

REVENUE: No revenue impact

FISCAL: Minimal fiscal impact, no statement issued

Action: Do Pass with Amendments to the A-Eng. Measure (Printed B-Eng.)

Vote: 5 - 0 - 0

Yeas: Bonamici, Boquist, Dingfelder, Whitsett, Prozanski

Nays: 0

Exc.: 0

Prepared By: Bill Taylor, Counsel

Meeting Dates: 5/26, 5/28

WHAT THE MEASURE DOES: Clarifies that delivery of more than an ounce of marijuana, for no consideration, is a Class C felony. Allows a peace officer to cite an individual for using artificial light from a vehicle while in possession of a bow and arrow, rifle or other firearm. Clarifies the definition of a firearm to mean any weapon designed to expel a projectile by the action of powder. Eliminates the sunset in ORS 475.235 which provides that a certified copy of the forensic laboratory report signed by the analyst is prima facie evidence of the test results unless the defendant provides notice of an objection, in which case the state must produce the analyst at trial.

ISSUES DISCUSSED:

- Delivery of marijuana for no consideration

EFFECT OF COMMITTEE AMENDMENT: Allows a peace officer to cite an individual for using artificial light from a vehicle while in possession of a bow and arrow, rifle or other firearm. Clarifies the definition of a firearm to mean any weapon designed to expel a projectile by the action of powder. Eliminates the sunset in ORS 475.235 which provides that a certified copy of the forensic laboratory report signed by the analyst is prima facie evidence of the test results unless the defendant provides notice of an objection, in which case the state must produce the analyst at trial.

BACKGROUND: ORS 475.860 provides the following:

- Delivery of Marijuana for consideration = Class B felony (level 4 on the sentencing grid)
- Delivery of Marijuana, less than an ounce, not for consideration = Class A misdemeanor
- Delivery of Marijuana, less than five grams, not for consideration = violation

The gap in the above list signifies where delivering more than an ounce of marijuana, not for consideration, would fall, as a Class C felony and level 2 on the sentencing grid. By defining this crime, HB 2285B ensures consistency throughout the state for charging and convictions for delivering more than an ounce of marijuana for no consideration.

When the drug statutes were rewritten in 2005, delivery of more than an ounce of marijuana, for no consideration, was not included in ORS 475.860. As a result, some jurisdictions interpreted the charge as being a Class A felony under 475.840 (1)(a). When the Legislative Assembly changed the drug statutes in 2005, delivery of marijuana for consideration was designated a Class B felony. The reason for excluding this offense from the new statute was not apparent and resulted in the penalty for giving marijuana away being greater than the penalty for selling marijuana. Judges, examining ORS 475.860, have noted this exclusion and determined that delivery of more than an ounce of marijuana, for no consideration, is anything from a misdemeanor to a Class C felony. HB 2285B addresses these inconsistencies.

Some hunters in Oregon use overhead lights to hunt at night. These lights momentarily stun animals and make them easy targets. The Oregon State Police would like to cite individuals for game violations who use these tactics. Recently, the Oregon Supreme Court, in *State v. Briney*, 345 OR 505 (2008), determined that the current definition of firearm (weapon designed to expel a projectile by action of powder and which is readily capable of use as a weapon) excluded guns without a firing pin. The change would clarify what constitutes a firearm for the crimes of felon in possession, unlawful possession of a weapon, first degree theft and unlawful paramilitary activity.

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This summary has not been adopted or officially endorsed by action of the committee.