

SENATE BILL REPORT

HB 1792

As Reported by Senate Committee On:
Law & Justice, April 2, 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: Passed House: 3/07/19, 89-8.

Committee Activity: Law & Justice: 4/01/19, 4/02/19 [DP, w/oRec].

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 twenty-one 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 twenty-one to enter or remain on the premises of the retail outlet, unless otherwise authorized in law.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Kuderer and Salomon.

Minority Report: That it be referred without recommendation.

Signed by Senators Padden, Ranking Member; Holy.

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: Shani Bauer (786-7468)

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 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 twenty-one 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 twenty-one or, generally, allow a person under age twenty-one to enter or remain on the premises of a retail outlet. There are exceptions for qualifying patients under the age of twenty-one who have a recognition card. A recognition card is a card issued to a qualifying patient by a marijuana retailer with a medical marijuana endorsement that has entered them into the medical marijuana authorization database. Qualifying patients between the ages of eighteen and twenty-one years 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 eighteen 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 twenty-one

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 eighteen sells or distributes a controlled substance to another person who is under age eighteen and at least three years younger than the seller. Additionally, the LCB's rules include monetary fines, license suspension, and up to license cancellation for a marijuana licensee furnishing marijuana to a minor.

It is a gross misdemeanor to sell, give, or otherwise supply liquor to any person under age twenty-one. Additionally, it is a misdemeanor to allow a person under age twenty-one 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 twenty-one in the course of their employment.

A retail outlet employee may still be prosecuted under existing felony provisions of the CSA, or any other applicable state law, if they sell marijuana products to a person they know is under the age of twenty-one and not otherwise authorized to purchase marijuana products, or if the employee sells or otherwise provides marijuana products to a person under age twenty-one outside of the course of their 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 twenty-one to enter or remain on the premises of the retail outlet. An exception continues to authorize qualifying patients under age twenty-one with recognition cards to enter or remain on the premises of a retail outlet.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Industry has been working on this fix for a while. As a newly legal industry, we realized it would take some time to bring forward. The marijuana industry has a much higher compliance rate than the liquor or tobacco industry. If an employee makes a mistake and sells to a minor, they are guilty of a felony. This bill attempts to align these provisions with the liquor industry. We recognize there is a difference between alcohol and marijuana products, which is why there is still a carve out for when a person has knowledge of the person's age or sells to an underage person outside the scope of the person's employment.

If there is a mistaken incident, the retail outlet gets a mark against their license. An employee faces a felony which can impact the rest of their life. Washington has legalized cannabis, but it still disproportionately prosecutes people for related crimes.

Persons Testifying: PRO: Brooke Davies, Washington CannaBusiness Association; Samantha Grad, UFCW 21.

Persons Signed In To Testify But Not Testifying: No one.