

INITIATIVE 502
To the Legislature

Chapter 3, Laws of 2013
Regular Session

Marijuana

EFFECTIVE DATE: December 6, 2012

Approved by the
People of the State of Washington
in the General Election on
November 6, 2012

ORIGINALLY FILED

July 8, 2011

Secretary of State

1 AN ACT Relating to marijuana; amending RCW 69.50.101, 69.50.401,
2 69.50.4013, 69.50.412, 69.50.4121, 69.50.500, 46.20.308, 46.61.502,
3 46.61.504, 46.61.50571, and 46.61.506; reenacting and amending RCW
4 69.50.505, 46.20.3101, and 46.61.503; adding a new section to chapter
5 46.04 RCW; adding new sections to chapter 69.50 RCW; creating new
6 sections; and prescribing penalties.

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

8 **PART I**
9 **INTENT**

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

- 12 (1) Allows law enforcement resources to be focused on violent and
13 property crimes;
- 14 (2) Generates new state and local tax revenue for education, health
15 care, research, and substance abuse prevention; and
- 16 (3) Takes marijuana out of the hands of illegal drug organizations
17 and brings it under a tightly regulated, state-licensed system similar
18 to that for controlling hard alcohol.

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

4 **PART II**
5 **DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

32 (ii) with respect to a particular individual, that the individual
33 represents or intends to have a stimulant, depressant, or
34 hallucinogenic effect on the central nervous system substantially
35 similar to the stimulant, depressant, or hallucinogenic effect on the

1 central nervous system of a controlled substance included in Schedule
2 I or II.

3 (2) The term does not include:

4 (i) a controlled substance;

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

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

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

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

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

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

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

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

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

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

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

1 (n) "Immediate precursor" means a substance:

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

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

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

9 (o) "Isomer" means an optical isomer, but in RCW 69.50.101(~~(+)~~)
10 (x)(5), 69.50.204(a) (12) and (34), and 69.50.206(b) (4), the term
11 includes any geometrical isomer; in RCW 69.50.204(a) (8) and (42), and
12 69.50.210(c) the term includes any positional isomer; and in RCW
13 69.50.204(a) (35), 69.50.204(c), and 69.50.208(a) the term includes any
14 positional or geometric isomer.

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

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

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

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

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

1 ~~((q))~~ (s) "Marijuana" or "marihuana" means all parts of the plant
2 Cannabis, whether growing or not, with a THC concentration greater than
3 0.3 percent on a dry weight basis; the seeds thereof; the resin
4 extracted from any part of the plant; and every compound, manufacture,
5 salt, derivative, mixture, or preparation of the plant, its seeds or
6 resin. The term does not include the mature stalks of the plant, fiber
7 produced from the stalks, oil or cake made from the seeds of the plant,
8 any other compound, manufacture, salt, derivative, mixture, or
9 preparation of the mature stalks (except the resin extracted
10 therefrom), fiber, oil, or cake, or the sterilized seed of the plant
11 which is incapable of germination.

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

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

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

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

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

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

36 (2) Synthetic opiate and any derivative of synthetic opiate,
37 including their isomers, esters, ethers, salts, and salts of isomers,

1 esters, and ethers, whenever the existence of the isomers, esters,
2 ethers, and salts is possible within the specific chemical designation.

3 (3) Poppy straw and concentrate of poppy straw.

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

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

8 (6) Cocaine base.

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

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

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

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

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

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

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

31 (1) A physician under chapter 18.71 RCW; a physician assistant
32 under chapter 18.71A RCW; an osteopathic physician and surgeon under
33 chapter 18.57 RCW; an osteopathic physician assistant under chapter
34 18.57A RCW who is licensed under RCW 18.57A.020 subject to any
35 limitations in RCW 18.57A.040; an optometrist licensed under chapter
36 18.53 RCW who is certified by the optometry board under RCW 18.53.010
37 subject to any limitations in RCW 18.53.010; a dentist under chapter
38 18.32 RCW; a podiatric physician and surgeon under chapter 18.22 RCW;

1 a veterinarian under chapter 18.92 RCW; a registered nurse, advanced
2 registered nurse practitioner, or licensed practical nurse under
3 chapter 18.79 RCW; a naturopathic physician under chapter 18.36A RCW
4 who is licensed under RCW 18.36A.030 subject to any limitations in RCW
5 18.36A.040; a pharmacist under chapter 18.64 RCW or a scientific
6 investigator under this chapter, licensed, registered or otherwise
7 permitted insofar as is consistent with those licensing laws to
8 distribute, dispense, conduct research with respect to or administer a
9 controlled substance in the course of their professional practice or
10 research in this state.

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

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

21 (~~(x)~~) (dd) "Prescription" means an order for controlled
22 substances issued by a practitioner duly authorized by law or rule in
23 the state of Washington to prescribe controlled substances within the
24 scope of his or her professional practice for a legitimate medical
25 purpose.

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

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

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

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

37 (~~(bb)~~) (ii) "THC concentration" means percent of delta-9

1 tetrahydrocannabinol content per dry weight of any part of the plant
2 Cannabis, or per volume or weight of marijuana product.

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

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

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

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

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

24 **PART III**
25 **LICENSING AND REGULATION OF MARIJUANA**
26 **PRODUCERS, PROCESSORS, AND RETAILERS**

27 NEW SECTION. Sec. 4. (1) There shall be a marijuana producer's
28 license to produce marijuana for sale at wholesale to marijuana
29 processors and other marijuana producers, regulated by the state liquor
30 control board and subject to annual renewal. The production,
31 possession, delivery, distribution, and sale of marijuana in accordance
32 with the provisions of this act and the rules adopted to implement and
33 enforce it, by a validly licensed marijuana producer, shall not be a
34 criminal or civil offense under Washington state law. Every marijuana
35 producer's license shall be issued in the name of the applicant, shall

1 specify the location at which the marijuana producer intends to
2 operate, which must be within the state of Washington, and the holder
3 thereof shall not allow any other person to use the license. The
4 application fee for a marijuana producer's license shall be two hundred
5 fifty dollars. The annual fee for issuance and renewal of a marijuana
6 producer's license shall be one thousand dollars. A separate license
7 shall be required for each location at which a marijuana producer
8 intends to produce marijuana.

9 (2) There shall be a marijuana processor's license to process,
10 package, and label useable marijuana and marijuana-infused products for
11 sale at wholesale to marijuana retailers, regulated by the state liquor
12 control board and subject to annual renewal. The processing,
13 packaging, possession, delivery, distribution, and sale of marijuana,
14 useable marijuana, and marijuana-infused products in accordance with
15 the provisions of this act and the rules adopted to implement and
16 enforce it, by a validly licensed marijuana processor, shall not be a
17 criminal or civil offense under Washington state law. Every marijuana
18 processor's license shall be issued in the name of the applicant, shall
19 specify the location at which the licensee intends to operate, which
20 must be within the state of Washington, and the holder thereof shall
21 not allow any other person to use the license. The application fee for
22 a marijuana processor's license shall be two hundred fifty dollars.
23 The annual fee for issuance and renewal of a marijuana processor's
24 license shall be one thousand dollars. A separate license shall be
25 required for each location at which a marijuana processor intends to
26 process marijuana.

27 (3) There shall be a marijuana retailer's license to sell useable
28 marijuana and marijuana-infused products at retail in retail outlets,
29 regulated by the state liquor control board and subject to annual
30 renewal. The possession, delivery, distribution, and sale of useable
31 marijuana and marijuana-infused products in accordance with the
32 provisions of this act and the rules adopted to implement and enforce
33 it, by a validly licensed marijuana retailer, shall not be a criminal
34 or civil offense under Washington state law. Every marijuana
35 retailer's license shall be issued in the name of the applicant, shall
36 specify the location of the retail outlet the licensee intends to
37 operate, which must be within the state of Washington, and the holder
38 thereof shall not allow any other person to use the license. The

1 application fee for a marijuana retailer's license shall be two hundred
2 fifty dollars. The annual fee for issuance and renewal of a marijuana
3 retailer's license shall be one thousand dollars. A separate license
4 shall be required for each location at which a marijuana retailer
5 intends to sell useable marijuana and marijuana-infused products.

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

9 NEW SECTION. **Sec. 6.** (1) For the purpose of considering any
10 application for a license to produce, process, or sell marijuana, or
11 for the renewal of a license to produce, process, or sell marijuana,
12 the state liquor control board may cause an inspection of the premises
13 to be made, and may inquire into all matters in connection with the
14 construction and operation of the premises. For the purpose of
15 reviewing any application for a license and for considering the denial,
16 suspension, revocation, or renewal or denial thereof, of any license,
17 the state liquor control board may consider any prior criminal conduct
18 of the applicant including an administrative violation history record
19 with the state liquor control board and a criminal history record
20 information check. The state liquor control board may submit the
21 criminal history record information check to the Washington state
22 patrol and to the identification division of the federal bureau of
23 investigation in order that these agencies may search their records for
24 prior arrests and convictions of the individual or individuals who
25 filled out the forms. The state liquor control board shall require
26 fingerprinting of any applicant whose criminal history record
27 information check is submitted to the federal bureau of investigation.
28 The provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply
29 to these cases. Subject to the provisions of this section, the state
30 liquor control board may, in its discretion, grant or deny the renewal
31 or license applied for. Denial may be based on, without limitation,
32 the existence of chronic illegal activity documented in objections
33 submitted pursuant to subsections (7)(c) and (9) of this section.
34 Authority to approve an uncontested or unopposed license may be granted
35 by the state liquor control board to any staff member the board

1 designates in writing. Conditions for granting this authority shall be
2 adopted by rule. No license of any kind may be issued to:

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

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

7 (c) A partnership, employee cooperative, association, nonprofit
8 corporation, or corporation unless formed under the laws of this state,
9 and unless all of the members thereof are qualified to obtain a license
10 as provided in this section; or

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

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

20 (b) The state liquor control board shall immediately suspend the
21 license of a person who has been certified pursuant to RCW 74.20A.320
22 by the department of social and health services as a person who is not
23 in compliance with a support order. If the person has continued to
24 meet all other requirements for reinstatement during the suspension,
25 reissuance of the license shall be automatic upon the state liquor
26 control board's receipt of a release issued by the department of social
27 and health services stating that the licensee is in compliance with the
28 order.

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

36 (d) Witnesses shall be allowed fees and mileage each way to and
37 from any inquiry, investigation, hearing, or proceeding at the rate

1 authorized by RCW 34.05.446. Fees need not be paid in advance of
2 appearance of witnesses to testify or to produce books, records, or
3 other legal evidence.

4 (e) In case of disobedience of any person to comply with the order
5 of the state liquor control board or a subpoena issued by the state
6 liquor control board, or any of its members, or administrative law
7 judges, or on the refusal of a witness to testify to any matter
8 regarding which he or she may be lawfully interrogated, the judge of
9 the superior court of the county in which the person resides, on
10 application of any member of the board or administrative law judge,
11 shall compel obedience by contempt proceedings, as in the case of
12 disobedience of the requirements of a subpoena issued from said court
13 or a refusal to testify therein.

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

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

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

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

36 (7) (a) Before the state liquor control board issues a new or
37 renewed license to an applicant it shall give notice of the application
38 to the chief executive officer of the incorporated city or town, if the

1 application is for a license within an incorporated city or town, or to
2 the county legislative authority, if the application is for a license
3 outside the boundaries of incorporated cities or towns.

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

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

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

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

36 (9) In determining whether to grant or deny a license or renewal of
37 any license, the state liquor control board shall give substantial
38 weight to objections from an incorporated city or town or county

1 legislative authority based upon chronic illegal activity associated
2 with the applicant's operations of the premises proposed to be licensed
3 or the applicant's operation of any other licensed premises, or the
4 conduct of the applicant's patrons inside or outside the licensed
5 premises. "Chronic illegal activity" means (a) a pervasive pattern of
6 activity that threatens the public health, safety, and welfare of the
7 city, town, or county including, but not limited to, open container
8 violations, assaults, disturbances, disorderly conduct, or other
9 criminal law violations, or as documented in crime statistics, police
10 reports, emergency medical response data, calls for service, field
11 data, or similar records of a law enforcement agency for the city,
12 town, county, or any other municipal corporation or any state agency;
13 or (b) an unreasonably high number of citations for violations of RCW
14 46.61.502 associated with the applicant's or licensee's operation of
15 any licensed premises as indicated by the reported statements given to
16 law enforcement upon arrest.

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

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

29 (2) An opportunity for a hearing must be provided to a licensee
30 prior to a revocation or modification of any license and, except as
31 provided in subsection (4) of this section, prior to the suspension of
32 any license.

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

35 (4) The state liquor control board may summarily suspend a license
36 for a period of up to one hundred eighty days without a prior hearing
37 if it finds that public health, safety, or welfare imperatively require

1 emergency action, and it incorporates a finding to that effect in its
2 order. Proceedings for revocation or other action must be promptly
3 instituted and determined. An administrative law judge may extend the
4 summary suspension period for up to one calendar year from the first
5 day of the initial summary suspension in the event the proceedings for
6 revocation or other action cannot be completed during the initial one
7 hundred eighty-day period due to actions by the licensee. The state
8 liquor control board's enforcement division shall complete a
9 preliminary staff investigation of the violation before requesting an
10 emergency suspension by the state liquor control board.

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

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

34 NEW SECTION. **Sec. 9.** For the purpose of carrying into effect the
35 provisions of this act according to their true intent or of supplying
36 any deficiency therein, the state liquor control board may adopt rules

1 not inconsistent with the spirit of this act as are deemed necessary or
2 advisable. Without limiting the generality of the preceding sentence,
3 the state liquor control board is empowered to adopt rules regarding
4 the following:

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

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

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

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

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

21 (6) Retail outlet locations and hours of operation;

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

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

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

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

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

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

17 NEW SECTION. **Sec. 10.** The state liquor control board, subject to
18 the provisions of this act, must adopt rules by December 1, 2013, that
19 establish the procedures and criteria necessary to implement the
20 following:

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

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

27 (a) Population distribution;

28 (b) Security and safety issues; and

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

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

35 (4) Determining the maximum quantities of marijuana, useable
36 marijuana, and marijuana-infused products a marijuana processor may

1 have on the premises of a licensed location at any time without
2 violating Washington state law;

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

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

10 (a) Security and safety issues;

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

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

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

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

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

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

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

30 (e) Language required by RCW 69.04.480;

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

36 (9) Establishing reasonable time, place, and manner restrictions
37 and requirements regarding advertising of marijuana, useable marijuana,

1 and marijuana-infused products that are not inconsistent with the
2 provisions of this act, taking into consideration:

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

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

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

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

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

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

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

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

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

8 NEW SECTION. **Sec. 12.** Except as provided by chapter 42.52 RCW, no
9 member of the state liquor control board and no employee of the state
10 liquor control board shall have any interest, directly or indirectly,
11 in the producing, processing, or sale of marijuana, useable marijuana,
12 or marijuana-infused products, or derive any profit or remuneration
13 from the sale of marijuana, useable marijuana, or marijuana-infused
14 products other than the salary or wages payable to him or her in
15 respect of his or her office or position, and shall receive no gratuity
16 from any person in connection with the business.

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

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

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

33 (3) Licensed marijuana retailers shall not display any signage in
34 a window, on a door, or on the outside of the premises of a retail
35 outlet that is visible to the general public from a public right-of-

1 way, other than a single sign no larger than one thousand six hundred
2 square inches identifying the retail outlet by the licensee's business
3 or trade name.

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

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

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

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

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

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

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

29 (a) One ounce of useable marijuana;

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

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

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

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

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

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

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

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

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

22 NEW SECTION. **Sec. 18.** (1) No licensed marijuana producer,
23 processor, or retailer shall place or maintain, or cause to be placed
24 or maintained, an advertisement of marijuana, useable marijuana, or a
25 marijuana-infused product in any form or through any medium whatsoever:

26 (a) Within one thousand feet of the perimeter of a school grounds,
27 playground, recreation center or facility, child care center, public
28 park, or library, or any game arcade admission to which is not
29 restricted to persons aged twenty-one years or older;

30 (b) On or in a public transit vehicle or public transit shelter; or

31 (c) On or in a publicly owned or operated property.

32 (2) Merchandising within a retail outlet is not advertising for the
33 purposes of this section.

34 (3) This section does not apply to a noncommercial message.

35 (4) The state liquor control board shall fine a licensee one

1 thousand dollars for each violation of subsection (1) of this section.
2 Fines collected under this subsection must be deposited into the
3 dedicated marijuana fund created under section 26 of this act.

4 **Sec. 19.** RCW 69.50.401 and 2005 c 218 s 1 are each amended to read
5 as follows:

6 (1) Except as authorized by this chapter, it is unlawful for any
7 person to manufacture, deliver, or possess with intent to manufacture
8 or deliver, a controlled substance.

9 (2) Any person who violates this section with respect to:

10 (a) A controlled substance classified in Schedule I or II which is
11 a narcotic drug or flunitrazepam, including its salts, isomers, and
12 salts of isomers, classified in Schedule IV, is guilty of a class B
13 felony and upon conviction may be imprisoned for not more than ten
14 years, or (i) fined not more than twenty-five thousand dollars if the
15 crime involved less than two kilograms of the drug, or both such
16 imprisonment and fine; or (ii) if the crime involved two or more
17 kilograms of the drug, then fined not more than one hundred thousand
18 dollars for the first two kilograms and not more than fifty dollars for
19 each gram in excess of two kilograms, or both such imprisonment and
20 fine;

21 (b) Amphetamine, including its salts, isomers, and salts of
22 isomers, or methamphetamine, including its salts, isomers, and salts of
23 isomers, is guilty of a class B felony and upon conviction may be
24 imprisoned for not more than ten years, or (i) fined not more than
25 twenty-five thousand dollars if the crime involved less than two
26 kilograms of the drug, or both such imprisonment and fine; or (ii) if
27 the crime involved two or more kilograms of the drug, then fined not
28 more than one hundred thousand dollars for the first two kilograms and
29 not more than fifty dollars for each gram in excess of two kilograms,
30 or both such imprisonment and fine. Three thousand dollars of the fine
31 may not be suspended. As collected, the first three thousand dollars
32 of the fine must be deposited with the law enforcement agency having
33 responsibility for cleanup of laboratories, sites, or substances used
34 in the manufacture of the methamphetamine, including its salts,
35 isomers, and salts of isomers. The fine moneys deposited with that law
36 enforcement agency must be used for such clean-up cost;

1 (c) Any other controlled substance classified in Schedule I, II, or
2 III, is guilty of a class C felony punishable according to chapter
3 9A.20 RCW;

4 (d) A substance classified in Schedule IV, except flunitrazepam,
5 including its salts, isomers, and salts of isomers, is guilty of a
6 class C felony punishable according to chapter 9A.20 RCW; or

7 (e) A substance classified in Schedule V, is guilty of a class C
8 felony punishable according to chapter 9A.20 RCW.

9 (3) The production, manufacture, processing, packaging, delivery,
10 distribution, sale, or possession of marijuana in compliance with the
11 terms set forth in section 15, 16, or 17 of this act shall not
12 constitute a violation of this section, this chapter, or any other
13 provision of Washington state law.

14 **Sec. 20.** RCW 69.50.4013 and 2003 c 53 s 334 are each amended to
15 read as follows:

16 (1) It is unlawful for any person to possess a controlled substance
17 unless the substance was obtained directly from, or pursuant to, a
18 valid prescription or order of a practitioner while acting in the
19 course of his or her professional practice, or except as otherwise
20 authorized by this chapter.

21 (2) Except as provided in RCW 69.50.4014, any person who violates
22 this section is guilty of a class C felony punishable under chapter
23 9A.20 RCW.

24 (3) The possession, by a person twenty-one years of age or older,
25 of useable marijuana or marijuana-infused products in amounts that do
26 not exceed those set forth in section 15(3) of this act is not a
27 violation of this section, this chapter, or any other provision of
28 Washington state law.

29 NEW SECTION. **Sec. 21.** It is unlawful to open a package containing
30 marijuana, useable marijuana, or a marijuana-infused product, or
31 consume marijuana, useable marijuana, or a marijuana-infused product,
32 in view of the general public. A person who violates this section is
33 guilty of a class 3 civil infraction under chapter 7.80 RCW.

34 **Sec. 22.** RCW 69.50.412 and 2002 c 213 s 1 are each amended to read
35 as follows:

1 (1) It is unlawful for any person to use drug paraphernalia to
2 plant, propagate, cultivate, grow, harvest, manufacture, compound,
3 convert, produce, process, prepare, test, analyze, pack, repack, store,
4 contain, conceal, inject, ingest, inhale, or otherwise introduce into
5 the human body a controlled substance other than marijuana. Any person
6 who violates this subsection is guilty of a misdemeanor.

7 (2) It is unlawful for any person to deliver, possess with intent
8 to deliver, or manufacture with intent to deliver drug paraphernalia,
9 knowing, or under circumstances where one reasonably should know, that
10 it will be used to plant, propagate, cultivate, grow, harvest,
11 manufacture, compound, convert, produce, process, prepare, test,
12 analyze, pack, repack, store, contain, conceal, inject, ingest, inhale,
13 or otherwise introduce into the human body a controlled substance other
14 than marijuana. Any person who violates this subsection is guilty of
15 a misdemeanor.

16 (3) Any person eighteen years of age or over who violates
17 subsection (2) of this section by delivering drug paraphernalia to a
18 person under eighteen years of age who is at least three years his
19 junior is guilty of a gross misdemeanor.

20 (4) It is unlawful for any person to place in any newspaper,
21 magazine, handbill, or other publication any advertisement, knowing, or
22 under circumstances where one reasonably should know, that the purpose
23 of the advertisement, in whole or in part, is to promote the sale of
24 objects designed or intended for use as drug paraphernalia. Any person
25 who violates this subsection is guilty of a misdemeanor.

26 (5) It is lawful for any person over the age of eighteen to possess
27 sterile hypodermic syringes and needles for the purpose of reducing
28 bloodborne diseases.

29 **Sec. 23.** RCW 69.50.4121 and 2002 c 213 s 2 are each amended to
30 read as follows:

31 (1) Every person who sells or gives, or permits to be sold or given
32 to any person any drug paraphernalia in any form commits a class I
33 civil infraction under chapter 7.80 RCW. For purposes of this
34 subsection, "drug paraphernalia" means all equipment, products, and
35 materials of any kind which are used, intended for use, or designed for
36 use in planting, propagating, cultivating, growing, harvesting,
37 manufacturing, compounding, converting, producing, processing,

1 preparing, testing, analyzing, packaging, repackaging, storing,
2 containing, concealing, injecting, ingesting, inhaling, or otherwise
3 introducing into the human body a controlled substance other than
4 marijuana. Drug paraphernalia includes, but is not limited to objects
5 used, intended for use, or designed for use in ingesting, inhaling, or
6 otherwise introducing (~~(marihuana,)~~) cocaine(~~(, hashish, or hashish~~
7 ~~oil)~~) into the human body, such as:

8 (a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes
9 with or without screens, permanent screens, hashish heads, or punctured
10 metal bowls;

11 (b) Water pipes;

12 (c) Carburetion tubes and devices;

13 (d) Smoking and carburetion masks;

14 (e) (~~Roach clips: Meaning objects used to hold burning material,~~
15 ~~such as a marihuana cigarette, that has become too small or too short~~
16 ~~to be held in the hand;~~

17 ~~(f))~~ Miniature cocaine spoons and cocaine vials;

18 (~~(g))~~ (f) Chamber pipes;

19 (~~(h))~~ (g) Carburetor pipes;

20 (~~(i))~~ (h) Electric pipes;

21 (~~(j))~~ (i) Air-driven pipes;

22 (~~(k) Chillums,~~

23 ~~(l) Bong(s,))~~ and

24 (~~(m))~~ (j) Ice pipes or chillers.

25 (2) It shall be no defense to a prosecution for a violation of this
26 section that the person acted, or was believed by the defendant to act,
27 as agent or representative of another.

28 (3) Nothing in subsection (1) of this section prohibits legal
29 distribution of injection syringe equipment through public health and
30 community based HIV prevention programs, and pharmacies.

31 **Sec. 24.** RCW 69.50.500 and 1989 1st ex.s. c 9 s 437 are each
32 amended to read as follows:

33 (a) It is hereby made the duty of the state board of pharmacy, the
34 department, the state liquor control board, and their officers, agents,
35 inspectors and representatives, and all law enforcement officers within
36 the state, and of all prosecuting attorneys, to enforce all provisions
37 of this chapter, except those specifically delegated, and to cooperate

1 with all agencies charged with the enforcement of the laws of the
2 United States, of this state, and all other states, relating to
3 controlled substances as defined in this chapter.

4 (b) Employees of the department of health, who are so designated by
5 the board as enforcement officers are declared to be peace officers and
6 shall be vested with police powers to enforce the drug laws of this
7 state, including this chapter.

8 **Sec. 25.** RCW 69.50.505 and 2009 c 479 s 46 and 2009 c 364 s 1 are
9 each reenacted and amended to read as follows:

10 (1) The following are subject to seizure and forfeiture and no
11 property right exists in them:

12 (a) All controlled substances which have been manufactured,
13 distributed, dispensed, acquired, or possessed in violation of this
14 chapter or chapter 69.41 or 69.52 RCW, and all hazardous chemicals, as
15 defined in RCW 64.44.010, used or intended to be used in the
16 manufacture of controlled substances;

17 (b) All raw materials, products, and equipment of any kind which
18 are used, or intended for use, in manufacturing, compounding,
19 processing, delivering, importing, or exporting any controlled
20 substance in violation of this chapter or chapter 69.41 or 69.52 RCW;

21 (c) All property which is used, or intended for use, as a container
22 for property described in (a) or (b) of this subsection;

23 (d) All conveyances, including aircraft, vehicles, or vessels,
24 which are used, or intended for use, in any manner to facilitate the
25 sale, delivery, or receipt of property described in (a) or (b) of this
26 subsection, except that:

27 (i) No conveyance used by any person as a common carrier in the
28 transaction of business as a common carrier is subject to forfeiture
29 under this section unless it appears that the owner or other person in
30 charge of the conveyance is a consenting party or privy to a violation
31 of this chapter or chapter 69.41 or 69.52 RCW;

32 (ii) No conveyance is subject to forfeiture under this section by
33 reason of any act or omission established by the owner thereof to have
34 been committed or omitted without the owner's knowledge or consent;

35 (iii) No conveyance is subject to forfeiture under this section if
36 used in the receipt of only an amount of marijuana for which possession
37 constitutes a misdemeanor under RCW 69.50.4014;

1 (iv) A forfeiture of a conveyance encumbered by a bona fide
2 security interest is subject to the interest of the secured party if
3 the secured party neither had knowledge of nor consented to the act or
4 omission; and

5 (v) When the owner of a conveyance has been arrested under this
6 chapter or chapter 69.41 or 69.52 RCW the conveyance in which the
7 person is arrested may not be subject to forfeiture unless it is seized
8 or process is issued for its seizure within ten days of the owner's
9 arrest;

10 (e) All books, records, and research products and materials,
11 including formulas, microfilm, tapes, and data which are used, or
12 intended for use, in violation of this chapter or chapter 69.41 or
13 69.52 RCW;

14 (f) All drug paraphernalia²¹ other than paraphernalia possessed,
15 sold, or used solely to facilitate marijuana-related activities that
16 are not violations of this chapter;

17 (g) All moneys, negotiable instruments, securities, or other
18 tangible or intangible property of value furnished or intended to be
19 furnished by any person in exchange for a controlled substance in
20 violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible
21 or intangible personal property, proceeds, or assets acquired in whole
22 or in part with proceeds traceable to an exchange or series of
23 exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW,
24 and all moneys, negotiable instruments, and securities used or intended
25 to be used to facilitate any violation of this chapter or chapter 69.41
26 or 69.52 RCW. A forfeiture of money, negotiable instruments,
27 securities, or other tangible or intangible property encumbered by a
28 bona fide security interest is subject to the interest of the secured
29 party if, at the time the security interest was created, the secured
30 party neither had knowledge of nor consented to the act or omission.
31 No personal property may be forfeited under this subsection (1)(g), to
32 the extent of the interest of an owner, by reason of any act or
33 omission which that owner establishes was committed or omitted without
34 the owner's knowledge or consent; and

35 (h) All real property, including any right, title, and interest in
36 the whole of any lot or tract of land, and any appurtenances or
37 improvements which are being used with the knowledge of the owner for
38 the manufacturing, compounding, processing, delivery, importing, or

1 exporting of any controlled substance, or which have been acquired in
2 whole or in part with proceeds traceable to an exchange or series of
3 exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW,
4 if such activity is not less than a class C felony and a substantial
5 nexus exists between the commercial production or sale of the
6 controlled substance and the real property. However:

7 (i) No property may be forfeited pursuant to this subsection
8 (1)(h), to the extent of the interest of an owner, by reason of any act
9 or omission committed or omitted without the owner's knowledge or
10 consent;

11 (ii) The bona fide gift of a controlled substance, legend drug, or
12 imitation controlled substance shall not result in the forfeiture of
13 real property;

14 (iii) The possession of marijuana shall not result in the
15 forfeiture of real property unless the marijuana is possessed for
16 commercial purposes that are unlawful under Washington state law, the
17 amount possessed is five or more plants or one pound or more of
18 marijuana, and a substantial nexus exists between the possession of
19 marijuana and the real property. In such a case, the intent of the
20 offender shall be determined by the preponderance of the evidence,
21 including the offender's prior criminal history, the amount of
22 marijuana possessed by the offender, the sophistication of the activity
23 or equipment used by the offender, whether the offender was licensed to
24 produce, process, or sell marijuana, or was an employee of a licensed
25 producer, processor, or retailer, and other evidence which demonstrates
26 the offender's intent to engage in unlawful commercial activity;

27 (iv) The unlawful sale of marijuana or a legend drug shall not
28 result in the forfeiture of real property unless the sale was forty
29 grams or more in the case of marijuana or one hundred dollars or more
30 in the case of a legend drug, and a substantial nexus exists between
31 the unlawful sale and the real property; and

32 (v) A forfeiture of real property encumbered by a bona fide
33 security interest is subject to the interest of the secured party if
34 the secured party, at the time the security interest was created,
35 neither had knowledge of nor consented to the act or omission.

36 (2) Real or personal property subject to forfeiture under this
37 chapter may be seized by any board inspector or law enforcement officer
38 of this state upon process issued by any superior court having

1 jurisdiction over the property. Seizure of real property shall include
2 the filing of a lis pendens by the seizing agency. Real property
3 seized under this section shall not be transferred or otherwise
4 conveyed until ninety days after seizure or until a judgment of
5 forfeiture is entered, whichever is later: PROVIDED, That real
6 property seized under this section may be transferred or conveyed to
7 any person or entity who acquires title by foreclosure or deed in lieu
8 of foreclosure of a security interest. Seizure of personal property
9 without process may be made if:

10 (a) The seizure is incident to an arrest or a search under a search
11 warrant or an inspection under an administrative inspection warrant;

12 (b) The property subject to seizure has been the subject of a prior
13 judgment in favor of the state in a criminal injunction or forfeiture
14 proceeding based upon this chapter;

15 (c) A board inspector or law enforcement officer has probable cause
16 to believe that the property is directly or indirectly dangerous to
17 health or safety; or

18 (d) The board inspector or law enforcement officer has probable
19 cause to believe that the property was used or is intended to be used
20 in violation of this chapter.

21 (3) In the event of seizure pursuant to subsection (2) of this
22 section, proceedings for forfeiture shall be deemed commenced by the
23 seizure. The law enforcement agency under whose authority the seizure
24 was made shall cause notice to be served within fifteen days following
25 the seizure on the owner of the property seized and the person in
26 charge thereof and any person having any known right or interest
27 therein, including any community property interest, of the seizure and
28 intended forfeiture of the seized property. Service of notice of
29 seizure of real property shall be made according to the rules of civil
30 procedure. However, the state may not obtain a default judgment with
31 respect to real property against a party who is served by substituted
32 service absent an affidavit stating that a good faith effort has been
33 made to ascertain if the defaulted party is incarcerated within the
34 state, and that there is no present basis to believe that the party is
35 incarcerated within the state. Notice of seizure in the case of
36 property subject to a security interest that has been perfected by
37 filing a financing statement in accordance with chapter 62A.9A RCW, or
38 a certificate of title, shall be made by service upon the secured party

1 or the secured party's assignee at the address shown on the financing
2 statement or the certificate of title. The notice of seizure in other
3 cases may be served by any method authorized by law or court rule
4 including but not limited to service by certified mail with return
5 receipt requested. Service by mail shall be deemed complete upon
6 mailing within the fifteen day period following the seizure.

7 (4) If no person notifies the seizing law enforcement agency in
8 writing of the person's claim of ownership or right to possession of
9 items specified in subsection (1)(d), (g), or (h) of this section
10 within forty-five days of the service of notice from the seizing agency
11 in the case of personal property and ninety days in the case of real
12 property, the item seized shall be deemed forfeited. The community
13 property interest in real property of a person whose spouse or domestic
14 partner committed a violation giving rise to seizure of the real
15 property may not be forfeited if the person did not participate in the
16 violation.

17 (5) If any person notifies the seizing law enforcement agency in
18 writing of the person's claim of ownership or right to possession of
19 items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h)
20 of this section within forty-five days of the service of notice from
21 the seizing agency in the case of personal property and ninety days in
22 the case of real property, the person or persons shall be afforded a
23 reasonable opportunity to be heard as to the claim or right. The
24 notice of claim may be served by any method authorized by law or court
25 rule including, but not limited to, service by first-class mail.
26 Service by mail shall be deemed complete upon mailing within the forty-
27 five day period following service of the notice of seizure in the case
28 of personal property and within the ninety-day period following service
29 of the notice of seizure in the case of real property. The hearing
30 shall be before the chief law enforcement officer of the seizing agency
31 or the chief law enforcement officer's designee, except where the
32 seizing agency is a state agency as defined in RCW 34.12.020(4), the
33 hearing shall be before the chief law enforcement officer of the
34 seizing agency or an administrative law judge appointed under chapter
35 34.12 RCW, except that any person asserting a claim or right may remove
36 the matter to a court of competent jurisdiction. Removal of any matter
37 involving personal property may only be accomplished according to the
38 rules of civil procedure. The person seeking removal of the matter

1 must serve process against the state, county, political subdivision, or
2 municipality that operates the seizing agency, and any other party of
3 interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-
4 five days after the person seeking removal has notified the seizing law
5 enforcement agency of the person's claim of ownership or right to
6 possession. The court to which the matter is to be removed shall be
7 the district court when the aggregate value of personal property is
8 within the jurisdictional limit set forth in RCW 3.66.020. A hearing
9 before the seizing agency and any appeal therefrom shall be under Title
10 34 RCW. In all cases, the burden of proof is upon the law enforcement
11 agency to establish, by a preponderance of the evidence, that the
12 property is subject to forfeiture.

13 The seizing law enforcement agency shall promptly return the
14 article or articles to the claimant upon a determination by the
15 administrative law judge or court that the claimant is the present
16 lawful owner or is lawfully entitled to possession thereof of items
17 specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this
18 section.

19 (6) In any proceeding to forfeit property under this title, where
20 the claimant substantially prevails, the claimant is entitled to
21 reasonable attorneys' fees reasonably incurred by the claimant. In
22 addition, in a court hearing between two or more claimants to the
23 article or articles involved, the prevailing party is entitled to a
24 judgment for costs and reasonable attorneys' fees.

25 (7) When property is forfeited under this chapter the board or
26 seizing law enforcement agency may:

27 (a) Retain it for official use or upon application by any law
28 enforcement agency of this state release such property to such agency
29 for the exclusive use of enforcing the provisions of this chapter;

30 (b) Sell that which is not required to be destroyed by law and
31 which is not harmful to the public;

32 (c) Request the appropriate sheriff or director of public safety to
33 take custody of the property and remove it for disposition in
34 accordance with law; or

35 (d) Forward it to the drug enforcement administration for
36 disposition.

37 (8) (a) When property is forfeited, the seizing agency shall keep a
38 record indicating the identity of the prior owner, if known, a

1 description of the property, the disposition of the property, the value
2 of the property at the time of seizure, and the amount of proceeds
3 realized from disposition of the property.

4 (b) Each seizing agency shall retain records of forfeited property
5 for at least seven years.

6 (c) Each seizing agency shall file a report including a copy of the
7 records of forfeited property with the state treasurer each calendar
8 quarter.

9 (d) The quarterly report need not include a record of forfeited
10 property that is still being held for use as evidence during the
11 investigation or prosecution of a case or during the appeal from a
12 conviction.

13 (9) (a) By January 31st of each year, each seizing agency shall
14 remit to the state treasurer an amount equal to ten percent of the net
15 proceeds of any property forfeited during the preceding calendar year.
16 Money remitted shall be deposited in the state general fund.

17 (b) The net proceeds of forfeited property is the value of the
18 forfeitable interest in the property after deducting the cost of
19 satisfying any bona fide security interest to which the property is
20 subject at the time of seizure; and in the case of sold property, after
21 deducting the cost of sale, including reasonable fees or commissions
22 paid to independent selling agents, and the cost of any valid
23 landlord's claim for damages under subsection (15) of this section.

24 (c) The value of sold forfeited property is the sale price. The
25 value of retained forfeited property is the fair market value of the
26 property at the time of seizure, determined when possible by reference
27 to an applicable commonly used index, such as the index used by the
28 department of licensing for valuation of motor vehicles. A seizing
29 agency may use, but need not use, an independent qualified appraiser to
30 determine the value of retained property. If an appraiser is used, the
31 value of the property appraised is net of the cost of the appraisal.
32 The value of destroyed property and retained firearms or illegal
33 property is zero.

34 (10) Forfeited property and net proceeds not required to be paid to
35 the state treasurer shall be retained by the seizing law enforcement
36 agency exclusively for the expansion and improvement of controlled
37 substances related law enforcement activity. Money retained under this
38 section may not be used to supplant preexisting funding sources.

1 (11) Controlled substances listed in Schedule I, II, III, IV, and
2 V that are possessed, transferred, sold, or offered for sale in
3 violation of this chapter are contraband and shall be seized and
4 summarily forfeited to the state. Controlled substances listed in
5 Schedule I, II, III, IV, and V, which are seized or come into the
6 possession of the board, the owners of which are unknown, are
7 contraband and shall be summarily forfeited to the board.

8 (12) Species of plants from which controlled substances in
9 Schedules I and II may be derived which have been planted or cultivated
10 in violation of this chapter, or of which the owners or cultivators are
11 unknown, or which are wild growths, may be seized and summarily
12 forfeited to the board.

13 (13) The failure, upon demand by a board inspector or law
14 enforcement officer, of the person in occupancy or in control of land
15 or premises upon which the species of plants are growing or being
16 stored to produce an appropriate registration or proof that he or she
17 is the holder thereof constitutes authority for the seizure and
18 forfeiture of the plants.

19 (14) Upon the entry of an order of forfeiture of real property, the
20 court shall forward a copy of the order to the assessor of the county
21 in which the property is located. Orders for the forfeiture of real
22 property shall be entered by the superior court, subject to court
23 rules. Such an order shall be filed by the seizing agency in the
24 county auditor's records in the county in which the real property is
25 located.

26 (15) (a) A landlord may assert a claim against proceeds from the
27 sale of assets seized and forfeited under subsection (7) (b) of this
28 section, only if:

29 ~~((a))~~ (i) A law enforcement officer, while acting in his or her
30 official capacity, directly caused damage to the complaining landlord's
31 property while executing a search of a tenant's residence; and

32 ~~((b))~~ (ii) The landlord has applied any funds remaining in the
33 tenant's deposit, to which the landlord has a right under chapter 59.18
34 RCW, to cover the damage directly caused by a law enforcement officer
35 prior to asserting a claim under the provisions of this section;

36 ~~((i))~~ (A) Only if the funds applied under ~~((b))~~ (a) (ii) of this
37 subsection are insufficient to satisfy the damage directly caused by a
38 law enforcement officer, may the landlord seek compensation for the

1 damage by filing a claim against the governmental entity under whose
2 authority the law enforcement agency operates within thirty days after
3 the search;

4 ~~((iii))~~ (B) Only if the governmental entity denies or fails to
5 respond to the landlord's claim within sixty days of the date of
6 filing, may the landlord collect damages under this subsection by
7 filing within thirty days of denial or the expiration of the sixty-day
8 period, whichever occurs first, a claim with the seizing law
9 enforcement agency. The seizing law enforcement agency must notify the
10 landlord of the status of the claim by the end of the thirty-day
11 period. Nothing in this section requires the claim to be paid by the
12 end of the sixty-day or thirty-day period.

13 ~~((c))~~ (b) For any claim filed under ~~((b))~~ (a)(ii) of this
14 subsection, the law enforcement agency shall pay the claim unless the
15 agency provides substantial proof that the landlord either:

16 (i) Knew or consented to actions of the tenant in violation of this
17 chapter or chapter 69.41 or 69.52 RCW; or

18 (ii) Failed to respond to a notification of the illegal activity,
19 provided by a law enforcement agency under RCW 59.18.075, within seven
20 days of receipt of notification of the illegal activity.

21 (16) The landlord's claim for damages under subsection (15) of this
22 section may not include a claim for loss of business and is limited to:

23 (a) Damage to tangible property and clean-up costs;

24 (b) The lesser of the cost of repair or fair market value of the
25 damage directly caused by a law enforcement officer;

26 (c) The proceeds from the sale of the specific tenant's property
27 seized and forfeited under subsection (7)(b) of this section; and

28 (d) The proceeds available after the seizing law enforcement agency
29 satisfies any bona fide security interest in the tenant's property and
30 costs related to sale of the tenant's property as provided by
31 subsection (9)(b) of this section.

32 (17) Subsections (15) and (16) of this section do not limit any
33 other rights a landlord may have against a tenant to collect for
34 damages. However, if a law enforcement agency satisfies a landlord's
35 claim under subsection (15) of this section, the rights the landlord
36 has against the tenant for damages directly caused by a law enforcement
37 officer under the terms of the landlord and tenant's contract are
38 subrogated to the law enforcement agency.

1 **PART IV**

2 **DEDICATED MARIJUANA FUND**

3 NEW SECTION. **Sec. 26.** (1) There shall be a fund, known as the
4 dedicated marijuana fund, which shall consist of all marijuana excise
5 taxes, license fees, penalties, forfeitures, and all other moneys,
6 income, or revenue received by the state liquor control board from
7 marijuana-related activities. The state treasurer shall be custodian
8 of the fund.

9 (2) All moneys received by the state liquor control board or any
10 employee thereof from marijuana-related activities shall be deposited
11 each day in a depository approved by the state treasurer and
12 transferred to the state treasurer to be credited to the dedicated
13 marijuana fund.

14 (3) Disbursements from the dedicated marijuana fund shall be on
15 authorization of the state liquor control board or a duly authorized
16 representative thereof.

17 NEW SECTION. **Sec. 27.** (1) There is levied and collected a
18 marijuana excise tax equal to twenty-five percent of the selling price
19 on each wholesale sale in this state of marijuana by a licensed
20 marijuana producer to a licensed marijuana processor or another
21 licensed marijuana producer. This tax is the obligation of the
22 licensed marijuana producer.

23 (2) There is levied and collected a marijuana excise tax equal to
24 twenty-five percent of the selling price on each wholesale sale in this
25 state of useable marijuana or marijuana-infused product by a licensed
26 marijuana processor to a licensed marijuana retailer. This tax is the
27 obligation of the licensed marijuana processor.

28 (3) There is levied and collected a marijuana excise tax equal to
29 twenty-five percent of the selling price on each retail sale in this
30 state of useable marijuana and marijuana-infused products. This tax is
31 the obligation of the licensed marijuana retailer, is separate and in
32 addition to general state and local sales and use taxes that apply to
33 retail sales of tangible personal property, and is part of the total
34 retail price to which general state and local sales and use taxes
35 apply.

36 (4) All revenues collected from the marijuana excise taxes imposed
37 under subsections (1) through (3) of this section shall be deposited

1 each day in a depository approved by the state treasurer and
2 transferred to the state treasurer to be credited to the dedicated
3 marijuana fund.

4 (5) The state liquor control board shall regularly review the tax
5 levels established under this section and make recommendations to the
6 legislature as appropriate regarding adjustments that would further the
7 goal of discouraging use while undercutting illegal market prices.

8 NEW SECTION. **Sec. 28.** All marijuana excise taxes collected from
9 sales of marijuana, useable marijuana, and marijuana-infused products
10 under section 27 of this act, and the license fees, penalties, and
11 forfeitures derived under this act from marijuana producer, marijuana
12 processor, and marijuana retailer licenses shall every three months be
13 disbursed by the state liquor control board as follows:

14 (1) One hundred twenty-five thousand dollars to the department of
15 social and health services to design and administer the Washington
16 state healthy youth survey, analyze the collected data, and produce
17 reports, in collaboration with the office of the superintendent of
18 public instruction, department of health, department of commerce,
19 family policy council, and state liquor control board. The survey
20 shall be conducted at least every two years and include questions
21 regarding, but not necessarily limited to, academic achievement, age at
22 time of substance use initiation, antisocial behavior of friends,
23 attitudes toward antisocial behavior, attitudes toward substance use,
24 laws and community norms regarding antisocial behavior, family
25 conflict, family management, parental attitudes toward substance use,
26 peer rewarding of antisocial behavior, perceived risk of substance use,
27 and rebelliousness. Funds disbursed under this subsection may be used
28 to expand administration of the healthy youth survey to student
29 populations attending institutions of higher education in Washington;

30 (2) Fifty thousand dollars to the department of social and health
31 services for the purpose of contracting with the Washington state
32 institute for public policy to conduct the cost-benefit evaluation and
33 produce the reports described in section 30 of this act. This
34 appropriation shall end after production of the final report required
35 by section 30 of this act;

36 (3) Five thousand dollars to the University of Washington alcohol
37 and drug abuse institute for the creation, maintenance, and timely

1 updating of web-based public education materials providing medically
2 and scientifically accurate information about the health and safety
3 risks posed by marijuana use;

4 (4) An amount not exceeding one million two hundred fifty thousand
5 dollars to the state liquor control board as is necessary for
6 administration of this act;

7 (5) Of the funds remaining after the disbursements identified in
8 subsections (1) through (4) of this section:

9 (a) Fifteen percent to the department of social and health services
10 division of behavioral health and recovery for implementation and
11 maintenance of programs and practices aimed at the prevention or
12 reduction of maladaptive substance use, substance-use disorder,
13 substance abuse or substance dependence, as these terms are defined in
14 the Diagnostic and Statistical Manual of Mental Disorders, among middle
15 school and high school age students, whether as an explicit goal of a
16 given program or practice or as a consistently corresponding effect of
17 its implementation; PROVIDED, That:

18 (i) Of the funds disbursed under (a) of this subsection, at least
19 eighty-five percent must be directed to evidence-based and cost-
20 beneficial programs and practices that produce objectively measurable
21 results; and

22 (ii) Up to fifteen percent of the funds disbursed under (a) of this
23 subsection may be directed to research-based and emerging best
24 practices or promising practices.

25 In deciding which programs and practices to fund, the secretary of
26 the department of social and health services shall consult, at least
27 annually, with the University of Washington's social development
28 research group and the University of Washington's alcohol and drug
29 abuse institute;

30 (b) Ten percent to the department of health for the creation,
31 implementation, operation, and management of a marijuana education and
32 public health program that contains the following:

33 (i) A marijuana use public health hotline that provides referrals
34 to substance abuse treatment providers, utilizes evidence-based or
35 research-based public health approaches to minimizing the harms
36 associated with marijuana use, and does not solely advocate an
37 abstinence-only approach;

1 (ii) A grants program for local health departments or other local
2 community agencies that supports development and implementation of
3 coordinated intervention strategies for the prevention and reduction of
4 marijuana use by youth; and

5 (iii) Media-based education campaigns across television, internet,
6 radio, print, and out-of-home advertising, separately targeting youth
7 and adults, that provide medically and scientifically accurate
8 information about the health and safety risks posed by marijuana use;

9 (c) Six-tenths of one percent to the University of Washington and
10 four-tenths of one percent to Washington State University for research
11 on the short and long-term effects of marijuana use, to include but not
12 be limited to formal and informal methods for estimating and measuring
13 intoxication and impairment, and for the dissemination of such
14 research;

15 (d) Fifty percent to the state basic health plan trust account to
16 be administered by the Washington basic health plan administrator and
17 used as provided under chapter 70.47 RCW;

18 (e) Five percent to the Washington state health care authority to
19 be expended exclusively through contracts with community health centers
20 to provide primary health and dental care services, migrant health
21 services, and maternity health care services as provided under RCW
22 41.05.220;

23 (f) Three-tenths of one percent to the office of the superintendent
24 of public instruction to fund grants to building bridges programs under
25 chapter 28A.175 RCW; and

26 (g) The remainder to the general fund.

27 NEW SECTION. **Sec. 29.** The department of social and health
28 services and the department of health shall, by December 1, 2013, adopt
29 rules not inconsistent with the spirit of this act as are deemed
30 necessary or advisable to carry into effect the provisions of section
31 28 of this act.

32 NEW SECTION. **Sec. 30.** (1) The Washington state institute for
33 public policy shall conduct cost-benefit evaluations of the
34 implementation of this act. A preliminary report, and recommendations
35 to appropriate committees of the legislature, shall be made by

1 September 1, 2015, and the first final report with recommendations by
2 September 1, 2017. Subsequent reports shall be due September 1, 2022,
3 and September 1, 2032.

4 (2) The evaluation of the implementation of this act shall include,
5 but not necessarily be limited to, consideration of the following
6 factors:

7 (a) Public health, to include but not be limited to:

8 (i) Health costs associated with marijuana use;

9 (ii) Health costs associated with criminal prohibition of
10 marijuana, including lack of product safety or quality control
11 regulations and the relegation of marijuana to the same illegal market
12 as potentially more dangerous substances; and

13 (iii) The impact of increased investment in the research,
14 evaluation, education, prevention and intervention programs, practices,
15 and campaigns identified in section 16 of this act on rates of
16 marijuana-related maladaptive substance use and diagnosis of marijuana-
17 related substance-use disorder, substance abuse, or substance
18 dependence, as these terms are defined in the Diagnostic and
19 Statistical Manual of Mental Disorders;

20 (b) Public safety, to include but not be limited to:

21 (i) Public safety issues relating to marijuana use; and

22 (ii) Public safety issues relating to criminal prohibition of
23 marijuana;

24 (c) Youth and adult rates of the following:

25 (i) Marijuana use;

26 (ii) Maladaptive use of marijuana; and

27 (iii) Diagnosis of marijuana-related substance-use disorder,
28 substance abuse, or substance dependence, including primary, secondary,
29 and tertiary choices of substance;

30 (d) Economic impacts in the private and public sectors, including
31 but not limited to:

32 (i) Jobs creation;

33 (ii) Workplace safety;

34 (iii) Revenues; and

35 (iv) Taxes generated for state and local budgets;

36 (e) Criminal justice impacts, to include but not be limited to:

37 (i) Use of public resources like law enforcement officers and
38 equipment, prosecuting attorneys and public defenders, judges and court

1 staff, the Washington state patrol crime lab and identification and
2 criminal history section, jails and prisons, and misdemeanor and felon
3 supervision officers to enforce state criminal laws regarding
4 marijuana; and

5 (ii) Short and long-term consequences of involvement in the
6 criminal justice system for persons accused of crimes relating to
7 marijuana, their families, and their communities; and

8 (f) State and local agency administrative costs and revenues.

9 **PART V**

10 **DRIVING UNDER THE INFLUENCE OF MARIJUANA**

11 **Sec. 31.** RCW 46.20.308 and 2008 c 282 s 2 are each amended to read
12 as follows:

13 (1) Any person who operates a motor vehicle within this state is
14 deemed to have given consent, subject to the provisions of RCW
15 46.61.506, to a test or tests of his or her breath or blood for the
16 purpose of determining the alcohol concentration, THC concentration, or
17 presence of any drug in his or her breath or blood if arrested for any
18 offense where, at the time of the arrest, the arresting officer has
19 reasonable grounds to believe the person had been driving or was in
20 actual physical control of a motor vehicle while under the influence of
21 intoxicating liquor or any drug or was in violation of RCW 46.61.503.
22 Neither consent nor this section precludes a police officer from
23 obtaining a search warrant for a person's breath or blood.

24 (2) The test or tests of breath shall be administered at the
25 direction of a law enforcement officer having reasonable grounds to
26 believe the person to have been driving or in actual physical control
27 of a motor vehicle within this state while under the influence of
28 intoxicating liquor or any drug or the person to have been driving or
29 in actual physical control of a motor vehicle while having alcohol or
30 THC in a concentration in violation of RCW 46.61.503 in his or her
31 system and being under the age of twenty-one. However, in those
32 instances where the person is incapable due to physical injury,
33 physical incapacity, or other physical limitation, of providing a
34 breath sample or where the person is being treated in a hospital,
35 clinic, doctor's office, emergency medical vehicle, ambulance, or other
36 similar facility or where the officer has reasonable grounds to believe

1 that the person is under the influence of a drug, a blood test shall be
2 administered by a qualified person as provided in RCW 46.61.506(5).
3 The officer shall inform the person of his or her right to refuse the
4 breath or blood test, and of his or her right to have additional tests
5 administered by any qualified person of his or her choosing as provided
6 in RCW 46.61.506. The officer shall warn the driver, in substantially
7 the following language, that:

8 (a) If the driver refuses to take the test, the driver's license,
9 permit, or privilege to drive will be revoked or denied for at least
10 one year; and

11 (b) If the driver refuses to take the test, the driver's refusal to
12 take the test may be used in a criminal trial; and

13 (c) If the driver submits to the test and the test is administered,
14 the driver's license, permit, or privilege to drive will be suspended,
15 revoked, or denied for at least ninety days if:

16 (i) The driver is age twenty-one or over and the test indicates
17 either that the alcohol concentration of the driver's breath or blood
18 is 0.08 or more((~~r~~)) or that the THC concentration of the driver's
19 blood is 5.00 or more; or ((~~if~~))

20 (ii) The driver is under age twenty-one and the test indicates
21 either that the alcohol concentration of the driver's breath or blood
22 is 0.02 or more((~~r~~)) or that the THC concentration of the driver's
23 blood is above 0.00; or ((~~if~~))

24 (iii) The driver is under age twenty-one and the driver is in
25 violation of RCW 46.61.502 or 46.61.504; and

26 (d) If the driver's license, permit, or privilege to drive is
27 suspended, revoked, or denied the driver may be eligible to immediately
28 apply for an ignition interlock driver's license.

29 (3) Except as provided in this section, the test administered shall
30 be of the breath only. If an individual is unconscious or is under
31 arrest for the crime of vehicular homicide as provided in RCW 46.61.520
32 or vehicular assault as provided in RCW 46.61.522, or if an individual
33 is under arrest for the crime of driving while under the influence of
34 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest
35 results from an accident in which there has been serious bodily injury
36 to another person, a breath or blood test may be administered without
37 the consent of the individual so arrested.

1 (4) Any person who is dead, unconscious, or who is otherwise in a
2 condition rendering him or her incapable of refusal, shall be deemed
3 not to have withdrawn the consent provided by subsection (1) of this
4 section and the test or tests may be administered, subject to the
5 provisions of RCW 46.61.506, and the person shall be deemed to have
6 received the warnings required under subsection (2) of this section.

7 (5) If, following his or her arrest and receipt of warnings under
8 subsection (2) of this section, the person arrested refuses upon the
9 request of a law enforcement officer to submit to a test or tests of
10 his or her breath or blood, no test shall be given except as authorized
11 under subsection (3) or (4) of this section.

12 (6) If, after arrest and after the other applicable conditions and
13 requirements of this section have been satisfied, a test or tests of
14 the person's blood or breath is administered and the test results
15 indicate that the alcohol concentration of the person's breath or blood
16 is 0.08 or more, or the THC concentration of the person's blood is 5.00
17 or more, if the person is age twenty-one or over, or that the alcohol
18 concentration of the person's breath or blood is 0.02 or more, or the
19 THC concentration of the person's blood is above 0.00, if the person is
20 under the age of twenty-one, or the person refuses to submit to a test,
21 the arresting officer or other law enforcement officer at whose
22 direction any test has been given, or the department, where applicable,
23 if the arrest results in a test of the person's blood, shall:

24 (a) Serve notice in writing on the person on behalf of the
25 department of its intention to suspend, revoke, or deny the person's
26 license, permit, or privilege to drive as required by subsection (7) of
27 this section;

28 (b) Serve notice in writing on the person on behalf of the
29 department of his or her right to a hearing, specifying the steps he or
30 she must take to obtain a hearing as provided by subsection (8) of this
31 section and that the person waives the right to a hearing if he or she
32 receives an ignition interlock driver's license;

33 (c) Mark the person's Washington state driver's license or permit
34 to drive, if any, in a manner authorized by the department;

35 (d) Serve notice in writing that the marked license or permit, if
36 any, is a temporary license that is valid for sixty days from the date
37 of arrest or from the date notice has been given in the event notice is
38 given by the department following a blood test, or until the

1 suspension, revocation, or denial of the person's license, permit, or
2 privilege to drive is sustained at a hearing pursuant to subsection (8)
3 of this section, whichever occurs first. No temporary license is valid
4 to any greater degree than the license or permit that it replaces; and

5 (e) Immediately notify the department of the arrest and transmit to
6 the department within seventy-two hours, except as delayed as the
7 result of a blood test, a sworn report or report under a declaration
8 authorized by RCW 9A.72.085 that states:

9 (i) That the officer had reasonable grounds to believe the arrested
10 person had been driving or was in actual physical control of a motor
11 vehicle within this state while under the influence of intoxicating
12 liquor or drugs, or both, or was under the age of twenty-one years and
13 had been driving or was in actual physical control of a motor vehicle
14 while having an alcohol or THC concentration in violation of RCW
15 46.61.503;

16 (ii) That after receipt of the warnings required by subsection (2)
17 of this section the person refused to submit to a test of his or her
18 blood or breath, or a test was administered and the results indicated
19 that the alcohol concentration of the person's breath or blood was 0.08
20 or more, or the THC concentration of the person's blood was 5.00 or
21 more, if the person is age twenty-one or over, or that the alcohol
22 concentration of the person's breath or blood was 0.02 or more, or the
23 THC concentration of the person's blood was above 0.00, if the person
24 is under the age of twenty-one; and

25 (iii) Any other information that the director may require by rule.

26 (7) The department of licensing, upon the receipt of a sworn report
27 or report under a declaration authorized by RCW 9A.72.085 under
28 subsection (6)(e) of this section, shall suspend, revoke, or deny the
29 person's license, permit, or privilege to drive or any nonresident
30 operating privilege, as provided in RCW 46.20.3101, such suspension,
31 revocation, or denial to be effective beginning sixty days from the
32 date of arrest or from the date notice has been given in the event
33 notice is given by the department following a blood test, or when
34 sustained at a hearing pursuant to subsection (8) of this section,
35 whichever occurs first.

36 (8) A person receiving notification under subsection (6)(b) of this
37 section may, within twenty days after the notice has been given,
38 request in writing a formal hearing before the department. The person

1 shall pay a fee of two hundred dollars as part of the request. If the
2 request is mailed, it must be postmarked within twenty days after
3 receipt of the notification. Upon timely receipt of such a request for
4 a formal hearing, including receipt of the required two hundred dollar
5 fee, the department shall afford the person an opportunity for a
6 hearing. The department may waive the required two hundred dollar fee
7 if the person is an indigent as defined in RCW 10.101.010. Except as
8 otherwise provided in this section, the hearing is subject to and shall
9 be scheduled and conducted in accordance with RCW 46.20.329 and
10 46.20.332. The hearing shall be conducted in the county of the arrest,
11 except that all or part of the hearing may, at the discretion of the
12 department, be conducted by telephone or other electronic means. The
13 hearing shall be held within sixty days following the arrest or
14 following the date notice has been given in the event notice is given
15 by the department following a blood test, unless otherwise agreed to by
16 the department and the person, in which case the action by the
17 department shall be stayed, and any valid temporary license marked
18 under subsection (6)(c) of this section extended, if the person is
19 otherwise eligible for licensing. For the purposes of this section,
20 the scope of the hearing shall cover the issues of whether a law
21 enforcement officer had reasonable grounds to believe the person had
22 been driving or was in actual physical control of a motor vehicle
23 within this state while under the influence of intoxicating liquor or
24 any drug or had been driving or was in actual physical control of a
25 motor vehicle within this state while having alcohol in his or her
26 system in a concentration of 0.02 or more, or THC in his or her system
27 in a concentration above 0.00, if the person was under the age of
28 twenty-one, whether the person was placed under arrest, and (a) whether
29 the person refused to submit to the test or tests upon request of the
30 officer after having been informed that such refusal would result in
31 the revocation of the person's license, permit, or privilege to drive,
32 or (b) if a test or tests were administered, whether the applicable
33 requirements of this section were satisfied before the administration
34 of the test or tests, whether the person submitted to the test or
35 tests, or whether a test was administered without express consent as
36 permitted under this section, and whether the test or tests indicated
37 that the alcohol concentration of the person's breath or blood was 0.08
38 or more, or the THC concentration of the person's blood was 5.00 or

1 more, if the person was age twenty-one or over at the time of the
2 arrest, or that the alcohol concentration of the person's breath or
3 blood was 0.02 or more, or the THC concentration of the person's blood
4 was above 0.00, if the person was under the age of twenty-one at the
5 time of the arrest. The sworn report or report under a declaration
6 authorized by RCW 9A.72.085 submitted by a law enforcement officer is
7 prima facie evidence that the officer had reasonable grounds to believe
8 the person had been driving or was in actual physical control of a
9 motor vehicle within this state while under the influence of
10 intoxicating liquor or drugs, or both, or the person had been driving
11 or was in actual physical control of a motor vehicle within this state
12 while having alcohol in his or her system in a concentration of 0.02 or
13 more, or THC in his or her system in a concentration above 0.00, and
14 was under the age of twenty-one and that the officer complied with the
15 requirements of this section.

16 A hearing officer shall conduct the hearing, may issue subpoenas
17 for the attendance of witnesses and the production of documents, and
18 shall administer oaths to witnesses. The hearing officer shall not
19 issue a subpoena for the attendance of a witness at the request of the
20 person unless the request is accompanied by the fee required by RCW
21 5.56.010 for a witness in district court. The sworn report or report
22 under a declaration authorized by RCW 9A.72.085 of the law enforcement
23 officer and any other evidence accompanying the report shall be
24 admissible without further evidentiary foundation and the
25 certifications authorized by the criminal rules for courts of limited
26 jurisdiction shall be admissible without further evidentiary
27 foundation. The person may be represented by counsel, may question
28 witnesses, may present evidence, and may testify. The department shall
29 order that the suspension, revocation, or denial either be rescinded or
30 sustained.

31 (9) If the suspension, revocation, or denial is sustained after
32 such a hearing, the person whose license, privilege, or permit is
33 suspended, revoked, or denied has the right to file a petition in the
34 superior court of the county of arrest to review the final order of
35 revocation by the department in the same manner as an appeal from a
36 decision of a court of limited jurisdiction. Notice of appeal must be
37 filed within thirty days after the date the final order is served or
38 the right to appeal is waived. Notwithstanding RCW 46.20.334, RALJ

1 1.1, or other statutes or rules referencing de novo review, the appeal
2 shall be limited to a review of the record of the administrative
3 hearing. The appellant must pay the costs associated with obtaining
4 the record of the hearing before the hearing officer. The filing of
5 the appeal does not stay the effective date of the suspension,
6 revocation, or denial. A petition filed under this subsection must
7 include the petitioner's grounds for requesting review. Upon granting
8 petitioner's request for review, the court shall review the
9 department's final order of suspension, revocation, or denial as
10 expeditiously as possible. The review must be limited to a
11 determination of whether the department has committed any errors of
12 law. The superior court shall accept those factual determinations
13 supported by substantial evidence in the record: (a) That were
14 expressly made by the department; or (b) that may reasonably be
15 inferred from the final order of the department. The superior court
16 may reverse, affirm, or modify the decision of the department or remand
17 the case back to the department for further proceedings. The decision
18 of the superior court must be in writing and filed in the clerk's
19 office with the other papers in the case. The court shall state the
20 reasons for the decision. If judicial relief is sought for a stay or
21 other temporary remedy from the department's action, the court shall
22 not grant such relief unless the court finds that the appellant is
23 likely to prevail in the appeal and that without a stay the appellant
24 will suffer irreparable injury. If the court stays the suspension,
25 revocation, or denial it may impose conditions on such stay.

26 (10) (a) If a person whose driver's license, permit, or privilege to
27 drive has been or will be suspended, revoked, or denied under
28 subsection (7) of this section, other than as a result of a breath or
29 blood test refusal, and who has not committed an offense for which he
30 or she was granted a deferred prosecution under chapter 10.05 RCW,
31 petitions a court for a deferred prosecution on criminal charges
32 arising out of the arrest for which action has been or will be taken
33 under subsection (7) of this section, or notifies the department of
34 licensing of the intent to seek such a deferred prosecution, then the
35 license suspension or revocation shall be stayed pending entry of the
36 deferred prosecution. The stay shall not be longer than one hundred
37 fifty days after the date charges are filed, or two years after the
38 date of the arrest, whichever time period is shorter. If the court

1 stays the suspension, revocation, or denial, it may impose conditions
2 on such stay. If the person is otherwise eligible for licensing, the
3 department shall issue a temporary license, or extend any valid
4 temporary license marked under subsection (6) of this section, for the
5 period of the stay. If a deferred prosecution treatment plan is not
6 recommended in the report made under RCW 10.05.050, or if treatment is
7 rejected by the court, or if the person declines to accept an offered
8 treatment plan, or if the person violates any condition imposed by the
9 court, then the court shall immediately direct the department to cancel
10 the stay and any temporary marked license or extension of a temporary
11 license issued under this subsection.

12 (b) A suspension, revocation, or denial imposed under this section,
13 other than as a result of a breath or blood test refusal, shall be
14 stayed if the person is accepted for deferred prosecution as provided
15 in chapter 10.05 RCW for the incident upon which the suspension,
16 revocation, or denial is based. If the deferred prosecution is
17 terminated, the stay shall be lifted and the suspension, revocation, or
18 denial reinstated. If the deferred prosecution is completed, the stay
19 shall be lifted and the suspension, revocation, or denial canceled.

20 (c) The provisions of (b) of this subsection relating to a stay of
21 a suspension, revocation, or denial and the cancellation of any
22 suspension, revocation, or denial do not apply to the suspension,
23 revocation, denial, or disqualification of a person's commercial
24 driver's license or privilege to operate a commercial motor vehicle.

25 (11) When it has been finally determined under the procedures of
26 this section that a nonresident's privilege to operate a motor vehicle
27 in this state has been suspended, revoked, or denied, the department
28 shall give information in writing of the action taken to the motor
29 vehicle administrator of the state of the person's residence and of any
30 state in which he or she has a license.

31 **Sec. 32.** RCW 46.20.3101 and 2004 c 95 s 4 and 2004 c 68 s 3 are
32 each reenacted and amended to read as follows:

33 Pursuant to RCW 46.20.308, the department shall suspend, revoke, or
34 deny the arrested person's license, permit, or privilege to drive as
35 follows:

36 (1) In the case of a person who has refused a test or tests:

1 (a) For a first refusal within seven years, where there has not
2 been a previous incident within seven years that resulted in
3 administrative action under this section, revocation or denial for one
4 year;

5 (b) For a second or subsequent refusal within seven years, or for
6 a first refusal where there has been one or more previous incidents
7 within seven years that have resulted in administrative action under
8 this section, revocation or denial for two years or until the person
9 reaches age twenty-one, whichever is longer.

10 (2) In the case of an incident where a person has submitted to or
11 been administered a test or tests indicating that the alcohol
12 concentration of the person's breath or blood was 0.08 or more, or that
13 the THC concentration of the person's blood was 5.00 or more:

14 (a) For a first incident within seven years, where there has not
15 been a previous incident within seven years that resulted in
16 administrative action under this section, suspension for ninety days;

17 (b) For a second or subsequent incident within seven years,
18 revocation or denial for two years.

19 (3) In the case of an incident where a person under age twenty-one
20 has submitted to or been administered a test or tests indicating that
21 the alcohol concentration of the person's breath or blood was 0.02 or
22 more, or that the THC concentration of the person's blood was above
23 0.00:

24 (a) For a first incident within seven years, suspension or denial
25 for ninety days;

26 (b) For a second or subsequent incident within seven years,
27 revocation or denial for one year or until the person reaches age
28 twenty-one, whichever is longer.

29 (4) The department shall grant credit on a day-for-day basis for
30 any portion of a suspension, revocation, or denial already served under
31 this section for a suspension, revocation, or denial imposed under RCW
32 46.61.5055 arising out of the same incident.

33 **Sec. 33.** RCW 46.61.502 and 2011 c 293 s 2 are each amended to read
34 as follows:

35 (1) A person is guilty of driving while under the influence of
36 intoxicating liquor, marijuana, or any drug if the person drives a
37 vehicle within this state:

1 (a) And the person has, within two hours after driving, an alcohol
2 concentration of 0.08 or higher as shown by analysis of the person's
3 breath or blood made under RCW 46.61.506; or

4 (b) The person has, within two hours after driving, a THC
5 concentration of 5.00 or higher as shown by analysis of the person's
6 blood made under RCW 46.61.506; or

7 (c) While the person is under the influence of or affected by
8 intoxicating liquor, marijuana, or any drug; or

9 ~~((c))~~ (d) While the person is under the combined influence of or
10 affected by intoxicating liquor, marijuana, and any drug.

11 (2) The fact that a person charged with a violation of this section
12 is or has been entitled to use a drug under the laws of this state
13 shall not constitute a defense against a charge of violating this
14 section.

15 (3) (a) It is an affirmative defense to a violation of subsection
16 (1)(a) of this section, which the defendant must prove by a
17 preponderance of the evidence, that the defendant consumed a sufficient
18 quantity of alcohol after the time of driving and before the
19 administration of an analysis of the person's breath or blood to cause
20 the defendant's alcohol concentration to be 0.08 or more within two
21 hours after driving. The court shall not admit evidence of this
22 defense unless the defendant notifies the prosecution prior to the
23 omnibus or pretrial hearing in the case of the defendant's intent to
24 assert the affirmative defense.

25 (b) It is an affirmative defense to a violation of subsection
26 (1)(b) of this section, which the defendant must prove by a
27 preponderance of the evidence, that the defendant consumed a sufficient
28 quantity of marijuana after the time of driving and before the
29 administration of an analysis of the person's blood to cause the
30 defendant's THC concentration to be 5.00 or more within two hours after
31 driving. The court shall not admit evidence of this defense unless the
32 defendant notifies the prosecution prior to the omnibus or pretrial
33 hearing in the case of the defendant's intent to assert the affirmative
34 defense.

35 (4) (a) Analyses of blood or breath samples obtained more than two
36 hours after the alleged driving may be used as evidence that within two
37 hours of the alleged driving, a person had an alcohol concentration of
38 0.08 or more in violation of subsection (1)(a) of this section, and in

1 any case in which the analysis shows an alcohol concentration above
2 0.00 may be used as evidence that a person was under the influence of
3 or affected by intoxicating liquor or any drug in violation of
4 subsection (1) (~~(b) or~~) (c) or (d) of this section.

5 (b) Analyses of blood samples obtained more than two hours after
6 the alleged driving may be used as evidence that within two hours of
7 the alleged driving, a person had a THC concentration of 5.00 or more
8 in violation of subsection (1) (b) of this section, and in any case in
9 which the analysis shows a THC concentration above 0.00 may be used as
10 evidence that a person was under the influence of or affected by
11 marijuana in violation of subsection (1) (c) or (d) of this section.

12 (5) Except as provided in subsection (6) of this section, a
13 violation of this section is a gross misdemeanor.

14 (6) It is a class C felony punishable under chapter 9.94A RCW, or
15 chapter 13.40 RCW if the person is a juvenile, if:

16 (a) The person has four or more prior offenses within ten years as
17 defined in RCW 46.61.5055; or

18 (b) The person has ever previously been convicted of:

19 (i) Vehicular homicide while under the influence of intoxicating
20 liquor or any drug, RCW 46.61.520(1) (a);

21 (ii) Vehicular assault while under the influence of intoxicating
22 liquor or any drug, RCW 46.61.522(1) (b);

23 (iii) An out-of-state offense comparable to the offense specified
24 in (b) (i) or (ii) of this subsection; or

25 (iv) A violation of this subsection (6) or RCW 46.61.504(6).

26 **Sec. 34.** RCW 46.61.503 and 1998 c 213 s 4, 1998 c 207 s 5, and
27 1998 c 41 s 8 are each reenacted and amended to read as follows:

28 (1) Notwithstanding any other provision of this title, a person is
29 guilty of driving or being in physical control of a motor vehicle after
30 consuming alcohol or marijuana if the person operates or is in physical
31 control of a motor vehicle within this state and the person:

32 (a) Is under the age of twenty-one; and

33 (b) Has, within two hours after operating or being in physical
34 control of the motor vehicle, either:

35 (i) An alcohol concentration of at least 0.02 but less than the
36 concentration specified in RCW 46.61.502, as shown by analysis of the
37 person's breath or blood made under RCW 46.61.506; or

1 (ii) A THC concentration above 0.00 but less than the concentration
2 specified in RCW 46.61.502, as shown by analysis of the person's blood
3 made under RCW 46.61.506.

4 (2) It is an affirmative defense to a violation of subsection (1)
5 of this section, which the defendant must prove by a preponderance of
6 the evidence, that the defendant consumed a sufficient quantity of
7 alcohol or marijuana after the time of driving or being in physical
8 control and before the administration of an analysis of the person's
9 breath or blood to cause the defendant's alcohol or THC concentration
10 to be in violation of subsection (1) of this section within two hours
11 after driving or being in physical control. The court shall not admit
12 evidence of this defense unless the defendant notifies the prosecution
13 prior to the earlier of: (a) Seven days prior to trial; or (b) the
14 omnibus or pretrial hearing in the case of the defendant's intent to
15 assert the affirmative defense.

16 (3) Analyses of blood or breath samples obtained more than two
17 hours after the alleged driving or being in physical control may be
18 used as evidence that within two hours of the alleged driving or being
19 in physical control, a person had an alcohol or THC concentration in
20 violation of subsection (1) of this section.

21 (4) A violation of this section is a misdemeanor.

22 **Sec. 35.** RCW 46.61.504 and 2011 c 293 s 3 are each amended to read
23 as follows:

24 (1) A person is guilty of being in actual physical control of a
25 motor vehicle while under the influence of intoxicating liquor or any
26 drug if the person has actual physical control of a vehicle within this
27 state:

28 (a) And the person has, within two hours after being in actual
29 physical control of the vehicle, an alcohol concentration of 0.08 or
30 higher as shown by analysis of the person's breath or blood made under
31 RCW 46.61.506; or

32 (b) The person has, within two hours after being in actual physical
33 control of a vehicle, a THC concentration of 5.00 or higher as shown by
34 analysis of the person's blood made under RCW 46.61.506; or

35 (c) While the person is under the influence of or affected by
36 intoxicating liquor or any drug; or

1 ~~((c))~~ (d) While the person is under the combined influence of or
2 affected by intoxicating liquor and any drug.

3 (2) The fact that a person charged with a violation of this section
4 is or has been entitled to use a drug under the laws of this state does
5 not constitute a defense against any charge of violating this section.
6 No person may be convicted under this section if, prior to being
7 pursued by a law enforcement officer, the person has moved the vehicle
8 safely off the roadway.

9 (3) (a) It is an affirmative defense to a violation of subsection
10 (1)(a) of this section which the defendant must prove by a
11 preponderance of the evidence that the defendant consumed a sufficient
12 quantity of alcohol after the time of being in actual physical control
13 of the vehicle and before the administration of an analysis of the
14 person's breath or blood to cause the defendant's alcohol concentration
15 to be 0.08 or more within two hours after being in such control. The
16 court shall not admit evidence of this defense unless the defendant
17 notifies the prosecution prior to the omnibus or pretrial hearing in
18 the case of the defendant's intent to assert the affirmative defense.

19 (b) It is an affirmative defense to a violation of subsection
20 (1)(b) of this section, which the defendant must prove by a
21 preponderance of the evidence, that the defendant consumed a sufficient
22 quantity of marijuana after the time of being in actual physical
23 control of the vehicle and before the administration of an analysis of
24 the person's blood to cause the defendant's THC concentration to be
25 5.00 or more within two hours after being in control of the vehicle.
26 The court shall not admit evidence of this defense unless the defendant
27 notifies the prosecution prior to the omnibus or pretrial hearing in
28 the case of the defendant's intent to assert the affirmative defense.

29 (4) (a) Analyses of blood or breath samples obtained more than two
30 hours after the alleged being in actual physical control of a vehicle
31 may be used as evidence that within two hours of the alleged being in
32 such control, a person had an alcohol concentration of 0.08 or more in
33 violation of subsection (1)(a) of this section, and in any case in
34 which the analysis shows an alcohol concentration above 0.00 may be
35 used as evidence that a person was under the influence of or affected
36 by intoxicating liquor or any drug in violation of subsection (1) ~~((b)~~
37 ~~or))~~ (c) or (d) of this section.

1 (b) Analyses of blood samples obtained more than two hours after
2 the alleged being in actual physical control of a vehicle may be used
3 as evidence that within two hours of the alleged being in control of
4 the vehicle, a person had a THC concentration of 5.00 or more in
5 violation of subsection (1)(b) of this section, and in any case in
6 which the analysis shows a THC concentration above 0.00 may be used as
7 evidence that a person was under the influence of or affected by
8 marijuana in violation of subsection (1)(c) or (d) of this section.

9 (5) Except as provided in subsection (6) of this section, a
10 violation of this section is a gross misdemeanor.

11 (6) It is a class C felony punishable under chapter 9.94A RCW, or
12 chapter 13.40 RCW if the person is a juvenile, if:

13 (a) The person has four or more prior offenses within ten years as
14 defined in RCW 46.61.5055; or

15 (b) The person has ever previously been convicted of:

16 (i) Vehicular homicide while under the influence of intoxicating
17 liquor or any drug, RCW 46.61.520(1)(a);

18 (ii) Vehicular assault while under the influence of intoxicating
19 liquor or any drug, RCW 46.61.522(1)(b);

20 (iii) An out-of-state offense comparable to the offense specified
21 in (b)(i) or (ii) of this subsection; or

22 (iv) A violation of this subsection (6) or RCW 46.61.502(6).

23 **Sec. 36.** RCW 46.61.50571 and 2000 c 52 s 1 are each amended to
24 read as follows:

25 (1) A defendant who is charged with an offense involving driving
26 while under the influence as defined in RCW 46.61.502, driving under
27 age twenty-one after consuming alcohol or marijuana as defined in RCW
28 46.61.503, or being in physical control of a vehicle while under the
29 influence as defined in RCW 46.61.504, shall be required to appear in
30 person before a judicial officer within one judicial day after the
31 arrest if the defendant is served with a citation or complaint at the
32 time of the arrest. A court may by local court rule waive the
33 requirement for appearance within one judicial day if it provides for
34 the appearance at the earliest practicable day following arrest and
35 establishes the method for identifying that day in the rule.

36 (2) A defendant who is charged with an offense involving driving
37 while under the influence as defined in RCW 46.61.502, driving under

1 age twenty-one after consuming alcohol or marijuana as defined in RCW
2 46.61.503, or being in physical control of a vehicle while under the
3 influence as defined in RCW 46.61.504, and who is not served with a
4 citation or complaint at the time of the incident, shall appear in
5 court for arraignment in person as soon as practicable, but in no event
6 later than fourteen days after the next day on which court is in
7 session following the issuance of the citation or the filing of the
8 complaint or information.

9 (3) At the time of an appearance required by this section, the
10 court shall determine the necessity of imposing conditions of pretrial
11 release according to the procedures established by court rule for a
12 preliminary appearance or an arraignment.

13 (4) Appearances required by this section are mandatory and may not
14 be waived.

15 **Sec. 37.** RCW 46.61.506 and 2010 c 53 s 1 are each amended to read
16 as follows:

17 (1) Upon the trial of any civil or criminal action or proceeding
18 arising out of acts alleged to have been committed by any person while
19 driving or in actual physical control of a vehicle while under the
20 influence of intoxicating liquor or any drug, if the person's alcohol
21 concentration is less than 0.08 or the person's THC concentration is
22 less than 5.00, it is evidence that may be considered with other
23 competent evidence in determining whether the person was under the
24 influence of intoxicating liquor or any drug.

25 (2)(a) The breath analysis of the person's alcohol concentration
26 shall be based upon grams of alcohol per two hundred ten liters of
27 breath.

28 (b) The blood analysis of the person's THC concentration shall be
29 based upon nanograms per milliliter of whole blood.

30 (c) The foregoing provisions of this section shall not be construed
31 as limiting the introduction of any other competent evidence bearing
32 upon the question whether the person was under the influence of
33 intoxicating liquor or any drug.

34 (3) Analysis of the person's blood or breath to be considered valid
35 under the provisions of this section or RCW 46.61.502 or 46.61.504
36 shall have been performed according to methods approved by the state
37 toxicologist and by an individual possessing a valid permit issued by

1 the state toxicologist for this purpose. The state toxicologist is
2 directed to approve satisfactory techniques or methods, to supervise
3 the examination of individuals to ascertain their qualifications and
4 competence to conduct such analyses, and to issue permits which shall
5 be subject to termination or revocation at the discretion of the state
6 toxicologist.

7 (4) (a) A breath test performed by any instrument approved by the
8 state toxicologist shall be admissible at trial or in an administrative
9 proceeding if the prosecution or department produces prima facie
10 evidence of the following:

11 (i) The person who performed the test was authorized to perform
12 such test by the state toxicologist;

13 (ii) The person being tested did not vomit or have anything to eat,
14 drink, or smoke for at least fifteen minutes prior to administration of
15 the test;

16 (iii) The person being tested did not have any foreign substances,
17 not to include dental work, fixed or removable, in his or her mouth at
18 the beginning of the fifteen-minute observation period;

19 (iv) Prior to the start of the test, the temperature of any liquid
20 simulator solution utilized as an external standard, as measured by a
21 thermometer approved of by the state toxicologist was thirty-four
22 degrees centigrade plus or minus 0.3 degrees centigrade;

23 (v) The internal standard test resulted in the message "verified";

24 (vi) The two breath samples agree to within plus or minus ten
25 percent of their mean to be determined by the method approved by the
26 state toxicologist;

27 (vii) The result of the test of the liquid simulator solution
28 external standard or dry gas external standard result did lie between
29 .072 to .088 inclusive; and

30 (viii) All blank tests gave results of .000.

31 (b) For purposes of this section, "prima facie evidence" is
32 evidence of sufficient circumstances that would support a logical and
33 reasonable inference of the facts sought to be proved. In assessing
34 whether there is sufficient evidence of the foundational facts, the
35 court or administrative tribunal is to assume the truth of the
36 prosecution's or department's evidence and all reasonable inferences
37 from it in a light most favorable to the prosecution or department.

1 (c) Nothing in this section shall be deemed to prevent the subject
2 of the test from challenging the reliability or accuracy of the test,
3 the reliability or functioning of the instrument, or any maintenance
4 procedures. Such challenges, however, shall not preclude the
5 admissibility of the test once the prosecution or department has made
6 a prima facie showing of the requirements contained in (a) of this
7 subsection. Instead, such challenges may be considered by the trier of
8 fact in determining what weight to give to the test result.

9 (5) When a blood test is administered under the provisions of RCW
10 46.20.308, the withdrawal of blood for the purpose of determining its
11 alcoholic or drug content may be performed only by a physician, a
12 registered nurse, a licensed practical nurse, a nursing assistant as
13 defined in chapter 18.88A RCW, a physician assistant as defined in
14 chapter 18.71A RCW, a first responder as defined in chapter 18.73 RCW,
15 an emergency medical technician as defined in chapter 18.73 RCW, a
16 health care assistant as defined in chapter 18.135 RCW, or any
17 technician trained in withdrawing blood. This limitation shall not
18 apply to the taking of breath specimens.

19 (6) The person tested may have a physician, or a qualified
20 technician, chemist, registered nurse, or other qualified person of his
21 or her own choosing administer one or more tests in addition to any
22 administered at the direction of a law enforcement officer. The test
23 will be admissible if the person establishes the general acceptability
24 of the testing technique or method. The failure or inability to obtain
25 an additional test by a person shall not preclude the admission of
26 evidence relating to the test or tests taken at the direction of a law
27 enforcement officer.

28 (7) Upon the request of the person who shall submit to a test or
29 tests at the request of a law enforcement officer, full information
30 concerning the test or tests shall be made available to him or her or
31 his or her attorney.

32 **PART VI**
33 **CONSTRUCTION**

34 NEW SECTION. **Sec. 38.** Sections 4 through 18 of this act are each
35 added to chapter 69.50 RCW under the subchapter heading "article III --

1 regulation of manufacture, distribution, and dispensing of controlled
2 substances."

3 NEW SECTION. **Sec. 39.** Section 21 of this act is added to chapter
4 69.50 RCW under the subchapter heading "article IV -- offenses and
5 penalties."

6 NEW SECTION. **Sec. 40.** Sections 26 through 30 of this act are each
7 added to chapter 69.50 RCW under the subchapter heading "article V --
8 enforcement and administrative provisions."

9 NEW SECTION. **Sec. 41.** The code reviser shall prepare a bill for
10 introduction at the next legislative session that corrects references
11 to the sections affected by this act.

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Election on November 6, 2012.