H-3383.2

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**HOUSE BILL 2612**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Representatives Kloba, Dolan, Doglio, Morgan, Vick, Blake, and Peterson

AN ACT Relating to continuing to improve the regulated marijuana system; amending RCW 69.50.4013, 69.51A.040, 69.51A.055, and 69.51A.060; reenacting and amending RCW 69.51A.010; and repealing RCW 69.51A.043.

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

**Sec.**  RCW 69.50.4013 and 2017 c 317 s 15 are each amended to read as follows:

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

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

(3)(a) The possession, by a person twenty-one years of age or older, of useable marijuana, marijuana concentrates, or marijuana-infused products in amounts that do not exceed those set forth in RCW 69.50.360(3) is not a violation of this section, this chapter, or any other provision of Washington state law.

(b) The possession of marijuana, useable marijuana, marijuana concentrates, and marijuana-infused products being physically transported or delivered within the state, in amounts not exceeding those that may be established under RCW 69.50.385(3), by a licensed employee of a common carrier when performing the duties authorized in accordance with RCW 69.50.382 and 69.50.385, is not a violation of this section, this chapter, or any other provision of Washington state law.

(4)(a) The delivery by a person twenty-one years of age or older to one or more persons twenty-one years of age or older, during a single twenty-four hour period, for noncommercial purposes and not conditioned upon or done in connection with the provision or receipt of financial consideration, of any combination of ((~~the following~~)) marijuana products that an adult age twenty-one or over may lawfully possess under subsection (3)(a) of this section, is not a violation of this section, this chapter, or any other provisions of Washington state law((~~:~~

~~(i) One-half ounce of useable marijuana;~~

~~(ii) Eight ounces of marijuana-infused product in solid form;~~

~~(iii) Thirty-six ounces of marijuana-infused product in liquid form; or~~

~~(iv) Three and one-half grams of marijuana concentrates~~)).

(b) The act of delivering marijuana or a marijuana product as authorized under this subsection (4) must meet one of the following requirements:

(i) The delivery must be done in a location outside of the view of general public and in a nonpublic place; or

(ii) The marijuana or marijuana product must be in the original packaging as purchased from the marijuana retailer.

(5) No person under twenty-one years of age may possess, manufacture, sell, or distribute marijuana, marijuana-infused products, or marijuana concentrates, regardless of THC concentration. This does not include qualifying patients with a valid authorization.

(6) The possession by a qualifying patient or designated provider of marijuana concentrates, useable marijuana, marijuana-infused products, or plants in accordance with chapter 69.51A RCW is not a violation of this section, this chapter, or any other provision of Washington state law.

**Sec.**  RCW 69.51A.010 and 2015 c 70 s 17 are each reenacted and amended to read as follows:

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

(1)(a) ((~~Until July 1, 2016, "authorization" means:~~

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

~~(ii) Proof of identity such as a Washington state driver's license or identicard, as defined in RCW 46.20.035.~~

~~(b) Beginning July 1, 2016, "authorization"~~)) "Authorization" means a form developed by the department that is completed and signed by a qualifying patient's health care professional and printed on tamper-resistant paper.

((~~(c)~~)) (b) An authorization is not a prescription as defined in RCW 69.50.101.

(2) "CBD concentration" means the percent of cannabidiol content per dry weight of any part of the plant *Cannabis*, or per volume or weight of marijuana product.

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

(4) "Designated provider" means a person who is twenty-one years of age or older and:

(a)(i) Is the parent or guardian of a qualifying patient who is under the age of eighteen and ((~~beginning July 1, 2016,~~)) holds a recognition card; or

(ii) Has been designated in writing by a qualifying patient to serve as the designated provider for that patient;

(b)(i) Has an authorization from the qualifying patient's health care professional; or

(ii) ((~~Beginning July 1, 2016:~~))(A) Has been entered into the medical marijuana authorization database as being the designated provider to a qualifying patient; and

(B) Has been provided a recognition card;

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

(d) Provides marijuana to only the qualifying patient that has designated him or her;

(e) Is in compliance with the terms and conditions of this chapter; and

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

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

(6) "Housing unit" means a house, an apartment, a mobile home, a group of rooms, or a single room that is occupied as separate living quarters, in which the occupants live and eat separately from any other persons in the building, and which have direct access from the outside of the building or through a common hall.

(7) "Low THC, high CBD" means products determined by the department to have a low THC, high CBD ratio under RCW 69.50.375. Low THC, high CBD products must be inhalable, ingestible, or absorbable.

(8) "Marijuana" has the meaning provided in RCW 69.50.101.

(9) "Marijuana concentrates" has the meaning provided in RCW 69.50.101.

(10) "Marijuana processor" has the meaning provided in RCW 69.50.101.

(11) "Marijuana producer" has the meaning provided in RCW 69.50.101.

(12) "Marijuana retailer" has the meaning provided in RCW 69.50.101.

(13) "Marijuana retailer with a medical marijuana endorsement" means a marijuana retailer that has been issued a medical marijuana endorsement by the state liquor and cannabis board pursuant to RCW 69.50.375.

(14) "Marijuana-infused products" has the meaning provided in RCW 69.50.101.

(15) "Medical marijuana authorization database" means the secure and confidential database established in RCW 69.51A.230.

(16) "Medical use of marijuana" means the manufacture, production, possession, transportation, delivery, ingestion, application, or administration of marijuana for the exclusive benefit of a qualifying patient in the treatment of his or her terminal or debilitating medical condition.

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

(18) "Public place" has the meaning provided in RCW 70.160.020.

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

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

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

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

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

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

(vi)(A) Has an authorization from his or her health care professional; or

(B) ((~~Beginning July 1, 2016, has~~)) Has been entered into the medical marijuana authorization database and has been provided a recognition card; and

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

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

(20) "Recognition card" means a card issued to qualifying patients and designated providers by a marijuana retailer with a medical marijuana endorsement that has entered them into the medical marijuana authorization database.

(21) "Retail outlet" has the meaning provided in RCW 69.50.101.

(22) "Secretary" means the secretary of the department of health.

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

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

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

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

(24) "Terminal or debilitating medical condition" means a condition severe enough to significantly interfere with the patient's activities of daily living and ability to function, which can be objectively assessed and evaluated and limited to the following:

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

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

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

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

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

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

(g) Posttraumatic stress disorder; or

(h) Traumatic brain injury.

(25) "THC concentration" has the meaning provided in RCW 69.50.101.

(26) "Useable marijuana" has the meaning provided in RCW 69.50.101.

**Sec.**  RCW 69.51A.040 and 2015 c 70 s 24 are each amended to read as follows:

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

(1)(a)(i) The qualifying patient or designated provider has been entered into the medical marijuana authorization database and holds a valid recognition card, or the qualifying patient or designated provider holds a valid authorization if the qualifying patient or designated provider has not been entered into the medical marijuana authorization database and has not been issued a recognition card, and the qualifying patient or designated provider possesses no more than the amount of marijuana concentrates, useable marijuana, plants, or marijuana-infused products authorized under RCW 69.51A.210.

(ii) If a person is both a qualifying patient and a designated provider for another qualifying patient, the person may possess no more than twice the amounts described in RCW 69.51A.210 for the qualifying patient and designated provider, whether the plants, marijuana concentrates, useable marijuana, or marijuana-infused products are possessed individually or in combination between the qualifying patient and his or her designated provider;

(b) The qualifying patient or designated provider presents his or her recognition card or, if the qualifying patient or designated provider does not have a recognition card, then his or her authorization, to any law enforcement officer who questions the patient or provider regarding his or her medical use of marijuana;

(c) The qualifying patient or designated provider keeps a copy of his or her recognition card ((~~and~~)) if the qualifying patient or designated provider has a recognition card, or keeps a copy of his or her authorization if the qualifying patient or designated provider does not have a recognition card, and keeps a copy of the qualifying patient or designated provider's contact information posted prominently next to any plants, marijuana concentrates, marijuana-infused products, or useable marijuana located at his or her residence;

(d) The investigating law enforcement officer does not possess evidence that:

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

(ii) The qualifying patient sold, donated, or supplied marijuana to another person; and

(e) The designated provider has not served as a designated provider to more than one qualifying patient within a fifteen-day period; or

(2) The qualifying patient or designated provider participates in a cooperative as provided in RCW 69.51A.250.

**Sec.**  RCW 69.51A.055 and 2015 c 70 s 30 are each amended to read as follows:

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

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

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

**Sec.**  RCW 69.51A.060 and 2019 c 204 s 3 are each amended to read as follows:

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

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

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

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

(5) Nothing in this chapter authorizes the possession or use of marijuana, marijuana concentrates, useable marijuana, or marijuana-infused products on federal property.

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

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

(8) No person shall be entitled to claim the protection from arrest and prosecution under RCW 69.51A.040 ((~~or the affirmative defense under RCW 69.51A.043~~)) for engaging in the medical use of marijuana in a way that endangers the health or well-being of any person through the use of a motorized vehicle on a street, road, or highway, including violations of RCW 46.61.502 or 46.61.504, or equivalent local ordinances.

NEW SECTION. **Sec.**  RCW 69.51A.043 (Failure to enter into the medical marijuana authorization database—Affirmative defense) and 2015 c 70 s 25 & 2011 c 181 s 402 are each repealed.

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