

ITEM C – SB 728

75th OREGON LEGISLATIVE ASSEMBLY--2009 Regular Session

Enrolled

Senate Bill 728

Sponsored by Senator FERRIOLI

CHAPTER

AN ACT

Relating to controlled substances; creating new provisions; and amending ORS 475.840.

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

SECTION 1. ORS 475.840 is amended to read:

475.840. (1) Except as authorized by ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful for any person to manufacture or deliver a controlled substance. Any person who violates this subsection with respect to:

(a) A controlled substance in Schedule I, is guilty of a Class A felony, except as otherwise provided in ORS 475.860.

(b) A controlled substance in Schedule II, is guilty of a Class B felony, except as otherwise provided in ORS 475.878, 475.880, 475.882, 475.888, 475.890, 475.892, 475.904 and 475.906.

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

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

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

(2) Except as authorized in ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful for any person to create or deliver a counterfeit substance. Any person who violates this subsection with respect to:

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

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

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

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

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

(3) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of professional practice, or except as otherwise authorized by ORS 475.005 to 475.285 and 475.840 to 475.980. Any person who violates this subsection with respect to:

(a) A controlled substance in Schedule I, is guilty of a Class B felony, except as otherwise provided in ORS 475.864.

(b) A controlled substance in Schedule II, is guilty of a Class C felony.

(c) A controlled substance in Schedule III, is guilty of a Class A misdemeanor.

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

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

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(4) In any prosecution under this section for manufacture, possession or delivery of that plant of the genus *Lophophora* commonly known as peyote, it is an affirmative defense that the peyote is being used or is intended for use:

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

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

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

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

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

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

SECTION 2. The State Board of Pharmacy shall classify marijuana as a controlled substance in Schedule II, III, IV or V.

SECTION 3. (1) The State Board of Pharmacy shall classify methamphetamine as a controlled

substance in Schedule I.

(2) Notwithstanding subsection (1) of this section, methamphetamine, its salts, isomers and salts of its isomers shall be classified as a controlled substance in Schedule II for purposes of currently accepted medical use in treatment in the United States and currently accepted medical use with severe restrictions within the meaning of 21 U.S.C. 812(b)(2).

SECTION 4. (1) The State Board of Pharmacy shall classify marijuana in accordance with section 2 of this 2009 Act no later than 180 days after the effective date of this 2009 Act.

(2) The board shall classify methamphetamine in accordance with section 3 of this 2009 Act no later than 180 days after the effective date of this 2009 Act.

SECTION 5. The amendments to ORS 475.840 by section 1 of this 2009 Act apply to offenses committed on or after the effective date of this 2009 Act.