

**A-Engrossed**  
**Senate Bill 326**

Ordered by the Senate April 5  
Including Senate Amendments dated April 5

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 and Ballot Measure 110 Implementation)

**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.

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, 133.726, 165.663, 475C.337,  
3 475C.341, 475C.349, 475C.353, 536.900 and 537.990 and section 45, chapter 542, Oregon Laws 2021;  
4 and declaring an emergency.

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

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

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

9 (a) **"Cleanup" means the removal, disposal and remediation, by an owner or an agent of**  
10 **an owner, of waste from a site in conformance with applicable law.**

11 (b) **"Cleanup costs" means reasonable costs that are associated with or attributable to**  
12 **cleanup.**

13 (c) **"Law enforcement agency" has the meaning given that term in ORS 181A.010.**

14 (d)(A) **"Owner" means a person who owns the real property where a site is located.**

15 (B) **"Owner" does not include a person who, without participating in the management of**  
16 **the site, holds indicia of ownership primarily to protect a security interest in the real prop-**  
17 **erty.**

18 (e) **"Site" means the location where the unlawful manufacture of a marijuana item, as**  
19 **described in ORS 475C.349, or the unlawful production of marijuana, as described in section**

**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 41, chapter 542, Oregon Laws 2021, occurred or is alleged to have occurred.

2 (f) "Waste" means:

3 (A) Marijuana flowers, marijuana leaves, marijuana plants and any parts of marijuana  
4 plants;

5 (B) Any items or materials used for an irrigation system if used to facilitate the unlawful  
6 manufacture of marijuana items or unlawful production of marijuana, unless:

7 (i) The site where the items or materials are located was leased to a third party that was  
8 responsible for the unlawful manufacture of marijuana items or unlawful production of  
9 marijuana;

10 (ii) The items or materials are the property of the owner; and

11 (iii) The owner elects to retain ownership and properly store the items or materials;

12 (C) Greenhouses, hoop houses and other structures used to facilitate the unlawful man-  
13 ufacture of marijuana items or unlawful production of marijuana, unless:

14 (i) The site where the greenhouses, hoop houses or other structures are located was  
15 leased to a third party that was responsible for the unlawful manufacture of marijuana items  
16 or unlawful production of marijuana;

17 (ii) The greenhouses, hoop houses or other structures are the property of the owner and  
18 are agricultural buildings, as defined in ORS 455.315, that are allowed on the real property;  
19 and

20 (iii) The owner elects to retain ownership and properly care for the greenhouses, hoop  
21 houses or other structures; and

22 (D) Any material or substance designated as chemical by the Environmental Quality  
23 Commission under ORS 475.425 used to facilitate the unlawful manufacture of marijuana  
24 items or unlawful production of marijuana, unless:

25 (i) The site where the material or substance is located was leased to a third party that  
26 was responsible for the unlawful manufacture of marijuana items or unlawful production of  
27 marijuana;

28 (ii) The material or substance is the property of the owner; and

29 (iii) The owner elects to retain ownership and properly store the material or substance.

30 (2) Upon receiving written notification from a law enforcement agency that a site con-  
31 tains waste, the owner shall promptly undertake any cleanup of the site. The owner may  
32 contract with a third party for all or part of the cleanup.

33 (3) It is a public nuisance, which may be abated pursuant to subsection (4) of this section,  
34 if the owner of a site described in subsection (2) of this section fails to complete cleanup of  
35 the site within 30 days of the date on which the owner receives the notification described in  
36 subsection (2) of this section.

37 (4) In order to abate a public nuisance described in subsection (3) of this section, the city  
38 or county that has jurisdiction over the real property where a site described in subsection  
39 (2) of this section is located may maintain civil proceedings in courts of this state against  
40 the owner described in subsection (3) of this section to:

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

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

44 (c) Enjoin any further violation of ORS 475C.349 or section 41, chapter 542, Oregon Laws  
45 2021.

1 (5) A court may allow the prevailing party reasonable attorney fees and expenses in a  
2 proceeding described in subsection (4) of this section.

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

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

8 (7)(a) The governing body of a city or county described in subsection (4) of this section  
9 may, at its discretion, file a claim of lien on real property where a site described in sub-  
10 section (2) of this section is located. The governing body of the city or county shall file  
11 written notice of claim of lien with the recording officer of each county in which the real  
12 property where a site described in subsection (2) of this section is located. All cleanup costs  
13 incurred by the city or county under subsection (4)(b) of this section shall constitute the lien.  
14 The lien must contain the name of the owner of the real property to which the lien is at-  
15 tached and a description of the real property sufficient to accurately identify the real prop-  
16 erty. The lien shall attach and become enforceable on the day of the filing described in this  
17 subsection.

18 (b) A lien described in this subsection shall be foreclosed in the manner provided in ORS  
19 chapter 88.

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

22 (8) Nothing in this section shall affect the right of the governing body of a city or county  
23 to bring an action against any person to recover all costs and damages for which the person  
24 is liable under this section.

25 **SECTION 3.** (1) At a location described in subsection (2) of this section, a person may  
26 not:

27 (a) Use, store or divert any waters under ORS 537.130;

28 (b) Use or attempt to use any ground water under ORS 537.535;

29 (c) Construct or attempt to construct any well or other means of developing and securing  
30 ground water under ORS 537.535;

31 (d) Collect or use precipitation water from an artificial impervious surface as described  
32 in ORS 537.141; or

33 (e) Use ground water as described in ORS 537.545 (1)(b) or (f).

34 (2) A person may not engage in or undertake an action described in subsection (1) of this  
35 section at a location where plants in the plant Cannabis family Cannabaceae are grown, if:

36 (a) The location described in this section is not licensed or registered under ORS  
37 475C.065, 475C.792 or 571.281; and

38 (b) The number of plants described in this section is greater than the number of  
39 marijuana plants or industrial hemp plants allowed under ORS 475C.005 to 475C.525, 475C.770  
40 to 475C.919 or 571.260 to 571.348.

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

42 133.619. (1) A warrant authorizing the installation or tracking of a mobile tracking device shall  
43 be executed as provided in this section.

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

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

3 (4) Within five days of the execution of the warrant, or, in the case of an ongoing investigation,  
4 within such additional time as the issuing judge may allow upon application, the officer shall mail  
5 a receipt for things seized or observations made under authority of the warrant to the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 133.726. (1) Notwithstanding ORS 133.724, under the circumstances described in this section, a  
31 law enforcement officer is authorized to intercept an oral communication to which the officer or a  
32 person under the direct supervision of the officer is a party, without obtaining an order for the in-  
33 terception of a wire, electronic or oral communication under ORS 133.724.

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

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

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

43 (b) A statement demonstrating that there is probable cause to believe that a person whose oral  
44 communication is to be intercepted is engaged in committing, has committed or is about to commit  
45 a particular felony, or a misdemeanor under ORS 167.007 or 167.008, and that intercepting the oral

1 communication will yield evidence thereof; and

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

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

6 (5) Upon examination of the application and evidence, the judge may enter an ex parte order,  
7 as requested or as modified, authorizing or approving the interception of an oral communication  
8 within the state if the judge determines on the basis of the facts submitted by the applicant that:

9 (a) There is probable cause to believe that a person is engaged in committing, has committed  
10 or is about to commit a particular felony, or a misdemeanor under ORS 167.007 or 167.008; and

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

13 (6) An order authorizing or approving the interception of an oral communication under this  
14 section must specify:

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

16 (b) A statement identifying the particular crime to which the oral communication is expected  
17 to relate;

18 (c) The agency authorized under the order to intercept the oral communication;

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

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

21 (f) A statement that the order authorizes only the interception of an oral communication to  
22 which a law enforcement officer or a person under the direct supervision of a law enforcement of-  
23 ficer is a party.

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

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

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

33 (8) A law enforcement officer who intercepts an oral communication pursuant to this section  
34 may not intentionally fail to record and preserve the oral communication in its entirety. A law  
35 enforcement officer, or a person under the direct supervision of the officer, who is authorized under  
36 this section to intercept an oral communication is not required to exclude from the interception an  
37 oral communication made by a person for whom probable cause does not exist if the officer or the  
38 person under the officer's direct supervision is a party to the oral communication.

39 (9) A law enforcement officer may not divulge the contents of an oral communication intercepted  
40 under this section before a preliminary hearing or trial in which an oral communication is going to  
41 be introduced as evidence against a person except:

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

44 (b) To a magistrate;

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

1 (d) In compliance with a court order.

2 (10) A law enforcement officer may intercept an oral communication under this section only  
3 when acting within the scope of the officer's employment and as a part of assigned duties.

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

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

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

7 (B) A political subdivision, agency, department or bureau of the governments described in sub-  
8 paragraph (A) of this paragraph; or

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

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

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

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

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

14 165.663. Any police officer may apply to the circuit court in which judicial district the targeted  
15 telephone is located for an ex parte order or extension of an order authorizing the installation and  
16 use of a pen register or a trap and trace device. The application shall:

17 (1) Be in writing under oath;

18 (2) Include the identity of the applicant and the identity of the law enforcement agency con-  
19 ducting the investigation;

20 (3) Contain a statement demonstrating that there is probable cause to believe that an individual  
21 is committing, has committed or is about to commit:

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

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

26 (c) A crime under ORS 166.720 that includes as part of the pattern of racketeering activity at  
27 least one incident of conduct that constitutes a felony; or

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

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

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

32 475C.337. (1) Except for licensees and licensee representatives acting in accordance with ORS  
33 475C.005 to 475C.525 and any rule adopted under ORS 475C.005 to 475C.525, it is unlawful for any  
34 person 21 years of age or older to possess, knowingly or intentionally:

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

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

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

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

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

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

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

44 (2) Except as provided in subsection (3) of this section, unlawful possession of a marijuana item  
45 is a Class A misdemeanor.

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

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

4 (b) A Class B misdemeanor, if the amount possessed is more than two times, but not more than  
5 four times, the applicable maximum amount specified in subsection (1)(a) to (f) of this section.

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

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

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

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

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

13 **(A) The amount possessed is more than 32 times the applicable maximum amount speci-**  
14 **fied in subsection (1)(a), (c), (d), (e) or (f) of this section; or**

15 **(B) The violation is a marijuana offense involving reckless unlawful conduct under ORS**  
16 **475C.353 (5) or a marijuana offense involving knowing unlawful conduct under ORS 475C.353**  
17 **(6).**

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

19 475C.341. (1) Except for licensees and licensee representatives acting in accordance with ORS  
20 475C.005 to 475C.525 and any rule adopted under ORS 475C.005 to 475C.525, it is unlawful for any  
21 person under 21 years of age to possess, knowingly or intentionally:

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

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

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

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

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

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

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

31 (2) Except as provided in [*subsection (3)*] **subsections (3) and (4)** of this section, unlawful pos-  
32 session of a marijuana item by a person under 21 years of age is a Class A misdemeanor.

33 (3) Unlawful possession of a marijuana item by a person under 21 years of age is a Class C fel-  
34 ony, if the amount possessed is:

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

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

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

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

42 **(a) The amount possessed is more than 32 times the applicable maximum amount speci-**  
43 **fied in subsection (1)(a), (c), (d), (e) or (f) of this section; or**

44 **(b) The violation is a marijuana offense involving reckless unlawful conduct under ORS**  
45 **475C.353 (5) or a marijuana offense involving knowing unlawful conduct under ORS 475C.353**

1 (6).

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

3 475C.349. (1) Except for licensees and licensee representatives acting in accordance with ORS  
4 475C.005 to 475C.525 and any rule adopted under ORS 475C.005 to 475C.525, and except for a person  
5 acting within the scope of and in compliance with ORS 475C.305, it is unlawful for any person to  
6 manufacture a marijuana item.

7 (2) Except as provided in subsection (3) of this section, unlawful manufacture of a marijuana  
8 item is a Class A misdemeanor.

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

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

14 (b) A Class C felony, if:

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

17 (B) A person unlawfully manufactures a cannabinoid product or a cannabinoid concentrate and  
18 the total amount of cannabinoid products or the total amount of cannabinoid concentrates exceeds  
19 twice the applicable maximum amount specified in ORS 475C.337 (1)(d), (e) or (f).

20 (c) A Class B felony, if:

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

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

24 (C) **The violation is a marijuana offense involving reckless unlawful conduct under ORS**  
25 **475C.353 (5) or a marijuana offense involving knowing unlawful conduct under ORS 475C.353**  
26 **(6).**

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

28 475C.353. (1) Except as provided in [subsection (3)] **subsections (3), (5) and (6)** of this section,  
29 a felony under ORS 475C.337 or 475C.341 shall be classified as crime category 1 of the sentencing  
30 guidelines grid of the Oregon Criminal Justice Commission.

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

34 (3) Subject to subsection (4) of this section, a felony under ORS 475C.337, 475C.341, 475C.345 or  
35 475C.349 shall be classified as crime category 8 of the sentencing guidelines grid of the Oregon  
36 Criminal Justice Commission if the violation is a commercial marijuana offense. A violation is a  
37 commercial marijuana offense for purposes of this subsection if the violation was [committed in  
38 conjunction with] **accompanied by** at least three of the following factors:

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

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

41 (c) The offender was unlawfully in possession of a firearm or other weapon as described in ORS  
42 166.270 (2), the offender used, attempted to use or threatened to use a deadly weapon or dangerous  
43 weapon, as those terms are defined in ORS 161.015, or the offender was in possession of a firearm  
44 or other deadly weapon or dangerous weapon for the purpose of using the deadly weapon or dan-  
45 gerous weapon;



1 (d) The offender was in possession of materials being used for the packaging of marijuana items,  
2 such as scales, wrapping or foil, other than a material used to contain the marijuana item that is  
3 the subject of the violation;

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

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

6 (g) The offender was in possession of manufacturing paraphernalia specifically designed for  
7 producing marijuana, such as recipes, precursor chemicals, laboratory equipment, lighting equip-  
8 ment, ventilating equipment or power generation equipment;

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

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

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

14 (4) To prove that a violation is a commercial marijuana offense for purposes of subsection (3)  
15 of this section, the state must plead in the accusatory instrument at least three of the factors de-  
16 scribed in subsection (3) of this section. The state has the burden of proving each factor beyond a  
17 reasonable doubt.

18 **(5) A violation of ORS 475C.337 (3)(d), 475C.341 (4), 475C.349 (3)(c)(B) or 475C.349 (3)(c)(C)**  
19 **shall be classified as a crime category 6 of the sentencing guidelines grid of the Oregon**  
20 **Criminal Justice Commission if the violation constitutes a marijuana offense involving reck-**  
21 **less unlawful conduct. A violation of ORS 475C.337 (3)(d), 475C.341 (4), 475C.349 (3)(c)(B) or**  
22 **475C.349 (3)(c)(C) is a marijuana offense involving reckless unlawful conduct if the person is**  
23 **aware of and consciously disregards a substantial and justifiable risk that the violation is**  
24 **accompanied by:**

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

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

27 **(B) Destroying, concealing, removing, confiscating or possessing an actual or purported**  
28 **passport or immigration document, or other actual or purported government identification**  
29 **document, of another person;**

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

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

33 **(E) Instilling in another person a fear that the person will withhold from the other per-**  
34 **son the necessities of life, including but not limited to lodging, food and clothing; or**

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

36 **(b) The issuance of a citation to a person under ORS 654.071 for a violation of any state**  
37 **occupational safety or health law, regulation, rule or order, including any safety and health**  
38 **standards for agricultural labor housing and related facilities under the Oregon Safe Em-**  
39 **ployment Act; or**

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

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

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

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

2 or

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

4 (6) A violation of ORS 475C.337 (3)(d), 475C.341 (4), 475C.349 (3)(c)(B) or 475C.349 (3)(c)(C)  
5 shall be classified as a crime category 8 of the sentencing guidelines grid of the Oregon  
6 Criminal Justice Commission if the violation constitutes a marijuana offense involving  
7 knowing unlawful conduct. A violation of ORS 475C.337 (3)(d), 475C.341 (4), 475C.349 (3)(c)(B)  
8 or 475C.349 (3)(c)(C) is a marijuana offense involving knowing unlawful conduct if the person  
9 acts with knowledge, or with a conscious purpose to avoid knowledge, that the violation is  
10 accompanied by:

11 (a) Any of the following factors:

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

13 (B) Destroying, concealing, removing, confiscating or possessing an actual or purported  
14 passport or immigration document, or other actual or purported government identification  
15 document, of another person;

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

18 (D) Threatening to collect an unlawful debt;

19 (E) Instilling in another person a fear that the person will withhold from the other per-  
20 son the necessities of life, including but not limited to lodging, food and clothing; or

21 (F) Withholding wages earned without lawful justification;

22 (b) The issuance of a citation to a person under ORS 654.071 for a violation of any state  
23 occupational safety or health law, regulation, rule or order, including any safety and health  
24 standards for agricultural labor housing and related facilities under the Oregon Safe Em-  
25 ployment Act; or

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

27 (A) Discharging, placing or causing to be placed any wastes, as defined in ORS 468B.005,  
28 into the waters of this state or in a location where the wastes are likely to escape or be  
29 carried into the waters of this state;

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

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

33 or

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

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

37 536.900. (1) In addition to any other liability or penalty provided by law, the Water Resources  
38 Commission may impose a civil penalty on a person for violation of:

39 (a) A term or condition of a permit, certificate or license issued under ORS chapters 536 to  
40 543A.

41 (b) ORS 537.130 or 537.535.

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

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

44 (e) ORS 540.045, 540.145, 540.210, 540.310, 540.320, 540.330, 540.340, 540.435, 540.440, 540.570 (5),  
45 540.710, 540.720 and 540.730 or rules adopted under ORS 540.145.

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

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

3 (2) A civil penalty may be imposed under this section for each day of violation of ORS 537.130,  
4 537.535, 540.045, 540.310, 540.330, 540.570 (5), 540.710, 540.720 or 540.730.

5 (3) In the event the petitioner knowingly misrepresents the map and petition required in ORS  
6 541.329, the commission may assess a penalty of up to \$1,000 based upon guidelines to be established  
7 by the commission. In addition, the petition and map shall be amended to correct the error at the  
8 petitioner's cost. Affected users shall be given notice as provided in ORS 541.329 (5).

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

12 (5) Notwithstanding any term or condition of a permit, certificate or license, the rotation of the  
13 use of water under ORS 540.150 may not be considered a violation under subsection (1) of this sec-  
14 tion.

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

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

19 537.990. (1) Violation of ORS 537.130 (2) is a Class B misdemeanor.

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

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

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

27 (5)(a) Violation of section 4 (1), chapter 52, Oregon Laws 2022, with criminal negligence, as de-  
28 fined in ORS 161.085, is a Class A misdemeanor.

29 (b) Notwithstanding ORS 161.635, the maximum fine for a violation described in this subsection  
30 is \$25,000 if the person:

31 (A) Owns a water hauling business; or

32 (B) Owns, operates or is responsible for the grow site to which the water was hauled or ar-  
33 ranged to be hauled.

34 (6)(a) Notwithstanding subsections (1) to (3) of this section, violation of ORS 537.130 (2) or  
35 537.535 that concerns the use of water at a grow site for a crop of plants in the plant Cannabis  
36 family Cannabaceae is a Class A misdemeanor if:

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

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

39 (b) Notwithstanding ORS 161.635, the maximum fine for a violation described in this subsection  
40 is \$25,000.

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

42 **Sec. 45.** Sections 40 and 41a to 44, **chapter 542, Oregon Laws 2021**, [of this 2021 Act] are re-  
43 pealed on January 1, 2024.

44 **SECTION 14.** Sections 2 and 3 of this 2023 Act and the amendments to ORS 133.619,  
45 133.726, 165.663, 475C.337, 475C.341, 475C.349, 475C.353, 536.900 and 537.990 and section 45,

1 **chapter 542, Oregon Laws 2021, by sections 4 to 13 of this 2023 Act apply to conduct occurring**  
2 **on or after the effective date of this 2023 Act.**

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

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