

## SENATE AMENDMENTS TO SENATE BILL 728

By COMMITTEE ON JUDICIARY

May 11

- 1 On page 1 of the printed bill, line 2, delete “and 475.906”.
- 2 Delete lines 4 through 28 and delete page 2 and insert:
- 3 “**SECTION 1.** ORS 475.840 is amended to read:
- 4 “475.840. (1) Except as authorized by ORS 475.005 to 475.285 and 475.840 to 475.980, it is un-
- 5 lawful for any person to manufacture or deliver a controlled substance. Any person who violates this
- 6 subsection with respect to:
- 7 “(a) A controlled substance in Schedule I, is guilty of a Class A felony, except as otherwise
- 8 provided in ORS 475.860.
- 9 “(b) A controlled substance in Schedule II, is guilty of a Class B felony, except as otherwise
- 10 provided in ORS 475.878, 475.880, 475.882, 475.888, 475.890, 475.892, 475.904 and 475.906.
- 11 “(c) A controlled substance in Schedule III, is guilty of a Class C felony, except as otherwise
- 12 provided in ORS 475.904 and 475.906.
- 13 “(d) A controlled substance in Schedule IV, is guilty of a Class B misdemeanor.
- 14 “(e) A controlled substance in Schedule V, is guilty of a Class C misdemeanor.
- 15 “(2) Except as authorized in ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful for any
- 16 person to create or deliver a counterfeit substance. Any person who violates this subsection with
- 17 respect to:
- 18 “(a) A counterfeit substance in Schedule I, is guilty of a Class A felony.
- 19 “(b) A counterfeit substance in Schedule II, is guilty of a Class B felony.
- 20 “(c) A counterfeit substance in Schedule III, is guilty of a Class C felony.
- 21 “(d) A counterfeit substance in Schedule IV, is guilty of a Class B misdemeanor.
- 22 “(e) A counterfeit substance in Schedule V, is guilty of a Class C misdemeanor.
- 23 “(3) It is unlawful for any person knowingly or intentionally to possess a controlled substance
- 24 unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a
- 25 practitioner while acting in the course of professional practice, or except as otherwise authorized
- 26 by ORS 475.005 to 475.285 and 475.840 to 475.980. Any person who violates this subsection with re-
- 27 spect to:
- 28 “(a) A controlled substance in Schedule I, is guilty of a Class B felony, except as otherwise
- 29 provided in ORS 475.864.
- 30 “(b) A controlled substance in Schedule II, is guilty of a Class C felony.
- 31 “(c) A controlled substance in Schedule III, is guilty of a Class A misdemeanor.
- 32 “(d) A controlled substance in Schedule IV, is guilty of a Class C misdemeanor.
- 33 “(e) A controlled substance in Schedule V, is guilty of a violation.
- 34 “(4) In any prosecution under this section for manufacture, possession or delivery of that plant
- 35 of the genus *Lophophora* commonly known as peyote, it is an affirmative defense that the peyote is

1 being used or is intended for use:

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

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

4 “(c) In a manner that is not dangerous to the health of the user or others who are in the  
5 proximity of the user.

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

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

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

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

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

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

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

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

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