



# 2021 SENATE BILL 408 LEGISLATIVE REPORT

December 31, 2021

## 2021 SB 408 – Executive Summary

During the 2021 regular session, the Oregon Legislature passed Senate Bill 408. Section 6(1) of 2021 SB 408 requires the Oregon Liquor & Cannabis Commission (OLCC) to submit a report to an interim committee of the Legislative Assembly related to the judiciary by December 31, 2021. The report must summarize the commission’s rulemaking activities under section 5 of the 2021 Act between the effective date of SB 408 and December 31, 2021.

*Section 5 of SB 408 requires OLCC to establish by rule a schedule outlining the numbers and types of violations described in ORS 475B.256 that, if committed within a two-year period by an applicant for a license issued under ORS 475B.010 to 475B.545 or a licensee indicate a disregard for the law or a failure to control the premises for which a license has been issued under ORS 475B.010 to 475B.545. The schedule adopted under this section must include a definition of the categories of violations, elements of the violations and a method by which to apply any aggravating or mitigating circumstances to the violations.*

Beginning in the summer of 2020 the OLCC engaged industry partners in an ongoing Marijuana Advisory Committee to facilitate better communication between the agency and our industry partners, while allowing for formal and transparent discussions. One of the ongoing topics has been the violation reclassification project. This project includes a holistic review of the violation and sanction schedules. Understanding this was going to be a large project that would need to take place over many rulemaking cycles, the agency, with the help of industry partners, decided to approach the violation reclassification with a phased methodology.

Violation Reclassification		
Project Phases		Timeline
Phase 1	Verification of Compliance	Complete
Phase 2	Quick Categorization Fixes	Complete April, 2021
Phase 3	Large Scale Re-Categorization	Complete December, 2021
Phase 4	Penalty Schedule	2022

This report contains a summary of the work to date, future rulemaking plans and the legislative changes outlined in SB 408, which are included in phase 3 of the project. The agency looks forward to continued partnership with industry partners to better refine our compliance program so that we are allowing businesses to thrive in Oregon.

*To obtain a paper copy of this report contact the Oregon Liquor & Cannabis Commission’s Recreational Marijuana program at [marijuana@oregon.gov](mailto:marijuana@oregon.gov).*

*Published online at <https://marijuana.oregon.gov> under the “[Legislative Reports](#)” header.*

## Introduction

During the 2021 regular session, the Oregon Legislature passed Senate Bill 408, which created new provisions regarding marijuana enforcement reform, plant diversity, possession and concentration limits, and packaging requirements. Section 6(1) of 2021 SB 408 requires the Oregon Liquor & Cannabis Commission (OLCC) to submit a report to an interim committee of the Legislative Assembly related to the judiciary by December 31, 2021. The report must summarize the commission's rulemaking activities under section 5 of the 2021 Act between the effective date of SB 408 and December 31, 2021, **including but not limited to rulemaking focused on the commission's mission to support businesses, public safety and community livability through public education and the enforcement of marijuana laws.**

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In the following report we discuss past rulemaking closely related to the requirements of SB 408 and current rulemaking to implement the changes in statute, highlighting the changes required by section 5 of SB 408.

## Background

Prior to the passage of 2021 SB 408, the OLCC engaged with industry partners to scope the violation reclassification project. Many of the violations listed in Oregon Administrative Rule chapter 845 division 25 were written in 2015 and reflected the inaugural program and the looming concerns of federal intervention. As the industry has matured and the concerns of federal intervention receded, the agency decided it was time for a holistic review of the violation and sanction schedules. Working with industry partners the OLCC approached the violation

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reclassification using a phased methodology, which was an explicit acknowledgement that the project would stretch over many cycles of rulemaking. Below is a short summary of the work to date, including legislative changes outlined in SB 408, which are included in phase 3 of the project.

## Violation Reclassification Project

To begin the violation reclassification project, the OLCC asked industry members, industry associations, attorneys and partner state agencies to join a standing Marijuana Advisory Committee. This committee does not act as a formal Rules Advisory Committee, but provides feedback in an ongoing advisory role. The advisory committee allows the OLCC and the industry members to have meaningful conversations in a public setting, while formulating concepts for wider industry evaluation. A majority of the advisory meetings to date have focused on marijuana licensing and compliance rules and regulations. With the collaboration of the committee the OLCC has been able to better understand the needs of the industry, and allow both the industry and the agency to work toward common goals.

### Phase One

In the first phase (Phase 1) of the violation reclassification project, compliance staff partnered with the advisory committee in the summer of 2020 to design the Verification of Compliance program. This program launched in September 2020 and allows OLCC Regulatory Specialists to issue licensees a Verification of Compliance (VOC) for select fixable violations. Eligible violations are *fixable* and *measurable*. The eligible violations and associated policies are measurable because they are *teachable, learnable, and executable*. If the notice of violation is remedied within a specific timeframe, the OLCC will not formally issue a violation. The goal of the VOC program is to utilize an established process to identify and remediate low level violations that can be handled quickly and appropriately through an informal process conducted in the field between our Regulatory Specialists and licensees.

The VOC program has been well received by licensees and OLCC Regulatory Specialists alike. The program has resulted in the cannabis industry gaining a greater understanding of how low level violations are treated and has increased voluntary compliance by licensees. The OLCC plans to re-evaluate the program in 2022 with the objective of including additional types of violations in the program.

## *Phase Two*

The second phase (Phase 2) of the violation reclassification project focused on identifying violations that could be made more contemporary by re-categorizing them to better reflect the severity of violation and their actual public safety impact. Because this rulemaking happened during the 2021 legislative session, the adjusted violations needed to be changed in a short timeframe. As a first step the OLCC assessed the history of all marijuana violation charges, and compiled the information by violation type, including if the violation was listed in rule, and the pattern of issuance. Using this information, OLCC surveyed staff members for feedback on which violations could be reclassified, thus further defining the scope of Phase 2 reclassification. When the results were gathered, OLCC worked with industry members and public health and safety partners to identify additional rules that could easily be clarified, reclassified, and updated. The changes included reclassifying: video surveillance violations, harvest notifications, processing activities and failure to use control plans. The Commission also expanded time frames for some reporting requirements.

Phase 2 work also helped the staff formulate additional changes that can be made over a longer period of time, including identifying what violations could be addressed in later phases and what internal policies could bridge the gap when needed. In April of 2021, OLCC Commissioners approved the violation reclassification permanent rule package.

## *Phase Three*

OLCC Commissioners voted to initiate permanent rule making on the third phase of the Violation Reclassification project in April of 2021. Phase 3 was a more comprehensive process that examined current rule violation categories, rule language, agency practices and procedures, and relevant 2021 legislation. Using the lists of all violations charged and the survey results from phase 2, the agency created a more comprehensive list of commonly-issued violations, separating uncategorized from categorized violations, to identify further work needed in the future. OLCC met with industry representatives and the Marijuana Advisory Committee throughout the summer to continue important dialog and make sure changes under consideration would benefit all parties.

In addition to rulemaking activities, the Commission voted to resolve multiple pending case reports (a step prior to issuing a violation) by issuing licensees with a warning for less-serious violations. With the significant changes made by SB 408 relating to the way OLCC is able to charge violations, it seemed appropriate to review open violation reports and reduce or remove the violations.

The Commission also plans to adopt an internal policy in January of 2022, using industry feedback from the rulemaking public comment as the framework, to give OLCC Regulatory Specialists additional tools enabling them to work with licensees on compliance issues instead of just issuing a violation.

### Phase Three - SB 408

SB 408 approved by the Legislature in 2021 amended multiple portions of ORS 475B.256. The legislation limited the circumstances when OLCC can revoke, suspend or restrict a license to specific violations, which required the OLCC to make changes to the rules listed below. Because the OLCC was already in rulemaking for Phase 3 of the violation reclassification project, the statutory changes from SB 408 were included. For a majority of these rules, the existing penalty was downgraded from cancellation of the license to a lesser penalty. In some cases, however, the penalty remained a cancellable offense *if the violation was intentionally committed*. The effected rules are listed below to highlight the scope of the project.

- OAR 845-025-1335 Marijuana Promotional Events
- 845-025-1440 Required Camera Coverage and Camera Placement
- 845-025-1450 Video Recording Requirements for Licensed Facilities
- 845-025-2040 Production Size Limitations
- 845-025-2500 Registration to Produce Usable Marijuana for Patients
- 845-025-2550 Requirements for Producing and Providing Marijuana for Patients
- 845-025-3255 Alternating Proprietors
- 845- 025-3505 Wholesaler For-Hire Trimming Privilege
- 845-025-7540 Seed-To-Sale Tracking — CTS User Requirements
- 845-025-8520 Prohibited Conduct
- 845-025-8550 History of Lack of Institutional Control
- 845-025-8590 Suspension, Cancellation, Civil Penalties, Sanction Schedule

SB 408 also allows OLCC to revoke, suspend or restrict a license if there is a history of a lack of institutional control involving the licensed premises; this required the adoption of rule 845-025-8550 to describe what constitutes a lack of institutional control. The OLCC plans to continue to work with the industry on the new rule section to make sure it reflects the legislative intent of SB 408.

When OLCC can revoke, suspend or restrict a license:
A licensee has violated a law or rule and the conduct poses a significant risk to public health or safety.
Involvement in diversion or inversion of marijuana or diversion or resources to criminal activities.
A licensee provided a False representation or statement
A licensee is in the habit of using alcoholic liquor, habit-forming drugs, marijuana or controlled substances to excess.
A licensee has misrepresented marijuana items.
A licensee has been convicted of a felony, of violating any of the marijuana laws of this state, general or local, or of any misdemeanor
A licensee has sold a marijuana item to a person under 21 years of age.
Displays a history of a lack of institutional control involving the licensed premises.

While reducing the types of violations that lead to license cancellations, the legislation did include a provision that allows the OLCC to cancel a license if the violations pose a significant risk to public health or safety under a violation of ORS 475B or OAR Division 25. As a result, OLCC amended its penalty rule, 845-025-8590, to include a list of conduct that would be considered a significant risk to public health and safety.

Additionally, SB 408 requires OLCC to consider mitigating factors in the violation process, which required further amendments to OAR 845-025-8590. This section of rule also includes a definition for each violation category and includes a violations table so licensees can see violations and the impact to their license status as a result of multiple violations in a two-year period.

Prior to and within the public comment period the OLCC received valuable feedback from our industry partners. While much of the suggested language was not able to be incorporated in this rulemaking cycle, the OLCC plans to use the feedback as building blocks for rulemaking in 2022 as well as for internal policies related to compliance activity.

The OLCC held a special commission meeting on December 28, 2021 and adopted the proposed rule changes. The rules are effective January 1, 2022.

#### *Phase Four*

The commission plans to open rulemaking again in 2022 and begin formal work on phase 4 of the violation reclassification project. Phase 4 will include, but is not limited to, regular meetings with the Marijuana Advisory Committee, rule updates resulting from 2022 legislation, continued evaluation of violations not listed in rule, and revisions to compliance policies.

To better highlight the four phases and the collaboration with the industry, we have included a list focusing on each phase and the formal meetings conducted to discuss rule changes.

Written materials and audio of all meetings can be found in the [Public Meeting](#) section of the OLCC website.

Phase	Date	Meeting Type
Phase 1	7/9/2020	Advisory Committee Meeting
Phase 1/2	9/10/2020	Advisory Committee Meeting
Phase 2	2/12/2021	Rules Advisory Committee
Phase 2	3/16/2021	Public Hearing
Phase 2/3	6/24/2021	Advisory Committee Meeting
Phase 3	10/20/21	Rules Advisory Committee
Phase 3	12/20/21	Public Hearing

## Conclusion

The mission of the OLCC is to support businesses, public safety and community livability through public education and the enforcement of marijuana laws. To be able to effectively fulfill our mission, including our responsibility to ensure compliance with marijuana laws, the OLCC understands that the need to revisit rules and regulations is an iterative process. With strong partnership and collective dedication, the commission will continue to work with industry members, the public, sister agencies and public health and safety partners to update and clarify administrative rules and policies, that will benefit Oregon businesses and Oregonians.

The OLCC looks forward to adding to this body of work in the December 2022 SB 408 legislative report by also including a report of violations charged and an analysis of licensees' voluntary compliance.