

Senate Bill 578

Sponsored by Senator PROZANSKI (at the request of Lee Berger) (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**.

Provides that determinations of guilt for certain marijuana offenses merge into one conviction and are not separately punishable.

Directs Oregon Criminal Justice Commission to classify commercial marijuana offense as crime category 6 of sentencing guidelines grid. Modifies factors that determine when offense is commercial marijuana offense.

A BILL FOR AN ACT

1
2 Relating to marijuana offenses; amending ORS 161.067 and 475B.354.

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

4 **SECTION 1.** ORS 161.067 is amended to read:

5 161.067. (1)(a) When the same conduct or criminal episode violates two or more statutory pro-
6 visions and each provision requires proof of an element that the others do not, there are as many
7 separately punishable offenses as there are separate statutory violations.

8 **(b) Notwithstanding paragraph (a) of this subsection, when the same conduct or criminal**
9 **episode violates the following statutory provisions, the two determinations of guilt merge**
10 **into a single conviction and are not separately punishable:**

11 **(A) Unlawful delivery of a marijuana item under ORS 475B.346 based on conduct consti-**
12 **tuting an attempted delivery; and**

13 **(B) Unlawful possession of marijuana under ORS 475B.337 or 475B.341.**

14 (2) When the same conduct or criminal episode, though violating only one statutory provision
15 involves two or more victims, there are as many separately punishable offenses as there are victims.
16 However, two or more persons owning joint interests in real or personal property shall be consid-
17 ered a single victim for purposes of determining the number of separately punishable offenses if the
18 property is the subject of one of the following crimes:

19 (a) Theft as defined in ORS 164.015.

20 (b) Unauthorized use of a vehicle as defined in ORS 164.135.

21 (c) Criminal possession of rented or leased personal property as defined in ORS 164.140.

22 (d) Criminal possession of a rented or leased motor vehicle as defined in ORS 164.138.

23 (e) Burglary as defined in ORS 164.215 or 164.225.

24 (f) Criminal trespass as defined in ORS 164.243, 164.245, 164.255, 164.265 or 164.278.

25 (g) Arson and related offenses as defined in ORS 164.315, 164.325 or 164.335.

26 (h) Forgery and related offenses as defined in ORS 165.002 to 165.070.

27 (3) When the same conduct or criminal episode violates only one statutory provision and in-
28 volves only one victim, but nevertheless involves repeated violations of the same statutory provision
29 against the same victim, there are as many separately punishable offenses as there are violations,
30 except that each violation, to be separately punishable under this subsection, must be separated

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 from other such violations by a sufficient pause in the defendant's criminal conduct to afford the
 2 defendant an opportunity to renounce the criminal intent. Each method of engaging in oral or anal
 3 sexual intercourse as defined in ORS 163.305, and each method of engaging in unlawful sexual pen-
 4 etration as defined in ORS 163.408 and 163.411 shall constitute separate violations of their respec-
 5 tive statutory provisions for purposes of determining the number of statutory violations.

6 **SECTION 2.** ORS 475B.354 is amended to read:

7 475B.354. (1) Except as provided in subsection (3) of this section, a felony under ORS 475B.337
 8 or 475B.341 shall be classified as crime category 1 of the sentencing guidelines grid of the Oregon
 9 Criminal Justice Commission.

10 (2) Except as provided in subsection (3) of this section, a felony under ORS 475B.346 or 475B.349
 11 shall be classified as crime category 4 of the sentencing guidelines grid of the Oregon Criminal
 12 Justice Commission.

13 (3) Subject to subsection (4) of this section, a felony under ORS 475B.337, 475B.341, 475B.346 or
 14 475B.349 shall be classified as crime category [8] **6** of the sentencing guidelines grid of the Oregon
 15 Criminal Justice Commission if the violation is a commercial marijuana offense. A violation is a
 16 commercial marijuana offense for purposes of this subsection if the violation was committed in
 17 conjunction with at least three of the following factors:

18 [(a) *The offender delivered a marijuana item for consideration;*]

19 [(b)] (a) The offender was in possession of [\$300] **\$10,000** or more in cash;

20 [(c)] (b) The offender was unlawfully in possession of a firearm or other weapon as described in
 21 ORS 166.270 (2), the offender used, attempted to use or threatened to use a deadly weapon or dan-
 22 gerous weapon, as those terms are defined in ORS 161.015, or the offender was in possession of a
 23 firearm or other deadly weapon or dangerous weapon for the purpose of using the deadly weapon
 24 or dangerous weapon;

25 [(d) *The offender was in possession of materials being used for the packaging of marijuana items,*
 26 *such as scales, wrapping or foil, other than a material used to contain the marijuana item that is the*
 27 *subject of the violation;*]

28 [(e)] (c) The offender was in possession of marijuana item transaction records or customer lists;

29 [(f)] (d) The offender was in possession of stolen property;

30 [(g)] (e) The offender was in possession of manufacturing paraphernalia specifically designed for
 31 producing marijuana, such as recipes, [*precursor chemicals, laboratory equipment,*] lighting equip-
 32 ment, ventilating equipment or power generation equipment;

33 [(h)] (f) The offender modified structures by painting, wiring, plumbing or lighting the structures
 34 to facilitate the offense;

35 [(i)] (g) The offender used public lands to manufacture the marijuana item; or

36 [(j)] (h) The offender constructed fortifications or took security measures that had the potential
 37 to injure persons.

38 (4) To prove that a violation is a commercial marijuana offense for purposes of subsection (3)
 39 of this section, the state must plead in the accusatory instrument at least three of the factors de-
 40 scribed in subsection (3) of this section. The state has the burden of proving each factor beyond a
 41 reasonable doubt.

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