

# A-Engrossed House Bill 2034

Ordered by the House April 14  
Including House Amendments dated April 14

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Representative Alan Brown for Lincoln County Government)

## 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.

Modifies definition of iodine matrix. [*Prohibits sale of certain precursor substances to minors.*] Exempts veterinarians **and certain practitioners** from certain crimes. Changes reporting requirements for methyl sulfonyl methane.

Permits law enforcement officer to issue warning notice for certain precursor substance offenses. Provides injunctive relief for repeated violations.

## A BILL FOR AN ACT

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

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

5 **SECTION 1.** ORS 475.940 is amended to read:

6 475.940. As used in ORS 475.940 to 475.999:

7 (1) "Iodine matrix" means iodine at a concentration greater than [1.5] **two** percent by weight in  
8 a matrix or solution.

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

11 (3) "Precursor substance" means:

12 (a) Phenyl-2-propanone.

13 (b) Methylamine.

14 (c) D-lysergic acid.

15 (d) Ergotamine.

16 (e) Diethyl Malonate.

17 (f) Malonic acid.

18 (g) Ethyl Malonate.

19 (h) Barbituric acid.

20 (i) Piperidine.

21 (j) N-acetylanthranilic acid.

22 (k) Ethylamine.

23 (L) Pyrolidine.

24 (m) Phenylacetic acid.

25 (n) Anthranilic acid.

26 (o) Morpholine.

**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 (p) Ephedrine.
- 2 (q) Pseudoephedrine.
- 3 (r) Norpseudoephedrine.
- 4 (s) Phenylpropanolamine.
- 5 (t) Benzyl cyanide.
- 6 (u) Ergonovine.
- 7 (v) 3,4-Methylenedioxyphenyl-2-propanone.
- 8 (w) Propionic anhydride.
- 9 (x) Insosafrole (Isosafrole).
- 10 (y) Safrole.
- 11 (z) Piperonal.
- 12 (aa) N-methylephedrine.
- 13 (bb) N-ethylephedrine.
- 14 (cc) N-methylpseudoephedrine.
- 15 (dd) N-ethylpseudoephedrine.
- 16 (ee) Hydriotic acid.
- 17 (ff) Gamma butyrolactone (GBL), including butyrolactone, 1,2-butanolide, 2-oxanol-one,
- 18 tetrahydro-2-furanone, dihydro-2(3H)-furanone and tetramethylene glycol, but not including gamma
- 19 aminobutyric acid (GABA).
- 20 (gg) 1,4-butanediol.
- 21 (hh) Any salt, isomer or salt of an isomer of the chemicals listed in paragraphs (a) to (gg) of this
- 22 subsection.
- 23 (ii) Iodine in its elemental form.
- 24 (jj) Iodine matrix.
- 25 (kk) Red phosphorus, white phosphorus, yellow phosphorus or hypophosphorus acid and its salts.
- 26 (LL) Anhydrous ammonia.
- 27 [(mm) *Methyl sulfonyl methane (MSM).*]
- 28 [(nn)] (mm) Any substance established as a precursor substance by rule under authority granted
- 29 in ORS 475.945.
- 30 **SECTION 2.** ORS 475.950 is amended to read:
- 31 475.950. (1) A person commits the offense of failure to report a precursor substances transaction
- 32 if the person does any of the following:
- 33 (a) Sells, transfers or otherwise furnishes any precursor substance described in ORS 475.940
- 34 (3)(a) to (hh) and [(nn)] (mm) and does not, at least three days before delivery of the substance,
- 35 submit to the Department of State Police a report that meets the reporting requirements established
- 36 by rule under ORS 475.945.
- 37 (b) Receives any precursor substance described in ORS 475.940 (3)(a) to (hh) and [(nn)] (mm)
- 38 and does not, within 10 days after receipt of the substance, submit to the Department of State Police
- 39 a report that meets the reporting requirements established by rule under ORS 475.945.
- 40 (2) This section does not apply to any of the following:
- 41 (a) Any pharmacist or other authorized person who sells or furnishes a precursor substance
- 42 upon the prescription of a physician, dentist, podiatric physician and surgeon or veterinarian.
- 43 (b) Any practitioner, as defined in ORS 475.005, who administers or furnishes a precursor sub-
- 44 stance to patients upon prescription.
- 45 (c) Any person licensed by the State Board of Pharmacy who sells, transfers or otherwise fur-

1 nishes a precursor substance to a licensed pharmacy, physician, dentist, podiatric physician and  
2 surgeon or veterinarian for distribution to patients upon prescription.

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

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

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

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

12 **(h) Any person who obtains a precursor substance from a practitioner, as defined in ORS**  
13 **475.005, with whom the person has a doctor-patient or doctor-client relationship.**

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

16 (4) The Department of State Police and any law enforcement agency may inspect the sales re-  
17 cords of any retail or wholesale distributor of methyl sulfonyl methane **or a precursor substance**  
18 during the normal business hours of the retail or wholesale distributor.

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

21 **SECTION 3.** ORS 475.973 is amended to read:

22 475.973. (1)(a) Except as otherwise provided in paragraphs (b) and (c) of this subsection, a person  
23 commits the crime of unlawful possession of ephedrine, pseudoephedrine or phenylpropanolamine if  
24 the person knowingly possesses more than nine grams of ephedrine, pseudoephedrine or  
25 phenylpropanolamine, the salts, isomers or salts of isomers of ephedrine, pseudoephedrine or  
26 phenylpropanolamine or a combination of any of these substances.

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

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

38 (2)(a) *[Except as otherwise provided in paragraph (b) of this subsection,]* A person commits the  
39 crime of unlawful distribution of ephedrine, pseudoephedrine or phenylpropanolamine if the person  
40 sells or otherwise transfers more than nine grams of ephedrine, pseudoephedrine or  
41 phenylpropanolamine, the salts, isomers or salts of isomers of ephedrine, pseudoephedrine or  
42 phenylpropanolamine or a combination of any of these substances to a person other than a  
43 **veterinarian**, physician, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman or  
44 common carrier or an agent of any of these persons in the regular course of lawful business activ-  
45 ities.

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

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

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

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

12 (3) This section does not apply to products that the State Board of Pharmacy, upon application  
13 of a manufacturer, exempts by rule because the product is formulated to effectively prevent con-  
14 version of the active ingredient into methamphetamine or its salts or precursors. Upon notification  
15 from the Department of State Police that the department has probable cause to believe that a  
16 product exempted under this subsection does not effectively prevent conversion of the active ingre-  
17 dient into methamphetamine or its salts or precursors, the State Board of Pharmacy may issue an  
18 emergency rule revoking the exemption for the product pending a full hearing.

19 (4) This section does not apply to dietary supplements, herbs or natural products, including  
20 concentrates or extracts, that are not otherwise prohibited by law and that contain naturally oc-  
21 ccurring ephedrine alkaloids in a matrix of organic material such that the substances do not exceed  
22 15 percent of the total weight of the dietary supplement, herb or natural product.

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

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

27 **SECTION 4.** ORS 475.978 is amended to read:

28 475.978. (1) A person who sells or otherwise transfers more than the amount permitted by ad-  
29 ministrative rule adopted by the Department of State Police of methyl sulfonyl methane to a person  
30 other than a physician, pharmacist, veterinarian, retail distributor, wholesaler, manufacturer,  
31 warehouseman or common carrier or an agent of any of these persons shall make a record of each  
32 such sale or transfer. The record must be made on a form provided by the department and must be  
33 retained by the person for at least three years. Failure to make or retain a record required under  
34 this subsection is a Class A violation.

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

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

45 **SECTION 5.** Sections 6 and 7 of this 2003 Act are added to and made a part of ORS 475.940

1 to 475.999.

2 **SECTION 6.** (1) In lieu of making an arrest or issuing a citation, a law enforcement of-  
3 ficer may deliver a warning notice to a person or business that the officer has probable cause  
4 to believe has sold or otherwise delivered a precursor substance in violation of ORS 475.940  
5 to 475.999 whenever the officer reasonably believes that the public interest will be adequately  
6 served under the circumstances by issuance of a written warning notice. The notice must  
7 be in substantially the following form:

8 \_\_\_\_\_

9  
10 **WARNING NOTICE**

11 **Please Read this Notice Carefully!!**

12 **TO:** \_\_\_\_\_ (name of person or business)

13 **DATE:** \_\_\_\_\_ (date of notice)

14 **FROM:** \_\_\_\_\_ (name of law enforcement agency)

15 **RE:** \_\_\_\_\_ (name of precursor substance or product)

16 The undersigned law enforcement officer has probable cause to believe that on  
17 \_\_\_\_\_ (date of violation), you sold or otherwise delivered a quantity of the pre-  
18 cursor substance identified above in violation of the laws of the State of Oregon.

19 This warning notice has been given to you in lieu of formal action concerning that vio-  
20 lation. Please be aware that any further violation may result in formal action being taken  
21 against you, which may include, but is not limited to, the filing of an action in circuit court  
22 seeking a court order prohibiting you from selling or delivering any quantity of one or more  
23 precursor substances to any person.

24 \_\_\_\_\_  
25 **Law Enforcement Officer**

26 \_\_\_\_\_  
27  
28 (2) A warning notice issued by a law enforcement officer under subsection (1) of this  
29 section shall be personally delivered to the person named in the notice, or personally deliv-  
30 ered to the person in charge of the business named in the notice.

31 **SECTION 7.** (1) Whenever it appears that any person has repeatedly sold or delivered one  
32 or more precursor substances in violation of the provisions of ORS 475.940 to 475.999, the  
33 county attorney or city attorney may cause a civil suit to be instituted in the circuit court  
34 for injunctive relief to restrain the person from selling or delivering one or more of the  
35 precursor substances.

36 (2) Upon a proper showing, the court may grant a permanent or temporary injunction  
37 prohibiting the defendant or defendants from any further sale or delivery of any amount of  
38 one or more precursor substances.

39 (3) The court may decline to enter an injunctive order against a defendant who:

40 (a) Demonstrates no knowledge of the existence of the violation, or demonstrates rea-  
41 sonable efforts to stop the violation from occurring;

42 (b) Has not been guilty of any contempt of court in the proceedings; and

43 (c) The court finds will make best efforts to immediately end any violation that may exist  
44 and prevent any further violation from occurring.