
SUBSTITUTE SENATE BILL 5528

State of Washington

63rd Legislature

2013 Regular Session

By Senate Health Care (originally sponsored by Senators Kohl-Welles, Delvin, Litzow, Kline, Darneille, Keiser, and Murray)

READ FIRST TIME 02/22/13.

1 AN ACT Relating to the medical use of cannabis but only relating to
2 making technical corrections necessary to address the partial veto of
3 Engrossed Second Substitute Senate Bill No. 5073 by restoring
4 definitions and removing references to the vetoed provisions; amending
5 RCW 69.51A.010, 69.51A.020, 69.51A.030, 69.51A.040, 69.51A.047,
6 69.51A.055, 69.51A.060, and 69.51A.085; and repealing RCW 69.51A.043.

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

8 **Sec. 1.** RCW 69.51A.010 and 2010 c 284 s 2 are each amended to read
9 as follows:

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

12 (1) "Cannabis" means all parts of the plant *Cannabis*, whether
13 growing or not; the seeds thereof; the resin extracted from any part of
14 the plant; and every compound, manufacture, salt, derivative, mixture,
15 or preparation of the plant, its seeds, or resin. For the purposes of
16 this chapter, "cannabis" does not include the mature stalks of the
17 plant, fiber produced from the stalks, oil or cake made from the seeds
18 of the plant, any other compound, manufacture, salt, derivative,
19 mixture, or preparation of the mature stalks, except the resin

1 extracted therefrom, fiber, oil, or cake, or the sterilized seed of the
2 plant which is incapable of germination. "Cannabis" includes cannabis
3 products and useable cannabis.

4 (2) "Cannabis products" means products that contain cannabis or
5 cannabis extracts, have a measurable THC concentration greater than
6 three-tenths of one percent, and are intended for human consumption or
7 application, including, but not limited to, edible products, tinctures,
8 and lotions. "Cannabis products," does not include useable cannabis.
9 "Cannabis products," as a measurement of THC concentration, only
10 applies to the provisions of this chapter and is not considered
11 applicable to any criminal laws related to marijuana or cannabis.

12 (3) "Collective garden" means qualifying patients sharing
13 responsibility for acquiring and supplying the resources required to
14 produce, process, and deliver cannabis for medical use such as, for
15 example, a location for a collective garden; equipment, supplies, and
16 labor necessary to plant, grow, and harvest cannabis; cannabis plants,
17 seeds, and cuttings; and equipment, supplies, and labor necessary for
18 proper construction, plumbing, wiring, and ventilation of a garden of
19 cannabis plants.

20 (4) "Correctional facility" has the same meaning as provided in RCW
21 72.09.015.

22 (5) "Corrections agency or department" means any agency or
23 department in the state of Washington, including local governments or
24 jails, that is vested with the responsibility to manage those
25 individuals who are being supervised in the community for a criminal
26 conviction and has established a written policy for determining when
27 the medical use of cannabis, including possession, manufacture, or
28 delivery of, or for possession with intent to manufacture or deliver,
29 is inconsistent with and contrary to the person's supervision.

30 (6)(a) "Designated provider" means a person who:
31 ((+a)) (i) Is eighteen years of age or older;
32 ((+b)) (ii) Has been designated in ((writing)) a written document
33 signed and dated by a qualifying patient to serve as a designated
34 provider under this chapter; and

35 ((+c)) (iii) Is ((prohibited from consuming marijuana obtained for
36 the personal, medical use of the patient for whom the individual is
37 acting as designated provider; and

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

1 ~~(2)~~) in compliance with the terms and conditions set forth in RCW
2 69.51A.040.

3 (b) A qualifying patient may be the designated provider for another
4 qualifying patient and be in possession of both patients' cannabis at
5 the same time.

6 (7) "Health care professional," for purposes of this chapter only,
7 means a physician licensed under chapter 18.71 RCW, a physician
8 assistant licensed under chapter 18.71A RCW, an osteopathic physician
9 licensed under chapter 18.57 RCW, an osteopathic physicians' assistant
10 licensed under chapter 18.57A RCW, a naturopath licensed under chapter
11 18.36A RCW, or an advanced registered nurse practitioner licensed under
12 chapter 18.79 RCW.

13 ~~((3))~~ (8) "Medical use of (~~marijuana~~) cannabis" means the
14 manufacture, production, possession, transportation, delivery,
15 ingestion, application, or administration of (~~marijuana, as defined in~~
16 RCW ~~69.50.101(q),~~) cannabis for the exclusive benefit of a qualifying
17 patient in the treatment of his or her terminal or debilitating
18 (~~illness~~) medical condition.

19 ~~((4))~~ (9) "Peace officer" means any law enforcement personnel as
20 defined in RCW 43.101.010.

21 (10) "Person" means an individual or an entity.

22 (11) "Plant" means an organism having at least three
23 distinguishable and distinct leaves, each leaf being at least three
24 centimeters in diameter, and a readily observable root formation
25 consisting of at least two separate and distinct roots, each being at
26 least two centimeters in length. Multiple stalks emanating from the
27 same root ball or root system is considered part of the same single
28 plant.

29 (12) "Public place" includes streets and alleys of incorporated
30 cities and towns; state or county or township highways or roads;
31 buildings and grounds used for school purposes; public dance halls and
32 grounds adjacent thereto; premises where goods and services are offered
33 to the public for retail sale; public buildings, public meeting halls,
34 lobbies, halls and dining rooms of hotels, restaurants, theatres,
35 stores, garages, and filling stations that are open to and are
36 generally used by the public and to which the public is permitted to
37 have unrestricted access; railroad trains, stages, buses, ferries, and
38 other public conveyances of all kinds and character, and the depots,

1 stops, and waiting rooms used in conjunction therewith which are open
2 to unrestricted use and access by the public; publicly owned bathing
3 beaches, parks, or playgrounds; and all other places of like or similar
4 nature to which the general public has unrestricted right of access,
5 and that are generally used by the public.

6 (13) "Qualifying patient" means a person who:

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

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

10 ~~((c))~~ (iii) Is a resident of the state of Washington at the time
11 of such diagnosis;

12 ~~((d))~~ (iv) Has been advised by that health care professional
13 about the risks and benefits of the medical use of ~~((marijuana))~~
14 cannabis; (and

15 ~~(e))~~ (v) Has been advised by that health care professional that
16 ~~((they))~~ he or she may benefit from the medical use of ~~((marijuana))~~
17 cannabis; and

18 (vi) Is otherwise in compliance with the terms and conditions
19 established in this chapter.

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

25 ~~((5))~~ (14) "Tamper-resistant paper" means paper that meets one or
26 more of the following industry-recognized features:

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

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

30 (c) One or more features designed to prevent the use of counterfeit
31 valid documentation.

32 ~~((6))~~ (15) "Terminal or debilitating medical condition" means:

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

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

37 (c) Glaucoma, either acute or chronic, limited for the purpose of

1 this chapter to mean increased intraocular pressure unrelieved by
2 standard treatments and medications; or

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

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

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

11 (g) Any other medical condition duly approved by the Washington
12 state medical quality assurance commission in consultation with the
13 board of osteopathic medicine and surgery as directed in this chapter.

14 ~~((7))~~ (16) "THC concentration" means percent of
15 tetrahydrocannabinol content per weight or volume of useable cannabis
16 or cannabis product.

17 (17) "Useable cannabis" means dried flowers of the Cannabis plant
18 having a THC concentration greater than three-tenths of one percent.
19 Useable cannabis excludes stems, stalks, leaves, seeds, and roots. For
20 purposes of this subsection, "dried" means containing less than fifteen
21 percent moisture content by weight. "Useable cannabis" does not
22 include cannabis products.

23 (18) "Valid documentation" means:

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

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

30 **Sec. 2.** RCW 69.51A.020 and 2011 c 181 s 103 are each amended to
31 read as follows:

32 ~~((Nothing in this chapter shall be construed to supersede~~
33 ~~Washington state law prohibiting the acquisition, possession,~~
34 ~~manufacture, sale, or use of cannabis for nonmedical purposes.))~~
35 Criminal penalties created under this chapter ~~((181, Laws of 2011))~~ do
36 not preclude the prosecution or punishment for other crimes, including

1 other crimes involving the manufacture or delivery of cannabis for
2 nonmedical purposes.

3 **Sec. 3.** RCW 69.51A.030 and 2011 c 181 s 301 are each amended to
4 read as follows:

5 (1) The following acts do not constitute crimes under state law or
6 unprofessional conduct under chapter 18.130 RCW, and a health care
7 professional may not be arrested, searched, prosecuted, disciplined, or
8 subject to other criminal sanctions or civil consequences or liability
9 under state law, or have real or personal property searched, seized, or
10 forfeited pursuant to state law, notwithstanding any other provision of
11 law as long as the health care professional complies with subsection
12 (2) of this section:

13 (a) Advising a qualifying patient about the risks and benefits of
14 medical use of cannabis or that the qualifying patient may benefit from
15 the medical use of cannabis; or

16 (b) Providing a qualifying patient (~~((meeting the criteria~~
17 ~~established under RCW 69.51A.010(26))~~) with valid documentation, based
18 upon the health care professional's assessment of the patient's medical
19 history and current medical condition, where such use is within a
20 professional standard of care or in the individual health care
21 professional's medical judgment.

22 (2)(a) A health care professional may only provide a qualifying
23 patient with valid documentation authorizing the medical use of
24 cannabis (~~((or register the patient with the registry established in~~
25 ~~section 901 of this act))~~) if he or she has a newly initiated or
26 existing documented relationship with the qualifying patient, as a
27 primary care provider or a specialist, relating to the diagnosis and
28 ongoing treatment or monitoring of the qualifying patient's terminal or
29 debilitating medical condition, and only after:

30 (i) Completing a physical examination of the patient as
31 appropriate, based on the patient's condition and age;

32 (ii) Documenting the terminal or debilitating medical condition of
33 the qualifying patient in the patient's medical record and that the
34 patient may benefit from treatment of this condition or its symptoms
35 with medical use of cannabis;

36 (iii) Informing the qualifying patient of other options for
37 treating the terminal or debilitating medical condition; and

1 (iv) Documenting other measures attempted to treat the terminal or
2 debilitating medical condition that do not involve the medical use of
3 cannabis.

4 (b) A health care professional shall not:

5 (i) Accept, solicit, or offer any form of pecuniary remuneration
6 from or to a (~~licensed dispenser, licensed producer, or licensed~~
7 ~~processor of cannabis products~~) collective garden;

8 (ii) Offer a discount or any other thing of value to a qualifying
9 patient who is a customer of, or agrees to be a customer of, a
10 particular (~~licensed dispenser, licensed producer, or licensed~~
11 ~~processor of cannabis products~~) collective garden;

12 (iii) Examine or offer to examine a patient for purposes of
13 diagnosing a terminal or debilitating medical condition at ((a)) the
14 location (~~where cannabis is produced, processed, or dispensed~~) of a
15 collective garden;

16 (iv) Have a business or practice which consists solely of
17 authorizing the medical use of cannabis;

18 (v) Include any statement or reference, visual or otherwise, on the
19 medical use of cannabis in any advertisement for his or her business or
20 practice; or

21 (vi) Hold an economic interest in an enterprise that produces,
22 processes, or dispenses cannabis if the health care professional
23 authorizes the medical use of cannabis.

24 (3) A violation of any provision of subsection (2) of this section
25 constitutes unprofessional conduct under chapter 18.130 RCW.

26 **Sec. 4.** RCW 69.51A.040 and 2011 c 181 s 401 are each amended to
27 read as follows:

28 The medical use of cannabis in accordance with the terms and
29 conditions of this chapter does not constitute a crime and a qualifying
30 patient or designated provider in compliance with the terms and
31 conditions of this chapter may not be arrested, prosecuted, or subject
32 to other criminal sanctions or civil consequences, for possession,
33 manufacture, or delivery of, or for possession with intent to
34 manufacture or deliver, cannabis under state law, or have real or
35 personal property seized or forfeited for possession, manufacture, or
36 delivery of, or for possession with intent to manufacture or deliver,

1 cannabis under state law, and investigating peace officers and law
2 enforcement agencies may not be held civilly liable for failure to
3 seize cannabis in this circumstance, if:

4 (1)(a) The qualifying patient or designated provider possesses no
5 more than fifteen cannabis plants and:

6 (i) No more than twenty-four ounces of useable cannabis;

7 (ii) No more cannabis product than what could reasonably be
8 produced with no more than twenty-four ounces of useable cannabis; or

9 (iii) A combination of useable cannabis and cannabis product that
10 does not exceed a combined total representing possession and processing
11 of no more than twenty-four ounces of useable cannabis.

12 (b) If a person is both a qualifying patient and a designated
13 provider for another qualifying patient, the person may possess no more
14 than twice the amounts described in (a) of this subsection, whether the
15 plants, useable cannabis, and cannabis product are possessed
16 individually or in combination between the qualifying patient and his
17 or her designated provider;

18 (2) The qualifying patient or designated provider presents his or
19 her (~~(proof of registration with the department of health,)~~) valid
20 documentation to any peace officer who questions the patient or
21 provider regarding his or her medical use of cannabis;

22 (~~(3) ((The qualifying patient or designated provider keeps a copy of~~
23 ~~his or her proof of registration with the registry established in~~
24 ~~section 901 of this act and the qualifying patient or designated~~
25 ~~provider's contact information posted prominently next to any cannabis~~
26 ~~plants, cannabis products, or useable cannabis located at his or her~~
27 ~~residence;~~

28 ~~(4))~~) The investigating peace officer does not possess evidence
29 that:

30 (a) The designated provider has converted cannabis produced or
31 obtained for the qualifying patient for his or her own personal use or
32 benefit; or

33 (b) The qualifying patient has converted cannabis produced or
34 obtained for his or her own medical use to the qualifying patient's
35 personal, nonmedical use or benefit; and

36 ~~((+5))~~) (4) The investigating peace officer does not possess
37 evidence that the designated provider has served as a designated

1 provider to more than one qualifying patient within a fifteen-day
2 period(~~(~~and~~~~
3 ~~(6) The investigating peace officer has not observed evidence of~~
4 ~~any of the circumstances identified in section 901(4) of this act)~~).

5 **Sec. 5.** RCW 69.51A.047 and 2011 c 181 s 406 are each amended to
6 read as follows:

7 A qualifying patient or designated provider who (~~is not registered~~
8 ~~with the registry established in section 901 of this act or~~) does not
9 present his or her valid documentation to a peace officer who questions
10 the patient or provider regarding his or her medical use of cannabis
11 but is in compliance with all other terms and conditions of this
12 chapter may establish an affirmative defense to charges of violations
13 of state law relating to cannabis through proof at trial, by a
14 preponderance of the evidence, that he or she was a validly authorized
15 qualifying patient or designated provider at the time of the officer's
16 questioning. A qualifying patient or designated provider who
17 establishes an affirmative defense under the terms of this section may
18 also establish an affirmative defense under RCW 69.51A.045.

19 **Sec. 6.** RCW 69.51A.055 and 2011 c 181 s 1105 are each amended to
20 read as follows:

21 (1)(a) The arrest and prosecution protections established in RCW
22 69.51A.040 may not be asserted in a supervision revocation or violation
23 hearing by a person who is supervised by a corrections agency or
24 department, including local governments or jails, that has determined
25 that the terms of this section are inconsistent with and contrary to
26 his or her supervision.

27 (b) The affirmative defenses established in RCW (~~69.51A.043,~~)
28 69.51A.045(~~(~~7~~)~~) and 69.51A.047(~~(~~7~~ and section 407 of this act)~~) may not
29 be asserted in a supervision revocation or violation hearing by a
30 person who is supervised by a corrections agency or department,
31 including local governments or jails, that has determined that the
32 terms of this section are inconsistent with and contrary to his or her
33 supervision.

34 (2) The provisions of RCW 69.51A.040, 69.51A.085, and 69.51A.025 do
35 not apply to a person who is supervised for a criminal conviction by a

1 corrections agency or department, including local governments or jails,
2 that has determined that the terms of this chapter are inconsistent
3 with and contrary to his or her supervision.

4 ~~((3) A person may not be licensed as a licensed producer, licensed
5 processor of cannabis products, or a licensed dispenser under section
6 601, 602, or 701 of this act if he or she is supervised for a criminal
7 conviction by a corrections agency or department, including local
8 governments or jails, that has determined that licensure is
9 inconsistent with and contrary to his or her supervision.))~~

10 **Sec. 7.** RCW 69.51A.060 and 2011 c 181 s 501 are each amended to
11 read as follows:

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

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

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

24 (4) Nothing in this chapter requires any accommodation of any on-
25 site medical use of cannabis in any place of employment, in any school
26 bus or on any school grounds, in any youth center, in any correctional
27 facility, or smoking cannabis in any public place or hotel or motel.

28 (5) Nothing in this chapter authorizes the use of medical cannabis
29 by any person who is subject to the Washington code of military justice
30 in chapter 38.38 RCW.

31 (6) Employers may establish drug-free work policies. Nothing in
32 this chapter requires an accommodation for the medical use of cannabis
33 if an employer has a drug-free work place.

34 (7) It is a class C felony to fraudulently produce any record
35 purporting to be, or tamper with the content of any record for the
36 purpose of having it accepted as, valid documentation (~~under RCW~~

1 ~~69.51A.010(32)(a))~~, or to backdate such documentation to a time
2 earlier than its actual date of execution.

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

10 **Sec. 8.** RCW 69.51A.085 and 2011 c 181 s 403 are each amended to
11 read as follows:

12 (1) Qualifying patients may create and participate in collective
13 gardens for the purpose of producing, processing, transporting, and
14 delivering cannabis for medical use subject to the following
15 conditions:

16 (a) No more than ten qualifying patients may participate in a
17 single collective garden at any time;

18 (b) A collective garden may contain no more than fifteen plants per
19 patient up to a total of forty-five plants;

20 (c) A collective garden may contain no more than twenty-four ounces
21 of useable cannabis per patient up to a total of seventy-two ounces of
22 useable cannabis;

23 (d) A copy of each qualifying patient's valid documentation (~~or~~
24 ~~proof of registration with the registry established in section 901 of~~
25 ~~this act, including~~) and a copy of the patient's proof of
26 identity(~~(7)~~) must be available at all times on the premises of the
27 collective garden; and

28 (e) No useable cannabis from the collective garden is delivered to
29 anyone other than one of the qualifying patients participating in the
30 collective garden.

31 (2) (~~For purposes of this section, the creation of a "collective~~
32 ~~garden" means qualifying patients sharing responsibility for acquiring~~
33 ~~and supplying the resources required to produce and process cannabis~~
34 ~~for medical use such as, for example, a location for a collective~~
35 ~~garden; equipment, supplies, and labor necessary to plant, grow, and~~
36 ~~harvest cannabis; cannabis plants, seeds, and cuttings; and equipment,~~

1 ~~supplies, and labor necessary for proper construction, plumbing,~~
2 ~~wiring, and ventilation of a garden of cannabis plants.~~

3 (3)) A person who knowingly violates a provision of subsection (1)
4 of this section is not entitled to the protections of this chapter.

5 NEW SECTION. **Sec. 9.** RCW 69.51A.043 (Failure to register--
6 Affirmative defense) and 2011 c 181 s 402 are each repealed.

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