

House Bill 4135

Sponsored by Representative MORGAN, Senators FINDLEY, HANSELL; Representatives GOODWIN, LEVY, NOBLE, SCHARF, Senators KENNEMER, LINTHICUM, THATCHER (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**.

Provides that "attempted transfer," for purposes of Uniform Controlled Substances Act, includes possession of controlled substance with intent to transfer to another person.

A BILL FOR AN ACT

1
2 Relating to delivery of controlled substances; creating new provisions; and amending ORS 475.005.

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

4 **SECTION 1.** ORS 475.005 is amended to read:

5 475.005. As used in ORS 475.005 to 475.285 and 475.752 to 475.980, unless the context requires
6 otherwise:

7 (1) "Abuse" means the repetitive excessive use of a drug short of dependence, without legal or
8 medical supervision, which may have a detrimental effect on the individual or society.

9 (2) "Administer" means the direct application of a controlled substance, whether by injection,
10 inhalation, ingestion or any other means, to the body of a patient or research subject by:

11 (a) A practitioner or an authorized agent thereof; or

12 (b) The patient or research subject at the direction of the practitioner.

13 (3) "Administration" means the Drug Enforcement Administration of the United States Depart-
14 ment of Justice, or its successor agency.

15 (4) "Agent" means an authorized person who acts on behalf of or at the direction of a man-
16 ufacturer, distributor or dispenser. It does not include a common or contract carrier, public
17 warehouseman or employee of the carrier or warehouseman.

18 (5) "Board" means the State Board of Pharmacy.

19 (6) "Controlled substance":

20 (a) Means a drug or its immediate precursor classified in Schedules I through V under the fed-
21 eral Controlled Substances Act, 21 U.S.C. 811 to 812, as modified under ORS 475.035. The use of the
22 term "precursor" in this paragraph does not control and is not controlled by the use of the term
23 "precursor" in ORS 475.752 to 475.980.

24 (b) Does not include:

25 (A) The plant Cannabis family Cannabaceae;

26 (B) Any part of the plant Cannabis family Cannabaceae, whether growing or not;

27 (C) Resin extracted from any part of the plant Cannabis family Cannabaceae;

28 (D) The seeds of the plant Cannabis family Cannabaceae;

29 (E) Any compound, manufacture, salt, derivative, mixture or preparation of a plant, part of a
30 plant, resin or seed described in this paragraph; or

31 (F) Psilocybin or psilocin, but only if and to the extent that a person manufactures, delivers, or

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 possesses psilocybin, psilocin, or psilocybin products in accordance with the provisions of ORS
 2 475A.210 to 475A.722 and rules adopted under ORS 475A.210 to 475A.722.

3 (7) “Counterfeit substance” means a controlled substance or its container or labeling, which,
 4 without authorization, bears the trademark, trade name, or other identifying mark, imprint, number
 5 or device, or any likeness thereof, of a manufacturer, distributor or dispenser other than the person
 6 who in fact manufactured, delivered or dispensed the substance.

7 (8) “Deliver” or “delivery” means the actual, constructive or attempted transfer, other than by
 8 administering or dispensing, from one person to another of a controlled substance, whether or not
 9 there is an agency relationship. **As used in this subsection, “attempted transfer” includes the**
 10 **possession of a controlled substance with intent to transfer the controlled substance to an-**
 11 **other person.**

12 (9) “Device” means instruments, apparatus or contrivances, including their components, parts
 13 or accessories, intended:

14 (a) For use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or
 15 animals; or

16 (b) To affect the structure of any function of the body of humans or animals.

17 (10) “Dispense” means to deliver a controlled substance to an ultimate user or research subject
 18 by or pursuant to the lawful order of a practitioner, and includes the prescribing, administering,
 19 packaging, labeling or compounding necessary to prepare the substance for that delivery.

20 (11) “Dispenser” means a practitioner who dispenses.

21 (12) “Distributor” means a person who delivers.

22 (13) “Drug” means:

23 (a) Substances recognized as drugs in the official United States Pharmacopoeia, official
 24 Homeopathic Pharmacopoeia of the United States or official National Formulary, or any supplement
 25 to any of them;

26 (b) Substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of
 27 disease in humans or animals;

28 (c) Substances (other than food) intended to affect the structure or any function of the body of
 29 humans or animals; and

30 (d) Substances intended for use as a component of any article specified in paragraph (a), (b) or
 31 (c) of this subsection; however, the term does not include devices or their components, parts or ac-
 32 cessories.

33 (14) “Electronically transmitted” or “electronic transmission” means a communication sent or
 34 received through technological apparatuses, including computer terminals or other equipment or
 35 mechanisms linked by telephone or microwave relays, or any similar apparatus having electrical,
 36 digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

37 (15) “Manufacture” means the production, preparation, propagation, compounding, conversion
 38 or processing of a controlled substance, either directly or indirectly by extraction from substances
 39 of natural origin, or independently by means of chemical synthesis, or by a combination of extraction
 40 and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or
 41 relabeling of its container, except that this term does not include the preparation or compounding
 42 of a controlled substance:

43 (a) By a practitioner as an incident to administering or dispensing of a controlled substance in
 44 the course of professional practice; or

45 (b) By a practitioner, or by an authorized agent under the practitioner’s supervision, for the

1 purpose of, or as an incident to, research, teaching or chemical analysis and not for sale.

2 (16) "Person" includes a government subdivision or agency, business trust, estate, trust or any
3 other legal entity.

4 (17) "Practitioner" means physician, dentist, veterinarian, scientific investigator, licensed nurse
5 practitioner, physician assistant or other person licensed, registered or otherwise permitted by law
6 to dispense, conduct research with respect to or to administer a controlled substance in the course
7 of professional practice or research in this state but does not include a pharmacist or a pharmacy.

8 (18) "Prescription" means a written, oral or electronically transmitted direction, given by a
9 practitioner for the preparation and use of a drug. When the context requires, "prescription" also
10 means the drug prepared under such written, oral or electronically transmitted direction. Any label
11 affixed to a drug prepared under written, oral or electronically transmitted direction shall promi-
12 nently display a warning that the removal thereof is prohibited by law.

13 (19) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a
14 controlled substance.

15 (20) "Research" means an activity conducted by the person registered with the federal Drug
16 Enforcement Administration pursuant to a protocol approved by the United States Food and Drug
17 Administration.

18 (21) "Ultimate user" means a person who lawfully possesses a controlled substance for the use
19 of the person or for the use of a member of the household of the person or for administering to an
20 animal owned by the person or by a member of the household of the person.

21 (22) "Usable quantity" means:

22 (a) An amount of a controlled substance that is sufficient to physically weigh independent of its
23 packaging and that does not fall below the uncertainty of the measuring scale; or

24 (b) An amount of a controlled substance that has not been deemed unweighable, as determined
25 by a Department of State Police forensic laboratory, due to the circumstances of the controlled
26 substance.

27 (23) "Within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet
28 or less in every direction from a specified location or from any point on the boundary line of a
29 specified unit of property.

30 **SECTION 2. The amendments to ORS 475.005 by section 1 of this 2022 Act apply to con-**
31 **duct occurring on or after the effective date of this 2022 Act.**

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