

**INITIATIVE 502**

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal, hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 502 to the Legislature is a true and correct copy as it was received by this office.

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  
36 central nervous system of a controlled substance included in Schedule  
37 I or II.

1 (2) The term does not include:  
2 (i) a controlled substance;  
3 (ii) a substance for which there is an approved new drug  
4 application;  
5 (iii) a substance with respect to which an exemption is in effect  
6 for investigational use by a particular person under Section 505 of the  
7 federal Food, Drug and Cosmetic Act, 21 U.S.C. Sec. 355, to the extent  
8 conduct with respect to the substance is pursuant to the exemption; or  
9 (iv) any substance to the extent not intended for human consumption  
10 before an exemption takes effect with respect to the substance.  
11 (f) "Deliver" or "delivery," means the actual or constructive  
12 transfer from one person to another of a substance, whether or not  
13 there is an agency relationship.  
14 (g) "Department" means the department of health.  
15 (h) "Dispense" means the interpretation of a prescription or order  
16 for a controlled substance and, pursuant to that prescription or order,  
17 the proper selection, measuring, compounding, labeling, or packaging  
18 necessary to prepare that prescription or order for delivery.  
19 (i) "Dispenser" means a practitioner who dispenses.  
20 (j) "Distribute" means to deliver other than by administering or  
21 dispensing a controlled substance.  
22 (k) "Distributor" means a person who distributes.  
23 (l) "Drug" means (1) a controlled substance recognized as a drug in  
24 the official United States pharmacopoeia/national formulary or the  
25 official homeopathic pharmacopoeia of the United States, or any  
26 supplement to them; (2) controlled substances intended for use in the  
27 diagnosis, cure, mitigation, treatment, or prevention of disease in  
28 individuals or animals; (3) controlled substances (other than food)  
29 intended to affect the structure or any function of the body of  
30 individuals or animals; and (4) controlled substances intended for use  
31 as a component of any article specified in (1), (2), or (3) of this  
32 subsection. The term does not include devices or their components,  
33 parts, or accessories.  
34 (m) "Drug enforcement administration" means the drug enforcement  
35 administration in the United States Department of Justice, or its  
36 successor agency.  
37 (n) "Immediate precursor" means a substance:

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

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

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

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

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

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

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

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

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

37 (~~((q))~~) (s) "Marijuana" or "marihuana" means all parts of the plant  
38 Cannabis, whether growing or not, with a THC concentration greater than  
39 0.3 percent on a dry weight basis; the seeds thereof; the resin

1 extracted from any part of the plant; and every compound, manufacture,  
2 salt, derivative, mixture, or preparation of the plant, its seeds or  
3 resin. The term does not include the mature stalks of the plant, fiber  
4 produced from the stalks, oil or cake made from the seeds of the plant,  
5 any other compound, manufacture, salt, derivative, mixture, or  
6 preparation of the mature stalks (except the resin extracted  
7 therefrom), fiber, oil, or cake, or the sterilized seed of the plant  
8 which is incapable of germination.

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

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

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

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

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

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

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

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

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

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

5 (6) Cocaine base.

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

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

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

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

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

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

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

28 (1) A physician under chapter 18.71 RCW; a physician assistant  
29 under chapter 18.71A RCW; an osteopathic physician and surgeon under  
30 chapter 18.57 RCW; an osteopathic physician assistant under chapter  
31 18.57A RCW who is licensed under RCW 18.57A.020 subject to any  
32 limitations in RCW 18.57A.040; an optometrist licensed under chapter  
33 18.53 RCW who is certified by the optometry board under RCW 18.53.010  
34 subject to any limitations in RCW 18.53.010; a dentist under chapter  
35 18.32 RCW; a podiatric physician and surgeon under chapter 18.22 RCW;  
36 a veterinarian under chapter 18.92 RCW; a registered nurse, advanced  
37 registered nurse practitioner, or licensed practical nurse under  
38 chapter 18.79 RCW; a naturopathic physician under chapter 18.36A RCW  
39 who is licensed under RCW 18.36A.030 subject to any limitations in RCW

1 18.36A.040; a pharmacist under chapter 18.64 RCW or a scientific  
2 investigator under this chapter, licensed, registered or otherwise  
3 permitted insofar as is consistent with those licensing laws to  
4 distribute, dispense, conduct research with respect to or administer a  
5 controlled substance in the course of their professional practice or  
6 research in this state.

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

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

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

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

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

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

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

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

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



1 shall be required for each location at which a marijuana producer  
2 intends to produce marijuana.

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

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

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

4        NEW SECTION.    **Sec. 6.**    (1) For the purpose of considering any  
5 application for a license to produce, process, or sell marijuana, or  
6 for the renewal of a license to produce, process, or sell marijuana,  
7 the state liquor control board may cause an inspection of the premises  
8 to be made, and may inquire into all matters in connection with the  
9 construction and operation of the premises.    For the purpose of  
10 reviewing any application for a license and for considering the denial,  
11 suspension, revocation, or renewal or denial thereof, of any license,  
12 the state liquor control board may consider any prior criminal conduct  
13 of the applicant including an administrative violation history record  
14 with the state liquor control board and a criminal history record  
15 information check.    The state liquor control board may submit the  
16 criminal history record information check to the Washington state  
17 patrol and to the identification division of the federal bureau of  
18 investigation in order that these agencies may search their records for  
19 prior arrests and convictions of the individual or individuals who  
20 filled out the forms.    The state liquor control board shall require  
21 fingerprinting of any applicant whose criminal history record  
22 information check is submitted to the federal bureau of investigation.  
23 The provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply  
24 to these cases.    Subject to the provisions of this section, the state  
25 liquor control board may, in its discretion, grant or deny the renewal  
26 or license applied for.    Denial may be based on, without limitation,  
27 the existence of chronic illegal activity documented in objections  
28 submitted pursuant to subsections (7)(c) and (9) of this section.  
29 Authority to approve an uncontested or unopposed license may be granted  
30 by the state liquor control board to any staff member the board  
31 designates in writing.    Conditions for granting this authority shall be  
32 adopted by rule.    No license of any kind may be issued to:

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

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

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

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

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

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

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

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

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

33 (e) In case of disobedience of any person to comply with the order  
34 of the state liquor control board or a subpoena issued by the state  
35 liquor control board, or any of its members, or administrative law  
36 judges, or on the refusal of a witness to testify to any matter  
37 regarding which he or she may be lawfully interrogated, the judge of  
38 the superior court of the county in which the person resides, on  
39 application of any member of the board or administrative law judge,

1 shall compel obedience by contempt proceedings, as in the case of  
2 disobedience of the requirements of a subpoena issued from said court  
3 or a refusal to testify therein.

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

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

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

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

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

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

1 The state liquor control board may extend the time period for  
2 submitting written objections.

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

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

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

26 (9) In determining whether to grant or deny a license or renewal of  
27 any license, the state liquor control board shall give substantial  
28 weight to objections from an incorporated city or town or county  
29 legislative authority based upon chronic illegal activity associated  
30 with the applicant's operations of the premises proposed to be licensed  
31 or the applicant's operation of any other licensed premises, or the  
32 conduct of the applicant's patrons inside or outside the licensed  
33 premises. "Chronic illegal activity" means (a) a pervasive pattern of  
34 activity that threatens the public health, safety, and welfare of the  
35 city, town, or county including, but not limited to, open container  
36 violations, assaults, disturbances, disorderly conduct, or other  
37 criminal law violations, or as documented in crime statistics, police  
38 reports, emergency medical response data, calls for service, field  
39 data, or similar records of a law enforcement agency for the city,

1 town, county, or any other municipal corporation or any state agency;  
2 or (b) an unreasonably high number of citations for violations of RCW  
3 46.61.502 associated with the applicant's or licensee's operation of  
4 any licensed premises as indicated by the reported statements given to  
5 law enforcement upon arrest.

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

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

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

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

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

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

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

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

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

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

37        (3) Methods of producing, processing, and packaging marijuana,  
38 useable marijuana, and marijuana-infused products; conditions of

1 sanitation; and standards of ingredients, quality, and identity of  
2 marijuana, useable marijuana, and marijuana-infused products produced,  
3 processed, packaged, or sold by licensees;

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

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

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

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

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

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

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

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

32 (12) Identification, seizure, confiscation, destruction, or  
33 donation to law enforcement for training purposes of all marijuana,  
34 useable marijuana, and marijuana-infused products produced, processed,  
35 sold, or offered for sale within this state which do not conform in all  
36 respects to the standards prescribed by this act or the rules adopted  
37 to implement and enforce it: PROVIDED, That nothing in this act shall  
38 be construed as authorizing the state liquor control board to seize,  
39 confiscate, destroy, or donate to law enforcement marijuana, useable

1 marijuana, or marijuana-infused products produced, processed, sold,  
2 offered for sale, or possessed in compliance with the Washington state  
3 medical use of cannabis act, chapter 69.51A RCW.

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

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

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

- 14 (a) Population distribution;
- 15 (b) Security and safety issues; and
- 16 (c) The provision of adequate access to licensed sources of useable  
17 marijuana and marijuana-infused products to discourage purchases from  
18 the illegal market;

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

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

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

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

- 33 (a) Security and safety issues;
- 34 (b) The provision of adequate access to licensed sources of  
35 marijuana, useable marijuana, and marijuana-infused products to  
36 discourage purchases from the illegal market; and

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

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

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

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

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

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

17 (e) Language required by RCW 69.04.480;

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

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

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

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

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

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

38 (11) In consultation with the department and the department of  
39 agriculture, establishing accreditation requirements for testing

1 laboratories used by licensees to demonstrate compliance with standards  
2 adopted by the state liquor control board, and prescribing methods of  
3 producing, processing, and packaging marijuana, useable marijuana, and  
4 marijuana-infused products; conditions of sanitation; and standards of  
5 ingredients, quality, and identity of marijuana, useable marijuana, and  
6 marijuana-infused products produced, processed, packaged, or sold by  
7 licensees;

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

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

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

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

30 NEW SECTION. **Sec. 12.** Except as provided by chapter 42.52 RCW, no  
31 member of the state liquor control board and no employee of the state  
32 liquor control board shall have any interest, directly or indirectly,  
33 in the producing, processing, or sale of marijuana, useable marijuana,  
34 or marijuana-infused products, or derive any profit or remuneration  
35 from the sale of marijuana, useable marijuana, or marijuana-infused  
36 products other than the salary or wages payable to him or her in

1 respect of his or her office or position, and shall receive no gratuity  
2 from any person in connection with the business.

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

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

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

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

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

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

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

35 NEW SECTION. **Sec. 15.** The following acts, when performed by a  
36 validly licensed marijuana retailer or employee of a validly licensed

1 retail outlet in compliance with rules adopted by the state liquor  
2 control board to implement and enforce this act, shall not constitute  
3 criminal or civil offenses under Washington state law:

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

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

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

14 (a) One ounce of useable marijuana;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (4) The state liquor control board shall fine a licensee one  
21 thousand dollars for each violation of subsection (1) of this section.  
22 Fines collected under this subsection must be deposited into the  
23 dedicated marijuana fund created under section 26 of this act.

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

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

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

30 (a) A controlled substance classified in Schedule I or II which is  
31 a narcotic drug or flunitrazepam, including its salts, isomers, and  
32 salts of isomers, classified in Schedule IV, is guilty of a class B  
33 felony and upon conviction may be imprisoned for not more than ten  
34 years, or (i) fined not more than twenty-five thousand dollars if the  
35 crime involved less than two kilograms of the drug, or both such  
36 imprisonment and fine; or (ii) if the crime involved two or more  
37 kilograms of the drug, then fined not more than one hundred thousand

1 dollars for the first two kilograms and not more than fifty dollars for  
2 each gram in excess of two kilograms, or both such imprisonment and  
3 fine;

4 (b) Amphetamine, including its salts, isomers, and salts of  
5 isomers, or methamphetamine, including its salts, isomers, and salts of  
6 isomers, is guilty of a class B felony and upon conviction may be  
7 imprisoned for not more than ten years, or (i) fined not more than  
8 twenty-five thousand dollars if the crime involved less than two  
9 kilograms of the drug, or both such imprisonment and fine; or (ii) if  
10 the crime involved two or more kilograms of the drug, then fined not  
11 more than one hundred thousand dollars for the first two kilograms and  
12 not more than fifty dollars for each gram in excess of two kilograms,  
13 or both such imprisonment and fine. Three thousand dollars of the fine  
14 may not be suspended. As collected, the first three thousand dollars  
15 of the fine must be deposited with the law enforcement agency having  
16 responsibility for cleanup of laboratories, sites, or substances used  
17 in the manufacture of the methamphetamine, including its salts,  
18 isomers, and salts of isomers. The fine moneys deposited with that law  
19 enforcement agency must be used for such clean-up cost;

20 (c) Any other controlled substance classified in Schedule I, II, or  
21 III, is guilty of a class C felony punishable according to chapter  
22 9A.20 RCW;

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

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

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

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

35 (1) It is unlawful for any person to possess a controlled substance  
36 unless the substance was obtained directly from, or pursuant to, a  
37 valid prescription or order of a practitioner while acting in the

1 course of his or her professional practice, or except as otherwise  
2 authorized by this chapter.

3 (2) Except as provided in RCW 69.50.4014, any person who violates  
4 this section is guilty of a class C felony punishable under chapter  
5 9A.20 RCW.

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

11 NEW SECTION. Sec. 21. It is unlawful to open a package containing  
12 marijuana, useable marijuana, or a marijuana-infused product, or  
13 consume marijuana, useable marijuana, or a marijuana-infused product,  
14 in view of the general public. A person who violates this section is  
15 guilty of a class 3 civil infraction under chapter 7.80 RCW.

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

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

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

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

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

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

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

12 (1) Every person who sells or gives, or permits to be sold or given  
13 to any person any drug paraphernalia in any form commits a class I  
14 civil infraction under chapter 7.80 RCW. For purposes of this  
15 subsection, "drug paraphernalia" means all equipment, products, and  
16 materials of any kind which are used, intended for use, or designed for  
17 use in planting, propagating, cultivating, growing, harvesting,  
18 manufacturing, compounding, converting, producing, processing,  
19 preparing, testing, analyzing, packaging, repackaging, storing,  
20 containing, concealing, injecting, ingesting, inhaling, or otherwise  
21 introducing into the human body a controlled substance other than  
22 marijuana. Drug paraphernalia includes, but is not limited to objects  
23 used, intended for use, or designed for use in ingesting, inhaling, or  
24 otherwise introducing (~~(marihuana,)~~) cocaine(~~(, hashish, or hashish~~  
25 ~~oil)~~) into the human body, such as:

26 (a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes  
27 with or without screens, permanent screens, hashish heads, or punctured  
28 metal bowls;

29 (b) Water pipes;

30 (c) Carburetion tubes and devices;

31 (d) Smoking and carburetion masks;

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

35 ~~—(f))~~ Miniature cocaine spoons and cocaine vials;

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

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

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

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

2 ((~~(k)~~ ~~Chillums~~;

3 ~~(l) Bongs~~;) and

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

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

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

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

13 (a) It is hereby made the duty of the state board of pharmacy, the  
14 department, the state liquor control board, and their officers, agents,  
15 inspectors and representatives, and all law enforcement officers within  
16 the state, and of all prosecuting attorneys, to enforce all provisions  
17 of this chapter, except those specifically delegated, and to cooperate  
18 with all agencies charged with the enforcement of the laws of the  
19 United States, of this state, and all other states, relating to  
20 controlled substances as defined in this chapter.

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

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

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

29 (a) All controlled substances which have been manufactured,  
30 distributed, dispensed, acquired, or possessed in violation of this  
31 chapter or chapter 69.41 or 69.52 RCW, and all hazardous chemicals, as  
32 defined in RCW 64.44.010, used or intended to be used in the  
33 manufacture of controlled substances;

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

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

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

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

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

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

18 (iv) A forfeiture of a conveyance encumbered by a bona fide  
19 security interest is subject to the interest of the secured party if  
20 the secured party neither had knowledge of nor consented to the act or  
21 omission; and

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

27 (e) All books, records, and research products and materials,  
28 including formulas, microfilm, tapes, and data which are used, or  
29 intended for use, in violation of this chapter or chapter 69.41 or  
30 69.52 RCW;

31 (f) All drug paraphernalia<sup>21</sup> other than paraphernalia possessed,  
32 sold, or used solely to facilitate marijuana-related activities that  
33 are not violations of this chapter;

34 (g) All moneys, negotiable instruments, securities, or other  
35 tangible or intangible property of value furnished or intended to be  
36 furnished by any person in exchange for a controlled substance in  
37 violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible  
38 or intangible personal property, proceeds, or assets acquired in whole  
39 or in part with proceeds traceable to an exchange or series of

1 exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW,  
2 and all moneys, negotiable instruments, and securities used or intended  
3 to be used to facilitate any violation of this chapter or chapter 69.41  
4 or 69.52 RCW. A forfeiture of money, negotiable instruments,  
5 securities, or other tangible or intangible property encumbered by a  
6 bona fide security interest is subject to the interest of the secured  
7 party if, at the time the security interest was created, the secured  
8 party neither had knowledge of nor consented to the act or omission.  
9 No personal property may be forfeited under this subsection (1)(g), to  
10 the extent of the interest of an owner, by reason of any act or  
11 omission which that owner establishes was committed or omitted without  
12 the owner's knowledge or consent; and

13 (h) All real property, including any right, title, and interest in  
14 the whole of any lot or tract of land, and any appurtenances or  
15 improvements which are being used with the knowledge of the owner for  
16 the manufacturing, compounding, processing, delivery, importing, or  
17 exporting of any controlled substance, or which have been acquired in  
18 whole or in part with proceeds traceable to an exchange or series of  
19 exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW,  
20 if such activity is not less than a class C felony and a substantial  
21 nexus exists between the commercial production or sale of the  
22 controlled substance and the real property. However:

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

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

30 (iii) The possession of marijuana shall not result in the  
31 forfeiture of real property unless the marijuana is possessed for  
32 commercial purposes that are unlawful under Washington state law, the  
33 amount possessed is five or more plants or one pound or more of  
34 marijuana, and a substantial nexus exists between the possession of  
35 marijuana and the real property. In such a case, the intent of the  
36 offender shall be determined by the preponderance of the evidence,  
37 including the offender's prior criminal history, the amount of  
38 marijuana possessed by the offender, the sophistication of the activity  
39 or equipment used by the offender, whether the offender was licensed to

1 produce, process, or sell marijuana, or was an employee of a licensed  
2 producer, processor, or retailer, and other evidence which demonstrates  
3 the offender's intent to engage in unlawful commercial activity;

4 (iv) The unlawful sale of marijuana or a legend drug shall not  
5 result in the forfeiture of real property unless the sale was forty  
6 grams or more in the case of marijuana or one hundred dollars or more  
7 in the case of a legend drug, and a substantial nexus exists between  
8 the unlawful sale and the real property; and

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

13 (2) Real or personal property subject to forfeiture under this  
14 chapter may be seized by any board inspector or law enforcement officer  
15 of this state upon process issued by any superior court having  
16 jurisdiction over the property. Seizure of real property shall include  
17 the filing of a lis pendens by the seizing agency. Real property  
18 seized under this section shall not be transferred or otherwise  
19 conveyed until ninety days after seizure or until a judgment of  
20 forfeiture is entered, whichever is later: PROVIDED, That real  
21 property seized under this section may be transferred or conveyed to  
22 any person or entity who acquires title by foreclosure or deed in lieu  
23 of foreclosure of a security interest. Seizure of personal property  
24 without process may be made if:

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

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

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

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

36 (3) In the event of seizure pursuant to subsection (2) of this  
37 section, proceedings for forfeiture shall be deemed commenced by the  
38 seizure. The law enforcement agency under whose authority the seizure  
39 was made shall cause notice to be served within fifteen days following

1 the seizure on the owner of the property seized and the person in  
2 charge thereof and any person having any known right or interest  
3 therein, including any community property interest, of the seizure and  
4 intended forfeiture of the seized property. Service of notice of  
5 seizure of real property shall be made according to the rules of civil  
6 procedure. However, the state may not obtain a default judgment with  
7 respect to real property against a party who is served by substituted  
8 service absent an affidavit stating that a good faith effort has been  
9 made to ascertain if the defaulted party is incarcerated within the  
10 state, and that there is no present basis to believe that the party is  
11 incarcerated within the state. Notice of seizure in the case of  
12 property subject to a security interest that has been perfected by  
13 filing a financing statement in accordance with chapter 62A.9A RCW, or  
14 a certificate of title, shall be made by service upon the secured party  
15 or the secured party's assignee at the address shown on the financing  
16 statement or the certificate of title. The notice of seizure in other  
17 cases may be served by any method authorized by law or court rule  
18 including but not limited to service by certified mail with return  
19 receipt requested. Service by mail shall be deemed complete upon  
20 mailing within the fifteen day period following the seizure.

21 (4) If no person notifies the seizing law enforcement agency in  
22 writing of the person's claim of ownership or right to possession of  
23 items specified in subsection (1)(d), (g), or (h) of this section  
24 within forty-five days of the service of notice from the seizing agency  
25 in the case of personal property and ninety days in the case of real  
26 property, the item seized shall be deemed forfeited. The community  
27 property interest in real property of a person whose spouse or domestic  
28 partner committed a violation giving rise to seizure of the real  
29 property may not be forfeited if the person did not participate in the  
30 violation.

31 (5) If any person notifies the seizing law enforcement agency in  
32 writing of the person's claim of ownership or right to possession of  
33 items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h)  
34 of this section within forty-five days of the service of notice from  
35 the seizing agency in the case of personal property and ninety days in  
36 the case of real property, the person or persons shall be afforded a  
37 reasonable opportunity to be heard as to the claim or right. The  
38 notice of claim may be served by any method authorized by law or court  
39 rule including, but not limited to, service by first-class mail.

1 Service by mail shall be deemed complete upon mailing within the forty-  
2 five day period following service of the notice of seizure in the case  
3 of personal property and within the ninety-day period following service  
4 of the notice of seizure in the case of real property. The hearing  
5 shall be before the chief law enforcement officer of the seizing agency  
6 or the chief law enforcement officer's designee, except where the  
7 seizing agency is a state agency as defined in RCW 34.12.020(4), the  
8 hearing shall be before the chief law enforcement officer of the  
9 seizing agency or an administrative law judge appointed under chapter  
10 34.12 RCW, except that any person asserting a claim or right may remove  
11 the matter to a court of competent jurisdiction. Removal of any matter  
12 involving personal property may only be accomplished according to the  
13 rules of civil procedure. The person seeking removal of the matter  
14 must serve process against the state, county, political subdivision, or  
15 municipality that operates the seizing agency, and any other party of  
16 interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-  
17 five days after the person seeking removal has notified the seizing law  
18 enforcement agency of the person's claim of ownership or right to  
19 possession. The court to which the matter is to be removed shall be  
20 the district court when the aggregate value of personal property is  
21 within the jurisdictional limit set forth in RCW 3.66.020. A hearing  
22 before the seizing agency and any appeal therefrom shall be under Title  
23 34 RCW. In all cases, the burden of proof is upon the law enforcement  
24 agency to establish, by a preponderance of the evidence, that the  
25 property is subject to forfeiture.

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

32 (6) In any proceeding to forfeit property under this title, where  
33 the claimant substantially prevails, the claimant is entitled to  
34 reasonable attorneys' fees reasonably incurred by the claimant. In  
35 addition, in a court hearing between two or more claimants to the  
36 article or articles involved, the prevailing party is entitled to a  
37 judgment for costs and reasonable attorneys' fees.

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

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

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

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

9 (d) Forward it to the drug enforcement administration for  
10 disposition.

11 (8) (a) When property is forfeited, the seizing agency shall keep a  
12 record indicating the identity of the prior owner, if known, a  
13 description of the property, the disposition of the property, the value  
14 of the property at the time of seizure, and the amount of proceeds  
15 realized from disposition of the property.

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

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

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

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

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

36 (c) The value of sold forfeited property is the sale price. The  
37 value of retained forfeited property is the fair market value of the  
38 property at the time of seizure, determined when possible by reference  
39 to an applicable commonly used index, such as the index used by the

1 department of licensing for valuation of motor vehicles. A seizing  
2 agency may use, but need not use, an independent qualified appraiser to  
3 determine the value of retained property. If an appraiser is used, the  
4 value of the property appraised is net of the cost of the appraisal.  
5 The value of destroyed property and retained firearms or illegal  
6 property is zero.

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

12 (11) Controlled substances listed in Schedule I, II, III, IV, and  
13 V that are possessed, transferred, sold, or offered for sale in  
14 violation of this chapter are contraband and shall be seized and  
15 summarily forfeited to the state. Controlled substances listed in  
16 Schedule I, II, III, IV, and V, which are seized or come into the  
17 possession of the board, the owners of which are unknown, are  
18 contraband and shall be summarily forfeited to the board.

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

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

30 (14) Upon the entry of an order of forfeiture of real property, the  
31 court shall forward a copy of the order to the assessor of the county  
32 in which the property is located. Orders for the forfeiture of real  
33 property shall be entered by the superior court, subject to court  
34 rules. Such an order shall be filed by the seizing agency in the  
35 county auditor's records in the county in which the real property is  
36 located.

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

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

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

8       ~~((i))~~ (A) Only if the funds applied under ~~((b))~~ (a)(ii) of this  
9 subsection are insufficient to satisfy the damage directly caused by a  
10 law enforcement officer, may the landlord seek compensation for the  
11 damage by filing a claim against the governmental entity under whose  
12 authority the law enforcement agency operates within thirty days after  
13 the search;

14       ~~((ii))~~ (B) Only if the governmental entity denies or fails to  
15 respond to the landlord's claim within sixty days of the date of  
16 filing, may the landlord collect damages under this subsection by  
17 filing within thirty days of denial or the expiration of the sixty-day  
18 period, whichever occurs first, a claim with the seizing law  
19 enforcement agency. The seizing law enforcement agency must notify the  
20 landlord of the status of the claim by the end of the thirty-day  
21 period. Nothing in this section requires the claim to be paid by the  
22 end of the sixty-day or thirty-day period.

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

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

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

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

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

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

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

38       (d) The proceeds available after the seizing law enforcement agency  
39 satisfies any bona fide security interest in the tenant's property and

1 costs related to sale of the tenant's property as provided by  
2 subsection (9) (b) of this section.

3 (17) Subsections (15) and (16) of this section do not limit any  
4 other rights a landlord may have against a tenant to collect for  
5 damages. However, if a law enforcement agency satisfies a landlord's  
6 claim under subsection (15) of this section, the rights the landlord  
7 has against the tenant for damages directly caused by a law enforcement  
8 officer under the terms of the landlord and tenant's contract are  
9 subrogated to the law enforcement agency.

#### 10 **PART IV**

#### 11 **DEDICATED MARIJUANA FUND**

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

18 (2) All moneys received by the state liquor control board or any  
19 employee thereof from marijuana-related activities shall be deposited  
20 each day in a depository approved by the state treasurer and  
21 transferred to the state treasurer to be credited to the dedicated  
22 marijuana fund.

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

26 NEW SECTION. **Sec. 27.** (1) There is levied and collected a  
27 marijuana excise tax equal to twenty-five percent of the selling price  
28 on each wholesale sale in this state of marijuana by a licensed  
29 marijuana producer to a licensed marijuana processor or another  
30 licensed marijuana producer. This tax is the obligation of the  
31 licensed marijuana producer.

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

1 (3) There is levied and collected a marijuana excise tax equal to  
2 twenty-five percent of the selling price on each retail sale in this  
3 state of useable marijuana and marijuana-infused products. This tax is  
4 the obligation of the licensed marijuana retailer, is separate and in  
5 addition to general state and local sales and use taxes that apply to  
6 retail sales of tangible personal property, and is part of the total  
7 retail price to which general state and local sales and use taxes  
8 apply.

9 (4) All revenues collected from the marijuana excise taxes imposed  
10 under subsections (1) through (3) of this section 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 (5) The state liquor control board shall regularly review the tax  
15 levels established under this section and make recommendations to the  
16 legislature as appropriate regarding adjustments that would further the  
17 goal of discouraging use while undercutting illegal market prices.

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

24 (1) One hundred twenty-five thousand dollars to the department of  
25 social and health services to design and administer the Washington  
26 state healthy youth survey, analyze the collected data, and produce  
27 reports, in collaboration with the office of the superintendent of  
28 public instruction, department of health, department of commerce,  
29 family policy council, and state liquor control board. The survey  
30 shall be conducted at least every two years and include questions  
31 regarding, but not necessarily limited to, academic achievement, age at  
32 time of substance use initiation, antisocial behavior of friends,  
33 attitudes toward antisocial behavior, attitudes toward substance use,  
34 laws and community norms regarding antisocial behavior, family  
35 conflict, family management, parental attitudes toward substance use,  
36 peer rewarding of antisocial behavior, perceived risk of substance use,  
37 and rebelliousness. Funds disbursed under this subsection may be used

1 to expand administration of the healthy youth survey to student  
2 populations attending institutions of higher education in Washington;

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

9 (3) Five thousand dollars to the University of Washington alcohol  
10 and drug abuse institute for the creation, maintenance, and timely  
11 updating of web-based public education materials providing medically  
12 and scientifically accurate information about the health and safety  
13 risks posed by marijuana use;

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

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

19 (a) Fifteen percent to the department of social and health services  
20 division of behavioral health and recovery for implementation and  
21 maintenance of programs and practices aimed at the prevention or  
22 reduction of maladaptive substance use, substance-use disorder,  
23 substance abuse or substance dependence, as these terms are defined in  
24 the Diagnostic and Statistical Manual of Mental Disorders, among middle  
25 school and high school age students, whether as an explicit goal of a  
26 given program or practice or as a consistently corresponding effect of  
27 its implementation; PROVIDED, That:

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

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

35 In deciding which programs and practices to fund, the secretary of  
36 the department of social and health services shall consult, at least  
37 annually, with the University of Washington's social development  
38 research group and the University of Washington's alcohol and drug  
39 abuse institute;

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

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

9 (ii) A grants program for local health departments or other local  
10 community agencies that supports development and implementation of  
11 coordinated intervention strategies for the prevention and reduction of  
12 marijuana use by youth; and

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

17 (c) Six-tenths of one percent to the University of Washington and  
18 four-tenths of one percent to Washington State University for research  
19 on the short and long-term effects of marijuana use, to include but not  
20 be limited to formal and informal methods for estimating and measuring  
21 intoxication and impairment, and for the dissemination of such  
22 research;

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

26 (e) Five percent to the Washington state health care authority to  
27 be expended exclusively through contracts with community health centers  
28 to provide primary health and dental care services, migrant health  
29 services, and maternity health care services as provided under RCW  
30 41.05.220;

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

34 (g) The remainder to the general fund.

35 NEW SECTION. **Sec. 29.** The department of social and health  
36 services and the department of health shall, by December 1, 2013, adopt  
37 rules not inconsistent with the spirit of this act as are deemed

1 necessary or advisable to carry into effect the provisions of section  
2 28 of this act.

3 NEW SECTION. **Sec. 30.** (1) The Washington state institute for  
4 public policy shall conduct cost-benefit evaluations of the  
5 implementation of this act. A preliminary report, and recommendations  
6 to appropriate committees of the legislature, shall be made by  
7 September 1, 2015, and the first final report with recommendations by  
8 September 1, 2017. Subsequent reports shall be due September 1, 2022,  
9 and September 1, 2032.

10 (2) The evaluation of the implementation of this act shall include,  
11 but not necessarily be limited to, consideration of the following  
12 factors:

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

14 (i) Health costs associated with marijuana use;

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

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

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

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

28 (ii) Public safety issues relating to criminal prohibition of  
29 marijuana;

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

31 (i) Marijuana use;

32 (ii) Maladaptive use of marijuana; and

33 (iii) Diagnosis of marijuana-related substance-use disorder,  
34 substance abuse, or substance dependence, including primary, secondary,  
35 and tertiary choices of substance;

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

38 (i) Jobs creation;

- 1 (ii) Workplace safety;
- 2 (iii) Revenues; and
- 3 (iv) Taxes generated for state and local budgets;
- 4 (e) Criminal justice impacts, to include but not be limited to:
- 5 (i) Use of public resources like law enforcement officers and
- 6 equipment, prosecuting attorneys and public defenders, judges and court
- 7 staff, the Washington state patrol crime lab and identification and
- 8 criminal history section, jails and prisons, and misdemeanor and felon
- 9 supervision officers to enforce state criminal laws regarding
- 10 marijuana; and
- 11 (ii) Short and long-term consequences of involvement in the
- 12 criminal justice system for persons accused of crimes relating to
- 13 marijuana, their families, and their communities; and
- 14 (f) State and local agency administrative costs and revenues.

15 **PART V**

16 **DRIVING UNDER THE INFLUENCE OF MARIJUANA**

17 **Sec. 31.** RCW 46.20.308 and 2008 c 282 s 2 are each amended to read

18 as follows:

19 (1) Any person who operates a motor vehicle within this state is

20 deemed to have given consent, subject to the provisions of RCW

21 46.61.506, to a test or tests of his or her breath or blood for the

22 purpose of determining the alcohol concentration, THC concentration, or

23 presence of any drug in his or her breath or blood if arrested for any

24 offense where, at the time of the arrest, the arresting officer has

25 reasonable grounds to believe the person had been driving or was in

26 actual physical control of a motor vehicle while under the influence of

27 intoxicating liquor or any drug or was in violation of RCW 46.61.503.

28 Neither consent nor this section precludes a police officer from

29 obtaining a search warrant for a person's breath or blood.

30 (2) The test or tests of breath shall be administered at the

31 direction of a law enforcement officer having reasonable grounds to

32 believe the person to have been driving or in actual physical control

33 of a motor vehicle within this state while under the influence of

34 intoxicating liquor or any drug or the person to have been driving or

35 in actual physical control of a motor vehicle while having alcohol or

36 THC in a concentration in violation of RCW 46.61.503 in his or her

37 system and being under the age of twenty-one. However, in those

1 instances where the person is incapable due to physical injury,  
2 physical incapacity, or other physical limitation, of providing a  
3 breath sample or where the person is being treated in a hospital,  
4 clinic, doctor's office, emergency medical vehicle, ambulance, or other  
5 similar facility or where the officer has reasonable grounds to believe  
6 that the person is under the influence of a drug, a blood test shall be  
7 administered by a qualified person as provided in RCW 46.61.506(5).  
8 The officer shall inform the person of his or her right to refuse the  
9 breath or blood test, and of his or her right to have additional tests  
10 administered by any qualified person of his or her choosing as provided  
11 in RCW 46.61.506. The officer shall warn the driver, in substantially  
12 the following language, that:

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

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

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

21 (i) The driver is age twenty-one or over and the test indicates  
22 either that the alcohol concentration of the driver's breath or blood  
23 is 0.08 or more(~~7~~) or that the THC concentration of the driver's  
24 blood is 5.00 or more; or ((if))

25 (ii) The driver is under age twenty-one and the test indicates  
26 either that the alcohol concentration of the driver's breath or blood  
27 is 0.02 or more(~~7~~) or that the THC concentration of the driver's  
28 blood is above 0.00; or ((if))

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

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

34 (3) Except as provided in this section, the test administered shall  
35 be of the breath only. If an individual is unconscious or is under  
36 arrest for the crime of vehicular homicide as provided in RCW 46.61.520  
37 or vehicular assault as provided in RCW 46.61.522, or if an individual  
38 is under arrest for the crime of driving while under the influence of  
39 intoxicating liquor or drugs as provided in RCW 46.61.502, which arrest

1 results from an accident in which there has been serious bodily injury  
2 to another person, a breath or blood test may be administered without  
3 the consent of the individual so arrested.

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

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

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

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

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

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

38 (d) Serve notice in writing that the marked license or permit, if  
39 any, is a temporary license that is valid for sixty days from the date

1 of arrest or from the date notice has been given in the event notice is  
2 given by the department following a blood test, or until the  
3 suspension, revocation, or denial of the person's license, permit, or  
4 privilege to drive is sustained at a hearing pursuant to subsection (8)  
5 of this section, whichever occurs first. No temporary license is valid  
6 to any greater degree than the license or permit that it replaces; and

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

11 (i) That the officer had reasonable grounds to believe the arrested  
12 person had been driving or was in actual physical control of a motor  
13 vehicle within this state while under the influence of intoxicating  
14 liquor or drugs, or both, or was under the age of twenty-one years and  
15 had been driving or was in actual physical control of a motor vehicle  
16 while having an alcohol or THC concentration in violation of RCW  
17 46.61.503;

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

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

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

38 (8) A person receiving notification under subsection (6) (b) of this  
39 section may, within twenty days after the notice has been given,

1 request in writing a formal hearing before the department. The person  
2 shall pay a fee of two hundred dollars as part of the request. If the  
3 request is mailed, it must be postmarked within twenty days after  
4 receipt of the notification. Upon timely receipt of such a request for  
5 a formal hearing, including receipt of the required two hundred dollar  
6 fee, the department shall afford the person an opportunity for a  
7 hearing. The department may waive the required two hundred dollar fee  
8 if the person is an indigent as defined in RCW 10.101.010. Except as  
9 otherwise provided in this section, the hearing is subject to and shall  
10 be scheduled and conducted in accordance with RCW 46.20.329 and  
11 46.20.332. The hearing shall be conducted in the county of the arrest,  
12 except that all or part of the hearing may, at the discretion of the  
13 department, be conducted by telephone or other electronic means. The  
14 hearing shall be held within sixty days following the arrest or  
15 following the date notice has been given in the event notice is given  
16 by the department following a blood test, unless otherwise agreed to by  
17 the department and the person, in which case the action by the  
18 department shall be stayed, and any valid temporary license marked  
19 under subsection (6)(c) of this section extended, if the person is  
20 otherwise eligible for licensing. For the purposes of this section,  
21 the scope of the hearing shall cover the issues of whether a law  
22 enforcement officer had reasonable grounds to believe the person had  
23 been driving or was in actual physical control of a motor vehicle  
24 within this state while under the influence of intoxicating liquor or  
25 any drug or had been driving or was in actual physical control of a  
26 motor vehicle within this state while having alcohol in his or her  
27 system in a concentration of 0.02 or more, or THC in his or her system  
28 in a concentration above 0.00, if the person was under the age of  
29 twenty-one, whether the person was placed under arrest, and (a) whether  
30 the person refused to submit to the test or tests upon request of the  
31 officer after having been informed that such refusal would result in  
32 the revocation of the person's license, permit, or privilege to drive,  
33 or (b) if a test or tests were administered, whether the applicable  
34 requirements of this section were satisfied before the administration  
35 of the test or tests, whether the person submitted to the test or  
36 tests, or whether a test was administered without express consent as  
37 permitted under this section, and whether the test or tests indicated  
38 that the alcohol concentration of the person's breath or blood was 0.08  
39 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  
39 1.1, or other statutes or rules referencing de novo review, the appeal

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (4) The department shall grant credit on a day-for-day basis for  
26 any portion of a suspension, revocation, or denial already served under  
27 this section for a suspension, revocation, or denial imposed under RCW  
28 46.61.5055 arising out of the same incident.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **Sec. 34.** RCW 46.61.503 and 1998 c 213 s 4, 1998 c 207 s 5, and  
23 1998 c 41 s 8 are each reenacted and amended to read as follows:

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

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

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

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

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

37 (2) It is an affirmative defense to a violation of subsection (1)  
38 of this section, which the defendant must prove by a preponderance of

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

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

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

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

19 (1) A person is guilty of being in actual physical control of a  
20 motor vehicle while under the influence of intoxicating liquor or any  
21 drug if the person has actual physical control of a vehicle within this  
22 state:

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

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

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

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

34 (2) The fact that a person charged with a violation of this section  
35 is or has been entitled to use a drug under the laws of this state does  
36 not constitute a defense against any charge of violating this section.  
37 No person may be convicted under this section if, prior to being

1 pursued by a law enforcement officer, the person has moved the vehicle  
2 safely off the roadway.

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

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

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

32 (b) Analyses of blood samples obtained more than two hours after  
33 the alleged being in actual physical control of a vehicle may be used  
34 as evidence that within two hours of the alleged being in control of  
35 the vehicle, a person had a THC concentration of 5.00 or more in  
36 violation of subsection (1) (b) of this section, and in any case in  
37 which the analysis shows a THC concentration above 0.00 may be used as  
38 evidence that a person was under the influence of or affected by  
39 marijuana in violation of subsection (1) (c) or (d) of this section.

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

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

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

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

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

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

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

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

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

17 (1) A defendant who is charged with an offense involving driving  
18 while under the influence as defined in RCW 46.61.502, driving under  
19 age twenty-one after consuming alcohol or marijuana as defined in RCW  
20 46.61.503, or being in physical control of a vehicle while under the  
21 influence as defined in RCW 46.61.504, shall be required to appear in  
22 person before a judicial officer within one judicial day after the  
23 arrest if the defendant is served with a citation or complaint at the  
24 time of the arrest. A court may by local court rule waive the  
25 requirement for appearance within one judicial day if it provides for  
26 the appearance at the earliest practicable day following arrest and  
27 establishes the method for identifying that day in the rule.

28 (2) A defendant who is charged with an offense involving driving  
29 while under the influence as defined in RCW 46.61.502, driving under  
30 age twenty-one after consuming alcohol or marijuana as defined in RCW  
31 46.61.503, or being in physical control of a vehicle while under the  
32 influence as defined in RCW 46.61.504, and who is not served with a  
33 citation or complaint at the time of the incident, shall appear in  
34 court for arraignment in person as soon as practicable, but in no event  
35 later than fourteen days after the next day on which court is in  
36 session following the issuance of the citation or the filing of the  
37 complaint or information.

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

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

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

9 (1) Upon the trial of any civil or criminal action or proceeding  
10 arising out of acts alleged to have been committed by any person while  
11 driving or in actual physical control of a vehicle while under the  
12 influence of intoxicating liquor or any drug, if the person's alcohol  
13 concentration is less than 0.08 or the person's THC concentration is  
14 less than 5.00, it is evidence that may be considered with other  
15 competent evidence in determining whether the person was under the  
16 influence of intoxicating liquor or any drug.

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

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

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

26 (3) Analysis of the person's blood or breath to be considered valid  
27 under the provisions of this section or RCW 46.61.502 or 46.61.504  
28 shall have been performed according to methods approved by the state  
29 toxicologist and by an individual possessing a valid permit issued by  
30 the state toxicologist for this purpose. The state toxicologist is  
31 directed to approve satisfactory techniques or methods, to supervise  
32 the examination of individuals to ascertain their qualifications and  
33 competence to conduct such analyses, and to issue permits which shall  
34 be subject to termination or revocation at the discretion of the state  
35 toxicologist.

36 (4) (a) A breath test performed by any instrument approved by the  
37 state toxicologist shall be admissible at trial or in an administrative

1 proceeding if the prosecution or department produces prima facie  
2 evidence of the following:

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

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

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

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

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

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

19 (vii) The result of the test of the liquid simulator solution  
20 external standard or dry gas external standard result did lie between  
21 .072 to .088 inclusive; and

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

23 (b) For purposes of this section, "prima facie evidence" is  
24 evidence of sufficient circumstances that would support a logical and  
25 reasonable inference of the facts sought to be proved. In assessing  
26 whether there is sufficient evidence of the foundational facts, the  
27 court or administrative tribunal is to assume the truth of the  
28 prosecution's or department's evidence and all reasonable inferences  
29 from it in a light most favorable to the prosecution or department.

30 (c) Nothing in this section shall be deemed to prevent the subject  
31 of the test from challenging the reliability or accuracy of the test,  
32 the reliability or functioning of the instrument, or any maintenance  
33 procedures. Such challenges, however, shall not preclude the  
34 admissibility of the test once the prosecution or department has made  
35 a prima facie showing of the requirements contained in (a) of this  
36 subsection. Instead, such challenges may be considered by the trier of  
37 fact in determining what weight to give to the test result.

38 (5) When a blood test is administered under the provisions of RCW  
39 46.20.308, the withdrawal of blood for the purpose of determining its

1 alcoholic or drug content may be performed only by a physician, a  
2 registered nurse, a licensed practical nurse, a nursing assistant as  
3 defined in chapter 18.88A RCW, a physician assistant as defined in  
4 chapter 18.71A RCW, a first responder as defined in chapter 18.73 RCW,  
5 an emergency medical technician as defined in chapter 18.73 RCW, a  
6 health care assistant as defined in chapter 18.135 RCW, or any  
7 technician trained in withdrawing blood. This limitation shall not  
8 apply to the taking of breath specimens.

9 (6) The person tested may have a physician, or a qualified  
10 technician, chemist, registered nurse, or other qualified person of his  
11 or her own choosing administer one or more tests in addition to any  
12 administered at the direction of a law enforcement officer. The test  
13 will be admissible if the person establishes the general acceptability  
14 of the testing technique or method. The failure or inability to obtain  
15 an additional test by a person shall not preclude the admission of  
16 evidence relating to the test or tests taken at the direction of a law  
17 enforcement officer.

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

## 22 **PART VI**

### 23 **CONSTRUCTION**

24 NEW SECTION. **Sec. 38.** Sections 4 through 18 of this act are each  
25 added to chapter 69.50 RCW under the subchapter heading "article III --  
26 regulation of manufacture, distribution, and dispensing of controlled  
27 substances."

28 NEW SECTION. **Sec. 39.** Section 21 of this act is added to chapter  
29 69.50 RCW under the subchapter heading "article IV -- offenses and  
30 penalties."

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

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

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