

Enrolled

House Bill 3052

Sponsored by Representative MANNIX (at the request of Oregon Association Chiefs of Police)

CHAPTER

AN ACT

Relating to Oregon Medical Marijuana Act; amending sections 4, 5, 6 and 8, chapter 4, Oregon Laws 1999; and declaring an emergency.

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

{ + NOTE: + } Section 1 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 2. Section 4, chapter 4, Oregon Laws 1999 (Ballot Measure 67, 1998), is amended to read:

{ + Sec. 4. + } (1) Except as provided in sections 5 and 11 { - of this Act - } , { + chapter 4, Oregon Laws 1999, + } 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 cardholder or applicant; and

(b) The person who has a debilitating medical condition and his or her primary caregiver are collectively in possession of, delivering or producing marijuana for medical use in the amounts allowed in section 7 { + , chapter 4, Oregon Laws 1999 + } { - of this Act - } .

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

(3) The division shall issue a registry identification card to a person who is under { - eighteen - } { + 18 + } years of age if the person submits the materials required under subsection (2) of this section, and { - one of the person's parents or legal guardians - } { + 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 { - person's - } attending physician { + of the person under 18 years of age + } has explained to { - the - } { + that + } person and to { - one of the person's parents or legal guardians - } { + 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 parent or legal guardian - } { + 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 { - parent or legal guardian - } { + custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age + } agrees to serve as the { - person's - } designated primary caregiver { + for the person under 18 years of age + }; and

(d) The { - parent or legal guardian - } { + 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 division. A county health department that receives the information pursuant to this subsection shall transmit the information to the division 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 division.

(5) The division 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 division may deny an application only for the following reasons:

(i) The applicant did not provide the information required pursuant to this section to establish his or her debilitating medical condition and to document his or her 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

(ii) The division determines that the information provided was falsified.

(b) Denial of a registry identification card shall be considered a final division action, subject to judicial review. Only the person whose application has been denied, or, in the case of a person under the age of { - eighteen - } { + 18 + }

years of age whose application has been denied, the person's parent or legal guardian, shall have standing to contest the division'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 division or a court of competent jurisdiction.

(6)(a) If the division 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 division shall issue a serially numbered registry identification card within five days of verification of the information. The registry identification card shall state:

- (i) The cardholder's name, address and date of birth;
- (ii) The date of issuance and expiration date of the registry identification card;
- (iii) The name and address of the person's designated primary caregiver, if any; and
- (iv) Such other information as the division may specify by rule.

(b) When the person to whom the division has issued a registry identification card pursuant to this section has specified a designated primary caregiver, the division shall issue an identification card to the designated primary caregiver. The primary caregiver's registry identification card shall contain the information provided in { - subsection 4 (6)(a)(i)-(iv) - } { + paragraph (a) of this subsection + }.

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

- (i) Notify the division of any change in the person's name, address, attending physician or designated primary caregiver; and
- (ii) Annually submit to the division:
 - (A) updated written documentation of the person's debilitating medical condition; and
 - (B) 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 division within seven calendar days of notification of the diagnosis. Any designated primary caregiver shall return his or her 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 his or her 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 division pursuant to subsections (2) or (3) of this section and proof of the date of mailing or other transmission of the documentation to the division. 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 3. Section 5, chapter 4, Oregon Laws 1999 (Ballot Measure 67, 1998), is amended to read:

{ + Sec. 5. + } (1) No person authorized to possess, deliver or produce marijuana for medical use pursuant to sections 1 to 19 { - of this Act - } { + , chapter 4, Oregon Laws 1999, + } 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;
{ - or - }

(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 one address for property under the control of the patient and one address for property under the control of the primary caregiver of the patient that have been provided to the Health Division; 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 division finds has willfully violated the provisions of sections 1 to 19 { - of this Act - } { + , chapter 4, Oregon Laws 1999, + } or rules adopted under sections 1 to 19 { - of this Act - } { + , chapter 4, Oregon Laws 1999, + } 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 division.

SECTION 4. Section 6, chapter 4, Oregon Laws 1999 (Ballot Measure 67, 1998), is amended to read:

{ + Sec. 6. + } (1) Except as provided in sections 5 and 11 { - of this Act - } , { + chapter 4, Oregon Laws 1999, + } 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 { - medication - } { + 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 the amounts allowed in section 7 (1) { - of this Act - } , { + chapter 4, Oregon Laws 1999, + } 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 section 7

{ - of this Act - } { + , chapter 4, Oregon Laws 1999, and the patient has taken a substantial step to comply with the provisions of sections 1 to 19, chapter 4, Oregon Laws 1999 + }.

{ + (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 5. Section 8, chapter 4, Oregon Laws 1999 (Ballot Measure 67, 1998), is amended to read:

{ + Sec. 8. + } (1) Possession of a registry identification card or designated primary caregiver identification card pursuant to section 4 { - of this Act - } { + , chapter 4, Oregon Laws 1999, + } shall not alone constitute probable cause to search the person or property of the cardholder or otherwise subject the person or property of the cardholder to inspection by any governmental agency.

(2) Any property interest possessed, owned or used in connection with the medical use of marijuana or acts incidental to the medical use of marijuana that has been seized by state or local law enforcement officers shall not be harmed, neglected, injured or destroyed while in the possession of any law enforcement agency. { + A law enforcement agency has no responsibility to maintain live marijuana plants lawfully seized. + }

No such property interest may be forfeited under any provision of law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense. { + Usable + } marijuana and paraphernalia used to administer marijuana that was seized by any law enforcement office shall be returned immediately upon a determination by the district attorney in whose county the property was seized, or his or her designee, that the person from whom the marijuana or paraphernalia used to administer marijuana was seized is entitled to the protections contained in sections 1 to 19 { - of this Act - } { + , chapter 4, Oregon Laws 1999 + }. Such determination may be evidenced, for example, be a decision not to prosecute, the dismissal of charges, or acquittal.

SECTION 6. { + This 1999 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 1999 Act takes effect on its passage. + }

Passed by House May 13, 1999

Repassed by House July 1, 1999

.....
Chief Clerk of House

.....
Speaker of House

Passed by Senate June 29, 1999

.....
President of Senate

Received by Governor:

.....M.,....., 1999

Approved:

.....M.,....., 1999

.....
Governor

Filed in Office of Secretary of State:

.....M.,....., 1999

.....
Secretary of State

