

Enrolled Senate Bill 1085

Sponsored by COMMITTEE ON RULES (at the request of Senator Bill Morrisette and Senator Jeff Kruse)

CHAPTER

AN ACT

Relating to medical marijuana; creating new provisions; and amending ORS 475.302, 475.306, 475.309, 475.316, 475.319, 475.326, 475.328 and 475.331.

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

SECTION 1. ORS 475.302 is amended to read:

475.302. As used in ORS 475.300 to 475.346:

(1) "Attending physician" means a physician licensed under ORS chapter 677 who has primary responsibility for the care and treatment of a person diagnosed with a debilitating medical condition.

(2) "Debilitating medical condition" means:

(a) Cancer, glaucoma, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, or treatment for these conditions;

(b) A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:

- (A) Cachexia;
- (B) Severe pain;
- (C) Severe nausea;
- (D) Seizures, including but not limited to seizures caused by epilepsy; or
- (E) Persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis;

or

(c) Any other medical condition or treatment for a medical condition adopted by the department by rule or approved by the department pursuant to a petition submitted pursuant to ORS 475.334.

(3) "Delivery" has the meaning given that term in ORS 475.005. **"Delivery" does not include transfer of marijuana by a registry identification cardholder to another registry identification cardholder if no consideration is paid for the transfer.**

(4) "Department" means the Department of Human Services.

(5) "Designated primary caregiver" means an individual 18 years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person's application for a registry identification card or in other written notification to the department. "Designated primary caregiver" does not include the person's attending physician.

(6) "Marijuana" has the meaning given that term in ORS 475.005.

(7) **"Marijuana grow site" means a location where marijuana is produced for use by a registry identification cardholder and that is registered under the provisions of section 8 of this 2005 Act.**

[(7)] (8) “Medical use of marijuana” means the production, possession, delivery, or administration of marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of his or her debilitating medical condition.

[(8)] (9) “Production” has the same meaning given that term in ORS 475.005.

[(9)] (10) “Registry identification card” means a document issued by the department that identifies a person authorized to engage in the medical use of marijuana and the person’s designated primary caregiver, if any.

[(10)] (11) “Usable marijuana” means the dried leaves and flowers of the plant Cannabis family Moraceae, and any mixture or preparation thereof, that are appropriate for medical use as allowed in ORS 475.300 to 475.346. “Usable marijuana” does not include the seeds, stalks and roots of the plant.

[(11)] (12) “Written documentation” means a statement signed by the attending physician of a person diagnosed with a debilitating medical condition or copies of the person’s relevant medical records.

SECTION 2. ORS 475.306 is amended to read:

475.306. (1) A person who possesses a registry identification card issued pursuant to ORS 475.309 may engage in, and a designated primary caregiver of such a person may assist in, the medical use of marijuana only as justified to mitigate the symptoms or effects of the person’s debilitating medical condition. *[Except as allowed in subsection (2) of this section, a registry identification cardholder and that person’s designated primary caregiver may not collectively possess, deliver or produce more than the following:]*

[(a) If the person is present at a location at which marijuana is not produced, including any residence associated with that location, one ounce of usable marijuana; and]

[(b) If the person is present at a location at which marijuana is produced, including any residence associated with that location, three mature marijuana plants, four immature marijuana plants and one ounce of usable marijuana per each mature plant.]

[(2) If the individuals described in subsection (1) of this section possess, deliver or produce marijuana in excess of the amounts allowed in subsection (1) of this section, such individuals are not exempted from the criminal laws of the state but may establish an affirmative defense to such charges, by a preponderance of the evidence, that the greater amount is medically necessary to mitigate the symptoms or effects of the person’s debilitating medical condition.]

(2) A person who is a registry identification cardholder must possess the registry identification card when using or transporting marijuana in a location other than the residence of the cardholder.

(3) The Department of Human Services shall define by rule when a marijuana plant is mature and when it is immature *[for purposes of this section]*. **The rule shall provide that a plant that has no flowers and that is less than 12 inches in height and less than 12 inches in diameter is a seedling or a start and is not a mature plant.**

SECTION 3. ORS 475.309 is amended to read:

475.309. (1) Except as provided in ORS 475.316 and 475.342 **and section 9 of this 2005 Act**, a person engaged in or assisting in the medical use of marijuana is excepted from the criminal laws of the state for possession, delivery or production of marijuana, aiding and abetting another in the possession, delivery or production of marijuana or any other criminal offense in which possession, delivery or production of marijuana is an element if the following conditions have been satisfied:

(a) The person holds a registry identification card issued pursuant to this section, has applied for a registry identification card pursuant to subsection (9) of this section, *[or]* is the designated primary caregiver of *[a]* **the cardholder or applicant, or is the person responsible for a marijuana grow site that is producing marijuana for the cardholder and is registered under section 8 of this 2005 Act;** and

(b) The person who has a debilitating medical condition, *[and]* the person’s primary caregiver **and the person responsible for a marijuana grow site that is producing marijuana for the cardholder and is registered under section 8 of this 2005 Act** are collectively in possession of,

delivering or producing marijuana for medical use in [the] amounts allowed [in ORS 475.306] **under section 9 of this 2005 Act.**

(2) The Department of Human Services shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of this section. Except as provided in subsection (3) of this section, the department shall issue a registry identification card to any person who pays a fee in the amount established by the department and provides the following:

(a) Valid, written documentation from the person's attending physician stating that the person has been diagnosed with a debilitating medical condition and that the medical use of marijuana may mitigate the symptoms or effects of the person's debilitating medical condition;

(b) The name, address and date of birth of the person;

(c) The name, address and telephone number of the person's attending physician; [and]

(d) The name and address of the person's designated primary caregiver, if the person has designated a primary caregiver at the time of application[.]; **and**

(e) A written statement that indicates whether the marijuana used by the cardholder will be produced at a location where the cardholder or designated primary caregiver is present or at another location.

(3) The department shall issue a registry identification card to a person who is under 18 years of age if the person submits the materials required under subsection (2) of this section, and the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age signs a written statement that:

(a) The attending physician of the person under 18 years of age has explained to that person and to the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age the possible risks and benefits of the medical use of marijuana;

(b) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age consents to the use of marijuana by the person under 18 years of age for medical purposes;

(c) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to serve as the designated primary caregiver for the person under 18 years of age; and

(d) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to control the acquisition of marijuana and the dosage and frequency of use by the person under 18 years of age.

(4) A person applying for a registry identification card pursuant to this section may submit the information required in this section to a county health department for transmittal to the Department of Human Services. A county health department that receives the information pursuant to this subsection shall transmit the information to the Department of Human Services within five days of receipt of the information. Information received by a county health department pursuant to this subsection shall be confidential and not subject to disclosure, except as required to transmit the information to the Department of Human Services.

(5) The department shall verify the information contained in an application submitted pursuant to this section and shall approve or deny an application within thirty days of receipt of the application.

(a) The department may deny an application only for the following reasons:

(A) The applicant did not provide the information required pursuant to this section to establish the applicant's debilitating medical condition and to document the applicant's consultation with an attending physician regarding the medical use of marijuana in connection with such condition, as provided in subsections (2) and (3) of this section; or

(B) The department determines that the information provided was falsified.

(b) Denial of a registry identification card shall be considered a final department action, subject to judicial review. Only the person whose application has been denied, or, in the case of a person

under the age of 18 years of age whose application has been denied, the person's parent or legal guardian, shall have standing to contest the department's action.

(c) Any person whose application has been denied may not reapply for six months from the date of the denial, unless so authorized by the department or a court of competent jurisdiction.

(6)(a) If the department has verified the information submitted pursuant to subsections (2) and (3) of this section and none of the reasons for denial listed in subsection (5)(a) of this section is applicable, the department shall issue a serially numbered registry identification card within five days of verification of the information. The registry identification card shall state:

(A) The cardholder's name, address and date of birth;

(B) The date of issuance and expiration date of the registry identification card;

(C) The name and address of the person's designated primary caregiver, if any; *[and]*

(D) Whether the marijuana used by the cardholder will be produced at a location where the cardholder or designated primary caregiver is present or at another location; and

[(D)] **(E) [Such] Any other information [as] that the department may specify by rule.**

(b) When the person to whom the department has issued a registry identification card pursuant to this section has specified a designated primary caregiver, the department shall issue an identification card to the designated primary caregiver. The primary caregiver's registry identification card shall contain the information provided in paragraph (a) of this subsection.

(7)(a) A person who possesses a registry identification card shall:

(A) Notify the department of any change in the person's name, address, attending physician or designated primary caregiver; and

(B) Annually submit to the department:

(i) Updated written documentation of the person's debilitating medical condition; and

(ii) The name of the person's designated primary caregiver if a primary caregiver has been designated for the upcoming year.

(b) If a person who possesses a registry identification card fails to comply with this subsection, the card shall be deemed expired. If a registry identification card expires, the identification card of any designated primary caregiver of the cardholder shall also expire.

(8) A person who possesses a registry identification card pursuant to this section and who has been diagnosed by the person's attending physician as no longer having a debilitating medical condition shall return the registry identification card to the department within seven calendar days of notification of the diagnosis. Any designated primary caregiver shall return the caregiver's identification card within the same period of time.

(9) A person who has applied for a registry identification card pursuant to this section but whose application has not yet been approved or denied, and who is contacted by any law enforcement officer in connection with the person's administration, possession, delivery or production of marijuana for medical use may provide to the law enforcement officer a copy of the written documentation submitted to the department pursuant to subsections (2) or (3) of this section and proof of the date of mailing or other transmission of the documentation to the department. This documentation shall have the same legal effect as a registry identification card until such time as the person receives notification that the application has been approved or denied.

SECTION 4. ORS 475.328 is amended to read:

475.328. (1) No professional licensing board may impose a civil penalty or take other disciplinary action against a licensee based on the licensee's medical use of marijuana in accordance with the provisions of ORS 475.300 to 475.346 or actions taken by the licensee that are necessary to carry out the licensee's role as a designated primary caregiver to a person who possesses a lawful registry identification card *[issued pursuant to ORS 475.309]*.

(2)(a) A licensed health care professional may administer medical marijuana to a person who possesses a registry identification card and resides in a licensed health care facility if the administration of pharmaceuticals is within the scope of practice of the licensed health care professional. Administration of medical marijuana under this subsection may not take place in a public place as defined in ORS 161.015 or in the presence of a person under 18 years

of age. If the medical marijuana administered under this subsection is smoked, adequate ventilation must be provided.

(b) Nothing in this subsection requires:

(A) A licensed health care professional to administer medical marijuana; or

(B) A licensed health care facility to make accommodations for the administration of medical marijuana.

SECTION 5. ORS 475.331 is amended to read:

475.331. (1)(a) The Department of Human Services shall create and maintain a list of the persons to whom the department has issued registry identification cards, [pursuant to ORS 475.309 and] the names of any designated primary caregivers **and the addresses of authorized marijuana grow sites**. Except as provided in subsection (2) of this section, the list shall be confidential and not subject to public disclosure.

(b) **The department shall develop a system by which authorized employees of state and local law enforcement agencies may verify at all times that a person is a lawful possessor of a registry identification card or the designated primary caregiver of a lawful possessor of a registry identification card or that a location is an authorized marijuana grow site.**

(2) Names and other identifying information from the list established pursuant to subsection (1) of this section may be released to:

(a) Authorized employees of the department as necessary to perform official duties of the department; and

(b) Authorized employees of state or local law enforcement agencies, only as necessary to verify that a person is a lawful possessor of a registry identification card or [that a person is] the designated primary caregiver of [such a person] **a lawful possessor of a registry identification card or that a location is an authorized marijuana grow site. Prior to being provided identifying information from the list, authorized employees of state or local law enforcement agencies shall provide to the department adequate identification, such as a badge number or similar authentication of authority.**

(3) Authorized employees of state or local law enforcement agencies that obtain identifying information from the list as authorized under this section may not release or use the information for any purpose other than verification that a person is a lawful possessor of a registry identification card or the designated primary caregiver of a lawful possessor of a registry identification card or that a location is an authorized marijuana grow site.

SECTION 6. Sections 7, 8, 9 and 10 of this 2005 Act are added to and made a part of ORS 475.300 to 475.346.

SECTION 7. (1) There is created the Advisory Committee on Medical Marijuana in the Department of Human Services, consisting of 11 members appointed by the Director of Human Services.

(2) The director shall appoint members of the committee from persons who possess registry identification cards, designated primary caregivers of persons who possess registry identification cards and advocates of the Oregon Medical Marijuana Act.

(3) The committee shall advise the director on the administrative aspects of the Oregon Medical Marijuana Program, review current and proposed administrative rules of the program and provide annual input on the fee structure of the program.

(4) The committee shall meet at least four times per year, at times and places specified by the director.

(5) The department shall provide staff support to the committee.

(6) All agencies of state government, as defined in ORS 174.111, are directed to assist the committee in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish information and advice that the members of the committee consider necessary to perform their duties.

SECTION 8. (1) The Department of Human Services shall establish by rule a marijuana grow site registration system to authorize production of marijuana by a registry identifica-

tion cardholder, a designated primary caregiver who grows marijuana for the cardholder or a person who is responsible for a marijuana grow site. The marijuana grow site registration system adopted must require a registry identification cardholder to submit an application to the department that includes:

- (a) The name of the person responsible for the marijuana grow site;
- (b) The address of the marijuana grow site;
- (c) The registry identification card number of the registry cardholder for whom the marijuana is being produced; and
- (d) Any other information the department considers necessary.

(2) The department shall issue a marijuana grow site registration card to a registry identification cardholder who has met the requirements of subsection (1) of this section.

(3) A person who has been issued a marijuana grow site registration card under this section must display the registration card at the marijuana grow site at all times when marijuana is being produced.

(4) A marijuana grow site registration card must be obtained and posted for each registry identification cardholder for whom marijuana is being produced at a marijuana grow site.

(5) All usable marijuana, plants, seedlings and seeds associated with the production of marijuana for a registry identification cardholder by a person responsible for a marijuana grow site are the property of the registry identification cardholder and must be provided to the registry identification cardholder upon request.

(6)(a) The department shall restrict a marijuana grow site registration card issued to a registry identification cardholder who has been convicted of violating ORS 475.992 (1)(a) or (b) to prohibit for a period of five years from the date of conviction the production of marijuana otherwise authorized by this section at a location where the registry identification cardholder is present.

(b) A registry identification cardholder who has been convicted of violating ORS 475.992 (1)(a) or (b) may not be issued a marijuana grow site registration card within five years of the date of the conviction for violating ORS 475.992 (1)(a) or (b) if the conviction was for a first offense to prohibit for a period of five years from the date of conviction the production of marijuana otherwise authorized by this section at a location where the registry identification cardholder is present.

(c) A person other than a registry identification cardholder who has been convicted of violating ORS 475.992 (1)(a) or (b) may not produce marijuana for a registry identification cardholder within five years of the date of the conviction for violating ORS 475.992 (1)(a) or (b) if the conviction was for a first offense.

(d) A person convicted more than once of violating ORS 475.992 (1)(a) or (b) may not be issued a marijuana grow site registration card or produce marijuana for a registry identification cardholder.

(7) A registry identification cardholder or the designated primary caregiver of the cardholder may reimburse the person responsible for a marijuana grow site for the costs of supplies and utilities associated with the production of marijuana for the registry identification cardholder. No other costs associated with the production of marijuana for the registry identification cardholder, including the cost of labor, may be reimbursed.

SECTION 8a. The provisions of section 8 (6) of this 2005 Act apply only to a person convicted of a violation of ORS 475.992 (1)(a) or (b) that occurred on or after the effective date of this 2005 Act.

SECTION 9. (1)(a) A registry identification cardholder or the designated primary caregiver of the cardholder may possess up to six mature marijuana plants and 24 ounces of usable marijuana.

(b) Notwithstanding paragraph (a) of this subsection, if a registry identification cardholder has been convicted of violating ORS 475.992 (1)(a) or (b), the registry identification

cardholder or the designated primary caregiver of the cardholder may possess one ounce of usable marijuana at any given time for a period of five years from the date of the conviction.

(2) If the marijuana used by the registry identification cardholder is produced at a marijuana grow site where the cardholder or designated primary caregiver is not present, the person responsible for the marijuana grow site:

(a) May produce marijuana for and provide marijuana to a registry identification cardholder or that person's designated primary caregiver as authorized under this section.

(b) May possess up to six mature plants and up to 24 ounces of usable marijuana for each cardholder or caregiver for which marijuana is being produced.

(c) May produce marijuana for up to four registry identification cardholders or designated primary caregivers per year.

(d) Must obtain and display a marijuana grow site registration card issued under section 8 of this 2005 Act for each registry identification cardholder or designated primary caregiver for which marijuana is being produced.

(e) Must provide all marijuana produced for a registry identification cardholder or designated primary caregiver to the cardholder or caregiver at the time the person responsible for a marijuana grow site ceases producing marijuana for the cardholder or caregiver.

(f) Must return the marijuana grow site registration card to the registry identification cardholder to whom the card was issued when requested to do so by the cardholder or when the person responsible for a marijuana grow site ceases producing marijuana for the cardholder or caregiver.

(3) Except as provided in subsections (1) and (2) of this section, a registry identification cardholder, the designated primary caregiver of the cardholder and the person responsible for a marijuana grow site producing marijuana for the registry identification cardholder may possess a combined total of up to six mature plants and 24 ounces of usable marijuana for that registry identification cardholder.

(4)(a) A registry identification cardholder and the designated primary caregiver of the cardholder may possess a combined total of up to 18 marijuana seedlings or starts as defined by rule of the Department of Human Services.

(b) A person responsible for a marijuana grow site may possess up to 18 marijuana seedlings or starts as defined by rule of the department for each registry identification cardholder for which the person responsible for the marijuana grow site is producing marijuana.

SECTION 10. A law enforcement officer who determines that a registry identification cardholder is in possession of amounts of usable marijuana or numbers of marijuana plants in excess of the amount or number authorized by section 9 of this 2005 Act may confiscate only any usable marijuana or plants that are in excess of the amount or number authorized.

SECTION 11. ORS 475.326 is amended to read:

475.326. No attending physician may be subjected to civil penalty or discipline by the Board of Medical Examiners for:

(1) Advising a person whom the attending physician has diagnosed as having a debilitating medical condition, or a person who the attending physician knows has been so diagnosed by another physician licensed under ORS chapter 677, about the risks and benefits of medical use of marijuana or that the medical use of marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, provided the advice is based on the attending physician's personal assessment of the person's medical history and current medical condition; or

(2) Providing the written documentation necessary for issuance of a registry identification card under ORS 475.309, if the documentation is based on the attending physician's personal assessment of the applicant's medical history and current medical condition and the **attending** physician has discussed the potential medical risks and benefits of the medical use of marijuana with the applicant.

SECTION 12. ORS 475.319 is amended to read:

475.319. (1) Except as provided in ORS 475.316 and 475.342, it is an affirmative defense to a criminal charge of possession or production of marijuana, or any other criminal offense in which possession or production of marijuana is an element, that the person charged with the offense is a person who:

(a) Has been diagnosed with a debilitating medical condition within 12 months prior to arrest and been advised by his or her attending physician the medical use of marijuana may mitigate the symptoms or effects of that debilitating medical condition;

(b) Is engaged in the medical use of marijuana; and

(c) Possesses or produces marijuana only in amounts permitted under section 9 of this 2005 Act.

[(c) Possesses or produces marijuana only in the amounts allowed in ORS 475.306 (1), or in excess of those amounts if the person proves by a preponderance of the evidence that the greater amount is medically necessary as determined by the person's attending physician to mitigate the symptoms or effects of the person's debilitating medical condition.]

(2) It is not necessary for a person asserting an affirmative defense pursuant to this section to have received a registry identification card in order to assert the affirmative defense established in this section.

(3) No person engaged in the medical use of marijuana who claims that marijuana provides medically necessary benefits and who is charged with a crime pertaining to such use of marijuana shall be precluded from presenting a defense of choice of evils, as set forth in ORS 161.200, or from presenting evidence supporting the necessity of marijuana for treatment of a specific disease or medical condition, provided that the amount of marijuana at issue is no greater than permitted under [ORS 475.306] **section 9 of this 2005 Act** and the patient has taken a substantial step to comply with the provisions of ORS 475.300 to 475.346.

(4) Any defendant proposing to use the affirmative defense provided for by this section in a criminal action shall, not less than five days before the trial of the cause, file and serve upon the district attorney a written notice of the intention to offer such a defense that specifically states the reasons why the defendant is entitled to assert and the factual basis for such affirmative defense. If the defendant fails to file and serve such notice, the defendant shall not be permitted to assert the affirmative defense at the trial of the cause unless the court for good cause orders otherwise.

SECTION 13. ORS 475.316 is amended to read:

475.316. (1) No person authorized to possess, deliver or produce marijuana for medical use pursuant to ORS 475.300 to 475.346 shall be excepted from the criminal laws of this state or shall be deemed to have established an affirmative defense to criminal charges of which possession, delivery or production of marijuana is an element if the person, in connection with the facts giving rise to such charges:

(a) Drives under the influence of marijuana as provided in ORS 813.010;

(b) Engages in the medical use of marijuana in a public place as that term is defined in ORS 161.015, or in public view or in a correctional facility as defined in ORS 162.135 (2) or youth correction facility as defined in ORS 162.135 (6);

(c) Delivers marijuana to any individual who the person knows is not in possession of a registry identification card;

(d) Delivers marijuana for consideration to any individual, even if the individual is in possession of a registry identification card;

(e) Manufactures or produces marijuana at a place other than:

(A)(i) One address for property under the control of the patient; and

(ii) One address for property under the control of the primary caregiver of the patient that have been provided to the Department of Human Services; or

(B) A marijuana grow site authorized under section 8 of this 2005 Act; or

(f) Manufactures or produces marijuana at more than one address.

(2) In addition to any other penalty allowed by law, a person who the department finds has willfully violated the provisions of ORS 475.300 to 475.346, or rules adopted under ORS 475.300 to

475.346, may be precluded from obtaining or using a registry identification card for the medical use of marijuana for a period of up to six months, at the discretion of the department.

Passed by Senate July 20, 2005

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Secretary of Senate

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President of Senate

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