

Senate Bill 812

Sponsored by COMMITTEE ON JUDICIARY (at the request of Coalition for Patients' Rights)

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 register certain dispensaries and producers of medical marijuana and establishes requirements for dispensaries and producers of marijuana.

Directs department to develop and implement program to assist low-income medical marijuana cardholder in obtaining marijuana.

Allows department to conduct research on efficacy and safety of marijuana used by medical marijuana cardholders.

Establishes Medical Marijuana Fund. Appropriates moneys in fund to department.

A BILL FOR AN ACT

1
2 Relating to medical marijuana; creating new provisions; amending ORS 475.302, 475.316, 475.323,
3 475.324 and 475.331; and appropriating money.

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

5 **SECTION 1. Sections 3, 4, 5, 10 and 11 of this 2009 Act are added to and made a part of**
6 **ORS 475.300 to 475.346.**

7 **SECTION 2.** ORS 475.302 is amended to read:

8 475.302. As used in ORS 475.300 to 475.346:

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

11 (2) "Debilitating medical condition" means:

12 (a) Cancer, glaucoma, agitation due to Alzheimer's disease, positive status for human
13 immunodeficiency virus or acquired immune deficiency syndrome, or treatment for these conditions;

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

16 (A) Cachexia;

17 (B) Severe pain;

18 (C) Severe nausea;

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

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

21 or

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

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

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

28 (5) "Designated primary caregiver" means an individual 18 years of age or older who has sig-

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 nificant responsibility for managing the well-being of a person who has been diagnosed with a de-
 2 bilitating medical condition and who is designated as such on that person's application for a registry
 3 identification card or in other written notification to the department. "Designated primary
 4 caregiver" does not include the person's attending physician.

5 **(6) "Dispensary" means a nonprofit entity that produces marijuana and delivers usable**
 6 **marijuana or marijuana plants to registry identification cardholders.**

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

8 [(7)] (8) "Marijuana grow site" means a location where marijuana is produced for use by a
 9 **particular** registry identification cardholder and that is registered under the provisions of ORS
 10 475.304.

11 [(8)] (9) "Medical use of marijuana" means the production, possession, delivery, or adminis-
 12 tration of marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive
 13 benefit of a person to mitigate the symptoms or effects of the person's debilitating medical condition.

14 **(10) "Producer" means a person who produces usable marijuana or marijuana plants for**
 15 **a registry identification cardholder, designated primary caregiver, person responsible for a**
 16 **grow site or registered dispensary.**

17 [(9)] (11) "Production" has the meaning given that term in ORS 475.005.

18 [(10)] (12) "Registry identification card" means a document issued by the department that iden-
 19 tifies a person authorized to engage in the medical use of marijuana and the person's designated
 20 primary caregiver, if any.

21 [(11)] (13) "Usable marijuana" means the dried leaves and flowers of the plant Cannabis family
 22 Moraceae, and any mixture or preparation thereof, that are appropriate for medical use as allowed
 23 in ORS 475.300 to 475.346. "Usable marijuana" does not include the seeds, stalks and roots of the
 24 plant.

25 [(12)] (14) "Written documentation" means a statement signed by the attending physician of a
 26 person diagnosed with a debilitating medical condition or copies of the person's relevant medical
 27 records.

28 **SECTION 3. (1) A dispensary may not produce or deliver marijuana unless the dispensary**
 29 **is registered with the Department of Human Services.**

30 **(2) A dispensary that is registered with the department may produce and deliver usable**
 31 **marijuana and marijuana plants to any registry identification cardholder or designated pri-**
 32 **mary caregiver.**

33 **(3) The department shall issue a dispensary registration card to a nonprofit entity that:**

34 **(a) Submits the following information to the department:**

35 **(A) The name of the entity and any other name used in connection with the production**
 36 **or delivery of marijuana;**

37 **(B) The addresses of locations used by the entity to produce or deliver marijuana;**

38 **(C) The names, addresses and dates of birth of the principal officers of the entity;**

39 **(D) The names, addresses and dates of birth of the employees of the entity; and**

40 **(E) Other information required by the department by rule; and**

41 **(b) Pays a fee in an amount not less than \$2,000, established by the department by rule.**

42 **(4)(a) The department shall conduct a criminal records check under ORS 181.534 of the**
 43 **officers and employees listed on an application for registration of a dispensary. The depart-**
 44 **ment may require the fingerprints of a person for the purpose of requesting the criminal**
 45 **records check.**

1 (b) A dispensary shall notify the department when it hires a new employee or appoints
2 a new officer.

3 (5) The department may not issue a dispensary registration card if an officer or employee
4 of the dispensary:

5 (a) Is less than 21 years of age;

6 (b) Is not a resident of this state;

7 (c) Has been convicted of a felony listed in ORS 137.635, theft in the first degree as de-
8 fined in ORS 164.055, aggravated theft in the first degree as defined in ORS 164.057, theft by
9 extortion as defined in ORS 164.075, organized retail theft as defined in ORS 164.098 or theft
10 of services as defined in ORS 164.125; or

11 (d) Has been convicted of a felony under ORS 475.840 (1)(a) or (b) in the five years pre-
12 ceding submission of the application for registration.

13 (6) A dispensary registration is valid for a period of one year from the date of registra-
14 tion.

15 (7) A dispensary shall prominently post the dispensary registration card at each location
16 where the dispensary produces or delivers usable marijuana or marijuana plants.

17 (8) A registry identification cardholder or designated primary caregiver may reimburse
18 a dispensary for the costs of supplies and utilities associated with the production of
19 marijuana delivered to the registry identification cardholder or designated primary caregiver.
20 No other costs associated with the production or delivery of marijuana, including the cost
21 of labor, may be reimbursed.

22 (9) The department may inspect the premises of a registered dispensary to ensure com-
23 pliance with the provisions of ORS 475.300 to 475.346 and rules adopted by the department
24 under ORS 475.300 to 475.346.

25 (10) The department shall adopt rules:

26 (a) Establishing the fees and requirements for renewal of a dispensary registration;

27 (b) Establishing the maximum amount of usable marijuana and marijuana plants that a
28 dispensary may possess;

29 (c) Requiring a dispensary to submit quarterly reports detailing its activities, including
30 an accounting of deliveries of usable marijuana and marijuana plants for no consideration;

31 (d) Establishing permissible locations for dispensaries;

32 (e) Establishing minimum requirements for the security of dispensaries; and

33 (f) Establishing penalties for dispensaries if an officer or employee of a dispensary is
34 convicted of a crime involving the operation of the dispensary.

35 (11) Subject to ORS chapter 183, the department may suspend or revoke a dispensary
36 registration if the dispensary fails to comply with ORS 475.300 to 475.436 or rules adopted by
37 the department under ORS 475.300 to 475.436.

38 (12) The department shall deposit fees received under this section to the credit of the
39 Medical Marijuana Fund, established in section 12 of this 2009 Act.

40 **SECTION 4.** (1) A producer may not produce or deliver marijuana unless the producer is
41 registered with the Department of Human Services.

42 (2) A producer that is registered with the department may produce and deliver usable
43 marijuana and marijuana plants to a registry identification cardholder, designated primary
44 caregiver, person responsible for a grow site or registered dispensary.

45 (3) The department shall issue a producer registration card to a person who:

- 1 (a) Submits the following information to the department:
 2 (A) The name, address and date of birth of the producer;
 3 (B) The addresses of locations used by the producer to produce marijuana; and
 4 (C) Other information required by the department by rule; and
 5 (b) Pays a fee in an amount not less than \$1,000, established by rule by the department.
 6 (4) The department shall conduct a criminal records check under ORS 181.534 of a pro-
 7 ducer who applies for registration under this section. The department may require the fin-
 8 gerprints of a producer for the purpose of requesting the criminal records check.
 9 (5) The department may not issue a producer registration card to a person who:
 10 (a) Is less than 21 years of age;
 11 (b) Is not a resident of this state;
 12 (c) Has been convicted of a felony listed in ORS 137.635, theft in the first degree as de-
 13 fined in ORS 164.055, aggravated theft in the first degree as defined in ORS 164.057, theft by
 14 extortion as defined in ORS 164.075, organized retail theft as defined in ORS 164.098 or theft
 15 of services as defined in ORS 164.125; or
 16 (d) Has been convicted of a felony under ORS 475.840 (1)(a) or (b) in the five years pre-
 17 ceding submission of the application for registration.
 18 (6) A producer registration is valid for a period of one year from the date of registration.
 19 (7) A producer shall prominently post the producer registration card at each location
 20 where the producer produces or delivers usable marijuana or marijuana plants.
 21 (8) A registry identification cardholder, designated primary caregiver, person responsible
 22 for a grow site or registered dispensary may reimburse a producer for the costs of supplies
 23 and utilities associated with the production of marijuana delivered to the cardholder,
 24 caregiver, person or dispensary. No other costs associated with the production or delivery
 25 of marijuana, including the cost of labor, may be reimbursed.
 26 (9) The department may inspect the premises of a registered producer to ensure compli-
 27 ance with the provisions of ORS 475.300 to 475.346 and rules adopted by the department under
 28 ORS 475.300 to 475.346.
 29 (10) The department shall adopt rules:
 30 (a) Establishing the maximum amount of usable marijuana and marijuana plants that a
 31 producer may possess; and
 32 (b) Establishing the fees and requirements for renewal of a producer registration.
 33 (11) Subject to ORS chapter 183, the department may suspend or revoke a producer reg-
 34 istration if the producer fails to comply with ORS 475.300 to 475.436 or rules adopted by the
 35 department under ORS 475.300 to 475.436.
 36 (12) The department shall deposit fees received under this section to the credit of the
 37 Medical Marijuana Fund established in section 12 of this 2009 Act.
 38 **SECTION 5.** Except as provided in ORS 475.316, 475.320 and 475.342, a dispensary regis-
 39 tered under section 3 of this 2009 Act and a producer registered under section 4 of this 2009
 40 Act are excepted from the criminal laws of this state for possession, delivery or production
 41 of marijuana, aiding and abetting another in the possession, delivery or production of
 42 marijuana or any other criminal offense in which possession, delivery or production of
 43 marijuana is an element if the dispensary or producer is in possession of, delivering or
 44 producing marijuana for medical use in amounts allowed by rule of the Department of Hu-
 45 man Services.

1 **SECTION 6.** ORS 475.316 is amended to read:

2 475.316. (1) [No] **A** person authorized to possess, deliver or produce marijuana for medical use
 3 pursuant to ORS 475.300 to 475.346 [shall be] **is not** excepted from the criminal laws of this state
 4 [or shall be deemed to have established] **and does not have** an affirmative defense to criminal
 5 charges of which possession, delivery or production of marijuana is an element if the person, in
 6 connection with the facts giving rise to such charges:

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

8 (b) Engages in the medical use of marijuana in a public place as that term is defined in ORS
 9 161.015, or in public view or in a correctional facility as defined in ORS 162.135 (2) or youth cor-
 10 rection facility as defined in ORS 162.135 (6);

11 (c) Delivers marijuana to [any] **an** individual who the person knows is not in possession of a
 12 registry identification card;

13 (d) Delivers marijuana for consideration to [any] **an** individual, even if the individual is in pos-
 14 session of a registry identification card; **or**

15 (e) Manufactures or produces marijuana at a place other than a marijuana grow site authorized
 16 under ORS 475.304[: or], **a dispensary registered under section 3 of this 2009 Act or the prem-
 17 ises of a producer registered under section 4 of this 2009 Act.**

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 7.** ORS 475.323 is amended to read:

24 475.323. (1) Possession of a registry identification card or designated primary caregiver identifi-
 25 cation card pursuant to ORS 475.309, **a dispensary registration card under section 3 of this 2009
 26 Act or a producer registration card under section 4 of this 2009 Act** does not alone constitute
 27 probable cause to search the person or property of the cardholder or otherwise subject the person
 28 or property of the cardholder to inspection by any governmental agency.

29 (2) Any property [interest] possessed, owned or used in connection with the medical use of
 30 marijuana or acts incidental to the medical use of marijuana that has been seized by state or local
 31 law enforcement officers may not be harmed, neglected, injured or destroyed while in the possession
 32 of any law enforcement agency. A law enforcement agency has no responsibility to maintain live
 33 marijuana plants lawfully seized. No **interest in** such property [interest] may be forfeited under any
 34 provision of law providing for the forfeiture of property other than as a sentence imposed after
 35 conviction of a criminal offense. Usable marijuana and paraphernalia used to administer marijuana
 36 that was seized by any law enforcement office [shall] **must** be returned immediately upon a deter-
 37 mination by the district attorney in whose county the property was seized, or the district attorney's
 38 designee, that the person from whom the marijuana or paraphernalia used to administer marijuana
 39 was seized is entitled to the protections contained in ORS 475.300 to 475.346. The determination may
 40 be evidenced, for example, by a decision not to prosecute, the dismissal of charges or acquittal.

41 **SECTION 8.** ORS 475.324 is amended to read:

42 475.324. A law enforcement officer who determines that a registry identification cardholder,
 43 **designated primary caregiver, person responsible for a grow site, dispensary or producer** is
 44 in possession of amounts of usable marijuana or numbers of marijuana plants in excess of the
 45 amount or number authorized by ORS [475.320] **475.300 to 475.346 or rules adopted by the De-**

1 **partment of Human Services under ORS 475.300 to 475.346** may confiscate only any usable
2 marijuana or plants that are in excess of the amount or number authorized.

3 **SECTION 9.** ORS 475.331 is amended to read:

4 475.331. (1)(a) The Department of Human Services shall create and maintain a list of the persons
5 to whom the department has issued registry identification cards, the names of any designated pri-
6 mary caregivers [*and*], the addresses of authorized marijuana grow sites, **the names and addresses**
7 **of registered dispensaries and the names and addresses of registered producers.** Except as
8 provided in subsection (2) of this section, the list [*shall be*] **is confidential and is not subject to**
9 public disclosure.

10 (b) The department shall develop a system by which authorized employees of state and local law
11 enforcement agencies may verify at all times that a person is [*a lawful possessor of a registry iden-*
12 *tification card or the designated primary caregiver of a lawful possessor of a registry identification*
13 *card or that a location is an authorized marijuana grow site*] **authorized by the department to**
14 **possess, produce or deliver marijuana.**

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

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

19 (b) Authorized employees of state or local law enforcement agencies, only as necessary to verify
20 that a person is [*a lawful possessor of a registry identification card or the designated primary*
21 *caregiver of a lawful possessor of a registry identification card or that a location is an authorized*
22 *marijuana grow site*] **authorized by the department to possess, produce or deliver marijuana.**
23 Prior to being provided identifying information from the list, authorized employees of state or local
24 law enforcement agencies [*shall*] **must** provide to the department adequate identification, such as
25 a badge number or similar authentication of authority.

26 (3) Authorized employees of state or local law enforcement agencies that obtain identifying in-
27 formation from the list as authorized under this section may not release or use the information for
28 any purpose other than verification that a person is [*a lawful possessor of a registry identification*
29 *card or the designated primary caregiver of a lawful possessor of a registry identification card or that*
30 *a location is an authorized marijuana grow site*] **authorized by the department to possess,**
31 **produce or deliver marijuana.**

32 **SECTION 10.** (1) **The Department of Human Services, in consultation with the Advisory**
33 **Committee on Medical Marijuana established under ORS 475.303, shall develop and implement**
34 **a program to assist low-income registry identification cardholders in obtaining marijuana.**

35 (2) **The department shall submit an annual report on the program to the Advisory Com-**
36 **mittee on Medical Marijuana.**

37 **SECTION 11.** (1) **The Department of Human Services may conduct research on the effi-**
38 **cacy and safety of marijuana used by registry identification cardholders.**

39 (2) **The department may provide grants to persons in this state to conduct the research.**

40 (3) **The department shall report the results of the research to the Advisory Committee**
41 **on Medical Marijuana established under ORS 475.303.**

42 **SECTION 12.** **The Medical Marijuana Fund is established in the State Treasury, separate**
43 **and distinct from the General Fund. The Medical Marijuana Fund consists of moneys re-**
44 **ceived by the Department of Human Services under ORS 475.300 to 475.346. Interest earned**
45 **by the Medical Marijuana Fund shall be credited to the fund. Moneys in the fund are con-**

1 **tinuously appropriated to the Department of Human Services for the purposes of carrying**
2 **out the provisions of ORS 475.300 to 475.346.**
3 _____