

House Bill 2128

Sponsored by Representatives POST, BUEHLER; Representatives BARRETO, PARRISH (Presession 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**.

Deletes requirement that pseudoephedrine be classified as Schedule III controlled substance.

Directs State Board of Pharmacy to adopt rules for dispensing pseudoephedrine. Requires rules to be consistent with provisions of federal Controlled Substances Act that are related to dispensing of pseudoephedrine and federal regulations that implement those provisions. Punishes violation of rules by five years' imprisonment, \$125,000 fine, or both.

Becomes operative January 1, 2018.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to pseudoephedrine; creating new provisions; amending ORS 475.950 and 475.973; repealing
3 ORS 475.754; and prescribing an effective date.

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

5 **SECTION 1. Section 2 of this 2017 Act is added to and made a part of ORS 475.005 to**
6 **475.285.**

7 **SECTION 2. (1) A person may not deliver, dispense or administer pseudoephedrine in this**
8 **state unless:**

9 **(a) The person is registered to dispense controlled substances under ORS 475.135 and is**
10 **dispensing the pseudoephedrine in accordance with rules adopted under this section; or**

11 **(b) The person is licensed as a practitioner under the laws of this state, the person's li-**
12 **cence authorizes the person to dispense and administer controlled substances and the person**
13 **dispenses or administers the pseudoephedrine in accordance with laws and rules applicable**
14 **to the dispensing of a controlled substance.**

15 **(2) The State Board of Pharmacy shall adopt rules for the dispensing of pseudoephedrine**
16 **by a person registered to dispense controlled substances under ORS 475.135. Rules adopted**
17 **under this section must set forth:**

18 **(a) Procedures for dispensing pseudoephedrine, including:**

19 **(A) The amount of pseudoephedrine that may be dispensed without a prescription during**
20 **a single transaction, provided that the amount does not exceed 3.6 grams;**

21 **(B) The amount of pseudoephedrine that may be dispensed without a prescription during**
22 **a one-month period, provided that the amount does not exceed nine grams per individual;**

23 **(C) Standards for the safekeeping of pseudoephedrine, provided that pseudoephedrine may**
24 **not be accessed by purchasers of pseudoephedrine without the assistance of the person reg-**
25 **istered to dispense controlled substances under ORS 475.135 or an employee of that person;**

26 **(D) Procedures for checking and verifying the identification of persons purchasing**
27 **pseudoephedrine, provided that the procedures require verifying identification through the**
28 **presentation of a driver license, an identification card issued under ORS 807.400, a passport,**

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 a United States military identification card or any other identification card issued by a state
 2 that bears a picture of the person, the name of the person, the person's date of birth and a
 3 physical description of the person; and

4 (E) Record keeping requirements for dispensing pseudoephedrine;

5 (b) Requirements for training and certifying employees who dispense pseudoephedrine;

6 (c) Reporting requirements for dispensing pseudoephedrine; and

7 (d) Any exemptions from the procedures and requirements adopted pursuant to para-
 8 graphs (a) to (c) of this subsection.

9 (3) In adopting rules under subsection (2) of this section, the board shall adopt rules that
 10 are consistent with the provisions of the federal Controlled Substances Act that are related
 11 to the dispensing of pseudoephedrine and the federal regulations that implement those pro-
 12 visions.

13 (4) Violation of this section or a rule adopted pursuant to this section is a Class C felony.

14 **SECTION 3.** ORS 475.973 is amended to read:

15 475.973. (1)(a) The State Board of Pharmacy may not adopt rules that exempt a product con-
 16 taining ephedrine [*or pseudoephedrine*] from classification as a controlled substance. Except as
 17 otherwise provided in this paragraph, the State Board of Pharmacy shall adopt rules to classify
 18 ephedrine[, *pseudoephedrine*] and phenylpropanolamine as Schedule III controlled substances. The
 19 Schedule III classification may be modified by the State Board of Pharmacy if the State Board of
 20 Pharmacy finds that restrictions on products containing ephedrine[, *pseudoephedrine*] or
 21 phenylpropanolamine under a Schedule III designation do not significantly reduce the number of
 22 methamphetamine laboratories within the state.

23 (b) Records of transactions involving products containing ephedrine[, *pseudoephedrine*] or
 24 phenylpropanolamine are subject to inspection by the State Board of Pharmacy and law enforcement
 25 agencies. A person required to make or maintain records of transactions involving products con-
 26 taining ephedrine[, *pseudoephedrine*] or phenylpropanolamine shall forward the records to the De-
 27 partment of State Police if directed to do so by the department. Failure to forward records as
 28 required by this paragraph is a Class A misdemeanor.

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

36 **SECTION 4.** ORS 475.950 is amended to read:

37 475.950. (1) A person commits the offense of failure to report a precursor substances transaction
 38 if the person does any of the following:

39 (a) Sells, transfers or otherwise furnishes any precursor substance described in ORS 475.940
 40 (3)(a) to (hh) and (oo) and does not, at least three days before delivery of the substance, submit to
 41 the Department of State Police a report that meets the reporting requirements established by rule
 42 under ORS 475.945.

43 (b) Receives any precursor substance described in ORS 475.940 (3)(a) to (hh) and (oo) and does
 44 not, within 10 days after receipt of the substance, submit to the Department of State Police a report
 45 that meets the reporting requirements established by rule under ORS 475.945.

1 (2) This section does not apply to any of the following:

2 (a) Any pharmacist or other authorized person who sells or furnishes a precursor substance
 3 upon the prescription of a physician licensed under ORS chapter 677, physician assistant licensed
 4 under ORS 677.505 to 677.525, nurse practitioner licensed under ORS 678.375 to 678.390, dentist or
 5 veterinarian.

6 (b) Any practitioner, as defined in ORS 475.005, who administers or furnishes a precursor sub-
 7 stance to patients upon prescription.

8 (c) Any person licensed by the State Board of Pharmacy who sells, transfers or otherwise fur-
 9 nishes a precursor substance to a licensed pharmacy, physician licensed under ORS chapter 677,
 10 physician assistant licensed under ORS 677.505 to 677.525, nurse practitioner licensed under ORS
 11 678.375 to 678.390, dentist or veterinarian for distribution to patients upon prescription.

12 (d) Any person who is authorized by rule under ORS 475.945 to report in an alternate manner
 13 if the person complies with the alternate reporting requirements.

14 (e) Any patient of a practitioner, as defined in ORS 475.005, who obtains a precursor substance
 15 from a licensed pharmacist, physician licensed under ORS chapter 677, physician assistant licensed
 16 under ORS 677.505 to 677.525, nurse practitioner licensed under ORS 678.375 to 678.390, dentist or
 17 veterinarian pursuant to a prescription.

18 (f) Any person who sells or transfers ephedrine, pseudoephedrine or phenylpropanolamine in
 19 compliance with ORS 475.973 **or section 2 of this 2017 Act.**

20 (g) Any practitioner, as defined in ORS 475.005, who dispenses a precursor substance to a person
 21 with whom the practitioner has a professional relationship.

22 (h) Any person who obtains a precursor substance from a practitioner, as defined in ORS
 23 475.005, with whom the person has a professional relationship.

24 (i) Any person who sells or transfers an isomer of a precursor substance, unless it is an optical
 25 isomer.

26 (3) Penalties related to providing false information on a report required under this section are
 27 provided under ORS 475.965.

28 (4) The Department of State Police and any law enforcement agency may inspect and remove
 29 copies of the sales records of any retail or wholesale distributor of methyl sulfonyl methane or a
 30 precursor substance during the normal business hours of the retail or wholesale distributor or may
 31 require the retail or wholesale distributor to provide copies of the records.

32 (5) Failure to report a precursor substances transaction is a Class A misdemeanor.

33 **SECTION 5. ORS 475.754 is repealed.**

34 **SECTION 6. Section 2 of this 2017 Act, the amendments to ORS 475.950 and 475.973 by**
 35 **sections 3 and 4 of this 2017 Act and the repeal of ORS 475.754 by section 5 of this 2017 Act**
 36 **apply to conduct occurring on or after the operative date specified in section 7 of this 2017**
 37 **Act.**

38 **SECTION 7. (1) Section 2 of this 2017 Act, the amendments to ORS 475.950 and 475.973**
 39 **by sections 3 and 4 of this 2017 Act and the repeal of ORS 475.754 by section 5 of this 2017**
 40 **Act become operative January 1, 2018.**

41 **(2) The State Board of Pharmacy may take any action before the operative date specified**
 42 **in subsection (1) of this section that is necessary to enable the board to exercise, on and**
 43 **after the operative date specified in subsection (1) of this section, all the duties, powers and**
 44 **functions conferred on the board by section 2 of this 2017 Act, the amendments to ORS**
 45 **475.950 and 475.973 by sections 3 and 4 of this 2017 Act and the repeal of ORS 475.754 by**

1 **section 5 of this 2017 Act.**

2 **SECTION 8. This 2017 Act takes effect on the 91st day after the date on which the 2017**
3 **regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**

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