
Public Safety Committee

HB 2375

Brief Description: Concerning tableting and encapsulating machines and controlled substance imitation materials.

Sponsors: Representatives Leavitt, Irwin, Davis, Harris, Klippert and Walen.

Brief Summary of Bill

- Makes it unlawful for a person to possess, purchase, deliver, sell, or possess with intent to sell a tableting machine, an encapsulating machine, or controlled substance imitation materials, unless he or she is registered under the Uniform Controlled Substances Act or the transaction complies with certain federal laws.

Hearing Date: 1/20/20

Staff: Kelly Leonard (786-7147).

Background:

State Law Pertaining to Controlled Substances and Imitation Controlled Substances.

Uniform Controlled Substances Act. Under the Washington Uniform Controlled Substances Act (UCSA), a "controlled substance" means a drug, substance, or immediate precursor included in schedules I through V, with some exceptions. The Pharmacy Quality Assurance Commission may modify the schedule for any given substance based on: its potential for abuse; whether there is a currently accepted medical use in treatment; and the safety of the substance and risk for dependence. Substances in schedule I are the most tightly controlled, while those in schedule V are the least tightly controlled.

It is unlawful for any person to possess, manufacture, or distribute a controlled substance unless:

- the substance was dispensed directly by an authorized practitioner;
- the substance was obtained pursuant to a valid prescription;

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.

- the person is a common or contract carrier or warehouseman acting in the usual course of business; or
- the person is registered to manufacture or distribute controlled substances, or employed by a registrant, and acting in the usual course of business.

In addition, the UCSA makes it unlawful for any person to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. The term "drug paraphernalia" includes several types of materials. This includes for example: blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances; and capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances.

The criminal penalties for violating the UCSA depends upon the nature of the violation and the type of substance. Most violations are classified as felony offenses, except for using drug paraphernalia is a misdemeanor offense.

Imitation Controlled Substances. State law also prohibits a person from manufacturing, distributing, or possessing with the intent to distribute, an "imitation controlled substance." An "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:

- 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;
- statements made to the recipient that the substance may be resold for inordinate profit; or
- whether the substance is packaged in a manner normally used for illicit controlled substances.

However, the criminal offense does not apply to any person registered under the UCSA who distributes or possesses an imitation controlled substance for use as a placebo or other use by a registered practitioner in the course of professional practice or research.

Forfeiture. Controlled substances, drug paraphernalia, and other specified property relating to offenses under the UCSA, as well as imitation controlled substances are subject to seizure and forfeiture. For certain property where possession is generally legal absent its use for violating the UCVA, law enforcement are required to follow certain procedures before returning or selling the items.

Federal Law on Tableting and Encapsulating Machines.

Certain transactions involving tableting machines and encapsulating machines are monitored and regulated by the federal government. A person who engages in a transaction involving a tableting machine or an encapsulating machine must keep certain records and report transactions. Under relevant federal law, the terms "regulated person," "regulated transaction," "regular

customer," and "regular importer," generally refer to persons and transactions reported to and monitored by the federal government.

It is against federal law to knowingly or intentionally possess, manufacture, distribute, export, or import any tableting machine, encapsulating machine, or gelatin capsule, or any equipment, chemical, product, or material which may be used to manufacture a controlled substance or listed chemical, knowing, intending, or having reasonable cause to believe that it will be used to manufacture a controlled substance or other listed chemical.

Summary of Bill:

Tableting Machines, Encapsulating Machines, and Controlled Substance Imitation Materials.

Definitions. "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.

"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.

"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.

Criminal Offense. It is unlawful for a person to possess, purchase, deliver, sell, or possess with intent to sell a tableting machine, an encapsulating machine, or controlled substance imitation materials, unless:

- he or she is registered under the UCVA; or
- he or she is a regulated person as part of a regular transaction related to the equipment or materials, with a regular customer or regular importer, as those terms are defined in federal law, and he or she complies with the federal law requiring registration of manufacturers, distributors, and dispensers of controlled substances.

In addition, 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.

Unauthorized tableting machines, encapsulating machines, and controlled substance imitation materials are subject to seizure, forfeiture, and disposition laws.

Imitation Controlled Substances.

Exemptions for the restriction on imitation controlled substances are expanded. It is not unlawful to manufacture an imitation controlled substance for use as a placebo or other use by a registered practitioner in the course of professional practice or research.

Appropriation: None.

Fiscal Note: Requested on January 15, 2020.

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