

## **NOTICE OF PROPOSED RULEMAKING**

CHAPTER 845

OREGON LIQUOR CONTROL COMMISSION

**FILING CAPTION:** The amendments increase the penalty for any sale of a marijuana item to a minor.

**LAST DAY AND TIME TO OFFER COMMENT TO AGENCY:** 05/28/2018 5:00 PM

**HEARING(S):**

**DATE:** 05/15/2018

**TIME:** 10:00 AM - 12:00 PM

**OFFICER:** Bryant Haley

**ADDRESS:** Oregon Liquor Control  
Commission

9079 SE McLoughlin Blvd.

Portland, OR 97222

**NEED FOR THE RULE(S):**

The Commission is charged with regulating the sale of marijuana items. From the inception of the marijuana program, one of the key public safety concerns has been preventing the sale of marijuana items to minors. The Commission has implemented a training program and subsequent permitting process for all persons involved in the industry known as the “marijuana worker permit.” In the training, the Commission clearly states: “Only marijuana retail businesses are allowed to sell marijuana and marijuana products to consumers, so those businesses and their employees are vital in preventing minor’s access to marijuana items.”

**DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:**

Minor Decoy Data – Available from OLCC

ORS 475B – Available from Legislative Counsel

Marijuana Worker Permit Education – Available from OLCC

Measure 91 – Available from Legislative Counsel

**FISCAL AND ECONOMIC IMPACT:**

This statement takes into account the fiscal impact on: (a) Marijuana Licensees and Permittees; (b) Local Government; (c) State Agencies; and (d) the Public.

(a) Marijuana Licensees and Permittees.

The Commission anticipates that the proposed amendments will have a possible negative fiscal impact on both licensees and permittees, whom illegally sell marijuana to a minor.

(b) Local Government.

The Commission expects the proposed amendments have no impact upon local governments, as the rule does not apply to them.

(c) State Agencies.

The Commission expects the proposed rule amendments to have no fiscal impact on outside state agencies because these rules do not apply to outside state agencies.

(d) The Public.

The Commission expects the proposed rule amendments to have a positive fiscal impact on the public to the extent that increases in penalties for sale to a minor will prevent sales to minors.

**COST OF COMPLIANCE:**

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The Commission anticipates no new costs to comply with the proposed amendments for outside state agencies, local government or members of the public.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

The Commission assumes that the majority of its licensees are small businesses. However, the Commission does not categorize its licensees, or applicants for a license, according to the size of their underlying business operations. The Commission anticipates that licensees and permittees may incur costs in the event they illegally sell marijuana to a minor.

b. Projected reporting, record keeping and other administrative activities required for compliance, including costs of professional services:

The Commission anticipates that some licensees and permittees may create more systems and education for staff to prevent a sale of marijuana to a minor.

c. Equipment, supplies, labor and increased administration required for compliance:

The Commission anticipates that some licensees and permittees may create more systems and education for staff to prevent a sale of marijuana to a minor.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The Commission held an Advisory Committee on April 12, 2018 with members of the industry and public health and safety representatives.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

CONTACT:

Bryant Haley  
503-872-5136  
bryant.haley@oregon.gov  
9079 SE McLoughlin Blvd.  
Portland,OR 97222

RULES PROPOSED:

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

AMEND: 845-025-5590

RULE TITLE: Worker Permit Suspension or Revocation

RULE SUMMARY: The Commission has recently stepped up its efforts to ensure marijuana retail licensees are not selling marijuana items to minors. Specifically, the Commission has deemed it necessary 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, the Commission has increased an intentional sale of marijuana to a minor to Category I violation, which would result in license revocation. The Commission sees this issue as a threat to public safety and has deemed temporary rulemaking 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.

RULE TEXT:

(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: 475B.218, ORS 475B.215

STATUTES/OTHER IMPLEMENTED: ORS 475B.215, 475B.218, 475B.125

AMEND: 845-025-8520

RULE TITLE: Prohibited Conduct

RULE SUMMARY: The Commission has recently stepped up its efforts to ensure marijuana retail licensees are not selling marijuana items to minors. Specifically, the Commission has deemed it necessary 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, the Commission has increased an intentional sale of marijuana to a minor to Category I violation, which would result in license revocation. The Commission sees this issue as a threat to public safety and has deemed temporary rulemaking 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.

RULE TEXT:

(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 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

STATUTORY/OTHER AUTHORITY: ORS 475B.025, 475B.070, 475B.090, 475B.100, 475B.110

STATUTES/OTHER IMPLEMENTED: ORS 475B.070, 475B.090, 475B.100, 475B.110, 475B.185, 475B.270, 475B.275, 475B.125

AMEND: 845-025-8590

RULE TITLE: Suspension, Cancellation, Civil Penalties, Sanction Schedule

RULE SUMMARY: The Commission has recently stepped up its efforts to ensure marijuana retail licensees are not selling marijuana items to minors. Specifically, the Commission has deemed it necessary 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, the Commission has increased an intentional sale of marijuana to a minor to Category I violation, which would result in license revocation.

RULE TEXT:

(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 ORS475B.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.

STATUTORY/OTHER AUTHORITY: ORS 475B.025

STATUTES/OTHER IMPLEMENTED: ORS 475B.210, 475B.295, 475B.560, 475B.635, 475B.125

