

Senate Bill 161

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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**.

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.

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.

A BILL FOR AN ACT

1
2 Relating to medical marijuana; amending ORS 475.304, 475.309, 475.316 and 475.320.

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

4 **SECTION 1.** ORS 475.304 is amended to read:

5 475.304. (1) The Department of Human Services shall establish by rule a marijuana grow site
6 registration system to authorize production of marijuana by a registry identification cardholder, a
7 designated primary caregiver who grows marijuana for the cardholder or a person who is responsi-
8 ble for a marijuana grow site. The marijuana grow site registration system adopted must require a
9 registry identification cardholder to submit an application to the department that includes:

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

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

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

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

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

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

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

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

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

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

8 *[(b) A registry identification cardholder who has been convicted of violating ORS 475.840 (1)(a) or*
 9 *(b) may not be issued a marijuana grow site registration card within five years of the date of the con-*
 10 *viction for violating ORS 475.840 (1)(a) or (b) if the conviction was for a first offense to prohibit for*
 11 *a period of five years from the date of conviction the production of marijuana otherwise authorized by*
 12 *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 2.** ORS 475.309 is amended to read:

26 475.309. (1) Except as provided in ORS 475.316, 475.320 and 475.342, a person engaged in or as-
 27 sisting in the medical use of marijuana is excepted from the criminal laws of the state for possession,
 28 delivery or production of marijuana, aiding and abetting another in the possession, delivery or pro-
 29 duction of marijuana or any other criminal offense in which possession, delivery or production of
 30 marijuana is an element if the following conditions have been satisfied:

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

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

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

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

1 mitigate the symptoms or effects of the person's debilitating medical condition;

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

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

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

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

9 (3) The department shall issue a registry identification card to a person who is under 18 years
10 of age if the person submits the materials required under subsection (2) of this section, and the
11 custodial parent or legal guardian with responsibility for health care decisions for the person under
12 18 years of age signs a written statement that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (B) Annually submit to the department:

23 (i) Updated written documentation of the person's debilitating medical condition **and that the**
24 **medical use of marijuana may mitigate the symptoms or effects of the person's debilitating**
25 **medical condition**; and

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

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

31 (8) A person who possesses a registry identification card pursuant to this section and who has
32 been diagnosed by the person's attending physician as no longer having a debilitating medical con-
33 dition **or whose physician has determined that the medical use of marijuana is**
34 **contraindicated for the person's debilitating medical condition** shall return the registry iden-
35 tification card to the department within seven calendar days of notification of the diagnosis **or no-**
36 **tification of the contraindication.** [*Any designated primary caregiver shall return the caregiver's*
37 *identification card within the same period of time.*]

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

1 **(10) The department shall revoke the registry identification card of a cardholder if a**
 2 **court has issued an order that prohibits the cardholder from participating in the medical use**
 3 **of marijuana or otherwise participating in the Oregon Medical Marijuana Program under**
 4 **ORS 475.300 to 475.346. The cardholder shall return the registry identification card to the**
 5 **department within seven calendar days of notification of the revocation. If the cardholder is**
 6 **a patient, the patient shall return the patient’s card and all other associated Oregon Medical**
 7 **Marijuana Program cards.**

8 **SECTION 3.** ORS 475.316 is amended to read:

9 475.316. (1) No person authorized to possess, deliver or produce marijuana for medical use pur-
 10 suant to ORS 475.300 to 475.346 shall be excepted from the criminal laws of this state or shall be
 11 deemed to have established an affirmative defense to criminal charges of which possession, delivery
 12 or production of marijuana is an element if the person, in connection with the facts giving rise to
 13 such charges:

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

15 (b) Engages in the medical use of marijuana in a public place as that term is defined in ORS
 16 161.015, or in public view or in a correctional facility as defined in ORS 162.135 (2) or youth cor-
 17 rection facility as defined in ORS 162.135 (6);

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

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

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

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

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

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

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

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

32 **SECTION 4.** ORS 475.320 is amended to read:

33 475.320. (1)(a) A registry identification cardholder or the designated primary caregiver of the
 34 cardholder may possess up to six mature marijuana plants and 24 ounces of usable marijuana.

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

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

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

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

1 (c) May produce marijuana for up to four registry identification cardholders or designated pri-
2 mary caregivers [*per year*] **concurrently**.

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

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

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

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

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

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

24