

Senate Bill 388

Sponsored by Senator MORRISETTE

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**.

Permits medical marijuana cardholders to possess certain amounts of hashish and food and tincture that incorporate marijuana or hashish.

Changes amounts of marijuana that medical marijuana cardholder and primary caregiver may collectively possess.

Decreases amount of marijuana that may be possessed by persons responsible for marijuana grow sites to 24 ounces. Creates exception to allow persons responsible for marijuana grow sites to store medical marijuana cardholder's marijuana if cardholder cannot store marijuana at cardholder's residence.

Increases allowable size of marijuana seedlings.

Directs Department of Human Services to prepare manual describing rights and obligations of medical marijuana cardholders, primary caregivers, and persons responsible for marijuana grow sites, and requires those persons to state in applications for registry identification cards that they have read manual.

Directs department to establish investigation and dispute resolution procedures for certain disputes.

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 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;

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.

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.

(4) “Department” means the Department of Human Services.

(5) “Designated primary caregiver” means an individual 18 years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person’s application for a registry identification card or in other written notification to the department. “Designated primary caregiver” does not include the person’s attending physician.

(6) “Hashish” means:

(a) Resin that contains tetrahydrocannabinol and is extracted from any part of the Cannabis plant; or

(b) Any compound, manufacture, derivative, mixture or preparation made from the resin described in paragraph (a) of this subsection.

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

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

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

(10) “Oregon Medical Marijuana Manual” means the manual prepared by the department in accordance with section 5 of this 2009 Act.

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

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

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

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

SECTION 2. ORS 475.320 is amended to read:

475.320. (1)(a) A registry identification cardholder [*or*] **and** the designated primary caregiver of the cardholder may **collectively** possess:

(A) Up to six mature marijuana plants [*and 24*];

(B) Twenty-four ounces of usable marijuana[.], no more than two ounces of which may be in the form of hashish that has not been combined with food or prepared in a tincture;

(C) A four-month supply of food that incorporates marijuana or hashish; and

(D) A four-month supply of tincture made from marijuana or hashish.

(b) Notwithstanding paragraph (a) of this subsection, if a registry identification cardholder has been convicted of a Class A or Class B felony under ORS 475.840 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II, the registry identification cardholder or the designated primary caregiver of the cardholder may possess one ounce of usable marijuana at any given time for a period of five years from the date of the conviction.

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

(a) May produce marijuana for and provide marijuana to a registry identification cardholder or

1 that person's designated primary caregiver as authorized under this section.

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

4 (c) May produce marijuana for no more than four registry identification cardholders or desig-
5 nated primary caregivers concurrently.

6 **(d) May possess no more than 24 ounces of usable marijuana regardless of the number**
7 **of cardholders for whom marijuana is being produced, unless the Department of Human**
8 **Services has granted an exception under subsection (3) of this section allowing the person**
9 **responsible for a marijuana grow site to store a cardholder's usable marijuana at the grow**
10 **site.**

11 [(d)] (e) Must obtain and display a marijuana grow site registration card issued under ORS
12 475.304 for each registry identification cardholder or designated primary caregiver for whom
13 marijuana is being produced.

14 [(e)] (f) Must provide all marijuana produced for a registry identification cardholder or desig-
15 nated primary caregiver to the cardholder or caregiver at the time the person responsible for a
16 marijuana grow site ceases producing marijuana for the cardholder or caregiver.

17 [(f)] (g) Must return the marijuana grow site registration card to the registry identification
18 cardholder to whom the card was issued when requested to do so by the cardholder or when the
19 person responsible for a marijuana grow site ceases producing marijuana for the cardholder or
20 caregiver.

21 **(3) Upon the request of a registry identification cardholder who is unable to store usable**
22 **marijuana at the cardholder's residence, the department may grant an exception to sub-**
23 **section (2)(d) of this section allowing a person responsible for a marijuana grow site to store**
24 **the cardholder's usable marijuana at the grow site.**

25 [(3)] (4) Except as provided in subsections (1) and (2) of this section, a registry identification
26 cardholder, the designated primary caregiver of the cardholder and the person responsible for a
27 marijuana grow site producing marijuana for the registry identification cardholder may possess a
28 combined total of up to six mature plants and 24 ounces of usable marijuana for that registry iden-
29 tification cardholder.

30 [(4)(a)] (5)(a) A registry identification cardholder and the designated primary caregiver of the
31 cardholder may possess a combined total of up to 18 marijuana seedlings or starts as defined by rule
32 of the department [*of Human Services*].

33 (b) A person responsible for a marijuana grow site may possess up to 18 marijuana seedlings or
34 starts as defined by rule of the department for each registry identification cardholder for whom the
35 person responsible for the marijuana grow site is producing marijuana.

36 **(c) The department shall define by rule when a marijuana plant is mature. The rule must**
37 **provide that a plant that has no flowers and that is less than 18 inches in height and less**
38 **than 18 inches in diameter is a seedling or a start and is not a mature plant.**

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

40 475.306. (1) A person who possesses a registry identification card issued pursuant to ORS 475.309
41 may engage in, and a designated primary caregiver of such a person may assist in, the medical use
42 of marijuana only as justified to mitigate the symptoms or effects of the person's debilitating medical
43 condition.

44 (2) A person who is a registry identification cardholder must possess the registry identification
45 card when using or transporting marijuana in a location other than the residence of the cardholder.

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

5 **SECTION 4.** Section 5 of this 2009 Act is added to and made a part of ORS 475.300 to
 6 **475.346.**

7 **SECTION 5.** The Department of Human Services shall prepare an Oregon Medical
 8 **Marijuana Manual describing the rights and obligations of registry identification cardholders,**
 9 **designated primary caregivers and persons responsible for marijuana grow sites. The de-**
 10 **partment shall prepare the manual in language that is as clear and simple as possible, and**
 11 **shall make the manual available in formats that accommodate persons with disabilities.**

12 **SECTION 6.** ORS 475.304 is amended to read:

13 475.304. (1) The Department of Human Services shall establish by rule a marijuana grow site
 14 registration system to authorize production of marijuana by a registry identification cardholder, a
 15 designated primary caregiver who grows marijuana for the cardholder or a person who is responsi-
 16 ble for a marijuana grow site. The marijuana grow site registration system adopted must require a
 17 registry identification cardholder **and the person responsible for the cardholder's marijuana**
 18 **grow site** to submit an application to the department that includes:

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

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

21 (c) The registry identification card number of the registry cardholder for whom the marijuana
 22 is being produced; *[and]*

23 **(d) A statement that the person responsible for the marijuana grow site has read the**
 24 **Oregon Medical Marijuana Manual and understands its contents;**

25 **(e) A statement that, if the registry identification cardholder submits a dispute with the**
 26 **person responsible for the marijuana grow site to the department in accordance with section**
 27 **10 of this 2009 Act, the cardholder and the person responsible for the marijuana grow site**
 28 **agree to comply with the department's investigation and resolution of the dispute; and**

29 *[(d)]* **(f)** Any other information the department considers necessary.

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

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

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

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

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

43 (b) A person convicted of a Class A or Class B felony under ORS 475.840 to 475.920 for the
 44 manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be issued
 45 a marijuana grow site registration card or produce marijuana for a registry identification cardholder

1 for five years from the date of conviction.

2 (c) A person convicted more than once of a Class A or Class B felony under ORS 475.840 to
3 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may
4 not be issued a marijuana grow site registration card or produce marijuana for a registry identifi-
5 cation cardholder.

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

11 **SECTION 7.** ORS 475.309 is amended to read:

12 475.309. (1) Except as provided in ORS 475.316, 475.320 and 475.342, a person engaged in or as-
13 sisting in the medical use of marijuana is excepted from the criminal laws of the state for possession,
14 delivery or production of marijuana, aiding and abetting another in the possession, delivery or pro-
15 duction of marijuana or any other criminal offense in which possession, delivery or production of
16 marijuana is an element if the following conditions have been satisfied:

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

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

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

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

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

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

35 (d) The name and address of the person's designated primary caregiver, if the person has des-
36 ignated a primary caregiver at the time of application; *[and]*

37 (e) A written statement that indicates whether the marijuana used by the cardholder will be
38 produced at a location where the cardholder or designated primary caregiver is present or at an-
39 other location[.]; **and**

40 **(f) A written statement that the person has read the Oregon Medical Marijuana Manual**
41 **and understands its contents.**

42 (3) The department shall issue a registry identification card to a person who is under 18 years
43 of age if the person submits the materials required under subsection (2) of this section, and the
44 custodial parent or legal guardian with responsibility for health care decisions for the person under
45 18 years of age signs a written statement that:

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

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

7 (c) The custodial parent or legal guardian with responsibility for health care decisions for the
8 person under 18 years of age agrees to serve as the designated primary caregiver for the person
9 under 18 years of age; *[and]*

10 (d) The custodial parent or legal guardian with responsibility for health care decisions for the
11 person under 18 years of age agrees to control the acquisition of marijuana and the dosage and
12 frequency of use by the person under 18 years of age^[.]; **and**

13 **(e) The custodial parent or legal guardian with responsibility for health care decisions for**
14 **the person under 18 years of age has read the Oregon Medical Marijuana Manual and**
15 **understands its contents.**

16 (4) A person applying for a registry identification card pursuant to this section may submit the
17 information required in this section to a county health department for transmittal to the Department
18 of Human Services. A county health department that receives the information pursuant to this sub-
19 section shall transmit the information to the Department of Human Services within five days of re-
20 ceipt of the information. Information received by a county health department pursuant to this
21 subsection *[shall be]* **is** confidential and not subject to disclosure, except as required to transmit the
22 information to the Department of Human Services.

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

26 (b) In addition to the authority granted to the department under ORS 475.316 to deny an appli-
27 cation, the department may deny an application for the following reasons:

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

32 (B) The department determines that the information provided was falsified; or

33 (C) The applicant has been prohibited by a court order from obtaining a registry identification
34 card.

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

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

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

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

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

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

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

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

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

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

11 (A) Notify the department of any change in the person's name, address, attending physician or
12 designated primary caregiver.

13 (B) If applicable, notify the designated primary caregiver of the cardholder and the person re-
14 sponsible for the marijuana grow site that produces marijuana for the cardholder of any change in
15 status including, but not limited to:

16 (i) The assignment of another individual as the designated primary caregiver of the cardholder;

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

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

20 (C) Annually submit to the department:

21 (i) Updated written documentation from the cardholder's attending physician of the person's
22 debilitating medical condition and that the medical use of marijuana may mitigate the symptoms or
23 effects of the person's debilitating medical condition; and

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

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

29 (8)(a) A person who possesses a registry identification card pursuant to this section and who
30 has been diagnosed by the person's attending physician as no longer having a debilitating medical
31 condition or whose attending physician has determined that the medical use of marijuana is
32 contraindicated for the person's debilitating medical condition shall return the registry identification
33 card and any other associated Oregon Medical Marijuana Program cards to the department within
34 30 calendar days of notification of the diagnosis or notification of the contraindication.

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

40 (9) A person who has applied for a registry identification card pursuant to this section but
41 whose application has not yet been approved or denied, and who is contacted by any law enforce-
42 ment officer in connection with the person's administration, possession, delivery or production of
43 marijuana for medical use may provide to the law enforcement officer a copy of the written doc-
44 umentation submitted to the department pursuant to subsection (2) or (3) of this section and proof
45 of the date of mailing or other transmission of the documentation to the department. This doc-

1 umentation [*shall have*] **has** the same legal effect as a registry identification card until such time
 2 as the person receives notification that the application has been approved or denied.

3 (10) A registry identification cardholder has the primary responsibility of notifying the primary
 4 caregiver and person responsible for the marijuana grow site that produces marijuana for the
 5 cardholder of any change in status of the cardholder. If the department is notified by the cardholder
 6 that a primary caregiver or person responsible for a marijuana grow site has changed, the depart-
 7 ment shall notify the primary caregiver or the person responsible for the marijuana grow site by
 8 mail at the address of record confirming the change in status and informing the caregiver or person
 9 that their card is no longer valid and must be returned to the department.

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

16 (12) The department and employees and agents of the department acting within the course and
 17 scope of their employment are immune from any civil liability that might be incurred or imposed for
 18 the performance of or failure to perform duties required by this section.

19 **SECTION 8.** ORS 475.312 is amended to read:

20 475.312. (1) If a person who possesses a registry identification card issued pursuant to ORS
 21 475.309 chooses to have a designated primary caregiver, the person must designate the primary
 22 caregiver [*by including the primary caregiver’s name and address*]:

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

26 **(2) The designation of the primary caregiver required by subsection (1) of this section**
 27 **must include:**

- 28 **(a) The primary caregiver’s name and address;**
- 29 **(b) A statement that the primary caregiver has read the Oregon Medical Marijuana**
 30 **Manual and understands its contents; and**
- 31 **(c) A statement that, if the registry identification cardholder submits a dispute with the**
 32 **primary caregiver to the department in accordance with section 10 of this 2009 Act, the pri-**
 33 **mary caregiver agrees to comply with the department’s investigation and resolution of the**
 34 **dispute.**

35 [(2)] **(3) A person described in this section may have only one designated primary caregiver at**
 36 **any given time.**

37 **SECTION 9.** Section 10 of this 2009 Act is added to and made a part of ORS 475.300 to
 38 **475.346.**

39 **SECTION 10.** (1) **When a registry identification cardholder has a dispute with a desig-**
 40 **ned primary caregiver or person responsible for a grow site, the registry identification**
 41 **cardholder may submit the dispute to the Department of Human Services for investigation**
 42 **and resolution.**

43 **(2) When a registry identification cardholder submits a dispute to the department, the**
 44 **department shall conduct an investigation, including but not limited to:**

- 45 **(a) Interviewing parties involved in the dispute, including the registry identification**

1 cardholder, the designated primary caregiver and persons responsible for grow sites; and

2 (b) Inspecting grow sites involved in the dispute.

3 (3) The department may conduct mediation between the parties involved in the dispute.

4 (4) In resolving a dispute, the department may revoke a designated primary caregiver's
5 registry identification card or a marijuana grow site registration card for a period of up to
6 six months, at the discretion of the department.

7 (5) Within 90 days after the registry identification cardholder submits a dispute to the
8 department, the department shall issue its decision resolving the dispute in writing to all
9 parties involved in the dispute. The department's decision is subject to judicial review as a
10 contested case under ORS chapter 183.

11 (6) If in the course of its investigation of a dispute the department gathers any evidence
12 of illegal activity, the department shall provide the evidence to an appropriate law enforce-
13 ment agency.

14 SECTION 11. The amendments to ORS 475.304, 475.309 and 475.312 by sections 6, 7 and 8
15 of this 2009 Act apply to applications submitted on or after March 1, 2010.

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