

By Representative Stokesbary

ESB 5476 - H COMM AMD TO APP COMM AMD (H-1608.1/21)
By Committee on Appropriations

1 Beginning on page 1, line 3, strike all material through
2 "affected." on page 53, line 4 and insert the following:

3 **"Sec. 1.** RCW 69.50.4011 and 2003 c 53 s 332 are each amended to
4 read as follows:

5 (1) Except as authorized by this chapter, it is unlawful for any
6 person to create, deliver, or knowingly possess a counterfeit
7 substance.

8 (2) Any person who violates this section with respect to:

9 (a) A counterfeit substance classified in Schedule I or II which
10 is a narcotic drug, or flunitrazepam classified in Schedule IV, is
11 guilty of a class B felony and upon conviction may be imprisoned for
12 not more than ten years, fined not more than twenty-five thousand
13 dollars, or both;

14 (b) A counterfeit substance which is methamphetamine, is guilty
15 of a class B felony and upon conviction may be imprisoned for not
16 more than ten years, fined not more than twenty-five thousand
17 dollars, or both;

18 (c) Any other counterfeit substance classified in Schedule I, II,
19 or III, is guilty of a class C felony punishable according to chapter
20 9A.20 RCW;

21 (d) A counterfeit substance classified in Schedule IV, except
22 flunitrazepam, is guilty of a class C felony punishable according to
23 chapter 9A.20 RCW;

24 (e) A counterfeit substance classified in Schedule V, is guilty
25 of a class C felony punishable according to chapter 9A.20 RCW.

26 **Sec. 2.** RCW 69.50.4013 and 2017 c 317 s 15 are each amended to
27 read as follows:

28 (1) It is unlawful for any person to knowingly possess a
29 controlled substance unless the substance was obtained directly from,
30 or pursuant to, a valid prescription or order of a practitioner while

1 acting in the course of his or her professional practice, or except
2 as otherwise authorized by this chapter.

3 (2) Except as provided in RCW 69.50.4014, any person who violates
4 this section is guilty of a class C felony punishable under chapter
5 9A.20 RCW.

6 (3)(a) The possession, by a person twenty-one years of age or
7 older, of useable marijuana, marijuana concentrates, or marijuana-
8 infused products in amounts that do not exceed those set forth in RCW
9 69.50.360(3) is not a violation of this section, this chapter, or any
10 other provision of Washington state law.

11 (b) The possession of marijuana, useable marijuana, marijuana
12 concentrates, and marijuana-infused products being physically
13 transported or delivered within the state, in amounts not exceeding
14 those that may be established under RCW 69.50.385(3), by a licensed
15 employee of a common carrier when performing the duties authorized in
16 accordance with RCW 69.50.382 and 69.50.385, is not a violation of
17 this section, this chapter, or any other provision of Washington
18 state law.

19 (4)(a) The delivery by a person twenty-one years of age or older
20 to one or more persons twenty-one years of age or older, during a
21 single twenty-four hour period, for noncommercial purposes and not
22 conditioned upon or done in connection with the provision or receipt
23 of financial consideration, of any of the following marijuana
24 products, is not a violation of this section, this chapter, or any
25 other provisions of Washington state law:

26 (i) One-half ounce of useable marijuana;

27 (ii) Eight ounces of marijuana-infused product in solid form;

28 (iii) Thirty-six ounces of marijuana-infused product in liquid
29 form; or

30 (iv) Three and one-half grams of marijuana concentrates.

31 (b) The act of delivering marijuana or a marijuana product as
32 authorized under this subsection (4) must meet one of the following
33 requirements:

34 (i) The delivery must be done in a location outside of the view
35 of general public and in a nonpublic place; or

36 (ii) The marijuana or marijuana product must be in the original
37 packaging as purchased from the marijuana retailer.

38 (5) No person under twenty-one years of age may ~~((possess))~~,
39 manufacture, sell, ~~((or))~~ distribute, or knowingly possess marijuana,
40 marijuana-infused products, or marijuana concentrates, regardless of

1 THC concentration. This does not include qualifying patients with a
2 valid authorization.

3 (6) The possession by a qualifying patient or designated provider
4 of marijuana concentrates, useable marijuana, marijuana-infused
5 products, or plants in accordance with chapter 69.51A RCW is not a
6 violation of this section, this chapter, or any other provision of
7 Washington state law.

8 **Sec. 3.** RCW 69.50.4014 and 2015 2nd sp.s. c 4 s 505 are each
9 amended to read as follows:

10 Except as provided in RCW 69.50.401(2)(c) or as otherwise
11 authorized by this chapter, any person found guilty of knowing
12 possession of forty grams or less of marijuana is guilty of a
13 misdemeanor.

14 **Sec. 4.** RCW 69.41.030 and 2019 c 55 s 9 are each amended to read
15 as follows:

16 (1) It shall be unlawful for any person to sell, deliver, or
17 knowingly possess any legend drug except upon the order or
18 prescription of a physician under chapter 18.71 RCW, an osteopathic
19 physician and surgeon under chapter 18.57 RCW, an optometrist
20 licensed under chapter 18.53 RCW who is certified by the optometry
21 board under RCW 18.53.010, a dentist under chapter 18.32 RCW, a
22 podiatric physician and surgeon under chapter 18.22 RCW, a
23 veterinarian under chapter 18.92 RCW, a commissioned medical or
24 dental officer in the United States armed forces or public health
25 service in the discharge of his or her official duties, a duly
26 licensed physician or dentist employed by the veterans administration
27 in the discharge of his or her official duties, a registered nurse or
28 advanced registered nurse practitioner under chapter 18.79 RCW when
29 authorized by the nursing care quality assurance commission, a
30 pharmacist licensed under chapter 18.64 RCW to the extent permitted
31 by drug therapy guidelines or protocols established under RCW
32 18.64.011 and authorized by the commission and approved by a
33 practitioner authorized to prescribe drugs, an osteopathic physician
34 assistant under chapter 18.57A RCW when authorized by the board of
35 osteopathic medicine and surgery, a physician assistant under chapter
36 18.71A RCW when authorized by the Washington medical commission, or
37 any of the following professionals in any province of Canada that
38 shares a common border with the state of Washington or in any state

1 of the United States: A physician licensed to practice medicine and
2 surgery or a physician licensed to practice osteopathic medicine and
3 surgery, a dentist licensed to practice dentistry, a podiatric
4 physician and surgeon licensed to practice podiatric medicine and
5 surgery, a licensed advanced registered nurse practitioner, a
6 licensed physician assistant, a licensed osteopathic physician
7 assistant, or a veterinarian licensed to practice veterinary
8 medicine: PROVIDED, HOWEVER, That the above provisions shall not
9 apply to sale, delivery, or possession by drug wholesalers or drug
10 manufacturers, or their agents or employees, or to any practitioner
11 acting within the scope of his or her license, or to a common or
12 contract carrier or warehouse operator, or any employee thereof,
13 whose possession of any legend drug is in the usual course of
14 business or employment: PROVIDED FURTHER, That nothing in this
15 chapter or chapter 18.64 RCW shall prevent a family planning clinic
16 that is under contract with the health care authority from selling,
17 delivering, possessing, and dispensing commercially prepackaged oral
18 contraceptives prescribed by authorized, licensed health care
19 practitioners: PROVIDED FURTHER, That nothing in this chapter
20 prohibits possession or delivery of legend drugs by an authorized
21 collector or other person participating in the operation of a drug
22 take-back program authorized in chapter 69.48 RCW.

23 (2) (a) A violation of this section involving the sale, delivery,
24 or possession with intent to sell or deliver is a class B felony
25 punishable according to chapter 9A.20 RCW.

26 (b) A violation of this section involving possession is a
27 misdemeanor.

28 **Sec. 5.** RCW 69.41.030 and 2020 c 80 s 41 are each amended to
29 read as follows:

30 (1) It shall be unlawful for any person to sell, deliver, or
31 knowingly possess any legend drug except upon the order or
32 prescription of a physician under chapter 18.71 RCW, an osteopathic
33 physician and surgeon under chapter 18.57 RCW, an optometrist
34 licensed under chapter 18.53 RCW who is certified by the optometry
35 board under RCW 18.53.010, a dentist under chapter 18.32 RCW, a
36 podiatric physician and surgeon under chapter 18.22 RCW, a
37 veterinarian under chapter 18.92 RCW, a commissioned medical or
38 dental officer in the United States armed forces or public health
39 service in the discharge of his or her official duties, a duly

1 licensed physician or dentist employed by the veterans administration
2 in the discharge of his or her official duties, a registered nurse or
3 advanced registered nurse practitioner under chapter 18.79 RCW when
4 authorized by the nursing care quality assurance commission, a
5 pharmacist licensed under chapter 18.64 RCW to the extent permitted
6 by drug therapy guidelines or protocols established under RCW
7 18.64.011 and authorized by the commission and approved by a
8 practitioner authorized to prescribe drugs, a physician assistant
9 under chapter 18.71A RCW when authorized by the Washington medical
10 commission, or any of the following professionals in any province of
11 Canada that shares a common border with the state of Washington or in
12 any state of the United States: A physician licensed to practice
13 medicine and surgery or a physician licensed to practice osteopathic
14 medicine and surgery, a dentist licensed to practice dentistry, a
15 podiatric physician and surgeon licensed to practice podiatric
16 medicine and surgery, a licensed advanced registered nurse
17 practitioner, a licensed physician assistant, or a veterinarian
18 licensed to practice veterinary medicine: PROVIDED, HOWEVER, That the
19 above provisions shall not apply to sale, delivery, or possession by
20 drug wholesalers or drug manufacturers, or their agents or employees,
21 or to any practitioner acting within the scope of his or her license,
22 or to a common or contract carrier or warehouse operator, or any
23 employee thereof, whose possession of any legend drug is in the usual
24 course of business or employment: PROVIDED FURTHER, That nothing in
25 this chapter or chapter 18.64 RCW shall prevent a family planning
26 clinic that is under contract with the health care authority from
27 selling, delivering, possessing, and dispensing commercially
28 prepackaged oral contraceptives prescribed by authorized, licensed
29 health care practitioners: PROVIDED FURTHER, That nothing in this
30 chapter prohibits possession or delivery of legend drugs by an
31 authorized collector or other person participating in the operation
32 of a drug take-back program authorized in chapter 69.48 RCW.

33 (2) (a) A violation of this section involving the sale, delivery,
34 or possession with intent to sell or deliver is a class B felony
35 punishable according to chapter 9A.20 RCW.

36 (b) A violation of this section involving possession is a
37 misdemeanor.

38 NEW SECTION. **Sec. 6.** Except for section 5 of this act, this act
39 is necessary for the immediate preservation of the public peace,

1 health, or safety, or support of the state government and its
2 existing public institutions, and takes effect immediately.

3 NEW SECTION. **Sec. 7.** Section 4 of this act expires July 1,
4 2022.

5 NEW SECTION. **Sec. 8.** Section 5 of this act takes effect July 1,
6 2022."

7 Correct the title.

EFFECT: (1) Strikes all provisions of the striking amendment.

(2) Adds a mens rea element to the crimes of unlawful possession of a controlled substance, unlawful possession of a counterfeit substance, unlawful possession of a legend drug, and unlawful possession of 40 grams or less of marijuana so that a person must knowingly possess the substance in order to be convicted of the offense.

(3) Includes an emergency clause.

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