

# Senate Bill 327

Sponsored by Senator FERRIOLI (in memory of Steven "Upty" Uptegrove) (Pre-session filed.)

## 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**.

Creates crime of unlawful manufacture of marijuana on public land. Punishes by maximum of 20 years' imprisonment, \$375,000 fine, or both.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to controlled substances; creating new provisions; amending ORS 475.840; and declaring an  
3 emergency.

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

5 **SECTION 1. Section 2 of this 2011 Act is added to and made a part of ORS 475.840 to**  
6 **475.920.**

7 **SECTION 2. (1) It is unlawful for a person to manufacture marijuana on public land.**

8 **(2) Unlawful manufacture of marijuana on public land is a Class A felony.**

9 **SECTION 3. ORS 475.840 is amended to read:**

10 475.840. (1) Except as authorized by ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful  
11 for *[any]* a person to manufacture or deliver a controlled substance. *[Any]* A person who violates  
12 this subsection with respect to:

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

15 (b) A controlled substance in Schedule II, is guilty of a Class B felony, except as otherwise  
16 provided in ORS **475.856, 475.858, 475.860, 475.862, 475.878, 475.880, 475.882, 475.888, *[475.890],***  
17 **475.892, 475.904 and 475.906 and section 2 of this 2011 Act.**

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

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

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

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

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

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

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

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

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

30 (3) It is unlawful for *[any]* a person knowingly or intentionally to possess a controlled substance  
31 unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a

**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 practitioner while acting in the course of professional practice, or except as otherwise authorized  
2 by ORS 475.005 to 475.285 and 475.840 to 475.980. [Any] A person who violates this subsection with  
3 respect to:

4 (a) A controlled substance in Schedule I, is guilty of a Class B felony, except as otherwise pro-  
5 vided in ORS [475.864] **475.894**.

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

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

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

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

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

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

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

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

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

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

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

26 **SECTION 4. Section 2 of this 2011 Act applies to the unlawful manufacture of marijuana**  
27 **on public land on or after the effective date of this 2011 Act.**

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

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