
HOUSE BILL 1560

State of Washington

67th Legislature

2021 Regular Session

By Representatives Young, Dufault, Eslick, Abbarno, Robertson, Gilday, Caldier, Corry, Barkis, Jacobsen, Chambers, Walsh, and Hoff

Read first time 03/23/21. Referred to Committee on Public Safety.

1 AN ACT Relating to the mens rea element of offenses related to
2 possession of controlled substances, counterfeit substances, and
3 legend drugs; amending RCW 69.50.4011, 69.50.4013, 69.50.4014,
4 69.41.030, and 69.41.030; creating a new section; providing an
5 effective date; providing an expiration date; and declaring an
6 emergency.

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

8 NEW SECTION. **Sec. 1.** The state of Washington relies on the
9 provisions of RCW 69.50.4011, 69.50.4013, 69.50.4014, and 69.41.030
10 to prohibit the unlawful possession of drugs by its citizens. Though
11 none of these offenses contain a mens rea element, the Washington
12 supreme court has examined and upheld this statutory structure in the
13 past, recognizing the legislature's authority to maintain strict
14 liability in relation to the possession of controlled substances and
15 other crimes. Furthermore, the legislature historically has not
16 considered it necessary to establish an express mens rea element, as
17 defendants have long relied on the availability of the affirmative
18 defense of unwitting possession to protect against prosecution for
19 unknowingly possessing illicit substances.

20 In light of the Washington supreme court's recent decision in
21 *State v. Blake*, Docket No. 96873-0 (February 25, 2021), which

1 invalidated the crime of unlawful possession of a controlled
2 substance due to its lack of a mens rea element, the legislature
3 intends to amend relevant statutory provisions in order to restore
4 the crime of unlawful possession of a controlled substance and to
5 preserve the applicability of other similarly structured drug crimes.
6 To that end, the legislature intends to establish an express mental
7 state requirement for crimes related to unlawful possession of
8 controlled substances, counterfeit substances, and legend drugs.

9 **Sec. 2.** RCW 69.50.4011 and 2003 c 53 s 332 are each amended to
10 read as follows:

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

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

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

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

24 (c) Any other counterfeit substance classified in Schedule I, II,
25 or III, is guilty of a class C felony punishable according to chapter
26 9A.20 RCW;

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

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

32 **Sec. 3.** RCW 69.50.4013 and 2017 c 317 s 15 are each amended to
33 read as follows:

34 (1) It is unlawful for any person to knowingly possess a
35 controlled substance unless the substance was obtained directly from,
36 or pursuant to, a valid prescription or order of a practitioner while
37 acting in the course of his or her professional practice, or except
38 as otherwise authorized by this chapter.

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

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

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

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

- 24 (i) One-half ounce of useable marijuana;
- 25 (ii) Eight ounces of marijuana-infused product in solid form;
- 26 (iii) Thirty-six ounces of marijuana-infused product in liquid
27 form; or
- 28 (iv) Three and one-half grams of marijuana concentrates.

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

- 32 (i) The delivery must be done in a location outside of the view
33 of general public and in a nonpublic place; or
- 34 (ii) The marijuana or marijuana product must be in the original
35 packaging as purchased from the marijuana retailer.

36 (5) No person under twenty-one years of age may ~~((possess))~~,
37 manufacture, sell, ~~((or))~~ distribute, or knowingly possess marijuana,
38 marijuana-infused products, or marijuana concentrates, regardless of
39 THC concentration. This does not include qualifying patients with a
40 valid authorization.

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

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

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

12 **Sec. 5.** RCW 69.41.030 and 2019 c 55 s 9 are each amended to read
13 as follows:

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

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

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

24 (b) A violation of this section involving possession is a
25 misdemeanor.

26 **Sec. 6.** RCW 69.41.030 and 2020 c 80 s 41 are each amended to
27 read as follows:

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

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

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

34 (b) A violation of this section involving possession is a
35 misdemeanor.

36 NEW SECTION. **Sec. 7.** Except for section 6 of this act, this act
37 is necessary for the immediate preservation of the public peace,
38 health, or safety, or support of the state government and its
39 existing public institutions, and takes effect immediately.

1 NEW SECTION. **Sec. 8.** Section 5 of this act expires July 1,
2 2022.

3 NEW SECTION. **Sec. 9.** Section 6 of this act takes effect July 1,
4 2022.

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