

House Bill 2982

Sponsored by Representative WINGARD (at the request of Deputy Emile Burley of the Clackamas County Sheriff's Office) (Presession filed.)

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 Oregon Health Authority to deny application for medical marijuana registry identification card if applicant has been convicted of felony involving controlled substance.

Prohibits person convicted of felony involving controlled substance from using medical marijuana registry identification card.

Requires Oregon Health Authority to conduct criminal records check on persons who possess medical marijuana registry identification card and to revoke card issued to person convicted of felony involving controlled substance.

A BILL FOR AN ACT

1
2 Relating to medical marijuana; creating new provisions; and amending ORS 475.309, 475.316 and
3 475.320.

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

5 **SECTION 1.** ORS 475.309 is amended to read:

6 475.309. (1) Except as provided in ORS 475.316, 475.320 and 475.342, a person engaged in or as-
7 sisting in the medical use of marijuana is excepted from the criminal laws of the state for possession,
8 delivery or production of marijuana, aiding and abetting another in the possession, delivery or pro-
9 duction of marijuana or any other criminal offense in which possession, delivery or production of
10 marijuana is an element if the following conditions have been satisfied:

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

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

19 (2) The Oregon Health Authority shall establish and maintain a program for the issuance of
20 registry identification cards to persons who meet the requirements of this section. Except as pro-
21 vided in subsection (3) of this section, the authority shall issue a registry identification card to any
22 person who pays a fee in the amount established by the authority and provides the following:

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

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

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

28 (d) The name and address of the person's designated primary caregiver, if the person has des-

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 designated a primary caregiver at the time of application; and

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

5 (3) The authority shall issue a registry identification card to a person who is under 18 years of
 6 age if the person submits the materials required under subsection (2) of this section, and the custo-
 7 dial parent or legal guardian with responsibility for health care decisions for the person under 18
 8 years of age signs a written statement that:

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

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

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

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

21 (4) A person applying for a registry identification card pursuant to this section may submit the
 22 information required in this section to a county health department for transmittal to the authority.
 23 A county health department that receives the information pursuant to this subsection shall transmit
 24 the information to the authority within five days of receipt of the information. Information received
 25 by a county health department pursuant to this subsection shall be confidential and not subject to
 26 disclosure, except as required to transmit the information to the authority.

27 (5)(a) The authority shall verify the information contained in an application submitted pursuant
 28 to this section and shall approve or deny an application within thirty days of receipt of the appli-
 29 cation.

30 (b) In addition to the authority granted to the authority under ORS 475.316 to deny an applica-
 31 tion, the authority:

32 (A) May deny an application [*for the following reasons*] if:

33 [(A)] (i) The applicant did not provide the information required pursuant to this section to es-
 34 tablish the applicant's debilitating medical condition and to document the applicant's consultation
 35 with an attending physician regarding the medical use of marijuana in connection with such condi-
 36 tion, as provided in subsections (2) and (3) of this section;

37 [(B)] (ii) The authority determines that the information provided was falsified; or

38 [(C)] (iii) The applicant has been prohibited by a court order from obtaining a registry identifi-
 39 cation card.

40 (B) Shall deny an application if the applicant has been convicted of a felony involving a
 41 controlled substance.

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

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

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

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

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

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

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

12 (E) Any other information that the authority may specify by rule.

13 (b) When the person to whom the authority has issued a registry identification card pursuant
 14 to this section has specified a designated primary caregiver, the authority shall issue an identifica-
 15 tion card to the designated primary caregiver. The primary caregiver's registry identification card
 16 shall contain the information provided in paragraph (a) of this subsection.

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

18 (A) Notify the authority of any change in the person's name, address, attending physician or
 19 designated primary caregiver.

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

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

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

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

27 (C) Annually submit to the authority:

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

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

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

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

42 (b) If, due to circumstances beyond the control of the registry identification cardholder, a
 43 cardholder is unable to obtain a second medical opinion about the cardholder's continuing eligibility
 44 to use medical marijuana before the 30-day period specified in paragraph (a) of this subsection has
 45 expired, the authority may grant the cardholder additional time to obtain a second opinion before

1 requiring the cardholder to return the registry identification card and any associated cards.

2 (9) A person who has applied for a registry identification card pursuant to this section but
 3 whose application has not yet been approved or denied, and who is contacted by any law enforce-
 4 ment officer in connection with the person’s administration, possession, delivery or production of
 5 marijuana for medical use may provide to the law enforcement officer a copy of the written doc-
 6 umentation submitted to the authority pursuant to subsection (2) or (3) of this section and proof of
 7 the date of mailing or other transmission of the documentation to the authority. This documentation
 8 shall have the same legal effect as a registry identification card until such time as the person re-
 9 ceives notification that the application has been approved or denied.

10 (10) A registry identification cardholder has the primary responsibility of notifying the primary
 11 caregiver and person responsible for the marijuana grow site that produces marijuana for the
 12 cardholder of any change in status of the cardholder. If the authority is notified by the cardholder
 13 that a primary caregiver or person responsible for a marijuana grow site has changed, the authority
 14 shall notify the primary caregiver or the person responsible for the marijuana grow site by mail at
 15 the address of record confirming the change in status and informing the caregiver or person that
 16 their card is no longer valid and must be returned to the authority.

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

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

26 **SECTION 2.** ORS 475.316 is amended to read:

27 475.316. (1) No person authorized to possess, deliver or produce marijuana for medical use pur-
 28 suant to ORS 475.300 to 475.346 shall be excepted from the criminal laws of this state or shall be
 29 deemed to have established an affirmative defense to criminal charges of which possession, delivery
 30 or production of marijuana is an element if the person, in connection with the facts giving rise to
 31 such charges:

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

33 (b) Engages in the medical use of marijuana in a public place as that term is defined in ORS
 34 161.015, or in public view or in a correctional facility as defined in ORS 162.135 (2) or youth cor-
 35 rection facility as defined in ORS 162.135 (6);

36 (c) Delivers marijuana to any individual who the person knows is not in possession of a registry
 37 identification card;

38 (d) Delivers marijuana for consideration to any individual, even if the individual is in possession
 39 of a registry identification card;

40 (e) Manufactures or produces marijuana at a place other than a marijuana grow site authorized
 41 under ORS 475.304; or

42 (f) Manufactures or produces marijuana at more than one address.

43 (2) In addition to any other penalty allowed by law, a person who the Oregon Health Authority
 44 finds has willfully violated the provisions of ORS 475.300 to 475.346, or rules adopted under ORS
 45 475.300 to 475.346, may be precluded from obtaining or using a registry identification card for the

1 medical use of marijuana for a period of up to six months, at the discretion of the authority.

2 **(3) In addition to any other penalty provided by law, a person who is convicted of a felony**
 3 **involving a controlled substance is permanently precluded from using a registry identifica-**
 4 **tion card for the medical use of marijuana.**

5 **SECTION 3.** ORS 475.320 is amended to read:

6 475.320. (1)[(a)] A registry identification cardholder or the designated primary caregiver of the
 7 cardholder may possess up to six mature marijuana plants and 24 ounces of usable marijuana.

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

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

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

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

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

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

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

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

30 (3) Except as provided in [*subsections (1) and*] **subsection (2)** of this section, a registry identifi-
 31 cation cardholder, the designated primary caregiver of the cardholder and the person responsible for
 32 a marijuana grow site producing marijuana for the registry identification cardholder may possess a
 33 combined total of up to six mature plants and 24 ounces of usable marijuana for that registry iden-
 34 tification cardholder.

35 (4)(a) A registry identification cardholder and the designated primary caregiver of the
 36 cardholder may possess a combined total of up to 18 marijuana seedlings or starts as defined by rule
 37 of the Oregon Health Authority.

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

41 **SECTION 4. (1) The Oregon Health Authority shall revoke a medical marijuana registry**
 42 **identification card issued to a person convicted before, on or after the effective date of this**
 43 **2011 Act of a felony involving a controlled substance.**

44 **(2) For purposes of subsection (1) of this section, no later than January 1, 2014, the**
 45 **Oregon Health Authority shall conduct a criminal records check on all persons who on the**

1 **effective date of this 2011 Act possess a medical marijuana registry identification card.**

2 **SECTION 5. Section 4 of this 2011 Act is repealed on January 2, 2014.**

3
