Initiative Measure No. 637

Filed December 10, 2013

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: I-2782.1/14

ATTY/TYPIST: AI:bbp

BRIEF DESCRIPTION:

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AN ACT Relating to substances placed on the controlled substances list; amending RCW 69.50.201, 69.50.203, 69.50.205, 69.50.207, 69.50.209, and 69.50.211; reenacting and amending RCW 69.50.101; creating new sections; and amending RCW 26.28.080.

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

NEW SECTION. **Sec. 1.** (1) Substances are placed on the controlled substances list not by the proven harms caused to people who consume these substances, but based in a person's desire to consume them.

(2) The placement of naturally occurring substances in Schedule I of the controlled substances act prevents research into potentially lifesaving or altering treatments.

(3) In 1998, the people of Washington state told elected representatives that at least one schedule one control substance does have medicinal value, yet the pharmacy quality assurance commission thwarts research by keeping it a Schedule I controlled substance.

(4) In 2012, the people of Washington state said even if elected representatives believe that this schedule one controlled substance

does not have proven medicinal value, adults should be free to consume it.

(5) Still, the pharmacy quality assurance commission schedules this and other natural plant products is such a way to prevent most research.

(6) Washingtonians want to start restricting access to medicinal substances based on the harm done by either the use or the cessation of use, not on the human desire to use them.

(7) Further, it is time to stop preventing research into natural cures. Research should not be prevented into the health benefits of any natural occurring substance.

(8) The pharmacy quality assurance commission has been prevented from taking effective action against cigarettes and other manufactured nicotine containing products.

(9) The people of Washington, therefore, desire the pharmacy quality assurance commission to regulate manufactured substances used as medicines based on harm reduction, allowing naturally occurring plant substances to be used by adults, while restricting access to minors.

Sec. 2. RCW 69.50.201 and 2013 c 19 s 87 are each amended to read as follows:

(a) The commission shall enforce this chapter and may add substances to or delete or reschedule substances listed in RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, or 69.50.212 pursuant to the procedures of chapter 34.05 RCW.

(1) In making a determination regarding a substance, the commission shall consider the following:

(i) the actual ((~~or relative~~)) potential for ((~~abuse~~)) detrimental effects from use;

(ii) the known scientific evidence of its pharmacological effect((~~, if known~~));

(iii) the state of current scientific knowledge regarding the substance;

(iv) the history and current pattern of ((~~abuse~~)) the detrimental effects from use;

(v) the scope, duration, and significance of ((~~abuse~~)) the detrimental effects from use;

(vi) the risk to the public health;

(vii) the potential of the substance to produce ((~~psychic or~~)) physiological dependence liability; and

(viii) whether the substance is ((~~an~~)) a manufactured immediate precursor of a controlled substance.

(2) ((~~The commission may consider findings of the federal Food and Drug Administration or the Drug Enforcement Administration as prima facie evidence relating to one or more of the determinative factors. (b)~~)) After considering the factors enumerated in this subsection ((~~(a) of this section~~)), the commission shall make findings with respect thereto and adopt and cause to be published a rule controlling the substance upon finding the substance has a potential for ((~~abuse~~)) significant detrimental effects from use or significant physical dependency.

((~~(c)~~)) (b) The commission, without regard to the findings required by subsection (a) of this section or RCW 69.50.203, 69.50.205, 69.50.207, 69.50.209, and 69.50.211 or the procedures prescribed by subsection((~~s~~)) (a) ((~~and (b)~~)) of this section, may place ((~~an~~)) a manufactured immediate precursor in the same schedule in which the controlled substance of which it is ((~~an~~)) a manufactured immediate precursor is placed or in any other schedule. If the commission designates a substance as ((~~an~~)) a manufactured immediate precursor, substances that are precursors of the controlled precursor are not subject to control solely because they are precursors of the controlled precursor.

((~~(d) If a substance is designated, rescheduled, or deleted as a controlled substance under federal law, the commission shall similarly control the substance under this chapter after the expiration of thirty days from the date of publication in the federal register of a final order designating the substance as a controlled substance or rescheduling or deleting the substance or from the date of issuance of~~

~~an order of temporary scheduling under Section 508 of the federal Dangerous Drug Diversion Control Act of 1984, 21 U.S.C. Sec. 811(h), unless within that thirty day period, the commission or an interested party objects to inclusion, rescheduling, temporary scheduling, or deletion. If no objection is made, the commission shall adopt and cause to be published, without the necessity of making determinations or findings as required by subsection (a) of this section or RCW 69.50.203, 69.50.205, 69.50.207, 69.50.209, and 69.50.211, a final rule, for which notice of proposed rule making is omitted, designating, rescheduling, temporarily scheduling, or deleting the substance. If an objection is made, the commission shall make a determination with respect to the designation, rescheduling, or deletion of the substance as provided by subsection (a) of this section. Upon receipt of an objection to inclusion, rescheduling, or deletion under this chapter by the commission, the commission shall publish notice of the receipt of the objection, and control under this chapter is stayed until the commission adopts a rule as provided by subsection (a) of this section.~~

~~(c) The commission, by rule and without regard to the requirements of subsection (a) of this section, may schedule a substance in Schedule I regardless of whether the substance is substantially similar to a controlled substance in Schedule I or II if the commission finds that scheduling of the substance on an emergency basis is necessary to avoid an imminent hazard to the public safety and the substance is not included in any other schedule or no exemption or approval is in effect for the substance under Section 505 of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 355. Upon receipt of notice under RCW 69.50.214, the commission shall initiate scheduling of the controlled substance analog on an emergency basis pursuant to this subsection. The scheduling of a substance under this subsection expires one year after the adoption of the scheduling rule. With respect to the finding of an imminent hazard to the public safety, the commission shall consider whether the substance has been scheduled on a temporary basis under federal law or factors set forth in subsection (a)(1)(iv), (v), and (vi) of this section, and may also~~

~~consider clandestine importation, manufacture, or distribution, and, if available, information concerning the other factors set forth in subsection (a)(1) of this section. A rule may not be adopted under this subsection until the commission initiates a rule-making proceeding under subsection (a) of this section with respect to the substance. A rule adopted under this subsection must be vacated upon the conclusion of the rule making proceeding initiated under subsection (a) of this section with respect to the substance.~~

~~(f)~~)) (c) Authority to control under this section does not extend to distilled spirits, wine, or malt beverages, herbs or unadulterated tobacco products as those terms are defined or used in Title~~s~~ 66 and 26 RCW.

Sec. 3. RCW 69.50.203 and 2013 c 19 s 88 are each amended to read as follows:

((~~(a)~~)) The commission shall place a manufactured substance in Schedule I upon finding that the substance:

((~~(1)~~)) (a) has high potential for ((~~abuse~~)) substantial detrimental effects from use or misuse;

((~~(2)~~)) (b) has no currently accepted medical use in treatment in any state of the United States; and

((~~(3) lacks accepted safety for use in treatment under medical supervision~~)) (c) will probably lead to severe physical dependence.

((~~(b) The commission may place a substance in Schedule I without making the findings required by subsection (a) of this section if the substance is controlled under Schedule I of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol.~~))

Sec. 4. RCW 69.50.205 and 2013 c 19 s 89 are each amended to read as follows:

((~~(a)~~)) The commission shall place a manufactured substance in Schedule II upon finding that:

((~~(1)~~)) (a) the substance has high potential for ((~~abuse~~)) substantial detrimental effects from use or misuse;

((~~(2)~~)) (b) the substance has currently accepted medical use in treatment in any state of the United States, or currently accepted medical use with severe restrictions; and

((~~(3)~~)) (c) the ((~~abuse~~)) use of the substance ((~~may~~)) will probably lead to severe ((~~psychological or~~)) physical dependence.

((~~(b) The commission may place a substance in Schedule II without making the findings required by subsection (a) of this section if the substance is controlled under Schedule II of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol.~~))

Sec. 5. RCW 69.50.207 and 2013 c 19 s 90 are each amended to read as follows:

((~~(a)~~)) The commission shall place a manufactured substance in Schedule III upon finding that:

((~~(1) the substance has a potential for abuse less than the substances included in Schedules I and II;~~

~~(2)~~)) (a) the substance has currently accepted medical use in treatment in any state of the United States;

(b) the substance has a moderate or greater potential for significant detrimental effects from use; and

((~~(3) abuse~~)) (c) the use of the substance ((~~may~~)) will probably lead to moderate ((~~or low~~)) physical dependence ((~~or high psychological dependence~~)).

((~~(b) The commission may place a substance in Schedule III without making the findings required by subsection (a) of this section if the substance is controlled under Schedule III of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol.~~))

Sec. 6. RCW 69.50.209 and 2013 c 19 s 92 are each amended to read as follows:

((~~(a)~~)) The commission shall place a manufactured substance in Schedule IV upon finding that:

((~~(1) the substance has a low potential for abuse relative to substances in Schedule III;~~

~~(2)~~)) (a) the substance has currently accepted medical use in treatment in any state of the United States;

(b) the substance has a potential for significant detrimental effects from use; and

((~~(3) abuse~~)) (c) the use of the substance may lead to limited physical dependence ((~~or psychological dependence relative to the substances included in Schedule III~~)).

((~~(b) The commission may place a substance in Schedule IV without making the findings required by subsection (a) of this section if the substance is controlled under Schedule IV of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol.~~))

Sec. 7. RCW 69.50.211 and 2013 c 19 s 94 are each amended to read as follows:

(a) The commission shall place a manufactured substance in Schedule V upon finding that:

((~~(1) the substance has low potential for abuse relative to the controlled substances included in Schedule IV;~~

~~(2)~~)) (1) the substance has currently accepted medical use in treatment in any state of the United States and either;

(2) the substance has potential for significant detrimental effects from misuse; or

(3) the abuse of the substance by individuals may ((~~lead to limited physical dependence or psychological dependence relative to the substances included in Schedule IV~~)) cause the substance to lose its effectiveness for the general public.

(b) The commission ((~~may~~)) shall place a substance ((~~in Schedule V without being required to make the findings required by subsection (a) of this section if the substance is controlled under~~)) that was not manufactured in Schedule V ((~~of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol~~)) only upon finding that:

(1) the substance has high potential for significant detrimental effects from occasional use; and

(2) the substance has high potential for moderate or greater physical dependence.

Sec. 8. RCW 69.50.101 and 2013 c 276 s 2 and 2013 c 116 s 1 are each reenacted and amended to read as follows:

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

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

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

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

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

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

(d) "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through V as set forth in ((~~federal or~~)) state laws((~~, or federal~~)) or ((~~board~~)) commission rules.

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

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

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

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

(2) The term does not include:

(i) a controlled substance;

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

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

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

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

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

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

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

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

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

(l) "Drug" means (1) a controlled substance recognized as a drug in the official United States pharmacopoeia/national formulary or the official homeopathic pharmacopoeia of the United States, or any supplement to them; (2) controlled substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals; (3) controlled substances (other than food) intended to affect the structure or any function of the body of individuals or animals; and (4) controlled substances intended for use

as a component of any article specified in (1), (2), or (3) of this subsection. The term does not include devices or their components, parts, or accessories.

(m) "Drug enforcement administration" means the drug enforcement administration in the United States Department of Justice, or its successor agency.

(n) "Electronic communication of prescription information" means the transmission of a prescription or refill authorization for a drug of a practitioner using computer systems. The term does not include a prescription or refill authorization verbally transmitted by telephone nor a facsimile manually signed by the practitioner.

(o) "Herb" means fresh, frozen, or dried, otherwise unprocessed vegetable matter with no significant detrimental effects from occasional, limited use. An herb is exempt from being placed on any schedule.

(p) "Immediate precursor" means a manufactured substance:

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

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

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

((~~(p)~~)) (q) "Isomer" means an optical isomer, but in subsection ((~~(y)~~)) (z)(5) of this section, RCW 69.50.204(a) (12) and (34), and 69.50.206(b)(4), the term includes any geometrical isomer; in RCW 69.50.204(a) (8) and (42), and 69.50.210(c) the term includes any positional isomer; and in RCW 69.50.204(a)(35), 69.50.204(c), and 69.50.208(a) the term includes any positional or geometric isomer.

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

((~~(r)~~)) (s) "Lot number" shall identify the licensee by business or trade name and Washington state unified business identifier number,

and the date of harvest or processing for each lot of marijuana, useable marijuana, or marijuana-infused product.

((~~(s)~~)) (t) "Manufacture" means the production, preparation, ((~~propagation,~~)) compounding, conversion, or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation, compounding, packaging, repackaging, labeling, or relabeling of a controlled substance:

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

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

((~~(t)~~)) (u) "Marijuana" or "marihuana" means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis((~~,~~)) and the seeds thereof((~~,~~)). The term does not include the resin extracted from any part of the plant; ((~~and every~~)) any compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin((~~. The term does not include~~)); or the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

((~~(u)~~)) (v) "Marijuana processor" means a person licensed by the state liquor control board to process marijuana into useable marijuana and marijuana-infused products, package and label useable marijuana and marijuana-infused products for sale in retail outlets, and sell

useable marijuana and marijuana-infused products at wholesale to marijuana retailers.

((~~(v)~~)) (w) "Marijuana producer" means a person licensed by the state liquor control board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

((~~(w)~~)) (x) "Marijuana-infused products" means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana-infused products" does not include useable marijuana.

((~~(x)~~)) (y) "Marijuana retailer" means a person licensed by the state liquor control board to sell useable marijuana and marijuana-infused products in a retail outlet.

((~~(y)~~)) (z) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

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

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

(3) Poppy straw and concentrate of poppy straw.

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

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

(6) Cocaine base.

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

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

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

((~~(aa)~~)) (bb) "Opium poppy" means the plant of the species Papaver somniferum L., except its seeds.

((~~(bb)~~)) (cc) "Person" means individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

((~~(cc)~~)) (dd) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

((~~(dd)~~)) (ee) "Practitioner" means:

(1) A physician under chapter 18.71 RCW; a physician assistant under chapter 18.71A RCW; an osteopathic physician and surgeon under chapter 18.57 RCW; an osteopathic physician assistant under chapter 18.57A RCW who is licensed under RCW 18.57A.020 subject to any limitations in RCW 18.57A.040; an optometrist licensed under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010 subject to any limitations in RCW 18.53.010; a dentist under chapter 18.32 RCW; a podiatric physician and surgeon under chapter 18.22 RCW; a veterinarian under chapter 18.92 RCW; a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW; a naturopathic physician under chapter 18.36A RCW who is licensed under RCW 18.36A.030 subject to any limitations in RCW 18.36A.040; a pharmacist under chapter 18.64 RCW or a scientific investigator under this chapter, licensed, registered or otherwise permitted insofar as is consistent with those licensing laws to

distribute, dispense, conduct research with respect to or administer a controlled substance in the course of their professional practice or research in this state.

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

(3) A physician licensed to practice medicine and surgery, a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, a licensed physician assistant or a licensed osteopathic physician assistant specifically approved to prescribe controlled substances by his or her state's medical quality assurance commission or equivalent and his or her supervising physician, an advanced registered nurse practitioner licensed to prescribe controlled substances, or a veterinarian licensed to practice veterinary medicine in any state of the United States.

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

((~~(ff)~~)) (gg) "Production" includes the manufacturing((~~, planting, cultivating, growing, or harvesting~~)) of a controlled substance.

((~~(gg)~~)) (hh) "Retail outlet" means a location licensed by the state liquor control board for the retail sale of useable marijuana and marijuana-infused products.

((~~(hh)~~)) (ii) "Secretary" means the secretary of health or the secretary's designee.

((~~(ii)~~)) (jj) "State," unless the context otherwise requires, means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

((~~(jj)~~)) (kk) "THC concentration" means percent of delta-9 tetrahydrocannabinol content per dry weight of any part of the plant *Cannabis*, or per volume or weight of marijuana product, or the combined percent of delta-9 tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant *Cannabis* regardless of moisture content.

((~~(kk)~~)) (ll) "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

((~~(ll)~~)) (mm) "Useable marijuana" means dried marijuana flowers. The term "useable marijuana" does not include marijuana-infused products.

NEW SECTION. **Sec. 9.** RCW 26.28.080 amended to read as follows:

(1) Every person, except a parent or guardian, who sells or gives, or permits to be sold or given, to any person under the age of eighteen years any cigar, ~~cigarette~~, cigarette paper or wrapper, tobacco in any form, or ~~a vapor product~~ any substance that is controlled under the federal Controlled Substances Act and is defined as an herb under RCW 69.50.101 (o) is guilty of a gross misdemeanor.

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

~~(3) For the purposes of this section, "vapor product" means a noncombustible tobacco-derived product containing nicotine that employs a mechanical heating element, battery, or circuit, regardless of shape or size, that can be used to heat a liquid nicotine solution contained in cartridges. Vapor product does not include any product that is regulated by the United States food and drug administration under chapter V of the federal food, drug, and cosmetic act.~~

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

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

NEW SECTION. **Sec. 12.** This act may be known and cited as the properly scheduled smoke consumer products act of 2014.