

# House Bill 2881

Sponsored by Representative BUCKLEY; Representatives HOLVEY, KOTEK, SHIELDS, TOMEI

## 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**.

Establishes procedure for employment-related marijuana drug testing and review of results by medical review officer.

Requires attending physician who provides documentation for medical marijuana card to perform in-person examination of patient.

## A BILL FOR AN ACT

1  
2 Relating to medical marijuana; creating new provisions; and amending ORS 438.435 and 475.326.

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

4 **SECTION 1.** ORS 438.435 is amended to read:

5 438.435. (1) In addition to duties which a clinical laboratory may perform under ORS 438.010 to  
6 438.510, a laboratory is authorized to perform appropriate tests, examinations or analyses on mate-  
7 rials derived from the human body for the purpose of detecting substances of abuse in the body. All  
8 laboratories performing the tests, examinations or analyses must be licensed under the provisions  
9 of ORS 438.010 to 438.510 and must employ qualified technical personnel to perform the tests, ex-  
10 aminations and analyses.

11 (2) In order to perform such tests, examinations or analyses, the laboratory may examine speci-  
12 mens submitted by persons other than those described in ORS 438.430 (1) and shall report the result  
13 of any test, examination or analysis to the person who submitted the specimen. When the substance  
14 of abuse test is for nonmedical employment or pre-employment purposes, and a written request is  
15 provided, the test result shall be reported to the person from whom the specimen was originally  
16 obtained.

17 (3) When the specimen of a person tested for substances of abuse is submitted to the laboratory  
18 and the test result is positive, the laboratory shall perform a confirming test which has been desig-  
19 nated by rule of the Department of Human Services as the best available technology for use to de-  
20 termine whether or not the substance of abuse identified by the first test is present in the specimen  
21 prior to reporting the test results.

22 **(4) When the substance of abuse test is a test for nonmedical employment or pre-**  
23 **employment purposes and includes a test for marijuana, the laboratory shall forward the**  
24 **marijuana test result to the medical review officer designated by the employer under section**  
25 **2 of this 2009 Act. The laboratory may not report a marijuana test result to the employer,**  
26 **but may report the result of any other substance of abuse test in accordance with this sec-**  
27 **tion.**

28 [(4)] (5) The department by rule shall set standards for special category laboratories that engage  
29 only in the initial testing for substances of abuse in the body, including registration procedures for  
30 such laboratories and personnel.

**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)] (6) The operator of a substances of abuse on-site screening facility may use substances of  
 2 abuse on-site screening tests if the test results are not for use in diagnosing or preventing disease  
 3 and are not for use by physicians, dentists or other licensed health care professionals in treating  
 4 humans. Any entity using the test shall pay a yearly filing fee, not to exceed \$50, and file a regis-  
 5 tration form as provided by rule of the department that:

6        (a) States the current name and address of the entity, the telephone number of the entity, if any,  
 7 and the name of a contact individual at each on-site facility operated by the entity; and

8        (b) Certifies that:

9        (A) The tests are being administered according to the federal Food and Drug Administration  
 10 package insert that accompanies the test;

11        (B) The tests are being administered according to the instructions of the manufacturer;

12        (C) Custody chain procedures are being followed;

13        (D) Operators of the substances of abuse on-site screening facility are trained in the use of the  
 14 substances of abuse on-site screening tests by the manufacturer; and

15        (E) If the substances of abuse on-site screening facility obtains a positive test result on a spec-  
 16 imen and the entity indicates that the test result is to be used to deny or deprive any person of  
 17 employment or any benefit, or may otherwise result in adverse employment action, the same speci-  
 18 men shall be submitted to a clinical laboratory licensed under ORS 438.110 and 438.150 or an  
 19 equivalent out-of-state facility and the presence of a substance of abuse confirmed prior to release  
 20 of the on-site test result.

21        [(6)] (7) The department by rule shall set reasonable standards for the screening by correctional  
 22 agencies of inmates within state and local correctional facilities and offenders on parole, probation  
 23 or post-prison supervision for substances of abuse. The standards shall include, but not be limited  
 24 to, the establishment of written procedures and protocols, the qualifications and training of indi-  
 25 viduals who perform screening tests, the approval of specific technologies and the minimum re-  
 26 quirements for record keeping, quality control and confirmation of positive screening results.

27        [(7)] (8) If an initial test by a special category laboratory under subsection [(4)] (5) of this sec-  
 28 tion or a special category screening under subsection [(6)] (7) of this section shows a result indi-  
 29 cating the presence of a substance of abuse in the body, a confirmatory test shall be conducted in  
 30 a licensed clinical laboratory if the results are to be used to deprive or deny any person of any  
 31 employment or benefit. If a screening test of an inmate of a state or local correctional facility is  
 32 positive for a substance of abuse, the inmate may be held in a secure facility pending the outcome  
 33 of the confirmatory test. If the confirmatory test is positive, the inmate may be held in a secure  
 34 facility pending the outcome of any hearing to determine what action will be taken.

35        [(8)] (9) If any test for substances of abuse is performed outside this state the results of which  
 36 are to be used to deprive or deny any person any employment or any benefit, the person desiring  
 37 to use the test shall have the burden to show that the testing procedure used meets or exceeds the  
 38 testing standards of this state.

39        **SECTION 2. (1) As used in this section:**

40        (a) **“Employee” means an employee or applicant for employment.**

41        (b) **“Medical review officer” means a physician licensed under ORS chapter 677 who is**  
 42 **responsible for receiving, reviewing and reporting laboratory results generated when an em-**  
 43 **ployer performs a drug test for marijuana on an employee.**

44        (2) **If an employer requires an employee to submit to a drug test for marijuana, the em-**  
 45 **ployer shall designate a medical review officer to receive, review and report the test result**

1 to the employer. The medical review officer must be trained in the assessment and treatment  
 2 of substance abuse.

3 (3) If a medical review officer receives a test result that is negative for marijuana from  
 4 a laboratory as provided in ORS 438.435, the medical review officer shall report a negative  
 5 marijuana test result to the employer.

6 (4)(a) If a medical review officer receives a test result that is positive for marijuana from  
 7 a laboratory as provided in ORS 438.435, the medical review officer shall consult with the  
 8 employee to determine if the employee possesses a registry identification card issued under  
 9 ORS 475.309.

10 (b) If the employee does not possess a registry identification card issued under ORS  
 11 475.309, the medical review officer shall report a positive marijuana test result to the em-  
 12 ployer.

13 (c) If the employee possesses a registry identification card issued under ORS 475.309, the  
 14 medical review officer shall consult with the employee to determine the employee's pattern  
 15 of marijuana use and the potential for impairment while the employee is acting in the course  
 16 and scope of employment.

17 (d) If, after the consultation required by paragraph (c) of this subsection, the medical  
 18 review officer determines that the employee's marijuana use poses a risk to the safety of the  
 19 employee or others in the employee's place of employment, the medical review officer shall  
 20 report a positive marijuana test result to the employer.

21 (e) If, after the consultation required by paragraph (c) of this subsection, the medical  
 22 review officer determines that the employee's marijuana use does not pose a risk to the  
 23 safety of the employee or others in the employee's place of employment, the medical review  
 24 officer shall report a negative marijuana test result to the employer.

25 **SECTION 3.** ORS 475.326 is amended to read:

26 475.326. No attending physician may be subjected to civil penalty or discipline by the Oregon  
 27 Medical Board for:

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

34 (2) Providing the written documentation necessary for issuance of a registry identification card  
 35 under ORS 475.309, if:

36 (a) The documentation is based on the attending physician's **in-person examination of the**  
 37 **applicant and** personal assessment of the applicant's medical history [*and*], current medical condi-  
 38 **tion and appropriate treatment plan;** and

39 (b) The attending physician has discussed the potential medical risks and benefits of the medical  
 40 use of marijuana with the applicant.