

House Bill 3434

Sponsored by Representative ESQUIVEL

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 **as introduced**.

Defines "within 1,000 feet" as straight line measurement in radius extending 1,000 feet or less in every direction from a specified location or from boundary line of property for purposes of determining whether certain activities and operations are unlawful.

A BILL FOR AN ACT

1
2 Relating to measurement of "within 1,000 feet"; creating new provisions; and amending ORS 430.590
3 and 475.005.

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

5 **SECTION 1.** ORS 475.005 is amended to read:

6 475.005. As used in ORS 475.005 to 475.285 and 475.752 to 475.980, unless the context requires
7 otherwise:

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

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

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

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

14 (3) "Administration" means the Drug Enforcement Administration of the United States Depart-
15 ment of Justice, or its successor agency.

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

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

20 (6) "Controlled substance":

21 (a) Means a drug or its immediate precursor classified in Schedules I through V under the fed-
22 eral Controlled Substances Act, 21 U.S.C. 811 to 812, as modified under ORS 475.035. The use of the
23 term "precursor" in this paragraph does not control and is not controlled by the use of the term
24 "precursor" in ORS 475.752 to 475.980.

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

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

31 (8) "Deliver" or "delivery" means the actual, constructive or attempted transfer, other than by

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 administering or dispensing, from one person to another of a controlled substance, whether or not
 2 there is an agency relationship.

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

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

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

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

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

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

13 (13) "Drug" means:

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

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

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

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

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

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

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

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

38 (16) "Marijuana":

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

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

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

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

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

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

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

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

19 (22) "Ultimate user" means a person who lawfully possesses a controlled substance for the use
20 of the person or for the use of a member of the household of the person or for administering to an
21 animal owned by the person or by a member of the household of the person.

22 **(23) "Within 1,000 feet" means a straight line measurement in a radius extending for**
23 **1,000 feet or less in every direction from a specified location or from any point on the**
24 **boundary line of a specified unit of property.**

25 **SECTION 2.** ORS 430.590 is amended to read:

26 430.590. (1) It is unlawful for any person to commence operating a methadone clinic:

27 (a) Within 1,000 feet of the real property comprising an existing public or private elementary,
28 secondary or career school attended primarily by minors; or

29 (b) Within 1,000 feet of the real property comprising an existing licensed child care facility. As
30 used in this section, "licensed child care facility" means a child care center certified under ORS
31 657A.280 that is operating under authority of a valid business license.

32 (2) Commencing operation of a methadone clinic within 1,000 feet of a school or licensed child
33 care facility is a nuisance and operation of the clinic shall be enjoined and abated as provided in
34 ORS 105.550 to 105.600.

35 **(3) For purposes of this section, "within 1,000 feet" means a straight line measurement**
36 **in a radius extending for 1,000 feet or less in every direction from any point on the boundary**
37 **line of the real property comprising an existing public or private elementary, secondary or**
38 **career school or an existing licensed child care facility under this section.**

39 **SECTION 3. The amendments to ORS 430.590 and 475.005 by sections 1 and 2 of this 2013**
40 **Act apply to unlawful activities and operations occurring before, on or after the effective**
41 **date of this 2013 Act.**