

# Senate Bill 365

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary)

## 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**.

Prohibits local governments from imposing system development charge on projects related to production, processing or retailing of marijuana items. Allows premises used for marijuana production to continue to be used for marijuana production if premises was first licensed prior to city or county prohibition on marijuana production.

Clarifies that supervision, diversion or release conditions related to marijuana must be imposed in same manner as supervision, diversion or release conditions related to prescription drugs.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to marijuana; creating new provisions; amending ORS 135.246, 135.893, 137.542, 144.086,  
3 223.301 and 475B.968; repealing ORS 135.252; and declaring an emergency.

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

## LOCAL GOVERNANCE OF MARIJUANA ENTITIES

5  
6  
7  
8 **SECTION 1.** ORS 223.301 is amended to read:

9 223.301. (1) As used in this section, "employer" means any person who contracts to pay  
10 remuneration for, and secures the right to direct and control the services of, any person.

11 (2) A local government may not establish or impose a system development charge that requires  
12 an employer to pay a reimbursement fee or an improvement fee based on:

13 (a) The number of individuals hired by the employer after a specified date; or

14 (b) A methodology that assumes that costs are necessarily incurred for capital improvements  
15 when an employer hires an additional employee.

16 (3) A methodology set forth in an ordinance or resolution that establishes an improvement fee  
17 or a reimbursement fee shall not include or incorporate any method or system under which the  
18 payment of the fee or the amount of the fee is determined by the number of employees of an em-  
19 ployer without regard to new construction, new development or new use of an existing structure by  
20 the employer.

21 **(4) A local government may not impose a system development charge on a farm use, as**  
22 **that term is defined in ORS 215.203 (2), that is conducted in an exclusive farm use zone.**

23 **SECTION 2.** Section 3 of this 2019 Act is added to and made a part of ORS 475B.010 to  
24 **475B.545.**

25 **SECTION 3.** (1) A premises for which a marijuana producer holds a production license  
26 issued under ORS 475B.070 and that is located in an area subject to the jurisdiction of a city  
27 or county that has adopted a prohibition under ORS 475B.968 on marijuana production, or

**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 **has adopted or amended a county or local ordinance that causes marijuana production to be**  
 2 **a nonconforming land use, since the date on which the production license was first issued**  
 3 **may continue to be used to produce marijuana.**

4 **(2) A premises described in subsection (1) of this section is not required to be continually**  
 5 **owned or operated by the marijuana producer that was first issued a license under ORS**  
 6 **475B.070.**

7 **(3) A land use compatibility statement, in addition to that required for initial licensure,**  
 8 **from the city or county is not required for a premises described in subsection (1) of this**  
 9 **section if:**

10 **(a) The marijuana producer is applying for licensure renewal; or**

11 **(b) A change in ownership of the premises occurs but does not alter the marijuana plant**  
 12 **grow canopy size or whether the marijuana plant grow canopy is indoors or outdoors.**

13 **(4)(a) Alterations may be made to premises described in subsection (1) of this section if**  
 14 **the alterations:**

15 **(A) Are necessary in order for the premises to comply with a lawful requirement for al-**  
 16 **teration in production; or**

17 **(B) In the production or in the buildings, structures or physical improvements associated**  
 18 **with the premises have no greater adverse impact to the surrounding area.**

19 **(b) The city or county that has jurisdiction over the premises shall perform an evaluation**  
 20 **of proposed alterations and may deny only alterations that do not meet the criteria set out**  
 21 **in this subsection.**

22 **(5) If a premises described in subsection (1) of this section is not used for marijuana**  
 23 **production for a period of at least 12 calendar months, marijuana production may not be**  
 24 **resumed on the premises unless the marijuana production conforms to any zoning require-**  
 25 **ments or regulations applicable at the time of the proposed resumption.**

26 **SECTION 4. ORS 475B.968 is amended to read:**

27 **475B.968. (1) The governing body of a city or county may adopt ordinances to be referred to the**  
 28 **electors of the city or county as described in subsection (2) of this section that prohibit or allow the**  
 29 **establishment of any one or more of the following in the area subject to the jurisdiction of the city**  
 30 **or in the unincorporated area subject to the jurisdiction of the county:**

31 **(a) Marijuana processing sites registered under ORS 475B.840;**

32 **(b) Medical marijuana dispensaries registered under ORS 475B.858;**

33 **(c) Marijuana producers that hold a license issued under ORS 475B.070;**

34 **(d) Marijuana processors that hold a license issued under ORS 475B.090;**

35 **(e) Marijuana wholesalers that hold a license issued under ORS 475B.100;**

36 **(f) Marijuana retailers that hold a license issued under ORS 475B.105;**

37 **(g) Marijuana producers that hold a license issued under ORS 475B.070 and that the Oregon**  
 38 **Liquor Control Commission has designated as an exclusively medical licensee under ORS 475B.122;**

39 **(h) Marijuana processors that hold a license issued under ORS 475B.090 and that the commission**  
 40 **has designated as an exclusively medical licensee under ORS 475B.127;**

41 **(i) Marijuana wholesalers that hold a license issued under ORS 475B.100 and that the commis-**  
 42 **sion has designated as an exclusively medical licensee under ORS 475B.129;**

43 **(j) Marijuana retailers that hold a license issued under ORS 475B.105 and that the commission**  
 44 **has designated as an exclusively medical licensee under ORS 475B.131; or**

45 **(k) Any combination of the entities described in this subsection.**

1 (2) If the governing body of a city or county adopts an ordinance under this section, the gov-  
2 erning body shall submit the measure of the ordinance to the electors of the city or county for ap-  
3 proval at the next statewide general election.

4 (3) If the governing body of a city or county adopts an ordinance under this section, the gov-  
5 erning body must provide the text of the ordinance:

6 (a) To the Oregon Health Authority, in a form and manner prescribed by the authority, if the  
7 ordinance concerns a medical marijuana dispensary registered under ORS 475B.858 or a marijuana  
8 processing site registered under ORS 475B.840; or

9 (b) To the commission, if the ordinance concerns a premises for which a license has been issued  
10 under ORS 475B.010 to 475B.545.

11 (4)(a) Upon receiving notice of a prohibition under subsection (3) of this section, the authority  
12 shall discontinue registering those entities to which the prohibition applies until the date of the next  
13 statewide general election.

14 (b) Upon receiving notice of a prohibition under subsection (3) of this section, the commission  
15 shall discontinue licensing those premises to which the prohibition applies until the date of the next  
16 statewide general election.

17 (5)(a) If an allowance is approved at the next statewide general election under subsection (2)  
18 of this section, and the allowance concerns an entity described in subsection (1)(a) or (b) of this  
19 section, the authority shall begin registering the entity to which the allowance applies on the first  
20 business day of the January immediately following the date of the statewide general election.

21 (b) If an allowance is approved at the next statewide general election under subsection (2) of  
22 this section, and the allowance concerns an entity described in subsection (1)(c) to (j) of this section,  
23 the commission shall begin licensing the premises to which the allowance applies on the first busi-  
24 ness day of the January immediately following the date of the next statewide general election.

25 (6) If the electors of a city or county approve an ordinance prohibiting or allowing an [*estab-*  
26 *lishment*] **entity** described in subsection (1)(a), (b) or (g) to (j) of this section, the governing body of  
27 the city or county may amend the ordinance, without referring the amendment to the electors of the  
28 city or county, to prohibit or allow any other [*establishment*] **entity** described in subsection (1)(a),  
29 (b) or (g) to (j) of this section.

30 (7) Notwithstanding any other provisions of law, a city or county that adopts an ordinance under  
31 this section that prohibits the establishment of an entity described in subsection (1) of this section  
32 may not impose a tax or fee on the production, processing or sale of marijuana or any product into  
33 which marijuana has been incorporated.

34 (8) Notwithstanding subsection (1) of this section, a medical marijuana dispensary is not subject  
35 to an ordinance adopted under this section if the medical marijuana dispensary:

36 (a) Is registered under ORS 475B.858 on or before the date on which the governing body adopts  
37 the ordinance; and

38 (b) Has successfully completed a city or county land use application process.

39 (9) Notwithstanding subsection (1) of this section, a marijuana processing site is not subject to  
40 an ordinance adopted under this section if the marijuana processing site:

41 (a) Is registered under ORS 475B.840 on or before the date on which the governing body adopts  
42 the ordinance; and

43 (b) Has successfully completed a city or county land use application process.

44 **SECTION 5. Section 3 of this 2019 Act and the amendments to ORS 233.301 and 475B.968**  
45 **by sections 1 and 4 of this 2019 Act apply to marijuana produced before, on and after the**

1 **operative date of this 2019 Act.**

2  
3 **DIVERSION, RELEASE OR SUPERVISION CONDITIONS RELATED TO MARIJUANA**

4  
5 **SECTION 6.** ORS 135.246 is amended to read:

6 135.246. (1) As used in this section, “cannabinoid concentrate,” “cannabinoid extract,” “medical  
7 cannabinoid product,” “registry identification card” and “usable marijuana” have the meanings  
8 given those terms in ORS 475B.791.

9 (2) *[Notwithstanding ORS 135.245, the conditions of release of a person who holds a registry*  
10 *identification card and is released from custody related to the use of usable marijuana, medical*  
11 *cannabinoid products, cannabinoid concentrates or cannabinoid extracts must be imposed in the same*  
12 *manner as conditions of release of a person released from custody related to prescription drugs]* **If a**  
13 **person who holds a registry identification card is released under ORS 135.230 to 135.290, any**  
14 **release conditions related to the use of usable marijuana, medical cannabinoid products,**  
15 **cannabinoid concentrates or cannabinoid extracts must be imposed in the same manner as**  
16 **would be imposed release conditions related to prescription drugs.**

17 **SECTION 7.** ORS 135.893 is amended to read:

18 135.893. (1) As used in this section, “cannabinoid concentrate,” “cannabinoid extract,” “medical  
19 cannabinoid product,” “registry identification card” and “usable marijuana” have the meanings  
20 given those terms in ORS 475B.791.

21 (2) *[Notwithstanding ORS 135.891, the conditions of diversion of a person who holds a registry*  
22 *identification card and enters into a diversion agreement related to the use of usable marijuana, med-*  
23 *ical cannabinoid products, cannabinoid concentrates or cannabinoid extracts must be imposed in the*  
24 *same manner as the conditions of diversion of a person who enters into a diversion agreement related*  
25 *to prescription drugs]* **For a person who holds a registry identification card who is subject to**  
26 **a diversion agreement under ORS 135.891, the diversion conditions related to the use of us-**  
27 **able marijuana, medical cannabinoid products, cannabinoid concentrates or cannabinoid ex-**  
28 **tracts must be imposed in the same manner as the diversion conditions related to**  
29 **prescription drugs.**

30 **SECTION 8.** ORS 137.542 is amended to read:

31 137.542. (1) As used in this section, “cannabinoid concentrate,” “cannabinoid extract,” “medical  
32 cannabinoid product,” “registry identification card” and “usable marijuana” have the meanings  
33 given those terms in ORS 475B.791.

34 (2) *Notwithstanding ORS 137.540, [the conditions of supervision of a person who holds a registry*  
35 *identification card and is sentenced to probation related to the use of usable marijuana, medical*  
36 *cannabinoid products, cannabinoid concentrates or cannabinoid extracts must be imposed in the same*  
37 *manner as the conditions of supervision of a person sentenced to probation related to prescription*  
38 *drugs]* **if a person who holds a registry identification card is sentenced to probation, super-**  
39 **vision conditions related to the use of usable marijuana, medical cannabinoid products,**  
40 **cannabinoid concentrates or cannabinoid extracts must be imposed in the same manner as**  
41 **the court would impose supervision conditions related to prescription drugs.**

42 **SECTION 9.** ORS 144.086 is amended to read:

43 144.086. (1) As used in this section, “cannabinoid concentrate,” “cannabinoid extract,” “medical  
44 cannabinoid product,” “registry identification card” and “usable marijuana” have the meanings  
45 given those terms in ORS 475B.791.

1 (2) Notwithstanding ORS 144.102 and 144.270, *[the conditions of supervision of a person who holds*  
 2 *a registry identification card and is released from prison or jail to post-prison supervision or parole*  
 3 *related to the use of usable marijuana, medical cannabinoid products, cannabinoid concentrates or*  
 4 *cannabinoid extracts must be imposed in the same manner as the conditions of supervision of a person*  
 5 *sentenced to probation related to prescription drugs]* **if a person who holds a registry identification**  
 6 **card is released on post-prison supervision or parole, the supervision conditions related to**  
 7 **the use of usable marijuana, medical cannabinoid products, cannabinoid concentrates or**  
 8 **cannabinoid extracts must be imposed in the same manner as supervision conditions related**  
 9 **to prescription drugs.**

10 **SECTION 10. ORS 135.252 is repealed on January 1, 2020.**

11  
 12 **CAPTIONS**

13  
 14 **SECTION 11. The unit captions used in this 2019 Act are provided only for the conven-**  
 15 **ience of the reader and do not become part of the statutory law of this state or express any**  
 16 **legislative intent in the enactment of this 2019 Act.**

17  
 18 **OPERATIVE AND EFFECTIVE DATES**

19  
 20 **SECTION 12. (1) Section 3 of this 2019 Act and the amendments to ORS 135.246, 135.893,**  
 21 **137.542, 144.086, 223.301 and 475B.968 by sections 1, 4 and 6 to 9 of this 2019 Act become op-**  
 22 **erative on January 1, 2020.**

23 **(2) The Oregon Liquor Control Commission may take any action before the operative date**  
 24 **specified in subsection (1) of this section that is necessary to enable the commission to ex-**  
 25 **ercise, on and after the operative date specified in subsection (1) of this section, all of the**  
 26 **duties, functions and powers conferred on the commission by section 3 of this 2019 Act and**  
 27 **the amendments to ORS 135.246, 135.893, 137.542, 144.086, 223.301 and 475B.968 by sections 1,**  
 28 **4 and 6 to 9 of this 2019 Act.**

29 **SECTION 13. This 2019 Act being necessary for the immediate preservation of the public**  
 30 **peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect**  
 31 **on its passage.**