

Senate Bill 717

Sponsored by Senator KRUSE

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 laws relating to medical use of marijuana.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to medical use of marijuana; amending ORS 475.302, 475.306, 475.309, 475.312, 475.316 and
3 475.319; and declaring an emergency.

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

5 **SECTION 1.** ORS 475.302 is amended to read:

6 475.302. As used in ORS 475.300 to 475.346:

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

9 (2) "Debilitating medical condition" means:

10 (a) Cancer, glaucoma, positive status for human immunodeficiency virus or acquired immune
11 deficiency syndrome, or treatment for these conditions;

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

14 (A) Cachexia;

15 (B) Severe pain;

16 (C) Severe nausea;

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

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

19 or

20 (c) Any other medical condition or treatment for a medical condition adopted by the department
21 by rule or approved by the department pursuant to [*a petition submitted pursuant to*] ORS 475.334.

22 (3) "Delivery" has the meaning given that term in ORS 475.005.

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

24 (5)(a) "Designated primary caregiver" means an individual 18 years of age or older:

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

27 (B) Who is designated as [*such on that*] a **primary caregiver on a person's application for a**
28 registry identification card or in other written notification to the department.

29 (b) "Designated primary caregiver" does not include the person's attending physician.

30 (6) "**Grow site**" means the street address at which marijuana for medical use will be
31 produced.

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

2 [(7)] (8) “Medical use of marijuana” means the production, possession, delivery, or adminis-
3 tration of marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive
4 benefit of a person to mitigate the symptoms or effects of his or her debilitating medical condition.

5 [(8)] (9) “Production” has the same meaning given that term in ORS 475.005.

6 [(9)] (10) “Registry identification card” means a document issued by the department that iden-
7 tifies a person authorized to engage in the medical use of marijuana and the person’s designated
8 primary caregiver, if any.

9 [(10)] (11) “Usable marijuana” means the dried leaves and flowers of the plant Cannabis family
10 Moraceae, and any mixture or preparation thereof, that are appropriate for medical use as allowed
11 in ORS 475.300 to 475.346. “Usable marijuana” does not include the seeds, stalks and roots of the
12 plant.

13 [(11)] (12) “Written documentation” means a statement signed **and dated** by the attending phy-
14 sician of a person diagnosed with a debilitating medical condition or copies of the person’s relevant
15 medical records **signed and dated by the attending physician**.

16 **SECTION 2.** ORS 475.309 is amended to read:

17 475.309. (1) Except as provided in ORS 475.316 and 475.342, a person engaged in or assisting in
18 the medical use of marijuana is excepted from the criminal laws of the state for possession, delivery
19 or production of marijuana, aiding and abetting another in the possession, delivery or production
20 of marijuana or any other criminal offense in which possession, delivery or production of marijuana
21 is an element if the following conditions have been satisfied:

22 (a) The person holds a registry identification card issued pursuant to this section, has applied
23 for a registry identification card pursuant to *[subsection (9) of]* this section or is the designated
24 primary caregiver of a cardholder or applicant; and

25 (b) The person who has a debilitating medical condition and the person’s primary caregiver are
26 collectively in possession of, delivering or producing marijuana for medical use in the amounts al-
27 lowed in ORS 475.306.

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

33 (a) Valid, written documentation *[from the person’s attending physician]* stating that the person
34 has been diagnosed with a debilitating medical condition and that the medical use of marijuana may
35 mitigate the symptoms or effects of the person’s debilitating medical condition;

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

37 (c) The name, address and telephone number of the person’s attending physician; *[and]*

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

40 (e) **The grow site for the person; and**

41 (f) **A signed statement that the person has read educational materials about the medical**
42 **use of marijuana or has read ORS 475.300 to 475.346 and understands the legal requirements**
43 **for the medical use of marijuana. The department shall provide educational materials in a**
44 **written form and on its website that explain the purpose and legal requirements for the**
45 **medical use of marijuana.**

1 (3) The department shall issue a registry identification card to a person who is under 18 years
 2 of age if the person submits the materials required under subsection (2) of this section, and the
 3 custodial parent or legal guardian with responsibility for health care decisions for the person [*under*
 4 *18 years of age*] signs a written statement that:

5 (a) The **person's** attending physician [*of the person under 18 years of age*] has explained to
 6 [*that*] **the** person and to the custodial parent or legal guardian with responsibility for health care
 7 decisions for the person [*under 18 years of age*] the possible risks and benefits of the medical use
 8 of marijuana;

9 (b) The custodial parent or legal guardian with responsibility for health care decisions for the
 10 person [*under 18 years of age*] consents to the use of marijuana by the person [*under 18 years of*
 11 *age*] for medical purposes;

12 (c) The custodial parent or legal guardian with responsibility for health care decisions for the
 13 person [*under 18 years of age*] agrees to serve as the designated primary caregiver for the person
 14 [*under 18 years of age*]; and

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

18 (4) A person applying for a registry identification card pursuant to this section may submit the
 19 information required [*in*] **by** this section to a county health department for transmittal to the De-
 20 partment of Human Services. A county health department that receives the information pursuant to
 21 this subsection shall transmit the information to the Department of Human Services within five days
 22 of receipt of the information. Information received by a county health department pursuant to this
 23 subsection [*shall be*] **is** confidential and **is** not subject to disclosure, except as required to transmit
 24 the information to the Department of Human Services.

25 (5) The department shall verify the information contained in an application submitted pursuant
 26 to this section and shall approve or deny an application within [*thirty*] **30** days of receipt of the
 27 application. **As part of the verification process, the department shall inform the applicant's**
 28 **attending physician if there has been a previous diagnosis by another attending physician**
 29 **that the applicant is no longer affected by a debilitating medical condition or that continued**
 30 **medical use of marijuana is contraindicated.**

31 [(a)] (6) The department may deny an application only for the following reasons:

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

36 [(B)] (b) The department determines that the information provided was falsified; **or**

37 (c) **The applicant has been convicted of violating ORS 475.992 (1)(a), (b) or (c) or an**
 38 **equivalent offense in another jurisdiction.**

39 [(b)] (7) Denial of a registry identification card [*shall be considered*] **is** a final department action,
 40 subject to judicial review. Only the person whose application has been denied[,] or, [*in the case of*
 41 *a*] **if the** person **is** under [*the age of*] 18 years of age [*whose application has been denied*], the person's
 42 **custodial** parent or legal guardian, [*shall have*] **has** standing to contest the department's action.

43 [(c)] (8) [*Any*] **A** person whose application has been denied **under subsection (6)(a) or (b) of**
 44 **this section** may not reapply for six months from the date of the denial, unless [*so*] authorized to
 45 **do so** by the department or a court of competent jurisdiction. **The department may permanently**

1 **prohibit a person from making further application if the person's application was denied un-**
 2 **der subsection (6)(c) of this section.**

3 [(6)(a)] **(9)(a)** If the department has verified the information submitted pursuant to [subsections
 4 (2) and (3)] **subsection (2) or (3)** of this section and none of the reasons for denial listed in sub-
 5 section [(5)(a)] **(6)** of this section is applicable, the department shall issue a serially numbered reg-
 6 istry identification card within five days of verification of the information. The registry
 7 identification card shall state:

8 (A) The [cardholder's] **person's** name, address and date of birth;

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

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

11 (D) Such other information as the department may specify by rule; **and**

12 **(E) The person's grow site.**

13 (b) When the person to whom the department has issued a registry identification card pursuant
 14 to this [section] **subsection** has specified a designated primary caregiver, the department shall issue
 15 an identification card to the designated primary caregiver. The primary caregiver's [registry] iden-
 16 tification card shall contain the information [provided in] **required by** paragraph (a) of this sub-
 17 section.

18 [(7)(a)] **(10)(a)** A person who possesses a registry identification card shall:

19 (A) Notify the department of any change in the person's name, address, **telephone number**, at-
 20 tending physician, [or] designated primary caregiver **or grow site**; and

21 (B) Annually submit to the department:

22 (i) Updated written documentation **stating that the person continues to be diagnosed with**
 23 **a debilitating medical condition and that the medical use of marijuana may continue to mit-**
 24 **igate the symptoms or effects** of the person's debilitating medical condition;

25 **(ii) The grow site for the person**; and

26 [(ii)] **(iii)** The name of the person's designated primary caregiver if a primary caregiver has been
 27 designated for the upcoming year.

28 (b) If a person who possesses a registry identification card fails to comply with this subsection,
 29 the card [shall be] **is deemed to have** expired. [If] **When** a registry identification card expires, the
 30 identification card of any designated primary caregiver of the cardholder [shall also expire] **expires**
 31 **on the same date.**

32 [(8) A person who possesses a registry identification card pursuant to this section and who has
 33 been diagnosed by the person's attending physician as no longer having a debilitating medical condi-
 34 tion shall return the registry identification card to the department within seven calendar days of no-
 35 tification of the diagnosis. Any designated primary caregiver shall return the caregiver's identification
 36 card within the same period of time.]

37 **(11)(a) No later than 30 days after an attending physician has diagnosed a person as no**
 38 **longer having a debilitating medical condition and has informed the person of that fact, the**
 39 **physician shall notify the department in writing of the change in diagnosis.**

40 **(b) No later than 30 days after an attending physician determines that continued medical**
 41 **use of marijuana by a person is contraindicated and has informed the person of that fact,**
 42 **the physician shall notify the department in writing of the determination.**

43 **(c) Upon receiving notice under paragraph (a) or (b) of this subsection, the department**
 44 **shall revoke the registry identification card of the person. No sooner than 45 days and no**
 45 **later than 60 days after receiving notice under paragraph (a) or (b) of this subsection, the**

1 department shall send the person a notice of revocation that includes a direction to the
 2 person to return the person's registry identification card and, if the person has a designated
 3 primary caregiver, the primary caregiver's identification card to the department. The revo-
 4 cation takes effect on the date that the person receives the notice of revocation. No later
 5 than seven days after receiving the notice of revocation, the person shall return the person's
 6 registry identification card and, if the person has a designated primary caregiver, the pri-
 7 mary caregiver's identification card to the department.

8 (d) Notwithstanding paragraph (c) of this subsection, if a person provides the department
 9 with valid written documentation from a different attending physician prior to receiving the
 10 notice of revocation, the person's registry identification card and, if the person has a desig-
 11 nated primary caregiver, the primary caregiver's identification card remain valid.

12 [(9)] (12) A person who has applied for a registry identification card pursuant to this section but
 13 whose application has not yet been approved or denied, and who is contacted by any law enforce-
 14 ment officer in connection with the person's administration, possession, delivery or production of
 15 marijuana for medical use may provide to the law enforcement officer a copy of the written doc-
 16 umentation submitted to the department pursuant to [subsections] subsection (2) or (3) of this sec-
 17 tion and proof of the date of mailing or other transmission of the documentation to the department.
 18 This documentation [shall have] has the same legal effect as a registry identification card until such
 19 time as the person receives notification that the application has been approved or denied.

20 (13) Information about a person's grow site that is provided to the department under this
 21 section is confidential and may not be disclosed except to employees of law enforcement
 22 agencies as necessary to verify that the site is registered with the department.

23 **SECTION 3.** ORS 475.316 is amended to read:

24 475.316. (1) No person authorized to possess, deliver or produce marijuana for medical use pur-
 25 suant to ORS 475.300 to 475.346 shall be excepted from the criminal laws of this state or shall be
 26 deemed to have established an affirmative defense to criminal charges of which possession, delivery
 27 or production of marijuana is an element if the person, in connection with the facts giving rise to
 28 such charges:

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

30 (b) Engages in the medical use of marijuana in a public place as that term is defined in ORS
 31 161.015, or in public view or in a correctional facility as defined in ORS 162.135 [(2)] or youth cor-
 32 rection facility as defined in ORS 162.135 [(6)];

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

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

37 [(e) Manufactures or produces marijuana at a place other than one address for property under the
 38 control of the patient and one address for property under the control of the primary caregiver of the
 39 patient that have been provided to the Department of Human Services; or]

40 [(f) Manufactures or produces marijuana at more than one address.]

41 (e) Produces marijuana in excess of the amounts authorized by ORS 475.306; or

42 (f) Produces marijuana at a location other than a grow site reported to the Department
 43 of Human Services and listed on the person's registry identification card or primary
 44 caregiver's identification card.

45 (2) In addition to any other penalty allowed by law[,];

1 **(a) The department may preclude** a person who the department finds has willfully violated the
 2 provisions of ORS 475.300 to 475.346, or rules adopted under ORS 475.300 to 475.346, [*may be pre-*
 3 *cluded*] from obtaining or using a registry identification card [*for the medical use of marijuana*] for
 4 a period of up to six months, at the discretion of the department.

5 **(b) The department may permanently revoke the registry identification card of a person**
 6 **who has been convicted of violating ORS 475.992 (1)(a), (b) or (c) or an equivalent offense in**
 7 **another jurisdiction.**

8 **SECTION 4.** ORS 475.312 is amended to read:

9 475.312. (1) If a person who possesses a registry identification card issued pursuant to ORS
 10 475.309 chooses to have a designated primary caregiver, the person must designate the primary
 11 caregiver by including the primary caregiver's name and address:

12 (a) On the person's application for a registry identification card;

13 (b) In the annual updated information required under ORS 475.309; or

14 (c) In a written, signed statement submitted to the Department of Human Services.

15 (2) A person described in this section may have only one designated primary caregiver at any
 16 given time.

17 **(3) A person who has been issued a registry identification card and has a designated**
 18 **primary caregiver may not serve as a designated primary caregiver.**

19 **SECTION 5.** ORS 475.306 is amended to read:

20 475.306. (1) A person who possesses a registry identification card issued pursuant to ORS 475.309
 21 may engage in, and a designated primary caregiver of such a person may assist in, the medical use
 22 of marijuana only as justified to mitigate the symptoms or effects of the person's debilitating medical
 23 condition. Except as allowed in subsection (2) of this section, a registry identification cardholder and
 24 that person's designated primary caregiver may not collectively possess, deliver or produce more
 25 than the following:

26 (a) If the person is present at a location at which marijuana is not produced, including any
 27 residence associated with that location, one ounce of usable marijuana; and

28 (b) If the person is present at a location at which marijuana is produced, including any residence
 29 associated with that location, three mature marijuana plants, four immature marijuana plants and
 30 one ounce of usable marijuana per each mature plant.

31 (2) If the individuals described in subsection (1) of this section possess, deliver or produce
 32 marijuana in excess of the amounts allowed in [*subsection (1)*] **subsections (1) and (3)** of this sec-
 33 tion, such individuals are not excepted from the criminal laws of the state but may establish an af-
 34 firmative defense to such charges, by a preponderance of the evidence, that the greater amount is
 35 medically necessary to mitigate the symptoms or effects of the person's debilitating medical condi-
 36 tion.

37 **(3) A person described in subsection (1) of this section may not grow more than three**
 38 **mature marijuana plants and four immature marijuana plants at one grow site.**

39 [(3)] (4) The Department of Human Services shall define by rule when a marijuana plant is ma-
 40 ture and when it is immature for purposes of this section.

41 **SECTION 6.** ORS 475.319 is amended to read:

42 475.319. (1) Except as provided in ORS 475.316 and 475.342, it is an affirmative defense to a
 43 criminal charge of possession or production of marijuana, or any other criminal offense in which
 44 possession or production of marijuana is an element, that the person charged with the offense is a
 45 person who:

1 (a) Has been diagnosed with a debilitating medical condition within 12 months prior to arrest
2 and been advised by his or her attending physician the medical use of marijuana may mitigate the
3 symptoms or effects of that debilitating medical condition;

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

5 (c) Possesses or produces marijuana only in the amounts allowed in ORS 475.306 (1) **and (3)**, or
6 in excess of those amounts if the person proves by a preponderance of the evidence that the greater
7 amount is medically necessary as determined by the person's attending physician to mitigate the
8 symptoms or effects of the person's debilitating medical condition.

9 (2) It is not necessary for a person asserting an affirmative defense pursuant to this section to
10 have received a registry identification card in order to assert the affirmative defense established in
11 this section.

12 (3) No person engaged in the medical use of marijuana who claims that marijuana provides
13 medically necessary benefits and who is charged with a crime pertaining to such use of marijuana
14 shall be precluded from presenting a defense of choice of evils, as set forth in ORS 161.200, or from
15 presenting evidence supporting the necessity of marijuana for treatment of a specific disease or
16 medical condition, provided that the amount of marijuana at issue is no greater than permitted un-
17 der ORS 475.306 and the patient has taken a substantial step to comply with the provisions of ORS
18 475.300 to 475.346.

19 (4) Any defendant proposing to use the affirmative defense provided for by this section in a
20 criminal action shall, not less than five days before the trial of the cause, file and serve upon the
21 district attorney a written notice of the intention to offer such a defense that specifically states the
22 reasons why the defendant is entitled to assert and the factual basis for such affirmative defense.
23 If the defendant fails to file and serve such notice, the defendant shall not be permitted to assert
24 the affirmative defense at the trial of the cause unless the court for good cause orders otherwise.

25 **SECTION 7. This 2005 Act being necessary for the immediate preservation of the public**
26 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**
27 **on its passage.**

28