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SUPREME COURT  
OF THE STATE OF WASHINGTON

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CANNABIS ACTION COALITION, ET AL.,  
Appellant,

v.

CITY OF KENT, ET AL.,  
Respondent

---

**BRIEF OF RESPONDENT  
CITY OF KENT**

Arthur Fitzpatrick  
City of Kent Deputy City Attorney

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220 Fourth Avenue South  
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CONFIDENTIAL

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## I. INTRODUCTION

In this case, the Court is asked to decide whether a city council of a non-charter code city, formed pursuant to Chapter 35A RCW, has the authority to determine for its citizens the most appropriate uses of land through its zoning code. The Kent City Council has determined that it is in the best interests of the health, safety, and welfare of its residents to prohibit a land use that constitutes criminal conduct. The Appellants challenge that determination, and attempt to divest the City of Kent (“City”) of its local control over land uses in favor of a mandate that the City permit criminal activity within its borders.

While the Legislature attempted to legalize some forms of production, distribution, and possession of cannabis through amendments to the Medical Cannabis Act (“MCA”) (Chapter 69.51A RCW), the Legislature’s attempt at “legalization through registration” failed due to gubernatorial veto. The manufacture, distribution, and possession of cannabis, even through participation in collective gardens, remains illegal under the MCA. Thus, the City’s prohibition of medical cannabis collective gardens is consistent with and not preempted by state law.

Zoning authority rests solely with a city unless specifically taken away by the Legislature. While the Legislature has chosen to limit city authority in relation to zoning in other areas, it has not done so with regard

to collective gardens. In fact, the Legislature specifically affirmed the power of cities to zone for medical cannabis uses such as collective gardens.

The United States Supreme Court has determined that the federal government, through the commerce power, has the authority to regulate even the personal use of cannabis, even when used for medical purposes. *Gonzales v. Raich*, 545 U.S. 1, 125 S. Ct. 2195, 162 L. Ed. 2d 1 (2005). Ultimately, the Appellants are asking the Court to determine that the City's authority to zone for medical cannabis uses has been preempted by the state, and that the City must, pursuant to state law, allow individuals to produce and process cannabis within the City's boundaries. This the Court cannot do, for if it does, it will *require* the City to permit an activity that is strictly forbidden by federal law. This will result in the preemption of the state MCA by federal law.

The City asks this Court to affirm the trial court's summary judgment determination that the City had the right to prohibit medical cannabis collective gardens within its borders and affirm the permanent injunction.

In addition, the trial court determined that Mr. Worthington did not have standing to file suit against the City. Mr. Worthington has failed to provide any argument relating to this determination. Therefore, his

challenge to the trial court's finding that he lacked standing has been waived. Without standing, this Court should not consider his arguments, and should disregard his appellate brief.

## **II. ASSIGNMENTS OF ERROR AND STATEMENT OF ISSUES**

### **A. ASSIGNMENTS OF ERROR**

The city of Kent assigns no error to the trial court's Order Granting Defendants' Motion for Summary Judgment and Order Granting Defendants' Motion for Permanent Injunction. (CP 558-560; 553-554).

### **B. STATEMENT OF ISSUES<sup>1</sup>**

The Appellants' Assignment of Errors raises the following issues for consideration of the Court:

1. Growing cannabis, either personally, or by participating in a collective garden, remains illegal under the MCA.
2. The city of Kent has the authority to zone for and prohibit medical cannabis collective gardens pursuant to its police powers found in Const. art. XI, § 11, its general zoning authority found in RCW

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<sup>1</sup> Similar issues were argued before the Supreme Court of California on February 5, 2013, in *City of Riverside v. Inland Empire Patient's Health & Wellness Center, Inc.*, 136 Cal. Rptr. 3d 667, 268 P.3d 1065, argued (Cal. Supreme Court, Feb. 5, 2013). Also, similar issues are the subject of an Application for Leave to File Appeal which has been submitted to the Supreme Court of Michigan in *John Ter Beek v. City of Wyoming*, 297 Mich. App. 446; 823 N.W.2d 864, appeal docketed (Mich. Supreme Court, Sept. 10, 2012),

35A.63.100, and the specific authority granted by the Medical Cannabis Act in RCW 69.51A.140.

3. The City's ordinance is not preempted by the MCA, as the MCA does not occupy the field of medical marijuana to the exclusion of cities, and the City's prohibition of collective gardens is consistent with the MCA.
4. All activities related to the production, processing, and possession of cannabis remain illegal under the federal Controlled Substances Act, and the U.S. Supreme Court has determined that it is within the authority of the Commerce Clause for the federal government to regulate even the personal use of cannabis. If this Court determines that the production and processing of marijuana is legal by virtue of the MCA, or alternatively, that the City must permit the production or processing of cannabis within its boundaries, then the MCA will be in conflict with the federal Controlled Substances Act and therefore preempted.
5. The trial court did not abuse its discretion when it enjoined the Appellants from violating the City's zoning prohibition of collective gardens.
6. The Trial court granted summary judgment in favor of the City based in part on Mr. Worthington's lack of standing to challenge

the City's zoning ordinance. Mr. Worthington has failed to address that issue in his briefing, has therefore waived his ability to argue that he had standing, and therefore, his brief and argument challenging the City's zoning ordinance should be disregarded.

### **III. STATEMENT OF THE CASE**

Cannabis is classified as a Schedule I controlled substance under state and federal law. RCW 69.50.204; 21 U.S.C. § 812(c). This classification is based upon a determination that cannabis has a high potential for abuse, no accepted medical use, and no acceptable use for medically supervised treatment. RCW 69.50.203 – 204; 21 U.S.C. § 812(b) – (c).

While cannabis continues to be classified as a Schedule I controlled substance under both state and federal law, in 1999, in response to Initiative 692, the Washington Legislature enacted Chapter 69.51A RCW, entitled "Medical Marijuana," to provide a limited affirmative defense to the possession and cultivation of a specified amount of cannabis.<sup>2</sup> Since its original enactment, the Chapter has been amended on three occasions, most recently during the 2011 legislative session by ESSSB 5073. Laws of 2011, Ch. 181. ESSSB 5073, which was passed by

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<sup>2</sup> ESSSB 5073 changed the title of Chapter 69.51A RCW from "Medical Marijuana" to "Medical Cannabis." The terms "marijuana" and cannabis" are used interchangeably throughout this brief.

the Legislature on April 21, 2011, was an attempt by the Legislature to overhaul Washington's medical cannabis laws. (Appendix A). ESSSB 5073 would have made the manufacture, distribution, and possession of medical cannabis legal under state law, subject to strict state oversight and regulation. However, citing warnings from United States Attorneys Jenny Durkan and Michael Ormsby, the Governor vetoed 36 of the 58 sections of ESSSB 5073. There has been a significant amount of uncertainty throughout Washington over the impact of ESSSB 5073 in light of the Governor's veto.

Pursuant to Kent City Code ("KCC") 1.01.120, Kent is a non-charter code city, formed pursuant to Title 35A RCW entitled, "Optional Municipal Code." (Appendix B). On July 5, 2011, in anticipation of the effective date of ESSSB 5073, the Kent City Council adopted Ordinance 3999 which implemented a six-month moratorium prohibiting medical cannabis collective gardens and dispensaries. (CP 298-321). This moratorium expired on January 5, 2012. Just prior to its expiration, on January 3, 2012, the Kent City Council adopted Ordinance 4027, which implemented a second six-month moratorium prohibiting medical cannabis collective gardens and dispensaries. (CP 323-332). This moratorium expired on June 11, 2012.

On June 5, 2012, prior to the expiration of the second moratorium, the Kent City Council passed Ordinance 4036. (CP 334-341; Appendix C). Ordinance 4036 became effective on June 13, 2012, and amended the City's zoning code, which is found in Title 15 of the KCC. Ordinance 4036 added a new section 15.02.074 to the KCC, which defined collective gardens, and a new section 15.08.290, which prohibited collective gardens in the City. (CP 334-341). Ordinance 4036 also declared that a violation of the ban on medical cannabis collective gardens constitutes a nuisance. (CP 334-341).

On June 5, 2012, Arthur West, John Worthington, Steve Sarich, Deryck Tsang, and the Cannabis Action Coalition, all appearing pro se, filed suit in the King County Superior Court seeking, among other things, a judgment declaring the City's ordinance unconstitutional and in conflict with state law. (CP 1-34). The City filed a counterclaim seeking injunctive relief. (CP 658-757).

With the exception of Deryck Tsang, the litigants in the lawsuit were not citizens of the City, and maintained no business within the City. Arthur West was a citizen of Olympia, John Worthington was a citizen of Renton, and Steve Sarich was a citizen of Seattle. (CP 4; 8). The non-resident litigants did not own or operate a business in the City, they had

never applied for a business license or any type of building permit in the City, and had never paid utility fees in the City. (CP 371-379).

Appellant Deryck Tsang alleged that he resided in Kent and operated a medical cannabis collective in the West Valley Business Park at 19011 68<sup>th</sup> Ave S., Ste A-110, Kent, WA 98032. (CP 4; 8; 196; 198).

The City had a long history with Deryck Tsang regarding his medical cannabis business. Over the course of almost two years, the City delivered numerous letters to Mr. Tsang, advising him, before he started operations, that a medical cannabis business was illegal in the City, and requesting, once he opened for business, that he cease and desist his operations. (CP 198-207; 220-221). The City also filed criminal charges against him relating to his cannabis business. (CP 209-218).

Cross-motions for summary judgment were heard on October 5, 2012. The trial court granted the City's motion for summary judgment in all respects, and entered an order dismissing the plaintiffs' suit on the following bases:

- Arthur West, John Worthington, Steve Sarich, and the Cannabis Action Coalition were dismissed for lack of standing;
- The City had the authority to prohibit medical cannabis collective gardens, and its zoning ordinance was not preempted by state law;
- The challenges to the expired moratoria were moot;

- The court lacked jurisdiction under the Land Use Petition Act;
- The City Council and Mayor were not proper parties to the lawsuit;
- The writ of mandamus was dismissed as the enactment of the ordinance was discretionary; and
- The writ of prohibition was dismissed as the City's discretion had already been exercised.

(CP 558-560). The trial court also granted a permanent injunction enjoining all parties from participating in a collective garden in the City.<sup>3</sup> (CP 553-554). The trial court denied the Plaintiffs' motion for summary judgment. (CP 561-562).

With the exception of the Cannabis Action Coalition, the plaintiffs appealed. Mr. Tsang appealed through legal counsel David Mann and submitted a Brief of Appellant. Arthur West appealed separately, but failed to file a Brief of Appellant. In a pro se capacity, John Worthington and Steve Sarich jointly appealed. While John Worthington submitted a Brief of Appellant, Steve Sarich did not.

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<sup>3</sup> Mr. Tsang continues to operate his collective garden pursuant to a temporary stay of the injunction issued by the Supreme Court Commissioner on December 5, 2012.

#### **IV. ARGUMENT**

##### **A. STANDARD OF REVIEW**

This case calls for the interpretation of the City's authority to zone in light of the MCA. The interpretation of a statute is a question of law. *State v. J.M.*, 144 Wn.2d 472, 480, 28 P.3d 720 (2001). We review grants of summary judgment and questions of law de novo. *Berrocal v. Fernandez*, 155 Wn.2d 585, 590, 121 P.3d 82 (2005).

##### **B. OVERVIEW OF MEDICAL CANNABIS ACT – THE AFFIRMATIVE DEFENSE UNDER WASHINGTON LAW**

In order to make a determination in this matter, it is helpful to ascertain exactly what the MCA permits and does not permit in relation to the production, processing, distribution, and possession of cannabis through collective gardens, as well as the distribution and possession of cannabis.

###### **1. Cannabis and the Federal Law**

Cannabis is classified as a Schedule I controlled substance under federal law, 21 U.S.C. § 812(c). This classification is based upon a determination that cannabis has a high potential for abuse, no accepted medical use, and no acceptable use for medically supervised treatment. 21 U.S.C. § 812(b) – (c). As a result, and without exception, it is unlawful to

manufacture, distribute, or possess cannabis under federal law. 21 U.S.C. § 841(a)(1), 844(a).

## **2. Cannabis and Washington State Law**

Like the federal law, Washington classifies cannabis as a Schedule I controlled substance. RCW 69.50.204. And like federal law, this classification is based upon a determination that cannabis has a high potential for abuse, no accepted medical use, and no acceptable use for medically supervised treatment. RCW 69.50.203. Despite this statutory determination, which remains intact, recent legislation, vetoes, and initiatives have created a morass of state laws applicable to cannabis and medical cannabis.

In 1999, in response to Initiative 692, the Washington Legislature enacted Chapter 69.51A RCW, entitled “Medical Marijuana,” to provide a limited affirmative defense to the possession of a specified amount of cannabis. Since its original enactment, the Chapter has been amended on three occasions, most recently, during the 2011 Legislative session. ESSSB 5073, which was passed by the Legislature on April 21, 2011, was an attempt by the Legislature to create a medical cannabis system best characterized as “legalization with registration.”

**3. ESSSB 5073: Legislative Attempt at “Legalization with Registration”**

As passed by the Legislature, and prior to the Governor’s veto, ESSSB 5073 was 41 pages, containing 11 parts, each covering a different subject. The underpinnings of ESSSB 5073 were found in the state regulation of the production, processing, and distribution of cannabis, and the state registry, which was a prerequisite to state legalization of any cannabis activity. It was the attempt to create a state registry system that is of exceptional import in this case.

Part IX of ESSSB 5073, specifically Section 901, required the Departments of Health and Agriculture to create a secure state registry that would be available to qualifying patients and designated providers, as well as licensed producers, processors, and dispensers of medical cannabis. While subsection (1)(b) of Section 901 required registration for all licensed producers, processors, and dispensers, subsection (1)(a) made registration with the state registry optional for qualifying patients and designated providers. The registry option for qualifying patients and designated providers that would have been established pursuant to the bill is critical to the analysis of the legality of medical cannabis, for registered qualified patients and designated providers could legally possess and grow

cannabis, while those unregistered would only have an affirmative defense to criminal charges.

Prior to the enactment of ESSSB 5073, RCW 69.51A.040 provided that qualifying patients and designated providers had an affirmative defense to criminal charges for certain medical cannabis activities. *Roe v. TeleTech Customer Care Mgmt. (Colo.) LLC*, 171 Wn.2d 736, 758, 257 P.3d 586 (2011); *State v. Fry*, 168 Wn.2d 1, 7, 228 P.3d 1 (2010). The Medical Marijuana Act, as it existed prior to ESSSB 5073, did not legalize the manufacture, distribution, or possession of medical cannabis. *Id.*

Section 401 of ESSSB 5073 amended RCW 69.51A.040 to establish the conditions under which qualifying patients and designated providers could legally grow and possess cannabis. As amended by ESSSB 5073, RCW 69.51A.040 provides that a “[t]he medical use of cannabis in accordance with the terms and conditions of this chapter does not constitute a crime and a qualifying patient and 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 . . . cannabis under state law . . . if . . . ” the qualifying patient or designated provider meets six conditions, two of which are:

(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;

RCW 69.51A.040(2)-(3). This statute clearly requires that as a condition of not being subject to criminal sanctions or civil consequences, the qualifying patient must register with the state registry.<sup>4</sup> This registration requirement applied to any and all production and processing of medical cannabis, and it is critical to note that the Legislature did not include an exception to the registration requirement for collective gardens. While these two conditions relating to the state registry are now impossible to meet due to the Governor's veto (discussed below), the intent that legalization of any cannabis production could only occur with registration is clear. This is buttressed by the new affirmative defense statute, RCW 69.51A.043, that describes what is to happen when a person is not registered.

ESSSB 5073 moved the affirmative defense portion of the act to a new section. Section 402 of ESSSB 5073, now codified at RCW

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<sup>4</sup> As explained below, this legalization became ineffective due to gubernatorial veto.

69.51A.043, is entitled, "Failure to register – Affirmative defense." This RCW acknowledged that registration was not required for qualified patients and designated providers, and states:

(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.

RCW 69.51A.043. Read together, RCWs 69.51A.040 and .043 establish the clear intent of ESSSB 5073 to create a two-pronged approach in which qualified patients and designated providers could either: (a) obtain protection from state criminal action and civil consequences if they registered in the state registry, or (b) have an affirmative defense in the event they chose not to register.

ESSSB 5073 also established that under certain conditions, qualified patients may participate in collective gardens. However, whether participation was legal under state law, or only provided for an affirmative defense to criminal charges, was conditioned on compliance with a number of things, including registration in the aforementioned state registry. ESSSB 5073, Section 403, now codified in RCW 69.51A.085, provides as follows:

(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.

RCW 69.51A.085. Of significance are subsections (1)(d) and (3). These subsections recognize the two options, either legality or affirmative

defense, set forth in the statutory structure. Subsection (1)(d) recognized that if the qualifying patients who participated in the collective had their state registration on the premises, in accordance with Section 901 of ESSSB 5073, they would not be subject to state criminal charges, and if they only had their valid documentation on the premises, in accordance with Section 402 of ESSSB 5073 (now RCW 69.51A.043), they would have available only an affirmative defense. Subsection (3) recognized that if they had neither, they would have no protection under the statutory structure.

ESSSB 5073 also established the authority of cities to regulate medical cannabis uses, and specifically limited the ability of cities to prohibit dispensaries. Section 1102 of ESSSB 5073, now codified at RCW 69.51A.140, speaks to the authority of cities to regulate the production, processing, or dispensing of cannabis and provides:

Cities and towns may adopt and enforce any of the following pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction: Zoning requirements, business licensing requirements, health and safety requirements, and business taxes. Nothing in 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.

RCW 69.51A.140.

In summary, the Legislature passed a bill that retained the affirmative defense for the production, processing, distribution, and possession of cannabis. It also created a system in which people could produce, process, distribute, and possess cannabis without threat of arrest or prosecution, but only if they were registered with the state registry established by the Departments of Health and Agriculture pursuant to Section 901. In addition, qualified patients could participate in collective gardens and would be able to do so legally if they were registered with the state registry, or illegally but with an affirmative defense if they were not registered. ESSSB 5073 also affirmed city authority to zone for medical cannabis uses.

ESSSB 5073 intended to establish "legalization with registration." There was never any legislative intent to simply legalize cannabis without any associated registration requirement or state oversight, and there was specific affirmation that cities could regulate medical cannabis uses through the zoning code.

#### 4. The Governor's Veto

Prior to signing ESSSB 5073, the Governor received a stern warning from the federal government. On April 14, 2011, Washington's United States Attorneys, Jenny Durkan and Michael Ormsby, speaking on behalf of the United States Department of Justice, wrote:

The Washington legislative proposals will create a licensing scheme that permits large-scale marijuana cultivation and distribution. This would authorize conduct contrary to federal law and thus, would undermine the federal government's efforts to regulate the possession, manufacturing, and trafficking of controlled substances. Accordingly, the Department could consider civil and criminal legal remedies regarding those who set up marijuana growing facilities and dispensaries as they will be doing so in violation of federal law. Others who knowingly facilitate the action of the licensees, including property owners, landlords, and financiers should also know that their conduct violates federal law. In addition, state employees who conducted activities mandated by the Washington legislative proposals would not be immune from liability under the CSA.

(CP 290-292).<sup>5</sup> Citing the warnings that state workers who were required to regulate businesses that produce, process, or dispense cannabis would not be immune from federal prosecution, the Governor vetoed 36 of the 58 sections of ESSSB 5073, including, most importantly, the state registry

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<sup>5</sup> On February 2, 2012, in a letter to the Clark County Commissioners, the Department of Justice affirmed the position expressed in its April 14, 2011, letter to the Governor, and wrote that its position regarding liability of state workers under the CSA would apply with equal force to county employees operating under a county ordinance regulating medical marijuana. (CP 294-295).

system. The Governor left intact ESSSB 5073, Sections 401 & 402 (now codified in RCW 69.51A.040 - .043), which collectively maintain the affirmative defense. She also left intact the provision for collective gardens found in ESSSB 5073, Section 403 (now codified in RCW 69.51A.085). Finally, she left intact city authority to zone for medical cannabis uses (discussed below).

**5. Growing Cannabis, Either Personally or by Participating in a Collective Garden, Remains Illegal Under Washington's Medical Cannabis Act**

Section 401 of ESSSB 5073 (RCW 69.51A.040) is the only section of the MCA that establishes the conditions that must be met for medical cannabis activity to be deemed legal. Pursuant to this statute, a condition of legality was registration in the state registry. While RCW 69.51A.040 survived the Governor's veto, it was retained solely because it established many of the conditions that a qualifying patient or designated provider must meet in order to assert the affirmative defense found in RCW 69.51A.043. For example, RCW 69.51A.040 (1) sets forth the maximum quantity of cannabis that may be grown or possessed in order to qualify for the affirmative defense. This section is incorporated by reference in the affirmative defense statute, RCW 69.51A.043, in subsection (1)(b). Thus, the affirmative defense found in RCW 69.51A.043 could not exist without RCW 69.51A.040.

When reviewing these two sections together then, a person may not lawfully manufacture, deliver, or possess cannabis under RCW 69.51A.040 because it is impossible to meet the registration requirement given the gubernatorial veto. However, under RCW 69.51A.043, a qualifying patient who possesses “no more cannabis than the limits set forth in RCW 69.51A.040” (15 cannabis plants, and 24 ounces of useable cannabis) may have an affirmative defense to criminal charges.

The collective garden section, now found in RCW 69.51A.085, was also retained. However, when read in conjunction with RCWs 69.51A.040 and .043, those participating in collective gardens only have an affirmative defense to criminal charges, because there is no way for a qualifying patient who participates in the collective garden to register with state.

The Appellants ask this court to read RCW 69.51A.085 in isolation, completely independent of the registration requirement in RCW 69.51A.040. The Appellants argue that the language of RCW 69.51A.085 which states, “Qualifying patients may create and participate in collective gardens . . . .” provides legal authority to grow cannabis without the threat of criminal charges completely independent of the registration requirement that was intended by RCW 69.51A.040 and its reference to Section 901 of ESSSB 5073.

This interpretation would not be consistent with the rules of statutory interpretation adopted by the Court. The rules of statutory interpretation were most succinctly stated in *Whatcom County v. Bellingham*, 128 Wn.2d 537,546, 909 P.2d 1303 (1996), which provides:

In interpreting a statute, we do not construe a statute that is unambiguous. *Food Servs. of Am. v. Royal Heights, Inc.*, 123 Wn.2d 779, 784-85, 871 P.2d 590 (1994). If the statute is ambiguous, the courts must construe the statute so as to effectuate the legislative intent. In so doing, we avoid a literal reading if it would result in unlikely, absurd or strained consequences. *State v. Elgin*, 118 Wn.2d 551, 555, 825 P.2d 314 (1992). The purpose of an enactment should prevail over express but inept wording. *Id.*; *State ex rel. Royal v. Board of Yakima County Comm'rs*, 123 Wn.2d 451, 462, 869 P.2d 56 (1994). The court must give effect to legislative intent determined "within the context of the entire statute." *Elgin*, 118 Wn.2d at 556; *State ex rel. Royal*, 123 Wn.2d at 459. Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous. *Stone v. Chelan County Sheriff's Dep't*, 110 Wn.2d 806, 810, 756 P.2d 736 (1988); *Tommy P. v. Board of County Comm'rs*, 97 Wn.2d 385, 391, 645 P.2d 697 (1982). The meaning of a particular word in a statute "is not gleaned from that word alone, because our purpose is to ascertain legislative intent of the statute as a whole." *State v. Krall*, 125 Wn.2d 146, 148, 881 P.2d 1040 (1994).

*Id.*, 128 Wn.2d at 546.

The interpretation urged by the Appellants ignores the obvious legislative intent to create a system of legalization with registration. Not only would this interpretation require the Court to ignore the attempt by the Legislature to create a detailed registration system, it would lead to

two absurd results. The first absurdity is that while it would be illegal for a qualifying patient to grow medical cannabis in the privacy of her own home, it would be legal for her to do so in a collective garden setting. This is so because, without question, based on both RCWs 69.51A.040 and .043, one person alone cannot legally grow cannabis for personal use.

Second, the collective garden statute states:

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

RCW 69.51A.085(1), *emphasis added*. The statute speaks to the amount of useable cannabis that the *collective garden* may maintain, but it does not speak to personal possession of cannabis by the qualifying patients of the collective garden. As a result, under the Appellants' strained interpretation of the statutory structure of the MCA, the collective garden could possess cannabis legally, but the individual qualifying patients participating in the collective, who would be unable to register, could not.

When interpreting statutes, the Court must not render any provision meaningless, or in a manner that creates an absurd or strained result. *Pierce County v. State*, 144 Wn. App. 783, 852, 185 P.3d 594 (2008). The interpretation offered by the Appellants would do both. To agree with the Appellants would require a tortured interpretation of the

law such that a qualifying patient could not personally grow medical cannabis, but could grow medical cannabis by participating in a collective, and regardless, could not legally possess what she grew.

In addition, the adoption of the argument that the collective garden statute provides an independent basis to legally grow cannabis would require the Court to ignore subsection (3) of RCW 69.51A.085, which provides:

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

RCW 69.51A.085(3). This subsection demonstrates that the protections of the MCA were provided in other sections of ESSSB 5073, namely RCWs 69.51A.040 and .043. If it were true that RCW 69.51A.085 provided a lawful way for a qualifying patient to produce cannabis independent of the registry requirement, there would be no need to refer to the “protections of this chapter.” The Appellant’s interpretation of the collective garden statute would render the section superfluous, and would be contrary to the rules of statutory construction.

The sole statute that establishes the conditions that must be met to produce, process, or possess medical cannabis activity is RCW 69.51A.040. This statute applies to all medical cannabis activity, and there is no exception to the registry requirement for collective gardens. A

qualifying patient who participates in the collective garden cannot register, and thus she cannot legally produce, process, or possess cannabis. The qualifying patient, therefore, may only have an affirmative defense to criminal charges as provided in RCW 69.51A.043.

The Appellants argue that the severability statute contained within the MCA should have some operative effect in relation to the Governor's veto. The severability section is set forth in RCW 69.51A.903, which provides:

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

RCW 69.51A.903. The Appellants' argument is misplaced. The Governor's veto does not implicate RCW 69.51A.903. First, this section was not operative until the Governor signed ESSSB 5073 into law, and her veto occurred prior to signing the act into law. Thus, her veto could not have been affected by this provision. More importantly, the Governor does not have the authority to hold "invalid" any provision of the act. Clearly, that authority lies with the Court. Despite the desire of the Appellants to apply the severability clause in this case, the Governor's veto was part of the legislation-making process, and therefore is

inapplicable to this analysis. In the event this Court holds any portion of the MCA invalid as a result of this appeal, only then will there be a need to consider the severability clause set forth in RCW 69.51A.903.

The Appellants also argue that RCW 69.51A.025 prohibits the City from enacting any provision prohibiting collective gardens. This argument is misplaced as well. First, the Appellants blatantly ignore the fact that this section only refers to the provisions and rules created to implement Chapter 69.51A RCW. It does not speak in any manner to regulations established by a City. Second, ESSSB 5073 would have required commercial producers, processors, and dispensers to be licensed by the state. (see for example ESSSB 5073, Sections 606, 608, and 702). State rules would have been required to implement the licensing requirements. It is clear that this section was intended to ensure that as long as a qualifying patient complied with RCW 69.51A.040, which by its terms required registration with the state registry, the statutes and rules developed by the state could not take away the qualifying patient's rights under Chapter 69.51A RCW. RCW 69.51A.025 has nothing to do with the City's ability to zone for medical cannabis uses, which is permitted by RCW 69.51A.140.

The Appellants rely on the Governor's veto message in support of their position. Her veto message provides, "Qualifying patients or their

designated providers may grow cannabis for the patient's use or participate in a collective garden without fear of state law criminal prosecutions." Governor's Explanation of Partial Veto, Laws of 2011, Ch. 181 (April 29, 2011). However, it is well settled, that a governor may not affirmatively legislate on a subject. *Tacoma v. State Tax Com*, 177 Wash. 604, 608, 33 P.2d 899 (1934); *Cascade Tel. Co. v. Tax Com. of Wash.*, 176 Wash. 616, 618, 30 P.2d 976 (1934). The Governor's veto message is nothing more than an expression of her opinion regarding her interpretation of the effect of ESSSB 5073. In approving or partially disapproving legislation, it is within the governor's prerogative to issue a statement expressing an opinion as to how the legislation should be interpreted. *State Grange v. Locke*, 153 Wn.2d 475, 490, 105 P.3d 9 (2005). A court may look to such a statement as an element of legislative history when interpreting the legislation. *Id.*<sup>6</sup> However, such a statement cannot be interpreted to constitute a rewrite or a redraft of the legislation, as to do so would exceed the Governor's veto power.

Without question, as a result of the Governor's veto, qualifying patients may not lawfully grow cannabis for the patient's use, as according

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<sup>6</sup> When the governor exercises veto power over portions of legislation, the governor "acts as part of the Legislature," and therefore, an analysis of such a bill should "consider gubernatorial intent as well." *Maples v. Maples*, 78 Wn. App. 696, 702, 899 P.2d 1 (1995) (citing *State ex rel. Royal v. Yakima County Comm'rs*, 123 Wn.2d 451, 462-63, 869 P.2d 56 (1994)).

to the clear terms of RCWs 69.51A.040 and .043, they only have an affirmative defense to criminal charges. The same holds true for collective gardens. Any other interpretation would have the result of giving the Governor's veto message the force of legislation. This, the Court cannot do. Thus, despite the errant opinion expressed by the Governor in her veto message, the effect of her veto was to eliminate any possibility of a legal way for a qualifying patient to produce or process cannabis. To rule that her veto somehow now grants a person a right never intended by the Legislature would be to grant the Governor legislative authority.

#### **6. Summary of Law Relating to Medical Cannabis**

While the Legislature attempted to create a system of legalization with registration, as a result of the Governor's veto, the MCA provides only an affirmative defense to criminal charges for those who otherwise satisfy the conditions set forth in the MCA. It remains illegal to manufacture, deliver, or possess cannabis under the MCA, even when participating in collective gardens, and it continues to be illegal to manufacture, deliver, or possess cannabis under federal law.<sup>7</sup>

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<sup>7</sup> During the pendency of this appeal, Washington voters passed Initiative 502. (Appendix D). I-502 put into place a detailed licensing, regulatory, and tax scheme to allow for the production, processing, and regulation of cannabis for recreational use. The law creates a detailed structure for state oversight, through the Liquor Control Board, that controls everything from licensing, producing, testing, packaging, labeling, health controls, and health warnings to advertizing, state inspections of cannabis businesses, and the location of cannabis businesses. I-502 provides that in the event those in the business

**C. THE CITY OF KENT HAS THE AUTHORITY TO ZONE FOR AND PROHIBIT MEDICAL CANNABIS COLLECTIVE GARDENS**

The City has the exclusive authority to establish zoning regulations, which, unless prohibited by the state or deemed unconstitutional, includes the authority to prohibit uses. In this case, the City has the authority to prohibit uses related to medical cannabis. While the Legislature may limit a city's authority to zone, the Legislature has not done so in relation to medical cannabis.

**1. The City has the Authority to Prohibit Medical Cannabis Uses.**

The City is a non-charter code city formed pursuant to Title 35A RCW. KCC 1.01.120. As a result, the City enjoys the broadest of powers available to a city in Washington. As set forth in RCW 35A.11.050, entitled, "Statement of purpose and policy":

The general grant of municipal power conferred by this chapter and this title on legislative bodies of noncharter code cities . . . is intended to confer the greatest power of local self-government consistent with the Constitution of

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of cannabis are properly licensed by the Liquor Control Board, and are in compliance with the provisions of I-502, they are not committing a criminal offense. However, the regulations for the licensing of cannabis businesses are not in effect as of yet (the Liquor Control Board has until December 1, 2013, to establish the regulations). As a result, one may possess an ounce of cannabis or less without fear of state criminal charges, yet, it remains unlawful for a person to grow cannabis or take delivery of cannabis.

It is valuable to note that which I-502 does not do in relation to medical cannabis. I-502 does not mention medical cannabis. It does not legitimize the production of cannabis through medical cannabis collective gardens. I-502 does not legalize in any manner the transfer of medical cannabis from one collective garden participant to another. It is no more lawful for one to participate in a medical cannabis collective garden now than it was prior to I-502.

this state and shall be construed liberally in favor of such cities.

RCW 35A.11.050.

Pursuant to RCW 35A.11.020, the City “may adopt and enforce ordinances of all kinds relating to and regulating its local or municipal affairs and appropriate to the good government of the city . . . .” and “shall have all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law.” RCW 35A.11.020. In addition, the City “shall have any authority ever given to any class of municipality or to all municipalities of this state . . . .” *Id.* When there is any doubt regarding its authority, such doubt must be resolved “liberally in favor” of the City. (see RCW 35A.11.050).

Authority to zone rests exclusively with the City. RCW 35A.63.100 provides the City with the authority to divide the area within its boundaries into appropriate zones within which specific standards, requirements, and conditions may be provided for regulating the use of public and private land and buildings. This authority is consistent with the City’ general police powers.

Pursuant to Article XI, Section 11 of the Washington Constitution, the City may “make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.”

Const., art. XI, § 11. Zoning is an exercise of police power that regulates the use of property. *First Covenant Church of Seattle v. City of Seattle*, 120 Wn.2d 203, 222, 840 P.2d 174 (1992). It is well established that zoning ordinances are constitutional in principle as a valid exercise of this police power. *Open Door Baptist Church v. Clark County*, 140 Wn.2d 143, 150, 995 P.2d 33 (2000) (internal cites omitted). Moreover, the Washington Supreme Court has held repeatedly that the regulation of cannabis is a valid exercise of the government's police powers. *Seeley v. State*, 132 Wn.2d 776, 799, 940 P.2d 604 (1997); citing *State v. Smith*, 93 Wn.2d 329, 339, 610 P.2d 869 (1980). See also *State ex rel. Hendrix v. Waters*, 89 Wn. App. 921, 927, 951 P.2d 317 (1998). It follows that zoning for uses that involve cannabis constitutes a valid exercise of the City's police power.

It is evident, pursuant to Title 35A RCW and Article XI, Section 11 of the Washington Constitution, that the power to zone rests with the City unless that power is limited by the Legislature through a specific statute, or when its exercise of authority directly conflicts with state law. While the Legislature has chosen to limit the zoning authority of cities in the past, it has chosen not to in this case, and in fact, has affirmed the authority of the City to zone for medical cannabis uses by its adoption of RCW 69.51A.140.

**2. RCW 69.51A.140 Affirms the City's Authority to Zone for Medical Cannabis Uses.**

The MCA provides that cities are specifically authorized to establish and enforce local zoning requirements surrounding medical cannabis. RCW 69.51A.140, which speaks to the authority of cities to regulate the production, processing, or dispensing of cannabis, provides:

Cities and towns may adopt and enforce any of the following pertaining to the production, processing, or dispensing of cannabis or cannabis products within their jurisdiction: Zoning requirements, business licensing requirements, health and safety requirements, and business taxes. Nothing in 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.

RCW 69.51A.140. The first full sentence of this statute provides the explicit authority of the City to zone for medical cannabis uses. By definition, a collective garden is nothing more than a mechanism designed for the production and processing of cannabis. The collective garden statute provides:

For the 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 . . . .

RCW 69.51A.085(2) (*emphasis added*). Read together, these statutes clearly provide that cities may adopt and enforce zoning requirements relating to the production and processing of cannabis through collective gardens.

The Legislature limited the ability to prohibit medical cannabis uses only in regards to dispensaries. Certainly, if the Legislature wanted to limit the authority of the City in relation to collective gardens, it could have. Limiting the City's zoning authority, as it did with dispensaries, is nothing new to the Legislature. It has taken action similar in the past, including:

- RCW 36.70A.200(5) - No city development regulation may preclude the siting of essential public facilities.
- RCW 35A.63.215(1) - City development regulation may not prohibit use of a residential dwelling, located in an area zoned for residential or commercial use, as a family day-care provider's home facility.
- RCW 70.128.140 – Adult family homes are considered a permitted use in all areas zoned for residential or commercial purposes including areas zoned for single-family dwellings.

Here, the Legislature chose not to limit the City's police power and statutory authority under RCW 35A.63.100 to prohibit collective gardens. Thus, the City's authority in this regard is unrestrained by statute.

In addition, the fact that the Legislature specifically chose to limit the ability of a city to prohibit dispensaries, but did not impose this limitation with regards to producers and processors (collective gardens), demonstrates the intent of the Legislature to affirm the ability of cities to prohibit them. Although the sections of ESSSB 5073 that established licensed dispensers were vetoed, the reference to dispensers in RCW 69.51A.140 is useful in divining legislative intent. "Under the statutory canon *expressio unius est exclusio alterius*, the express inclusion in a statute of the situations in which it applies implies that other situations are intentionally omitted." *In re Det. of Strand*, 167 Wn.2d 180, 217 P.3d 1159 (2009) (citing *State v. Delgado*, 148 Wn.2d 723, 729, 63 P.3d 792 (2003)). Upon applying this canon to RCW 69.51A.140, it is clear that while the Legislature intended to restrict the zoning powers of cities in regards to dispensaries, it intended that cities have the authority to prohibit collective gardens. The ability of the City to zone collective gardens is unfettered.

The effect of the Governor's partial veto of ESSSB 5073 does not support a contrary reading of RCW 69.51A.140. The Governor's intent is expressed in her veto message, which provides:

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

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

Governor's Explanation of Partial Veto, Laws of 2011, Ch. 181 (April 29, 2011). The Governor's statement demonstrates that her intent was to retain the authority of municipalities to zone for medical cannabis uses, yet ensure that dispensers could not rely on vestigial language to argue that cities must allow their establishment.

In summary, it is clear that it was the intent of the Legislature that cities retain their statutory and police power authority to regulate medical cannabis through zoning controls. While the Legislature could have

limited the authority of the City to prohibit the production and processing of cannabis through collective gardens as it did with dispensaries, it specifically chose not to. Moreover, the fact that the Legislature forbade cities from prohibiting dispensaries, but not collective gardens, demonstrates the Legislature's intent to allow cities to prohibit collective gardens.

**D. THE CITY'S ORDINANCE IS NOT PREEMPTED BY THE MEDICAL CANNABIS ACT**

Appellants argue that the City's zoning ordinance prohibiting collective gardens is unconstitutional because it conflicts with the MCA. It is clear, however, that the MCA does not occupy the field of zoning for medical cannabis uses to the exclusion of the City, and that the City's ordinance is consistent with state law, and not preempted.

As a land use regulation, the City's zoning ordinance is a valid exercise of the constitutional authority established by Article XI, Section 11 of the Washington Constitution, the City's zoning authority pursuant to RCW 51A.63.100, and the specific legislative authority provided in RCW 69.51A.140. The ordinance is presumptively valid unless proven unconstitutional. *State v. Kirwin*, 165 Wn.2d 818, 825, 203 P.3d 1044 (2009). An ordinance may be found to be unconstitutional when it is preempted by state law. *Id.* A state statute preempts an ordinance on the

same subject if the statute occupies the field, leaving no room for concurrent jurisdiction, or if a conflict exists such that the statute and the ordinance may not be harmonized. *Lawson v. City of Pasco*, 168 Wn.2d 675, 679, 230 P.3d 1038 (2010); citing *Brown v. Yakima*, 116 Wn.2d 556, 559, 807 P.2d 353 (1991).

**1. The MCA Acknowledges the City's Authority to Zone Medical Cannabis Uses. Thus, the MCA Does Not Occupy the Field to the Exclusion of Cities.**

The City's ordinance would only be invalid under the theory of field preemption if the MCA contained "express legislative intent to preempt the field, or if such intent is necessarily implied." *Lawson*, 168Wn.2d at 679; *Rabon v. City of Seattle*, 135 Wn.2d 278, 287, 957 P.2d 621 (1998). Where a statute provides some measure of concurrent jurisdiction, express legislative intent to preempt the field is absent. *Rabon*, 135 Wn.2d at 290; citing *Brown*, 116 Wn.2d at 560. In *Tacoma v. Luvane*, 118 Wn.2d 826, 827 P.2d 1374 (1992), the appellant challenged Tacoma's drug loitering ordinance, arguing that it was preempted by the controlled substances act, which provides in RCW 69.50.608:

The state of Washington fully occupies and preempts the field of setting penalties for violation of the controlled substances act. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to controlled substances that are consistent with

this chapter. Such local ordinances shall have the same penalties as provided for by state law. Local laws and ordinances that are inconsistent with the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of the city, town, county, or municipality.

RCW 69.50.608. The Court determined that this language specifically contemplated municipal ordinances relating to controlled substances other than penalties. *Luvene*, 118 Wn.2d at 834. The Court stated that when the Legislature affirmatively expresses its intent to accord concurrent jurisdiction to a municipality there is no room for doubt. *Luvene*, 118 Wn.2d at 833. In this case, the MCA is devoid of any preemption language, and to the contrary, it explicitly allows cities to “adopt and enforce . . . [z]oning requirements” related to medical cannabis activities. RCW 69.51A.140. Therefore, express intent to preempt the field is absent.

In determining whether preemption is implied, “This court ‘will not interpret a statute to deprive a municipality of the power to legislate on a particular subject unless that clearly is the legislative intent.’” *HJS Dev. v. Pierce County*, 148 Wn.2d 451, 481, 61 P.3d 1141 (2003). The intent of the Legislature to preempt the field in this case cannot be necessarily implied. As noted above, the Legislature chose only to limit the authority of cities in terms of zoning regulations applicable to dispensaries. The

only implication that can be drawn from a close reading of RCW 69.51A.140 is that, except as to dispensaries, the Legislature intended that cities be permitted to exercise the complete compliment of their zoning authority under police powers and RCW 35A.63.100. In addition, the entire scheme of zoning as set forth in the myriad of state laws relating to the subject, gives zoning authority to local governments. This statutory structure, enacted by the Legislature, cannot be ignored when analyzing whether the MCA preempts the City's authority to zone, and undercuts the proposition that the Legislature intended to preempt the field. *HJS Dev.*, 148 Wn.2d at 481.

**2. The City's Zoning Ordinance Does Not Conflict With State Law.**

A local ordinance may be preempted by state law when both laws govern the same conduct, and the ordinance "directly and irreconcilably conflicts with the statute." *Lawson*, 168 Wn.2d at 682. Put in more succinct terms, an ordinance is invalid if it "permits what state law forbids or forbids what state law permits." *Id.* In determining whether an ordinance and statute stand in direct conflict, or whether the two can instead be harmonized, this Court has repeatedly stated that ambiguities are to be resolved in favor of harmonization, and that the court "will not interpret a statute to deprive a municipality of the power to legislate on a

particular subject unless that clearly is the legislative intent.” *State v. Kirwin*, 165 Wn.2d 818, 826, 203 P.3d 1044 (2009); (*citing HJS Development*, 148 Wn.2d at 480).

As discussed in detail above, when the Legislature passed ESSSB 5073, it intended to establish a system of legalization with registration. Collective gardens were offered as a mechanism to produce and process cannabis. Participation in collective gardens would have been legal only if certain criteria were met, including that all qualifying patients be registered with the state registry. There was never an intent to allow a person to lawfully participate in a collective garden without first registering with the state. If the person failed to register, the person’s conduct would be illegal under the law, and the person would only have for themselves an affirmative defense to criminal charges.

As we know, the Governor vetoed the registry sections found in ESSSB 5073, Section 901. Thus, the ability of a qualifying patient to legally participate in a collective garden has become impossible, participation in a collective garden remains a criminal act, and participants are only entitled to an affirmative defense to criminal charges if they meet certain conditions. It follows that if participation in collective gardens is not legal under state law, the City’s ordinance that prohibits collective gardens is consistent with state law, and not in conflict with state law.

Kent's zoning prohibition merely prohibits an act that is illegal under the MCA.

Even if the Court determines that collective gardens without the registry requirement are legal in the state of Washington, still, the City's prohibition against collective gardens does not conflict with state law. The *Lawson* court, when it determined that a local ordinance prohibiting recreational vehicles within mobile home parks did not conflict with state law pertaining to the same area of law, noted that while the state law regulated certain rights and duties related to recreational vehicles in mobile home parks, it was "not equivalent to an affirmative authorization of their presence . . . nor does it create a right enabling their placement." *Lawson*, 168 Wn.2d at 683. In other words, the fact that the state may regulate an activity does not mean that a city must allow it.

Similarly, although RCW 69.51A.085 creates conditions for those who wish to participate in collective gardens, nothing in the statute confers an absolute right to undertake such activities in any location of their choosing. In an analogous situation involving a local regulation of animals that was challenged on the theory of state preemption, this Court stated, "The fact that an activity may be licensed under state law does not lead to the conclusion that it must be permitted under local law." *Rabon v. City of Seattle*, 135 Wn.2d 278, 292, 957 P.2d 621 (1998).

Because Chapter 69.51A RCW does not give individuals an absolute right to establish collective gardens as a permitted land use in any location of their choosing, and instead explicitly allows for municipalities to impose zoning requirements on cannabis-related activities, the City's ordinance does not stand in direct conflict with state law.

In summary, collective gardens are not legal under state law. Rather, participants in collective gardens may avail themselves to an affirmative defense if charged with a crime relating to cannabis. As a result, the City's zoning ordinance that prohibits medical cannabis collective gardens cannot possibly conflict with state law in which the production, distribution, and possession of cannabis under the MCA remains a crime. However, even if the Court determines that it is legal to produce and process cannabis through collective gardens, this permission does not equate to a right to locate the collectives within the City, or to prevent the City from prohibiting them. Thus, the City's zoning ordinance is not in conflict with state law.

**E. A DETERMINATION THAT IT IS LEGAL TO PRODUCE AND PROCESS CANNABIS, OR THAT A CITY IS REQUIRED TO PERMIT THE PRODUCTION OR PROCESSING OF CANNABIS, WILL RESULT IN FEDERAL PREEMPTION OF THE MEDICAL CANNABIS ACT.**

A determination that state law compels the City to allow collective gardens could only be premised on a decision that it is legal to produce and process cannabis in Washington. If the Court were to make this determination, the result would be a state law at odds with and preempted by the federal Controlled Substance Act ("CSA"). This would also be true in the event the Court were to rule that the City must permit them within its boundaries.

The United States Supreme Court has held that under federal law, the production, distribution, and possession of cannabis, by virtue of its inclusion in Schedule I of the CSA, is prohibited in all circumstances, despite use that is in accordance with state laws permitting cannabis for medical purposes. *Gonzales v. Raich*, 545 U.S. 1, 28, 125 S. Ct. 2195, 162 L.Ed.2d 1 (2005). Further, because of Congress' broad power, under the Commerce Clause to regulate all activity involving cannabis, the CSA preempts all state laws with which it conflicts:

The Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail. It is beyond peradventure that federal power over commerce is 'superior to that of the States to provide for the welfare or necessities of their inhabitants,' however legitimate or dire those necessities may be.

*Id. at 29.*

As the Supreme Court noted, Congress has the power to regulate purely local activities that are part of an economic “class of activities” that have a substantial effect on interstate commerce. *Id.* at 17. Thus, as the Court held in *Raich*, cannabis produced solely for homegrown consumption is within the reach of the federal CSA through the Commerce Clause. *Id.* at 19. It follows, then, that the production and processing of cannabis at the local level through participation in collective gardens is within the reach of the federal CSA, despite any permission arguably granted by the state MCA.

This Court has acknowledged that federal preemption of state law, under the Supremacy Clause of the U.S. Constitution, Art. I, §8, cl.3, can occur in multiple ways:

Congress may preempt state law by explicitly defining the extent to which its enactments preempt laws (express preemption). Preemption may also occur where the federal government intends to exclusively occupy a field (field preemption) and where it is impossible to comply with both state and federal law (conflict preemption).

*Veit v. Burlington N. Santa Fe Corp.*, 171 Wn.2d 88, 99, 249 P.3d 6097 (2011) (citing *Campbell v. Dep't of Soc. & Health Servs.*, 150 Wn.2d 881, 897, 83 P.3d 999 (2004)). Conflict preemption is found where it is impossible to comply with both state and federal law or where state law

“stands as an obstacle to the accomplishment of the full purposes and objectives of Congress.” *McKee v. AT&T Corp.*, 164 Wn.2d 372, 387 191 P.3d 845 (2008); citing *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 248, 104 S. Ct. 615, 78 L. Ed. 2d 443 (1984).

Congress explained the scope of federal preemption of state laws in Section 21 U.S.C. § 903. This section provides:

No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any state law on the same subject matter which would otherwise be within the authority of the state, unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together.

21 U.S.C. § 903. From the terms of this section of the CSA, it is clear that Congressional intent in passing the CSA was to avoid express preemption and field preemption of state laws regarding controlled substances such as cannabis, but to preserve the possibility of conflict preemption. The question, then, is whether a state law that expressly permits the production and processing of cannabis, or requires a city to permit collective gardens within its boundaries would constitute an obstacle to the accomplishment of the purpose and objectives of the federal CSA.

In order to analyze this issue, it is important to understand the purpose behind the federal CSA. As set forth in 21 U.S.C. § 801, it was critical to Congress for there to be uniformity in the regulation of

controlled substances across the Nation, between the states, and within the states. 21 U.S.C. § 801 provides:

§ 801. Congressional findings and declarations: controlled substances. The Congress makes the following findings and declarations:

...

(2) The illegal importation, manufacture, distribution, and possession and improper use of controlled substances have a substantial and detrimental effect on the health and general welfare of the American people.

(3) A major portion of the traffic in controlled substances flows through interstate and foreign commerce. Incidents of the traffic which are not an integral part of the interstate or foreign flow, such as manufacture, local distribution, and possession, nonetheless have a substantial and direct effect upon interstate commerce because -

(A) after manufacture, many controlled substances are transported in interstate commerce,

(B) controlled substances distributed locally usually have been transported in interstate commerce immediately before their distribution, and

(C) controlled substances possessed commonly flow through interstate commerce immediately prior to such possession.

(4) Local distribution and possession of controlled substances contribute to swelling the interstate traffic in such substances.

(5) Controlled substances manufactured and distributed intrastate cannot be differentiated from controlled substances manufactured and distributed interstate. Thus, it is not feasible to distinguish, in terms of controls, between controlled substances manufactured and distributed interstate and controlled substances manufactured and distributed intrastate.

(6) Federal control of the intrastate incidents of the traffic in controlled substances is essential to the effective control of the interstate incidents of such traffic. . . .

21 U.S.C. § 801.

The Washington Supreme Court has recognized that a major purpose of the federal CSA was to achieve uniformity in the regulation of controlled substances and the importance of uniformity between Washington's Controlled Substances Act and the federal CSA. *Seeley v. State*, 132 Wn.2d 776, 790, 940 P.2d 604 (1997). The Court in *Seeley* stated:

[T]he substantial similarities between RCW 69.50 and the federal controlled substance law indicate that Washington's Uniform Controlled Substances Act is intended to be part of a uniform policy to control illegal drugs. See *State v. McFadden*, 63 Wn. App. 441, 447, 820 P. 2d 53 (1991), review denied, 119 Wash. 2d 1002, 832 P.2d 487 (1992) ("adoption by the Washington State Legislature of a uniform narcotics control statute substantially identical to the federal legislation is a clear statement that the matter is not one of special local concern but one as to which national and uniform policies are desirable"). The Uniform Controlled Substances Act has been adopted in some form by all 50 states, all of which place marijuana on schedule I. See Uniform Controlled Substances Act, 9 U.L.A. prefatory note at 2 (1988).

The Prefatory Note for the Uniform Controlled Substances Act summarizes the important interest in maintaining the integrity of uniform state and parallel federal law.

[The] Uniform [Controlled Substances] Act was drafted to achieve uniformity between the laws of the several States and those of the Federal government. It has been designed to complete the new Federal Narcotic dangerous drug legislation and provide an interlocking trellis of Federal and State law to enable government *at all levels* to control more effectively the drug abuse problem. . . . Much of [the] major increase in drug use and abuse is attributable to the

increased mobility of our citizens . . . . It becomes critical to approach . . . this problem at the State and local level on a uniform basis. *Id.* It is apparent that there is a need for national uniformity in the area of controlled substance regulation and that Washington's Uniform Controlled Substances Act was intended to be part of a national scheme.

*Seeley*, 132 Wn.2d at 790 – 791.

With the clear purpose of uniformity between state and federal law and the need for uniformity at all levels of government in mind, it is plain to see that a determination that it is legal to produce and process cannabis in the state of Washington would constitute an obstacle to the purpose of the federal CSA. Permitting the production and processing of cannabis through participation in collective gardens would be a clear obstacle to the control of the production, distribution, and possession of cannabis that the federal CSA attempts to prevent. As a result, “legalization” of cannabis through participation in collective gardens, whether by legislative act or by a decision of this Court, would result in a conflict with the federal CSA.

A decision by the Oregon Supreme Court bears this out. The state of Oregon has a medical cannabis act much like that intended by portions of the pre-veto version of ESSSB 5073. It provides that those registered with the state are permitted to possess cannabis, and that those not registered may have an affirmative defense to criminal charges. The

Supreme Court in Oregon determined, however, that federal law preempts Oregon's law permitting cannabis possession. In *Emerald Steel Fabricators, Inc. v. Bureau of Labor & Indus.*, 348 Ore. 159, 230 P.3d 518 (2010), an employee was terminated soon after disclosing his medical use of cannabis. The employee filed a complaint with Oregon's Bureau of Labor and Industries, asserting that the employer failed to accommodate his disability pursuant to Oregon's laws against disability discrimination. The employee prevailed and the employer appealed. The Oregon Supreme Court agreed with the employer that under the law, the employee was engaged in the illegal use of a controlled substance, and thus, his termination was proper. The Court noted that a conflict between state and federal law exists either when it is impossible to comply with both state and federal law, or when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Emerald Steel Fabricators, Inc. v. Bureau of Labor & Indus.*, 348 Ore. at 175. The Oregon Supreme Court determined that because OR. Rev. Stat. § 475.306(1) specifically authorized the use of cannabis, it stood as an obstacle to the purpose of the federal CSA. The Court held that "[t]o the extent that [state law] affirmatively authorizes the use of medical cannabis, federal law preempts that subsection, leaving it 'without effect.'" *Id.* at 178.

While the legalization of the production and processing of cannabis through participation in collective gardens would clearly present an obstacle to the purpose of the federal CSA, there could be nothing more contrary to the purpose of the federal CSA than a decision by this Court that a City must allow the production and processing of cannabis within its borders. If this Court interprets state law to require that cities must allow medical cannabis collective gardens, the result will, without doubt, be a state law that constitutes an obstacle to the accomplishment of the objectives of the CSA.

The objective of the federal CSA is uniformity in the regulation of controlled substances across the nation, between the states, and within each state. This is set forth in 21 U.S.C. § 801, was recognized by the U.S. Supreme Court in *Gonzales v. Raich*, and was recognized by the Washington Supreme Court in *Seeley v. State*, where the Court stated that the Controlled Substance Act was designed to “. . . provide an interlocking trellis of federal and state law to enable government at all levels to control more effectively the drug abuse problem . . . .” *Seeley v. State*, 132 Wn.2d at 791. A determination by this Court that the City must permit the production and processing of cannabis within its borders could not possibly be squared with the objective of the federal CSA, and therefore, would result in federal preemption of state law.

In summary, a determination by this Court that the MCA either permits the production and processing of cannabis through participation in collective gardens, or that cities are required to permit collective gardens within their boundaries, would result in an obstacle to the purpose of the federal CSA. This would result in invalidation of the MCA through federal preemption.

**F. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT ENJOINED THE APPELLANTS FROM VIOLATING THE CITY'S ZONING CODE.**

A trial court's decision to grant an injunction and its decision regarding the terms of the injunction are reviewed for abuse of discretion. *Kucera v. DOT*, 140 Wn.2d 200, 209, 995 P.2d 63(2000); citing *Washington Fed'n of State Employees v. State*, 99 Wn.2d 878, 887, 665 P.2d 1337 (1983). A trial court necessarily abuses its discretion if the decision is based upon untenable grounds, or the decision is manifestly unreasonable or arbitrary. *Id.* The requirements for issuance of an injunction are well settled:

[O]ne who seeks relief by temporary or permanent injunction must show (1) that he has a clear legal or equitable right, (2) that he has a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of are either resulting in or will result in actual and substantial injury to him.

*Id.*

In the instant case, Appellants argue that in the event the City may not prohibit collective gardens, the injunction must be lifted. As demonstrated above, the City had the legal authority to prohibit collective gardens through its zoning code. In the event this Court determines that the injunction must be lifted, again, as explained above, the Court will be creating an undeniable conflict between state law and the federal CSA.

In this case, the City had a clear legal right to enact the ordinance prohibiting collective gardens. In addition, the Appellants continue to operate their collective gardens, and have expressed a desire and intent to continue to operate in the future. The failure of this Court to affirm the trial court's decision to grant the injunction will result in the inability of the City to effectively enforce its lawfully passed ordinance.

**G. MR. WORTHINGTON HAS FAILED TO ADDRESS THE TRIAL COURT'S DETERMINATION THAT HE LACKED STANDING. LACKING STANDING, MR. WORTHINGTON MAY NOT ARGUE THE INVALIDITY OF THE CITY'S ORDINANCE ON APPEAL.**

It is well settled that an individual may not maintain an action to declare an ordinance invalid unless specific, concrete damage or injury to his person or property has been or will be done. *Grant Cy. Fire Prot. Dist. V. Moses Lake*, 150 Wn.2d 791, 802, 83 P.3d 419 (2004). One who is not adversely affected by an ordinance may not question its validity. *Id.* In this

case, during summary judgment proceedings, the City challenged the standing of all litigants with the exception of Deryck Tsang. The trial court specifically ruled that John Worthington, Arthur West, Steve Sarich and CANACO failed to establish standing, and granted summary judgment in favor of the City on this grounds. (CP 558-560).

While Mr. Worthington, Arthur West, and Steve Sarich all filed appeals, only Mr. Worthington filed a brief, and even then, Mr. Worthington failed to challenge or submit briefing in regards to the trial court's determination that he lacked standing.<sup>8</sup> Having failed to argue or brief the issue, he has waived any appeal as to the standing determination. Without standing, he should not now be permitted to argue other issues on appeal, and the City requests the Court disregard his brief.

This Court must "consider those points not argued and discussed in the opening brief abandoned and not open to consideration on their merits." *Fosbre v. Washington*, 70 Wn.2d 578, 583, 424 P.2d 901 (1967). Simply put, in the event an appellant fails to provide argument or briefing, the "assignments of error are waived." *Kent v. Whitaker*, 58 Wn.2d 569, 571, 364 P.2d 556 (1961). In addition, a contention presented for the first

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<sup>8</sup> The argument set forth in this section only addresses Mr. Worthington's failure to argue or provide briefing challenging the trial court's finding that he did not have standing. While these same arguments would apply with equal force to Arthur West and Steve Sarich, they have failed to provide any briefing whatsoever, and therefore, they have waived their appeal entirely.

time in the reply brief will not receive consideration on appeal. *Fosbre*, 70 Wn.2d at 583. This rule must apply whether the appellant is appearing pro se or is represented by an attorney. An appellant appearing pro se is bound by the same rules of procedure and substantive law as his or her attorney would have been had the appellant chosen to be represented by counsel. *In re Marriage of Olson*, 69 Wn.App. 621, 626, 850 P.2d 527 (1993). Thus, the fact that Mr. Worthington failed to address the trial court's determination that he did not have standing to challenge the City's ordinance operates to preclude him from challenging the ordinance on appeal.

Without waiving the City's position on this matter, even if the Court is inclined to consider the matter of standing, it is clear that Mr. Worthington did not have standing to challenge the City's ordinance in the first place.<sup>9</sup> Standing must be established by plaintiffs in order to bring both an action pursuant to the Uniform Declaratory Judgment Act (UDJA), and a Constitutional challenge. Constitutional standing requirements tend to overlap the requirements for justiciability under the UDJA. *American Legion Post No. 149 v. Dept. of Health*, 164 Wn.2d 570, 593, 192 P.3d 306 (2008); citing *Amalgamated Transit*, 142 Wn.2d 183,

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<sup>9</sup> The City's argument and briefing regarding standing that follows should not be interpreted by the Court as a waiver of the City's argument that, due to his failure to brief the issue, Mr. Worthington is not in a position to argue that he has standing in the first place.

203, 11 P.3d 762 (2000). The doctrine of standing prohibits a litigant from asserting another's legal right. *West v. Thurston County*, 144 Wn. App. 573, 578, 183 P.3d 346 (2008); citing *Miller v. U.S. Bank of Wash., NA*, 72 Wn. App. 416, 424, 865 P.2d 536 (1994). Standing is a jurisdictional issue. A court has no jurisdiction to hear a suit with regards to a litigant without standing. *Branson v. Port of Seattle*, 152 Wn.2d 862, 875, 101 P.3d 67 (2004); citing, *High Tide Seafoods v. State*, 106 Wn.2d 695, 702, 725 P.2d 411 (1986) ("If a plaintiff lacks standing to bring a suit, courts lack jurisdiction to consider it").

In order to establish standing, a party must first establish that he is within the "zone of interests to be protected or regulated by the statute" in question. *Am. Legion Post No. 149 v. Dep't of Health*, 164 Wn.2d 570, 593, 192 P.3d 306 (2008). Second, the party must have suffered an "injury in fact." *Id.*, 164 Wn.2d at 594. See also *Dean v. Lehman*, 143 Wn.2d 12, 18 P.3d 523 (2001) (The general rule is that "one who is not adversely affected by a statute may not question its validity" citing *Haberman v. Wash. Pub. Power Supply Sys.*, 109 Wn.2d 107, 138, 744 P.2d 1032 (1987)); *State v. Rowe*, 60 Wn.2d 797, 799, 376 P.2d 446 (1962) ("[o]ne who challenges the constitutionality of a statute must claim infringement of an interest particular and personal to himself, as distinguished from a cause of dissatisfaction with the general framework of the statute.").

Mr. Worthington's lack of standing in this case presents facts similar to those in *Warth v. Seldin*, 422 U.S. 490, 498-99, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975). In *Warth*, a non-profit organization called Metro-Act, Inc., which was located in Rochetser, NY, as well as eight citizens of Rochester, brought an action for declaratory judgment to invalidate a zoning ordinance in an adjacent municipality called Penfield, asserting that the ordinance excluded persons of low or moderate income from living in the town of Penfield in violation of the Constitution. The Court held:

[A] plaintiff who seeks to challenge exclusionary zoning practices must allege specific, concrete facts demonstrating that the challenged practices *harm him*, and that *he personally* would benefit in a tangible way from the court's intervention. Absent the necessary allegations of *demonstrable, particularized injury*, there can be no confidence of "a real need to exercise the power of judicial review" or that relief can be framed "no broader than required by the precise facts to which the court's ruling would be applied." *Schlesinger v. Reservists to Stop the War*, 418 U.S., at 221-222.

*Warth v. Seldin*, 422 U.S. at 508 (emphasis added). The Court determined that none of the plaintiffs could show particularized injury and thus had no standing to challenge the zoning ordinance. The Court made this determination despite finding:

[P]etitioners . . . alleged in conclusory terms that they are among the persons excluded by respondents' actions. None of them has ever resided in Penfield; each claims at least

implicitly that he desires, or has desired, to do so. Each asserts, moreover, that he made some effort, at some time, to locate housing in Penfield that was at once within his means and adequate for his family's needs. Each claims that his efforts proved fruitless.

*Id.*, 422 U.S. at 503. Consistent with *Warth*, at least one jurisdiction has determined that a person lacks standing to challenge an ordinance by the simple fact that he is a non-citizen. In *Pichette v. City of N. Miami*, 642 So. 2d 1165 (1994), the plaintiffs filed a declaratory judgment action seeking to invalidate a zoning ordinance. The appellate court determined the plaintiffs lacked standing as they did not reside in the subject city.

Washington Courts follow the same principles as *Warth*. In *Branson v. Port of Seattle*, 152 Wn.2d 862, 101 P.3d 67 (2004), a customer of a rental car business brought an action under the UDJA against the SeaTac Airport and rental car companies after the rental companies began to pass certain Port-imposed fees on to customers. The Court determined that the customer did not have standing to bring the action under the UDJA. The Court determined that in order to have standing to seek declaratory judgment, a person must present a justiciable controversy, which it defined as:

(1) . . . an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial,

rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive.

*Branson v. Port of Seattle*, 152 Wn.2d at 877. Absent these elements, the court "steps into the prohibited area of advisory opinions." *Id.*

In summary, to establish harm under the UDJA, a party must present a justiciable controversy based on allegations of harm personal to the party that are substantial rather than speculative or abstract. *Grant Cy. Fire Prot. Dist. V. Moses Lake*, 150 Wn.2d at 802. John Worthington is a citizen of Renton. He does not reside in Kent, does not own property in Kent, and does not own or operate a business in Kent. (CP 371-379). He has never applied for a business license or paid utility fees in Kent. (CP 371-379). While he asserted that he was involved in the "process of establishing and/or joining collective gardens in the city of Kent," the trial court record is noticeably devoid of any specific, concrete facts demonstrating that Kent's ordinance harms him personally in any tangible way. As in *Warth* and *Pichette*, his relationship with Kent is far too remote and his unarticulated and unsupported claims too speculative to establish injury. And, as in *Branson*, his status as a potential customer cannot form a sufficient basis for standing.

In this case, the Court's decision to grant standing to a non-citizen such as Mr. Worthington in an action challenging the City's zoning

decisions would be an evisceration of the standing requirement altogether, for if he can sue, then any person in the world could sue simply because he wishes to obtain cannabis in the City.<sup>10</sup> The trial court determined that Mr. Worthington did not have standing to challenge the City's ordinance. That determination was not challenged by Mr. Worthington and thus was waived. Even if the Court determines the standing issue was not waived for the purposes of this appeal, it is clear that Mr. Worthington, who is not a resident of the City and had no business within the City, failed to provide any evidence of injury as a result of the City's ordinance. As a result, the trial court's determination that Mr. Worthington did not have standing to challenge that City's ordinance must be affirmed.

## V. CONCLUSION

The authority to establish zoning controls has long-resided with the city councils of non-charter code cities by way of the Washington Constitution and state statute. This authority cannot be taken away without clear legislative intent to do so. In this case, rather than take that authority away, the Legislature reaffirmed city authority to prohibit collective gardens through zoning controls.

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<sup>10</sup> Worthington has no cognizable Constitutional claim. Without a Constitutional basis for the alleged injury, the non-resident Appellant has no standing to challenge the zoning actions of the City.

# APPENDIX A

CERTIFICATION OF ENROLLMENT  
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5073

Chapter 181, Laws of 2011  
(partial veto)

62nd Legislature  
2011 Regular Session

MEDICAL CANNABIS

EFFECTIVE DATE: 07/22/11

Passed by the Senate April 21, 2011  
YEAS 27 NAYS 21

BRAD OWEN

\_\_\_\_\_  
President of the Senate

Passed by the House April 11, 2011  
YEAS 54 NAYS 43

FRANK CHOPP

\_\_\_\_\_  
Speaker of the House of Representatives

Approved April 29, 2011, 3:00 p.m., 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, which are vetoed.

CHRISTINE GREGOIRE

\_\_\_\_\_  
Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of  
the Senate of the State of  
Washington, do hereby certify that  
the attached is ENGROSSED SECOND  
SUBSTITUTE SENATE BILL 5073 as  
passed by the Senate and the House  
of Representatives on the dates  
hereon set forth.

THOMAS HOEMANN

\_\_\_\_\_  
Secretary

FILED

April 29, 2011

Secretary of State  
State of Washington



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

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

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

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

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

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

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

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

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

25 (iii) Acute or chronic glaucoma;

26 (iv) Crohn's disease; and

27 (v) Some forms of intractable pain.

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

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

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

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

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

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

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

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

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

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

1 PART II  
2 DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

10       ~~(2))~~ in compliance with the terms and conditions set forth in RCW  
11 69.51A.040.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### PART III

#### PROTECTIONS FOR HEALTH CARE PROFESSIONALS

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

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

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

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

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

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

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

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

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

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

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

3 (b) A health care professional shall not:

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

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

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

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

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

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

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

24 **PART IV**

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

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

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

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

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

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

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

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

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

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

24 ~~guardian of the qualifying patient.) The medical use of cannabis in~~  
25 ~~accordance with the terms and conditions of this chapter does not~~  
26 ~~constitute a crime and a qualifying patient or designated provider in~~  
27 ~~compliance with the terms and conditions of this chapter may not be~~  
28 ~~arrested, prosecuted, or subject to other criminal sanctions or civil~~  
29 ~~consequences, for possession, manufacture, or delivery of, or for~~  
30 ~~possession with intent to manufacture or deliver, cannabis under state~~  
31 ~~law, or have real or personal property seized or forfeited for~~  
32 ~~possession, manufacture, or delivery of, or for possession with intent~~  
33 ~~to manufacture or deliver, cannabis under state law, and investigating~~  
34 ~~peace officers and law enforcement agencies may not be held civilly~~  
35 ~~liable for failure to seize cannabis in this circumstance, if:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 PART V

5 LIMITATIONS ON PROTECTIONS FOR QUALIFYING  
6 PATIENTS AND DESIGNATED PROVIDERS

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

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

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

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

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

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

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

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

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

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

12 PART VI

13 LICENSED PRODUCERS AND LICENSED PROCESSORS OF CANNABIS PRODUCTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (ii) THC concentration; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1  
2 PART VII  
LICENSED DISPENSERS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (i) Update the maximum allowable number of licensed dispensers in  
10 each county; and

11 (ii) Issue approvals to operate within a county according to the  
12 random selection process.

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 PART X  
29 EVALUATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



1 (c) Be registered with the secretary of state as of May 1, 2011;  
2 (d) File a letter of intent with the department of agriculture or  
3 the department of health, as the case may be, asserting that the  
4 producer or dispenser intends to become licensed in accordance with  
5 this chapter and rules adopted by the appropriate department; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Passed by the Senate April 21, 2011.*

*Passed by the House April 11, 2011.*

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

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

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

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

"AN ACT Relating to medical use of cannabis."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

# APPENDIX B

**1.01.120 Noncharter code city classification.**

Notwithstanding anything contained in the ordinances of the city to the contrary, the city hereby adopts the classification of a noncharter code city operating under the concept of a seven (7) member city council plus a mayor form of government as set forth in Chapter 35A.12 RCW. The city shall be endowed with all the applicable rights, powers, privileges, duties, and obligations of noncharter code cities as set forth in RCW Title 35A as the same now exists, including, but not limited to, those set forth in Chapter 35A.11 RCW, and further including any and all supplements, amendments, and/or other modifications of such title hereafter.

(Ord. No. 1822, § 1. Formerly Code 1986, § 1.04.010)

**State law reference(s)** – Noncharter code city, optional municipal code, RCW 35A.01.020.

# APPENDIX C

# Ordinance No. 4036

(Amending or Repealing Ordinances)

CFN=1320 - Medical Marijuana-Cannabis

Passed 6/5/2012

Medical Cannabis Collective Garden Zoning Amend KCC Title 15

Adding New Section 15.02.074

**ORDINANCE NO. 4036**

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

**RECITALS**

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

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

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

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

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

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

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

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

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

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

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

**ORDINANCE**

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

**Sec. 15.02.074. Collective gardens.**

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

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

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

**Sec. 15.08.290. Medical cannabis collective gardens.**

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

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

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

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

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

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

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

  
SUZETTE COOKE, MAYOR

ATTEST:

Brenda Jacober  
BRENDA JACOBER, CITY CLERK



APPROVED AS TO FORM:

Tom Brubaker  
TOM BRUBAKER, CITY ATTORNEY

PASSED: 5 day of June, 2012.

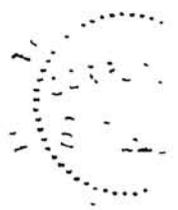
APPROVED: 5 day of June, 2012.

PUBLISHED: 8 day of June, 2012.

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

Brenda Jacober (SEAL)  
BRENDA JACOBER, CITY CLERK

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# APPENDIX D

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**BILL REQUEST - CODE REVISER'S OFFICE**

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BILL REQ. #: I-2465.1/11

ATTY/TYPIST: AI:crs

BRIEF DESCRIPTION:

Initiative Measure No. 502

filed July 8, 2011

AN ACT Relating to marijuana; amending RCW 69.50.101, 69.50.401, 69.50.4013, 69.50.412, 69.50.4121, 69.50.500, 46.20.308, 46.61.502, 46.61.504, 46.61.50571, and 46.61.506; reenacting and amending RCW 69.50.505, 46.20.3101, and 46.61.503; adding a new section to chapter 46.04 RCW; adding new sections to chapter 69.50 RCW; creating new sections; and prescribing penalties.

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

**PART I**

**INTENT**

NEW SECTION. **Sec. 1.** The people intend to stop treating adult marijuana use as a crime and try a new approach that:

(1) Allows law enforcement resources to be focused on violent and property crimes;

(2) Generates new state and local tax revenue for education, health care, research, and substance abuse prevention; and

(3) Takes marijuana out of the hands of illegal drug organizations and brings it under a tightly regulated, state-licensed system similar to that for controlling hard alcohol.

This measure authorizes the state liquor control board to regulate and tax marijuana for persons twenty-one years of age and older, and add a new threshold for driving under the influence of marijuana.

**PART II**

**DEFINITIONS**

**Sec. 2.** RCW 69.50.101 and 2010 c 177 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, definitions of terms shall be as indicated where used in this chapter:

(a) "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

(1) a practitioner authorized to prescribe (or, by the practitioner's authorized agent); or

(2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseperson, or employee of the carrier or warehouseperson.

(c) "Board" means the state board of pharmacy.

(d) "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal or state laws, or federal or board rules.

(e)(1) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II and:

(i) that has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II; or

(ii) with respect to a particular individual, that the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II.

(2) The term does not include:

(i) a controlled substance;

(ii) a substance for which there is an approved new drug application;

(iii) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the federal Food, Drug and Cosmetic Act, 21 U.S.C. Sec. 355, to the extent conduct with respect to the substance is pursuant to the exemption; or

(iv) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

(f) "Deliver" or "delivery," means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

(g) "Department" means the department of health.

(h) "Dispense" means the interpretation of a prescription or order for a controlled substance and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(i) "Dispenser" means a practitioner who dispenses.

(j) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(k) "Distributor" means a person who distributes.

(l) "Drug" means (1) a controlled substance recognized as a drug in the official United States pharmacopoeia/national formulary or the official homeopathic pharmacopoeia of the United States, or any supplement to them; (2) controlled substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals; (3) controlled substances (other than food) intended to affect the structure or any function of the body of individuals or animals; and (4) controlled substances intended for use as a component of any article specified in (1), (2), or (3) of this subsection. The term does not include devices or their components, parts, or accessories.

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

(n) "Immediate precursor" means a substance:

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

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

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

(o) "Isomer" means an optical isomer, but in RCW 69.50.101(~~(x)~~) (x)(5), 69.50.204(a) (12) and (34), and 69.50.206(b)(4), the term includes any geometrical isomer; in RCW 69.50.204(a) (8) and (42), and 69.50.210(c) the term includes any positional isomer; and in RCW 69.50.204(a)(35), 69.50.204(c), and 69.50.208(a) the term includes any positional or geometric isomer.

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

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

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

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

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

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

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

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

(v) "Marijuana-infused products" means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana-infused products" does not include useable marijuana.

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

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

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

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

(3) Poppy straw and concentrate of poppy straw.

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

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

(6) Cocaine base.

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

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

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

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

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

~~((+v+))~~ (bb) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

~~((+w+))~~ (cc) "Practitioner" means:

(1) A physician under chapter 18.71 RCW; a physician assistant under chapter 18.71A RCW; an osteopathic physician and surgeon under chapter 18.57 RCW; an osteopathic physician assistant under chapter 18.57A RCW who is licensed under RCW 18.57A.020 subject to any limitations in RCW 18.57A.040; an optometrist licensed under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010 subject to any limitations in RCW 18.53.010; a dentist under chapter 18.32 RCW; a podiatric physician and surgeon under chapter 18.22 RCW; a veterinarian under chapter 18.92 RCW; a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW; a naturopathic physician under chapter 18.36A RCW who is licensed under RCW 18.36A.030 subject to any limitations in RCW 18.36A.040; a pharmacist under chapter 18.64 RCW or a scientific investigator under this chapter, licensed, registered or otherwise permitted insofar as is consistent with those licensing laws to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of their professional practice or research in this state.

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

(3) A physician licensed to practice medicine and surgery, a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, or a veterinarian licensed to practice veterinary medicine in any state of the United States.

~~((+x+))~~ (dd) "Prescription" means an order for controlled substances issued by a practitioner duly authorized by law or rule in

the state of Washington to prescribe controlled substances within the scope of his or her professional practice for a legitimate medical purpose.

~~((+y+))~~ (ee) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

~~((+z+))~~ (ff) "Retail outlet" means a location licensed by the state liquor control board for the retail sale of useable marijuana and marijuana-infused products.

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

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

~~((+bb+))~~ (ii) "THC concentration" means percent of delta-9 tetrahydrocannabinol content per dry weight of any part of the plant *Cannabis*, or per volume or weight of marijuana product.

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

~~((+cc+))~~ (kk) "Useable marijuana" means dried marijuana flowers. The term "useable marijuana" does not include marijuana-infused products.

(ll) "Electronic communication of prescription information" means the communication of prescription information by computer, or the transmission of an exact visual image of a prescription by facsimile, or other electronic means for original prescription information or prescription refill information for a Schedule III-V controlled substance between an authorized practitioner and a pharmacy or the transfer of prescription information for a controlled substance from one pharmacy to another pharmacy.

NEW SECTION. **Sec. 3.** A new section is added to chapter 46.04 RCW to read as follows:

"THC concentration" means nanograms of delta-9 tetrahydrocannabinol per milliliter of a person's whole blood. THC concentration does not include measurement of the metabolite THC-COOH, also known as carboxy-THC.

### PART III

#### LICENSING AND REGULATION OF MARIJUANA PRODUCERS, PROCESSORS, AND RETAILERS

NEW SECTION. **Sec. 4.** (1) There shall be a marijuana producer's license to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers, regulated by the state liquor control board and subject to annual renewal. The production, possession, delivery, distribution, and sale of marijuana in accordance with the provisions of this act and the rules adopted to implement and enforce it, by a validly licensed marijuana producer, shall not be a criminal or civil offense under Washington state law. Every marijuana producer's license shall be issued in the name of the applicant, shall specify the location at which the marijuana producer intends to operate, which must be within the state of Washington, and the holder thereof shall not allow any other person to use the license. The application fee for a marijuana producer's license shall be two hundred fifty dollars. The annual fee for issuance and renewal of a marijuana producer's license shall be one thousand dollars. A separate license shall be required for each location at which a marijuana producer intends to produce marijuana.

(2) There shall be a marijuana processor's license to process, package, and label useable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers, regulated by the state liquor control board and subject to annual renewal. The processing, packaging, possession, delivery, distribution, and sale of marijuana, useable marijuana, and marijuana-infused products in accordance with the provisions of this act and the rules adopted to implement and enforce it, by a validly licensed marijuana processor, shall not be a

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

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

NEW SECTION. **Sec. 5.** Neither a licensed marijuana producer nor a licensed marijuana processor shall have a direct or indirect financial interest in a licensed marijuana retailer.

NEW SECTION. **Sec. 6.** (1) For the purpose of considering any application for a license to produce, process, or sell marijuana, or

for the renewal of a license to produce, process, or sell marijuana, the state liquor control board may cause an inspection of the premises to be made, and may inquire into all matters in connection with the construction and operation of the premises. For the purpose of reviewing any application for a license and for considering the denial, suspension, revocation, or renewal or denial thereof, of any license, the state liquor control board may consider any prior criminal conduct of the applicant including an administrative violation history record with the state liquor control board and a criminal history record information check. The state liquor control board may submit the criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The state liquor control board shall require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation. The provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to these cases. Subject to the provisions of this section, the state liquor control board may, in its discretion, grant or deny the renewal or license applied for. Denial may be based on, without limitation, the existence of chronic illegal activity documented in objections submitted pursuant to subsections (7)(c) and (9) of this section. Authority to approve an uncontested or unopposed license may be granted by the state liquor control board to any staff member the board designates in writing. Conditions for granting this authority shall be adopted by rule. No license of any kind may be issued to:

(a) A person under the age of twenty-one years;

(b) A person doing business as a sole proprietor who has not lawfully resided in the state for at least three months prior to applying to receive a license;

(c) A partnership, employee cooperative, association, nonprofit corporation, or corporation unless formed under the laws of this

state, and unless all of the members thereof are qualified to obtain a license as provided in this section; or

(d) A person whose place of business is conducted by a manager or agent, unless the manager or agent possesses the same qualifications required of the licensee.

(2)(a) The state liquor control board may, in its discretion, subject to the provisions of section 7 of this act, suspend or cancel any license; and all protections of the licensee from criminal or civil sanctions under state law for producing, processing, or selling marijuana, useable marijuana, or marijuana-infused products thereunder shall be suspended or terminated, as the case may be.

(b) The state liquor control board shall immediately suspend the license of a person who has been certified pursuant to 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 reinstatement during the suspension, reissuance of the license shall be automatic upon the state liquor control board's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

(c) The state liquor control board may request the appointment of administrative law judges under chapter 34.12 RCW who shall have power to administer oaths, issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, examine witnesses, and to receive testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, under rules and regulations the state liquor control board may adopt.

(d) Witnesses shall be allowed fees and mileage each way to and from any inquiry, investigation, hearing, or proceeding at the rate authorized by RCW 34.05.446. Fees need not be paid in advance of appearance of witnesses to testify or to produce books, records, or other legal evidence.

(e) In case of disobedience of any person to comply with the order of the state liquor control board or a subpoena issued by the state liquor control board, or any of its members, or administrative law Code Rev/AI:crs

judges, or on the refusal of a witness to testify to any matter regarding which he or she may be lawfully interrogated, the judge of the superior court of the county in which the person resides, on application of any member of the board or administrative law judge, shall compel obedience by contempt proceedings, as in the case of disobedience of the requirements of a subpoena issued from said court or a refusal to testify therein.

(3) Upon receipt of notice of the suspension or cancellation of a license, the licensee shall forthwith deliver up the license to the state liquor control board. Where the license has been suspended only, the state liquor control board shall return the license to the licensee at the expiration or termination of the period of suspension. The state liquor control board shall notify all other licensees in the county where the subject licensee has its premises of the suspension or cancellation of the license; and no other licensee or employee of another licensee may allow or cause any marijuana, useable marijuana, or marijuana-infused products to be delivered to or for any person at the premises of the subject licensee.

(4) Every license issued under this act shall be subject to all conditions and restrictions imposed by this act or by rules adopted by the state liquor control board to implement and enforce this act. All conditions and restrictions imposed by the state liquor control board in the issuance of an individual license shall be listed on the face of the individual license along with the trade name, address, and expiration date.

(5) Every licensee shall post and keep posted its license, or licenses, in a conspicuous place on the premises.

(6) No licensee shall employ any person under the age of twenty-one years.

(7)(a) Before the state liquor control board issues a new or renewed license to an applicant it shall give notice of the application to the chief executive officer of the incorporated city or town, if the application is for a license within an incorporated city or town, or to the county legislative authority, if the application is for a license outside the boundaries of incorporated cities or towns.

(b) The incorporated city or town through the official or employee selected by it, or the county legislative authority or the official or employee selected by it, shall have the right to file with the state liquor control board within twenty days after the date of transmittal of the notice for applications, or at least thirty days prior to the expiration date for renewals, written objections against the applicant or against the premises for which the new or renewed license is asked. The state liquor control board may extend the time period for submitting written objections.

(c) The written objections shall include a statement of all facts upon which the objections are based, and in case written objections are filed, the city or town or county legislative authority may request, and the state liquor control board may in its discretion hold, a hearing subject to the applicable provisions of Title 34 RCW. If the state liquor control board makes an initial decision to deny a license or renewal based on the written objections of an incorporated city or town or county legislative authority, the applicant may request a hearing subject to the applicable provisions of Title 34 RCW. If a hearing is held at the request of the applicant, state liquor control board representatives shall present and defend the state liquor control board's initial decision to deny a license or renewal.

(d) Upon the granting of a license under this title the state liquor control board shall send written notification to the chief executive officer of the incorporated city or town in which the license is granted, or to the county legislative authority if the license is granted outside the boundaries of incorporated cities or towns.

(8) The state liquor control board shall not issue a license for any premises within one thousand feet of the perimeter of the grounds of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, or library, or any game arcade admission to which is not restricted to persons aged twenty-one years or older.

(9) In determining whether to grant or deny a license or renewal of any license, the state liquor control board shall give substantial weight to objections from an incorporated city or town or county legislative authority based upon chronic illegal activity associated with the applicant's operations of the premises proposed to be licensed or the applicant's operation of any other licensed premises, or the conduct of the applicant's patrons inside or outside the licensed premises. "Chronic illegal activity" means (a) a pervasive pattern of activity that threatens the public health, safety, and welfare of the city, town, or county including, but not limited to, open container violations, assaults, disturbances, disorderly conduct, or other criminal law violations, or as documented in crime statistics, police reports, emergency medical response data, calls for service, field data, or similar records of a law enforcement agency for the city, town, county, or any other municipal corporation or any state agency; or (b) an unreasonably high number of citations for violations of RCW 46.61.502 associated with the applicant's or licensee's operation of any licensed premises as indicated by the reported statements given to law enforcement upon arrest.

NEW SECTION. **Sec. 7.** The action, order, or decision of the state liquor control board as to any denial of an application for the reissuance of a license to produce, process, or sell marijuana, or as to any revocation, suspension, or modification of any license to produce, process, or sell marijuana, shall be an adjudicative proceeding and subject to the applicable provisions of chapter 34.05 RCW.

(1) An opportunity for a hearing may be provided to an applicant for the reissuance of a license prior to the disposition of the application, and if no opportunity for a prior hearing is provided then an opportunity for a hearing to reconsider the application must be provided the applicant.

(2) An opportunity for a hearing must be provided to a licensee prior to a revocation or modification of any license and, except as

provided in subsection (4) of this section, prior to the suspension of any license.

(3) No hearing shall be required until demanded by the applicant or licensee.

(4) The state liquor control board may summarily suspend a license for a period of up to one hundred eighty days without a prior hearing if it finds that public health, safety, or welfare imperatively require emergency action, and it incorporates a finding to that effect in its order. Proceedings for revocation or other action must be promptly instituted and determined. An administrative law judge may extend the summary suspension period for up to one calendar year from the first day of the initial summary suspension in the event the proceedings for revocation or other action cannot be completed during the initial one hundred eighty-day period due to actions by the licensee. The state liquor control board's enforcement division shall complete a preliminary staff investigation of the violation before requesting an emergency suspension by the state liquor control board.

NEW SECTION.    **Sec. 8.**    (1) If the state liquor control board approves, a license to produce, process, or sell marijuana may be transferred, without charge, to the surviving spouse or domestic partner of a deceased licensee if the license was issued in the names of one or both of the parties. For the purpose of considering the qualifications of the surviving party to receive a marijuana producer's, marijuana processor's, or marijuana retailer's license, the state liquor control board may require a criminal history record information check. The state liquor control board may submit the criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The state liquor control board shall require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation.

(2) The proposed sale of more than ten percent of the outstanding or issued stock of a corporation licensed under this act, or any proposed change in the officers of such a corporation, must be reported to the state liquor control board, and state liquor control board approval must be obtained before the changes are made. A fee of seventy-five dollars will be charged for the processing of the change of stock ownership or corporate officers.

NEW SECTION. **Sec. 9.** For the purpose of carrying into effect the provisions of this act according to their true intent or of supplying any deficiency therein, the state liquor control board may adopt rules not inconsistent with the spirit of this act as are deemed necessary or advisable. Without limiting the generality of the preceding sentence, the state liquor control board is empowered to adopt rules regarding the following:

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

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

(3) Methods of producing, processing, and packaging marijuana, useable marijuana, and marijuana-infused products; conditions of sanitation; and standards of ingredients, quality, and identity of marijuana, useable marijuana, and marijuana-infused products produced, processed, packaged, or sold by licensees;

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

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

(6) Retail outlet locations and hours of operation;

(7) Labeling requirements and restrictions on advertisement of marijuana, useable marijuana, and marijuana-infused products;

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

(9) Application, reinstatement, and renewal fees for licenses issued under this act, and fees for anything done or permitted to be done under the rules adopted to implement and enforce this act;

(10) The manner of giving and serving notices required by this act or rules adopted to implement or enforce it;

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

(12) Identification, seizure, confiscation, destruction, or donation to law enforcement for training purposes of all marijuana, useable marijuana, and marijuana-infused products produced, processed, sold, or offered for sale within this state which do not conform in all respects to the standards prescribed by this act or the rules adopted to implement and enforce it: PROVIDED, That nothing in this act shall be construed as authorizing the state liquor control board to seize, confiscate, destroy, or donate to law enforcement marijuana, useable marijuana, or marijuana-infused products produced, processed, sold, offered for sale, or possessed in compliance with the Washington state medical use of cannabis act, chapter 69.51A RCW.

NEW SECTION. **Sec. 10.** The state liquor control board, subject to the provisions of this act, must adopt rules by December 1, 2013, that

establish the procedures and criteria necessary to implement the following:

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

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

(a) Population distribution;

(b) Security and safety issues; and

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

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

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

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

(6) In making the determinations required by subsections (3) through (5) of this section, the state liquor control board shall take into consideration:

(a) Security and safety issues;

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

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

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

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

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

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

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

(e) Language required by RCW 69.04.480;

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

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

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

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

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

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

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

(12) Specifying procedures for identifying, seizing, confiscating, destroying, and donating to law enforcement for training purposes all marijuana, useable marijuana, and marijuana-infused products produced, processed, packaged, labeled, or offered for sale in this state that do not conform in all respects to the standards prescribed by this act or the rules of the state liquor control board.

NEW SECTION. **Sec. 11.** (1) On a schedule determined by the state liquor control board, every licensed marijuana producer and processor must submit representative samples of marijuana, useable marijuana, or marijuana-infused products produced or processed by the licensee to an independent, third-party testing laboratory meeting the accreditation requirements established by the state liquor control board, for inspection and testing to certify compliance with standards adopted by the state liquor control board. Any sample remaining after testing shall be destroyed by the laboratory or returned to the licensee.

(2) Licensees must submit the results of this inspection and testing to the state liquor control board on a form developed by the state liquor control board.

(3) If a representative sample inspected and tested under this section does not meet the applicable standards adopted by the state liquor control board, the entire lot from which the sample was taken must be destroyed.

NEW SECTION. **Sec. 12.** Except as provided by chapter 42.52 RCW, no member of the state liquor control board and no employee of the Code Rev/AI:crs

state liquor control board shall have any interest, directly or indirectly, in the producing, processing, or sale of marijuana, useable marijuana, or marijuana-infused products, or derive any profit or remuneration from the sale of marijuana, useable marijuana, or marijuana-infused products other than the salary or wages payable to him or her in respect of his or her office or position, and shall receive no gratuity from any person in connection with the business.

NEW SECTION. **Sec. 13.** There may be licensed, in no greater number in each of the counties of the state than as the state liquor control board shall deem advisable, retail outlets established for the purpose of making useable marijuana and marijuana-infused products available for sale to adults aged twenty-one and over. Retail sale of useable marijuana and marijuana-infused products in accordance with the provisions of this act and the rules adopted to implement and enforce it, by a validly licensed marijuana retailer or retail outlet employee, shall not be a criminal or civil offense under Washington state law.

NEW SECTION. **Sec. 14.** (1) Retail outlets shall sell no products or services other than useable marijuana, marijuana-infused products, or paraphernalia intended for the storage or use of useable marijuana or marijuana-infused products.

(2) Licensed marijuana retailers shall not employ persons under twenty-one years of age or allow persons under twenty-one years of age to enter or remain on the premises of a retail outlet.

(3) Licensed marijuana retailers shall not display any signage in a window, on a door, or on the outside of the premises of a retail outlet that is visible to the general public from a public right-of-way, other than a single sign no larger than one thousand six hundred square inches identifying the retail outlet by the licensee's business or trade name.

(4) Licensed marijuana retailers shall not display useable marijuana or marijuana-infused products in a manner that is visible to the general public from a public right-of-way.

(5) No licensed marijuana retailer or employee of a retail outlet shall open or consume, or allow to be opened or consumed, any useable marijuana or marijuana-infused product on the outlet premises.

(6) The state liquor control board shall fine a licensee one thousand dollars for each violation of any subsection of this section. Fines collected under this section must be deposited into the dedicated marijuana fund created under section 26 of this act.

NEW SECTION. **Sec. 15.** The following acts, when performed by a validly licensed marijuana retailer or employee of a validly licensed retail outlet in compliance with rules adopted by the state liquor control board to implement and enforce this act, shall not constitute criminal or civil offenses under Washington state law:

(1) Purchase and receipt of useable marijuana or marijuana-infused products that have been properly packaged and labeled from a marijuana processor validly licensed under this act;

(2) Possession of quantities of useable marijuana or marijuana-infused products that do not exceed the maximum amounts established by the state liquor control board under section 10(5) of this act; and

(3) Delivery, distribution, and sale, on the premises of the retail outlet, of any combination of the following amounts of useable marijuana or marijuana-infused product to any person twenty-one years of age or older:

(a) One ounce of useable marijuana;

(b) Sixteen ounces of marijuana-infused product in solid form; or

(c) Seventy-two ounces of marijuana-infused product in liquid form.

NEW SECTION. **Sec. 16.** The following acts, when performed by a validly licensed marijuana processor or employee of a validly licensed marijuana processor in compliance with rules adopted by the state liquor control board to implement and enforce this act, shall not constitute criminal or civil offenses under Washington state law:

(1) Purchase and receipt of marijuana that has been properly packaged and labeled from a marijuana producer validly licensed under this act;

(2) Possession, processing, packaging, and labeling of quantities of marijuana, useable marijuana, and marijuana-infused products that do not exceed the maximum amounts established by the state liquor control board under section 10(4) of this act; and

(3) Delivery, distribution, and sale of useable marijuana or marijuana-infused products to a marijuana retailer validly licensed under this act.

NEW SECTION. **Sec. 17.** The following acts, when performed by a validly licensed marijuana producer or employee of a validly licensed marijuana producer in compliance with rules adopted by the state liquor control board to implement and enforce this act, shall not constitute criminal or civil offenses under Washington state law:

(1) Production or possession of quantities of marijuana that do not exceed the maximum amounts established by the state liquor control board under section 10(3) of this act; and

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

NEW SECTION. **Sec. 18.** (1) No licensed marijuana producer, processor, or retailer shall place or maintain, or cause to be placed or maintained, an advertisement of marijuana, useable marijuana, or a marijuana-infused product in any form or through any medium whatsoever:

(a) Within one thousand feet of the perimeter of a school grounds, playground, recreation center or facility, child care center, public park, or library, or any game arcade admission to which is not restricted to persons aged twenty-one years or older;

(b) On or in a public transit vehicle or public transit shelter;  
or

(c) On or in a publicly owned or operated property.

(2) Merchandising within a retail outlet is not advertising for the purposes of this section.

(3) This section does not apply to a noncommercial message.

(4) The state liquor control board shall fine a licensee one thousand dollars for each violation of subsection (1) of this section. Fines collected under this subsection must be deposited into the dedicated marijuana fund created under section 26 of this act.

**Sec. 19.** RCW 69.50.401 and 2005 c 218 s 1 are each amended to read as follows:

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

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

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

(b) Amphetamine, including its salts, isomers, and salts of isomers, or methamphetamine, including its salts, isomers, and salts of isomers, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, or (i) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (ii) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine. Three thousand dollars of the

fine may not be suspended. As collected, the first three thousand dollars of the fine must be deposited with the law enforcement agency having responsibility for cleanup of laboratories, sites, or substances used in the manufacture of the methamphetamine, including its salts, isomers, and salts of isomers. The fine moneys deposited with that law enforcement agency must be used for such clean-up cost;

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

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

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

(3) The production, manufacture, processing, packaging, delivery, distribution, sale, or possession of marijuana in compliance with the terms set forth in section 15, 16, or 17 of this act shall not constitute a violation of this section, this chapter, or any other provision of Washington state law.

**Sec. 20.** RCW 69.50.4013 and 2003 c 53 s 334 are each amended to read as follows:

(1) It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter.

(2) Except as provided in RCW 69.50.4014, any person who violates this section is guilty of a class C felony punishable under chapter 9A.20 RCW.

(3) The possession, by a person twenty-one years of age or older, of useable marijuana or marijuana-infused products in amounts that do not exceed those set forth in section 15(3) of this act is not a violation of this section, this chapter, or any other provision of Washington state law.

NEW SECTION.     **Sec. 21.**     It is unlawful to open a package containing marijuana, useable marijuana, or a marijuana-infused product, or consume marijuana, useable marijuana, or a marijuana-infused product, in view of the general public. A person who violates this section is guilty of a class 3 civil infraction under chapter 7.80 RCW.

**Sec. 22.**     RCW 69.50.412 and 2002 c 213 s 1 are each amended to read as follows:

(1) It is unlawful for any person to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance other than marijuana. Any person who violates this subsection is guilty of a misdemeanor.

(2) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance other than marijuana. Any person who violates this subsection is guilty of a misdemeanor.

(3) Any person eighteen years of age or over who violates subsection (2) of this section by delivering drug paraphernalia to a person under eighteen years of age who is at least three years his junior is guilty of a gross misdemeanor.

(4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this subsection is guilty of a misdemeanor.

(5) It is lawful for any person over the age of eighteen to possess sterile hypodermic syringes and needles for the purpose of reducing bloodborne diseases.

**Sec. 23.** RCW 69.50.4121 and 2002 c 213 s 2 are each amended to read as follows:

(1) Every person who sells or gives, or permits to be sold or given to any person any drug paraphernalia in any form commits a class I civil infraction under chapter 7.80 RCW. For purposes of this subsection, "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance other than marijuana. Drug paraphernalia includes, but is not limited to objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing (~~(marihuana,)~~) cocaine (~~(, hashish, or hashish oil)~~) into the human body, such as:

(a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(b) Water pipes;

(c) Carburetion tubes and devices;

(d) Smoking and carburetion masks;

(e) (~~Roach clips: Meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;~~

~~(f))~~ Miniature cocaine spoons and cocaine vials;

~~(+g))~~ (f) Chamber pipes;

~~(+h))~~ (g) Carburetor pipes;

~~(+i))~~ (h) Electric pipes;

~~(+j))~~ (i) Air-driven pipes;

~~((k) Chillums;~~

~~(1) Bongs;))~~ and

~~((m))~~ (j) Ice pipes or chillers.

(2) It shall be no defense to a prosecution for a violation of this section that the person acted, or was believed by the defendant to act, as agent or representative of another.

(3) Nothing in subsection (1) of this section prohibits legal distribution of injection syringe equipment through public health and community based HIV prevention programs, and pharmacies.

**Sec. 24.** RCW 69.50.500 and 1989 1st ex.s. c 9 s 437 are each amended to read as follows:

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

(b) Employees of the department of health, who are so designated by the board as enforcement officers are declared to be peace officers and shall be vested with police powers to enforce the drug laws of this state, including this chapter.

**Sec. 25.** RCW 69.50.505 and 2009 c 479 s 46 and 2009 c 364 s 1 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements which are being used with the knowledge of the owner for the manufacturing, compounding, processing, delivery, importing, or exporting of any controlled substance, or which have been acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, if such activity is not less than a class C felony and a substantial nexus exists between the commercial production or sale of the controlled substance and the real property. However:

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

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

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

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

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

(2) Real or personal property subject to forfeiture under this chapter may be seized by any board inspector or law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of real property shall include the filing of a lis pendens by the seizing agency. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later: PROVIDED, That real property seized under this section may be transferred or conveyed to

any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security interest. Seizure of personal property without process may be made if:

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

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

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

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

(3) In the event of seizure pursuant to subsection (2) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9A RCW, or a certificate of title, shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of

seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

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

(5) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this section within forty-five days of the service of notice from the seizing agency in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The notice of claim may be served by any method authorized by law or court rule including, but not limited to, service by first-class mail. Service by mail shall be deemed complete upon mailing within the forty-five day period following service of the notice of seizure in the case of personal property and within the ninety-day period following service of the notice of seizure in the case of real property. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of

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competent jurisdiction. Removal of any matter involving personal property may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of personal property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In all cases, the burden of proof is upon the law enforcement agency to establish, by a preponderance of the evidence, that the property is subject to forfeiture.

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

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

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

(a) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the provisions of this chapter;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public;

(c) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law; or

(d) Forward it to the drug enforcement administration for disposition.

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

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

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

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

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

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

(c) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the

department of licensing for valuation of motor vehicles. A seizing agency may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

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

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

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

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

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

county auditor's records in the county in which the real property is located.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### PART IV

#### DEDICATED MARIJUANA FUND

NEW SECTION. **Sec. 26.** (1) There shall be a fund, known as the dedicated marijuana fund, which shall consist of all marijuana excise taxes, license fees, penalties, forfeitures, and all other moneys, income, or revenue received by the state liquor control board from marijuana-related activities. The state treasurer shall be custodian of the fund.

(2) All moneys received by the state liquor control board or any employee thereof from marijuana-related activities shall be deposited each day in a depository approved by the state treasurer and

transferred to the state treasurer to be credited to the dedicated marijuana fund.

(3) Disbursements from the dedicated marijuana fund shall be on authorization of the state liquor control board or a duly authorized representative thereof.

NEW SECTION.     **Sec. 27.**     (1) There is levied and collected a marijuana excise tax equal to twenty-five percent of the selling price on each wholesale sale in this state of marijuana by a licensed marijuana producer to a licensed marijuana processor or another licensed marijuana producer. This tax is the obligation of the licensed marijuana producer.

(2) There is levied and collected a marijuana excise tax equal to twenty-five percent of the selling price on each wholesale sale in this state of useable marijuana or marijuana-infused product by a licensed marijuana processor to a licensed marijuana retailer. This tax is the obligation of the licensed marijuana processor.

(3) There is levied and collected a marijuana excise tax equal to twenty-five percent of the selling price on each retail sale in this state of useable marijuana and marijuana-infused products. This tax is the obligation of the licensed marijuana retailer, is separate and in addition to general state and local sales and use taxes that apply to retail sales of tangible personal property, and is part of the total retail price to which general state and local sales and use taxes apply.

(4) All revenues collected from the marijuana excise taxes imposed under subsections (1) through (3) of this section shall be deposited each day in a depository approved by the state treasurer and transferred to the state treasurer to be credited to the dedicated marijuana fund.

(5) The state liquor control board shall regularly review the tax levels established under this section and make recommendations to the legislature as appropriate regarding adjustments that would further the goal of discouraging use while undercutting illegal market prices.

NEW SECTION. **Sec. 28.** All marijuana excise taxes collected from sales of marijuana, useable marijuana, and marijuana-infused products under section 27 of this act, and the license fees, penalties, and forfeitures derived under this act from marijuana producer, marijuana processor, and marijuana retailer licenses shall every three months be disbursed by the state liquor control board as follows:

(1) One hundred twenty-five thousand dollars to the department of social and health services to design and administer the Washington state healthy youth survey, analyze the collected data, and produce reports, in collaboration with the office of the superintendent of public instruction, department of health, department of commerce, family policy council, and state liquor control board. The survey shall be conducted at least every two years and include questions regarding, but not necessarily limited to, academic achievement, age at time of substance use initiation, antisocial behavior of friends, attitudes toward antisocial behavior, attitudes toward substance use, laws and community norms regarding antisocial behavior, family conflict, family management, parental attitudes toward substance use, peer rewarding of antisocial behavior, perceived risk of substance use, and rebelliousness. Funds disbursed under this subsection may be used to expand administration of the healthy youth survey to student populations attending institutions of higher education in Washington;

(2) Fifty thousand dollars to the department of social and health services for the purpose of contracting with the Washington state institute for public policy to conduct the cost-benefit evaluation and produce the reports described in section 30 of this act. This appropriation shall end after production of the final report required by section 30 of this act;

(3) Five thousand dollars to the University of Washington alcohol and drug abuse institute for the creation, maintenance, and timely updating of web-based public education materials providing medically and scientifically accurate information about the health and safety risks posed by marijuana use;

(4) An amount not exceeding one million two hundred fifty thousand dollars to the state liquor control board as is necessary for administration of this act;

(5) Of the funds remaining after the disbursements identified in subsections (1) through (4) of this section:

(a) Fifteen percent to the department of social and health services division of behavioral health and recovery for implementation and maintenance of programs and practices aimed at the prevention or reduction of maladaptive substance use, substance-use disorder, substance abuse or substance dependence, as these terms are defined in the Diagnostic and Statistical Manual of Mental Disorders, among middle school and high school age students, whether as an explicit goal of a given program or practice or as a consistently corresponding effect of its implementation; PROVIDED, That:

(i) Of the funds disbursed under (a) of this subsection, at least eighty-five percent must be directed to evidence-based and cost-beneficial programs and practices that produce objectively measurable results; and

(ii) Up to fifteen percent of the funds disbursed under (a) of this subsection may be directed to research-based and emerging best practices or promising practices.

In deciding which programs and practices to fund, the secretary of the department of social and health services shall consult, at least annually, with the University of Washington's social development research group and the University of Washington's alcohol and drug abuse institute;

(b) Ten percent to the department of health for the creation, implementation, operation, and management of a marijuana education and public health program that contains the following:

(i) A marijuana use public health hotline that provides referrals to substance abuse treatment providers, utilizes evidence-based or research-based public health approaches to minimizing the harms associated with marijuana use, and does not solely advocate an abstinence-only approach;

(ii) A grants program for local health departments or other local community agencies that supports development and implementation of coordinated intervention strategies for the prevention and reduction of marijuana use by youth; and

(iii) Media-based education campaigns across television, internet, radio, print, and out-of-home advertising, separately targeting youth and adults, that provide medically and scientifically accurate information about the health and safety risks posed by marijuana use;

(c) Six-tenths of one percent to the University of Washington and four-tenths of one percent to Washington State University for research on the short and long-term effects of marijuana use, to include but not be limited to formal and informal methods for estimating and measuring intoxication and impairment, and for the dissemination of such research;

(d) Fifty percent to the state basic health plan trust account to be administered by the Washington basic health plan administrator and used as provided under chapter 70.47 RCW;

(e) Five percent to the Washington state health care authority to be expended exclusively through contracts with community health centers to provide primary health and dental care services, migrant health services, and maternity health care services as provided under RCW 41.05.220;

(f) Three-tenths of one percent to the office of the superintendent of public instruction to fund grants to building bridges programs under chapter 28A.175 RCW; and

(g) The remainder to the general fund.

NEW SECTION. **Sec. 29.** The department of social and health services and the department of health shall, by December 1, 2013, adopt rules not inconsistent with the spirit of this act as are deemed necessary or advisable to carry into effect the provisions of section 28 of this act.

NEW SECTION. **Sec. 30.** (1) The Washington state institute for public policy shall conduct cost-benefit evaluations of the

implementation of this act. A preliminary report, and recommendations to appropriate committees of the legislature, shall be made by September 1, 2015, and the first final report with recommendations by September 1, 2017. Subsequent reports shall be due September 1, 2022, and September 1, 2032.

(2) The evaluation of the implementation of this act shall include, but not necessarily be limited to, consideration of the following factors:

(a) Public health, to include but not be limited to:

(i) Health costs associated with marijuana use;

(ii) Health costs associated with criminal prohibition of marijuana, including lack of product safety or quality control regulations and the relegation of marijuana to the same illegal market as potentially more dangerous substances; and

(iii) The impact of increased investment in the research, evaluation, education, prevention and intervention programs, practices, and campaigns identified in section 16 of this act on rates of marijuana-related maladaptive substance use and diagnosis of marijuana-related substance-use disorder, substance abuse, or substance dependence, as these terms are defined in the Diagnostic and Statistical Manual of Mental Disorders;

(b) Public safety, to include but not be limited to:

(i) Public safety issues relating to marijuana use; and

(ii) Public safety issues relating to criminal prohibition of marijuana;

(c) Youth and adult rates of the following:

(i) Marijuana use;

(ii) Maladaptive use of marijuana; and

(iii) Diagnosis of marijuana-related substance-use disorder, substance abuse, or substance dependence, including primary, secondary, and tertiary choices of substance;

(d) Economic impacts in the private and public sectors, including but not limited to:

(i) Jobs creation;

(ii) Workplace safety;

(iii) Revenues; and

(iv) Taxes generated for state and local budgets;

(e) Criminal justice impacts, to include but not be limited to:

(i) Use of public resources like law enforcement officers and equipment, prosecuting attorneys and public defenders, judges and court staff, the Washington state patrol crime lab and identification and criminal history section, jails and prisons, and misdemeanor and felon supervision officers to enforce state criminal laws regarding marijuana; and

(ii) Short and long-term consequences of involvement in the criminal justice system for persons accused of crimes relating to marijuana, their families, and their communities; and

(f) State and local agency administrative costs and revenues.

#### PART V

#### DRIVING UNDER THE INFLUENCE OF MARIJUANA

**Sec. 31.** RCW 46.20.308 and 2008 c 282 s 2 are each amended to read as follows:

(1) Any person who operates a motor vehicle within this state is deemed to have given consent, subject to the provisions of RCW 46.61.506, to a test or tests of his or her breath or blood for the purpose of determining the alcohol concentration, THC concentration, or presence of any drug in his or her breath or blood if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug or was in violation of RCW 46.61.503. Neither consent nor this section precludes a police officer from obtaining a search warrant for a person's breath or blood.

(2) The test or tests of breath shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle within this state while under the influence of

intoxicating liquor or any drug or the person to have been driving or in actual physical control of a motor vehicle while having alcohol or THC in a concentration in violation of RCW 46.61.503 in his or her system and being under the age of twenty-one. However, in those instances where the person is incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample or where the person is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility or where the officer has reasonable grounds to believe that the person is under the influence of a drug, a blood test shall be administered by a qualified person as provided in RCW 46.61.506(5). The officer shall inform the person of his or her right to refuse the breath or blood test, and of his or her right to have additional tests administered by any qualified person of his or her choosing as provided in RCW 46.61.506. The officer shall warn the driver, in substantially the following language, that:

(a) If the driver refuses to take the test, the driver's license, permit, or privilege to drive will be revoked or denied for at least one year; and

(b) If the driver refuses to take the test, the driver's refusal to take the test may be used in a criminal trial; and

(c) If the driver submits to the test and the test is administered, the driver's license, permit, or privilege to drive will be suspended, revoked, or denied for at least ninety days if:

(i) The driver is age twenty-one or over and the test indicates either that the alcohol concentration of the driver's breath or blood is 0.08 or more((7)) or that the THC concentration of the driver's blood is 5.00 or more; or ((if))

(ii) The driver is under age twenty-one and the test indicates either that the alcohol concentration of the driver's breath or blood is 0.02 or more((7)) or that the THC concentration of the driver's blood is above 0.00; or ((if))

(iii) The driver is under age twenty-one and the driver is in violation of RCW 46.61.502 or 46.61.504; and

(d) If the driver's license, permit, or privilege to drive is suspended, revoked, or denied the driver may be eligible to immediately apply for an ignition interlock driver's license.

(3) Except as provided in this section, the test administered shall be of the breath only. If an individual is unconscious or is under arrest for the crime of vehicular homicide as provided in RCW 46.61.520 or vehicular assault as provided in RCW 46.61.522, or if an individual is under arrest for the crime of driving while under the influence of intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest results from an accident in which there has been serious bodily injury to another person, a breath or blood test may be administered without the consent of the individual so arrested.

(4) Any person who is dead, unconscious, or who is otherwise in a condition rendering him or her incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection (1) of this section and the test or tests may be administered, subject to the provisions of RCW 46.61.506, and the person shall be deemed to have received the warnings required under subsection (2) of this section.

(5) If, following his or her arrest and receipt of warnings under subsection (2) of this section, the person arrested refuses upon the request of a law enforcement officer to submit to a test or tests of his or her breath or blood, no test shall be given except as authorized under subsection (3) or (4) of this section.

(6) If, after arrest and after the other applicable conditions and requirements of this section have been satisfied, a test or tests of the person's blood or breath is administered and the test results indicate that the alcohol concentration of the person's breath or blood is 0.08 or more, or the THC concentration of the person's blood is 5.00 or more, if the person is age twenty-one or over, or that the alcohol concentration of the person's breath or blood is 0.02 or more, or the THC concentration of the person's blood is above 0.00, if the person is under the age of twenty-one, or the person refuses to submit to a test, the arresting officer or other law enforcement officer at whose direction any test has been given, or the department, where

applicable, if the arrest results in a test of the person's blood, shall:

(a) Serve notice in writing on the person on behalf of the department of its intention to suspend, revoke, or deny the person's license, permit, or privilege to drive as required by subsection (7) of this section;

(b) Serve notice in writing on the person on behalf of the department of his or her right to a hearing, specifying the steps he or she must take to obtain a hearing as provided by subsection (8) of this section and that the person waives the right to a hearing if he or she receives an ignition interlock driver's license;

(c) Mark the person's Washington state driver's license or permit to drive, if any, in a manner authorized by the department;

(d) Serve notice in writing that the marked license or permit, if any, is a temporary license that is valid for sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or until the suspension, revocation, or denial of the person's license, permit, or privilege to drive is sustained at a hearing pursuant to subsection (8) of this section, whichever occurs first. No temporary license is valid to any greater degree than the license or permit that it replaces; and

(e) Immediately notify the department of the arrest and transmit to the department within seventy-two hours, except as delayed as the result of a blood test, a sworn report or report under a declaration authorized by RCW 9A.72.085 that states:

(i) That the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or was under the age of twenty-one years and had been driving or was in actual physical control of a motor vehicle while having an alcohol or THC concentration in violation of RCW 46.61.503;

(ii) That after receipt of the warnings required by subsection (2) of this section the person refused to submit to a test of his or her

blood or breath, or a test was administered and the results indicated that the alcohol concentration of the person's breath or blood was 0.08 or more, or the THC concentration of the person's blood was 5.00 or more, if the person is age twenty-one or over, or that the alcohol concentration of the person's breath or blood was 0.02 or more, or the THC concentration of the person's blood was above 0.00, if the person is under the age of twenty-one; and

(iii) Any other information that the director may require by rule.

(7) The department of licensing, upon the receipt of a sworn report or report under a declaration authorized by RCW 9A.72.085 under subsection (6)(e) of this section, shall suspend, revoke, or deny the person's license, permit, or privilege to drive or any nonresident operating privilege, as provided in RCW 46.20.3101, such suspension, revocation, or denial to be effective beginning sixty days from the date of arrest or from the date notice has been given in the event notice is given by the department following a blood test, or when sustained at a hearing pursuant to subsection (8) of this section, whichever occurs first.

(8) A person receiving notification under subsection (6)(b) of this section may, within twenty days after the notice has been given, request in writing a formal hearing before the department. The person shall pay a fee of two hundred dollars as part of the request. If the request is mailed, it must be postmarked within twenty days after receipt of the notification. Upon timely receipt of such a request for a formal hearing, including receipt of the required two hundred dollar fee, the department shall afford the person an opportunity for a hearing. The department may waive the required two hundred dollar fee if the person is an indigent as defined in RCW 10.101.010. Except as otherwise provided in this section, the hearing is subject to and shall be scheduled and conducted in accordance with RCW 46.20.329 and 46.20.332. The hearing shall be conducted in the county of the arrest, except that all or part of the hearing may, at the discretion of the department, be conducted by telephone or other electronic means. The hearing shall be held within sixty days following the arrest or following the date notice has been given in the event notice

is given by the department following a blood test, unless otherwise agreed to by the department and the person, in which case the action by the department shall be stayed, and any valid temporary license marked under subsection (6)(c) of this section extended, if the person is otherwise eligible for licensing. For the purposes of this section, the scope of the hearing shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or any drug or had been driving or was in actual physical control of a motor vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more, or THC in his or her system in a concentration above 0.00, if the person was under the age of twenty-one, whether the person was placed under arrest, and (a) whether the person refused to submit to the test or tests upon request of the officer after having been informed that such refusal would result in the revocation of the person's license, permit, or privilege to drive, or (b) if a test or tests were administered, whether the applicable requirements of this section were satisfied before the administration of the test or tests, whether the person submitted to the test or tests, or whether a test was administered without express consent as permitted under this section, and whether the test or tests indicated that the alcohol concentration of the person's breath or blood was 0.08 or more, or the THC concentration of the person's blood was 5.00 or more, if the person was age twenty-one or over at the time of the arrest, or that the alcohol concentration of the person's breath or blood was 0.02 or more, or the THC concentration of the person's blood was above 0.00, if the person was under the age of twenty-one at the time of the arrest. The sworn report or report under a declaration authorized by RCW 9A.72.085 submitted by a law enforcement officer is prima facie evidence that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle within this state while under the influence of intoxicating liquor or drugs, or both, or the person had been driving or was in actual physical control of a motor

vehicle within this state while having alcohol in his or her system in a concentration of 0.02 or more, or THC in his or her system in a concentration above 0.00, and was under the age of twenty-one and that the officer complied with the requirements of this section.

A hearing officer shall conduct the hearing, may issue subpoenas for the attendance of witnesses and the production of documents, and shall administer oaths to witnesses. The hearing officer shall not issue a subpoena for the attendance of a witness at the request of the person unless the request is accompanied by the fee required by RCW 5.56.010 for a witness in district court. The sworn report or report under a declaration authorized by RCW 9A.72.085 of the law enforcement officer and any other evidence accompanying the report shall be admissible without further evidentiary foundation and the certifications authorized by the criminal rules for courts of limited jurisdiction shall be admissible without further evidentiary foundation. The person may be represented by counsel, may question witnesses, may present evidence, and may testify. The department shall order that the suspension, revocation, or denial either be rescinded or sustained.

(9) If the suspension, revocation, or denial is sustained after such a hearing, the person whose license, privilege, or permit is suspended, revoked, or denied has the right to file a petition in the superior court of the county of arrest to review the final order of revocation by the department in the same manner as an appeal from a decision of a court of limited jurisdiction. Notice of appeal must be filed within thirty days after the date the final order is served or the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ 1.1, or other statutes or rules referencing de novo review, the appeal shall be limited to a review of the record of the administrative hearing. The appellant must pay the costs associated with obtaining the record of the hearing before the hearing officer. The filing of the appeal does not stay the effective date of the suspension, revocation, or denial. A petition filed under this subsection must include the petitioner's grounds for requesting review. Upon granting petitioner's request for review, the court shall review the

department's final order of suspension, revocation, or denial as expeditiously as possible. The review must be limited to a determination of whether the department has committed any errors of law. The superior court shall accept those factual determinations supported by substantial evidence in the record: (a) That were expressly made by the department; or (b) that may reasonably be inferred from the final order of the department. The superior court may reverse, affirm, or modify the decision of the department or remand the case back to the department for further proceedings. The decision of the superior court must be in writing and filed in the clerk's office with the other papers in the case. The court shall state the reasons for the decision. If judicial relief is sought for a stay or other temporary remedy from the department's action, the court shall not grant such relief unless the court finds that the appellant is likely to prevail in the appeal and that without a stay the appellant will suffer irreparable injury. If the court stays the suspension, revocation, or denial it may impose conditions on such stay.

(10)(a) If a person whose driver's license, permit, or privilege to drive has been or will be suspended, revoked, or denied under subsection (7) of this section, other than as a result of a breath or blood test refusal, and who has not committed an offense for which he or she was granted a deferred prosecution under chapter 10.05 RCW, petitions a court for a deferred prosecution on criminal charges arising out of the arrest for which action has been or will be taken under subsection (7) of this section, or notifies the department of licensing of the intent to seek such a deferred prosecution, then the license suspension or revocation shall be stayed pending entry of the deferred prosecution. The stay shall not be longer than one hundred fifty days after the date charges are filed, or two years after the date of the arrest, whichever time period is shorter. If the court stays the suspension, revocation, or denial, it may impose conditions on such stay. If the person is otherwise eligible for licensing, the department shall issue a temporary license, or extend any valid temporary license marked under subsection (6) of this section, for the

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period of the stay. If a deferred prosecution treatment plan is not recommended in the report made under RCW 10.05.050, or if treatment is rejected by the court, or if the person declines to accept an offered treatment plan, or if the person violates any condition imposed by the court, then the court shall immediately direct the department to cancel the stay and any temporary marked license or extension of a temporary license issued under this subsection.

(b) A suspension, revocation, or denial imposed under this section, other than as a result of a breath or blood test refusal, shall be stayed if the person is accepted for deferred prosecution as provided in chapter 10.05 RCW for the incident upon which the suspension, revocation, or denial is based. If the deferred prosecution is terminated, the stay shall be lifted and the suspension, revocation, or denial reinstated. If the deferred prosecution is completed, the stay shall be lifted and the suspension, revocation, or denial canceled.

(c) The provisions of (b) of this subsection relating to a stay of a suspension, revocation, or denial and the cancellation of any suspension, revocation, or denial do not apply to the suspension, revocation, denial, or disqualification of a person's commercial driver's license or privilege to operate a commercial motor vehicle.

(11) When it has been finally determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this state has been suspended, revoked, or denied, the department shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he or she has a license.

**Sec. 32.** RCW 46.20.3101 and 2004 c 95 s 4 and 2004 c 68 s 3 are each reenacted and amended to read as follows:

Pursuant to RCW 46.20.308, the department shall suspend, revoke, or deny the arrested person's license, permit, or privilege to drive as follows:

(1) In the case of a person who has refused a test or tests:

(a) For a first refusal within seven years, where there has not been a previous incident within seven years that resulted in administrative action under this section, revocation or denial for one year;

(b) For a second or subsequent refusal within seven years, or for a first refusal where there has been one or more previous incidents within seven years that have resulted in administrative action under this section, revocation or denial for two years or until the person reaches age twenty-one, whichever is longer.

(2) In the case of an incident where a person has submitted to or been administered a test or tests indicating that the alcohol concentration of the person's breath or blood was 0.08 or more, or that the THC concentration of the person's blood was 5.00 or more:

(a) For a first incident within seven years, where there has not been a previous incident within seven years that resulted in administrative action under this section, suspension for ninety days;

(b) For a second or subsequent incident within seven years, revocation or denial for two years.

(3) In the case of an incident where a person under age twenty-one has submitted to or been administered a test or tests indicating that the alcohol concentration of the person's breath or blood was 0.02 or more, or that the THC concentration of the person's blood was above 0.00:

(a) For a first incident within seven years, suspension or denial for ninety days;

(b) For a second or subsequent incident within seven years, revocation or denial for one year or until the person reaches age twenty-one, whichever is longer.

(4) The department shall grant credit on a day-for-day basis for any portion of a suspension, revocation, or denial already served under this section for a suspension, revocation, or denial imposed under RCW 46.61.5055 arising out of the same incident.

**Sec. 33.** RCW 46.61.502 and 2011 c 293 s 2 are each amended to read as follows:

(1) A person is guilty of driving while under the influence of intoxicating liquor, marijuana, or any drug if the person drives a vehicle within this state:

(a) And the person has, within two hours after driving, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(b) The person has, within two hours after driving, a THC concentration of 5.00 or higher as shown by analysis of the person's blood made under RCW 46.61.506; or

(c) While the person is under the influence of or affected by intoxicating liquor, marijuana, or any drug; or

~~((e))~~ (d) While the person is under the combined influence of or affected by intoxicating liquor, marijuana, and any drug.

(2) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this state shall not constitute a defense against a charge of violating this section.

(3) (a) It is an affirmative defense to a violation of subsection (1)(a) of this section, which the defendant must prove by a preponderance of the evidence, that the defendant consumed a sufficient quantity of alcohol after the time of driving and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or more within two hours after driving. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(b) It is an affirmative defense to a violation of subsection (1)(b) of this section, which the defendant must prove by a preponderance of the evidence, that the defendant consumed a sufficient quantity of marijuana after the time of driving and before the administration of an analysis of the person's blood to cause the defendant's THC concentration to be 5.00 or more within two hours after driving. The court shall not admit evidence of this defense unless the defendant

notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(4) (a) Analyses of blood or breath samples obtained more than two hours after the alleged driving may be used as evidence that within two hours of the alleged driving, a person had an alcohol concentration of 0.08 or more in violation of subsection (1)(a) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsection (1) ~~((b) or (c))~~ (c) or (d) of this section.

(b) Analyses of blood samples obtained more than two hours after the alleged driving may be used as evidence that within two hours of the alleged driving, a person had a THC concentration of 5.00 or more in violation of subsection (1)(b) of this section, and in any case in which the analysis shows a THC concentration above 0.00 may be used as evidence that a person was under the influence of or affected by marijuana in violation of subsection (1)(c) or (d) of this section.

(5) Except as provided in subsection (6) of this section, a violation of this section is a gross misdemeanor.

(6) It is a class C felony punishable under chapter 9.94A RCW, or chapter 13.40 RCW if the person is a juvenile, if:

(a) The person has four or more prior offenses within ten years as defined in RCW 46.61.5055; or

(b) The person has ever previously been convicted of:

(i) Vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a);

(ii) Vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b);

(iii) An out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection; or

(iv) A violation of this subsection (6) or RCW 46.61.504(6).

**Sec. 34.** RCW 46.61.503 and 1998 c 213 s 4, 1998 c 207 s 5, and 1998 c 41 s 8 are each reenacted and amended to read as follows:

(1) Notwithstanding any other provision of this title, a person is guilty of driving or being in physical control of a motor vehicle after consuming alcohol or marijuana if the person operates or is in physical control of a motor vehicle within this state and the person:

(a) Is under the age of twenty-one; and

(b) Has, within two hours after operating or being in physical control of the motor vehicle, either:

(i) An alcohol concentration of at least 0.02 but less than the concentration specified in RCW 46.61.502, as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(ii) A THC concentration above 0.00 but less than the concentration specified in RCW 46.61.502, as shown by analysis of the person's blood made under RCW 46.61.506.

(2) It is an affirmative defense to a violation of subsection (1) of this section, which the defendant must prove by a preponderance of the evidence, that the defendant consumed a sufficient quantity of alcohol or marijuana after the time of driving or being in physical control and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol or THC concentration to be in violation of subsection (1) of this section within two hours after driving or being in physical control. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the earlier of: (a) Seven days prior to trial; or (b) the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(3) Analyses of blood or breath samples obtained more than two hours after the alleged driving or being in physical control may be used as evidence that within two hours of the alleged driving or being in physical control, a person had an alcohol or THC concentration in violation of subsection (1) of this section.

(4) A violation of this section is a misdemeanor.

**Sec. 35.** RCW 46.61.504 and 2011 c 293 s 3 are each amended to read as follows:

(1) A person is guilty of being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug if the person has actual physical control of a vehicle within this state:

(a) And the person has, within two hours after being in actual physical control of the vehicle, an alcohol concentration of 0.08 or higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(b) The person has, within two hours after being in actual physical control of a vehicle, a THC concentration of 5.00 or higher as shown by analysis of the person's blood made under RCW 46.61.506;  
or

(c) While the person is under the influence of or affected by intoxicating liquor or any drug; or

~~((+e))~~ (d) While the person is under the combined influence of or affected by intoxicating liquor and any drug.

(2) The fact that a person charged with a violation of this section is or has been entitled to use a drug under the laws of this state does not constitute a defense against any charge of violating this section. No person may be convicted under this section if, prior to being pursued by a law enforcement officer, the person has moved the vehicle safely off the roadway.

(3) (a) It is an affirmative defense to a violation of subsection (1)(a) of this section which the defendant must prove by a preponderance of the evidence that the defendant consumed a sufficient quantity of alcohol after the time of being in actual physical control of the vehicle and before the administration of an analysis of the person's breath or blood to cause the defendant's alcohol concentration to be 0.08 or more within two hours after being in such control. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(b) It is an affirmative defense to a violation of subsection (1)(b) of this section, which the defendant must prove by a preponderance of

the evidence, that the defendant consumed a sufficient quantity of marijuana after the time of being in actual physical control of the vehicle and before the administration of an analysis of the person's blood to cause the defendant's THC concentration to be 5.00 or more within two hours after being in control of the vehicle. The court shall not admit evidence of this defense unless the defendant notifies the prosecution prior to the omnibus or pretrial hearing in the case of the defendant's intent to assert the affirmative defense.

(4) (a) Analyses of blood or breath samples obtained more than two hours after the alleged being in actual physical control of a vehicle may be used as evidence that within two hours of the alleged being in such control, a person had an alcohol concentration of 0.08 or more in violation of subsection (1) (a) of this section, and in any case in which the analysis shows an alcohol concentration above 0.00 may be used as evidence that a person was under the influence of or affected by intoxicating liquor or any drug in violation of subsection (1) (~~(b)~~ ~~or~~) (c) or (d) of this section.

(b) Analyses of blood samples obtained more than two hours after the alleged being in actual physical control of a vehicle may be used as evidence that within two hours of the alleged being in control of the vehicle, a person had a THC concentration of 5.00 or more in violation of subsection (1) (b) of this section, and in any case in which the analysis shows a THC concentration above 0.00 may be used as evidence that a person was under the influence of or affected by marijuana in violation of subsection (1) (c) or (d) of this section.

(5) Except as provided in subsection (6) of this section, a violation of this section is a gross misdemeanor.

(6) It is a class C felony punishable under chapter 9.94A RCW, or chapter 13.40 RCW if the person is a juvenile, if:

(a) The person has four or more prior offenses within ten years as defined in RCW 46.61.5055; or

(b) The person has ever previously been convicted of:

(i) Vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1) (a);

(ii) Vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b);

(iii) An out-of-state offense comparable to the offense specified in (b)(i) or (ii) of this subsection; or

(iv) A violation of this subsection (6) or RCW 46.61.502(6).

**Sec. 36.** RCW 46.61.50571 and 2000 c 52 s 1 are each amended to read as follows:

(1) A defendant who is charged with an offense involving driving while under the influence as defined in RCW 46.61.502, driving under age twenty-one after consuming alcohol or marijuana as defined in RCW 46.61.503, or being in physical control of a vehicle while under the influence as defined in RCW 46.61.504, shall be required to appear in person before a judicial officer within one judicial day after the arrest if the defendant is served with a citation or complaint at the time of the arrest. A court may by local court rule waive the requirement for appearance within one judicial day if it provides for the appearance at the earliest practicable day following arrest and establishes the method for identifying that day in the rule.

(2) A defendant who is charged with an offense involving driving while under the influence as defined in RCW 46.61.502, driving under age twenty-one after consuming alcohol or marijuana as defined in RCW 46.61.503, or being in physical control of a vehicle while under the influence as defined in RCW 46.61.504, and who is not served with a citation or complaint at the time of the incident, shall appear in court for arraignment in person as soon as practicable, but in no event later than fourteen days after the next day on which court is in session following the issuance of the citation or the filing of the complaint or information.

(3) At the time of an appearance required by this section, the court shall determine the necessity of imposing conditions of pretrial release according to the procedures established by court rule for a preliminary appearance or an arraignment.

(4) Appearances required by this section are mandatory and may not be waived.

**Sec. 37.** RCW 46.61.506 and 2010 c 53 s 1 are each amended to read as follows:

(1) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or any drug, if the person's alcohol concentration is less than 0.08 or the person's THC concentration is less than 5.00, it is evidence that may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor or any drug.

(2)(a) The breath analysis of the person's alcohol concentration shall be based upon grams of alcohol per two hundred ten liters of breath.

(b) The blood analysis of the person's THC concentration shall be based upon nanograms per milliliter of whole blood.

(c) The foregoing provisions of this section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of intoxicating liquor or any drug.

(3) Analysis of the person's blood or breath to be considered valid under the provisions of this section or RCW 46.61.502 or 46.61.504 shall have been performed according to methods approved by the state toxicologist and by an individual possessing a valid permit issued by the state toxicologist for this purpose. The state toxicologist is directed to approve satisfactory techniques or methods, to supervise the examination of individuals to ascertain their qualifications and competence to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the state toxicologist.

(4)(a) A breath test performed by any instrument approved by the state toxicologist shall be admissible at trial or in an administrative proceeding if the prosecution or department produces prima facie evidence of the following:

(i) The person who performed the test was authorized to perform such test by the state toxicologist;

(ii) The person being tested did not vomit or have anything to eat, drink, or smoke for at least fifteen minutes prior to administration of the test;

(iii) The person being tested did not have any foreign substances, not to include dental work, fixed or removable, in his or her mouth at the beginning of the fifteen-minute observation period;

(iv) Prior to the start of the test, the temperature of any liquid simulator solution utilized as an external standard, as measured by a thermometer approved of by the state toxicologist was thirty-four degrees centigrade plus or minus 0.3 degrees centigrade;

(v) The internal standard test resulted in the message "verified";

(vi) The two breath samples agree to within plus or minus ten percent of their mean to be determined by the method approved by the state toxicologist;

(vii) The result of the test of the liquid simulator solution external standard or dry gas external standard result did lie between .072 to .088 inclusive; and

(viii) All blank tests gave results of .000.

(b) For purposes of this section, "prima facie evidence" is evidence of sufficient circumstances that would support a logical and reasonable inference of the facts sought to be proved. In assessing whether there is sufficient evidence of the foundational facts, the court or administrative tribunal is to assume the truth of the prosecution's or department's evidence and all reasonable inferences from it in a light most favorable to the prosecution or department.

(c) Nothing in this section shall be deemed to prevent the subject of the test from challenging the reliability or accuracy of the test, the reliability or functioning of the instrument, or any maintenance procedures. Such challenges, however, shall not preclude the admissibility of the test once the prosecution or department has made a prima facie showing of the requirements contained in (a) of this subsection. Instead, such challenges may be considered by the trier of fact in determining what weight to give to the test result.

(5) When a blood test is administered under the provisions of RCW 46.20.308, the withdrawal of blood for the purpose of determining its

alcoholic or drug content may be performed only by a physician, a registered nurse, a licensed practical nurse, a nursing assistant as defined in chapter 18.88A RCW, a physician assistant as defined in chapter 18.71A RCW, a first responder as defined in chapter 18.73 RCW, an emergency medical technician as defined in chapter 18.73 RCW, a health care assistant as defined in chapter 18.135 RCW, or any technician trained in withdrawing blood. This limitation shall not apply to the taking of breath specimens.

(6) The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his or her own choosing administer one or more tests in addition to any administered at the direction of a law enforcement officer. The test will be admissible if the person establishes the general acceptability of the testing technique or method. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.

(7) Upon the request of the person who shall submit to a test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or her or his or her attorney.

## PART VI

### CONSTRUCTION

NEW SECTION. **Sec. 38.** Sections 4 through 18 of this act are each added to chapter 69.50 RCW under the subchapter heading "article III - regulation of manufacture, distribution, and dispensing of controlled substances."

NEW SECTION. **Sec. 39.** Section 21 of this act is added to chapter 69.50 RCW under the subchapter heading "article IV -- offenses and penalties."

NEW SECTION. **Sec. 40.** Sections 26 through 30 of this act are each added to chapter 69.50 RCW under the subchapter heading "article V -- enforcement and administrative provisions."

NEW SECTION. **Sec. 41.** The code reviser shall prepare a bill for introduction at the next legislative session that corrects references to the sections affected by this act.

## OFFICE RECEPTIONIST, CLERK

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Monday, March 18, 2013 4:26 PM  
**To:** 'Komoto, Kim'  
**Cc:** worthingtonjw2u@hotmail.com; Arthur West (awestaa@gmail.com); steve@cannacare.org; mann@gendlermann.com  
**Subject:** RE: Respondent City of Kent's Brief - Cannabis Action v. City of Kent No. 88079-4 Appendix A

Rec'd 3-18-13

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-----Original Message-----

**From:** Komoto, Kim [<mailto:KKomoto@kentwa.gov>]  
**Sent:** Monday, March 18, 2013 4:24 PM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** [worthingtonjw2u@hotmail.com](mailto:worthingtonjw2u@hotmail.com); Arthur West ([awestaa@gmail.com](mailto:awestaa@gmail.com)); [steve@cannacare.org](mailto:steve@cannacare.org); [mann@gendlermann.com](mailto:mann@gendlermann.com)  
**Subject:** RE: Respondent City of Kent's Brief - Cannabis Action v. City of Kent No. 88079-4 Appendix A

Appendix A

-----Original Message-----

**From:** Komoto, Kim  
**Sent:** Monday, March 18, 2013 4:22 PM  
**To:** Fitzpatrick, Pat  
**Subject:** FW: Respondent City of Kent's Brief - Cannabis Action v. City of Kent No. 88079-4

-----Original Message-----

**From:** Komoto, Kim  
**Sent:** Monday, March 18, 2013 4:22 PM  
**To:** [supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)  
**Cc:** [worthingtonjw2u@hotmail.com](mailto:worthingtonjw2u@hotmail.com); Arthur West ([awestaa@gmail.com](mailto:awestaa@gmail.com)); [steve@cannacare.org](mailto:steve@cannacare.org); [mann@gendlermann.com](mailto:mann@gendlermann.com)  
**Subject:** Respondent City of Kent's Brief - Cannabis Action v. City of Kent No. 88079-4

Attached is the Respondent, City of Kent's brief. Additional emails will follow that will contain the Exhibits.

Thanks,

Kim Komoto, Legal Analyst  
Assistant to Tom Brubaker and Arthur "Pat" Fitzpatrick Public Safety Committee Secretary Law Department  
220 Fourth Avenue South, Kent, WA 98032  
Phone 253-856-5788 | Fax 253-856-6770  
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## OFFICE RECEPTIONIST, CLERK

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**Sent:** Monday, March 18, 2013 4:27 PM  
**To:** 'Komoto, Kim'  
**Cc:** Arthur West (awestaa@gmail.com); worthingtonjw2u@hotmail.com; steve@cannacare.org; mann@gendlermann.com  
**Subject:** RE: Respondent City of Kent's Brief - Cannabis Action v. City of Kent No. 88079-4 Appendix B

Rec'd 3-18-13

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**Cc:** Arthur West ([awestaa@gmail.com](mailto:awestaa@gmail.com)); [worthingtonjw2u@hotmail.com](mailto:worthingtonjw2u@hotmail.com); [steve@cannacare.org](mailto:steve@cannacare.org); [mann@gendlermann.com](mailto:mann@gendlermann.com)  
**Subject:** RE: Respondent City of Kent's Brief - Cannabis Action v. City of Kent No. 88079-4 Appendix B

Appendix B

-----Original Message-----

**From:** Komoto, Kim  
**Sent:** Monday, March 18, 2013 4:24 PM  
**To:** [supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)  
**Cc:** [worthingtonjw2u@hotmail.com](mailto:worthingtonjw2u@hotmail.com); Arthur West ([awestaa@gmail.com](mailto:awestaa@gmail.com)); [steve@cannacare.org](mailto:steve@cannacare.org); [mann@gendlermann.com](mailto:mann@gendlermann.com)  
**Subject:** RE: Respondent City of Kent's Brief - Cannabis Action v. City of Kent No. 88079-4 Appendix A

Appendix A

-----Original Message-----

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**Sent:** Monday, March 18, 2013 4:22 PM  
**To:** Fitzpatrick, Pat  
**Subject:** FW: Respondent City of Kent's Brief - Cannabis Action v. City of Kent No. 88079-4

-----Original Message-----

**From:** Komoto, Kim  
**Sent:** Monday, March 18, 2013 4:22 PM  
**To:** [supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)  
**Cc:** [worthingtonjw2u@hotmail.com](mailto:worthingtonjw2u@hotmail.com); Arthur West ([awestaa@gmail.com](mailto:awestaa@gmail.com)); [steve@cannacare.org](mailto:steve@cannacare.org); [mann@gendlermann.com](mailto:mann@gendlermann.com)  
**Subject:** Respondent City of Kent's Brief - Cannabis Action v. City of Kent No. 88079-4

Attached is the Respondent, City of Kent's brief. Additional emails will follow that will contain the Exhibits.

Thanks,

Kim Komoto, Legal Analyst

Assistant to Tom Brubaker and Arthur "Pat" Fitzpatrick Public Safety Committee Secretary Law  
Department

220 Fourth Avenue South, Kent, WA 98032

Phone 253-856-5788 | Fax 253-856-6770

[kkomoto@KentWA.gov](mailto:kkomoto@KentWA.gov)

[www.KentWA.gov](http://www.KentWA.gov)

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## OFFICE RECEPTIONIST, CLERK

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Monday, March 18, 2013 4:27 PM  
**To:** 'Komoto, Kim'  
**Cc:** 'Arthur West (awestaa@gmail.com)'; 'worthingtonjw2u@hotmail.com'; 'steve@cannacare.org'; 'mann@gendlermann.com'  
**Subject:** RE: Respondent City of Kent's Brief - Cannabis Action v. City of Kent No. 88079-4 Appendix C

Rec'd 3-18-13

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**From:** Komoto, Kim [<mailto:KKomoto@kentwa.gov>]  
**Sent:** Monday, March 18, 2013 4:25 PM  
**To:** OFFICE RECEPTIONIST, CLERK  
**Cc:** 'Arthur West ([awestaa@gmail.com](mailto:awestaa@gmail.com))'; 'worthingtonjw2u@hotmail.com'; 'steve@cannacare.org'; 'mann@gendlermann.com'  
**Subject:** RE: Respondent City of Kent's Brief - Cannabis Action v. City of Kent No. 88079-4 Appendix C

Appendix C

-----Original Message-----

**From:** Komoto, Kim  
**Sent:** Monday, March 18, 2013 4:24 PM  
**To:** [supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)  
**Cc:** Arthur West ([awestaa@gmail.com](mailto:awestaa@gmail.com)); [worthingtonjw2u@hotmail.com](mailto:worthingtonjw2u@hotmail.com); [steve@cannacare.org](mailto:steve@cannacare.org); [mann@gendlermann.com](mailto:mann@gendlermann.com)  
**Subject:** RE: Respondent City of Kent's Brief - Cannabis Action v. City of Kent No. 88079-4 Appendix B

Appendix B

-----Original Message-----

**From:** Komoto, Kim  
**Sent:** Monday, March 18, 2013 4:24 PM  
**To:** [supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)  
**Cc:** [worthingtonjw2u@hotmail.com](mailto:worthingtonjw2u@hotmail.com); Arthur West ([awestaa@gmail.com](mailto:awestaa@gmail.com)); [steve@cannacare.org](mailto:steve@cannacare.org); [mann@gendlermann.com](mailto:mann@gendlermann.com)  
**Subject:** RE: Respondent City of Kent's Brief - Cannabis Action v. City of Kent No. 88079-4 Appendix A

Appendix A

-----Original Message-----

**From:** Komoto, Kim  
**Sent:** Monday, March 18, 2013 4:22 PM  
**To:** Fitzpatrick, Pat  
**Subject:** FW: Respondent City of Kent's Brief - Cannabis Action v. City of Kent No. 88079-4

-----Original Message-----

From: Komoto, Kim

Sent: Monday, March 18, 2013 4:22 PM

To: [supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)

Cc: [worthingtonjw2u@hotmail.com](mailto:worthingtonjw2u@hotmail.com); Arthur West ([awestaa@gmail.com](mailto:awestaa@gmail.com)); [steve@cannacare.org](mailto:steve@cannacare.org); [mann@gendlermann.com](mailto:mann@gendlermann.com)

Subject: Respondent City of Kent's Brief - Cannabis Action v. City of Kent No. 88079-4

Attached is the Respondent, City of Kent's brief. Additional emails will follow that will contain the Exhibits.

Thanks,

Kim Komoto, Legal Analyst

Assistant to Tom Brubaker and Arthur "Pat" Fitzpatrick Public Safety Committee Secretary Law Department

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**From:** OFFICE RECEPTIONIST, CLERK  
**Sent:** Monday, March 18, 2013 4:28 PM  
**To:** 'Komoto, Kim'  
**Cc:** 'Arthur West (awestaa@gmail.com)'; 'worthingtonjw2u@hotmail.com'; 'steve@cannacare.org'; 'mann@gendlermann.com'  
**Subject:** RE: Respondent City of Kent's Brief - Cannabis Action v. City of Kent No. 88079-4 Appendix D

Rec'd 3-18-13

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**Cc:** 'Arthur West ([awestaa@gmail.com](mailto:awestaa@gmail.com))'; 'worthingtonjw2u@hotmail.com'; 'steve@cannacare.org'; 'mann@gendlermann.com'  
**Subject:** RE: Respondent City of Kent's Brief - Cannabis Action v. City of Kent No. 88079-4 Appendix D

Final email containing appendix D

-----Original Message-----

**From:** Komoto, Kim  
**Sent:** Monday, March 18, 2013 4:25 PM  
**To:** 'supreme@courts.wa.gov'  
**Cc:** 'Arthur West ([awestaa@gmail.com](mailto:awestaa@gmail.com))'; 'worthingtonjw2u@hotmail.com'; 'steve@cannacare.org'; 'mann@gendlermann.com'  
**Subject:** RE: Respondent City of Kent's Brief - Cannabis Action v. City of Kent No. 88079-4 Appendix C

Appendix C

-----Original Message-----

**From:** Komoto, Kim  
**Sent:** Monday, March 18, 2013 4:24 PM  
**To:** [supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)  
**Cc:** Arthur West ([awestaa@gmail.com](mailto:awestaa@gmail.com)); [worthingtonjw2u@hotmail.com](mailto:worthingtonjw2u@hotmail.com); [steve@cannacare.org](mailto:steve@cannacare.org); [mann@gendlermann.com](mailto:mann@gendlermann.com)  
**Subject:** RE: Respondent City of Kent's Brief - Cannabis Action v. City of Kent No. 88079-4 Appendix B

Appendix B

-----Original Message-----

**From:** Komoto, Kim  
**Sent:** Monday, March 18, 2013 4:24 PM  
**To:** [supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)  
**Cc:** [worthingtonjw2u@hotmail.com](mailto:worthingtonjw2u@hotmail.com); Arthur West ([awestaa@gmail.com](mailto:awestaa@gmail.com)); [steve@cannacare.org](mailto:steve@cannacare.org); [mann@gendlermann.com](mailto:mann@gendlermann.com)  
**Subject:** RE: Respondent City of Kent's Brief - Cannabis Action v. City of Kent No. 88079-4 Appendix A

Appendix A

-----Original Message-----

From: Komoto, Kim  
Sent: Monday, March 18, 2013 4:22 PM  
To: Fitzpatrick, Pat  
Subject: FW: Respondent City of Kent's Brief - Cannabis Action v. City of Kent No. 88079-4

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From: Komoto, Kim  
Sent: Monday, March 18, 2013 4:22 PM  
To: [supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)  
Cc: [worthingtonjw2u@hotmail.com](mailto:worthingtonjw2u@hotmail.com); Arthur West ([awestaa@gmail.com](mailto:awestaa@gmail.com)); [steve@cannacare.org](mailto:steve@cannacare.org); [mann@gendlermann.com](mailto:mann@gendlermann.com)  
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