



A Legislator's Guide to Washington's Marijuana Laws

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Introduction

This *Legislator's Guide to Washington's Marijuana Laws* is offered as a resource to members of the Senate, their staff, and other interested persons to provide an overview of the marijuana laws in this state.

The *Legislator's Guide to Washington's Marijuana Laws* was prepared by the Senate Commerce & Labor Committee staff (within Senate Committee Services) to provide answers to many of the typical questions regarding the state's marijuana laws.

This guide should not be considered legislative history for purposes of interpreting the associated statutes or regulations. The information contained in this guide should not be interpreted as providing legal advice. The content is intended for general informational purposes only. This guide does not reflect changes made to statutes or administrative rules adopted after the date of publication.

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Liquor and Cannabis Board: Producer, Processor, and Retailer Licenses

The Liquor and Cannabis Board (LCB) issues licenses for businesses to produce, process, and sell marijuana. ([RCW 69.50.325](#)).

Marijuana Producer License

A marijuana producer license is required to produce marijuana for sale at wholesale to marijuana processors and other marijuana producers and to produce marijuana plants for sale to cooperatives. The license allows the business to produce, possess, deliver, distribute, and sell marijuana when in compliance with state's marijuana laws and regulations. Additional administrative rules for producers can be found in [WAC 314-55-075](#).

Marijuana Processor License

A marijuana processor license is required to process, package, and label marijuana concentrates, useable marijuana, and marijuana-infused products for sale at wholesale to marijuana processors and marijuana retailers. The license allows the business to process, package, possess, deliver, distribute, and sell marijuana, useable marijuana, marijuana-infused products, and marijuana concentrates when in compliance with state's marijuana laws and regulations. Additional administrative rules for processors can be found in [WAC 314-55-077](#).

Marijuana Retailer License

A marijuana retailer license is required to sell marijuana concentrates, useable marijuana, and marijuana-infused products at retail in retail stores. The license allows the business to possess, deliver (to customers in the store), distribute, and sell marijuana concentrates, useable marijuana, and marijuana-infused products when in compliance with state's marijuana laws and regulations. Additional administrative rules for retailers can be found in [WAC 314-55-079](#).

Additional Marijuana license provisions and restrictions

- A separate license is required for each location at which a marijuana producer, processor, or retailer intends to operate its business.
- A marijuana producer or processor may not have any financial interest in a retail business or vice versa. ([RCW 69.50.328](#)). The LCB does issue a joint producer/processor license.
- An applicant for a marijuana license must be a resident of the state for at least six months. ([RCW 69.50.331](#)).
- The LCB may obtain criminal history record information regarding an applicant's prior arrests and convictions. ([RCW 69.50.342](#)). The LCB uses a point system to determine whether an applicant's criminal history or marijuana law or regulation violation history disqualifies the applicant from obtaining a license. ([WAC 314-55-040](#) & [314-55-045](#)).

- All licenses must be issued in the name of the true party of interest, as defined in [WAC 314-55-035](#).
- Marijuana license holders may not employ anybody under the age of 21. ([RCW 69.50.331\(6\)](#)).
- The LCB may set limits on the number of marijuana retail licenses issued in each county and may set limits on the amount of square feet authorized for the production of marijuana. ([RCW 69.50.345\(2\)](#) & [RCW 69.50.354](#)).

Data

Current data on the number of licenses issued, locations of licensed businesses, monthly production, and reports on monthly retail sales can be found on the LCB's website [here](#).

Public Records Act Exemption

The Public Records Act protects financial information, building security plans, transportation and data submitted to the LCB in applications for marijuana licenses, or in reports submitted by the licensees. ([RCW 42.56.270](#)).

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Liquor and Cannabis Board: Marijuana Research Licenses

Research Licenses

The Liquor and Cannabis Board (LCB) may issue marijuana research licenses that allow a licensee to produce, process, and possess marijuana for the purpose of: (a) testing chemical potency and composition levels; (b) conducting clinical investigations of marijuana-derived drug products; (c) conducting research on the efficacy and safety of administering marijuana as part of medical treatment; and (d) conducting genomic or agricultural research. ([RCW 69.50.331](#) & [69.50.372](#)).

Applicants for a marijuana research license must submit proposed projects to the LCB's designated scientific reviewer to determine if the projects meet the authorized research purposes. The reviewer also will assess items such as: The project's quality and value; the qualifications of the applicants; funding sources; and whether the amount of marijuana to be grown (if any) is consistent with the project's scope and goals. The research project applicant must pay the reviewer directly for the entire cost of the scientific review. ([RCW 69.50.372](#)).

Note: The LCB may adopt rules regarding the marijuana research licensing process and operational standards. As of the date of this guide, the rules have not been adopted and the LCB is not yet accepting applications for research licenses.

Research Location

Generally, research facilities may not be located within 1,000 feet of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, library, or any game arcade that admits persons under the age of 21. If a city, county, or town ordinance allows a research facility to be located less than 1,000, but more than 100 feet from the above listed entities, the LCB may issue the research license as long as the facility meets enhanced security measures, limits its public access, and does not have any advertising or signage indicating it is a marijuana research facility. ([RCW 69.50.331\(8\)](#)).

Public Records Act Exemption

The Public Records Act protects proprietary financial, commercial, operations, and technical and research information and data submitted to or obtained by the LCB in applications for marijuana research licenses, or in reports submitted by the licensees. ([RCW 42.56.270\(24\)](#)).

State-Funded Research

The legislature must annually appropriate moneys to the University of Washington (UW) and the Washington State University (WSU) for research on the short and long-term effects of marijuana use, including methods for estimating and measuring intoxication and impairment, and for the dissemination of the research. ([RCW 69.50.540](#)).

Both universities have issued guidance on marijuana research:

- UW - <http://adai.uw.edu/marijuana/research.htm>.
- WSU - https://research.wsu.edu/office-research/policies/cannabis_guidance/

The UW website summarizes the marijuana research conducted by a number of organizations at the university. UW resources include a clearinghouse and library, which provides an interlibrary loan service.

Also see the [Initiative 502 section](#) (page 44) summarizing the cost-benefit evaluations to be conducted by the Washington State Institute for Public Policy.

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Liquor and Cannabis Board: Transportation of Marijuana

Licensed Marijuana Businesses

Licensed marijuana producers, processors, and retailers, and their employees may deliver marijuana products between licensed marijuana businesses as authorized by the Liquor and Cannabis Board (LCB). ([RCW 69.50.325](#)). A marijuana retailer may transport products to other business locations that the retailer owns or return products to a marijuana processor. ([WAC 314-55-079\(8\)](#)).

Deliveries to Retail Customers Prohibited

Marijuana retailers are prohibited from delivering products to a customer. ([WAC 314-55-079\(3\)](#)).

Licensed Common Carriers

A licensed marijuana producer, processor, researcher, or retailer, or their employees may use the services of a common carrier licensed by the LCB to physically transport or deliver marijuana products between licensed marijuana businesses located within the state. A licensed common carrier may transport marijuana on Washington state ferries. ([RCW 69.50.382](#)). The qualifications necessary to become a licensed transporter of marijuana are listed in [WAC 314-55-310](#).

Employees of a common carrier engaged in marijuana-related transportation or delivery services are prohibited from carrying or using a firearm, unless explicitly authorized by the LCB. ([RCW 69.50.382](#)). The LCB has not adopted a rule authorizing the carrying of firearms.

Processes and Procedures

The specific processes and procedures that must be followed to transport marijuana, including manifest requirements, are specified in [WAC 314-55-085](#) and [WAC 314-55-310](#).

The LCB has the right to inspect any vehicle used by a licensed marijuana business for the transportation of marijuana, including while the vehicle is in transit. ([WAC 314-55-185](#)).

The LCB may seize, destroy, confiscate, or place an administrative hold on any transported marijuana that is not properly logged in inventory records or is an untraceable product required to be in the traceability system. ([WAC 314-55-210](#)).

Note: As of October 31, 2016, 25 applications have been submitted to the LCB for a marijuana transportation license. Five applications were withdrawn and two licenses have been issued.

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Liquor and Cannabis Board: Laboratory Testing

Required Testing

Every licensed marijuana producer and processor is required to submit representative samples of its products to an independent, third-party testing laboratory. The results of the inspection and testing must be submitted to the Liquor and Cannabis Board (LCB). ([RCW 69.50.348](#)).

Usable flowers, batches of marijuana concentrate, or batches of marijuana-infused product may not be sold or transported until the completion of all required quality assurance testing. ([WAC 314-55-102](#)).

Generally, if samples do not meet the LCB's standards, the entire lot from which the sample was taken must be destroyed. ([RCW 69.50.348](#)). However, with the LCB's approval, a lot that fails a quality assurance test may be used to create extracts that must pass all required quality assurance tests. ([WAC 314-55-102](#)).

Lab Checklist

The LCB has created a "good laboratory practice checklist" that it uses for the certification process for evaluating third-party testing laboratories. ([WAC 314-55-103](#)).

Scientific Director

Each lab is required to employ a scientific director responsible for ensuring the achievement and maintenance of quality standards. ([WAC 314-55-102](#)).

Monitoring and Inspections

The LCB may require third-party validation and ongoing monitoring of a lab's basic proficiency. The labs must allow the LCB or its vendor to conduct physical visits and inspect related laboratory equipment, testing and other related records during normal business hours without advance notice.

Tests

The quality assurance tests for marijuana flowers and infused products include moisture content, potency analysis, foreign matter inspection, microbiological screening, and residual solvent levels. In conjunction with the Washington State Department of Agriculture, the LCB will soon begin random screening for pesticide residues.

Reports

Labs must report, within 24 hours of completion, all required quality assurance test results directly into the LCB's seed-to-sale traceability system. ([WAC 314-55-102\(18\)](#)).

Suspension

The LCB can summarily suspend a lab's certification if the lab is not in compliance with the LCB's administrative rules. ([WAC 314-55-102](#)).

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State Government Authority Regarding Notice and Siting

Buffer Zones

The Liquor and Cannabis Board (LCB) is prohibited from licensing a marijuana business that would be located within a statutory buffer zone. Unless the zone is reduced by a local government as authorized under [RCW 69.50.331\(8\)\(b\)](#) (and see next section), a statutory buffer zone is within 1,000 feet of any elementary or secondary school, playground, recreation center or facility, child care center, public park, public transit center, or library, or any game arcade that admits anybody under age twenty-one. ([RCW 69.50.331\(8\)\(a\)](#)).

Public Notice Requirement

Applicants are required to post a notice outside any premises to be licensed as a marijuana business. The notice must be posted within seven days of the submission of the application to the LCB. ([RCW 69.50.580\(1\)](#)).

LCB Notice to Local Governments

The LCB must give notice to local governments before issuing or renewing a license for a marijuana business. The local government has 20 days to respond for new businesses (30 days for license renewals) with written objections against the applicant or against the premises. The LCB may extend the time to respond. ([RCW 69.50.331\(7\)](#)).

The LCB investigates local government objections regarding potential issues of the applicant or business location. If the objection is related to a local ban, moratorium, or zoning issue the LCB will still issue the license, if the business is qualified under state law, and leave enforcement of the local ordinance violations to the local government.

If the local government objections are more generally related to neighborhood complaints without any statutory or administrative rule violations, the LCB reviews those concerns. The LCB has discretionary authority to deny or suspend a license if it will not be in the best interest of the welfare, health, or safety of the people of the state. ([WAC 314-55-050\(16\)](#)). However, without a statutory threshold for disqualifying an applicant over these general concerns, the LCB's practice has been to issue these licenses.

The local government may request a hearing on the objections, which the LCB may hold in its discretion. If the LCB denies a license because of a local government objection, the applicant may request a hearing on the denial.

The LCB must also give notice to local governments when a marijuana license is issued.

Substantial Weight - Chronic Illegal Activity

In issuing licenses or renewals, the LCB must give substantial weight to a local government's objections if the objections are based on "chronic illegal activity" associated with the applicant's operations or the conduct of the applicant's patrons. "Chronic illegal activity" is defined to include, in part, a pervasive pattern of activity that threatens the public health, safety, and welfare of the jurisdiction, or an unreasonably high number of citations for driving under the influence. ([RCW 69.50.331\(10\)](#)).

The LCB refers any objections made by the public regarding the renewal of a marijuana license to the relevant local government authority. ([WAC 314-55-165\(1\)\(f\)](#)).

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Local Government Authority Regarding Notice and Siting

General Authority

The Washington Constitution grants local governments the authority to make and enforce laws, which are not in conflict with state laws, and specifies powers covering such areas as local police, sanitary, and other regulations.

[\(WA. Const. Art. XI, Section 11\)](#).

Local Ban

Cities, towns, and counties can opt out of the marijuana business licensing laws and ban those businesses within their jurisdiction. The authority to ban these businesses has been upheld by several superior courts and is supported by a formal Attorney General Opinion (AGO). The AGO concluded that [Initiative 502](#) did not state an intent to preempt local authorities. ([AGO 2014 No. 2, January 16, 2014](#)). Several of these cases have been consolidated and are still pending in the appellate courts. MMH, LLC, et al, *Appellants*, v. The City of Fife et al., *Respondents*. Div. II, WA Court of Appeals (decision pending).

Note: Jurisdictions that ban the siting of marijuana businesses are not eligible to receive any of the funds that are generated by the state marijuana excise tax.

[\(RCW 69.50.540\(2\)\(g\)\)](#).

Local Zoning

Local governments may adopt zoning ordinances that place restrictions on the siting of marijuana businesses. This authority is supported by the [2014 AGO](#) referenced above. The ordinances may include, but are not limited to, restricting businesses within areas zoned residential or areas zoned for rural use with a minimum lot size of five acres or smaller. ([RCW 69.50.331\(9\)](#)). Licensed marijuana businesses must comply with local zoning ordinances, building and fire codes, and business licensing requirements.

[\(WAC 314-55-020\(11\)\)](#).

Reduced Buffer Zones

Local governments are authorized to reduce the state statutory 1,000 foot buffer zones to not less than 100 feet if the reduction will not negatively impact the jurisdiction's civil regulatory enforcement, criminal law enforcement interests, public safety, or public health. The 1,000 foot buffer zone may not be reduced near schools and playgrounds.

[\(RCW 69.50.331\(8\)\(b\)\)](#).

Under limited conditions, a local government may also allow for the siting of a marijuana research facility not less than 100 feet from a school or playground.

[\(RCW 69.50.331\(8\)\(d\)\)](#).

Local Notice Option

Local governments may adopt an ordinance requiring marijuana license applicants to provide individual notice, 60 days prior to issuance of a license, to any elementary or secondary school, playground, recreation center or facility, child care center, church, public park, public transit center, library, or any game arcade that admits anybody under age twenty-one, that is located within 1,000 feet. ([RCW 69.50.580\(3\)](#)).

Local Business Licensing

Local governments may adopt their own local licensing requirements for marijuana businesses. ([WAC 314-55-020\(11\)](#)).

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Extraction or Separation of Resins

Marijuana Extracts

The concentrated resins of the cannabis plant are referred to as hashish, hash oil, butane hash oil, (BHO), Rick Simpson oil (RSO), kief, shatter, wax, etc., depending on the method of extraction or separation. These products generally contain higher concentrations of delta-9-tetrahydrocannabinol (THC) and are, therefore, more potent than unprocessed marijuana.

Extraction by Processors

Only licensed marijuana processors may create marijuana extracts through the use of butane or other explosive gases ([RCW 69.50.450](#)). When creating extracts, the licensee must use methods, equipment, solvents, gases, and mediums as specified in [WAC 314-55-104](#). The licensee must also meet certification requirements, obtain fire department inspections, and meet all fire, safety, and building code requirements.

The State Building Code Council has adopted emergency rules ([WAC 51-54A-3800](#)) that provide regulatory guidance to marijuana processing or extraction facilities. These rules must be followed whenever the extraction method utilizes chemicals or equipment that are regulated by the International Fire Code. The emergency rules include provisions covering: permitting; building construction and location; processing systems, equipment, and extraction methods; ventilation; and emergency power requirements. Permanent rulemaking is still underway.

Extraction for Noncommercial Personal Use

Cooking oil, butter, and other nonexplosive home cooking substances may be used to make marijuana extracts for noncommercial personal use ([RCW 69.50.450](#)).

Extractions for Qualifying Medical Patients

Qualifying medical marijuana patients and their designated providers (including individuals in cooperatives) may extract or separate the resin from marijuana, only if noncombustible methods of extraction are used ([RCW 69.51A.270](#)). The authorized extraction methods for qualifying medical patients are outlined in [WAC 314-55-430](#). The resins extracted under these provisions may only be used by the qualifying patient or cooperative members.

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Issues Relating to Marijuana Smoke and Smell

Smoking in Public Generally Prohibited

Washington's current law prohibiting "Smoking in Public Places" ([Chapter 70.160 RCW](#), formerly known as the Washington Clean Indoor Air Act) applies to the smoke from marijuana, just as it does to cigarette and cigars. The statute recognizes the dangers of secondhand smoke and prohibits all smoking in public places and workplaces. The definition of "public place" used in this statute is specifically limited to only cover buildings or vehicles used by the public, and smoking within twenty-five feet from entrances, exits, windows that open, and ventilation intakes. Private residences are specifically excluded from the definition of public places.

Consumption of Marijuana in Public is Prohibited

State law prohibits consuming marijuana or marijuana products, or the opening a package containing marijuana or marijuana products in a public place **or** in view of the general public. ([RCW 69.50.445](#)). "Public place" is defined for the purposes of marijuana to include, among other locations, streets, school facilities, public buildings, restaurants, public parks, and other areas to which the public has an unrestricted right of access.

Statutes Relating to Medical Marijuana and Smell

Qualifying patients or designated providers who are entered in the state's voluntary patient database may cultivate, in his or her domicile, up to 6 plants for the personal medical use. If a health care professional determines that the medical needs of a qualifying patient exceed the amounts provided, the health care professional may specify that the patient be allowed to grow up to 15 plants. ([RCW 69.51A.210](#)).

If a qualifying patient has not been entered into the medical marijuana authorization database, he or she may grow up to 4 plants in his or her domicile for personal medical use. ([RCW 69.51A.210\(3\)](#)). Unless registered as a cooperative with the Liquor and Cannabis Board (LCB) a maximum of 15 plants can be grown in a single housing unit, regardless of the number of patients or designated providers that reside in the home or whether or not they are entered into the database. ([RCW 69.51A.260](#)).

Members of a medical marijuana cooperative (maximum of four members) may only grow as much as the combined total number of plants that all of the members are authorized to grow, up to a maximum of 60 plants. The location of the cooperative must be registered with the LCB and the cooperative members may only grow and process marijuana at that location. The location of the cooperative must be the domicile of one of the members and be at least one mile away from a marijuana retailer. ([RCW 69.51A.250](#)).

The production, processing, and storing of medical marijuana in a housing unit is prohibited if it can be readily seen or readily smelled from a public place or from the private property of another housing unit. ([RCW 69.51A.260\(2\)](#)).

Growing Marijuana for Recreational Purposes

Except as provided for medical marijuana (see above), only licensed marijuana producers or licensed researchers may grow marijuana in Washington. ([RCW 69.50.325](#) and [69.50.372](#)).

The Puget Sound Clean Air Agency (PSCAA) requires licensed marijuana producers and processors located in its jurisdiction to obtain approval of their operations. The PSCAA looks at the business's impact on air quality, including odorous emissions. The PSCAA requires a marijuana producer or processor to submit a State Environment Policy Act (SEPA) environmental checklist and file a notice of construction permit that identifies its specific odor control equipment. The PSCAA may issue civil penalties for violations of the Clean Air Act or the agency's regulations.

The PSCAA's regulations only apply in King, Kitsap, Pierce and Snohomish counties. The Department of Ecology and other regional clean air agencies have authority in the other counties. A list of those authorities can be found at: <http://www.ecy.wa.gov/programs/air/local.html> and <http://lcb.wa.gov/mjlicense/air-and-odor>

Also see the Interagency Resource of Achieving Cooperation's publication entitled "[Regulatory Guidance for Cannabis Operations](#)."

Civil Nuisances

A person may sue for damages or abatement of a nuisance: "Such action may be brought by any person whose property is, or whose patrons or employees are, injuriously affected or whose personal enjoyment is lessened by the nuisance." ([RCW 7.48.020](#)). Actionable nuisances are defined to include: "...whatever is injurious to health or indecent or offensive to the senses, or an obstruction to the free use of property, so as to essentially interfere with the comfortable enjoyment of the life and property..." and is subject to an action for damages and other relief. ([RCW 7.48.010](#)).

As of the date of this document, no appellate court has addressed the issues related to a private nuisance involving marijuana smoke or odors. There is an unpublished appellate case involving the intrusion of cigarette smoke from a neighboring residence. *Boffoli vs. Orton*, unpublished opinion #63457-7-1, Wn. App. Div. I (issued April 19, 2010; petition for review denied by the WA. Sup. Court). The court found that the plaintiff failed to demonstrate a right to bring a nuisance action against the defendants' smoking of cigarettes on their own property.

Other Jurisdictions

The City of Pendleton, Oregon, recently adopted an amendment to its nuisance ordinance to declare the odor of marijuana to be a public nuisance. The relevant

portion of the ordinance (Number 3868, adopted May 19, 2015) states: “Unlawful Release of Marijuana Odor. No owner of real property or person in charge thereof shall allow, permit or cause the odor of marijuana to emanate from that premises to any other property.” The Pendleton ordinance is a criminal statute.

The State of Utah's nuisance statute (2006 Utah Code, Title 78, Chapter 38, Part 1) authorizes civil causes of action to remedy situations involving drifting tobacco smoke. The statute provides that a nuisance includes tobacco smoke that drifts into any residential unit a person rents, leases, or owns, from another residential or commercial unit if the smoke drifts: (a) in more than once in each of two or more consecutive seven-day periods, and (b) creates any condition which is injurious to health, indecent, offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.

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Marijuana Advertising

Signs on Marijuana Retail Businesses

A licensed marijuana retailer is limited to two signs outside of the licensed premises that identify the retail outlet by the licensee's business or trade name. Each sign must be no larger than 1,600 square inches and must be permanently affixed to a building or other structure. The signs may not be posted within 1,000 feet from any elementary school, secondary school, or playground. ([RCW 69.50.357\(4\)](#)).

General Restrictions on Marijuana Advertising

Ads, in any form or through any medium, are prohibited within 1,000 feet of a:

- school ground,
- playground,
- recreation center or facility,
- child care center,
- public park,
- library, or
- any game arcade where the admission is not restricted to persons aged 21 years or older.

The statute also prohibits ads on public transit vehicles or transit shelters, and on any publicly owned or operated property. ([RCW 69.50.369](#)).

Marijuana Advertising in Print Media and on the Internet, Television, and Radio

The current Washington statutes only address physical signage and do not specifically address other forms of advertising such as print media and those ads transmitted over the Internet, television, or radio.

- **Print Media.** The LCB's stated policy is that although print media such as newspapers are often delivered to locations at or near schools, it does not intend to enforce the 1,000 foot buffer for newspaper advertising as long as the advertising does not violate other state laws.
- **Internet.** Marijuana businesses are not prohibited from advertising on an Internet website or over social media. The ads may not be targeted to individuals under the age of 21.
- **Television and radio.** At this time, the Federal Communications Commission (FCC) has not issued any regulations regarding the advertising of marijuana.

Note: Other Jurisdictions

At least one state has specifically addressed advertising over the Internet, radio, and television. The state of Colorado required the adoption of administrative rules addressing the marketing and advertising of marijuana in mass-market campaigns that have a high likelihood of reaching persons under the age of twenty-one. The Colorado administrative rules cover the advertising of marijuana retail businesses on the Internet, radio, and television.

The Colorado administrative rules prohibit the Internet, radio, and television advertisements "...unless the retail marijuana establishment has reliable evidence that no more than 30 percent of the audience for the program on which the advertising is to air is reasonably expected to be under the age of 21." ([Colorado Code of Regulations, Department of Revenue, 1 CCR 212-2](#)) The Colorado rules are modeled after the alcohol industry's voluntary standard on advertising.

Additional advertising information is available on the LCB's website:
http://liq.wa.gov/mj2015/faq_i502_advertising#onlineadvertising.

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Marijuana Industry Employees and Employment Laws

Federal Employment Laws

While marijuana is illegal under federal law, many labor protections still apply to marijuana industry workers.

The Occupational Safety and Health Administration (OSHA) regulates and enforces health and safety in the workplace. OSHA will [enforce OSHA standards](#) in marijuana businesses. However, Washington is a “state plan state” which means there is a state agency, the Department of Labor and Industries (L&I), that takes the place of OSHA. OSHA retains jurisdiction over businesses with ties to the federal government or tribes along with floating worksites in Washington. More information on the relationship between OSHA and L&I can be found [here](#).

The [Americans with Disabilities Act \(ADA\)](#) prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, state and local government services, public accommodations, commercial facilities, and transportation. The ADA generally [applies to all employers](#) with 15 or more employees working each day for 20 or more weeks unless the accommodation would impose an undue hardship on the employer. ([42 U.S.C. § 12111\(5\)\(A\)](#); [42 U.S.C. § 12112\(b\)\(5\)\(A\)](#)).

The [Pregnancy Discrimination Act \(PDA\)](#) amended the Civil Rights Act to prohibit sex discrimination based on pregnancy. The [PDA applies to employers](#) with more than 15 employees.

Under the [Family and Medical Leave Act \(FMLA\)](#), an employee is able to take twelve weeks of unpaid leave in a 12-month period for family and medical reasons. An employee is eligible if the employee has worked for the employer for at least 12 months and worked at least 1,250 hours for the employer in the preceding 12 months. The FMLA applies to employers with 50 or more employees.

The [National Labor Relations Board \(NLRB\)](#) works with unfair labor practices and employees that wish to unionize. In 2013, the NLRB issued an [Advice Memorandum](#) stating that as long as the company meets the monetary jurisdictional standards, the NLRB would assert enforcement of federal labor laws in the medical marijuana industry. Additionally, the NLRB asserted jurisdiction of employees engaged in processing activities of the marijuana industry by labeling them “employees” under the act instead of “agricultural laborers.” The NLRB does not cover agricultural employees.

State Employment Laws

Washington State’s employment laws, such as minimum wage, industrial insurance, and unemployment benefits, apply equally to all employees, including those in the marijuana industry.

All licensed marijuana businesses are also under the jurisdiction of L&I and its task of protecting the health, safety, and security of the state's workers.

Marijuana extraction facilities are regulated under the State Building Code. ([Chapter 19.27 RCW](#)).

Additionally, employers in the marijuana industry must abide by the Washington State Department of Agriculture (WSDA) and L&I rules regarding the application of pesticides for both handlers and workers as specified by the [Worker Protection Standard: Requirements for Marijuana Growers](#), issued by the WSDA. Handlers are persons directly using the pesticides, and workers perform hand-task jobs such as weeding and planting. The WSDA will be updating its marijuana industry policies in January 2017.

Workplace Drug Testing Laws for all Employees

[Washington](#) and [Federal](#) laws do not prohibit employers from drug testing. Institutions that receive federal funds are [still subject to federal policies on drug testing](#). In 2011, the Supreme Court of Washington in *Roe v. TeleTech Customer Care Management*, [257 P.3d 586 \(Wash. 2011\)](#), held that a person with an authorization for marijuana does not have a cause of action due to termination nor is that person protected from termination for failing a drug test under the medical marijuana laws in Washington. However, some states, such as Arizona ([A.R.S. § 36-2813\(B\)\(2\)](#)), Delaware ([16 Del.C. § 4905A\(a\)\(3\)\(b\)](#)), Illinois ([410 ILCS 130](#)), Maine ([22 M.R.S.A. § 2423-E\(1\)-\(2\)](#)) Michigan ([M.C.L.A. 333.26424](#)), and Rhode Island ([Gen.Laws 1956, § 21-28.6-4](#)) do provide varying levels of protections for patients using medical marijuana.

Americans with Disabilities Act

The use of illegal drugs is explicitly excluded from enforcement under the ADA ([42 U.S.C. § 12114](#)). Employers are able to drug test because a drug test is not considered a medical examination. In *James v. City of Costa Mesa*, 700 F.3d 394 (9th Cir. 2012), the 9th Circuit has held that the ADA does not protect medical use of marijuana because the ADA relies on the federal definition of "illegal drug use."

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Federal Activities

U.S. Drug Enforcement Agency

Under federal law, marijuana is a Schedule I controlled substance. ([21 U.S. Code § 812](#)). This means it is classified as having a high potential for abuse, no accepted medical use, and a lack of accepted safety. Healthcare practitioners cannot legally prescribe or dispense Schedule I controlled substances.

Federal law requires the following factors to be considered when adding or removing a drug from the schedule of controlled substances:

1. Its actual or relative potential for abuse.
2. Scientific evidence of its pharmacological effect, if known.
3. The state of current scientific knowledge regarding the drug or other substance.
4. Its history and current pattern of abuse.
5. The scope, duration, and significance of abuse.
6. What, if any, risk there is to the public health.
7. Its psychic or physiological dependence liability.
8. Whether the substance is an immediate precursor of a substance already controlled under this subchapter. ([21 U.S. Code § 811](#)).

Several petitions have been filed with the Drug Enforcement Administration (DEA) requesting that the agency reclassify marijuana. On August 11, 2016, the DEA [rejected the petitions to reschedule marijuana](#). The most current scheduling information can be found on the DEA's website [here](#).

Note: A reclassification to Schedule II may conflict with Washington's existing regulatory system for both medical and recreational marijuana as, under federal law, Schedule II drugs can only be dispensed by authorized health care professionals.

Federal Response to Marijuana Legalization by the States

Washington is one of at least 23 states that have passed legislation allowing the use of marijuana for medicinal purposes and one of four states, plus Washington D.C., that allow its recreational use. These activities, however, remain illegal under federal law.

In August of 2013, the United States Department of Justice (DOJ) issued a formal enforcement policy memorandum (known as the [Cole Memorandum](#)) in response to the legalization of recreational marijuana in the states of Washington and Colorado. In this memorandum, federal prosecutors were instructed to focus investigative and prosecutorial resources related to marijuana on specific enforcement priorities to prevent:

- the distribution of marijuana to minors;
- marijuana sales revenue from being directed to criminal enterprises;
- marijuana from being diverted from states where it is legal to states where it is illegal;

- state-authorized marijuana activity from being used as a cover for trafficking other illegal drugs or other illegal activity;
- violence and the use of firearms in the production and distribution of marijuana;
- drugged driving and other marijuana-related public health consequences;
- the growing of marijuana on public lands; and
- marijuana possession or use on federal property.

With respect to state laws that authorize marijuana production, distribution, and sales, the memorandum states that when these activities are conducted in compliance with strong and effective regulatory and enforcement systems, there is a reduced threat to federal priorities. In such instances, the memorandum asserts that state and local law enforcement should be the primary means of regulation. The memorandum, however, affirms continuing federal authority to challenge state regulatory systems and to bring individual enforcement actions in cases in which state regulatory efforts are inadequate.

State and Federal Banking Developments

Following the issuance of the [Cole Memo](#), on October 2, 2013, the states of Washington and Colorado sent a joint letter to the federal regulators asking for “flexibility in the federal banking regulations that will allow state-licensed marijuana producers, processors, and retailers access to the banking system.”

On February 14, 2014, a [Department of Justice Memo](#) was issued stating the money laundering statutes, the unlicensed money remitter statute, and the Bank Secrecy Act remained in effect regarding marijuana and the financial sector. It also reminded financial institutions that they could face potential criminal liability if they engage in business with marijuana-related businesses. The memo states the eight most important objectives of the federal government regarding marijuana (that were specified in the Cole Memo) and uses those priorities when considering prosecutorial discretion of financial institutions.

This memo also instructed financial institutions to adhere to the Department of the Treasury Financial Crimes Enforcement Network’s [\(FinCEN\) guidance](#) issued the same day if they were going to choose to bank with marijuana-related businesses.

The FinCEN guidance requires banks to file suspicion activity reports (SARs) for marijuana-related businesses because marijuana is still federally illegal. However, the FinCEN guidance created three tiers of filings:

- A “Marijuana Limited” SAR is to be filed when a financial institution providing services to marijuana business does not believe, using due diligence, that one of the Cole Memo priorities was implicated nor was a state law violated. A “Marijuana Limited” SAR requires “(i) identifying information of the subject and related parties; (ii) addresses of the subject and related parties; (iii) the fact that the filing institution is filing the SAR solely because the subject is engaged in a marijuana-related business; and (iv) the fact that no additional suspicious activity has been identified.” These same guidelines may be used for filing a continuous activity report.

- A “Marijuana Priority” SAR is used when a financial institution reasonably believes that a priority of the Cole Memo is implicated or that state law has been violated. In addition to identifying information, the report must include details regarding the enforcement priorities the financial institution believes have been implicated and dates, amounts, and other relevant details of financial transactions involved in the suspicious activity.
- A “Marijuana Termination” SAR filing is used if a financial institution believes it must terminate the relationship with the marijuana business and a narrative should be included detailing the reason.

Both the [FDIC](#) (insures banks) and the [NCUA](#) (insures credit unions) have informed their examiners to ensure financial institutions working with marijuana businesses are in compliance with the DOJ Memo and FinCEN guidance.

In 2014, Washington Department of Financial Institutions (DFI) issued [factors](#) to consider for providing banking services to marijuana-related businesses.

Data on Financial Institutions offering Services to Marijuana Businesses

Federal data indicates that at least 301 financial institutions across the country offer services to marijuana-related businesses. Many financial institutions do not specify whether they accept marijuana-related accounts on their websites.

Federal Enforcement Activities

In May of 2016, DFI released [Examination Procedures for Credit unions with Member Accounts in the I-502 Marijuana Business](#). It reminded credit unions that they have a choice to open, close, or reject a specific account. It also warned credit unions against lending to marijuana businesses. Although not binding on Washington courts, there have been two cases regarding enforcement and marijuana:

- *In re Arenas*, 535 B.R. 845, 854 (10th Cir. BAP 2015) held that debtors in the marijuana business cannot use federal bankruptcy court to obtain relief because a trustee could not administer the assets, including the marijuana-related income. Additionally, the debtors did not have enough supplemental legal income to devise a plan to pay the creditors.
- *Fourth Corner Credit Union v. FRB of Kan. City*, 154 F. Supp. 3d 1185, (D. Colo. – 2016) held that a federal judge “cannot use equitable powers to issue an order that would facilitate criminal activity” when the Colorado based credit union was denied a master account.

In light of these cases, DFI stated that it believes “Washington Superior Court Judges would lack equitable jurisdiction to appoint receivers for failing marijuana-related businesses.” However, the agency states “there may be lower risk associated with a secured loan for which the financial institution receives collateral property (such as real property) that is *not* in any way related to the LCB-licensed marijuana-related business.”

Credit Cards/Debit Cards

DFI notes that “[a]s of April 2016, it is uncertain whether VISA and MasterCard will accept accounts from LCB [Liquor and Cannabis Board] licensed marijuana-related businesses.” American Express will not allow its card to be used for medical marijuana.

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Taxation of Marijuana at Retail

A 37% marijuana excise tax is imposed on the buyer of any marijuana product subject to the excise tax. The retail marijuana excise tax is collected from the buyer and held in trust by the seller until remitted to the state.

The retail marijuana tax is in addition to state retail sales and use tax and must be separately itemized on the sales receipt provided to consumers. The displayed shelf price must illustrate the final price to the buyer, including the marijuana excise tax, but need not include the general retail sales tax.

Sales and use tax exemptions (not the 37% excise tax) are provided for qualifying patients or their designated providers for patients, as long as they possess a medical authorization card.

The total cannabis excise taxes plus license fees as forecasted in the September 21, 2016 report by the Washington State Economic and Revenue Forecast Council (ERFC) are:

Biennial totals	
2013-15	\$ 67,486,000
2015-17	\$466,014,000
2017-19	\$723,403,000
2019-21	\$798,751,000

Source: [ERFC publications](#).

Distributions to Local Governments

Jurisdictions that do not ban the siting of marijuana businesses are eligible to receive a portion of the funds that are generated by the state marijuana excise tax. ([RCW 69.50.540\(2\)\(g\)](#)).

Subject to appropriation, at least \$6 million must be appropriated per fiscal year for fiscal years 2016 and 2017 to local governments for marijuana enforcement. The monies must be distributed under a formula based on retail sales within local jurisdictions.

Starting no earlier than fiscal year 2018, distributions to local jurisdictions may not occur until \$25 million of marijuana tax revenues has been deposited into the State General Fund, at which point 30 percent of the previous fiscal year's marijuana-related State General Fund revenues will be distributed to eligible counties and cities in four installments.

Thirty percent of the local distribution must be disbursed to counties, cities, and towns based on the amount of marijuana excise tax revenues attributable to licensed marijuana retailers located within a county, city, or town. The remaining 70 percent

must be disbursed based on population, with counties receiving 60 percent of this allocation and cities and towns sharing the remaining 40 percent.

Local jurisdiction distributions **may not exceed** \$15 million per fiscal year for the 2017-2019 biennium and \$20 million per fiscal year thereafter.

A list of distributions to local governments can be found here:

<http://lcb.wa.gov/publications/Marijuana/FY16-MJ-Distributions-Revised.pdf>.

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Tribal Authority Concerning Marijuana

The Legislature authorized the Governor to enter into agreements with federally recognized Indian tribes concerning marijuana. These agreements **may** address any marijuana-related issue that involves both state and tribal interests or otherwise has an impact on tribal-state relations, including the following subject matters:

- criminal and civil law enforcement;
- regulatory issues related to the commercial production, processing, sale, and possession of marijuana and processed marijuana products;
- medical and pharmaceutical research involving marijuana;
- taxation; and
- dispute resolution, including the use of mediation or other nonjudicial process.

Any marijuana agreement relating to the production, processing, and sale of marijuana in Indian country, whether for recreational or medical purposes, **must** address the following issues:

- preservation of public health and safety;
- ensuring the security of production, processing, retail, and research facilities; and
- cross-border commerce in marijuana.

Any tribal-state marijuana agreement must include a requirement that the tribe impose a tribal marijuana tax in an amount that is at least 100% of state and local excise, sales, and use taxes on sales of marijuana. However, tribal marijuana sales to the tribe, tribal entities, or tribal members are exempt from this taxation requirement to the extent such sales are exempt from taxation under state and federal law.

State-licensed marijuana retailers may purchase and receive marijuana and processed marijuana products from a federally recognized Indian tribe as permitted by a tribal-state agreement. State-licensed marijuana producers and processors may also sell and distribute marijuana and processed marijuana products as permitted by a tribal-state agreement.

Federal Policy on Marijuana and Tribes

In October of 2014, another federal memorandum (known as the [Wilkinson Memorandum](#)) was issued regarding the legalization of marijuana by Indian tribes. Its substantive provisions are largely identical to the Cole Memorandum, insofar as it indicates that federal authorities will not interfere with tribal legalization efforts provided the tribe implements strong and effective regulatory and enforcement systems consistent with federal law enforcement priorities. The Wilkinson Memorandum also acknowledges that the tribes are sovereign nations and directs the DOJ to consult with affected tribes on a government-to-government basis on matters relating to the regulation of legalized marijuana.

Additional Resources:

- [RCW 43.06.490](#) - Marijuana agreements - Federally recognized Indian tribes.
- An example of a [tribal marijuana compact](#) (for the Suquamish Tribe).
- Other [Washington State & Tribal Compacts and Agreements](#).
- The federal [Wilkinson memorandum](#) on tribes & marijuana.

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Medical Marijuana

Qualified Medical Patients

Washington residents qualify for the medical use of marijuana if they are patients of a health care professional, have been diagnosed with a terminal or debilitating medical condition, have been advised of the benefits and risks of marijuana use, and have been advised they may benefit from the use of medical marijuana by their health care professional. Patients must be informed of other options for treating the medical condition and their health care professional must document in their medical record other measures attempted to treat the qualifying medical condition. ([RCW 69.51A.010](#)).

Qualifying patients must either have an authorization form from their health care professional or must be entered into the medical marijuana authorization database (database). Physicians, physician assistants, osteopathic physicians, osteopathic physician assistants, naturopathic physicians, and advanced registered nurse practitioners are [health care professionals that may authorize the medical use marijuana](#).

A terminal or debilitating medical condition is a qualifying medical condition that is "severe enough to significantly interfere with the patient's activities of daily living and ability to function." ([RCW 69.51A.010\(24\)](#)). Qualifying conditions that are established in statute and in the administrative code are:

- cancer, human immunodeficiency virus (HIV), multiple sclerosis, epilepsy or other seizure disorder, or spasticity disorders;
- intractable pain (limited to pain unrelieved by standard medical treatment and medications);
- glaucoma, either acute or chronic (limited to "increased intraocular pressure unrelieved by standard treatments and medications");
- Crohn's disease with debilitating symptoms unrelieved by standard treatments or medications;
- Hepatitis C with debilitating nausea or intractable pain unrelieved by standard treatments or medications;
- diseases, including anorexia, which result in nausea, vomiting, wasting, appetite loss, cramping, seizures, muscle spasms, or spasticity, when these symptoms are unrelieved by standard treatments or medications;
- chronic renal failure requiring hemodialysis;
- posttraumatic stress disorder; or
- traumatic brain injury.

Persons being actively supervised for a criminal conviction may not become qualified for the medical use of marijuana if the use of marijuana is contrary to the terms of supervision. ([RCW 69.51A.010\(19b\)](#)).

Patients under the age of 18 may be authorized for the medical use of marijuana if the minor's parent or guardian participates and agrees to the course of treatment for the minor, and if the parent or guardian is the designated provider for the minor and has sole possession of the minor's marijuana. ([RCW 69.51A.220](#)). Both the minor and the parent or guardian must be entered into the database (see below). The minor is not authorized to purchase or grow marijuana; however, the minor may enter a medical marijuana endorsed store with his or her designated provider. ([RCW 69.50.354](#)). Additionally, qualifying patients between the age of 18 and 21 with recognition cards may enter a medical marijuana endorsed store and purchase product for their personal medical use.

Medical Marijuana Authorization Form

Created by the Department of Health (DOH), [Medical Marijuana Authorization Forms](#) require patient and health care professional information, optional recommendations by the healthcare professional for growing up to 15 plants, date of issuance and expiration, and notice about lack of arrest protection if the qualifying patient is not entered into the authorization database. ([RCW 69.51A.030](#)). Additionally, the authorization form requires the health care professional to:

- specify the terminal or debilitating medical condition of the patient;
- attest to performing an in-person exam;
- advise the patient of the potential risks and benefits of the medical use of marijuana; and
- express his or her opinion that the qualifying patient may benefit from the medical use of marijuana.

The qualifying patient or the designated provider must sign an attestation acknowledging the risks involved and verifying the person has read and understands the legal requirements of being a patient or provider.

Recognition Card and Authorization Database

Once a qualified patient has obtained a medical marijuana authorization form, he or she may go to a marijuana retailer holding a medical marijuana endorsement and present his or her authorization form [for entry into the authorization database](#) by a certified medical marijuana consultant. Upon entry, and payment of a \$1 fee, the qualifying patient or designated provider will receive a recognition card. Recognition cards are valid for up to one year for qualifying patients who are 18 years or older. Recognition cards for qualifying patients who are under 18 years of age and their designated providers are valid for up to six months. ([RCW 69.51A.230](#)).

The authorization database allows:

- a marijuana retailer with a medical marijuana endorsement to add a qualifying patient or designated provider to the database and include the amount of plants the patient may grow;
- persons authorized to prescribe or dispense controlled substances to access health care information on their patients;

- a qualifying patient or designated provider to request and receive his or her own health care information or information on any person or entity that has queried the patient's name or information;
- appropriate local, state, tribal, and federal law enforcement or prosecutorial officials who are engaged in a bona fide specific investigation of suspected illegal marijuana-related activity in Washington to confirm the validity of a recognition card;
- a marijuana retailer holding a medical marijuana endorsement to confirm the validity of the recognition card;
- the Department of Revenue to verify tax exemptions;
- the DOH and health care professionals' disciplining authorities to monitor authorizations and ensure compliance by their licensees; and
- authorizations to expire six months or one year after entry into the database, depending on whether the authorization is for a minor or an adult. ([RCW 69.51A.230](#)).

The recognition card must include an identifying number; a photograph of the qualifying patient or the designated provider; the amount of product authorized; the name of the authorizing healthcare professional; and security features. After a patient's recognition card expires, he or she must be reexamined by a health care professional. If he or she continues to qualify for the medical use of marijuana, he or she may be reentered into the authorization database and may be issued a new recognition card.

Personally identifiable information collected in the database is exempt from disclosure under the Public Records Act. ([RCW 42.56.625](#)).

Qualifying patients and designated providers who are entered into the database may grow up to 15 plants for their medical use, are provided arrest protection, and may possess three times the amount of marijuana permitted for the recreational user. ([RCW 69.51A.210](#)).

Qualified patients and designated providers who are not entered into the database may grow marijuana for their medical use, however, they are limited to four plants and six ounces of useable marijuana from those plants. They are provided an affirmative defense to charges of violating the law on medical use of marijuana. Individuals who are not entered into the database also do not get recognition cards; do not receive the additional protections; are not allowed to purchase the higher amounts of products; nor do they receive the sales-tax relief available to patients and designated providers in the database. ([RCW 69.51A.210](#) & [69.51A.043](#)).

Change of Designated Provider

A qualified patient who wishes to change or cease using a designated provider must use a DOH form to communicate that change. The revocation form must be sent to the vendor that operates the database and to the designated provider. ([WAC 246-71-140](#)). The vendor must deactivate the designated provider's recognition card. The designated

provider is no longer protected under the medical marijuana laws 72 hours after receiving the revocation from the qualifying patient. ([RCW 69.51A.100](#)).

A designated provider who wishes to stop being a designated provider for a qualifying patient must provide a letter to the patient and submit a form established by the DOH to the vendor, at which point the vendor will deactivate the designated provider's recognition card. The designated provider must wait 15 days after ceasing to be a designated provider for one qualified patient before becoming a designated provider for a new patient. ([RCW 69.51A.100](#)).

Medical Marijuana Endorsement

A medical marijuana endorsement held by a marijuana retailer allows that business to sell marijuana products or provide marijuana products, in their discretion, free of charge to qualified patients and their designated providers. However, medically endorsed marijuana retailers may not allow qualified patients to use marijuana at the retail store; must carry specific marijuana concentrates and marijuana-infused products identified by the DOH as beneficial for medical use; must not make the marijuana product attractive to minors; must be able to enter qualified patients into the database; and must follow rules passed by the DOH, the Liquor and Cannabis Board (LCB), and the Department of Revenue regarding tax exempt sales.

A marijuana retailer holding a medical marijuana endorsement must train its employees on recognizing valid authorizations, use of equipment to enter authorizations into the database, recognizing valid recognition cards, and have knowledge of strains, varieties, and concentrations of marijuana products. ([RCW 69.50.375](#)).

Marijuana retailers holding medical marijuana endorsements may sell products with a THC concentration lower than 0.3%. ([RCW 69.50.378](#)). Additionally, these stores may advertise as medical retail outlets and must have a medical marijuana consultant on staff. ([WAC 314-55-080](#)).

Applicants for marijuana producer licenses must indicate whether or not they intend to produce products for medical use, and if so, how much of this product they intend to produce.

Number of square feet and number of stores

Recent legislation requires that the LCB reconsider and increase the amount of square feet permitted to be in production to incorporate medical product. The LCB must also reevaluate the number of retail stores and ensure enough exist to meet the medical need of the state. ([RCW 69.50.345](#)).

Certified Medical Marijuana Consultants

A medical marijuana consultant may be a retail store owner, employee, or volunteer. An applicant must complete a DOH-approved training program. To date, the DOH has approved three training programs, including two on-line courses. The applicant must then apply to the DOH for certification. ([RCW 69.51A.290](#)).

A medical marijuana consultant may help customers select product by explaining the risks and benefits while also explaining proper use, handling, and storage of the product. Medical marijuana consultants may not attempt to diagnose or cure an ailment or recommend a modification of treatment. Consultant certifications are valid for one year, and must be renewed on the certificate holder's birthday. ([WAC 246-72-080](#)). More requirements for the medical marijuana consultant certificate can be found in [Chapter 246-72 WAC](#).

Limits on Growing and Possession

	Recreational (RCW. 69.50.360)	With authorization, in database (RCW 69.51A.210)	With authorization, not in database (RCW 69.51A.210)
Grow (plants)	0	6 plants (may be authorized up to 15 plants); possess up to 8 oz. (may be authorized up to 16 oz.) of useable marijuana from plants	4 plants; possess up to 6 oz. of useable marijuana from plants
Marijuana Infused (solid)	16 oz.	48 oz.	16 oz.
Marijuana Infused (liquid)	72 oz.	216 oz.	72 oz.
Concentrates	7 g.	21 g.	7 g.
Useable	1 oz.	3 oz.	1 oz.

Cooperatives

Qualifying patients or designated providers may form cooperatives to share in the responsibilities of producing and processing marijuana. ([RCW 69.51A.250](#)). A cooperative's location must be registered with the LCB. Cities, towns, or counties may prohibit cooperatives. A cooperative may not be within one mile of a marijuana retailer, and a cooperative may not be in the area of the smaller of either 1,000 feet of, generally, places frequented by people under the age of 21 or areas restricted by ordinance.

A maximum of four members may join a cooperative, and each member must be at least 21 years of age and possess a valid recognition card. A designated provider for a minor may join a cooperative. If a member leaves a cooperative, the member has 15 days to notify the LCB, which then must remove the member from cooperative records. Additional members may not join the cooperative until 60 days after notice was given to the LCB of the member's departure.

Each member must provide assistance in growing marijuana plants. Financial contributions are not considered assistance. Qualified patients and designated providers may only participate in one cooperative and may only grow in one location.

Each cooperative may grow the total number of plants authorized for each participant up to a maximum of 60 plants and may have on its premises as much usable marijuana as could be produced from the authorized number of plants, up to 72 ounces. Additionally, cooperatives are restricted to only purchasing plants from licensed marijuana producers. No portion of the product from the cooperative may be sold or given to someone not in the cooperative.

Collective Gardens Repealed

Beginning July 1, 2016, collective gardens are not permitted. ([Chapter 69.51A.085 RCW Dispositions](#)). Prior to July 1, 2016, collective gardens allowed up to 10 qualified patients to produce, process, transport, and deliver marijuana for medical use. Many medical marijuana “access points” were operating under the collective garden provision and either became licensed or closed before July 1, 2016.

Department of Health Consultation

The LCB must consult the DOH when adopting rules concerning retail stores holding medical marijuana endorsements. ([RCW 69.50.342](#)).

Sales Tax Exemption

A retail sales tax exemption is provided for qualifying patients or designated providers possessing medical marijuana authorization cards. ([RCW 82.08.9998](#)). The 37% excise tax on the product still applies. ([2E2SHB 2136, 2015](#)).

Additional sales & use tax information can be found on the Department of Revenue’s website [here](#).

Products that May be Beneficial to Patients

The DOH was directed to identify marijuana products that may be beneficial to patients with medical authorizations. ([RCW 69.50.375](#) & [RCW 82.08.9998](#)). Emergency rules were adopted in October of 2015 and permanent rules one year later. Rather than limiting patients to certain product types or cannabinoid profiles, the rules create enhanced standards for testing, labeling, safe handling and employee training. The emergency rules provided additional time for producers, processors and labs to grow, package and test to these higher standards. The first “DOH Compliant” products were sold in retail stores in October of 2016. There are three categories of compliant products: general use and high-CBD, both of which can be purchased by any legal consumer; and high-THC, which contain up to 50 mgs of THC per serving and are restricted to patients and designated providers who are entered into the medical marijuana authorization database. ([Chapter 246-70 WAC](#)).

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Study: Cost-Benefit Evaluation of Marijuana

[Initiative 502](#) (2012) included a provision requiring the Washington State Institute for Public Policy (WSIPP) to conduct a cost-benefit evaluation of the marijuana initiative. ([RCW 69.50.550](#)).

The evaluation must include an examination of the outcomes related to:

- public health,
- public safety,
- substance use,
- the criminal justice system,
- economic impacts, and
- administrative costs and revenues.

WSIPP's evaluation of I-502 will be divided into three components:

1. a descriptive study of how the law is being implemented;
2. an outcome study that will identify causal effects of the law; and
3. a benefit-cost study.

WSIPP is required to produce reports for the legislature in 2015, 2017, 2022, and 2032. It should be noted that the [preliminary report](#) sets the framework for the study and does not contain any findings.

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Growing Marijuana: Comparison of States with Recreational Marijuana Laws

Jurisdiction	# of Plants (Must be age 21 or older)	Restrictions on Growing	Penalties
Washington	None (Growing allowed for medical marijuana only)	N/A (Growing allowed for medical marijuana only)	Possession of 40 grams or more. Penalties include a fine of up to \$10,000, up to five years in prison, or both. Second or subsequent offenses. Someone convicted of a second or subsequent offense will face double the penalties described above. (RCW 69.50.408.)
Alaska	Up to 6 marijuana plants, with no more than 3 being mature.	<ol style="list-style-type: none"> 1. Plants must not be subject to public view without use of binoculars, aircraft, or other optical aids. 2. Reasonable precautions to ensure the plants are secure from unauthorized access. 3. Cultivation may only occur on property lawfully possessed by the cultivator or with consent. 	A general violation is subject to a \$750 fine. Cultivation of less than 25 plants of marijuana for personal use is protected under the right to privacy of the Alaska constitution. Cultivation of 25 plants or more is a class C felony punishable by up to 5 years imprisonment and/or a fine up to \$50,000.

(continued on next page)

Jurisdiction	# of Plants (Must be age 21 or older)	Limits on Growing	Penalties
Colorado	Up to 6 marijuana plants, with no more than 3 being mature.	<ol style="list-style-type: none"> 1. No more than 12 plants per residence (e.g. two individuals may grow in a single residence). 2. Must be in an enclosed, locked space. 3. May not be conducted openly or publicly. 	<p>If under age 21: 6 plants or fewer is a misdemeanor punishable by 6 to 18 months imprisonment and a fine between \$500 and \$5,000.</p> <p>For any age: Between 6 and 30 plants is a level 4 drug felony punishable by 6 to 12 months or 6 months to 2 years imprisonment for repeat offenders, and a fine between \$1,000 and \$100,000.</p> <p>For any age: More than 30 plants is a level 3 drug felony punishable by 2 to 6 years imprisonment and a fine between \$2,000 and \$500,000.</p>
Oregon	Up to 4 plants.	<ol style="list-style-type: none"> 1. Per residence. 2. Not in public view. 	<p>Cultivation of more than 4 - 8 plants is a Class B misdemeanor punishable by up to 6 months' imprisonment and/or a fine up to \$2,500.</p> <p>More than 8 plants is a felony punishable by up to 5 years in prison and up to a \$125,000 fine.</p>
Washington D.C.	Up to 6 marijuana plants, with no more than 3 being mature.	<ol style="list-style-type: none"> 1. No more than 12 plants (e.g. two individuals may grow in a single residence). 2. Must be within the interior of a house, building or rental unit that constitutes the person's primary residence. 	<p>1/2 lb. or less - up to 6 months & \$1,000.</p> <p>Subsequent offense - up to 2 years & \$5,000.</p> <p>Any other amount - up to 5 years & \$50,000.</p>

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Health and Beauty Aids

Generally, marijuana is defined as all parts of the cannabis plant, whether growing or not, with a THC concentration greater than 0.3 percent on a dry-weight basis. ([RCW 69.50.101](#)).

Cannabis health and beauty aids are exempt from regulations and penalties in [Chapter 69.50 RCW](#) that apply to marijuana products. Cannabis health and beauty aids are defined as a product containing any part of the cannabis plant that:

- is intended for topical application use only, to provide therapeutic benefit or to enhance appearance;
- contains a THC concentration of not more than 0.3 percent;
- does not cross the blood-brain barrier; and
- is not intended for ingestion by humans or animals. ([RCW 69.50.575](#)).

Generally, [licensed marijuana retailers](#) are permitted to sell only marijuana and marijuana-related products but many also sell cannabis-based health and beauty aids.

The Liquor and Cannabis Board (LCB) may adopt rules regarding labeling requirements and restrictions on advertisement of cannabis health and beauty aids sold in retail stores. ([RCW 69.50.342](#)). The LCB has not adopted any rules on this topic as of November 9, 2016.

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Hemp

Definitions: "Industrial hemp" means all parts and varieties of the genera Cannabis, cultivated or possessed by a grower, whether growing or not, that contain a THC concentration of 0.3 percent or less by dry weight. Industrial hemp does not include plants of the genera Cannabis that meet the definition of "marijuana...." "THC concentration" means the percent of total tetrahydrocannabinol, which is the combined percent of delta-9 tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the genera Cannabis. ([RCW 15.120.010](#)).

This is different from [marijuana](#) which is defined at a THC concentration of greater than 0.3 percent.

A major difference between industrial hemp and marijuana is that it is extremely difficult, if not impossible, for a person to experience a psychoactive effect from [industrial hemp](#). To experience a high from cannabis containing up to 1% THC it would require a person to smoke 10-12 cigarettes in a very short period of time which is difficult to tolerate, or to ingest large amounts of hemp which would have a laxative effect. The side effects are generally too great for it to be used as a drug.

Industrial Hemp Uses

There are many uses for industrial hemp including: "textiles; clothing; biofuel; paper products; protein rich food containing fatty acids and amino acids; biodegradable plastics; resins; nontoxic medicinal and cosmetic products; construction materials; rope." ([SHB 1552, 2015](#)).

Federal Law

Originally, hemp and marijuana were legal; however, by 1931, 29 states had made marijuana illegal. In 1932, the Federal Bureau of Narcotics encouraged each state to pass the Uniform State Narcotic Act which would ban marijuana.

In 1970, under the [Controlled Substances Act](#), marijuana, defined as any part of the cannabis plant, was classified as a Schedule I substance. Schedule I substances are defined as having a high potential for abuse; no accepted medical use; and lack of safety even under the supervision of medical professionals.

Starting in 2001, the [DEA](#) allowed for importations of hemp products that do not allow THC to enter the body. This includes products such as textiles as opposed to food products containing THC.

The [2014 Farm Bill, Section 7606](#) allows industrial hemp to be grown by "an institution of higher education or a State department of agriculture" for research as long as the state laws allow for it. As of March 2016, 28 states had [enacted laws](#) regarding

industrial hemp either in accordance with the federal law, or legalizing industrial hemp in general.

State Law

[House Bill 1268 \(2015\)](#) instructs the Washington Department of Agriculture (Department) to conduct research on the use of hemp in animal feed. If the Department finds positive results, the Department is instructed to create administrative procedures to enable farms to use hemp in their feed. This section expires on June 30, 2018, but the Department may file for an extension.

[Substitute Senate Bill 6206 \(2016\)](#) authorized growing industrial hemp under the 2014 Farm Bill only for research purposes authorized by the Department. The Department is instructed to establish rules for licensing people to grow industrial hemp for the research program that must include fee amounts; testing procedures for the THC levels; and grower qualifications. Specifically, no one with a felony drug conviction in the last 10 years may obtain a license. The Department must also provide forms to people wishing to apply for a license. The forms must require at a minimum:

- the name and mailing address of the applicant;
- the legal description and global positioning coordinates sufficient to locate the proposed industrial hemp production fields;
- a signed declaration indicating whether the applicant has ever been convicted of a felony or misdemeanor;
- written consent allowing the Department, if a license is ultimately issued to the applicant, to enter onto the industrial hemp production fields to conduct physical inspections of industrial hemp planted and grown by the applicant, and to ensure compliance with the requirements of this chapter;
- any other information required by the Department; and
- the payment of a nonrefundable application fee, in an amount set by the Department.

If Washington State University is able to obtain funding from the federal government or privately, the university must conduct a study concerning:

- the market economic conditions affecting the development of an industrial hemp industry in the state;
- the estimated value-added benefit that Washington's economy would reap from having a developed industrial hemp industry in the state;
- whether Washington soils and growing conditions are appropriate for use of industrial hemp in the rotation of other crops and whether soils and growing conditions are appropriate for farming industrial hemp at economically viable levels;
- whether growing industrial hemp will introduce or serve as a vector for plant disease affecting related species, such as hops;
- the agronomy research being conducted worldwide relating to industrial hemp varieties, production, and use; and
- other legislative acts, experiences, and outcomes around the world regarding industrial hemp production.

The Department's report is due to the legislature including "recommendations for any legislative actions necessary to encourage and support the development of an industrial hemp industry in the state of Washington" by January 14, 2017.

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Vaping

Vaping - Marijuana

A vaporizer is a device used for the extraction of vapor for inhalation from plant materials such as tobacco or cannabis. The act of using the device is referred to as "vaping." The Liquor and Cannabis Board notes that, based on the current scientific research, there is no definitively proven safe way of inhaling [marijuana smoke or vapor](#).

It remains illegal to [open a package of or consume](#) marijuana in any form in a [public place](#). ([RCW 69.50.445](#) & [66.04.010](#)).

Marijuana is excluded from the statutory definition of vapor products (see below).

Vaping - Tobacco

Washington State recently passed legislation regulating the vaping of tobacco products in [ESSB 6328 \(2016\)](#). The bill defines vapor products as any noncombustible product that *may* contain nicotine and that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size that can be used to produce vapor or aerosol from a solution or other substance. The bill explicitly excludes marijuana from the regulation in Section 4(19)(b).

ESSB 6328 established statutory provisions for tobacco vapor products covering:

- the licensure of vapor product retailers, distributors, and Internet sellers;
- prohibiting use by minors;
- product labeling regarding safety and nicotine content;
- child resistant packaging;
- sampling of products at retail establishments;
- mail and Internet sales;
- use of coupons and other product promotions;
- the public use of vapor products; and
- state preemption of local government regulations.

However, local governments may regulate indoor use except local governments cannot ban tasting within adult-only vapor stores. Local governments may also regulate outdoor use in "areas where children congregate, such as schools, playgrounds, and parks." The bill also [increased the penalties and fines](#) associated with violations.

Shortly after ESSB 6328 passed, on May 5, 2016, the [Food & Drug Administration \(FDA\) deemed](#) certain covered tobacco products to be subject to the Federal Food, Drug, and Cosmetic Act (FD&C Act) amended by the Family Smoking Protection and Tobacco Control Act (Tobacco Control Act). The federal definition of "tobacco products" includes electronic nicotine delivery systems (referred to as ENDS) such as e-cigarettes, e-hookah, e-cigars, vape pens, advanced refillable personal vaporizers, and electronic pipes. The FDCA only covers products that [contain nicotine](#), so this does not cover marijuana.

The Tobacco Control Act [established restrictions](#) for covered tobacco products, now including the newly deemed products, such as:

- product registration;
- listing of ingredients;
- requirements for health warnings;
- prohibitions against certain descriptors and marketing claims; and
- pre-market review.

Additional restrictions, specific to the newly deemed products, have been added including prohibiting access to individuals under the age of 18; a prohibition of vending machine sales, except in an adult-only facility; and prohibiting the distribution of free samples.

Also, producers of the newly deemed products must show the products are in compliance with applicable public health standards in the law unless the product was on the market prior to February 15, 2007.

According to the Washington Attorney General's office, there are two main areas where the [state law conflicts with the FDA regulations](#): tasting and labeling. The state allows for tasting in adult-only facilities as long as the product is not removed from the location, the mouth piece is disposed after each use, and the customer expressly consents to any nicotine in the product. However, the FDA bans all free samples, including tastings, of "tobacco products." The FDA defines and regulates only products that contain nicotine or tobacco.

The state and FDA labeling requirements also conflict, but the state specified that the state's labeling provisions would only be in effect until the FDA regulations started to require labeling. The labelling requirements [will take effect on May 10, 2018](#). The FDA's labeling requirements have not been finalized.

Note: Vaping products are not taxed in the same manner as cigarettes.

An informational work session on the legal & regulatory issues of vapor products can be found [here on TVW](#).

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Overview of Initiative 692 (1998)

In 1998 Washington voters approved [Initiative 692](#), the Medical Use of Marijuana Act (Act). The Act creates an affirmative defense to the violation of state laws relating to marijuana if the individual uses and possesses it for medicinal purposes. Qualifying patients, or their designated provider, may establish the defense if they only possess the amount of marijuana necessary for their personal use, up to a 60-day supply, and if they present valid documentation to law enforcement officers. Qualifying patients are those who:

- have been diagnosed with a terminal or debilitating medical condition;
- have been advised by a physician about the risks and benefits of the medical use of marijuana; and
- may benefit from such use.

The Legislature subsequently amended the chapter on medical use of marijuana in 2007, 2010, 2011, and 2015, changing who may authorize the medical use of marijuana, the definition of terminal or debilitating medical condition, what constitutes a 60-day supply of medical marijuana; allowing qualifying patients and designated providers to participate in ten-member collective gardens (now repealed in favor of four-member cooperatives); creating a voluntary database with recognition cards, a new authorization form for health care providers, and integrating the formerly unregulated medical marijuana system into the state licensed recreational marijuana system.

Please refer to the individual sections contained in this guide for a summary of the current laws.

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Overview of Initiative 502 (2012)

[Initiative 502](#) (I-502) was a ballot measure approved by Washington voters in November 2012 that: (1) legalized the production, processing, possession and personal use of marijuana; (2) created a framework for a regulatory scheme to be further developed by the, now renamed, Liquor and Cannabis Board (LCB) through its rule-making authority; and (3) revised criminal laws to accommodate such legalization.

I-502 contained the following provisions:

- legalizing the personal use and possession of up to 1 ounce of marijuana, as well as specified products directly related to such marijuana use;
- licensing and regulating marijuana production, distribution, and retailing;
- designating the LCB as the regulatory entity responsible for the implementation of the initiative, including continuing oversight of the commercial practices and conduct of licensed marijuana producers, processors, and retailers;
- providing the LCB rule-making authority with respect to the development of the requisite regulatory scheme;
- implementing excise taxes on marijuana production, processing, and retailing;
- creating a dedicated marijuana fund for the collection and distribution of marijuana-related tax revenues;
- removing provisions containing criminal or civil penalties for marijuana-related activities authorized by I-502; and
- amending driving under the influence laws to include specific provisions pertaining to driving under the influence of marijuana.

The Legislature subsequently amended the chapter concerning recreational marijuana in 2013, 2014, and 2015 to, among other provisions, allow the Governor to enter into agreements with federally recognized tribes; correct the THC concentration definition; create a marijuana research license; address the disposal of marijuana; modify the tax structure and the distribution of revenues; create a transportation and delivery license; revise the zoning restrictions; address synthetic cannabinoids and bath salts; and ban vending machines and marijuana clubs.

Please refer to the individual sections contained in this guide for a summary of the current laws.

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