

# Senate Bill 1085

Sponsored by COMMITTEE ON RULES (at the request of Senator Bill Morrisette and Senator Jeff 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 amount of medical marijuana authorized person or designated primary caregiver may possess under certain circumstances. Eliminates affirmative defense of medical necessity in certain circumstances. Clarifies meaning of mature plant for purposes of Oregon Medical Marijuana Act. Requires authorized person to possess registry identification card when using or transporting medical marijuana away from person's residence. Provides exception from laws relating to criminal possession, delivery or production for persons registered to grow marijuana. Authorizes certain licensed health care professionals to administer medical marijuana to authorized persons in certain circumstances.

Requires Department of Human Services to develop system to allow authorized law enforcement personnel to access list of persons issued registry identification cards. Requires state and local law enforcement personnel to provide identification to department prior to obtaining information from list of persons issued registry identification cards. Creates Advisory Committee on Medical Marijuana in department.

Requires department to establish by rule marijuana grow site registration system for medical marijuana production. Limits amounts of marijuana that may be produced and possessed at grow site. Requires department to revoke registration for certain violations. Limits costs that may be reimbursed to person responsible for grow site.

## A BILL FOR AN ACT

1  
2 Relating to medical marijuana; creating new provisions; and amending ORS 475.302, 475.306, 475.309,  
3 475.316, 475.319, 475.326, 475.328 and 475.331.

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. **"Delivery" does not include**

**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 **transfer of marijuana by a registry identification cardholder to another registry identifica-**  
 2 **tion cardholder if no consideration is paid for the transfer.**

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

4 (5) "Designated primary caregiver" means an individual 18 years of age or older who has sig-  
 5 nificant responsibility for managing the well-being of a person who has been diagnosed with a de-  
 6 bilitating medical condition and who is designated as such on that person's application for a registry  
 7 identification card or in other written notification to the department. "Designated primary  
 8 caregiver" does not include the person's attending physician.

9 (6) "Marijuana" has the meaning given that term in ORS 475.005.

10 (7) **"Marijuana grow site" means a location where marijuana is produced for use by a**  
 11 **registry identification cardholder and that is registered under the provisions of section 8 of**  
 12 **this 2005 Act.**

13 [(7)] (8) "Medical use of marijuana" means the production, possession, delivery, or adminis-  
 14 tration of marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive  
 15 benefit of a person to mitigate the symptoms or effects of his or her debilitating medical condition.

16 [(8)] (9) "Production" has the same meaning given that term in ORS 475.005.

17 [(9)] (10) "Registry identification card" means a document issued by the department that iden-  
 18 tifies a person authorized to engage in the medical use of marijuana and the person's designated  
 19 primary caregiver, if any.

20 [(10)] (11) "Usable marijuana" means the dried leaves and flowers of the plant Cannabis family  
 21 Moraceae, and any mixture or preparation thereof, that are appropriate for medical use as allowed  
 22 in ORS 475.300 to 475.346. "Usable marijuana" does not include the seeds, stalks and roots of the  
 23 plant.

24 [(11)] (12) "Written documentation" means a statement signed by the attending physician of a  
 25 person diagnosed with a debilitating medical condition or copies of the person's relevant medical  
 26 records.

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

28 475.306. (1) A person who possesses a registry identification card issued pursuant to ORS 475.309  
 29 may engage in, and a designated primary caregiver of such a person may assist in, the medical use  
 30 of marijuana only as justified to mitigate the symptoms or effects of the person's debilitating medical  
 31 condition. [*Except as allowed in subsection (2) of this section, a registry identification cardholder and*  
 32 *that person's designated primary caregiver may not collectively possess, deliver or produce more than*  
 33 *the following:*]

34 [(a) *If the person is present at a location at which marijuana is not produced, including any resi-*  
 35 *dence associated with that location, one ounce of usable marijuana; and]*

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

39 [(2) *If the individuals described in subsection (1) of this section possess, deliver or produce*  
 40 *marijuana in excess of the amounts allowed in subsection (1) of this section, such individuals are not*  
 41 *excepted from the criminal laws of the state but may establish an affirmative defense to such charges,*  
 42 *by a preponderance of the evidence, that the greater amount is medically necessary to mitigate the*  
 43 *symptoms or effects of the person's debilitating medical condition.*]

44 (2) **A person who is a registry identification cardholder must possess the registry iden-**  
 45 **tification card when using or transporting marijuana in a location other than the residence**

1 **of the cardholder.**

2 (3) The Department of Human Services shall define by rule when a marijuana plant is mature  
3 and when it is immature [*for purposes of this section*]. **The rule shall provide that a plant that**  
4 **has no flowers and that is less than 12 inches in height and less than 12 inches in diameter**  
5 **is a seedling or a start and is not a mature plant.**

6 **SECTION 3.** ORS 475.309 is amended to read:

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

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

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

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

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

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

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

32 (d) The name and address of the person's designated primary caregiver, if the person has des-  
33 ignated a primary caregiver at the time of application[.]; **and**

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

37 (3) The department shall issue a registry identification card to a person who is under 18 years  
38 of age if the person submits the materials required under subsection (2) of this section, and the  
39 custodial parent or legal guardian with responsibility for health care decisions for the person under  
40 18 years of age signs a written statement that:

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

44 (b) The custodial parent or legal guardian with responsibility for health care decisions for the  
45 person under 18 years of age consents to the use of marijuana by the person under 18 years of age

1 for medical purposes;

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

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

8 (4) A person applying for a registry identification card pursuant to this section may submit the  
9 information required in this section to a county health department for transmittal to the Department  
10 of Human Services. A county health department that receives the information pursuant to this sub-  
11 section shall transmit the information to the Department of Human Services within five days of re-  
12 ceipt of the information. Information received by a county health department pursuant to this  
13 subsection shall be confidential and not subject to disclosure, except as required to transmit the  
14 information to the Department of Human Services.

15 (5) The department shall verify the information contained in an application submitted pursuant  
16 to this section and shall approve or deny an application within thirty days of receipt of the appli-  
17 cation.

18 (a) The department may deny an application only for the following reasons:

19 (A) The applicant did not provide the information required pursuant to this section to establish  
20 the applicant's debilitating medical condition and to document the applicant's consultation with an  
21 attending physician regarding the medical use of marijuana in connection with such condition, as  
22 provided in subsections (2) and (3) of this section; or

23 (B) The department determines that the information provided was falsified.

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

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

30 (6)(a) If the department has verified the information submitted pursuant to subsections (2) and  
31 (3) of this section and none of the reasons for denial listed in subsection (5)(a) of this section is  
32 applicable, the department shall issue a serially numbered registry identification card within five  
33 days of verification of the information. The registry identification card shall state:

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

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

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

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

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

40 (b) When the person to whom the department has issued a registry identification card pursuant  
41 to this section has specified a designated primary caregiver, the department shall issue an identifi-  
42 cation card to the designated primary caregiver. The primary caregiver's registry identification  
43 card shall contain the information provided in paragraph (a) of this subsection.

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

45 (A) Notify the department of any change in the person's name, address, attending physician or

1 designated primary caregiver; and

2 (B) Annually submit to the department:

3 (i) Updated written documentation of the person's debilitating medical condition; and

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

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

9 (8) A person who possesses a registry identification card pursuant to this section and who has  
10 been diagnosed by the person's attending physician as no longer having a debilitating medical condi-  
11 tion shall return the registry identification card to the department within seven calendar days of  
12 notification of the diagnosis. Any designated primary caregiver shall return the caregiver's identifi-  
13 cation card within the same period of time.

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

22 **SECTION 4.** ORS 475.328 is amended to read:

23 475.328. (1) No professional licensing board may impose a civil penalty or take other disciplinary  
24 action against a licensee based on the licensee's medical use of marijuana in accordance with the  
25 provisions of ORS 475.300 to 475.346 or actions taken by the licensee that are necessary to carry  
26 out the licensee's role as a designated primary caregiver to a person who possesses a lawful registry  
27 identification card *[issued pursuant to ORS 475.309]*.

28 **(2)(a) A licensed health care professional may administer medical marijuana to a person  
29 who possesses a registry identification card and resides in a licensed health care facility if  
30 the administration of pharmaceuticals is within the scope of practice of the licensed health  
31 care professional. Administration of medical marijuana under this subsection may not take  
32 place in a public place as defined in ORS 161.015 or in the presence of a person under 18 years  
33 of age. If the medical marijuana administered under this subsection is smoked, adequate  
34 ventilation must be provided.**

35 **(b) Nothing in this subsection requires:**

36 **(A) A licensed health care professional to administer medical marijuana; or**

37 **(B) A licensed health care facility to make accommodations for the administration of  
38 medical marijuana.**

39 **SECTION 5.** ORS 475.331 is amended to read:

40 475.331. (1)(a) The Department of Human Services shall create and maintain a list of the persons  
41 to whom the department has issued registry identification cards, *[pursuant to ORS 475.309 and]* the  
42 names of any designated primary caregivers **and the addresses of authorized marijuana grow  
43 sites.** Except as provided in subsection (2) of this section, the list shall be confidential and not  
44 subject to public disclosure.

45 **(b) The department shall develop a system by which authorized employees of state and**

1 **local law enforcement agencies may verify at all times that a person is a lawful possessor**  
2 **of a registry identification card or the designated primary caregiver of a lawful possessor of**  
3 **a registry identification card or that a location is an authorized marijuana grow site.**

4 (2) Names and other identifying information from the list established pursuant to subsection (1)  
5 of this section may be released to:

6 (a) Authorized employees of the department as necessary to perform official duties of the de-  
7 partment; and

8 (b) Authorized employees of state or local law enforcement agencies, only as necessary to verify  
9 that a person is a lawful possessor of a registry identification card or *[that a person is]* the desig-  
10 nated primary caregiver of *[such a person]* **a lawful possessor of a registry identification card**  
11 **or that a location is an authorized marijuana grow site. Prior to being provided identifying**  
12 **information from the list, authorized employees of state or local law enforcement agencies**  
13 **shall provide to the department adequate identification, such as a badge number or similar**  
14 **authentication of authority.**

15 (3) Authorized employees of state or local law enforcement agencies that obtain identi-  
16 fying information from the list as authorized under this section may not release or use the  
17 information for any purpose other than verification that a person is a lawful possessor of a  
18 registry identification card or the designated primary caregiver of a lawful possessor of a  
19 registry identification card or that a location is an authorized marijuana grow site.

20 **SECTION 6.** Sections 7, 8, 9 and 10 of this 2005 Act are added to and made a part of ORS  
21 **475.300 to 475.346.**

22 **SECTION 7.** (1) There is created the Advisory Committee on Medical Marijuana in the  
23 Department of Human Services, consisting of 11 members appointed by the Director of Hu-  
24 man Services.

25 (2) The director shall appoint members of the committee from persons who possess reg-  
26 istry identification cards, designated primary caregivers of persons who possess registry  
27 identification cards and advocates of the Oregon Medical Marijuana Act.

28 (3) The committee shall advise the director on the administrative aspects of the Oregon  
29 Medical Marijuana Program, review current and proposed administrative rules of the pro-  
30 gram and provide annual input on the fee structure of the program.

31 (4) The committee shall meet at least four times per year, at times and places specified  
32 by the director.

33 (5) The department shall provide staff support to the committee.

34 (6) All agencies of state government, as defined in ORS 174.111, are directed to assist the  
35 committee in the performance of its duties and, to the extent permitted by laws relating to  
36 confidentiality, to furnish information and advice that the members of the committee con-  
37 sider necessary to perform their duties.

38 **SECTION 8.** (1) The Department of Human Services shall establish by rule a marijuana  
39 grow site registration system to authorize production of marijuana by a registry identifica-  
40 tion cardholder, a designated primary caregiver who grows marijuana for the cardholder or  
41 a person who is responsible for a marijuana grow site. The marijuana grow site registration  
42 system adopted must require a registry identification cardholder to submit an application to  
43 the department that includes:

44 (a) The name of the person responsible for the marijuana grow site;

45 (b) The address of the marijuana grow site;

1 (c) The registry identification card number of the registry cardholder for whom the  
2 marijuana is being produced; and

3 (d) Any other information the department considers necessary.

4 (2) The department shall issue a marijuana grow site registration card to a registry  
5 identification cardholder who has met the requirements of subsection (1) of this section.

6 (3) A person who has been issued a marijuana grow site registration card under this  
7 section must display the registration card at the marijuana grow site at all times when  
8 marijuana is being produced.

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

11 (5) All usable marijuana, plants, seedlings and seeds associated with the production of  
12 marijuana for a registry identification cardholder by a person responsible for a marijuana  
13 grow site are the property of the registry identification cardholder and must be provided to  
14 the registry identification cardholder upon request.

15 (6)(a) The department shall revoke a marijuana grow site registration card issued to a  
16 registry identification cardholder who has been convicted of violating ORS 475.992 (1)(a) or  
17 (b).

18 (b) A registry identification cardholder who has been convicted of violating ORS 475.992  
19 (1)(a) or (b) may not be issued a marijuana grow site registration card within five years of  
20 the date of the conviction for violating ORS 475.992 (1)(a) or (b) if the conviction was for a  
21 first offense.

22 (c) A person convicted more than once of violating ORS 475.992 (1)(a) or (b) may not be  
23 issued a marijuana grow site registration card.

24 (7) A registry identification cardholder or the designated primary caregiver of the  
25 cardholder may reimburse the person responsible for a marijuana grow site for the costs of  
26 supplies and utilities associated with the production of marijuana for the registry identifica-  
27 tion cardholder. No other costs associated with the production of marijuana for the registry  
28 identification cardholder, including the cost of labor, may be reimbursed.

29 **SECTION 9.** (1) A registry identification cardholder or the designated primary caregiver  
30 of the cardholder may possess up to six mature marijuana plants and 24 ounces of usable  
31 marijuana.

32 (2) If the marijuana used by the registry identification cardholder is produced at a  
33 marijuana grow site where the cardholder or designated primary caregiver is not present,  
34 the person responsible for the marijuana grow site:

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

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

39 (c) May produce marijuana for up to four registry identification cardholders or desig-  
40 nated primary caregivers per year.

41 (d) Must obtain and display a marijuana grow site registration card issued under section  
42 8 of this 2005 Act for each registry identification cardholder or designated primary caregiver  
43 for which marijuana is being produced.

44 (e) Must provide all marijuana produced for a registry identification cardholder or desig-  
45 nated primary caregiver to the cardholder or caregiver at the time the person responsible

1 for a marijuana grow site ceases producing marijuana for the cardholder or caregiver.

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

6 (3) Notwithstanding subsections (1) and (2) of this section, a registry identification  
 7 cardholder, the designated primary caregiver of the cardholder and the person responsible  
 8 for a marijuana grow site producing marijuana for the registry identification cardholder may  
 9 possess a combined total of up to six mature plants and 24 ounces of usable marijuana for  
 10 that registry identification cardholder.

11 (4)(a) A registry identification cardholder and the designated primary caregiver of the  
 12 cardholder may possess a combined total of up to 18 marijuana seedlings or starts as defined  
 13 by rule of the Department of Human Services.

14 (b) A person responsible for a marijuana grow site may possess up to 18 marijuana  
 15 seedlings or starts as defined by rule of the department for each registry identification  
 16 cardholder for which the person responsible for the marijuana grow site is producing  
 17 marijuana.

18 **SECTION 10.** A law enforcement officer who determines that a registry identification  
 19 cardholder is in possession of amounts of usable marijuana or numbers of marijuana plants  
 20 in excess of the amount or number authorized by section 9 of this 2005 Act may confiscate  
 21 only any usable marijuana or plants that are in excess of the amount or number authorized.

22 **SECTION 11.** ORS 475.326 is amended to read:

23 475.326. No attending physician may be subjected to civil penalty or discipline by the Board of  
 24 Medical Examiners for:

25 (1) Advising a person whom the attending physician has diagnosed as having a debilitating  
 26 medical condition, or a person who the attending physician knows has been so diagnosed by another  
 27 physician licensed under ORS chapter 677, about the risks and benefits of medical use of marijuana  
 28 or that the medical use of marijuana may mitigate the symptoms or effects of the person’s debili-  
 29 tating medical condition, provided the advice is based on the attending physician’s personal assess-  
 30 ment of the person’s medical history and current medical condition; or

31 (2) Providing the written documentation necessary for issuance of a registry identification card  
 32 under ORS 475.309, if the documentation is based on the attending physician’s personal assessment  
 33 of the applicant’s medical history and current medical condition and the **attending** physician has  
 34 discussed the potential medical risks and benefits of the medical use of marijuana with the applicant.

35 **SECTION 12.** ORS 475.319 is amended to read:

36 475.319. [(1) Except as provided in ORS 475.316 and 475.342, it is an affirmative defense to a  
 37 criminal charge of possession or production of marijuana, or any other criminal offense in which pos-  
 38 session or production of marijuana is an element, that the person charged with the offense is a person  
 39 who:]

40 [(a) Has been diagnosed with a debilitating medical condition within 12 months prior to arrest and  
 41 been advised by his or her attending physician the medical use of marijuana may mitigate the symp-  
 42 toms or effects of that debilitating medical condition;]

43 [(b) Is engaged in the medical use of marijuana; and]

44 [(c) Possesses or produces marijuana only in the amounts allowed in ORS 475.306 (1), or in excess  
 45 of those amounts if the person proves by a preponderance of the evidence that the greater amount is

1 *medically necessary as determined by the person's attending physician to mitigate the symptoms or ef-*  
 2 *fects of the person's debilitating medical condition.]*

3 *[(2) It is not necessary for a person asserting an affirmative defense pursuant to this section to have*  
 4 *received a registry identification card in order to assert the affirmative defense established in this sec-*  
 5 *tion.]*

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

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

19 **SECTION 13.** ORS 475.316 is amended to read:

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

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

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

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

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

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

34 **(A)(i)** One address for property under the control of the patient; and

35 **(ii)** One address for property under the control of the primary caregiver of the patient that have  
 36 been provided to the Department of Human Services; or

37 **(B) A marijuana grow site authorized under section 8 of this 2005 Act; or**

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

39 (2) In addition to any other penalty allowed by law, a person who the department finds has  
 40 willfully violated the provisions of ORS 475.300 to 475.346, or rules adopted under ORS 475.300 to  
 41 475.346, may be precluded from obtaining or using a registry identification card for the medical use  
 42 of marijuana for a period of up to six months, at the discretion of the department.