in violation of RCW 69.50.401,
3 .402, and .407, and RCW 9A.28.040.

4 **CONCLUSIONS OF LAW**

5 1. At all times material to this case, sale of marijuana which does not meet the
6 specifications of RCW 69.51A.010 *et seq.* was a criminal offense, subject to the Uniform
7 Controlled Substances Act, RCW 69.50.

8 2. The information considered by the judicial officer who issued the search warrant
9 gave probable cause to believe that the dispensary operations did not meet the
10 specifications of RCW 69.51A:

11 a. The officers' observation of more than ten purchasers was an indication
12 that the dispensary was exceeding the ten patient maximum established in RCW
13 69.51A.085(1)(a) and thus was not a "collective garden" as defined in RCW
14 69.51A.085(1);

15 b. The officers' observation of more than ten purchasers was an indication
16 that Crowley and Detmering were serving numerous patients and thus were not
17 "designated providers" as defined in RCW 69.51A.010(1);

18 c. The statement to the officers that the dispensary sold fifty-one strains of
19 marijuana was an indication that the quantity of marijuana being sold by the dispensary
20 likely exceeded the maximum established in RCW 69.51A.085(1)(c).

21 3. The search warrant was supported by probable cause that defendants and the
22 dispensary were operating in violation of RCW 69.50. The warrant was valid, and the
23 search pursuant to the warrant was lawful.

24 4. The Motion to Suppress the evidence found in the search should be denied.

25 ////////////////

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ORDER

**NOW, THEREFORE, the Court orders that the Motion to Suppress Evidence be,
and it hereby is, denied.**

DATED this 9th day of April, 2013.



**Deborra Garrett, Judge
Whatcom County Superior Court**

APPENDIX B

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

(4) The patient qualification review committee may include other disease groups for participation in the controlled substances therapeutic research program after pertinent medical data have been presented by a practitioner to both the committee and the commission, and after approval for such participation has been granted pursuant to pertinent rules promulgated by the United States drug enforcement agency, the food and drug administration, and the national institute on drug abuse. [2013 c 19 § 115; 1979 c 136 § 5.]

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

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

(3) The commission shall distribute the analyzed marijuana to approved practitioners and/or institutions in accordance with rules promulgated by the commission. [2013 c 19 § 116; 1979 c 136 § 6.]

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

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

Chapter 69.51A RCW
MEDICAL CANNABIS
(Formerly: Medical marijuana)

Sections

69.51A.005	Purpose and intent.
69.51A.010	Definitions.
69.51A.020	Construction of chapter.
69.51A.025	Construction of chapter—Compliance with RCW 69.51A.040.
69.51A.030	Acts not constituting crimes or unprofessional conduct—Health care professionals not subject to penalties or liabilities.
69.51A.040	Compliance with chapter—Qualifying patients and designated providers not subject to penalties—Law enforcement not subject to liability.
69.51A.043	Failure to register—Affirmative defense.
69.51A.045	Possession of cannabis exceeding lawful amount—Affirmative defense.

69.51A.047	Failure to register or present valid documentation—Affirmative defense.
69.51A.050	Medical marijuana, lawful possession—State not liable.
69.51A.055	Limitations of chapter—Persons under supervision.
69.51A.060	Crimes—Limitations of chapter.
69.51A.070	Addition of medical conditions.
69.51A.085	Collective gardens.
69.51A.090	Applicability of valid documentation definition.
69.51A.100	Qualifying patient's designation of provider—Provider's service as designated provider—Termination.
69.51A.110	Suitability for organ transplant.
69.51A.120	Parental rights or residential time—Not to be restricted.
69.51A.130	State and municipalities—Not subject to liability.
69.51A.140	Counties, cities, towns—Authority to adopt and enforce requirements.
69.51A.200	Evaluation.
69.51A.900	Short title—1999 c 2.
69.51A.901	Severability—1999 c 2.
69.51A.902	Captions not law—1999 c 2.
69.51A.903	Severability—2011 c 181.

69.51A.005 Purpose and intent. (1) The legislature finds that:

(a) There is medical evidence that some patients with terminal or debilitating medical conditions may, under their health care professional's care, benefit from the medical use of cannabis. Some of the conditions for which cannabis appears to be beneficial include, but are not limited to:

(i) Nausea, vomiting, and cachexia associated with cancer, HIV-positive status, AIDS, hepatitis C, anorexia, and their treatments;

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

(iii) Acute or chronic glaucoma;

(iv) Crohn's disease; and

(v) Some forms of intractable pain.

(b) Humanitarian compassion necessitates that the decision to use cannabis by patients with terminal or debilitating medical conditions is a personal, individual decision, based upon their health care professional's professional medical judgment and discretion.

(2) Therefore, the legislature intends that:

(a) Qualifying patients with terminal or debilitating medical conditions who, in the judgment of their health care professionals, may benefit from the medical use of cannabis, shall not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences under state law based solely on their medical use of cannabis, notwithstanding any other provision of law;

(b) Persons who act as designated providers to such patients shall also not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences under state law, notwithstanding any other provision of law, based solely on their assisting with the medical use of cannabis; and

(c) Health care professionals shall also not be arrested, prosecuted, or subject to other criminal sanctions or civil consequences under state law for the proper authorization of medical use of cannabis by qualifying patients for whom, in the health care professional's professional judgment, the medical use of cannabis may prove beneficial.

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

(4) Nothing in this chapter diminishes the authority of correctional agencies and departments, including local gov-

ernments or jails, to establish a procedure for determining when the use of cannabis would impact community safety or the effective supervision of those on active supervision for a criminal conviction, nor does it create the right to any accommodation of any medical use of cannabis in any correctional facility or jail. [2011 c 181 § 102; 2010 c 284 § 1; 2007 c 371 § 2; 1999 c 2 § 2 (Initiative Measure No. 692, approved November 3, 1998).]

Intent—2007 c 371: "The legislature intends to clarify the law on medical marijuana so that the lawful use of this substance is not impaired and medical practitioners are able to exercise their best professional judgment in the delivery of medical treatment, qualifying patients may fully participate in the medical use of marijuana, and designated providers may assist patients in the manner provided by this act without fear of state criminal prosecution. This act is also intended to provide clarification to law enforcement and to all participants in the judicial system." [2007 c 371 § 1.]

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

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

(a) Is eighteen years of age or older;

(b) Has been designated in writing by a patient to serve as a designated provider under this chapter;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) "Valid documentation" means:

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

(b) Proof of identity such as a Washington state driver's license or identocard, as defined in RCW 46.20.035. [2010 c 284 § 2; 2007 c 371 § 3; 1999 c 2 § 6 (Initiative Measure No. 692, approved November 3, 1998).]

***Reviser's note:** RCW 69.50.101 was amended by 2013 c 3 § 2, changing subsection (q) to subsection (s). RCW 69.50.101 was subsequently alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (s) to subsection (t).

Intent—2007 c 371: See note following RCW 69.51A.005.

69.51A.020 Construction of chapter. Nothing in this chapter shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale, or use of cannabis for nonmedical purposes. Criminal penalties created under chapter 181, Laws of 2011 do not preclude the prosecution or punishment for other crimes, including other crimes involving the manufacture or delivery of cannabis for nonmedical purposes. [2011 c 181 § 103; 1999 c 2 § 3 (Initiative Measure No. 692, approved November 3, 1998).]

69.51A.025 Construction of chapter—Compliance with RCW 69.51A.040. Nothing in this chapter or in the rules adopted to implement it precludes a qualifying patient or designated provider from engaging in the private, unlicensed, noncommercial production, possession, transportation, delivery, or administration of cannabis for medical use as authorized under RCW 69.51A.040. [2011 c 181 § 413.]

69.51A.030 Acts not constituting crimes or unprofessional conduct—Health care professionals not subject to penalties or liabilities. (1) The following acts do not constitute crimes under state law or unprofessional conduct under chapter 18.130 RCW, and a health care professional may not be arrested, searched, prosecuted, disciplined, or subject to

other criminal sanctions or civil consequences or liability under state law, or have real or personal property searched, seized, or forfeited pursuant to state law, notwithstanding any other provision of law as long as the health care professional complies with subsection (2) of this section:

(a) Advising a patient about the risks and benefits of medical use of cannabis or that the patient may benefit from the medical use of cannabis; or

(b) Providing a patient meeting the criteria established under *RCW 69.51A.010(26) with valid documentation, based upon the health care professional's assessment of the patient's medical history and current medical condition, where such use is within a professional standard of care or in the individual health care professional's medical judgment.

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

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

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

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

(iv) Documenting other measures attempted to treat the terminal or debilitating medical condition that do not involve the medical use of cannabis.

(b) A health care professional shall not:

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

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

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

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

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

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

(3) A violation of any provision of subsection (2) of this section constitutes unprofessional conduct under chapter 18.130 RCW. [2011 c 181 § 301; 2010 c 284 § 3; 2007 c 371 § 4; 1999 c 2 § 4 (Initiative Measure No. 692, approved November 3, 1998).]

Reviser's note: *(1) RCW 69.51A.010(26) is a reference to the definition of "qualifying patient" which was amended and renumbered by 2011 c 181 § 201, but the section was vetoed by the governor.

** (2) The section creating a registry, 2011 c 181 § 901, was vetoed by the governor.

Intent—2007 c 371: See note following RCW 69.51A.005.

69.51A.040 Compliance with chapter—Qualifying patients and designated providers not subject to penalties—Law enforcement not subject to liability. 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, for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, cannabis under state law, or have real or personal property seized or forfeited for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, cannabis under state law, and investigating peace officers and law enforcement agencies may not be held civilly liable for failure to seize cannabis in this circumstance, if:

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

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

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

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

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

(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:

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

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

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

(6) The investigating peace officer has not observed evidence of any of the circumstances identified in *section 901(4) of this act. [2011 c 181 § 401; 2007 c 371 § 5; 1999 c 2 § 5 (Initiative Measure No. 692, approved November 3, 1998).]

***Reviser's note:** Section 901 of this act was vetoed by the governor.

Intent—2007 c 371: See note following RCW 69.51A.005.

69.51A.043 Failure to register—Affirmative defense.

(1) A qualifying patient or designated provider who is not registered with the registry established in *section 901 of this act may raise the affirmative defense set forth in subsection (2) of this section, if:

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

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

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

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

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

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

(2) 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. A qualifying patient or designated provider meeting the conditions of this subsection but possessing more cannabis than the limits set forth in RCW 69.51A.040(1) may, in the investigating peace officer's discretion, be taken into custody and booked into jail in connection with the investigation of the incident. [2011 c 181 § 402.]

***Reviser's note:** Section 901 of this act was vetoed by the governor.

69.51A.045 Possession of cannabis exceeding lawful amount—Affirmative defense. A qualifying patient or designated provider in possession of cannabis plants, useable cannabis, or cannabis product exceeding the limits set forth in RCW 69.51A.040(1) but otherwise in compliance with all other terms and conditions of this chapter may establish an affirmative defense to charges of violations of state law relating to cannabis through proof at trial, by a preponderance of the evidence, that the qualifying patient's necessary medical use exceeds the amounts set forth in RCW 69.51A.040(1). An investigating peace officer may seize cannabis plants,

useable cannabis, or cannabis product exceeding the amounts set forth in RCW 69.51A.040(1): PROVIDED, That in the case of cannabis plants, the qualifying patient or designated provider shall be allowed to select the plants that will remain at the location. The officer and his or her law enforcement agency may not be held civilly liable for failure to seize cannabis in this circumstance. [2011 c 181 § 405.]

69.51A.047 Failure to register or present valid documentation—Affirmative defense. A qualifying patient or designated provider who is not registered with the registry established in *section 901 of this act or does not present his or her valid documentation to a peace officer who questions the patient or provider regarding his or her medical use of cannabis but is in compliance with all other terms and conditions of this chapter may establish 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 was a validly authorized qualifying patient or designated provider at the time of the officer's questioning. A qualifying patient or designated provider who establishes an affirmative defense under the terms of this section may also establish an affirmative defense under RCW 69.51A.045. [2011 c 181 § 406.]

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

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

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

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

69.51A.055 Limitations of chapter—Persons under supervision. (1)(a) The arrest and prosecution protections established in RCW 69.51A.040 may not be asserted in a supervision revocation or violation hearing by a person who is supervised by a corrections agency or department, including local governments or jails, that has determined that the terms of this section are inconsistent with and contrary to his or her supervision.

(b) The affirmative defenses established in RCW 69.51A.043, 69.51A.045, 69.51A.047, and *section 407 of this act may not be asserted in a supervision revocation or violation hearing by a person who is supervised by a corrections agency or department, including local governments or jails, that has determined that the terms of this section are inconsistent with and contrary to his or her supervision.

(2) The provisions of RCW 69.51A.040, 69.51A.085, and 69.51A.025 do not apply to a person who is supervised for a criminal conviction by a corrections agency or department, including local governments or jails, that has determined that the terms of this chapter are inconsistent with and contrary to his or her supervision.

(3) A person may not be licensed as a licensed producer, licensed processor of cannabis products, or a licensed dispenser under *section 601, 602, or 701 of this act if he or she is supervised for a criminal conviction by a corrections agency or department, including local governments or jails, that has determined that licensure is inconsistent with and contrary to his or her supervision. [2011 c 181 § 1105.]

***Reviser's note:** Sections 407, 601, 602, and 701 were vetoed by the governor.

69.51A.060 Crimes—Limitations of chapter. (1) It shall be a class 3 civil infraction to use or display medical cannabis in a manner or place which is open to the view of the general public.

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

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

(4) Nothing in this chapter requires any accommodation of any on-site medical use of cannabis in any place of employment, in any school bus or on any school grounds, in any youth center, in any correctional facility, or smoking cannabis in any public place or hotel or motel.

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

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

(7) It is a class C felony to fraudulently produce any record purporting to be, or tamper with the content of any record for the purpose of having it accepted as, valid documentation under *RCW 69.51A.010(32)(a), or to backdate such documentation to a time earlier than its actual date of execution.

(8) No person shall be entitled to claim the protection from arrest and prosecution under RCW 69.51A.040 or the affirmative defense under RCW 69.51A.043 for engaging in the medical use of cannabis in a way that endangers the health or well-being of any person through the use of a motorized vehicle on a street, road, or highway, including violations of RCW 46.61.502 or 46.61.504, or equivalent local ordinances. [2011 c 181 § 501; 2010 c 284 § 4; 2007 c 371 § 6; 1999 c 2 § 8 (Initiative Measure No. 692, approved November 3, 1998).]

***Reviser's note:** RCW 69.51A.010(32) is a reference to the definition of "valid documentation" which was amended and renumbered by 2011 c 181 § 201, but the section was vetoed by the governor.

Intent—2007 c 371: See note following RCW 69.51A.005.

69.51A.070 Addition of medical conditions. The Washington state medical quality assurance commission in consultation with the board of osteopathic medicine and sur-

gery, or other appropriate agency as designated by the governor, shall accept for consideration petitions submitted to add terminal or debilitating conditions to those included in this chapter. In considering such petitions, the Washington state medical quality assurance commission in consultation with the board of osteopathic medicine and surgery shall include public notice of, and an opportunity to comment in a public hearing upon, such petitions. The Washington state medical quality assurance commission in consultation with the board of osteopathic medicine and surgery shall, after hearing, approve or deny such petitions within one hundred eighty days of submission. The approval or denial of such a petition shall be considered a final agency action, subject to judicial review. [2007 c 371 § 7; 1999 c 2 § 9 (Initiative Measure No. 692, approved November 3, 1998).]

Intent—2007 c 371: See note following RCW 69.51A.005.

69.51A.085 Collective gardens. (1) Qualifying patients may create and participate in collective gardens for the purpose of producing, processing, transporting, and delivering cannabis for medical use subject to the following conditions:

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

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

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

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

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

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

(3) A person who knowingly violates a provision of subsection (1) of this section is not entitled to the protections of this chapter. [2011 c 181 § 403.]

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

69.51A.090 Applicability of valid documentation definition. The provisions of RCW 69.51A.010, relating to the definition of "valid documentation," apply prospectively only, not retroactively, and do not affect valid documentation obtained prior to June 10, 2010. [2010 c 284 § 5.]

69.51A.100 Qualifying patient's designation of provider—Provider's service as designated provider—Termination. (1) A qualifying patient may revoke his or her

designation of a specific provider and designate a different provider at any time. A revocation of designation must be in writing, signed and dated. The protections of this chapter cease to apply to a person who has served as a designated provider to a qualifying patient seventy-two hours after receipt of that patient's revocation of his or her designation.

(2) A person may stop serving as a designated provider to a given qualifying patient at any time. However, that person may not begin serving as a designated provider to a different qualifying patient until fifteen days have elapsed from the date the last qualifying patient designated him or her to serve as a provider. [2011 c 181 § 404.]

69.51A.110 Suitability for organ transplant. A qualifying patient's medical use of cannabis as authorized by a health care professional may not be a sole disqualifying factor in determining the patient's suitability for an organ transplant, unless it is shown that this use poses a significant risk of rejection or organ failure. This section does not preclude a health care professional from requiring that a patient abstain from the medical use of cannabis, for a period of time determined by the health care professional, while waiting for a transplant organ or before the patient undergoes an organ transplant. [2011 c 181 § 408.]

69.51A.120 Parental rights or residential time—Not to be restricted. A qualifying patient or designated provider may not have his or her parental rights or residential time with a child restricted solely due to his or her medical use of cannabis in compliance with the terms of this chapter absent written findings supported by evidence that such use has resulted in a long-term impairment that interferes with the performance of parenting functions as defined under RCW 26.09.004. [2011 c 181 § 409.]

69.51A.130 State and municipalities—Not subject to liability. (1) No civil or criminal liability may be imposed by any court on the state or its officers and employees for actions taken in good faith under this chapter and within the scope of their assigned duties.

(2) No civil or criminal liability may be imposed by any court on cities, towns, and counties or other municipalities and their officers and employees for actions taken in good faith under this chapter and within the scope of their assigned duties. [2011 c 181 § 1101.]

69.51A.140 Counties, cities, towns—Authority to adopt and enforce requirements. (1) Cities and towns may adopt and enforce any of the following pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction: Zoning requirements, business licensing requirements, health and safety requirements, and business taxes. Nothing in chapter 181, Laws of 2011 is intended to limit the authority of cities and towns to impose zoning requirements or other conditions upon licensed dispensers, so long as such requirements do not preclude the possibility of siting licensed dispensers within the jurisdiction. If the jurisdiction has no commercial zones, the jurisdiction is not required to adopt zoning to accommodate licensed dispensers.

(2) Counties may adopt and enforce any of the following pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction in locations outside of the corporate limits of any city or town: Zoning requirements, business licensing requirements, and health and safety requirements. Nothing in chapter 181, Laws of 2011 is intended to limit the authority of counties to impose zoning requirements or other conditions upon licensed dispensers, so long as such requirements do not preclude the possibility of siting licensed dispensers within the jurisdiction. If the jurisdiction has no commercial zones, the jurisdiction is not required to adopt zoning to accommodate licensed dispensers. [2011 c 181 § 1102.]

69.51A.200 Evaluation. (1) By July 1, 2014, the Washington state institute for public policy shall, within available funds, conduct a cost-benefit evaluation of the implementation of chapter 181, Laws of 2011 and the rules adopted to carry out its purposes.

(2) The evaluation of the implementation of chapter 181, Laws of 2011 and the rules adopted to carry out its purposes shall include, but not necessarily be limited to, consideration of the following factors:

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

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

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

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

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

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

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

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

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

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

(3) For purposes of facilitating this evaluation, the departments of health and agriculture will make available to the Washington state institute for public policy requested data, and any other data either department may consider relevant, from which all personally identifiable information has been redacted. [2011 c 181 § 1001.]

69.51A.900 Short title—1999 c 2. This chapter may be known and cited as the Washington state medical use of cannabis act. [2011 c 181 § 1106; 1999 c 2 § 1 (Initiative Measure No. 692, approved November 3, 1998).]

69.51A.901 Severability—1999 c 2. If any provision of this act or its application to any person or circumstance is

held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1999 c 2 § 10 (Initiative Measure No. 692, approved November 3, 1998).]

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

69.51A.903 Severability—2011 c 181. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. [2011 c 181 § 1103.]

**Chapter 69.52 RCW
IMITATION CONTROLLED SUBSTANCES**

Sections

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

Drug nuisances—Injunctions: Chapter 7.43 RCW.

69.52.010 Legislative findings. The legislature finds that imitation controlled substances are being manufactured to imitate the appearance of the dosage units of controlled substances for sale to school age youths and others to facilitate the fraudulent sale of controlled substances. The legislature further finds that manufacturers are endeavoring to profit from the manufacture of these imitation controlled substances while avoiding liability by accurately labeling the containers or packaging which contain these imitation controlled substances. The close similarity of appearance between dosage units of imitation controlled substances and controlled substances is indicative of a deliberate and wilful attempt to profit by deception without regard to the tragic human consequences. The use of imitation controlled substances is responsible for a growing number of injuries and deaths, and the legislature hereby declares that this chapter is necessary for the protection and preservation of the public health and safety. [1982 c 171 § 2.]

69.52.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Controlled substance" means a substance as that term is defined in chapter 69.50 RCW.

(2) "Distribute" means the actual or constructive transfer (or attempted transfer) or delivery or dispensing to another of an imitation controlled substance.

(3) "Imitation controlled substance" means a substance that is not a controlled substance, but which by appearance or

representation would lead a reasonable person to believe that the substance is a controlled substance. Appearance includes, but is not limited to, color, shape, size, and markings of the dosage unit. Representation includes, but is not limited to, representations or factors of the following nature:

(a) Statements made by an owner or by anyone else in control of the substance concerning the nature of the substance, or its use or effect;

(b) Statements made to the recipient that the substance may be resold for inordinate profit; or

(c) Whether the substance is packaged in a manner normally used for illicit controlled substances.

(4) "Manufacture" means the production, preparation, compounding, processing, encapsulating, packaging or repackaging, or labeling or relabeling of an imitation controlled substance. [1982 c 171 § 3.]

69.52.030 Violations—Exceptions. (1) It is unlawful for any person to manufacture, distribute, or possess with intent to distribute, an imitation controlled substance. Any person who violates this subsection shall, upon conviction, be guilty of a class C felony.

(2) Any person eighteen years of age or over who violates subsection (1) of this section by distributing an imitation controlled substance to a person under eighteen years of age is guilty of a class B felony.

(3) It is unlawful for any person to cause to be placed in any newspaper, magazine, handbill, or other publication, or to post or distribute in any public place, any advertisement or solicitation offering for sale imitation controlled substances. Any person who violates this subsection is guilty of a class C felony.

(4) No civil or criminal liability shall be imposed by virtue of this chapter on any person registered under the Uniform Controlled Substances Act pursuant to RCW 69.50.301 or 69.50.303 who manufactures, distributes, or possesses an imitation controlled substance for use as a placebo or other use by a registered practitioner, as defined in *RCW 69.50.101(t), in the course of professional practice or research.

(5) No prosecution under this chapter shall be dismissed solely by reason of the fact that the dosage units were contained in a bottle or other container with a label accurately describing the ingredients of the imitation controlled substance dosage units. The good faith of the defendant shall be an issue of fact for the trier of fact. [1983 1st ex.s. c 4 § 5; 1982 c 171 § 4.]

***Reviser's note:** The reference to RCW 69.50.101(t) is erroneous. "Practitioner" is defined in (w) of that section. RCW 69.50.101 was amended by 2013 c 3 § 2, changing subsection (w) to subsection (cc). RCW 69.50.101 was subsequently alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (cc) to subsection (dd).

Additional notes found at www.leg.wa.gov

69.52.040 Seizure of contraband. Imitation controlled substances shall be subject to seizure, forfeiture, and disposition in the same manner as are controlled substances under RCW 69.50.505. [1982 c 171 § 5.]

69.52.045 Seizure at rental premises—Notification of landlord. Whenever an imitation controlled substance which is manufactured, distributed, or possessed in violation

APPENDIX C

or a power purchase agreement for not prohibit the commission from y's acquisition of capacity resources wer or following load.
 on's approval of a power purchase i power that includes the ability to company's authorized rate of return ompany to receive an equity return ther power contract.
 purchase agreement" means a long- W 80.80.010(15)(b).
 2025.

c 195 s 3 are each amended to read

consistent with this section.
 thousand customers that are not full date an integrated resource plan by ogress reports reflecting changing ed resource plan must be produced integrated resource plan must be ent to the 2008 integrated resource imum, must include:

next ten years, of projected custome ic data and customer usage;
 ailable conservation and efficienc e, as appropriate, high efficienc anagement programs, and current ed to obtain the conservation an

ailable, utility scale renewable and uding a comparison of the benefi ew resources;

vable and nonrenewable generatin distribution delivery costs, and ing "lowest reasonable cost" as

asts and resource evaluations into of supply side generating resource that will meet current and projecte to the utility and its ratepayers; and specific actions to be taken by the ted resource plan.

lop a full integrated resource plan a or, at a minimum, shall develop

l ten years;
 l be maintained and/or acquired t

(c) Explains why the resources in (b) of this subsection were chosen and, if the resources chosen are not renewable resources or conservation and efficiency resources, why such a decision was made.

(3) An electric utility that is required to develop a resource plan under this section must complete its initial plan by September 1, 2008.

(4) Resource plans developed under this section must be updated on a regular basis, at a minimum on intervals of two years.

(5) Plans shall not be a basis to bring legal action against electric utilities.

(6) Each electric utility shall publish its final plan either as part of an annual report or as a separate document available to the public. The report may be in an electronic form.

NEW SECTION. Sec. 306. A new section is added to chapter 80.70 RCW to read as follows:

(1) An applicant for a natural gas-fired generation plant to be constructed in a county with a coal-fired electric generation facility subject to RCW 80.80.040(3)(c) is exempt from this chapter if the application is filed before December 31, 2025.

(2) For the purposes of this section, an applicant means the owner of a coal-fired electric generation facility subject to RCW 80.80.040(3)(c).

(3) This section expires December 31, 2025, or when the station-generating capability of all natural gas-fired generation plants approved under this section equals the station-generating capability from a coal-fired electric generation facility subject to RCW 80.80.040(3)(c).

NEW SECTION. Sec. 307. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed by the Senate April 21, 2011.

Passed by the House April 11, 2011.

Approved by the Governor April 29, 2011.

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

CHAPTER 181

[Engrossed Second Substitute Senate Bill 5073]

MEDICAL CANNABIS

AN ACT Relating to medical use of cannabis; amending RCW 69.51A.005, 69.51A.020, 69.51A.010, 69.51A.030, 69.51A.040, 69.51A.050, 69.51A.060, and 69.51A.900; adding new sections to chapter 69.51A RCW; adding new sections to chapter 42.56 RCW; adding a new section to chapter 28B.20 RCW; creating new sections; repealing RCW 69.51A.080; prescribing penalties; and providing an effective date.

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

PART I

LEGISLATIVE DECLARATION AND INTENT

***NEW SECTION. Sec. 101.** (1) *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;

(b) Qualifying patients will have access to an adequate, safe, consistent, and secure source of medical quality cannabis; and

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

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

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

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

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

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

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

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

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

(iii) Acute or chronic glaucoma;

(iv) Crohn's disease; and

(v) Some forms of intractable pain.

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

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

(a) Qualifying patients with terminal or debilitating ((illnesses)) medical conditions who, in the judgment of their health care professionals, may benefit from the medical use of ((marijuana)) cannabis, shall not be ((found guilty of a crime under state law for their possession and limited use of marijuana)) arrested, prosecuted, or subject to other criminal sanctions or civil consequences under state law based solely on their medical use of cannabis, notwithstanding any other provision of law;

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

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

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

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

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

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

PART II DEFINITIONS

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

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

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

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

(3) "Cannabis products" means products that contain cannabis or cannabis extracts, have a measurable THC concentration greater than three-tenths of one percent, and are intended for human consumption or application, including, but not limited to, edible products, tinctures, and lotions. The term "cannabis products" does not include useable cannabis. The definition of "cannabis products" as a measurement of THC

concentration only applies to the provisions of this chapter and shall not be considered applicable to any criminal laws related to marijuana or cannabis.

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

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

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

(a) Is eighteen years of age or older;

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

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

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

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

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

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

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

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

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

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

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

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

(14) "Licensed producer" means a person licensed by the department of agriculture to produce cannabis for medical use for wholesale to licensed

dispensers and licensed processors of cannabis products in accordance with rules adopted by the department of agriculture pursuant to the terms of this chapter.

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

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

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

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

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

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

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

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

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

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

(25) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; premises where goods and services are offered to the public for retail sale; public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages, and filling stations which are

open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, buses, ferries, and other public conveyances of all kinds and character, and the depots, stops, and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

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

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

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

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

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

~~((e))~~ (v) Has been advised by that health care professional that ~~((they))~~ he or she may benefit from the medical use of ~~((marijuana))~~ cannabis; and

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

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

~~((f))~~ (27) "Secretary" means the secretary of health.

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

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

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

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

~~((g))~~ (29) "Terminal or debilitating medical condition" means:

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

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

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

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

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

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

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

~~((7))~~ (30) "THC concentration" means percent of tetrahydrocannabinol content per weight or volume of useable cannabis or cannabis product.

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

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

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

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

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

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

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

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

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

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

~~((A health care professional shall be exempted from the state's criminal laws and shall not be penalized in any manner, or denied any right or privilege, for))~~

(1) The following acts do not constitute crimes under state law or unprofessional conduct under chapter 18.130 RCW, and a health care professional may not be arrested, searched, prosecuted, disciplined, or subject to other criminal sanctions or civil consequences or liability under state law, or have real or personal property searched, seized, or forfeited pursuant to state law, notwithstanding any other provision of law as long as the health care professional complies with subsection (2) of this section:

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

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

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

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

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

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

(iv) Documenting other measures attempted to treat the terminal or debilitating medical condition that do not involve the medical use of cannabis.

(b) A health care professional shall not:

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

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

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

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

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

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

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

PART IV PROTECTIONS FOR QUALIFYING PATIENTS AND DESIGNATED PROVIDERS

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

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

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

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

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

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

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

~~(4) A qualifying patient, if under eighteen years of age at the time he or she is alleged to have committed the offense, shall demonstrate compliance with subsection (3)(a) and (c) of this section. However, any possession under subsection (3)(b) of this section, as well as any production, acquisition, and decision as to dosage and frequency of use, shall be the responsibility of the parent or legal guardian of the qualifying patient.)) 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, for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, cannabis under state law, or have real or personal property seized or forfeited for possession, manufacture, or delivery of, or for possession with intent to manufacture or deliver, cannabis under state law, and investigating peace officers and law enforcement agencies may not be held civilly liable for failure to seize cannabis in this circumstance, if:~~

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

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

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

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

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

(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:

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

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

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

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

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

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

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

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

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

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

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

(2) A qualifying patient or designated provider who is not registered with the registry established in section 901 of this act, but who presents the valid documentation to any peace officer who questions the patient or provider regarding his or her medical use of cannabis, may assert an affirmative

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. A qualifying patient or designated provider meeting the conditions of this subsection but possessing more cannabis than the limits set forth in RCW 69.51A.040(1) may, in the investigating peace officer's discretion, be taken into custody and booked into jail in connection with the investigation of the incident.

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

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

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

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

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

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

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

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

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

A person may stop serving as a designated provider to a given qualifying patient at any time. However, that person may not begin serving as a designated provider to a different qualifying patient until fifteen days have elapsed from the time the qualifying patient designated him or her to serve as a provider.

NEW SECTION. Sec. 405. A qualifying patient or designated provider in possession of more than the limits of cannabis plants, useable cannabis, or cannabis product exceeding the limits set forth in RCW 69.51A.040(1) but otherwise in compliance with all other terms and conditions of this chapter may establish an affirmative defense to charges of violations of state law relating to cannabis through proof at trial, by

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

NEW SECTION. Sec. 406. A qualifying patient or designated provider who is not registered with the registry established in section 901 of this act or does not present his or her valid documentation to a peace officer who questions the patient or provider regarding his or her medical use of cannabis but is in compliance with all other terms and conditions of this chapter may establish 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 was a validly authorized qualifying patient or designated provider at the time of the officer's questioning. A qualifying patient or designated provider who establishes an affirmative defense under the terms of this section may also establish an affirmative defense under section 405 of this act.

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

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

(2) *Is in compliance with all provisions of this chapter other than requirements relating to being a Washington resident or possessing valid documentation issued by a licensed health care professional in Washington;*

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

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

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

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

care professional, while waiting for a transplant organ or before the patient undergoes an organ transplant.

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

***NEW SECTION. Sec. 410.** (1) *Except as provided in subsection (2) of this section, a qualifying patient may not be refused housing or evicted from housing solely as a result of his or her possession or use of useable cannabis or cannabis products except that housing providers otherwise permitted to enact and enforce prohibitions against smoking in their housing may apply those prohibitions to smoking cannabis provided that such smoking prohibitions are applied and enforced equally as to the smoking of cannabis and the smoking of all other substances, including without limitation tobacco.*

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

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

***NEW SECTION. Sec. 411.** *In imposing any criminal sentence, deferred prosecution, stipulated order of continuance, deferred disposition, or dispositional order, any court organized under the laws of Washington state may permit the medical use of cannabis in compliance with the terms of this chapter and exclude it as a possible 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. This section does not require the accommodation of any medical use of cannabis in any correctional facility or jail.*

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

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

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

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

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

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

NEW SECTION. Sec. 413. Nothing in this chapter or in the rules adopted to implement it precludes a qualifying patient or designated provider from engaging in the private, unlicensed, noncommercial production, possession, transportation, delivery, or administration of cannabis for medical use as authorized under RCW 69.51A.040.

PART V
LIMITATIONS ON PROTECTIONS FOR QUALIFYING PATIENTS AND DESIGNATED PROVIDERS

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

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

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

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

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

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

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

(7) It is a class C felony to fraudulently produce any record purporting to be, or tamper with the content of any record for the purpose of having it accepted as, valid documentation under RCW 69.51A.010~~((7))~~ (32)(a), or to backdate such documentation to a time earlier than its actual date of execution.

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

PART VI
LICENSED PRODUCERS AND LICENSED PROCESSORS OF CANNABIS PRODUCTS

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

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

**NEW SECTION. Sec. 602. A person may not act as a licensed processor without a license for each processing facility issued by the department of agriculture and prominently displayed on the premises. Provided they are acting in compliance with the terms of this chapter and rules adopted to enforce and carry out its purposes, licensed processors of cannabis products and their employees, members, officers, and directors may possess useable cannabis and manufacture, produce, prepare, process, package, repack, transport, transfer, deliver, label, relabel, wholesale, or possess cannabis products intended for medical use by qualifying patients, and may not be arrested, searched, prosecuted, or subject to other criminal sanctions or civil consequences under state law, or have real or personal property searched, seized, or forfeited pursuant to state law, for such activities, notwithstanding any other provision of law.*

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

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

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

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

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

(3) If a representative sample of cannabis tested under this section has a concentration of three-tenths of one percent or less, the lot of cannabis

the sample was taken from may not be sold for medical use and must be destroyed or sold to a manufacturer of hemp products.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) THC concentration; and

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

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

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

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

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

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

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

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

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

(2) The property, books, records, accounts, papers, and proceedings of every licensed producer and licensed processor of cannabis products shall be subject to inspection by the department of agriculture at any time during ordinary business hours. Licensed producers and licensed processors of cannabis products shall maintain adequate records and systems for the filing and accounting of crop production, product manufacturing and processing, records of weights and measurements, product testing, receipts, canceled receipts, other documents, and transactions necessary or common to the medical cannabis industry.

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

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

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

***NEW SECTION.** *Sec. 610. (1) The department of agriculture may give written notice to a licensed producer or processor of cannabis products to furnish required reports, documents, or other requested information, under*

such conditions and at such time as the department of agriculture deems necessary if a licensed producer or processor of cannabis products fails to:

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

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

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

(2) If the licensed producer or processor of cannabis products fails to comply with the terms of the notice within seventy-two hours from the date of its issuance, or within such further time as the department of agriculture may allow, the department of agriculture shall levy a fine of five hundred dollars per day from the final date for compliance allowed by this section or the department of agriculture. In those cases where the failure to comply continues for more than seven days or where the director determines the failure to comply creates a threat to public health, public safety, or a substantial risk of diversion of cannabis to unauthorized persons or purposes, the department of agriculture may, in lieu of levying further fines, petition the superior court of the county where the licensee's principal place of business in Washington is located, as shown by the license application, for an order:

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

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

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

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

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

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

(2) A licensed processor of cannabis products may not sell or deliver cannabis to any person other than a cannabis analysis laboratory, licensed dispenser, or law enforcement officer except as provided by court order. A licensed processor of cannabis products may also sell or deliver cannabis to the University of Washington or Washington State University for research

purposes, as identified in section 1002 of this act. Violation of this section is a class C felony punishable according to chapter 9A.20 RCW.

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

PART VII LICENSED DISPENSERS

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

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

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

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

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

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

(d) Establishing recordkeeping requirements for licensed dispensers;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) The secretary shall establish a schedule to:

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

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

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

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

***NEW SECTION.** Sec. 703. A licensed dispenser may not sell cannabis received from any person other than a licensed producer or licensed processor of cannabis products, or sell or deliver cannabis to any person other than a qualifying patient, designated provider, or law enforcement officer except as

provided by court order. A licensed dispenser may also sell or deliver cannabis to the University of Washington or Washington State University for research purposes, as identified in section 1002 of this act. Before selling or providing cannabis to a qualifying patient or designated provider, the licensed dispenser must confirm that the patient qualifies for the medical use of cannabis by contacting, at least once in a one-year period, that patient's health care professional. Violation of this section is a class C felony punishable according to chapter 9A.20 RCW.

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

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

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

***NEW SECTION.** Sec. 705. The secretary of health shall not issue or renew a license to an applicant or licensed dispenser located within five hundred feet of a community center, child care center, elementary or secondary school, or another licensed dispenser.

*Sec. 705 was vetoed. See message at end of chapter.

PART VIII MISCELLANEOUS PROVISIONS APPLYING TO ALL LICENSED PRODUCERS, PROCESSORS, AND DISPENSERS

***NEW SECTION.** Sec. 801. All weighing and measuring instruments and devices used by licensed producers, processors of cannabis products, and dispensers shall comply with the requirements set forth in chapter 19.94 RCW.

*Sec. 801 was vetoed. See message at end of chapter.

***NEW SECTION.** Sec. 802. (1) No person, partnership, corporation, association, or agency may advertise cannabis for sale to the general public in any manner that promotes or tends to promote the use or abuse of cannabis. For the purposes of this subsection, displaying cannabis, including artistic depictions of cannabis, is considered to promote or to tend to promote the use or abuse of cannabis.

(2) The department of agriculture may fine a licensed producer or processor of cannabis products up to one thousand dollars for each violation of subsection (1) of this section. Fines collected under this subsection must be deposited into the agriculture local fund created in RCW 43.23.230.

(3) The department of health may fine a licensed dispenser up to one thousand dollars for each violation of subsection (1) of this section. Fines collected under this subsection must be deposited into the health professions account created in RCW 43.70.320.

(4) No broadcast television licensee, radio broadcast licensee, newspaper, magazine, advertising agency, or agency or medium for the dissemination of an advertisement, except the licensed producer, processor of cannabis products, or dispenser to which the advertisement relates, is subject to the penalties of this section by reason of dissemination of advertising in good faith without knowledge that the advertising promotes or tends to promote the use or abuse of cannabis.

*Sec. 802 was vetoed. See message at end of chapter.

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

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

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

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

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

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

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

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

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

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

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

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

***NEW SECTION. Sec. 807.** The department of agriculture or the department of health, as the case may be, must suspend the certification of

licensure of any person who has been certified by a lending agency and reported to the appropriate department for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Prior to the suspension, the department of agriculture or the department of health, as the case may be, must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's license may not be reissued until the person provides the appropriate department a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for certification or registration during the suspension, reinstatement is automatic upon receipt of the notice and 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

***NEW SECTION. Sec. 901.** (1) 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; and

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

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

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

(4) Before seeking a nonvehicle search warrant or arrest warrant, a peace officer investigating a cannabis-related incident must make reasonable efforts to ascertain whether the location or person under investigation is registered in the registration system, and include the results of this inquiry in the affidavit

submitted in support of the application for the warrant. This requirement does not apply to investigations in which:

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

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

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

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

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

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

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

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

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

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

(8) During the rule-making process, the department of health shall consult with stakeholders and persons with relevant expertise, to include, but not be limited to, qualifying patients, designated providers, health care professionals, state and local law enforcement agencies, and the University of Washington computer science and engineering security and privacy research lab.

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

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

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

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

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

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

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

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

(ii) Authorized employees of state or local law enforcement agencies, only as necessary to verify that the person or location is a qualified patient, designated provider, licensed producer, licensed processor of cannabis products, or licensed dispenser, and only after the inquiring employee has provided adequate identification. Authorized employees who obtain personally identifiable information under this subsection may not release or use the information for any purpose other than verification that a person or location is a qualified patient, designated provider, licensed producer, licensed processor of cannabis products, or licensed dispenser;

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

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

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

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

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

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

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

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

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

PART X EVALUATION

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

(2) The evaluation of the implementation of this act and the rules adopted to carry out its purposes shall include, but not necessarily be limited to, consideration of the following factors:

- (a) Qualifying patients' access to an adequate source of cannabis for medical use;
- (b) Qualifying patients' access to a safe source of cannabis for medical use;
- (c) Qualifying patients' access to a consistent source of cannabis for medical use;
- (d) Qualifying patients' access to a secure source of cannabis for medical use;
- (e) Qualifying patients' and designated providers' contact with law enforcement and involvement in the criminal justice system;
- (f) Diversion of cannabis intended for medical use to nonmedical uses;
- (g) Incidents of home invasion burglaries, robberies, and other violent and property crimes associated with qualifying patients accessing cannabis for medical use;
- (h) Whether there are health care professionals who make a disproportionately high amount of authorizations in comparison to the health care professional community at large;
- (i) Whether there are indications of health care professionals in violation of RCW 69.51A.030; and
- (j) Whether the health care professionals making authorizations reside in this state or out of this state.

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

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

The University of Washington and Washington State University may conduct scientific research on the efficacy and safety of administering cannabis as part of medical treatment. As part of this research, the University of Washington and Washington State University may develop and conduct studies to ascertain the general medical safety and efficacy of cannabis and may develop medical guidelines for the appropriate administration and use of cannabis.

PART XI CONSTRUCTION

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

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

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

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

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

***NEW SECTION. Sec. 1104.** In the event that the federal government authorizes the use of cannabis for medical purposes, within a year of such action, the joint legislative audit and review committee shall conduct a program and fiscal review of the cannabis production and dispensing programs established in this chapter. The review shall consider whether a distinct cannabis production and dispensing system continues to be necessary

when considered in light of the federal action and make recommendations to the legislature.

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

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

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

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

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

Sec. 1106. RCW 69.51A.900 and 1999 c 2 s 1 are each amended to read as follows:

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

PART XII MISCELLANEOUS

***NEW SECTION. Sec. 1201.** (1) *The legislature recognizes that there are cannabis producers and cannabis dispensaries in operation as of the effective date of this section that are unregulated by the state and who produce and dispense cannabis for medical use by qualifying patients. The legislature intends that these producers and dispensaries become licensed in accordance with the requirements of this chapter and that this licensing provides them with arrest protection so long as they remain in compliance with the requirements of this chapter and the rules adopted under this chapter. The legislature further recognizes that cannabis producers and cannabis dispensaries in current operation are not able to become licensed until the department of agriculture and the department of health adopt rules and consequently, it is likely they will remain unlicensed until at least January 1, 2013. These producers and dispensary owners and operators run the risk of arrest between the effective date of this section and the time they become licensed. Therefore, the legislature intends to provide them with an affirmative defense if they meet the requirements of this section.*

(2) *If charged with a violation of state law relating to cannabis, a producer of cannabis or a dispensary and its owners and operators that are engaged in the production or dispensing of cannabis to a qualifying patient or who assists a qualifying patient in the medical use of cannabis is deemed to have established an affirmative defense to such charges by proof of compliance with this section.*

(3) *In order to assert an affirmative defense under this section, a cannabis producer or cannabis dispensary must:*

(a) *In the case of producers, solely provide cannabis to cannabis dispensaries for the medical use of cannabis by qualified patients;*

(b) *In the case of dispensaries, solely provide cannabis to qualified patients for their medical use;*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

***NEW SECTION. Sec. 1206.** *Section 1002 of this act takes effect 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, 603, 604, 605, 606, 607, 608, 609, 610, 611, 701, 702, 703, 704, 705, 801, 802, 803, 804, 805, 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. 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 repeal provisions of Initiative 692 and provide additional state law protections. Qualifying patients

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 include 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 dispensaries within the jurisdiction" are without meaning in light of the vetoes of sections providing for licensed dispensaries. 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."

CHAPTER 182

[House Bill 1031]

BALLOT ENVELOPES

AN ACT Relating to ballot envelopes; and amending RCW 29A.40.091.

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

Sec. 1. RCW 29A.40.091 and 2010 c 125 s 1 are each amended to read as follows:

The county auditor shall send each voter a ballot, a security envelope in which to ~~((seal))~~ conceal the ballot after voting, a larger envelope in which to return the security envelope, and instructions on how to mark the ballot and how to return it to the county auditor. The instructions that accompany a ballot for a partisan primary must include instructions for voting the applicable ballot style, as provided in chapter 29A.36 RCW. The voter's name and address must be printed on the larger return envelope, which must also contain a declaration by the voter reciting his or her qualifications and stating that he or she has not voted in any other jurisdiction at this election, together with a summary of the penalties for any violation of any of the provisions of this chapter. The declaration must clearly inform the voter that it is illegal to vote if he or she is not a United States citizen; it is illegal to vote if he or she has been convicted of a felony and has not had his or her voting rights restored; and, except as otherwise provided by law, it is illegal to cast a ballot or sign a return envelope on behalf of another voter. The return envelope must provide space for the voter to indicate the date on which the ballot was voted and for the voter to sign the oath. It must also contain a space so that the voter may include a telephone number. A summary of the applicable penalty provisions of this chapter must be printed on the return envelope immediately adjacent to the space for the voter's signature. The signature of the voter on the return envelope must affirm and attest to the statements regarding the qualifications of that voter and to the validity of the ballot. The return envelope may provide secrecy for the voter's signature and

optional telephone number. For overseas and service voters, the signed declaration on the return envelope constitutes the equivalent of a voter registration for the election or primary for which the ballot has been issued. The voter must be instructed to either return the ballot to the county auditor by whom it was issued or attach sufficient first-class postage, if applicable, and mail the ballot to the appropriate county auditor no later than the day of the election or primary for which the ballot was issued.

If the county auditor chooses to forward ballots, he or she must include with the ballot a clear explanation of the qualifications necessary to vote in that election and must also advise a voter with questions about his or her eligibility to contact the county auditor. This explanation may be provided on the ballot envelope, on an enclosed insert, or printed directly on the ballot itself. If the information is not included, the envelope must clearly indicate that the ballot is not to be forwarded and that return postage is guaranteed.

Passed by the House February 23, 2011.

Passed by the Senate April 8, 2011.

Approved by the Governor April 29, 2011.

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

CHAPTER 183

[House Bill 1040]

ELECTRONIC SIGNATURES AND NOTICES

AN ACT Relating to the use of electronic signatures and notices; and amending RCW 19.09.085, 19.34.231, 23B.01.500, 23B.01.510, 24.03.400, 24.06.445, and 24.12.051.

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

Sec. 1. RCW 19.09.085 and 2007 c 471 s 6 are each amended to read as follows:

(1) Registration under this chapter shall be effective for one year or longer, as established by the secretary.

(2) Reregistration required under RCW 19.09.075 or 19.09.079 shall be submitted to the secretary no later than the date established by the secretary by rule.

(3) Entities required to register under this chapter shall file a notice of change of information within thirty days of any change in the information contained in RCW 19.09.075 (1) through (9) or 19.09.079 (1) through (7).

(4) The secretary shall notify entities registered under this chapter of the need to reregister upon the expiration of their current registration. The notification ~~((shall))~~ may be by postal or electronic mail, sent at least sixty days prior to the expiration of their current registration. Failure to register shall not be excused by a failure of the secretary to ~~((mail))~~ send the notice or by an entity's failure to receive the notice.

Sec. 2. RCW 19.34.231 and 1999 c 287 s 12 are each amended to read as follows:

(1) If a signature of a unit of state or local government, including its appropriate officers or employees, is required by statute, administrative rule, court rule, or requirement of the office of financial management, that unit of state or local government ~~((shall))~~ may become a subscriber to a certificate

CERTIFICATE

I CERTIFY that on this date I mailed, or otherwise caused to be delivered, a copy of the document to which this Certificate is attached to this Court and Appellant's counsel, addressed as follows:

Law Office of Kurt Boehl
8420 Dayton Ave N, Suite 102
Seattle, WA 98103
kurt@keblaw.com
Stephanie@keblaw.com


~~LEGAL ASSISTANT~~ Hilary Thomas 3/6/14
DATE

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2014 MAR - 7 PM 1:18

**WHATCOM COUNTY PROSECUTING ATTORNEY
DAVID S. McEACHRAN**

CHIEF CRIMINAL DEPUTY
Mac D. Setter

ASST. CHIEF CRIMINAL DEPUTY
Warren J. Page

CRIMINAL DEPUTIES

Craig D. Chambers
Elizabeth L. Gallery
David A. Graham
Eric J. Richey
James T. Hulbert
Jeffrey D. Sawyer
Shannon Connor
Dona Bracke
Nathan Deen
Jonathan Richardson
Christopher Quinn
Brandon Waldron
Melissa Stone

Whatcom County Courthouse
311 Grand Avenue, Second Floor
Bellingham, Washington 98225-4079
(360) 676-6784 / APPELLATE FAX (360) 738-2517
COUNTY (360) 398-1310

CHIEF CIVIL DEPUTY
Randall J. Watts

ASST CHIEF CIVIL DEPUTY
Daniel L. Gibson

CIVIL DEPUTIES
Karen L. Frakes
Royce Buckingham

**CIVIL SUPPORT
ENFORCEMENT DEPUTIES**
Angela A. Cuevas
Dionne M. Clasen

APPELLATE DEPUTIES
Kimberly Thulin
Hilary A. Thomas

ADMINISTRATOR
Kathy Walker

FACSIMILE TRANSMISSION

2 Pages including cover

March 7, 2014

TO: Richard D. Johnson
Court of Appeals, Division I

FAX #: (206) 389-2613

FROM: BROOKE ANDERSON
for HILARY THOMAS
Appellate Deputy Prosecuting Attorney
WSBA No. 22007

RE: State v. DENNIS M. CROWLEY (COA No. 70300-5-1)

**FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2014 MAR -7 AM 9:37**

Following is Respondent, State of Washington's, Declaration of Service in regards to service on counsel for Jennifer Detmering. Respondent's Supplemental Designation of Clerk's Papers, Respondent's Motion for Extension of Time to File Response Brief, and Brief of Respondent in the case of Dennis Crowley have already been placed in the mail to the court; however, we neglected to include a Declaration of Service for Detmering's counsel.