

D R A F T

SUMMARY

Requires owner of real property where site of unlawful manufacture of marijuana or unlawful production of marijuana is located to clean up waste from site upon receipt of notification from law enforcement agency. Provides that failure to timely complete cleanup is public nuisance. Authorizes local government to take certain actions to abate public nuisance, including filing claim of lien against real property.

Prohibits use of water at location not licensed or registered for growing of cannabis. Allows Water Resources Commission to impose civil penalty for violation. Punishes by maximum of 364 days' imprisonment, \$6,250 fine, or both.

Allows use of mobile tracking device and pen register and law enforcement interception of oral communications in specified circumstances. Increases penalties for possession or manufacture of marijuana in specified quantities. Creates crimes of marijuana offense involving reckless unlawful conduct and marijuana offense involving knowing unlawful conduct. Punishes by maximum of 10 years' imprisonment, \$250,000 fine, or both.

Repeals sunset on provisions related to unlawful production of marijuana. Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to cannabis; creating new provisions; amending ORS 133.619,
3 133.726, 165.663, 475C.337, 475C.341, 475C.349, 475C.353, 536.900 and 537.990
4 and section 45, chapter 542, Oregon Laws 2021; and declaring an emer-
5 gency.

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

7 **SECTION 1. Section 2 of this 2023 Act is added to and made a part**
8 **of ORS 475C.005 to 475C.525.**

9 **SECTION 2. (1) As used in this section:**

10 **(a) "Cleanup" means the removal, by an owner or an agent of an**

1 owner, of waste from a site.

2 (b) "Cleanup costs" means reasonable costs that are associated with
3 or attributable to cleanup.

4 (c)(A) "Owner" means a person who owns the real property where
5 a site is located.

6 (B) "Owner" does not include a person who, without participating
7 in the management of the site, holds indicia of ownership primarily
8 to protect a security interest in the real property.

9 (d) "Site" means the location where the unlawful manufacture of
10 a marijuana item, as described in ORS 475C.349, or the unlawful pro-
11 duction of marijuana, as described in section 41, chapter 542, Oregon
12 Laws 2021, occurred or is alleged to have occurred.

13 (e) "Waste" means:

14 (A) Marijuana flowers, marijuana leaves, marijuana plants and any
15 parts of marijuana plants;

16 (B) Any items or materials used for an irrigation system;

17 (C) Greenhouses, hoop houses and other structures used to facili-
18 tate the unlawful manufacture of marijuana items; and

19 (D) Any material or substance designated as chemical by the Envi-
20 ronmental Quality Commission under ORS 475.425.

21 (2) Upon receiving written notification from a law enforcement
22 agency that a site contains waste, the owner shall promptly undertake
23 any cleanup of the site. The owner may contract with a third party for
24 all or part of the cleanup.

25 (3) It is a public nuisance, which may be abated pursuant to sub-
26 section (4) of this section, if the owner of a site described in subsection
27 (2) of this section fails to complete cleanup of the site within 30 days
28 of the date on which the owner receives the notification described in
29 subsection (2) of this section.

30 (4) In order to abate a public nuisance described in subsection (3)
31 of this section, the city or county that has jurisdiction over the real

1 **property where a site described in subsection (2) of this section is lo-**
2 **cated may maintain civil proceedings in courts of this state against**
3 **the owner described in subsection (3) of this section to:**

4 **(a) Enforce the requirements of subsection (2) of this section;**

5 **(b) Authorize the city or county to conduct cleanup and subject the**
6 **real property where the site is located to a lien for cleanup costs; and**

7 **(c) Enjoin any further violation of ORS 475C.349 or section 41,**
8 **chapter 542, Oregon Laws 2021.**

9 **(5) A court may allow the prevailing party reasonable attorney fees**
10 **and expenses in a proceeding described in subsection (4) of this sec-**
11 **tion.**

12 **(6)(a) The remedies described in subsection (4) of this section are**
13 **in addition to any other remedies available to the governing body of**
14 **a city or county that has jurisdiction over the real property where a**
15 **site is located.**

16 **(b) Nothing in this section requires the governing body of a city or**
17 **county to avail itself of a remedy allowed by this section or by any**
18 **other law.**

19 **(7)(a) The governing body of a city or county described in sub-**
20 **section (4) of this section may, at its discretion, file a claim of lien on**
21 **real property where a site described in subsection (2) of this section**
22 **is located. The governing body of the city or county shall file written**
23 **notice of claim of lien with the recording officer of each county in**
24 **which the real property where a site described in subsection (2) of this**
25 **section is located. All cleanup costs incurred by the city or county**
26 **under subsection (4)(b) of this section shall constitute the lien. The**
27 **lien must contain the name of the owner of the real property to which**
28 **the lien is attached and a description of the real property sufficient**
29 **to accurately identify the real property. The lien shall attach and be-**
30 **come enforceable on the day of the filing described in this subsection.**

31 **(b) A lien described in this subsection shall be foreclosed in the**

1 **manner provided in ORS chapter 88.**

2 **(c) A lien described in this subsection shall have priority over any**
3 **claim of the state under ORS 166.715 to 166.735 or any local government**
4 **forfeiture ordinance or regulation.**

5 **(8) Nothing in this section shall affect the right of the governing**
6 **body of a city or county to bring an action against any person to re-**
7 **cover all costs and damages for which the person is liable under this**
8 **section.**

9 **SECTION 3. A person may not use, store or divert any waters under**
10 **ORS 537.130 or use or attempt to use any ground water under ORS**
11 **537.535 or construct or attempt to construct any well or other means**
12 **of developing and securing ground water under ORS 537.535 (1) at a**
13 **location where plants in the plant Cannabis family Cannabaceae are**
14 **grown, if:**

15 **(1) The location described in this section is not licensed or regis-**
16 **tered under ORS 475C.065, 475C.792 or 571.281; or**

17 **(2) The number of plants described in this section is greater than**
18 **the number of marijuana plants or industrial hemp plants allowed**
19 **under ORS 475C.005 to 475C.525, 475C.770 to 475C.919 or 571.260 to**
20 **571.348.**

21 **SECTION 4. ORS 133.619 is amended to read:**

22 **133.619. (1) A warrant authorizing the installation or tracking of a mobile**
23 **tracking device shall be executed as provided in this section.**

24 **(2) The officer need not inform any person of the existence or content of**
25 **the warrant prior to its execution.**

26 **(3) Except as provided in subsection (4) of this section, the officer need**
27 **not deliver or leave a receipt for things seized or observations made under**
28 **authority of the warrant.**

29 **(4) Within five days of the execution of the warrant, or, in the case of**
30 **an ongoing investigation, within such additional time as the issuing judge**
31 **may allow upon application, the officer shall mail a receipt for things seized**

1 or observations made under authority of the warrant to the following:

2 (a) If the mobile tracking device has been affixed to a vehicle, to the
3 registered owner; and

4 (b) To such other persons as the court may direct in the warrant.

5 (5) The receipt provided for in subsection (4) of this section must include
6 the dates and times during which the officer monitored or attempted to
7 monitor the mobile tracking device.

8 (6) A warrant authorizing the installation or tracking of a mobile track-
9 ing device shall be issued only when based upon the submission of an affi-
10 davit or oral statement as described in ORS 133.545, which affidavit or
11 statement demonstrates that probable cause exists to believe that an indi-
12 vidual is committing or is about to commit:

13 (a) A particular felony of murder, kidnapping, arson, robbery or other
14 crime dangerous to life and punishable as a felony;

15 (b) A crime punishable as a felony arising under ORS 475.752 [*or*], 475.806
16 to 475.894, **475C.005 to 475C.525 or 475C.770 to 475C.919**;

17 (c) The crime of unlawfully transporting metal property under ORS
18 164.857 or a crime described in ORS 165.118;

19 (d) Bribery, extortion, burglary or unauthorized use of a motor vehicle
20 punishable as a felony;

21 (e) A violation of a criminal provision of the wildlife laws as described
22 in ORS 496.002;

23 (f) A violation of a criminal provision of the commercial fishing laws as
24 described in ORS 506.001;

25 (g) A violation of ORS 704.020, 704.021, 704.030 or 704.065; or

26 (h) A conspiracy to commit a crime listed in this subsection.

27 (7) A court may authorize the installation or tracking of a mobile track-
28 ing device for a period not to exceed 30 days. Upon application, the court
29 may grant one or more extensions for a period not to exceed 30 days per
30 extension.

31 **SECTION 5.** ORS 133.726 is amended to read:

1 133.726. (1) Notwithstanding ORS 133.724, under the circumstances de-
2 scribed in this section, a law enforcement officer is authorized to intercept
3 an oral communication to which the officer or a person under the direct
4 supervision of the officer is a party, without obtaining an order for the in-
5 terception of a wire, electronic or oral communication under ORS 133.724.

6 (2) For purposes of this section and ORS 133.736, a person is a party to
7 an oral communication if the oral communication is made in the person's
8 immediate presence and is audible to the person regardless of whether the
9 communication is specifically directed to the person.

10 (3) An ex parte order for intercepting an oral communication in any
11 county of this state under this section may be issued by any judge as defined
12 in ORS 133.525 upon written application made upon oath or affirmation of
13 the district attorney or a deputy district attorney authorized by the district
14 attorney for the county in which the order is sought or upon the oath or
15 affirmation of any peace officer as defined in ORS 133.005. The application
16 shall include:

17 (a) The name of the applicant and the applicant's authority to make the
18 application;

19 (b) A statement demonstrating that there is probable cause to believe that
20 a person whose oral communication is to be intercepted is engaged in com-
21 mitting, has committed or is about to commit a particular felony, or a
22 misdemeanor under ORS 167.007 or 167.008, and that intercepting the oral
23 communication will yield evidence thereof; and

24 (c) The identity of the person, if known, suspected of committing the
25 crime and whose oral communication is to be intercepted.

26 (4) The judge may require the applicant to furnish further testimony or
27 documentary evidence in support of the application.

28 (5) Upon examination of the application and evidence, the judge may en-
29 ter an ex parte order, as requested or as modified, authorizing or approving
30 the interception of an oral communication within the state if the judge de-
31 termines on the basis of the facts submitted by the applicant that:

1 (a) There is probable cause to believe that a person is engaged in com-
2 mitting, has committed or is about to commit a particular felony, or a
3 misdemeanor under ORS 167.007 or 167.008; and

4 (b) There is probable cause to believe that the oral communication to be
5 obtained will contain evidence concerning that crime.

6 (6) An order authorizing or approving the interception of an oral com-
7 munication under this section must specify:

8 (a) The identity of the person, if known, whose oral communication is to
9 be intercepted;

10 (b) A statement identifying the particular crime to which the oral com-
11 munication is expected to relate;

12 (c) The agency authorized under the order to intercept the oral commu-
13 nication;

14 (d) The name and office of the applicant and the signature and title of the
15 issuing judge;

16 (e) A period of time after which the order shall expire; and

17 (f) A statement that the order authorizes only the interception of an oral
18 communication to which a law enforcement officer or a person under the
19 direct supervision of a law enforcement officer is a party.

20 (7) An order under ORS 133.724 or this section is not required when a law
21 enforcement officer intercepts an oral communication to which the officer
22 or a person under the direct supervision of the officer is a party if the oral
23 communication is made by a person whom the officer has probable cause to
24 believe has committed, is engaged in committing or is about to commit:

25 (a) A crime punishable as a felony under ORS 475.752, 475.806 to 475.894
26 [or], 475.906, **475C.005 to 475C.525 or 475C.770 to 475C.919** or as a
27 misdemeanor under ORS 167.007 or 167.008; or

28 (b) Any other crime punishable as a felony if the circumstances at the
29 time the oral communication is intercepted are of such exigency that it
30 would be unreasonable to obtain a court order under ORS 133.724 or this
31 section.

1 (8) A law enforcement officer who intercepts an oral communication pur-
2 suant to this section may not intentionally fail to record and preserve the
3 oral communication in its entirety. A law enforcement officer, or a person
4 under the direct supervision of the officer, who is authorized under this
5 section to intercept an oral communication is not required to exclude from
6 the interception an oral communication made by a person for whom probable
7 cause does not exist if the officer or the person under the officer's direct
8 supervision is a party to the oral communication.

9 (9) A law enforcement officer may not divulge the contents of an oral
10 communication intercepted under this section before a preliminary hearing
11 or trial in which an oral communication is going to be introduced as evi-
12 dence against a person except:

13 (a) To a superior officer or other official with whom the law enforcement
14 officer is cooperating in the enforcement of the criminal laws of this state
15 or the United States;

16 (b) To a magistrate;

17 (c) In a presentation to a federal or state grand jury; or

18 (d) In compliance with a court order.

19 (10) A law enforcement officer may intercept an oral communication un-
20 der this section only when acting within the scope of the officer's employ-
21 ment and as a part of assigned duties.

22 (11) As used in this section, "law enforcement officer" means:

23 (a) An officer employed to enforce criminal laws by:

24 (A) The United States, this state or a municipal government within this
25 state;

26 (B) A political subdivision, agency, department or bureau of the govern-
27 ments described in subparagraph (A) of this paragraph; or

28 (C) A police department established by a university under ORS 352.121
29 or 353.125;

30 (b) An authorized tribal police officer as defined in ORS 181A.940; or

31 (c) A regulatory specialist as defined in ORS 471.001.

1 (12) Violation of subsection (9) of this section is a Class A misdemeanor.

2 **SECTION 6.** ORS 165.663 is amended to read:

3 165.663. Any police officer may apply to the circuit court in which judicial
4 district the targeted telephone is located for an ex parte order or extension
5 of an order authorizing the installation and use of a pen register or a trap
6 and trace device. The application shall:

7 (1) Be in writing under oath;

8 (2) Include the identity of the applicant and the identity of the law
9 enforcement agency conducting the investigation;

10 (3) Contain a statement demonstrating that there is probable cause to
11 believe that an individual is committing, has committed or is about to com-
12 mit:

13 (a) A particular felony of murder, kidnapping, arson, robbery, bribery,
14 extortion or other crime dangerous to life and punishable as a felony;

15 (b) A crime punishable as a felony under ORS 475.752, 475.806 to 475.894
16 [or], 475.906, **475C.005 to 475C.525 or 475C.770 to 475C.919**;

17 (c) A crime under ORS 166.720 that includes as part of the pattern of
18 racketeering activity at least one incident of conduct that constitutes a fel-
19 ony; or

20 (d) Any conspiracy to commit a crime described in paragraphs (a) to (c)
21 of this subsection; and

22 (4) Contain a statement demonstrating that use of a pen register or trap
23 and trace device will yield evidence relevant to the crime.

24 **SECTION 7.** ORS 475C.337 is amended to read:

25 475C.337. (1) Except for licensees and licensee representatives acting in
26 accordance with ORS 475C.005 to 475C.525 and any rule adopted under ORS
27 475C.005 to 475C.525, it is unlawful for any person 21 years of age or older
28 to possess, knowingly or intentionally:

29 (a) An amount of plants in the genus Cannabis within the plant family
30 Cannabaceae in excess of the amount allowed under ORS 475C.305 (1).

31 (b) More than two ounces of usable marijuana in a public place.

1 (c) More than eight ounces of usable marijuana.

2 (d) More than 16 ounces of cannabinoid products in solid form or
3 cannabinoid concentrates.

4 (e) More than 72 ounces of cannabinoid products in liquid form.

5 (f) More than one ounce of cannabinoid extracts.

6 (g) A cannabinoid extract that was not purchased from a marijuana
7 retailer that holds a license issued under ORS 475C.097.

8 (2) Except as provided in subsection (3) of this section, unlawful pos-
9 session of a marijuana item is a Class A misdemeanor.

10 (3) Unlawful possession of a marijuana item is:

11 (a) A Class B violation, if the amount possessed is not more than two
12 times the applicable maximum amount specified in subsection (1)(a) to (f) of
13 this section.

14 (b) A Class B misdemeanor, if the amount possessed is more than two
15 times, but not more than four times, the applicable maximum amount speci-
16 fied in subsection (1)(a) to (f) of this section.

17 (c) A Class C felony, if the amount possessed is:

18 (A) More than 16 times the applicable maximum amount specified in
19 subsection (1)(a), (c), (d), (e) or (f) of this section;

20 (B) More than eight pounds of usable marijuana in a public place; or

21 (C) More than one-quarter ounce of cannabinoid extract that was not
22 purchased from a marijuana retailer that holds a license issued under ORS
23 475C.097.

24 **(d) A Class B felony, if:**

25 **(A) The amount possessed is more than 32 times the applicable**
26 **maximum amount specified in subsection (1)(a), (c), (d), (e) or (f) of**
27 **this section; or**

28 **(B) The violation is a marijuana offense involving reckless unlawful**
29 **conduct under ORS 475C.353 (5) or a marijuana offense involving**
30 **knowing unlawful conduct under ORS 475C.353 (6).**

31 **SECTION 8.** ORS 475C.341 is amended to read:

1 475C.341. (1) Except for licensees and licensee representatives acting in
2 accordance with ORS 475C.005 to 475C.525 and any rule adopted under ORS
3 475C.005 to 475C.525, it is unlawful for any person under 21 years of age to
4 possess, knowingly or intentionally:

5 (a) An amount of plants in the genus Cannabis within the plant family
6 Cannabaceae in excess of the amount allowed under ORS 475C.305 (1).

7 (b) More than two ounces of usable marijuana in a public place.

8 (c) More than eight ounces of usable marijuana.

9 (d) More than 16 ounces of cannabinoid products in solid form or
10 cannabinoid concentrates.

11 (e) More than 72 ounces of cannabinoid products in liquid form.

12 (f) More than one ounce of cannabinoid extracts.

13 (g) A cannabinoid extract that was not purchased from a marijuana
14 retailer that holds a license under ORS 475C.097.

15 (2) Except as provided in [*subsection (3)*] **subsections (3) and (4)** of this
16 section, unlawful possession of a marijuana item by a person under 21 years
17 of age is a Class A misdemeanor.

18 (3) Unlawful possession of a marijuana item by a person under 21 years
19 of age is a Class C felony, if the amount possessed is:

20 (a) More than 16 times the applicable maximum amount specified in sub-
21 section (1)(a), (c), (d), (e) or (f) of this section;

22 (b) More than eight pounds of usable marijuana in a public place; or

23 (c) More than one-quarter ounce of cannabinoid extract that was not
24 purchased from a marijuana retailer that holds a license issued under ORS
25 475C.097.

26 **(4) Unlawful possession of a marijuana item by a person under 21**
27 **years of age is a Class B felony, if:**

28 **(a) The amount possessed is more than 32 times the applicable**
29 **maximum amount specified in subsection (1)(a), (c), (d), (e) or (f) of**
30 **this section; or**

31 **(b) The violation is a marijuana offense involving reckless unlawful**

1 **conduct under ORS 475C.353 (5) or a marijuana offense involving**
2 **knowing unlawful conduct under ORS 475C.353 (6).**

3 **SECTION 9.** ORS 475C.349 is amended to read:

4 475C.349. (1) Except for licensees and licensee representatives acting in
5 accordance with ORS 475C.005 to 475C.525 and any rule adopted under ORS
6 475C.005 to 475C.525, and except for a person acting within the scope of and
7 in compliance with ORS 475C.305, it is unlawful for any person to manufac-
8 ture a marijuana item.

9 (2) Except as provided in subsection (3) of this section, unlawful manu-
10 facture of a marijuana item is a Class A misdemeanor.

11 (3) Unlawful manufacture of a marijuana item is:

12 (a) A Class B misdemeanor, if a person 21 years of age or older unlawfully
13 manufactures homegrown marijuana at a household and the total number of
14 homegrown plants in the genus Cannabis within the plant family
15 Cannabaceae at the household exceeds four plants but does not exceed eight
16 plants.

17 (b) A Class C felony, if:

18 (A) A person unlawfully manufactures marijuana and the total number
19 of plants in the genus Cannabis within the plant family Cannabaceae exceeds
20 12 plants; or

21 (B) A person unlawfully manufactures a cannabinoid product or a
22 cannabinoid concentrate and the total amount of cannabinoid products or the
23 total amount of cannabinoid concentrates exceeds twice the applicable max-
24 imum amount specified in ORS 475C.337 (1)(d), (e) or (f).

25 (c) A Class B felony, if:

26 (A) A person unlawfully manufactures a cannabinoid extract[.];

27 (B) **The violation involves the manufacture of more than 100**
28 **marijuana plants, whether mature or immature; or**

29 (C) **The violation is a marijuana offense involving reckless unlawful**
30 **conduct under ORS 475C.353 (5) or a marijuana offense involving**
31 **knowing unlawful conduct under ORS 475C.353 (6).**

1 **SECTION 10.** ORS 475C.353 is amended to read:

2 475C.353. (1) Except as provided in [*subsection (3)*] **subsections (3), (5)**
3 **and (6)** of this section, a felony under ORS 475C.337 or 475C.341 shall be
4 classified as crime category 1 of the sentencing guidelines grid of the Oregon
5 Criminal Justice Commission.

6 (2) Except as provided in [*subsection (3)*] **subsections (3), (5) and (6)** of
7 this section, a felony under ORS 475C.345 or 475C.349 shall be classified as
8 crime category 4 of the sentencing guidelines grid of the Oregon Criminal
9 Justice Commission.

10 (3) Subject to subsection (4) of this section, a felony under ORS 475C.337,
11 475C.341, 475C.345 or 475C.349 shall be classified as crime category 8 of the
12 sentencing guidelines grid of the Oregon Criminal Justice Commission if the
13 violation is a commercial marijuana offense. A violation is a commercial
14 marijuana offense for purposes of this subsection if the violation was [*com-*
15 *mitted in conjunction with*] **accompanied by** at least three of the following
16 factors:

17 (a) The offender delivered a marijuana item for consideration;

18 (b) The offender was in possession of \$300 or more in cash;

19 (c) The offender was unlawfully in possession of a firearm or other
20 weapon as described in ORS 166.270 (2), the offender used, attempted to use
21 or threatened to use a deadly weapon or dangerous weapon, as those terms
22 are defined in ORS 161.015, or the offender was in possession of a firearm
23 or other deadly weapon or dangerous weapon for the purpose of using the
24 deadly weapon or dangerous weapon;

25 (d) The offender was in possession of materials being used for the pack-
26 aging of marijuana items, such as scales, wrapping or foil, other than a ma-
27 terial used to contain the marijuana item that is the subject of the violation;

28 (e) The offender was in possession of marijuana item transaction records
29 or customer lists;

30 (f) The offender was in possession of stolen property;

31 (g) The offender was in possession of manufacturing paraphernalia spe-

1 cifically designed for producing marijuana, such as recipes, precursor chem-
2 icals, laboratory equipment, lighting equipment, ventilating equipment or
3 power generation equipment;

4 (h) The offender modified structures by painting, wiring, plumbing or
5 lighting the structures to facilitate the offense;

6 (i) The offender used public lands to manufacture the marijuana item; or

7 (j) The offender constructed fortifications or took security measures that
8 had the potential to injure persons.

9 (4) To prove that a violation is a commercial marijuana offense for pur-
10 poses of subsection (3) of this section, the state must plead in the accusatory
11 instrument at least three of the factors described in subsection (3) of this
12 section. The state has the burden of proving each factor beyond a reasonable
13 doubt.

14 **(5) A violation of ORS 475C.337 (3)(d), 475C.341 (4), 475C.349 (3)(c)(B)**
15 **or 475C.349 (3)(c)(C) shall be classified as a crime category 6 of the**
16 **sentencing guidelines grid of the Oregon Criminal Justice Commission**
17 **if the violation constitutes a marijuana offense involving reckless un-**
18 **lawful conduct. A violation of ORS 475C.337 (3)(d), 475C.341 (4), 475C.349**
19 **(3)(c)(B) or 475C.349 (3)(c)(C) is a marijuana offense involving reckless**
20 **unlawful conduct if the person is aware of and consciously disregards**
21 **a substantial and justifiable risk that the violation is accompanied by:**

22 **(a) Any of the following factors:**

23 **(A) Abusing or threatening to abuse the law or legal process;**

24 **(B) Destroying, concealing, removing, confiscating or possessing an**
25 **actual or purported passport or immigration document, or other ac-**
26 **tual or purported government identification document, of another**
27 **person;**

28 **(C) Threatening to report another person to a government agency**
29 **for the purpose of the other person's arrest or deportation;**

30 **(D) Threatening to collect an unlawful debt;**

31 **(E) Instilling in another person a fear that the person will withhold**

1 from the other person the necessities of life, including but not limited
2 to lodging, food and clothing; or

3 (F) Withholding wages earned without lawful justification;

4 (b) The issuance of a citation to a person under ORS 654.071 for a
5 violation of any state occupational safety or health law, regulation,
6 rule or order, including any safety and health standards for agricul-
7 tural labor housing and related facilities under the Oregon Safe Em-
8 ployment Act; or

9 (c) Any of the following factors related to the environment:

10 (A) Discharging, placing or causing to be placed any wastes, as de-
11 fined in ORS 468B.005, into the waters of this state or in a location
12 where the wastes are likely to escape or be carried into the waters of
13 this state;

14 (B) The unlawful use, storage, disposal, treatment or transport of
15 hazardous waste, as defined in ORS 466.005;

16 (C) The unlawful possession, use or application of a pesticide, as
17 defined in ORS 634.006; or

18 (D) The use of surface water or ground water in violation of ORS
19 chapter 537.

20 (6) A violation of ORS 475C.337 (3)(d), 475C.341 (4), 475C.349 (3)(c)(B)
21 or 475C.349 (3)(c)(C) shall be classified as a crime category 8 of the
22 sentencing guidelines grid of the Oregon Criminal Justice Commission
23 if the violation constitutes a marijuana offense involving knowing
24 unlawful conduct. A violation of ORS 475C.337 (3)(d), 475C.341 (4),
25 475C.349 (3)(c)(B) or 475C.349 (3)(c)(C) is a marijuana offense involving
26 knowing unlawful conduct if the person acts with knowledge, or with
27 a conscious purpose to avoid knowledge, that the violation is accom-
28 panied by:

29 (a) Any of the following factors:

30 (A) Abusing or threatening to abuse the law or legal process;

31 (B) Destroying, concealing, removing, confiscating or possessing an

1 **actual or purported passport or immigration document, or other ac-**
2 **tual or purported government identification document, of another**
3 **person;**

4 **(C) Threatening to report another person to a government agency**
5 **for the purpose the other person's arrest or deportation;**

6 **(D) Threatening to collect an unlawful debt;**

7 **(E) Instilling in another person a fear that the person will withhold**
8 **from the other person the necessities of life, including but not limited**
9 **to lodging, food and clothing; or**

10 **(F) Withholding wages earned without lawful justification;**

11 **(b) The issuance of a citation to a person under ORS 654.071 for a**
12 **violation of any state occupational safety or health law, regulation,**
13 **rule or order, including any safety and health standards for agricul-**
14 **tural labor housing and related facilities under the Oregon Safe Em-**
15 **ployment Act; or**

16 **(c) Any of the following factors related to the environment:**

17 **(A) Discharging, placing or causing to be placed any wastes, as de-**
18 **defined in ORS 468B.005, into the waters of this state or in a location**
19 **where the wastes are likely to escape or be carried into the waters of**
20 **this state;**

21 **(B) The unlawful use, storage, disposal, treatment or transport of**
22 **hazardous waste, as defined in ORS 466.005;**

23 **(C) The unlawful possession, use or application of a pesticide, as**
24 **defined in ORS 634.006; or**

25 **(D) The use of surface water or ground water in violation of ORS**
26 **chapter 537.**

27 **SECTION 11.** ORS 536.900, as amended by section 5, chapter 52, Oregon
28 Laws 2022, is amended to read:

29 536.900. (1) In addition to any other liability or penalty provided by law,
30 the Water Resources Commission may impose a civil penalty on a person for
31 violation of:

1 (a) A term or condition of a permit, certificate or license issued under
2 ORS chapters 536 to 543A.

3 (b) ORS 537.130 or 537.535.

4 (c) ORS 537.545 (5) or a rule described in ORS 537.545 (7).

5 (d) A commission rule or order that pertains to well maintenance.

6 (e) ORS 540.045, 540.145, 540.210, 540.310, 540.320, 540.330, 540.340, 540.435,
7 540.440, 540.570 (5), 540.710, 540.720 and 540.730 or rules adopted under ORS
8 540.145.

9 (f) Section 2 or 4 (2), chapter 52, Oregon Laws 2022.

10 **(g) Section 3 of this 2023 Act.**

11 (2) A civil penalty may be imposed under this section for each day of vi-
12 olation of ORS 537.130, 537.535, 540.045, 540.310, 540.330, 540.570 (5), 540.710,
13 540.720 or 540.730.

14 (3) In the event the petitioner knowingly misrepresents the map and pe-
15 tition required in ORS 541.329, the commission may assess a penalty of up
16 to \$1,000 based upon guidelines to be established by the commission. In ad-
17 dition, the petition and map shall be amended to correct the error at the
18 petitioner's cost. Affected users shall be given notice as provided in ORS
19 541.329 (5).

20 (4) A civil penalty may not be imposed until the commission prescribes
21 a reasonable time to eliminate the violation. The commission shall notify the
22 violator of the time allowed to correct a violation within 10 business days
23 after the commission first becomes aware of the violation.

24 (5) Notwithstanding any term or condition of a permit, certificate or li-
25 cense, the rotation of the use of water under ORS 540.150 may not be con-
26 sidered a violation under subsection (1) of this section.

27 **(6) The commission may impose a civil penalty of not more than**
28 **\$2,000 per occurrence for a violation described in subsection (1)(g) of**
29 **this section.**

30 **SECTION 12.** ORS 537.990, as amended by section 6, chapter 52, Oregon
31 Laws 2022, is amended to read:

1 537.990. (1) Violation of ORS 537.130 (2) is a Class B misdemeanor.

2 (2) Any person who willfully diverts or uses water to the detriment of
3 others without compliance with law shall be punished as provided in sub-
4 section (1) of this section. The possession or use of water, except when a
5 right of use is acquired in accordance with law, shall be prima facie evidence
6 of the guilt of the person using it.

7 (3) Violation of ORS 537.535 (1) or 537.747 is a Class B misdemeanor.

8 (4) Violation of section 4 (2), chapter 52, Oregon Laws 2022, **or section**
9 **3 of this 2023 Act** is a Class A misdemeanor.

10 (5)(a) Violation of section 4 (1), chapter 52, Oregon Laws 2022, with
11 criminal negligence, as defined in ORS 161.085, is a Class A misdemeanor.

12 (b) Notwithstanding ORS 161.635, the maximum fine for a violation de-
13 scribed in this subsection is \$25,000 if the person:

14 (A) Owns a water hauling business; or

15 (B) Owns, operates or is responsible for the grow site to which the water
16 was hauled or arranged to be hauled.

17 (6)(a) Notwithstanding subsections (1) to (3) of this section, violation of
18 ORS 537.130 (2) or 537.535 that concerns the use of water at a grow site for
19 a crop of plants in the plant Cannabis family Cannabaceae is a Class A
20 misdemeanor if:

21 (A) The grow site is not registered or licensed under ORS 475C.065,
22 475C.792 or 571.281; and

23 (B) The crop of plants is in an amount that is not allowed under state
24 law.

25 (b) Notwithstanding ORS 161.635, the maximum fine for a violation de-
26 scribed in this subsection is \$25,000.

27 **SECTION 13.** Section 45, chapter 542, Oregon Laws 2021, is amended to
28 read:

29 **Sec. 45.** Sections 40 **and 41a** to 44 of this 2021 Act are repealed on Jan-
30 uary 1, 2024.

31 **SECTION 14.** **Sections 2 and 3 of this 2023 Act and the amendments**

1 to ORS 133.619, 133.726, 165.663, 475C.337, 475C.341, 475C.349, 475C.353,
2 536.900 and 537.990 and section 45, chapter 542, Oregon Laws 2021, by
3 sections 4 to 13 of this 2023 Act apply to conduct occurring on or after
4 the effective date of this 2023 Act.

5 SECTION 15. This 2023 Act being necessary for the immediate
6 preservation of the public peace, health and safety, an emergency is
7 declared to exist, and this 2023 Act takes effect on its passage.

8
