

# House Bill 3299

Sponsored by Representative SHIELDS (at the request of Lee Berger)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies definitions related to use of medical marijuana.

Establishes penalties for failure to possess registry identification card when transporting medical marijuana or medical marijuana plants and for failing to post marijuana grow site registration card at medical marijuana grow site. Punishes by maximum 30 days' imprisonment, \$1,250 fine, or both.

Authorizes certain persons under control of court to use or assist in use of medical marijuana if qualified to do so. Restricts basis for seizing medical marijuana or medical marijuana plants.

Clarifies availability of choice of evils defense. Imposes penalties on law enforcement agency for willful violation of Act. Requires suppression of evidence seized as result of willful violation.

Authorizes person who is enrolled in medical marijuana program in another state to participate in Oregon Medical Marijuana Program under certain circumstances.

Requires Department of Human Services to conduct scientific research about medical marijuana.

## A BILL FOR AN ACT

1  
2 Relating to medical marijuana; creating new provisions; and amending ORS 475.302, 475.304, 475.306,  
3 475.309, 475.312, 475.319, 475.324 and 475.331.

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

5 **SECTION 1.** ORS 475.302 is amended to read:

6 475.302. As used in ORS 475.300 to 475.346:

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

9 (2) "Debilitating medical condition" means:

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

12 (b) A medical condition or treatment for a medical condition that produces, for a specific pa-  
13 tient, one or more of the following:

14 (A) Cachexia;

15 (B) Severe pain;

16 (C) Severe nausea;

17 (D) Seizures, including but not limited to seizures caused by epilepsy; or

18 (E) Persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis;

19 or

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

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

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

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (5) “Designated primary caregiver” means an individual 18 years of age or older who has sig-  
 2 nificant responsibility for managing the well-being of a person who has been diagnosed with a de-  
 3 bilitating medical condition and who is designated as such on that person’s application for a registry  
 4 identification card or in other written notification to the department. “Designated primary  
 5 caregiver” does not include the person’s attending physician. **Providing medical marijuana con-  
 6 stitutes significant responsibility for managing the well-being of a person who has been di-  
 7 agnosed with a debilitating medical condition.**

8 (6) “Marijuana” has the meaning given that term in ORS 475.005.

9 (7) “Marijuana grow site” means a location where marijuana is produced for use by a registry  
 10 identification cardholder and that is registered under the provisions of ORS 475.304.

11 (8) “Medical use of marijuana” means the production, possession, delivery, or administration of  
 12 marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive benefit of  
 13 a person to mitigate the symptoms or effects of the person’s debilitating medical condition.

14 (9) “Production” has the meaning given that term in ORS 475.005.

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

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

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

24 **SECTION 2.** ORS 475.304 is amended to read:

25 475.304. (1) The Department of Human Services shall establish by rule a marijuana grow site  
 26 registration system to authorize production of marijuana by a registry identification cardholder, a  
 27 designated primary caregiver who grows marijuana for the cardholder or a person who is responsi-  
 28 ble for a marijuana grow site. The marijuana grow site registration system adopted must require a  
 29 registry identification cardholder to submit an application to the department that includes:

30 (a) The name of the person responsible for the marijuana grow site;

31 (b) The address of the marijuana grow site;

32 (c) The registry identification card number of the registry cardholder for whom the marijuana  
 33 is being produced; and

34 (d) Any other information the department considers necessary.

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

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

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

42 (b) **Failure to post a marijuana grow site registration card is a Class C misdemeanor.**

43 (c) **Failure to post a marijuana grow site registration card is not a basis for seizing  
 44 medical marijuana or medical marijuana plants.**

45 (5) All usable marijuana, plants, seedlings and seeds associated with the production of marijuana

1 for a registry identification cardholder by a person responsible for a marijuana grow site are the  
2 property of the registry identification cardholder and must be provided to the registry identification  
3 cardholder upon request.

4 (6)(a) The department shall restrict a marijuana grow site registration card issued to a registry  
5 identification cardholder who has been convicted of violating ORS 475.840 (1)(a) or (b) to prohibit  
6 for a period of five years from the date of conviction the production of marijuana otherwise au-  
7 thorized by this section at a location where the registry identification cardholder is present.

8 (b) A registry identification cardholder who has been convicted of violating ORS 475.840 (1)(a)  
9 or (b) may not be issued a marijuana grow site registration card within five years of the date of the  
10 conviction for violating ORS 475.840 (1)(a) or (b) if the conviction was for a first offense to prohibit  
11 for a period of five years from the date of conviction the production of marijuana otherwise au-  
12 thorized by this section at a location where the registry identification cardholder is present.

13 (c) A person other than a registry identification cardholder who has been convicted of violating  
14 ORS 475.840 (1)(a) or (b) may not produce marijuana for a registry identification cardholder within  
15 five years of the date of the conviction for violating ORS 475.840 (1)(a) or (b) if the conviction was  
16 for a first offense.

17 (d) A person convicted more than once of violating ORS 475.840 (1)(a) or (b) may not be issued  
18 a marijuana grow site registration card or produce marijuana for a registry identification  
19 cardholder.

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

25 **SECTION 3.** ORS 475.306 is amended to read:

26 475.306. (1) A person who possesses a registry identification card issued pursuant to ORS 475.309  
27 may engage in, and a designated primary caregiver of such a person may assist in, the medical use  
28 of marijuana only as justified to mitigate the symptoms or effects of the person's debilitating medical  
29 condition.

30 (2)(a) A person who is a registry identification cardholder must possess the registry identifica-  
31 tion card when using [*or transporting*] marijuana in a location other than the residence of the  
32 cardholder **or transporting medical marijuana or medical marijuana plants.**

33 **(b) Failure to possess a registry identification card while transporting medical marijuana**  
34 **or medical marijuana plants is a Class C misdemeanor.**

35 **(c) Failure to possess a registry identification card while transporting medical marijuana**  
36 **or medical marijuana plants is not a basis for seizing medical marijuana or medical**  
37 **marijuana plants.**

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

42 **SECTION 4.** ORS 475.309 is amended to read:

43 475.309. (1) Except as provided in ORS 475.316, 475.320 and 475.342, a person engaged in or as-  
44 sisting in the medical use of marijuana is excepted from the criminal laws of the state for possession,  
45 delivery or production of marijuana, aiding and abetting another in the possession, delivery or pro-

1 duction of marijuana or any other criminal offense in which possession, delivery or production of  
2 marijuana is an element if the following conditions have been satisfied:

3 (a) The person holds a registry identification card issued pursuant to this section, has applied  
4 for a registry identification card pursuant to subsection (9) of this section, is the designated primary  
5 caregiver of the cardholder or applicant, or is the person responsible for a marijuana grow site that  
6 is producing marijuana for the cardholder and is registered under ORS 475.304; and

7 (b) The person who has a debilitating medical condition, the person's primary caregiver and the  
8 person responsible for a marijuana grow site that is producing marijuana for the cardholder and is  
9 registered under ORS 475.304 are collectively in possession of, delivering or producing marijuana for  
10 medical use in amounts allowed under ORS 475.320.

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

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

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

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

21 (d) The name and address of the person's designated primary caregiver, if the person has des-  
22 ignated a primary caregiver at the time of application; and

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

26 (3) The department shall issue a registry identification card to a person who is under 18 years  
27 of age if the person submits the materials required under subsection (2) of this section, and the  
28 custodial parent or legal guardian with responsibility for health care decisions for the person under  
29 18 years of age signs a written statement that:

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

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

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

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

42 (4) A person applying for a registry identification card pursuant to this section may submit the  
43 information required in this section to a county health department for transmittal to the Department  
44 of Human Services. A county health department that receives the information pursuant to this sub-  
45 section shall transmit the information to the Department of Human Services within five days of re-

1 ceipt of the information. Information received by a county health department pursuant to this  
 2 subsection shall be confidential and not subject to disclosure, except as required to transmit the  
 3 information to the Department of Human Services.

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

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

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

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

13 (b) Denial of a registry identification card shall be considered a final department action, subject  
 14 to judicial review. Only the person whose application has been denied, or, in the case of a person  
 15 under the age of 18 years of age whose application has been denied, the person's parent or legal  
 16 guardian, shall have standing to contest the department's action.

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

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

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

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

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

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

28 (E) Any other information that the department may specify by rule.

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

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

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

36 (B) Annually submit to the department:

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

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

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

43 (8) A person who possesses a registry identification card pursuant to this section and who has  
 44 been diagnosed by the person's attending physician as no longer having a debilitating medical con-  
 45 dition shall return the registry identification card to the department within seven calendar days of

1 notification of the diagnosis. Any designated primary caregiver shall return the caregiver’s identifi-  
 2 cation card within the same period of time.

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

11 **(10) Except as provided in ORS 475.316, 475.320 and 475.342, a person who is on pretrial**  
 12 **release as provided by ORS chapter 135, in diversion as provided by ORS chapter 813, under**  
 13 **post-prison supervision as provided by ORS chapter 144 or on probation as provided by ORS**  
 14 **chapter 137 and who is engaged in or assisting in the medical use of marijuana is excepted**  
 15 **from the criminal laws of the state for possession, delivery or production of marijuana, aid-**  
 16 **ing and abetting another in the possession, delivery or production of marijuana or any other**  
 17 **criminal offense in which possession, delivery or production of marijuana is an element if the**  
 18 **following conditions have been satisfied:**

19 (a) **The person holds a registry identification card issued pursuant to this section, has**  
 20 **applied for a registry identification card pursuant to subsection (9) of this section, is the**  
 21 **designated primary caregiver of the cardholder or applicant or is the person responsible for**  
 22 **a marijuana grow site that is producing marijuana for the cardholder and is registered under**  
 23 **ORS 475.304; and**

24 (b) **The person who has a debilitating medical condition, the person’s primary caregiver**  
 25 **and the person responsible for a marijuana grow site that is producing marijuana for the**  
 26 **cardholder and is registered under ORS 475.304 are collectively in possession of, delivering**  
 27 **or producing marijuana for medical use in amounts allowed under ORS 475.320.**

28 **SECTION 5.** ORS 475.312 is amended to read:

29 475.312. (1) If a person who possesses a registry identification card issued pursuant to ORS  
 30 475.309 chooses to have a designated primary caregiver, the person must designate the primary  
 31 caregiver by including the primary caregiver’s name and address:

- 32 (a) On the person’s application for a registry identification card;
- 33 (b) In the annual updated information required under ORS 475.309; or
- 34 (c) In a written, signed statement submitted to the Department of Human Services.

35 (2) A person described in this section may have only one designated primary caregiver at any  
 36 given time.

37 **(3) Delivering usable medical marijuana or medical marijuana plants to a registry iden-**  
 38 **tification cardholder does not make the person delivering the marijuana or marijuana plants**  
 39 **to the cardholder a designated primary caregiver.**

40 **SECTION 6.** ORS 475.319 is amended to read:

41 475.319. (1) Except as provided in ORS 475.316 and 475.342, it is an affirmative defense to a  
 42 criminal charge of possession or production of marijuana, or any other criminal offense in which  
 43 possession or production of marijuana is an element, that the person charged with the offense is a  
 44 person who:

- 45 (a) Has been diagnosed with a debilitating medical condition within 12 months prior to arrest

1 and been advised by the person's attending physician that the medical use of marijuana may mitigate  
 2 the symptoms or effects of that debilitating medical condition;

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

4 (c) Possesses or produces marijuana only in amounts permitted under ORS 475.320.

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

8 (3) No person engaged in the medical use of marijuana who claims that marijuana provides  
 9 medically necessary benefits and who is charged with a crime pertaining to such use of marijuana  
 10 shall be precluded from presenting a defense of choice of evils, as set forth in ORS 161.200, or from  
 11 presenting evidence supporting the necessity of marijuana for treatment of a specific disease or  
 12 medical condition, provided that the amount of marijuana at issue is no greater than permitted un-  
 13 der ORS 475.320 and the patient has taken a substantial step to comply with the provisions of ORS  
 14 475.300 to 475.346. **The defense available to a person meeting the criteria established in this**  
 15 **subsection is available to any person meeting those criteria even if the person has not been**  
 16 **issued a registry identification card.**

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

23 **SECTION 7.** ORS 475.324 is amended to read:

24 475.324. (1) A law enforcement officer who determines that a registry identification cardholder  
 25 is in possession of amounts of usable marijuana or numbers of marijuana plants in excess of the  
 26 amount or number authorized by ORS 475.320 may confiscate only any usable marijuana or plants  
 27 that are in excess of the amount or number authorized.

28 **(2) Willful violation of this section by a member of a law enforcement agency shall sub-**  
 29 **ject the agency to damages for the violation and shall result in suppression of any evidence**  
 30 **present that was obtained as a result of the violation.**

31 **SECTION 8.** ORS 475.331 is amended to read:

32 475.331. (1)(a) The Department of Human Services shall create and maintain a list of the persons  
 33 to whom the department has issued registry identification cards, the names of any designated pri-  
 34 mary caregivers and the addresses of authorized marijuana grow sites. Except as provided in sub-  
 35 section (2) of this section, the list shall be confidential and not subject to public disclosure. **Failure**  
 36 **to attempt to obtain verification under this subsection prior to a request for a search war-**  
 37 **rant shall result in suppression of any evidence obtained as a result of the search.**

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

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

44 (a) Authorized employees of the department as necessary to perform official duties of the de-  
 45 partment; and

1 (b) Authorized employees of state or local law enforcement agencies, only as necessary to verify  
 2 that a person is a lawful possessor of a registry identification card or the designated primary  
 3 caregiver of a lawful possessor of a registry identification card or that a location is an authorized  
 4 marijuana grow site. Prior to being provided identifying information from the list, authorized em-  
 5 ployees of state or local law enforcement agencies shall provide to the department adequate iden-  
 6 tification, such as a badge number or similar authentication of authority.

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

12 (b) **Willful violation of this section shall result in the dismissal of any charges initiated**  
 13 **as a result of the violation and shall subject the law enforcement agency employing the of-**  
 14 **ficer who committed the violation to liquidated damages of \$10,000.**

15 **SECTION 9. Sections 10 and 11 of this 2007 Act are added to and made a part of ORS**  
 16 **475.300 to 475.346.**

17 **SECTION 10. Any person who is enrolled in the medical marijuana program of another**  
 18 **state and presents documentation of enrollment in the program shall be provided the same**  
 19 **rights and privileges as a registry identification cardholder of the Oregon Medical Marijuana**  
 20 **Program.**

21 **SECTION 11. (1) The Department of Human Services shall conduct scientific research**  
 22 **into the efficacy and safety of medical marijuana used by registry identification cardholders**  
 23 **of the Oregon Medical Marijuana Program. The purpose of the research is to assist physi-**  
 24 **cians and patients in evaluating the risks and benefits of using medical marijuana.**

25 (2) **The department shall report the results of the research required under subsection (1)**  
 26 **of this section to the Advisory Committee on Medical Marijuana established under ORS**  
 27 **475.303.**