

[NOTE: This text is excerpted from the entire bill. Portions referring to current statutory language have been removed.]

73rd OREGON LEGISLATIVE ASSEMBLY--2005 Regular Session

LC 1809

B-Engrossed

House Bill 2485

Ordered by the House July 18

Including House Amendments dated June 27 and July 18

SECTION 11. ORS 475.973 is amended to read:

475.973. (1)(a) Except as otherwise provided in paragraphs (b) to (d) 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) Paragraph (a) of this subsection does not apply to a person in possession 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 pursuant to a prescription issued by a licensed veterinarian or physician or other licensed health care practitioner authorized to prescribe pseudoephedrine.

(2) 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.

(3)(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 or 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.

(4) 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.

(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 (3)(a).

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 ORS 475.973 (3) become operative:

(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, 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 (3)(b) 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.