

House Bill 2722

Sponsored by Representative NOSSE

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**.

Includes physician assistant, naturopathic physician and nurse practitioner in definition of "attending provider" who has primary responsibility for treatment of person diagnosed with debilitating medical condition. Removes requirement that "debilitating medical condition" be approved by Oregon Health Authority for treatment with medical use of marijuana. Allows health care professional whose scope of practice includes administration of pharmaceuticals to administer medical marijuana product to registry identification cardholder.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to medical use of marijuana; creating new provisions; amending ORS 475B.791, 475B.797,
3 475B.913, 475B.916, 475B.919 and 475B.952; repealing ORS 475B.946; and prescribing an effective
4 date.

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

6 **SECTION 1.** ORS 475B.791 is amended to read:

7 475B.791. As used in ORS 475B.785 to 475B.949:

8 (1) "Attending [*physician*] **provider**" means **any of the following licensed health care pro-**
9 **viders who has primary responsibility for the care and treatment of a person diagnosed with**
10 **a debilitating medical condition:**

11 (a) A physician licensed under ORS chapter 677 [*who has primary responsibility for the care and*
12 *treatment of a person diagnosed with a debilitating medical condition.*];

13 (b) **A physician assistant licensed under ORS 677.505 to 677.525;**

14 (c) **A naturopathic physician licensed under ORS chapter 685; or**

15 (d) **A nurse practitioner licensed under ORS 678.375 to 678.390.**

16 (2) "Cannabinoid" means any of the chemical compounds that are the active constituents of
17 marijuana.

18 (3) "Cannabinoid concentrate" means a substance obtained by separating cannabinoids from
19 marijuana by:

20 (a) A mechanical extraction process;

21 (b) A chemical extraction process using a nonhydrocarbon-based solvent, such as vegetable
22 glycerin, vegetable oils, animal fats, isopropyl alcohol or ethanol;

23 (c) A chemical extraction process using the hydrocarbon-based solvent carbon dioxide, provided
24 that the process does not involve the use of high heat or pressure; or

25 (d) Any other process identified by the Oregon Health Authority, in consultation with the
26 Oregon Liquor Control Commission, by rule.

27 (4) "Cannabinoid edible" means food or potable liquid into which a cannabinoid concentrate,
28 cannabinoid extract or dried leaves or flowers of marijuana have been incorporated.

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 (5) “Cannabinoid extract” means a substance obtained by separating cannabinoids from
 2 marijuana by:

3 (a) A chemical extraction process using a hydrocarbon-based solvent, such as butane, hexane
 4 or propane;

5 (b) A chemical extraction process using the hydrocarbon-based solvent carbon dioxide, if the
 6 process uses high heat or pressure; or

7 (c) Any other process identified by the Oregon Health Authority, in consultation with the
 8 Oregon Liquor Control Commission, by rule.

9 (6) “Debilitating medical condition” means:

10 (a) Cancer, glaucoma, a degenerative or pervasive neurological condition, positive status for
 11 human immunodeficiency virus or acquired immune deficiency syndrome, or a side effect related to
 12 the treatment of those medical conditions;

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

15 (A) Cachexia;

16 (B) Severe pain;

17 (C) Severe nausea;

18 (D) Seizures, including seizures caused by epilepsy; or

19 (E) Persistent muscle spasms, including spasms caused by multiple sclerosis;

20 (c) Post-traumatic stress disorder; or

21 (d) Any other medical condition or side effect related to the treatment of a medical condition
 22 *[adopted by the Oregon Health Authority by rule or approved by the authority pursuant to a petition*
 23 *filed under ORS 475B.946]* **that an attending provider determines, in accordance with**
 24 **evidence-based practices and the attending provider’s professional judgment, may be miti-**
 25 **gated by the medical use of marijuana.**

26 (7)(a) “Delivery” has the meaning given that term in ORS 475.005.

27 (b) “Delivery” does not include transfer of marijuana by a registry identification cardholder to
 28 another registry identification cardholder if no consideration is paid for the transfer.

29 (8)(a) “Designated primary caregiver” means an individual:

30 (A) Who is 18 years of age or older;

31 (B) Who has significant responsibility for managing the well-being of a person who has been
 32 diagnosed with a debilitating medical condition; and

33 (C) Who is designated as the person responsible for managing the well-being of a person who
 34 has been diagnosed with a debilitating medical condition on that person’s application for a registry
 35 identification card or in other written notification submitted to the authority.

36 (b) “Designated primary caregiver” does not include a person’s attending [*physician*] **provider**.

37 (9) “High heat” means a temperature exceeding 180 degrees.

38 (10) “Immature marijuana plant” means a marijuana plant that is not flowering.

39 (11)(a) “Marijuana” means the plant Cannabis family Cannabaceae, any part of the plant
 40 Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae.

41 (b) “Marijuana” does not include industrial hemp, as defined in ORS 571.300.

42 (12) “Marijuana grow site” means a location registered under ORS 475B.810 where marijuana
 43 is produced for use by a registry identification cardholder.

44 (13) “Marijuana processing site” means a marijuana processing site registered under ORS
 45 475B.840 or a site for which an applicant has submitted an application for registration under ORS

1 475B.840.

2 (14) “Mature marijuana plant” means a marijuana plant that is not an immature marijuana
3 plant.

4 (15)(a) “Medical cannabinoid product” means a cannabinoid edible and any other product in-
5 tended for human consumption or use, including a product intended to be applied to a person’s skin
6 or hair, that contains cannabinoids or dried leaves or flowers of marijuana.

7 (b) “Medical cannabinoid product” does not include:

8 (A) Usable marijuana by itself;

9 (B) A cannabinoid concentrate by itself;

10 (C) A cannabinoid extract by itself; or

11 (D) Industrial hemp, as defined in ORS 571.300.

12 (16) “Medical marijuana dispensary” means a medical marijuana dispensary registered under
13 ORS 475B.858 or a site for which an applicant has submitted an application for registration under
14 ORS 475B.858.

15 (17) “Medical use of marijuana” means the production, processing, possession, delivery or ad-
16 ministration of marijuana, or use of paraphernalia used to administer marijuana, to mitigate the
17 symptoms or effects of a debilitating medical condition.

18 (18) “Person designated to produce marijuana by a registry identification cardholder” means a
19 person designated to produce marijuana by a registry identification cardholder under ORS 475B.810
20 who produces marijuana for a registry identification cardholder at an address other than the address
21 where the registry identification cardholder resides or at an address where more than 12 mature
22 marijuana plants are produced.

23 (19) “Process” means the compounding or conversion of marijuana into medical cannabinoid
24 products, cannabinoid concentrates or cannabinoid extracts.

25 (20) “Production” means:

26 (a) Planting, cultivating, growing, trimming or harvesting marijuana; or

27 (b) Drying marijuana leaves or flowers.

28 (21) “Registry identification card” means a document issued by the Oregon Health Authority
29 under ORS 475B.797 that identifies a person authorized to engage in the medical use of marijuana
30 and, if the person has a designated primary caregiver under ORS 475B.804, the person’s designated
31 primary caregiver.

32 (22) “Registry identification cardholder” means a person to whom a registry identification card
33 has been issued under ORS 475B.797.

34 (23)(a) “Usable marijuana” means the dried leaves and flowers of marijuana.

35 (b) “Usable marijuana” does not include:

36 (A) The seeds, stalks and roots of marijuana; or

37 (B) Waste material that is a by-product of producing marijuana.

38 (24) “Written documentation” means a statement signed by the attending [*physician*] **provider**
39 of a person diagnosed with a debilitating medical condition or copies of the person’s relevant med-
40 ical records.

41 **SECTION 2.** ORS 475B.797 is amended to read:

42 475B.797. (1) The Oregon Health Authority shall establish a program for the issuance of registry
43 identification cards to applicants who meet the requirements of this section.

44 (2) The authority shall issue a registry identification card to an applicant who is 18 years of age
45 or older if the applicant pays a fee in an amount established by the authority by rule and submits

1 to the authority an application containing the following information:

2 (a) Written documentation from the applicant's attending [*physician*] **provider** stating that the
 3 attending [*physician*] **provider** has diagnosed the applicant as having a debilitating medical condi-
 4 tion and that the medical use of marijuana may mitigate the symptoms or effects of the applicant's
 5 debilitating medical condition;

6 (b) The name, address and date of birth of the applicant;

7 (c) The name, address and telephone number of the applicant's attending [*physician*] **provider**;

8 (d) Proof of residency, submitted in a form required by the authority by rule;

9 (e) The name and address of the applicant's designated primary caregiver, if the applicant is
 10 designating a primary caregiver under ORS 475B.804; and

11 (f) The information described in ORS 475B.810 (2), if the applicant is applying to produce
 12 marijuana or designate another person under ORS 475B.810 to produce marijuana.

13 (3)(a) The authority shall issue a registry identification card to an applicant who is under 18
 14 years of age if:

15 (A) The applicant pays the fee and submits the application described in subsection (2) of this
 16 section; and

17 (B) The custodial parent or legal guardian who is responsible for the health care decisions of
 18 the applicant signs and submits to the authority a written statement that:

19 (i) The applicant's attending [*physician*] **provider** has explained to the applicant and to the
 20 custodial parent or legal guardian the possible risks and benefits of the medical use of marijuana;

21 (ii) The custodial parent or legal guardian consents to the medical use of marijuana by the ap-
 22 plicant;

23 (iii) The custodial parent or legal guardian agrees to serve as the applicant's designated primary
 24 caregiver; and

25 (iv) The custodial parent or legal guardian agrees to control the acquisition, dosage and fre-
 26 quency of the medical use of marijuana by the applicant.

27 (b) An applicant who is under 18 years of age may not apply to produce marijuana under sub-
 28 section (2)(f) of this section.

29 (4) The authority shall:

30 (a) On the date on which the authority receives an application described in subsection (2) of this
 31 section, issue a receipt to the applicant verifying that the authority received an application under
 32 subsection (2) or (3) of this section; and

33 (b) Approve or deny an application received under subsection (2) or (3) of this section within
 34 30 days after receiving the application.

35 (5)(a) If the authority approves an application, the authority shall issue a serially numbered
 36 registry identification card to the applicant within five days after approving the application. The
 37 registry identification card must include the following information:

38 (A) The registry identification cardholder's name, address and date of birth;

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

40 (C) If the registry identification cardholder designated a primary caregiver under ORS 475B.804,
 41 the name and address of the registry identification cardholder's designated primary caregiver; and

42 (D) Any other information required by the authority by rule.

43 (b) If the registry identification cardholder designated a primary caregiver under ORS 475B.804,
 44 the authority shall issue an identification card to the designated primary caregiver. The identifica-
 45 tion card must contain the information required by paragraph (a) of this subsection.

- 1 (6) A registry identification cardholder shall:
- 2 (a) In a form and manner prescribed by the authority, notify the authority of any change con-
- 3 cerning the registry identification cardholder's:
- 4 (A) Name, address or attending [*physician*] **provider**;
- 5 (B) Designated primary caregiver, including the designation of a primary caregiver made at a
- 6 time other than at the time of applying for or renewing a registry identification card; or
- 7 (C) Person responsible for a marijuana grow site, including the designation of a person respon-
- 8 sible for a marijuana grow site made at a time other than at the time of applying for or renewing
- 9 a registry identification card.
- 10 (b) Annually renew the registry identification card by paying a fee in an amount established by
- 11 the authority by rule and submitting to the authority an application that contains the following in-
- 12 formation:
- 13 (A) Updated written documentation from the registry identification cardholder's attending [*phy-*
- 14 *sician*] **provider** stating that the registry identification cardholder still has a debilitating medical
- 15 condition and that the medical use of marijuana may mitigate the symptoms or effects of the registry
- 16 identification cardholder's debilitating medical condition;
- 17 (B) The information described in subsection (2)(b) to (f) of this section; and
- 18 (C) If the registry identification cardholder is under 18 years of age, a statement signed by the
- 19 custodial parent or legal guardian of the registry identification cardholder that meets the require-
- 20 ments of subsection (3) of this section.
- 21 (7) The authority shall:
- 22 (a) On the date on which the authority receives an application described in subsection (2) of this
- 23 section, issue a receipt to the applicant verifying that the authority received an application under
- 24 subsection (6)(b) of this section; and
- 25 (b) Approve or deny an application received under subsection (6)(b) of this section within 30
- 26 days after receiving the application.
- 27 (8)(a) If the registry identification cardholder's attending [*physician*] **provider** determines that
- 28 the registry identification cardholder no longer has a debilitating medical condition, or determines
- 29 that the medical use of marijuana is contraindicated for the registry identification cardholder's de-
- 30 bilitating medical condition, the registry identification cardholder shall return the registry identifi-
- 31 cation card to the authority within 30 calendar days after receiving notice of the determination.
- 32 (b) If, because of circumstances beyond the control of the registry identification cardholder, a
- 33 registry identification cardholder is unable to obtain a second medical opinion about the registry
- 34 identification cardholder's continuing eligibility for the medical use of marijuana before having to
- 35 return the registry identification card to the authority, the authority may grant the registry iden-
- 36 tification cardholder additional time to obtain a second medical opinion.
- 37 (9)(a) The authority may deny an application for a registry identification card or an application
- 38 to renew a registry identification card, or may suspend or revoke a registry identification card, if:
- 39 (A) The applicant or registry identification cardholder does not provide the information required
- 40 by this section;
- 41 (B) The authority determines that the applicant or registry identification cardholder provided
- 42 false information; or
- 43 (C) The authority determines that the applicant or registry identification cardholder violated a
- 44 provision of ORS 475B.785 to 475B.949 or a rule adopted under ORS 475B.785 to 475B.949.
- 45 (b) If a registry identification card is revoked, any associated identification card issued under

1 subsection (5)(b) of this section, or marijuana grow site registration card issued under ORS 475B.810
 2 (6), shall also be revoked.

3 (c) A person whose application is denied, or whose registry identification card is revoked, under
 4 this subsection may not reapply for a registry identification card for six months from the date of the
 5 denial or revocation unless otherwise authorized by the authority.

6 (10)(a) The authority may deny a designation of a primary caregiver made under ORS 475B.804,
 7 or suspend or revoke an associated identification card issued under subsection (5)(b) of this section,
 8 if the authority determines that the designee or the registry identification cardholder violated a
 9 provision of ORS 475B.785 to 475B.949 or a rule adopted under ORS 475B.785 to 475B.949.

10 (b) A person whose designation has been denied, or whose identification card has been revoked,
 11 under this subsection may not be designated as a primary caregiver under ORS 475B.804 for six
 12 months from the date of the denial or revocation unless otherwise authorized by the authority.

13 (11)(a) Notwithstanding subsection (2) or (6)(b) of this section, if an applicant for a registry
 14 identification card, or a registry identification cardholder applying for renewal of a registry iden-
 15 tification card, submits to the authority proof of having served in the Armed Forces of the United
 16 States, the authority may not impose a fee that is greater than \$20 for the issuance or renewal of
 17 the registry identification card.

18 (b) Notwithstanding subsection (6)(b)(A) of this section, the requirement that a registry identifi-
 19 cation cardholder include in the application to renew a registry identification card updated written
 20 documentation from the cardholder's attending [*physician*] **provider** regarding the cardholder's con-
 21 tinuing debilitating medical condition does not apply to a service-disabled veteran who:

22 (A) Has been assigned a total and permanent disability rating for compensation that rates the
 23 veteran as unable to secure or follow a substantially gainful occupation as a result of service-
 24 connected disabilities as described in 38 C.F.R. 4.16; or

25 (B) Has a United States Department of Veterans Affairs total disability rating of 100 percent
 26 as a result of an injury or illness that the veteran incurred, or that was aggravated, during active
 27 military service and who received a discharge or release under other than dishonorable conditions.

28 (12) For any purpose described in ORS 475B.785 to 475B.949, including exemption from criminal
 29 liability under ORS 475B.907, a receipt issued by the authority verifying that an application has
 30 been submitted to the authority under subsection (2), (3) or (6)(b) of this section has the same legal
 31 effect as a registry identification card for 30 days following the date on which the receipt was issued
 32 to the applicant.

33 **SECTION 3.** ORS 475B.913 is amended to read:

34 475B.913. (1) Except as provided in ORS 475B.910, a person has an affirmative defense to a
 35 criminal charge of possession, delivery or manufacture of marijuana, or any other criminal offense
 36 in which possession, delivery or manufacture of marijuana is an element, if the person charged with
 37 the offense:

38 (a) Was diagnosed with a debilitating medical condition within 12 months of the date on which
 39 the person was arrested and was advised by the person's attending [*physician*] **provider** that the
 40 medical use of marijuana may mitigate the symptoms or effects of that debilitating medical condi-
 41 tion;

42 (b) Is engaged in the medical use of marijuana; and

43 (c) Possesses, delivers or manufactures marijuana only in quantities permitted under ORS
 44 475B.831.

45 (2) A person does not need to lawfully possess a registry identification card to assert the affir-

1 mative defense established in this section.

2 (3) A person engaged in the medical use of marijuana who claims that marijuana provides med-
 3 ically necessary benefits and who is charged with a crime pertaining to the use of marijuana is not
 4 precluded from presenting a defense of choice of evils, as set forth in ORS 161.200, or from pre-
 5 senting evidence supporting the necessity of marijuana for treatment of a specific disease or medical
 6 condition, provided that:

7 (a) The person possesses, delivers or manufactures marijuana only as permitted under ORS
 8 475B.831 (1); and

9 (b) The person has taken a substantial step toward complying with the provisions of ORS
 10 475B.785 to 475B.949.

11 (4) A defendant proposing to use the affirmative defense established in this section in a criminal
 12 action shall, not less than five days before the trial of the cause, file and serve upon the district
 13 attorney a written notice of the intention to assert the affirmative defense. The notice must specif-
 14 ically state the reasons why the defendant is entitled to assert the affirmative defense and the fac-
 15 tual basis for the affirmative defense. If the defendant fails to file and serve the notice, the defendant
 16 is not permitted to assert the affirmative defense at the trial of the cause unless the court orders,
 17 for good cause, otherwise.

18 **SECTION 4.** ORS 475B.916 is amended to read:

19 475B.916. The **Oregon Board of Naturopathic Medicine, the Oregon Medical Board and the**
 20 **Oregon State Board of Nursing** may not impose a civil penalty or take other disciplinary action
 21 against an attending [*physician*] **provider over whom a board has regulatory authority** for:

22 (1) Advising a person diagnosed as having a debilitating medical condition by the attending
 23 [*physician or*] **provider or** another physician licensed under ORS chapter 677, **another physician**
 24 **assistant licensed under ORS 677.505 to 677.525, another naturopathic physician licensed un-**
 25 **der ORS chapter 685 or another nurse practitioner licensed under ORS 678.375 to 678.390**
 26 about the risks and benefits associated with the medical use of marijuana or that the medical use
 27 of marijuana may mitigate the symptoms or effects of the person's debilitating medical condition,
 28 provided that the advice is based on the attending [*physician's*] **provider's** personal assessment of
 29 the person's medical history and current medical condition; or

30 (2) Providing the written documentation necessary for issuance or renewal of a registry iden-
 31 tification card under ORS 475B.797, provided that the written documentation is based on the at-
 32 tending [*physician's*] **provider's** personal assessment of the person's medical history and current
 33 medical condition and the attending [*physician*] **provider** has discussed with the person the potential
 34 risks and benefits associated with the medical use of marijuana.

35 **SECTION 5.** ORS 475B.919 is amended to read:

36 475B.919. (1) A professional licensing board may not impose a civil penalty or take other disci-
 37 plinary action against a licensee based on the licensee's medical use of marijuana under the pro-
 38 visions of ORS 475B.785 to 475B.949 or actions taken by the licensee pursuant to the licensee's
 39 designation as a primary caregiver under ORS 475B.804.

40 (2)(a) A [*licensed*] health care professional **who holds an authorization issued by this state**
 41 **to practice a health care profession and whose scope of practice includes the administration**
 42 **of pharmaceuticals** may administer medical marijuana to a person who possesses a registry iden-
 43 tification card and resides in a licensed health care facility [*if the administration of pharmaceuticals*
 44 *is within the scope of practice of the licensed health care professional*]. Administration of medical
 45 marijuana under this subsection may not take place in a public place as defined in ORS 161.015 or

1 in the presence of a person under 18 years of age. If the medical marijuana administered under this
 2 subsection is smoked, adequate ventilation must be provided.

3 (b) Nothing in this subsection requires[:]

4 [(A)] a [*licensed*] health care professional **described in this subsection** to administer medical
 5 marijuana[; or]

6 [(B) A *licensed health care facility to make accommodations for the administration of medical*
 7 *marijuana*].

8 **SECTION 6.** ORS 475B.952 is amended to read:

9 475B.952. (1) The Oregon Cannabis Commission is established within the Oregon Health Au-
 10 thority. The commission consists of:

11 (a) The Public Health Officer or the Public Health Officer’s designee; and

12 (b) Eight members appointed by the Governor as follows:

13 (A) A registry identification cardholder, as defined in ORS 475B.791;

14 (B) A person designated to produce marijuana by a registry identification cardholder, as defined
 15 in ORS 475B.791;

16 (C) An attending [*physician*] **provider**, as defined in ORS 475B.791;

17 (D) A person representing the Oregon Health Authority;

18 (E) A person representing the Oregon Liquor Control Commission;

19 (F) A local health officer, as described in ORS 431.418;

20 (G) A law enforcement officer; and

21 (H) A person knowledgeable about research proposal grant protocols.

22 (2) The term of office of each member of the commission is four years, but a member serves at
 23 the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall
 24 appoint a successor whose term begins on January 1 of the following year. A member is eligible for
 25 reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to be-
 26 come immediately effective for the unexpired term.

27 (3) The appointment of each member of the commission is subject to confirmation by the Senate
 28 in the manner prescribed in ORS 171.562 and 171.565.

29 (4) Members of the commission are not entitled to compensation, but may be reimbursed for
 30 actual and necessary travel and other expenses incurred by them in the performance of their official
 31 duties in the manner and amounts provided for in ORS 292.495.

32 **SECTION 7. ORS 475B.946 is repealed.**

33 **SECTION 8. The amendments to ORS 475B.913, 475B.916 and 475B.919 by sections 3, 4 and**
 34 **5 of this 2019 Act apply to conduct occurring on or after the operative date of this 2019 Act.**

35 **SECTION 9. (1) The amendments to ORS 475B.791, 475B.797, 475B.913, 475B.916, 475B.919**
 36 **and 475B.952 by sections 1 to 6 of this 2019 Act and the repeal of ORS 475B.946 by section 7**
 37 **of this 2019 Act become operative on January 1, 2020.**

38 (2) **The Oregon Health Authority, the Oregon Board of Naturopathic Medicine, the**
 39 **Oregon Medical Board and the Oregon State Board of Nursing may take any action before**
 40 **the operative date specified in subsection (1) of this section that is necessary to enable the**
 41 **authority and the boards to exercise, on and after the operative date specified in subsection**
 42 **(1) of this section, the duties, functions and powers conferred on the authority and the**
 43 **boards by the amendments to ORS 475B.791, 475B.797, 475B.913, 475B.916, 475B.919 and**
 44 **475B.952 by sections 1 to 6 of this 2019 Act and the repeal of ORS 475B.946 by section 7 of this**
 45 **2019 Act.**

1 **SECTION 10.** This 2019 Act takes effect on the 91st day after the date on which the 2019
2 regular session of the Eightieth Legislative Assembly adjourns sine die.
3 _____