

House Bill 2880

Sponsored by Representatives DEXTER, REYNOLDS, Senator JAMA, Representative BYNUM; Representative LEVY B, Senators GELSER BLOUIN, PATTERSON, SOLLMAN (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**.

Exempts from drug paraphernalia prohibitions pipes, fentanyl test strips and other harm reduction items.

Expands affirmative defense to crime of unlawful possession of a controlled substance to include any person acting in capacity of employee or volunteer of harm reduction intervention program.

Repeals prohibition on providing hypodermic devices to minors.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to controlled substances; creating new provisions; amending ORS 475.525, 475.757, 689.405
3 and 689.445; repealing ORS 475.744; and declaring an emergency.

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

5 **SECTION 1.** ORS 475.525 is amended to read:

6 475.525. (1) It is unlawful for any person to sell or deliver, possess with intent to sell or deliver
7 or manufacture with intent to sell or deliver drug paraphernalia, knowing that it will be used to
8 unlawfully plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce,
9 process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or other-
10 wise introduce into the human body a controlled substance as defined by ORS 475.005.

11 (2) For the purposes of this section, "drug paraphernalia" means all equipment, products and
12 materials of any kind that are marketed for use or designed for use in planting, propagating, culti-
13 vating, growing, harvesting, manufacturing, compounding, converting, producing, processing, pre-
14 paring, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting,
15 ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation
16 of ORS 475.752 to 475.980. Drug paraphernalia includes, but is not limited to:

17 (a) Kits marketed for use or designed for use in unlawfully planting, propagating, cultivating,
18 growing or harvesting of any species of plant that is a controlled substance or from which a con-
19 trolled substance can be derived;

20 (b) Kits marketed for use or designed for use in manufacturing, compounding, converting,
21 producing, processing or preparing controlled substances;

22 (c) Isomerization devices marketed for use or designed for use in increasing the potency of any
23 species of plant that is a controlled substance;

24 (d) Testing equipment marketed for use or designed for use in identifying or in analyzing the
25 strength, effectiveness or purity of controlled substances;

26 (e) Scales and balances marketed for use or designed for use in weighing or measuring con-
27 trolled substances;

28 (f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and

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 lactose, marketed for use or designed for use in cutting controlled substances;

2 (g) Lighting equipment specifically designed for growing controlled substances;

3 (h) Containers and other objects marketed for use or designed for use in storing or concealing
4 controlled substances; and

5 (i) Objects marketed for use or designed specifically for use in ingesting, inhaling or otherwise
6 introducing a controlled substance into the human body, such as:

7 [(A) *Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens;*]

8 [(B) *Water pipes;*]

9 [(C) *Carburetion tubes and devices;*]

10 [(D)] (A) Smoking and carburetion masks;

11 [(E)] (B) Roach clips, meaning objects used to hold burning material that has become too small
12 or too short to be held in the hand; **or**

13 [(F)] (C) Miniature cocaine spoons and cocaine vials[;].

14 [(G) *Chamber pipes;*]

15 [(H) *Carburetor pipes;*]

16 [(I) *Electric pipes;*]

17 [(J) *Air-driven pipes;*]

18 [(K) *Chillums;*]

19 [(L) *Bongs; and*]

20 [(M) *Ice pipes or chillers.*]

21 (3) For purposes of this section, “drug paraphernalia” does not include hypodermic syringes or
22 needles, **pipes, fentanyl test strips or any other item designed to prevent or reduce the harm**
23 **associated with the use of controlled substances, including but not limited to items that re-**
24 **duce the transmission of infectious disease or prevent injury, infection or overdose.**

25 (4) The provisions of ORS 475.525 to 475.565 do not apply to persons registered under the pro-
26 visions of ORS 475.125 or to persons specified as exempt from registration under the provisions of
27 that statute.

28 (5)(a) The provisions of ORS 475.525 to 475.565 do not apply to a person who sells or delivers
29 marijuana paraphernalia as defined in ORS 475C.373 to a person 21 years of age or older.

30 (b) In determining whether an object is drug paraphernalia under this section or marijuana
31 paraphernalia under ORS 475C.373, a trier of fact shall consider, in addition to any other relevant
32 factor, the following:

33 (A) Any oral or written instruction provided with the object related to the object’s use;

34 (B) Any descriptive material packaged with the object that explains or depicts the object’s use;

35 (C) Any national or local advertising related to the object’s use;

36 (D) Any proffered expert testimony related to the object’s use;

37 (E) The manner in which the object is displayed for sale, if applicable; and

38 (F) Any other proffered evidence substantiating the object’s intended use.

39 **SECTION 2.** ORS 475.757 is amended to read:

40 475.757. (1) As used in this section, [“*syringe service program*”] **“harm reduction intervention**
41 **program”** means a program that provides services **or items designed to prevent or reduce the**
42 **harm associated with the use of controlled substances, including but not limited to providing**
43 **free sterile needles and syringes and safe disposal for needles and syringes or providing other**
44 **items that reduce the transmission of infectious disease or prevent injury, infection or**
45 **overdose.**

1 (2) It is an affirmative defense to unlawful possession of a controlled substance under ORS
2 475.752 to 475.980 that the person was acting in the capacity of an employee or volunteer of a
3 [syringe service] **harm reduction intervention** program.

4 (3) Sterile needles and syringes and other items provided by a [syringe service] **harm reduction**
5 **intervention** program may not be considered “drug paraphernalia,” as that term is defined in ORS
6 475.525.

7 **SECTION 3. ORS 475.744 is repealed.**

8 **SECTION 4.** ORS 689.405 is amended to read:

9 689.405. (1) The State Board of Pharmacy may refuse to issue or renew, or may suspend, revoke
10 or restrict the license of any person or the certificate of registration of any drug outlet upon one
11 or more of the following grounds:

12 (a) Unprofessional conduct as that term is defined by the rules of the board.

13 (b) Repeated or gross negligence.

14 (c) Incapacity of a nature that prevents a person from engaging in the activity for which the
15 person is licensed with reasonable skill, competence and safety to the public.

16 (d) Impairment as defined in ORS 676.303.

17 (e) Being found guilty by the board of a violation of subparagraph (B) of this paragraph, or by
18 a court of competent jurisdiction of one or more of the following:

19 (A) A felony, as defined by the laws of this state; or

20 (B) Violations of the pharmacy or drug laws of this state or rules pertaining thereto, or of
21 statutes, rules or regulations of any other state, or of the federal government.

22 (f) Fraud or intentional misrepresentation by a licensee or registrant in securing or attempting
23 to secure the issuance or renewal of a license.

24 (g) Engaging or aiding and abetting an individual to engage in the practice of pharmacy without
25 a license, or falsely using the title of pharmacist.

26 (h) Aiding and abetting an individual in performing the duties of a pharmacy technician without
27 licensing.

28 (i) Being found by the board to be in violation of any of the provisions of ORS 435.010 to 435.130,
29 453.025, 453.045, 475.035 to 475.190, [475.744,] 475.752 to 475.980 or this chapter or rules adopted
30 pursuant to ORS 435.010 to 435.130, 453.025, 453.045, 475.035 to 475.190, [475.744,] 475.752 to 475.980
31 and this chapter.

32 (j) Disciplinary action by another state regarding a license, based upon acts by the licensee
33 similar to acts described in this subsection. A certified copy of the record of disciplinary action of
34 the state taking the disciplinary action is conclusive evidence thereof.

35 (2) Upon receipt of a complaint under this chapter, the board shall conduct an investigation as
36 described under ORS 676.165.

37 (3) Actions taken under subsection (1) of this section shall be considered a contested case under
38 ORS chapter 183.

39 **SECTION 5.** ORS 689.445 is amended to read:

40 689.445. (1) Upon the finding of the existence of grounds for discipline of any person holding a
41 license, seeking a license or renewal of a license under the provisions of ORS 435.010 to 435.030,
42 475.125 and 475.135 and this chapter, the State Board of Pharmacy may impose one or more of the
43 following penalties:

44 (a) Suspension of the offender’s license for a term to be determined by the board;

45 (b) Revocation of the offender’s license;

1 (c) Restriction of the offender’s license to prohibit the offender from performing certain acts or
2 from engaging in the practice of pharmacy in a particular manner for a term to be determined by
3 the board;

4 (d) A civil penalty not to exceed:

5 (A) \$1,000 for each offense committed by an individual; and

6 (B) \$10,000 for each offense committed by a drug outlet;

7 (e) Refusal to renew offender’s license; or

8 (f) Placement of the offender on probation and supervision by the board for a period to be de-
9 termined by the board.

10 (2) Any person whose license issued pursuant to this chapter has been suspended, revoked or
11 restricted pursuant to this chapter, whether voluntarily or by action of the board, shall have the
12 right, at reasonable intervals, to petition the board for reinstatement of such license. Such petition
13 shall be made in writing and in the form prescribed by the board. Upon investigation and hearing,
14 the board may in its discretion grant or deny such petition, or it may modify its original finding to
15 reflect any circumstances which have changed sufficiently to warrant such modifications. Pardon
16 and restoration of civil rights to any person formerly licensed by the board does not obligate the
17 board to restore revoked, restricted or suspended licenses.

18 (3) Nothing in this chapter shall be construed as barring criminal prosecutions for violations of
19 ORS 435.010 to 435.130, 453.025, 453.045, 475.035 to 475.190, [475.744,] 475.752 to 475.980 and this
20 chapter where such violations are deemed as criminal offenses in other statutes of this state or of
21 the United States.

22 (4) Civil penalties under this section shall be imposed as provided in ORS 183.745.

23 (5) All penalties recovered under ORS 435.010 to 435.130, 453.025, 453.045, 475.035 to 475.190,
24 [475.744,] 475.752 to 475.980 and this chapter shall be deposited into the State Board of Pharmacy
25 Account established in ORS 689.139.

26 **SECTION 6. The amendments to ORS 475.525, 475.757, 689.405 and 689.445 by sections 1,**
27 **2, 4 and 5 of this 2023 Act and the repeal of ORS 475.744 by section 3 of this 2023 Act apply**
28 **to conduct occurring on or after the effective date of this 2023 Act.**

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

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