

Enrolled
House Bill 2174

Sponsored by Representative COWAN; Senators MONNES ANDERSON, VERGER (at the request of Rob Bovett and Oregon Narcotics Enforcement Association) (Presession filed.)

CHAPTER

AN ACT

Relating to controlled substances; creating new provisions; amending ORS 342.143, 475.125, 475.135, 475.185, 475.245, 475.495, 475.914, 475.967 and 475.973; repealing ORS 475.045; and declaring an emergency.

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

SECTION 1. ORS 475.495 is amended to read:

475.495. (1) The Illegal Drug Cleanup Fund is established separate and distinct from the General Fund in the State Treasury.

(2) The following moneys shall be deposited into the State Treasury and credited to the Illegal Drug Cleanup Fund:

- (a) Moneys recovered or otherwise received from responsible parties for cleanup costs;
 - (b) Moneys received from a state agency, local government unit or any agency of a local government unit for cleanup of illegal drug manufacturing sites, including moneys received from forfeiture proceeds under the provisions of ORS 131A.360 and 131A.365;
 - (c) Moneys received from the federal government for cleanup of illegal drug manufacturing sites;
- and

(d) Any penalty, fine or punitive damages recovered under ORS 475.435, 475.455 or 475.485.

(3) The State Treasurer may invest and reinvest moneys in the Illegal Drug Cleanup Fund in the manner provided by law. Interest earned by the fund shall be credited to the fund.

(4) The moneys in the Illegal Drug Cleanup Fund are appropriated continuously to the Department of Environmental Quality to be used as provided for in subsection (5) of this section.

(5) Moneys in the Illegal Drug Cleanup Fund may be used for the following purposes:

- (a) Payment of the state’s cleanup costs; [and]
 - (b) Funding any action or activity authorized by ORS 475.415 to 475.455, 475.475 and 475.485[.];
- and

(c) Funding safety certification training and personal protective equipment for law enforcement personnel assigned to respond to illegal drug manufacturing sites.

(6) In addition to the purposes provided for in subsection (5) of this section, moneys in the Illegal Drug Cleanup Fund received from forfeiture proceeds under the provisions of ORS 131A.360 and 131A.365 may be transferred to the Department of Human Services to support the administration of the illegal drug manufacturing cleanup program provided for in ORS 453.855 to 453.912.

(7) The department may not expend more than \$250,000 in each biennium of the forfeiture proceeds that are paid into the Illegal Drug Cleanup Fund by political subdivisions under the provisions of ORS 131A.360. If at the end of a biennium more than \$250,000 has been paid into the Illegal Drug

Cleanup Fund under the provisions of ORS 131A.360, the department shall refund to each political subdivision that made payments into the fund a pro rata share of the excess amount, based on the amount of forfeiture proceeds paid into the fund by the political subdivision.

SECTION 2. ORS 475.245 is amended to read:

475.245. Whenever any person pleads guilty to or is found guilty of possession of a controlled substance under ORS 475.840 (3), 475.854, 475.864, 475.874, 475.884 or 475.894 **or section 10, 15 or 20 of this 2011 Act, of endangering the welfare of a minor under ORS 163.575 (1)(b), of frequenting a place where controlled substances are used under ORS 167.222** or of a property offense that is motivated by a dependence on a controlled substance, the court, without entering a judgment of guilt and with the consent of the district attorney and the accused, may defer further proceedings and place the person on probation. Upon violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against the person. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. There may be only one discharge and dismissal under this section with respect to any person.

SECTION 3. ORS 475.185 is amended to read:

475.185. (1) Except when dispensed directly by a practitioner to an ultimate user, *[no]* a controlled substance in Schedule II may **not** be dispensed without the written prescription of a practitioner.

(2) In emergency situations, as defined by rule of the State Board of Pharmacy, Schedule II drugs may be dispensed upon oral or electronically transmitted prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of ORS 475.165. *[No]* A prescription for a Schedule II substance may **not** be refilled.

(3) Except when dispensed directly by a practitioner to an ultimate user, a controlled substance included in *[Schedule III, IV or V, which is a prescription drug, shall]* **Schedule III or IV may not** be dispensed without a written, oral or electronically transmitted prescription of a practitioner. The prescription *[shall]* **may not** be filled or refilled more than six months after the date on which it was issued and *[no]* a prescription authorized to be refilled may **not** be refilled more than five times. Additional quantities of the controlled substances listed in *[Schedule III, IV or V]* **Schedule III or IV may only** be authorized by a practitioner through issuance of a new prescription.

(4) **Except when dispensed directly by a practitioner to an ultimate user, a controlled substance included in Schedule V that is a prescription drug may not be dispensed without a written, oral or electronically transmitted prescription of a practitioner. The prescription may not be filled or refilled more than six months after the date on which it was issued and a prescription authorized to be refilled may not be refilled more than five times. Additional quantities of the controlled substances listed in Schedule V may only be authorized by a practitioner through issuance of a new prescription.**

[(4)] (5) A controlled substance *[shall]* **may not** be delivered or dispensed other than for a medical purpose.

[(5)] (6) Except in good faith and in the course of professional practice only, a practitioner or a pharmacist may not dispense controlled substances.

[(6)] (7) Any oral or electronically transmitted prescription authorized by statute or rule *[shall]* **must** be stored by electronic means or reduced promptly to writing and filed by the pharmacy.

[(7)] (8) Issuance, preparation, labeling, dispensing, recordkeeping and filing of prescriptions or medication orders *[shall]* **must** be in conformance with the requirements of the federal law and rules of the board.

SECTION 4. ORS 475.045 is repealed.

SECTION 5. Sections 6 to 20 of this 2011 Act are added to and made a part of ORS 475.846 to 475.894.

SECTION 6. (1) Except as authorized by ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful for any person to manufacture oxycodone.

(2) Unlawful manufacture of oxycodone is a Class B felony.

SECTION 7. (1) Except as authorized by ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful for any person to manufacture oxycodone within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2) Unlawful manufacture of oxycodone within 1,000 feet of a school is a Class A felony.

SECTION 8. (1) Except as authorized by ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful for any person to deliver oxycodone.

(2) Unlawful delivery of oxycodone is a Class B felony.

(3) Notwithstanding subsection (2) of this section, unlawful delivery of oxycodone is a Class A felony if the delivery is to a person under 18 years of age.

SECTION 9. (1) Except as authorized by ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful for any person to deliver oxycodone within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2) Unlawful delivery of oxycodone within 1,000 feet of a school is a Class A felony.

SECTION 10. (1) It is unlawful for any person knowingly or intentionally to possess oxycodone unless the oxycodone was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of professional practice, or except as otherwise authorized by ORS 475.005 to 475.285 and 475.840 to 475.980.

(2) Unlawful possession of oxycodone is a Class C felony.

SECTION 11. (1) Except as authorized by ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful for any person to manufacture hydrocodone.

(2) Unlawful manufacture of hydrocodone is a Class C felony.

SECTION 12. (1) Except as authorized by ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful for any person to manufacture hydrocodone within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2) Unlawful manufacture of hydrocodone within 1,000 feet of a school is a Class B felony.

SECTION 13. (1) Except as authorized by ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful for any person to deliver hydrocodone.

(2) Unlawful delivery of hydrocodone is a Class C felony.

(3) Notwithstanding subsection (2) of this section, unlawful delivery of hydrocodone is a Class B felony if the delivery is to a person under 18 years of age.

SECTION 14. (1) Except as authorized by ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful for any person to deliver hydrocodone within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2) Unlawful delivery of hydrocodone within 1,000 feet of a school is a Class B felony.

SECTION 15. (1) It is unlawful for any person knowingly or intentionally to possess hydrocodone unless the hydrocodone was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of professional practice, or except as otherwise authorized by ORS 475.005 to 475.285 and 475.840 to 475.980.

(2) Unlawful possession of hydrocodone is a Class A misdemeanor.

SECTION 16. (1) Except as authorized by ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful for any person to manufacture methadone.

(2) Unlawful manufacture of methadone is a Class B felony.

SECTION 17. (1) Except as authorized by ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful for any person to manufacture methadone within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2) Unlawful manufacture of methadone within 1,000 feet of a school is a Class A felony.

SECTION 18. (1) Except as authorized by ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful for any person to deliver methadone.

(2) Unlawful delivery of methadone is a Class B felony.

(3) Notwithstanding subsection (2) of this section, unlawful delivery of methadone is a Class A felony if the delivery is to a person under 18 years of age.

SECTION 19. (1) Except as authorized by ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful for any person to deliver methadone within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2) Unlawful delivery of methadone within 1,000 feet of a school is a Class A felony.

SECTION 20. (1) It is unlawful for any person knowingly or intentionally to possess methadone unless the methadone was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of professional practice, or except as otherwise authorized by ORS 475.005 to 475.285 and 475.840 to 475.980.

(2) Unlawful possession of methadone is a Class C felony.

SECTION 21. ORS 342.143 is amended to read:

342.143. (1) No teaching, personnel service or administrative license [*shall*] **may** be issued to any person until the person has attained the age of 18 years and has furnished satisfactory evidence of proper educational training.

(2) The Teacher Standards and Practices Commission may require an applicant for a teaching, personnel service or administrative license or for registration as a public charter school teacher or administrator to furnish evidence satisfactory to the commission of good moral character, mental and physical health, and such other evidence as it may deem necessary to establish the applicant's fitness to serve as a teacher or administrator.

(3) Without limiting the powers of the Teacher Standards and Practices Commission under subsection (2) of this section:

(a) No teaching, personnel service or administrative license or registration as a public charter school teacher or administrator [*shall*] **may** be issued to any person who:

(A) Has been convicted of a crime listed in ORS 163.095, 163.115, 163.185, 163.235, 163.355, 163.365, 163.375, 163.385, 163.395, 163.405, 163.408, 163.411, 163.415, 163.425, 163.427, 163.432, 163.433, 163.435, 163.445, 163.465, 163.515, 163.525, 163.547, 163.575, 163.670, 163.675 (1985 Replacement Part), 163.680 (1993 Edition), 163.684, 163.686, 163.687, 163.688, 163.689, 164.325, 164.415, 166.005, 166.087, 167.007, 167.012, 167.017, 167.054, 167.057, 167.062, 167.075, 167.080, 167.090, 475.848, 475.852, 475.858, 475.860, 475.862, 475.864 (4), 475.868, 475.872, 475.878, 475.880, 475.882, 475.888, 475.890, 475.892, 475.904 or 475.906 **or section 7, 8, 9, 12, 13, 14, 17, 18 or 19 of this 2011 Act.**

(B) Has been convicted under ORS 161.405 of an attempt to commit any of the crimes listed in subparagraph (A) of this paragraph.

(C) Has been convicted in another jurisdiction of a crime that is substantially equivalent, as defined by rule, to any of the crimes listed in subparagraphs (A) and (B) of this paragraph.

(D) Has had a teaching, personnel service or administrative license or registration revoked in another jurisdiction for a reason that is substantially equivalent, as defined by rule, to a reason described in ORS 342.175 and the revocation is not subject to further appeal. A person whose privilege to apply for a license or registration is denied under this subparagraph may apply for reinstatement of the privilege as provided in ORS 342.175 (4).

(b) The Teacher Standards and Practices Commission may refuse to issue a license or registration to any person who has been convicted of a crime involving the illegal use, sale or possession of controlled substances.

(4) In denying the issuance of a license or registration under this section, the commission shall follow the procedure set forth in ORS 342.176 and 342.177.

(5) The Department of Education shall provide school districts and public charter schools a copy of the list contained in subsection (3) of this section.

SECTION 22. ORS 475.967 is amended to read:

475.967. (1) A person commits the crime of possession of a precursor substance with intent to manufacture a controlled substance if the person possesses one or more precursor substances with the intent to manufacture a controlled substance in violation of ORS 475.840 (1), 475.846, 475.848, 475.866, 475.868, 475.876, 475.878, 475.886 or 475.888 **or section 6, 7, 11, 12, 16 or 17 of this 2011 Act.**

(2) Possession of a precursor substance with intent to manufacture a controlled substance is a Class B felony.

SECTION 23. ORS 475.125 is amended to read:

475.125. (1) Every person who manufactures, delivers or dispenses any controlled substance within this state or who proposes to engage in the manufacture, delivery or dispensing of any controlled substance within this state, must obtain annually a registration issued by the State Board of Pharmacy in accordance with its rules.

(2) Persons registered by the board under ORS 475.005 to 475.285 and 475.840 to 475.980 to manufacture, deliver, dispense or conduct research with controlled substances may possess, manufacture, deliver, dispense or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of ORS [475.045,] 475.095 and 475.125 to 475.185 and other applicable laws of this state.

(3) The following persons need not register and may lawfully possess controlled substances under ORS 475.005 to 475.285 and 475.840 to 475.980:

(a) An agent or employee of any registered manufacturer, distributor or dispenser of any controlled substance if the agent or employee is acting in the usual course of business or employment.

(b) A common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment.

(c) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V substance, unless otherwise prohibited.

(d) A practitioner otherwise licensed under the laws of this state and authorized to dispense or administer a controlled substance by the licensing authority.

(4) The board may waive by rule the requirement for registration of certain manufacturers or dispensers if it finds it consistent with the public health and safety.

(5) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, delivers or dispenses controlled substances.

(6) The board may inspect the establishment of a registrant or applicant for registration in accordance with the rules of the board.

SECTION 24. ORS 475.135 is amended to read:

475.135. (1) The State Board of Pharmacy shall register or renew the registration of an applicant to manufacture or dispense controlled substances included in schedules under procedures defined in ORS 475.035, unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board shall consider the following factors:

(a) Failure to maintain effective controls against diversion of controlled substances into other than legitimate medical, scientific or industrial channels;

(b) Failure to comply with applicable state or local laws;

(c) Any convictions of the applicant under any federal or state laws relating to any controlled substance;

(d) Past experience in the manufacture, delivery or dispensing of controlled substances and the existence in the applicant's establishment of effective controls against diversion;

(e) Furnishing by the applicant of false or fraudulent material in any application filed under ORS 475.005 to 475.285 and 475.840 to 475.980;

(f) Suspension or revocation of the applicant's federal registration to manufacture, deliver or dispense controlled substances as authorized by federal law; or

(g) Any other factors relevant to and consistent with the public health and safety.

(2) Registration under subsection (1) of this section does not entitle a registrant to manufacture, deliver or dispense controlled substances in Schedule I or II other than those specified in the registration.

(3) Practitioners must be registered to conduct research with controlled substances in Schedules I through V if they are authorized to conduct research under the law of this state. The board need not require separate registration under ORS [475.045,] 475.095 and 475.125 to 475.185 for practitioners engaging in research with controlled substances in Schedules I through V where the registrant is already registered under ORS [475.045,] 475.095 and 475.125 to 475.185 in another capacity. Persons with valid registration from the Drug Enforcement Administration for research on controlled substances may conduct research within this state in compliance with other state law upon furnishing the board evidence of that federal registration, and are exempt from state prosecution for possession and distribution of controlled substances to the extent of the registration. Registration under ORS 475.005 to 475.285 and 475.840 to 475.980 does not exempt the registrant from compliance with any other relevant law of this state or the United States, unless such exemption is expressly provided under ORS 475.005 to 475.285 and 475.840 to 475.980.

(4) Notwithstanding this section, the manufacture, delivery or dispensing of any controlled substance excluded from any medical use by federal law is prohibited, except:

(a) For research authorized under subsection (3) of this section and ORS 475.225; or

(b) As otherwise provided by state or federal law.

(5) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration, excluding fees, entitles them to be registered under ORS [475.045,] 475.095 and 475.125 to 475.185.

SECTION 25. ORS 475.914 is amended to read:

475.914. (1) It is unlawful for any person:

(a) Who is subject to ORS [475.045,] 475.095 and 475.125 to 475.185 to deliver or dispense a controlled substance in violation of ORS 475.185;

(b) Who is a registrant, to manufacture a controlled substance not authorized by this registration, or to deliver or dispense a controlled substance not authorized by the registration to another registrant or other authorized person;

(c) To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under ORS 475.005 to 475.285 and 475.840 to 475.980;

(d) To refuse an entry into any premises for any inspection authorized by ORS 475.005 to 475.285 and 475.840 to 475.980; or

(e) To keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft or other structure or place, while knowingly permitting persons to use controlled substances in such places in violation of ORS 475.005 to 475.285 and 475.840 to 475.980, or which is used for keeping or selling them in violation of ORS 475.005 to 475.285 and 475.840 to 475.980.

(2) Any person who violates this section with respect to:

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

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

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

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

SECTION 26. ORS 475.973 is amended to read:

475.973. (1)(a) [Notwithstanding ORS 475.045,] The State Board of Pharmacy may not adopt rules that exempt a product containing ephedrine or pseudoephedrine from classification as a controlled substance. Except as otherwise provided in this paragraph, the State Board of Pharmacy shall adopt rules to classify ephedrine, pseudoephedrine and phenylpropanolamine as Schedule III controlled

substances. The Schedule III classification may be modified by the State Board of Pharmacy if the State Board of Pharmacy finds that restrictions on products containing ephedrine, pseudoephedrine or phenylpropanolamine under a Schedule III designation do not significantly reduce the number of methamphetamine laboratories within the state.

(b) Records of transactions involving products containing ephedrine, pseudoephedrine or phenylpropanolamine are subject to inspection by the State Board of Pharmacy and law enforcement agencies. A person required to make or maintain records of transactions involving products containing ephedrine, pseudoephedrine or phenylpropanolamine shall forward the records to the Department of State Police if directed to do so by the department. Failure to forward records as required by this paragraph is a Class A misdemeanor.

(2) This section does not apply to products that the State Board of Pharmacy, upon application of a manufacturer, exempts by rule because the product is formulated to effectively prevent conversion of the active ingredient into methamphetamine or its salts or precursors. Upon notification from the Department of State Police that the department has probable cause to believe that a product exempted under this subsection does not effectively prevent conversion of the active ingredient into methamphetamine or its salts or precursors, the State Board of Pharmacy may issue an emergency rule revoking the exemption for the product pending a full hearing.

SECTION 27. Sections 6 to 20 of this 2011 Act and the amendments to ORS 342.143, 475.185, 475.245, 475.914 and 475.967 by sections 2, 3, 21, 22 and 25 of this 2011 Act apply to conduct occurring on or after the effective date of this 2011 Act.

SECTION 28. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by House April 27, 2011

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Passed by Senate June 14, 2011

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2011

Approved:

.....M.,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2011

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Kate Brown, Secretary of State