

**PROPOSED AMENDMENTS TO
SENATE BILL 772**

1 On page 1 of the printed bill, after “provisions;” delete the rest of the line
2 and insert “and amending ORS 475.302, 475.306, 475.309, 475.316, 475.319,
3 475.326, 475.328 and 475.331.”.

4 Delete lines 4 through 26 and insert:

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
8 677 who has primary responsibility for the care and treatment of a person
9 diagnosed with a debilitating medical condition.

10 “(2) ‘Debilitating medical condition’ means:

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

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

15 “(A) Cachexia;

16 “(B) Severe pain;

17 “(C) Severe nausea;

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

20 “(E) Persistent muscle spasms, including but not limited to spasms caused
21 by multiple sclerosis; or

22 “(c) Any other medical condition or treatment for a medical condition
23 adopted by the department by rule or approved by the department pursuant
24 to a petition submitted pursuant to ORS 475.334.

1 “(3) ‘Delivery’ has the meaning given that term in ORS 475.005.
2 **‘Delivery’ does not include transfer of marijuana by a registry iden-**
3 **tification cardholder to another registry identification cardholder if**
4 **no consideration is paid for the transfer.**

5 “(4) ‘Department’ means the Department of Human Services.

6 “(5) ‘Designated primary caregiver’ means an individual 18 years of age
7 or older who has significant responsibility for managing the well-being of a
8 person who has been diagnosed with a debilitating medical condition and
9 who is designated as such on that person’s application for a registry iden-
10 tification card or in other written notification to the department. ‘Designated
11 primary caregiver’ does not include the person’s attending physician.

12 “(6) ‘Marijuana’ has the meaning given that term in ORS 475.005.

13 **“(7) ‘Marijuana grow site’ means a location where marijuana is**
14 **produced for use by a registry identification cardholder and that is**
15 **registered under the provisions of section 8 of this 2005 Act.**

16 “[(7)] (8) ‘Medical use of marijuana’ means the production, possession,
17 delivery, or administration of marijuana, or paraphernalia used to administer
18 marijuana, as necessary for the exclusive benefit of a person to mitigate the
19 symptoms or effects of his or her debilitating medical condition.

20 “[(8)] (9) ‘Production’ has the same meaning given that term in ORS
21 475.005.

22 “[(9)] (10) ‘Registry identification card’ means a document issued by the
23 department that identifies a person authorized to engage in the medical use
24 of marijuana and the person’s designated primary caregiver, if any.

25 “[(10)] (11) ‘Usable marijuana’ means the dried leaves and flowers of the
26 plant Cannabis family Moraceae, and any mixture or preparation thereof,
27 that are appropriate for medical use as allowed in ORS 475.300 to 475.346.
28 ‘Usable marijuana’ does not include the seeds, stalks and roots of the plant.

29 “[(11)] (12) ‘Written documentation’ means a statement signed by the at-
30 tending physician of a person diagnosed with a debilitating medical condition

1 or copies of the person's relevant medical records.

2 **"SECTION 2.** ORS 475.306 is amended to read:

3 "475.306. (1) A person who possesses a registry identification card issued
4 pursuant to ORS 475.309 may engage in, and a designated primary caregiver
5 of such a person may assist in, the medical use of marijuana only as justified
6 to mitigate the symptoms or effects of the person's debilitating medical con-
7 dition. [*Except as allowed in subsection (2) of this section, a registry identifi-*
8 *cation cardholder and that person's designated primary caregiver may not*
9 *collectively possess, deliver or produce more than the following:*]

10 "[*(a) If the person is present at a location at which marijuana is not*
11 *produced, including any residence associated with that location, one ounce of*
12 *usable marijuana; and*]

13 "[*(b) If the person is present at a location at which marijuana is produced,*
14 *including any residence associated with that location, three mature marijuana*
15 *plants, four immature marijuana plants and one ounce of usable marijuana*
16 *per each mature plant.*]

17 "[*(2) If the individuals described in subsection (1) of this section possess,*
18 *deliver or produce marijuana in excess of the amounts allowed in subsection*
19 *(1) of this section, such individuals are not excepted from the criminal laws*
20 *of the state but may establish an affirmative defense to such charges, by a*
21 *preponderance of the evidence, that the greater amount is medically necessary*
22 *to mitigate the symptoms or effects of the person's debilitating medical condi-*
23 *tion.*]

24 "[*(3)*] **(2)** The Department of Human Services shall define by rule when a
25 marijuana plant is mature and when it is immature [*for purposes of this*
26 *section*]. **The rule shall provide that a plant that has no flowers and is**
27 **less than 12 inches in height and less than 12 inches in diameter is a**
28 **seedling or a start and not a mature plant and may be possessed in**
29 **any number by a registry identification cardholder, a designated pri-**
30 **mary caregiver or a person authorized to produce marijuana for a**

1 **cardholder under section 8 of this 2005 Act.**

2 **“SECTION 3.** ORS 475.309 is amended to read:

3 **“475.309. (1) Except as provided in ORS 475.316 and 475.342 and section**
4 **9 of this 2005 Act,** a person engaged in or assisting in the medical use of
5 marijuana is excepted from the criminal laws of the state for possession,
6 delivery or production of marijuana, aiding and abetting another in the
7 possession, delivery or production of marijuana or any other criminal offense
8 in which possession, delivery or production of marijuana is an element if the
9 following conditions have been satisfied:

10 **“(a) The person holds a registry identification card issued pursuant to**
11 **this section, has applied for a registry identification card pursuant to sub-**
12 **section (9) of this section, [or] is the designated primary caregiver of a**
13 **cardholder or applicant, or is the person responsible for a marijuana**
14 **grow site that is producing marijuana for the cardholder and is regis-**
15 **tered under section 8 of this 2005 Act; and**

16 **“(b) The person who has a debilitating medical condition, [and] the per-**
17 **son’s primary caregiver and the person responsible for a marijuana grow**
18 **site that is producing marijuana for the cardholder and is registered**
19 **under section 8 of this 2005 Act are collectively in possession of, delivering**
20 **or producing marijuana for medical use in [the] amounts allowed [in ORS**
21 **475.306] under section 9 of this 2005 Act.**

22 **“(2) The Department of Human Services shall establish and maintain a**
23 **program for the issuance of registry identification cards to persons who meet**
24 **the requirements of this section. Except as provided in subsection (3) of this**
25 **section, the department shall issue a registry identification card to any per-**
26 **son who pays a fee in the amount established by the department and provides**
27 **the following:**

28 **“(a) Valid, written documentation from the person’s attending physician**
29 **stating that the person has been diagnosed with a debilitating medical con-**
30 **dition and that the medical use of marijuana may mitigate the symptoms or**

1 effects of the person's debilitating medical condition;

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

3 "(c) The name, address and telephone number of the person's attending
4 physician; [and]

5 "(d) The name and address of the person's designated primary caregiver,
6 if the person has designated a primary caregiver at the time of
7 application[.]; and

8 **"(e) A written statement that indicates whether the marijuana used**
9 **by the cardholder will be produced at a location where the cardholder**
10 **or designated primary caregiver is present or at another location.**

11 "(3) The department shall issue a registry identification card to a person
12 who is under 18 years of age if the person submits the materials required
13 under subsection (2) of this section, and the custodial parent or legal
14 guardian with responsibility for health care decisions for the person under
15 18 years of age signs a written statement that:

16 "(a) The attending physician of the person under 18 years of age has ex-
17 plained to that person and to the custodial parent or legal guardian with
18 responsibility for health care decisions for the person under 18 years of age
19 the possible risks and benefits of the medical use of marijuana;

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

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

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

30 "(4) A person applying for a registry identification card pursuant to this

1 section may submit the information required in this section to a county
2 health department for transmittal to the Department of Human Services. A
3 county health department that receives the information pursuant to this
4 subsection shall transmit the information to the Department of Human Ser-
5 vices within five days of receipt of the information. Information received by
6 a county health department pursuant to this subsection shall be confidential
7 and not subject to disclosure, except as required to transmit the information
8 to the Department of Human Services.

9 “(5) The department shall verify the information contained in an appli-
10 cation submitted pursuant to this section and shall approve or deny an ap-
11 plication within thirty days of receipt of the application.

12 “(a) The department may deny an application only for the following rea-
13 sons:

14 “(A) The applicant did not provide the information required pursuant to
15 this section to establish the applicant’s debilitating medical condition and
16 to document the applicant’s consultation with an attending physician re-
17 garding the medical use of marijuana in connection with such condition, as
18 provided in subsections (2) and (3) of this section; or

19 “(B) The department determines that the information provided was falsi-
20 fied.

21 “(b) Denial of a registry identification card shall be considered a final
22 department action, subject to judicial review. Only the person whose appli-
23 cation has been denied, or, in the case of a person under the age of 18 years
24 of age whose application has been denied, the person’s parent or legal
25 guardian, shall have standing to contest the department’s action.

26 “(c) Any person whose application has been denied may not reapply for
27 six months from the date of the denial, unless so authorized by the depart-
28 ment or a court of competent jurisdiction.

29 “(6)(a) If the department has verified the information submitted pursuant
30 to subsections (2) and (3) of this section and none of the reasons for denial

1 listed in subsection (5)(a) of this section is applicable, the department shall
2 issue a serially numbered registry identification card within five days of
3 verification of the information. The registry identification card shall state:

4 “(A) The cardholder’s name, address and date of birth;

5 “(B) The date of issuance and expiration date of the registry identification
6 card;

7 “(C) The name and address of the person’s designated primary caregiver,
8 if any; [and]

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

12 “[~~(D)~~] (E) [*Such*] Any other information [*as*] that the department may
13 specify by rule.

14 “(b) When the person to whom the department has issued a registry
15 identification card pursuant to this section has specified a designated pri-
16 mary caregiver, the department shall issue an identification card to the
17 designated primary caregiver. The primary caregiver’s registry identification
18 card shall contain the information provided in paragraph (a) of this sub-
19 section.

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

21 “(A) Notify the department of any change in the person’s name, address,
22 attending physician or designated primary caregiver; and

23 “(B) Annually submit to the department:

24 “(i) Updated written documentation of the person’s debilitating medical
25 condition; and

26 “(ii) The name of the person’s designated primary caregiver if a primary
27 caregiver has been designated for the upcoming year.

28 “(b) If a person who possesses a registry identification card fails to com-
29 ply with this subsection, the card shall be deemed expired. If a registry
30 identification card expires, the identification card of any designated primary

1 caregiver of the cardholder shall also expire.

2 “(8) A person who possesses a registry identification card pursuant to this
3 section and who has been diagnosed by the person’s attending physician as
4 no longer having a debilitating medical condition shall return the registry
5 identification card to the department within seven calendar days of notifi-
6 cation of the diagnosis. Any designated primary caregiver shall return the
7 caregiver’s identification card within the same period of time.

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

18 On page 2, delete lines 1 through 17.

19 In line 18, delete “2” and insert “4”.

20 In line 35, delete “3” and insert “5”.

21 On page 3, line 16, delete “4. Section 5 of this 2005 Act is” and insert
22 “6. Sections 7, 8 and 9 of this 2005 Act are”.

23 In line 18, delete “5” and insert “7”.

24 After line 33, insert:

25 **“SECTION 8. (1) The Department of Human Services shall establish**
26 **by rule a marijuana grow site registration system to authorize pro-**
27 **duction of marijuana by a registry identification cardholder or that**
28 **person’s designated primary caregiver who grows marijuana or by a**
29 **person who is responsible for a marijuana grow site. The marijuana**
30 **grow site registration system adopted must require a registry iden-**

1 tification cardholder to submit an application to the department that
2 includes:

3 “(a) The name of the person responsible for the marijuana grow
4 site;

5 “(b) The address of the marijuana grow site;

6 “(c) The registry identification card number of the registry
7 cardholder for whom the marijuana is being produced; and

8 “(d) Any other information the department considers necessary.

9 “(2) The department shall issue a marijuana grow site registration
10 card to a registry identification cardholder who has met the require-
11 ments of subsection (1) of this section.

12 “(3) A person who has been issued a marijuana grow site registra-
13 tion card under this section must display the registration card at the
14 marijuana grow site at all times when marijuana is being produced.

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

18 SECTION 9. “(1) A registry identification cardholder or the desig-
19 nated primary caregiver of the cardholder may possess up to six ma-
20 ture marijuana plants and 60 ounces of usable marijuana.

21 “(2) If the marijuana used by the registry identification cardholder
22 is produced at a marijuana grow site where the cardholder or desig-
23 nated primary caregiver is not present, the person responsible for the
24 marijuana grow site:

25 “(a) May produce marijuana for and deliver marijuana to a registry
26 identification cardholder or that person’s designated primary caregiver
27 as authorized under this section.

28 “(b) May possess up to six mature plants and up to 60 ounces of
29 usable marijuana for each cardholder or caregiver for which marijuana
30 is being produced.

1 “(c) May produce marijuana for up to four registry identification
2 cardholders or designated primary caregivers per year.

3 “(d) Must obtain and display a marijuana grow site registration
4 card issued under section 8 of this 2005 Act for each registry identifi-
5 cation cardholder or designated primary caregiver for which marijuana
6 is being produced.

7 “(e) Must provide all marijuana produced for a registry identifica-
8 tion cardholder or designated primary caregiver to the cardholder or
9 caregiver at the time the person responsible for a marijuana grow site
10 ceases producing marijuana for the cardholder or caregiver.

11 “(f) Must return the marijuana grow site registration card to the
12 registry identification cardholder to whom the card was issued when
13 requested to do so by the cardholder or when the person responsible
14 for a marijuana grow site ceases producing marijuana for the
15 cardholder or caregiver.

16 “(3) Notwithstanding subsections (1) and (2) of this section, a reg-
17 istry identification cardholder, the designated primary caregiver of the
18 cardholder and the person responsible for a marijuana grow site
19 producing marijuana for the registry identification cardholder may
20 possess a combined total of up to six mature plants and 60 ounces of
21 usable marijuana for that registry identification cardholder.

22 “(4) A registry identification cardholder, the designated primary
23 caregiver of the cardholder and a person responsible for a marijuana
24 grow site may possess marijuana seedlings or starts as defined by rule
25 of the Department of Human Services in any quantity.

26 “**SECTION 10.** ORS 475.326 is amended to read:

27 “475.326. No attending physician may be subjected to civil penalty or
28 discipline by the Board of Medical Examiners for:

29 “(1) Advising a person whom the attending physician has diagnosed as
30 having a debilitating medical condition, or a person who the attending phy-

1 sician knows has been so diagnosed by another physician licensed under ORS
2 chapter 677, about the risks and benefits of medical use of marijuana or that
3 the medical use of marijuana may mitigate the symptoms or effects of the
4 person's debilitating medical condition, provided the advice is based on the
5 attending physician's personal assessment of the person's medical history and
6 current medical condition; or

7 "(2) Providing the written documentation necessary for issuance of a
8 registry identification card under ORS 475.309, if the documentation is based
9 on the attending physician's personal assessment of the applicant's medical
10 history and current medical condition and the **attending** physician has dis-
11 cussed the potential medical risks and benefits of the medical use of
12 marijuana with the applicant.

13 "**SECTION 11.** ORS 475.319 is amended to read:

14 "475.319. [(1) *Except as provided in ORS 475.316 and 475.342, it is an af-*
15 *firmative defense to a criminal charge of possession or production of*
16 *marijuana, or any other criminal offense in which possession or production of*
17 *marijuana is an element, that the person charged with the offense is a person*
18 *who:]*

19 "[*(a) Has been diagnosed with a debilitating medical condition within 12*
20 *months prior to arrest and been advised by his or her attending physician the*
21 *medical use of marijuana may mitigate the symptoms or effects of that debili-*
22 *tating medical condition;]*

23 "[*(b) Is engaged in the medical use of marijuana; and]*

24 "[*(c) Possesses or produces marijuana only in the amounts allowed in ORS*
25 *475.306 (1), or in excess of those amounts if the person proves by a preponder-*
26 *ance of the evidence that the greater amount is medically necessary as deter-*
27 *mined by the person's attending physician to mitigate the symptoms or effects*
28 *of the person's debilitating medical condition.]*

29 "[*(2) It is not necessary for a person asserting an affirmative defense pur-*
30 *suant to this section to have received a registry identification card in order to*

1 *assert the affirmative defense established in this section.]*

2 “[(3)] No person engaged in the medical use of marijuana who claims that
3 marijuana provides medically necessary benefits and who is charged with a
4 crime pertaining to such use of marijuana shall be precluded from presenting
5 a defense of choice of evils, as set forth in ORS 161.200, or from presenting
6 evidence supporting the necessity of marijuana for treatment of a specific
7 disease or medical condition, provided that the amount of marijuana at issue
8 is no greater than permitted under [ORS 475.306] **section 9 of this 2005 Act**
9 and the patient has taken a substantial step to comply with the provisions
10 of ORS 475.300 to 475.346.

11 “[4) Any defendant proposing to use the affirmative defense provided for
12 by this section in a criminal action shall, not less than five days before the
13 trial of the cause, file and serve upon the district attorney a written notice of
14 the intention to offer such a defense that specifically states the reasons why the
15 defendant is entitled to assert and the factual basis for such affirmative de-
16 fense. If the defendant fails to file and serve such notice, the defendant shall
17 not be permitted to assert the affirmative defense at the trial of the cause un-
18 less the court for good cause orders otherwise.]

19 **“SECTION 12.** ORS 475.316 is amended to read:

20 “475.316. (1) No person authorized to possess, deliver or produce
21 marijuana for medical use pursuant to ORS 475.300 to 475.346 shall be ex-
22 cepted from the criminal laws of this state [*or shall be deemed to have es-*
23 *tablished an affirmative defense to criminal charges of which possession,*
24 *delivery or production of marijuana is an element*] if the person, in connection
25 with the facts giving rise to such charges:

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

27 “(b) Engages in the medical use of marijuana in a public place as that
28 term is defined in ORS 161.015, or in public view or in a correctional facility
29 as defined in ORS 162.135 (2) or youth correction facility as defined in ORS
30 162.135 (6);

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

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

5 “(e) Manufactures or produces marijuana at a place other than:

6 “(A)(i) One address for property under the control of the patient; and

7 “(ii) One address for property under the control of the primary caregiver
8 of the patient that have been provided to the Department of Human Services;

9 or

10 “(B) A marijuana grow site authorized under section 8 of this 2005
11 Act; or

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

13 “(2) In addition to any other penalty allowed by law, a person who the
14 department finds has willfully violated the provisions of ORS 475.300 to
15 475.346, or rules adopted under ORS 475.300 to 475.346, may be precluded
16 from obtaining or using a registry identification card for the medical use of
17 marijuana for a period of up to six months, at the discretion of the depart-
18 ment.”.

19
