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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

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1 AN ACT Relating to tableting and encapsulating machines and  
2 controlled substance imitation materials; amending RCW 69.52.020,  
3 69.52.030, 69.52.040, 69.52.045, and 9.94A.518; and prescribing  
4 penalties.

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

6 **Sec. 1.** RCW 69.52.020 and 1982 c 171 s 3 are each amended to  
7 read as follows:

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

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

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

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

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

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

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

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

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

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

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

25 **Sec. 2.** RCW 69.52.030 and 1983 1st ex.s. c 4 s 5 are each  
26 amended to read as follows:

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

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

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

5        ~~((3))~~ (4) It is unlawful for any person to cause to be placed  
6 in any newspaper, magazine, handbill, or other publication, or to  
7 post or distribute in any public place, any advertisement or  
8 solicitation offering for sale imitation controlled substances. Any  
9 person who violates this subsection is guilty of a class C felony.

10        ~~((4))~~ (5)(a) No civil or criminal liability shall be imposed by  
11 virtue of this chapter on any person registered under the Uniform  
12 Controlled Substances Act pursuant to RCW 69.50.301 or 69.50.303 who  
13 (~~manufactures~~):

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

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

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

37        ~~((5))~~ (6) No prosecution under this chapter shall be dismissed  
38 solely by reason of the fact that the dosage units were contained in  
39 a bottle or other container with a label accurately describing the  
40 ingredients of the imitation controlled substance dosage units. The

1 good faith of the defendant shall be an issue of fact for the trier  
2 of fact.

3 **Sec. 3.** RCW 69.52.040 and 1982 c 171 s 5 are each amended to  
4 read as follows:

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

9 **Sec. 4.** RCW 69.52.045 and 1988 c 150 s 10 are each amended to  
10 read as follows:

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

22 **Sec. 5.** RCW 9.94A.518 and 2003 c 53 s 57 are each amended to  
23 read as follows:

24 TABLE 4

25 DRUG OFFENSES

26 INCLUDED WITHIN EACH

27 SERIOUSNESS LEVEL

- 28 III Any felony offense under chapter  
29 69.50 RCW with a deadly weapon  
30 special verdict under RCW  
31 ((9.94A.602)) 9.94A.825  
32 Controlled Substance Homicide (RCW  
33 69.50.415)

1 Delivery of imitation controlled  
2 substance by person eighteen or  
3 over to person under eighteen  
4 (RCW 69.52.030(~~(2)~~)) (3))  
5 Involving a minor in drug dealing  
6 (RCW 69.50.4015)  
7 Manufacture of methamphetamine  
8 (RCW 69.50.401(2)(b))  
9 Over 18 and deliver heroin,  
10 methamphetamine, a narcotic from  
11 Schedule I or II, or flunitrazepam  
12 from Schedule IV to someone  
13 under 18 (RCW 69.50.406)  
14 Over 18 and deliver narcotic from  
15 Schedule III, IV, or V or a  
16 nonnarcotic, except flunitrazepam  
17 or methamphetamine, from  
18 Schedule I-V to someone under 18  
19 and 3 years junior (RCW  
20 69.50.406)  
21 Possession of Ephedrine,  
22 Pseudoephedrine, or Anhydrous  
23 Ammonia with intent to  
24 manufacture  
25 methamphetamine (RCW  
26 69.50.440)  
27 Selling for profit (controlled or  
28 counterfeit) any controlled  
29 substance (RCW 69.50.410)  
30 II Create, deliver, or possess a counterfeit  
31 controlled substance (RCW  
32 69.50.4011)  
33 Deliver or possess with intent to  
34 deliver methamphetamine (RCW  
35 69.50.401(2)(b))

1 Delivery of a material in lieu of a  
2 controlled substance (RCW  
3 69.50.4012)

4 Maintaining a Dwelling or Place for  
5 Controlled Substances (RCW  
6 69.50.402(1)(f))

7 Manufacture, deliver, or possess with  
8 intent to deliver amphetamine  
9 (RCW 69.50.401(2)(b))

10 Manufacture, deliver, or possess with  
11 intent to deliver narcotics from  
12 Schedule I or II or flunitrazepam  
13 from Schedule IV (RCW  
14 69.50.401(2)(a))

15 Manufacture, deliver, or possess with  
16 intent to deliver narcotics from  
17 Schedule III, IV, or V or  
18 nonnarcotics from Schedule I-V  
19 (except marijuana, amphetamine,  
20 methamphetamines, or  
21 flunitrazepam) (RCW  
22 69.50.401(2) (c) through (e))

23 Manufacture, distribute, or possess  
24 with intent to distribute an  
25 imitation controlled substance  
26 (RCW 69.52.030(1))

27 I Forged Prescription (RCW 69.41.020)

28 Forged Prescription for a Controlled  
29 Substance (RCW 69.50.403)

30 Manufacture, deliver, or possess with  
31 intent to deliver marijuana (RCW  
32 69.50.401(2)(c))

33 Possess Controlled Substance that is a  
34 Narcotic from Schedule III, IV, or  
35 V or Nonnarcotic from Schedule I-  
36 V (RCW 69.50.4013)

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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** ---