

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 new sections 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:

18

19 TABLE 4

20 DRUG OFFENSES

21 INCLUDED WITHIN EACH

22 SERIOUSNESS LEVEL

23 III Any felony offense under chapter 69.50

24 RCW with a deadly weapon

25 special verdict under RCW

26 ((9.94A.602)) 9.94A.825

27 Controlled Substance Homicide (RCW

28 69.50.415)

29 Delivery of imitation controlled

30 substance by person eighteen or

31 over to person under eighteen

32 (RCW 69.52.030(2))

33 Involving a minor in drug dealing

34 (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, or manufacture of marijuana by persons under the age  
7 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.

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 NEW SECTION. **Sec. 6.** A new section is added to chapter 69.50 RCW  
29 to read as follows:

30 (1) It is unlawful for any person under the age of eighteen to  
31 manufacture, deliver, or possess with intent to manufacture or deliver  
32 marijuana. Any person who violates this subsection is guilty of a  
33 class C felony.

34 (2) It is unlawful for any person under the age of eighteen to  
35 create, deliver, or possess counterfeit marijuana. Any person who  
36 violates this subsection is guilty of a class C felony.

1 (3) It is unlawful, except as authorized in this chapter and  
2 chapter 69.41 RCW, for any person under the age of eighteen to offer,  
3 arrange, or negotiate for the sale, gift, delivery, dispensing,  
4 distribution, or administration of marijuana to any person and then  
5 sell, give, deliver, dispense, distribute, or administer to that person  
6 any other liquid, substance, or material in lieu of such marijuana.  
7 Any person who violates this subsection is guilty of a class C felony.

8 (4) It is unlawful for any person under the age of eighteen to  
9 possess marijuana unless the substance was obtained directly from, or  
10 pursuant to, a valid prescription or order of a practitioner while  
11 acting in the course of his or her professional practice, or except as  
12 otherwise authorized by this chapter. Any person who violates this  
13 subsection is guilty of a class C felony.

14 (5) Any person eighteen years of age or over who distributes  
15 marijuana or any other controlled substance listed in Schedules I, II,  
16 III, IV, and V to a person under eighteen years of age who is at least  
17 three years younger is guilty of a class B felony punishable by the  
18 fine authorized by RCW 69.50.401(2) (c), (d), or (e), by a term of  
19 imprisonment up to twice that authorized by RCW 69.50.401(2) (c), (d),  
20 or (e), or both.

21 **Sec. 7.** RCW 69.50.412 and 2002 c 213 s 1 are each amended to read  
22 as follows:

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

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

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

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

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

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

16 **Sec. 8.** RCW 69.50.4121 and 2002 c 213 s 2 are each amended to read  
17 as follows:

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

32 (a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes  
33 with or without screens, permanent screens, hashish heads, or punctured  
34 metal bowls;

35 (b) Water pipes;

36 (c) Carburetion tubes and devices;

37 (d) Smoking and carburetion masks;

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

4 (f) Miniature cocaine spoons and cocaine vials;

5 (g) Chamber pipes;

6 (h) Carburetor pipes;

7 (i) Electric pipes;

8 (j) Air-driven pipes;

9 (k) Chillums;

10 (l) Bongs; and

11 (m) Ice pipes or chillers.

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

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

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

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

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

24 (a) All controlled substances which have been manufactured,  
25 distributed, dispensed, acquired, or possessed in violation of this  
26 chapter or chapter 69.41 or 69.52 RCW, and all hazardous chemicals, as  
27 defined in RCW 64.44.010, used or intended to be used in the  
28 manufacture of controlled substances;

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

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

35 (d) All conveyances, including aircraft, vehicles, or vessels,  
36 which are used, or intended for use, in any manner to facilitate the

1 sale, delivery, or receipt of property described in (a) or (b) of this  
2 subsection, except that:

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

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

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

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

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

23 (e) All books, records, and research products and materials,  
24 including formulas, microfilm, tapes, and data which are used, or  
25 intended for use, in violation of this chapter or chapter 69.41 or  
26 69.52 RCW;

27 (f) All drug paraphernalia;

28 (g) All moneys, negotiable instruments, securities, or other  
29 tangible or intangible property of value furnished or intended to be  
30 furnished by any person in exchange for a controlled substance in  
31 violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible  
32 or intangible personal property, proceeds, or assets acquired in whole  
33 or in part with proceeds traceable to an exchange or series of  
34 exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW,  
35 and all moneys, negotiable instruments, and securities used or intended  
36 to be used to facilitate any violation of this chapter or chapter 69.41  
37 or 69.52 RCW. A forfeiture of money, negotiable instruments,  
38 securities, or other tangible or intangible property encumbered by a

1 bona fide security interest is subject to the interest of the secured  
2 party if, at the time the security interest was created, the secured  
3 party neither had knowledge of nor consented to the act or omission.  
4 No personal property may be forfeited under this subsection (1)(g), to  
5 the extent of the interest of an owner, by reason of any act or  
6 omission which that owner establishes was committed or omitted without  
7 the owner's knowledge or consent; and

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

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

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

25 ~~(iii) ((The possession of marijuana shall not result in the  
26 forfeiture of real property unless the marijuana is possessed for  
27 commercial purposes, the amount possessed is five or more plants or one  
28 pound or more of marijuana, and a substantial nexus exists between the  
29 possession of marijuana and the real property. In such a case, the  
30 intent of the offender shall be determined by the preponderance of the  
31 evidence, including the offender's prior criminal history, the amount  
32 of marijuana possessed by the offender, the sophistication of the  
33 activity or equipment used by the offender, and other evidence which  
34 demonstrates the offender's intent to engage in commercial activity;~~

35 ~~(iv))~~ The unlawful sale of ~~((marijuana or))~~ a legend drug shall  
36 not result in the forfeiture of real property unless the sale was  
37 ~~((forty grams or more in the case of marijuana or))~~ one hundred dollars

1 or more in the case of a legend drug, and a substantial nexus exists  
2 between the unlawful sale and the real property; and

3 ((+v)) (iv) A forfeiture of real property encumbered by a bona  
4 fide security interest is subject to the interest of the secured party  
5 if the secured party, at the time the security interest was created,  
6 neither had knowledge of nor consented to the act or omission.

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

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

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

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

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

30 (3) In the event of seizure pursuant to subsection (2) of this  
31 section, proceedings for forfeiture shall be deemed commenced by the  
32 seizure. The law enforcement agency under whose authority the seizure  
33 was made shall cause notice to be served within fifteen days following  
34 the seizure on the owner of the property seized and the person in  
35 charge thereof and any person having any known right or interest  
36 therein, including any community property interest, of the seizure and  
37 intended forfeiture of the seized property. Service of notice of  
38 seizure of real property shall be made according to the rules of civil



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

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

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

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

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

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

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

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

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

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

6 (d) Forward it to the drug enforcement administration for  
7 disposition.

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

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

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

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

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

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

33 (c) The value of sold forfeited property is the sale price. The  
34 value of retained forfeited property is the fair market value of the  
35 property at the time of seizure, determined when possible by reference  
36 to an applicable commonly used index, such as the index used by the  
37 department of licensing for valuation of motor vehicles. A seizing  
38 agency may use, but need not use, an independent qualified appraiser to

1 determine the value of retained property. If an appraiser is used, the  
2 value of the property appraised is net of the cost of the appraisal.  
3 The value of destroyed property and retained firearms or illegal  
4 property is zero.

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

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

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

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

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

35 (15)(a) A landlord may assert a claim against proceeds from the  
36 sale of assets seized and forfeited under subsection (7)(b) of this  
37 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       ~~((e))~~ (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

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

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

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

15 NEW SECTION. Sec. 10. In the event that any sections of this act  
16 are in conflict with any other laws codified in the Revised Code of  
17 Washington, the provisions of this act shall control.

18 NEW SECTION. Sec. 11. If this act is validly submitted to and is  
19 approved and ratified by the voters at the next general election, the  
20 legislature must adopt rules and if appropriate, tax provisions, to  
21 carry out the provisions of this act by final adjournment of the 2012  
22 regular legislative session.

23 NEW SECTION. Sec. 12. If any provision of this act or its  
24 application to any person or circumstance is held invalid, the  
25 remainder of the act or the application of the provision to other  
26 persons or circumstances is not affected.

27 NEW SECTION. Sec. 13. This act may be known and cited as the  
28 marijuana reform act.

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