

HOUSE BILL REPORT

HB 1792

As Passed House:

March 7, 2019

Title: An act relating to criminal penalties applicable to licensed marijuana retailers and employees of marijuana retail outlets.

Brief Description: Concerning criminal penalties applicable to licensed marijuana retailers and employees of marijuana retail outlets.

Sponsors: Representatives Pettigrew and Appleton.

Brief History:

Committee Activity:

Commerce & Gaming: 2/15/19, 2/18/19 [DP].

Floor Activity:

Passed House: 3/7/19, 89-8.

Brief Summary of Bill

- Creates a gross misdemeanor crime applicable when an employee of a marijuana retail outlet sells marijuana products to a person under age 21 in the course of their employment.
- Provides that an employee of a marijuana retailer may still be prosecuted under applicable felony provisions of the Controlled Substances Act in certain circumstances, including when the employee makes the sale to the underage person outside the course of the person's employment.
- Creates a misdemeanor crime applicable when a marijuana retailer or employee of the retailer allows a person under the age of 21 to enter or remain on the premises of the retail outlet (unless otherwise authorized in law).

HOUSE COMMITTEE ON COMMERCE & GAMING

Majority Report: Do pass. Signed by 11 members: Representatives Stanford, Chair; Reeves, Vice Chair; MacEwen, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Blake, Jenkin, Kirby, Kloba, Morgan, Vick and Young.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Peter Clodfelter (786-7127).

Background:

Except as expressly authorized in the state Controlled Substances Act (CSA), it is unlawful for any person to sell or distribute a controlled substance. "Marijuana" is a controlled substance, although specific conduct with respect to marijuana is expressly authorized to allow for the legal marijuana program in Washington. Conduct relating to possessing, transferring, selling, processing, or producing marijuana that is not expressly authorized in law falls outside of the legal protections, and the default felony provisions under the CSA apply.

The CSA expressly authorizes licensed marijuana retailers and their employees to engage in certain conduct including delivering, distributing, and selling, on the premises of the retail outlet, any combination of the following marijuana products to a person age 21 or older:

- 1 ounce of useable marijuana;
- 16 ounces of marijuana-infused product in solid form;
- 72 ounces of marijuana-infused product in liquid form; or
- 7 grams of marijuana concentrates.

Licensed marijuana retailers may not employ a person under age 21 or, generally, allow a person under age 21 to enter or remain on the premises of a retail outlet. However, qualifying patients between the ages of 18 and 21 years of age with a recognition card may enter and remain on the premises of a retail outlet holding a medical marijuana endorsement and may purchase products for their personal medical use. Qualifying patients who are under age 18 with a recognition card and who accompany their designated providers may enter and remain on the premises of a retail outlet holding a medical marijuana endorsement, but may not purchase products for their personal medical use. Rules adopted by the Liquor and Cannabis Board (LCB) include monetary penalties for a licensed marijuana retailer allowing a minor to frequent the retail store or for employing a person under age 21.

Under the CSA, it is generally a class C felony to sell or distribute a controlled substance to another person in a manner not expressly authorized in the CSA. Additionally, selling or distributing a controlled substance to another person is punishable as a class B felony when a person who is age 18 or older sells or distributes a controlled substance to another person who is under age 18 and at least three years younger than the seller. Without limiting the applicability of these crimes, the LCB's rules include monetary fines, license suspension, and up to license cancellation for a marijuana licensee furnishing marijuana to a minor.

State criminal laws provide that felonies are punishable by a term in prison not less than one year, plus possible fines. Class C felonies are punishable by confinement in a state correctional institution for five years, or by a fine in an amount fixed by the court of \$10,000, or by both such confinement and a fine. Class B felonies are punishable by confinement in a state correctional institution for a term of 10 years, or by a fine in an amount fixed by the court of \$20,000, or by both confinement and a fine.

State criminal laws provide that any misdemeanor is punishable by imprisonment in the county jail for a maximum term fixed by the court of not more than 90 days, by a fine in an

amount fixed by the court of not more than \$1,000, or by both imprisonment and a fine. In contrast, a gross misdemeanor is punishable by imprisonment in the county jail for a maximum term fixed by the court of up to 364 days, or by a fine in an amount fixed by the court of not more \$5,000, or by both imprisonment and a fine.

However, an individual offender's sentence will depend on their offender score based on their criminal history or lack of criminal history, and the seriousness level of the current offense, which leads to individual sentencing differences and, typically, shorter sentences than the preceding statutory maximum sentences.

In the context of liquor laws, it is a gross misdemeanor to sell, give, or otherwise supply liquor to any person under age 21. Additionally, it is a misdemeanor to allow a person under age 21 to remain in any area of a liquor-licensed establishment classified as off-limits.

Summary of Bill:

A new gross misdemeanor crime is created applicable when an employee of a retail outlet sells marijuana products to a person under the age of 21 in the course of his or her employment.

However, a retail outlet employee may still be prosecuted under existing felony provisions of the Controlled Substances Act, or any other applicable state law, if the employee sells marijuana products to a person the employee knows is under the age of 21 and not otherwise authorized to purchase marijuana products, or if the employee sells or otherwise provides marijuana products to a person under age 21 outside of the course of his or her employment.

A new misdemeanor crime is created applicable when a licensed marijuana retailer or employee of a retail outlet allows a person under the age of 21 to enter or remain on the premises of the retail outlet. An exception continues to authorize qualifying patients under age 21 with recognition cards to enter or remain on the premises of a retail outlet.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This is a high priority for industry and legislators. Because voters legalized marijuana, the state should continue to take steps to fix any remaining unfair disparities in marijuana laws relative to alcohol laws. The bill fixes a gap in the law. Unlike retail staff of businesses who sell alcohol to the public, marijuana retail staff work in crippling fear of inadvertently making one mistake by incorrectly verifying an identification card, and accidentally selling a marijuana product to a minor. There are safeguards in place, and the industry has a very high compliance rate, but this does not help the fear. There are examples from within the state where employees who accidentally violated the law were charged with

felonies. Prosecutors are currently faced with the tough choice of charging a felony, or dismissing charges. Felonies ruin lives. This bill retains the existing stronger penalties for any employee who knowingly sells to a minor, or sells to a person outside of work. Although there are differences in the substances marijuana and alcohol, which may be relevant in some regulatory contexts, the distinction in this circumstance is unfair and arbitrary. This makes the crime and punishment proportionate.

(Opposed) None.

Persons Testifying: Representative Pettigrew, prime sponsor; Brooke Davies, Washington CannaBusiness Association; Samantha Grad, United Food and Commercial Workers Union Local 21; and Ian Eisenberg, Uncle Ike's.

Persons Signed In To Testify But Not Testifying: None.