

# OREGON LIQUOR CONTROL COMMISSION

## At-A-Glance Initial Action

(Temporarily amend three existing rules)

### **Marijuana Sale to Minor Package**

OAR 845-025-5590, 845-025-8520, 845-025-8590

## January 2018

Commission staff has recently stepped up its efforts to ensure marijuana retail licensees are not selling marijuana items to minors. Specifically, staff has implemented a minor decoy program to test licensees' compliance, as set forth in OAR 845-025-8570. During recent minor decoy operations, staff has discovered a concerning amount of sales to OLCC minor decoys.

In response, staff sees it necessary to escalate both compliance operations and the penalty schedule for a sale to minor. Specifically, staff is proposing to increase the penalty for an unintentional sale to minor to a 30 day license suspension or a fine of four thousand nine hundred and fifty dollars for the first offense. Further, staff is proposing to increase an intentional sale of marijuana to a minor to Category I violation, which would result in license revocation. Staff sees this issue as a threat to public safety and believes temporary rulemaking is necessary to reinforce with the marijuana industry that the Commission views any sale to a minor as one of the most egregious violations a licensee can commit.

#### **SUGGESTED MOTION:**

I move to temporarily amend 845-025-5590, 845-025-8520, 845-025-8590 effective January 26, 2018 and hold a rulemaking hearing at staff's discretion.

#### **ALTERNATIVE MOTIONS:**

I move to defer this rulemaking action until our next meeting.

I move to initiate rulemaking to amend 845-025-5590, 845-025-8520, 845-025-8590 and hold a rulemaking hearing at staff's discretion.

**OREGON LIQUOR CONTROL COMMISSION**  
**CHAPTER 845**  
**PROPOSED AMENDMENTS**

Note: **Bold and underlined** = new text; *italics and strikethrough* = deleted text

**845-025-5590**

**Suspension or Revocation**

(1) The Commission may suspend or revoke the permit of any marijuana worker if the worker:

(a) Has been convicted of a felony, except for a felony described ORS 475B.218(4)(a);

(b) Has violated a provision of ORS 475B.010 to 475B.395 or these rules; or

(c) Makes a material false statement to the Commission.

**(2) The Commission will revoke a marijuana worker permit if a permittee intentionally sells a marijuana item to a person under 21 years of age.**

(3) The Commission may suspend or revoke the permit for any marijuana worker for any reasons that would be the basis for denying a permit application under OAR 845-025-5540.

(4) If an individual's permit is revoked under sections (1)(b) or (c) of this rule future applications will be denied if received within two years of the date the final order of revocation was issued.

(5) A notice of suspension or revocation must be issued by the Commission in accordance with ORS 183.

Statutory/Other Authority: ORS 475B.218 & 475B.215

Statutes/Other Implemented: ORS **475B.125,** 475B.215 & 475B.218

**845-025-8520**

**Prohibited Conduct**

(1) Sale to a Minor. A licensee or permittee may not sell, deliver, transfer or make available any marijuana item to a person under 21 years of age unless the individual holds a valid OMMP patient or caregiver card.

(a) Violation of this section for an intentional sale to a minor by a licensee, permittee or license representative is a Category I ~~II~~ violation.

(b) Violation of this section for other than intentional sales is a Category II(b) violation.

(2) Identification. A licensee or license representative must require a person to produce identification as required by ORS 475B.170 before selling or providing a marijuana item to that person. Violation of this section is a Category IV violation.

(3) Access to Premises.

(a) A licensee or permittee may not:

(A) During regular business hours for the licensed premises, refuse to admit or fail to promptly admit a Commission regulatory specialist who identifies him or herself and who enters or wants to enter a licensed premises to conduct an inspection to ensure compliance with ORS 475B affecting the licensed privileges; or these rules;

(B) Outside of regular business hours or when the premises appear closed, refuse to admit or fail to promptly admit a Commission regulatory specialist who identifies him or herself and requests entry on the basis that there is a reason to believe a violation of ORS 475B affecting the licensed privileges; or these rules is occurring; or

(C) Once a regulatory specialist is on the licensed premises, ask the regulatory specialist to leave until the specialist has had an opportunity to conduct an inspection to ensure compliance with ORS 475B affecting the licensed privileges; or these rules.

(b) Violation of this section is a Category II violation.

(4) Use or Consumption of Intoxicants on Duty and Under the Influence on Duty.

(a) No licensee, licensee representative, or permittee may consume any intoxicating substances while on duty, except for employees as permitted under OAR 845-025-1230(6)(b). Violation of this subsection is a Category III violation.

(b) No licensee, licensee representative, or permittee may be under the influence of intoxicating substances while on duty. Violation of this subsection is a Category II violation.

(c) Whether a person is paid or scheduled for a work shift is not determinative of whether the person is considered "on duty."

(d) As used in this section:

(A) "On duty" means:

(i) From the beginning to the end of a work shift for the licensed business, including any and all coffee, rest or meal breaks; or

(ii) Performing any acts on behalf of the licensee or the licensed business outside of a work shift if the individual has the authority to put himself or herself on duty.

(B) "Intoxicants" means any substance that is known to have or does have intoxicating effects, and includes alcohol, marijuana, or any other controlled substances.

(5) Permitting Use of Marijuana at Licensed Premises. A licensee or permittee may not permit the use or consumption of marijuana, hemp items, or any other intoxicating substance, anywhere in or on the licensed premises, or in surrounding areas under the control of the licensee, except for employees as permitted under OAR 845-025-1230(6)(b). Violation of this section is a Category III violation.

(6) Import and Export. A licensee or permittee may not import marijuana items into this state or export marijuana items out of this state. Violation of this section is a Category I violation and could result in license or permit revocation.

(7) Permitting, Disorderly or Unlawful Conduct. A licensee or permittee may not permit disorderly activity or activity that is unlawful under Oregon state law on the licensed premises or in areas adjacent to or outside the licensed premises under the control of the licensee.

(a) If the prohibited activity under this section results in death or serious physical injury, or involves unlawful use or attempted use of a deadly weapon against another person, or results in a sexual offense which is a Class A felony such as first degree rape, sodomy, or unlawful sexual penetration, the violation is a Category I violation and could result in license or permit revocation.

(b) If the prohibited activity under this section involves use of a dangerous weapon against another person with intent to cause death or serious physical injury, it is a Category II violation.

(c) As used in this section:

(A) "Disorderly activities" means activities that harass, threaten or physically harm oneself or another person.

(B) "Unlawful activity" means activities that violate the laws of this state, including but not limited to any activity that violates a state criminal statute.

(d) The Commission does not require a conviction to establish a violation of this section except as required in ORS 475B.045.

(8) Marijuana as a Prize, Premium or Consideration. No licensee or permittee may give or permit the giving of any marijuana item as a prize, premium, or consideration for any lottery, contest, game of chance or skill, exhibition, or any competition of any kind on the licensed premises.

(9) Visibly Intoxicated Persons. No licensee or permittee may sell, give, or otherwise make available any marijuana item to any person who is visibly intoxicated. Violation of this section is a Category III violation.

(10) Additional Prohibitions. A licensee or permittee may not:

(a) Sell or deliver any marijuana item through a drive-up or walk-up window.

(b) Use any device or machine that both verifies the age of the consumer and delivers marijuana to the consumer; or

(c) Deliver marijuana to a consumer off the licensed premises, except that retail licensees may provide delivery as set forth in OAR 845-025-2880.

(d) Violation of this subsection is a Category III violation.

(e) Permit hemp item or product derived from industrial hemp that contains cannabinoids to be present on the licensed premises, except as allowed by these rules. Violation of this subsection is a Category I violation.

Stat. Auth.: ORS 475B.025, 475B.070, 475B.090, 475B.100 & 475B.110

Stats. Implemented: ORS 475B.070, 475B.090, 475B.100, 475B.110, **475B.125**  
475B.185, 475B.270 & 475B.275

## **845-025-8590**

### **Suspension, Cancellation, Civil Penalties, Sanction Schedule**

(1) The Commission may suspend or revoke:

(a) A license issued under ORS 475B.010 to 475B.395 or 475B.560.

(b) A marijuana workers permit issued under ORS 475B.215.

(c) A research certificate issued under ORS 475B.235.

(d) An industrial hemp certificate issued under OAR 845-025-2700.

(2) Civil Penalties.

(a) The Commission may impose a civil penalty under ORS 475B.295. Civil penalties will be calculated by multiplying:

(A) The number of days in a suspension, if suspension could be or is being imposed, by \$165 for licensees or certificate holders; or

(B) The number of days in a suspension, if suspension could be or is being imposed, by \$25 for permittees.

(b) The Commission may impose a civil penalty under ORS 475B.655 of no more than \$500 each day the violation occurs.

(3) The Commission uses the following violation categories for licensees licensed under ORS 475B.010 to 475B.395:

(a) Category I — Violations that make licensee ineligible for a license;

(b) Category II — Violations that create a present threat to public health or safety;

(c) Category II (b) — Violations for sales to a minor;

(d) Category III — Violations that create a potential threat to public health or safety;

(e) Category IV — Violations that create a climate conducive to abuses associated with the sale or manufacture of marijuana items;

(f) Category V — Violations inconsistent with the orderly regulation of the sale or manufacture of marijuana items.

(4) Violation sanctions.

(a) The Commission may sanction a licensee or permittee in accordance with the guidelines set forth in Exhibit 1, incorporated by reference. Exhibit 1 also contains the categories for the most common violations.

(b) Exhibit 1 lists the proposed sanctions for single or multiple violations that occur within a two year period for each category described in section (3) of this rule. The Commission may allege multiple violations in a single notice or may count violations alleged in notices issued within the previous two year period toward the total number of violations. In calculating the total number of violations, the Commission may consider a proposed violation for which the Commission has not yet issued a final order.

(c) The proposed sanctions in Exhibit 1 are guidelines. If the Commission finds one or more mitigating or aggravating circumstances, it may assess a lesser or greater sanction, up to and including revocation. The Commission may decrease or increase a sanction to prevent inequity or to take account of particular circumstances in the case.

(d) Mitigating circumstances include, but are not limited to:

(A) Making a good faith effort to prevent a violation.

(B) Extraordinary cooperation in the violation investigation demonstrating the licensee or permittee accepts responsibility.

(e) Aggravating circumstances include, but are not limited to:

(A) Receiving a prior warning about one or more compliance problems.

(B) Repeated failure to comply with laws.

(C) Failure to use age verification equipment purchased as an offset to a previous penalty.

(D) Efforts by licensee or permittee to conceal a violation.

(E) Intentionally committing a violation.

(F) A violation involving more than one consumer or employee.

(G) A violation involving a juvenile.

(H) A violation resulting in injury or death.

(I) A violation that occurred at a licensed premises that has been granted a security waiver.

(J) Three or more violations within a two-year-period, regardless of the category, where the number of the proposed or final violations indicate a disregard for the law or failure to control the premises.

(5) A licensee may not avoid the sanction for a violation or the application of the provision for successive violations by changing the corporate structure for example, by adding or dropping a partner or converting to another form of legal entity when the individuals who own, operate, or control the business are substantially similar.

[ED. NOTE: Exhibits referenced is not included in rule text. [Click here for PDF copy of exhibit.](#)]

Stat. Auth.: ORS 475B.025

Stats. Implemented: ORS **475B.125**, 475B.210, 475B.295, 475B.560 & 475B.635

Exhibit 1, OAR 845-025-8590 Oregon Liquor Control Commission - Recreational Marijuana Sanctions

Category	1 Violation in a 2- year period	2 Violations in a 2- year period	3 Violations in a 2- year period	4 Violations in a 2- year period	5 Violations in a 2- year period	6 Violations in a 2- year period
I	Revoke					
II	30 days or \$4950	Revoke				
II(b)	30 days or \$4950	30 days	Revoke			
III	10 days or \$1650	30 days or \$4950	30 days	Revoke		
IV	7 days or \$1155	10 days or \$1650	20 days or \$3300	30 days	Revoke	
V	3 days or \$495	7 days or \$1155	10 days or \$1650	20 days or \$3300	30 days	Revoke

**Categories for Most Common Violations**

Category	Violation
II	False statement or representation to Commission (other than intentional)
	Under the influence of intoxicants while on duty
	Failure to promptly admit regulatory specialist or law enforcement into licensed retail premises
	Destruction or concealment of evidence (other than intentional)
	Denial of access by law enforcement or regulatory specialist to the licensed premises during regular business hours
	Permitted noisy, disorderly or unlawful activity that involves use of a dangerous weapon against another person with intent to cause death or serious physical injury
	Failure to promptly admit regulatory specialist or law enforcement onto the licensed premises when premises appear closed (for producer,

	processor, wholesale or lab licensees, and research certificate holders)
	Failure to permit premises or records inspection

Category	Violation
II(b)	Sale to a minor (unintentional)

Category	Violation
I	Failure to verify the age of a minor (intentional)
	Conviction of a felony (licensee)
	Operating other than the license permits
	Intentional false statement to the Commission
	Intentional destruction or concealment of evidence
	Intentional failure to pay taxes to Department of Revenue
	Permitted noisy, disorderly or unlawful activity that results in death or serious physical injury, or that involves unlawful use or attempted use of a deadly weapon against another person, or that results in a sexual offense which is a Class A felony, such as first degree rape, sodomy, or unlawful sexual penetration
	Failure to notify prior to complete change of ownership/allowed interest in licensed business without prior Commission approval
	Operated licensed business while suspended

<b>Category</b>	<b>Violation</b>
<b>III</b>	Permitted minor to enter or remain in a prohibited area
	Conviction of a crime other than a felony (licensee)
	Permitted sales by an employee without a marijuana worker permit
	Sold or made recreational marijuana available to a visibly intoxicated person
	Consumption of marijuana, alcohol or other intoxicants while on duty
	Permitted consumption (by employees, customers or the public) of alcohol, marijuana or other intoxicants on the licensed premises or in areas adjacent to the licensed premises under licensee's control (such as parking lots)
	Failure to keep required records (other than as required in 845-025-7500, seed-to-sale tracking requirements)
	Failure to follow an approved security plan
	Permitted disorderly activity
	Permitted unlawful (under state law) activity
	Failure to complete manifest before transport
	Failure to pay taxes to the Department of Revenue

<b>Category</b>	<b>Violation</b>
<b>IV</b>	Operated the licensed business after lawful hours for sale of marijuana items (retail licensees)
	Removed, altered or covered license suspension or other required notice sign
	Advertising violations

<b>Category</b>	<b>Violation</b>
<b>V</b>	Permitted marijuana items to be given as a prize (retail licensees)
	Failure to notify the Commission of a temporary closure of the licensed business (all licenses and certificates)