

SB 755-2
(LC 3429)
3/1/21 (JLM/ps)

Requested by SENATE COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION (at the request of Senator Floyd Prozanski)

**PROPOSED AMENDMENTS TO
SENATE BILL 755**

1 On page 1 of the printed bill, line 2, after “423.478,” insert “475.235,”.

2 On page 10, after line 2, insert:

3 **“SECTION 12a.** ORS 475.235 is amended to read:

4 “475.235. (1) It is not necessary for the state to negate any exemption or
5 exception in ORS 475.005 to 475.285 and 475.752 to 475.980 in any complaint,
6 information, indictment or other pleading or in any trial, hearing or other
7 proceeding under ORS 475.005 to 475.285 and 475.752 to 475.980. The burden
8 of proof of any exemption or exception is upon the person claiming it.

9 “(2) In the absence of proof that a person is the duly authorized holder
10 of an appropriate registration or order form issued under ORS 475.005 to
11 475.285 and 475.752 to 475.980, the person is presumed not to be the holder
12 of the registration or form. The burden of proof is upon the person to rebut
13 the presumption.

14 “(3)(a) When a controlled substance is at issue in a criminal proceeding
15 before a grand jury, at a preliminary hearing, in a proceeding on a district
16 attorney’s information, **during a proceeding on a Class E violation** or for
17 purposes of an early disposition program, it is prima facie evidence of the
18 identity of the controlled substance if:

19 “(A) A sample of the controlled substance is tested using a presumptive
20 test for controlled substances;

21 “(B) The test is conducted by a law enforcement officer trained to use the

1 test or by a forensic scientist; and

2 “(C) The test is positive for the particular controlled substance.

3 “(b) When the identity of a controlled substance is established using a
4 presumptive test for purposes of a criminal proceeding before a grand jury,
5 a preliminary hearing, a proceeding on a district attorney’s information or
6 an early disposition program, the defendant, upon notice to the district at-
7 torney, may request that the controlled substance be sent to a state police
8 forensic laboratory for analysis. **The defendant may not make a request**
9 **under this paragraph concerning a controlled substance at issue in a**
10 **proceeding on a Class E violation.**

11 “(4) Notwithstanding any other provision of law, in all prosecutions in
12 which an analysis of a controlled substance or sample was conducted, a
13 certified copy of the analytical report signed by the director of a state police
14 forensic laboratory or the analyst or forensic scientist conducting the anal-
15 ysis shall be admitted as prima facie evidence of the results of the analytical
16 findings unless the defendant has provided notice of an objection in accord-
17 ance with subsection (5) of this section.

18 “(5) If the defendant intends to object at trial to the admission of a cer-
19 tified copy of an analytical report as provided in subsection (4) of this sec-
20 tion, not less than 15 days prior to trial the defendant shall file written
21 notice of the objection with the court and serve a copy on the district at-
22 torney.

23 “(6) As used in this section:

24 “(a) ‘Analyst’ means a person employed by the Department of State Police
25 to conduct analysis in forensic laboratories established by the department
26 under ORS 181A.150.

27 “(b) ‘Presumptive test’ includes, but is not limited to, chemical tests using
28 Marquis reagent, Duquenois-Levine reagent, Scott reagent system or modi-
29 fied Chen’s reagent.”.

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