H-3674.1

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**HOUSE BILL 2375**

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**State of Washington 66th Legislature 2020 Regular Session**

**By** Representatives Leavitt, Irwin, Davis, Harris, Klippert, and Walen

AN ACT Relating to tableting and encapsulating machines and controlled substance imitation materials; amending RCW 69.52.020, 69.52.030, 69.52.040, 69.52.045, and 9.94A.518; and prescribing penalties.

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

**Sec.**  RCW 69.52.020 and 1982 c 171 s 3 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Controlled substance" means a substance as that term is defined in chapter 69.50 RCW.

(2) "Distribute" means the actual or constructive transfer (or attempted transfer) or delivery or dispensing to another of an imitation controlled substance.

(3) "Imitation controlled substance" means a substance that is not a controlled substance, but which by appearance or representation would lead a reasonable person to believe that the substance is a controlled substance. Appearance includes, but is not limited to, color, shape, size, and markings of the dosage unit. Representation includes, but is not limited to, representations or factors of the following nature:

(a) Statements made by an owner or by anyone else in control of the substance concerning the nature of the substance, or its use or effect;

(b) Statements made to the recipient that the substance may be resold for inordinate profit; or

(c) Whether the substance is packaged in a manner normally used for illicit controlled substances.

(4) "Manufacture" means the production, preparation, compounding, processing, encapsulating, packaging or repackaging, or labeling or relabeling of an imitation controlled substance.

(5) "Controlled substance imitation materials" means a punch, die, plate, stone, or other item designed to print, imprint, reproduce, or create a likeness of the trademark, trade name, or other identifying mark, imprint, or device of another, upon a drug or container or labeling so as to render the drug an imitation controlled substance.

(6)"Encapsulating machine" means manual, semiautomatic, or fully automatic equipment that can be used to fill shells or capsules with powdered or granular solids or semisolid material to produce coherent solid contents.

(7) "Tableting machine" means manual, semiautomatic, or fully automatic equipment that can be used to compact, compress, or mold powdered or granular solids or semisolid material to produce fused coherent solid tablets.

**Sec.**  RCW 69.52.030 and 1983 1st ex.s. c 4 s 5 are each amended to read as follows:

(1) It is unlawful for any person to manufacture, distribute, or possess with intent to distribute, an imitation controlled substance. Any person who violates this subsection shall, upon conviction, be guilty of a class C felony.

(2) No person may possess, purchase, deliver, sell, or possess with intent to sell a tableting machine, an encapsulating machine, or controlled substance imitation materials unless authorized as provided in subsection (5) of this section. Unauthorized possession, purchase, delivery, sale, or possession with intent to sell a tableting machine, an encapsulating machine, or controlled substance imitation materials is prima facie evidence of intent to manufacture, distribute, or possess with intent to distribute a controlled substance or an imitation controlled substance.

(3) Any person eighteen years of age or over who violates subsection (1) of this section by distributing an imitation controlled substance to a person under eighteen years of age is guilty of a class B felony.

((~~(3)~~)) (4) It is unlawful for any person to cause to be placed in any newspaper, magazine, handbill, or other publication, or to post or distribute in any public place, any advertisement or solicitation offering for sale imitation controlled substances. Any person who violates this subsection is guilty of a class C felony.

((~~(4)~~)) (5)(a) No civil or criminal liability shall be imposed by virtue of this chapter on any person registered under the Uniform Controlled Substances Act pursuant to RCW 69.50.301 or 69.50.303 who ((~~manufactures~~)):

(i) Manufactures, distributes, or possesses an imitation controlled substance for use as a placebo or other use by a registered practitioner, as defined in RCW 69.50.101((~~(t)~~)), in the course of professional practice or research; or

(ii) Possesses, purchases, delivers, sells, or possesses with intent to sell or deliver a tableting machine, an encapsulating machine, or controlled substance imitation materials.

(b) No civil or criminal liability is imposed by virtue of this chapter on a regulated person as part of a regulated transaction related to a tableting machine, an encapsulating machine, or controlled substance imitation materials, with a regular customer or regular importer if the person complies with the federal law requiring registration of manufacturers, distributors, and dispensers of controlled substances under the federal food, drug, and cosmetic act, 21 U.S.C Sec. 830, as it existed on the effective date of this section or on a subsequent date if provided by the department of health in rule, consistent with the purposes of this section. For purposes of this subsection, regulated person, regulated transaction, regular customer, and regular importer have the meanings provided in the federal food, drug, and cosmetic act, 21 U.S.C. Sec. 802, as it existed on the effective date of this section or on a subsequent date if provided by the department of health in rule, consistent with the purposes of this section.

((~~(5)~~)) (6) No prosecution under this chapter shall be dismissed solely by reason of the fact that the dosage units were contained in a bottle or other container with a label accurately describing the ingredients of the imitation controlled substance dosage units. The good faith of the defendant shall be an issue of fact for the trier of fact.

**Sec.**  RCW 69.52.040 and 1982 c 171 s 5 are each amended to read as follows:

Imitation controlled substances, and unauthorized tableting machines, encapsulating machines, and controlled substance imitation materials, shall be subject to seizure, forfeiture, and disposition in the same manner as are controlled substances under RCW 69.50.505.

**Sec.**  RCW 69.52.045 and 1988 c 150 s 10 are each amended to read as follows:

Whenever an imitation controlled substance which is manufactured, distributed, or possessed in violation of this chapter or an unauthorized tableting machine, encapsulating machine, or controlled substance imitation materials, used in the manufacture, distribution, or possession of an imitation controlled substance in violation of this chapter or a controlled substance in violation of chapter 69.50 RCW, is seized at rental premises, the law enforcement agency shall make a reasonable attempt to discover the identity of the landlord and shall notify the landlord in writing, at the last address listed in the property tax records and at any other address known to the law enforcement agency, of the seizure and the location of the seizure.

**Sec.**  RCW 9.94A.518 and 2003 c 53 s 57 are each amended to read as follows:

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|  | TABLE 4 |  |
|  | DRUG OFFENSES  INCLUDED WITHIN EACH SERIOUSNESS LEVEL |  |
| III | Any felony offense under chapter 69.50 RCW with a deadly weapon special verdict under RCW ((~~9.94A.602~~)) 9.94A.825 |  |
|  | Controlled Substance Homicide (RCW 69.50.415) |  |
|  | Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030((~~(2)~~)) (3)) |  |
|  | Involving a minor in drug dealing (RCW 69.50.4015) |  |
|  | Manufacture of methamphetamine (RCW 69.50.401(2)(b)) |  |
|  | Over 18 and deliver heroin, methamphetamine, a narcotic from Schedule I or II, or flunitrazepam from Schedule IV to someone under 18 (RCW 69.50.406) |  |
|  | Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic, except flunitrazepam or methamphetamine, from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406) |  |
|  | Possession of Ephedrine, Pseudoephedrine, or Anhydrous Ammonia with intent to manufacture methamphetamine (RCW 69.50.440) |  |
|  | Selling for profit (controlled or counterfeit) any controlled substance (RCW 69.50.410) |  |
| II | Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.4011) |  |
|  | Deliver or possess with intent to deliver methamphetamine (RCW 69.50.401(2)(b)) |  |
|  | Delivery of a material in lieu of a controlled substance (RCW 69.50.4012) |  |
|  | Maintaining a Dwelling or Place for Controlled Substances (RCW 69.50.402(1)(f)) |  |
|  | Manufacture, deliver, or possess with intent to deliver amphetamine (RCW 69.50.401(2)(b)) |  |
|  | Manufacture, deliver, or possess with intent to deliver narcotics from Schedule I or II or flunitrazepam from Schedule IV (RCW 69.50.401(2)(a)) |  |
|  | Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana, amphetamine, methamphetamines, or flunitrazepam) (RCW 69.50.401(2) (c) through (e)) |  |
|  | Manufacture, distribute, or possess with intent to distribute an imitation controlled substance (RCW 69.52.030(1)) |  |
| I | Forged Prescription (RCW 69.41.020) |  |
|  | Forged Prescription for a Controlled Substance (RCW 69.50.403) |  |
|  | Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(2)(c)) |  |
|  | Possess Controlled Substance that is a Narcotic from Schedule III, IV, or V or Nonnarcotic from Schedule I-V (RCW 69.50.4013) |  |
|  | Possession of Controlled Substance that is either heroin or narcotics from Schedule I or II (RCW 69.50.4013) |  |
|  | Unlawful Use of Building for Drug Purposes (RCW 69.53.010) |  |

**--- END ---**