

Senate Bill 728

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 **as introduced**.

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.

A BILL FOR AN ACT

1
2 Relating to controlled substances; creating new provisions; and amending ORS 475.840 and 475.906.

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*] **Class C**
15 **felony**.

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

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

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

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

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

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

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

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

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 spect to:

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

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

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

6 (d) A controlled substance in Schedule IV, is guilty of a [*Class C*] **Class A** misdemeanor.

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

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

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

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

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

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

17 **(6)(a) When a person is convicted of an offense described in subsection (1)(d) of this**
 18 **section, a court shall impose a sentence of at least 364 days' imprisonment and a fine of at**
 19 **least \$10,000.**

20 **(b) When a person is convicted of an offense described in subsection (3)(d) of this section,**
 21 **a court shall impose a sentence of:**

22 **(A) 90 days in a court-approved treatment facility and a fine of \$1,000; or**

23 **(B) One year's imprisonment and a fine of \$2,500.**

24 **SECTION 2.** ORS 475.906 is amended to read:

25 475.906. Except as authorized by ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful
 26 for any person to deliver a controlled substance to a person under 18 years of age. Any person who
 27 violates this section with respect to:

28 (1) A controlled substance in Schedule I or II, is guilty of a Class A felony.

29 (2) A controlled substance in Schedule III, is guilty of a Class B felony.

30 (3) A controlled substance in Schedule IV, is guilty of a [*Class A misdemeanor*] **Class C**
 31 **felony.**

32 (4) A controlled substance in Schedule V, is guilty of a Class B misdemeanor.

33 **SECTION 3.** The amendments to ORS 475.840 and 475.906 by sections 1 and 2 of this 2009
 34 **Act apply to offenses committed on or after the effective date of this 2009 Act.**