

## HOUSE AMENDMENTS TO HOUSE BILL 2645

By COMMITTEE ON JUDICIARY

February 13

1 On page 1 of the printed bill, line 2, after “substances;” delete the rest of the line and delete line  
2 3 and insert “amending ORS 475.752 and 475.900; and declaring an emergency.”.

3 Delete lines 5 through 25 and delete pages 2 through 9 and insert:

4 “**SECTION 1.** ORS 475.752 is amended to read:

5 “475.752. (1) Except as authorized by ORS 475.005 to 475.285 and 475.752 to 475.980, it is un-  
6 lawful for any person to manufacture or deliver a controlled substance. Any person who violates this  
7 subsection with respect to:

8 “(a) A controlled substance in Schedule I, is guilty of a Class A felony, except as otherwise  
9 provided in ORS 475.886 and 475.890.

10 “(b) A controlled substance in Schedule II, is guilty of a Class B felony, except as otherwise  
11 provided in ORS 475.878, 475.880, 475.882, 475.904 and 475.906.

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

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

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

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

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

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

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

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

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

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

29 “(a) A controlled substance in Schedule I, is guilty of a Class E violation, except as otherwise  
30 provided in ORS 475.854, 475.874 and 475.894 and subsection (7) of this section.

31 “(b) A controlled substance in Schedule II, is guilty of a Class E violation, except as otherwise  
32 provided in ORS 475.814, 475.824, 475.834 or 475.884 or subsection (8) of this section.

33 “(c) A controlled substance in Schedule III, is guilty of a Class E violation.

34 “(d) A controlled substance in Schedule IV, is guilty of a Class E violation.

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

1 “(4) It is an affirmative defense in any prosecution under this section for manufacture, pos-  
2 session or delivery of the plant of the genus *Lophophora* commonly known as peyote that the peyote  
3 is being used or is intended for use:

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

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

6 “(c) In a manner that is not dangerous to the health of the user or others who are in the  
7 proximity of the user.

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

11 “(6)(a) Notwithstanding subsection (1) of this section, a person who unlawfully manufactures or  
12 delivers a controlled substance in Schedule IV and who thereby causes death to another person is  
13 guilty of a Class C felony.

14 “(b) For purposes of this subsection, causation is established when the controlled substance  
15 plays a substantial role in the death of the other person.

16 “(7) Notwithstanding subsection (3)(a) of this section:

17 “(a) Unlawful possession of a controlled substance in Schedule I is a Class A misdemeanor if the  
18 person possesses:

19 “(A) Forty or more user units of a mixture or substance containing a detectable amount of  
20 lysergic acid diethylamide; or

21 “(B) Twelve grams or more of a mixture or substance containing a detectable amount of  
22 psilocybin or psilocin.

23 “(b) Unlawful possession of a controlled substance in Schedule I is a Class B felony if:

24 “(A) The possession is a commercial drug offense under ORS 475.900 (1)(b); or

25 “(B) The person possesses a substantial quantity under ORS 475.900 (2)(b).

26 “(8) Notwithstanding subsection (3)(b) of this section[,]:

27 “(a) **Unlawful possession of a controlled substance in Schedule II is a Class A**  
28 **misdemeanor if the person possesses one gram or more or five or more user units of a**  
29 **mixture or substance containing a detectable amount of fentanyl, or any substituted deriva-**  
30 **tive of fentanyl as defined by the rules of the State Board of Pharmacy.**

31 “(b) Unlawful possession of a controlled substance in Schedule II is a Class C felony if:

32 “[(a)] (A) The possession is a commercial drug offense under ORS 475.900 (1)(b); or

33 “[(b)] (B) The person possesses a substantial quantity under ORS 475.900 (2)(b).

34 “**SECTION 2.** ORS 475.900 is amended to read:

35 “475.900. (1) A violation of ORS 475.752, 475.806 to 475.894, 475.904 or 475.906 shall be classified  
36 as crime category 8 of the sentencing guidelines grid of the Oregon Criminal Justice Commission if:

37 “(a) The violation constitutes delivery or manufacture of a controlled substance and involves  
38 substantial quantities of a controlled substance. For purposes of this paragraph, the following  
39 amounts constitute substantial quantities of the following controlled substances:

40 “(A) Five grams or more of a mixture or substance containing a detectable amount of heroin;

41 “(B) Five grams or more **or 25 or more user units** of a mixture or substance containing a de-  
42 tectable amount of fentanyl, or any substituted derivative of fentanyl as defined by the rules of the  
43 [Oregon] State Board of Pharmacy;

44 “(C) Ten grams or more of a mixture or substance containing a detectable amount of cocaine;

45 “(D) Ten grams or more of a mixture or substance containing a detectable amount of metham-

1 phetamine, its salts, isomers or salts of its isomers;

2 “(E) Two hundred or more user units of a mixture or substance containing a detectable amount

3 of lysergic acid diethylamide;

4 “(F) Sixty grams or more of a mixture or substance containing a detectable amount of psilocybin

5 or psilocin; or

6 “(G) Five grams or more or 25 or more pills, tablets or capsules of a mixture or substance

7 containing a detectable amount of:

8 “(i) 3,4-methylenedioxyamphetamine;

9 “(ii) 3,4-methylenedioxymethamphetamine; or

10 “(iii) 3,4-methylenedioxy-N-ethylamphetamine.

11 “(b) The violation constitutes possession, delivery or manufacture of a controlled substance and

12 the possession, delivery or manufacture is a commercial drug offense. A possession, delivery or

13 manufacture is a commercial drug offense for purposes of this subsection if it is accompanied by at

14 least three of the following factors:

15 “(A) The delivery was of heroin, **fentanyl**, cocaine, methamphetamine, lysergic acid

16 diethylamide, psilocybin or psilocin and was for consideration;

17 “(B) The offender was in possession of \$300 or more in cash;

18 “(C) The offender was unlawfully in possession of a firearm or other weapon as described in ORS

19 166.270 (2), or the offender used, attempted to use or threatened to use a deadly or dangerous

20 weapon as defined in ORS 161.015, or the offender was in possession of a firearm or other deadly

21 or dangerous weapon as defined in ORS 161.015 for the purpose of using it in connection with a

22 controlled substance offense;

23 “(D) The offender was in possession of materials being used for the packaging of controlled

24 substances such as scales, wrapping or foil, other than the material being used to contain the sub-

25 stance that is the subject of the offense;

26 “(E) The offender was in possession of drug transaction records or customer lists;

27 “(F) The offender was in possession of stolen property;

28 “(G) Modification of structures by painting, wiring, plumbing or lighting to facilitate a con-

29 trolled substance offense;

30 “(H) The offender was in possession of manufacturing paraphernalia, including recipes, precu-

31 sor chemicals, laboratory equipment, lighting, ventilating or power generating equipment;

32 “(I) The offender was using public lands for the manufacture of controlled substances;

33 “(J) The offender had constructed fortifications or had taken security measures with the poten-

34 tial of injuring persons; or

35 “(K) The offender was in possession of controlled substances in an amount greater than:

36 “(i) Three grams or more of a mixture or substance containing a detectable amount of heroin;

37 “(ii) Three grams or more **or 15 or more user units** of a mixture or substance containing a

38 detectable amount of fentanyl, or any substituted derivative of fentanyl as defined by the rules of

39 the [Oregon] **State** Board of Pharmacy;

40 “(iii) Eight grams or more of a mixture or substance containing a detectable amount of cocaine;

41 “(iv) Eight grams or more of a mixture or substance containing a detectable amount of meth-

42 amphetamine;

43 “(v) Twenty or more user units of a mixture or substance containing a detectable amount of

44 lysergic acid diethylamide;

45 “(vi) Ten grams or more of a mixture or substance containing a detectable amount of psilocybin

1 or psilocin; or

2 “(vii) Four grams or more or 20 or more pills, tablets or capsules of a mixture or substance

3 containing a detectable amount of:

4 “(I) 3,4-methylenedioxyamphetamine;

5 “(II) 3,4-methylenedioxymethamphetamine; or

6 “(III) 3,4-methylenedioxy-N-ethylamphetamine.

7 “(c) The violation constitutes a violation of ORS 475.848, 475.852, 475.868, 475.872, 475.878,

8 475.882, 475.888, 475.892 or 475.904.

9 “(d) The violation constitutes manufacturing methamphetamine and the manufacturing consists

10 of:

11 “(A) A chemical reaction involving one or more precursor substances for the purpose of manu-

12 facturing methamphetamine; or

13 “(B) Grinding, soaking or otherwise breaking down a precursor substance for the purpose of

14 manufacturing methamphetamine.

15 “(e) The violation constitutes a violation of ORS 475.906 (1) or (2) that is not described in ORS

16 475.907.

17 “(2) A violation of ORS 475.752 or 475.806 to 475.894 shall be classified as crime category 6 of

18 the sentencing guidelines grid of the Oregon Criminal Justice Commission if:

19 “(a) The violation constitutes delivery of heroin, cocaine, **fantanyl**, methamphetamine or

20 3,4-methylenedioxyamphetamine, 3,4-methylenedioxymethamphetamine or

21 3,4-methylenedioxy-N-ethylamphetamine and is for consideration.

22 “(b) The violation constitutes possession of substantial quantities of a controlled substance. For

23 purposes of this paragraph, the following amounts constitute substantial quantities of the following

24 controlled substances:

25 “(A) Five grams or more of a mixture or substance containing a detectable amount of heroin;

26 “(B) Five grams or more **or 25 or more user units** of a mixture or substance containing a de-

27 tectable amount of fentanyl, or any substituted derivative of fentanyl as defined by the rules of the

28 [Oregon] **State** Board of Pharmacy;

29 “(C) Ten grams or more of a mixture or substance containing a detectable amount of cocaine;

30 “(D) Ten grams or more of a mixture or substance containing a detectable amount of metham-

31 phetamine;

32 “(E) Two hundred or more user units of a mixture or substance containing a detectable amount

33 of lysergic acid diethylamide;

34 “(F) Sixty grams or more of a mixture or substance containing a detectable amount of psilocybin

35 or psilocin; or

36 “(G) Five grams or more or 25 or more pills, tablets or capsules of a mixture or substance

37 containing a detectable amount of:

38 “(i) 3,4-methylenedioxyamphetamine;

39 “(ii) 3,4-methylenedioxymethamphetamine; or

40 “(iii) 3,4-methylenedioxy-N-ethylamphetamine.

41 “(3) Any felony violation of ORS 475.752 or 475.806 to 475.894 not contained in subsection (1)

42 or (2) of this section shall be classified as crime category 4 of the sentencing guidelines grid of the

43 Oregon Criminal Justice Commission if the violation involves delivery or manufacture of a con-

44 trolled substance.

45 “(4) In order to prove a commercial drug offense, the state shall plead in the accusatory in-

1 strument sufficient factors of a commercial drug offense under subsections (1) and (2) of this section.  
2 The state has the burden of proving each factor beyond a reasonable doubt.

3 “(5) As used in this section, ‘mixture or substance’ means any mixture or substance, whether  
4 or not the mixture or substance is in an ingestible or marketable form at the time of the offense.

5 **“SECTION 3. This 2023 Act being necessary for the immediate preservation of the public**  
6 **peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect**  
7 **on its passage.”.**

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