



# Green Business Law, LLC

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## MEMORANDUM

**Date:** June 10, 2015

**To:** Joint Committee on Implementing Measure 91

**From:** Bradley Steinman

**Re:** Dash 2 Amendment to HB 2041

Co-Chairs Burdick and Lininger, Hon. Members of the Joint Committee on Implementing Measure 91,

My name is Bradley Steinman, and I am a drug policy reform activist and attorney. I helped finalize the language of Measure 91 before I got admitted to practice law here in Oregon. I am proud to represent medical cannabis patients and their providers in my practice, and look forward to helping the State implement Measure 91's **responsible adult use** cannabis programs by representing **responsible adult use** clients in the near future.

Here are my ideas for the Dash 2 amendment to HB 2041, and the proposed 'privilege tax' on retail sales:

First, the tax needs to be lower. I would recommend imposing a maximum of a 15% total privilege tax cap.

The State privilege tax on Retail Sale could be set at 8%, and allowing local governments that do not ban dispensaries to tack on percentage hikes of up to an additional 3.5% for cities and 3.5% for counties for a total of up to 7% in additional local sales taxes on top of the State's 8%.

Second, on page 1 of the dash 2 amendment to House Bill 2041, at line 13, under SECTION 1, the definition for '**Retail sale**' is too broad and should be reworked. It currently reads:

“(2) ‘Retail sale’ means **any** transfer, exchange, gift or barter of a marijuana item **by any person** to a consumer.

Please consider narrowing the scope of the definition for “Retail sale” by modifying it to apply more narrowly to dispensary sales to responsible adult use consumers. I believe it would make the most sense if “Retail sale” were defined as meaning something along the lines of either:

- (a) any **sale** by a licensed dispensary to any consumer, or on behalf of any consumer; or,
- (b) any **transfer for consideration** by a licensed dispensary to any consumer, or on behalf of any consumer.

Additionally, the tax should reflect the actual facts on the ground of how consumers are actually engaging in the responsible adult use of cannabis and the medical use of cannabis in a communal or social setting. Under

the current definition of Retail sale, two responsible adult consumers sharing of a single bowl of dried cannabis flower would be a taxable event.

Also, the medical expenses of patients suffering from debilitating medical conditions certainly deserves to be subsidized by the State, and patients deserve to be excluded from the State privilege tax in any event. I appreciate the proposal to incentivize cities and counties to not ban the medical use or responsible adult use of cannabis in their jurisdictions by allowing them to impose a tax on top of the State's Retail sales privilege tax.

The legislative history of the manner in which our state cannabis laws evolved should be reflected in the statutory language of the privilege tax. Before there was Measure 91, SB 1531, and HB 3460, there was the federal crackdown on medical marijuana of 2011-12, Measure 80, *Gonzales v. Raich*, two failed dispensary initiatives, and 2005's SB 1085.

SB 1085 expanded the OMMP registry program to add 'a marijuana grow site registration system to authorize production of marijuana by a registry identification cardholder, a designated primary caregiver who grows marijuana for the cardholder or a person who is responsible for a marijuana grow site.' It also amended ORS 475.302's definition of "Delivery", added a definition for "Marijuana grow site", established the cardholder class of a 'person responsible for a marijuana grow site'.

The clear legislative intent of SB 1085 was to codify that OMMP cardholders' sharing of medical marijuana amongst one another, within limits, would be excepted from state criminal and civil penalty, so long as the transfers were only among and between cardholders, the transfers were not for consideration, and other restrictions were observed.

Under SB 1085, a grow site registry card is issued to the registry identification cardholder (patient), who is required to display the card at the grow site, whenever marijuana is being produced. If marijuana is being cultivated for more than one registry identification cardholder (patient) at one grow site, each registry identification cardholder's grow site registration card must be posted there. All usable marijuana, plants, seedlings and seeds associated with the production of marijuana for a patient by a grower are the property of the registry identification cardholder and must be provided to the patient upon request.

Prior to HB 3460, a patient or caregiver could only reimburse the person responsible for a marijuana grow site for the costs of supplies and utilities associated with the production of marijuana for the registry identification cardholder. No other costs associated with the production of marijuana for the registry identification cardholder, including the cost of labor, could be reimbursed. It was not until HB 3460 passed that the restrictions on reimbursing a grower for their labor and other costs of doing business were ameliorated, and state legal cannabis industry was able to legally develop here in Oregon.

Please consider the point brought up in the article, "Colorado Cuts Marijuana Tax, Targets Black Market, While Oregon Eyes 20% Tax," and publicly available online at:

[http://www.forbes.com/fdc/welcome\\_mjx.shtml](http://www.forbes.com/fdc/welcome_mjx.shtml)

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“Colorado is leading again, this time with a permanent tax break on recreational marijuana. The state is lowering the tax from 10% to 8% effective in July 2017, a move that *could cut into Colorado’s black market.* Colorado was the first state to legalize marijuana for recreational use, and now it’s passed a marijuana tax relief. There is even a one-time tax holiday on September 16, 2015, from the 10% state sales tax.[...]”

Please consider lowering the tax, as 20% is more than a bit high.

This high of a rate will strangle the nascent legal industry, embolden and reward the black market, and would lead to fraud, tax evasion, and over-subsidization by the State.

Very truly yours,

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