

A-Engrossed Senate Bill 728

Ordered by the Senate May 11
Including Senate Amendments dated May 11

Sponsored by Senator FERRIOLI (at the request of Teresa Dunn in memory of Brandon Dunn)

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.

[Reclassifies crime of manufacturing or delivering Schedule IV controlled substance as Class C felony. Punishes by minimum of 364 days' imprisonment and \$10,000 fine, and maximum of five years' imprisonment and \$125,000 fine.]

[Reclassifies crime of possessing Schedule IV controlled substance as Class A misdemeanor. Punishes by either 90 days in treatment facility and \$1,000 fine or one year's imprisonment and \$2,500 fine.]

[Reclassifies crime of distribution of Schedule IV controlled substance to minor as Class C felony. Punishes by maximum of five years' imprisonment, \$125,000 fine, or both.]

Subjects person who manufactures or delivers controlled substance in Schedule IV and thereby causes death to person to maximum of five years' imprisonment, \$125,000 fine, or both.

Directs State Board of Pharmacy to classify marijuana as controlled substance in Schedule II, III, IV or V. Directs board to classify methamphetamine as controlled substance in Schedule I. Specifies date by which board must classify marijuana and methamphetamine.

A BILL FOR AN ACT

1
2 Relating to controlled substances; creating new provisions; and amending ORS 475.840.

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

4 **SECTION 1.** ORS 475.840 is amended to read:

5 475.840. (1) Except as authorized by ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful
6 for any person to manufacture or deliver a controlled substance. Any person who violates this sub-
7 section with respect to:

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

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

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

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

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

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

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

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

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

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

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

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

8 (a) A controlled substance in Schedule I, is guilty of a Class B felony, except as otherwise pro-
9 vided in ORS 475.864.

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

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

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

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

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

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

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

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

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

23 **(6)(a) Notwithstanding subsection (1) of this section, a person who manufactures or de-**
24 **livers a controlled substance in Schedule IV and who thereby causes death to any person is**
25 **guilty of a Class C felony.**

26 **(b) For purposes of this subsection, causation is established when the controlled sub-**
27 **stance plays a substantial role in the death of any person.**

28 **SECTION 2. The State Board of Pharmacy shall classify marijuana as a controlled sub-**
29 **stance in Schedule II, III, IV or V.**

30 **SECTION 3. The State Board of Pharmacy shall classify methamphetamine as a con-**
31 **trolled substance in Schedule I.**

32 **SECTION 4. (1) The State Board of Pharmacy shall classify marijuana in accordance with**
33 **section 2 of this 2009 Act no later than 180 days after the effective date of this 2009 Act.**

34 **(2) The board shall classify methamphetamine in accordance with section 3 of this 2009**
35 **Act no later than 180 days after the effective date of this 2009 Act.**

36 **SECTION 5. The amendments to ORS 475.840 by section 1 of this 2009 Act apply to of-**
37 **fenses committed on or after the effective date of this 2009 Act.**

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