

**Enrolled**  
**Senate Bill 302**

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 Joint Interim Committee on Marijuana Legalization)

CHAPTER .....

AN ACT

Relating to cannabis; creating new provisions; amending ORS 90.243, 90.396, 90.398, 90.440, 105.121, 105.555, 131.602, 131A.005, 131A.360, 131A.365, 137.226, 137.540, 146.113, 161.705, 163.197, 163.205, 163.547, 163.575, 166.715, 166.725, 167.222, 167.262, 180.600, 307.455, 336.241, 342.143, 342.175, 419A.015, 419A.265, 419A.300, 419A.305, 419B.005, 419B.504, 419C.239, 419C.420, 419C.443, 419C.575, 420.048, 423.150, 430.402, 430.480, 433.835, 433.850, 438.010, 453.858, 471.775, 475.005, 475.245, 475.405, 475.525, 475.752, 475.898, 475.900, 475.908, 475.910, 475.934, 475B.015, 475B.030, 475B.185, 475B.218, 475B.255, 475B.265, 475B.270, 475B.275, 475B.315, 475B.360, 475B.510, 616.723, 656.005, 657.176, 676.200, 676.260, 676.612, 677.141, 677.190, 682.208, 689.557, 704.020, 704.040, 743A.164, 801.272, 807.060, 807.250, 809.235, 809.260, 809.730, 809.745, 813.010, 813.040, 813.131, 813.140, 813.150, 813.215, 813.220, 813.430, 813.500, 813.602, 821.250, 830.325, 830.365, 830.515, 830.520, 830.525 and 830.815; repealing ORS 135.907, 135.909, 135.911, 135.913, 135.915, 135.917, 135.919, 135.921, 475.059, 475.290, 475.856, 475.858, 475.860, 475.862 and 475.864 and section 12, chapter 591, Oregon Laws 2013, section 129, chapter 614, Oregon Laws 2015, section 26, chapter 23, Oregon Laws 2016, and sections 41 and 47, chapter 24, Oregon Laws 2016; and declaring an emergency.

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

**AMENDMENTS TO THE CONTROL AND  
REGULATION OF MARIJUANA ACT  
(Definitions)**

**SECTION 1.** ORS 475B.015, as amended by section 63, chapter 24, Oregon Laws 2016, and section 11, chapter 83, Oregon Laws 2016, is amended to read:

475B.015. As used in ORS 475B.010 to 475B.395:

(1) "Cannabinoid" means any of the chemical compounds that are the active constituents of marijuana.

(2) "Cannabinoid concentrate" means a substance obtained by separating cannabinoids from marijuana by:

(a) A mechanical extraction process;

(b) A chemical extraction process using a nonhydrocarbon-based or other solvent, such as water, vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol or ethanol;

(c) A chemical extraction process using the hydrocarbon-based solvent carbon dioxide, provided that the process does not involve the use of high heat or pressure; or

(d) Any other process identified by the Oregon Liquor Control Commission, in consultation with the Oregon Health Authority, by rule.

(3) “Cannabinoid edible” means food or potable liquid into which a cannabinoid concentrate, cannabinoid extract or dried marijuana leaves or flowers have been incorporated.

(4) “Cannabinoid extract” means a substance obtained by separating cannabinoids from marijuana by:

(a) A chemical extraction process using a hydrocarbon-based solvent, such as butane, hexane or propane;

(b) A chemical extraction process using the hydrocarbon-based solvent carbon dioxide, if the process uses high heat or pressure; or

(c) Any other process identified by the commission, in consultation with the authority, by rule.

(5)(a) “Cannabinoid product” means a cannabinoid edible and any other product intended for human consumption or use, including a product intended to be applied to the skin or hair, that contains cannabinoids or dried marijuana leaves or flowers.

(b) “Cannabinoid product” does not include:

(A) Usable marijuana by itself;

(B) A cannabinoid concentrate by itself;

(C) A cannabinoid extract by itself; or

(D) Industrial hemp, as defined in ORS 571.300.

(6) “Consumer” means a person who purchases, acquires, owns, holds or uses marijuana items other than for the purpose of resale.

**(7) “Deliver” means the actual, constructive or attempted transfer from one person to another of a marijuana item, whether or not there is an agency relationship.**

[(7)(a)] **(8)(a)** “Financial consideration” means value that is given or received either directly or indirectly through sales, barter, trade, fees, charges, dues, contributions or donations.

(b) “Financial consideration” does not include marijuana, cannabinoid products or cannabinoid concentrates that are delivered within the scope of and in compliance with ORS 475B.245.

[(8)] **(9)** “Homegrown” means grown by a person 21 years of age or older for noncommercial purposes.

[(9)] **(10)** “Household” means a housing unit and any place in or around a housing unit at which the occupants of the housing unit are producing, processing, possessing or storing homegrown marijuana, cannabinoid products, cannabinoid concentrates or cannabinoid extracts.

[(10)] **(11)** “Housing unit” means a house, an apartment or a mobile home, or a group of rooms or a single room that is occupied as separate living quarters, in which the occupants live and eat separately from any other persons in the building and that has direct access from the outside of the building or through a common hall.

[(11)] **(12)** “Immature marijuana plant” means a marijuana plant that is not flowering.

[(12)] **(13)** “Licensee” means a person [who] **that** holds a license issued under ORS 475B.070, 475B.090, 475B.100 or 475B.110.

[(13)] **(14)** “Licensee representative” means an owner, director, officer, manager, employee, agent or other representative of a licensee, to the extent that the person acts in a representative capacity.

**(15)(a) “Manufacture” means producing, propagating, preparing, compounding, converting or processing a marijuana item, either directly or indirectly, by extracting from substances of natural origin.**

**(b) “Manufacture” includes any packaging or repackaging of a marijuana item or the labeling or relabeling of a container containing a marijuana item.**

[(14)(a)] **(16)(a)** “Marijuana” means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae.

(b) “Marijuana” does not include industrial hemp, as defined in ORS 571.300.

[(15)] (17) “Marijuana flowers” means the flowers of the plant genus Cannabis within the plant family Cannabaceae.

[(16)] (18) “Marijuana items” means marijuana, cannabinoid products, cannabinoid concentrates and cannabinoid extracts.

[(17)] (19) “Marijuana leaves” means the leaves of the plant genus Cannabis within the plant family Cannabaceae.

[(18)] (20) “Marijuana processor” means a person who processes marijuana items in this state.

[(19)] (21) “Marijuana producer” means a person who produces marijuana in this state.

[(20)] (22) “Marijuana retailer” means a person who sells marijuana items to a consumer in this state.

[(21)] (23) “Marijuana wholesaler” means a person who purchases marijuana items in this state for resale to a person other than a consumer.

[(22)] (24) “Mature marijuana plant” means a marijuana plant that is not an immature marijuana plant.

[(23)] (25) “Medical grade cannabinoid product, cannabinoid concentrate or cannabinoid extract” means a cannabinoid product, cannabinoid concentrate or cannabinoid extract that has a concentration of tetrahydrocannabinol that is permitted under ORS 475B.625 in a single serving of the cannabinoid product, cannabinoid concentrate or cannabinoid extract for consumers who hold a valid registry identification card issued under ORS 475B.415.

[(24)] (26) “Medical purpose” means a purpose related to using usable marijuana, cannabinoid products, cannabinoid concentrates or cannabinoid extracts to mitigate the symptoms or effects of a debilitating medical condition, as defined in ORS 475B.410.

[(25)] (27) “Noncommercial” means not dependent or conditioned upon the provision or receipt of financial consideration.

[(26)(a)] (28)(a) “Premises” or “licensed premises” includes the following areas of a location licensed under ORS 475B.070, 475B.090, 475B.100 or 475B.110:

(A) All public and private enclosed areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms and storerooms;

(B) All areas outside a building that the commission has specifically licensed for the processing, wholesale sale or retail sale of marijuana items; and

(C) For a location that the commission has specifically licensed for the production of marijuana outside a building, that portion of the location used to produce marijuana.

(b) “Premises” or “licensed premises” does not include a primary residence.

[(27)(a)] (29)(a) “Processes” means the processing, compounding or conversion of marijuana into cannabinoid products, cannabinoid concentrates or cannabinoid extracts.

(b) “Processes” does not include packaging or labeling.

[(28)(a)] (30)(a) “Produces” means the manufacture, planting, cultivation, growing or harvesting of marijuana.

(b) “Produces” does not include:

(A) The drying of marijuana by a marijuana processor, if the marijuana processor is not otherwise producing marijuana; or

(B) The cultivation and growing of an immature marijuana plant by a marijuana processor, marijuana wholesaler or marijuana retailer if the marijuana processor, marijuana wholesaler or marijuana retailer purchased or otherwise received the plant from a licensed marijuana producer.

[(29)] (31) “Propagate” means to grow immature marijuana plants or to breed or produce the seeds of the plant Cannabis family Cannabaceae.

[(30)] (32) “Public place” means a place to which the general public has access and includes, but is not limited to, hallways, lobbies and other parts of apartment houses and hotels not constituting rooms or apartments designed for actual residence, and highways, streets, schools, places of amusement, parks, playgrounds and areas used in connection with public passenger transportation.

[(31)(a)] (33)(a) “Usable marijuana” means the dried leaves and flowers of marijuana.

(b) “Usable marijuana” does not include:

- (A) The seeds, stalks and roots of marijuana; or
- (B) Waste material that is a by-product of producing or processing marijuana.

**(Possession, Delivery, Manufacture)**

**SECTION 2.** Sections 3 to 7 of this 2017 Act are added to and made a part of ORS 475B.010 to 475B.395.

**SECTION 3.** (1) Except for licensees and licensee representatives acting in accordance with ORS 475B.010 to 475B.395 and any rule adopted under ORS 475B.010 to 475B.395, it is unlawful for any person 21 years of age or older to possess, knowingly or intentionally:

- (a) An amount of marijuana plants in excess of the amount allowed under ORS 475B.245 (1).
- (b) More than one ounce of usable marijuana in a public place.
- (c) More than eight ounces of usable marijuana.
- (d) More than 16 ounces of cannabinoid products in solid form or cannabinoid concentrates.
- (e) More than 72 ounces of cannabinoid products in liquid form.
- (f) More than one ounce of cannabinoid extracts.
- (g) A cannabinoid extract that was not purchased from a marijuana retailer that holds a license issued under ORS 475B.110.

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

(3) Unlawful possession of a marijuana item is:

- (a) A Class B violation, if the amount possessed is not more than two times the applicable maximum amount specified in subsection (1)(a) to (f) of this section.
- (b) A Class B misdemeanor, if the amount possessed is more than two times, but not more than four times, the applicable maximum amount specified in subsection (1)(a) to (f) of this section.
- (c) A Class C felony, if the amount possessed is:
  - (A) More than 16 times the applicable maximum amount specified in subsection (1)(a), (c), (d), (e) or (f) of this subsection;
  - (B) More than eight pounds of usable marijuana in a public place; or
  - (C) More than one-quarter ounce of cannabinoid extract that was not purchased from a marijuana retailer that holds a license issued under ORS 475B.110.

**SECTION 4.** (1) Except for licensees and licensee representatives acting in accordance with ORS 475B.010 to 475B.395 and any rule adopted under ORS 475B.010 to 475B.395, it is unlawful for any person under 21 years of age to possess, knowingly or intentionally:

- (a) An amount of marijuana plants in excess of the amount allowed under ORS 475B.245 (1).
- (b) More than one ounce of usable marijuana in a public place.
- (c) More than eight ounces of usable marijuana.
- (d) More than 16 ounces of cannabinoid products in solid form or cannabinoid concentrates.
- (e) More than 72 ounces of cannabinoid products in liquid form.
- (f) More than one ounce of cannabinoid extracts.
- (g) A cannabinoid extract that was not purchased from a marijuana retailer that holds a license under ORS 475B.110.

(2) Except as provided in subsection (3) of this section, unlawful possession of a marijuana item by a person under 21 years of age is a Class A misdemeanor.

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

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

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

(c) More than one-quarter ounce of cannabinoid extract that was not purchased from a marijuana retailer that holds a license issued under ORS 475B.110.

**SECTION 5.** (1) Except for licensees and licensee representatives acting in accordance with ORS 475B.010 to 475B.395 and any rule adopted under ORS 475B.010 to 475B.395, and except for a person acting within the scope of and in compliance with ORS 475B.245, it is unlawful for any person to deliver a marijuana item.

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

(3) Unlawful delivery of a marijuana item is:

(a) A Class B misdemeanor, if a person 21 years of age or older unlawfully delivers usable marijuana, for no consideration, to a person 21 years of age or older, and the total amount of usable marijuana delivered is not more than twice the amount described in ORS 475B.245 (7).

(b) A Class C felony, if:

(A) The delivery involves:

(i) More than 16 times the applicable maximum amount specified in section 3 (1)(a), (c), (d), (e) or (f) of this of this 2017 Act;

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

(iii) More than one-quarter ounce of cannabinoid extract that was not purchased from a marijuana retailer that holds a license issued under ORS 475B.110.

(B) The marijuana item is delivered to a person under 21 years of age, unless the person delivering the marijuana item is under 24 years of age at the time of the delivery and delivers not more than one ounce of usable marijuana, for no consideration, to a person who is 16 years of age or older.

**SECTION 6.** (1) Except for licensees and licensee representatives acting in accordance with ORS 475B.010 to 475B.395 and any rule adopted under ORS 475B.010 to 475B.395, and except for a person acting within the scope of and in compliance with ORS 475B.245, it is unlawful for any person to manufacture a marijuana item.

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

(3) Unlawful manufacture of a marijuana item is:

(a) A Class B misdemeanor, if a person 21 years of age or older unlawfully manufactures homegrown marijuana at a household and the total number of homegrown marijuana plants at the household exceeds four marijuana plants but does not exceed eight marijuana plants.

(b) A Class C felony, if:

(A) A person unlawfully manufactures marijuana and the total number of marijuana plants exceeds 12 marijuana plants; or

(B) A person unlawfully manufactures a cannabinoid product or a cannabinoid concentrate and the total amount of cannabinoid products or the total amount of cannabinoid concentrates exceeds twice the applicable maximum amount specified in section 3 (1)(d), (e) or (f) of this 2017 Act.

(c) A Class B felony, if a person unlawfully manufactures a cannabinoid extract.

**SECTION 7.** (1) Except as provided in subsection (3) of this section, a felony under section 3 or 4 of this 2017 Act shall be classified as crime category 1 of the sentencing guidelines grid of the Oregon Criminal Justice Commission.

(2) Except as provided in subsection (3) of this section, a felony under section 5 or 6 of this 2017 Act shall be classified as crime category 4 of the sentencing guidelines grid of the Oregon Criminal Justice Commission.

(3) Subject to subsection (4) of this section, a felony under section 3, 4, 5 or 6 of this 2017 Act shall be classified as crime category 8 of the sentencing guidelines grid of the Oregon Criminal Justice Commission if the violation is a commercial marijuana offense. A violation is a commercial marijuana offense for purposes of this subsection if the violation was committed in conjunction with at least three of the following factors:

- (a) The offender delivered a marijuana item for consideration;
- (b) The offender was in possession of \$300 or more in cash;
- (c) The offender was unlawfully in possession of a firearm or other weapon as described in ORS 166.270 (2), the offender used, attempted to use or threatened to use a deadly weapon or dangerous weapon, as those terms are defined in ORS 161.015, or the offender was in possession of a firearm or other deadly weapon or dangerous weapon for the purpose of using the deadly weapon or dangerous weapon;
- (d) The offender was in possession of materials being used for the packaging of marijuana items, such as scales, wrapping or foil, other than a material used to contain the marijuana item that is the subject of the violation;
- (e) The offender was in possession of marijuana item transaction records or customer lists;
- (f) The offender was in possession of stolen property;
- (g) The offender was in possession of manufacturing paraphernalia specifically designed for producing marijuana, such as recipes, precursor chemicals, laboratory equipment, lighting equipment, ventilating equipment or power generation equipment;
- (h) The offender modified structures by painting, wiring, plumbing or lighting the structures to facilitate the offense;
- (i) The offender used public lands to manufacture the marijuana item; or
- (j) The offender constructed fortifications or took security measures that had the potential to injure persons.

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

(Arson)

**SECTION 8.** Sections 9 and 9a of this 2017 Act are added to and made a part of ORS 475B.010 to 475B.395.

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

- (a) "Property" has the meaning given that term in ORS 164.005.
- (b) "Property of another" and "protected property" have the meanings given those terms in ORS 164.305.

(2) A person commits the crime of arson incident to manufacture of a cannabinoid extract in the first degree if, by knowingly engaging in the manufacture of a cannabinoid extract, the person causes a fire or causes an explosion that damages:

- (a) The protected property of another person;
- (b) Any property, whether the property of the person or the property of another person, if the fire or explosion recklessly places another person in danger of physical injury or the protected property of another person in danger of damage; or
- (c) Any property, whether the property of the person or the property of another person, if the fire or explosion recklessly causes serious physical injury to a firefighter or peace officer acting in the line of duty relating to the fire or explosion.

(3) Arson incident to manufacture of a cannabinoid extract in the first degree is a Class A felony.

(4) This section does not apply to a licensee that is authorized under the laws of this state to engage in the manufacture of cannabinoid extracts.

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

(a) "Property" has the meaning given that term in ORS 164.005.

(b) "Property of another" and "protected property" have the meanings given those terms in ORS 164.305.

(2) A person commits the crime of arson incident to manufacture of a cannabinoid extract in the second degree if, by knowingly engaging in the manufacture of a cannabinoid extract, the person causes a fire or causes an explosion that damages:

(a) Any building of another person that is not protected property; or

(b) The property of another, if the damages to the property exceed \$750.

(2) Arson incident to manufacture of a cannabinoid extract in the second degree is a Class C felony.

(3) This section does not apply to a licensee that is authorized under the laws of this state to engage in the manufacture of cannabinoid extracts.

(Person Felonies)

**SECTION 10.** Sections 11 and 12 of this 2017 Act are added to and made a part of ORS 475B.010 to 475B.395.

**SECTION 11.** (1) As used in this section:

(a) "Crime of violence" has the meaning given that term in ORS 475.908.

(b)(A) "Ingest" means to consume or otherwise deliver a cannabinoid into the body of a person.

(B) "Ingest" does not include the inhalation of smoke, aerosols or vapors created by smoking, aerosolizing or vaporizing a marijuana item.

(2)(a) A person commits the offense of causing another person to ingest marijuana if the person knowingly or intentionally causes the other person to ingest a marijuana item without the consent of the other person.

(b) Causing another person to ingest marijuana is a Class B felony.

(c) A violation of this subsection shall be classified as a person felony and crime category 8 of the sentencing guidelines grid of the Oregon Criminal Justice Commission.

(3)(a) Notwithstanding subsection (2) of this section, causing another person to ingest marijuana is a Class A felony if the person, with the intent of committing or facilitating a crime of violence against the other person, knowingly or intentionally causes the other person to ingest a marijuana item without the consent of the other person.

(b) A violation of this subsection shall be classified as a person felony and crime category 9 of the sentencing guidelines grid of the Oregon Criminal Justice Commission.

**SECTION 12.** (1) Except as authorized under ORS 475B.010 to 475B.395, 475B.400 to 475B.525, 475B.550 to 475B.590 and 475B.600 to 475B.655 and rules adopted under ORS 475B.010 to 475B.395, 475B.400 to 475B.525, 475B.550 to 475B.590 and 475B.600 to 475B.655, it is unlawful for a person to intentionally administer a marijuana item to the body of another person who is under 18 years of age by inhalation, ingestion or any other means.

(2) Intentionally administering a marijuana item to the body of a person who is under 18 years of age is a Class A felony.

(3) A violation of this section shall be classified as a person felony and crime category 9 of the sentencing guidelines grid of the Oregon Criminal Justice Commission.

(4) It is an affirmative defense to a charge of intentionally administering a marijuana item to the body of a person who is under 18 years of age if:

(a) The person administering the marijuana item was less than three years older than the other person at the time of the administration, and the other person consented to the administration; or

(b) The marijuana item was administered for a medical purpose with the consent of the person under 18 years of age, and the person under 18 years of age was a registry identification cardholder as defined in ORS 475B.410 at the time of the administration.

(Unlawful Sale or Delivery of Marijuana Paraphernalia)

**SECTION 13.** Section 14 of this 2017 Act is added to and made a part of ORS 475B.010 to 475B.395.

**SECTION 14.** (1) As used in this section, “marijuana paraphernalia” means an object that is marketed to be used for, or that is designed for, planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a marijuana item. “Marijuana paraphernalia” does not include hypodermic syringes or needles.

(2) It is unlawful for a person to sell or deliver, to possess with intent to sell or deliver or to manufacture with intent to sell or deliver marijuana paraphernalia to a person who is under 21 years of age, knowing that the marijuana paraphernalia will be used for the purpose for which it was marketed or designed.

(3) Violation of this section is a Class B violation.

(4) Subject to the provisions of ORS chapter 131A, and notwithstanding the violation classification specified in subsection (3) of this section, the Oregon Liquor Control Commission may purchase, possess, seize or dispose of marijuana paraphernalia as is necessary for the commission to ensure compliance with and enforce this section and any rule adopted under this section.

(5) In determining whether an object is marijuana paraphernalia under this section or drug paraphernalia under ORS 475.525, a trier of fact in an administrative or judicial proceeding must consider, in addition to any other relevant factor, the following:

- (a) Any oral or written instruction provided with the object related to the object’s use;
- (b) Any descriptive material packaged with the object that explains or depicts the object’s use;
- (c) Any national or local advertising related to the object’s use;
- (d) Any proffered expert testimony related to the object’s use;
- (e) The manner in which the object is displayed for sale, if applicable; and
- (f) Any other proffered evidence substantiating the object’s intended use.

(Importing and Exporting Marijuana Items)

**SECTION 15.** ORS 475B.185, as amended by section 39, chapter 24, Oregon Laws 2016, is amended to read:

475B.185. (1) For purposes of this section, “export” includes placing a marijuana item in any mode of transportation for hire, such as luggage, mail or parcel delivery, even if the transportation of the marijuana item is intercepted prior to the marijuana item leaving this state.

[(1)] (2) A person may not import marijuana items into this state or export marijuana items from this state.

[(2)] (3) Except as provided in subsection [(3)] (4) of this section, a violation of this section is a Class B violation.

[(3)] (4) A violation of this section is a:

[(a) Class C felony, if the importation or exportation:]

[(A) Is for consideration and the person holds a license under ORS 475B.070, 475B.090, 475B.100 or 475B.110; or]

*[(B) Concerns usable marijuana and the importation or exportation exceeds 16 ounces of usable marijuana.]*

*[(b)] (a) Class A misdemeanor, if the importation or exportation:*

*(A) Is not for consideration and the person holds a license issued under ORS 475B.070, 475B.090, 475B.100 or 475B.110; or*

*[(B) Concerns usable marijuana and the importation or exportation exceeds one ounce of usable marijuana.]*

**(B) Concerns an amount of marijuana items that exceeds the applicable maximum amount specified in section 3 (1)(a) to (f) of this 2017 Act.**

**(b) Class C felony, if the importation or exportation:**

**(A) Is for consideration and the person holds a license issued under ORS 475B.070, 475B.090, 475B.100 or 475B.110;**

**(B) Concerns an amount of marijuana items that exceeds 16 times the applicable maximum amount specified in section 3 (1)(a) to (f) of this 2017 Act; or**

**(C) Concerns a cannabinoid extract that was not purchased from a marijuana retailer that holds a license issued under ORS 475B.110.**

**(Defenses, Protections and Expungement)**

**SECTION 16.** Sections 17 to 20 of this 2017 Act are added to and made a part of ORS 475B.010 to 475B.395.

**SECTION 17.** A person who, in good faith, makes a report of a violation of ORS 475B.010 to 475B.395, and who has reasonable grounds for making the report, is immune from any civil or criminal liability that otherwise might be incurred or imposed with respect to making the report or to the content of the report. The person has the same immunity with respect to participating in a judicial proceeding resulting from the report.

**SECTION 18.** If a crime described in ORS 475B.010 to 475B.395 is a crime under federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

**SECTION 19.** (1) As used in this section, “cannabis-related overdose” means an acute condition, including mania, hysteria, extreme physical illness, coma or death, resulting from the consumption or use of cannabis, or another substance with which cannabis was combined, that a person would reasonably believe requires medical attention.

(2)(a) A person who contacts emergency medical services or a law enforcement agency to obtain medical assistance for another person because of a cannabis-related overdose is immune from arrest or prosecution for violating section 3, 4 or 14 of this 2017 Act if the evidence of the offense was obtained because the person contacted emergency medical services or a law enforcement agency.

(b) A person who is in need of medical assistance because of a cannabis-related overdose is immune from arrest or prosecution for violating section 3, 4 or 14 of this 2017 Act if the evidence of the offense was obtained because any person contacted emergency medical services or a law enforcement agency to obtain medical assistance for the person.

(3) A person may not be arrested for violating, or found to be in violation of, the conditions of the person’s pretrial release, probation, post-prison supervision or parole if the violation involves:

(a) The possession or use of a marijuana item or frequenting a place where marijuana items are used; and

(b)(A) The evidence of the violation was obtained because the person contacted emergency medical services or a law enforcement agency to obtain medical assistance for another person who needed medical assistance due to a cannabis-related overdose; or

(B) The evidence of the violation was obtained because the person was in need of medical assistance due to a cannabis-related overdose and any person contacted emergency medical services or a law enforcement agency to obtain medical assistance for the person.

(4)(a) A person may not be arrested on an outstanding warrant for violating section 3, 4 or 14 of this 2017 Act, or on an outstanding warrant for a violation, other than commission of a new crime, of the conditions of the person's probation, post-prison supervision or parole for conduct that would constitute a violation of section 3, 4 or 14 of this 2017 Act, if the person was located because:

(A) The person contacted emergency medical services or a law enforcement agency to obtain medical assistance for another person who needed medical assistance due to a cannabis-related overdose; or

(B) The person was in need of medical assistance due to a cannabis-related overdose and any person contacted emergency medical services or a law enforcement agency to obtain medical assistance for the person.

(b) This subsection does not apply to outstanding federal warrants or outstanding warrants issued from other states.

(5) The immunity from arrest and prosecution described in this section is not grounds for the suppression of evidence relating to a criminal offense other than the offenses described in sections 3, 4 and 14 of this 2017 Act.

**SECTION 20.** It is an affirmative defense to a charge of violating section 3, 5 or 6 of this 2017 Act that:

(1) The defendant had held a license issued under ORS 475B.010 to 475B.395, or was performing work for or on behalf of a person that had held a license issued under ORS 475B.010 to 475B.395;

(2) The violation concerned an activity for which the license exempts the person from section 3, 5 or 6 of this 2017 Act;

(3) The license had lapsed or had been suspended or revoked; and

(4) The defendant reasonably believed that the license had not lapsed or had not been suspended or revoked.

**SECTION 21.** When a person is convicted of an offense involving possession, delivery or manufacture of marijuana or a marijuana item as defined in ORS 475B.015, and when the conduct that is the basis of the conviction occurred before the effective date of this 2017 Act, the convicted person may file a motion for a court order setting aside the conviction pursuant to ORS 137.225, and the court, when determining whether the person is eligible for the order, shall consider the offense to be classified under ORS 161.535 or 161.555 as if the conduct occurred on or after the effective date of this 2017 Act or, if the offense is no longer a crime, shall consider the offense to be classified as a Class C misdemeanor.

## AMENDMENTS TO THE UNIFORM CONTROLLED SUBSTANCES ACT

**SECTION 22.** ORS 475.005 is amended to read:

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

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

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

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

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

(3) "Administration" means the Drug Enforcement Administration of the United States Department of Justice, or its successor agency.

(4) “Agent” means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. It does not include a common or contract carrier, public warehouseman or employee of the carrier or warehouseman.

(5) “Board” means the State Board of Pharmacy.

(6) “Controlled substance”:

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

(b) Does not [*mean industrial hemp, as defined in ORS 571.300, or industrial hemp commodities or products.*] **include:**

**(A) The plant Cannabis family Cannabaceae;**

**(B) Any part of the plant Cannabis family Cannabaceae, whether growing or not;**

**(C) Resin extracted from any part of the plant Cannabis family Cannabaceae;**

**(D) The seeds of the plant Cannabis family Cannabaceae; or**

**(E) Any compound, manufacture, salt, derivative, mixture or preparation of a plant, part of a plant, resin or seed described in this paragraph.**

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

(8) “Deliver” or “delivery” means the actual, constructive or attempted transfer, other than by administering or dispensing, from one person to another of a controlled substance, whether or not there is an agency relationship.

(9) “Device” means instruments, apparatus or contrivances, including their components, parts or accessories, intended:

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

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

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

(11) “Dispenser” means a practitioner who dispenses.

(12) “Distributor” means a person who delivers.

(13) “Drug” means:

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

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

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

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

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

(15) “Manufacture” means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of ex-

traction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance:

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

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

[(16) "Marijuana":]

*[(a) Except as provided in this subsection, means all parts of the plant Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin.]*

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

*[(c) Does not mean industrial hemp, as defined in ORS 571.300, or industrial hemp commodities or products.]*

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

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

[(19)] (18) "Prescription" means a written, oral or electronically transmitted direction, given by a practitioner for the preparation and use of a drug. When the context requires, "prescription" also means the drug prepared under such written, oral or electronically transmitted direction. Any label affixed to a drug prepared under written, oral or electronically transmitted direction shall prominently display a warning that the removal thereof is prohibited by law.

[(20)] (19) "Production" includes the manufacture, planting, cultivation, growing or harvesting of a controlled substance.

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

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

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

**SECTION 23.** ORS 475.245, as amended by section 58, chapter 24, Oregon Laws 2016, is amended to read:

475.245. (1) Whenever any person pleads guilty to or is found guilty of an offense listed in subsection (5) of this section, the court, without entering a judgment of guilt and with the consent of the district attorney and the person, may defer further proceedings and place the person on probation.

(2) Upon violation of a term or condition of probation, the court may enter an adjudication of guilt and proceed as otherwise provided.

(3) Upon fulfillment of the terms and conditions of probation, the court shall discharge the person and dismiss the proceedings against the person. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes

of disqualifications or disabilities imposed by law upon conviction of a crime. There may be only one discharge and dismissal under this section with respect to any person.

(4) In the event that the period of probation under this section expires, but the terms and conditions of probation have not been fulfilled and no probation violation proceeding was initiated prior to the expiration of the period of probation, the court may not discharge the person and dismiss the proceedings against the person. The court shall instead issue an order requiring the person to appear and to show cause why the court should not enter an adjudication of guilt as described in subsection (2) of this section due to the failure of the person to fulfill the terms and conditions of probation prior to expiration of the period of probation. At the hearing on the order to show cause, after considering any evidence or argument from the district attorney and the person, the court may:

(a) Order a new period of probation to allow the person to fulfill the terms and conditions of the previous period of probation; or

(b) Enter an adjudication of guilt as described in subsection (2) of this section.

(5) This section applies to the following offenses:

(a) Possession of a controlled substance under ORS 475.752 (3), 475.814, 475.824, 475.834, 475.854, [475.864,] 475.874, 475.884 or 475.894 [or section 47, chapter 24, Oregon Laws 2016];

(b) Unlawfully possessing a prescription drug under ORS 689.527 (6);

**(c) Unlawfully possessing marijuana plants, usable marijuana, cannabinoid products, cannabinoid concentrates or cannabinoid extracts as described in section 3 or 4 of this 2017 Act, if the offense is a misdemeanor or felony;**

[c] **(d)** Endangering the welfare of a minor under ORS 163.575 (1)(b);

[d] **(e)** Frequenting a place where controlled substances are used under ORS 167.222; and

[e] **(f)** A property offense that is motivated by a dependence on a controlled substance **or a marijuana item as defined in ORS 475B.015.**

**SECTION 24.** ORS 475.405 is amended to read:

475.405. As used in ORS 475.405 to 475.495:

(1) "Chemical" means:

(a) Any material defined as a controlled substance or precursor substance as defined by ORS 475.005 to 475.285 and 475.744 to 475.980.

(b) Any substance used in the manufacture of a controlled substance as defined by ORS 475.005 to 475.285 and 475.744 to 475.980.

**(c) Any substance used in the manufacture of a cannabinoid extract as defined in ORS 475B.015.**

[c] **(d)** Any material or substance designated by the Environmental Quality Commission under ORS 475.425.

(2) "Cleanup" includes any action the Department of Environmental Quality, or a person acting on behalf of the department, is required to take pursuant to a request under ORS 475.415.

(3) "Cleanup costs" means reasonable costs that are attributable to or associated with cleanup at an alleged illegal drug manufacturing site, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts and health studies.

(4) "Commission" means the Environmental Quality Commission.

(5) "Department" means the Department of Environmental Quality.

(6) "Director" means the Director of the Department of Environmental Quality.

(7) "Fund" means the Illegal Drug Cleanup Fund established under ORS 475.495.

(8) "Owner or operator" means any person who owns, leases, operates or controls an alleged illegal drug manufacturing site. "Owner or operator" does not include a person, who, without participating in the management of an alleged illegal drug manufacturing site, holds indicia of ownership primarily to protect a security interest in the site.

(9) "Site" means an illegal drug manufacturing site.

**SECTION 25.** ORS 475.525 is amended to read:

475.525. (1) It is unlawful for any person to sell or deliver, possess with intent to sell or deliver or manufacture with intent to sell or deliver drug paraphernalia, knowing that it will be used to

unlawfully plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance as defined by ORS 475.005.

(2) For the purposes of this section, “drug paraphernalia” means all equipment, products and materials of any kind *[which]* **that** are marketed for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of ORS 475.840 to 475.980. Drug paraphernalia includes, but is not limited to:

(a) Kits marketed for use or designed for use in unlawfully planting, propagating, cultivating, growing or harvesting of any species of plant *[which]* **that** is a controlled substance or from which a controlled substance can be derived;

(b) Kits marketed for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

(c) Isomerization devices marketed for use or designed for use in increasing the potency of any species of plant *[which]* **that** is a controlled substance;

(d) Testing equipment marketed for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

(e) Scales and balances marketed for use or designed for use in weighing or measuring controlled substances;

(f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, marketed for use or designed for use in cutting controlled substances;

*[(g) Separation gins and sifters marketed for use or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana;]*

**(g) Lighting equipment specifically designed for growing controlled substances;**

(h) Containers and other objects marketed for use or designed for use in storing or concealing controlled substances; and

(i) Objects marketed for use or designed specifically for use in ingesting, inhaling or otherwise introducing *[marijuana, cocaine, hashish or hashish oil]* **a controlled substance** into the human body, such as:

(A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, *permanent screens or hashish heads*];

(B) Water pipes;

(C) Carburetion tubes and devices;

(D) Smoking and carburetion masks;

(E) Roach clips, meaning objects used to hold burning material that has become too small or too short to be held in the hand, *such as a marijuana cigarette*];

(F) Miniature cocaine spoons and cocaine vials;

(G) Chamber pipes;

(H) Carburetor pipes;

(I) Electric pipes;

(J) Air-driven pipes;

(K) Chillums;

(L) Bongs; **and**

(M) Ice pipes or chillers; *and*].

*[(N) Lighting equipment specifically designed for the growing of controlled substances.]*

(3) **For purposes of this section**, “drug paraphernalia” does not include hypodermic syringes or needles.

*[(4) For the purposes of this section, “marijuana paraphernalia” means all equipment, products and materials of any kind which are marketed for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting,*

*inhaling or otherwise introducing into the human body marijuana in violation of ORS 475.840 to 475.980.]*

*[(5) In determining whether an object is drug paraphernalia or marijuana paraphernalia, a trier of fact should consider, in addition to all other relevant factors, the following:]*

*[(a) Instructions, oral or written, provided with the object concerning its use;]*

*[(b) Descriptive materials accompanying the object which explain or depict its use;]*

*[(c) National and local advertising concerning its use;]*

*[(d) The manner in which the object is displayed for sale;]*

*[(e) The existence and scope of legitimate uses for the object in the community; and]*

*[(f) Any expert testimony which may be introduced concerning its use.]*

[(6)] (4) The provisions of ORS 475.525 to 475.565 do not apply to persons registered under the provisions of ORS 475.125 or to persons specified as exempt from registration under the provisions of that statute.

[(7)] (5)(a) The provisions of ORS 475.525 to 475.565 do not apply to a person who sells or delivers marijuana paraphernalia **as defined in section 14 of this 2017 Act** to a person 21 years of age or older.

**(b) In determining whether an object is drug paraphernalia under this section or marijuana paraphernalia under section 14 of this 2017 Act, a trier of fact shall consider, in addition to any other relevant factor, the following:**

**(A) Any oral or written instruction provided with the object related to the object's use;**

**(B) Any descriptive material packaged with the object that explains or depicts the object's use;**

**(C) Any national or local advertising related to the object's use;**

**(D) Any proffered expert testimony related to the object's use;**

**(E) The manner in which the object is displayed for sale, if applicable; and**

**(F) Any other proffered evidence substantiating the object's intended use.**

**SECTION 26.** ORS 475.752, as amended by section 59, chapter 24, Oregon Laws 2016, is amended to read:

475.752. (1) *[Except for licensees and licensee representatives, as those terms are defined in ORS 475B.015, that are engaged in lawful activities, and except for a person acting within the scope of and in compliance with ORS 475B.245, and]* Except as authorized by ORS 475.005 to 475.285 and 475.752 to 475.980, it is unlawful for any person to manufacture or deliver a controlled substance. Any person who violates this subsection with respect to:

(a) A controlled substance in Schedule I, is guilty of a Class A felony, except as otherwise provided in ORS 475.886 and 475.890.

(b) A controlled substance in Schedule II, is guilty of a Class B felony, except as otherwise provided in ORS *[475.858, 475.860, 475.862,]* 475.878, 475.880, 475.882, 475.904 and 475.906.

(c) A controlled substance in Schedule III, is guilty of a Class C felony, except as otherwise provided in ORS 475.904 and 475.906.

(d) A controlled substance in Schedule IV, is guilty of a Class B misdemeanor.

(e) A controlled substance in Schedule V, is guilty of a Class C misdemeanor.

(2) Except as authorized in ORS 475.005 to 475.285 and 475.752 to 475.980, it is unlawful for any person to create or deliver a counterfeit substance. Any person who violates this subsection with respect to:

(a) A counterfeit substance in Schedule I, is guilty of a Class A felony.

(b) A counterfeit substance in Schedule II, is guilty of a Class B felony.

(c) A counterfeit substance in Schedule III, is guilty of a Class C felony.

(d) A counterfeit substance in Schedule IV, is guilty of a Class B misdemeanor.

(e) A counterfeit substance in Schedule V, is guilty of a Class C misdemeanor.

(3) It is unlawful for any person knowingly or intentionally to possess a controlled substance~~],~~ *other than marijuana,* unless the substance was obtained directly from, or pursuant to a valid prescription or order of, a practitioner while acting in the course of professional practice, or except

as otherwise authorized by ORS 475.005 to 475.285 and 475.752 to 475.980. Any person who violates this subsection with respect to:

(a) A controlled substance in Schedule I, is guilty of a Class B felony, except as otherwise provided in ORS 475.894.

(b) A controlled substance in Schedule II, is guilty of a Class C felony[, *except as otherwise provided in ORS 475.864 or section 47, chapter 24, Oregon Laws 2016*].

(c) A controlled substance in Schedule III, is guilty of a Class A misdemeanor.

(d) A controlled substance in Schedule IV, is guilty of a Class C misdemeanor.

(e) A controlled substance in Schedule V, is guilty of a violation.

(4) In any prosecution under this section for manufacture, possession or delivery of that plant of the genus *Lophophora* commonly known as peyote, it is an affirmative defense that the peyote is being used or is intended for use:

(a) In connection with the good faith practice of a religious belief;

(b) As directly associated with a religious practice; and

(c) In a manner that is not dangerous to the health of the user or others who are in the proximity of the user.

(5) The affirmative defense created in subsection (4) of this section is not available to any person who has possessed or delivered the peyote while incarcerated in a correctional facility in this state.

(6)(a) Notwithstanding subsection (1) of this section, a person who unlawfully manufactures or delivers a controlled substance in Schedule IV and who thereby causes death to another person is guilty of a Class C felony.

(b) For purposes of this subsection, causation is established when the controlled substance plays a substantial role in the death of the other person.

**SECTION 27.** ORS 475.898, as amended by section 60, chapter 24, Oregon Laws 2016, is amended to read:

475.898. (1) A person who contacts emergency medical services or a law enforcement agency to obtain medical assistance for another person who needs medical assistance due to a drug-related overdose is immune from arrest or prosecution for an offense listed in subsection (3) of this section if the evidence of the offense was obtained because the person contacted emergency medical services or a law enforcement agency.

(2) A person who is in need of medical assistance due to a drug-related overdose is immune from arrest or prosecution for an offense listed in subsection (3) of this section if the evidence of the offense was obtained because any person contacted emergency medical services or a law enforcement agency to obtain medical assistance for the person.

(3) The immunity conferred under subsections (1) and (2) of this section applies to arrest and prosecution for:

(a) Frequenting a place where controlled substances are used as described in ORS 167.222;

(b) Possession of a controlled substance as described in ORS 475.752;

(c) Unlawful possession of hydrocodone as described in ORS 475.814;

(d) Unlawful possession of methadone as described in ORS 475.824;

(e) Unlawful possession of oxycodone as described in ORS 475.834;

(f) Unlawful possession of heroin as described in ORS 475.854;

*[(g) Unlawful possession of marijuana as described in ORS 475.864 and section 47, chapter 24, Oregon Laws 2016;]*

*[(h)] (g)* Unlawful possession of 3,4-methylenedioxymethamphetamine as described in ORS 475.874;

*[(i)] (h)* Unlawful possession of cocaine as described in ORS 475.884;

*[(j)] (i)* Unlawful possession of methamphetamine as described in ORS 475.894;

*[(k)] (j)* Unlawfully possessing a prescription drug as described in ORS 689.527 (6); and

*[(L)] (k)* Unlawful possession of drug paraphernalia with intent to sell or deliver as described in ORS 475.525.

(4)(a) A person may not be arrested for violating, or found to be in violation of, the conditions of the person's pretrial release, probation, post-prison supervision or parole if the violation involves:

(A) The possession or use of a controlled substance or frequenting a place where controlled substances are used; and

(B) The evidence of the violation was obtained because the person contacted emergency medical services or a law enforcement agency to obtain medical assistance for another person who needed medical assistance due to a drug-related overdose.

(b) A person may not be arrested for violating, or found to be in violation of, the conditions of the person's pretrial release, probation, post-prison supervision or parole if the violation involves:

(A) The possession or use of a controlled substance or frequenting a place where controlled substances are used; and

(B) The evidence of the violation was obtained because the person was in need of medical assistance due to a drug-related overdose and any person contacted emergency medical services or a law enforcement agency to obtain medical assistance for the person.

(5)(a) A person may not be arrested on an outstanding warrant for any of the offenses listed in subsection (3) of this section, or on an outstanding warrant for a violation, other than commission of a new crime, of the conditions of the person's probation, post-prison supervision or parole for conduct that would constitute an offense listed in subsection (3) of this section, if the location of the person was obtained because the person contacted emergency medical services or a law enforcement agency to obtain medical assistance for another person who needed medical assistance due to a drug-related overdose.

(b) A person may not be arrested on an outstanding warrant for any of the offenses listed in subsection (3) of this section, or on an outstanding warrant for a violation, other than commission of a new crime, of the conditions of the person's probation, post-prison supervision or parole for conduct that would constitute an offense listed in subsection (3) of this section, if the location of the person was obtained because the person was in need of medical assistance due to a drug-related overdose and any person contacted emergency medical services or a law enforcement agency to obtain medical assistance for the person.

(c) This subsection does not apply to outstanding federal warrants or outstanding warrants issued from other states.

(6) The immunity from arrest and prosecution described in this section is not grounds for the suppression of evidence relating to a criminal offense other than the offenses listed in subsection (3) of this section.

(7) As used in this section:

(a) "Controlled substance" has the meaning given that term in ORS 475.005.

(b) "Drug-related overdose" means an acute condition, including mania, hysteria, extreme physical illness, coma or death, resulting from the consumption or use of a controlled substance, or another substance with which a controlled substance was combined, that a person would reasonably believe to be a condition that requires medical attention.

**SECTION 28.** ORS 475.900 is amended to read:

475.900. (1) A violation of ORS 475.752, 475.806 to 475.894, 475.904 or 475.906 shall be classified as crime category 8 of the sentencing guidelines grid of the Oregon Criminal Justice Commission if:

(a) The violation constitutes delivery or manufacture of a controlled substance and involves substantial quantities of a controlled substance. For purposes of this paragraph, the following amounts constitute substantial quantities of the following controlled substances:

(A) Five grams or more of a mixture or substance containing a detectable amount of heroin;

(B) Ten grams or more of a mixture or substance containing a detectable amount of cocaine;

(C) Ten grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers or salts of its isomers;

(D) Two hundred or more user units of a mixture or substance containing a detectable amount of lysergic acid diethylamide;

(E) Sixty grams or more of a mixture or substance containing a detectable amount of psilocybin or psilocin; or

(F) Five grams or more or 25 or more pills, tablets or capsules of a mixture or substance containing a detectable amount of:

(i) 3,4-methylenedioxyamphetamine;

(ii) 3,4-methylenedioxymethamphetamine; or

(iii) 3,4-methylenedioxy-N-ethylamphetamine.

(b) The violation constitutes possession, delivery or manufacture of a controlled substance and the possession, delivery or manufacture is a commercial drug offense. A possession, delivery or manufacture is a commercial drug offense for purposes of this subsection if it is accompanied by at least three of the following factors:

(A) The delivery was of heroin, cocaine, methamphetamine, lysergic acid diethylamide, psilocybin or psilocin and was for consideration;

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

(C) The offender was unlawfully in possession of a firearm or other weapon as described in ORS 166.270 (2), or the offender used, attempted to use or threatened to use a deadly or dangerous weapon as defined in ORS 161.015, or the offender was in possession of a firearm or other deadly or dangerous weapon as defined in ORS 161.015 for the purpose of using it in connection with a controlled substance offense;

(D) The offender was in possession of materials being used for the packaging of controlled substances such as scales, wrapping or foil, other than the material being used to contain the substance that is the subject of the offense;

(E) The offender was in possession of drug transaction records or customer lists;

(F) The offender was in possession of stolen property;

(G) Modification of structures by painting, wiring, plumbing or lighting to facilitate a controlled substance offense;

(H) The offender was in possession of manufacturing paraphernalia, including recipes, precursor chemicals, laboratory equipment, lighting, ventilating or power generating equipment;

(I) The offender was using public lands for the manufacture of controlled substances;

(J) The offender had constructed fortifications or had taken security measures with the potential of injuring persons; or

(K) The offender was in possession of controlled substances in an amount greater than:

(i) Three grams or more of a mixture or substance containing a detectable amount of heroin;

(ii) Eight grams or more of a mixture or substance containing a detectable amount of cocaine;

(iii) Eight grams or more of a mixture or substance containing a detectable amount of methamphetamine;

(iv) Twenty or more user units of a mixture or substance containing a detectable amount of lysergic acid diethylamide;

(v) Ten grams or more of a mixture or substance containing a detectable amount of psilocybin or psilocin; or

(vi) Four grams or more or 20 or more pills, tablets or capsules of a mixture or substance containing a detectable amount of:

(I) 3,4-methylenedioxyamphetamine;

(II) 3,4-methylenedioxymethamphetamine; or

(III) 3,4-methylenedioxy-N-ethylamphetamine.

(c) The violation constitutes a violation of ORS 475.848, 475.852, [475.862,] 475.868, 475.872, 475.878, 475.882, 475.888, 475.892 or 475.904.

(d) The violation constitutes manufacturing methamphetamine and the manufacturing consists of:

(A) A chemical reaction involving one or more precursor substances for the purpose of manufacturing methamphetamine; or

(B) Grinding, soaking or otherwise breaking down a precursor substance for the purpose of manufacturing methamphetamine.

(e) The violation constitutes a violation of ORS 475.906 (1) or (2) that is not described in ORS 475.907.

(2) A violation of ORS 475.752 or 475.806 to 475.894 shall be classified as crime category 6 of the sentencing guidelines grid of the Oregon Criminal Justice Commission if:

(a) The violation constitutes delivery of heroin, cocaine, methamphetamine or 3,4-methylenedioxyamphetamine, 3,4-methylenedioxymethamphetamine or 3,4-methylenedioxy-N-ethylamphetamine and is for consideration.

(b) The violation constitutes possession of:

(A) Five grams or more of a mixture or substance containing a detectable amount of heroin;

(B) Ten grams or more of a mixture or substance containing a detectable amount of cocaine;

(C) Ten grams or more of a mixture or substance containing a detectable amount of methamphetamine;

(D) Two hundred or more user units of a mixture or substance containing a detectable amount of lysergic acid diethylamide;

(E) Sixty grams or more of a mixture or substance containing a detectable amount of psilocybin or psilocin; or

(F) Five grams or more or 25 or more pills, tablets or capsules of a mixture or substance containing a detectable amount of:

(i) 3,4-methylenedioxyamphetamine;

(ii) 3,4-methylenedioxymethamphetamine; or

(iii) 3,4-methylenedioxy-N-ethylamphetamine.

(3) Any felony violation of ORS 475.752 or 475.806 to 475.894 not contained in subsection (1) or (2) of this section shall be classified as:

(a) Crime category 4 of the sentencing guidelines grid of the Oregon Criminal Justice Commission if the violation involves delivery or manufacture of a controlled substance; or

(b) Crime category 1 of the sentencing guidelines grid of the Oregon Criminal Justice Commission if the violation involves possession of a controlled substance.

(4) In order to prove a commercial drug offense, the state shall plead in the accusatory instrument sufficient factors of a commercial drug offense under subsections (1) and (2) of this section. The state has the burden of proving each factor beyond a reasonable doubt.

(5) As used in this section, "mixture or substance" means any mixture or substance, whether or not the mixture or substance is in an ingestible or marketable form at the time of the offense.

**SECTION 29.** ORS 475.908 is amended to read:

475.908. (1) A person commits the crime of causing another person to ingest a controlled substance if the person knowingly or intentionally causes the other person to ingest, other than by administering or dispensing, a controlled substance or a controlled substance analog without consent of the other person. A person who violates this subsection is guilty of a Class B felony.

(2) Notwithstanding subsection (1) of this section, causing another person to ingest a controlled substance is a Class A felony if the person, with the intent of committing or facilitating a crime of violence against the other person, knowingly or intentionally causes the other person to ingest a controlled substance or a controlled substance analog without consent of the other person.

(3) For the purposes of this section:

(a)(A) Except as provided in subparagraph (B) of this paragraph, "controlled substance analog" means a substance that:

(i) Has a chemical structure that is substantially similar to the chemical structure of a controlled substance in Schedule I or II.

(ii) Has a stimulant, depressant or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.

(B) "Controlled substance analog" does not include:

- (i) A controlled substance;
- (ii) Any substance that has an approved drug application;
- (iii) Any substance exempted under 21 U.S.C. 355 if the ingestion is within the scope of investigation authorized under 21 U.S.C. 355; or
- (iv) Distilled spirits, wine or malt beverages.
- (b) "Crime of violence" means:
  - (A) Rape in the first degree, as defined in ORS 163.375;
  - (B) Sodomy in the first degree, as defined in ORS 163.405;
  - (C) Unlawful sexual penetration in the first degree, as defined in ORS 163.411;
  - (D) Sexual abuse in the first degree, as defined in ORS 163.427;
  - (E) Kidnapping in the first degree, as defined in ORS 163.235;
  - (F) Kidnapping in the second degree, as defined in ORS 163.225;
  - (G) Assault in the first degree, as defined in ORS 163.185; or
  - (H) Assault in the second degree, as defined in ORS 163.175.
- (c) "Ingest" means to consume or otherwise deliver a controlled substance into the body of a person[, *except that "ingest" does not include inhalation of marijuana smoke*].

**SECTION 30.** ORS 475.910 is amended to read:

475.910. [(1)] Except as authorized by ORS 475.005 to 475.285 or 475.752 to 475.980, it is unlawful for any person to intentionally apply a controlled substance to the body of another person by injection, inhalation, ingestion or any other means if the other person is under 18 years of age. A person who violates this section with respect to:

[(a)] (1) A controlled substance in Schedule I or II, is guilty of a Class A felony classified as crime category 9 of the sentencing guidelines grid of the Oregon Criminal Justice Commission.

[(b)] (2) A controlled substance in Schedule III, is guilty of a Class B felony classified as crime category 8 of the sentencing guidelines grid of the Oregon Criminal Justice Commission.

[(c)] (3) A controlled substance in Schedule IV, is guilty of a Class C felony.

[(d)] (4) A controlled substance in Schedule V, is guilty of a Class A misdemeanor.

[(2)] *It is a defense to a charge of violating subsection (1) of this section by applying marijuana that the person applying the marijuana was less than three years older than the victim at the time of the alleged offense.*

**SECTION 31.** ORS 475.934 is amended to read:

475.934. (1) When a court sentences a person convicted of a crime listed in subsection (2) of this section, the court may not impose a sentence of optional probation or grant a downward dispositional departure or a downward durational departure under the rules of the Oregon Criminal Justice Commission if the person has a previous conviction for any of the crimes listed in subsection (2) of this section.

(2) The crimes to which subsection (1) of this section applies are:

(a) Manufacture or delivery of a controlled substance[, *other than marijuana,*] under ORS 475.752 (1);

(b) Creation or delivery of a counterfeit substance[, *other than marijuana,*] under ORS 475.752 (2);

(c) Manufacture or delivery of heroin under ORS 475.846, 475.848, 475.850 or 475.852;

(d) Manufacture or delivery of 3,4-methylenedioxymethamphetamine under ORS 475.866, 475.868, 475.870 or 475.872;

(e) Manufacture or delivery of cocaine under ORS 475.876, 475.878, 475.880 or 475.882;

(f) Manufacture or delivery of methamphetamine under ORS 475.886, 475.888, 475.890 or 475.892;

(g) Manufacture or delivery of a controlled substance within 1,000 feet of a school under ORS 475.904;

(h) Delivery of a controlled substance to a person under 18 years of age under ORS 475.906; and

(i) Possession of a precursor substance with intent to manufacture a controlled substance under ORS 475.967.

(3)(a) For a crime committed on or after November 1, 1989, a conviction is considered to have occurred upon the pronouncement in open court of sentence. However, when sentences are imposed for two or more convictions arising out of the same conduct or criminal episode, none of the convictions is considered to have occurred prior to any of the other convictions arising out of the same conduct or criminal episode.

(b) For a crime committed prior to November 1, 1989, a conviction is considered to have occurred upon the pronouncement in open court of a sentence or upon the pronouncement in open court of the suspended imposition of a sentence.

(4) For purposes of this section, previous convictions must be proven pursuant to ORS 137.079.

(5) As used in this section, "previous conviction" includes convictions entered in any other state or federal court for comparable offenses.

## STATUTES REFERENCING CONTROLLED SUBSTANCES

**SECTION 32.** ORS 90.243 is amended to read:

90.243. (1) A dwelling unit qualifies as drug and alcohol free housing if:

(a)(A) For premises consisting of more than eight dwelling units, the dwelling unit is one of at least eight contiguous dwelling units on the premises that are designated by the landlord as drug and alcohol free housing dwelling units and that are each occupied or held for occupancy by at least one tenant who is a recovering alcoholic or drug addict and is participating in a program of recovery; or

(B) For premises consisting of eight or fewer dwelling units, the dwelling unit is one of at least four contiguous dwelling units on the premises that are designated by the landlord as drug and alcohol free housing dwelling units and that are each occupied or held for occupancy by at least one tenant who is a recovering alcoholic or drug addict and is participating in a program of recovery;

(b) The landlord is a nonprofit corporation incorporated pursuant to ORS chapter 65 or a housing authority created pursuant to ORS 456.055 to 456.235;

(c) The landlord provides for the designated drug and alcohol free housing dwelling units:

(A) A drug and alcohol free environment, covering all tenants, employees, staff, agents of the landlord and guests;

(B) Monitoring of the tenants for compliance with the requirements described in paragraph (d) of this subsection;

(C) Individual and group support for recovery; and

(D) Access to a specified program of recovery; and

(d) The rental agreement for the designated drug and alcohol free housing dwelling unit is in writing and includes the following provisions:

(A) That the dwelling unit is designated by the landlord as a drug and alcohol free housing dwelling unit;

(B) That the tenant may not use, possess or share alcohol, **marijuana items as defined in ORS 475B.015**, illegal drugs, controlled substances or prescription drugs without a medical prescription, either on or off the premises;

(C) That the tenant may not allow the tenant's guests to use, possess or share alcohol, **marijuana items as defined in ORS 475B.015**, illegal drugs, controlled substances or prescription drugs without a medical prescription, on the premises;

(D) That the tenant shall participate in a program of recovery, which specific program is described in the rental agreement;

(E) That on at least a quarterly basis the tenant shall provide written verification from the tenant's program of recovery that the tenant is participating in the program of recovery and that the tenant has not used:

(i) Alcohol [or];

(ii) **Marijuana items as defined in ORS 475B.015**; or

(iii) Illegal drugs;

(F) That the landlord has the right to require the tenant to take a test for drug or alcohol usage promptly and at the landlord's discretion and expense; and

(G) That the landlord has the right to terminate the tenant's tenancy in the drug and alcohol free housing under ORS 90.392, 90.398 or 90.630 for noncompliance with the requirements described in this paragraph.

(2) A dwelling unit qualifies as drug and alcohol free housing despite the premises not having the minimum number of qualified dwelling units required by subsection (1)(a) of this section if:

(a) The premises are occupied but have not previously qualified as drug and alcohol free housing;

(b) The landlord designates certain dwelling units on the premises as drug and alcohol free dwelling units;

(c) The number of designated drug and alcohol free housing dwelling units meets the requirement of subsection (1)(a) of this section;

(d) When each designated dwelling unit becomes vacant, the landlord rents that dwelling unit to, or holds that dwelling unit for occupancy by, at least one tenant who is a recovering alcoholic or drug addict and is participating in a program of recovery and the landlord meets the other requirements of subsection (1) of this section; and

(e) The dwelling unit is one of the designated drug and alcohol free housing dwelling units.

(3) The failure by a tenant to take a test for drug or alcohol usage as requested by the landlord pursuant to subsection (1)(d)(F) of this section may be considered evidence of drug or alcohol use.

(4) As used in this section, "program of recovery" means a verifiable program of counseling and rehabilitation treatment services, including a written plan, to assist recovering alcoholics or drug addicts to recover from their addiction to alcohol, **cannabis** or illegal drugs while living in drug and alcohol free housing. A "program of recovery" includes Alcoholics Anonymous, Narcotics Anonymous and similar programs.

**SECTION 33.** ORS 90.396, as amended by section 54, chapter 24, Oregon Laws 2016, is amended to read:

90.396. (1) Except as provided in subsection (2) of this section, after at least 24 hours' written notice specifying the acts and omissions constituting the cause and specifying the date and time of the termination, the landlord may terminate the rental agreement and take possession as provided in ORS 105.105 to 105.168, if:

(a) The tenant, someone in the tenant's control or the tenant's pet seriously threatens to inflict substantial personal injury, or inflicts any substantial personal injury, upon a person on the premises other than the tenant;

(b) The tenant or someone in the tenant's control recklessly endangers a person on the premises other than the tenant by creating a serious risk of substantial personal injury;

(c) The tenant, someone in the tenant's control or the tenant's pet inflicts any substantial personal injury upon a neighbor living in the immediate vicinity of the premises;

(d) The tenant or someone in the tenant's control intentionally inflicts any substantial damage to the premises or the tenant's pet inflicts substantial damage to the premises on more than one occasion;

(e)(A) The tenant intentionally provided substantial false information on the application for the tenancy within the past year;

(B) The false information was with regard to a criminal conviction of the tenant that would have been material to the landlord's acceptance of the application; and

(C) The landlord terminates the rental agreement within 30 days after discovering the falsity of the information; or

(f) The tenant, someone in the tenant's control or the tenant's pet commits any act that is outrageous in the extreme, on the premises or in the immediate vicinity of the premises. For purposes of this paragraph, an act is outrageous in the extreme if the act is not described in paragraphs (a) to (e) of this subsection, but is similar in degree and is one that a reasonable person in that community would consider to be so offensive as to warrant termination of the tenancy within 24 hours,

considering the seriousness of the act or the risk to others. An act that is outrageous in the extreme is more extreme or serious than an act that warrants a 30-day termination under ORS 90.392. Acts that are “outrageous in the extreme” include, but are not limited to, the following acts by a person:

(A) Prostitution, commercial sexual solicitation or promoting prostitution, as described in ORS 167.007, 167.008 and 167.012;

(B) **Unlawful** manufacture, delivery or possession of a controlled substance, as [described] **defined** in ORS 475.005[, *but not including*:];

[*(i) The medical use of marijuana in compliance with ORS 475B.400 to 475B.525; or*]

[*(ii) Possession of prescription drugs;*]

(C) **Manufacture of a cannabinoid extract, as defined in ORS 475B.015, unless the person manufacturing the cannabinoid extract holds a license issued under ORS 475B.090 or is registered under ORS 475B.435;**

[*(C)*] (D) Intimidation, as described in ORS 166.155 and 166.165; or

[*(D)*] (E) Burglary as described in ORS 164.215 and 164.225.

(2) If the cause for a termination notice given pursuant to subsection (1) of this section is based upon the acts of the tenant’s pet, the tenant may cure the cause and avoid termination of the tenancy by removing the pet from the premises prior to the end of the notice period. The notice must describe the right of the tenant to cure the cause. If the tenant returns the pet to the premises at any time after having cured the violation, the landlord, after at least 24 hours’ written notice specifying the subsequent presence of the offending pet, may terminate the rental agreement and take possession as provided in ORS 105.105 to 105.168. The tenant does not have a right to cure this subsequent violation.

(3) For purposes of subsection (1) of this section, someone is in the tenant’s control if that person enters or remains on the premises with the tenant’s permission or consent after the tenant reasonably knows or should know of that person’s act or likelihood to commit any act of the type described in subsection (1) of this section.

(4) An act can be proven to be outrageous in the extreme even if the act is one that does not violate a criminal statute. Notwithstanding the references to criminal statutes in subsection (1)(f) of this section, the landlord’s burden of proof in an action for possession under subsection (1) of this section is the civil standard of proof by a preponderance of the evidence.

(5) If a good faith effort by a landlord to terminate the tenancy under subsection (1)(f) of this section and to recover possession of the rental unit under ORS 105.105 to 105.168 fails by decision of the court, the landlord may not be found in violation of any state statute or local ordinance requiring the landlord to remove that tenant upon threat of fine, abatement or forfeiture as long as the landlord continues to make a good faith effort to terminate the tenancy.

**SECTION 34.** ORS 90.398 is amended to read:

90.398. (1) If a tenant living for less than two years in drug and alcohol free housing uses, possesses or shares alcohol, **marijuana items as defined in ORS 475B.015**, illegal drugs, controlled substances or prescription drugs without a medical prescription, the landlord may deliver a written notice to the tenant terminating the tenancy for cause and take possession as provided in ORS 105.105 to 105.168. The notice must specify the acts constituting the drug or alcohol violation and state that the rental agreement will terminate in not less than 48 hours after delivery of the notice, at a specified date and time. The notice must also state that the tenant can cure the drug or alcohol violation by a change in conduct or otherwise within 24 hours after delivery of the notice.

(2) If the tenant cures the violation within the 24-hour period, the rental agreement does not terminate. If the tenant does not cure the violation within the 24-hour period, the rental agreement terminates as provided in the notice.

(3) If substantially the same act that constituted a prior drug or alcohol violation of which notice was given reoccurs within six months, the landlord may terminate the rental agreement upon at least 24 hours’ written notice specifying the violation and the date and time of termination of the rental agreement. The tenant does not have a right to cure this subsequent violation.

**SECTION 35.** ORS 90.440 is amended to read:

90.440. (1) As used in this section:

(a) "Group recovery home" means a place that provides occupants with shared living facilities and that meets the description of a group home under 42 U.S.C. 300x-25.

(b) "Illegal drugs" includes controlled substances or prescription drugs:

(A) For which the tenant does not have a valid prescription; or

(B) That are used by the tenant in a manner contrary to the prescribed regimen.

(c) "**Marijuana item**" has the meaning given that term in ORS 475B.015.

[(c)] (d) "Peace officer" means:

(A) A sheriff, constable, marshal or deputy;

(B) A member of a state or city police force;

(C) A police officer commissioned by a university under ORS 352.121 or 353.125; or

(D) An authorized tribal police officer as defined in ORS 181A.680.

(2)(a) Notwithstanding ORS 90.375 and 90.435, a group recovery home may terminate a tenancy and peaceably remove a tenant without complying with ORS 105.105 to 105.168 if the tenant has used or possessed alcohol, a **marijuana item** or illegal drugs within the preceding seven days.

(b) For purposes of this subsection, the following are sufficient proof that a tenant has used or possessed alcohol, a **marijuana item** or illegal drugs:

[(a)] (A) The tenant fails a test for alcohol, **cannabis** or illegal drug use;

[(b)] (B) The tenant refuses a request made in good faith by the group recovery home that the tenant take a test for alcohol, **cannabis** or illegal drug use; or

[(c)] (C) Any person has personally observed the tenant using or possessing alcohol, a **marijuana item** or illegal drugs.

(3) A group recovery home that undertakes the removal of a tenant under this section shall personally deliver to the tenant a written notice that:

(a) Describes why the tenant is being removed;

(b) Describes the proof that the tenant has used or possessed alcohol, a **marijuana item** or illegal drugs within the seven days preceding delivery of the notice;

(c) Specifies the date and time by which the tenant must move out of the group recovery home;

(d) Explains that if the removal was wrongful or in bad faith the tenant may seek injunctive relief to recover possession under ORS 105.121 and may bring an action to recover monetary damages; and

(e) Gives contact information for the local legal services office and for the Oregon State Bar's Lawyer Referral Service, identifying those services as possible sources for free or reduced-cost legal services.

(4) A written notice in substantially the following form meets the requirements of subsection (3) of this section:

---

This notice is to inform you that you must move out of \_\_\_\_\_ (insert address of group recovery home) by \_\_\_\_\_ (insert date and time that is not less than 24 hours after delivery of notice).

The reason for this notice is \_\_\_\_\_ (specify use or possession of alcohol, **marijuana** or illegal drugs, as applicable, and dates of occurrence).

The proof of your use or possession is \_\_\_\_\_ (specify facts).

If you did not use or possess alcohol, **marijuana** or illegal drugs within the seven days before delivery of this notice, if this notice was given in bad faith or if your group recovery home has not substantially complied with ORS 90.440, you may be able to get a court to order the group recovery home to let you move back in. You may also be able to recover monetary damages.

You may be eligible for free legal services at your local legal services office \_\_\_\_\_ (insert telephone number) or reduced fee legal services through the Oregon State Bar at 1-800-452-7636.

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(5) Within the notice period, a group recovery home shall allow a tenant removed under this section to follow any emergency departure plan that was prepared by the tenant and approved by the group recovery home at the time the tenancy began. If the removed tenant does not have an emergency departure plan, a representative of the group recovery home shall offer to take the removed tenant to a public shelter, detoxification center or similar location if existing in the community.

(6) The date and time for moving out specified in a notice under subsection (3) of this section must be at least 24 hours after the date and time the notice is delivered to the tenant. If the tenant remains on the group recovery home premises after the date and time for moving out specified in the notice, the tenant is a person remaining unlawfully in a dwelling as described in ORS 164.255 and not a person described in ORS 105.115. Only a peace officer may forcibly remove a tenant who remains on the group recovery home premises after the date and time specified for moving out.

(7) A group recovery home that removes a tenant under this section shall send a copy of the notice described in subsection (3) of this section to the Oregon Health Authority no later than 72 hours after delivering the notice to the tenant.

(8) A tenant who is removed under subsection (2) of this section may obtain injunctive relief to recover possession and may recover an amount equal to the greater of actual damages or three times the tenant's monthly rent if:

(a) The group recovery home removed the tenant in bad faith or without substantially complying with this section; or

(b) If removal is under subsection [(2)(c)] **(2)(b)(C)** of this section, the removal was wrongful because the tenant did not use or possess alcohol, **a marijuana item** or illegal drugs.

(9) Notwithstanding ORS 12.125, a tenant who seeks to obtain injunctive relief to recover possession under ORS 105.121 must commence the action to seek relief not more than 90 days after the date specified in the notice for the tenant to move out.

(10) In any court action regarding the removal of a tenant under this section, a group recovery home may present evidence that the tenant used or possessed alcohol, **a marijuana item** or illegal drugs within seven days preceding the removal, whether or not the evidence was described in the notice required by subsection (3) of this section.

(11) This section does not prevent a group recovery home from terminating a tenancy as provided by any other provision of this chapter and evicting a tenant as provided in ORS 105.105 to 105.168.

**SECTION 36.** ORS 105.121 is amended to read:

105.121. (1) A former tenant removed from a group recovery home under ORS 90.440 may bring an action for injunctive relief to recover possession if the removal was wrongful or in bad faith.

(2) An action under this section shall be governed by the provisions of ORS 105.105 to 105.168 except that:

(a) The complaint shall be in substantially the following form and shall be available from the court clerk:

---

IN THE \_\_\_\_\_ COURT FOR  
THE COUNTY OF \_\_\_\_\_

(Tenant), )  
Plaintiff(s), )  
)  
vs. ) No. \_\_\_\_\_  
)  
(Landlord), )  
)  
Defendant(s). )



(Landlord), )  
)  
Defendant(s). )

ANSWER

We deny that the plaintiff is entitled to possession of the group recovery home dwelling unit that is the subject of the complaint because:

\_\_\_\_\_ The defendant removed the plaintiff in compliance with the procedural requirements of ORS 90.440.

\_\_\_\_\_ The plaintiff used or possessed alcohol, **marijuana** or illegal drugs as described in ORS 90.440 within seven days preceding delivery of a written notice of removal.

\_\_\_\_\_ The defendant did not remove the plaintiff in bad faith as alleged.

We ask that the plaintiff take nothing by the complaint and that we be awarded our costs and disbursements.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of defendant

(d) The issue at trial shall be limited to whether the plaintiff is entitled to possession of the dwelling unit described in the complaint.

(e) If the basis for the complaint is that removal was wrongful because the plaintiff did not use or possess alcohol, **marijuana** or illegal drugs, the defendant has the burden of proving that the plaintiff used or possessed alcohol, **marijuana** or illegal drugs as described in ORS 90.440 within seven days preceding delivery of the written notice of removal.

(f) A claim for damages may not be asserted by either party in the action for possession of the dwelling unit under this section, but each party may pursue any claim for damages in a separate action.

(g) A party may join an action for possession of the dwelling unit with an action for damages or a claim for other relief, but the proceeding is not governed by the provisions of ORS 105.105 to 105.168.

(h) If the court determines that the plaintiff is entitled to possession of the dwelling unit that is the subject of the complaint, the court shall enter an order directing the defendant to return possession of the dwelling unit to the plaintiff. The court may provide that the defendant have a period of time to deliver possession of the dwelling unit to the plaintiff.

(i) Subject to the provisions of ORCP 68, a prevailing party who has been represented by counsel may recover attorney fees as provided by ORS 90.255.

**SECTION 37.** ORS 105.555 is amended to read:

105.555. (1) The following are declared to be nuisances and shall be enjoined and abated as provided in ORS 105.550 to 105.600:

(a) Any place that, as a regular course of business, is used for the purpose of prostitution and any place where acts of prostitution or commercial sexual solicitation occur[;].

(b) Any place that is used and maintained for profit and for the purpose of gambling or a lottery, as defined in ORS 167.117, by any person, partnership or corporation organized for profit and wherein take place any of the acts or wherein are kept, stored or located any of the games, devices or things that are forbidden by or made punishable by ORS 167.108 to 167.164[;].

(c) Any place that has been determined to be not fit for use under ORS 453.876 and that has not been decontaminated and certified as fit for use under ORS 453.885 within 180 days after the determination under ORS 453.876[; and].

(d) Any place where activity involving the unauthorized delivery, manufacture or possession of a controlled substance, as defined in ORS 475.005, occurs or any place wherein are kept, stored or located any of the devices, equipment, things or substances used for unauthorized delivery, manu-

facture or possession of a controlled substance. As used in this paragraph, “devices, equipment, things” does not include hypodermic syringes or needles. *[This paragraph does not apply to acts that constitute violations under ORS 475.860 or 475.864.]*

**(e) Any place where activity involving a misdemeanor or felony offense described in section 3, 4, 5 or 6 of this 2017 Act occurs or any place wherein are kept, stored or located any of the devices, equipment, things or substances used for a misdemeanor or felony offense described in section 3, 4, 5 or 6 of this 2017 Act. As used in this paragraph, “devices, equipment, things or substances” does not include hypodermic syringes or needles.**

(2) Nothing in ORS 105.550 to 105.600, 166.715 and 167.158 applies to property to the extent that the devices, equipment, things or substances that are used for delivery, manufacture or possession of a controlled substance, **or for commission of an offense described in section 3, 4, 5 or 6 of this 2017 Act**, are kept, stored or located in or on the property for the purpose of lawful sale or use of *[these items]* **the devices, equipment, things or substances.**

**SECTION 38.** ORS 131.602, as amended by section 6, chapter 47, Oregon Laws 2016, is amended to read:

131.602. The crimes to which ORS 131.550 (12)(b) applies are:

- (1) Bribe giving, as defined in ORS 162.015.
- (2) Bribe receiving, as defined in ORS 162.025.
- (3) Public investment fraud, as defined in ORS 162.117.
- (4) Bribing a witness, as defined in ORS 162.265.
- (5) Bribe receiving by a witness, as defined in ORS 162.275.
- (6) Simulating legal process, as defined in ORS 162.355.
- (7) Official misconduct in the first degree, as defined in ORS 162.415.
- (8) Assisting another person to commit suicide, as defined in ORS 163.193.
- (9) Custodial interference in the second degree, as defined in ORS 163.245.
- (10) Custodial interference in the first degree, as defined in ORS 163.257.
- (11) Buying or selling a person under 18 years of age, as defined in ORS 163.537.
- (12) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670.
- (13) Encouraging child sexual abuse in the first degree, as defined in ORS 163.684.
- (14) Encouraging child sexual abuse in the second degree, as defined in ORS 163.686.
- (15) Encouraging child sexual abuse in the third degree, as defined in ORS 163.687.
- (16) Possession of materials depicting sexually explicit conduct of a child in the first degree, as defined in ORS 163.688.
- (17) Possession of materials depicting sexually explicit conduct of a child in the second degree, as defined in ORS 163.689.
- (18) Theft in the second degree, as defined in ORS 164.045.
- (19) Theft in the first degree, as defined in ORS 164.055.
- (20) Aggravated theft in the first degree, as defined in ORS 164.057.
- (21) Extortion, as defined in ORS 164.075.
- (22) Theft by deception, as defined in ORS 164.085, if it is a felony or a Class A misdemeanor.
- (23) Theft by receiving, as defined in ORS 164.095, if it is a felony or a Class A misdemeanor.
- (24) Theft of services, as defined in ORS 164.125, if it is a felony or a Class A misdemeanor.
- (25) Unauthorized use of a vehicle, as defined in ORS 164.135.
- (26) Mail theft or receipt of stolen mail, as defined in ORS 164.162.
- (27) Laundering a monetary instrument, as defined in ORS 164.170.
- (28) Engaging in a financial transaction in property derived from unlawful activity, as defined in ORS 164.172.
- (29) Burglary in the second degree, as defined in ORS 164.215.
- (30) Burglary in the first degree, as defined in ORS 164.225.
- (31) Possession of a burglary tool or theft device, as defined in ORS 164.235.
- (32) Unlawful entry into a motor vehicle, as defined in ORS 164.272.
- (33) Arson in the second degree, as defined in ORS 164.315.

- (34) Arson in the first degree, as defined in ORS 164.325.
- (35) Computer crime, as defined in ORS 164.377.
- (36) Robbery in the third degree, as defined in ORS 164.395.
- (37) Robbery in the second degree, as defined in ORS 164.405.
- (38) Robbery in the first degree, as defined in ORS 164.415.
- (39) Unlawful labeling of a sound recording, as defined in ORS 164.868.
- (40) Unlawful recording of a live performance, as defined in ORS 164.869.
- (41) Unlawful labeling of a videotape recording, as defined in ORS 164.872.
- (42) A violation of ORS 164.886.
- (43)(a) Endangering aircraft in the first degree, as defined in ORS 164.885.
- (b) Endangering aircraft in the second degree, as defined in ORS 164.885.
- (44) Interference with agricultural operations, as defined in ORS 164.887.
- (45) Forgery in the second degree, as defined in ORS 165.007.
- (46) Forgery in the first degree, as defined in ORS 165.013.
- (47) Criminal possession of a forged instrument in the second degree, as defined in ORS 165.017.
- (48) Criminal possession of a forged instrument in the first degree, as defined in ORS 165.022.
- (49) Criminal possession of a forgery device, as defined in ORS 165.032.
- (50) Criminal simulation, as defined in ORS 165.037.
- (51) Fraudulently obtaining a signature, as defined in ORS 165.042.
- (52) Fraudulent use of a credit card, as defined in ORS 165.055.
- (53) Negotiating a bad check, as defined in ORS 165.065.
- (54) Possessing a fraudulent communications device, as defined in ORS 165.070.
- (55) Unlawful factoring of a payment card transaction, as defined in ORS 165.074.
- (56) Falsifying business records, as defined in ORS 165.080.
- (57) Sports bribery, as defined in ORS 165.085.
- (58) Sports bribe receiving, as defined in ORS 165.090.
- (59) Misapplication of entrusted property, as defined in ORS 165.095.
- (60) Issuing a false financial statement, as defined in ORS 165.100.
- (61) Obtaining execution of documents by deception, as defined in ORS 165.102.
- (62) A violation of ORS 165.543.
- (63) Cellular counterfeiting in the third degree, as defined in ORS 165.577.
- (64) Cellular counterfeiting in the second degree, as defined in ORS 165.579.
- (65) Cellular counterfeiting in the first degree, as defined in ORS 165.581.
- (66) Identity theft, as defined in ORS 165.800.
- (67) A violation of ORS 166.190.
- (68) Unlawful use of a weapon, as defined in ORS 166.220.
- (69) A violation of ORS 166.240.
- (70) Unlawful possession of a firearm, as defined in ORS 166.250.
- (71) A violation of ORS 166.270.
- (72) Unlawful possession of a machine gun, short-barreled rifle, short-barreled shotgun or firearms silencer, as defined in ORS 166.272.
- (73) A violation of ORS 166.275.
- (74) Unlawful possession of armor piercing ammunition, as defined in ORS 166.350.
- (75) A violation of ORS 166.370.
- (76) Unlawful possession of a destructive device, as defined in ORS 166.382.
- (77) Unlawful manufacture of a destructive device, as defined in ORS 166.384.
- (78) Possession of a hoax destructive device, as defined in ORS 166.385.
- (79) A violation of ORS 166.410.
- (80) Providing false information in connection with a transfer of a firearm, as defined in ORS 166.416.
- (81) Improperly transferring a firearm, as defined in ORS 166.418.
- (82) Unlawfully purchasing a firearm, as defined in ORS 166.425.

- (83) A violation of ORS 166.429.
- (84) A violation of ORS 166.470.
- (85) A violation of ORS 166.480.
- (86) A violation of ORS 166.635.
- (87) A violation of ORS 166.638.
- (88) Unlawful paramilitary activity, as defined in ORS 166.660.
- (89) A violation of ORS 166.720.
- (90) Prostitution, as defined in ORS 167.007.
- (91) Commercial sexual solicitation, as defined in ORS 167.008.
- (92) Promoting prostitution, as defined in ORS 167.012.
- (93) Compelling prostitution, as defined in ORS 167.017.
- (94) Exhibiting an obscene performance to a minor, as defined in ORS 167.075.
- (95) Unlawful gambling in the second degree, as defined in ORS 167.122.
- (96) Unlawful gambling in the first degree, as defined in ORS 167.127.
- (97) Possession of gambling records in the second degree, as defined in ORS 167.132.
- (98) Possession of gambling records in the first degree, as defined in ORS 167.137.
- (99) Possession of a gambling device, as defined in ORS 167.147.
- (100) Possession of a gray machine, as defined in ORS 167.164.
- (101) Cheating, as defined in ORS 167.167.
- (102) Tampering with drug records, as defined in ORS 167.212.
- (103) A violation of ORS 167.262.
- (104) Research and animal interference, as defined in ORS 167.312.
- (105) Animal abuse in the first degree, as defined in ORS 167.320.
- (106) Aggravated animal abuse in the first degree, as defined in ORS 167.322.
- (107) Animal neglect in the first degree, as defined in ORS 167.330.
- (108) Interfering with an assistance, a search and rescue or a therapy animal, as defined in ORS 167.352.
- (109) Involvement in animal fighting, as defined in ORS 167.355.
- (110) Dogfighting, as defined in ORS 167.365.
- (111) Participation in dogfighting, as defined in ORS 167.370.
- (112) Unauthorized use of a livestock animal, as defined in ORS 167.385.
- (113) Interference with livestock production, as defined in ORS 167.388.
- (114) A violation of ORS 167.390.
- (115) Participation in cockfighting, as defined in ORS 167.431.
- (116) A violation of ORS 471.410.
- (117) Failure to report missing precursor substances, as defined in ORS 475.955.
- (118) Illegally selling drug equipment, as defined in ORS 475.960.
- (119) Providing false information on a precursor substances report, as defined in ORS 475.965.
- (120) Unlawful delivery of an imitation controlled substance, as defined in ORS 475.912.
- (121) A violation of ORS 475.752, if it is a felony or a Class A misdemeanor.
- (122) A violation of ORS 475.914, if it is a felony or a Class A misdemeanor.
- (123) A violation of ORS 475.916.
- (124) A violation of ORS 475.906, if it is a felony or a Class A misdemeanor.
- (125) A violation of ORS 475.904.
- (126) A violation of section 3 of this 2017 Act, if it is a felony or a Class A misdemeanor.**
- (127) A violation of section 4 of this 2017 Act, if it is a felony or a Class A misdemeanor.**
- (128) A violation of section 5 of this 2017 Act, if it is a felony or a Class A misdemeanor.**
- (129) A violation of section 6 of this 2017 Act, if it is a felony or a Class A misdemeanor.**
- (130) A violation of ORS 475B.185.**
- [(126)] **(131)** Misuse of an identification card, as defined in ORS 807.430.
- [(127)] **(132)** Unlawful production of identification cards, licenses, permits, forms or camera cards, as defined in ORS 807.500.

[(128)] (133) Transfer of documents for the purposes of misrepresentation, as defined in ORS 807.510.

[(129)] (134) Using an invalid license, as defined in ORS 807.580.

[(130)] (135) Permitting misuse of a license, as defined in ORS 807.590.

[(131)] (136) Using another's license, as defined in ORS 807.600.

[(132)] (137) Criminal driving while suspended or revoked, as defined in ORS 811.182.

[(133)] (138) Aggravated driving while suspended or revoked, as defined in ORS 163.196.

[(134)] (139) Driving while under the influence of intoxicants, as defined in ORS 813.010, when it is a felony.

[(135)] (140) Unlawful distribution of cigarettes, as defined in ORS 323.482.

[(136)] (141) Unlawful distribution of tobacco products, as defined in ORS 323.632.

[(137)] (142) A violation of ORS 180.440 (2) or 180.486 (2).

[(138)] (143) A violation described in ORS 475.806 to 475.894, if it is a felony.

[(139)] (144) Subjecting another person to involuntary servitude in the first degree, as defined in ORS 163.264.

[(140)] (145) Subjecting another person to involuntary servitude in the second degree, as defined in ORS 163.263.

[(141)] (146) Trafficking in persons, as defined in ORS 163.266.

[(142)] (147) Luring a minor, as defined in ORS 167.057.

[(143)] (148) Online sexual corruption of a child in the second degree, as defined in ORS 163.432.

[(144)] (149) Online sexual corruption of a child in the first degree, as defined in ORS 163.433.

[(145)] (150) An attempt, conspiracy or solicitation to commit a crime in subsections (1) to [(144)] (149) of this section if the attempt, conspiracy or solicitation is a felony or a Class A misdemeanor.

**SECTION 39.** ORS 131A.005 is amended to read:

131A.005. As used in this chapter:

(1) "All persons known to have an interest" means:

(a) Any person who filed a notice of interest for seized property with any public office, in the manner required or permitted by law, before the property was seized for forfeiture;

(b) Any person from whose custody property is seized for forfeiture; and

(c) Any person who has an interest in property seized for forfeiture, including all owners and occupants of the property, whose identity and address is known or is ascertainable upon diligent inquiry and whose rights and interest in the property may be affected by the action.

(2) "Attorney fees" has the meaning given that term in ORCP 68 A.

(3) "Financial institution" means any person lawfully conducting business as:

(a) A financial institution or trust company, as those terms are defined in ORS 706.008;

(b) A consumer finance company subject to the provisions of ORS chapter 725;

(c) A mortgage banker or a mortgage broker as those terms are defined in ORS 86A.100, a mortgage servicing company or other mortgage company;

(d) An officer, agency, department or instrumentality of the federal government, including but not limited to:

(A) The Secretary of Housing and Urban Development;

(B) The Federal Housing Administration;

(C) The United States Department of Veterans Affairs;

(D) Rural Development and the Farm Service Agency of the United States Department of Agriculture;

(E) The Federal National Mortgage Association;

(F) The Government National Mortgage Administration;

(G) The Federal Home Loan Mortgage Corporation;

(H) The Federal Agricultural Mortgage Corporation; and

(I) The Small Business Administration;

(e) An agency, department or instrumentality of the state, including but not limited to:

- (A) The Housing and Community Services Department;
  - (B) The Department of Veterans' Affairs; and
  - (C) The Public Employees Retirement System;
  - (f) An agency, department or instrumentality of any local government, as defined by ORS 174.116, or special government body, as defined by ORS 174.117, including but not limited to such agencies as the Portland Development Commission;
  - (g) An insurer as defined in ORS 731.106;
  - (h) A private mortgage insurance company;
  - (i) A pension plan or fund or other retirement plan; and
  - (j) A broker-dealer or investment adviser as defined in ORS 59.015.
- (4) "Forfeiting agency" means a public body that is seeking forfeiture of property under this chapter.
- (5) "Forfeiture counsel" means an attorney designated by a forfeiting agency to represent the forfeiting agency in forfeiture proceedings.
- (6) "Forfeiture proceeds" means all property that has been forfeited in a proceeding under this chapter, including money, earnings from forfeited property and amounts realized from the sale of forfeited property.
- (7) "Instrumentality" has the meaning given in ORS 131.550.
- (8) "Law enforcement agency" means any agency that employs police officers or prosecutes criminal cases.
- (9) "Motor vehicle with a hidden compartment" means a motor vehicle as defined in ORS 801.360 that has had the vehicle's original design modified by a person other than the manufacturer to create a container, space or enclosure for the purpose of concealing, hiding or otherwise preventing discovery of its contents and that is used or intended to be used to facilitate the commission of a criminal offense.
- (10) "Police officer" has the meaning given that term in ORS 133.525.
- (11) "Proceeds of prohibited conduct" means property derived directly or indirectly from prohibited conduct, or maintained by or realized through prohibited conduct. "Proceeds of prohibited conduct" includes any benefit, interest or property of any kind, without reduction for expenses of acquiring or maintaining the property.
- (12) "Prohibited conduct" means:
- (a) Violation of, solicitation to violate, attempt to violate or conspiracy to violate a provision of ORS 475.005 to 475.285 and 475.744 to 475.980 when the conduct constitutes the commission of a crime as described in ORS 161.515;
  - (b) Violation of, solicitation to violate, attempt to violate or conspiracy to violate section 3, 4, 5 or 6 of this 2017 Act when the conduct constitutes the commission of a crime as described in ORS 161.515;**
  - (c) Violation of, solicitation to violate, attempt to violate or conspiracy to violate ORS 475B.185;**
- [(b)] **(d)** Violation of, solicitation to violate, attempt to violate or conspiracy to violate a provision of ORS 163.263, 163.264, 163.266 or 167.017; and
- [(c)] **(e)** Other conduct that constitutes the commission of a crime as described in ORS 161.515, that provides for civil forfeiture of proceeds or instrumentalities of the conduct and that is made subject to the provisions of this chapter under ORS 131A.010 (4) or other law.
- (13) "Property" means any interest in anything of value, including the whole of any lot or tract of land and tangible and intangible personal property, including currency, instruments or securities or any other kind of privilege, interest, claim or right whether due or to become due.
- (14) "Public body" has the meaning given in ORS 174.109.
- (15) "Seizing agency" means a law enforcement agency that has seized property for forfeiture.
- (16) "Weapon" means any instrument of offensive or defensive combat or anything used, or designed to be used, in destroying, defeating or injuring a person.

**SECTION 40.** ORS 137.540 is amended to read:

137.540. (1) The court may sentence the defendant to probation subject to the following general conditions unless specifically deleted by the court. The probationer shall:

(a) Pay supervision fees, fines, restitution or other fees ordered by the court.

(b) Not use or possess controlled substances except pursuant to a medical prescription.

(c) Submit to testing for controlled substance, **cannabis** or alcohol use if the probationer has a history of substance abuse or if there is a reasonable suspicion that the probationer has illegally used controlled substances.

(d) Participate in a substance abuse evaluation as directed by the supervising officer and follow the recommendations of the evaluator if there are reasonable grounds to believe there is a history of substance abuse.

(e) Remain in the State of Oregon until written permission to leave is granted by the Department of Corrections or a county community corrections agency.

(f) If physically able, find and maintain gainful full-time employment, approved schooling, or a full-time combination of both. Any waiver of this requirement must be based on a finding by the court stating the reasons for the waiver.

(g) Change neither employment nor residence without prior permission from the Department of Corrections or a county community corrections agency.

(h) Permit the parole and probation officer to visit the probationer or the probationer's work site or residence and to conduct a walk-through of the common areas and of the rooms in the residence occupied by or under the control of the probationer.

(i) Consent to the search of person, vehicle or premises upon the request of a representative of the supervising officer if the supervising officer has reasonable grounds to believe that evidence of a violation will be found, and submit to fingerprinting or photographing, or both, when requested by the Department of Corrections or a county community corrections agency for supervision purposes.

(j) Obey all laws, municipal, county, state and federal.

(k) Promptly and truthfully answer all reasonable inquiries by the Department of Corrections or a county community corrections agency.

(L) Not possess weapons, firearms or dangerous animals.

(m) Report as required and abide by the direction of the supervising officer.

(n) If recommended by the supervising officer, successfully complete a sex offender treatment program approved by the supervising officer and submit to polygraph examinations at the direction of the supervising officer if the probationer:

(A) Is under supervision for a sex offense under ORS 163.305 to 163.467;

(B) Was previously convicted of a sex offense under ORS 163.305 to 163.467; or

(C) Was previously convicted in another jurisdiction of an offense that would constitute a sex offense under ORS 163.305 to 163.467 if committed in this state.

(o) Participate in a mental health evaluation as directed by the supervising officer and follow the recommendation of the evaluator.

(p) If required to report as a sex offender under ORS 163A.015, report with the Department of State Police, a city police department, a county sheriff's office or the supervising agency:

(A) When supervision begins;

(B) Within 10 days of a change in residence;

(C) Once each year within 10 days of the probationer's date of birth;

(D) Within 10 days of the first day the person works at, carries on a vocation at or attends an institution of higher education; and

(E) Within 10 days of a change in work, vocation or attendance status at an institution of higher education.

(q) Submit to a risk and needs assessment as directed by the supervising officer.

(2) In addition to the general conditions, the court may impose any special conditions of probation that are reasonably related to the crime of conviction or the needs of the probationer for the

protection of the public or reformation of the probationer, or both, including, but not limited to, that the probationer shall:

(a) For crimes committed prior to November 1, 1989, and misdemeanors committed on or after November 1, 1989, be confined to the county jail or be restricted to the probationer's own residence or to the premises thereof, or be subject to any combination of such confinement and restriction, such confinement or restriction or combination thereof to be for a period not to exceed one year or one-half of the maximum period of confinement that could be imposed for the offense for which the defendant is convicted, whichever is the lesser.

(b) For felonies committed on or after November 1, 1989:

(A) Be confined in the county jail, or be subject to other custodial sanctions under community supervision, or both, as provided by rules of the Oregon Criminal Justice Commission; and

(B) Comply with any special conditions of probation that are imposed by the supervising officer in accordance with subsection (8) of this section.

(c) For crimes committed on or after December 5, 1996, sell any assets of the probationer as specifically ordered by the court in order to pay restitution.

(3) When a person who is a sex offender is released on probation, the court shall impose as a special condition of probation that the person not reside in any dwelling in which another sex offender who is on probation, parole or post-prison supervision resides, without the approval of the person's supervising parole and probation officer, or in which more than one other sex offender who is on probation, parole or post-prison supervision resides, without the approval of the director of the probation agency that is supervising the person or of the county manager of the Department of Corrections, or a designee of the director or manager. As soon as practicable, the supervising parole and probation officer of a person subject to the requirements of this subsection shall review the person's living arrangement with the person's sex offender treatment provider to ensure that the arrangement supports the goals of offender rehabilitation and community safety. As used in this subsection:

(a) "Dwelling" has the meaning given that term in ORS 469B.100.

(b) "Dwelling" does not include a residential treatment facility or a halfway house.

(c) "Halfway house" means a publicly or privately operated profit or nonprofit residential facility that provides rehabilitative care and treatment for sex offenders.

(d) "Sex offender" has the meaning given that term in ORS 163A.005.

(4)(a) If the person is released on probation following conviction of a sex crime, as defined in ORS 163A.005, or an assault, as defined in ORS 163.175 or 163.185, and the victim was under 18 years of age, the court, if requested by the victim, shall include as a special condition of the person's probation that the person not reside within three miles of the victim unless:

(A) The victim resides in a county having a population of less than 130,000 and the person is required to reside in that county;

(B) The person demonstrates to the court by a preponderance of the evidence that no mental intimidation or pressure was brought to bear during the commission of the crime;

(C) The person demonstrates to the court by a preponderance of the evidence that imposition of the condition will deprive the person of a residence that would be materially significant in aiding in the rehabilitation of the person or in the success of the probation; or

(D) The person resides in a halfway house. As used in this subparagraph, "halfway house" means a publicly or privately operated profit or nonprofit residential facility that provides rehabilitative care and treatment for sex offenders.

(b) A victim may request imposition of the special condition of probation described in this subsection at the time of sentencing in person or through the prosecuting attorney.

(c) If the court imposes the special condition of probation described in this subsection and if at any time during the period of probation the victim moves to within three miles of the probationer's residence, the court may not require the probationer to change the probationer's residence in order to comply with the special condition of probation.

(5) When a person who is a sex offender, as defined in ORS 163A.005, is released on probation, the Department of Corrections or the county community corrections agency, whichever is appropriate, shall notify the city police department, if the person is going to reside within a city, and the county sheriff's office of the county in which the person is going to reside of the person's release and the conditions of the person's release.

(6) Failure to abide by all general and special conditions of probation may result in arrest, modification of conditions, revocation of probation or imposition of structured, intermediate sanctions in accordance with rules adopted under ORS 137.595.

(7) The court may order that probation be supervised by the court. If the court orders that probation be supervised by the court, the defendant shall pay a fee of \$100 to the court. Fees imposed under this subsection in the circuit court shall be deposited by the clerk of the court in the General Fund. Fees imposed in a justice court under this subsection shall be paid to the county treasurer. Fees imposed in a municipal court under this subsection shall be paid to the city treasurer.

(8)(a) The court may at any time modify the conditions of probation.

(b) When the court orders a defendant placed under the supervision of the Department of Corrections or a community corrections agency, the supervising officer may file with the court a proposed modification to the special conditions of probation. The supervising officer shall provide a copy of the proposed modification to the district attorney and the probationer. If the district attorney:

(A) Files an objection to the proposed modification less than five judicial days after the proposed modification was filed, the court shall schedule a hearing no later than 10 judicial days after the proposed modification was filed, unless the court finds good cause to schedule a hearing at a later time.

(B) Does not file an objection to the proposed modification less than five judicial days after the proposed modification was filed, the proposed modification becomes effective five judicial days after the proposed modification was filed.

(9) A court may not order revocation of probation as a result of the probationer's failure to pay restitution unless the court determines from the totality of the circumstances that the purposes of the probation are not being served.

(10) It is not a cause for revocation of probation that the probationer failed to apply for or accept employment at any workplace where there is a labor dispute in progress. As used in this subsection, "labor dispute" has the meaning for that term provided in ORS 662.010.

(11)(a) If the court determines that a defendant has violated the terms of probation, the court shall collect a \$25 fee from the defendant and may impose a fee for the costs of extraditing the defendant to this state for the probation violation proceeding if the defendant left the state in violation of the conditions of the defendant's probation. The fees imposed under this subsection become part of the judgment and may be collected in the same manner as a fine.

(b) Probation violation fees collected under this subsection in the circuit court shall be deposited by the clerk of the court in the General Fund. Extradition cost fees collected in the circuit court under this subsection shall be deposited by the clerk of the court in the Arrest and Return Account established by ORS 133.865. Fees collected in a justice court under this subsection shall be paid to the county treasurer. Fees collected in a municipal court under this subsection shall be paid to the city treasurer.

(12) As used in this section, "attends," "institution of higher education," "works" and "carries on a vocation" have the meanings given those terms in ORS 163A.005.

**SECTION 41.** ORS 146.113 is amended to read:

146.113. (1) A medical examiner or district attorney may, in any death requiring investigation, order samples of blood or urine taken for laboratory analysis.

(2) When a death requiring an investigation as a result of a motor vehicle accident occurs within five hours after the accident and the deceased is over 13 years of age, a blood sample shall be taken and forwarded to an approved laboratory for analysis. Such blood or urine samples shall

be analyzed for the presence and quantity of ethyl alcohol, and if considered necessary by the State Medical Examiner, the presence of **cannabis** or controlled substances.

(3) Laboratory reports of the analysis shall be made a part of the State Medical Examiner's and district medical examiner's files.

**SECTION 42.** ORS 163.197 is amended to read:

163.197. (1) A student organization or a member of a student organization commits the offense of hazing if, as a condition or precondition of attaining membership in the organization or of attaining any office or status in the organization, the organization or member intentionally hazes any member, potential member or person pledged to be a member of the organization.

(2)(a) A student organization that violates subsection (1) of this section commits a Class A violation.

(b) A member of a student organization who personally violates subsection (1) of this section commits a Class B violation.

(3) Consent of the person who is hazed is not a defense in a prosecution under this section.

(4) As used in this section:

(a) "Haze" means:

(A) To subject an individual to whipping, beating, striking, branding or electronic shocking, to place a harmful substance on an individual's body or to subject an individual to other similar forms of physical brutality;

(B) To subject an individual to sleep deprivation, exposure to the elements, confinement in a small space or other similar activity that subjects the individual to an unreasonable risk of harm or adversely affects the physical health or safety of the individual;

(C) To compel an individual to consume food, liquid, alcohol, **cannabis**, controlled substances or other substances that subject the individual to an unreasonable risk of harm or adversely affect the physical health or safety of the individual; or

(D) To induce, cause or require an individual to perform a duty or task that involves the commission of a crime or an act of hazing.

(b) "Member" includes volunteers, coaches and faculty advisers of a student organization.

(c) "Student organization" means a fraternity, sorority, athletic team or other organization that is organized or operating on a college, university or elementary or secondary school campus for the purpose of providing members an opportunity to participate in student activities of the college, university or elementary or secondary school.

**SECTION 43.** ORS 163.205 is amended to read:

163.205. (1) A person commits the crime of criminal mistreatment in the first degree if:

(a) The person, in violation of a legal duty to provide care for another person, or having assumed the permanent or temporary care, custody or responsibility for the supervision of another person, intentionally or knowingly withholds necessary and adequate food, physical care or medical attention from that other person; or

(b) The person, in violation of a legal duty to provide care for a dependent person or elderly person, or having assumed the permanent or temporary care, custody or responsibility for the supervision of a dependent person or elderly person, intentionally or knowingly:

(A) Causes physical injury or injuries to the dependent person or elderly person;

(B) Deserts the dependent person or elderly person in a place with the intent to abandon that person;

(C) Leaves the dependent person or elderly person unattended at a place for such a period of time as may be likely to endanger the health or welfare of that person;

(D) Hides the dependent person's or elderly person's money or property or takes the money or property for, or appropriates the money or property to, any use or purpose not in the due and lawful execution of the person's responsibility;

(E) Takes charge of a dependent or elderly person for the purpose of fraud; [or]

**(F) Leaves the dependent person or elderly person, or causes the dependent person or elderly person to enter or remain, in or upon premises:**

- (i) Where a cannabinoid extract as defined in ORS 475B.015 is being processed; and**
- (ii) That have not been licensed under ORS 475B.090; or**

[(F)] (G) Leaves the dependent person or elderly person, or causes the dependent person or elderly person to enter or remain, in or upon premises where a chemical reaction involving one or more precursor substances:

(i) Is occurring as part of unlawfully manufacturing a controlled substance or grinding, soaking or otherwise breaking down a precursor substance for the unlawful manufacture of a controlled substance; or

(ii) Has occurred as part of unlawfully manufacturing a controlled substance or grinding, soaking or otherwise breaking down a precursor substance for the unlawful manufacture of a controlled substance and the premises have not been certified as fit for use under ORS 453.885.

(2) As used in this section:

(a) “Controlled substance” has the meaning given that term in ORS 475.005.

(b) “Dependent person” means a person who because of either age or a physical or mental disability is dependent upon another to provide for the person’s physical needs.

(c) “Elderly person” means a person 65 years of age or older.

(d) “Legal duty” includes but is not limited to a duty created by familial relationship, court order, contractual agreement or statutory or case law.

(e) “Precursor substance” has the meaning given that term in ORS 475.940.

(3) Criminal mistreatment in the first degree is a Class C felony.

**SECTION 44.** ORS 163.547 is amended to read:

163.547. (1)(a) A person having custody or control of a child under 16 years of age commits the crime of child neglect in the first degree if the person knowingly leaves the child, or allows the child to stay:

(A) In a vehicle where controlled substances **or cannabinoid extracts as defined in ORS 475B.015** are being criminally delivered or manufactured;

**(B) In or upon premises, or in the immediate proximity of premises, where a cannabinoid extract as defined in ORS 475B.015 is being processed, if the premises have not been licensed under ORS 475B.090;**

[(B)] (C) In or upon premises and in the immediate proximity where controlled substances are criminally delivered or manufactured for consideration or profit or where a chemical reaction involving one or more precursor substances:

(i) Is occurring as part of unlawfully manufacturing a controlled substance or grinding, soaking or otherwise breaking down a precursor substance for the unlawful manufacture of a controlled substance; or

(ii) Has occurred as part of unlawfully manufacturing a controlled substance or grinding, soaking or otherwise breaking down a precursor substance for the unlawful manufacture of a controlled substance and the premises have not been certified as fit for use under ORS 453.885; or

[(C)] (D) In or upon premises that have been determined to be not fit for use under ORS 453.855 to 453.912.

(b) As used in this subsection, “vehicle” and “premises” do not include public places, as defined in ORS 161.015.

(2) Child neglect in the first degree is a Class B felony.

(3) Subsection (1) of this section does not apply if the controlled substance is marijuana and is delivered for no consideration.

(4) The Oregon Criminal Justice Commission shall classify child neglect in the first degree as crime category 6 of the sentencing guidelines grid of the commission if the controlled substance being delivered or manufactured is methamphetamine.

**SECTION 45.** ORS 163.575 is amended to read:

163.575. (1) A person commits the offense of endangering the welfare of a minor if the person knowingly:

(a) Induces, causes or permits an unmarried person under 18 years of age to witness an act of sexual conduct or sadomasochistic abuse as defined in ORS 167.060;

(b) Permits a person under 18 years of age to enter or remain in a place where unlawful activity involving controlled substances **or cannabis** is maintained or conducted;

(c) Induces, causes or permits a person under 18 years of age to participate in gambling as defined in ORS 167.117;

(d) Distributes, sells or allows to be sold tobacco in any form to a person under 18 years of age;

(e) Distributes, sells or allows to be sold an inhalant delivery system, as defined in ORS 431A.175, to a person under 18 years of age; or

(f) Sells to a person under 18 years of age any device in which tobacco, [*marijuana*,] **cannabis**, cocaine or any controlled substance, as defined in ORS 475.005, is burned and the principal design and use of which is directly or indirectly to deliver tobacco smoke, [*marijuana*] **cannabis** smoke, cocaine smoke or smoke from any controlled substance into the human body including but not limited to:

(A) Pipes, water pipes, hookahs, wooden pipes, carburetor pipes, electric pipes, air driven pipes, corncob pipes, meerschaum pipes and ceramic pipes, with or without screens, permanent screens, hashish heads or punctured metal bowls;

(B) Carburetion tubes and devices, including carburetion masks;

(C) Bongs;

(D) Chillums;

(E) Ice pipes or chillers;

(F) Cigarette rolling papers and rolling machines; and

(G) Cocaine free basing kits.

(2) Endangering the welfare of a minor by violation of subsection (1)(a), (b) or (c) of this section, by violation of subsection (1)(e) of this section if the inhalant delivery system contains or is a substance containing a cannabinoid or by violation of subsection (1)(f) of this section involving other than a device for smoking tobacco, is a Class A misdemeanor.

(3) Endangering the welfare of a minor by violation of subsection (1)(d) of this section is a Class A violation.

(4) Endangering the welfare of a minor by violation of subsection (1)(e) of this section if the inhalant delivery system does not contain or is not a substance containing a cannabinoid is a Class A violation.

(5) Endangering the welfare of a minor by violation of subsection (1)(f) of this section involving a device for smoking tobacco is a Class A violation.

**SECTION 46.** ORS 166.715 is amended to read:

166.715. As used in ORS 166.715 to 166.735, unless the context requires otherwise:

(1) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phonograph record, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

(2) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business trust or other profit or nonprofit legal entity, and includes any union, association or group of individuals associated in fact although not a legal entity, and both illicit and licit enterprises and governmental and nongovernmental entities.

(3) "Investigative agency" means the Department of Justice or any district attorney.

(4) "Pattern of racketeering activity" means engaging in at least two incidents of racketeering activity that have the same or similar intents, results, accomplices, victims or methods of commission or otherwise are interrelated by distinguishing characteristics, including a nexus to the same enterprise, and are not isolated incidents, provided at least one of such incidents occurred after November 1, 1981, and that the last of such incidents occurred within five years after a prior incident of racketeering activity. Notwithstanding ORS 131.505 to 131.525 or 419A.190 or any other provision of law providing that a previous prosecution is a bar to a subsequent prosecution, conduct

that constitutes an incident of racketeering activity may be used to establish a pattern of racketeering activity without regard to whether the conduct previously has been the subject of a criminal prosecution or conviction or a juvenile court adjudication, unless the prosecution resulted in an acquittal or the adjudication resulted in entry of an order finding the youth not to be within the jurisdiction of the juvenile court.

(5) "Person" means any individual or entity capable of holding a legal or beneficial interest in real or personal property.

(6) "Racketeering activity" includes conduct of a person committed both before and after the person attains the age of 18 years, and means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce or intimidate another person to commit:

(a) Any conduct that constitutes a crime, as defined in ORS 161.515, under any of the following provisions of the Oregon Revised Statutes:

- (A) ORS 59.005 to 59.451, 59.710 to 59.830, 59.991 and 59.995, relating to securities;
- (B) ORS 162.015, 162.025 and 162.065 to 162.085, relating to bribery and perjury;
- (C) ORS 162.235, 162.265 to 162.305, 162.325, 162.335, 162.355 and 162.365, relating to obstructing governmental administration;
- (D) ORS 162.405 to 162.425, relating to abuse of public office;
- (E) ORS 162.455, relating to interference with legislative operation;
- (F) ORS 163.095 to 163.115, 163.118, 163.125 and 163.145, relating to criminal homicide;
- (G) ORS 163.160 to 163.205, relating to assault and related offenses;
- (H) ORS 163.225 and 163.235, relating to kidnapping;
- (I) ORS 163.275, relating to coercion;
- (J) ORS 163.665 to 163.693, relating to sexual conduct of children;
- (K) ORS 164.015, 164.043, 164.045, 164.055, 164.057, 164.075 to 164.095, 164.098, 164.125, 164.135, 164.140, 164.215, 164.225 and 164.245 to 164.270, relating to theft, burglary, criminal trespass and related offenses;
- (L) ORS 164.315 to 164.335, relating to arson and related offenses;
- (M) ORS 164.345 to 164.365, relating to criminal mischief;
- (N) ORS 164.395 to 164.415, relating to robbery;
- (O) ORS 164.865, 164.875 and 164.868 to 164.872, relating to unlawful recording or labeling of a recording;
- (P) ORS 165.007 to 165.022, 165.032 to 165.042 and 165.055 to 165.070, relating to forgery and related offenses;
- (Q) ORS 165.080 to 165.109, relating to business and commercial offenses;
- (R) ORS 165.540 and 165.555, relating to communication crimes;
- (S) ORS 166.180, 166.190, 166.220, 166.250, 166.270, 166.275, 166.410, 166.450 and 166.470, relating to firearms and other weapons;
- (T) ORS 164.377 (2) to (4), as punishable under ORS 164.377 (5)(b), 167.007 to 167.017, 167.057, 167.062 to 167.080, 167.090, 167.122 to 167.137, 167.147, 167.164, 167.167, 167.212, 167.355, 167.365, 167.370, 167.428, 167.431 and 167.439, relating to prostitution, obscenity, sexual conduct, gambling, computer crimes involving the Oregon State Lottery, animal fighting, forcible recovery of a fighting bird and related offenses;
- (U) ORS 171.990, relating to legislative witnesses;
- (V) ORS 260.575 and 260.665, relating to election offenses;
- (W) ORS 314.075, relating to income tax;
- (X) ORS 180.440 (2) and 180.486 (2) and ORS chapter 323, relating to cigarette and tobacco products taxes and the directories developed under ORS 180.425 and 180.477;
- (Y) ORS 411.630, 411.675, 411.690 and 411.840, relating to public assistance payments or medical assistance benefits, and ORS 411.990 (2) and (3);
- (Z) ORS 462.140, 462.415 and 462.420 to 462.520, relating to racing;
- (AA) ORS 463.995, relating to boxing, mixed martial arts and entertainment wrestling, as defined in ORS 463.015;

(BB) ORS 471.305, 471.360, 471.392 to 471.400, 471.403, 471.404, 471.405, 471.425, 471.442, 471.445, 471.446, 471.485, 471.490 and 471.675, relating to alcoholic liquor, and any of the provisions of ORS chapter 471 relating to licenses issued under the Liquor Control Act;

**(CC) ORS 475B.010 to 475B.395, relating to marijuana items as defined in ORS 475B.015;**

[(CC)] (DD) ORS 475.005 to 475.285 and 475.752 to 475.980, relating to controlled substances;

[(DD)] (EE) ORS 480.070, 480.210, 480.215, 480.235 and 480.265, relating to explosives;

[(EE)] (FF) ORS 819.010, 819.040, 822.100, 822.135 and 822.150, relating to motor vehicles;

[(FF)] (GG) ORS 658.452 or 658.991 (2) to (4), relating to labor contractors;

[(GG)] (HH) ORS chapter 706, relating to banking law administration;

[(HH)] (II) ORS chapter 714, relating to branch banking;

[(II)] (JJ) ORS chapter 716, relating to mutual savings banks;

[(JJ)] (KK) ORS chapter 723, relating to credit unions;

[(KK)] (LL) ORS chapter 726, relating to pawnbrokers;

[(LL)] (MM) ORS 166.382 and 166.384, relating to destructive devices;

[(MM)] (NN) ORS 165.074;

[(NN)] (OO) ORS 86A.095 to 86A.198, relating to mortgage bankers and mortgage brokers;

[(OO)] (PP) ORS chapter 496, 497 or 498, relating to wildlife;

[(PP)] (QQ) ORS 163.355 to 163.427, relating to sexual offenses;

[(QQ)] (RR) ORS 166.015, relating to riot;

[(RR)] (SS) ORS 166.155 and 166.165, relating to intimidation;

[(SS)] (TT) ORS chapter 696, relating to real estate and escrow;

[(TT)] (UU) ORS chapter 704, relating to outfitters and guides;

[(UU)] (VV) ORS 165.692, relating to making a false claim for health care payment;

[(VV)] (WW) ORS 162.117, relating to public investment fraud;

[(WW)] (XX) ORS 164.170 or 164.172;

[(XX)] (YY) ORS 647.140, 647.145 or 647.150, relating to trademark counterfeiting;

[(YY)] (ZZ) ORS 164.886;

[(ZZ)] (AAA) ORS 167.312 and 167.388;

[(AAA)] (BBB) ORS 164.889;

[(BBB)] (CCC) ORS 165.800; or

[(CCC)] (DDD) ORS 163.263, 163.264 or 163.266.

(b) Any conduct defined as “racketeering activity” under 18 U.S.C. 1961 (1)(B), (C), (D) and (E).

(7) “Unlawful debt” means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in the state in whole or in part because the debt was incurred or contracted:

(a) In violation of any one of the following:

(A) ORS chapter 462, relating to racing;

(B) ORS 167.108 to 167.164, relating to gambling; or

(C) ORS 82.010 to 82.170, relating to interest and usury.

(b) In gambling activity in violation of federal law or in the business of lending money at a rate usurious under federal or state law.

(8) Notwithstanding contrary provisions in ORS 174.060, when this section references a statute in the Oregon Revised Statutes that is substantially different in the nature of its essential provisions from what the statute was when this section was enacted, the reference shall extend to and include amendments to the statute.

**SECTION 47.** ORS 167.222 is amended to read:

167.222. (1) A person commits the offense of frequenting a place where controlled substances are used if the person keeps, maintains, frequents, or remains at a place, while knowingly permitting persons to use controlled substances in such place or to keep or sell them in violation of ORS 475.005 to 475.285 and 475.752 to 475.980.

(2) Frequenting a place where controlled substances are used is a Class A misdemeanor.

[3] *Notwithstanding subsection (2) of this section, if the conviction is for knowingly maintaining, frequenting or remaining at a place where less than one avoirdupois ounce of the dried leaves, stems, and flowers of the plant Cannabis family Moraceae is found at the time of the offense under this section, frequenting a place where controlled substances are used is a Class D violation.*]

[4] (3) As used in this section, “frequents” means repeatedly or habitually visits, goes to or resorts to.

**SECTION 48.** ORS 167.262 is amended to read:

167.262. (1) It is unlawful for an adult to knowingly use as an aider or abettor or to knowingly solicit, force, compel, coerce or employ a minor, with or without compensation to the minor:

(a) To manufacture a controlled substance **or a marijuana item as defined in ORS 475B.015;**  
or

(b) To transport, carry, sell, give away, prepare for sale or otherwise distribute a controlled substance **or a marijuana item as defined in ORS 475B.015.**

(2)(a) Except as otherwise provided in paragraph (b) of this subsection, violation of this section is a Class A felony.

(b) Violation of this section is a Class A misdemeanor if the violation involves delivery for no consideration of less than *[five grams]* **one ounce of usable marijuana as defined in ORS 475B.015.**

**SECTION 49.** ORS 180.600 is amended to read:

180.600. As used in ORS 180.600 to 180.630:

(1) “Department” means the state Department of Justice.

(2) “Organized crime” means any combination or conspiracy of two or more persons to engage in criminal activity as a significant source of income or livelihood, or to violate, aid or abet the violation of criminal laws relating to prostitution, gambling, loan sharking, theft, abuse of controlled substances, illegal alcohol, **cannabis** or controlled substance distribution, counterfeiting, extortion or corruption of law enforcement officers or other public officers or employees.

**SECTION 50.** ORS 342.143 is amended to read:

342.143. (1) A teaching, personnel service or administrative license, or public charter school registration, may not be issued to any person until the person has attained the age of 18 years and has furnished satisfactory evidence of proper educational training.

(2) The Teacher Standards and Practices Commission may require an applicant for a teaching, personnel service or administrative license or for registration as a public charter school teacher or administrator to furnish evidence satisfactory to the commission of good moral character, mental and physical health, and such other evidence as the commission may deem necessary to establish the applicant’s fitness to serve as a teacher or administrator.

(3) Without limiting the powers of the Teacher Standards and Practices Commission under subsection (2) of this section:

(a) A teaching, personnel service or administrative license, or a public charter school registration, may not be issued to any person who:

(A) Has been convicted of a crime listed in ORS 163.095, 163.115, 163.185, 163.235, 163.355, 163.365, 163.375, 163.385, 163.395, 163.405, 163.408, 163.411, 163.415, 163.425, 163.427, 163.432, 163.433, 163.435, 163.445, 163.465, 163.515, 163.525, 163.547, 163.575, 163.670, 163.675 (1985 Replacement Part), 163.680 (1993 Edition), 163.684, 163.686, 163.687, 163.688, 163.689, 164.325, 164.415, 166.005, 166.087, 167.007, 167.008, 167.012, 167.017, 167.057, 167.062, 167.075, 167.080, 167.090, 475.808, 475.810, 475.812, 475.818, 475.820, 475.822, 475.828, 475.830, 475.832, 475.848, 475.852, *[475.858, 475.860, 475.862,]* 475.868, 475.872, 475.878, 475.880, 475.882, 475.888, 475.890, 475.892, 475.904 or 475.906.

(B) Has been convicted under ORS 161.405 of an attempt to commit any of the crimes listed in subparagraph (A) of this paragraph.

(C) Has been convicted in another jurisdiction of a crime that is substantially equivalent, as defined by rule, to any of the crimes listed in subparagraphs (A) and (B) of this paragraph.

(D) Has had a teaching, personnel service or administrative license, or a public charter school registration, revoked in another jurisdiction for a reason that is substantially equivalent, as defined

by rule, to a reason described in ORS 342.175 and the revocation is not subject to further appeal. A person whose right to apply for a license or registration is denied under this subparagraph may apply for reinstatement of the right as provided in ORS 342.175 (4).

(b) The Teacher Standards and Practices Commission may refuse to issue a license or registration to any person who has been convicted of:

(A) A crime involving the illegal use, sale or possession of controlled substances[.]; **or**

(B) **A crime described in ORS 475B.010 to 475B.395.**

(4) In denying the issuance of a license or registration under this section, the commission shall follow the procedure set forth in ORS 342.176 and 342.177.

**SECTION 51.** ORS 342.175 is amended to read:

342.175. (1) The Teacher Standards and Practices Commission may suspend or revoke the license or registration of a teacher or administrator, discipline a teacher or administrator, or suspend or revoke the right of any person to apply for a license or registration, if the licensee, registrant or applicant has held a license or registration at any time within five years prior to issuance of the notice of charges under ORS 342.176 based on the following:

(a) Conviction of a crime not listed in ORS 342.143 (3);

(b) Gross neglect of duty;

(c) Any gross unfitness;

(d) Conviction of a crime for violating any law of this state or any state or of the United States involving the illegal use, sale or possession of controlled substances;

(e) **Conviction of a crime described in ORS 475B.010 to 475B.395;**

[e] (f) Any false statement knowingly made in an application for issuance, renewal or reinstatement of a license or registration; or

[f] (g) Failure to comply with any condition of reinstatement under subsection (4) of this section or any condition of probation under ORS 342.177 (3)(b).

(2) If a person is enrolled in an approved educator preparation program under ORS 342.147, the commission may issue a public reprimand or may suspend or revoke the right to apply for a license or registration based on the following:

(a) Conviction of a crime listed in ORS 342.143 (3) or a crime described by the commission by rule;

(b) Conviction of a crime for violating any law of this state or any state or of the United States involving the illegal use, sale or possession of controlled substances; or

(c) Any conduct that may cause the commission to issue a public reprimand for a teacher or to suspend or revoke the license or registration of a teacher.

(3) The commission shall revoke any license or registration and shall revoke the right of any person to apply for a license or registration if the person has been convicted of any crime listed in ORS 342.143 (3).

(4)(a) Except for convictions for crimes listed in ORS 342.143 (3) and subject to subsection (5) of this section, any person whose license or registration has been revoked, or whose right to apply for a license or registration has been revoked, may apply to the commission for reinstatement of the license or registration after one year from the date of the revocation.

(b) Any person whose license or registration has been suspended, or whose right to apply for a license or registration has been suspended, may apply to the commission for reinstatement of the license or registration.

(c) The commission may require an applicant for reinstatement to furnish evidence satisfactory to the commission of good moral character, mental and physical health and such other evidence as the commission may consider necessary to establish the applicant's fitness. The commission may impose a probationary period and such conditions as the commission considers necessary upon approving an application for reinstatement.

(5) The commission shall reconsider immediately a license or registration suspension or revocation or the situation of a person whose right to apply for a license or registration has been re-

voked, upon application therefor, when the license or registration suspension or revocation or the right revocation is based on a criminal conviction that is reversed on appeal.

(6) Violation of rules adopted by the commission relating to competent and ethical performance of professional duties shall be admissible as evidence of gross neglect of duty or gross unfitness.

(7) A copy of the record of conviction, certified to by the clerk of the court entering the conviction, shall be conclusive evidence of a conviction described in this section.

**SECTION 52.** ORS 419A.015 is amended to read:

419A.015. (1)(a) Once each month, a county juvenile department shall provide to school administrators of schools or of school districts in the county a list of all youth offenders enrolled in a school in the county who are on probation by order of the juvenile court in the county. The department shall include in the list the name and business telephone number of the juvenile counselor assigned to each case.

(b) When a youth offender who is on probation transfers from one school or school district to a different school or school district, the juvenile counselor assigned to the case shall notify the school administrator of the school or of the school district to which the youth offender has transferred of the youth offender's probation status. The juvenile counselor shall make the notification no later than 72 hours after the juvenile counselor knows of the transfer.

(2) Upon request by the school administrator, the juvenile department shall provide additional information, including the offense that brought the youth offender within the jurisdiction of the juvenile court and such other information that is subject to disclosure under ORS 419A.255 (6).

(3) In addition to the general notification required by subsection (1) of this section, the juvenile department shall notify the school administrator of the specific offense if the act bringing the youth offender within the jurisdiction of the juvenile court involved a firearm, **delivery of a marijuana item as defined in ORS 475B.015** or delivery of a controlled substance.

(4) When a school administrator receives any notice under this section, the school administrator may disclose the information only to school personnel, as defined in ORS 339.326, who the school administrator determines need the information in order to safeguard the safety and security of the school, students and staff. A person to whom personally identifiable information is disclosed under this subsection may not disclose the information to another person except to carry out the provisions of this subsection.

(5) Except as otherwise provided in ORS 192.490, a juvenile department, school district or school administrator, or anyone employed or acting on behalf of a juvenile department, school district or school administrator, who sends or receives records under this section is not civilly or criminally liable for failing to disclose the information under this section.

(6) As used in this section, "school administrator" has the meaning given that term in ORS 419A.305.

**SECTION 53.** ORS 419A.300 is amended to read:

419A.300. (1)(a) Once each month, the Department of Human Services shall provide to each school district a list of all young persons enrolled in a school in the school district who are on conditional release. The department shall include in the list the name and business telephone number of the caseworker assigned to each case.

(b) When a young person who is on conditional release transfers from one school district to a different school district, the caseworker assigned to the case shall notify the superintendent of the school district to which the young person has transferred of the young person's status. The caseworker shall make the notification no later than 72 hours after the caseworker knows of the transfer.

(2) Upon request by the superintendent of the school district in which a young person is enrolled or the superintendent's designee, the department shall provide additional information, including the offense that brought the young person within the jurisdiction of the juvenile court and such other information that is subject to disclosure under ORS 419A.255 (6).

(3) In addition to the general notification required by subsection (1) of this section, the department shall notify the superintendent or the superintendent's designee of the specific offense and

whether the act involved a firearm, **delivery of a marijuana item as defined in ORS 475B.015** or delivery of a controlled substance.

(4) ORS 419A.015 (4) and (5) apply to persons sending or receiving records under this section.

**SECTION 54.** ORS 419A.305 is amended to read:

419A.305. (1) As used in this section:

(a) "Principal" means a person having general administrative control and supervision of a school.

(b) "School administrator" means:

(A) The superintendent of the school district in which a youth attends school, or the designee of the superintendent, if the youth attends a public school that is not a public charter school;

(B) The principal of a public charter school, if the youth attends a public charter school;

(C) The principal of a private school that provides education to one or more instructional levels from kindergarten through grade 12 or equivalent instructional levels, if the youth attends a private school;

(D) The superintendent of the school district in which the youth resides, or the designee of the superintendent, if the school that the youth attends is not known by the person giving notice;

(E) The director of the Oregon School for the Deaf; or

(F) The Superintendent of Public Instruction if the youth is in an educational program under the Youth Corrections Education Program.

(c) "School district" has the meaning given that term in ORS 332.002.

(2) Notice shall be given to a school administrator when:

(a) A youth makes a first appearance before the juvenile court on a petition described in subsection (7) of this section alleging that the youth is within the jurisdiction of the juvenile court under ORS 419C.005.

(b) A youth admits to being within the jurisdiction of the juvenile court as provided in ORS 419C.005 on a petition described in subsection (7) of this section or is adjudicated by a juvenile court to be within its jurisdiction on a petition described in subsection (7) of this section.

(c) A youth is found responsible except for insanity under ORS 419C.411.

(d) Notice had been given as provided by paragraph (a) or (b) of this subsection and the juvenile court:

(A) Sets aside or dismisses the petition as provided in ORS 419C.261; or

(B) Determines that the youth is not within the jurisdiction of the juvenile court after a hearing on the merits of the petition.

(3) A notice required by subsection (2) of this section shall be given by:

(a) The district attorney;

(b) In the case of a petition filed under ORS 419C.250, the person who filed the petition;

(c) In the case of a person prosecuting a case who is not the district attorney, the person who is prosecuting the case; or

(d) In the case of a juvenile department that has agreed to be responsible for providing the notices required under this section, the juvenile department.

(4) A notice required under subsection (2) of this section may be communicated by mail or other means of delivery, including but not limited to electronic transmission. A notice must include:

(a) The name and date of birth of the youth;

(b) The names and addresses of the youth's parents or guardians;

(c) The alleged basis for the juvenile court's jurisdiction over the youth;

(d) The act alleged in the petition that, if committed by an adult, would constitute a crime;

(e) The name and contact information of the attorney for the youth, if known;

(f) The name and contact information of the individual to contact for further information about the notice;

(g) If applicable, the portion of the juvenile court order providing for the legal disposition of the youth;

(h) Any conditions of release or terms of probation; and

(i) Any other conditions required by the court.

(5) In addition to the information required by subsection (4) of this section:

(a) A notice required by subsection (2)(a) of this section shall contain substantially the following statement: "This notice is to inform you that a student who attends your school may come under the jurisdiction of the juvenile court as the result of a petition filed with the juvenile court. The student has not yet been determined to be within the jurisdiction of the juvenile court nor to have committed any violations of law. The allegation pending before the juvenile court must not be discussed with the student."

(b) A notice required by subsection (2)(b) of this section shall contain substantially the following statement: "This notice is to inform you that a student who attends your school has come under the jurisdiction of the juvenile court as the result of a petition filed with the juvenile court. There may be pending juvenile court hearings or proceedings, and a disposition order may not yet have been entered by the court. The allegation pending before the juvenile court must not be discussed with the student."

(c) A notice required by subsection (2)(c) of this section shall contain substantially the following statement: "This notice is to inform you that a disposition order has been entered in a case involving a student who attends your school about whom a previous notice was sent. The disposition order finds the student to be responsible except for insanity under ORS 419C.411 for the act alleged in the petition filed with the juvenile court. The case should not be discussed with the student."

(d) A notice required by subsection (2)(d) of this section shall contain substantially the following statement: "This notice is to inform you that a petition involving a student who attends your school about whom a previous notice was sent has been set aside or dismissed or the juvenile court has determined the student is not within its jurisdiction. The notice and any documents or information related to the notice in the student's education records should be removed and destroyed upon receipt of this notice. The case should not be discussed with the student."

(6) A notice required under subsection (2) of this section must be given within 15 days after:

(a) The youth makes a first appearance before the juvenile court on a petition;

(b) The youth admits to being within the jurisdiction of the juvenile court;

(c) The youth is adjudicated by a juvenile court to be within the jurisdiction of the court;

(d) The petition is dismissed or set aside;

(e) The juvenile court determines that the youth is not within the jurisdiction of the juvenile court after a hearing on the merits of the petition; or

(f) The juvenile court enters a disposition order finding the youth responsible except for insanity under ORS 419C.411.

(7) This section applies to petitions filed alleging that the youth engaged in:

(a) Conduct that, if committed by an adult, would constitute a crime that:

(A) Involves serious physical injury or threatened serious physical injury to another person, including criminal homicide, felony assault or any attempt to cause serious physical injury to another person;

(B) Involves the sexual assault of an animal or animal abuse in any degree;

(C) Is a felony sex offense listed in ORS 163A.005, except for rape in the third degree under ORS 163.355 or incest under ORS 163.525;

(D) Involves a weapon, as defined in ORS 166.360, or the threatened use of a weapon;

(E) Involves the possession or manufacture of a destructive device, as defined in ORS 166.382, or possession of a hoax destructive device, as defined in ORS 166.385; or

(F) Involves an offense in which an element of the crime is:

(i) Manufacture of a controlled substance **or a marijuana item as defined in ORS 475B.015**;

(ii) Delivery of a controlled substance **or a marijuana item as defined in ORS 475B.015** in conjunction with conduct described in subparagraph (A) of this paragraph; or

(iii) Delivery of a controlled substance **or a marijuana item as defined in ORS 475B.015** to a person under 18 years of age; or

(b) Conduct that is of such a nature that the court determines notice is necessary to safeguard the safety and security of the school, students and staff. The person or entity responsible for giving notice under subsection (3) of this section shall request that the court make the determination under this paragraph when the person or entity believes notice is necessary to safeguard the safety and security of the school, students and staff and the conduct involves an offense under ORS 163.160.

(8) Except as otherwise provided in ORS 192.490, a person who sends or receives notice under this section is not civilly or criminally liable for failing to disclose the information under this section.

**SECTION 55.** ORS 419B.005, as amended by section 39, chapter 106, Oregon Laws 2016, is amended to read:

419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

(1)(a) "Abuse" means:

(A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.

(B) Any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.

(C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration and incest, as those acts are described in ORS chapter 163.

(D) Sexual abuse, as described in ORS chapter 163.

(E) Sexual exploitation, including but not limited to:

(i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording or other exhibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not including any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or which is designed to serve educational or other legitimate purposes; and

(ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution as described in ORS 167.007 or a commercial sex act as defined in ORS 163.266, to purchase sex with a minor as described in ORS 163.413 or to engage in commercial sexual solicitation as described in ORS 167.008.

(F) Negligent treatment or maltreatment of a child, including but not limited to the failure to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of the child.

(G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.

(H) Buying or selling a person under 18 years of age as described in ORS 163.537.

(I) Permitting a person under 18 years of age to enter or remain in or upon premises where methamphetamines are being manufactured.

(J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, **or to the unlawful manufacturing of a cannabinoid extract, as defined in ORS 475B.015**, that subjects a child to a substantial risk of harm to the child's health or safety.

(b) "Abuse" does not include reasonable discipline unless the discipline results in one of the conditions described in paragraph (a) of this subsection.

(2) "Child" means an unmarried person who:

(a) Is under 18 years of age; or

(b) Is under 21 years of age and residing in or receiving care or services at a child-caring agency as that term is defined in ORS 418.205.

(3) "Higher education institution" means:

(a) A community college as defined in ORS 341.005;

- (b) A public university listed in ORS 352.002;
  - (c) The Oregon Health and Science University; and
  - (d) A private institution of higher education located in Oregon.
- (4) “Law enforcement agency” means:
- (a) A city or municipal police department.
  - (b) A county sheriff’s office.
  - (c) The Oregon State Police.
  - (d) A police department established by a university under ORS 352.121 or 353.125.
  - (e) A county juvenile department.
- (5) “Public or private official” means:
- (a) Physician or physician assistant licensed under ORS chapter 677 or naturopathic physician, including any intern or resident.
  - (b) Dentist.
  - (c) School employee, including an employee of a higher education institution.
  - (d) Licensed practical nurse, registered nurse, nurse practitioner, nurse’s aide, home health aide or employee of an in-home health service.
  - (e) Employee of the Department of Human Services, Oregon Health Authority, Early Learning Division, Youth Development Division, Office of Child Care, the Oregon Youth Authority, a local health department, a community mental health program, a community developmental disabilities program, a county juvenile department, a child-caring agency as that term is defined in ORS 418.205 or an alcohol and drug treatment program.
  - (f) Peace officer.
  - (g) Psychologist.
  - (h) Member of the clergy.
  - (i) Regulated social worker.
  - (j) Optometrist.
  - (k) Chiropractor.
  - (L) Certified provider of foster care, or an employee thereof.
  - (m) Attorney.
  - (n) Licensed professional counselor.
  - (o) Licensed marriage and family therapist.
  - (p) Firefighter or emergency medical services provider.
  - (q) A court appointed special advocate, as defined in ORS 419A.004.
  - (r) A child care provider registered or certified under ORS 329A.030 and 329A.250 to 329A.450.
  - (s) Member of the Legislative Assembly.
  - (t) Physical, speech or occupational therapist.
  - (u) Audiologist.
  - (v) Speech-language pathologist.
  - (w) Employee of the Teacher Standards and Practices Commission directly involved in investigations or discipline by the commission.
  - (x) Pharmacist.
  - (y) An operator of a preschool recorded program under ORS 329A.255.
  - (z) An operator of a school-age recorded program under ORS 329A.257.
  - (aa) Employee of a private agency or organization facilitating the provision of respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056.
  - (bb) Employee of a public or private organization providing child-related services or activities:
    - (A) Including but not limited to youth groups or centers, scout groups or camps, summer or day camps, survival camps or groups, centers or camps that are operated under the guidance, supervision or auspices of religious, public or private educational systems or community service organizations; and

(B) Excluding community-based, nonprofit organizations whose primary purpose is to provide confidential, direct services to victims of domestic violence, sexual assault, stalking or human trafficking.

(cc) A coach, assistant coach or trainer of an amateur, semiprofessional or professional athlete, if compensated and if the athlete is a child.

(dd) Personal support worker, as defined by rule adopted by the Home Care Commission.

(ee) Home care worker, as defined in ORS 410.600.

**SECTION 56.** ORS 419B.504 is amended to read:

419B.504. The rights of the parent or parents may be terminated as provided in ORS 419B.500 if the court finds that the parent or parents are unfit by reason of conduct or condition seriously detrimental to the child or ward and integration of the child or ward into the home of the parent or parents is improbable within a reasonable time due to conduct or conditions not likely to change. In determining such conduct and conditions, the court shall consider but is not limited to the following:

(1) Emotional illness, mental illness or mental retardation of the parent of such nature and duration as to render the parent incapable of providing proper care for the child or ward for extended periods of time.

(2) Conduct toward any child of an abusive, cruel or sexual nature.

(3) Addictive or habitual use of intoxicating liquors, **cannabis** or controlled substances to the extent that parental ability has been substantially impaired.

(4) Physical neglect of the child or ward.

(5) Lack of effort of the parent to adjust the circumstances of the parent, conduct, or conditions to make it possible for the child or ward to safely return home within a reasonable time or failure of the parent to effect a lasting adjustment after reasonable efforts by available social agencies for such extended duration of time that it appears reasonable that no lasting adjustment can be effected.

(6) Criminal conduct that impairs the parent's ability to provide adequate care for the child or ward.

**SECTION 57.** ORS 419C.575 is amended to read:

419C.575. If the court finds that the parent's or guardian's addiction to or habitual use of alcohol, **cannabis** or controlled substances has significantly contributed to the circumstances bringing the youth offender within the jurisdiction of the court, the court may conduct a special hearing to determine if the court should order the parent or guardian to participate in treatment and pay the costs thereof. Notice of this hearing shall be by special petition and summons to be filed by the court and served upon the parent or guardian. The court shall appoint counsel to represent the parent or guardian if the parent or guardian is eligible under ORS 135.050. If, at this hearing, the court finds it is in the best interest of the youth offender for the parent or guardian to be directly involved in treatment, the judge may order the parent or guardian to participate in treatment. The dispositional order shall be in writing and shall contain appropriate findings of fact and conclusions of law. The judge shall state with particularity, both orally and in the written order of the disposition, the precise terms of the disposition.

**SECTION 58.** ORS 420.048 is amended to read:

420.048. (1)(a) When a youth offender who is in the legal custody of the Oregon Youth Authority transfers from one school or school district to a different school or school district, the person responsible for supervising the youth offender shall notify the school administrator of the school or of the school district to which the youth offender has transferred of the youth offender's status as a youth offender. The person shall make the notification no later than 72 hours after the person knows of the transfer.

(b) When a school administrator receives notification under this section, the school administrator may request the Oregon Youth Authority to provide additional information about the youth offender. The youth authority shall provide additional information, including the offense that brought the youth offender within the jurisdiction of the juvenile court and such other information that is subject to disclosure under ORS 419A.255 (6).

- (2) The youth authority shall include in the notice the following:
- (a) The name and date of birth of the youth offender;
  - (b) The names and addresses of the youth offender's parents or guardians;
  - (c) The name and contact information of the attorney for the youth offender, if known;
  - (d) The name and contact information of the person giving notice under subsection (1) of this section or the person's designated representative to contact for further information about the notice;
  - (e) The specific offense that brought the youth offender within the jurisdiction of the juvenile court and whether it involved a firearm, **the delivery of a marijuana item as defined in ORS 475B.015** or the delivery of a controlled substance, a violation of ORS 163.355 to 163.445 or 163.465 or any other offense if the youth authority or juvenile court believes the youth offender represents a risk to other students or school staff; and
  - (f) Any terms of probation.
- (3) Except as otherwise provided in ORS 192.490, the youth authority, a school district or a school administrator, or anyone employed or acting on behalf of the youth authority, school district or school administrator, who sends or receives records under this section is not liable civilly or criminally for failing to disclose the information under this section.

(4) As used in this section:

- (a) "School administrator" has the meaning given that term in ORS 419A.305.
- (b) "School district" has the meaning given that term in ORS 332.002.

**SECTION 59.** ORS 423.150 is amended to read:

423.150. (1) The Department of Corrections shall:

(a) Provide appropriate treatment services to drug-addicted persons in the custody of the department who are at a high or medium risk of reoffending and who have moderate to severe treatment needs; and

(b) Make grants to counties in order to provide supplemental funding for:

(A) The operation of local jails;

(B) Appropriate treatment services for drug-addicted persons on probation, parole or post-prison supervision; or

(C) The intensive supervision of drug-addicted persons on probation, parole or post-prison supervision, including the incarceration of drug-addicted persons who have violated the terms and conditions of probation, parole or post-prison supervision.

(2) The Oregon Criminal Justice Commission shall make grants to counties in order to provide supplemental funding for drug courts for drug-addicted persons, including the costs of appropriate treatment services and the incarceration of persons who have violated the terms and conditions of a drug court.

(3)(a) The appropriate legislative committee shall periodically conduct oversight hearings on the effectiveness of this section.

(b) The Oregon Criminal Justice Commission shall periodically conduct independent evaluations of the programs funded by this section for their effectiveness in reducing criminal behavior in a cost-effective manner and shall report the findings to the Alcohol and Drug Policy Commission.

(4) The Department of Corrections shall determine which persons are eligible for treatment under subsection (1)(a) of this section using an actuarial risk assessment tool.

(5) The department shall adopt rules to administer the grant program described in subsection (1)(b) of this section.

(6) Prior to adopting the rules described in subsection (5) of this section, the department shall consult with a broad-based committee that includes representatives of:

- (a) County boards of commissioners;
- (b) County sheriffs;
- (c) District attorneys;
- (d) County community corrections;
- (e) The Oregon Criminal Justice Commission;
- (f) Presiding judges of the judicial districts of this state;

- (g) Public defenders; and
  - (h) Treatment providers.
- (7) In determining which grant proposals to fund within each county, the department shall:
- (a) Consult with the committee described in subsection (6) of this section;
  - (b) Give priority to those proposals that are best designed to reduce crime and drug addiction;
- and
- (c) Be guided by evidence-based and tribal-based practices, risk assessment tools or other research-based considerations.
  - (8) Nothing in this section:
    - (a) Creates any claim, right of action or civil liability; or
    - (b) Requires a supervisory authority or the Department of Corrections to provide treatment to any individual under the authority's supervision or in the custody of the department.
  - (9) As used in this section:
    - (a) "Drug-addicted person" means a person who has lost the ability to control the personal use of controlled substances, **cannabis** or alcohol, or who uses controlled substances, **cannabis** or alcohol to the extent that the health of the person or that of others is substantially impaired or endangered or the social or economic function of the person is substantially disrupted. A drug-addicted person may be physically dependent, a condition in which the body requires a continuing supply of a controlled substance, **cannabis** or alcohol to avoid characteristic withdrawal symptoms, or psychologically dependent, a condition characterized by an overwhelming mental desire for continued use of a controlled substance, **cannabis** or alcohol.
    - (b) "Intensive supervision" means the active monitoring of a person's performance in a treatment program by a parole and probation officer and the imposition of sanctions, or request to a court for sanctions, if the person fails to abide by the terms and conditions of a treatment program.

**SECTION 60.** ORS 430.402 is amended to read:

430.402. (1) A political subdivision in this state shall not adopt or enforce any local law or regulation that makes any of the following an offense, a violation or the subject of criminal or civil penalties or sanctions of any kind:

- (a) Public intoxication.
- (b) Public drinking, except as to places where any consumption of alcoholic beverages is generally prohibited.
- (c) Drunk and disorderly conduct.
- (d) Vagrancy or other behavior that includes as one of its elements either drinking alcoholic beverages or using **cannabis or** controlled substances in public, being an alcoholic or a drug-dependent person, or being found in specified places under the influence of alcohol, **cannabis** or controlled substances.
- (e) Using or being under the influence of **cannabis or** controlled substances.

(2) Nothing in subsection (1) of this section shall affect any local law or regulation of any political subdivision in this state against driving while under the influence of intoxicants, as defined in ORS 813.010, or other similar offenses that involve the operation of motor vehicles.

**SECTION 61.** ORS 430.480 is amended to read:

430.480. Nothing in ORS 430.450 to 430.555 is intended to limit the introduction of other evidence bearing upon the question of whether or not a person is using or is under the influence of **cannabis or** controlled substances.

**SECTION 62.** ORS 438.010 is amended to read:

438.010. As used in ORS 438.010 to 438.510, unless the context requires otherwise:

- (1) "Authority" means the Oregon Health Authority.
- (2) "Clinical laboratory" or "laboratory" means a facility where the microbiological, serological, chemical, hematological, immunohematological, immunological, toxicological, cytogenetical, exfoliative cytological, histological, pathological or other examinations are performed on materials derived from the human body, for the purpose of diagnosis, prevention of disease or treatment of

patients by physicians, dentists and other persons who are authorized by license to diagnose or treat humans.

(3) "Clinical laboratory specialty" or "laboratory specialty" means the examination of materials derived from the human body for the purpose of diagnosis and treatment of patients or assessment of health, employing one of the following sciences: Serology, microbiology, chemistry, hematology, immunohematology, immunology, toxicology, cytogenetics, exfoliative cytology, histology or pathology.

(4) "Clinician" means a nurse practitioner licensed and certified by the Oregon State Board of Nursing, or a physician assistant licensed by the Oregon Medical Board.

(5) "Custody chain" means the handling of specimens in a way that supports legal testimony to prove that the sample integrity and identification of the sample have not been violated, as well as the documentation describing those procedures from specimen collection to the final report.

(6) "Dentist" means a person licensed to practice dentistry by the Oregon Board of Dentistry.

(7) "Director of clinical laboratory" or "director" means the person who plans, organizes, directs and participates in any or all of the technical operations of a clinical laboratory, including but not limited to reviewing laboratory procedures and their results, training and supervising laboratory personnel, and evaluating the technical competency of such personnel.

(8) "Health screen testing" means tests performed for the purpose of identifying health risks, providing health information and referring the person being tested to medical care.

(9) "High complexity laboratory" means a facility that performs testing classified as highly complex in the specialties of microbiology, chemistry, hematology, diagnostic immunology, immunohematology, clinical cytogenetics, cytology, histopathology, oral pathology, pathology, radiobioassay and histocompatibility and that may also perform moderate complexity tests and waived tests.

(10) "High complexity test" means a procedure performed on materials derived from the human body that meet the criteria for this category of testing in the specialties of microbiology, chemistry, hematology, immunohematology, diagnostic immunology, clinical cytogenetics, cytology, histopathology, oral pathology, pathology, radiobioassay and histocompatibility as established by the authority.

(11) "Laboratory evaluation system" means a system of testing clinical laboratory methods, procedures and proficiency by periodic performance and reporting on test specimens submitted for examination.

(12) "Moderate complexity laboratory" means a facility that performs testing classified as moderately complex in the specialties of microbiology, hematology, chemistry, immunohematology or diagnostic immunology and may also perform any waived test.

(13) "Moderate complexity test" means a procedure performed on materials derived from the human body that meet the criteria for this category of testing in the specialties of microbiology, hematology, chemistry, immunohematology or diagnostic immunology as established by the authority.

(14) "Operator of a substances of abuse on-site screening facility" or "operator" means the person who plans, organizes, directs and participates in any or all of the technical and administrative operations of a substances of abuse on-site screening facility.

(15) "Owner of a clinical laboratory" means the person who owns the clinical laboratory, or a county or municipality operating a clinical laboratory or the owner of any institution operating a clinical laboratory.

(16) "Physician" means a person licensed to practice medicine by the Oregon Medical Board.

(17) "Physician performed microscopy procedure" means a test personally performed by a physician or other clinician during a patient's visit on a specimen obtained during the examination of the patient.

(18) "Physician performed microscopy procedures" means a limited group of tests that are performed only by a physician or clinician.

(19) "Specimen" means materials derived from a human being or body.

(20) “Substances of abuse” means ethanol, **cannabis** and controlled substances[, *except those used as allowed by law and as defined in ORS chapter 475 or as used in ORS 689.005*].

(21) “Substances of abuse on-site screening facility” or “on-site facility” means a location where on-site tests are performed on specimens for the purpose of screening for the detection of substances of abuse.

(22) “Substances of abuse on-site screening test” or “on-site test” means a substances of abuse test that is easily portable and can meet the requirements of the federal Food and Drug Administration for commercial distribution or an alcohol screening test that meets the requirements of the conforming products list found in the United States Department of Transportation National Highway Traffic Safety Administration Docket No. 94-004 and meets the standards of the United States Department of Transportation Alcohol Testing Procedure, 49 C.F.R. part 40, in effect on October 23, 1999.

(23) “Waived test” means a procedure performed on materials derived from the human body that meet the criteria for this category of testing as established by the authority.

**SECTION 63.** ORS 453.858 is amended to read:

453.858. As used in ORS 453.855 to 453.912:

[1] “*Controlled substance*” *does not include marijuana.*]

[2] (1) “Illegal drug manufacturing site” means any property on which there is a reasonably clear possibility of contamination with chemicals associated with the manufacturing of controlled substances and:

(a) Where activity involving the unauthorized manufacture of a controlled substance listed on Schedules I and II or any precursor chemical for such substances occurs; or

(b) Wherein are kept, stored or located any of the devices, equipment, things or substances used for the unauthorized manufacture of a controlled substance listed on Schedules I and II.

[3] (2) “Property” means any:

(a) Real property, improvements on real property or portions of the improvements;

(b) Boat, trailer, motor vehicle or manufactured dwelling; or

(c) Contents of the items listed in paragraph (a) or (b) of this subsection.

**SECTION 64.** ORS 656.005 is amended to read:

656.005. (1) “Average weekly wage” means the Oregon average weekly wage in covered employment, as determined by the Employment Department, for the last quarter of the calendar year preceding the fiscal year in which the injury occurred.

(2) “Beneficiary” means an injured worker, and the spouse in a marriage, child or dependent of a worker, who is entitled to receive payments under this chapter. “Beneficiary” does not include:

(a) A spouse of an injured worker living in a state of abandonment for more than one year at the time of the injury or subsequently. A spouse who has lived separate and apart from the worker for a period of two years and who has not during that time received or attempted by process of law to collect funds for support or maintenance is considered living in a state of abandonment.

(b) A person who intentionally causes the compensable injury to or death of an injured worker.

(3) “Board” means the Workers’ Compensation Board.

(4) “Carrier-insured employer” means an employer who provides workers’ compensation coverage with the State Accident Insurance Fund Corporation or an insurer authorized under ORS chapter 731 to transact workers’ compensation insurance in this state.

(5) “Child” includes a posthumous child, a child legally adopted prior to the injury, a child toward whom the worker stands in loco parentis, a child born out of wedlock and a stepchild, if such stepchild was, at the time of the injury, a member of the worker’s family and substantially dependent upon the worker for support. A dependent child who is an invalid is a child, for purposes of benefits, regardless of age, so long as the child was an invalid at the time of the accident and thereafter remains an invalid substantially dependent on the worker for support. For purposes of this chapter, a dependent child who is an invalid is considered to be a child under 18 years of age.

(6) “Claim” means a written request for compensation from a subject worker or someone on the worker’s behalf, or any compensable injury of which a subject employer has notice or knowledge.

(7)(a) A “compensable injury” is an accidental injury, or accidental injury to prosthetic appliances, arising out of and in the course of employment requiring medical services or resulting in disability or death; an injury is accidental if the result is an accident, whether or not due to accidental means, if it is established by medical evidence supported by objective findings, subject to the following limitations:

(A) No injury or disease is compensable as a consequence of a compensable injury unless the compensable injury is the major contributing cause of the consequential condition.

(B) If an otherwise compensable injury combines at any time with a preexisting condition to cause or prolong disability or a need for treatment, the combined condition is compensable only if, so long as and to the extent that the otherwise compensable injury is the major contributing cause of the disability of the combined condition or the major contributing cause of the need for treatment of the combined condition.

(b) “Compensable injury” does not include:

(A) Injury to any active participant in assaults or combats which are not connected to the job assignment and which amount to a deviation from customary duties;

(B) Injury incurred while engaging in or performing, or as the result of engaging in or performing, any recreational or social activities primarily for the worker’s personal pleasure; or

(C) Injury the major contributing cause of which is demonstrated to be by a preponderance of the evidence the injured worker’s consumption of alcoholic beverages **or cannabis** or the unlawful consumption of any controlled substance, unless the employer permitted, encouraged or had actual knowledge of such consumption.

(c) A “disabling compensable injury” is an injury which entitles the worker to compensation for disability or death. An injury is not disabling if no temporary benefits are due and payable, unless there is a reasonable expectation that permanent disability will result from the injury.

(d) A “nondisabling compensable injury” is any injury which requires medical services only.

(8) “Compensation” includes all benefits, including medical services, provided for a compensable injury to a subject worker or the worker’s beneficiaries by an insurer or self-insured employer pursuant to this chapter.

(9) “Department” means the Department of Consumer and Business Services.

(10) “Dependent” means any of the following-named relatives of a worker whose death results from any injury: Parent, grandparent, stepparent, grandson, granddaughter, brother, sister, half sister, half brother, niece or nephew, who at the time of the accident, are dependent in whole or in part for their support upon the earnings of the worker. Unless otherwise provided by treaty, aliens not residing within the United States at the time of the accident other than parent, spouse in a marriage or children are not included within the term “dependent.”

(11) “Director” means the Director of the Department of Consumer and Business Services.

(12)(a) “Doctor” or “physician” means a person duly licensed to practice one or more of the healing arts in any country or in any state, territory or possession of the United States within the limits of the license of the licentiate.

(b) Except as otherwise provided for workers subject to a managed care contract, “attending physician” means a doctor, physician or physician assistant who is primarily responsible for the treatment of a worker’s compensable injury and who is:

(A) A medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the Oregon Medical Board, or a podiatric physician and surgeon licensed under ORS 677.805 to 677.840 by the Oregon Medical Board, an oral and maxillofacial surgeon licensed by the Oregon Board of Dentistry or a similarly licensed doctor in any country or in any state, territory or possession of the United States; or

(B) For a cumulative total of 60 days from the first visit on the initial claim or for a cumulative total of 18 visits, whichever occurs first, to any of the medical service providers listed in this subparagraph, a:

(i) Doctor or physician licensed by the State Board of Chiropractic Examiners for the State of Oregon under ORS chapter 684 or a similarly licensed doctor or physician in any country or in any state, territory or possession of the United States;

(ii) Physician assistant licensed by the Oregon Medical Board in accordance with ORS 677.505 to 677.525 or a similarly licensed physician assistant in any country or in any state, territory or possession of the United States; or

(iii) Doctor of naturopathy or naturopathic physician licensed by the Oregon Board of Naturopathic Medicine under ORS chapter 685 or a similarly licensed doctor or physician in any country or in any state, territory or possession of the United States.

(c) Except as otherwise provided for workers subject to a managed care contract, “attending physician” does not include a physician who provides care in a hospital emergency room and refers the injured worker to a primary care physician for follow-up care and treatment.

(d) “Consulting physician” means a doctor or physician who examines a worker or the worker’s medical record to advise the attending physician or nurse practitioner authorized to provide compensable medical services under ORS 656.245 regarding treatment of a worker’s compensable injury.

(13)(a) “Employer” means any person, including receiver, administrator, executor or trustee, and the state, state agencies, counties, municipal corporations, school districts and other public corporations or political subdivisions, who contracts to pay a remuneration for and secures the right to direct and control the services of any person.

(b) Notwithstanding paragraph (a) of this subsection, for purposes of this chapter, the client of a temporary service provider is not the employer of temporary workers provided by the temporary service provider.

(c) As used in paragraph (b) of this subsection, “temporary service provider” has the meaning for that term provided in ORS 656.850.

(14) “Insurer” means the State Accident Insurance Fund Corporation or an insurer authorized under ORS chapter 731 to transact workers’ compensation insurance in this state or an assigned claims agent selected by the director under ORS 656.054.

(15) “Consumer and Business Services Fund” means the fund created by ORS 705.145.

(16) “Invalid” means one who is physically or mentally incapacitated from earning a livelihood.

(17) “Medically stationary” means that no further material improvement would reasonably be expected from medical treatment, or the passage of time.

(18) “Noncomplying employer” means a subject employer who has failed to comply with ORS 656.017.

(19) “Objective findings” in support of medical evidence are verifiable indications of injury or disease that may include, but are not limited to, range of motion, atrophy, muscle strength and palpable muscle spasm. “Objective findings” does not include physical findings or subjective responses to physical examinations that are not reproducible, measurable or observable.

(20) “Palliative care” means medical service rendered to reduce or moderate temporarily the intensity of an otherwise stable medical condition, but does not include those medical services rendered to diagnose, heal or permanently alleviate or eliminate a medical condition.

(21) “Party” means a claimant for compensation, the employer of the injured worker at the time of injury and the insurer, if any, of such employer.

(22) “Payroll” means a record of wages payable to workers for their services and includes commissions, value of exchange labor and the reasonable value of board, rent, housing, lodging or similar advantage received from the employer. However, “payroll” does not include overtime pay, vacation pay, bonus pay, tips, amounts payable under profit-sharing agreements or bonus payments to reward workers for safe working practices. Bonus pay is limited to payments which are not anticipated under the contract of employment and which are paid at the sole discretion of the employer. The exclusion from payroll of bonus payments to reward workers for safe working practices is only for the purpose of calculations based on payroll to determine premium for workers’ com-

pensation insurance, and does not affect any other calculation or determination based on payroll for the purposes of this chapter.

(23) "Person" includes partnership, joint venture, association, limited liability company and corporation.

(24)(a) "Preexisting condition" means, for all industrial injury claims, any injury, disease, congenital abnormality, personality disorder or similar condition that contributes to disability or need for treatment, provided that:

(A) Except for claims in which a preexisting condition is arthritis or an arthritic condition, the worker has been diagnosed with such condition, or has obtained medical services for the symptoms of the condition regardless of diagnosis; and

(B)(i) In claims for an initial injury or omitted condition, the diagnosis or treatment precedes the initial injury;

(ii) In claims for a new medical condition, the diagnosis or treatment precedes the onset of the new medical condition; or

(iii) In claims for a worsening pursuant to ORS 656.273 or 656.278, the diagnosis or treatment precedes the onset of the worsened condition.

(b) "Preexisting condition" means, for all occupational disease claims, any injury, disease, congenital abnormality, personality disorder or similar condition that contributes to disability or need for treatment and that precedes the onset of the claimed occupational disease, or precedes a claim for worsening in such claims pursuant to ORS 656.273 or 656.278.

(c) For the purposes of industrial injury claims, a condition does not contribute to disability or need for treatment if the condition merely renders the worker more susceptible to the injury.

(25) "Self-insured employer" means an employer or group of employers certified under ORS 656.430 as meeting the qualifications set out by ORS 656.407.

(26) "State Accident Insurance Fund Corporation" and "corporation" mean the State Accident Insurance Fund Corporation created under ORS 656.752.

(27) "Subject employer" means an employer who is subject to this chapter as provided by ORS 656.023.

(28) "Subject worker" means a worker who is subject to this chapter as provided by ORS 656.027.

(29) "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident, including reasonable value of board, rent, housing, lodging or similar advantage received from the employer, and includes the amount of tips required to be reported by the employer pursuant to section 6053 of the Internal Revenue Code of 1954, as amended, and the regulations promulgated pursuant thereto, or the amount of actual tips reported, whichever amount is greater. The State Accident Insurance Fund Corporation may establish assumed minimum and maximum wages, in conformity with recognized insurance principles, at which any worker shall be carried upon the payroll of the employer for the purpose of determining the premium of the employer.

(30) "Worker" means any person, including a minor whether lawfully or unlawfully employed, who engages to furnish services for a remuneration, subject to the direction and control of an employer and includes salaried, elected and appointed officials of the state, state agencies, counties, cities, school districts and other public corporations, but does not include any person whose services are performed as an inmate or ward of a state institution or as part of the eligibility requirements for a general or public assistance grant. For the purpose of determining entitlement to temporary disability benefits or permanent total disability benefits under this chapter, "worker" does not include a person who has withdrawn from the workforce during the period for which such benefits are sought.

(31) "Independent contractor" has the meaning for that term provided in ORS 670.600.

**SECTION 65.** ORS 657.176 is amended to read:

657.176. (1) An authorized representative designated by the Director of the Employment Department shall promptly examine each claim to determine whether an individual is subject to dis-

qualification as a result of a separation, termination, leaving, resignation, or disciplinary suspension from work or as a result of failure to apply for or accept work and shall promptly enter a director's decision if required by ORS 657.267. The authorized representative may address issues raised by information before the authorized representative, including but not limited to the nature of the separation, notwithstanding the way the parties characterize those issues.

(2) An individual shall be disqualified from the receipt of benefits until the individual has performed service in employment subject to this chapter or the equivalent law of another state or Canada or as defined in ORS 657.030 (2) or as an employee of the federal government, for which remuneration is received that equals or exceeds four times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred, if the authorized representative designated by the director finds that the individual:

- (a) Has been discharged for misconduct connected with work;
- (b) Has been suspended from work for misconduct connected with work;
- (c) Voluntarily left work without good cause;
- (d) Failed without good cause to apply for available suitable work when referred by the employment office or the director;
- (e) Failed without good cause to accept suitable work when offered;
- (f) Has been discharged or suspended for being absent or tardy in reporting to work and the absence or tardiness occurred as a result of the unlawful use of any drug unless the person was participating in a recognized drug rehabilitation program at the time of the absence or tardiness, or is so participating within 10 days after the date of the discharge or suspension, and the person provides to the Employment Department documentation of program participation. As used in this paragraph, "unlawful use" does not include the use of a drug taken under the supervision of a licensed health care professional and in accordance with the prescribed directions for consumption, or other uses authorized by the laws of this state;
- (g) Has been discharged or suspended for being absent or tardy in reporting to work and the absence or tardiness occurred as the result of the use of alcohol **or cannabis** on a second or any subsequent occasion within a period of 12 months unless the person was participating in a recognized alcohol **or cannabis** rehabilitation program at the time of the absence or tardiness, or is so participating within 10 days after the date of the discharge or suspension, and the person provides to the department documentation of program participation; or
- (h) Has committed a disqualifying act described in subsection (9) or (10) of this section.

(3) If the authorized representative designated by the director finds that an individual was discharged for misconduct because of the individual's commission of a felony or theft in connection with the individual's work, all benefit rights based on wages earned prior to the date of the discharge shall be canceled if the individual's employer notifies the director of the discharge within 10 days following issuance of the notice provided for in ORS 657.265 or 30 days following issuance of the notice provided for in ORS 657.266, and:

- (a) The individual has admitted commission of the felony or theft to an authorized representative of the director;
- (b) The individual has signed a written admission of the felony or theft and the written admission has been presented to an authorized representative of the director; or
- (c) The felony or theft has resulted in a conviction by a court of competent jurisdiction.

(4) An individual disqualified under subsection (2) of this section shall have the individual's maximum benefit amount reduced by eight times the individual's weekly benefit amount. However, in no event shall the individual's maximum benefit amount be reduced to less than the individual's weekly benefit amount unless the individual has previously received benefits during the individual's benefit year.

(5) An individual may not be disqualified from receiving benefits under subsection (2)(c) or (e) of this section or under ORS 657.200 if the individual ceases work or fails to accept work when a collective bargaining agreement between the individual's bargaining unit and the individual's em-

ployer is in effect and the employer unilaterally modifies the amount of wages payable under the agreement, in breach of the agreement.

(6) For purposes of applying subsection (2) of this section, when an individual has notified an employer that the individual will leave work on a specific date and it is determined that:

- (a) The separation would be for reasons that constitute good cause;
- (b) The individual voluntarily left work without good cause prior to the date of the impending good cause voluntary leaving date; and
- (c) The actual voluntary leaving of work occurred no more than 15 days prior to the planned date of voluntary leaving,

then the separation from work shall be adjudicated as if the actual voluntary leaving had not occurred and the planned voluntary leaving had occurred. However, the individual shall be ineligible for benefits for the period including the week in which the actual voluntary leaving occurred through the week prior to the week of the planned good cause voluntary leaving date.

(7) For purposes of applying subsection (2) of this section, when an employer has notified an individual that the individual will be discharged on a specific date and it is determined that:

- (a) The discharge would not be for reasons that constitute misconduct connected with the work;
- (b) The individual voluntarily left work without good cause prior to the date of the impending discharge; and
- (c) The voluntary leaving of work occurred no more than 15 days prior to the date of the impending discharge,

then the separation from work shall be adjudicated as if the voluntary leaving had not occurred and the discharge had occurred. However, the individual shall be ineligible for benefits for the period including the week in which the voluntary leaving occurred through the week prior to the week in which the individual would have been discharged.

(8) For purposes of applying subsection (2) of this section, when an individual has notified an employer that the individual will leave work on a specific date and it is determined that:

- (a) The voluntary leaving would be for reasons that do not constitute good cause;
- (b) The employer discharged the individual, but not for misconduct connected with work, prior to the date of the planned voluntary leaving; and
- (c) The actual discharge occurred no more than 15 days prior to the planned voluntary leaving,

then the separation from work shall be adjudicated as if the discharge had not occurred and the planned voluntary leaving had occurred. However, the individual shall be eligible for benefits for the period including the week in which the actual discharge occurred through the week prior to the week of the planned voluntary leaving date.

(9)(a) For the purposes of subsection (2) of this section, an individual is considered to have committed a disqualifying act when the individual:

(A) Fails to comply with the terms and conditions of a reasonable written policy established by the employer or through collective bargaining, which may include blanket, random, periodic and probable cause testing, that governs the use, sale, possession or effects of drugs, **cannabis** or alcohol in the workplace;

(B) Fails or refuses to take a drug, **cannabis** or alcohol test as required by the employer's reasonable written policy;

(C) Refuses to cooperate with or subverts or attempts to subvert a drug, **cannabis** or alcohol testing process in any employment-related test required by the employer's reasonable written policy, including but not limited to:

- (i) Refusal or failure to complete proper documentation that authorizes the test;
- (ii) Refusal or failure to sign a chain of custody form;
- (iii) Presentation of false identification;

(iv) Placement of an adulterant in the individual's specimen for testing, when the adulterant is identified by a testing facility; or

(v) Interference with the accuracy of the test results by conduct that includes dilution or adulteration of a test specimen;

(D) Is under the influence of intoxicants while performing services for the employer;

(E) Possesses **cannabis** or a drug unlawfully or in violation of the employer's reasonable written policy during work;

(F) Tests positive for alcohol, **cannabis** or an unlawful drug in connection with employment; or

(G) Refuses to enter into or violates the terms of a last chance agreement with the employer.

(b)(A) Except as provided in subparagraph (B) of this paragraph, an individual is not considered to have committed a disqualifying act under this subsection if the individual, on the date of separation or within 10 days after the date of separation, is participating in a recognized drug, **cannabis** or alcohol rehabilitation program and provides documentation of participation in the program to the department.

(B) This paragraph does not apply to an individual who has refused to enter into or has violated the terms of a last chance agreement with the employer.

(c) It is no defense or excuse under this section that the individual's separation resulted from alcohol use, [*marijuana*] **cannabis** use, unlawful drug use, alcoholism or [*drug*] addiction to **cannabis** or drugs.

(d) The department shall adopt rules to carry out the provisions of this subsection.

(10) For the purposes of subsection (2) of this section, an individual is considered to have committed a disqualifying act when the individual voluntarily leaves work, fails to apply for available suitable work when referred by the employment office or the director or fails to accept suitable work when offered:

(a) Because the employer has or introduces a reasonable written **cannabis-free** or drug-free workplace policy that is consistent with subsection (9)(a)(A) of this section;

(b) Because the employer requires the employee to consent to present or future drug, **cannabis** or alcohol tests under a reasonable written policy that is consistent with subsection (9)(a)(A) of this section;

(c) To avoid taking a drug, **cannabis** or alcohol test under a reasonable written policy that is consistent with subsection (9)(a)(A) of this section; or

(d) To avoid meeting the requirements of a last chance agreement.

(11) An individual may not be disqualified from receiving benefits under subsection (2)(c) of this section and shall be deemed laid off if the individual:

(a) Works under a collective bargaining agreement;

(b) Elects to be laid off when the employer has decided to lay off employees; and

(c) Is placed on the referral list under the collective bargaining agreement.

(12) An individual may not be disqualified from receiving benefits under subsection (2)(c), (d) or (e) of this section or be considered unavailable for purposes of ORS 657.155 if:

(a) The individual or a member of the individual's immediate family is a victim of domestic violence, stalking or sexual assault, or the individual believes that the individual or a member of the individual's immediate family could become a victim of domestic violence, stalking or sexual assault; and

(b) The individual leaves work, fails to apply for available suitable work or fails to accept suitable work when offered in order to protect the individual or a member of the individual's immediate family from domestic violence, stalking or sexual assault that the individual reasonably believes will occur as a result of the individual's continued employment or acceptance of work.

(13) For purposes of this section:

(a) "Adulterant" means a substance that does not occur naturally in urine, or that occurs naturally in urine but not at the concentrations detected. "Adulterant" includes but is not limited to glutaraldehyde, nitrite concentrations above physiological levels, hypochlorite or soap.

(b) "Drug" means a controlled substance as defined in ORS 475.005.

(c) “Last chance agreement” means a reasonable agreement:

(A) Between an employer and an employee who has violated the employer’s reasonable written policy, has engaged in drug, **cannabis** or alcohol use connected with work or has admitted to alcohol abuse, [*marijuana use*] **cannabis abuse** or unlawful drug use; and

(B) That permits the employee to return to work under conditions that may require the employee to:

(i) Abstain from alcohol use, [*marijuana*] **cannabis** use and unlawful drug use; and

(ii) Attend and comply with the requirements of a rehabilitation or education program acceptable to the employer.

(d) An individual is “under the influence of intoxicants” when the level of alcohol, [*marijuana*] **cannabis** or unlawful drugs present in the individual’s body exceeds the amount prescribed in a collective bargaining agreement, or the amount prescribed in the employer’s reasonable written policy if there is no applicable collective bargaining agreement provision.

**SECTION 66.** ORS 676.200 is amended to read:

676.200. (1)(a) A health profession licensing board that is authorized by law to take disciplinary action against licensees may adopt rules opting to participate in the impaired health professional program established under ORS 676.190 and may contract with or designate one or more programs to deliver therapeutic services to its licensees.

(b) A board may not establish the board’s own impaired health professional program for the purpose of monitoring licensees of the board that have been referred to the program.

(c) A board may adopt rules establishing additional requirements for licensees referred to the impaired health professional program established under ORS 676.190 or a program with which the board has entered into a contract or designated to deliver therapeutic services under subsection (1) of this section.

(2) If a board participates in the impaired health professional program, the board shall establish by rule a procedure for referring licensees to the program. The procedure must provide that, before the board refers a licensee to the program, the board shall ensure that:

(a) An independent third party approved by the board to evaluate alcohol or substance abuse or mental health disorders has diagnosed the licensee with alcohol or substance abuse or a mental health disorder and provided the diagnosis and treatment options to the licensee and the board;

(b) The board has investigated to determine whether the licensee’s professional practice while impaired has presented or presents a danger to the public; and

(c) The licensee has agreed to report any arrest for or conviction of a misdemeanor or felony crime to the board within three business days after the licensee is arrested or convicted.

(3) A board that participates in the impaired health professional program shall review reports received from the program. If the board finds that a licensee is substantially noncompliant with a diversion agreement entered into under ORS 676.190, the board may suspend, restrict, modify or revoke the licensee’s license or end the licensee’s participation in the impaired health professional program.

(4) A board may not discipline a licensee solely because the licensee:

(a) Self-refers to or participates in the impaired health professional program;

(b) Has been diagnosed with alcohol or substance abuse or a mental health disorder; or

(c) Used controlled substances **or cannabis** before entry into the impaired health professional program, if the licensee did not practice while impaired.

**SECTION 67.** ORS 676.260 is amended to read:

676.260. (1) A health care facility that provides medical care immediately after a motor vehicle accident to a person reasonably believed to be the operator of a motor vehicle involved in the accident shall notify any law enforcement officer who is at the health care facility and is acting in an official capacity in relation to the motor vehicle accident if the health care facility becomes aware, as a result of any blood test performed in the course of that treatment, that:

(a) The person’s blood alcohol level meets or exceeds the percent specified in ORS 813.010; [*or*]

**(b) The person’s blood contains cannabis; or**

[(b)] (c) The person's blood contains a controlled substance, as defined in ORS 475.005.

(2) If a health care facility is required to notify a law enforcement officer of test results under subsection (1) of this section and no law enforcement officer is present in an official capacity at the health care facility, the health care facility shall notify a law enforcement agency in the county in which the accident occurred, or an Oregon State Police dispatch center, as soon as possible but no more than 72 hours after becoming aware of the results of the blood test.

(3) A notice required under this section must consist of:

(a) The name of the person being treated;

(b) The blood alcohol level, **the blood cannabis level** and name and level of any controlled substance disclosed by the test; and

(c) The date and time of the administration of the test.

(4) ORS 40.225 to 40.295 do not affect the requirement to provide notice imposed by this section, and the health care facility shall not be considered to have breached any duty under ORS 40.225 to 40.295 owed to the person about whom the notice is made.

**SECTION 68.** ORS 676.612 is amended to read:

676.612. (1) Subject to ORS 676.616 and 687.445, and in the manner prescribed in ORS chapter 183 for contested cases and as specified in ORS 675.385, 676.825, 678.780, 680.535, 687.445, 688.734, 688.836, 690.167, 690.407, 691.477, 694.147 and 700.111, the Health Licensing Office may refuse to issue or renew, may suspend or revoke or may otherwise condition or limit an authorization or may discipline or place on probation an authorization holder for commission of the prohibited acts listed in subsection (2) of this section.

(2) A person subject to the authority of a board or council listed in ORS 676.583 commits a prohibited act if the person engages in:

(a) Fraud, misrepresentation, concealment of material facts or deception in applying for or obtaining an authorization to practice in this state, or in any written or oral communication to the office concerning the issuance or retention of the authorization.

(b) Using, causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, insignia or any other representation, however disseminated or published, that is false, misleading or deceptive.

(c) Making a representation that the authorization holder knew or should have known is false or misleading regarding skill or the efficacy or value of treatment or remedy administered by the authorization holder.

(d) Practicing under a false, misleading or deceptive name, or impersonating another authorization holder.

(e) Permitting a person other than the authorization holder to use the authorization.

(f) Practicing with a physical or mental condition that presents an unreasonable risk of harm to the authorization holder or to the person or property of others in the course of performing the authorization holder's duties.

(g) Practicing while under the influence of alcohol, **cannabis**, controlled substances or other skill-impairing substances, or engaging in the illegal use of controlled substances or other skill-impairing substances so as to create a risk of harm to the person or property of others in the course of performing the duties of an authorization holder.

(h) Failing to properly and reasonably accept responsibility for the actions of employees.

(i) Employing, directly or indirectly, any suspended, uncertified, unlicensed or unregistered person to practice a regulated occupation or profession subject to the authority of the boards and councils listed in ORS 676.583.

(j) Unprofessional conduct, negligence, incompetence, repeated violations or any departure from or failure to conform to standards of practice in performing services or practicing in a regulated occupation or profession subject to the authority of the boards and councils listed under ORS 676.583.

(k) Conviction of any criminal offense, subject to ORS 670.280. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence of the

conviction. A plea of no contest or an admission of guilt is a conviction for purposes of this paragraph.

(L) Failing to report any adverse action, as required by statute or rule, taken against the authorization holder by another regulatory jurisdiction or any peer review body, health care institution, professional association, governmental agency, law enforcement agency or court for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action as described in this section.

(m) Violation of a statute regulating an occupation or profession subject to the authority of the boards and councils listed in ORS 676.583.

(n) Violation of any rule regulating an occupation or profession subject to the authority of the boards and councils listed in ORS 676.583.

(o) Failing to cooperate with the office in any investigation, inspection or request for information.

(p) Selling or fraudulently obtaining or furnishing an authorization to practice in a regulated occupation or profession subject to the authority of the boards and councils listed in ORS 676.583, or aiding or abetting such an act.

(q) Selling or fraudulently obtaining or furnishing any record related to practice in a regulated occupation or profession subject to the authority of the boards and councils listed in ORS 676.583, or aiding or abetting such an act.

(r) Failing to pay an outstanding civil penalty or fee that is due or failing to meet the terms of any order issued by the office that has become final.

(3) For the purpose of requesting a state or nationwide criminal records check under ORS 181A.195, the office may require the fingerprints of a person who is:

- (a) Applying for an authorization;
- (b) Applying for renewal of an authorization; or
- (c) Under investigation by the office.

(4) If the office places an authorization holder on probation under subsection (1) of this section, the office, in consultation with the appropriate board or council, may determine and at any time modify the conditions of the probation.

(5) If an authorization is suspended, the authorization holder may not practice during the term of suspension. Upon the expiration of the term of suspension, the authorization may be reinstated by the office if the conditions of suspension no longer exist and the authorization holder has satisfied all requirements in the relevant statutes or administrative rules for issuance, renewal or reinstatement.

**SECTION 69.** ORS 677.141 is amended to read:

677.141. (1) A physician issued a license under ORS 677.139 is subject to all the provisions of this chapter and to all the rules of the Oregon Medical Board. A physician issued a license under ORS 677.139 has the same duties and responsibilities and is subject to the same penalties and sanctions as any other physician licensed under this chapter.

(2) A physician issued a license under ORS 677.139 may not:

(a) Act as a dispensing physician as defined in ORS 677.010;

(b) Administer controlled substances for the treatment of intractable pain to a person located within this state;

**(c) Provide written documentation for purposes of ORS 475B.415;**

[(c)] **(d)** Employ a physician assistant as defined in ORS 677.495 to treat a person located within this state;

[(d)] **(e)** Participate in the primary care provider loan repayment program created in ORS 413.233; or

[(e)] **(f)** Assert a lien for services under ORS 87.555.

(3) A physician licensed under ORS 677.139 shall comply with all patient confidentiality requirements of this state, except as those requirements are expressly prohibited by the law of any other state of the United States where a person's medical records are maintained.

**SECTION 70.** ORS 677.141, as amended by section 6, chapter 829, Oregon Laws 2015, is amended to read:

677.141. (1) A physician issued a license under ORS 677.139 is subject to all the provisions of this chapter and to all the rules of the Oregon Medical Board. A physician issued a license under ORS 677.139 has the same duties and responsibilities and is subject to the same penalties and sanctions as any other physician licensed under this chapter.

(2) A physician issued a license under ORS 677.139 may not:

(a) Act as a dispensing physician as defined in ORS 677.010;

(b) Administer controlled substances for the treatment of intractable pain to a person located within this state;

**(c) Provide written documentation for purposes of ORS 475B.415;**

[(c)] **(d)** Employ a physician assistant as defined in ORS 677.495 to treat a person located within this state; or

[(d)] **(e)** Assert a lien for services under ORS 87.555.

(3) A physician licensed under ORS 677.139 shall comply with all patient confidentiality requirements of this state, except as those requirements are expressly prohibited by the law of any other state of the United States where a person's medical records are maintained.

**SECTION 71.** ORS 677.190 is amended to read:

677.190. The Oregon Medical Board may refuse to grant, or may suspend or revoke a license to practice for any of the following reasons:

(1)(a) Unprofessional or dishonorable conduct.

(b) For purposes of this subsection, the use of an alternative medical treatment shall not by itself constitute unprofessional conduct. For purposes of this paragraph:

(A) "Alternative medical treatment" means:

(i) A treatment that the treating physician, based on the physician's professional experience, has an objective basis to believe has a reasonable probability for effectiveness in its intended use even if the treatment is outside recognized scientific guidelines, is unproven, is no longer used as a generally recognized or standard treatment or lacks the approval of the United States Food and Drug Administration;

(ii) A treatment that is supported for specific usages or outcomes by at least one other physician licensed by the Oregon Medical Board; and

(iii) A treatment that poses no greater risk to a patient than the generally recognized or standard treatment.

(B) "Alternative medical treatment" does not include use by a physician of controlled substances in the treatment of a person for chemical dependency resulting from the use of controlled substances.

(2) Employing any person to solicit patients for the licensee. However, a managed care organization, independent practice association, preferred provider organization or other medical service provider organization may contract for patients on behalf of physicians.

(3) Representing to a patient that a manifestly incurable condition of sickness, disease or injury can be cured.

(4) Obtaining any fee by fraud or misrepresentation.

(5) Willfully or negligently divulging a professional secret without the written consent of the patient.

(6) Conviction of any offense punishable by incarceration in a Department of Corrections institution or in a federal prison, subject to ORS 670.280. A copy of the record of conviction, certified to by the clerk of the court entering the conviction, shall be conclusive evidence of the conviction.

(7) Impairment as defined in ORS 676.303.

(8) Fraud or misrepresentation in applying for or procuring a license to practice in this state, or in connection with applying for or procuring registration.

(9) Making statements that the licensee knows, or with the exercise of reasonable care should know, are false or misleading, regarding skill or the efficacy or value of the medicine, treatment or

remedy prescribed or administered by the licensee or at the direction of the licensee in the treatment of any disease or other condition of the human body or mind.

(10) Impersonating another licensee licensed under this chapter or permitting or allowing any person to use the license.

(11) Aiding or abetting the practice of medicine or podiatry by a person not licensed by the board, when the licensee knows, or with the exercise of reasonable care should know, that the person is not licensed.

(12) Using the name of the licensee under the designation “doctor,” “Dr.,” “D.O.” or “M.D.,” “D.P.M.,” “Acupuncturist,” “P.A.” or any similar designation in any form of advertising that is untruthful or is intended to deceive or mislead the public.

(13) Gross negligence or repeated negligence in the practice of medicine or podiatry.

(14) Incapacity to practice medicine or podiatry. If the board has evidence indicating incapacity, the board may order a licensee to submit to a standardized competency examination. The licensee shall have access to the result of the examination and to the criteria used for grading and evaluating the examination. If the examination is given orally, the licensee shall have the right to have the examination recorded.

(15) Disciplinary action by another state of a license to practice, based upon acts by the licensee similar to acts described in this section. A certified copy of the record of the disciplinary action of the state is conclusive evidence thereof.

(16) Failing to designate the degree appearing on the license under circumstances described in ORS 677.184 (3).

(17) Willfully violating any provision of this chapter or any rule adopted by the board, board order, or failing to comply with a board request pursuant to ORS 677.320.

(18) Failing to report the change of the location of practice of the licensee as required by ORS 677.172.

(19) Imprisonment as provided in ORS 677.225.

(20) Making a fraudulent claim.

(21)(a) Performing psychosurgery.

(b) For purposes of this subsection and ORS 426.385, “psychosurgery” means any operation designed to produce an irreversible lesion or destroy brain tissue for the primary purpose of altering the thoughts, emotions or behavior of a human being. “Psychosurgery” does not include procedures which may produce an irreversible lesion or destroy brain tissues when undertaken to cure well-defined disease states such as brain tumor, epileptic foci and certain chronic pain syndromes.

(22) Refusing an invitation for an informal interview with the board requested under ORS 677.415.

(23) Violation of the federal Controlled Substances Act.

(24) Prescribing controlled substances without a legitimate medical purpose, or prescribing controlled substances without following accepted procedures for examination of patients, or prescribing controlled substances without following accepted procedures for record keeping.

**(25) Providing written documentation for purposes of ORS 475B.415 without having legitimately diagnosed a debilitating medical condition, as defined in ORS 475B.410, or without having followed accepted procedures for the examination of patients or for keeping records.**

[25] (26) Failure by the licensee to report to the board any adverse action taken against the licensee by another licensing jurisdiction or any peer review body, health care institution, professional or medical society or association, governmental agency, law enforcement agency or court for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action as described in this section.

[26] (27) Failure by the licensee to notify the board of the licensee’s voluntary resignation from the staff of a health care institution or voluntary limitation of a licensee’s staff privileges at the institution if that action occurs while the licensee is under investigation by the institution or a committee thereof for any reason related to medical incompetence, unprofessional conduct, physical incapacity or impairment.

**SECTION 72.** ORS 682.208 is amended to read:

682.208. (1) A person desiring to be licensed as an emergency medical services provider shall submit an application for licensure to the Oregon Health Authority. The application must be upon forms prescribed by the authority and must contain:

(a) The name and address of the applicant.

(b) The name and location of the training course successfully completed by the applicant and the date of completion.

(c) A statement that to the best of the applicant's knowledge the applicant is physically and mentally qualified to act as an emergency medical services provider, is free from addiction to controlled substances, **cannabis** or alcoholic beverages[,] or, if not so free, has been and is currently rehabilitated and is free from epilepsy or diabetes[,] or, if not so free, has been free from any lapses of consciousness or control for a period of time as prescribed by rule of the authority.

(d) Other information as the authority may reasonably require to determine compliance with applicable provisions of this chapter and the rules adopted [*thereunder*] **under this chapter**.

(2) The application must be accompanied by proof as prescribed by rule of the authority of the applicant's successful completion of a training course approved by the authority[,] and, if an extended period of time has elapsed since the completion of the course, of a satisfactory amount of continuing education.

(3) The authority shall adopt a schedule of minimum educational requirements in emergency and nonemergency care for emergency medical services providers. A course approved by the authority must be designed to protect the welfare of out-of-hospital patients, to promote the health, well-being and saving of the lives of such patients and to reduce their pain and suffering.

**SECTION 73.** ORS 743A.164 is amended to read:

743A.164. A health insurance policy other than a disability income policy shall provide coverage or reimbursement of expenses for the medical treatment of injuries or illnesses caused in whole or in part by the insured's use of alcohol, **cannabis** or a controlled substance to the same extent as and subject to limitations no more restrictive than those imposed on coverage or reimbursement of expenses arising from treatment of injuries or illnesses not caused by an insured's use of alcohol, **cannabis** or a controlled substance.

**SECTION 74.** ORS 801.272 is amended to read:

801.272. "Field sobriety test" means a physical or mental test, approved by the Department of State Police by rule after consultation with the Department of Public Safety Standards and Training, that enables a police officer or trier of fact to screen for or detect probable impairment from intoxicating liquor, **cannabis**, a controlled substance[,] **or** an inhalant, or any combination of intoxicating liquor, [*an inhalant and*] **cannabis**, a controlled substance **and an inhalant**.

**SECTION 75.** ORS 807.060 is amended to read:

807.060. The Department of Transportation may not grant driving privileges to a person under a license if the person is not eligible under this section. The following are not eligible for a license:

(1) A person under 16 years of age.

(2)(a) A person under 18 years of age who is not an emancipated minor, unless the application of the person is signed by the person's mother, father or legal guardian. A person who signs an application under this paragraph may have the driving privileges canceled as provided under ORS 809.320.

(b) A person under 18 years of age who does not meet the requirements of ORS 807.065.

(3) Notwithstanding subsection (2) of this section, a person under 18 years of age is not eligible for a commercial driver license.

(4) A person [*that*] the department determines has a problem condition involving alcohol, [*inhalants or*] **cannabis**, controlled substances **or inhalants** as described under ORS 813.040.

(5) A person the department reasonably believes has a mental or physical condition or impairment that affects the person's ability to safely operate a motor vehicle upon the highways.

(6) A person the department reasonably believes is unable to understand highway signs that warn, regulate or direct traffic.

(7) A person who is required to make future responsibility filings but has not made filings as required.

(8) A person who cannot be issued a license under the Driver License Compact under ORS 802.540.

(9) A person who is not subject to the Driver License Compact under ORS 802.540 but whose driving privileges are currently under suspension or revocation in any other state upon grounds which, if committed in this state, would be grounds for the suspension or revocation of the driving privileges of the person.

(10) A person who has been declared a habitual offender under ORS 809.640. A person declared not eligible to be licensed under this subsection may become eligible by having eligibility restored under ORS 809.640.

(11) A person whose driving privileges are canceled in this state under ORS 809.310 until the person is eligible under ORS 809.310.

(12) A person while the person's driving privileges are revoked in this state.

(13) A person during a period when the person's driving privileges are suspended in this state.

(14) A person who holds a current out-of-state license or driver permit or a valid Oregon license or driver permit. A person who is not eligible under this subsection may become eligible by surrendering the license, driver permit or out-of-state license or driver permit to the department before issuance of the license. Nothing in this subsection authorizes a person to continue to operate a motor vehicle on the basis of an out-of-state license or permit if the person is required by ORS 807.062 to obtain an Oregon license or permit.

(15) A person who has not complied with the requirements and responsibilities created by citation for or conviction of a traffic offense in another jurisdiction if an agreement under ORS 802.530 authorizes the department to withhold issuance of a license.

(16) A person who has not complied with the requirement of ORS 813.022 (1).

**SECTION 76.** ORS 807.250 is amended to read:

807.250. (1) In addition to any requirements under ORS 807.240 and any applicable conditions under ORS 813.500 and 813.520, the Department of Transportation may not issue a hardship permit under ORS 807.240 to a person whose suspension of driving privileges is based upon a conviction of any of the following unless the person submits to the department a recommendation from the judge before whom the person was convicted:

(a) ORS 811.140.

(b) ORS 811.540.

(c) Driving while under the influence of intoxicants. If a person's driving privileges are suspended for a conviction for driving while under the influence of intoxicants and the person is determined under ORS 813.500 to have a problem condition involving alcohol, [*inhalants or*] **cannabis**, controlled substances **or inhalants** as described in ORS 813.040, the judge must:

(A) Make the recommendation with reference to the best interest of the public as well as of the defendant and the recommendation must be in writing.

(B) Recommend times, places, routes and days minimally necessary for the person to seek or retain employment, to attend any alcohol or drug treatment or rehabilitation program or to receive necessary medical treatment for the person or a member of the person's immediate family.

(2) The department may not issue a hardship permit to a person whose suspension of driving privileges is based on a conviction described in ORS 809.265.

(3) The department may not issue a hardship permit to a person whose driver license or driver permit is suspended pursuant to ORS 25.750 to 25.783.

(4) The department may not issue a hardship permit to a person whose driving privileges are suspended pursuant to ORS 809.280 (4) or 809.416 (1) or (2).

**SECTION 77.** ORS 809.260 is amended to read:

809.260. (1) Whenever a person who is 17 years of age or younger, but not younger than 13 years of age, is convicted of any offense described in this subsection or determined by a juvenile court to have committed one of the described offenses, the court in which the person is convicted shall order

suspension of the person's driving privileges. This subsection applies to ORS 166.370 **and sections 4, 5 and 6 of this 2017 Act** and to any offense involving the delivery, manufacture or possession of controlled substances.

(2) Whenever a person who is 20 years of age or younger, but not younger than 13 years of age, at the time of committing any offense described in this subsection, is convicted or determined by a juvenile court to have committed one of the described offenses, the court in which the person is convicted shall order suspension of the person's driving privileges. This subsection applies to any offense involving the possession, use or abuse of alcohol **or cannabis**.

(3) If a court has issued an order suspending driving privileges under this section, the court, upon petition of the person, may review the order and may withdraw the order at any time the court deems appropriate except as provided in the following:

(a) A court may not withdraw an order for a period of 90 days following the issuance of the order if it is the first such order issued with respect to the person.

(b) A court may not withdraw an order for a period of one year following the issuance of the order if it is the second or subsequent such order issued with respect to the person.

(c) Notwithstanding paragraph (a) of this subsection, a court may not withdraw an order for a period of six months if the order is based on a determination or conviction involving controlled substances.

(4) Upon receipt of an order under this section, the department shall take action as directed under ORS 809.280.

**SECTION 78.** ORS 809.235 is amended to read:

809.235. (1)(a) Notwithstanding ORS 809.409 (2), the court shall order that a person's driving privileges be permanently revoked if the person is convicted of any degree of murder and the court finds that the person intentionally used a motor vehicle as a dangerous weapon resulting in the death of the victim, or if the person is convicted of aggravated vehicular homicide, manslaughter in the first or second degree resulting from the operation of a motor vehicle, criminally negligent homicide resulting from the operation of a motor vehicle or assault in the first degree resulting from the operation of a motor vehicle.

(b) The court shall order that a person's driving privileges be permanently revoked if the person is convicted of felony driving while under the influence of intoxicants in violation of ORS 813.010 or if the person is convicted for a third or subsequent time of any of the following offenses in any combination:

(A) Driving while under the influence of intoxicants in violation of:

(i) ORS 813.010; or

(ii) The statutory counterpart to ORS 813.010 in another jurisdiction.

(B) A driving under the influence of intoxicants offense in another jurisdiction that involved the impaired driving of a vehicle due to the use of intoxicating liquor, **cannabis**, a controlled substance, an inhalant or any combination thereof.

(C) A driving offense in another jurisdiction that involved operating a vehicle while having a blood alcohol content above that jurisdiction's permissible blood alcohol content.

(c) For the purposes of paragraph (b) of this subsection, a conviction for a driving offense in another jurisdiction based solely on a person under 21 years of age having a blood alcohol content that is lower than the permissible blood alcohol content in that jurisdiction for a person 21 years of age or older does not constitute a prior conviction.

(2)(a) A person whose driving privileges are revoked as described in subsection (1) of this section may file a petition in the circuit court of the county in which the person's driving privileges were revoked for an order restoring the person's driving privileges. A petition may be filed under this subsection no sooner than 10 years after the person is:

(A) Released on parole or post-prison supervision for the crime for which the person's driving privileges were revoked and any other crimes arising out of the same criminal episode;

(B) Sentenced to probation for the crime for which the person's driving privileges were revoked, unless the probation is revoked, in which case the petition may be filed no sooner than 10 years after the date probation is revoked; or

(C) Sentenced for the crime for which the person's driving privileges were revoked, if no other provision of this paragraph applies.

(b) Notwithstanding paragraph (a) of this subsection, if during the revocation period for the crime for which the person was convicted the person is convicted of a criminal offense involving a motor vehicle, the person may file a petition to restore driving privileges as described in paragraph (a) of this subsection no sooner than 10 years from the date of the most recent conviction involving a motor vehicle.

(c) The district attorney of the county in which the person's driving privileges were revoked shall be named and served as the respondent in the petition.

(3) The court shall hold a hearing on a petition filed in accordance with subsection (2) of this section. In determining whether to grant the petition, the court shall consider:

(a) The nature of the offense for which driving privileges were revoked.

(b) The degree of violence involved in the offense.

(c) Other criminal and relevant noncriminal behavior of the petitioner both before and after the conviction that resulted in the revocation.

(d) The recommendation of the person's parole officer, which shall be based in part on a psychological evaluation ordered by the court to determine whether the person is presently a threat to the safety of the public.

(e) Any other relevant factors.

(4) The court shall order a petitioner's driving privileges restored if, after a hearing described in subsection (3) of this section, the court finds by clear and convincing evidence that the petitioner:

(a) Is rehabilitated;

(b) Does not pose a threat to the safety of the public; and

(c) If the sentence for the crime for which the petitioner's driving privileges were revoked required the petitioner to complete an alcohol or drug treatment program, has completed an alcohol or drug treatment program in a facility approved by the Director of the Oregon Health Authority or a similar program in another jurisdiction.

(5) Upon receiving a court order to restore a person's driving privileges, the department may reinstate driving privileges in accordance with ORS 809.390, except that the department may not reinstate driving privileges of any person whose privileges are revoked under this section until the person complies with future responsibility filings.

**SECTION 79.** ORS 809.730 is amended to read:

809.730. (1) A motor vehicle may be seized and forfeited if the person operating the vehicle is arrested or issued a citation for driving while under the influence of intoxicants in violation of ORS 813.010 and the person, within three years prior to the arrest or issuance of the citation, has been convicted of:

(a) Driving while under the influence of intoxicants in violation of:

(A) ORS 813.010; or

(B) The statutory counterpart to ORS 813.010 in another jurisdiction;

(b) A driving under the influence of intoxicants offense in another jurisdiction that involved the impaired driving of a vehicle due to the use of intoxicating liquor, **cannabis**, a controlled substance, an inhalant or any combination thereof;

(c) A driving offense in another jurisdiction that involved operating a vehicle while having a blood alcohol content above that jurisdiction's permissible blood alcohol content;

(d) Murder, manslaughter, criminally negligent homicide or assault that resulted from the operation of a motor vehicle in this state or in another jurisdiction; or

(e) Aggravated vehicular homicide under ORS 163.149 or aggravated driving while suspended or revoked under ORS 163.196.

(2) For the purposes of subsection (1) of this section, a conviction for a driving offense in another jurisdiction based solely on a person under 21 years of age having a blood alcohol content that is lower than the permissible blood alcohol content in that jurisdiction for a person 21 years of age or older does not constitute a prior conviction.

(3) All seizure and forfeiture proceedings under this section shall be conducted in accordance with ORS chapter 131A.

**SECTION 80.** ORS 813.010 is amended to read:

813.010. (1) A person commits the offense of driving while under the influence of intoxicants if the person drives a vehicle while the person:

(a) Has 0.08 percent or more by weight of alcohol in the blood of the person as shown by chemical analysis of the breath or blood of the person made under ORS 813.100, 813.140 or 813.150;

(b) Is under the influence of intoxicating liquor, **cannabis**, a controlled substance or an inhalant; or

(c) Is under the influence of any combination of intoxicating liquor, [*an inhalant and*] **cannabis**, a controlled substance **and an inhalant**.

(2) A person may not be convicted of driving while under the influence of intoxicants on the basis of being under the influence of a controlled substance or an inhalant unless the fact that the person was under the influence of a controlled substance or an inhalant is pleaded in the accusatory instrument and is either proved at trial or is admitted by the person through a guilty plea.

(3) A person convicted of the offense described in this section is subject to ORS 813.020 in addition to this section.

(4) Except as provided in subsection (5) of this section, the offense described in this section, driving while under the influence of intoxicants, is a Class A misdemeanor and is applicable upon any premises open to the public.

(5)(a) Driving while under the influence of intoxicants is a Class C felony if the current offense was committed in a motor vehicle and the person has, at least three times in the 10 years prior to the date of the current offense, been convicted of, or been found to be within the jurisdiction of the juvenile court for an act that if committed by an adult would be, any of the following offenses in any combination:

(A) Driving while under the influence of intoxicants in violation of:

(i) This section; or

(ii) The statutory counterpart to this section in another jurisdiction.

(B) A driving under the influence of intoxicants offense in another jurisdiction that involved the impaired driving or operation of a vehicle, an aircraft or a boat due to the use of intoxicating liquor, **cannabis**, a controlled substance, an inhalant or any combination thereof.

(C) A driving offense in another jurisdiction that involved operating a vehicle, an aircraft or a boat while having a blood alcohol content above that jurisdiction's permissible blood alcohol content.

(b) For the purposes of paragraph (a) of this subsection, a conviction or adjudication for a driving offense in another jurisdiction based solely on a person under 21 years of age having a blood alcohol content that is lower than the permissible blood alcohol content in that jurisdiction for a person 21 years of age or older does not constitute a prior conviction or adjudication.

(6) In addition to any other sentence that may be imposed, the court shall impose one or more of the following fines on a person convicted of driving while under the influence of intoxicants as follows:

(a) For a person's first conviction, a minimum of \$1,000.

(b) For a person's second conviction, a minimum of \$1,500.

(c) For a person's third or subsequent conviction, a minimum of \$2,000 if the person is not sentenced to a term of imprisonment.

(d) For a person who drives a vehicle while the person has 0.15 percent or more by weight of alcohol in the blood of the person as shown by chemical analysis of the breath or blood of the person made under ORS 813.100, 813.140 or 813.150, a minimum of \$2,000.

(7) Notwithstanding ORS 161.635, \$10,000 is the maximum fine that a court may impose on a person convicted of driving while under the influence of intoxicants if:

- (a) The current offense was committed in a motor vehicle; and
- (b) There was a passenger in the motor vehicle who was under 18 years of age and was at least three years younger than the person driving the motor vehicle.

**SECTION 81.** ORS 813.040 is amended to read:

813.040. This section establishes, for purposes of ORS 471.432, 807.060 and 813.500, when a person has a problem condition involving alcohol, [*inhalants or*] **cannabis**, controlled substances **or inhalants**. For purposes of ORS 471.432, 807.060 and 813.500, a person has a problem condition involving alcohol, [*inhalants or*] **cannabis**, controlled substances **or inhalants** if it is determined that the person has a problem condition in which the person's health or that of others is substantially impaired or endangered or the person's social or economic function is substantially disrupted because of the person's:

(1) Habitual or periodic use of:

(a) Alcoholic beverages; or

(b) **Cannabis, unless the person holds a registry identification card as defined in ORS 475B.410; or**

(2) Use of or loss of the ability to control the use of controlled substances, inhalants or other substances with abuse potential, including a condition that may have developed:

(a) A physical dependence in which the body requires a continuing supply of a [*drug, inhalant or*] controlled substance, **an inhalant or a drug** to avoid characteristic withdrawal symptoms; or

(b) A psychological dependence characterized by an overwhelming mental desire for continued use of a [*drug, inhalant or*] controlled substance, **an inhalant or a drug**.

**SECTION 82.** ORS 813.131 is amended to read:

813.131. (1) Any person who operates a motor vehicle upon premises open to the public or the highways of this state shall be deemed to have given consent, subject to the Motorist Implied Consent Law, to a chemical test of the person's urine for the purpose of determining the presence of **cannabis**, a controlled substance or an inhalant in the person's body if the person is arrested for driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance and either:

(a) The person takes the breath test described in ORS 813.100 and the test discloses a blood alcohol content of less than 0.08 percent; or

(b) The person is involved in an accident resulting in injury or property damage. A urine test may be requested under this paragraph regardless of whether a breath test has been requested and regardless of the results of a breath test, if one is taken.

(2) A police officer may not request a urine test unless the officer is certified by the Department of Public Safety Standards and Training as having completed at least eight hours of training in recognition of drug impaired driving and the officer has a reasonable suspicion that the person arrested has been driving while under the influence of **cannabis**, a controlled substance, an inhalant or any combination of [*an inhalant,*] **cannabis**, a controlled substance, **an inhalant** and intoxicating liquor.

(3) A person asked to give a urine sample shall be given privacy and may not be observed by a police officer when producing the sample.

(4)(a) At the trial of any civil or criminal action, suit or proceeding arising out of the acts committed by a person driving a motor vehicle while under the influence of intoxicants, a valid chemical analysis of a person's urine is admissible as evidence and may be used with other evidence, if any, to determine whether the person was driving while under the influence of intoxicants.

(b) A chemical analysis of a person's urine is valid under this subsection if analysis is performed in an accredited or licensed toxicology laboratory.

**SECTION 83.** ORS 813.140 is amended to read:

813.140. Nothing in ORS 813.100 is intended to preclude the administration of a chemical test described in this section. A police officer may obtain a chemical test of the breath or blood to de-

termine the amount of alcohol in any person's blood or a test of the person's blood or urine, or both, to determine the presence of **cannabis**, a controlled substance or an inhalant in the person as provided in the following:

(1) If, when requested by a police officer, the person expressly consents to such a test.

(2) Notwithstanding subsection (1) of this section, from a person without the person's consent if:

(a) The police officer has probable cause to believe that the person was driving while under the influence of intoxicants and that evidence of the offense will be found in the person's blood or urine; and

(b) The person is unconscious or otherwise in a condition rendering the person incapable of expressly consenting to the test or tests requested.

**SECTION 84.** ORS 813.150 is amended to read:

813.150. In addition to a chemical test of the breath, blood or urine administered under ORS 813.100 or 813.140, upon the request of a police officer, a person shall be permitted upon request, at the person's own expense, reasonable opportunity to have any licensed physician and surgeon, licensed professional nurse or qualified technician, chemist or other qualified person of the person's own choosing administer a chemical test or tests of the person's breath or blood for the purpose of determining the alcoholic content of the person's blood or a chemical test or tests of the person's blood or urine, or both, for the purpose of determining the presence of **cannabis**, a controlled substance or an inhalant in the person. The failure or inability to obtain such a test or tests by a person shall not preclude the admission of evidence relating to a test or tests taken upon the request of a police officer.

**SECTION 85.** ORS 813.215, as amended by section 62, chapter 24, Oregon Laws 2016, is amended to read:

813.215. (1) A defendant is eligible for diversion if the defendant meets all of the following conditions:

(a) On the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement, the defendant had no charge, other than the charge for the present offense, pending for:

(A) An offense of driving while under the influence of intoxicants in violation of:

(i) ORS 813.010; or

(ii) The statutory counterpart to ORS 813.010 in another jurisdiction;

(B) A driving under the influence of intoxicants offense in another jurisdiction that involved the impaired driving of a vehicle due to the use of intoxicating liquor, **cannabis**, a controlled substance, an inhalant or any combination thereof; or

(C) A driving offense in another jurisdiction that involved operating a vehicle while having a blood alcohol content above that jurisdiction's permissible blood alcohol content.

(b) The defendant has not been convicted of an offense described in paragraph (a) of this subsection within the period beginning 15 years before the date of the commission of the present offense and ending on the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement.

(c) The defendant has not been convicted of a felony offense described in ORS 813.010 (5)(a).

(d) The defendant was not participating in a driving while under the influence of intoxicants diversion program or in any similar alcohol or drug rehabilitation program in this state or in another jurisdiction on the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement. A defendant is not ineligible for diversion under this paragraph by reason of participation in a diversion program or any similar alcohol or drug rehabilitation program as a result of the charge for the present offense or a charge for violation of ORS 471.430.

(e) The defendant did not participate in a diversion or rehabilitation program described in paragraph (d) of this subsection within the period beginning 15 years before the date of the commission of the present offense and ending on the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement. A defendant is not ineligible for diversion

under this paragraph by reason of participation in a diversion program or rehabilitation program described in paragraph (d) of this subsection as a result of the charge for the present offense or a charge for violation of ORS 471.430.

(f) The defendant had no charge of an offense of aggravated vehicular homicide or of murder, manslaughter, criminally negligent homicide or assault that resulted from the operation of a motor vehicle pending in this state or in another jurisdiction on the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement.

(g) The defendant has not been convicted of an offense described in paragraph (f) of this subsection within the period beginning 15 years before the date of the commission of the present offense and ending on the date the defendant filed the petition for a driving while under the influence of intoxicants diversion agreement.

(h) The defendant did not hold commercial driving privileges on the date of the commission of the offense.

(i) The defendant was not operating a commercial motor vehicle at the time of the offense.

(j) The present driving while under the influence of intoxicants offense did not involve an accident resulting in:

(A) Death of any person; or

(B) Physical injury as defined in ORS 161.015 to any person other than the defendant.

(2) For the purposes of subsection (1)(a) of this section, a conviction for a driving offense in another jurisdiction based solely on a person under 21 years of age having a blood alcohol content that is lower than the permissible blood alcohol content in that jurisdiction for a person 21 years of age or older does not constitute a prior conviction.

(3) A defendant is eligible for a second or subsequent diversion if the defendant meets all of the conditions of subsection (1) of this section and the defendant has not been convicted of any other criminal offense involving a motor vehicle within the period beginning 15 years before the date of the commission of the present offense and ending on the date the defendant filed the petition for the second or subsequent driving while under the influence of intoxicants diversion agreement.

**SECTION 86.** ORS 813.220 is amended to read:

813.220. After the time for requesting a hearing under ORS 813.210 has expired with no request for a hearing, or after a hearing requested under ORS 813.210, the court shall determine whether to allow or deny a petition for a driving while under the influence of intoxicants diversion agreement. In making a determination under this section, the court:

(1) Shall consider whether the diversion will be of benefit to the defendant and the community.

(2) May take into consideration whether there was an early recognition by the defendant during the proceeding that a course of diagnosis and treatment of problem drinking, alcoholism or drug dependency would be beneficial.

(3) May take into consideration whether there is a probability that the defendant will cooperate with the diagnostic assessment and treatment agencies.

(4) May take into consideration whether the defendant will observe the restrictions contained in the diversion agreement.

(5) May take into consideration whether the offense was committed in a motor vehicle and whether there was a passenger in the motor vehicle who was under 18 years of age and at least three years younger than the defendant.

(6) Shall deny the petition for a driving while under the influence of intoxicants diversion agreement if the defendant failed to appear at an arraignment on the present offense without good cause.

(7) Shall deny the petition for a driving while under the influence of intoxicants diversion agreement if, after the date the defendant filed the petition, the defendant was charged with or convicted of:

(a) An offense of driving while under the influence of intoxicants in violation of:

(A) ORS 813.010; or

(B) The statutory counterpart to ORS 813.010 in another jurisdiction;

(b) A driving under the influence of intoxicants offense in another jurisdiction that involved the impaired driving of a vehicle due to the use of intoxicating liquor, **cannabis**, a controlled substance, an inhalant or any combination thereof; or

(c) A driving offense in another jurisdiction that involved operating a vehicle while having a blood alcohol content above that jurisdiction's permissible blood alcohol content.

(8) Shall deny the petition for a driving while under the influence of intoxicants diversion agreement if the defendant participated in a driving while under the influence of intoxicants diversion program or in any similar alcohol or drug rehabilitation program, other than a program entered into as a result of the charge for the present offense, in this state or in another jurisdiction after the date the defendant filed the petition.

(9) Shall deny the petition for a driving while under the influence of intoxicants diversion agreement if the defendant was charged with or convicted of an offense of aggravated vehicular homicide or of murder, manslaughter, criminally negligent homicide or assault that resulted from the operation of a motor vehicle in this state or in another jurisdiction after the date the defendant filed the petition.

(10) Shall deny the petition for a driving while under the influence of intoxicants diversion agreement if the defendant has been convicted of a felony offense described in ORS 813.010 (5)(a).

(11) For the purposes of subsection (7) of this section, may not consider a conviction for a driving offense in another jurisdiction based solely on a person under 21 years of age having a blood alcohol content that is lower than the permissible blood alcohol content in that jurisdiction for a person 21 years of age or older as a prior conviction.

(12) May not deny the petition for a driving while under the influence of intoxicants diversion agreement solely on the basis that the defendant is a member of the Armed Forces of the United States, the reserve components of the Armed Forces of the United States or the National Guard and has been called or demonstrates that the defendant will be called to active duty, and the military service will impair the defendant's ability to complete the diversion program.

**SECTION 87.** ORS 813.430 is amended to read:

813.430. This section establishes circumstances under which ORS 813.420 requires an increase in the time for suspension of driving privileges and under which ORS 813.520 requires an increase in the time before the Department of Transportation may issue a hardship permit. A person is subject to an increase in suspension time under this section if any of the following apply:

(1) The person is presently participating in a driving while under the influence of intoxicants diversion program in this state or in any similar alcohol or drug rehabilitation program in this or another jurisdiction.

(2) Within the five years preceding the date of arrest any of the following occurred:

(a) A suspension of the person's driving privileges under ORS 813.410 or 482.540 (1981 Replacement Part) became effective.

(b) The person was convicted of:

(A) Driving while under the influence of intoxicants in violation of:

(i) ORS 813.010;

(ii) The statutory counterpart to ORS 813.010 in another jurisdiction; or

(iii) A municipal ordinance in this state or another jurisdiction;

(B) A driving under the influence of intoxicants offense in another jurisdiction that involved the impaired driving of a vehicle due to the use of intoxicating liquor, **cannabis**, a controlled substance, an inhalant or any combination thereof; or

(C) A driving offense in another jurisdiction that involved operating a vehicle while having a blood alcohol content above that jurisdiction's permissible blood alcohol content.

(c) The person commenced participating in a driving while under the influence of intoxicants diversion program in this state or in any similar alcohol or drug rehabilitation program in this or another jurisdiction.

(3) For the purposes of subsection (2)(b) of this section, a conviction for a driving offense in another jurisdiction based solely on a person under 21 years of age having a blood alcohol content

that is lower than the permissible blood alcohol content in that jurisdiction for a person 21 years of age or older does not constitute a prior conviction.

**SECTION 88.** ORS 813.500 is amended to read:

813.500. (1) If a person's license is suspended for driving while under the influence of intoxicants under ORS 813.400 and the suspension period is determined by ORS 809.428 (2)(b) or (c), the Department of Transportation may only issue a hardship permit to the person under ORS 807.240 if the person, in addition to any requirement under ORS 807.240 and any applicable requirements under ORS 807.250 and 813.520:

(a) Is examined by the Oregon Health Authority to determine whether the person has a problem condition involving alcohol, [*inhalants or*] **cannabis**, controlled substances **or inhalants** as described in ORS 813.040; and

(b) Complies with the requirements of this section.

(2) If the authority determines that the person has a problem condition involving alcohol, [*inhalants or*] **cannabis**, controlled substances **or inhalants**, as described in ORS 813.040, the department may issue the permit to the person only if both the following apply:

(a) The person enrolled in a program for rehabilitation for alcoholism or drug dependence approved by the authority.

(b) The authority recommends, on the basis of the person's progress in the rehabilitation program, such reinstatement in writing to the department. If the authority makes a recommendation under this paragraph, the authority shall state specifically in the recommendation the times, places, routes and days of the week minimally necessary for the person to seek or retain employment, to attend any alcohol or drug treatment or rehabilitation program or to obtain necessary medical treatment for the person or a member of the person's immediate family.

(3) If the authority determines that the person does not have a problem condition involving alcohol, [*inhalants or*] **cannabis**, controlled substances **or inhalants** as described in ORS 813.040, the department may issue the permit to the person only if, in addition to any requirements under ORS 807.240, the person enters an alcohol or drug information program approved by the authority and the department determines that issuance of a permit is appropriate. If the department issues a permit to a person described in this subsection, the department shall require, under ORS 807.240, that the person complete the program as a condition of retaining the permit.

**SECTION 89.** ORS 813.602 is amended to read:

813.602. (1) Subject to subsection (2) of this section, when a person is convicted of driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance, the Department of Transportation, in addition to any other requirement, shall require that the person have installed and be using an approved ignition interlock device in any vehicle operated by the person:

(a) Before the person is eligible for a hardship permit. The requirement is a condition of the hardship permit for the duration of the hardship permit.

(b) For a first conviction, for one year after the ending date of the suspension or revocation caused by the conviction. Violation of the condition imposed under this paragraph is a Class A traffic violation.

(c) For a second or subsequent conviction, for two years after the ending date of the suspension or revocation caused by the conviction. Violation of the condition imposed under this paragraph is a Class A traffic violation.

(2) When a person is convicted of a crime or multiple crimes as described in this subsection, the department, in addition to any other requirement, shall require that the person have installed and be using an approved ignition interlock device in any vehicle operated by the person for five years after the ending date of the longest running suspension or revocation caused by any of the convictions. Violation of the condition imposed under this subsection is a Class A traffic violation. A person is subject to this subsection when the person is convicted of:

(a) Driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance and any of the following crimes as part of the same criminal episode:

(A) Any degree of murder.

- (B) Manslaughter in the first or second degree.
- (C) Criminally negligent homicide.
- (D) Assault in the first degree.
- (b) Aggravated vehicular homicide.

(c) Driving while under the influence of intoxicants in violation of ORS 813.010 or of a municipal ordinance and the person's driving privileges are revoked under ORS 809.235 (1)(b) and later ordered restored under ORS 809.235 (4).

(3)(a) Except as provided in paragraph (c) of this subsection, as a condition of a driving while under the influence of intoxicants diversion agreement:

(A) The court shall require that an approved ignition interlock device be installed and used in any vehicle operated by the person during the period of the agreement when the person has driving privileges if:

(i) The person submitted to a chemical test of the person's breath or blood as required under ORS 813.100 and the test disclosed a blood alcohol content of 0.08 percent or more by weight;

(ii) The person refused to submit to a chemical test of the person's breath or blood; or

(iii) The person submitted to a chemical test of the person's breath, blood or urine as required under ORS 813.100 or 813.131 and the test disclosed a blood alcohol content of more than 0.00 percent by weight but less than 0.08 percent by weight and disclosed the presence of **cannabis**, a controlled substance or an inhalant.

(B) The court may require that an approved ignition interlock device be installed and used in any vehicle operated by the person during the period of the agreement when the person has driving privileges if the person submitted to a chemical test of the person's breath, blood or urine as required under ORS 813.100 or 813.131 and the test disclosed a blood alcohol content below 0.08 percent by weight.

(b) In addition to any action taken under ORS 813.255, violation of the condition imposed under this subsection is a Class A traffic violation.

(c) A court may exempt a person from the condition in a diversion agreement to have installed and be using an ignition interlock device if the court determines that the person meets the requirements for a medical exemption in accordance with rules adopted by the department under this section. A person granted a medical exemption under this paragraph shall carry proof of the medical exemption with the person while operating any vehicle.

(4) The department shall adopt rules permitting medical exemptions from the requirements of installation and use of an ignition interlock device under this section.

(5) When a person is required to install an ignition interlock device under subsection (2) of this section, the provider of the device shall provide notice of any installation or removal of the device or any tampering with the device to:

(a) The supervising court or to the court's designee, including but not limited to an agency or organization certified by the Oregon Health Authority under ORS 813.025; and

(b) The district attorney or the city prosecutor.

**SECTION 90.** ORS 821.250 is amended to read:

821.250. (1) A person commits the offense of permitting dangerous operation of a snowmobile or an all-terrain vehicle if the person is the owner or other person having charge or control of a snowmobile or an all-terrain vehicle and the person knowingly authorizes or permits any person to operate the vehicle across a highway who is:

(a) Incapable by reason of age, physical or mental disability; or

(b) Under the influence of intoxicating liquor, [*inhalants* or] **cannabis**, controlled substances **or inhalants**.

(2) In addition to other penalties provided by this section, operators or owners may be liable as provided under ORS 821.310.

(3) The offense described in this section, permitting dangerous operation of a snowmobile or an all-terrain vehicle, is a Class A traffic violation.

**SECTION 91.** ORS 830.325 is amended to read:

830.325. (1) No person under the influence of an intoxicating liquor, **cannabis** or a controlled substance shall operate, propel or be in actual physical control of any boat on any waters of this state.

(2) No owner of a boat or person in charge or in control of a boat shall authorize or knowingly permit the boat to be propelled or operated on any waters of this state by any person who is under the influence of an intoxicating liquor, **cannabis** or a controlled substance.

**SECTION 92.** ORS 830.365 is amended to read:

830.365. (1) No person shall ride or manipulate any water skis, surfboard or similar device in a reckless or negligent manner so as to endanger any person or property.

(2) No person shall operate a boat for the purpose of towing a person on water skis, surfboard or similar device, and no person shall engage in waterskiing, surfboarding or similar activity at any time after sunset and before sunrise. This subsection does not apply to a person while engaged in a professional exhibition or to a person engaged in an activity authorized under ORS 830.375.

(3) No person shall operate or manipulate any boat, tow rope or other device by which the direction or location of a person on water skis, surfboard or similar device may be affected or controlled in a reckless or negligent manner so as to cause the person on water skis, surfboard or similar device to collide with or strike against any person or object.

(4) No person shall ride or manipulate any water skis, surfboard or similar device while under the influence of an intoxicating liquor, **cannabis** or a controlled substance.

(5) No person shall operate a boat on any waters of this state, towing a person on water skis, aqua-plane, surfboard, saucer, or similar device, unless there is in the boat another person, in addition to the operator, who is in a position to continuously observe the person being towed.

(6) Notwithstanding subsection (5) of this section, persons operating a boat to tow a water-skier in an authorized competitive marine event, or engaged in practicing for a competitive water ski event on a water ski course authorized by the State Marine Board, may use either a curved, rearview mirror or another person, in addition to the operator, to continuously observe the person being towed.

(7) No person shall operate any boat used for towing water skis, surfboards or similar devices on the waters of this state unless the boat is equipped with and displays a warning flag as follows:

(a) The warning flag, also known as the "skier down" flag, shall be international orange or red in color and shall be at least 12 inches in height and 12 inches in width.

(b) When any person being towed by the boat becomes disengaged from the towline and is down in the water, a person in the boat shall immediately display the warning flag aloft, visible from all sides, as an indicator to other boats in the area that a person is down in the water. As long as the downed person is in the water, the flag shall remain displayed to prevent danger to that person and hazards to passing boats.

(c) The warning flag described in this section shall be displayed only under the conditions set forth in paragraph (b) of this subsection or when other imminent danger exists.

**SECTION 93.** ORS 830.515 is amended to read:

830.515. If a person refuses or fails to submit to chemical tests of the breath, blood or urine as required by ORS 830.505 and 830.520, evidence of the person's refusal or failure to submit is admissible in any criminal or civil action or proceeding arising out of acts alleged to have been committed while the person was operating a boat while under the influence of intoxicating liquor, **cannabis** or controlled substances.

**SECTION 94.** ORS 830.520 is amended to read:

830.520. Nothing in ORS 830.505 is intended to preclude the administration of chemical tests described in this section. A peace officer may obtain a chemical test of the blood to determine the amount of alcohol in any person's blood or a test of the person's blood or a test of the person's blood or urine, or both, to determine the presence of **cannabis** or a controlled substance in the person as provided in the following:

(1) If, when requested by a peace officer, the person expressly consents to such a test.

(2) Notwithstanding subsection (1) of this section, from a person without the person's consent if:

(a) The peace officer has probable cause to believe that the person was operating a boat while under the influence of an intoxicating liquor, **cannabis** or a controlled substance and that evidence of the offense will be found in the person's blood or urine; and

(b) The person is unconscious or otherwise in a condition rendering the person incapable of expressly consenting to the test or tests requested.

**SECTION 95.** ORS 830.525 is amended to read:

830.525. In addition to chemical tests of the breath, blood or urine administered under ORS 830.505 and 830.520, upon the request of a peace officer, a person shall be permitted upon request, at the person's own expense, reasonable opportunity to have any licensed physician, licensed professional nurse or qualified technician, chemist or other qualified person of the person's own choosing administer a chemical test or tests of the person's breath or blood for the purpose of determining the alcoholic content of the person's blood or a chemical test or tests of the person's blood or urine, or both, for the purpose of determining the presence of **cannabis** or a controlled substance in the person. The failure or inability to obtain such a test or tests by a person shall not preclude the admission of evidence relating to a test or tests taken upon the request of a peace officer.

**SECTION 96.** ORS 830.815 is amended to read:

830.815. (1) The State Marine Board may refuse to issue a certificate of title or a certificate of number or registration if the board determines at any time that an applicant for the certificate has:

(a) Given a false statement or false information in applying for the certificate;

(b) Otherwise failed to comply with the applicable provisions under ORS 830.060 to 830.140 and 830.700 to 830.870 pertaining to application for certificates; or

(c) Been convicted of operating a boat while under the influence of an intoxicating liquor, **cannabis** or a controlled substance within one year of the date of application or within three years of the date of application if the record of conviction shows that the person willfully refused the request of a peace officer to submit to chemical testing of the breath or a field sobriety test pursuant to ORS 830.505 and 830.550.

(2) After a hearing upon 10 days' notice, the board may cancel a certificate of title or certificate of number or registration if the board determines at any time that an owner, boat manufacturer or dealer named in the certificate:

(a) Gave a false statement or false information in applying for the certificate; or

(b) Otherwise failed to comply with the applicable provisions under ORS 830.060 to 830.140, 830.700 to 830.715, 830.725, 830.730, 830.770, 830.780, 830.785, 830.795 to 830.820 and 830.830 to 830.870 pertaining to applications for certificates.

(3) The board shall automatically suspend the certificate of number for any boat if the board receives notification of a conviction for violation of ORS 830.260 under ORS 830.270. The suspension under this subsection is not subject to hearing. The board shall reinstate a certificate of number suspended under this subsection when the boat owner submits proof satisfactory to the board that the boat has been approved by a person designated by the board as meeting the standards for sound levels established by the board.

(4) If the board receives notification from any court in this state that any person who is charged with a boating offense and who is the registered owner of the boat has failed to appear as required by law or has failed to comply with the judgment of the sentencing court, the board shall take the following actions:

(a) Notify, by certified mail, the registered owner of the boat involved in the offense of the owner's failure to appear or comply with the judgment of the court. The notification shall include a copy of the citation issued to the owner and will inform the owner that the board will suspend the certificate of number for the boat 45 days from the date of the mailing of the notice by the board. The notice shall include a statement that a hearing may be requested in writing within 10 days of

the notice. Any hearing requested under this subsection shall be limited to the issue of whether the person is the person who failed to appear or comply with the judgment of the sentencing court.

(b) The board shall suspend the certificate of number for the boat involved 45 days after mailing notice of intent to suspend to the owner of the boat unless a hearing has been requested or, within the 45-day notice period, the board receives notice from the court that the owner has appeared in court and is in compliance with any court order entered in the proceeding. Notice from the court may consist of a copy of any receipt or other document issued by the court indicating that the person has appeared and is in compliance with any court order.

(c) Upon suspending any certificate of number under this subsection, the board may charge the owner a reinstatement fee sufficient to cover the actual expenses of the board in processing the transactions described in this section. The board shall reinstate any certificate of number suspended under this subsection upon receiving payment of any reinstatement fee and notice from the court that the owner has appeared and fully satisfied the judgment of the court.

(5) Conviction of operating a boat while under the influence of an intoxicating liquor, **cannabis** or a controlled substance under ORS 830.325 constitutes grounds for suspension of a person's certificate of number or registration for all boats owned by the person. The following provisions apply to such suspension:

(a) Upon receipt of a record of conviction for a violation of ORS 830.325, the board shall notify the convicted person that all certificates of number or registration issued in the person's name are suspended. The notice shall include a statement that a hearing may be requested in writing within 10 days of the notice. Any hearing requested under this subsection shall be limited to the issue of whether the person is the person convicted.

(b) The suspension shall be for three years from the date of conviction if the record of conviction shows that the person willfully refused the request of a peace officer to submit to chemical testing of the breath or a field sobriety test under ORS 830.505 and 830.550. Otherwise the period of suspension shall be for one year from the date of conviction.

## TECHNICAL AND CONFORMING AMENDMENTS

### **SECTION 97.** ORS 131A.360 is amended to read:

131A.360. (1) The provisions of this section apply only to a forfeiting agency other than the state, and apply only to forfeiture proceeds arising out of prohibited conduct as [*defined by*] **described in** ORS 131A.005 (12)(a), **(b) and (c)**.

(2) If the forfeiting agency is not a county, the forfeiting agency shall enter into an agreement, under ORS chapter 190, with the county in which the property was seized to provide a portion of the forfeiture proceeds to the county.

(3) After entry of a judgment of forfeiture, a forfeiting agency shall first pay from the forfeiture proceeds the costs incurred by seizing and forfeiting agencies in investigating and prosecuting the case, including costs, disbursements and attorney fees as defined in ORCP 68 A, special expenses such as the provision of currency for undercover law enforcement operations, the cost of disabling a hidden compartment in a motor vehicle and the expenses of maintaining the seized property. The forfeiting agency may not pay expenditures made in connection with the ordinary maintenance and operation of a seizing or forfeiting agency under this subsection.

(4) After payment of costs under subsection (3) of this section, the forfeiting agency shall:

(a) Deduct an amount equal to five percent of the forfeiture proceeds and deposit that amount in the Illegal Drug Cleanup Fund established by ORS 475.495 for the purposes specified in ORS 475.495 (5) and (6);

(b) Deduct an amount equal to 2.5 percent of the forfeiture proceeds and deposit that amount in the Asset Forfeiture Oversight Account;

(c) Deduct an amount equal to 20 percent of the forfeiture proceeds and deposit that amount in the Oregon Criminal Justice Commission Account established under ORS 137.662 for disbursement to drug court programs as described in ORS 3.450; and

(d) Deduct an amount equal to 10 percent of the forfeiture proceeds and deposit that amount in the Early Learning Division Fund established in ORS 326.435 for disbursement to relief nurseries as described in ORS 417.788.

(5) If the forfeiting agency has entered into an agreement with a county under subsection (2) of this section, after paying costs under subsection (3) of this section and making the deductions required by subsection (4) of this section, the forfeiting agency shall pay the county the amounts required by the agreement.

(6) After making all payments and deductions required by subsections (3), (4) and (5) of this section, the forfeiting agency may use the remaining forfeiture proceeds, including amounts received by a county under subsection (5) of this section or by any other public body under an intergovernmental agreement entered into under ORS 131A.355, only for:

(a) The purchase of equipment necessary for the enforcement of laws relating to the unlawful delivery, distribution, manufacture or possession of controlled substances;

(b) Currency for undercover law enforcement operations;

(c) Drug awareness and drug education programs offered in middle schools and high schools;

(d) The expenses of a forfeiting agency in operating joint narcotic operations with other forfeiting agencies pursuant to the terms of an intergovernmental agreement, including paying for rental space, utilities and office equipment;

(e) Expenses of a district attorney in criminal prosecutions for unlawful delivery, distribution, manufacture or possession of controlled substances, as determined through intergovernmental agreement between the forfeiting agency and the district attorney;

(f) Drug treatment and programs that support drug treatment; and

(g) A CASA Volunteer Program as defined in ORS 458.580.

(7) Notwithstanding subsection (6) of this section, growing equipment and laboratory equipment seized by a forfeiting agency that was used, or intended for use, in the manufacturing of controlled substances may be donated to a public school, community college or institution of higher education.

(8) A forfeiting agency shall sell as much property as may be needed to make the distributions required by this section. Distributions required under subsection (4) of this section must be made once every three months and are due within 20 days of the end of each quarter. No interest shall accrue on amounts that are paid within the period specified by this subsection.

**SECTION 98.** ORS 131A.365 is amended to read:

131A.365. (1) The provisions of this section apply only when the forfeiting agency is the state, and apply only to forfeiture proceeds arising out of prohibited conduct as [*defined by*] **described in** ORS 131A.005 (12)(a), (b) and (c).

(2) After entry of a judgment of forfeiture, a forfeiting agency shall first pay from the forfeiture proceeds the costs incurred by seizing and forfeiting agencies in investigating and prosecuting the case, including costs, disbursements and attorney fees as defined in ORCP 68 A, special expenses such as the provision of currency for undercover law enforcement operations, the cost of disabling a hidden compartment in a motor vehicle and the expenses of maintaining the seized property. The forfeiting agency may not pay expenditures made in connection with the ordinary maintenance and operation of a seizing or forfeiting agency under this subsection. Any amount paid to or retained by the Department of Justice under this subsection shall be deposited in the Criminal Justice Revolving Account in the State Treasury. Any amount paid to or retained by the Oregon State Police under this subsection shall be deposited in the State Police Account.

(3) After payment of costs under subsection (2) of this section, the forfeiting agency shall:

(a) Deduct an amount equal to 10 percent of the forfeiture proceeds and deposit that amount in the Illegal Drug Cleanup Fund established by ORS 475.495 for the purposes specified in ORS 475.495 (5) and (6);

(b) Deduct an amount equal to three percent of the forfeiture proceeds, not to exceed \$50,000 in a biennium, and deposit that amount in the Asset Forfeiture Oversight Account;

(c) Deduct an amount equal to 20 percent of the forfeiture proceeds and deposit that amount in the Oregon Criminal Justice Commission Account established under ORS 137.662 for disbursement to drug court programs as described in ORS 3.450; and

(d) Deduct an amount equal to 10 percent of the forfeiture proceeds and deposit that amount in the Early Learning Division Fund established in ORS 326.435 for disbursement to relief nurseries as described in ORS 417.788.

(4) If the forfeiting agency has entered into an intergovernmental agreement with another public body under ORS 131A.355, or has entered into an agreement with any other law enforcement agency of the state relating to distribution of forfeiture proceeds, after paying costs under subsection (2) of this section and making the deductions required by subsection (3) of this section, the forfeiting agency shall pay an equitable portion of the forfeiture proceeds to each agency participating in the seizure or forfeiture as provided by the agreement.

(5) After making all payments and deductions required by subsections (2), (3) and (4) of this section, the forfeiting agency shall distribute the remaining forfeiture proceeds as follows:

(a) If no law enforcement agency other than the Department of Justice participated in the seizure or forfeiture, the remaining forfeiture proceeds, and forfeiture proceeds received by the Department of Justice under subsection (4) of this section, shall be divided between the Criminal Justice Revolving Account and the Special Crime and Forfeiture Account according to the following schedule:

(A) One hundred percent of the first \$200,000 accumulated shall be deposited in the Criminal Justice Revolving Account.

(B) Seventy-five percent of the next \$200,000 shall be deposited in the Criminal Justice Revolving Account and the balance in the Special Crime and Forfeiture Account.

(C) Fifty percent of the next \$200,000 shall be deposited in the Criminal Justice Revolving Account and the balance in the Special Crime and Forfeiture Account.

(D) Twenty-five percent of the next \$200,000 shall be deposited in the Criminal Justice Revolving Account and the balance in the Special Crime and Forfeiture Account.

(E) One hundred percent of all additional sums shall be deposited in the Special Crime and Forfeiture Account.

(b) If no law enforcement agency other than the Department of State Police participated in the seizure or forfeiture, the remaining proceeds, and proceeds received by the Department of State Police under subsection (4) of this section, shall be divided between the State Police Account and the Special Crime and Forfeiture Account according to the following schedule:

(A) One hundred percent of the first \$600,000 accumulated shall be deposited in the State Police Account.

(B) Seventy-five percent of the next \$300,000 shall be deposited in the State Police Account and the balance in the Special Crime and Forfeiture Account.

(C) Fifty percent of the next \$200,000 shall be deposited in the State Police Account and the balance in the Special Crime and Forfeiture Account.

(D) Twenty-five percent of the next \$200,000 shall be deposited in the State Police Account and the balance in the Special Crime and Forfeiture Account.

(E) One hundred percent of all additional sums shall be deposited in the Special Crime and Forfeiture Account.

(6) Forfeiture proceeds distributed under subsection (5) of this section may be used only for:

(a) The purchase of equipment necessary for the enforcement of laws relating to the unlawful delivery, distribution, manufacture or possession of controlled substances;

(b) Currency for undercover law enforcement operations;

(c) Drug awareness and drug education programs offered in middle schools and high schools; and

(d) The expenses of a forfeiting agency in operating joint narcotic operations with other forfeiting agencies pursuant to the terms of an intergovernmental agreement, including paying for rental space, utilities and office equipment.

(7) A forfeiting agency shall sell as much property as may be needed to make the distributions required by this section. Distributions required under subsection (3) of this section must be made once every three months and are due within 20 days of the end of each quarter. No interest shall accrue on amounts that are paid within the period specified by this subsection.

**SECTION 99.** ORS 137.226 is amended to read:

137.226. Notwithstanding ORS 137.225 (1)(a), a defendant is eligible for an order setting aside a conviction for a criminal offense in which possession, delivery or manufacture of marijuana **or a marijuana item as defined in ORS 475B.015** is an element after one year has elapsed from the date of entry of judgment of conviction if:

(1) The defendant was under 21 years of age at the time of the conviction;

(2) The defendant has not been convicted of any other offense, excluding motor vehicle violations; and

(3) The defendant has fully complied with and performed the sentence of the court.

**SECTION 100.** ORS 161.705 is amended to read:

161.705. Notwithstanding ORS 161.525, the court may enter judgment of conviction for a Class A misdemeanor and make disposition accordingly when:

(1)(a) A person is convicted of any Class C felony; or

(b) A person convicted of a felony described in paragraph (a) of this subsection, of possession or delivery of marijuana **or a marijuana item as defined in ORS 475B.015** constituting a Class B felony, or of a Class A felony pursuant to ORS 166.720, has successfully completed a sentence of probation; and

(2) The court, considering the nature and circumstances of the crime and the history and character of the defendant, believes that it would be unduly harsh to sentence the defendant for a felony.

**SECTION 101.** ORS 166.725 is amended to read:

166.725. (1) Any circuit court may, after making due provision for the rights of innocent persons, enjoin violations of the provisions of ORS 166.720 (1) to (4) by issuing appropriate orders and judgments, including, but not limited to:

(a) Ordering a divestiture by the defendant of any interest in any enterprise, including real property.

(b) Imposing reasonable restrictions upon the future activities or investments of any defendant, including, but not limited to, prohibiting any defendant from engaging in the same type of endeavor as the enterprise in which the defendant was engaged in violation of the provisions of ORS 166.720 (1) to (4).

(c) Ordering the dissolution or reorganization of any enterprise.

(d) Ordering the suspension or revocation of a license, permit or prior approval granted to any enterprise by any agency of the state.

(e) Ordering the forfeiture of the charter of a corporation organized under the laws of this state, or the revocation of a certificate of authority authorizing a foreign corporation to conduct business within this state, upon finding that the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct in violation of ORS 166.720 (1) to (4) and that, for the prevention of future criminal activity, the public interest requires the charter of the corporation forfeited and the corporation dissolved or the certificate of authority revoked.

(2) All property, real or personal, including money, used in the course of, derived from or realized through conduct in violation of a provision of ORS 166.715 to 166.735 is subject to civil forfeiture to the state. The state shall dispose of all forfeited property as soon as commercially feasible. If property is not exercisable or transferable for value by the state, it shall expire. All forfeitures or dispositions under this section shall be made with due provision for the rights of innocent persons. Forfeited property shall be distributed as follows:

(a)(A) All moneys and the clear proceeds of all other property forfeited shall be deposited with the State Treasurer to the credit of the Common School Fund.

(B) For purposes of subparagraph (A) of this paragraph, “clear proceeds” means proceeds of forfeited property less costs of maintaining and preserving property pending its sale or other disposition, less costs of sale or disposition and, if the Department of Justice has not otherwise recovered its costs and expenses of the investigation and prosecution leading to the forfeiture, less 30 percent of the remaining proceeds of the property which is awarded to the department as reasonable reimbursement for costs of such investigation and prosecution.

(b) Any amounts awarded to the Department of Justice pursuant to paragraph (a) of this subsection shall be deposited in the Criminal Justice Revolving Account in the State Treasury.

(3) Property subject to forfeiture under this section may be seized by a police officer, as defined in ORS 133.525 (2), upon court process. Seizure without process may be made if:

(a) The seizure is incident to a lawful arrest or search or an inspection under an administrative inspection warrant; or

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a forfeiture proceeding based upon this section.

(4) In the event of a seizure under subsection (3) of this section, a forfeiture proceeding shall be instituted promptly. Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the police officer making the seizure, subject only to the order of the court. When property is seized under this section, pending forfeiture and final disposition, the police officer may:

(a) Place the property under seal;

(b) Remove the property to a place designated by the court; or

(c) Require another agency authorized by law to take custody of the property and remove it to an appropriate location.

(5) The Attorney General, any district attorney or any state agency having jurisdiction over conduct in violation of a provision of ORS 166.715 to 166.735 may institute civil proceedings under this section. In any action brought under this section, the circuit court shall give priority to the hearing and determination. Pending final determination, the circuit court may at any time enter such injunctions, prohibitions or restraining orders, or take such actions, including the acceptance of satisfactory performance bonds, as the court may deem proper. The Attorney General, district attorney or state agency bringing an action under this section may be awarded, upon entry of a judgment in favor of the state, costs of investigation and litigation, reasonably incurred. Amounts recovered may include costs and expenses of state and local governmental departments and agencies incurred in connection with the investigation or litigation.

(6)(a) Any aggrieved person may institute a proceeding under subsection (1) of this section:

(A) If the proceeding is based upon racketeering activity for which a criminal conviction has been obtained, any rights of appeal have expired and the action is against the individual convicted of the racketeering activity; or

(B) If the person is entitled to pursue a cause of action under subsection (7)(a)(B) of this section.

(b) In such proceeding, relief shall be granted in conformity with the principles that govern the granting of injunctive relief from threatened loss or damage in other civil cases, except that no showing of special or irreparable damage to the person shall have to be made. Upon the execution of proper bond against damages for an injunction improvidently granted and a showing of immediate danger of significant loss or damage, a temporary restraining order and a preliminary injunction may be issued in any such action before a final determination on the merits.

(7)(a) Any person who is injured by reason of any violation of the provisions of ORS 166.720 (1) to (4) shall have a cause of action for three-fold the actual damages sustained and, when appropriate, punitive damages:

(A) If a criminal conviction for the racketeering activity that is the basis of the violation has been obtained, any rights of appeal have expired and the action is against the individual convicted of the racketeering activity; or

(B) If the violation is based on racketeering activity as defined in ORS 166.715 (6)(a)(B) to (J), (K) as it relates to burglary and criminal trespass, (L) to (P), (S), (T), (U), (V), (X) to (Z), (AA) to [(DD), (KK), (LL) or (OO) to (VV).] **(EE), (LL), (MM) or (PP) to (WW).**

(b) The defendant or any injured person may demand a trial by jury in any civil action brought pursuant to this subsection.

(c) Any injured person shall have a right or claim to forfeited property or to the proceeds derived therefrom superior to any right or claim the state has in the same property or proceeds.

(8) An investigative agency may bring an action for civil penalties for any violation of ORS 166.720 (1) to (4). Upon proof of any such violation, the court shall impose a civil penalty of not more than \$250,000.

(9) A judgment rendered in favor of the state in any criminal proceeding under ORS 166.715 to 166.735 shall estop the defendant in any subsequent civil action or proceeding brought by the state or any other person as to all matters as to which such judgment would be an estoppel as between the state and the defendant.

(10) The Attorney General may, upon timely application, intervene in any civil action or proceeding brought under subsection (6) or (7) of this section if the Attorney General certifies that, in the opinion of the Attorney General, the action or proceeding is of general public importance. In such action or proceeding, the state shall be entitled to the same relief as if the Attorney General instituted the action or proceeding.

(11)(a) Notwithstanding any other provision of law, a criminal or civil action or proceeding under ORS 166.715 to 166.735 may be commenced at any time within five years after the conduct in violation of a provision of ORS 166.715 to 166.735 terminates or the cause of action accrues. If a criminal prosecution or civil action or other proceeding is brought, or intervened in, to punish, prevent or restrain any violation of the provisions of ORS 166.715 to 166.735, the running of the period of limitations prescribed by this section with respect to any cause of action arising under subsection (6) or (7) of this section which is based in whole or in part upon any matter complained of in any such prosecution, action or proceeding shall be suspended during the pendency of such prosecution, action or proceeding and for two years following its termination.

(b) A cause of action arising under subsection (6)(a)(A) or (7)(a)(A) of this section accrues when the criminal conviction for the underlying activity is obtained. In addition to any suspension of the running of the period of limitations provided for in paragraph (a) of this subsection, the period of limitations prescribed by paragraph (a) of this subsection is suspended during any appeal from the criminal conviction for the underlying activity.

(12) The application of one civil remedy under any provision of ORS 166.715 to 166.735 shall not preclude the application of any other remedy, civil or criminal, under ORS 166.715 to 166.735 or any other provision of law. Civil remedies under ORS 166.715 to 166.735 are supplemental and not mutually exclusive.

(13) Notwithstanding subsection (6) or (7) of this section, a person may not institute a proceeding under subsection (6) of this section and does not have a cause of action under subsection (7) of this section if the conduct that is the basis of the proceeding or action could also be the basis of a claim of discrimination because of sex that constitutes sexual harassment.

(14) In an action brought under the provisions of this section by a person other than the Attorney General, a district attorney or a state agency, the court may award reasonable attorney fees to the prevailing party. In a civil action brought under the provisions of this section by the Attorney General, a district attorney or a state agency:

(a) The court may award reasonable attorney fees to the Attorney General, district attorney or state agency if the Attorney General, district attorney or state agency prevails in the action; and

(b) The court may award reasonable attorney fees to a defendant who prevails in an action under this section if the court determines that the Attorney General, district attorney or state agency had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court.

**SECTION 102.** ORS 307.455, as amended by section 1, chapter 105, Oregon Laws 2016, is amended to read:

307.455. (1) As used in this section and ORS 307.457:

(a) "Assessor" means the county assessor, or the Department of Revenue if under ORS 306.126 the department is responsible for appraisal of the facility at which the qualified machinery and equipment is located.

(b) "Bakery product" has the meaning given that term in ORS 625.010.

(c) "Dairy products" has the meaning given that term in ORS 621.003.

(d) "Food processor":

(A) Means a person engaged in the business of freezing, canning, dehydrating, concentrating, preserving, processing or repacking for human consumption raw or fresh fruit, vegetables, nuts, legumes, grains, bakery products, dairy products, eggs or seafood in any procedure that occurs prior to the point of first sale by the processor.

(B) Does not include:

(i) Persons engaged in the business of producing alcoholic beverages[, *marijuana or any product that contains marijuana or a marijuana extract*] **or marijuana items as defined in ORS 475B.015.**

(ii) A person engaged in the business of producing bakery products unless the person has been issued a wholesale license by the State Department of Agriculture.

(e) "Integrated processing line" does not include forklifts, trucks or other rolling stock used to transport material to or from a point of manufacture or assembly.

(f) "Qualified machinery and equipment" means property, whether new or used, that is newly acquired by a food processor and placed into service prior to January 1 preceding the first tax year for which an exemption under this section is sought, and that consists of:

(A) Real property machinery and equipment that is used by a food processor in the primary processing of raw or fresh fruit, vegetables, nuts, legumes, grains, bakery products, dairy products, eggs or seafood; or

(B) Personal property machinery and equipment that is used in an integrated processing line for the primary processing of raw or fresh fruit, vegetables, nuts, legumes, grains, bakery products, dairy products, eggs or seafood.

(2)(a) On or before March 1 preceding the first tax year for which property is to be exempt from taxation under this section, a food processor seeking an exemption under this section shall apply to the assessor for exemption. The application shall be on a form prescribed by the Department of Revenue and shall include any information required by the department, including a schedule of the qualified machinery and equipment for which certification is sought.

(b) Notwithstanding paragraph (a) of this subsection, the assessor may approve an application that is filed after March 1, and on or before December 31 of the assessment year, if the statement is accompanied by a late filing fee of the greater of \$200 or one-tenth of one percent of the real market value of the property that is the subject of the application.

(c) The assessor shall review the application and, if the machinery and equipment that is the subject of the application constitutes qualified machinery and equipment certified by the State Department of Agriculture under ORS 307.457, shall approve the application and exempt the qualified machinery and equipment.

(d) If any of the machinery and equipment that is the subject of the application does not constitute qualified machinery and equipment certified by the State Department of Agriculture under ORS 307.457, the assessor shall exclude the nonqualified machinery and equipment from the application.

(3) Qualified machinery and equipment for which an application has been approved under subsection (2) of this section shall be exempt for the tax year for which the application was approved and for the next four succeeding tax years, if as of the assessment date for each year the property constitutes qualified machinery and equipment.

(4) The duration of the exemption under subsection (3) of this section may not be extended as the result of the value of changes to qualified machinery and equipment that are attributable to rehabilitation, reconditioning or ongoing maintenance or repair.

(5) Notwithstanding subsection (3) of this section, qualified machinery and equipment that is used to process grains or bakery products may not be granted exemption under this section unless the qualified machinery and equipment has a total cost of initial investment of at least \$100,000 to the food processor.

(6) Notwithstanding subsection (3) of this section, qualified machinery and equipment that is used to process bakery products may not be granted exemption under this section if proceeds from retail sales made at the processing site constitute more than 10 percent of all proceeds from sales made at the processing site.

**SECTION 103.** ORS 336.241, as amended by section 32, chapter 83, Oregon Laws 2016, is amended to read:

336.241. (1) As part of the comprehensive alcohol and drug abuse policy and implementation plan described in ORS 336.222, the Oregon Health Authority, State Board of Education and Alcohol and Drug Policy Commission shall collaborate on developing supplemental curricula for [*marijuana*] **cannabis** abuse prevention and public information programs for students, parents, teachers, administrators and school board members.

(2) In the manner provided by ORS 192.245, the authority shall report on the implementation of this section to the Legislative Assembly on or before February 1 of each odd-numbered year.

**SECTION 104.** ORS 419A.265 is amended to read:

419A.265. Notwithstanding ORS 419A.262 (2)(a), a person is eligible for an order of expunction under ORS 419A.262 if the person was adjudicated for committing an act that, if committed by an adult, would constitute a criminal offense in which possession, delivery or manufacture of marijuana **or a marijuana item as defined in ORS 475B.015** is an element and:

(1) The court finds that at least one year has elapsed since the date of the person's most recent termination;

(2) The applicant has not been adjudicated or convicted for any other act or offense, excluding motor vehicle violations; and

(3) The applicant has complied with and performed all conditions of the adjudication.

**SECTION 105.** ORS 419C.239, as amended by section 55, chapter 24, Oregon Laws 2016, is amended to read:

419C.239. (1) A formal accountability agreement shall:

(a) Be completed within a period of time not to exceed one year;

(b) Be voluntarily entered into by all parties;

(c) Be revocable by the youth at any time by a written revocation;

(d) Be revocable by the juvenile department in the event the department has reasonable cause to believe the youth has failed to carry out the terms of the formal accountability agreement or has committed a subsequent offense;

(e) Not be used as evidence against the youth at any adjudicatory hearing;

(f) Be executed in writing and expressed in language understandable to the persons involved;

(g) Be signed by the juvenile department, the youth, the youth's parent or parents or legal guardian, and the youth's counsel, if any;

(h) Become part of the youth's juvenile department record; and

(i) When the youth has been charged with having committed the youth's first violation of [*a provision under ORS 475.860*] **section 4 of this 2017 Act** and unless the juvenile department determines that it would be inappropriate in the particular case:

(A) Require the youth to participate in a diagnostic assessment and an information or treatment program as recommended by the assessment. The agencies or organizations providing assessment or programs of information or treatment must be the same as those designated by the court under ORS 419C.443 (1) and must meet the standards set by the Director of the Oregon Health Authority.

The parent of the youth shall pay the cost of the youth's participation in the program based upon the ability of the parent to pay.

(B) Monitor the youth's progress in the program which shall be the responsibility of the diagnostic assessment agency or organization. It shall make a report to the juvenile department stating the youth's successful completion or failure to complete all or any part of the program specified by the diagnostic assessment. The form of the report shall be determined by agreement between the juvenile department and the diagnostic assessment agency or organization. The juvenile department shall make the report a part of the record of the case.

(2) Notwithstanding any other provision of law, the following information contained in a formal accountability agreement under ORS 419C.230 is not confidential and is not exempt from disclosure:

(a) The name and date of birth of the youth;

(b) The act alleged; and

(c) The portion of the agreement providing for the disposition of the youth.

**SECTION 106.** ORS 419C.420, as amended by section 56, chapter 24, Oregon Laws 2016, is amended to read:

419C.420. If a youth is cited or summoned for [*a violation under*] **violating** ORS 471.430 or [475.860] **section 4 of this 2017 Act** and fails to appear, the court may adjudicate the citation or petition and enter a disposition without a hearing.

**SECTION 107.** ORS 419C.443, as amended by section 57, chapter 24, Oregon Laws 2016, is amended to read:

419C.443. (1) Except when otherwise provided in subsection (3) of this section, when a youth offender has been found to be within the jurisdiction of the court under ORS 419C.005 for a first violation of [*the provisions under ORS 475.860,*] **section 4 of this 2017 Act**, the court shall order an evaluation and designate agencies or organizations to perform diagnostic assessment and provide programs of information and treatment. The designated agencies or organizations must meet the standards set by the Director of the Oregon Health Authority. Whenever possible, the court shall designate agencies or organizations to perform the diagnostic assessment that are separate from those that may be designated to carry out a program of information or treatment. The parent of the youth offender shall pay the cost of the youth offender's participation in the program based upon the ability of the parent to pay. The petition shall be dismissed by the court upon written certification of the youth offender's successful completion of the program from the designated agency or organization providing the information and treatment.

(2) Monitoring the youth offender's progress in the program shall be the responsibility of the diagnostic assessment agency or organization. The agency or organization shall make a report to the court stating the youth offender's successful completion or failure to complete all or any part of the program specified by the diagnostic assessment. The form of the report shall be determined by agreement between the court and the diagnostic assessment agency or organization. The court shall make the report a part of the record of the case.

(3) The court is not required to make the disposition required by subsection (1) of this section if the court determines that the disposition is inappropriate in the case or if the court finds that the youth offender has previously entered into a formal accountability agreement under ORS 419C.239 (1)(i).

**SECTION 108.** ORS 433.835 is amended to read:

433.835. As used in ORS 433.835 to 433.875:

(1) "Cigar bar" means a business that:

(a) Has on-site sales of cigars as defined in ORS 323.500;

(b) Has a humidor on the premises;

(c) Allows the smoking of cigars on the premises but prohibits the smoking, aerosolizing or vaporizing of other inhalants on the premises;

(d) Has been issued and operates under a full on-premises sales license issued under ORS 471.175;

(e) Prohibits persons under 21 years of age from entering the premises and posts notice of the prohibition;

(f) Does not offer video lottery games as authorized under ORS 461.217;

(g) Has a maximum seating capacity of 40 persons;

(h) Has a ventilation system that exhausts smoke from the business and is designed and terminated in accordance with the state building code standards for the occupancy classification in use; and

(i) Requires all employees to read and sign a document that explains the dangers of exposure to secondhand smoke.

(2) "Inhalant" means nicotine, a cannabinoid or any other substance that:

(a) Is in a form that allows the nicotine, cannabinoid or substance to be delivered into a person's respiratory system;

(b) Is inhaled for the purpose of delivering the nicotine, cannabinoid or other substance into a person's respiratory system; and

(c)(A) Is not approved by, or emitted by a device approved by, the United States Food and Drug Administration for a therapeutic purpose; or

(B) If approved by, or emitted by a device approved by, the United States Food and Drug Administration for a therapeutic purpose, is not marketed and sold solely for that purpose.

(3)(a) "Place of employment" means an enclosed area under the control of a public or private employer, including work areas, employee lounges, vehicles that are operated in the course of an employer's business and that are not operated exclusively by one employee, rest rooms, conference rooms, classrooms, cafeterias, hallways, meeting rooms, elevators and stairways.

(b) "Place of employment" does not include a private residence unless it is used as a child care facility as defined in ORS 329A.250 or a facility providing adult day care as defined in ORS 410.490.

(4) "Public place" means an enclosed area open to the public.

(5) "Smoke shop" means a business that is certified with the Oregon Health Authority as a smoke shop pursuant to the rules adopted under ORS 433.847.

(6) "Smoking instrument" means any cigar, cigarette, pipe or other instrument used to smoke tobacco, [*marijuana*] **cannabis** or any other inhalant.

**SECTION 109.** ORS 433.850 is amended to read:

433.850. (1) An employer:

(a) Shall provide for employees a place of employment that is free of all smoke, aerosols and vapors containing inhalants; and

(b) May not allow employees to smoke, aerosolize or vaporize inhalants at the place of employment.

(2) Notwithstanding subsection (1) of this section:

(a) The owner or person in charge of a hotel or motel may designate up to 25 percent of the sleeping rooms of the hotel or motel as rooms in which the smoking, aerosolizing or vaporizing of inhalants is permitted.

(b) Smoking of noncommercial tobacco products for ceremonial purposes is permitted in spaces designated for traditional ceremonies in accordance with the American Indian Religious Freedom Act, 42 U.S.C. 1996.

(c) The smoking of tobacco products is permitted in a smoke shop.

(d) The smoking of cigars is permitted in a cigar bar that generated on-site retail sales of cigars of at least \$5,000 for the calendar year ending December 31, 2006.

(e) A performer may smoke or carry a lighted smoking instrument that does not contain tobacco or [*marijuana*,] **cannabis**, and may aerosolize or vaporize a substance that does not contain nicotine or a cannabinoid, while performing in a scripted stage, motion picture or television production if:

(A) The production is produced by an organization whose primary purpose is producing scripted productions; and

(B) The act of smoking, aerosolizing or vaporizing is an integral part of the production.

(f) The medical use of marijuana is permitted in the place of employment of a licensee of a professional licensing board as described in ORS 475B.485.

(3) An employer, except in those places described in subsection (2) of this section, shall post signs that provide notice of the provisions of ORS 433.835 to 433.875.

**SECTION 110.** ORS 471.775, as amended by section 20, chapter 24, Oregon Laws 2016, is amended to read:

471.775. (1) The provisions of ORS 183.440 shall apply to subpoenas issued by each member of the Oregon Liquor Control Commission or any of its authorized agents.

(2) Subject to subsection (3) of this section, regulatory specialists have authority as provided under this chapter, ORS chapter 153, ORS 133.005 to 133.400, 133.450, 133.525 to 133.703, 133.721 to 133.739, 161.235, 161.239, 161.245, 475B.010 to 475B.395, 475B.550 to 475B.590 and 475B.600 to 475B.655 and chapter 743, Oregon Laws 1971, to conduct inspections or investigations, make arrests and seizures, aid in prosecutions for offenses, issue criminal citations and citations for violations and otherwise enforce this chapter, ORS 474.005 to 474.095, 474.115, 475B.010 to 475B.395, 475B.550 to 475B.590 and 475B.600 to 475B.655, commission rules and any other laws of this state that the commission considers related to alcoholic liquor, marijuana and marijuana-derived products, including but not limited to:

(a) Laws regarding the production, processing, manufacture, importation, transportation, possession, distribution, sale or consumption of alcoholic beverages, **marijuana or marijuana-derived products;**

(b) The manufacture or use of false identification; or

(c) The entry of premises licensed to sell alcoholic liquor, marijuana or marijuana-derived products.

(3) A regulatory specialist may not:

(a) Be sworn in as a federal law enforcement official and act in that capacity while performing duties under subsection (2) of this section;

(b) Carry a firearm;

(c) Conduct inspections and investigations of a primary residence or for purposes of ensuring compliance with ORS 475B.245 and 475B.375; or

(d) Except as provided under the provisions of ORS 475B.010 to 475B.395, conduct inspections and investigations for purposes of ensuring compliance with ORS 475B.400 to 475B.525.

**SECTION 111.** ORS 475B.030 is amended to read:

475B.030. **Subject to any applicable provision of ORS chapter 183,** the Oregon Liquor Control Commission may purchase, possess, seize, **transfer to a licensee** or dispose of marijuana items as is necessary for the commission to ensure compliance with and enforce the provisions of ORS 475B.010 to 475B.395 and any rule adopted under ORS 475B.010 to 475B.395.

**SECTION 112.** ORS 475B.218, as amended by section 13, chapter 24, Oregon Laws 2016, is amended to read:

475B.218. (1) The Oregon Liquor Control Commission shall issue permits to qualified applicants to perform work described in ORS 475B.215. The commission shall adopt rules establishing:

(a) The qualifications for performing work described in ORS 475B.215;

(b) The term of a permit issued under this section;

(c) Procedures for applying for and renewing a permit issued under this section; and

(d) Reasonable application, issuance and renewal fees for a permit issued under this section.

(2)(a) The commission may require an individual applying for a permit under this section to successfully complete a course, made available by or through the commission, through which the individual receives training on:

(A) Checking identification;

(B) Detecting intoxication;

(C) Handling marijuana items;

(D) The content of ORS 475B.010 to 475B.395 and rules adopted under ORS 475B.010 to 475B.395; and

- (E) Any matter deemed necessary by the commission to protect the public health and safety.
- (b) The commission or other provider of the course may charge a reasonable fee for the course.
- (c) The commission may not require an individual to successfully complete the course more than once, except that:

(A) As part of a final order suspending a permit issued under this section, the commission may require a permit holder to successfully complete the course as a condition of lifting the suspension; and

(B) As part of a final order revoking a permit issued under this section, the commission shall require an individual to successfully complete the course prior to applying for a new permit.

(3) The commission shall conduct a criminal records check under ORS 181A.195 on an individual applying for a permit under this section.

(4) Subject to the applicable provisions of ORS chapter 183, the commission may suspend, revoke or refuse to issue or renew a permit if the individual who is applying for or who holds the permit:

(a) Is convicted of a felony or is convicted of an offense under ORS [475.856, 475.858, 475.860, 475.862 or] 475B.010 to 475B.395, except that the commission may not consider a conviction for an offense under ORS [475.856, 475.858, 475.860, 475.862 or] 475B.010 to 475B.395 if the date of the conviction is two or more years before the date of the application or renewal;

(b) Violates any provision of ORS 475B.010 to 475B.395 or any rule adopted under ORS 475B.010 to 475B.395; or

(c) Makes a false statement to the commission.

(5) A permit issued under this section is a personal privilege and permits work described under ORS 475B.215 only for the individual who holds the permit.

**SECTION 113.** ORS 475B.255, as amended by section 38, chapter 24, Oregon Laws 2016, is amended to read:

475B.255. (1) A person other than a [person] **marijuana processor** that holds a license **issued** under ORS 475B.090 may not process cannabinoid extracts into a cannabinoid product.

**(2) Violation of this section is a Class A misdemeanor.**

**SECTION 114.** ORS 475B.265 is amended to read:

475B.265. (1) A person may not produce any piece of identification that [would falsely indicate] **falsely indicates** the person's age.

**(2) Violation of this section is a Class A misdemeanor.**

[2] (3) If a piece of identification is offered as evidence in any administrative or criminal prosecution of a licensee or licensee representative for sale or service of a marijuana item to a person under 21 years of age, the licensee or licensee representative is not guilty of any offense prohibiting a person from selling or serving a marijuana item to a person under 21 years of age unless it is demonstrated that a reasonable person would have determined that the identification exhibited by the person under 21 years of age was altered, or **that the identification exhibited by the person under 21 years of age** did not accurately describe the person [under 21 years of age] to whom the marijuana item was sold or served.

**SECTION 115.** ORS 475B.270 is amended to read:

475B.270. (1) A person may not sell, give or otherwise make available [any] **a** marijuana item to a person who is visibly intoxicated.

(2)(a) A person who exercises control over private real property may not knowingly allow a person under [the age of] 21 years **of age** to consume **a** marijuana [items] **item** on the property, or allow [any other] **another** person under [the age of] 21 years **of age** to remain on the property if the person under [the age of] 21 years **of age** consumes **a** marijuana [items] **item** on the property.

(b) This subsection:

(A) Applies only to a person who is present and in control of the location at the time the consumption occurs; and

(B) Does not apply to the owner of rental property, or the agent of an owner of rental property, unless the consumption occurs in the individual housing unit in which the owner or agent resides.

**(3) Violation of this section is a Class A misdemeanor.**

**SECTION 116.** ORS 475B.275 is amended to read:

475B.275. (1) A marijuana item may not be given as a prize, premium or consideration for a lottery, contest, game of chance, game of skill or competition of any kind.

**(2) Violation of this section is a Class A misdemeanor.**

**SECTION 117.** ORS 475B.315 is amended to read:

475B.315. *[(1) Except where other punishment is specifically provided for in ORS 475B.010 to 475B.395, violation of any provision of ORS 475B.010 to 475B.395 is a Class A misdemeanor.]*

*[(2)]* Subject to ORS 153.022, violation of a rule adopted under ORS 475B.025 (2)(d) is a Class C violation.

**SECTION 118.** ORS 475B.360 is amended to read:

475B.360. **Subject to any applicable provision of ORS chapter 131A or 183,** any state officer, board, commission, corporation, institution, department or other state body, and any local officer, board, commission, institution, department or other local government body, that is authorized by the statutory laws of this state to perform a duty, function or power with respect to a marijuana item, may purchase, possess, seize or dispose of the marijuana item as the state officer, board, commission, corporation, institution, department or other state body, or the local officer, board, commission, institution, department or other local government body, considers necessary to ensure compliance with and enforce the applicable statutory law or any rule adopted under the applicable statutory law.

**SECTION 119.** ORS 475B.510 is amended to read:

475B.510. **Subject to any applicable provision of ORS chapter 183,** the Oregon Health Authority, the State Department of Agriculture and the Oregon Liquor Control Commission may possess, seize or dispose of marijuana, usable marijuana, medical cannabinoid products, cannabinoid concentrates and cannabinoid extracts as is necessary for the authority to ensure compliance with and enforce the provisions of ORS 475B.400 to 475B.525 and any rule adopted under ORS 475B.400 to 475B.525.

**SECTION 120.** ORS 616.723 is amended to read:

616.723. (1) As used in this section:

(a) “Food” and “food establishment” have the meanings given those terms in ORS 616.695. “Food” does not include any article containing [*marijuana*] **cannabis**.

(b) “Potentially hazardous” means requiring temperature control due to the capacity to support the rapid and progressive growth of infectious microorganisms or the growth of toxic microorganisms.

(2) ORS 616.695 to 616.755 do not apply to a food establishment if:

(a) The food establishment is located in a residential dwelling;

(b) The food establishment sells food only to the end user of the product;

(c) The foods prepared at the food establishment for public distribution are not potentially hazardous;

(d) The foods prepared at the food establishment for public distribution are baked goods or confectionary items;

(e) The food bears on its label a statement and product information as described in subsection (4) of this section informing consumers that the product is not prepared in an inspected food establishment;

(f) Except as provided in subsection (6) of this section, the annual gross sales of foods prepared at the food establishment do not exceed \$20,000; and

(g) Each individual involved in the preparation of food at the food establishment for public distribution has successfully completed a food handler training program and holds a certificate issued under ORS 624.570.

(3) A person may not sell foods prepared in an establishment described in this section on the Internet or to a commercial entity or an institution including, but not limited to, a restaurant, grocery store, caterer, school, day care center, hospital, nursing home or correctional facility.

(4)(a) Except as provided in this paragraph, the label statement required under subsection (2) of this section is "This product is homemade and is not prepared in an inspected food establishment." The State Department of Agriculture may adopt rules specifying alternative wording for the label statement to the extent that alternative wording is necessary in order to comply with federal requirements.

(b) In addition to the statement required under paragraph (a) of this subsection, the label shall disclose the following product information:

- (A) The name, phone number and address for the food establishment;
- (B) The name of the product;
- (C) The ingredients of the product in descending order by weight;
- (D) The net weight or net volume of the product;
- (E) Any applicable allergen warnings as specified under federal labeling requirements; and
- (F) If the label provides any nutrient content claim, health claim or other nutritional information, product nutritional information as described in federal labeling requirements.

(5) Notwithstanding subsection (2) of this section, the department may require a food establishment described in this section to become licensed under ORS 616.695 to 616.755, if the food establishment refuses to comply with department rules requiring that the food establishment be constructed and maintained in a clean, healthful and sanitary condition.

(6) The department may adopt rules increasing the food sales limit established in subsection (2) of this section by an amount that reflects changes in the Portland-Salem, OR-WA, Consumer Price Index for All Urban Consumers for All Items as reported by the Bureau of Labor Statistics of the United States Department of Labor. The State Department of Agriculture may not adopt rules decreasing the food sales limit established in subsection (2) of this section.

(7) A person operating a food establishment described in this section must maintain accurate records of annual sales and the types of foods produced by the food establishment. The person must retain the records for not less than three years and make the records available for inspection by the department upon request.

**SECTION 121.** ORS 689.557 is amended to read:

689.557. (1) The State Board of Pharmacy shall establish by rule instructions for the disposal of a marijuana **item as defined in ORS 475B.015** left behind by individuals visiting retail drug outlets.

(2) At a minimum, the instructions established under subsection (1) of this section must:

- (a) Require an employee or supervisor of the retail drug outlet to notify law enforcement upon discovering **the** marijuana **item** at the site; and
- (b) Include procedures for destroying the marijuana **item** so that it can no longer be used for human consumption.

(3) A person acting under and in accordance with this section is exempt from the criminal laws of this state for any criminal offense in which possession of marijuana **or a marijuana item as defined in ORS 475B.015** is an element.

**SECTION 122.** ORS 704.020 is amended to read:

704.020. (1) Any person who acts or offers to act as an outfitter and guide must first register with the State Marine Board. Each registration shall be submitted annually on a form provided by the board and shall include the following information:

(a) The name, residence address and telephone number of the person providing outfitting and guiding services, and all business names, addresses and telephone numbers under which outfitting and guiding services are provided.

(b) Proof that the business under which outfitting and guiding services are provided has registered with the Secretary of State.

(c) If the outfitting and guiding services are to be performed in the business name of an individual, proof that the outfitter and guide is certified to give first aid, as determined by the board by rule.

(d) If the outfitting and guiding services are to be performed in the business name of a person other than an individual, a list of the names of all employees, agents and parties in interest who physically provide, or who directly assist in physically providing, outfitting and guiding services in this state, together with the affidavit of the outfitter and guide that each such employee, agent or party in interest is certified to give first aid, as determined by the board by rule.

(e) If the outfitter and guide is carrying passengers for hire on waterways determined to be navigable by the United States Coast Guard, proof that the person or an individual employed by the person has a valid United States Coast Guard operator license.

(f) A description of:

(A) The outfitting and guiding services and any equipment, supplies, livestock and materials provided by the outfitter and guide;

(B) The geographic area in which the outfitter and guide provides the outfitting and guiding services and the equipment, supplies, livestock and materials; and

(C) The experience of the outfitter and guide in providing the outfitting and guiding services and the equipment, supplies, livestock and materials.

(g) Proof that the outfitter and guide has liability insurance covering occurrences by the outfitter and guide, and the employees of the outfitter and guide, which result in bodily injury or property damage. To meet the requirement under this paragraph, insurance must provide combined single limit per occurrence general liability coverage of at least \$500,000.

(h) Certification by the outfitter and guide that the outfitter and guide will maintain the insurance required by paragraph (g) of this subsection continuously and in full force and effect for a period of time to be determined by the board by rule.

(i) The affidavit of the outfitter and guide stating that for a period of not less than 24 months immediately prior to making the registration application the outfitter and guide and each person who provides or assists in directly providing outfitting and guiding services:

(A) Have not been convicted of:

(i) A felony or misdemeanor related to the provision of services regulated by this chapter;

(ii) A violation under this chapter or ORS chapter 477, 496, 497, 498, 501, 506, 508, 509, 511 or 830 or any rule adopted pursuant to ORS chapter 477, 496, 497, 498, 501, 506, 508, 509, 511 or 830;

(iii) A violation of the wildlife laws that occurred while acting as an outfitter and guide and that resulted in court-ordered revocation of the hunting or fishing license of the outfitter and guide;

(iv) A crime involving delivery, manufacture or possession of a controlled substance, as defined in ORS 475.005[ *except marijuana*]; or

(v) Assault in any degree, criminal homicide as defined in ORS 163.005 or kidnapping in any degree;

(B) Have not had an outfitting and guiding license, permit or certificate revoked, suspended or canceled by another state or by an agency of the government of the United States;

(C) Have not been denied the right to apply for an outfitting and guiding license, permit or certificate by another state or by an agency of the government of the United States; and

(D) Have not been convicted of guiding without registration as required by this subsection.

(j) The affidavit of the outfitter and guide stating that the outfitter and guide and each person who provides or assists in directly providing outfitting and guiding services have not been convicted of:

(A) A crime, the result of which prohibits the person from possessing a firearm; or

(B) A crime, the result of which requires the person to be registered as a sex offender under ORS 163A.010, 163A.015, 163A.020 or 163A.025.

(2) In addition to the requirements of subsection (1) of this section, a person who acts or offers to act as an outfitter and guide using boats that are under the direct operation of an outfitter and guide or an employee of an outfitter and guide for the purpose of carrying passengers on the waters of this state must submit proof:

(a) If operating a motorboat on waterways determined to be navigable by the United States Coast Guard, that the outfitter and guide possesses a valid United States Coast Guard operator license; and

(b) Of liability insurance in a form prescribed by the board by rule.

(3)(a) A person who registers as an outfitter and guide and who accepts deposits from clients in excess of \$100 per person shall submit a bond or other financial security in the amount of \$5,000 to the board at the time of registration. The bond or other financial security shall be held by the board for the benefit of clients of the outfitter and guide who pay a money deposit to the outfitter and guide in anticipation of services to be received. The bond or other financial security amount shall be released to such client or clients conditioned upon a failure of the outfitter and guide to return the deposit following cancellation of services or other failure to provide agreed upon services.

(b) The board shall release or retain all or any portion of a bond or other financial security as described in paragraph (a) of this subsection according to the provisions of ORS chapter 183.

(4) Each annual registration shall be accompanied by a fee as follows:

(a) For resident persons, \$150.

(b) For nonresident persons who reside in a state that requires residents of this state to pay a license fee, registration fee or other fee or charge in excess of \$150 to act as an outfitter and guide in that state, the same fee or other charge as is charged the residents of this state to act as an outfitter and guide in the state where the nonresident applicant resides. If the state in which such a nonresident applicant resides makes distinctions in fees or charges based on the type of outfitter and guide service performed and requires residents of this state to pay fees or charges accordingly, the board shall make and apply those same distinctions and require the nonresident applicants to pay the corresponding fees or charges.

(c) For nonresident persons other than those referred to in paragraph (b) of this subsection, \$150.

(5) Upon the submission to the board of the appropriate fees prescribed in this section and the registration information required by this section, the board shall issue to the applicant a certificate of registration. The board shall also issue to each registrant proof of compliance with the requirements of this section.

(6) A person who conducts sightseeing flights or other aircraft operations is exempt from the provisions of this section unless the activities conducted by the person are outdoor recreational activities as defined in ORS 704.010.

(7) The board shall issue an identifying decal to outfitters and guides registering under this section that may be displayed on vehicles, pack equipment or other suitable locations where customers can see the registration decal.

(8) A certificate of registration issued to an outfitter and guide under this section expires on December 31 of each calendar year or on such date as may be specified by board rule.

**SECTION 123.** ORS 704.020, as amended by section 7, chapter 422, Oregon Laws 2013, and section 2, chapter 438, Oregon Laws 2015, is amended to read:

704.020. (1) Any person who acts or offers to act as an outfitter and guide must first register with the State Marine Board. Each registration shall be submitted annually on a form provided by the board and shall include the following information:

(a) The name, residence address and telephone number of the person providing outfitting and guiding services, and all business names, addresses and telephone numbers under which outfitting and guiding services are provided.

(b) Proof that the business under which outfitting and guiding services are provided has registered with the Secretary of State.

(c) If the outfitting and guiding services are to be performed in the business name of an individual, proof that the outfitter and guide is certified to give first aid, as determined by the board by rule.

(d) If the outfitting and guiding services are to be performed in the business name of a person other than an individual, a list of the names of all employees, agents and parties in interest who physically provide, or who directly assist in physically providing, outfitting and guiding services in this state, together with the affidavit of the outfitter and guide that each such employee, agent or party in interest is certified to give first aid, as determined by the board by rule.

(e) If the outfitter and guide is carrying passengers for hire on waterways determined to be navigable by the United States Coast Guard, proof that the person or an individual employed by the person has a valid United States Coast Guard operator license.

(f) A description of:

(A) The outfitting and guiding services and any equipment, supplies, livestock and materials provided by the outfitter and guide;

(B) The geographic area in which the outfitter and guide provides the outfitting and guiding services and the equipment, supplies, livestock and materials; and

(C) The experience of the outfitter and guide in providing the outfitting and guiding services and the equipment, supplies, livestock and materials.

(g) Proof that the outfitter and guide has liability insurance covering occurrences by the outfitter and guide, and the employees of the outfitter and guide, which result in bodily injury or property damage. To meet the requirement under this paragraph, insurance must provide combined single limit per occurrence general liability coverage of at least \$500,000.

(h) Certification by the outfitter and guide that the outfitter and guide will maintain the insurance required by paragraph (g) of this subsection continuously and in full force and effect for a period of time to be determined by the board by rule.

(i) The affidavit of the outfitter and guide stating that for a period of not less than 24 months immediately prior to making the registration application the outfitter and guide and each person who provides or assists in directly providing outfitting and guiding services:

(A) Have not been convicted of:

(i) A felony or misdemeanor related to the provision of services regulated by this chapter;

(ii) A violation under this chapter or ORS chapter 477, 496, 497, 498, 501, 506, 508, 509, 511 or 830 or any rule adopted pursuant to ORS chapter 477, 496, 497, 498, 501, 506, 508, 509, 511 or 830;

(iii) A violation of the wildlife laws that occurred while acting as an outfitter and guide and that resulted in court-ordered revocation of the hunting or fishing license of the outfitter and guide;

(iv) A crime involving delivery, manufacture or possession of a controlled substance, as defined in ORS 475.005[, *except marijuana*]; or

(v) Assault in any degree, criminal homicide as defined in ORS 163.005 or kidnapping in any degree;

(B) Have not had an outfitting and guiding license, permit or certificate revoked, suspended or canceled by another state or by an agency of the government of the United States;

(C) Have not been denied the right to apply for an outfitting and guiding license, permit or certificate by another state or by an agency of the government of the United States; and

(D) Have not been convicted of guiding without registration as required by this subsection.

(j) The affidavit of the outfitter and guide stating that the outfitter and guide and each person who provides or assists in directly providing outfitting and guiding services have not been convicted of:

(A) A crime, the result of which prohibits the person from possessing a firearm; or

(B) A crime, the result of which requires the person to be registered as a sex offender under ORS 163A.010, 163A.015, 163A.020 or 163A.025.

(2)(a) In addition to the requirements of subsection (1) of this section, a person who acts or offers to act as an outfitter and guide using boats that are under the direct operation of an outfitter and guide or an employee of an outfitter and guide for the purpose of carrying passengers on the waters of this state must submit proof:

(A) If operating a motorboat on the waters of this state, that the outfitter and guide:

(i) Has passed a written test adopted by the board by rule;

- (ii) Has participated in a drug and alcohol program as defined by the board by rule; and
  - (iii) Has completed a physical examination every five years as required by the board by rule.
- (B) Of liability insurance in a form prescribed by the board by rule.

(b) A person is exempt from paragraph (a)(A) of this subsection if the person is operating a motorboat on waters of this state determined to be navigable by the United States Coast Guard and the person possesses a valid United States Coast Guard operator license.

(3)(a) A person who registers as an outfitter and guide and who accepts deposits from clients in excess of \$100 per person shall submit a bond or other financial security in the amount of \$5,000 to the board at the time of registration. The bond or other financial security shall be held by the board for the benefit of clients of the outfitter and guide who pay a money deposit to the outfitter and guide in anticipation of services to be received. The bond or other financial security amount shall be released to such client or clients conditioned upon a failure of the outfitter and guide to return the deposit following cancellation of services or other failure to provide agreed upon services.

(b) The board shall release or retain all or any portion of a bond or other financial security as described in paragraph (a) of this subsection according to the provisions of ORS chapter 183.

(4) Each annual registration shall be accompanied by a fee as follows:

(a) For resident persons, \$150.

(b) For nonresident persons who reside in a state that requires residents of this state to pay a license fee, registration fee or other fee or charge in excess of \$150 to act as an outfitter and guide in that state, the same fee or other charge as is charged the residents of this state to act as an outfitter and guide in the state where the nonresident applicant resides. If the state in which such a nonresident applicant resides makes distinctions in fees or charges based on the type of outfitter and guide service performed and requires residents of this state to pay fees or charges accordingly, the board shall make and apply those same distinctions and require the nonresident applicants to pay the corresponding fees or charges.

(c) For nonresident persons other than those referred to in paragraph (b) of this subsection, \$150.

(5) Upon the submission to the board of the appropriate fees prescribed in this section and the registration information required by this section, the board shall issue to the applicant a certificate of registration. The board shall also issue to each registrant proof of compliance with the requirements of this section.

(6) A person who conducts sightseeing flights or other aircraft operations is exempt from the provisions of this section unless the activities conducted by the person are outdoor recreational activities as defined in ORS 704.010.

(7) The board shall issue an identifying decal to outfitters and guides registering under this section that may be displayed on vehicles, pack equipment or other suitable locations where customers can see the registration decal.

(8) A certificate of registration issued to an outfitter and guide under this section expires on December 31 of each calendar year or on such date as may be specified by board rule.

**SECTION 124.** ORS 704.040 is amended to read:

704.040. (1) The Legislative Assembly finds that violation of fire prevention, wildlife, hunting, angling, trapping, commercial fishing, recreational boating or public safety laws is directly related to the fitness required for registration as an outfitter and guide.

(2) When a person is convicted of a felony or misdemeanor related to the provision of services regulated by this chapter, a violation of ORS 704.020 or 704.030 or ORS chapter 477, 496, 497, 498, 501, 506, 508, 509, 511 or 830, or any rule promulgated pursuant to ORS 704.500 or ORS chapter 477, 496, 497, 498, 501, 506, 508, 509, 511 or 830, the court having jurisdiction of the offense may order the State Marine Board to revoke the certificate of registration issued to that person pursuant to ORS 704.020.

(3) When a court orders revocation of a certificate of registration pursuant to this section, the court shall take up the certificate of registration and forward it with a copy of the revocation order

to the board. Upon receipt thereof, the board shall cause revocation of the certificate of registration in accordance with the court order.

(4) A person who has had a certificate of registration revoked pursuant to a court order under this section is ineligible to register under ORS 704.020 for a period of 24 months from the date the court ordered the revocation.

(5) The board, in its discretion, may reprimand an outfitter and guide or suspend for up to 24 months, revoke or deny the registration of an outfitter and guide for any of the following:

(a) Conviction of a felony or misdemeanor related to the provision of services regulated by this chapter.

(b) Any serious or repeated violation of this chapter or ORS chapter 477, 496, 497, 498, 501, 506, 508, 509, 511 or 830 or any rule adopted pursuant to ORS chapter 477, 496, 497, 498, 501, 506, 508, 509, 511 or 830.

(c) Any serious or repeated violation of the fish and wildlife laws or regulations of the federal government or of another state for committing or omitting acts that, if committed or omitted in this state, would be a violation of ethical or professional standards established pursuant to this chapter. A certified copy of the record of suspension or revocation of the state making such suspension or revocation is conclusive evidence thereof.

(d) Having an outfitter and guide registration, license, permit or certificate suspended, revoked, canceled or denied by another state or by an agency of the United States for committing or omitting acts that, if committed or omitted in this state, would be a violation of ethical or professional standards established pursuant to this chapter. A certified copy of the record of suspension or revocation of the state making such suspension or revocation is conclusive evidence thereof.

(e) Having a United States Coast Guard vessel operator license revoked, suspended or canceled by the United States Coast Guard for committing or omitting acts that if committed or omitted in this state would be a violation of standards established pursuant to this chapter. A certified copy of the record of revocation, suspension or cancellation from the United States Coast Guard is conclusive evidence thereof.

(f) Engaging in fraudulent, untruthful or seriously misleading advertising in the conduct of the outfitting and guiding services.

(g) Conviction of a crime involving delivery, manufacture or possession of a controlled substance, as defined in ORS 475.005[, *except marijuana*].

(h) Conviction of assault in any degree, criminal homicide as defined in ORS 163.005 or kidnapping in any degree.

(6) The board shall revoke the registration of an outfitter and guide for:

(a) Conviction of a crime, the result of which prohibits the person from possessing a firearm; or

(b) Conviction of a crime, the result of which requires the person to be registered as a sex offender under ORS 163A.010, 163A.015, 163A.020 or 163A.025.

(7) The board shall adopt rules to implement subsections (5) and (6) of this section, including rules that describe conduct that is a serious or repeated violation of a law, rule or regulation.

**SECTION 125.** ORS 809.745 is amended to read:

809.745. A law enforcement agency, as defined in ORS 136.595, may not seize a vehicle for forfeiture under ORS 131.602 [(132) or (133)] **(137) or (138)** or 809.740, unless the agency has adopted policies and procedures for seizure, including policies relating to when a police officer may seize a motor vehicle for forfeiture under ORS 131.602 [(132) or (133)] **(137) or (138)** or 809.740.

## REPEALS

**SECTION 126.** ORS 135.907, 135.909, 135.911, 135.913, 135.915, 135.917, 135.919, 135.921, 475.059, 475.290, 475.856, 475.858, 475.860, 475.862 and 475.864 and section 12, chapter 591, Oregon Laws 2013, section 129, chapter 614, Oregon Laws 2015, section 26, chapter 23, Oregon Laws 2016, and sections 41 and 47, chapter 24, Oregon Laws 2016, are repealed.

**APPLICABILITY**

**SECTION 127.** Sections 3 to 7, 9, 9a, 11, 12, 14 and 17 to 20 of this 2017 Act, the amendments to statutes by sections 1, 15 and 22 to 125 of this 2017 Act and the repeal of statutes and session laws by section 126 of this 2017 Act apply to conduct occurring on and after the effective date of this 2017 Act.

**UNIT CAPTIONS**

**SECTION 128.** The unit captions used in this 2017 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2017 Act.

**EMERGENCY CLAUSE**

**SECTION 129.** This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect on its passage.

**Passed by Senate March 14, 2017**

.....  
Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

**Passed by House April 6, 2017**

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Tina Kotek, Speaker of House

**Received by Governor:**

.....M.,....., 2017

**Approved:**

.....M.,....., 2017

.....  
Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2017

.....  
Dennis Richardson, Secretary of State