

HB 2645-1
(LC 963)
1/26/23 (JLM/ps)

Requested by HOUSE COMMITTEE ON JUDICIARY (at the request of Oregon District Attorneys Association)

**PROPOSED AMENDMENTS TO
HOUSE BILL 2645**

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

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
6 to 475.980, it is unlawful for any person to manufacture or deliver a con-
7 trolled substance. Any person who violates this subsection with respect to:

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

10 “(b) A controlled substance in Schedule II, is guilty of a Class B felony,
11 except as otherwise provided in ORS 475.878, 475.880, 475.882, 475.904 and
12 475.906.

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

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

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

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

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

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

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

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

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

8 “(3) It is unlawful for any person knowingly or intentionally to possess
9 a controlled substance unless the substance was obtained directly from, or
10 pursuant to a valid prescription or order of, a practitioner while acting in
11 the course of professional practice, or except as otherwise authorized by ORS
12 475.005 to 475.285 and 475.752 to 475.980. Any person who violates this sub-
13 section with respect to:

14 “(a) A controlled substance in Schedule I, is guilty of a Class E violation,
15 except as otherwise provided in ORS 475.854, 475.874 and 475.894 and sub-
16 section (7) of this section.

17 “(b) A controlled substance in Schedule II, is guilty of a Class E vio-
18 lation, except as otherwise provided in ORS 475.814, 475.824, 475.834 or
19 475.884 or subsection (8) of this section.

20 “(c) A controlled substance in Schedule III, is guilty of a Class E vio-
21 lation.

22 “(d) A controlled substance in Schedule IV, is guilty of a Class E vio-
23 lation.

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

25 “(4) It is an affirmative defense in any prosecution under this section for
26 manufacture, possession or delivery of the plant of the genus *Lophophora*
27 commonly known as peyote that the peyote is being used or is intended for
28 use:

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

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

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

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

6 “(6)(a) Notwithstanding subsection (1) of this section, a person who un-
7 lawfully manufactures or delivers a controlled substance in Schedule IV and
8 who thereby causes death to another person is guilty of a Class C felony.

9 “(b) For purposes of this subsection, causation is established when the
10 controlled substance plays a substantial role in the death of the other per-
11 son.

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

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

15 “(A) Forty or more user units of a mixture or substance containing a de-
16 tectable amount of lysergic acid diethylamide; or

17 “(B) Twelve grams or more of a mixture or substance containing a de-
18 tectable amount of psilocybin or psilocin.

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

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

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

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

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

30 “(b) Unlawful possession of a controlled substance in Schedule II is a

1 Class C felony if:

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

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

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

7 “475.900. (1) A violation of ORS 475.752, 475.806 to 475.894, 475.904 or
8 475.906 shall be classified as crime category 8 of the sentencing guidelines
9 grid of the Oregon Criminal Justice Commission if:

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

14 “(A) Five grams or more of a mixture or substance containing a detect-
15 able amount of heroin;

16 “(B) Five grams or more **or 25 or more user units** of a mixture or sub-
17 stance containing a detectable amount of fentanyl, or any substituted deriv-
18 ative of fentanyl as defined by the rules of the [*Oregon*] **State** Board of
19 Pharmacy;

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

22 “(D) Ten grams or more of a mixture or substance containing a detectable
23 amount of methamphetamine, its salts, isomers or salts of its isomers;

24 “(E) Two hundred or more user units of a mixture or substance containing
25 a detectable amount of lysergic acid diethylamide;

26 “(F) Sixty grams or more of a mixture or substance containing a detect-
27 able amount of psilocybin or psilocin; or

28 “(G) Five grams or more or 25 or more pills, tablets or capsules of a
29 mixture or substance containing a detectable amount of:

30 “(i) 3,4-methylenedioxyamphetamine;

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

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

3 “(b) The violation constitutes possession, delivery or manufacture of a
4 controlled substance and the possession, delivery or manufacture is a com-
5 mercial drug offense. A possession, delivery or manufacture is a commercial
6 drug offense for purposes of this subsection if it is accompanied by at least
7 three of the following factors:

8 “(A) The delivery was of heroin, **fentanyl**, cocaine, methamphetamine,
9 lysergic acid diethylamide, psilocybin or psilocin and was for consideration;

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

11 “(C) The offender was unlawfully in possession of a firearm or other
12 weapon as described in ORS 166.270 (2), or the offender used, attempted to
13 use or threatened to use a deadly or dangerous weapon as defined in ORS
14 161.015, or the offender was in possession of a firearm or other deadly or
15 dangerous weapon as defined in ORS 161.015 for the purpose of using it in
16 connection with a controlled substance offense;

17 “(D) The offender was in possession of materials being used for the
18 packaging of controlled substances such as scales, wrapping or foil, other
19 than the material being used to contain the substance that is the subject of
20 the offense;

21 “(E) The offender was in possession of drug transaction records or cus-
22 tomer lists;

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

24 “(G) Modification of structures by painting, wiring, plumbing or lighting
25 to facilitate a controlled substance offense;

26 “(H) The offender was in possession of manufacturing paraphernalia, in-
27 cluding recipes, precursor chemicals, laboratory equipment, lighting, venti-
28 lating or power generating equipment;

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

1 “(J) The offender had constructed fortifications or had taken security
2 measures with the potential of injuring persons; or

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

5 “(i) Three grams or more of a mixture or substance containing a detect-
6 able amount of heroin;

7 “(ii) Three grams or more **or 15 or more user units** of a mixture or
8 substance containing a detectable amount of fentanyl, or any substituted
9 derivative of fentanyl as defined by the rules of the [*Oregon*] **State** Board
10 of Pharmacy;

11 “(iii) Eight grams or more of a mixture or substance containing a de-
12 tectable amount of cocaine;

13 “(iv) Eight grams or more of a mixture or substance containing a detect-
14 able amount of methamphetamine;

15 “(v) Twenty or more user units of a mixture or substance containing a
16 detectable amount of lysergic acid diethylamide;

17 “(vi) Ten grams or more of a mixture or substance containing a detectable
18 amount of psilocybin or psilocin; or

19 “(vii) Four grams or more or 20 or more pills, tablets or capsules of a
20 mixture or substance containing a detectable amount of:

21 “(I) 3,4-methylenedioxyamphetamine;

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

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

24 “(c) The violation constitutes a violation of ORS 475.848, 475.852, 475.868,
25 475.872, 475.878, 475.882, 475.888, 475.892 or 475.904.

26 “(d) The violation constitutes manufacturing methamphetamine and the
27 manufacturing consists of:

28 “(A) A chemical reaction involving one or more precursor substances for
29 the purpose of manufacturing methamphetamine; or

30 “(B) Grinding, soaking or otherwise breaking down a precursor substance

1 for the purpose of manufacturing methamphetamine.

2 “(e) The violation constitutes a violation of ORS 475.906 (1) or (2) that is
3 not described in ORS 475.907.

4 “(2) A violation of ORS 475.752 or 475.806 to 475.894 shall be classified
5 as crime category 6 of the sentencing guidelines grid of the Oregon Criminal
6 Justice Commission if:

7 “(a) The violation constitutes delivery of heroin, cocaine, **fentanyl**,
8 methamphetamine or 3,4-methylenedioxyamphetamine,
9 3,4-methylenedioxymethamphetamine or
10 3,4-methylenedioxy-N-ethylamphetamine and is for consideration.

11 “(b) The violation constitutes possession of substantial quantities of a
12 controlled substance. For purposes of this paragraph, the following amounts
13 constitute substantial quantities of the following controlled substances:

14 “(A) Five grams or more of a mixture or substance containing a detect-
15 able amount of heroin;

16 “(B) Five grams or more **or 25 or more user units** of a mixture or sub-
17 stance containing a detectable amount of fentanyl, or any substituted deriv-
18 ative of fentanyl as defined by the rules of the [*Oregon*] **State** Board of
19 Pharmacy;

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

22 “(D) Ten grams or more of a mixture or substance containing a detectable
23 amount of methamphetamine;

24 “(E) Two hundred or more user units of a mixture or substance containing
25 a detectable amount of lysergic acid diethylamide;

26 “(F) Sixty grams or more of a mixture or substance containing a detect-
27 able amount of psilocybin or psilocin; or

28 “(G) Five grams or more or 25 or more pills, tablets or capsules of a
29 mixture or substance containing a detectable amount of:

30 “(i) 3,4-methylenedioxyamphetamine;

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

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

3 “(3) Any felony violation of ORS 475.752 or 475.806 to 475.894 not con-
4 tained in subsection (1) or (2) of this section shall be classified as crime
5 category 4 of the sentencing guidelines grid of the Oregon Criminal Justice
6 Commission if the violation involves delivery or manufacture of a controlled
7 substance.

8 “(4) In order to prove a commercial drug offense, the state shall plead in
9 the accusatory instrument sufficient factors of a commercial drug offense
10 under subsections (1) and (2) of this section. The state has the burden of
11 proving each factor beyond a reasonable doubt.

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

15 **“SECTION 3. This 2023 Act takes effect on the 91st day after the**
16 **date on which the 2023 regular session of the Eighty-second Legislative**
17 **Assembly adjourns sine die.”.**

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