

# Senate Bill 956

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Association Chiefs of Police, Oregon State Sheriffs' Association, Oregon District Attorneys Association, Oregon Narcotics Enforcement Association and Oregon Partnership)

## 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**.

Modifies definitions related to marijuana for purposes of certain criminal laws.  
Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to marijuana; amending ORS 167.222, 475.005, 475.302, 475.304, 475.306, 475.320, 475.323,  
3 475.324, 475.860 and 475.864; and declaring an emergency.

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

5 **SECTION 1.** ORS 475.005 is amended to read:

6 475.005. As used in ORS 475.005 to 475.285 and 475.840 to 475.980, unless the context requires  
7 otherwise:

8 (1) "Abuse" means the repetitive excessive use of a drug short of dependence, without legal or  
9 medical supervision, which may have a detrimental effect on the individual or society.

10 (2) "Administer" means the direct application of a controlled substance, whether by injection,  
11 inhalation, ingestion or any other means, to the body of a patient or research subject by:

12 (a) A practitioner or an authorized agent thereof; or

13 (b) The patient or research subject at the direction of the practitioner.

14 (3) "Administration" means the Drug Enforcement Administration of the United States Depart-  
15 ment of Justice, or its successor agency.

16 (4) "Agent" means an authorized person who acts on behalf of or at the direction of a man-  
17 ufacturer, distributor or dispenser. It does not include a common or contract carrier, public  
18 warehouseman or employee of the carrier or warehouseman.

19 (5) "Board" means the State Board of Pharmacy.

20 (6) "Controlled substance" means a drug or its immediate precursor classified in Schedules I  
21 through V under the federal Controlled Substances Act, 21 U.S.C. 811 to 812, as modified under ORS  
22 475.035. The use of the term "precursor" in this subsection does not control and is not controlled  
23 by the use of the term "precursor" in ORS 475.840 to 475.980.

24 (7) "Counterfeit substance" means a controlled substance or its container or labeling, which,  
25 without authorization, bears the trademark, trade name, or other identifying mark, imprint, number  
26 or device, or any likeness thereof, of a manufacturer, distributor or dispenser other than the person  
27 who in fact manufactured, delivered or dispensed the substance.

28 (8) "Deliver" or "delivery" means the actual, constructive or attempted transfer, other than by  
29 administering or dispensing, from one person to another of a controlled substance, whether or not  
30 there is an agency relationship.

**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 (9) "Device" means instruments, apparatus or contrivances, including their components, parts  
2 or accessories, intended:

3 (a) For use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or  
4 animals; or

5 (b) To affect the structure of any function of the body of humans or animals.

6 (10) "Dispense" means to deliver a controlled substance to an ultimate user or research subject  
7 by or pursuant to the lawful order of a practitioner, and includes the prescribing, administering,  
8 packaging, labeling or compounding necessary to prepare the substance for that delivery.

9 (11) "Dispenser" means a practitioner who dispenses.

10 (12) "Distributor" means a person who delivers.

11 (13) "Drug" means:

12 (a) Substances recognized as drugs in the official United States Pharmacopoeia, official  
13 Homeopathic Pharmacopoeia of the United States or official National Formulary, or any supplement  
14 to any of them;

15 (b) Substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of  
16 disease in humans or animals;

17 (c) Substances (other than food) intended to affect the structure or any function of the body of  
18 humans or animals; and

19 (d) Substances intended for use as a component of any article specified in paragraph (a), (b) or  
20 (c) of this subsection; however, the term does not include devices or their components, parts or ac-  
21 cessories.

22 (14) "Electronically transmitted" or "electronic transmission" means a communication sent or  
23 received through technological apparatuses, including computer terminals or other equipment or  
24 mechanisms linked by telephone or microwave relays, or any similar apparatus having electrical,  
25 digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

26 (15) "**Hashish**" means:

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

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

31 [(15)] (16) "Manufacture" means the production, preparation, propagation, compounding, con-  
32 version or processing of a controlled substance, either directly or indirectly by extraction from  
33 substances of natural origin, or independently by means of chemical synthesis, or by a combination  
34 of extraction and chemical synthesis, and includes any packaging or repackaging of the substance  
35 or labeling or relabeling of its container, except that this term does not include the preparation or  
36 compounding of a controlled substance:

37 (a) By a practitioner as an incident to administering or dispensing of a controlled substance in  
38 the course of professional practice; or

39 (b) By a practitioner, or by an authorized agent under the practitioner's supervision, for the  
40 purpose of, or as an incident to, research, teaching or chemical analysis and not for sale.

41 [(16)] (17) "Marijuana" means all parts of the [*plant*] Cannabis **plant** [*family Moraceae*], whether  
42 growing or not; [*the resin extracted from any part of the plant;*] and every compound, manufacture,  
43 salt, derivative, mixture, or preparation of the plant [*or its resin. It*]. "**Marijuana**" does not include  
44 the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of  
45 the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature

1 stalks [*except the resin extracted therefrom*], fiber, oil[,] or cake, [*or*] the sterilized seed of the plant  
2 [*which*] **that** is incapable of germination **or hashish**.

3 [(17)] (18) "Person" includes a government subdivision or agency, business trust, estate, trust  
4 or any other legal entity.

5 [(18)] (19) "Practitioner" means physician, dentist, veterinarian, scientific investigator, certified  
6 nurse practitioner, physician assistant or other person licensed, registered or otherwise permitted  
7 by law to dispense, conduct research with respect to or to administer a controlled substance in the  
8 course of professional practice or research in this state but does not include a pharmacist or a  
9 pharmacy.

10 [(19)] (20) "Prescription" means a written, oral or electronically transmitted direction, given by  
11 a practitioner for the preparation and use of a drug. When the context requires, "prescription" also  
12 means the drug prepared under such written, oral or electronically transmitted direction. Any label  
13 affixed to a drug prepared under written, oral or electronically transmitted direction shall promi-  
14 nently display a warning that the removal thereof is prohibited by law.

15 [(20)] (21) "Production" includes the manufacture, planting, cultivation, growing or harvesting  
16 of a controlled substance.

17 [(21)] (22) "Research" means an activity conducted by the person registered with the federal  
18 Drug Enforcement Administration pursuant to a protocol approved by the United States Food and  
19 Drug Administration.

20 [(22)] (23) "Ultimate user" means a person who lawfully possesses a controlled substance for the  
21 use of the person or for the use of a member of the household of the person or for administering to  
22 an animal owned by the person or by a member of the household of the person.

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

24 475.302. As used in ORS 475.300 to 475.346:

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

27 (2) "Debilitating medical condition" means:

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

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

32 (A) Cachexia;

33 (B) Severe pain;

34 (C) Severe nausea;

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

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

37 or

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

40 (3) "Delivery" has the meaning given that term in ORS 475.005. [*"Delivery" does not include*  
41 *transfer of marijuana by a registry identification cardholder to another registry identification*  
42 *cardholder if no consideration is paid for the transfer.*]

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

44 (5) "Designated primary caregiver" means an individual 18 years of age or older who has sig-  
45 nificant responsibility for managing the well-being of a person who has been diagnosed with a de-

1 debilitating medical condition and who is designated as such on that person’s application for a registry  
 2 identification card or in other written notification to the department. “Designated primary  
 3 caregiver” does not include the person’s attending physician.

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

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

7 **(8) “Mature marijuana plant” means a marijuana plant that is not a seedling or start.**  
 8 **“Mature marijuana plant” includes plants that have been harvested and are in the process**  
 9 **of drying.**

10 [(8)] (9) “Medical use of marijuana” means the production, possession, delivery, or adminis-  
 11 tration of marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive  
 12 benefit of a person to mitigate the symptoms or effects of the person’s debilitating medical condition.

13 [(9)] (10) “Production” has the meaning given that term in ORS 475.005.

14 [(10)] (11) “Registry identification card” means a document issued by the department that iden-  
 15 tifies a person authorized to engage in the medical use of marijuana and the person’s designated  
 16 primary caregiver, if any.

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

21 **(12) “Seedling or start” means a marijuana plant that has no flowers and that is less than**  
 22 **12 inches in height and less than 12 inches in diameter.**

23 [(12)] (13) “Written documentation” means a statement signed by the attending physician of a  
 24 person diagnosed with a debilitating medical condition or copies of the person’s relevant medical  
 25 records.

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

27 475.306. (1) A person who possesses a registry identification card issued pursuant to ORS 475.309  
 28 may engage in, and a designated primary caregiver of such a person may assist in, the medical use  
 29 of marijuana only as justified to mitigate the symptoms or effects of the person’s debilitating medical  
 30 condition.

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

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

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

38 475.320. (1)(a) A registry identification cardholder or the designated primary caregiver of the  
 39 cardholder may possess up to six mature marijuana plants and 24 ounces of [*usable marijuana*] **the**  
 40 **dried leaves, stems and flowers of the Cannabis plant.**

41 (b) Notwithstanding paragraph (a) of this subsection, if a registry identification cardholder has  
 42 been convicted of a Class A or Class B felony under ORS 475.840 to 475.920 for the manufacture or  
 43 delivery of a controlled substance in Schedule I or Schedule II, the registry identification cardholder  
 44 or the designated primary caregiver of the cardholder may possess one ounce of [*usable marijuana*]  
 45 **the dried leaves, stems and flowers of the Cannabis plant** at any given time for a period of five

1 years from the date of the conviction.

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

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

5 (b) May possess up to six mature **marijuana** plants and up to 24 ounces of [*usable marijuana*]  
6 **the dried leaves, stems and flowers of the Cannabis plant** for each cardholder or caregiver for  
7 whom marijuana is being produced.

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

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

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

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

20 (3) Except as provided in subsections (1) and (2) of this section, a registry identification  
21 cardholder, the designated primary caregiver of the cardholder and the person responsible for a  
22 marijuana grow site producing marijuana for the registry identification cardholder may possess a  
23 combined total of up to six mature **marijuana** plants and 24 ounces of [*usable marijuana*] **the dried**  
24 **leaves, stems and flowers of the Cannabis plant** for that registry identification cardholder.

25 (4)(a) A registry identification cardholder, [*and*] the designated primary caregiver of the  
26 cardholder **and the person responsible for a marijuana grow site** may possess a combined total  
27 of up to 18 marijuana seedlings or starts [*as defined by rule of the Department of Human Services*].

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

31 **SECTION 5.** ORS 475.304 is amended to read:

32 475.304. (1) The Department of Human Services shall establish by rule a marijuana grow site  
33 registration system to authorize production of marijuana by a registry identification cardholder, a  
34 designated primary caregiver who grows marijuana for the cardholder or a person who is responsi-  
35 ble for a marijuana grow site. The marijuana grow site registration system adopted must require a  
36 registry identification cardholder to submit an application to the department that includes:

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

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

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

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

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

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

1 produced.

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

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

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

10 (b) A person convicted of a Class A or Class B felony under ORS 475.840 to 475.920 for the  
11 manufacture or delivery of a controlled substance in Schedule I or Schedule II may not be issued  
12 a marijuana grow site registration card or produce marijuana for a registry identification cardholder  
13 for five years from the date of conviction.

14 (c) A person convicted more than once of a Class A or Class B felony under ORS 475.840 to  
15 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may  
16 not be issued a marijuana grow site registration card or produce marijuana for a registry identifi-  
17 cation cardholder.

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

23 **SECTION 6.** 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 does not alone constitute probable cause to search the person  
26 or property of the cardholder or otherwise subject the person or property of the cardholder to in-  
27 spection by any governmental agency.

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

40 **SECTION 7.** ORS 475.324 is amended to read:

41 475.324. A law enforcement officer who determines that a registry identification cardholder is  
42 in possession of amounts of [*usable*] marijuana or numbers of marijuana plants in excess of the  
43 amount or number authorized by ORS 475.320 may confiscate only any [*usable*] marijuana or  
44 **marijuana** plants that are in excess of the amount or number authorized.

45 **SECTION 8.** ORS 167.222 is amended to read:

1 167.222. (1) A person commits the offense of frequenting a place where controlled substances are  
 2 used if the person keeps, maintains, frequents, or remains at a place, while knowingly permitting  
 3 persons to use controlled substances in such place or to keep or sell them in violation of ORS  
 4 475.005 to 475.285 and 475.840 to 475.980.

5 (2) Frequenting a place where controlled substances are used is a Class A misdemeanor.

6 (3) Notwithstanding subsection (2) of this section, if the conviction is for knowingly maintaining,  
 7 frequenting or remaining at a place where less than one avoirdupois ounce of the dried leaves,  
 8 stems, and flowers of the [*plant*] Cannabis **plant** [*family Moraceae*] is found at the time of the offense  
 9 under this section, frequenting a place where controlled substances are used is a Class D violation.

10 (4) As used in this section, “frequents” means repeatedly or habitually visits, goes to or resorts  
 11 to.

12 **SECTION 9.** ORS 475.860 is amended to read:

13 475.860. (1) It is unlawful for any person to deliver marijuana.

14 (2) Unlawful delivery of marijuana is a Class B felony if the delivery is for consideration.

15 (3) Notwithstanding subsection (2) of this section, unlawful delivery of marijuana is a:

16 (a) Class A misdemeanor, if the delivery is for no consideration and consists of less than one  
 17 avoirdupois ounce of the dried leaves, stems and flowers of the [*plant*] Cannabis **plant** [*family*  
 18 *Moraceae*]; or

19 (b) Violation, if the delivery is for no consideration and consists of less than five grams of the  
 20 dried leaves, stems and flowers of the [*plant*] Cannabis **plant** [*family Moraceae*]. A violation under  
 21 this paragraph is punishable by a fine of not less than \$500 and not more than \$1,000. Fines col-  
 22 lected under this paragraph shall be forwarded to the Department of Revenue for deposit in the  
 23 Criminal Fine and Assessment Account established in ORS 137.300.

24 (4) Notwithstanding subsections (2) and (3) of this section, unlawful delivery of marijuana is a:

25 (a) Class A felony, if the delivery is to a person under 18 years of age and the defendant is at  
 26 least 18 years of age and is at least three years older than the person to whom the marijuana is  
 27 delivered; or

28 (b) Class C misdemeanor, if the delivery:

29 (A) Is for no consideration;

30 (B) Consists of less than five grams of the dried leaves, stems and flowers of the [*plant*] Cannabis  
 31 **plant** [*family Moraceae*];

32 (C) Takes place in a public place, as defined in ORS 161.015, that is within 1,000 feet of the real  
 33 property comprising a public or private elementary, secondary or career school attended primarily  
 34 by minors; and

35 (D) Is to a person who is 18 years of age or older.

36 **SECTION 10.** ORS 475.864 is amended to read:

37 475.864. (1) It is unlawful for any person knowingly or intentionally to possess marijuana.

38 (2) Unlawful possession of marijuana is a Class B felony.

39 (3) Notwithstanding subsection (2) of this section, unlawful possession of marijuana is a violation  
 40 if the amount possessed is less than one avoirdupois ounce of the dried leaves, stems and flowers  
 41 of the [*plant*] Cannabis **plant** [*family Moraceae*]. A violation under this subsection is punishable by  
 42 a fine of not less than \$500 and not more than \$1,000. Fines collected under this subsection shall  
 43 be forwarded to the Department of Revenue for deposit in the Criminal Fine and Assessment Ac-  
 44 count established under ORS 137.300.

45 (4) Notwithstanding subsections (2) and (3) of this section, unlawful possession of marijuana is

1 a Class C misdemeanor if the amount possessed is less than one avoirdupois ounce of the dried  
2 leaves, stems and flowers of the [*plant*] Cannabis **plant** [*family Moraceae*] and the possession takes  
3 place in a public place, as defined in ORS 161.015, that is within 1,000 feet of the real property  
4 comprising a public or private elementary, secondary or career school attended primarily by minors.

5 **SECTION 11. This 2009 Act being necessary for the immediate preservation of the public**  
6 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**  
7 **on its passage.**

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