

Chapter 475

2009 EDITION

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**UNIFORM CONTROLLED
SUBSTANCES ACT****(Generally)**

475.005 Definitions for ORS 475.005 to 475.285 and 475.840 to 475.980. As used in ORS 475.005 to 475.285 and 475.840 to 475.980, unless the context requires otherwise:

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

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

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

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

(3) "Administration" means the Drug Enforcement Administration of the United States Department of Justice, or its successor agency.

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

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

(6) "Controlled substance":

(a) Means a drug or its immediate precursor classified in Schedules I through V under the federal Controlled Substances Act, 21 U.S.C. 811 to 812, as modified under ORS 475.035. The use of the term "precursor" in this paragraph does not control and is not controlled by the use of the term "precursor" in ORS 475.840 to 475.980.

(b) Does not mean industrial hemp, as defined in ORS 571.300, or industrial hemp commodities or products.

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

(8) "Deliver" or "delivery" means the actual, constructive or attempted transfer, other than by administering or dispensing, from one person to another of a controlled

substance, whether or not there is an agency relationship.

(9) "Device" means instruments, apparatus or contrivances, including their components, parts or accessories, intended:

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

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

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

(11) "Dispenser" means a practitioner who dispenses.

(12) "Distributor" means a person who delivers.

(13) "Drug" means:

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

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

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

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

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

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

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

(b) By a practitioner, or by an authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale.

(16) "Marijuana":

(a) Except as provided in this subsection, means all parts of the plant Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin.

(b) Does not mean the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(c) Does not mean industrial hemp, as defined in ORS 571.300, or industrial hemp commodities or products.

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

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

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

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

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

(22) "Ultimate user" means a person who lawfully possesses a controlled substance for the use of the person or for the use of a member of the household of the person or for administering to an animal owned by the person or by a member of the household of the person. [1977 c.745 §1; 1979 c.777 §49; 1979 c.785 §5; 1981 c.220 §1; 1981 c.666 §1; 1987 c.657 §8; 1995 c.440 §22; 2001 c.615 §15; 2001 c.623 §3; 2009 c.897 §4]

475.010 [Amended by 1953 c.342 §3; 1957 c.587 §6; 1965 c.545 §1; 1971 c.743 §378; 1973 c.697 §9; 1974 c.67 §5; repealed by 1977 c.745 §54]

475.015 [1977 c.745 §3; 1979 c.777 §50; repealed by 1981 c.666 §11]

475.020 [Repealed by 1957 c.587 §12]

475.025 [1977 c.745 §4; repealed by 1981 c.666 §11]

475.030 [Repealed by 1957 c.587 §12]

475.035 Authority to control schedule; rules. (1) In arriving at any decision on changes in or addition to classification when changes or additions are proposed by the federal Drug Enforcement Administration or by any other reliable source, the State Board of Pharmacy shall review the scientific knowledge available regarding the substance, its pharmacological effects, patterns of use and misuse, and potential consequences of abuse, and consider the judgment of individuals with training and experience with the substance.

(2) Whenever the board determines that a change in or an addition to the schedule of a controlled substance is justified, the board by rule may order the change and fix the effective date thereof.

(3) If a substance is an ingredient of a controlled substance, the ingredient shall be considered to be in the same schedule as that controlled substance. Substances which are precursors of the ingredient shall not be subject to control solely because they are precursors of the ingredient. The use of the term "precursor" in this subsection does not control and is not controlled by the use of the term "precursor" in ORS 475.840 to 475.980.

(4) The board shall administer ORS 475.005 to 475.285 and 475.840 to 475.980 in accordance with ORS chapter 183.

(5) Authority to control under this section does not extend to tobacco or to alcoholic beverages as defined in ORS 471.001. [1977 c.745 §5; 1981 c.666 §2; 1987 c.657 §9; 1995 c.301 §31; 1995 c.440 §23; 2001 c.615 §16]

475.040 [Repealed by 1957 c.587 §12]

475.045 Exclusions. The State Board of Pharmacy shall exclude any nonnarcotic substance from a schedule if such substance may, under the Federal Food, Drug, and Cosmetic Act and the law of this state, be lawfully sold over the counter without a prescription. [1977 c.745 §7a]

475.050 [Repealed by 1957 c.587 §12]

475.055 Publishing of schedules. The State Board of Pharmacy shall publish the classification of controlled substances within 30 days following revision of any classification or reclassification of a controlled substance. [1977 c.745 §6; 1981 c.666 §3]

475.059 Classification of marijuana. The State Board of Pharmacy shall classify marijuana as a controlled substance in Schedule II, III, IV or V. [2009 c.898 §2]

Note: 475.059 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 475 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

475.060 [Repealed by 1957 c.587 §12]

475.065 Classification of methamphetamine; exceptions. (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). [2009 c.898 §3]

Note: 475.065 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 475 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

475.070 [Amended by 1961 c.648 §12; repealed by 1971 c.743 §432]

475.075 [1977 c.745 §2; 1979 c.777 §51; repealed by 1981 c.666 §11]

475.080 [Repealed by 1959 c.411 §22]

475.085 [1977 c.745 §55; 1979 c.777 §52; repealed by 1981 c.666 §11]

475.090 [Amended by 1953 c.543 §3; 1957 c.587 §7; repealed by 1971 c.743 §432]

475.095 Rules; fees. The State Board of Pharmacy may adopt rules relating to fees and charge reasonable fees in addition to any other fees required by statute or rule, relating to the registration and control of the manufacture, delivery and dispensing of controlled substances within this state. [1977 c.745 §7; 1981 c.666 §4]

475.100 [Amended by 1953 c.396 §2; 1957 c.587 §8; 1963 c.229 §1; 1965 c.15 §1; 1965 c.545 §2; 1971 c.743 §379; repealed by 1977 c.745 §54]

475.101 Immunity for reporting violation. A person who, in good faith, makes a report of a violation of ORS 475.840 to 475.980 and who has reasonable grounds for making the report is immune from any civil or criminal liability that might otherwise be incurred or imposed with respect to making the report or to the content of the report. The person has the same immunity with re-

spect to participating in a judicial proceeding resulting from the report. [2005 c.706 §7]

Note: 475.101 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 475 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

475.110 [Amended by 1953 c.396 §2; 1965 c.545 §3; 1971 c.743 §379a; repealed by 1977 c.745 §54]

475.120 [Repealed by 1971 c.743 §432]

(Registration)

475.125 Registration requirements. (1) Every person who manufactures, delivers or dispenses any controlled substance within this state or who proposes to engage in the manufacture, delivery or dispensing of any controlled substance within this state, must obtain annually a registration issued by the State Board of Pharmacy in accordance with its rules.

(2) Persons registered by the board under ORS 475.005 to 475.285 and 475.840 to 475.980 to manufacture, deliver, dispense or conduct research with controlled substances may possess, manufacture, deliver, dispense or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of ORS 475.045, 475.095 and 475.125 to 475.185 and other applicable laws of this state.

(3) The following persons need not register and may lawfully possess controlled substances under ORS 475.005 to 475.285 and 475.840 to 475.980:

(a) An agent or employee of any registered manufacturer, distributor or dispenser of any controlled substance if the agent or employee is acting in the usual course of business or employment.

(b) A common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment.

(c) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V substance, unless otherwise prohibited.

(d) A practitioner otherwise licensed under the laws of this state and authorized to dispense or administer a controlled substance by the licensing authority.

(4) The board may waive by rule the requirement for registration of certain manufacturers or dispensers if it finds it consistent with the public health and safety.

(5) A separate registration is required at each principal place of business or professional practice where the applicant manufac-

tures, delivers or dispenses controlled substances.

(6) The board may inspect the establishment of a registrant or applicant for registration in accordance with the rules of the board. [1977 c.745 §8; 1995 c.440 §24]

475.130 [Repealed by 1957 c.587 §12]

475.135 Grounds to grant or deny registration; scope of registration; effect of federal registration. (1) The State Board of Pharmacy shall register or renew the registration of an applicant to manufacture or dispense controlled substances included in schedules under procedures defined in ORS 475.035, unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board shall consider the following factors:

(a) Failure to maintain effective controls against diversion of controlled substances into other than legitimate medical, scientific or industrial channels;

(b) Failure to comply with applicable state or local laws;

(c) Any convictions of the applicant under any federal or state laws relating to any controlled substance;

(d) Past experience in the manufacture, delivery or dispensing of controlled substances and the existence in the applicant's establishment of effective controls against diversion;

(e) Furnishing by the applicant of false or fraudulent material in any application filed under ORS 475.005 to 475.285 and 475.840 to 475.980;

(f) Suspension or revocation of the applicant's federal registration to manufacture, deliver or dispense controlled substances as authorized by federal law; or

(g) Any other factors relevant to and consistent with the public health and safety.

(2) Registration under subsection (1) of this section does not entitle a registrant to manufacture, deliver or dispense controlled substances in Schedule I or II other than those specified in the registration.

(3) Practitioners must be registered to conduct research with controlled substances in Schedules I through V if they are authorized to conduct research under the law of this state. The board need not require separate registration under ORS 475.045, 475.095 and 475.125 to 475.185 for practitioners engaging in research with controlled substances in Schedules I through V where the registrant is already registered under ORS 475.045, 475.095 and 475.125 to 475.185 in another capacity. Persons with valid registration from the Drug Enforcement

Administration for research on controlled substances may conduct research within this state in compliance with other state law upon furnishing the board evidence of that federal registration, and are exempt from state prosecution for possession and distribution of controlled substances to the extent of the registration. Registration under ORS 475.005 to 475.285 and 475.840 to 475.980 does not exempt the registrant from compliance with any other relevant law of this state or the United States, unless such exemption is expressly provided under ORS 475.005 to 475.285 and 475.840 to 475.980.

(4) Notwithstanding this section, the manufacture, delivery or dispensing of any controlled substance excluded from any medical use by federal law is prohibited, except:

(a) For research authorized under subsection (3) of this section and ORS 475.225; or

(b) As otherwise provided by state or federal law.

(5) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration, excluding fees, entitles them to be registered under ORS 475.045, 475.095 and 475.125 to 475.185. [1977 c.745 §9; 1979 c.777 §53; 1981 c.666 §5; 1995 c.440 §25]

475.140 [Repealed by 1957 c.587 §12]

475.145 Revocation and suspension of registration. (1) A registration under ORS 475.135 to manufacture, deliver or dispense a controlled substance may be suspended or revoked by the State Board of Pharmacy upon a finding that:

(a) The registrant has furnished false or fraudulent material information in any application filed under ORS 475.005 to 475.285 and 475.840 to 475.980;

(b) The registrant has been convicted of a felony under any state or federal law relating to any controlled substance;

(c) The registrant has had the federal registration suspended or revoked to manufacture, deliver or dispense controlled substances;

(d) The registrant has violated any rule of the board under ORS 475.005 to 475.285 and 475.840 to 475.980;

(e) The registrant has failed to maintain proper records or has failed to follow proper refill procedures; or

(f) Continuance of registration would be inconsistent with the public interest under any factor stated in ORS 475.135.

(2) The board may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(3) If the board suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state.

(4) The board shall promptly notify the administration of all orders suspending or revoking registration and all forfeitures of controlled substances. [1977 c.745 §10; 1981 c.666 §6; 1995 c.440 §26]

475.150 [Amended by 1959 c.411 §1; 1971 c.418 §14; repealed by 1977 c.745 §54]

475.155 Order to show cause. (1) Before denying, suspending or revoking a registration, or refusing a renewal of registration, the State Board of Pharmacy shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked or suspended, or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the board at a time and place not less than 30 days after the date of service of the order. These proceedings shall be conducted in accordance with ORS chapter 183 without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

(2) The board may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under ORS 475.145 or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction. [1977 c.745 §11]

475.160 [Repealed by 1977 c.745 §54]

475.165 Records of registrants. Persons registered to manufacture, deliver or dispense controlled substances under ORS 475.005 to 475.285 and 475.840 to 475.980 shall keep records and maintain inventories in conformance with the recordkeeping and inventory requirements of federal law and with any additional rules the State Board of Pharmacy issues. [1977 c.745 §12; 1995 c.440 §27]

(Records)

475.175 When order forms required.

Controlled substances in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section. [1977 c.745 §13]

475.185 When prescriptions required.

(1) Except when dispensed directly by a practitioner to an ultimate user, no controlled substance in Schedule II may be dispensed without the written prescription of a practitioner.

(2) In emergency situations, as defined by rule of the State Board of Pharmacy, Schedule II drugs may be dispensed upon oral or electronically transmitted prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of ORS 475.165. No prescription for a Schedule II substance may be refilled.

(3) Except when dispensed directly by a practitioner to an ultimate user, a controlled substance included in Schedule III, IV or V, which is a prescription drug, shall not be dispensed without a written, oral or electronically transmitted prescription of a practitioner. The prescription shall not be filled or refilled more than six months after the date on which it was issued and no prescription authorized to be refilled may be refilled more than five times. Additional quantities of the controlled substances listed in Schedule III, IV or V may only be authorized by a practitioner through issuance of a new prescription.

(4) A controlled substance shall not be delivered or dispensed other than for a medical purpose.

(5) Except in good faith and in the course of professional practice only, a practitioner or a pharmacist may not dispense controlled substances.

(6) Any oral or electronically transmitted prescription authorized by statute or rule shall be stored by electronic means or reduced promptly to writing and filed by the pharmacy.

(7) Issuance, preparation, labeling, dispensing, recordkeeping and filing of prescriptions or medication orders shall be in conformance with the requirements of the federal law and rules of the board. [1977 c.745 §14; 1979 c.777 §54; 1981 c.666 §7; 2001 c.623 §4]

475.188 Prescription drug orders; electronic transmission. (1) Prescription drug orders may be transmitted by electronic means from a practitioner authorized to pre-

scribe drugs directly to the dispensing pharmacist.

(2) All prescription drug orders communicated by way of electronic transmission shall:

(a) Be transmitted only by an authorized practitioner;

(b) Be transmitted directly to a pharmacist in a pharmacy of the patient's choice with no intervening person having access to the prescription drug order;

(c) Specify the prescribing practitioner's telephone number for verbal confirmation, the time and date of transmission, the identity of the pharmacy intended to receive the transmission and all other information required for a prescription by federal or state law; and

(d) Be traceable to the prescribing practitioner by an electronic signature or other secure method of validation.

(3) An electronic transmission of a prescription drug order shall be stored by electronic means or reduced promptly to writing, filed by the pharmacy and retained in conformity with the requirements of ORS 475.165.

(4) The dispensing pharmacist shall exercise professional judgment regarding the accuracy, validity and authenticity of an electronically transmitted prescription drug order.

(5) All equipment for transmission, storage or receipt of electronically transmitted prescription drug orders shall be maintained to protect against unauthorized access.

(6) A pharmacist, pharmacy or pharmacy department shall not enter into an agreement with a practitioner or health care facility concerning the provision of any electronic transmission equipment or apparatus that would adversely affect a patient's freedom to select the pharmacy or pharmacy department of the patient's choice.

(7) A pharmacist, pharmacy or pharmacy department shall not provide any electronic equipment or apparatus to a practitioner or health care facility for the purpose of providing an incentive to the practitioner or health care facility to refer patients to a particular pharmacy or pharmacy department.

(8) There shall be no additional charge to the patient because the prescription drug order was electronically transmitted.

(9) Nothing in this section shall be construed as authorizing the electronic transmission of a prescription drug order when a written prescription is required under ORS

127.815, 137.473, 169.750, 453.025 or 475.185 (1). [2001 c.623 §2; 2003 c.102 §1]

Note: 475.188 was added to and made a part of 475.005 to 475.285 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

475.190 Exception to prescription requirement; rules. (1) Notwithstanding the provisions of ORS 475.185, upon registration with the State Board of Pharmacy, a humane society or animal control agency may purchase, possess and, subject to subsection (4) of this section, administer sodium pentobarbital to euthanize injured, sick, homeless or unwanted domestic pets and other animals.

(2) The State Board of Pharmacy, after consultation with the Oregon State Veterinary Medical Examining Board, shall adopt rules according to ORS 183.325 to 183.410 establishing requirements for registration, renewal of registration and revocation or suspension of registration under subsection (1) of this section. Those rules shall include a provision that the State Board of Pharmacy will suspend or revoke the registration of any humane society or animal control agency that allows a person who is not certified under subsection (4) of this section to administer sodium pentobarbital.

(3) Any person who is registered under ORS 475.005 to 475.285 and 475.840 to 475.980 to deliver or dispense controlled substances may deliver or dispense sodium pentobarbital to a humane society or animal control agency registered under subsections (1) and (2) of this section.

(4) The Oregon State Veterinary Medical Examining Board, after consultation with the State Board of Pharmacy, shall adopt rules establishing requirements for certification of persons to administer sodium pentobarbital. Those rules may require that a person complete certain educational or training programs in order to be certified. No person shall administer sodium pentobarbital unless the person is certified by the Oregon State Veterinary Medical Examining Board. [1983 c.342 §2; 1995 c.440 §28]

475.205 [1977 c.745 §24; repealed by 1981 c.666 §11]

(Miscellaneous)

475.215 Cooperative arrangements. The State Board of Pharmacy shall cooperate with federal and other state agencies in discharging its responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, it may:

(1) Arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances; and

(2) Cooperate in training programs concerning controlled substance law enforcement at local and state levels. [1977 c.745 §22]

475.225 Education and research.

(1) The Oregon Health Authority shall carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs it may:

(a) Promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(b) Assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(c) Consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(d) Evaluate procedures, projects, techniques and controls conducted or proposed as part of educational programs on misuse or abuse of controlled substances;

(e) Disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and

(f) Assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(2) The authority shall encourage research on the medical use, misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of ORS 475.005 to 475.285 and 475.840 to 475.980, it may:

(a) Establish methods to assess accurately the physiological, psychological and social effects of controlled substances and identify their medical uses, relative hazard potential, and potential for abuse;

(b) Make studies and undertake programs of research to:

(A) Develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of ORS 475.005 to 475.285 and 475.840 to 475.980;

(B) Determine patterns of use, misuse and abuse of controlled substances and the social effects thereof; and

(C) Improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of controlled substances; or

(c) Enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for

the purpose of conducting research, demonstrations or special projects which bear directly on misuse and abuse of controlled substances.

(3) The authority may enter into contracts for educational and research activities without performance bonds and without regard to ORS 279A.125, 279A.140, 279B.025, 279B.240, 279B.270, 279B.275, 279B.280, 459A.475, 459A.480, 459A.485 and 459A.490. [1977 c.745 §25; 1981 c.666 §8; 1995 c.440 §29; 2003 c.794 §297; 2009 c.595 §963]

(Enforcement)

475.235 Burden of proof; status of analysis of controlled substance; notice of objection.

(1) It is not necessary for the state to negate any exemption or exception in ORS 475.005 to 475.285 and 475.840 to 475.980 in any complaint, information, indictment or other pleading or in any trial, hearing or other proceeding under ORS 475.005 to 475.285 and 475.840 to 475.980. The burden of proof of any exemption or exception is upon the person claiming it.

(2) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under ORS 475.005 to 475.285 and 475.840 to 475.980, the person is presumed not to be the holder of the registration or form. The burden of proof is upon the person to rebut the presumption.

(3)(a) When a controlled substance is at issue in a criminal proceeding before a grand jury, at a preliminary hearing, in a proceeding on a district attorney's information or for purposes of an early disposition program, it is prima facie evidence of the identity of the controlled substance if:

(A) A sample of the controlled substance is tested using a presumptive test for controlled substances;

(B) The test is conducted by a law enforcement officer trained to use the test or by a forensic scientist; and

(C) The test is positive for the particular controlled substance.

(b) When the identity of a controlled substance is established using a presumptive test for purposes of a criminal proceeding before a grand jury, a preliminary hearing, a proceeding on a district attorney's information or an early disposition program, the defendant, upon notice to the district attorney, may request that the controlled substance be sent to a state police forensic laboratory for analysis.

(4) Notwithstanding any other provision of law, in all prosecutions in which an analysis of a controlled substance or sample was conducted, a certified copy of the analytical

report signed by the director of a state police forensic laboratory or the analyst or forensic scientist conducting the analysis shall be admitted as prima facie evidence of the results of the analytical findings unless the defendant has provided notice of an objection in accordance with subsection (5) of this section.

(5) If the defendant intends to object at trial to the admission of a certified copy of an analytical report as provided in subsection (4) of this section, not less than 15 days prior to trial the defendant shall file written notice of the objection with the court and serve a copy on the district attorney.

(6) As used in this section:

(a) "Analyst" means a person employed by the Department of State Police to conduct analysis in forensic laboratories established by the department under ORS 181.080.

(b) "Presumptive test" includes, but is not limited to, chemical tests using Marquis reagent, Duquenois-Levine reagent, Scott reagent system or modified Chen's reagent. [1977 c.745 §23; 1989 c.194 §1; 1995 c.440 §6; 1997 c.346 §1; 2001 c.870 §14; 2003 c.538 §1; 2007 c.636 §§1,2; 2009 c.610 §8]

475.245 Conditional discharge. Whenever any person pleads guilty to or is found guilty of possession of a controlled substance under ORS 475.840 (3), 475.854, 475.864, 475.874, 475.884 or 475.894 or of a property offense that is motivated by a dependence on a controlled substance, the court, without entering a judgment of guilt and with the consent of the district attorney and the accused, may defer further proceedings and place the person on probation. Upon violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against the person. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. There may be only one discharge and dismissal under this section with respect to any person. [1977 c.745 §21; 1995 c.440 §30; 1999 c.799 §1; 2001 c.834 §§6,10; 2005 c.706 §26; 2005 c.708 §§56,57]

475.255 Status of penalties. Any penalty imposed for violation of ORS 475.005 to 475.285 and 475.840 to 475.980 is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law. [1977 c.745 §18; 1995 c.440 §31]

475.265 When prosecution barred. If a violation of ORS 475.005 to 475.285 and 475.840 to 475.980 is a violation of a federal law or the law of another state, a conviction

or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state. [1977 c.745 §19; 1995 c.440 §32]

(Interpretation; Title)

475.275 Uniformity of interpretation. ORS 475.005 to 475.285 and 475.840 to 475.980 shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of ORS 475.005 to 475.285 and 475.840 to 475.980 among those states which enact similar laws. [1977 c.745 §28; 1995 c.440 §33]

475.285 Short title. ORS 475.005 to 475.285 and 475.840 to 475.980 may be cited as the Uniform Controlled Substances Act. [1977 c.745 §29; 1995 c.440 §7]

475.295 [1989 c.1075 §2; 1991 c.460 §3; 1993 c.33 §358; renumbered 430.400 in 1993]

OREGON MEDICAL MARIJUANA ACT

475.300 Findings. The people of the state of Oregon hereby find that:

(1) Patients and doctors have found marijuana to be an effective treatment for suffering caused by debilitating medical conditions, and therefore, marijuana should be treated like other medicines;

(2) Oregonians suffering from debilitating medical conditions should be allowed to use small amounts of marijuana without fear of civil or criminal penalties when their doctors advise that such use may provide a medical benefit to them and when other reasonable restrictions are met regarding that use;

(3) ORS 475.300 to 475.346 are intended to allow Oregonians with debilitating medical conditions who may benefit from the medical use of marijuana to be able to discuss freely with their doctors the possible risks and benefits of medical marijuana use and to have the benefit of their doctor's professional advice; and

(4) ORS 475.300 to 475.346 are intended to make only those changes to existing Oregon laws that are necessary to protect patients and their doctors from criminal and civil penalties, and are not intended to change current civil and criminal laws governing the use of marijuana for nonmedical purposes. [1999 c.4 §2]

Note: 475.300 to 475.346 were adopted by the people by initiative petition but were not added to or made a part of ORS chapter 475 or any series therein. See Preface to Oregon Revised Statutes for further explanation.

475.302 Definitions for ORS 475.300 to 475.346. As used in ORS 475.300 to 475.346:

(1) "Attending physician" means a physician licensed under ORS chapter 677 who has primary responsibility for the care and

treatment of a person diagnosed with a debilitating medical condition.

(2) “Authority” means the Oregon Health Authority.

(3) “Debilitating medical condition” means:

(a) Cancer, glaucoma, agitation due to Alzheimer’s disease, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, or treatment for these conditions;

(b) A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:

(A) Cachexia;

(B) Severe pain;

(C) Severe nausea;

(D) Seizures, including but not limited to seizures caused by epilepsy; or

(E) Persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis; or

(c) Any other medical condition or treatment for a medical condition adopted by the authority by rule or approved by the authority pursuant to a petition submitted pursuant to ORS 475.334.

(4) “Delivery” has the meaning given that term in ORS 475.005. “Delivery” does not include transfer of marijuana by a registry identification cardholder to another registry identification cardholder if no consideration is paid for the transfer.

(5) “Designated primary caregiver” means an individual 18 years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person’s application for a registry identification card or in other written notification to the authority. “Designated primary caregiver” does not include the person’s attending physician.

(6) “Marijuana” has the meaning given that term in ORS 475.005.

(7) “Marijuana grow site” means a location where marijuana is produced for use by a registry identification cardholder and that is registered under the provisions of ORS 475.304.

(8) “Medical use of marijuana” means the production, possession, delivery, or administration of marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of the person’s debilitating medical condition.

(9) “Production” has the meaning given that term in ORS 475.005.

(10) “Registry identification card” means a document issued by the authority that identifies a person authorized to engage in the medical use of marijuana and the person’s designated primary caregiver, if any.

(11) “Usable marijuana” means the dried leaves and flowers of the plant Cannabis family Moraceae, and any mixture or preparation thereof, that are appropriate for medical use as allowed in ORS 475.300 to 475.346. “Usable marijuana” does not include the seeds, stalks and roots of the plant.

(12) “Written documentation” means a statement signed by the attending physician of a person diagnosed with a debilitating medical condition or copies of the person’s relevant medical records. [1999 c.4 §3; 2001 c.900 §205; 2003 c.14 §305; 2005 c.22 §346; 2005 c.822 §1; 2007 c.573 §1; 2009 c.595 §964]

Note: See note under 475.300.

475.303 Advisory Committee on Medical Marijuana. (1) There is created the Advisory Committee on Medical Marijuana in the Oregon Health Authority, consisting of 11 members appointed by the Director of the Oregon Health Authority.

(2) The director shall appoint members of the committee from persons who possess registry identification cards, designated primary caregivers of persons who possess registry identification cards and advocates of the Oregon Medical Marijuana Act.

(3) The committee shall advise the director on the administrative aspects of the Oregon Medical Marijuana Program, review current and proposed administrative rules of the program and provide annual input on the fee structure of the program.

(4) The committee shall meet at least four times per year, at times and places specified by the director.

(5) The authority shall provide staff support to the committee.

(6) All agencies of state government, as defined in ORS 174.111, are directed to assist the committee in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish information and advice that the members of the committee consider necessary to perform their duties. [2005 c.822 §7; 2009 c.595 §965]

Note: See note under 475.300. 475.303 was added to and made a part of 475.300 to 475.346 by legislative action.

475.304 Marijuana grow site registration system; rules. (1) The Oregon Health Authority shall establish by rule a marijuana grow site registration system to authorize production of marijuana by a registry identification cardholder, a designated primary

caregiver who grows marijuana for the cardholder or a person who is responsible for a marijuana grow site. The marijuana grow site registration system adopted must require a registry identification cardholder to submit an application to the authority that includes:

(a) The name of the person responsible for the marijuana grow site;

(b) The address of the marijuana grow site;

(c) The registry identification card number of the registry cardholder for whom the marijuana is being produced; and

(d) Any other information the authority considers necessary.

(2) The authority shall issue a marijuana grow site registration card to a registry identification cardholder who has met the requirements of subsection (1) of this section.

(3) A person who has been issued a marijuana grow site registration card under this section must display the registration card at the marijuana grow site at all times when marijuana is being produced.

(4) A marijuana grow site registration card must be obtained and posted for each registry identification cardholder for whom marijuana is being produced at a marijuana grow site.

(5) All usable marijuana, plants, seedlings and seeds associated with the production of marijuana for a registry identification cardholder by a person responsible for a marijuana grow site are the property of the registry identification cardholder and must be provided to the registry identification cardholder upon request.

(6)(a) The authority shall conduct a criminal records check under ORS 181.534 of any person whose name is submitted as a person responsible for a marijuana grow site.

(b) A person convicted of a Class A or Class B felony under ORS 475.840 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder for five years from the date of conviction.

(c) A person convicted more than once of a Class A or Class B felony under ORS 475.840 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder.

(7) A registry identification cardholder or the designated primary caregiver of the cardholder may reimburse the person responsible for a marijuana grow site for the

costs of supplies and utilities associated with the production of marijuana for the registry identification cardholder. No other costs associated with the production of marijuana for the registry identification cardholder, including the cost of labor, may be reimbursed. [2005 c.822 §8; 2007 c.573 §2; 2009 c.595 §966]

Note: Section 7, chapter 573, Oregon Laws 2007, provides:

Sec. 7. The amendments to ORS 475.304 and 475.320 by sections 2 and 5 of this 2007 Act apply only to a person convicted after January 1, 2006, of a Class A or Class B felony under ORS 475.840 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II. [2007 c.573 §7]

Note: See note under 475.300. 475.304 was added to and made a part of 475.300 to 475.346 by legislative action.

475.305 [1977 c.636 §1; 1979 c.674 §1; repealed by 1993 c.571 §30]

475.306 Medical use of marijuana;

rules. (1) A person who possesses a registry identification card issued pursuant to ORS 475.309 may engage in, and a designated primary caregiver of such a person may assist in, the medical use of marijuana only as justified to mitigate the symptoms or effects of the person's debilitating medical condition.

(2) A person who is a registry identification cardholder must possess the registry identification card when using or transporting marijuana in a location other than the residence of the cardholder.

(3) The Oregon Health Authority shall define by rule when a marijuana plant is mature and when it is immature. The rule shall provide that a plant that has no flowers and that is less than 12 inches in height and less than 12 inches in diameter is a seedling or a start and is not a mature plant. [1999 c.4 §7; 2005 c.822 §2; 2009 c.595 §967]

Note: See note under 475.300.

475.309 Registry identification card; issuance; eligibility; duties of cardholder; immunity.

(1) Except as provided in ORS 475.316, 475.320 and 475.342, a person engaged in or assisting in the medical use of marijuana is excepted from the criminal laws of the state for possession, delivery or production of marijuana, aiding and abetting another in the possession, delivery or production of marijuana or any other criminal offense in which possession, delivery or production of marijuana is an element if the following conditions have been satisfied:

(a) The person holds a registry identification card issued pursuant to this section, has applied for a registry identification card pursuant to subsection (9) of this section, is the designated primary caregiver of the cardholder or applicant, or is the person responsible for a marijuana grow site that is producing marijuana for the cardholder and is registered under ORS 475.304; and

(b) The person who has a debilitating medical condition, the person's primary caregiver and the person responsible for a marijuana grow site that is producing marijuana for the cardholder and is registered under ORS 475.304 are collectively in possession of, delivering or producing marijuana for medical use in amounts allowed under ORS 475.320.

(2) The Oregon Health Authority shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of this section. Except as provided in subsection (3) of this section, the authority shall issue a registry identification card to any person who pays a fee in the amount established by the authority and provides the following:

(a) Valid, written documentation from the person's attending physician stating that the person has been diagnosed with a debilitating medical condition and that the medical use of marijuana may mitigate the symptoms or effects of the person's debilitating medical condition;

(b) The name, address and date of birth of the person;

(c) The name, address and telephone number of the person's attending physician;

(d) The name and address of the person's designated primary caregiver, if the person has designated a primary caregiver at the time of application; and

(e) A written statement that indicates whether the marijuana used by the cardholder will be produced at a location where the cardholder or designated primary caregiver is present or at another location.

(3) The authority shall issue a registry identification card to a person who is under 18 years of age if the person submits the materials required under subsection (2) of this section, and the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age signs a written statement that:

(a) The attending physician of the person under 18 years of age has explained to that person and to the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age the possible risks and benefits of the medical use of marijuana;

(b) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age consents to the use of marijuana by the person under 18 years of age for medical purposes;

(c) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees

to serve as the designated primary caregiver for the person under 18 years of age; and

(d) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to control the acquisition of marijuana and the dosage and frequency of use by the person under 18 years of age.

(4) A person applying for a registry identification card pursuant to this section may submit the information required in this section to a county health department for transmittal to the authority. A county health department that receives the information pursuant to this subsection shall transmit the information to the authority within five days of receipt of the information. Information received by a county health department pursuant to this subsection shall be confidential and not subject to disclosure, except as required to transmit the information to the authority.

(5)(a) The authority shall verify the information contained in an application submitted pursuant to this section and shall approve or deny an application within thirty days of receipt of the application.

(b) In addition to the authority granted to the authority under ORS 475.316 to deny an application, the authority may deny an application for the following reasons:

(A) The applicant did not provide the information required pursuant to this section to establish the applicant's debilitating medical condition and to document the applicant's consultation with an attending physician regarding the medical use of marijuana in connection with such condition, as provided in subsections (2) and (3) of this section;

(B) The authority determines that the information provided was falsified; or

(C) The applicant has been prohibited by a court order from obtaining a registry identification card.

(c) Denial of a registry identification card shall be considered a final authority action, subject to judicial review. Only the person whose application has been denied, or, in the case of a person under the age of 18 years of age whose application has been denied, the person's parent or legal guardian, shall have standing to contest the authority's action.

(d) Any person whose application has been denied may not reapply for six months from the date of the denial, unless so authorized by the authority or a court of competent jurisdiction.

(6)(a) If the authority has verified the information submitted pursuant to subsections (2) and (3) of this section and none of the

reasons for denial listed in subsection (5)(b) of this section is applicable, the authority shall issue a serially numbered registry identification card within five days of verification of the information. The registry identification card shall state:

(A) The cardholder's name, address and date of birth;

(B) The date of issuance and expiration date of the registry identification card;

(C) The name and address of the person's designated primary caregiver, if any;

(D) Whether the marijuana used by the cardholder will be produced at a location where the cardholder or designated primary caregiver is present or at another location; and

(E) Any other information that the authority may specify by rule.

(b) When the person to whom the authority has issued a registry identification card pursuant to this section has specified a designated primary caregiver, the authority shall issue an identification card to the designated primary caregiver. The primary caregiver's registry identification card shall contain the information provided in paragraph (a) of this subsection.

(7)(a) A person who possesses a registry identification card shall:

(A) Notify the authority of any change in the person's name, address, attending physician or designated primary caregiver.

(B) If applicable, notify the designated primary caregiver of the cardholder and the person responsible for the marijuana grow site that produces marijuana for the cardholder of any change in status including, but not limited to:

(i) The assignment of another individual as the designated primary caregiver of the cardholder;

(ii) The assignment of another individual as the person responsible for a marijuana grow site producing marijuana for the cardholder; or

(iii) The end of the eligibility of the cardholder to hold a valid registry identification card.

(C) Annually submit to the authority:

(i) Updated written documentation from the cardholder's attending physician of the person's debilitating medical condition and that the medical use of marijuana may mitigate the symptoms or effects of the person's debilitating medical condition; and

(ii) The name of the person's designated primary caregiver if a primary caregiver has been designated for the upcoming year.

(b) If a person who possesses a registry identification card fails to comply with this subsection, the card shall be deemed expired. If a registry identification card expires, the identification card of any designated primary caregiver of the cardholder shall also expire.

(8)(a) A person who possesses a registry identification card pursuant to this section and who has been diagnosed by the person's attending physician as no longer having a debilitating medical condition or whose attending physician has determined that the medical use of marijuana is contraindicated for the person's debilitating medical condition shall return the registry identification card and any other associated Oregon Medical Marijuana Program cards to the authority within 30 calendar days of notification of the diagnosis or notification of the contraindication.

(b) If, due to circumstances beyond the control of the registry identification cardholder, a cardholder is unable to obtain a second medical opinion about the cardholder's continuing eligibility to use medical marijuana before the 30-day period specified in paragraph (a) of this subsection has expired, the authority may grant the cardholder additional time to obtain a second opinion before requiring the cardholder to return the registry identification card and any associated cards.

(9) A person who has applied for a registry identification card pursuant to this section but whose application has not yet been approved or denied, and who is contacted by any law enforcement officer in connection with the person's administration, possession, delivery or production of marijuana for medical use may provide to the law enforcement officer a copy of the written documentation submitted to the authority pursuant to subsection (2) or (3) of this section and proof of the date of mailing or other transmission of the documentation to the authority. This documentation shall have the same legal effect as a registry identification card until such time as the person receives notification that the application has been approved or denied.

(10) A registry identification cardholder has the primary responsibility of notifying the primary caregiver and person responsible for the marijuana grow site that produces marijuana for the cardholder of any change in status of the cardholder. If the authority is notified by the cardholder that a primary caregiver or person responsible for a marijuana grow site has changed, the authority shall notify the primary caregiver or the person responsible for the marijuana grow site by mail at the address of record confirming the change in status and inform-

ing the caregiver or person that their card is no longer valid and must be returned to the authority.

(11) The authority shall revoke the registry identification card of a cardholder if a court has issued an order that prohibits the cardholder from participating in the medical use of marijuana or otherwise participating in the Oregon Medical Marijuana Program under ORS 475.300 to 475.346. The cardholder shall return the registry identification card to the authority within seven calendar days of notification of the revocation. If the cardholder is a patient, the patient shall return the patient's card and all other associated Oregon Medical Marijuana Program cards.

(12) The authority and employees and agents of the authority acting within the course and scope of their employment are immune from any civil liability that might be incurred or imposed for the performance of or failure to perform duties required by this section. [1999 c.4 §4; 1999 c.825 §2; 2003 c.14 §306; 2005 c.822 §3; 2007 c.573 §3; 2009 c.595 §968]

Note: See note under 475.300.

475.312 Designated primary caregiver.

(1) If a person who possesses a registry identification card issued pursuant to ORS 475.309 chooses to have a designated primary caregiver, the person must designate the primary caregiver by including the primary caregiver's name and address:

(a) On the person's application for a registry identification card;

(b) In the annual updated information required under ORS 475.309; or

(c) In a written, signed statement submitted to the Oregon Health Authority.

(2) A person described in this section may have only one designated primary caregiver at any given time. [1999 c.4 §13; 2009 c.595 §969]

Note: See note under 475.300.

475.315 [1977 c.636 §2; 1979 c.674 §2; repealed by 1993 c.571 §30]

475.316 Limitations on cardholder's immunity from criminal laws involving marijuana. (1) No person authorized to possess, deliver or produce marijuana for medical use pursuant to ORS 475.300 to 475.346 shall be excepted from the criminal laws of this state or shall be deemed to have established an affirmative defense to criminal charges of which possession, delivery or production of marijuana is an element if the person, in connection with the facts giving rise to such charges:

(a) Drives under the influence of marijuana as provided in ORS 813.010;

(b) Engages in the medical use of marijuana in a public place as that term is defined in ORS 161.015, or in public view or in a correctional facility as defined in ORS 162.135 (2) or youth correction facility as defined in ORS 162.135 (6);

(c) Delivers marijuana to any individual who the person knows is not in possession of a registry identification card;

(d) Delivers marijuana for consideration to any individual, even if the individual is in possession of a registry identification card;

(e) Manufactures or produces marijuana at a place other than a marijuana grow site authorized under ORS 475.304; or

(f) Manufactures or produces marijuana at more than one address.

(2) In addition to any other penalty allowed by law, a person who the Oregon Health Authority finds has willfully violated the provisions of ORS 475.300 to 475.346, or rules adopted under ORS 475.300 to 475.346, may be precluded from obtaining or using a registry identification card for the medical use of marijuana for a period of up to six months, at the discretion of the authority. [1999 c.4 §5; 1999 c.825 §3; 2005 c.822 §13; 2007 c.573 §4; 2009 c.595 §970]

Note: See note under 475.300.

475.319 Affirmative defense to certain criminal laws involving marijuana; notice.

(1) Except as provided in ORS 475.316 and 475.342, it is an affirmative defense to a criminal charge of possession or production of marijuana, or any other criminal offense in which possession or production of marijuana is an element, that the person charged with the offense is a person who:

(a) Has been diagnosed with a debilitating medical condition within 12 months prior to arrest and been advised by the person's attending physician that the medical use of marijuana may mitigate the symptoms or effects of that debilitating medical condition;

(b) Is engaged in the medical use of marijuana; and

(c) Possesses or produces marijuana only in amounts permitted under ORS 475.320.

(2) It is not necessary for a person asserting an affirmative defense pursuant to this section to have received a registry identification card in order to assert the affirmative defense established in this section.

(3) No person engaged in the medical use of marijuana who claims that marijuana provides medically necessary benefits and who is charged with a crime pertaining to such use of marijuana shall be precluded from presenting a defense of choice of evils, as set forth in ORS 161.200, or from presenting evidence supporting the necessity of marijuana

for treatment of a specific disease or medical condition, provided that the amount of marijuana at issue is no greater than permitted under ORS 475.320 and the patient has taken a substantial step to comply with the provisions of ORS 475.300 to 475.346.

(4) Any defendant proposing to use the affirmative defense provided for by this section in a criminal action shall, not less than five days before the trial of the cause, file and serve upon the district attorney a written notice of the intention to offer such a defense that specifically states the reasons why the defendant is entitled to assert and the factual basis for such affirmative defense. If the defendant fails to file and serve such notice, the defendant is not permitted to assert the affirmative defense at the trial of the cause unless the court for good cause orders otherwise. [1999 c.4 §6; 1999 c.825 §4; 2005 c.22 §347; 2005 c.822 §12]

Note: See note under 475.300.

475.320 Limits on amounts possessed.

(1)(a) A registry identification cardholder or the designated primary caregiver of the cardholder may possess up to six mature marijuana plants and 24 ounces of usable marijuana.

(b) Notwithstanding paragraph (a) of this subsection, if a registry identification cardholder has been convicted of a Class A or Class B felony under ORS 475.840 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II, the registry identification cardholder or the designated primary caregiver of the cardholder may possess one ounce of usable marijuana at any given time for a period of five years from the date of the conviction.

(2) A person authorized under ORS 475.304 to produce marijuana at a marijuana grow site:

(a) May produce marijuana for and provide marijuana to a registry identification cardholder or that person's designated primary caregiver as authorized under this section.

(b) May possess up to six mature plants and up to 24 ounces of usable marijuana for each cardholder or caregiver for whom marijuana is being produced.

(c) May produce marijuana for no more than four registry identification cardholders or designated primary caregivers concurrently.

(d) Must obtain and display a marijuana grow site registration card issued under ORS 475.304 for each registry identification cardholder or designated primary caregiver for whom marijuana is being produced.

(e) Must provide all marijuana produced for a registry identification cardholder or

designated primary caregiver to the cardholder or caregiver at the time the person responsible for a marijuana grow site ceases producing marijuana for the cardholder or caregiver.

(f) Must return the marijuana grow site registration card to the registry identification cardholder to whom the card was issued when requested to do so by the cardholder or when the person responsible for a marijuana grow site ceases producing marijuana for the cardholder or caregiver.

(3) Except as provided in subsections (1) and (2) of this section, a registry identification cardholder, the designated primary caregiver of the cardholder and the person responsible for a marijuana grow site producing marijuana for the registry identification cardholder may possess a combined total of up to six mature plants and 24 ounces of usable marijuana for that registry identification cardholder.

(4)(a) A registry identification cardholder and the designated primary caregiver of the cardholder may possess a combined total of up to 18 marijuana seedlings or starts as defined by rule of the Oregon Health Authority.

(b) A person responsible for a marijuana grow site may possess up to 18 marijuana seedlings or starts as defined by rule of the authority for each registry identification cardholder for whom the person responsible for the marijuana grow site is producing marijuana. [2005 c.822 §9; 2007 c.573 §5; 2009 c.595 §971]

Note: See first note under 475.304.

Note: See note under 475.300. 475.320 was added to and made a part of 475.300 to 475.346 by legislative action.

475.323 Effect of possession of registry identification card or designated primary caregiver card on search and seizure rights.

(1) Possession of a registry identification card or designated primary caregiver identification card pursuant to ORS 475.309 does not alone constitute probable cause to search the person or property of the cardholder or otherwise subject the person or property of the cardholder to inspection by any governmental agency.

(2) Any property interest possessed, owned or used in connection with the medical use of marijuana or acts incidental to the medical use of marijuana that has been seized by state or local law enforcement officers may not be harmed, neglected, injured or destroyed while in the possession of any law enforcement agency. A law enforcement agency has no responsibility to maintain live marijuana plants lawfully seized. No such property interest may be forfeited under any provision of law providing for the forfeiture

of property other than as a sentence imposed after conviction of a criminal offense. Usable marijuana and paraphernalia used to administer marijuana that was seized by any law enforcement office shall be returned immediately upon a determination by the district attorney in whose county the property was seized, or the district attorney's designee, that the person from whom the marijuana or paraphernalia used to administer marijuana was seized is entitled to the protections contained in ORS 475.300 to 475.346. The determination may be evidenced, for example, by a decision not to prosecute, the dismissal of charges or acquittal. [1999 c.4 §8; 1999 c.825 §5; 2005 c.22 §348]

Note: See note under 475.300.

475.324 Limits on confiscation of marijuana. A law enforcement officer who determines that a registry identification cardholder is in possession of amounts of usable marijuana or numbers of marijuana plants in excess of the amount or number authorized by ORS 475.320 may confiscate only any usable marijuana or plants that are in excess of the amount or number authorized. [2005 c.822 §10]

Note: See note under 475.300. 475.324 was added to and made a part of 475.300 to 475.346 by legislative action.

475.325 [1977 c.636 §3; 1979 c.674 §3; repealed by 1993 c.571 §30]

475.326 Attending physician; limitation on civil liability and professional discipline. No attending physician may be subjected to civil penalty or discipline by the Oregon Medical Board for:

(1) Advising a person whom the attending physician has diagnosed as having a debilitating medical condition, or a person who the attending physician knows has been so diagnosed by another physician licensed under ORS chapter 677, about the risks and benefits of medical use of marijuana or that the medical use of marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, provided the advice is based on the attending physician's personal assessment of the person's medical history and current medical condition; or

(2) Providing the written documentation necessary for issuance of a registry identification card under ORS 475.309, if the documentation is based on the attending physician's personal assessment of the applicant's medical history and current medical condition and the attending physician has discussed the potential medical risks and benefits of the medical use of marijuana with the applicant. [1999 c.4 §9; 2005 c.822 §11]

Note: See note under 475.300.

475.328 Limits on professional licensing board's authority to sanction licensee for medical use of marijuana; authorizes licensed health care professional to administer medical marijuana. (1) No professional licensing board may impose a civil penalty or take other disciplinary action against a licensee based on the licensee's medical use of marijuana in accordance with the provisions of ORS 475.300 to 475.346 or actions taken by the licensee that are necessary to carry out the licensee's role as a designated primary caregiver to a person who possesses a lawful registry identification card.

(2)(a) A licensed health care professional may administer medical marijuana to a person who possesses a registry identification card and resides in a licensed health care facility if the administration of pharmaceuticals is within the scope of practice of the licensed health care professional. Administration of medical marijuana under this subsection may not take place in a public place as defined in ORS 161.015 or in the presence of a person under 18 years of age. If the medical marijuana administered under this subsection is smoked, adequate ventilation must be provided.

(b) Nothing in this subsection requires:

(A) A licensed health care professional to administer medical marijuana; or

(B) A licensed health care facility to make accommodations for the administration of medical marijuana. [1999 c.4 §10; 2005 c.822 §4]

Note: See note under 475.300.

475.331 List of persons issued registry identification cards, designated primary caregivers and authorized grow sites; disclosure. (1)(a) The Oregon Health Authority shall create and maintain a list of the persons to whom the authority has issued registry identification cards, the names of any designated primary caregivers and the addresses of authorized marijuana grow sites. Except as provided in subsection (2) of this section, the list shall be confidential and not subject to public disclosure.

(b) The authority shall develop a system by which authorized employees of state and local law enforcement agencies may verify at all times that a person is a lawful possessor of a registry identification card or the designated primary caregiver of a lawful possessor of a registry identification card or that a location is an authorized marijuana grow site.

(2) Names and other identifying information from the list established pursuant to subsection (1) of this section may be released to:

(a) Authorized employees of the authority as necessary to perform official duties of the authority; and

(b) Authorized employees of state or local law enforcement agencies, only as necessary to verify that a person is a lawful possessor of a registry identification card or the designated primary caregiver of a lawful possessor of a registry identification card or that a location is an authorized marijuana grow site. Prior to being provided identifying information from the list, authorized employees of state or local law enforcement agencies shall provide to the authority adequate identification, such as a badge number or similar authentication of authority.

(3) Authorized employees of state or local law enforcement agencies that obtain identifying information from the list as authorized under this section may not release or use the information for any purpose other than verification that a person is a lawful possessor of a registry identification card or the designated primary caregiver of a lawful possessor of a registry identification card or that a location is an authorized marijuana grow site. [1999 c.4 §12; 2005 c.822 §5; 2009 c.595 §972]

Note: See note under 475.300.

475.334 Adding diseases or conditions that qualify as debilitating medical conditions; rules. Any person may submit a petition to the Oregon Health Authority requesting that a particular disease or condition be included among the diseases and conditions that qualify as debilitating medical conditions under ORS 475.302. The authority shall adopt rules establishing the manner in which the authority will evaluate petitions submitted under this section. Any rules adopted pursuant to this section shall require the authority to approve or deny a petition within 180 days of receipt of the petition by the authority. Denial of a petition shall be considered a final authority action subject to judicial review. [1999 c.4 §14; 2009 c.595 §973]

Note: See note under 475.300.

475.335 [1977 c.636 §4; 1979 c.674 §4; repealed by 1993 c.571 §30]

475.338 Rules. The Oregon Health Authority shall adopt all rules necessary for the implementation and administration of ORS 475.300 to 475.346. [1999 c.4 §15; 2009 c.595 §974]

Note: See note under 475.300.

475.340 Limitations on reimbursement of costs and employer accommodation. Nothing in ORS 475.300 to 475.346 shall be construed to require:

(1) A government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana; or

(2) An employer to accommodate the medical use of marijuana in any workplace. [1999 c.4 §16]

Note: See note under 475.300.

475.342 Limitations on protection from criminal liability. Nothing in ORS 475.300 to 475.346 shall protect a person from a criminal cause of action based on possession, production, or delivery of marijuana that is not authorized by ORS 475.300 to 475.346. [1999 c.4 §11]

Note: See note under 475.300.

475.345 [1977 c.636 §5; 1979 c.674 §5; repealed by 1993 c.571 §30]

475.346 Short title. ORS 475.300 to 475.346 shall be known as the Oregon Medical Marijuana Act. [1999 c.4 §1]

Note: See note under 475.300.

475.355 [1977 c.636 §6; 1979 c.674 §6; repealed by 1993 c.571 §30]

475.360 [1979 c.674 §10; repealed by 1993 c.571 §30]

475.365 [1977 c.636 §7; 1979 c.674 §7; repealed by 1993 c.571 §30]

475.375 [1977 c.636 §8; 1979 c.674 §8; repealed by 1993 c.571 §30]

ILLEGAL DRUG CLEANUP

475.405 Definitions for ORS 475.405 to 475.495. As used in ORS 475.405 to 475.495:

(1) “Chemical” means:

(a) Any material defined as a controlled substance or precursor substance as defined by ORS 475.005 to 475.285 and 475.805 to 475.980.

(b) Any substance used in the manufacture of a controlled substance as defined by ORS 475.005 to 475.285 and 475.805 to 475.980.

(c) Any material or substance designated by the Environmental Quality Commission under ORS 475.425.

(2) “Cleanup” includes any action the Department of Environmental Quality, or a person acting on behalf of the department, is required to take pursuant to a request under ORS 475.415.

(3) “Cleanup costs” means reasonable costs that are attributable to or associated with cleanup at an alleged illegal drug manufacturing site, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts and health studies.

(4) “Commission” means the Environmental Quality Commission.

(5) “Department” means the Department of Environmental Quality.

(6) “Director” means the Director of the Department of Environmental Quality.

(7) "Fund" means the Illegal Drug Cleanup Fund established under ORS 475.495.

(8) "Owner or operator" means any person who owns, leases, operates or controls an alleged illegal drug manufacturing site. "Owner or operator" does not include a person, who, without participating in the management of an alleged illegal drug manufacturing site, holds indicia of ownership primarily to protect a security interest in the site.

(9) "Site" means an illegal drug manufacturing site. [1987 c.699 §1; 1995 c.440 §8]

475.415 Request for cleanup. Upon the request of a law enforcement agency, the Department of Environmental Quality may identify, clean up, store and dispose of chemicals located at an alleged illegal drug manufacturing site. [1987 c.699 §2]

475.425 Environmental Quality Commission rules; designation of chemicals.

(1) The Environmental Quality Commission shall consult with the law enforcement agencies in adopting rules necessary for the Department of Environmental Quality to carry out its responsibilities under ORS 475.415.

(2) By rule, the commission may designate as chemical for the purposes of ORS 475.405 to 475.495 any element, compound, mixture or solution that may be a controlled substance or precursor substance as defined by ORS 475.005 to 475.285 and 475.805 to 475.980 or used to illegally manufacture drugs. [1987 c.699 §3; 1995 c.440 §9]

475.435 Authority of director. (1) Upon request of a law enforcement agency, the Director of the Department of Environmental Quality:

(a) May undertake directly or by contract any cleanup action necessary to protect the public health, safety, welfare and the environment; or

(b) May authorize any person to carry out any cleanup action in accordance with any requirements of or directions from the director, if the director determines that the person will commence and complete the cleanup action properly and in a timely manner. However, the director in most circumstances shall not require the law enforcement agency to be responsible for carrying out the cleanup action.

(2) Nothing in ORS 475.415 to 475.455, 475.475 and 475.485 shall prevent the director from taking any emergency cleanup action necessary to protect public health, safety, welfare or the environment.

(3) The director may require a person liable under ORS 475.455 to conduct any

cleanup action or related actions necessary to protect the public health, safety, welfare and the environment. The director's action under this subsection may include but need not be limited to issuing an order specifying the cleanup action the person must take.

(4) The director may request the Attorney General to bring an action or proceeding for legal or equitable relief, in the circuit court of the county in which the site is located or in Marion County, as may be necessary:

(a) To enforce an order issued under subsection (3) of this section; or

(b) To abate any imminent and substantial danger to the public health, safety, welfare or the environment related to a release.

(5) Notwithstanding any provision of ORS chapter 183, any order issued by the director under subsection (3) of this section shall not be appealable to the Environmental Quality Commission or subject to judicial review.

(6) If any person who is liable under ORS 475.455 fails without sufficient cause to conduct a cleanup action as required by an order of the director, the person shall be liable to the Department of Environmental Quality for the state's cleanup costs and for punitive damages not to exceed three times the amount of the state's cleanup costs.

(7) Nothing in this section is intended to interfere with, limit or abridge the authority of the State Fire Marshal or any other state agency or local unit of government relating to an emergency that presents a combustion or explosion hazard. [1987 c.699 §6]

475.445 Site entry; purposes. (1) Upon request of a law enforcement agency under ORS 475.415, the Department of Environmental Quality or its authorized representative may enter any alleged illegal drug manufacturing site at any reasonable time to:

(a) Sample, inspect, examine and investigate;

(b) Examine and copy records and other information; or

(c) Carry out cleanup action authorized by ORS 475.415 to 475.455, 475.475 and 475.485.

(2) If any person refuses to provide information, documents, records or to allow entry under subsection (1) of this section, the department may request the Attorney General to seek from a court of competent jurisdiction an order requiring the person to provide such information, documents, records or to allow entry. [1987 c.699 §4]

475.455 Liability of certain persons for cleanup costs. (1) The following persons shall be strictly liable for those cleanup costs incurred by the state or any other person

that are attributable to or associated with an alleged illegal drug manufacturing site and for damages for injury to or destruction of any natural resources caused by chemicals at the site:

(a) Any owner or operator at or during the time of the acts or omissions that resulted in a site being created or damage to natural resources.

(b) Any owner or operator who became the owner or operator after the time of the acts or omissions that resulted in a site being created or damages, and who knew or reasonably should have known of the site or damages when the person first became the owner or operator.

(c) Any owner or operator who obtained actual knowledge of the site or damages during the time the person was the owner or operator of the site and then subsequently transferred ownership or operation of the site to another person without disclosing such knowledge.

(d) Any person who, by any acts or omissions, caused, contributed to or exacerbated the site or damage, unless the acts or omissions were in material compliance with applicable laws, standards, regulations, licenses or permits.

(e) Any person who unlawfully hinders or delays entry to, investigation of or cleanup action at a site.

(2) Except as provided in subsection (1)(b) to (e) of this section and subsection (4) of this section, the following persons shall not be liable for cleanup costs incurred by the state or any other person that are attributable to or associated with a site, or for damages for injury to or destruction of any natural resources caused by chemicals at the site:

(a) Any owner or operator who became the owner or operator after the time of the acts or omissions that resulted in the site being created or damages, and who did not know and reasonably should not have known of the damages when the person first became the owner or operator.

(b) Any owner or operator of property that was contaminated by the migration of chemicals from real property not owned or operated by the person.

(c) Any owner or operator at or during the time of the acts or omissions that resulted in the site or damages, if the site or damage at the site was caused solely by one or a combination of the following:

(A) An act of God. "Act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable and irresistible character, the ef-

fects of which could not have been prevented or avoided by the exercise of due care or foresight.

(B) An act of war.

(C) Acts or omissions of a third party, other than an employee or agent of the person asserting this defense, or other than a person whose acts or omissions occur in connection with a contractual relationship, existing directly or indirectly, with the person asserting this defense. As used in this subparagraph, "contractual relationship" includes but is not limited to land contracts, deeds or other instruments transferring title or possession.

(3) Except as provided in subsection (1)(c) to (e) of this section or subsection (4) of this section, the following persons shall not be liable for cleanup costs incurred by the state or any other person that are attributable to or associated with an alleged illegal drug manufacturing site, or for damages for injury to or destruction of any natural resources caused by chemicals at the site:

(a) A unit of state or local government that acquired ownership or control of a site in the following ways:

(A) Involuntarily by virtue of its function as sovereign, including but not limited to escheat, bankruptcy, tax delinquency or abandonment; or

(B) Through the exercise of eminent domain authority by purchase or condemnation.

(b) A person who acquired a site by inheritance or bequest.

(4) Notwithstanding the exclusions from liability provided for specified persons in subsections (2) and (3) of this section, such persons shall be liable for cleanup costs incurred by the state or any other person that are attributable to or associated with a site, and for damages for injury to or destruction of any natural resources caused by chemicals at a site, to the extent that the person's acts or omissions contribute to such costs or damages, if the person:

(a) Obtained actual knowledge of the chemicals at a site or damages and then failed to promptly notify the Department of Environmental Quality and exercise due care with respect to the chemicals concerned, taking into consideration the characteristics of the chemicals in light of all relevant facts and circumstances; or

(b) Failed to take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the reasonably foreseeable consequences of such acts or omissions.

(5)(a) No indemnification, hold harmless, or similar agreement or conveyance shall be

effective to transfer from any person who may be liable under this section, to any other person, the liability imposed under this section. Nothing in this section shall bar any agreement to insure, hold harmless or indemnify a party to such agreement for any liability under this section.

(b) A person who is liable under this section shall not be barred from seeking contribution from any other person for liability under this section.

(c) Nothing in ORS 475.415 to 475.455, 475.475 and 475.485 shall bar a cause of action that a person liable under this section or a guarantor has or would have by reason of subrogation or otherwise against any person.

(d) Nothing in this section shall restrict any right that the state or any person might have under federal statute, common law or other state statute to recover cleanup costs or to seek any other relief related to the cleanup of an alleged illegal drug manufacturing site.

(6) To establish, for purposes of subsection (1)(b) of this section or subsection (2)(a) of this section, that the person did or did not have reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability.

(7)(a) Except as provided in paragraph (b) of this subsection, no person shall be liable under ORS 475.415 to 475.455, 475.475 and 475.485 for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance or advice in accordance with rules adopted by the Environmental Quality Commission or at the direction of the department or its authorized representative, with respect to an incident creating a danger to public health, safety, welfare or the environment as a result of any cleanup of a site. This paragraph shall not preclude liability for costs or damages as the result of negligence on the part of such person.

(b) No state or local government shall be liable under this section for costs or damages as a result of actions taken in response to an emergency created by the chemicals at or generated by or from a site owned by another person. This paragraph shall not preclude liability for costs or damages as a result of gross negligence or intentional misconduct by the state or local government. For the purpose of this paragraph, reckless, willful or wanton misconduct shall constitute gross negligence.

(c) This subsection shall not alter the liability of any person covered by subsection (1) of this section. [1987 c.699 §5]

475.465 Liability of state for cleanup. Notwithstanding any other provision of law, the State of Oregon, the Environmental Quality Commission and the Department of Environmental Quality and their officers, employees and agents shall not be liable to a person possessing or owning chemicals located at an alleged illegal drug manufacturing site for any claims or actions arising from the identification, cleanup, storage or disposal of such chemicals by the Department of Environmental Quality. [1987 c.699 §10]

475.475 Department record of costs; collection of costs. (1) The Department of Environmental Quality shall keep a record of the state's cleanup costs.

(2) Based on the record compiled by the department under subsection (1) of this section, the department shall require any person liable under ORS 475.435 or 475.455 to pay the amount of the state's cleanup costs and, if applicable, punitive damages.

(3) If the state's cleanup costs and punitive damages are not paid by the liable person to the department within 45 days after receipt of notice that such costs and damages are due and owing, the Attorney General, at the request of the Director of the Department of Environmental Quality, shall bring an action in the name of the State of Oregon in a court of competent jurisdiction to recover the amount owed, plus reasonable legal expenses.

(4) All moneys received by the department under this section shall be deposited in the Illegal Drug Cleanup Fund established under ORS 475.495. [1987 c.699 §7]

475.485 Costs and penalties as lien; enforcement of lien. (1) All of the state's cleanup costs, penalties and punitive damages for which a person is liable to the state under ORS 475.435 or 475.455 shall constitute a lien upon any real and personal property owned by the person.

(2) At the discretion of the Department of Environmental Quality, the department may file a claim of lien on real property or a claim of lien on personal property. The department shall file a claim of lien on real property to be charged with a lien under this section with the recording officer of each county in which the real property is located and shall file a claim of lien on personal property to be charged with a lien under this section with the Secretary of State. The lien shall attach and become enforceable on the day of such filing. The lien claim shall contain:

(a) A statement of the demand;

(b) The name of the person against whose property the lien attaches;

(c) A description of the property charged with the lien sufficient for identification; and

(d) A statement of the failure of the person to conduct cleanup action and pay penalties and damages as required.

(3) The lien created by this section may be foreclosed by a suit on real and personal property in the circuit court in the manner provided by law for the foreclosure of other liens.

(4) Nothing in this section shall affect the right of the state to bring an action against any person to recover all costs and damages for which the person is liable under ORS 475.435 or 475.455.

(5) A lien created under this section shall have priority over any claim of the state under ORS 166.715 to 166.735 or any local government forfeiture ordinance or regulation. [1987 c.699 §8]

475.495 Illegal Drug Cleanup Fund; sources; uses. (1) The Illegal Drug Cleanup Fund is established separate and distinct from the General Fund in the State Treasury.

(2) The following moneys shall be deposited into the State Treasury and credited to the Illegal Drug Cleanup Fund:

(a) Moneys recovered or otherwise received from responsible parties for cleanup costs;

(b) Moneys received from a state agency, local government unit or any agency of a local government unit for cleanup of illegal drug manufacturing sites, including moneys received from forfeiture proceeds under the provisions of ORS 131A.360 and 131A.365;

(c) Moneys received from the federal government for cleanup of illegal drug manufacturing sites; and

(d) Any penalty, fine or punitive damages recovered under ORS 475.435, 475.455 or 475.485.

(3) The State Treasurer may invest and reinvest moneys in the Illegal Drug Cleanup Fund in the manner provided by law. Interest earned by the fund shall be credited to the fund.

(4) The moneys in the Illegal Drug Cleanup Fund are appropriated continuously to the Department of Environmental Quality to be used as provided for in subsection (5) of this section.

(5) Moneys in the Illegal Drug Cleanup Fund may be used for the following purposes:

(a) Payment of the state's cleanup costs; and

(b) Funding any action or activity authorized by ORS 475.415 to 475.455, 475.475 and 475.485.

(6) In addition to the purposes provided for in subsection (5) of this section, moneys in the Illegal Drug Cleanup Fund received from forfeiture proceeds under the provisions of ORS 131A.360 and 131A.365 may be transferred to the Department of Human Services to support the administration of the illegal drug manufacturing cleanup program provided for in ORS 453.855 to 453.912.

(7) The department may not expend more than \$250,000 in each biennium of the forfeiture proceeds that are paid into the Illegal Drug Cleanup Fund by political subdivisions under the provisions of ORS 131A.360. If at the end of a biennium more than \$250,000 has been paid into the Illegal Drug Cleanup Fund under the provisions of ORS 131A.360, the department shall refund to each political subdivision that made payments into the fund a pro rata share of the excess amount, based on the amount of forfeiture proceeds paid into the fund by the political subdivision. [1987 c.699 §9; 1989 c.966 §56; 1993 c.699 §5; 2001 c.780 §§19,19a; 2009 c.78 §52]

475.505 [1979 c.253 §1; repealed by 1987 c.75 §1]

475.510 [1979 c.253 §2; repealed by 1987 c.75 §1]

475.515 [1979 c.253 §3; repealed by 1987 c.75 §1]

DRUG PARAPHERNALIA

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

(2) For the purposes of this section, "drug paraphernalia" means all equipment, products and materials of any kind which are marketed for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of ORS 475.840 to 475.980. Drug paraphernalia includes, but is not limited to:

(a) Kits marketed for use or designed for use in unlawfully planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance

or from which a controlled substance can be derived;

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

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

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

(e) Scales and balances marketed for use or designed for use in weighing or measuring controlled substances;

(f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, marketed for use or designed for use in cutting controlled substances;

(g) Separation gins and sifters marketed for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana;

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

(i) Objects marketed for use or designed specifically for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

(A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens or hashish heads;

(B) Water pipes;

(C) Carburetion tubes and devices;

(D) Smoking and carburetion masks;

(E) Roach clips, meaning objects used to hold burning material that has become too small or too short to be held in the hand, such as a marijuana cigarette;

(F) Miniature cocaine spoons and cocaine vials;

(G) Chamber pipes;

(H) Carburetor pipes;

(I) Electric pipes;

(J) Air-driven pipes;

(K) Chillums;

(L) Bonges;

(M) Ice pipes or chillers; and

(N) Lighting equipment specifically designed for the growing of controlled substances.

(3) Drug paraphernalia does not include hypodermic syringes or needles.

(4) In determining whether an object is drug paraphernalia, a trier of fact should consider, in addition to all other relevant factors, the following:

(a) Instructions, oral or written, provided with the object concerning its use;

(b) Descriptive materials accompanying the object which explain or depict its use;

(c) National and local advertising concerning its use;

(d) The manner in which the object is displayed for sale;

(e) The existence and scope of legitimate uses for the object in the community; and

(f) Any expert testimony which may be introduced concerning its use.

(5) The provisions of ORS 475.525 to 475.565 do not apply to persons registered under the provisions of ORS 475.125 or to persons specified as exempt from registration under the provisions of that statute. [1989 c.1077 §1; 1995 c.440 §10]

475.535 Action to enforce ORS 475.525 to 475.565. The State of Oregon, any political subdivision of the state, or any official or agency of the state or its political subdivisions may bring an action to enforce ORS 475.525 to 475.565. The court shall award costs and reasonable attorney fees to the prevailing party in any such action. [1989 c.1077 §2]

475.545 Order of forfeiture of paraphernalia; effect. If, at the trial or upon a hearing, the trier of fact finds any item received into evidence at the trial or hearing to be drug paraphernalia, the court may order the item forfeited upon motion of the district attorney. The drug paraphernalia may then be destroyed or, if the paraphernalia is of substantial value and is not contraband, may be sold, the proceeds to be deposited in the Common School Fund. [1989 c.1077 §3]

475.555 Seizure of drug paraphernalia. An official of the state, its political subdivisions or any agency thereof may seize drug paraphernalia when:

(1) The drug paraphernalia is the subject of an adverse judgment under ORS 475.525 to 475.565;

(2) The seizure is in the course of a constitutionally valid arrest or search;

(3) The owner or person in possession of the drug paraphernalia consents to the seizure; or

(4) The seizure is pursuant to a lawful order of a court, including an order issued

under ORCP 83 or ORS 166.725. [1989 c.1077 §5]

475.565 Civil penalty for violation of ORS 475.525. (1) In addition to any other penalty provided by law:

(a) A person who violates ORS 475.525 shall incur a civil penalty in an amount of at least \$2,000 and not more than \$10,000; and

(b) The court may order other equitable remedies including but not limited to injunctive relief.

(2) Any fines collected under this section shall be forwarded to the State Treasurer for deposit in the General Fund to the credit of the Oregon Health Authority. The moneys shall be used for the development and implementation of drug abuse prevention activities and adolescent treatment. [1989 c.1077 §4; 2003 c.14 §307; 2009 c.595 §975]

475.610 [1955 c.573 §2; 1957 c.587 §9; repealed by 1959 c.411 §2 (475.615 enacted in lieu of 475.610)]

475.615 [1959 c.411 §3 (enacted in lieu of 475.610); repealed by 1977 c.745 §54]

475.620 [1955 c.573 §3; 1957 c.587 §10; repealed by 1959 c.411 §4 (475.625 enacted in lieu of 475.620)]

475.625 [1959 c.411 §5 (enacted in lieu of 475.620); 1963 c.137 §2; 1969 c.310 §2; repealed by 1971 c.743 §432]

475.630 [1955 c.573 §4; repealed by 1959 c.411 §6 (475.655 enacted in lieu of 475.630)]

475.635 [1959 c.411 §11 (enacted in lieu of 475.650); 1969 c.310 §3; repealed by 1971 c.743 §432]

475.640 [1955 c.573 §5; repealed by 1959 c.411 §8 (475.665 enacted in lieu of 475.640)]

475.645 [1959 c.411 §21 (enacted in lieu of 475.700); 1969 c.391 §15; 1971 c.743 §380; 1973 c.697 §20; 1977 c.745 §41; repealed by 1977 c.871 §29]

475.650 [1955 c.573 §6; repealed by 1959 c.411 §10 (475.635 enacted in lieu of 475.650)]

475.655 [1959 c.411 §7 (enacted in lieu of 475.630); 1963 c.137 §3; 1971 c.743 §381; repealed by 1973 c.697 §21]

475.660 [1955 c.573 §7; repealed by 1959 c.411 §12 (475.675 enacted in lieu of 475.660)]

475.665 [1959 c.411 §9 (enacted in lieu of 475.640); 1971 c.743 §382; 1973 c.697 §17; 1977 c.745 §42; repealed by 1977 c.871 §29]

475.670 [1955 c.573 §8; repealed by 1959 c.411 §14 (475.705 enacted in lieu of 475.670)]

475.675 [1959 c.411 §13 (enacted in lieu of 475.660); 1969 c.638 §2; 1973 c.697 §18; repealed by 1977 c.871 §29]

475.680 [1955 c.573 §§9,13; repealed by 1959 c.411 §16 (475.685 enacted in lieu of 475.680)]

475.685 [1959 c.411 §17 (enacted in lieu of 475.680); 1973 c.697 §15; repealed by 1977 c.871 §29]

475.690 [1955 c.573 §9; repealed by 1959 c.411 §18 (475.695 enacted in lieu of 475.690)]

475.695 [1959 c.411 §19 (enacted in lieu of 475.690); 1973 c.697 §16; 1977 c.745 §48; repealed by 1977 c.871 §29]

475.700 [1955 c.573 §10; repealed by 1959 c.411 §20 (475.645 enacted in lieu of 475.700)]

475.705 [1959 c.411 §15 (enacted in lieu of 475.670); 1969 c.638 §3; 1973 c.697 §19; 1977 c.745 §49; repealed by 1977 c.871 §29]

475.710 [1955 c.573 §11; repealed by 1959 c.411 §22]

475.715 [1969 c.442 §1; renumbered 430.560]

475.720 [1955 c.573 §12; repealed by 1959 c.411 §22]

475.725 [1969 c.442 §2; renumbered 430.565]

475.730 [1955 c.573 §13; repealed by 1959 c.411 §22]

475.732 [1973 c.697 §12; repealed by 1977 c.745 §54 and 1977 c.871 §29]

475.740 [1955 c.573 §1; repealed by 1959 c.411 §22]

475.742 [1973 c.697 §14; repealed by 1977 c.871 §29]

475.750 [1955 c.573 §3; repealed by 1959 c.411 §22]

HYPODERMIC DEVICES

475.805 Providing hypodermic device to minor prohibited; exception. (1) No person shall sell or give a hypodermic device to a minor unless the minor demonstrates a lawful need therefor by authorization of a physician, parent or legal guardian or by other means acceptable to the seller or donor.

(2) As used in this section, "hypodermic device" means a hypodermic needle or syringe or medication packaged in a hypodermic syringe or any instrument adapted for the subcutaneous injection of a controlled substance as defined in ORS 475.005. [1983 c.738 §1]

PENALTIES

475.840 Prohibited acts generally; penalties; affirmative defense for certain peyote uses; causing death by Schedule IV substance. (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.

(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. [Formerly 475.992; 2009 c.898 §1]

475.843 Affirmative defense to unlawfully possessing pseudoephedrine. It is an affirmative defense to a charge of violating ORS 475.840 by unlawfully possessing pseudoephedrine that the person:

(1) Obtained the pseudoephedrine lawfully;

(2) Possessed no more than six grams of pseudoephedrine, the salts, isomers or salts of isomers of pseudoephedrine or a combination of any of these substances; and

(3) Possessed the pseudoephedrine under circumstances that are consistent with typical medicinal or household use, as indicated by factors that include but are not limited to storage location, purchase date, possession of the products in a variety of strengths, brands, types or purposes and expiration date. [2005 c.706 §13a]

Note: 475.843 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 475 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

475.846 Unlawful manufacture of heroin. (1) It is unlawful for any person to manufacture heroin.

(2) Unlawful manufacture of heroin is a Class A felony. [2005 c.708 §24]

475.848 Unlawful manufacture of heroin within 1,000 feet of school. (1) It is unlawful for any person to manufacture heroin within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2) Unlawful manufacture of heroin within 1,000 feet of a school is a Class A felony. [2005 c.708 §25]

475.850 Unlawful delivery of heroin. (1) It is unlawful for any person to deliver heroin.

(2) Unlawful delivery of heroin is a Class A felony. [2005 c.708 §26]

475.852 Unlawful delivery of heroin within 1,000 feet of school. (1) It is unlawful for any person to deliver heroin within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2) Unlawful delivery of heroin within 1,000 feet of a school is a Class A felony. [2005 c.708 §27]

475.854 Unlawful possession of heroin. (1) It is unlawful for any person knowingly or intentionally to possess heroin.

(2) Unlawful possession of heroin is a Class B felony. [2005 c.708 §28]

475.856 Unlawful manufacture of marijuana. (1) It is unlawful for any person to manufacture marijuana.

(2) Unlawful manufacture of marijuana is a Class A felony. [2005 c.708 §29]

475.858 Unlawful manufacture of marijuana within 1,000 feet of school. (1) It is unlawful for any person to manufacture marijuana within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2) Unlawful manufacture of marijuana within 1,000 feet of a school is a Class A felony. [2005 c.708 §30]

475.860 Unlawful delivery of marijuana. (1) It is unlawful for any person to deliver marijuana.

(2) Unlawful delivery of marijuana is a:

(a) Class B felony if the delivery is for consideration.

(b) Class C felony if the delivery is for no consideration.

(3) Notwithstanding subsection (2) of this section, unlawful delivery of marijuana is a:

(a) Class A misdemeanor, if the delivery is for no consideration and consists of less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae; or

(b) Violation, if the delivery is for no consideration and consists of less than five grams of the dried leaves, stems and flowers of the plant Cannabis family Moraceae. A violation under this paragraph is punishable by a fine of not less than \$500 and not more than \$1,000. Fines collected under this paragraph shall be forwarded to the Department of Revenue for deposit in the Criminal Fine and Assessment Account established in ORS 137.300.

(4) Notwithstanding subsections (2) and (3) of this section, unlawful delivery of marijuana is a:

(a) Class A felony, if the delivery is to a person under 18 years of age and the defendant is at least 18 years of age and is at least three years older than the person to whom the marijuana is delivered; or

(b) Class C misdemeanor, if the delivery:

(A) Is for no consideration;

(B) Consists of less than five grams of the dried leaves, stems and flowers of the plant Cannabis family Moraceae;

(C) Takes place in a public place, as defined in ORS 161.015, that is within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors; and

(D) Is to a person who is 18 years of age or older. [2005 c.708 §31; 2009 c.610 §1]

475.862 Unlawful delivery of marijuana within 1,000 feet of school. (1) It is unlawful for any person to deliver marijuana within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2) Unlawful delivery of marijuana within 1,000 feet of a school is a Class A felony. [2005 c.708 §32]

475.864 Unlawful possession of marijuana. (1) It is unlawful for any person knowingly or intentionally to possess marijuana.

(2) Unlawful possession of marijuana is a Class B felony.

(3) Notwithstanding subsection (2) of this section, unlawful possession of marijuana is a violation if the amount possessed is less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae. A violation under this subsection is punishable by a fine of not less than \$500 and not more than \$1,000. Fines collected under this subsection shall be forwarded to the Department of Revenue for deposit in the Criminal Fine and Assessment Account established under ORS 137.300.

(4) Notwithstanding subsections (2) and (3) of this section, unlawful possession of marijuana is a Class C misdemeanor if the amount possessed is less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae and the possession takes place in a public place, as defined in ORS 161.015, that is within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors. [2005 c.708 §33]

475.866 Unlawful manufacture of 3,4-methylenedioxymethamphetamine. (1) It is unlawful for any person to manufacture 3,4-methylenedioxymethamphetamine.

(2) Unlawful manufacture of 3,4-methylenedioxymethamphetamine is a Class A felony. [2005 c.708 §34]

475.868 Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 feet of school. (1) It is unlawful for any person to manufacture 3,4-methylenedioxymethamphetamine within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2) Unlawful manufacture of 3,4-meth-

ylenedioxymethamphetamine within 1,000 feet of a school is a Class A felony. [2005 c.708 §35]

475.870 Unlawful delivery of 3,4-methylenedioxymethamphetamine. (1) It is unlawful for any person to deliver 3,4-methylenedioxymethamphetamine.

(2) Unlawful delivery of 3,4-methylenedioxymethamphetamine is a Class A felony. [2005 c.708 §36]

475.872 Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school. (1) It is unlawful for any person to deliver 3,4-methylenedioxymethamphetamine within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2) Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of a school is a Class A felony. [2005 c.708 §37]

475.874 Unlawful possession of 3,4-methylenedioxymethamphetamine. (1) It is unlawful for any person knowingly or intentionally to possess 3,4-methylenedioxymethamphetamine.

(2) Unlawful possession of 3,4-methylenedioxymethamphetamine is a Class B felony. [2005 c.708 §38]

475.876 Unlawful manufacture of cocaine. (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 cocaine.

(2) Unlawful manufacture of cocaine is a Class B felony. [2005 c.708 §19]

475.878 Unlawful manufacture of cocaine within 1,000 feet of school. (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 cocaine within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2) Unlawful manufacture of cocaine within 1,000 feet of a school is a Class A felony. [2005 c.708 §20]

475.880 Unlawful delivery of cocaine. (1) Except as authorized by ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful for any person to deliver cocaine.

(2) Unlawful delivery of cocaine is a Class B felony.

(3) Notwithstanding subsection (2) of this section, unlawful delivery of cocaine is a Class A felony if the delivery is to a person under 18 years of age. [2005 c.708 §21]

475.882 Unlawful delivery of cocaine within 1,000 feet of school. (1) Except as

authorized by ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful for any person to deliver cocaine within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2) Unlawful delivery of cocaine within 1,000 feet of a school is a Class A felony. [2005 c.708 §22]

475.884 Unlawful possession of cocaine. (1) It is unlawful for any person knowingly or intentionally to possess cocaine 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.

(2) Unlawful possession of cocaine is a Class C felony. [2005 c.708 §23]

475.886 Unlawful manufacture of methamphetamine. (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 methamphetamine.

(2) Unlawful manufacture of methamphetamine is a Class B felony. [2005 c.708 §14]

475.888 Unlawful manufacture of methamphetamine within 1,000 feet of school. (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 methamphetamine within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2) Unlawful manufacture of methamphetamine within 1,000 feet of a school is a Class A felony. [2005 c.708 §15]

475.890 Unlawful delivery of methamphetamine. (1) Except as authorized by ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful for any person to deliver methamphetamine.

(2) Unlawful delivery of methamphetamine is a Class B felony.

(3) Notwithstanding subsection (2) of this section, unlawful delivery of methamphetamine is a Class A felony if the delivery is to a person under 18 years of age. [2005 c.708 §16]

475.892 Unlawful delivery of methamphetamine within 1,000 feet of school. (1) Except as authorized by ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful for any person to deliver methamphetamine within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2) Unlawful delivery of methamphetamine within 1,000 feet of a school is a Class A felony. [2005 c.708 §17]

475.894 Unlawful possession of methamphetamine. (1) It is unlawful for any person knowingly or intentionally to possess methamphetamine 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.

(2) Unlawful possession of methamphetamine is a Class C felony. [2005 c.708 §18]

475.900 Crime category classification; proof of commercial drug offense. (1) A violation of ORS 475.840, 475.846 to 475.894, 475.904 or 475.906 shall be classified as crime category 8 of the sentencing guidelines grid of the Oregon Criminal Justice Commission if:

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

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

(B) Ten grams or more of a mixture or substance containing a detectable amount of cocaine;

(C) Ten grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers or salts of its isomers;

(D) One hundred grams or more of a mixture or substance containing a detectable amount of hashish;

(E) One hundred and fifty grams or more of a mixture or substance containing a detectable amount of marijuana;

(F) Two hundred or more user units of a mixture or substance containing a detectable amount of lysergic acid diethylamide;

(G) Sixty grams or more of a mixture or substance containing a detectable amount of psilocybin or psilocin; or

(H) Five grams or more or 25 or more pills, tablets or capsules of a mixture or substance containing a detectable amount of:

(i) 3,4-methylenedioxyamphetamine;

(ii) 3,4-methylenedioxymethamphetamine;

or

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

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

(A) The delivery was of heroin, cocaine, hashish, marijuana, methamphetamine, lysergic acid diethylamide, psilocybin or psilocin and was for consideration;

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

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

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

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

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

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

(H) The offender was in possession of manufacturing paraphernalia, including recipes, precursor chemicals, laboratory equipment, lighting, ventilating or power generating equipment;

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

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

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

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

(ii) Eight grams or more of a mixture or substance containing a detectable amount of cocaine;

(iii) Eight grams or more of a mixture or substance containing a detectable amount of methamphetamine;

(iv) Eight grams or more of a mixture or substance containing a detectable amount of hashish;

(v) One hundred ten grams or more of a mixture or substance containing a detectable amount of marijuana;

(vi) Twenty or more user units of a mixture or substance containing a detectable amount of lysergic acid diethylamide;

(vii) Ten grams or more of a mixture or substance containing a detectable amount of psilocybin or psilocin; or

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

(I) 3,4-methylenedioxyamphetamine;

(II) 3,4-methylenedioxymethamphetamine; or

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

(c) The violation constitutes a violation of ORS 475.848, 475.852, 475.858, 475.862, 475.868, 475.872, 475.878, 475.882, 475.888, 475.892 or 475.904.

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

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

(B) Grinding, soaking or otherwise breaking down a precursor substance for the purpose of manufacturing methamphetamine.

(e) The violation constitutes a violation of ORS 475.860 (4)(a) or 475.906 (1) or (2).

(2) A violation of ORS 475.840 or 475.846 to 475.894 shall be classified as crime category 6 of the sentencing guidelines grid of the Oregon Criminal Justice Commission if:

(a) The violation constitutes delivery of heroin, cocaine, methamphetamine or 3,4-methylenedioxyamphetamine, 3,4-methylenedioxymethamphetamine or 3,4-methylenedioxy-N-ethylamphetamine and is for consideration.

(b) The violation constitutes possession of:

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

(B) Ten grams or more of a mixture or substance containing a detectable amount of cocaine;

(C) Ten grams or more of a mixture or substance containing a detectable amount of methamphetamine;

(D) One hundred grams or more of a mixture or substance containing a detectable amount of hashish;

(E) One hundred fifty grams or more of a mixture or substance containing a detectable amount of marijuana;

(F) Two hundred or more user units of a mixture or substance containing a detectable amount of lysergic acid diethylamide;

(G) Sixty grams or more of a mixture or substance containing a detectable amount of psilocybin or psilocin; or

(H) Five grams or more or 25 or more pills, tablets or capsules of a mixture or substance containing a detectable amount of:

(i) 3,4-methylenedioxyamphetamine;

(ii) 3,4-methylenedioxymethamphetamine; or

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

(3) Any felony violation of ORS 475.840 or 475.846 to 475.894 not contained in subsection (1) or (2) of this section shall be classified as:

(a) Crime category 4 of the sentencing guidelines grid of the Oregon Criminal Justice Commission if the violation involves delivery or manufacture of a controlled substance; or

(b) Crime category 1 of the sentencing guidelines grid of the Oregon Criminal Justice Commission if the violation involves possession of a controlled substance.

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

(5) As used in this section, "mixture or substance" means any mixture or substance, whether or not the mixture or substance is in an ingestible or marketable form at the time of the offense. [Formerly 475.996; 2007 c.494 §1]

475.902 Directives to Oregon Criminal Justice Commission. (1) The Oregon Criminal Justice Commission shall classify causing another person to ingest a controlled substance as a person felony and crime category 8 of the sentencing guidelines grid of the commission.

(2) The Oregon Criminal Justice Commission shall classify causing another person to ingest a controlled substance with the intent of committing or facilitating a crime of violence against the other person as a person felony and crime category 9 of the sentencing guidelines grid of the commission.

(3) The Oregon Criminal Justice Commission shall amend its rules and appendices to prohibit persons convicted of manufactur-

ing substantial quantities of methamphetamine, its salts, isomers or salts of its isomers from being eligible for an optional probation sentence.

(4) As used in subsection (3) of this section, “substantial quantities” means that quantity of methamphetamine, its salts, isomers or salts of its isomers described in ORS 475.900 (1)(a). [Formerly 475.998; 2009 c.11 §70]

Note: 475.902 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 475 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

475.904 Unlawful manufacture or delivery of controlled substance within 1,000 feet of school. (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 schedule I, II or III controlled substance within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors.

(2) Unlawful manufacture or delivery of a controlled substance within 1,000 feet of a school is a Class A felony, except as otherwise provided in ORS 475.860. [Formerly 475.999]

475.906 Penalties for unlawful delivery to minors. Except as authorized by ORS 475.005 to 475.285 and 475.840 to 475.980, it is unlawful for any person to deliver a controlled substance to a person under 18 years of age. Any person who violates this section with respect to:

(1) A controlled substance in Schedule I or II, is guilty of a Class A felony.

(2) A controlled substance in Schedule III, is guilty of a Class B felony.

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

(4) A controlled substance in Schedule V, is guilty of a Class B misdemeanor. [Formerly 475.995]

475.907 Sentencing for unlawful delivery of cocaine, methamphetamine, heroin or ecstasy to minors. (1) When a person is convicted of the unlawful delivery of cocaine, methamphetamine, heroin or ecstasy to a person under 18 years of age, the court shall sentence the person to a term of incarceration ranging from 34 months to 72 months, depending on the person’s criminal history.

(2) The sentence described in subsection (1) of this section does not apply to a person who is less than three years older than the person under 18 years of age to whom the controlled substance was delivered, unless the person has a previous conviction for delivery of cocaine, methamphetamine, heroin or ecstasy to a person under 18 years of age. [2008 c.14 §3]

Note: 475.907, 475.924 and 475.925 were enacted into law but were not added to or made a part of ORS chapter 475 or any series therein by law. See Preface to Oregon Revised Statutes for further explanation.

475.908 Causing another person to ingest a controlled substance. (1) A person commits the crime of causing another person to ingest a controlled substance if the person knowingly or intentionally causes the other person to ingest, other than by administering or dispensing, a controlled substance or a controlled substance analog without consent of the other person. A person who violates this subsection is guilty of a Class B felony.

(2) Notwithstanding subsection (1) of this section, causing another person to ingest a controlled substance is a Class A felony if the person, with the intent of committing or facilitating a crime of violence against the other person, knowingly or intentionally causes the other person to ingest a controlled substance or a controlled substance analog without consent of the other person.

(3) For the purposes of this section:

(a)(A) Except as provided in subparagraph (B) of this paragraph, “controlled substance analog” means a substance that:

(i) Has a chemical structure that is substantially similar to the chemical structure of a controlled substance in Schedule I or II.

(ii) Has a stimulant, depressant or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.

(B) “Controlled substance analog” does not include:

(i) A controlled substance;

(ii) Any substance that has an approved drug application;

(iii) Any substance exempted under 21 U.S.C. 355 if the ingestion is within the scope of investigation authorized under 21 U.S.C. 355; or

(iv) Distilled spirits, wine or malt beverages.

(b) “Crime of violence” means:

(A) Rape in the first degree, as defined in ORS 163.375;

(B) Sodomy in the first degree, as defined in ORS 163.405;

(C) Unlawful sexual penetration in the first degree, as defined in ORS 163.411;

(D) Sexual abuse in the first degree, as defined in ORS 163.427;

(E) Kidnapping in the first degree, as defined in ORS 163.235;

(F) Kidnapping in the second degree, as defined in ORS 163.225;

(G) Assault in the first degree, as defined in ORS 163.185; or

(H) Assault in the second degree, as defined in ORS 163.175.

(c) "Ingest" means to consume or otherwise deliver a controlled substance into the body of a person, except that "ingest" does not include inhalation of marijuana smoke. [Formerly 475.984]

475.910 Application of controlled substance to the body of another person; prohibition. (1) Except as authorized by ORS 475.005 to 475.285 or 475.840 to 475.980, it is unlawful for any person to intentionally apply a controlled substance to the body of another person by injection, inhalation, ingestion or any other means if the other person is under 18 years of age. A person who violates this section with respect to:

(a) A controlled substance in Schedule I or II, is guilty of a Class A felony classified as crime category 9 of the sentencing guidelines grid of the Oregon Criminal Justice Commission.

(b) A controlled substance in Schedule III, is guilty of a Class B felony classified as crime category 8 of the sentencing guidelines grid of the Oregon Criminal Justice Commission.

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

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

(2) It is a defense to a charge of violating subsection (1) of this section by applying marijuana that the person applying the marijuana was less than three years older than the victim at the time of the alleged offense. [Formerly 475.986]

475.912 Unlawful delivery of imitation controlled substance. (1) A person commits the crime of unlawful delivery of an imitation controlled substance if the person knowingly:

(a) Delivers, other than by administering or dispensing, a substance that is not a controlled substance upon the express or implied representation that the substance is a controlled substance; or

(b) Delivers a substance that is not a controlled substance upon the express or implied representation that the substance is of such nature or appearance that the recipient of the delivery will be able to distribute the substance as a controlled substance.

(2) As used in this section, "deliver" or "delivery" means the actual or constructive

transfer, or offer or agreement to transfer, from one person to another of a substance, whether or not there is an agency relationship.

(3) Unlawful delivery of an imitation controlled substance is a Class A misdemeanor. [Formerly 475.991]

475.914 Prohibited acts for registrants; penalties. (1) It is unlawful for any person:

(a) Who is subject to ORS 475.045, 475.095 and 475.125 to 475.185 to deliver or dispense a controlled substance in violation of ORS 475.185;

(b) Who is a registrant, to manufacture a controlled substance not authorized by this registration, or to deliver or dispense a controlled substance not authorized by the registration to another registrant or other authorized person;

(c) To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under ORS 475.005 to 475.285 and 475.840 to 475.980;

(d) To refuse an entry into any premises for any inspection authorized by ORS 475.005 to 475.285 and 475.840 to 475.980; or

(e) To keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft or other structure or place, while knowingly permitting persons to use controlled substances in such places in violation of ORS 475.005 to 475.285 and 475.840 to 475.980, or which is used for keeping or selling them in violation of ORS 475.005 to 475.285 and 475.840 to 475.980.

(2) Any person who violates this section with respect to:

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

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

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

(d) A controlled substance in Schedule IV or V, is guilty of a Class C misdemeanor. [Formerly 475.993]

475.916 Prohibited acts involving records and fraud; penalties. (1) It is unlawful for any person knowingly or intentionally:

(a) To deliver as a registrant a controlled substance classified in Schedule I or II, except pursuant to an order form as required by ORS 475.175;

(b) To use in the course of manufacture or delivery of a controlled substance a registration number which is fictitious, revoked, suspended or issued to another person;

(c) To acquire or to attempt to acquire or obtain or attempt to obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;

(d) To furnish false or fraudulent material information in, or omit any material information from, any application, report, record or other document required to be kept or filed under ORS 475.005 to 475.285 and 475.840 to 475.980; or

(e) To make, deliver or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

(2) Any person who violates this section is guilty of a Class A misdemeanor. [Formerly 475.994]

475.918 Falsifying drug test results. (1)

A person commits the crime of falsifying drug test results if the person intentionally uses, or possesses with intent to use, any substance or device designed to falsify the results of a drug test of the person.

(2) Falsifying drug test results is a Class B misdemeanor.

(3) As used in this section and ORS 475.920, "drug test" means a lawfully administered test designed to detect the presence of a controlled substance. [Formerly 475.981]

475.920 Providing drug test falsification equipment. (1) A person commits the crime of providing drug test falsification equipment if the person intentionally delivers, possesses with intent to deliver or manufactures with intent to deliver a substance or device designed to enable a person to falsify the results of a drug test.

(2) Providing drug test falsification equipment is a Class A misdemeanor. [Formerly 475.982]

475.924 Definitions for ORS 164.061, 475.907, 475.924 and 475.925. As used in ORS 164.061, 475.907, 475.924 and 475.925:

(1) "Controlled substance" means:

- (a) Cocaine;
- (b) Methamphetamine;
- (c) Heroin; or
- (d) Ecstasy.

(2) "Ecstasy" means:

- (a) 3,4-methylenedioxyamphetamine;
- (b) 3,4-methylenedioxyamphetamine; or

(c)

3,4-methylenedioxy-N-ethylamphetamine.

(3) "Mixture or substance" means any mixture or substance, whether or not the

mixture or substance is in an ingestible or marketable form at the time of the offense. [2008 c.14 §5]

Note: See note under 475.907.

Note: Section 1, chapter 14, Oregon Laws 2008, provides:

Sec. 1. The Legislative Assembly finds and declares that:

(1) The manufacturing and dealing of methamphetamine, heroin, cocaine and ecstasy are especially damaging to our community.

(2) Many Oregonians are addicted to these drugs. Some of these drug-addicted persons present a danger to public safety by committing crimes to feed their addictions.

(3) In order to reduce the risk of future criminal activity, these drug-addicted offenders need the opportunity to change their behavior through effective drug treatment.

(4) Sections 2 to 5 and 6 of this 2008 Act and the amendments to ORS 137.717 and 164.162 by sections 7 and 10 of this 2008 Act increase the punishment for offenders who commit high-level or repeat drug and property crimes.

(5) Section 8 of this 2008 Act increases the availability of treatment for drug-addicted offenders.

(6) Section 9 of this 2008 Act requires swift and certain punishment for offenders who refuse or fail to successfully complete treatment as a condition of probation, parole or post-prison supervision. [2008 c.14 §1]

475.925 Sentences for certain controlled substance offenses. When a person is convicted of the unlawful delivery or manufacture of a controlled substance, the court shall sentence the person to a term of incarceration ranging from:

(1) 58 months to 130 months, depending on the person's criminal history, if the delivery or manufacture involves:

(a) 500 grams or more of a mixture or substance containing a detectable amount of cocaine;

(b) 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers or salts of its isomers;

(c) 100 grams or more of a mixture or substance containing a detectable amount of heroin; or

(d) 100 grams or more or 500 or more pills, tablets or capsules of a mixture or substance containing a detectable amount of ecstasy.

(2) 34 months to 72 months, depending on the person's criminal history, if the delivery or manufacture involves:

(a) 100 grams or more of a mixture or substance containing a detectable amount of cocaine;

(b) 100 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers or salts of its isomers;

(c) 50 grams or more of a mixture or substance containing a detectable amount of heroin; or

(d) 50 grams or more or 250 or more pills, tablets or capsules of a mixture or substance containing a detectable amount of ecstasy. [2008 c.14 §2]

Note: See note under 475.907.

475.930 Imposition of sentence under ORS 164.061, 475.907, 475.924 and 475.925.

(1) When a court sentences a person under ORS 164.061, 475.907, 475.924 and 475.925:

(a) The court shall use the criminal history scale of the sentencing guidelines grid of the Oregon Criminal Justice Commission to determine the sentence to impose. The sentence described in:

(A) ORS 475.925 (1) shall be determined utilizing crime category 10 of the sentencing guidelines grid.

(B) ORS 475.907 (1) and 475.925 (2) shall be determined utilizing crime category 9 of the sentencing guidelines grid.

(C) ORS 164.061 shall be determined utilizing crime category 8 of the sentencing guidelines grid.

(b)(A) Notwithstanding ORS 161.605, the court shall impose the sentence described in ORS 164.061, 475.907, 475.924 and 475.925 and may not impose a sentence of optional probation or grant a downward dispositional departure or a downward durational departure under the rules of the commission.

(B) The court may impose a sentence other than the sentence described in ORS 164.061, 475.907, 475.924 and 475.925 if the court imposes a longer term of incarceration that is otherwise required or authorized by law.

(2) A person sentenced under ORS 164.061, 475.907, 475.924 and 475.925 may not receive a reduction in the term of incarceration for appropriate institutional behavior that exceeds 20 percent of the sentence imposed. [2008 c.14 §11]

Note: 475.930 was enacted into law but was not added to or made a part of ORS chapter 475 or any series therein by law. See Preface to Oregon Revised Statutes for further explanation.

475.933 Sentencing of persons with previous conviction for controlled substance offense.

(1) When a court sentences a person convicted of a crime listed in subsection (2) of this section, the court may not impose a sentence of optional probation or grant a downward dispositional departure or a downward durational departure under the rules of the Oregon Criminal Justice Commission if the person has a previous conviction for any of the crimes listed in subsection (2) of this section.

(2) The crimes to which subsection (1) of this section applies are:

(a) Manufacture or delivery of a controlled substance, other than marijuana, under ORS 475.840 (1);

(b) Creation or delivery of a counterfeit substance, other than marijuana, under ORS 475.840 (2);

(c) Manufacture or delivery of heroin under ORS 475.846, 475.848, 475.850 or 475.852;

(d) Manufacture or delivery of 3,4-methylenedioxymethamphetamine under ORS 475.866, 475.868, 475.870 or 475.872;

(e) Manufacture or delivery of cocaine under ORS 475.876, 475.878, 475.880 or 475.882;

(f) Manufacture or delivery of methamphetamine under ORS 475.886, 475.888, 475.890 or 475.892;

(g) Manufacture or delivery of a controlled substance within 1,000 feet of a school under ORS 475.904;

(h) Delivery of a controlled substance to a person under 18 years of age under ORS 475.906; and

(i) Possession of a precursor substance with intent to manufacture a controlled substance under ORS 475.967.

(3)(a) For a crime committed on or after November 1, 1989, a conviction is considered to have occurred upon the pronouncement in open court of sentence. However, when sentences are imposed for two or more convictions arising out of the same conduct or criminal episode, none of the convictions is considered to have occurred prior to any of the other convictions arising out of the same conduct or criminal episode.

(b) For a crime committed prior to November 1, 1989, a conviction is considered to have occurred upon the pronouncement in open court of a sentence or upon the pronouncement in open court of the suspended imposition of a sentence.

(4) For purposes of this section, previous convictions must be proven pursuant to ORS 137.079.

(5) As used in this section, "previous conviction" means:

(a) Convictions occurring before, on or after July 1, 2009; and

(b) Convictions entered in any other state or federal court for comparable offenses. [2009 c.660 §10]

Note: 475.933 becomes operative January 1, 2012. See section 48, chapter 660, Oregon Laws 2009.

Note: 475.933 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 475 or any series therein by legislative

action. See Preface to Oregon Revised Statutes for further explanation.

Note: Section 6, chapter 14, Oregon Laws 2008, and section 47 (1), chapter 660, Oregon Laws 2009, provide:

Sec. 6. (1) When a court sentences a person convicted of a crime listed in subsection (2) of this section, the court may not impose a sentence of optional probation or grant a downward dispositional departure or a downward durational departure under the rules of the Oregon Criminal Justice Commission if the person has a previous conviction for any of the crimes listed in subsection (2) of this section.

(2) The crimes to which subsection (1) of this section applies are:

(a) Manufacture or delivery of a controlled substance, other than marijuana, under ORS 475.840 (1);

(b) Creation or delivery of a counterfeit substance, other than marijuana, under ORS 475.840 (2);

(c) Manufacture or delivery of heroin under ORS 475.846, 475.848, 475.850 or 475.852;

(d) Manufacture or delivery of 3,4-methylenedioxyamphetamine under ORS 475.866, 475.868, 475.870 or 475.872;

(e) Manufacture or delivery of cocaine under ORS 475.876, 475.878, 475.880 or 475.882;

(f) Manufacture or delivery of methamphetamine under ORS 475.886, 475.888, 475.890 or 475.892;

(g) Manufacture or delivery of a controlled substance within 1,000 feet of a school under ORS 475.904;

(h) Delivery of a controlled substance to a person under 18 years of age under ORS 475.906; and

(i) Possession of a precursor substance with intent to manufacture a controlled substance under ORS 475.967.

(3)(a) For a crime committed on or after November 1, 1989, a conviction is considered to have occurred upon the pronouncement in open court of sentence. However, when sentences are imposed for two or more convictions arising out of the same conduct or criminal episode, none of the convictions is considered to have occurred prior to any of the other convictions arising out of the same conduct or criminal episode.

(b) For a crime committed prior to November 1, 1989, a conviction is considered to have occurred upon the pronouncement in open court of a sentence or upon the pronouncement in open court of the suspended imposition of a sentence.

(4) For purposes of this section, previous convictions must be proven pursuant to ORS 137.079.

(5) As used in this section, "previous conviction" means:

(a) Convictions occurring before, on or after the effective date of this 2008 Act [December 4, 2008]; and

(b) Convictions entered in any other state or federal court for comparable offenses. [2008 c.14 §6]

Sec. 47. (1) Sections 1, 6, 8 and 9, chapter 14, Oregon Laws 2008, and sections 8, 9 and 10, chapter 35, Oregon Laws 2008, are repealed on February 15, 2010. [2009 c.660 §47(1)]

475.935 Presumptive sentences for certain methamphetamine offenses. (1) Except as provided in ORS 475.900, 475.907 or 475.925, when a court sentences a person convicted of:

(a) Manufacture of methamphetamine under ORS 475.886 or 475.888, the court may not impose a sentence of optional probation or grant a downward dispositional departure or a downward durational departure of more

than one-half of the presumptive prison sentence under the rules of the Oregon Criminal Justice Commission if the person has a previous conviction for:

(A) Delivery or manufacture of methamphetamine under ORS 475.840, 475.886 or 475.890;

(B) Delivery or manufacture of methamphetamine within 1,000 feet of a school under ORS 475.888, 475.892 or 475.904; or

(C) Possession of a precursor substance with intent to manufacture a controlled substance under ORS 475.967.

(b) Delivery of methamphetamine under ORS 475.890 or 475.892, the court may not impose a sentence of optional probation or grant a downward dispositional departure under the rules of the Oregon Criminal Justice Commission if:

(A) The delivery involved a substantial quantity of methamphetamine as described in ORS 475.900; and

(B) The person has a previous conviction for:

(i) Delivery or manufacture of methamphetamine under ORS 475.840, 475.886 or 475.890;

(ii) Delivery or manufacture of methamphetamine within 1,000 feet of a school under ORS 475.888, 475.892 or 475.904; or

(iii) Possession of a precursor substance with intent to manufacture a controlled substance under ORS 475.967.

(c) Delivery of methamphetamine under ORS 475.890 or 475.892, the presumptive sentence is 19 months of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has two or more previous convictions for any combination of the following crimes:

(A) Delivery or manufacture of methamphetamine under ORS 475.840, 475.886 or 475.890;

(B) Delivery or manufacture of methamphetamine within 1,000 feet of a school under ORS 475.888, 475.892 or 475.904; or

(C) Possession of a precursor substance with intent to manufacture a controlled substance under ORS 475.967.

(2) The court may impose a sentence other than the sentence provided by subsection (1) of this section if the court imposes:

(a) A longer term of incarceration that is otherwise required or authorized by law; or

(b) An upward or downward durational departure sentence that is authorized by law or the rules of the Oregon Criminal Justice Commission based upon findings of substan-

tial and compelling reasons unless otherwise noted in subsection (1) of this section. Unless otherwise authorized by law or rule of the Oregon Criminal Justice Commission, the maximum departure allowed for a person sentenced under this subsection is double the presumptive sentence provided in subsection (1) of this section.

(3) As used in this section, “previous conviction” means:

(a) Convictions occurring before, on or after August 16, 2005; and

(b) Convictions entered in any other state or federal court for comparable offenses.

(4)(a) For a crime committed on or after November 1, 1989, a conviction is considered to have occurred upon the pronouncement of sentence in open court. However, when sentences are imposed for two or more convictions arising out of the same conduct or criminal episode, none of the convictions is considered to have occurred prior to any of the other convictions arising out of the same conduct or criminal episode.

(b) For a crime committed prior to November 1, 1989, a conviction is considered to have occurred upon the pronouncement in open court of a sentence or upon the pronouncement in open court of the suspended imposition of a sentence.

(5) For purposes of this section, previous convictions must be proven pursuant to ORS 137.079. [Formerly 137.721]

Note 1: The amendments to 475.935 [formerly 137.721] by section 15, chapter 660, Oregon Laws 2009, become operative February 15, 2010, and apply to sentences imposed on or after February 15, 2010, for crimes committed on or after January 1, 2009, and before January 1, 2012. See sections 48 (3) and 49 (4), chapter 660, Oregon Laws 2009. The text that is operative until February 15, 2010, including amendments by section 1, chapter 191, Oregon Laws 2009, is set forth for the user’s convenience.

475.935. (1) Except as provided in ORS 475.900, 475.907 or 475.925, when the court sentences a person convicted of delivery of methamphetamine under ORS 475.890 or 475.892, the presumptive sentence is 19 months of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has two or more previous convictions for any combination of the following crimes:

(a) Delivery or manufacture of methamphetamine under ORS 475.840, 475.886 or 475.890;

(b) Delivery or manufacture of methamphetamine within 1,000 feet of a school under ORS 475.888, 475.892 or 475.904; or

(c) Possession of a precursor substance with intent to manufacture a controlled substance under ORS 475.967.

(2) The court may impose a sentence other than the sentence provided by subsection (1) of this section if the court imposes:

(a) A longer term of incarceration that is otherwise required or authorized by law; or

(b) An upward durational departure sentence that is authorized by law or the rules of the Oregon Crimi-

nal Justice Commission based upon findings of substantial and compelling reasons. Unless otherwise authorized by law or rule of the Oregon Criminal Justice Commission, the maximum departure allowed for a person sentenced under this subsection is double the presumptive sentence provided in subsection (1) of this section.

(3) As used in this section, “previous conviction” means:

(a) Convictions occurring before, on or after August 16, 2005; and

(b) Convictions entered in any other state or federal court for comparable offenses.

(4)(a) For a crime committed on or after November 1, 1989, a conviction is considered to have occurred upon the pronouncement of sentence in open court. However, when sentences are imposed for two or more convictions arising out of the same conduct or criminal episode, none of the convictions is considered to have occurred prior to any of the other convictions arising out of the same conduct or criminal episode.

(b) For a crime committed prior to November 1, 1989, a conviction is considered to have occurred upon the pronouncement in open court of a sentence or upon the pronouncement in open court of the suspended imposition of a sentence.

(5) For purposes of this section, previous convictions must be proven pursuant to ORS 137.079.

Note 2: The amendments to 475.935 [formerly 137.721] by section 16, chapter 660, Oregon Laws 2009, become operative January 1, 2012. See sections 48 (4) and 49 (5), chapter 660, Oregon Laws 2009. The text that is operative on and after January 1, 2012, is set forth for the user’s convenience.

475.935. (1) Except as provided in ORS 475.900, 475.907 or 475.925, when the court sentences a person convicted of delivery of methamphetamine under ORS 475.890 or 475.892, the presumptive sentence is 19 months of incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer presumptive sentence, if the person has two or more previous convictions for any combination of the following crimes:

(a) Delivery or manufacture of methamphetamine under ORS 475.840, 475.886 or 475.890;

(b) Delivery or manufacture of methamphetamine within 1,000 feet of a school under ORS 475.888, 475.892 or 475.904; or

(c) Possession of a precursor substance with intent to manufacture a controlled substance under ORS 475.967.

(2) The court may impose a sentence other than the sentence provided by subsection (1) of this section if the court imposes:

(a) A longer term of incarceration that is otherwise required or authorized by law; or

(b) An upward durational departure sentence that is authorized by law or the rules of the Oregon Criminal Justice Commission based upon findings of substantial and compelling reasons. Unless otherwise authorized by law or rule of the Oregon Criminal Justice Commission, the maximum departure allowed for a person sentenced under this subsection is double the presumptive sentence provided in subsection (1) of this section.

(3) As used in this section, “previous conviction” means:

(a) Convictions occurring before, on or after August 16, 2005; and

(b) Convictions entered in any other state or federal court for comparable offenses.

(4)(a) For a crime committed on or after November 1, 1989, a conviction is considered to have occurred

upon the pronouncement of sentence in open court. However, when sentences are imposed for two or more convictions arising out of the same conduct or criminal episode, none of the convictions is considered to have occurred prior to any of the other convictions arising out of the same conduct or criminal episode.

(b) For a crime committed prior to November 1, 1989, a conviction is considered to have occurred upon the pronouncement in open court of a sentence or upon the pronouncement in open court of the suspended imposition of a sentence.

(5) For purposes of this section, previous convictions must be proven pursuant to ORS 137.079.

Note 3: 475.935 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 475 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PRECURSOR SUBSTANCES

475.940 Precursor substances described. As used in ORS 475.840 to 475.980:

(1) "Iodine matrix" means iodine at a concentration greater than two percent by weight in a matrix or solution.

(2) "Matrix" means something, as a substance, in which something else originates, develops, or is contained.

(3) "Precursor substance" means:

- (a) Phenyl-2-propanone.
- (b) Methylamine.
- (c) D-lysergic acid.
- (d) Ergotamine.
- (e) Diethyl Malonate.
- (f) Malonic acid.
- (g) Ethyl Malonate.
- (h) Barbituric acid.
- (i) Piperidine.
- (j) N-acetylanthranilic acid.
- (k) Ethylamine.
- (l) Pyrrolidine.
- (m) Phenylacetic acid.
- (n) Anthranilic acid.
- (o) Morpholine.
- (p) Ephedrine.
- (q) Pseudoephedrine.
- (r) Norpseudoephedrine.
- (s) Phenylpropanolamine.
- (t) Benzyl cyanide.
- (u) Ergonovine.
- (v) 3,4-Methylenedioxyphenyl-2-propanone.
- (w) Propionic anhydride.
- (x) Insosafrole (Isosafrole).
- (y) Safrole.
- (z) Piperonal.
- (aa) N-methylephedrine.
- (bb) N-ethylephedrine.

(cc) N-methylpseudoephedrine.

(dd) N-ethylpseudoephedrine.

(ee) Hydriotic acid.

(ff) Gamma butyrolactone (GBL), including butyrolactone, 1,2-butanolide, 2-oxanolone, tetrahydro-2-furanone, dihydro-2(3H)-furanone and tetramethylene glycol, but not including gamma aminobutyric acid (GABA).

(gg) 1,4-butanediol.

(hh) Any salt, isomer or salt of an isomer of the chemicals listed in paragraphs (a) to (gg) of this subsection.

(ii) Iodine in its elemental form.

(jj) Iodine matrix.

(kk) Red phosphorus, white phosphorus, yellow phosphorus or hypophosphorus acid and its salts.

(LL) Anhydrous ammonia.

(mm) Lithium metal.

(nn) Sodium metal.

(oo) Any substance established as a precursor substance by rule under authority granted in ORS 475.945. [1987 c.657 §§3,3a; 2001 c.615 §1; 2003 c.448 §1; 2005 c.706 §17]

475.945 Authority and duties of Department of State Police; rules. This section grants authority to and establishes duties of the Department of State Police in relation to the requirements concerning precursor substances under ORS 475.840 to 475.980. The following are applicable as described:

(1) The department may adopt rules in accordance with ORS chapter 183 that add substances to those specifically enumerated in ORS 475.940 (3) if the substance is a precursor to a controlled substance. Similarly, the department may delete such substances as it has added by administrative rule.

(2) Notwithstanding the time period established for reporting under ORS 475.950, the department may authorize the submission of such reports on a monthly basis with respect to repeated, regular transactions between the furnisher and recipient involving the same substance if the department determines that all of the following exist:

(a) A pattern of regular supply of such substance exists as between the manufacturer, wholesaler, retailer or other person who sells, transfers or otherwise furnishes such substance and the recipient of the substance.

(b) The recipient has established a record of use of the substance for lawful purposes.

(3) The department shall establish a common form for reporting or recording for purposes of ORS 475.950, 475.975 (3), 475.976 (3) and 475.978 (1). The department may in-

clude as information required to be reported or recorded on the form any information the department determines will be convenient or useful to police agencies in finding potentially illegal uses of precursor substances. The reporting or recording form shall require at least the following information:

- (a) The name of the substance.
- (b) The quantity of the substance sold, transferred or furnished.
- (c) The date the substance was sold, transferred or furnished.
- (d) The name and address of the person buying or receiving the substance accompanied by a verification of the person's identification by means the department requires by rule.
- (e) The name and address of the person selling, transferring or furnishing the substance accompanied by a verification of the person's identification by means the department requires by rule.
- (f) The name of any agent acting on behalf of any party to the transaction accompanied by a verification of the person's identification by means the department requires by rule.

(4) The department shall establish a common reporting form for purposes of ORS 475.955. The department may include as information required to be reported on the form any information the department determines will be convenient or useful to police agencies in finding potentially illegal uses of precursor substances. The reporting form shall require at least the following information:

- (a) The name of the person making the report.
- (b) The name of the common carrier or person who transports the substance and date of shipment of the substance.
- (c) The date and circumstances of discovering the loss, theft or discrepancy.

(5) The department shall furnish a copy of the report to the local law enforcement agency in whose jurisdiction the transaction occurred. [1987 c.657 §6; 2001 c.615 §12]

475.947 Warning notice for precursor substance violation. (1) In lieu of making an arrest or issuing a citation, a law enforcement officer may deliver a warning notice to a person or business that the officer has probable cause to believe has sold or otherwise delivered a precursor substance in violation of ORS 475.840 to 475.980 whenever the officer reasonably believes that the public interest will be adequately served under the circumstances by issuance of a written warning notice. The notice must be in substantially the following form:

WARNING NOTICE

Please Read this Notice Carefully!!!

TO: _____ (name of person or business)
 DATE: _____ (date of notice)
 FROM: _____ (name of law enforcement agency)
 RE: _____ (name of precursor substance or product)

The undersigned law enforcement officer has probable cause to believe that on _____ (date of violation), you sold or otherwise delivered a quantity of the precursor substance identified above in violation of the laws of the State of Oregon.

This warning notice has been given to you in lieu of formal action concerning that violation. Please be aware that any further violation may result in formal action being taken against you, which may include, but is not limited to, the filing of an action in circuit court seeking a court order prohibiting you from selling or delivering any quantity of one or more precursor substances to any person.

 Law Enforcement Officer

(2) A warning notice issued by a law enforcement officer under subsection (1) of this section shall be personally delivered to the person named in the notice, or personally delivered to the person in charge of the business named in the notice. [2003 c.448 §6]

475.949 Injunctive relief for precursor substance violation. (1) Whenever it appears that any person has repeatedly sold or delivered one or more precursor substances in violation of the provisions of ORS 475.840 to 475.980, the county attorney or city attorney may cause a civil suit to be instituted in the circuit court for injunctive relief to restrain the person from selling or delivering one or more of the precursor substances.

(2) Upon a proper showing, the court may grant a permanent or temporary injunction prohibiting the defendant or defendants from any further sale or delivery of any amount of one or more precursor substances.

(3) The court may decline to enter an injunctive order against a defendant who:

- (a) Demonstrates no knowledge of the existence of the violation, or demonstrates reasonable efforts to stop the violation from occurring;
- (b) Has not been guilty of any contempt of court in the proceedings; and

(c) The court finds will make best efforts to immediately end any violation that may exist and prevent any further violation from occurring. [2003 c.448 §7]

475.950 Failure to report precursor substances transaction. (1) A person commits the offense of failure to report a precursor substances transaction if the person does any of the following:

(a) Sells, transfers or otherwise furnishes any precursor substance described in ORS 475.940 (3)(a) to (hh) and (oo) and does not, at least three days before delivery of the substance, submit to the Department of State Police a report that meets the reporting requirements established by rule under ORS 475.945.

(b) Receives any precursor substance described in ORS 475.940 (3)(a) to (hh) and (oo) and does not, within 10 days after receipt of the substance, submit to the Department of State Police a report that meets the reporting requirements established by rule under ORS 475.945.

(2) This section does not apply to any of the following:

(a) Any pharmacist or other authorized person who sells or furnishes a precursor substance upon the prescription of a physician, dentist, podiatric physician and surgeon or veterinarian.

(b) Any practitioner, as defined in ORS 475.005, who administers or furnishes a precursor substance to patients upon prescription.

(c) Any person licensed by the State Board of Pharmacy who sells, transfers or otherwise furnishes a precursor substance to a licensed pharmacy, physician, dentist, podiatric physician and surgeon or veterinarian for distribution to patients upon prescription.

(d) Any person who is authorized by rule under ORS 475.945 to report in an alternate manner if the person complies with the alternate reporting requirements.

(e) Any patient of a practitioner, as defined in ORS 475.005, who obtains a precursor substance from a licensed pharmacist, physician, dentist, podiatric physician and surgeon or veterinarian pursuant to a prescription.

(f) Any person who sells or transfers ephedrine, pseudoephedrine or phenylpropanolamine in compliance with ORS 475.973.

(g) Any practitioner, as defined in ORS 475.005, who dispenses a precursor substance to a person with whom the practitioner has a doctor-patient or doctor-client relationship.

(h) Any person who obtains a precursor substance from a practitioner, as defined in ORS 475.005, with whom the person has a doctor-patient or doctor-client relationship.

(i) Any person who sells or transfers an isomer of a precursor substance, unless it is an optical isomer.

(3) Penalties related to providing false information on a report required under this section are provided under ORS 475.965.

(4) The Department of State Police and any law enforcement agency may inspect and remove copies of the sales records of any retail or wholesale distributor of methyl sulfonyl methane or a precursor substance during the normal business hours of the retail or wholesale distributor or may require the retail or wholesale distributor to provide copies of the records.

(5) Failure to report a precursor substances transaction is a Class A misdemeanor. [1987 c.657 §2; 2001 c.615 §2; 2003 c.448 §2; 2005 c.706 §18; 2007 c.253 §1]

475.955 Failure to report missing precursor substances. (1) A person commits the offense of failure to report missing precursor substances if the person:

(a) Is a licensee or other person regulated by the provisions of ORS 475.005 to 475.285 and 475.840 to 475.980;

(b) Discovers any theft or loss of any precursor substance or any difference between the quantity received and the quantity shipped; and

(c) Within three days after discovery of the theft or loss or actual knowledge of the discrepancy, does not report the theft, loss or discrepancy to the Department of State Police in the manner provided by rule adopted under ORS 475.945.

(2) Penalties for providing false information on any report required under this section are provided under ORS 465.965.

(3) The offense described in this section, failure to report missing precursor substances, is a Class A misdemeanor. [1987 c.657 §4; 1995 c.440 §34; 2001 c.615 §13]

475.960 Illegally selling drug equipment. (1) A person commits the offense of illegally selling drug equipment if the person sells any substance, article, apparatus or device with knowledge that the substance, article, apparatus or device will be used to manufacture, compound, convert, process or prepare a controlled substance for unlawful sale or distribution.

(2) The offense described in this section, illegally selling drug equipment, is a Class A misdemeanor. [1987 c.657 §5]

475.962 Distribution of equipment, solvent, reagent or precursor substance with intent to facilitate manufacture of controlled substance. (1) A person commits the crime of distribution of equipment, a solvent, a reagent or a precursor substance with intent to facilitate the manufacture of a controlled substance if the person sells or otherwise transfers equipment, a solvent, a reagent or a precursor substance with knowledge that the equipment, solvent, reagent or precursor substance is intended to be used in the manufacture of a controlled substance in violation of ORS 475.840.

(2) Distribution of equipment, a solvent, a reagent or a precursor substance with intent to facilitate the manufacture of a controlled substance is a Class B felony. [2005 c.706 §8]

Note: 475.962 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 475 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

475.965 Providing false information on precursor substances report or record. (1) A person commits the offense of providing false information on a precursor substances report or record if the person knowingly provides false information in any report or record required under ORS 475.950, 475.955, 475.975, 475.976 or 475.978.

(2) The offense described in this section, providing false information on a precursor substances report or record, is a Class A misdemeanor. [1987 c.657 §7; 2001 c.615 §14]

475.967 Possession of precursor substance with intent to manufacture controlled substance. (1) A person commits the crime of possession of a precursor substance with intent to manufacture a controlled substance if the person possesses one or more precursor substances with the intent to manufacture a controlled substance in violation of ORS 475.840 (1), 475.846, 475.848, 475.866, 475.868, 475.876, 475.878, 475.886 or 475.888.

(2) Possession of a precursor substance with intent to manufacture a controlled substance is a Class B felony. [2001 c.615 §10; 2005 c.708 §58]

475.969 Unlawful possession of phosphorus. (1) Except as otherwise provided in subsection (2) of this section, a person commits the crime of unlawful possession of phosphorus if the person knowingly possesses any amount of phosphorus.

(2) Subsection (1) of this section does not apply to:

(a) A person who is conducting a licensed business that involves phosphorus in the manufacture of:

(A) The striking surface used for lighting matches;

(B) Flame retardant polymers; or

(C) Fireworks if the person possesses a federal license to manufacture explosives;

(b) A person who possesses phosphorus in conjunction with experiments conducted in a chemistry or chemistry related laboratory maintained by a:

(A) Regularly established public or private secondary school; or

(B) Public or private institution of higher education that is accredited by a regional or national accrediting agency recognized by the United States Department of Education;

(c) A retail distributor, wholesaler, manufacturer, warehouseman or common carrier or an agent of any of these persons, who possesses phosphorus in the regular course of lawful business activities;

(d) The possession of phosphorus as a component of a commercially produced product including, but not limited to, matchbooks, fireworks and emergency flares; or

(e) A person who possesses phosphorus in a chemical compound in the regular course of a lawful agricultural activity.

(3) Unlawful possession of phosphorus is a Class A misdemeanor. [2001 c.615 §4]

475.971 Unlawful possession of anhydrous ammonia. (1) A person commits the crime of unlawful possession of anhydrous ammonia if the person knowingly possesses anhydrous ammonia in a container that is not approved by the United States Department of Transportation to hold anhydrous ammonia nor constructed to meet state and federal health and safety standards to hold anhydrous ammonia.

(2) Unlawful possession of anhydrous ammonia is a Class A misdemeanor.

(3) This section does not apply to a person who possesses anhydrous ammonia as part of a cleanup, as defined in ORS 466.605, of anhydrous ammonia by the Department of Environmental Quality under ORS 466.610. [2001 c.615 §5]

475.973 Rulemaking authority regarding products containing ephedrine, pseudoephedrine and phenylpropanolamine; records. (1)(a) Notwithstanding ORS 475.045, the State Board of Pharmacy may not adopt rules that exempt a product containing ephedrine or pseudoephedrine from classification as a controlled substance. Except as otherwise provided in this paragraph, the State Board of Pharmacy shall adopt rules to classify ephedrine, pseudoephedrine and phenylpropanolamine as Schedule III con-

trolled substances. The Schedule III classification may be modified by the State Board of Pharmacy if the State Board of Pharmacy finds that restrictions on products containing ephedrine, pseudoephedrine or phenylpropanolamine under a Schedule III designation do not significantly reduce the number of methamphetamine laboratories within the state.

(b) Records of transactions involving products containing ephedrine, pseudoephedrine or phenylpropanolamine are subject to inspection by the State Board of Pharmacy and law enforcement agencies. A person required to make or maintain records of transactions involving products containing ephedrine, pseudoephedrine or phenylpropanolamine shall forward the records to the Department of State Police if directed to do so by the department. Failure to forward records as required by this paragraph is a Class A misdemeanor.

(2) This section does not apply to products that the State Board of Pharmacy, upon application of a manufacturer, exempts by rule because the product is formulated to effectively prevent conversion of the active ingredient into methamphetamine or its salts or precursors. Upon notification from the Department of State Police that the department has probable cause to believe that a product exempted under this subsection does not effectively prevent conversion of the active ingredient into methamphetamine or its salts or precursors, the State Board of Pharmacy may issue an emergency rule revoking the exemption for the product pending a full hearing. [2001 c.615 §6; 2003 c.448 §3; 2005 c.706 §11]

475.975 Unlawful possession of iodine in its elemental form; recording transfers; unlawful distribution of iodine in its elemental form. (1) Except as otherwise provided in subsection (2) of this section, a person commits the crime of unlawful possession of iodine in its elemental form if the person knowingly possesses iodine in its elemental form.

(2) Subsection (1) of this section does not apply to:

(a) A physician, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman or common carrier or an agent of any of these persons who possesses iodine in its elemental form in the regular course of lawful business activities;

(b) A person who possesses iodine in its elemental form in conjunction with experiments conducted in a chemistry or chemistry related laboratory maintained by a:

(A) Regularly established public or private secondary school;

(B) Public or private institution of higher education that is accredited by a regional or national accrediting agency recognized by the United States Department of Education; or

(C) Manufacturing, government agency or research facility in the course of lawful business activities;

(c) A licensed veterinarian;

(d) A person working in a general hospital who possesses iodine in its elemental form in the regular course of employment at the hospital; or

(e) A person who possesses iodine in its elemental form as a prescription drug pursuant to a prescription issued by a licensed veterinarian or physician.

(3) Except as otherwise provided in subsection (4) of this section, a person who sells or otherwise transfers iodine in its elemental form to another person shall make a record of each sale or transfer. The record must be made on a form provided by the Department of State Police, completed pursuant to instructions provided by the department and retained by the person for at least three years or sent to the department if directed to do so by the department. Failure to make and retain or send a record required under this subsection is a Class A misdemeanor.

(4) A licensed veterinarian is not required to make a record of a sale or transfer of iodine in its elemental form under subsection (3) of this section if the veterinarian makes a record of the sale or transfer under other applicable laws or rules regarding the prescribing and dispensing of regulated or controlled substances by veterinarians.

(5) A person commits the crime of unlawful distribution of iodine in its elemental form if the person knowingly sells or otherwise transfers iodine in its elemental form to a person not listed in subsection (2) of this section.

(6) Unlawful possession of iodine in its elemental form is a Class A misdemeanor.

(7) Unlawful distribution of iodine in its elemental form is a Class A misdemeanor. [2001 c.615 §7; 2005 c.706 §14]

475.976 Unlawful possession of iodine matrix; recording transfers; unlawful distribution of iodine matrix. (1) Except as otherwise provided in subsection (2) of this section, a person commits the crime of unlawful possession of an iodine matrix if the person knowingly possesses an iodine matrix.

(2) Subsection (1) of this section does not apply to:

(a) A person who possesses an iodine matrix as a prescription drug, pursuant to a

prescription issued by a licensed veterinarian or physician;

(b) A person who is actively engaged in the practice of animal husbandry of livestock as defined in ORS 609.125;

(c) A person who possesses an iodine matrix in conjunction with experiments conducted in a chemistry or chemistry related laboratory maintained by a:

(A) Regularly established public or private secondary school;

(B) Public or private institution of higher education that is accredited by a regional or national accrediting agency recognized by the United States Department of Education; or

(C) Manufacturing, government agency or research facility in the course of lawful business activities;

(d) A veterinarian, physician, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman or common carrier or an agent of any of these persons who possesses an iodine matrix in the regular course of lawful business activities; or

(e) A person working in a general hospital who possesses an iodine matrix in the regular course of employment at the hospital.

(3) Except as otherwise provided in subsection (4) of this section, a person who sells or otherwise transfers an iodine matrix to another person shall make a record of each sale or transfer. The record must be made on a form provided by the Department of State Police, completed pursuant to instructions provided by the department and retained by the person for at least three years or sent to the department if directed to do so by the department. Failure to make and retain or send a record required under this subsection is a Class A misdemeanor.

(4) A licensed veterinarian is not required to make a record of a sale or transfer of an iodine matrix under subsection (3) of this section if the veterinarian makes a record of the sale or transfer under other applicable laws or rules regarding the prescribing and dispensing of regulated or controlled substances by veterinarians.

(5) A person commits the crime of unlawful distribution of an iodine matrix if the person knowingly sells or otherwise transfers an iodine matrix to a person not listed in subsection (2) of this section.

(6) Unlawful possession of an iodine matrix is a Class A misdemeanor.

(7) Unlawful distribution of an iodine matrix is a Class A misdemeanor. [2001 c.615 §8; 2005 c.706 §15]

475.977 Possessing or disposing of methamphetamine manufacturing waste.

(1) As used in this section:

(a) "Dispose of" means to discharge, deposit, inject, spill, leak or place methamphetamine manufacturing waste into or onto land or water.

(b) "Methamphetamine manufacturing waste" means chemical waste or debris, used in or resulting from the manufacture of methamphetamine or the grinding, soaking or otherwise breaking down of a precursor substance for the manufacture of methamphetamine.

(2) A person commits the crime of possessing or disposing of methamphetamine manufacturing waste if the person:

(a) Knowingly possesses methamphetamine manufacturing waste; or

(b) Knowingly disposes of methamphetamine manufacturing waste.

(3) Subsection (2) of this section does not apply to the possession or disposal of methamphetamine manufacturing waste if:

(a) The person was storing, treating or disposing of the waste pursuant to state or federal laws regulating the cleanup or disposal of waste products from unlawful methamphetamine manufacturing;

(b) The person has notified a law enforcement agency of the existence of the waste; or

(c) The person possesses or disposes of waste that had previously been disposed of by another person on the person's property in violation of subsection (2) of this section.

(4) Possessing or disposing of methamphetamine manufacturing waste is a Class C felony. [2005 c.706 §6]

475.978 Methyl sulfonyl methane; transfers; records; rules.

(1) A person who sells or otherwise transfers more than the amount permitted by administrative rule adopted by the Department of State Police of methyl sulfonyl methane to a person other than a physician, pharmacist, veterinarian, retail distributor, wholesaler, manufacturer, warehouseman or common carrier or an agent of any of these persons shall make a record of each such sale or transfer. The record must be made on a form provided by the department, completed pursuant to instructions provided by the department and retained by the person for at least three years. Failure to make and retain a record required under this subsection is a Class A violation.

(2) The department shall adopt a rule establishing the minimum amount of methyl sulfonyl methane the sale or transfer of which requires a report under subsection (1) of this section. In establishing the minimum

amount, the department shall determine an amount that is reasonably designed not to infringe upon legitimate uses of methyl sulfonyl methane but that discourages the use of methyl sulfonyl methane in the illicit production and distribution of methamphetamine.

(3) This section applies to the sale or transfer of bulk methyl sulfonyl methane in its powder form only, and does not apply to the sale or transfer of products containing methyl sulfonyl methane in other forms including, but not limited to, liquids, tablets, capsules not containing methyl sulfonyl methane in pure powder form, ointments, creams, cosmetics, foods and beverages. [2001 c.615 §9; 2003 c.448 §4; 2005 c.706 §16]

Note: Section 11, chapter 615, Oregon Laws 2001, provides:

Sec. 11. Until the Department of State Police adopts a rule under section 9 of this 2001 Act [475.978], a person who sells or otherwise transfers two pounds or more of methyl sulfonyl methane shall make the reports required by section 9 of this 2001 Act. [2001 c.615 §11]

475.979 Unlawful possession of lithium metal or sodium metal. (1) Except as otherwise provided in subsection (2) of this section, a person commits the crime of unlawful possession of lithium metal or sodium metal if the person knowingly possesses lithium metal or sodium metal.

(2) Subsection (1) of this section does not apply to:

(a) A person who is conducting a lawful manufacturing operation that involves the use of lithium metal or sodium metal;

(b) A person who possesses lithium metal or sodium metal in conjunction with experiments conducted in a chemistry or chemistry related laboratory maintained by a:

(A) Regularly established public or private secondary school; or

(B) Public or private institution of higher education that is accredited by a regional or national accrediting agency recognized by the United States Department of Education;

(c) A retail distributor, wholesaler, manufacturer, warehouseman or common carrier,

or an agent of any of these persons, who possesses lithium metal or sodium metal in the regular course of lawful business activities; or

(d) A person who possesses lithium metal or sodium metal as a component of a commercially produced product including, but not limited to, rechargeable batteries.

(3) Unlawful possession of lithium metal or sodium metal is a Class A misdemeanor. [2005 c.706 §9]

Note: 475.979 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 475 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

475.980 Affirmative defense to ORS 475.969, 475.971, 475.975 (1) and 475.976 (1).

It is an affirmative defense to a charge of violating ORS 475.969, 475.971, 475.975 (1) or 475.976 (1) that the person possessed the precursor substance for a lawful purpose. [2001 c.615 §17]

475.981 [2001 c.700 §2; renumbered 475.918 in 2005]

475.982 [2001 c.700 §3; renumbered 475.920 in 2005]

475.984 [2001 c.510 §2; renumbered 475.908 in 2005]

475.986 [2001 c.857 §2; renumbered 475.910 in 2005]

475.990 [1957 c.587 §11; 1969 c.310 §4; repealed by 1977 c.745 §45]

475.991 [1981 c.859 §2; renumbered 475.912 in 2005]

475.992 [1977 c.745 §15; 1979 c.777 §55; 1989 c.1075 §3; 1991 c.329 §1; 1991 c.460 §§4,20; 1991 c.818 §5; 1995 c.440 §35; 2005 c.708 §39; renumbered 475.840 in 2005]

475.993 [1977 c.745 §16; 1995 c.440 §36; renumbered 475.914 in 2005]

475.994 [1977 c.745 §17; 1993 c.571 §25; 1995 c.440 §37; renumbered 475.916 in 2005]

475.995 [1977 c.745 §20; 1979 c.777 §56; 1995 c.440 §38; 2005 c.708 §40; renumbered 475.906 in 2005]

475.996 [1991 c.690 §§1,2,3,3a; 2001 c.804 §2; 2001 c.870 §9; 2003 c.695 §3; 2005 c.708 §7; renumbered 475.900 in 2005]

475.997 [1977 c.636 §9; repealed by 1993 c.571 §30]

475.998 [Subsections (1) and (2) of 2001 Edition enacted as 2001 c.510 §3; subsections (3) and (4) of 2001 Edition enacted as 2001 c.804 §1; renumbered 475.902 in 2005]

475.999 [1989 c.806 §2; 1991 c.574 §1; 1993 c.78 §1; 1995 c.343 §49; 1995 c.440 §39; 2005 c.22 §349; 2005 c.708 §41; renumbered 475.904 in 2005]