

Senate Bill 959

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 provisions of Oregon Medical Marijuana Act.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to compliance with the Oregon Medical Marijuana Act; creating new provisions; amending
3 ORS 475.304, 475.306, 475.309, 475.316, 475.320, 475.323 and 475.324; and declaring an emergency.

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

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

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

11 *[(a)]* **(A)** The name of the person responsible for the marijuana grow site;

12 *[(b)]* **(B)** The address of the marijuana grow site;

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

15 *[(d)]* **(D)** Any other information the department considers necessary.

16 **(b) A marijuana grow site may not be operated at an address that is within 1,000 feet of**
17 **a school in violation of ORS 475.858.**

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

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

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

25 **(5) A person responsible for a marijuana grow site must possess a true copy of the per-**
26 **son's marijuana grow site registration card if the person possesses marijuana at a location**
27 **other than the grow site, including the residence of the registry identification cardholder or**
28 **designated primary caregiver, if the grow site is not located at the residence.**

29 *[(5)]* **(6)** All usable marijuana, plants, seedlings and seeds associated with the production of
30 marijuana for a registry identification cardholder by a person responsible for a marijuana grow site

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 are the property of the registry identification cardholder and must be provided to the registry
2 identification cardholder upon request.

3 [(6)(a)] **(7)(a)** The department shall conduct a criminal records check under ORS 181.534 of any
4 person whose name is submitted as a person responsible for a marijuana grow site.

5 (b) A person convicted of a [Class A or Class B] felony **in any jurisdiction** [under ORS 475.840
6 to 475.920] for the **possession**, manufacture or delivery of a controlled substance in Schedule I or
7 Schedule II may not be issued a marijuana grow site registration card, **be a designated primary**
8 **caregiver** or produce marijuana for a registry identification cardholder for five years from the date
9 of conviction.

10 (c) A person convicted more than once of a [Class A or Class B] felony **in any jurisdiction**
11 [under ORS 475.840 to 475.920] for the **possession**, manufacture or delivery of a controlled sub-
12 stance in Schedule I or Schedule II may not be issued a marijuana grow site registration card, **be**
13 **a designated primary caregiver** or produce marijuana for a registry identification cardholder.

14 [(7) A registry identification cardholder or the designated primary caregiver of the cardholder may
15 reimburse the person responsible for a marijuana grow site for the costs of supplies and utilities as-
16 sociated with the production of marijuana for the registry identification cardholder. No other costs as-
17 sociated with the production of marijuana for the registry identification cardholder, including the cost
18 of labor, may be reimbursed.]

19 **SECTION 2.** For the purposes of ORS 475.300 to 475.346, the district attorney of each
20 county shall provide the Department of Human Services with identifying information for
21 each person convicted of the possession, manufacture or delivery of a controlled substance
22 in Schedule I or Schedule II.

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

24 475.306. (1) A person who possesses a registry identification card issued pursuant to ORS 475.309
25 may engage in, and a designated primary caregiver of such a person may assist in, the medical use
26 of marijuana only as justified to mitigate the symptoms or effects of the person's debilitating medical
27 condition.

28 (2)(a) A person who is a registry identification cardholder must possess the registry identifica-
29 tion card when using or [transporting] **possessing** marijuana in a location other than the residence
30 of the cardholder **or the marijuana grow site.**

31 **(b) A person who is a designated primary caregiver must possess a designated primary**
32 **caregiver identification card when assisting in the use of or possessing marijuana in a lo-**
33 **cation other than the residence of the cardholder or the marijuana grow site.**

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

38 **SECTION 4.** ORS 475.309 is amended to read:

39 475.309. (1) Except as provided in ORS 475.316, 475.320 and 475.342, a person engaged in or as-
40 sisting in the medical use of marijuana is excepted from the criminal laws of the state for possession,
41 delivery or production of marijuana, aiding and abetting another in the possession, delivery or pro-
42 duction of marijuana or any other criminal offense in which possession, delivery or production of
43 marijuana is an element if the following conditions have been satisfied:

44 (a) The person holds a registry identification card issued pursuant to this section, [has applied
45 for a registry identification card pursuant to subsection (9) of this section,] is the designated primary

1 caregiver of the cardholder [*or applicant,*] or is the person responsible for a marijuana grow site that
2 is producing marijuana for the cardholder and is registered under ORS 475.304; and

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

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

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

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

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

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

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

22 (3) The department shall issue a registry identification card to a person who is under 18 years
23 of age if the person submits the materials required under subsection (2) of this section, and the
24 custodial parent or legal guardian with responsibility for health care decisions for the person under
25 18 years of age signs a written statement that:

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

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

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

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

38 (4) A person applying for a registry identification card pursuant to this section may submit the
39 information required in this section to a county health department for transmittal to the Department
40 of Human Services. A county health department that receives the information pursuant to this sub-
41 section shall transmit the information to the Department of Human Services within five days of re-
42 ceipt of the information. Information received by a county health department pursuant to this
43 subsection shall be confidential and not subject to disclosure, except as required to transmit the
44 information to the Department of Human Services.

45 (5)(a) The department shall verify the information contained in an application submitted pursu-

1 ant to this section and shall approve or deny an application within thirty days of receipt of the
2 application.

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

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

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

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

12 (c) Denial of a registry identification card shall be considered a final department action, subject
13 to judicial review. Only the person whose application has been denied, or, in the case of a person
14 under the age of 18 years of age whose application has been denied, the person's parent or legal
15 guardian, shall have standing to contest the department's action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (C) Annually submit to the department:

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

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

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

6 (8)(a) A person who possesses a registry identification card pursuant to this section and who
7 has been diagnosed by the person's attending physician as no longer having a debilitating medical
8 condition or whose attending physician has determined that the medical use of marijuana is
9 contraindicated for the person's debilitating medical condition shall return the registry identification
10 card and any other associated Oregon Medical Marijuana Program cards to the department within
11 30 calendar days of notification of the diagnosis or notification of the contraindication.

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

17 *[(9) A person who has applied for a registry identification card pursuant to this section but whose
18 application has not yet been approved or denied, and who is contacted by any law enforcement officer
19 in connection with the person's administration, possession, delivery or production of marijuana for
20 medical use may provide to the law enforcement officer a copy of the written documentation submitted
21 to the department pursuant to subsection (2) or (3) of this section and proof of the date of mailing or
22 other transmission of the documentation to the department. This documentation shall have the same
23 legal effect as a registry identification card until such time as the person receives notification that the
24 application has been approved or denied.]*

25 *[(10)]* (9) A registry identification cardholder has the primary responsibility of notifying the
26 primary caregiver and person responsible for the marijuana grow site that produces marijuana for
27 the cardholder of any change in status of the cardholder. If the department is notified by the
28 cardholder that a primary caregiver or person responsible for a marijuana grow site has changed,
29 the department shall notify the primary caregiver or the person responsible for the marijuana grow
30 site by mail at the address of record confirming the change in status and informing the caregiver
31 or person that their card is no longer valid and must be returned to the department.

32 *[(11)]* (10) The department shall revoke the registry identification card of a cardholder if a court
33 has issued an order that prohibits the cardholder from participating in the medical use of marijuana
34 or otherwise participating in the Oregon Medical Marijuana Program under ORS 475.300 to 475.346.
35 The cardholder shall return the registry identification card to the department within seven calendar
36 days of notification of the revocation. If the cardholder is a patient, the patient shall return the
37 patient's card and all other associated Oregon Medical Marijuana Program cards.

38 *[(12)]* (11) The department and employees and agents of the department acting within the course
39 and scope of their employment are immune from any civil liability that might be incurred or imposed
40 for the performance of or failure to perform duties required by this section.

41 **SECTION 5.** ORS 475.316 is amended to read:

42 475.316. (1) No person authorized to possess, deliver or produce marijuana for medical use pur-
43 suant to ORS 475.300 to 475.346 shall be excepted from the criminal laws of this state or shall be
44 deemed to have established an affirmative defense to criminal charges of which possession, delivery
45 or production of marijuana is an element if the person, in connection with the facts giving rise to

1 such charges:

2 **(a) Fails to comply with the provisions of ORS 475.300 to 475.346;**

3 [(a)] **(b)** Drives under the influence of marijuana as provided in ORS 813.010;

4 [(b)] **(c)** Engages in the medical use of marijuana in a public place as that term is defined in
5 ORS 161.015, or in public view or in a correctional facility as defined in ORS 162.135 (2) or youth
6 correction facility as defined in ORS 162.135 (6);

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

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

11 [(e)] **(f)** Manufactures or produces marijuana at a place other than a marijuana grow site au-
12 thorized under ORS 475.304; [or]

13 [(f)] **(g)** Manufactures or produces marijuana at more than one address[.];

14 **(h) Possesses a controlled substance in Schedule I, other than marijuana;**

15 **(i) Possesses a controlled substance in Schedule II or III, without a valid prescription;**

16 **or**

17 **(j) Uses marijuana and is not a registry identification cardholder.**

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

22 **SECTION 6.** ORS 475.320 is amended to read:

23 475.320. (1)(a) A registry identification cardholder or the designated primary caregiver of the
24 cardholder may possess up to six mature marijuana plants and 24 ounces of usable marijuana.

25 (b) Notwithstanding paragraph (a) of this subsection, if a registry identification cardholder has
26 been convicted of a [Class A or Class B] felony **in any jurisdiction** [under ORS 475.840 to
27 475.920] for the **possession**, manufacture or delivery of a controlled substance in Schedule I or
28 Schedule II, the registry identification cardholder or the designated primary caregiver of the
29 cardholder may possess one ounce of usable marijuana at any given time for a period of five years
30 from the date of the conviction.

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

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

34 (b) May possess up to six mature plants and up to 24 ounces of usable marijuana for each
35 cardholder or caregiver for whom marijuana is being produced.

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

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

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

44 (f) Must return the marijuana grow site registration card to the registry identification
45 cardholder to whom the card was issued when requested to do so by the cardholder or when the

1 person responsible for a marijuana grow site ceases producing marijuana for the cardholder or
 2 caregiver.

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

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

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

14 **SECTION 7.** ORS 475.323 is amended to read:

15 475.323. (1) Possession of a registry identification card or designated primary caregiver identifi-
 16 cation card pursuant to ORS 475.309 does not alone constitute probable cause to search the person
 17 or property of the cardholder or otherwise subject the person or property of the cardholder to in-
 18 spection by any governmental agency.

19 (2) Any property interest possessed, owned or used in connection with the medical use of
 20 marijuana or acts incidental to the medical use of marijuana that has been seized by state or local
 21 law enforcement officers may not be harmed, neglected, injured or destroyed while in the possession
 22 of any law enforcement agency. A law enforcement agency has no responsibility to maintain live
 23 marijuana plants lawfully seized. No such property interest may be forfeited under any provision of
 24 law providing for the forfeiture of property other than as a sentence imposed after conviction of a
 25 criminal offense **or pursuant to a civil forfeiture proceeding under ORS chapter 475A**. Usable
 26 marijuana and paraphernalia used to administer marijuana that was seized by any law enforcement
 27 office shall be returned immediately upon a determination by the district attorney in whose county
 28 the property was seized, or the district attorney’s designee, that the person from whom the
 29 marijuana or paraphernalia used to administer marijuana was seized is entitled to the protections
 30 contained in ORS 475.300 to 475.346. The determination may be evidenced, for example, by a decision
 31 not to prosecute, the dismissal of charges or acquittal.

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

33 475.324. A law enforcement officer who determines that a registry identification cardholder is
 34 in possession of amounts of usable marijuana or numbers of marijuana plants in excess of the
 35 amount or number authorized by ORS 475.320 may confiscate *[only any]* **the** usable marijuana *[or]*
 36 **and** plants *[that are in excess of the amount or number authorized]*.

37 **SECTION 9. This 2009 Act being necessary for the immediate preservation of the public**
 38 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
 39 **on its passage.**