

House Bill 2341

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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**.

Modifies definition of marijuana for purposes of controlled substances laws.

A BILL FOR AN ACT

1
2 Relating to marijuana; creating new provisions; and amending ORS 167.222, 475.005, 475.302, 475.860
3 and 475.864.

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

5 **SECTION 1.** ORS 475.005 is amended to read:

6 475.005. As used in ORS 475.005 to 475.285 and 475.840 to 475.980, unless the context requires
7 otherwise:

8 (1) "Abuse" means the repetitive excessive use of a drug short of dependence, without legal or
9 medical supervision, which may have a detrimental effect on the individual or society.

10 (2) "Administer" means the direct application of a controlled substance, whether by injection,
11 inhalation, ingestion or any other means, to the body of a patient or research subject by:

12 (a) A practitioner or an authorized agent thereof; or

13 (b) The patient or research subject at the direction of the practitioner.

14 (3) "Administration" means the Drug Enforcement Administration of the United States Depart-
15 ment of Justice, or its successor agency.

16 (4) "Agent" means an authorized person who acts on behalf of or at the direction of a man-
17 ufacturer, distributor or dispenser. It does not include a common or contract carrier, public
18 warehouseman or employee of the carrier or warehouseman.

19 (5) "Board" means the State Board of Pharmacy.

20 (6) "Controlled substance" means a drug or its immediate precursor classified in Schedules I
21 through V under the federal Controlled Substances Act, 21 U.S.C. 811 to 812, as modified under ORS
22 475.035. The use of the term "precursor" in this subsection does not control and is not controlled
23 by the use of the term "precursor" in ORS 475.840 to 475.980.

24 (7) "Counterfeit substance" means a controlled substance or its container or labeling, which,
25 without authorization, bears the trademark, trade name, or other identifying mark, imprint, number
26 or device, or any likeness thereof, of a manufacturer, distributor or dispenser other than the person
27 who in fact manufactured, delivered or dispensed the substance.

28 (8) "Deliver" or "delivery" means the actual, constructive or attempted transfer, other than by
29 administering or dispensing, from one person to another of a controlled substance, whether or not
30 there is an agency relationship.

31 (9) "Device" means instruments, apparatus or contrivances, including their components, parts

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 or accessories, intended:

2 (a) For use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or
3 animals; or

4 (b) To affect the structure of any function of the body of humans or animals.

5 (10) "Dispense" means to deliver a controlled substance to an ultimate user or research subject
6 by or pursuant to the lawful order of a practitioner, and includes the prescribing, administering,
7 packaging, labeling or compounding necessary to prepare the substance for that delivery.

8 (11) "Dispenser" means a practitioner who dispenses.

9 (12) "Distributor" means a person who delivers.

10 (13) "Drug" means:

11 (a) Substances recognized as drugs in the official United States Pharmacopoeia, official
12 Homeopathic Pharmacopoeia of the United States or official National Formulary, or any supplement
13 to any of them;

14 (b) Substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of
15 disease in humans or animals;

16 (c) Substances (other than food) intended to affect the structure or any function of the body of
17 humans or animals; and

18 (d) Substances intended for use as a component of any article specified in paragraph (a), (b) or
19 (c) of this subsection; however, the term does not include devices or their components, parts or ac-
20 cessories.

21 (14) "Electronically transmitted" or "electronic transmission" means a communication sent or
22 received through technological apparatuses, including computer terminals or other equipment or
23 mechanisms linked by telephone or microwave relays, or any similar apparatus having electrical,
24 digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

25 (15) "Manufacture" means the production, preparation, propagation, compounding, conversion
26 or processing of a controlled substance, either directly or indirectly by extraction from substances
27 of natural origin, or independently by means of chemical synthesis, or by a combination of extraction
28 and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or
29 relabeling of its container, except that this term does not include the preparation or compounding
30 of a controlled substance:

31 (a) By a practitioner as an incident to administering or dispensing of a controlled substance in
32 the course of professional practice; or

33 (b) By a practitioner, or by an authorized agent under the practitioner's supervision, for the
34 purpose of, or as an incident to, research, teaching or chemical analysis and not for sale.

35 (16) "Marijuana" means all parts of the plant Cannabis family Moraceae **or of the plant**
36 **Cannabis family Cannabaceae**, whether growing or not; the resin extracted from any part of the
37 plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its
38 resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake
39 made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or
40 preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the
41 sterilized seed of the plant which is incapable of germination.

42 (17) "Person" includes a government subdivision or agency, business trust, estate, trust or any
43 other legal entity.

44 (18) "Practitioner" means physician, dentist, veterinarian, scientific investigator, certified nurse
45 practitioner, physician assistant or other person licensed, registered or otherwise permitted by law

1 to dispense, conduct research with respect to or to administer a controlled substance in the course
 2 of professional practice or research in this state but does not include a pharmacist or a pharmacy.

3 (19) "Prescription" means a written, oral or electronically transmitted direction, given by a
 4 practitioner for the preparation and use of a drug. When the context requires, "prescription" also
 5 means the drug prepared under such written, oral or electronically transmitted direction. Any label
 6 affixed to a drug prepared under written, oral or electronically transmitted direction shall promi-
 7 nently display a warning that the removal thereof is prohibited by law.

8 (20) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a
 9 controlled substance.

10 (21) "Research" means an activity conducted by the person registered with the federal Drug
 11 Enforcement Administration pursuant to a protocol approved by the United States Food and Drug
 12 Administration.

13 (22) "Ultimate user" means a person who lawfully possesses a controlled substance for the use
 14 of the person or for the use of a member of the household of the person or for administering to an
 15 animal owned by the person or by a member of the household of the person.

16 **SECTION 2.** ORS 475.302 is amended to read:

17 475.302. As used in ORS 475.300 to 475.346:

18 As used in ORS 475.300 to 475.346:

19 (1) "Attending physician" means a physician licensed under ORS chapter 677 who has primary
 20 responsibility for the care and treatment of a person diagnosed with a debilitating medical condition.

21 (2) "Debilitating medical condition" means:

22 (a) Cancer, glaucoma, agitation due to Alzheimer's disease, positive status for human
 23 immunodeficiency virus or acquired immune deficiency syndrome, or treatment for these conditions;

24 (b) A medical condition or treatment for a medical condition that produces, for a specific pa-
 25 tient, one or more of the following:

26 (A) Cachexia;

27 (B) Severe pain;

28 (C) Severe nausea;

29 (D) Seizures, including but not limited to seizures caused by epilepsy; or

30 (E) Persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis;

31 or

32 (c) Any other medical condition or treatment for a medical condition adopted by the department
 33 by rule or approved by the department pursuant to a petition submitted pursuant to ORS 475.334.

34 (3) "Delivery" has the meaning given that term in ORS 475.005. "Delivery" does not include
 35 transfer of marijuana by a registry identification cardholder to another registry identification
 36 cardholder if no consideration is paid for the transfer.

37 (4) "Department" means the Department of Human Services.

38 (5) "Designated primary caregiver" means an individual 18 years of age or older who has sig-
 39 nificant responsibility for managing the well-being of a person who has been diagnosed with a de-
 40 bilitating medical condition and who is designated as such on that person's application for a registry
 41 identification card or in other written notification to the department. "Designated primary
 42 caregiver" does not include the person's attending physician.

43 (6) "Marijuana" has the meaning given that term in ORS 475.005.

44 (7) "Marijuana grow site" means a location where marijuana is produced for use by a registry
 45 identification cardholder and that is registered under the provisions of ORS 475.304.

1 (8) “Medical use of marijuana” means the production, possession, delivery, or administration of
 2 marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive benefit of
 3 a person to mitigate the symptoms or effects of the person’s debilitating medical condition.

4 (9) “Production” has the meaning given that term in ORS 475.005.

5 (10) “Registry identification card” means a document issued by the department that identifies a
 6 person authorized to engage in the medical use of marijuana and the person’s designated primary
 7 caregiver, if any.

8 (11) “Usable marijuana” means the dried leaves and flowers of the plant *Cannabis* family
 9 **Moraceae or of the plant *Cannabis* family *Cannabaceae***, and any mixture or preparation thereof,
 10 that are appropriate for medical use as allowed in ORS 475.300 to 475.346. “Usable marijuana” does
 11 not include the seeds, stalks and roots of the plant.

12 (12) “Written documentation” means a statement signed by the attending physician of a person
 13 diagnosed with a debilitating medical condition or copies of the person’s relevant medical records.

14 **SECTION 3.** ORS 167.222 is amended to read:

15 167.222. (1) A person commits the offense of frequenting a place where controlled substances are
 16 used if the person keeps, maintains, frequents, or remains at a place, while knowingly permitting
 17 persons to use controlled substances in such place or to keep or sell them in violation of ORS
 18 475.005 to 475.285 and 475.840 to 475.980.

19 (2) Frequenting a place where controlled substances are used is a Class A misdemeanor.

20 (3) Notwithstanding subsection (2) of this section, if the conviction is for knowingly maintaining,
 21 frequenting or remaining at a place where less than one avoirdupois ounce of the dried leaves,
 22 stems, and flowers of the **marijuana** plant [*Cannabis family Moraceae*] is found at the time of the
 23 offense under this section, frequenting a place where controlled substances are used is a Class D
 24 violation.

25 (4) As used in this section[,]:

26 (a) “Frequents” means repeatedly or habitually visits, goes to or resorts to.

27 (b) **“Marijuana plant” means the plant *Cannabis* family *Moraceae* or the plant *Cannabis***
 28 **family *Cannabaceae*.**

29 **SECTION 4.** ORS 475.860 is amended to read:

30 475.860. (1) It is unlawful for any person to deliver marijuana.

31 (2) Unlawful delivery of marijuana is a Class B felony if the delivery is for consideration.

32 (3) Notwithstanding subsection (2) of this section, unlawful delivery of marijuana is a:

33 (a) Class A misdemeanor, if the delivery is for no consideration and consists of less than one
 34 avoirdupois ounce of the dried leaves, stems and flowers of the **marijuana** plant [*Cannabis family*
 35 *Moraceae*]; or

36 (b) Violation, if the delivery is for no consideration and consists of less than five grams of the
 37 dried leaves, stems and flowers of the **marijuana** plant [*Cannabis family Moraceae*]. A violation un-
 38 der this paragraph is punishable by a fine of not less than \$500 and not more than \$1,000. Fines
 39 collected under this paragraph shall be forwarded to the Department of Revenue for deposit in the
 40 Criminal Fine and Assessment Account established in ORS 137.300.

41 (4) Notwithstanding subsections (2) and (3) of this section, unlawful delivery of marijuana is a:

42 (a) Class A felony, if the delivery is to a person under 18 years of age and the defendant is at
 43 least 18 years of age and is at least three years older than the person to whom the marijuana is
 44 delivered; or

45 (b) Class C misdemeanor, if the delivery:

1 (A) Is for no consideration;

2 (B) Consists of less than five grams of the dried leaves, stems and flowers of the **marijuana**
3 plant [*Cannabis family Moraceae*];

4 (C) Takes place in a public place, as defined in ORS 161.015, that is within 1,000 feet of the real
5 property comprising a public or private elementary, secondary or career school attended primarily
6 by minors; and

7 (D) Is to a person who is 18 years of age or older.

8 **(5) As used in this section, “marijuana plant” has the meaning given that term in ORS**
9 **167.222.**

10 **SECTION 5.** ORS 475.864 is amended to read:

11 475.864. (1) It is unlawful for any person knowingly or intentionally to possess marijuana.

12 (2) Unlawful possession of marijuana is a Class B felony.

13 (3) Notwithstanding subsection (2) of this section, unlawful possession of marijuana is a violation
14 if the amount possessed is less than one avoirdupois ounce of the dried leaves, stems and flowers
15 of the **marijuana** plant [*Cannabis family Moraceae*]. A violation under this subsection is punishable
16 by a fine of not less than \$500 and not more than \$1,000. Fines collected under this subsection shall
17 be forwarded to the Department of Revenue for deposit in the Criminal Fine and Assessment Ac-
18 count established under ORS 137.300.

19 (4) Notwithstanding subsections (2) and (3) of this section, unlawful possession of marijuana is
20 a Class C misdemeanor if the amount possessed is less than one avoirdupois ounce of the dried
21 leaves, stems and flowers of the **marijuana** plant [*Cannabis family Moraceae*] and the possession
22 takes place in a public place, as defined in ORS 161.015, that is within 1,000 feet of the real property
23 comprising a public or private elementary, secondary or career school attended primarily by minors.

24 **(5) As used in this section, “marijuana plant” has the meaning given that term in ORS**
25 **167.222.**

26 **SECTION 6.** The amendments to ORS 167.222, 475.005, 475.302, 475.860 and 475.864 by
27 sections 1 to 5 of this 2009 Act apply to conduct occurring on or after the effective date of
28 this 2009 Act.