

SB 5476 - S AMD 874
By Senator Padden

OUT OF ORDER 04/15/2021

1 Strike everything after the enacting clause and insert the
2 following:

3 **"Sec. 1.** RCW 69.50.4011 and 2003 c 53 s 332 are each amended to
4 read as follows:

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

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

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

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

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

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

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

26 **Sec. 2.** RCW 69.50.4013 and 2017 c 317 s 15 are each amended to
27 read as follows:

28 (1) (~~It is unlawful for any person to possess a controlled~~
29 ~~substance unless~~) Unless the substance was obtained directly from,
30 or pursuant to, a valid prescription or order of a practitioner while
31 acting in the course of his or her professional practice, or except

1 as otherwise authorized by this chapter, it is unlawful for any
2 person to knowingly possess a controlled substance.

3 (2) Except as provided in RCW 69.50.4014(~~(, any)~~):

4 (a) Any person over the age of 21 who violates this section is
5 guilty of a class C felony punishable under chapter 9A.20 RCW;

6 (b) Any person under the age of 21 who violates this section is
7 guilty of a gross misdemeanor.

8 (3) (a) A person who is found to be in possession of a controlled
9 substance shall be referred for evaluation and services and enter
10 into a diversion agreement for their first offense.

11 (b) A person who is found to be in possession of a controlled
12 substance may be referred for evaluation and services and enter into
13 a diversion agreement for their second offense if the prosecuting
14 attorney of the local jurisdiction approves the referral.

15 (4) (a) The possession, by a person twenty-one years of age or
16 older, of useable marijuana, marijuana concentrates, or marijuana-
17 infused products in amounts that do not exceed those set forth in RCW
18 69.50.360(3) is not a violation of this section, this chapter, or any
19 other provision of Washington state law.

20 (b) The possession of marijuana, useable marijuana, marijuana
21 concentrates, and marijuana-infused products being physically
22 transported or delivered within the state, in amounts not exceeding
23 those that may be established under RCW 69.50.385(3), by a licensed
24 employee of a common carrier when performing the duties authorized in
25 accordance with RCW 69.50.382 and 69.50.385, is not a violation of
26 this section, this chapter, or any other provision of Washington
27 state law.

28 (~~(4)~~) (5) (a) The delivery by a person twenty-one years of age
29 or older to one or more persons twenty-one years of age or older,
30 during a single twenty-four hour period, for noncommercial purposes
31 and not conditioned upon or done in connection with the provision or
32 receipt of financial consideration, of any of the following marijuana
33 products, is not a violation of this section, this chapter, or any
34 other provisions of Washington state law:

35 (i) One-half ounce of useable marijuana;

36 (ii) Eight ounces of marijuana-infused product in solid form;

37 (iii) Thirty-six ounces of marijuana-infused product in liquid
38 form; or

39 (iv) Three and one-half grams of marijuana concentrates.

1 (b) The act of delivering marijuana or a marijuana product as
2 authorized under this subsection (~~((4))~~) (5) must meet one of the
3 following requirements:

4 (i) The delivery must be done in a location outside of the view
5 of general public and in a nonpublic place; or

6 (ii) The marijuana or marijuana product must be in the original
7 packaging as purchased from the marijuana retailer.

8 (~~((5))~~) (6) No person under twenty-one years of age may possess,
9 manufacture, sell, or distribute marijuana, marijuana-infused
10 products, or marijuana concentrates, regardless of THC concentration.
11 This does not include qualifying patients with a valid authorization.

12 (~~((6))~~) (7) The possession by a qualifying patient or designated
13 provider of marijuana concentrates, useable marijuana, marijuana-
14 infused products, or plants in accordance with chapter 69.51A RCW is
15 not a violation of this section, this chapter, or any other provision
16 of Washington state law.

17 **Sec. 3.** RCW 69.50.445 and 2015 2nd sp.s. c 4 s 401 are each
18 amended to read as follows:

19 (1) It is unlawful to open a package containing marijuana,
20 useable marijuana, marijuana-infused products, or marijuana
21 concentrates, or consume marijuana, useable marijuana, marijuana-
22 infused products, or marijuana concentrates, in view of the general
23 public or in a public place.

24 (2) It is unlawful to open a package containing a counterfeit or
25 controlled substance or consume a counterfeit or controlled substance
26 in view of the general public or in a public place.

27 (3) For the purposes of this section, "public place" has the same
28 meaning as defined in RCW 66.04.010, but the exclusions in RCW
29 66.04.011 do not apply.

30 (~~((3))~~) (4)(a) A person who violates subsection (1) of this
31 section is guilty of a class 3 civil infraction under chapter 7.80
32 RCW.

33 (b) A person who violates subsection (2) of this section is
34 guilty of a class 1 civil infraction under chapter 7.80 RCW and
35 subject to a maximum penalty of \$250. Proceeds from this infraction
36 are to be deposited in the State v. Blake reimbursement account
37 created in section 7 of this act.

1 **Sec. 4.** RCW 69.41.030 and 2019 c 55 s 9 are each amended to read
2 as follows:

3 (1) (~~It~~) Except as provided in subsection (2) of this section,
4 it shall be unlawful for any person to sell, deliver, or knowingly
5 possess any legend drug (~~except~~).

6 (2) The sale, delivery, or possession of a legend drug does not
7 constitute a violation of this section upon the order or prescription
8 of a physician under chapter 18.71 RCW, an osteopathic physician and
9 surgeon under chapter 18.57 RCW, an optometrist licensed under
10 chapter 18.53 RCW who is certified by the optometry board under RCW
11 18.53.010, a dentist under chapter 18.32 RCW, a podiatric physician
12 and surgeon under chapter 18.22 RCW, a veterinarian under chapter
13 18.92 RCW, a commissioned medical or dental officer in the United
14 States armed forces or public health service in the discharge of his
15 or her official duties, a duly licensed physician or dentist employed
16 by the veterans administration in the discharge of his or her
17 official duties, a registered nurse or advanced registered nurse
18 practitioner under chapter 18.79 RCW when authorized by the nursing
19 care quality assurance commission, a pharmacist licensed under
20 chapter 18.64 RCW to the extent permitted by drug therapy guidelines
21 or protocols established under RCW 18.64.011 and authorized by the
22 commission and approved by a practitioner authorized to prescribe
23 drugs, an osteopathic physician assistant under chapter 18.57A RCW
24 when authorized by the board of osteopathic medicine and surgery, a
25 physician assistant under chapter 18.71A RCW when authorized by the
26 Washington medical commission, or any of the following professionals
27 in any province of Canada that shares a common border with the state
28 of Washington or in any state of the United States: A physician
29 licensed to practice medicine and surgery or a physician licensed to
30 practice osteopathic medicine and surgery, a dentist licensed to
31 practice dentistry, a podiatric physician and surgeon licensed to
32 practice podiatric medicine and surgery, a licensed advanced
33 registered nurse practitioner, a licensed physician assistant, a
34 licensed osteopathic physician assistant, or a veterinarian licensed
35 to practice veterinary medicine: PROVIDED, HOWEVER, That the above
36 provisions shall not apply to sale, delivery, or possession by drug
37 wholesalers or drug manufacturers, or their agents or employees, or
38 to any practitioner acting within the scope of his or her license, or
39 to a common or contract carrier or warehouse operator, or any
40 employee thereof, whose possession of any legend drug is in the usual

1 course of business or employment: PROVIDED FURTHER, That nothing in
2 this chapter or chapter 18.64 RCW shall prevent a family planning
3 clinic that is under contract with the health care authority from
4 selling, delivering, possessing, and dispensing commercially
5 prepackaged oral contraceptives prescribed by authorized, licensed
6 health care practitioners: PROVIDED FURTHER, That nothing in this
7 chapter prohibits possession or delivery of legend drugs by an
8 authorized collector or other person participating in the operation
9 of a drug take-back program authorized in chapter 69.48 RCW.

10 ~~((2))~~ (3)(a) A violation of this section involving the sale,
11 delivery, or possession with intent to sell or deliver is a class B
12 felony punishable according to chapter 9A.20 RCW.

13 (b) A violation of this section involving possession is a
14 misdemeanor.

15 **Sec. 5.** RCW 69.41.030 and 2020 c 80 s 41 are each amended to
16 read as follows:

17 (1) ~~((1))~~ Except as provided in subsection (2) of this section,
18 it shall be unlawful for any person to sell, deliver, or knowingly
19 possess any legend drug ~~((except))~~.

20 (2) The sale, delivery, or possession of a legend drug does not
21 constitute a violation of this section upon the order or prescription
22 of a physician under chapter 18.71 RCW, an osteopathic physician and
23 surgeon under chapter 18.57 RCW, an optometrist licensed under
24 chapter 18.53 RCW who is certified by the optometry board under RCW
25 18.53.010, a dentist under chapter 18.32 RCW, a podiatric physician
26 and surgeon under chapter 18.22 RCW, a veterinarian under chapter
27 18.92 RCW, a commissioned medical or dental officer in the United
28 States armed forces or public health service in the discharge of his
29 or her official duties, a duly licensed physician or dentist employed
30 by the veterans administration in the discharge of his or her
31 official duties, a registered nurse or advanced registered nurse
32 practitioner under chapter 18.79 RCW when authorized by the nursing
33 care quality assurance commission, a pharmacist licensed under
34 chapter 18.64 RCW to the extent permitted by drug therapy guidelines
35 or protocols established under RCW 18.64.011 and authorized by the
36 commission and approved by a practitioner authorized to prescribe
37 drugs, a physician assistant under chapter 18.71A RCW when authorized
38 by the Washington medical commission, or any of the following
39 professionals in any province of Canada that shares a common border

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

23 ~~((2))~~ (3)(a) A violation of this section involving the sale,
24 delivery, or possession with intent to sell or deliver is a class B
25 felony punishable according to chapter 9A.20 RCW.

26 (b) A violation of this section involving possession is a
27 misdemeanor.

28 NEW SECTION. **Sec. 6.** A new section is added to chapter 10.77
29 RCW to read as follows:

30 (1) In addition to those services provided under RCW 10.77.074, a
31 forensic navigator may be used as a resource for law enforcement to
32 serve as a care coordinator for substance use disorder resources.

33 (2) When a forensic navigator receives information alleging that
34 a person was in possession of a counterfeit substance, controlled
35 substance, or legend drug in an amount classified as personal use,
36 the forensic navigator must attempt to contact the individual in
37 order to provide resources for evaluation, treatment, recovery, and
38 support.

1 (3) Local jurisdictions are not required to use forensic
2 navigators.

3 NEW SECTION. **Sec. 7.** The *State v. Blake* reimbursement account
4 is created in the state treasury. All receipts from penalties
5 collected under RCW 69.50.445(4)(b) must be deposited into the
6 account. Moneys in the account may be spent only after appropriation.
7 Expenditures from the account may be used only for state and local
8 government costs resulting from the supreme court's decision in *State*
9 *v. Blake* and to reimburse individuals for legal financial obligations
10 paid in connection with sentences that have been invalidated as a
11 result of the decision in *State v. Blake*.

12 NEW SECTION. **Sec. 8.** Section 4 of this act expires July 1,
13 2022.

14 NEW SECTION. **Sec. 9.** Section 5 of this act takes effect July 1,
15 2022.

16 NEW SECTION. **Sec. 10.** Except for section 5 of this act, this
17 act is necessary for the immediate preservation of the public peace,
18 health, or safety, or support of the state government and its
19 existing public institutions, and takes effect immediately."

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OUT OF ORDER 04/15/2021

20 On page 1, line 1 of the title, after "decision;" strike the
21 remainder of the title and insert "amending RCW 69.50.4011,
22 69.50.4013, 69.50.445, 69.41.030, and 69.41.030; adding a new section
23 to chapter 10.77 RCW; creating a new section; prescribing penalties;
24 providing an effective date; providing an expiration date; and
25 declaring an emergency."

EFFECT: Removes references to "personal use amounts". Makes changes to referral and diversion procedures. Makes local use of navigators optional. Changes infraction to class 1 infraction.

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