

A-Engrossed
Senate Bill 161

Ordered by the Senate April 18
Including Senate Amendments dated April 18

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski for Department of Human Services)

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.

Adds agitation due to Alzheimer's disease as qualifying condition for medical marijuana use.

Requires Department of Human Services to conduct criminal records check of person responsible for marijuana grow site. Authorizes department to deny application for registry identification card of person prohibited by court order from obtaining registry identification card. Requires department to revoke registry identification card issued to person prohibited by court order from participating in medical use of marijuana.

Modifies documentation that registry identification cardholder must provide to department annually and circumstances that require cardholder to return card to department. **Increases time that cardholder has to return registry identification card and associated cards to department after attending physician has determined medical use of marijuana is contraindicated for person's condition. Authorizes department to grant extension to allow cardholder time to obtain second opinion.**

Eliminates affirmative defense to certain criminal charges of person producing medical marijuana at place other than authorized marijuana grow site. Limits multiple-person grow site to production of medical marijuana for four eligible persons concurrently. Modifies restrictions on marijuana grow site registration card issued to person convicted of certain crimes. **Specifies that "delivery" of controlled substance does not include transfer of marijuana by registry identification cardholder to person responsible for marijuana grow site if no consideration is paid for transfer.**

Provides civil immunity to Department of Human Services employees and agents acting within scope of employment related to medical marijuana requirements.

A BILL FOR AN ACT

1
2 Relating to medical marijuana; creating new provisions; and amending ORS 475.302, 475.304, 475.309,
3 475.316 and 475.320.

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, **agitation due to Alzheimer's disease**, positive status for human
11 immunodeficiency virus or acquired immune 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;

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 (C) Severe nausea;

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

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

4 or

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

7 (3) "Delivery" has the meaning given that term in ORS 475.005. "Delivery" does not include
8 transfer of marijuana by a registry identification cardholder to another registry identification
9 cardholder **or to a person responsible for a marijuana grow site** if no consideration is paid for
10 the transfer.

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

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

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

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

20 (8) "Medical use of marijuana" means the production, possession, delivery, or administration of
21 marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive benefit of
22 a person to mitigate the symptoms or effects of the person's debilitating medical condition.

23 (9) "Production" has the meaning given that term in ORS 475.005.

24 (10) "Registry identification card" means a document issued by the department that identifies a
25 person authorized to engage in the medical use of marijuana and the person's designated primary
26 caregiver, if any.

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

31 (12) "Written documentation" means a statement signed by the attending physician of a person
32 diagnosed with a debilitating medical condition or copies of the person's relevant medical records.

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

34 475.304. (1) The Department of Human Services shall establish by rule a marijuana grow site
35 registration system to authorize production of marijuana by a registry identification cardholder, a
36 designated primary caregiver who grows marijuana for the cardholder or a person who is responsi-
37 ble for a marijuana grow site. The marijuana grow site registration system adopted must require a
38 registry identification cardholder to submit an application to the department that includes:

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

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

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

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

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

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

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

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

10 (6)(a) **The department shall conduct a criminal records check under ORS 181.534 of any**
11 **person whose name is submitted as a person responsible for a marijuana grow site.**

12 (b) The department shall restrict a marijuana grow site registration card issued to a registry
13 identification cardholder who has been convicted of a **first offense of** violating ORS 475.840 (1)(a)
14 or (b) to prohibit for a period of five years from the date of conviction the production of marijuana
15 otherwise authorized by this section at a location where the registry identification cardholder is
16 present.

17 *[(b) A registry identification cardholder who has been convicted of violating ORS 475.840 (1)(a) or*
18 *(b) may not be issued a marijuana grow site registration card within five years of the date of the con-*
19 *viction for violating ORS 475.840 (1)(a) or (b) if the conviction was for a first offense to prohibit for*
20 *a period of five years from the date of conviction the production of marijuana otherwise authorized by*
21 *this section at a location where the registry identification cardholder is present.]*

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

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

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

34 **SECTION 3.** ORS 475.309 is amended to read:

35 475.309. (1) Except as provided in ORS 475.316, 475.320 and 475.342, a person engaged in or as-
36 sisting in the medical use of marijuana is excepted from the criminal laws of the state for possession,
37 delivery or production of marijuana, aiding and abetting another in the possession, delivery or pro-
38 duction of marijuana or any other criminal offense in which possession, delivery or production of
39 marijuana is an element if the following conditions have been satisfied:

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

44 (b) The person who has a debilitating medical condition, the person's primary caregiver and the
45 person responsible for a marijuana grow site that is producing marijuana for the cardholder and is

1 registered under ORS 475.304 are collectively in possession of, delivering or producing marijuana for
2 medical use in amounts allowed under ORS 475.320.

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

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

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

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

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

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

18 (3) The department shall issue a registry identification card to a person who is under 18 years
19 of age if the person submits the materials required under subsection (2) of this section, and the
20 custodial parent or legal guardian with responsibility for health care decisions for the person under
21 18 years of age signs a written statement that:

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

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

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

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

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

41 (5)(a) The department shall verify the information contained in an application submitted pursu-
42 ant to this section and shall approve or deny an application within thirty days of receipt of the
43 application.

44 [(a)] (b) **In addition to the authority granted to the department under ORS 475.316 to deny**
45 **an application**, the department may deny an application [only] for the following reasons:

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

5 (B) The department determines that the information provided was falsified[.]; **or**

6 **(C) The applicant has been prohibited by a court order from obtaining a registry iden-**
7 **tification card.**

8 *[(b)]* (c) Denial of a registry identification card shall be considered a final department action,
9 subject to judicial review. Only the person whose application has been denied, or, in the case of a
10 person under the age of 18 years of age whose application has been denied, the person's parent or
11 legal guardian, shall have standing to contest the department's action.

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

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

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

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

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

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

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

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

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

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

31 **(B) If applicable, notify the designated primary caregiver of the cardholder and the per-**
32 **son responsible for the marijuana grow site that produces marijuana for the cardholder of**
33 **any change in status including, but not limited to:**

34 **(i) The assignment of another individual as the designated primary caregiver of the**
35 **cardholder;**

36 **(ii) The assignment of another individual as the person responsible for a marijuana grow**
37 **site producing marijuana for the cardholder; or**

38 **(iii) The end of the eligibility of the cardholder to hold a valid registry identification card.**

39 *[(B)]* (C) Annually submit to the department:

40 (i) Updated written documentation **from the cardholder's attending physician** of the person's
41 debilitating medical condition **and that the medical use of marijuana may mitigate the symp-**
42 **toms or effects of the person's debilitating medical condition;** and

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

45 (b) If a person who possesses a registry identification card fails to comply with this subsection,

1 the card shall be deemed expired. If a registry identification card expires, the identification card of
2 any designated primary caregiver of the cardholder shall also expire.

3 (8)(a) A person who possesses a registry identification card pursuant to this section and who
4 has been diagnosed by the person's attending physician as no longer having a debilitating medical
5 condition **or whose attending physician has determined that the medical use of marijuana is**
6 **contraindicated for the person's debilitating medical condition** shall return the registry iden-
7 tification card **and any other associated Oregon Medical Marijuana Program cards** to the de-
8 partment within [seven] **30** calendar days of notification of the diagnosis **or notification of the**
9 **contraindication**. [*Any designated primary caregiver shall return the caregiver's identification card*
10 *within the same period of time.*]

11 (b) **If, due to circumstances beyond the control of the registry identification cardholder,**
12 **a cardholder is unable to obtain a second medical opinion about the cardholder's continuing**
13 **eligibility to use medical marijuana before the 30-day period specified in paragraph (a) of this**
14 **subsection has expired, the department may grant the cardholder additional time to obtain**
15 **a second opinion before requiring the cardholder to return the registry identification card**
16 **and any associated cards.**

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

25 (10) **A registry identification cardholder has the primary responsibility of notifying the**
26 **primary caregiver and person responsible for the marijuana grow site that produces**
27 **marijuana for the cardholder of any change in status of the cardholder. If the department**
28 **is notified by the cardholder that a primary caregiver or person responsible for a marijuana**
29 **grow site has changed, the department shall notify the primary caregiver or the person re-**
30 **sponsible for the marijuana grow site by mail at the address of record confirming the change**
31 **in status and informing the caregiver or person that their card is no longer valid and must**
32 **be returned to the department.**

33 (11) **The department shall revoke the registry identification card of a cardholder if a**
34 **court has issued an order that prohibits the cardholder from participating in the medical use**
35 **of marijuana or otherwise participating in the Oregon Medical Marijuana Program under**
36 **ORS 475.300 to 475.346. The cardholder shall return the registry identification card to the**
37 **department within seven calendar days of notification of the revocation. If the cardholder is**
38 **a patient, the patient shall return the patient's card and all other associated Oregon Medical**
39 **Marijuana Program cards.**

40 (12) **The department and employees and agents of the department acting within the**
41 **course and scope of their employment are immune from any civil liability that might be in-**
42 **curred or imposed for the performance of or failure to perform duties required by this sec-**
43 **tion.**

44 **SECTION 4.** ORS 475.316 is amended to read:

45 475.316. (1) No person authorized to possess, deliver or produce marijuana for medical use pur-

1 suant to ORS 475.300 to 475.346 shall be excepted from the criminal laws of this state or shall be
2 deemed to have established an affirmative defense to criminal charges of which possession, delivery
3 or production of marijuana is an element if the person, in connection with the facts giving rise to
4 such charges:

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

6 (b) Engages in the medical use of marijuana in a public place as that term is defined in ORS
7 161.015, or in public view or in a correctional facility as defined in ORS 162.135 (2) or youth cor-
8 rection facility as defined in ORS 162.135 (6);

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

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

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

14 [(A)(i) *One address for property under the control of the patient; and*]

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

17 [(B)] a marijuana grow site authorized under ORS 475.304; or

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

19 (2) In addition to any other penalty allowed by law, a person who the Department of **Human**
20 **Services** finds has willfully violated the provisions of ORS 475.300 to 475.346, or rules adopted under
21 ORS 475.300 to 475.346, may be precluded from obtaining or using a registry identification card for
22 the medical use of marijuana for a period of up to six months, at the discretion of the department.

23 **SECTION 5.** ORS 475.320 is amended to read:

24 475.320. (1)(a) A registry identification cardholder or the designated primary caregiver of the
25 cardholder may possess up to six mature marijuana plants and 24 ounces of usable marijuana.

26 (b) Notwithstanding paragraph (a) of this subsection, if a registry identification cardholder has
27 been convicted of violating ORS 475.840 (1)(a) or (b), the registry identification cardholder or the
28 designated primary caregiver of the cardholder may possess one ounce of usable marijuana at any
29 given time for a period of five years from the date of the conviction.

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

33 **(2) A person authorized under ORS 475.304 to produce marijuana at a marijuana grow**
34 **site:**

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

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

39 (c) May produce marijuana for [*up to*] **no more than** four registry identification cardholders or
40 designated primary caregivers [*per year*] **concurrently**.

41 (d) Must obtain and display a marijuana grow site registration card issued under ORS 475.304
42 for each registry identification cardholder or designated primary caregiver for [*which*] **whom**
43 marijuana is being produced.

44 (e) Must provide all marijuana produced for a registry identification cardholder or designated
45 primary caregiver to the cardholder or caregiver at the time the person responsible for a marijuana

1 grow site ceases producing marijuana for the cardholder or caregiver.

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

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

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

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

17 **SECTION 6. The amendments to ORS 475.320 by section 5 of this 2007 Act become oper-**
18 **ative on July 1, 2008.**