

BILL BRADBURY
SECRETARY OF STATE



ELECTIONS DIVISION
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ELECTIONS — (503) 986-1518

June 27, 2002

To All Interested Parties:

Secretary of State Bill Bradbury is responsible for the pre-election review of proposed initiative petitions for compliance with the procedural constitutional requirements established in the Oregon Constitution for initiative petitions. This review will be completed before approving the form of the cover and signature sheets for the purpose of circulating the proposed initiative petition to gather signatures.

The Secretary of State is seeking public input on whether proposed initiative petition (#4), satisfies the procedural constitutional requirements for circulation as a proposed initiative petition. Petition #4 was filed in our office on June 26, 2002, by Richard A.B. Szymanski, for the General Election of November 2, 2004.

Enclosed is a copy of the text of this proposed initiative petition. If you are interested in providing comments on whether the proposed initiative petition meets the procedural constitutional requirements, please write to the secretary at the Elections Division in the State Capitol. Your comments, if any, must be received by the Elections Division no later than July 19, 2002, in order for them to be considered in the review.

BILL BRADBURY
Secretary of State

BY: *sd*

Summer Davis
Compliance Specialist



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BILL BRADBURY
SECRETARY OF STATE

Be it enacted by the People of the State of Oregon:

SECTION 1.

ORS 475.005 is amended to read:

475.005. Definitions for ORS 475.005 to 475.285 and 475.940 to 475.995.

As used in ORS 475.005 to 475.285 and 475.940 to 475.995, 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" 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 subsection does not control and is not controlled by the use of the term "precursor" in ORS 475.940, 475.950 and 475.955.

(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) "Hemp" means all parts of the plant Cannabis family Moraceae or a related plant in the Cannabis family, whether growing or not, having a level of tetrahydrocannabinol (THC) not exceeding 1%.

(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" means all parts of the plant Cannabis family Moraceae **or a related plant in the Cannabis family**, whether growing or not, **having a level of tetrahydrocannabinol (THC) exceeding 1%**; the resin **having a level of tetrahydrocannabinol (THC) exceeding 1%** extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin **having a level of tetrahydrocannabinol (THC) exceeding 1%**. It does not include **hemp**, 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 **having a level of tetrahydrocannabinol (THC) exceeding 1%** extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(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 or oral 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 or oral direction. Any label affixed to a drug prepared under written or oral 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.

SECTION 2.

ORS 475.992 is amended to read:

475.992. Prohibited acts generally; **exceptions**; penalties; affirmative defense for certain peyote uses.

(1) Except as authorized by ORS 475.005 to 475.285 and 475.940 to 475.995, 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.
- (b) A controlled substance in Schedule II, is guilty of a Class B felony.
- (c) A controlled substance in Schedule III, is guilty of a Class C felony.
- (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) Notwithstanding the placement of marijuana in a schedule of controlled substances under ORS 475.005 to 475.285 and 475.940 to 475.995:

- (a) Any person who delivers marijuana for consideration is guilty of a Class B felony.
- (b) Any person **between the ages of 18 and 21 years** who delivers, for no consideration, less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae, **or related plants in the Cannabis family, having a level of tetrahydrocannabinol (THC) exceeding 1%** is guilty of a Class A misdemeanor, except that any person **between the ages of 18 and 21 years** who delivers, for no consideration, less than five grams of the dried leaves, stems and flowers of the plant Cannabis family Moraceae, **or related plants in the Cannabis family, having a level of tetrahydrocannabinol (THC) exceeding 1%** is guilty of a violation, 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.

(c) Except as provided in ORS 475.999, any person over the age of 21 who delivers, for no consideration, less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae, or related plants in the Cannabis family, having a level of tetrahydrocannabinol (THC) exceeding 1% shall be guilty of no crime or violation.

(d) Any person over the age of 21 who manufactures marijuana in private by growing less than seven plants of the Cannabis family Moraceae, or related plants in the Cannabis family, having a level of tetrahydrocannabinol (THC) exceeding 1% shall be guilty of no crime or violation. For the purposes of this paragraph, "in private" means on private property and not viewable from a public area.

(e) Any person who manufactures or delivers hemp shall be guilty of no crime or violation.

(3) Except as authorized in ORS 475.005 to 475.285 and 475.940 to 475.995, 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.

(4) 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 475.940 to 475.995. Any person who violates this subsection with respect to:

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

(f) Notwithstanding the placement of marijuana in a schedule of controlled substances under ORS 475.005 to 475.285 and 475.940 to 475.995, any person **between the ages of 18 and 21 years** who knowingly or intentionally is in unlawful possession of less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae is guilty of a violation, 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 under ORS 137.300.

(g) Notwithstanding the placement of marijuana in a schedule of controlled substances under ORS 475.005 to 475.285 and 475.940 to 475.995, any person over the age of 21 years who is lawfully manufacturing marijuana pursuant to this section and is in possession of less than three avoirdupois ounces of the dried leaves, stems and flowers of the plant Cannabis family Moraceae, or related plants in the Cannabis family, having a level of tetrahydrocannabinol (THC) exceeding 1% at the site of manufacture shall be guilty of no crime or violation.

(h) Any person possessing any amount of hemp shall be guilty of no crime or violation.

(5) 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.

(6) The affirmative defense created in subsection (5) 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.

SECTION 3.

ORS 475.999 is amended to read:

475.999. Penalty for manufacture or delivery of controlled substance within 1,000 feet of school.

Except as authorized by ORS 475.005 to 475.285 and 475.940 to 475.995, it is unlawful for any person to:

(1) 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.

(a) Unlawful manufacture or delivery of a controlled substance within 1,000 feet of a school is a Class A felony.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, delivery for no consideration of less than [*five grams*] **one ounce** of the dried leaves, stems and flowers of the plant Cannabis family Moraceae, **or a related plant in the Cannabis family, having a level of tetrahydrocannabinol (THC) exceeding 1%** 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 to a person who is 18 years of age or older is a Class C misdemeanor.

[(2)(a) Possess less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae 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.

(b) Possession of less than one avoirdupois ounce of the dried leaves, stems and flowers of the plant Cannabis family Moraceae in a public place that is within 1,000 feet of a school is a Class C misdemeanor.]

SECTION 4.

ORS 167.222 is amended to read:

167.222. Frequenting a place where controlled substances are used.

(1) A person commits the offense of frequenting a place where controlled substances are used if the person keeps, maintains, frequents, or remains at a place, while knowingly permitting persons to use controlled substances in such place or to keep or sell them in violation of ORS 475.005 to 475.285 and 475.940 to 475.995.

(2) Frequenting a place where controlled substances are used is a Class A misdemeanor.

(3) Notwithstanding subsection (2) of this section, if the conviction is for knowingly maintaining, frequenting or remaining at a place where less than one avoirdupois ounce of the dried leaves, stems, and flowers of the plant Cannabis family Moraceae, **or a related plant in the Cannabis family, having a level of tetrahydrocannabinol (THC) exceeding 1%** is found at the time of the offense under this section, frequenting a place where controlled substances are used is a Class D violation.

(4) As used in this section, "frequents" means repeatedly or habitually visits, goes to or resorts to.

SECTION 5.

The provisions of this Act shall become effective January 1, 2005.

SECTION 6.

If any part of this act is held invalid, the remaining severable parts shall not be affected, and shall be held in full force and effect.

NOTE: **Bold** text indicates new language.
 [*Bracketed, italicized*] text indicates deleted language.