

# Enrolled House Bill 2485

Sponsored by Representatives BROWN, JENSON, P SMITH; Representatives ANDERSON, AVAKIAN, BARKER, BARNHART, BERGER, BEYER, BOONE, BOQUIST, BRUUN, BUCKLEY, BURLEY, BUTLER, CAMERON, DALLUM, DALTO, DINGFELDER, ESQUIVEL, FARR, FLORES, GALIZIO, GARRARD, GILMAN, HANNA, HANSEN, HASS, HOLVEY, HUNT, KITTS, KOMP, KRIEGER, KROPP, LIM, MACPHERSON, MERKLEY, MINNIS, MORGAN, NELSON, OLSON, RICHARDSON, RILEY, ROBLAN, SCHAUFLE, SCOTT, G SMITH, SUMNER, THATCHER, TOMEI, WHISNANT, Senators ATKINSON, BATES, BEYER, BROWN, BURDICK, COURTNEY, DEVLIN, FERRIOLI, GEORGE, GORDLY, JOHNSON, KRUSE, MONNES ANDERSON, MORRISSETTE, MORSE, NELSON, PROZANSKI, RINGO, SCHRADER, SHIELDS, B STARR, C STARR, VERGER, WESTLUND, WHITSETT, WINTERS (at the request of Rob Bovett and Oregon Narcotics Enforcement Association)

CHAPTER .....

AN ACT

Relating to controlled substances; creating new provisions; amending ORS 3.450, 105.555, 137.656, 164.055, 164.315, 164.325, 411.119, 453.882, 475.245, 475.940, 475.950, 475.973, 475.975, 475.976 and 475.978; and declaring an emergency.

- (1) Whereas the Legislative Assembly finds that:
  - (a) Methamphetamine use and addiction in Oregon have reached epidemic proportions;
  - (b) The nature and cycle of methamphetamine use and addiction have many negative and severe impacts on the livability of communities throughout Oregon including, but not limited to:
    - (A) Endangering children exposed to a methamphetamine laboratory or methamphetamine house environment;
    - (B) Increasing the rate of property crimes such as theft, identity theft and burglary;
    - (C) Increasing the rate of violent crimes such as homicide, robbery, assault and sexual abuse;
    - (D) Creation and dumping of toxic waste from methamphetamine laboratories; and
    - (E) Methamphetamine-induced mental illness, psychosis and death;
  - (c) Recent developments in methamphetamine manufacturing methods, purity levels and methods of ingestion have substantially contributed to the extremely addictive nature and expanded use of methamphetamine;
  - (d) An adequate response to the methamphetamine epidemic sweeping Oregon and many parts of the nation will require a coordinated and significantly enhanced effort to effectively use scarce prevention, enforcement and treatment resources;
  - (e) Prevention, enforcement and treatment providers in every community in Oregon need to work together in an effort to raise community awareness about, and reduce the incidence of manufacturing, distribution and use of, methamphetamine; and
  - (f) Establishing the following priorities is critical to the effort to remedy the methamphetamine epidemic:
    - (A) Prevention efforts including:
      - (i) Community education and awareness; and
      - (ii) Mobilization of community prevention coalitions;

- (B) Enforcement efforts including:
- (i) Enhanced and stabilized funding for law enforcement agencies;
  - (ii) Enhanced control of critical precursor substances;
  - (iii) Stabilized funding for cleanup of unlawful methamphetamine laboratories;
  - (iv) Establishment of effective programs to address the problems of drug-endangered children;
- and
- (v) Early intervention in and prosecution of all methamphetamine cases in order to encourage early methamphetamine addiction treatment; and
- (C) Treatment efforts including:
- (i) Use of effective methamphetamine addiction treatment to improve public safety;
  - (ii) Enhanced and stabilized funding for methamphetamine addiction treatment resources;
  - (iii) Standardization of the best practices for methamphetamine addiction treatment; and
  - (iv) Enhanced and stabilized funding for secondary treatment services such as those provided to the children and other family members of a person undergoing methamphetamine addiction treatment; and
- (2) Whereas law enforcement and social service agencies in Oregon should be encouraged to develop and implement written protocols for taking appropriate action when a child is present in a home where methamphetamine is manufactured, distributed or used, which protocols should reflect that exposing a child to the manufacture, distribution or use of methamphetamine is criminal conduct and that a response coordinated by law enforcement and social service agencies is essential to the health and welfare of the child; and
- (3) Whereas the needs of a drug-endangered child are best served through written protocols encouraging:
- (a) The arrest of the person responsible for exposing the child to the drug endangering environment;
  - (b) The provision of health and mental health services to the child; and
  - (c) The placement of the child in a safe and nurturing environment; and
- (4) Whereas protocols that encourage a dependency investigation to occur at the same time as a law enforcement investigation at a methamphetamine crime scene involving a child are consistent with the child's best interest; and
- (5) Whereas communities in Oregon should be encouraged to form multiagency and multijurisdictional groups that include law enforcement officers, prosecutors, public health professionals and social workers to address the welfare of children endangered by parental methamphetamine manufacturing, distribution and use; and
- (6) Whereas multiagency and multijurisdictional groups formed by communities should be encouraged to develop protocols addressing:
- (a) Arrests for methamphetamine-related crimes;
  - (b) The immediate response of child protective social workers to a methamphetamine crime scene involving a child;
  - (c) The assignment of child protective social workers to work with law enforcement agencies charged with responding to methamphetamine crime scenes;
  - (d) Child dependency investigations involving methamphetamine laboratories;
  - (e) Forensic methamphetamine and toxic chemical exposure testing;
  - (f) Decontamination of children found in a methamphetamine laboratory setting;
  - (g) Medical examinations and developmental evaluations of children found in a methamphetamine laboratory setting;
  - (h) The creation of drug-endangered children awareness training; and
  - (i) Short-term and long-term medical, social and psychological follow-up for drug-endangered children; now, therefore,

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

**SECTION 1.** ORS 105.555 is amended to read:

105.555. (1) The following are declared to be nuisances and shall be enjoined and abated as provided in ORS 105.550 to 105.600:

(a) Any place that, as a regular course of business, is used for the purpose of prostitution and any place where acts of prostitution occur;

(b) Any place *[which]* **that** is used and maintained for profit and for the purpose of gambling or a lottery, as defined in ORS 167.117, by any person, partnership or corporation organized for profit and wherein take place any of the acts or wherein are kept, stored or located any of the games, devices or things *[which]* **that** are forbidden by or made punishable by ORS 167.108 to 167.164; *[and]*

**(c) Any place that has been determined to be not fit for use under ORS 453.876 and that has not been decontaminated and certified as fit for use under ORS 453.885 within 180 days after the determination under ORS 453.876; and**

*[(c)]* **(d)** Any place where activity involving the unauthorized delivery, manufacture or possession of a controlled substance, as defined in ORS 475.005, occurs or any place wherein are kept, stored or located any of the devices, equipment, things or substances used for unauthorized delivery, manufacture or possession of a controlled substance. As used in this *[subsection]* **paragraph**, “devices, equipment, *[and]* things” does not include hypodermic syringes or needles. This *[subsection shall]* **paragraph does** not apply to acts *[which]* **that** constitute violations under ORS 475.992 (2)(b) and (4)(f).

(2) Nothing in ORS 105.550 to 105.600, 166.715 and 167.158 applies to property to the extent that the devices, equipment, things or substances that are used for delivery, manufacture or possession of a controlled substance are kept, stored or located in or on the property for the purpose of lawful sale or use of these items.

**SECTION 2.** ORS 453.882 is amended to read:

453.882. The owner of property *[that has been determined to be not fit for use pursuant to ORS 453.855 to 453.912 who allows such property to be used as if it were fit for use]* shall be considered to be maintaining a public nuisance subject to being enjoined or abated under ORS 105.550 to 105.600 **if the property has been determined to be not fit for use under ORS 453.876 and the owner:**

**(1) Allows the property to be used as if it were fit for use; or**

**(2) Fails to have the property decontaminated and certified as fit for use under ORS 453.885 within 180 days after the determination under ORS 453.876.**

**SECTION 3.** ORS 164.315 is amended to read:

164.315. (1) A person commits the crime of arson in the second degree if[,];

**(a)** By starting a fire or causing an explosion, the person intentionally damages:

*[(a)]* **(A)** Any building of another that is not protected property; or

*[(b)]* **(B)** Any property of another and the damages to the property exceed \$750; **or**

**(b) By knowingly engaging in the manufacture of methamphetamine, the person causes fire or causes an explosion that damages property described in paragraph (a) of this subsection.**

(2) Arson in the second degree is a Class C felony.

**SECTION 4.** ORS 164.325 is amended to read:

164.325. (1) A person commits the crime of arson in the first degree if[,];

**(a)** By starting a fire or causing an explosion, the person intentionally damages:

*[(a)]* **(A)** Protected property of another;

*[(b)]* **(B)** Any property, whether the property of the person or the property of another person, and such act recklessly places another person in danger of physical injury or protected property of another in danger of damage; or

*[(c)]* **(C)** Any property, whether the property of the person or the property of another person, and recklessly causes serious physical injury to a firefighter or peace officer acting in the line of duty relating to the fire; **or**

(b) By knowingly engaging in the manufacture of methamphetamine, the person causes fire or causes an explosion that damages property described in paragraph (a) of this subsection.

(2) Arson in the first degree is a Class A felony.

**SECTION 5.** Section 6 of this 2005 Act is added to and made a part of ORS 475.940 to 475.999.

**SECTION 6.** (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.

**SECTION 7.** A person who, in good faith, makes a report of a violation of ORS 475.940 to 475.999 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 respect to participating in a judicial proceeding resulting from the report.

**SECTION 8.** (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 475.992.

(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.

**SECTION 9.** (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.**

**SECTION 10.** ORS 164.055 is amended to read:

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

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

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

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

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

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

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

(2) As used in this section:

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

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

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

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

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

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

**SECTION 11.** ORS 475.973 is amended to read:

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

[(b) *Paragraph (a) of this subsection does not apply to a veterinarian, physician, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman or common carrier or an agent of any of these persons if the possession is in the regular course of lawful business activities.*]

[(c) *Paragraph (a) of this subsection does not apply to a person in possession of less than 24 grams of ephedrine, pseudoephedrine or phenylpropanolamine, or the salts, isomers or salts of isomers of ephedrine, pseudoephedrine or phenylpropanolamine, in the home or residence of the person 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. The exception under this paragraph does not apply if the substances, in excess of nine grams, were all purchased within a period of seven consecutive days.*]

[(2)(a) *A person commits the crime of unlawful distribution of ephedrine, pseudoephedrine or phenylpropanolamine if the person sells or otherwise transfers more than nine grams of ephedrine, pseudoephedrine or phenylpropanolamine, the salts, isomers or salts of isomers of ephedrine, pseudoephedrine or phenylpropanolamine or a combination of any of these substances to a person other*

than a veterinarian, physician, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman or common carrier or an agent of any of these persons in the regular course of lawful business activities.]

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

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

*[(B) In liquid form when recommended dosage units, according to label instructions, do not exceed 15 milligrams of ephedrine, pseudoephedrine or phenylpropanolamine per five milliliters of liquid product.]*

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

**(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 controlled 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.**

*[(3)] (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.*

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

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

*[(b) Unlawful distribution of ephedrine, pseudoephedrine or phenylpropanolamine is a Class A misdemeanor.]*

**SECTION 12. No later than July 1, 2006, the State Board of Pharmacy shall make any amendments to the board's administrative rules that are necessary to bring the rules into compliance with ORS 475.973 (1)(a). The State Board of Pharmacy shall provide that any rules or amendments to rules required by this section take effect on July 1, 2006.**

**SECTION 13. For the period of time beginning on the effective date of this 2005 Act and ending on the date the rules required by section 12 of this 2005 Act take effect:**

**(1) The State Board of Pharmacy may adopt rules placing requirements and limitations, in addition to the requirements and limitations contained in ORS 475.973 (2003 Edition), on**

the sale or transfer of products containing ephedrine, pseudoephedrine or phenylpropanolamine.

(2) If the State Board of Pharmacy requires a person who sells or transfers products described in ORS 475.973 (2003 Edition) to make or maintain records relating to the sale or transfer, the records are subject to inspection by the State Board of Pharmacy and law enforcement agencies. A person required to make or maintain records pursuant to rules adopted under this section shall forward the records to the Department of State Police if directed to do so by the department. Failure to make or maintain records required by rules adopted under this section or to forward records as required by this subsection is a Class A misdemeanor.

(3) Notwithstanding subsection (1) of this section, the State Board of Pharmacy may not require a licensed veterinarian or physician or other licensed health care practitioner authorized to prescribe pseudoephedrine to make or maintain a record of the sale or transfer of products under ORS 475.973 if the veterinarian, physician or other health care practitioner makes and maintains a record of the sale or transfer under other applicable laws or rules regarding prescribing and dispensing regulated or controlled substances by veterinarians, physicians and other health care practitioners.

(4)(a) Except as otherwise provided in paragraphs (b) and (c) of this subsection, a person commits the crime of unlawful possession of ephedrine, pseudoephedrine or phenylpropanolamine if the person knowingly possesses more than nine grams of ephedrine, pseudoephedrine or phenylpropanolamine, the salts, isomers or salts of isomers of ephedrine, pseudoephedrine or phenylpropanolamine or a combination of any of these substances.

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

(c) Paragraph (a) of this subsection does not apply to a person in possession of less than 24 grams of ephedrine, pseudoephedrine or phenylpropanolamine, or the salts, isomers or salts of isomers of ephedrine, pseudoephedrine or phenylpropanolamine, in the home or residence of the person 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. The exception under this paragraph does not apply if the substances, in excess of nine grams, were all purchased within a period of seven consecutive days.

(d) Unlawful possession of ephedrine, pseudoephedrine or phenylpropanolamine is a Class A misdemeanor.

(5)(a) A person commits the crime of unlawful distribution of ephedrine, pseudoephedrine or phenylpropanolamine if the person sells or otherwise transfers:

(A) A product containing ephedrine, pseudoephedrine or phenylpropanolamine in violation of a rule of the State Board of Pharmacy; or

(B) More than nine grams of ephedrine, pseudoephedrine or phenylpropanolamine, the salts, isomers or salts of isomers of ephedrine, pseudoephedrine or phenylpropanolamine or a combination of any of these substances to a person other than a veterinarian, physician, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman or common carrier or an agent of any of these persons in the regular course of lawful business activities.

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

**SECTION 13a.** It is an affirmative defense to a charge of violating ORS 475.992 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.**

**SECTION 14.** ORS 475.975 is amended to read:

475.975. (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 [*more than two ounces of*] 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; [*or*]

(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 [*a physician, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman, common carrier, chemistry laboratory, licensed veterinarian or general hospital or an agent of any of these persons or entities*] **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** [*must be*] **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 [*or*] **and retain or send** a record required under this subsection is a Class A [*violation*] **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.**

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

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

**SECTION 15.** ORS 475.976 is amended to read:

475.976. (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 *[a person pursuant to a prescription issued by a licensed veterinarian or physician, to a person engaged in the practice of animal husbandry of livestock, to a chemistry or chemistry related laboratory, to a general hospital or to a veterinarian, physician, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman or common carrier or an agent of any of these persons or entities,]* **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 *[must be]* 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 *[or]* **and** retain **or send** a record required under this subsection is a Class A *[violation]* **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.**

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

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

**SECTION 16.** ORS 475.978 is amended to read:

475.978. (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 *[must be]* retained by the person for at least three years. Failure to make *[or]* **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.

**SECTION 17.** ORS 475.940 is amended to read:

475.940. As used in ORS 475.940 to 475.999:

(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) Pyrolidine.
- (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-oxanol-one, 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.**

[*mm*] **(oo)** Any substance established as a precursor substance by rule under authority granted in ORS 475.945.

**SECTION 18.** ORS 475.950 is amended to read:

475.950. (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 [(mm)] (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 [(mm)] (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.

(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) [*The offense described in this section,*] Failure to report a precursor substances transaction[,] is a Class A misdemeanor.

**SECTION 19. As used in sections 19 to 21 of this 2005 Act:**

(1) **“Anhydrous ammonia”:**

(a) **Means a liquid or gaseous inorganic compound that is formed by the chemical combination of nitrogen and hydrogen in the molar proportion of one part nitrogen to three parts hydrogen.**

(b) **Does not mean ammonium hydroxide.**

(2) **“Distributor” means a person that imports, consigns, sells, offers for sale, barter, exchanges or otherwise facilitates the supply of anhydrous ammonia to a user in this state.**

(3) **“Nontoxic dye” means a biodegradable, clear liquid product that causes staining when exposed to air.**

(4) **“Other additive” means a product other than a nontoxic dye that, when put in tanks containing anhydrous ammonia, renders the anhydrous ammonia nonreactive, unusable or undesirable for use as a precursor substance in the manufacture of methamphetamine.**

(5) **“User” means a person that applies anhydrous ammonia as a plant nutrient in the course of engaging in agricultural activity in this state.**

**SECTION 20. (1) The State Department of Agriculture, by rule and in consultation with the Department of State Police, shall certify each brand of nontoxic dye or other additive that a distributor or user may add to anhydrous ammonia.**

(2) In accordance with applicable provisions of ORS chapter 183, the State Department of Agriculture shall adopt rules establishing standards to be used in making certifications under this section and for the administration of section 21 of this 2005 Act. In establishing the standards, the State Department of Agriculture shall consult with the Anhydrous Ammonia Additive Review Committee established under section 21 of this 2005 Act.

**SECTION 21.** (1) The Director of Agriculture, in consultation with the Superintendent of State Police, shall appoint an Anhydrous Ammonia Additive Review Committee consisting of not fewer than six members. The term of a member is four years, but a member serves at the pleasure of the director.

(2) Members of the committee are not entitled to compensation, but in the discretion of the director may be reimbursed from funds available to the State Department of Agriculture for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amount provided in ORS 292.495.

(3) The members of the committee shall include at least one representative from each of the following:

- (a) The Department of State Police.
  - (b) The State Department of Agriculture.
  - (c) Manufacturers of anhydrous ammonia fertilizers.
  - (d) The Oregon State University Extension Service.
  - (e) Retail distributors.
  - (f) Users who are growers of agricultural commodities.
- (4) The committee:

(a) May review all relevant scientific and economic data on nontoxic dyes or other additives for anhydrous ammonia that are submitted for certification to the State Department of Agriculture under section 20 of this 2005 Act.

(b) Shall, at a minimum, require the manufacturer of any product submitted under section 20 of this 2005 Act to provide sufficient scientifically valid data for each submitted nontoxic dye or other additive to allow the State Department of Agriculture to determine the dye's or additive's:

- (A) Impact on crop yield;
- (B) Specific food crop residue analysis; and
- (C) Impact on the environment.

(c) May issue recommendations to the director regarding whether a nontoxic dye or other additive to anhydrous ammonia should be certified by the State Department of Agriculture under section 20 of this 2005 Act.

**SECTION 22.** ORS 411.119 is amended to read:

411.119. (1) **Except as provided in subsection (2) of this section,** a person who is otherwise eligible to receive public assistance, including food stamp benefits, *[shall]* **may** not be denied assistance because the person has been convicted of a drug-related felony.

(2) **The Department of Human Services may suspend a person's food stamp benefits if:**

(a) **The person has been convicted of the manufacture or delivery of a controlled substance under ORS 475.992 (1)(a) to (c); and**

(b) **The person is on probation, parole or post-prison supervision and the agency supervising the person makes a recommendation to the department, pursuant to subsection (3) of this section, that the department suspend the person's food stamp benefits.**

(3) **When making a recommendation to the department regarding the continuation or suspension of a person's food stamp benefits, a supervising authority shall consider, at a minimum, whether there is reason to believe:**

(a) **That the person traded the person's food stamp benefits for controlled substances; and**

(b) That, as a result of the trading, a member of the person's household who is a dependent of the person did not receive the food stamp benefits for which the member is eligible.

(4) The department shall reinstate the food stamp benefits of a person whose benefits were suspended under subsection (2) of this section if the department receives a recommendation from the supervising authority to reinstate the benefits pursuant to subsection (5) of this section.

(5) When making a recommendation to the department regarding the reinstatement of food stamp benefits, the supervising authority shall consider, at a minimum, the following:

(a) Whether members of the person's household are also receiving food stamp benefits; and

(b) Whether the person is enrolled in and successfully participating in a rehabilitation program.

**SECTION 23.** The amendments to ORS 411.119 by section 22 of this 2005 Act apply to individuals and households certified or recertified to be eligible to receive food stamp benefits on or after the effective date of this 2005 Act.

**SECTION 24.** ORS 137.656 is amended to read:

137.656. (1) The purpose of the Oregon Criminal Justice Commission is to improve the effectiveness and efficiency of state and local criminal justice systems by providing a centralized and impartial forum for statewide policy development and planning.

(2) The primary duty of the commission is to develop and maintain a state criminal justice policy and comprehensive, long-range plan for a coordinated state criminal justice system that encompasses public safety, offender accountability, crime reduction and prevention and offender treatment and rehabilitation. The plan must include, but need not be limited to, recommendations regarding:

(a) Capacity, utilization and type of state and local prison and jail facilities;

(b) Implementation of community corrections programs;

(c) Alternatives to the use of prison and jail facilities;

(d) Appropriate use of existing facilities and programs;

(e) Whether additional or different facilities and programs are necessary;

(f) Methods of assessing the effectiveness of juvenile and adult correctional programs, devices and sanctions in reducing future criminal conduct by juvenile and adult offenders; and

(g) Methods of reducing the risk of future criminal conduct.

(3) Other duties of the commission are:

(a) To conduct joint studies by agreement with other state agencies, boards or commissions on any matter within the jurisdiction of the commission.

(b) To provide Oregon criminal justice analytical and statistical information to federal agencies and serve as a clearinghouse and information center for the collection, preparation, analysis and dissemination on state and local sentencing practices.

(c) To provide technical assistance and support to local public safety coordinating councils.

(d) To implement the recommendations of the Juvenile Crime Prevention Advisory Committee, as approved by the Governor.

(e) In cooperation with other state and federal agencies, to coordinate technical assistance efforts on a statewide and county-specific basis relating to juvenile crime prevention programs and services.

**(f) To receive grant applications to start or expand drug court programs as defined in ORS 3.450, to make rules to govern the grant process and to award grant funds according to the rules.**

(4) The commission may contract with local governments or other entities to administer juvenile crime prevention programs and services. In accordance with the applicable provisions of ORS chapter 183, the commission may adopt rules necessary for the administration of juvenile crime prevention programs and services.

**SECTION 25.** ORS 3.450 is amended to read:

3.450. (1) As used in this section, “drug court program” means a program in which:

(a) Individuals who are before the court obtain treatment for substance abuse issues and report regularly to the court on the progress of their treatment; and

(b) A local drug court team, consisting of the court, agency personnel and treatment and service providers, monitors the individuals’ participation in treatment.

(2)(a) The governing body of a county or a treatment provider may establish fees that individuals participating in a drug court program may be required to pay for treatment and other services provided as part of the drug court program.

(b) A court may order an individual participating in a drug court program to pay fees to participate in the program. Fees imposed under this subsection may not be paid to the court.

(3) Records that are maintained by the circuit court specifically for the purpose of a drug court program must be maintained separately from other court records. Records maintained by a circuit court specifically for the purpose of a drug court program are confidential and may not be disclosed except in accordance with regulations adopted under 42 U.S.C. 290dd-2, including under the circumstances described in subsections (4) to (6) of this section.

(4) If the individual who is the subject of the record gives written consent, a record described in subsection (3) of this section may be disclosed to members of the local drug court team in order to develop treatment plans, monitor progress in treatment and determine outcomes of participation in the drug court program.

(5) A record described in subsection (3) of this section may not be introduced into evidence in any legal proceeding other than the drug court program unless:

(a) The individual who is the subject of the record gives written consent for introduction of the record; or

(b) The court finds good cause for introduction. In determining whether good cause exists for purposes of this subparagraph, the court shall weigh the public interest and the need for disclosure against the potential injury caused by the disclosure to:

(A) The individual who is the subject of the record;

(B) The individual-physician relationship; and

(C) The treatment services being provided to the individual who is the subject of the record.

(6) A court, [or] the State Court Administrator **or the Oregon Criminal Justice Commission** may use records described in subsection (3) of this section and other drug court program information to track and develop statistics about the effectiveness, costs and other areas of public interest concerning drug court programs. A court, [or] the State Court Administrator **or the Oregon Criminal Justice Commission** may release statistics developed under this subsection and analyses based on the statistics to the public. Statistics and analyses released under this subsection may not contain any information that identifies an individual participant in a drug court program.

**SECTION 26.** ORS 475.245, as amended by section 10, chapter 834, Oregon Laws 2001, is amended to read:

475.245. Whenever any person pleads guilty to or is found guilty of possession of a controlled substance under ORS 475.992 (4) **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.

**SECTION 27. This 2005 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect on its passage.**

**Passed by House July 20, 2005**

**Repassed by House August 1, 2005**

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Chief Clerk of House

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Speaker of House

**Passed by Senate July 30, 2005**

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President of Senate

**Received by Governor:**

.....M,....., 2005

**Approved:**

.....M,....., 2005

.....  
Governor

**Filed in Office of Secretary of State:**

.....M,....., 2005

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Secretary of State