

Senate Bill 40

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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 unlawful manufacture of marijuana to Class B felony. Punishes by maximum of 10 years' imprisonment, \$250,000 fine, or both.

Reduces unlawful possession of marijuana to Class C felony. Punishes by maximum of five years' imprisonment, \$125,000 fine, or both.

Amends exceptions to classification of Schedule I and Schedule II controlled substances to reflect rescheduling of methamphetamine and marijuana.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to classification of controlled substance offenses; creating new provisions; amending ORS
3 161.570, 161.705, 475.752, 475.856 and 475.864; and declaring an emergency.

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

5 **SECTION 1.** ORS 475.856 is amended to read:

6 475.856. (1) It is unlawful for any person to manufacture marijuana.

7 (2) Unlawful manufacture of marijuana is a [*Class A*] **Class B** felony.

8 **SECTION 2.** ORS 475.864 is amended to read:

9 475.864. (1) It is unlawful for any person knowingly or intentionally to possess marijuana.

10 (2) Unlawful possession of marijuana is a [*Class B*] **Class C** felony.

11 (3) Notwithstanding subsection (2) of this section, unlawful possession of marijuana is a violation
12 if the amount possessed is less than one avoirdupois ounce of the dried leaves, stems and flowers
13 of the plant Cannabis family Moraceae. A violation under this subsection is a specific fine violation.
14 The presumptive fine for a violation under this subsection is \$650.

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

20 **SECTION 3.** ORS 475.752 is amended to read:

21 475.752. (1) Except as authorized by ORS 475.005 to 475.285 and 475.752 to 475.980, it is unlawful
22 for any person to manufacture or deliver a controlled substance. Any person who violates this sub-
23 section with respect to:

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

26 (b) A controlled substance in Schedule II, is guilty of a Class B felony, except as otherwise
27 provided in ORS **475.858, 475.860, 475.862**, 475.878, 475.880, 475.882, [*475.888, 475.890, 475.892,*]

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.

1 475.904 and 475.906.

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

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

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

6 (2) Except as authorized in ORS 475.005 to 475.285 and 475.752 to 475.980, it is unlawful for any
7 person to create or deliver a counterfeit substance. Any person who violates this subsection with
8 respect to:

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

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

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

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

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

14 (3) It is unlawful for any person knowingly or intentionally to possess a controlled substance
15 unless the substance was obtained directly from, or pursuant to[,] a valid prescription or order of,
16 a practitioner while acting in the course of professional practice, or except as otherwise authorized
17 by ORS 475.005 to 475.285 and 475.752 to 475.980. Any person who violates this subsection with re-
18 spect to:

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

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

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

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

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

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

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

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

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

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

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

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

40 **SECTION 4.** ORS 161.570 is amended to read:

41 161.570. (1) As used in this section, “nonperson felony” has the meaning given that term in the
42 rules of the Oregon Criminal Justice Commission.

43 (2) A district attorney may elect to treat a Class C nonperson felony or a violation of ORS
44 475.752 (3)(a), 475.854[, 475.864 (2)] or 475.874 as a Class A misdemeanor. The election must be made
45 by the district attorney orally or in writing at the time of the first appearance of the defendant. If

1 a district attorney elects to treat a Class C felony or a violation of ORS 475.752 (3)(a), 475.854[,
 2 475.864 (2)] or 475.874 as a Class A misdemeanor under this subsection, the court shall amend the
 3 accusatory instrument to reflect the charged offense as a Class A misdemeanor.

4 (3) If, at some time after the first appearance of a defendant charged with a Class C nonperson
 5 felony or a violation of ORS 475.752 (3)(a), 475.854[, 475.864 (2)] or 475.874, the district attorney and
 6 the defendant agree to treat the charged offense as a Class A misdemeanor, the court may allow the
 7 offense to be treated as a Class A misdemeanor by stipulation of the parties.

8 (4) If a Class C felony or a violation of ORS 475.752 (3)(a), 475.854[, 475.864 (2)] or 475.874 is
 9 treated as a Class A misdemeanor under this section, the court shall clearly denominate the offense
 10 as a Class A misdemeanor in any judgment entered in the matter.

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

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

15 (7) Notwithstanding ORS 161.635, the fine that a court may impose upon conviction of a
 16 misdemeanor under this section may not:

17 (a) Be less than the minimum fine established by ORS 137.286 for a felony; or

18 (b) Exceed the amount provided in ORS 161.625 for the class of felony receiving Class A
 19 misdemeanor treatment.

20 **SECTION 5.** ORS 161.705 is amended to read:

21 161.705. Notwithstanding ORS 161.525, the court may enter judgment of conviction for a Class
 22 A misdemeanor and make disposition accordingly when:

23 (1)(a) A person is convicted of any Class C felony;

24 (b) A person is convicted of a Class B felony pursuant to ORS 475.860 (2)(a); **or**

25 [(c) *A person is convicted of the Class B felony of possession of marijuana pursuant to ORS*
 26 *475.864 (2); or*]

27 [(d)] **(c)** A person convicted of [*any of the felonies described in paragraphs (a) to (c)*] **a felony**
 28 **described in paragraph (a) or (b)** of this subsection, or of a Class A felony pursuant to ORS
 29 166.720, has successfully completed a sentence of probation; and

30 (2) The court, considering the nature and circumstances of the crime and the history and char-
 31 acter of the defendant, believes that it would be unduly harsh to sentence the defendant for a felony.

32 **SECTION 6. The amendments to ORS 475.752, 475.856 and 475.864 by sections 1 to 3 of this**
 33 **2013 Act apply to conduct occurring on or after the effective date of this 2013 Act.**

34 **SECTION 7. This 2013 Act being necessary for the immediate preservation of the public**
 35 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
 36 **on its passage.**

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