RCW 69.50.201 Enforcement of chapter—Authority to change schedules of controlled substances. (a) [(1)] 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) [(a)] In making a determination regarding a substance, the commission shall consider the following:

(i) the actual or relative potential for abuse;

(ii) the 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;

(v) the scope, duration, and significance of abuse;

(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 immediate precursor of a controlled substance.

(2) [(b)] 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) [(2)] After considering the factors enumerated in subsection (a) [(1)] 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.

(c) [(3)] The commission, without regard to the findings required by subsection (a) [(1)] 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 subsections (a) and (b) [(1) and (2)] of this section, may place an immediate precursor in the same schedule in which the controlled substance of which it is an immediate precursor is placed or in any other schedule. If the commission designates a substance as an 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) [(4)] 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) [(1)] 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) [(1)] 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) [(1)] of this section.

(e) [(5)] The commission, by rule and without regard to the requirements of subsection (a) [(1)] 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) [(1)(a)](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) [(1)(a)] of this section. A rule may not be adopted under this subsection until the commission initiates a rule-making proceeding under subsection (a) [(1)] 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) [(1)] of this section with respect to the substance.

(f) [(6)] Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in Titles 66 and 26 RCW. [2013 c 19 s 87; 1998 c 245 s 108; 1993 c 187 s 2; 1989 1st ex.s. c 9 s 430; 1986 c 124 s 2; 1971 ex.s. c 308 s 69.50.201.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.