

House Bill 2494

Sponsored by Representative LIM

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Creates crime of unlawful possession of salvinorin A or Salvia divinorum. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both.

Creates crime of unlawful manufacture or delivery of salvinorin A or Salvia divinorum. Punishes by maximum of 20 years' imprisonment, \$375,000 fine, or both.

Requires State Board of Pharmacy to classify salvinorin A or Salvia divinorum as Schedule I controlled substance.

A BILL FOR AN ACT

1 Relating to Salvia divinorum; creating new provisions; and amending ORS 475.840.

2 **Be It Enacted by the People of the State of Oregon:**

3 **SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS 475.005 to**
4 **475.285.**

5 **SECTION 2. The State Board of Pharmacy shall adopt rules to classify salvinorin A or**
6 **Salvia divinorum as a Schedule I controlled substance.**

7 **SECTION 3. Section 4 of this 2007 Act is added to and made a part of ORS 475.840 to**
8 **475.980.**

9 **SECTION 4. (1) It is unlawful for any person knowingly or intentionally to possess**
10 **salvinorin A or Salvia divinorum.**

11 **(2) Unlawful possession of salvinorin A or Salvia divinorum is a Class A misdemeanor.**

12 **SECTION 5. ORS 475.840 is amended to read:**

13 475.840. (1) Except as authorized by ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful
14 for any person to manufacture or deliver a controlled substance. Any person who violates this sub-
15 section with respect to:

16 (a) A controlled substance in Schedule I, is guilty of a Class A felony, except as otherwise pro-
17 vided in ORS 475.860.

18 (b) A controlled substance in Schedule II, is guilty of a Class B felony, except as otherwise
19 provided in ORS 475.878, 475.880, 475.882, 475.888, 475.890, 475.892, 475.904 and 475.906.

20 (c) A controlled substance in Schedule III, is guilty of a Class C felony, except as otherwise
21 provided in ORS 475.904 and 475.906.

22 (d) A controlled substance in Schedule IV, is guilty of a Class B misdemeanor.

23 (e) A controlled substance in Schedule V, is guilty of a Class C misdemeanor.

24 (2) Except as authorized in ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful for any
25 person to create or deliver a counterfeit substance. Any person who violates this subsection with
26 respect to:

27 (a) A counterfeit substance in Schedule I, is guilty of a Class A felony.

28 (b) A counterfeit substance in Schedule II, is guilty of a Class B felony.

29 **NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (c) A counterfeit substance in Schedule III, is guilty of a Class C felony.

2 (d) A counterfeit substance in Schedule IV, is guilty of a Class B misdemeanor.

3 (e) A counterfeit substance in Schedule V, is guilty of a Class C misdemeanor.

4 (3) It is unlawful for any person knowingly or intentionally to possess a controlled substance
5 unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a
6 practitioner while acting in the course of professional practice, or except as otherwise authorized
7 by ORS 475.005 to 475.285 and 475.840 to 475.980. Any person who violates this subsection with re-
8 spect to:

9 (a) A controlled substance in Schedule I, is guilty of a Class B felony, except as otherwise pro-
10 vided in ORS 475.864 **or section 4 of this 2007 Act.**

11 (b) A controlled substance in Schedule II, is guilty of a Class C felony.

12 (c) A controlled substance in Schedule III, is guilty of a Class A misdemeanor.

13 (d) A controlled substance in Schedule IV, is guilty of a Class C misdemeanor.

14 (e) A controlled substance in Schedule V, is guilty of a violation.

15 (4) In any prosecution under this section for manufacture, possession or delivery of that plant
16 of the genus *Lophophora* commonly known as peyote, it is an affirmative defense that the peyote is
17 being used or is intended for use:

18 (a) In connection with the good faith practice of a religious belief;

19 (b) As directly associated with a religious practice; and

20 (c) In a manner that is not dangerous to the health of the user or others who are in the prox-
21 imity of the user.

22 (5) The affirmative defense created in subsection (4) of this section is not available to any person
23 who has possessed or delivered the peyote while incarcerated in a correctional facility in this state.
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