

1 AN ACT Relating to the removal of civil and criminal penalties  
2 associated with adult marijuana use; amending RCW 9.94A.518, 69.50.101,  
3 69.50.4014, 69.50.412, and 69.50.4121; reenacting and amending RCW  
4 69.50.505; adding a new section to chapter 69.50 RCW; creating new  
5 sections; and prescribing penalties.

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

7 NEW SECTION. **Sec. 1.** (1) The people of the state of Washington  
8 are concerned about the millions of dollars spent each year to arrest,  
9 prosecute, and incarcerate people for marijuana offenses. It is widely  
10 accepted that marijuana is a benign therapeutic substance that, unlike  
11 other legal substances such as tobacco and alcohol, has never caused a  
12 single death.

13 (2) In 1998, the people recognized the medicinal benefits of  
14 marijuana by approving and enacting Initiative Measure No. 692,  
15 codified in chapter 69.51A RCW, which authorized the medical use of  
16 marijuana by qualified patients. Since chapter 69.51A RCW only  
17 provides an affirmative defense, it has proven ineffective at  
18 protecting qualified patients from arrest and prosecution.

1 (3) Several bills have been introduced in the legislature seeking  
2 decriminalization of marijuana, but none have been permitted to reach  
3 the floor of the legislature for a vote.

4 (4) Under current law:

5 (a) Washington citizens face the prospect of arrest, prosecution,  
6 and incarceration, as well as the loss of employment and important  
7 parental and property rights, for marijuana offenses; and

8 (b) Washington farmers and landowners are prohibited from growing  
9 industrial hemp on their land, depriving them of the ability to grow a  
10 valuable, environmentally friendly crop.

11 (5) The people intend to remove all existing civil and criminal  
12 penalties for adults eighteen years of age or older who cultivate,  
13 possess, transport, sell, or use marijuana, without impacting existing  
14 laws proscribing dangerous activities while under the influence of  
15 marijuana or certain conduct that exposes younger persons to marijuana.

16 **Sec. 2.** RCW 9.94A.518 and 2003 c 53 s 57 are each amended to read  
17 as follows:  
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TABLE 4	
DRUG OFFENSES	
INCLUDED WITHIN EACH	
SERIOUSNESS LEVEL	
III	Any felony offense under chapter 69.50 RCW with a deadly weapon special verdict under RCW <del>((9.94A.602))</del> <u>9.94A.825</u> Controlled Substance Homicide (RCW 69.50.415) Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2)) Involving a minor in drug dealing (RCW 69.50.4015)

1 Manufacture of methamphetamine  
2 (RCW 69.50.401(2)(b))  
3 Over 18 and deliver heroin,  
4 methamphetamine, a narcotic from  
5 Schedule I or II, or flunitrazepam  
6 from Schedule IV to someone  
7 under 18 (RCW 69.50.406)  
8 Over 18 and deliver narcotic from  
9 Schedule III, IV, or V or a  
10 nonnarcotic, except flunitrazepam  
11 or methamphetamine, from  
12 Schedule I-V to someone under 18  
13 and 3 years junior (RCW  
14 69.50.406)  
15 Possession of Ephedrine,  
16 Pseudoephedrine, or Anhydrous  
17 Ammonia with intent to  
18 manufacture  
19 methamphetamine (RCW  
20 69.50.440)  
21 Selling for profit (controlled or  
22 counterfeit) any controlled  
23 substance (RCW 69.50.410)  
24 II Create, deliver, or possess a counterfeit  
25 controlled substance (RCW  
26 69.50.4011)  
27 Deliver or possess with intent to deliver  
28 methamphetamine (RCW  
29 69.50.401(2)(b))  
30 Delivery of a material in lieu of a  
31 controlled substance (RCW  
32 69.50.4012)  
33 Maintaining a Dwelling or Place for  
34 Controlled Substances (RCW  
35 69.50.402(1)(f))

1 Manufacture, deliver, or possess with  
2 intent to deliver amphetamine  
3 (RCW 69.50.401(2)(b))  
4 Manufacture, deliver, or possess with  
5 intent to deliver narcotics from  
6 Schedule I or II or flunitrazepam  
7 from Schedule IV (RCW  
8 69.50.401(2)(a))  
9 Manufacture, deliver, or possess with  
10 intent to deliver narcotics from  
11 Schedule III, IV, or V or  
12 nonnarcotics from Schedule I-V  
13 (except marijuana, amphetamine,  
14 methamphetamines, or  
15 flunitrazepam) (RCW  
16 69.50.401(2) (c) through (e))  
17 Manufacture, distribute, or possess with  
18 intent to distribute an imitation  
19 controlled substance (RCW  
20 69.52.030(1))  
21 I Forged Prescription (RCW 69.41.020)  
22 Forged Prescription for a Controlled  
23 Substance (RCW 69.50.403)  
24 (~~Manufacture, deliver, or possess with~~  
25 ~~intent to deliver marijuana (RCW~~  
26 ~~69.50.401(2)(e)))  
27 Possess Controlled Substance that is a  
28 Narcotic from Schedule III, IV, or  
29 V or Nonnarcotic from Schedule I-  
30 V (RCW 69.50.4013)  
31 Possession of Controlled Substance  
32 that is either heroin or narcotics  
33 from Schedule I or II (RCW  
34 69.50.4013)  
35 Unlawful Use of Building for Drug  
36 Purposes (RCW 69.53.010)~~

1        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 69.50 RCW  
2 to read as follows:

3        Nothing in this act shall be construed to affect the provisions or  
4 penalties set forth in the juvenile justice act, chapter 13.40 RCW, or  
5 the crimes enumerated in Title 46 RCW, or to legalize or authorize the  
6 possession, use, delivery, or manufacture of marijuana by persons under  
7 the age of eighteen.

8        **Sec. 4.**    RCW 69.50.101 and 2010 c 177 s 1 are each amended to read  
9 as follows:

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

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

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

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

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

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

24        (d) "Controlled substance" means a drug, substance, or immediate  
25 precursor included in Schedules I through V as set forth in federal or  
26 state laws, or federal or board rules. "Controlled substance" does not  
27 include marijuana for persons over the age of eighteen.

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

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

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

1 similar to the stimulant, depressant, or hallucinogenic effect on the  
2 central nervous system of a controlled substance included in Schedule  
3 I or II.

4 (2) The term does not include:

5 (i) a controlled substance;

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

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

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

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

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

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

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

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

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

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

37 (m) "Drug enforcement administration" means the drug enforcement

1 administration in the United States Department of Justice, or its  
2 successor agency.

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

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

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

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

11 (o) "Isomer" means an optical isomer, but in RCW 69.50.101(r)(5),  
12 69.50.204(a) (12) and (34), and 69.50.206(b)(4), the term includes any  
13 geometrical isomer; in RCW 69.50.204(a) (8) and (42), and 69.50.210(c)  
14 the term includes any positional isomer; and in RCW 69.50.204(a)(35),  
15 69.50.204(c), and 69.50.208(a) the term includes any positional or  
16 geometric isomer.

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

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

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

32 (q) "Marijuana" or "marihuana" means all parts of the plant  
33 Cannabis, whether growing or not; the seeds thereof; the resin  
34 extracted from any part of the plant; and every compound, manufacture,  
35 salt, derivative, mixture, or preparation of the plant, its seeds or  
36 resin. The term does not include the mature stalks of the plant, fiber  
37 produced from the stalks, oil or cake made from the seeds of the plant,  
38 any other compound, manufacture, salt, derivative, mixture, or

1 preparation of the mature stalks (except the resin extracted  
2 therefrom), fiber, oil, or cake, or the sterilized seed of the plant  
3 which is incapable of germination.

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

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

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

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

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

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

22 (6) Cocaine base.

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

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

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

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



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

5 (v) "Poppy straw" means all parts, except the seeds, of the opium  
6 poppy, after mowing.

7 (w) "Practitioner" means:

8 (1) A physician under chapter 18.71 RCW; a physician assistant  
9 under chapter 18.71A RCW; an osteopathic physician and surgeon under  
10 chapter 18.57 RCW; an osteopathic physician assistant under chapter  
11 18.57A RCW who is licensed under RCW 18.57A.020 subject to any  
12 limitations in RCW 18.57A.040; an optometrist licensed under chapter  
13 18.53 RCW who is certified by the optometry board under RCW 18.53.010  
14 subject to any limitations in RCW 18.53.010; a dentist under chapter  
15 18.32 RCW; a podiatric physician and surgeon under chapter 18.22 RCW;  
16 a veterinarian under chapter 18.92 RCW; a registered nurse, advanced  
17 registered nurse practitioner, or licensed practical nurse under  
18 chapter 18.79 RCW; a naturopathic physician under chapter 18.36A RCW  
19 who is licensed under RCW 18.36A.030 subject to any limitations in RCW  
20 18.36A.040; a pharmacist under chapter 18.64 RCW or a scientific  
21 investigator under this chapter, licensed, registered or otherwise  
22 permitted insofar as is consistent with those licensing laws to  
23 distribute, dispense, conduct research with respect to or administer a  
24 controlled substance in the course of their professional practice or  
25 research in this state.

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

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

36 (x) "Prescription" means an order for controlled substances issued  
37 by a practitioner duly authorized by law or rule in the state of

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

3 (y) "Production" includes the manufacturing, planting, cultivating,  
4 growing, or harvesting of a controlled substance.

5 (z) "Secretary" means the secretary of health or the secretary's  
6 designee.

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

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

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

23 **Sec. 5.** RCW 69.50.4014 and 2003 c 53 s 335 are each amended to  
24 read as follows:

25 Except as provided in RCW 69.50.401(2)(c), any person under  
26 eighteen years of age found guilty of possession of forty grams or less  
27 of (~~marihuana~~) marijuana is guilty of a misdemeanor.

28 **Sec. 6.** RCW 69.50.412 and 2002 c 213 s 1 are each amended to read  
29 as follows:

30 (1) It is unlawful for any person to use drug paraphernalia to  
31 plant, propagate, cultivate, grow, harvest, manufacture, compound,  
32 convert, produce, process, prepare, test, analyze, pack, repack, store,  
33 contain, conceal, inject, ingest, inhale, or otherwise introduce into  
34 the human body a controlled substance. Any person who violates this  
35 subsection is guilty of a misdemeanor.

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

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

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

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

22 (6) This section does not apply to marijuana-related offenses for  
23 persons over the age of eighteen.

24 **Sec. 7.** RCW 69.50.4121 and 2002 c 213 s 2 are each amended to read  
25 as follows:

26 (1) Every person who sells or gives, or permits to be sold or given  
27 to any person any drug paraphernalia in any form commits a class I  
28 civil infraction under chapter 7.80 RCW. For purposes of this  
29 subsection, "drug paraphernalia" means all equipment, products, and  
30 materials of any kind which are used, intended for use, or designed for  
31 use in planting, propagating, cultivating, growing, harvesting,  
32 manufacturing, compounding, converting, producing, processing,  
33 preparing, testing, analyzing, packaging, repackaging, storing,  
34 containing, concealing, injecting, ingesting, inhaling, or otherwise  
35 introducing into the human body a controlled substance. Drug  
36 paraphernalia includes, but is not limited to objects used, intended

1 for use, or designed for use in ingesting, inhaling, or otherwise  
2 introducing (~~marihuana,~~) cocaine, hashish, or hashish oil into the  
3 human body, such as:

4 (a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes  
5 with or without screens, permanent screens, hashish heads, or punctured  
6 metal bowls;

7 (b) Water pipes;

8 (c) Carburetion tubes and devices;

9 (d) Smoking and carburetion masks;

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

13 (f) Miniature cocaine spoons and cocaine vials;

14 (g) Chamber pipes;

15 (h) Carburetor pipes;

16 (i) Electric pipes;

17 (j) Air-driven pipes;

18 (k) Chillums;

19 (l) Bonges; and

20 (m) Ice pipes or chillers.

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

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

27 (4) This section does not apply to marijuana-related offenses for  
28 persons over the age of eighteen.

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

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

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

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

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

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

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

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

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

22 ~~(iv))~~) A forfeiture of a conveyance encumbered by a bona fide  
23 security interest is subject to the interest of the secured party if  
24 the secured party neither had knowledge of nor consented to the act or  
25 omission; and

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

31 (e) All books, records, and research products and materials,  
32 including formulas, microfilm, tapes, and data which are used, or  
33 intended for use, in violation of this chapter or chapter 69.41 or  
34 69.52 RCW;

35 (f) All drug paraphernalia;

36 (g) All moneys, negotiable instruments, securities, or other  
37 tangible or intangible property of value furnished or intended to be  
38 furnished by any person in exchange for a controlled substance in

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

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

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

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

33 ~~(iii) ((The possession of marijuana shall not result in the~~  
34 ~~forfeiture of real property unless the marijuana is possessed for~~  
35 ~~commercial purposes, the amount possessed is five or more plants or one~~  
36 ~~pound or more of marijuana, and a substantial nexus exists between the~~  
37 ~~possession of marijuana and the real property. In such a case, the~~  
38 ~~intent of the offender shall be determined by the preponderance of the~~

1 ~~evidence, including the offender's prior criminal history, the amount~~  
2 ~~of marijuana possessed by the offender, the sophistication of the~~  
3 ~~activity or equipment used by the offender, and other evidence which~~  
4 ~~demonstrates the offender's intent to engage in commercial activity;~~

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

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

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

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

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

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

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

37 (3) In the event of seizure pursuant to subsection (2) of this  
38 section, proceedings for forfeiture shall be deemed commenced by the

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

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

33 (5) If any person notifies the seizing law enforcement agency in  
34 writing of the person's claim of ownership or right to possession of  
35 items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h)  
36 of this section within forty-five days of the service of notice from  
37 the seizing agency in the case of personal property and ninety days in  
38 the case of real property, the person or persons shall be afforded a



1 reasonable opportunity to be heard as to the claim or right. The  
2 notice of claim may be served by any method authorized by law or court  
3 rule including, but not limited to, service by first-class mail.  
4 Service by mail shall be deemed complete upon mailing within the forty-  
5 five day period following service of the notice of seizure in the case  
6 of personal property and within the ninety-day period following service  
7 of the notice of seizure in the case of real property. The hearing  
8 shall be before the chief law enforcement officer of the seizing agency  
9 or the chief law enforcement officer's designee, except where the  
10 seizing agency is a state agency as defined in RCW 34.12.020(4), the  
11 hearing shall be before the chief law enforcement officer of the  
12 seizing agency or an administrative law judge appointed under chapter  
13 34.12 RCW, except that any person asserting a claim or right may remove  
14 the matter to a court of competent jurisdiction. Removal of any matter  
15 involving personal property may only be accomplished according to the  
16 rules of civil procedure. The person seeking removal of the matter  
17 must serve process against the state, county, political subdivision, or  
18 municipality that operates the seizing agency, and any other party of  
19 interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-  
20 five days after the person seeking removal has notified the seizing law  
21 enforcement agency of the person's claim of ownership or right to  
22 possession. The court to which the matter is to be removed shall be  
23 the district court when the aggregate value of personal property is  
24 within the jurisdictional limit set forth in RCW 3.66.020. A hearing  
25 before the seizing agency and any appeal therefrom shall be under Title  
26 34 RCW. In all cases, the burden of proof is upon the law enforcement  
27 agency to establish, by a preponderance of the evidence, that the  
28 property is subject to forfeiture.

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

35 (6) In any proceeding to forfeit property under this title, where  
36 the claimant substantially prevails, the claimant is entitled to  
37 reasonable attorneys' fees reasonably incurred by the claimant. In

1 addition, in a court hearing between two or more claimants to the  
2 article or articles involved, the prevailing party is entitled to a  
3 judgment for costs and reasonable attorneys' fees.

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

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

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

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

14 (d) Forward it to the drug enforcement administration for  
15 disposition.

16 (8)(a) When property is forfeited, the seizing agency shall keep a  
17 record indicating the identity of the prior owner, if known, a  
18 description of the property, the disposition of the property, the value  
19 of the property at the time of seizure, and the amount of proceeds  
20 realized from disposition of the property.

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

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

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

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

34 (b) The net proceeds of forfeited property is the value of the  
35 forfeitable interest in the property after deducting the cost of  
36 satisfying any bona fide security interest to which the property is  
37 subject at the time of seizure; and in the case of sold property, after

1 deducting the cost of sale, including reasonable fees or commissions  
2 paid to independent selling agents, and the cost of any valid  
3 landlord's claim for damages under subsection (15) of this section.

4 (c) The value of sold forfeited property is the sale price. The  
5 value of retained forfeited property is the fair market value of the  
6 property at the time of seizure, determined when possible by reference  
7 to an applicable commonly used index, such as the index used by the  
8 department of licensing for valuation of motor vehicles. A seizing  
9 agency may use, but need not use, an independent qualified appraiser to  
10 determine the value of retained property. If an appraiser is used, the  
11 value of the property appraised is net of the cost of the appraisal.  
12 The value of destroyed property and retained firearms or illegal  
13 property is zero.

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

19 (11) Controlled substances listed in Schedule I, II, III, IV, and  
20 V that are possessed, transferred, sold, or offered for sale in  
21 violation of this chapter are contraband and shall be seized and  
22 summarily forfeited to the state. Controlled substances listed in  
23 Schedule I, II, III, IV, and V, which are seized or come into the  
24 possession of the board, the owners of which are unknown, are  
25 contraband and shall be summarily forfeited to the board.

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

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

37 (14) Upon the entry of an order of forfeiture of real property, the  
38 court shall forward a copy of the order to the assessor of the county

1 in which the property is located. Orders for the forfeiture of real  
2 property shall be entered by the superior court, subject to court  
3 rules. Such an order shall be filed by the seizing agency in the  
4 county auditor's records in the county in which the real property is  
5 located.

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

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

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

16 ((+i)) (A) Only if the funds applied under (b) of this subsection  
17 are insufficient to satisfy the damage directly caused by a law  
18 enforcement officer, may the landlord seek compensation for the damage  
19 by filing a claim against the governmental entity under whose authority  
20 the law enforcement agency operates within thirty days after the  
21 search;

22 ((+ii)) (B) Only if the governmental entity denies or fails to  
23 respond to the landlord's claim within sixty days of the date of  
24 filing, may the landlord collect damages under this subsection by  
25 filing within thirty days of denial or the expiration of the sixty-day  
26 period, whichever occurs first, a claim with the seizing law  
27 enforcement agency. The seizing law enforcement agency must notify the  
28 landlord of the status of the claim by the end of the thirty-day  
29 period. Nothing in this section requires the claim to be paid by the  
30 end of the sixty-day or thirty-day period.

31 ((+e)) (b) For any claim filed under ((+b)) (a)(ii) of this  
32 subsection, the law enforcement agency shall pay the claim unless the  
33 agency provides substantial proof that the landlord either:

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

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

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

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

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

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

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

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

19 (18) No seizure or forfeiture of property may result from  
20 marijuana-related offenses committed by persons eighteen years of age  
21 or older.

22 NEW SECTION. Sec. 9. In the event that any sections of this act  
23 are in conflict with any other laws codified in the Revised Code of  
24 Washington, the provisions of this act shall control.

25 NEW SECTION. Sec. 10. If this act is validly submitted to and is  
26 approved and ratified by the voters at the next general election, the  
27 legislature must adopt rules and if appropriate, tax provisions, to  
28 carry out the provisions of this act by final adjournment of the 2012  
29 regular legislative session.

30 NEW SECTION. Sec. 11. If any provision of this act or its  
31 application to any person or circumstance is held invalid, the  
32 remainder of the act or the application of the provision to other  
33 persons or circumstances is not affected.

1        NEW SECTION.    **Sec. 12.**    This act may be known and cited as the  
2 marijuana reform act.

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