

A-Engrossed
Senate Bill 912

Ordered by the Senate March 31
Including Senate Amendments dated March 31

Sponsored by COMMITTEE ON JUDICIARY (at the request of Governor Theodore R. Kulongoski)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Provides immunity under certain circumstances for person reporting possession of or transaction involving precursor substance.

Creates crime of distribution of equipment, solvent, reagent or precursor substance with intent to facilitate manufacture of controlled substance. Punishes by maximum of 10 years' imprisonment, \$250,000 fine, or both.

Creates crime of unlawful possession of lithium metal or sodium metal. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both.

Expands crime of theft in first degree to include theft of precursor substances.

Authorizes State Board of Pharmacy to adopt rules regulating sale or transfer of products containing pseudoephedrine. Punishes failure to make, keep or forward records by one year's imprisonment, \$6,250 fine, or both.

Modifies recording requirements for transactions involving iodine in elemental form or iodine matrix. Increases punishment for failing to comply with recording requirements to maximum of one year's imprisonment, \$6,250 fine, or both.

Creates crime of unlawful distribution of iodine in elemental form. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both.

Creates crime of unlawful distribution of iodine matrix. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both.

A BILL FOR AN ACT

1
2 Relating to precursor substances; creating new provisions; and amending ORS 164.055, 475.940,
3 475.950, 475.973, 475.975, 475.976 and 475.978.

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

5 **SECTION 1. Sections 2 to 4 of this 2005 Act are added to and made a part of ORS 475.940**
6 **to 475.999.**

7 **SECTION 2. A person who reports the possession of a precursor substance or a trans-**
8 **action involving a precursor substance to a law enforcement agency is immune from any civil**
9 **or criminal liability that might otherwise be incurred or imposed with respect to making the**
10 **report or the content of the report if the person has reasonable grounds for suspecting the**
11 **possession or transaction is prohibited under ORS 475.940 to 475.999.**

12 **SECTION 3. (1) A person commits the crime of distribution of equipment, a solvent, a**
13 **reagent or a precursor substance with intent to facilitate the manufacture of a controlled**
14 **substance if the person sells or otherwise transfers equipment, a solvent, a reagent or a**
15 **precursor substance to another person with knowledge that the equipment, solvent, reagent**
16 **or precursor substance is intended to be used to manufacture a controlled substance in vio-**
17 **lation of ORS 475.992.**

18 **(2) Distribution of equipment, a solvent, a reagent or a precursor substance with intent**
19 **to facilitate the manufacture of a controlled substance is a Class B felony.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **SECTION 4. (1) Except as otherwise provided in subsection (2) of this section, a person**
2 **commits the crime of unlawful possession of lithium metal or sodium metal if the person**
3 **knowingly possesses lithium metal or sodium metal.**

4 **(2) Subsection (1) of this section does not apply to:**

5 **(a) A person who is conducting a lawful manufacturing operation that involves the use**
6 **of lithium metal or sodium metal;**

7 **(b) A person who possesses lithium metal or sodium metal in conjunction with exper-**
8 **iments conducted in a chemistry or chemistry related laboratory maintained by a:**

9 **(A) Regularly established public or private secondary school; or**

10 **(B) Public or private institution of higher education that is accredited by a regional or**
11 **national accrediting agency recognized by the United States Department of Education;**

12 **(c) A retail distributor, wholesaler, manufacturer, warehouseman or common carrier, or**
13 **an agent of any of these persons, who possesses lithium metal or sodium metal in the regular**
14 **course of lawful business activities; or**

15 **(d) A person who possesses lithium metal or sodium metal as a component of a com-**
16 **mercially produced product including, but not limited to, rechargeable batteries.**

17 **(3) Unlawful possession of lithium metal or sodium metal is a Class A misdemeanor.**

18 **SECTION 5.** ORS 164.055 is amended to read:

19 164.055. (1) A person commits the crime of theft in the first degree if, by other than extortion,
20 the person commits theft as defined in ORS 164.015 and:

21 (a) The total value of the property in a single or aggregate transaction is \$200 or more in a case
22 of theft by receiving, and \$750 or more in any other case; [or]

23 (b) The theft is committed during a riot, fire, explosion, catastrophe or other emergency in an
24 area affected [thereby; or] **by the riot, fire, explosion, catastrophe or other emergency;**

25 (c) The theft is theft by receiving committed by buying, selling, borrowing or lending on the
26 security of the property; [or]

27 (d) The subject of the theft is a firearm or explosive; [or]

28 (e) The subject of the theft is a livestock animal, a companion animal or a wild animal removed
29 from habitat or born of a wild animal removed from habitat, pursuant to ORS 497.308 (2)(c); **or**

30 **(f) The subject of the theft is a precursor substance.**

31 (2) As used in this section:

32 (a) "Companion animal" means a dog or cat possessed by a person, business or other entity for
33 purposes of companionship, security, hunting, herding or providing assistance in relation to a phys-
34 ical disability.

35 (b) "Explosive" means a chemical compound, mixture or device that is commonly used or in-
36 tended for the purpose of producing a chemical reaction resulting in a substantially instantaneous
37 release of gas and heat, including but not limited to dynamite, blasting powder, nitroglycerin,
38 blasting caps and nitrojelly, but excluding fireworks as defined in ORS 480.110 (1), black powder,
39 smokeless powder, small arms ammunition and small arms ammunition primers.

40 (c) "Firearm" means a weapon, by whatever name known, which is designed to expel a projectile
41 by the action of black powder or smokeless powder and which is readily capable of use as a weapon.

42 (d) "Livestock animal" means a ratite, psittacine, horse, gelding, mare, stallion, colt, mule, ass,
43 jenny, bull, steer, cow, calf, goat, sheep, lamb, llama, pig or hog.

44 **(e) "Precursor substance" has the meaning given that term in ORS 475.940.**

45 (3) Theft in the first degree is a Class C felony.

1 **SECTION 6.** ORS 475.973 is amended to read:

2 475.973. (1)(a) Except as otherwise provided in paragraphs [(b) and (c)] **(b) to (d)** of this sub-
3 section, a person commits the crime of unlawful possession of ephedrine, pseudoephedrine or
4 phenylpropanolamine if the person knowingly possesses more than nine grams of ephedrine,
5 pseudoephedrine or phenylpropanolamine, the salts, isomers or salts of isomers of ephedrine,
6 pseudoephedrine or phenylpropanolamine or a combination of any of these substances.

7 (b) Paragraph (a) of this subsection does not apply to a veterinarian, physician, pharmacist, re-
8 tail distributor, wholesaler, manufacturer, warehouseman or common carrier or an agent of any of
9 these persons if the possession is in the regular course of lawful business activities.

10 (c) Paragraph (a) of this subsection does not apply to a person in possession of less than 24
11 grams of ephedrine, pseudoephedrine or phenylpropanolamine, or the salts, isomers or salts of
12 isomers of ephedrine, pseudoephedrine or phenylpropanolamine, in the home or residence of the
13 person under circumstances that are consistent with typical medicinal or household use, as indicated
14 by factors that include but are not limited to storage location, purchase date, possession of the
15 products in a variety of strengths, brands, types or purposes and expiration date. The exception
16 under this paragraph does not apply if the substances, in excess of nine grams, were all purchased
17 within a period of seven consecutive days.

18 **(d) Paragraph (a) of this subsection does not apply to a person in possession of ephedrine,**
19 **pseudoephedrine or phenylpropanolamine, the salts, isomers or salts of isomers of ephedrine,**
20 **pseudoephedrine or phenylpropanolamine or a combination of any of these substances pur-**
21 **suant to a prescription issued by a licensed veterinarian, physician or other licensed health**
22 **care practitioner authorized to prescribe pseudoephedrine.**

23 (2)(a) A person commits the crime of unlawful distribution of ephedrine, pseudoephedrine or
24 phenylpropanolamine if the person sells or otherwise transfers more than nine grams of ephedrine,
25 pseudoephedrine or phenylpropanolamine, the salts, isomers or salts of isomers of ephedrine,
26 pseudoephedrine or phenylpropanolamine or a combination of any of these substances to a person
27 other than a veterinarian, physician, pharmacist, retail distributor, wholesaler, manufacturer,
28 warehouseman or common carrier or an agent of any of these persons in the regular course of lawful
29 business activities.

30 (b) Paragraph (a) of this subsection does not apply to pediatric products primarily intended for
31 administration, according to label instructions, to children under 12 years of age, either:

32 (A) In solid dosage form when individual dosage units do not exceed 15 milligrams of ephedrine,
33 pseudoephedrine or phenylpropanolamine; or

34 (B) In liquid form when recommended dosage units, according to label instructions, do not ex-
35 ceed 15 milligrams of ephedrine, pseudoephedrine or phenylpropanolamine per five milliliters of liq-
36 uid product.

37 (c) Paragraph (a) of this subsection does not apply to pediatric products in liquid form that are
38 primarily intended for administration to children under two years of age for whom the recommended
39 dosage does not exceed two milliliters and that have a total package content of not more than one
40 fluid ounce.

41 **(3)(a) Notwithstanding ORS 475.045, the State Board of Pharmacy may not adopt rules**
42 **that exempt a product containing ephedrine or pseudoephedrine from classification as a**
43 **controlled substance unless the product consists of liquid-filled gelatin capsules or a liquid**
44 **preparation.**

45 **(b) The State Board of Pharmacy may adopt rules placing requirements and limitations,**

1 in addition to those contained in this section, on the sale or transfer of products containing
 2 ephedrine, pseudoephedrine or phenylpropanolamine. If the State Board of Pharmacy re-
 3 quires a person who sells or transfers products containing ephedrine, pseudoephedrine or
 4 phenylpropanolamine to make or maintain records relating to the sale or transfer, the re-
 5 cords are subject to inspection by the State Board of Pharmacy and law enforcement agen-
 6 cies. A person required to make or maintain records pursuant to rules adopted under this
 7 section shall forward the records to the Department of State Police if directed to do so by
 8 the department. Failure to make or maintain records required by rules adopted under this
 9 subsection or to forward records as required by this subsection is a Class A misdemeanor.
 10 The State Board of Pharmacy may not require a licensed veterinarian, physician or other
 11 licensed health care practitioner authorized to prescribe pseudoephedrine to make or main-
 12 tain a record of the sale or transfer of products under this subsection if the veterinarian,
 13 physician or other licensed health care practitioner makes and maintains a record of the sale
 14 or transfer under other applicable laws or rules regarding prescribing and dispensing regu-
 15 lated or controlled substances by veterinarians, physicians or other licensed health care
 16 practitioners authorized to prescribe pseudoephedrine.

17 [(3)] (4) This section does not apply to products that the State Board of Pharmacy, upon appli-
 18 cation of a manufacturer, exempts by rule because the product is formulated to effectively prevent
 19 conversion of the active ingredient into methamphetamine or its salts or precursors. Upon notifica-
 20 tion from the Department of State Police that the department has probable cause to believe that a
 21 product exempted under this subsection does not effectively prevent conversion of the active ingre-
 22 dient into methamphetamine or its salts or precursors, the State Board of Pharmacy may issue an
 23 emergency rule revoking the exemption for the product pending a full hearing.

24 [(4)] (5) This section does not apply to dietary supplements, herbs or natural products, including
 25 concentrates or extracts, that are not otherwise prohibited by law and that contain naturally oc-
 26 ccurring ephedrine alkaloids in a matrix of organic material such that the substances do not exceed
 27 15 percent of the total weight of the dietary supplement, herb or natural product.

28 [(5)(a)] (6)(a) Unlawful possession of ephedrine, pseudoephedrine or phenylpropanolamine is a
 29 Class A misdemeanor.

30 (b) Unlawful distribution of ephedrine, pseudoephedrine or phenylpropanolamine is a Class A
 31 misdemeanor.

32 **SECTION 7.** ORS 475.975 is amended to read:

33 475.975. (1) Except as otherwise provided in subsection (2) of this section, a person commits the
 34 crime of unlawful possession of iodine in its elemental form if the person knowingly possesses [*more*
 35 *than two ounces of*] iodine in its elemental form.

36 (2) Subsection (1) of this section does not apply to:

37 (a) A physician, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman or
 38 common carrier or an agent of any of these persons who possesses iodine in its elemental form in
 39 the regular course of lawful business activities;

40 (b) A person who possesses iodine in its elemental form in conjunction with experiments con-
 41 ducted in a chemistry or chemistry related laboratory maintained by a:

42 (A) Regularly established public or private secondary school;

43 (B) Public or private institution of higher education that is accredited by a regional or national
 44 accrediting agency recognized by the United States Department of Education; or

45 (C) Manufacturing, government agency or research facility in the course of lawful business ac-

1 tivities;

2 (c) A licensed veterinarian; *[or]*

3 (d) A person working in a general hospital who possesses iodine in its elemental form in the
4 regular course of employment at the hospital; **or**

5 **(e) A person who possesses an iodine matrix as a prescription drug, pursuant to a pre-**
6 **scription issued by a licensed veterinarian or physician.**

7 **(3) Except as otherwise provided in subsection (4) of this section,** a person who sells or
8 otherwise transfers iodine in its elemental form to *[a physician, pharmacist, retail distributor,*
9 *wholesaler, manufacturer, warehouseman, common carrier, chemistry laboratory, licensed veterinarian*
10 *or general hospital or an agent of any of these persons or entities]* **another person** shall make a re-
11 cord of each sale or transfer. The record must be made on a form provided by the Department of
12 State Police, **must be completed pursuant to instructions provided by the department** and must
13 be retained by the person for at least three years **or sent to the department if directed to do so**
14 **by the department.** Failure to make, *[or]* retain **or send** a record required under this subsection
15 is a Class A *[violation]* **misdemeanor.**

16 **(4) A licensed veterinarian is not required to make a record of a sale or transfer of iodine**
17 **in its elemental form under subsection (3) of this section if the veterinarian makes a record**
18 **of the sale or transfer under other applicable laws or rules regarding prescribing and dis-**
19 **persing regulated or controlled substances by veterinarians.**

20 **(5) A person commits the crime of unlawful distribution of iodine in its elemental form**
21 **if the person knowingly sells or otherwise transfers iodine in its elemental form to a person**
22 **not listed in subsection (2) of this section.**

23 *[(4)]* **(6) Unlawful possession of iodine in its elemental form is a Class A misdemeanor.**

24 **(7) Unlawful distribution of iodine in its elemental form is a Class A misdemeanor.**

25 **SECTION 8.** ORS 475.976 is amended to read:

26 475.976. (1) Except as otherwise provided in subsection (2) of this section, a person commits the
27 crime of unlawful possession of an iodine matrix if the person knowingly possesses an iodine matrix.

28 (2) Subsection (1) of this section does not apply to:

29 (a) A person who possesses an iodine matrix as a prescription drug, pursuant to a prescription
30 issued by a licensed veterinarian or physician;

31 (b) A person who is actively engaged in the practice of animal husbandry of livestock as defined
32 in ORS 609.125;

33 (c) A person who possesses an iodine matrix in conjunction with experiments conducted in a
34 chemistry or chemistry related laboratory maintained by a:

35 (A) Regularly established public or private secondary school;

36 (B) Public or private institution of higher education that is accredited by a regional or national
37 accrediting agency recognized by the United States Department of Education; or

38 (C) Manufacturing, government agency or research facility in the course of lawful business ac-
39 tivities;

40 (d) A veterinarian, physician, pharmacist, retail distributor, wholesaler, manufacturer,
41 warehouseman or common carrier or an agent of any of these persons who possesses an iodine ma-
42 trix in the regular course of lawful business activities; or

43 (e) A person working in a general hospital who possesses an iodine matrix in the regular course
44 of employment at the hospital.

45 **(3) Except as otherwise provided in subsection (4) of this section,** a person who sells or

1 otherwise transfers an iodine matrix to [a person pursuant to a prescription issued by a licensed
 2 veterinarian or physician, to a person engaged in the practice of animal husbandry of livestock, to a
 3 chemistry or chemistry related laboratory, to a general hospital or to a veterinarian, physician,
 4 pharmacist, retail distributor, wholesaler, manufacturer, warehouseman or common carrier or an agent
 5 of any of these persons or entities,] **another person** shall make a record of each sale or transfer. The
 6 record must be made on a form provided by the Department of State Police, **must be completed**
 7 **pursuant to instructions provided by the department** and must be retained by the person for at
 8 least three years **or sent to the department if directed to do so by the department**. Failure to
 9 make or retain a record required under this subsection is a Class A [violation] **misdemeanor**.

10 (4) **A licensed veterinarian is not required to make a record of a sale or transfer of an**
 11 **iodine matrix under subsection (3) of this section if the veterinarian makes a record of the**
 12 **sale or transfer under other applicable laws or rules regarding prescribing and dispensing**
 13 **regulated or controlled substances by veterinarians.**

14 (5) **A person commits the crime of unlawful distribution of an iodine matrix if the person**
 15 **knowingly sells or otherwise transfers an iodine matrix to a person not listed in subsection**
 16 **(2) of this section.**

17 [(4)] (6) Unlawful possession of an iodine matrix is a Class A misdemeanor.

18 (7) **Unlawful distribution of an iodine matrix is a Class A misdemeanor.**

19 **SECTION 9.** ORS 475.978 is amended to read:

20 475.978. (1) A person who sells or otherwise transfers more than the amount permitted by ad-
 21 ministrative rule adopted by the Department of State Police of methyl sulfonyl methane to a person
 22 other than a physician, pharmacist, veterinarian, retail distributor, wholesaler, manufacturer,
 23 warehouseman or common carrier or an agent of any of these persons shall make a record of each
 24 such sale or transfer. The record must be made on a form provided by the department, **must be**
 25 **completed pursuant to instructions provided by the department** and must be retained by the
 26 person for at least three years. Failure to make or retain a record required under this subsection
 27 is a Class A violation.

28 (2) The department shall adopt a rule establishing the minimum amount of methyl sulfonyl
 29 methane the sale or transfer of which requires a report under subsection (1) of this section. In es-
 30 tablishing the minimum amount, the department shall determine an amount that is reasonably de-
 31 signed not to infringe upon legitimate uses of methyl sulfonyl methane but that discourages the use
 32 of methyl sulfonyl methane in the illicit production and distribution of methamphetamine.

33 (3) This section applies to the sale or transfer of bulk methyl sulfonyl methane in its powder
 34 form only, and does not apply to the sale or transfer of products containing methyl sulfonyl methane
 35 in other forms including, but not limited to, liquids, tablets, capsules not containing methyl sulfonyl
 36 methane in pure powder form, ointments, creams, cosmetics, foods and beverages.

37 **SECTION 10.** ORS 475.940 is amended to read:

38 475.940. As used in ORS 475.940 to 475.999:

39 (1) "Iodine matrix" means iodine at a concentration greater than two percent by weight in a
 40 matrix or solution.

41 (2) "Matrix" means something, as a substance, in which something else originates, develops, or
 42 is contained.

43 (3) "Precursor substance" means:

44 (a) Phenyl-2-propanone.

45 (b) Methylamine.

- 1 (c) D-lysergic acid.
- 2 (d) Ergotamine.
- 3 (e) Diethyl Malonate.
- 4 (f) Malonic acid.
- 5 (g) Ethyl Malonate.
- 6 (h) Barbituric acid.
- 7 (i) Piperidine.
- 8 (j) N-acetylanthranilic acid.
- 9 (k) Ethylamine.
- 10 (L) Pyrrolidine.
- 11 (m) Phenylacetic acid.
- 12 (n) Anthranilic acid.
- 13 (o) Morpholine.
- 14 (p) Ephedrine.
- 15 (q) Pseudoephedrine.
- 16 (r) Norpseudoephedrine.
- 17 (s) Phenylpropanolamine.
- 18 (t) Benzyl cyanide.
- 19 (u) Ergonovine.
- 20 (v) 3,4-Methylenedioxyphenyl-2-propanone.
- 21 (w) Propionic anhydride.
- 22 (x) Isosafrole (Isosafrole).
- 23 (y) Safrole.
- 24 (z) Piperonal.
- 25 (aa) N-methylephedrine.
- 26 (bb) N-ethylephedrine.
- 27 (cc) N-methylpseudoephedrine.
- 28 (dd) N-ethylpseudoephedrine.
- 29 (ee) Hydriotic acid.
- 30 (ff) Gamma butyrolactone (GBL), including butyrolactone, 1,2-butanolide, 2-oxanol-one,
- 31 tetrahydro-2-furanone, dihydro-2(3H)-furanone and tetramethylene glycol, but not including gamma
- 32 aminobutyric acid (GABA).
- 33 (gg) 1,4-butanediol.
- 34 (hh) Any salt, isomer or salt of an isomer of the chemicals listed in paragraphs (a) to (gg) of this
- 35 subsection.
- 36 (ii) Iodine in its elemental form.
- 37 (jj) Iodine matrix.
- 38 (kk) Red phosphorus, white phosphorus, yellow phosphorus or hypophosphorus acid and its salts.
- 39 (LL) Anhydrous ammonia.
- 40 **(mm) Lithium metal.**
- 41 **(nn) Sodium metal.**
- 42 [(mm)] **(oo)** Any substance established as a precursor substance by rule under authority granted
- 43 in ORS 475.945.
- 44 **SECTION 11.** ORS 475.950 is amended to read:
- 45 475.950. (1) A person commits the offense of failure to report a precursor substances transaction

1 if the person does any of the following:

2 (a) Sells, transfers or otherwise furnishes any precursor substance described in ORS 475.940
3 (3)(a) to (hh) and [(mm)] (oo) and does not, at least three days before delivery of the substance,
4 submit to the Department of State Police a report that meets the reporting requirements established
5 by rule under ORS 475.945.

6 (b) Receives any precursor substance described in ORS 475.940 (3)(a) to (hh) and [(mm)] (oo) and
7 does not, within 10 days after receipt of the substance, submit to the Department of State Police a
8 report that meets the reporting requirements established by rule under ORS 475.945.

9 (2) This section does not apply to any of the following:

10 (a) Any pharmacist or other authorized person who sells or furnishes a precursor substance
11 upon the prescription of a physician, dentist, podiatric physician and surgeon or veterinarian.

12 (b) Any practitioner, as defined in ORS 475.005, who administers or furnishes a precursor sub-
13 stance to patients upon prescription.

14 (c) Any person licensed by the State Board of Pharmacy who sells, transfers or otherwise fur-
15 nishes a precursor substance to a licensed pharmacy, physician, dentist, podiatric physician and
16 surgeon or veterinarian for distribution to patients upon prescription.

17 (d) Any person who is authorized by rule under ORS 475.945 to report in an alternate manner
18 if the person complies with the alternate reporting requirements.

19 (e) Any patient of a practitioner, as defined in ORS 475.005, who obtains a precursor substance
20 from a licensed pharmacist, physician, dentist, podiatric physician and surgeon or veterinarian pur-
21 suant to a prescription.

22 (f) Any person who sells or transfers ephedrine, pseudoephedrine or phenylpropanolamine in
23 compliance with ORS 475.973.

24 (g) Any practitioner, as defined in ORS 475.005, who dispenses a precursor substance to a person
25 with whom the practitioner has a doctor-patient or doctor-client relationship.

26 (h) Any person who obtains a precursor substance from a practitioner, as defined in ORS
27 475.005, with whom the person has a doctor-patient or doctor-client relationship.

28 (3) Penalties related to providing false information on a report required under this section are
29 provided under ORS 475.965.

30 (4) The Department of State Police and any law enforcement agency may inspect **and remove**
31 **a copy of** the sales records of any retail or wholesale distributor of methyl sulfonyl methane or a
32 precursor substance during the normal business hours of the retail or wholesale distributor **or may**
33 **require the distributor to provide a copy of the records.**

34 (5) The offense described in this section, failure to report a precursor substances transaction,
35 is a Class A misdemeanor.

36 **SECTION 12. No later than July 1, 2006, the State Board of Pharmacy shall make any**
37 **amendments to its administrative rules that are necessary to bring the rules into compliance**
38 **with ORS 475.973 (3)(a).**