

# House Bill 2674

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary)

## 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**.

Reduces possession of user quantity of controlled substance in Schedules I and II to Class A misdemeanor. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both. Defines "user quantity" as quantity of controlled substance that is less than quantities listed in ORS 475.900 (2)(b) and possession of which is not commercial drug offense.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to possession of controlled substances; amending ORS 161.570, 475.005, 475.840, 475.854,  
3 475.864, 475.874, 475.884 and 475.894; and declaring an emergency.

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

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

6 475.840. (1) Except as authorized by ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful  
7 for *[any]* a person to manufacture or deliver a controlled substance. *[Any]* A person who violates  
8 this subsection with respect to:

9 (a) A controlled substance in Schedule I, is guilty of a Class A felony, except as otherwise pro-  
10 vided in ORS *[475.860]* **475.886 and 475.890**.

11 (b) A controlled substance in Schedule II, is guilty of a Class B felony, except as otherwise  
12 provided in ORS **475.856, 475.858, 475.860, 475.862, 475.878, 475.880, 475.882, 475.888, *[475.890],***  
13 **475.892, 475.904 and 475.906**.

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

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

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

18 (2) Except as authorized in ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful for  
19 *[any]* a person to create or deliver a counterfeit substance. *[Any]* A person who violates this sub-  
20 section with respect to:

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

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

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

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

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

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

**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 respect to:

2 (a) A controlled substance in Schedule I[,];

3 (A) Is guilty of a Class B felony, except as otherwise provided in [ORS 475.864] **subparagraph**  
 4 **(B) of this paragraph and ORS 475.894.**

5 **(B) Is guilty of a Class A misdemeanor if the person possesses a user quantity of the**  
 6 **controlled substance.**

7 (b) A controlled substance in Schedule II[,];

8 (A) Is guilty of a Class C felony, **except as otherwise provided in subparagraph (B) of this**  
 9 **paragraph and ORS 475.864.**

10 **(B) Is guilty of a Class A misdemeanor if the person possesses a user quantity of the**  
 11 **controlled substance.**

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

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

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

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

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

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

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

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

25 (6)(a) Notwithstanding subsection (1) of this section, a person who **unlawfully** manufactures or  
 26 delivers a controlled substance in Schedule IV and who thereby causes death to [any] **another**  
 27 person is guilty of a Class C felony.

28 (b) For purposes of this subsection, causation is established when the controlled substance plays  
 29 a substantial role in the death of [any] **the other** person.

30 **SECTION 2.** ORS 475.854 is amended to read:

31 475.854. (1) It is unlawful for [any] a person knowingly or intentionally to possess heroin.

32 (2)(a) **Except as provided in paragraph (b) of this subsection,** unlawful possession of heroin  
 33 is a Class B felony.

34 **(b) Unlawful possession of heroin is a Class A misdemeanor if the person possesses a user**  
 35 **quantity of heroin.**

36 **SECTION 3.** ORS 475.864 is amended to read:

37 475.864. (1) It is unlawful for [any] a person knowingly or intentionally to possess marijuana.

38 (2)(a) **Except as provided in paragraph (b) of this subsection and subsections (3) and (4)**  
 39 **of this section,** unlawful possession of marijuana is a Class B felony.

40 **(b) Except as provided in subsections (3) and (4) of this section, unlawful possession of**  
 41 **marijuana is a Class A misdemeanor if the person possesses a user quantity of marijuana.**

42 (3) [Notwithstanding subsection (2) of this section,] Unlawful possession of marijuana is a vio-  
 43 lation if the amount possessed is less than one avoirdupois ounce of the dried leaves, stems and  
 44 flowers of the plant Cannabis family Moraceae. A violation under this subsection is punishable by  
 45 a fine of not less than \$500 and not more than \$1,000. Fines collected under this subsection shall

1 be forwarded to the Department of Revenue for deposit in the Criminal Fine and Assessment Ac-  
 2 count established under ORS 137.300.

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

8 **SECTION 4.** ORS 475.874 is amended to read:

9 475.874. (1) It is unlawful for *[any]* a person knowingly or intentionally to possess  
 10 3,4-methylenedioxymethamphetamine.

11 (2)(a) **Except as provided in paragraph (b) of this subsection,** unlawful possession of  
 12 3,4-methylenedioxymethamphetamine is a Class B felony.

13 **(b) Unlawful possession of 3,4-methylenedioxymethamphetamine is a Class A**  
 14 **misdemeanor if the person possesses a user quantity of**  
 15 **3,4-methylenedioxymethamphetamine.**

16 **SECTION 5.** ORS 475.884 is amended to read:

17 475.884. (1) It is unlawful for *[any]* a person knowingly or intentionally to possess cocaine unless  
 18 the substance was obtained directly from, or pursuant to, a valid prescription or order of a practi-  
 19 tioner while acting in the course of professional practice, or except as otherwise authorized by ORS  
 20 475.005 to 475.285 and 475.840 to 475.980.

21 (2)(a) **Except as provided in paragraph (b) of this subsection,** unlawful possession of cocaine  
 22 is a Class C felony.

23 **(b) Unlawful possession of cocaine is a Class A misdemeanor if the person possesses a**  
 24 **user quantity of cocaine.**

25 **SECTION 6.** ORS 475.894 is amended to read:

26 475.894. (1) It is unlawful for *[any]* a person knowingly or intentionally to possess methamphet-  
 27 amine unless the substance was obtained directly from, or pursuant to, a valid prescription or order  
 28 of a practitioner while acting in the course of professional practice, or except as otherwise author-  
 29 ized by ORS 475.005 to 475.285 and 475.840 to 475.980.

30 (2)(a) **Except as provided in paragraph (b) of this subsection,** unlawful possession of meth-  
 31 amphetamine is a Class C felony.

32 **(b) Unlawful possession of methamphetamine is a Class A misdemeanor if the person**  
 33 **possesses a user quantity of methamphetamine.**

34 **SECTION 7.** ORS 475.005 is amended to read:

35 475.005. As used in ORS 475.005 to 475.285 and 475.840 to 475.980, unless the context requires  
 36 otherwise:

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

39 (2) “Administer” means the direct application of a controlled substance, whether by injection,  
 40 inhalation, ingestion or any other means, to the body of a patient or research subject by:

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

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

43 (3) “Administration” means the Drug Enforcement Administration of the United States Depart-  
 44 ment of Justice, or its successor agency.

45 (4) “Agent” means an authorized person who acts on behalf of or at the direction of a man-

1 ufacturer, distributor or dispenser. It does not include a common or contract carrier, public  
2 warehouseman or employee of the carrier or warehouseman.

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

4 (6) "Controlled substance":

5 (a) Means a drug or its immediate precursor classified in Schedules I through V under the fed-  
6 eral Controlled Substances Act, 21 U.S.C. 811 to 812, as modified under ORS 475.035. The use of the  
7 term "precursor" in this paragraph does not control and is not controlled by the use of the term  
8 "precursor" in ORS 475.840 to 475.980.

9 (b) Does not mean industrial hemp, as defined in ORS 571.300, or industrial hemp commodities  
10 or products.

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

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

18 (9) "Device" means instruments, apparatus or contrivances, including their components, parts  
19 or accessories, intended:

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

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

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

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

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

28 (13) "Drug" means:

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

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

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

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

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

43 (15) "Manufacture" means the production, preparation, propagation, compounding, conversion  
44 or processing of a controlled substance, either directly or indirectly by extraction from substances  
45 of natural origin, or independently by means of chemical synthesis, or by a combination of extraction

1 and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or  
 2 relabeling of its container, except that this term does not include the preparation or compounding  
 3 of a controlled substance:

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

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

8 (16) “Marijuana”:

9 (a) Except as provided in this subsection, means all parts of the plant Cannabis family  
 10 Moraceae, whether growing or not; the resin extracted from any part of the plant; and every com-  
 11 pound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin.

12 (b) Does not mean the mature stalks of the plant, fiber produced from the stalks, oil or cake  
 13 made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or  
 14 preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the  
 15 sterilized seed of the plant which is incapable of germination.

16 (c) Does not mean industrial hemp, as defined in ORS 571.300, or industrial hemp commodities  
 17 or products.

18 (17) “Person” includes a government subdivision or agency, business trust, estate, trust or any  
 19 other legal entity.

20 (18) “Practitioner” means physician, dentist, veterinarian, scientific investigator, certified nurse  
 21 practitioner, physician assistant or other person licensed, registered or otherwise permitted by law  
 22 to dispense, conduct research with respect to or to administer a controlled substance in the course  
 23 of professional practice or research in this state but does not include a pharmacist or a pharmacy.

24 (19) “Prescription” means a written, oral or electronically transmitted direction, given by a  
 25 practitioner for the preparation and use of a drug. When the context requires, “prescription” also  
 26 means the drug prepared under such written, oral or electronically transmitted direction. Any label  
 27 affixed to a drug prepared under written, oral or electronically transmitted direction shall promi-  
 28 nently display a warning that the removal thereof is prohibited by law.

29 (20) “Production” includes the manufacture, planting, cultivation, growing or harvesting of a  
 30 controlled substance.

31 (21) “Research” means an activity conducted by the person registered with the federal Drug  
 32 Enforcement Administration pursuant to a protocol approved by the United States Food and Drug  
 33 Administration.

34 (22) “Ultimate user” means a person who lawfully possesses a controlled substance for the use  
 35 of the person or for the use of a member of the household of the person or for administering to an  
 36 animal owned by the person or by a member of the household of the person.

37 **(23) “User quantity” means a quantity of a controlled substance:**

38 **(a) That is less than the quantities listed in ORS 475.900 (2)(b); and**

39 **(b) The possession of which is not a commercial drug offense within the meaning of ORS**  
 40 **475.900 (1)(b).**

41 **SECTION 8.** ORS 161.570 is amended to read:

42 161.570. (1) As used in this section, “nonperson felony” has the meaning given that term in the  
 43 rules of the Oregon Criminal Justice Commission.

44 (2) A district attorney may elect to treat a Class C nonperson felony or a [violation of] **felony**  
 45 **described in** ORS 475.840 (3)(a), 475.854, 475.864 [(2)] or 475.874 as a Class A misdemeanor. The

1 election must be made by the district attorney orally or in writing at the time of the first appear-  
 2 ance of the defendant. If a district attorney elects to treat a Class C felony or a *[violation of]* **felony**  
 3 **described in** ORS 475.840 (3)(a), 475.854, 475.864 [(2)] or 475.874 as a Class A misdemeanor under  
 4 this subsection, the court shall amend the accusatory instrument to reflect the charged offense as  
 5 a Class A misdemeanor.

6 (3) If, at some time after the first appearance of a defendant charged with a Class C nonperson  
 7 felony or a *[violation of]* **felony described in** ORS 475.840 (3)(a), 475.854, 475.864 [(2)] or 475.874, the  
 8 district attorney and the defendant agree to treat the charged offense as a Class A misdemeanor,  
 9 the court may allow the offense to be treated as a Class A misdemeanor by stipulation of the parties.

10 (4) If a Class C felony or a *[violation of]* **felony described in** ORS 475.840 (3)(a), 475.854, 475.864  
 11 [(2)] or 475.874 is treated as a Class A misdemeanor under this section, the court shall clearly de-  
 12 nominate the offense as a Class A misdemeanor in any judgment entered in the matter.

13 (5) If no election or stipulation is made under this section, the case proceeds as a felony.

14 (6) Before a district attorney may make an election under subsection (2) of this section, the  
 15 district attorney shall adopt written guidelines for determining when and under what circumstances  
 16 the election may be made. The district attorney shall apply the guidelines uniformly.

17 (7) Notwithstanding ORS 161.635, the maximum fine that a court may impose upon conviction  
 18 of a misdemeanor under this section may not exceed the amount provided in ORS 161.625 for the  
 19 class of felony receiving Class A misdemeanor treatment.

20 **SECTION 9. This 2011 Act being necessary for the immediate preservation of the public**  
 21 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**  
 22 **on its passage.**