

A-Engrossed
House Bill 3104

Ordered by the House May 4
Including House Amendments dated May 4

Sponsored by Representative HICKS

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.

[Includes youth correction facility staff within definition of "staff member" for purposes of assault in the third degree and aggravated harassment.]

Modifies penalties for certain crimes related to possession of controlled substances.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to crime; amending ORS 475.005, 475.840, 475.854 and 475.874; and declaring an emergency.

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]* a person to manufacture or deliver a controlled substance. *[Any]* A person who violates
7 this subsection 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]* **475.886 and 475.890**.

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

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

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

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
18 *[any]* a person to create or deliver a counterfeit substance. *[Any]* A person who violates this sub-
19 section with 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]* a 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

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 by ORS 475.005 to 475.285 and 475.840 to 475.980. [Any] A person who violates this subsection with
2 respect to:

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

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

6 (B) Is guilty of a Class C felony if the person possesses a user quantity of the controlled
7 substance.

8 (b) A controlled substance in Schedule II, is guilty of a Class C felony, **except as otherwise**
9 **provided in ORS 475.864.**

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

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

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

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

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

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

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

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

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

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

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

29 475.854. (1) It is unlawful for [any] a person knowingly or intentionally to possess heroin.

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

32 (b) **Unlawful possession of heroin is a Class C felony if the person possesses a user**
33 **quantity of heroin.**

34 **SECTION 3.** ORS 475.874 is amended to read:

35 475.874. (1) It is unlawful for [any] a person knowingly or intentionally to possess
36 3,4-methylenedioxymethamphetamine.

37 (2)(a) **Except as provided in paragraph (b) of this subsection,** unlawful possession of
38 3,4-methylenedioxymethamphetamine is a Class B felony.

39 (b) **Unlawful possession of 3,4-methylenedioxymethamphetamine is a Class C felony if the**
40 **person possesses a user quantity of 3,4-methylenedioxymethamphetamine.**

41 **SECTION 4.** ORS 475.005 is amended to read:

42 475.005. As used in ORS 475.005 to 475.285 and 475.840 to 475.980, unless the context requires
43 otherwise:

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

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

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

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

5 (3) "Administration" means the Drug Enforcement Administration of the United States Depart-
6 ment of Justice, or its successor agency.

7 (4) "Agent" means an authorized person who acts on behalf of or at the direction of a man-
8 ufacturer, distributor or dispenser. It does not include a common or contract carrier, public
9 warehouseman or employee of the carrier or warehouseman.

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

11 (6) "Controlled substance":

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

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

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

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

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

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

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

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

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

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

35 (13) "Drug" means:

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

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

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

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

1 (14) “Electronically transmitted” or “electronic transmission” means a communication sent or
2 received through technological apparatuses, including computer terminals or other equipment or
3 mechanisms linked by telephone or microwave relays, or any similar apparatus having electrical,
4 digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

5 (15) “Manufacture” means the production, preparation, propagation, compounding, conversion
6 or processing of a controlled substance, either directly or indirectly by extraction from substances
7 of natural origin, or independently by means of chemical synthesis, or by a combination of extraction
8 and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or
9 relabeling of its container, except that this term does not include the preparation or compounding
10 of a controlled substance:

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

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

15 (16) “Marijuana”:

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

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

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

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

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

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

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

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

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

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

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

1 **(b) The possession of which is not a commercial drug offense within the meaning of ORS**
2 **475.900 (1)(b).**

3 **SECTION 5.** **This 2011 Act being necessary for the immediate preservation of the public**
4 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
5 **on its passage.**

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