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**HOUSE BILL 2002**

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**State of Washington**

**68th Legislature**

**2024 Regular Session**

**By** Representatives Low and Cheney

Prefiled 12/21/23.

1 AN ACT Relating to criminal penalties for the knowing or  
2 intentional use of fentanyl or methamphetamine in a public space with  
3 another person; amending RCW 69.50.4013 and 9.94A.518; adding a new  
4 section to chapter 69.50 RCW; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 69.50  
7 RCW to read as follows:

8 (1) It is unlawful for any person to knowingly or intentionally  
9 combust or exhale the smoke of a substance:

10 (a) The person knows or reasonably should know contains or is  
11 contaminated with fentanyl or methamphetamine, or their isomers,  
12 esters, ethers, salts, or salts of isomers, esters, or ethers; and

13 (b) While in a public space and within 10 feet of another person,  
14 or while inside an enclosed public space with another person.

15 (2) Except as provided in subsection (3) of this section, any  
16 person who violates this section is guilty of a gross misdemeanor.

17 (3) Any person who violates this section while in a public space  
18 and within 10 feet of another person under age 13, or while inside an  
19 enclosed public space with another person under age 13, is guilty of  
20 a class C felony.

1 (4) For the purposes of this section, "public space" includes,  
2 but is not limited to, a public conveyance, park, transit stop,  
3 hospital or other health care setting, or any other place open to the  
4 public.

5 **Sec. 2.** RCW 69.50.4013 and 2023 sp.s. c 1 s 2 are each amended  
6 to read as follows:

7 (1) Except as otherwise authorized by this chapter, it is  
8 unlawful for any person to:

9 (a) Knowingly possess a controlled substance unless the substance  
10 was obtained directly from, or pursuant to, a valid prescription or  
11 order of a practitioner while acting in the course of his or her  
12 professional practice; or

13 (b) Knowingly use a controlled substance in a public place,  
14 unless the substance was obtained directly from, or pursuant to, a  
15 valid prescription or order of a practitioner while acting in the  
16 course of his or her professional practice.

17 (2)(a) Except as provided in RCW 69.50.4014 (~~(e)~~), 69.50.445, or  
18 section 1 of this act, a violation of subsection (1)(a) or (b) of  
19 this section is a gross misdemeanor punishable by imprisonment of up  
20 to 180 days in jail, or by a fine of not more than \$1,000, or by both  
21 such imprisonment and fine, however, if the defendant has two or more  
22 prior convictions under subsection (1)(a) or (b) of this section  
23 occurring after July 1, 2023, a violation of subsection (1)(a) or (b)  
24 of this section is punishable by imprisonment for up to 364 days, or  
25 by a fine of not more than \$1,000, or by both such imprisonment and  
26 fine. The prosecutor is encouraged to divert such cases for  
27 assessment, treatment, or other services.

28 (b) No person may be charged under both subsection (1)(a) and (b)  
29 of this section relating to the same course of conduct.

30 (c) In lieu of jail booking and referral to the prosecutor, law  
31 enforcement is encouraged to offer a referral to assessment and  
32 services available under RCW 10.31.110 or other program or entity  
33 responsible for receiving referrals in lieu of legal system  
34 involvement, which may include, but are not limited to, arrest and  
35 jail alternative programs established under RCW 36.28A.450, law  
36 enforcement assisted diversion programs established under RCW  
37 71.24.589, and the recovery navigator program established under RCW  
38 71.24.115.

1 (3) (a) The possession, by a person 21 years of age or older, of  
2 useable cannabis, cannabis concentrates, or cannabis-infused products  
3 in amounts that do not exceed those set forth in RCW 69.50.360(3) is  
4 not a violation of this section, this chapter, or any other provision  
5 of Washington state law.

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

14 (4) (a) The delivery by a person 21 years of age or older to one  
15 or more persons 21 years of age or older, during a single 24 hour  
16 period, for noncommercial purposes and not conditioned upon or done  
17 in connection with the provision or receipt of financial  
18 consideration, of any of the following cannabis products, is not a  
19 violation of this section, this chapter, or any other provisions of  
20 Washington state law:

- 21 (i) One-half ounce of useable cannabis;
- 22 (ii) Eight ounces of cannabis-infused product in solid form;
- 23 (iii) 36 ounces of cannabis-infused product in liquid form; or
- 24 (iv) Three and one-half grams of cannabis concentrates.

25 (b) The act of delivering cannabis or a cannabis product as  
26 authorized under this subsection (4) must meet one of the following  
27 requirements:

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

30 (ii) The cannabis or cannabis product must be in the original  
31 packaging as purchased from the cannabis retailer.

32 (5) No person under 21 years of age may manufacture, sell,  
33 distribute, or knowingly possess cannabis, cannabis-infused products,  
34 or cannabis concentrates, regardless of THC concentration. This does  
35 not include qualifying patients with a valid authorization.

36 (6) The possession by a qualifying patient or designated provider  
37 of cannabis concentrates, useable cannabis, cannabis-infused  
38 products, or plants in accordance with chapter 69.51A RCW is not a  
39 violation of this section, this chapter, or any other provision of  
40 Washington state law.

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

4 (8) For the purposes of this section, "use a controlled  
5 substance" means to introduce the substance into the human body by  
6 injection, inhalation, ingestion, or any other means.

7 **Sec. 3.** RCW 9.94A.518 and 2023 c 66 s 2 are each amended to read  
8 as follows:

9 TABLE 4

10 DRUG OFFENSES  
11 INCLUDED WITHIN EACH  
12 SERIOUSNESS LEVEL

- 13 III Any felony offense under chapter  
14 69.50 RCW with a deadly weapon  
15 special verdict under RCW  
16 9.94A.825
- 17 Controlled Substance Homicide (RCW  
18 69.50.415)
- 19 Delivery of imitation controlled  
20 substance by person eighteen or  
21 over to person under eighteen  
22 (RCW 69.52.030(2))
- 23 Involving a minor in drug dealing  
24 (RCW 69.50.4015)
- 25 Manufacture of methamphetamine  
26 (RCW 69.50.401(2)(b))
- 27 Over 18 and deliver heroin,  
28 methamphetamine, a narcotic from  
29 Schedule I or II, or flunitrazepam  
30 from Schedule IV to someone  
31 under 18 (RCW 69.50.406)

1 Over 18 and deliver narcotic from  
2 Schedule III, IV, or V or a  
3 nonnarcotic, except flunitrazepam  
4 or methamphetamine, from  
5 Schedule I-V to someone under 18  
6 and 3 years junior (RCW  
7 69.50.406)

8 Possession of Ephedrine,  
9 Pseudoephedrine, or Anhydrous  
10 Ammonia with intent to  
11 manufacture methamphetamine  
12 (RCW 69.50.440)

13 Selling for profit (controlled or  
14 counterfeit) any controlled  
15 substance (RCW 69.50.410)

16 II Combust or exhale fentanyl or  
17 methamphetamine in a public  
18 space with another person under  
19 age 13 (section 1(3) of this act)

20 Create or deliver a counterfeit  
21 controlled substance (RCW  
22 69.50.4011(1)(a))

23 Deliver or possess with intent to  
24 deliver methamphetamine (RCW  
25 69.50.401(2)(b))

26 Delivery of a material in lieu of a  
27 controlled substance (RCW  
28 69.50.4012)

29 Maintaining a Dwelling or Place for  
30 Controlled Substances (RCW  
31 69.50.402(1)(f))

32 Manufacture, deliver, or possess with  
33 intent to deliver amphetamine  
34 (RCW 69.50.401(2)(b))

1 Manufacture, deliver, or possess with  
2 intent to deliver narcotics from  
3 Schedule I or II or flunitrazepam  
4 from Schedule IV (RCW  
5 69.50.401(2)(a))  
6 Manufacture, deliver, or possess with  
7 intent to deliver narcotics from  
8 Schedule III, IV, or V or  
9 nonnarcotics from Schedule I-V  
10 (except cannabis as defined in  
11 RCW 69.50.101, amphetamine,  
12 methamphetamines, or  
13 flunitrazepam) (RCW  
14 69.50.401(2) (c) through (e))  
15 Manufacture, distribute, or possess  
16 with intent to distribute an  
17 imitation controlled substance  
18 (RCW 69.52.030(1))  
19 Possess, purchase, deliver, sell, or  
20 possess with intent to sell a  
21 tableting machine or encapsulating  
22 machine (RCW 69.50.418)  
23 I Forged Prescription (RCW 69.41.020)  
24 Forged Prescription for a Controlled  
25 Substance (RCW 69.50.403)  
26 Manufacture, deliver, or possess with  
27 intent to deliver cannabis as  
28 defined in RCW 69.50.101 (RCW  
29 69.50.401(2)(c))  
30 Unlawful Use of Building for Drug  
31 Purposes (RCW 69.53.010)

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