

Initiative # 180

Relating to medical marijuana; creating new provisions; and amending ORS 475.300, 475.302, 475.306, 475.309, 475.312, 475.316, 475.319, 475.323, 475.331, 475.334, 475.338, 475.340

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

SECTION 1. ORS 475.300 is amended to read:

475.300. The people of the state of Oregon hereby find that:

(1) [*Patients and doctors have found marijuana to be*] **Marijuana is** an effective treatment for suffering caused by debilitating medical conditions, and therefore, **patients using** marijuana should be treated like **patients using** other medicines;

(2) Oregonians suffering from debilitating medical conditions should be allowed to use [*small*] **adequate** amounts of marijuana without fear of civil or criminal penalties when their doctors advise that such use may provide a medical benefit to them and when other reasonable restrictions are met regarding that use;

(3) ORS 475.300 to 475.346 are intended to allow Oregonians with debilitating medical conditions who may benefit from the medical use of marijuana to be able to discuss freely with their doctors the possible risks and benefits of medical marijuana use and to have the benefit of their doctor's professional advice; [*and*]

(4) ORS 475.300 to 475.346 are intended to make only those changes to existing Oregon laws that are necessary to protect patients and their doctors from criminal and civil penalties, and are not intended to change current civil and criminal laws governing the use of marijuana for nonmedical purposes.

(5) The State of Oregon has a right to regulate the public health and safety of its citizens pursuant to the police power reserved to the sovereign States by the Tenth Amendment to the United States Constitution. This includes the right to regulate the licensing of the wholly intrastate distribution of marijuana for medical purposes.

(6) Citizens of Oregon have the fundamental personal privacy right to use marijuana for medical purposes to ameliorate pain, prolong life, and/or maintain bodily integrity, and for other medical purposes as guaranteed by the Ninth Amendment to the United States Constitution and as further affirmed by the people of the State of Oregon by this Act.

(7) Patients for whom the medical use of marijuana is beneficial have a personal privacy right to a safe affordable supply of this medicine. No such supply can be guaranteed to these patients unless the persons providing the marijuana can

be adequately compensated. No adequate supply of medical marijuana can be assured for all patients who could benefit from medical marijuana unless medical marijuana can be safely and lawfully dispensed in a regulated intrastate market.

(8) Oregon citizens have a right to the best available scientific information regarding the safety and efficacy of medical marijuana. Experiments to determine the best information cannot occur unless data is collected from patients and licensed dispensaries. The people recognizing this right enact amendments necessary to conduct these scientific experiments.

SECTION 2. ORS 475.302 is amended to read:

475.302. As used in ORS 475.300 to 475.346:

(1) "Attending physician" means a physician licensed under ORS chapter 677, **a naturopath licensed under ORS chapter 685 or a nurse practitioner certified under ORS chapter 678** who has [*primary*] responsibility for the care and treatment of a person diagnosed with a debilitating medical condition.

(2) "Debilitating medical condition" means:

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

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

(i) Cachexia;

(ii) Severe pain;

(iii) Severe nausea;

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

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

(c) [*Any other medical condition or treatment for a medical condition adopted by the division by rule or approved by the division pursuant to a petition submitted pursuant to ORS 475.334.*] **Any other medical condition for which, in the determination of the attending physician, the medical use of marijuana would be beneficial.**

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

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

[4] **(5) "Designated [*primary*] medical marijuana caregiver"** means an individual eighteen years of age or older who has significant responsibility for [*managing the well-being of*] **supplying or assisting in supplying marijuana to** a person who has been diagnosed with a debilitating medical condition, and who is [*designated as such on that person's application for a registry identification card or in other written notification to the division.*] **identified by a patient on the patient's application for a registry**

identification card or in other written notification to the department changing or updating the designated medical marijuana caregiver's status. "Designated [*primary*] **medical marijuana** caregiver" does not include the person's attending physician. **A person who merely assists a patient in the patient's use of medical marijuana does not become that patient's designated medical marijuana caregiver by doing so.**

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

(7) "**Medical marijuana dispensary**" means a person or nonprofit entity that produces, supplies, and or dispenses medical marijuana to patients and their designated medical marijuana caregivers, and to other medical marijuana dispensaries. "**Medical marijuana dispensary**" includes any employees or agents of such a nonprofit entity.

[(7)] (8) "Medical use of marijuana" means the [*production, possession, delivery, or*] administration of marijuana[, *or paraphernalia used to administer marijuana*] **by smoking or vaporizing, eating or drinking, or through poultices or tinctures**, as necessary for the [*exclusive*] benefit of a person to mitigate the symptoms or effects of his or her debilitating medical condition.

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

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

[(10)] (11) "Usable marijuana" means the dried leaves and flowers of the **cannabis** plant [*Cannabis family Moraceae*], and any mixture or preparation thereof, that are appropriate for medical use as allowed in ORS 475.300 to 475.346. "Usable marijuana" does not include the seeds, stalks and roots of the plant **or any contaminated marijuana or any male marijuana plants or any marijuana clearly intended to be discarded or the weight of other ingredients in marijuana prepared for consumption as food.**

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

SECTION 3. ORS 475.306 is amended to read:

475.306. (1) A person who possesses a registry identification card issued pursuant to ORS 475.309 may engage in, [*and*] **or** a designated [*primary*] **medical marijuana** caregiver of such [*a person*] **persons** may assist in, the medical use of marijuana [*only as justified*] **and the possession, production, delivery, or transportation of marijuana as**

needed to mitigate the symptoms or effects of the person's debilitating medical condition. Except as allowed in subsection (2) of this section, a registry identification cardholder and that person's designated [*primary*] **medical marijuana** caregiver may not collectively possess, **produce**, deliver, **or transport** [*or produce*] more than [*the following*]:

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

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

(a) Ten marijuana plants at any one time; and

(b) One pound of usable marijuana at any one time, unless the person can show that they are only growing one crop of marijuana per year, and has registered that information with the Department, in which case the person may possess up to six pounds per patient immediately following harvest, which is the amount provided by the United States government to patients through the Compassionate Investigational New Drug Program of the Department of Health and Human Services.

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

(3) [*The Health Division shall define by rule when a marijuana plant is mature and when it is immature for purposes of this section.*] **Cuttings, clones, seedlings, and starter plants shall not be counted toward the ten plant limit unless they are greater than one foot long measured in any direction or contain usable mature female marijuana flowers.**

SECTION 4. (1) A medical marijuana dispensary may not possess, produce, deliver or transport marijuana for any purpose except to assist patients with registry identification cards in their medical use of marijuana or to assist designated medical marijuana caregivers in supplying usable marijuana to a qualified patient.

(2) A dispensary shall not deliver more than six pounds of marijuana per year to a qualified patient or that person's designated medical marijuana caregiver unless that person presents an additional statement from the person's attending physician that the greater amount is medically necessary as determined by the attending physician to mitigate the symptoms or effects of the person's debilitating medical condition.

(3) A medical marijuana dispensary may not possess, produce, deliver, or transport an amount of marijuana greater than needed to assure an adequate supply for registered patients.

SECTION 5. ORS 475.309 is amended to read:

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

(a) The person holds a registry identification card issued pursuant to this section, has applied for a registry identification card pursuant to subsection ([9]**10**) of this section, or is the designated [*primary*] **medical marijuana** caregiver of a cardholder or applicant; and

(b) The person who has a debilitating medical condition and his or her [*primary*] **medical marijuana** caregiver are collectively [*in possession of*] **possessing, producing, delivering or** [*producing*] **transporting** marijuana for medical use in the amounts allowed in ORS 475.306.

(2) The [*division*] **Department of Human Services** shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of this section. Except as provided in subsection (3) of this section, the department shall issue a registry identification card to any person who pays a fee in the amount [*established by the division*] **of twenty dollars** and provides the following:

(a) Valid, written documentation from the person's attending physician stating that the person has been diagnosed with a debilitating medical condition and that the medical use of marijuana may mitigate the symptoms or effects of the person's debilitating medical condition **and, if applicable, any statement by the person's attending physician that the person may need to exceed the limits established in 475.306(1).**

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

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

and

(d) The name and address of the person's designated [*primary*] **medical marijuana** caregiver, if the person has designated a [*primary*] **medical marijuana** caregiver at the time of application.

(e) **A statement, for purposes of ORS 475.306 (1)(b), declaring whether the patient or their designated medical marijuana caregiver will grow only one outdoor marijuana crop per year or will grow multiple indoor crops.**

(3) The department shall issue a registry identification card to a person who is under 18 years of age if the person submits the materials required under subsection (2) of

this section, and the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age signs a written statement that:

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

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

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

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

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

(b) **If the person's attending physician refuses to provide the written documentation required by ORS 475.309 (2)(a), then the person may present to their County Health Officer written proof of a diagnosis within the last year of a debilitating condition listed in ORS 475.302(2). The County Health Officer shall authenticate the diagnosis of a debilitating medical condition and this authentication shall meet the requirements for this section that an attending physician state that the medical use of marijuana may mitigate the symptoms or effects of the person's debilitating medical condition.**

(5) The [*division*] **department** shall verify the information contained in an application submitted pursuant to this section and shall approve or deny an application within thirty days of receipt of the application.

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

(i) The applicant did not provide the information required pursuant to this section to establish his or her debilitating medical condition and to document his or her consultation with an attending physician **or authentication of the debilitating medical condition by a county health officer** regarding the medical use of marijuana in connection with such condition, as provided in subsections (2) and (3) of this section; or

(ii) The [*division*] **department** determines that the information provided was falsified.

(b) Denial of a registry identification card shall be considered a final *[division]* **department** action, subject to judicial review. Only the person whose application has been denied, or, in the case of a person under the age of 18 years of age whose application has been denied, the person's parent or legal guardian, shall have standing to contest the *[division's]* **department's** action. **Jurisdiction shall be in the Circuit Court and venue will lie in either the district where the applicant lives or in the district where the denial occurred at the applicant's discretion.**

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

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

- (i) The cardholder's name, address and date of birth;
- (ii) The date of issuance and expiration date of the registry identification card;
- (iii) The name and address of the person's designated *[primary]* **medical marijuana** caregiver, if any; and
- (iv) Such other information as the *[division]* **department** may specify by rule.

(b) When the person to whom the *[division]* **department** has issued a registry identification card pursuant to this section has specified a designated *[primary]* **medical marijuana** caregiver, the *[division]* **department** shall issue an identification card to the designated *[primary]* **medical marijuana** caregiver **at the caregiver's address listed on the application.** The *[primary]* **medical marijuana** caregiver's registry identification card shall contain the primary information provided in paragraph (a) of this subsection.

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

- (i) Notify the *[division]* **department** of any change in the person's name, address, attending physician or designated *[primary]* **medical marijuana** caregiver; and
- (ii) Annually submit to the *[division]* **department**:
 - (A) Updated written documentation of the person's debilitating medical condition; and

(B) The name of the person's designated *[primary]* **medical marijuana** caregiver if a *[primary]* **medical marijuana** caregiver has been designated for the upcoming year.

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

(8) When a person notifies the department of any change in the person's name, address, designated medical marijuana caregiver, or address of a registered garden, the department shall issue the person a new registry identification card

within ten days of receipt of the updated information and shall issue a new registry identification card for the person's designated medical marijuana caregiver.

[(8)] **[9]** A person who possesses a registry identification card pursuant to this section and who has been diagnosed by the person's attending physician as no longer having a debilitating medical condition shall return the registry identification card to the [division] **department** within seven calendar days of notification of the diagnosis. Any designated [primary] **medical marijuana** caregiver shall return his or her identification card within the same period of time.

[(9)] **[10]** A person who has applied for a registry identification card pursuant to this section **or that person's designated medical marijuana caregiver** [but] whose application has not yet been approved or denied, and who is contacted by any law enforcement officer in connection with his or her administration, possession, delivery, [or] production **or transportation** of marijuana for medical use may provide to the law enforcement officer a copy of the written documentation submitted to the [division] **department** pursuant to subsections (2) or (3) of this section and proof of the date of mailing or other transmission of the documentation to the [division] **department**. This documentation shall have the same legal effect as a registry identification card until such time as the person receives notification that the application has been approved or denied. **The department shall provide copies of an application for status as a registered patient or as a designated medical marijuana caregiver to the person submitting the application at the time the application is submitted to the department. These copies must be marked to clearly indicate the date the application was received by the department.**

SECTION 6. ORS 475.312 is amended to read:

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

- (a) On the person's application for a registry identification card;
- (b) In the annual updated information required under ORS 475.309; or
- (c) In a written, signed statement submitted to the [division] **Department of**

Human Services.

(2) A person described in this section may have only one designated [primary] **medical marijuana** caregiver at any given time **but may change their designated medical marijuana caregiver at any time by notifying the department and paying an additional ten-dollar fee.**

(3) A person who merely assists a qualified patient with their medical use of marijuana but who is not designated as such on the patient's application form or in other written communication with the department shall not be considered that patient's designated medical marijuana caregiver.

(4) A person may be the designated medical marijuana caregiver for up to ten patients without a medical marijuana dispensary license.

(5) When a patient who possesses a registry identification card changes their designated medical marijuana caregiver, the department shall notify the designated medical marijuana caregiver within ten days.

(a) The designated medical marijuana caregivers' exception from criminal laws shall expire ten days after notification by the department of their cancellation.

(6) Designated medical marijuana caregivers may be compensated by their registry identification cardholders in any manner agreed on by both parties. This compensation shall not constitute transfer of marijuana for consideration for the purposes of ORS 475.992.

SECTION 7. (1) A medical marijuana dispensary is excepted from the criminal laws of the state for possession, production, delivery, or transportation of marijuana, or aiding and abetting another in the possession, production, delivery, or transportation of marijuana, or any other criminal offense in which possession, production, delivery or transportation of marijuana is an element if:

(a) The medical marijuana dispensary holds a medical marijuana dispensary license issued by the department pursuant to this section;

(b) The only delivery of marijuana is between the licensed medical marijuana dispensary and a person holding a valid registry identification card, designated caregiver card or another licensed medical marijuana dispensary; and

(c) The medical marijuana dispensary is in compliance with all applicable rules promulgated by the department for regulating medical marijuana dispensaries.

(2)(a) The department shall establish and maintain a program for the issuance of medical marijuana dispensary licenses to persons who meet the requirements of this section. The department shall promulgate rules and procedures necessary to create a supply of medical marijuana for qualified patients. These rules shall be promulgated to create an intrastate market in medical marijuana subject to regulations necessary to ensure that medical marijuana is available to qualified patients.

(b) The department shall issue a medical marijuana dispensary license to any person who provides the following:

(i) A fee paid to the department in the amount established by the department by rule. This fee shall initially be set at \$1000.

(ii) A petition signed by at least twenty-five registry identification card holders calling for the establishment of the dispensary.

(iii) The name of the dispensary.

(iv) The physical address of the dispensary and any other property where medical marijuana is possessed, produced, processed, or cultivated related to the operations of the dispensary.

(v) The name, address and date of birth of any person who is an agent of or employed by the medical marijuana dispensary.

(3) Notwithstanding subsection (4)(a) below, any County Health Department may be licensed by the department as a medical marijuana dispensary. If no private dispensary is licensed in a county where one or more registered patients resides within six months following enactment of these amendments then the department shall grant the County Health Department a medical marijuana dispensary license waiving the signature and license fee requirements. Once so licensed the County Health Department shall dispense medical marijuana to registered patients in that county as needed. Nothing in this section shall be construed to impinge on patients' rights to cultivate their own medical marijuana, designate a medical marijuana caregiver to cultivate for them, or procure marijuana at a dispensary of their choice.

(4) The department shall establish the necessary rules and procedures to regulate the operation of medical marijuana dispensaries including the following:

(a) Medical marijuana dispensaries shall be established as nonprofit entities. They shall be subject to all applicable Oregon laws governing nonprofit entities but need not have received 501(c)(3) status from the Internal Revenue Service.

(b) Medical marijuana dispensaries shall be subject to reasonable inspection by the department to determine that applicable rules are being followed. Reasonable notice shall be given prior to these inspections.

(c) Medical marijuana dispensaries shall file quarterly reports with the department. These report shall include:

(i) An accounting of all income from and all expenditures incurred to possess, produce, deliver or transport medical marijuana;

(ii) The quantity of marijuana in ounces delivered to each cardholder by their card number in a manner that maintains the confidentiality of the registry cardholders' identity.

(iii) The total quantity of marijuana in ounces delivered for consideration.

(iv) The total revenue received from marijuana delivered for consideration.

(v) The total quantity of marijuana in ounces delivered for no consideration and the total quantity delivered to each indigent patient in a manner that maintains the confidentiality of the registry cardholders' identity

(d) The department shall collect a monthly fee from each medical marijuana dispensary that is a percentage of gross revenue for delivery of medical marijuana. The percentage shall be set at 10% unless the department determines that this is insufficient to fund the program in which case the department may increase the percentage but not more than to 25%.

(e) The department shall set these fees and the fee for a dispensary registration license at a level to cover the costs of administering the Oregon Medical Marijuana Program. These costs shall not include the costs for legal advice and rulemaking which shall be paid out of the budget of the Department of Human Services.

Section 8. The department shall establish a program to assist indigent patients in obtaining medical marijuana.

(1) The purpose of this program is to provide a minimum supply of usable medical marijuana to every registry identification cardholding patient.

(2) The department shall establish income standards based on eligibility for the Oregon Health Plan. A patient shall qualify for this program if their income is at or below the level set for qualifying for the Oregon Health Plan. A patient who meets the income requirements but has insurance other than the Oregon Health Plan shall also be covered.

(3) Patients whose income is below the level set by the Oregon Health Plan shall receive a certificate of indigence from the department that the patient may use to acquire medical marijuana at no cost from medical marijuana dispensaries.

(4) Each medical marijuana dispensary shall be required to provide medical marijuana to indigent patients. The dollar value of the medicinal marijuana provided to indigent patients must be at least 20% of the total dollar value of medical marijuana sold by each medical marijuana dispensary each month.

(5) Each dispensary shall report monthly to the department detailing which indigent patients received medical marijuana from the dispensary and how much marijuana in ounces they received, and the dollar value of the marijuana in a manner that maintains the confidentiality of the indigent patients

(6) The department shall promulgate rules and procedures necessary to implement this program.

(7) The department shall establish penalties for abuse of this program by dispensaries. Discriminating against indigent patients by a pattern of delivering lower grade medicine shall be considered abuse.

(a) The penalty for a first violation shall be a warning.

(b) The penalty for a second violation shall include fines up to 20% of the monthly revenue of the dispensary.

(c) The penalty for a third violation shall include suspension of the dispensary's license for a period of time to be determined by the department.

(d) The penalty for a fourth violation shall be revocation of the dispensary license.

(e) A licensed medical marijuana dispensary shall have the right to de novo review by the commission established by Section 23 of these amendments and shall have the right to review of the commission's decision by the Court of Appeals upon filing a notice of appeal within sixty days following an adverse decision by the commission.

(8) The department shall establish a system of auditing the reports provided by the medical marijuana dispensaries to determine that no indigent patient is receiving more marijuana than is allowed by this act.

Section 9. ORS 475.316 is amended to read:

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

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

(b) [*Engages in the medical use of*] **Smokes** marijuana in a public place, as that term is defined in ORS 161.015, or in public view or in a correctional facility as defined in ORS 162.135 (2) or youth correction facility as defined in ORS 162.135 (6);

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

(d) Delivers marijuana for consideration to any individual, even if the individual is in possession of a registry identification card, **unless the person delivering marijuana for consideration is an agent or employee of a medical marijuana dispensary, or the designated medical marijuana caregiver delivering to the patient for whom they are designated;**

(e) [*Manufactures or produces marijuana at a place other than one address for property under the control of the patient and one address for property under the control of the primary caregiver of the patient that have been provided to the Health Division;* or] **Manufactures or produces marijuana at a place that has not been registered with the department.**

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

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

Section 10. ORS 475.319 is amended to read:

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

(a) Has been diagnosed with a debilitating medical condition within 12 months prior to arrest and **has** been advised by his or her attending physician the medical use of marijuana may mitigate the symptoms or effects of that debilitating medical condition; **or is the designated medical marijuana caregiver for such a person;**

(b) Is engaged in the [*medical use of marijuana*] **possession, production, delivery, or transportation of marijuana for medical use;** and

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

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

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

(3) No person charged with possession, delivery or manufacture of marijuana, or any other criminal offense in which the possession, delivery or manufacture of marijuana is an element of the offense shall be precluded in any way from asserting the defense of choice of evils as set forth in ORS 161.200, where the person reasonably believes that the possession, delivery or manufacture of marijuana is medically necessary. No such person shall be prevented from presenting any evidence, including scientific evidence, in support of the reasonableness of the person's belief. The objective reasonableness of the person's belief shall be an issue only for the trier of fact and the trial judge shall instruct the jury on the elements of the defense in all cases where such person subjectively has such reasonable belief.

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

(5) If any person registers with the department as a medical marijuana patient subsequent to his or her arrest and can establish by a preponderance of the evidence that the person suffered from the debilitating medical condition at the time of his or her arrest, any conviction arising out of that arrest in which the possession, production, delivery, or transportation of marijuana is an element shall be punishable as a violation with a fine not to exceed \$500.

Section 11. The department shall utilize data collected from registered cardholders and licensed medical marijuana dispensaries to engage in scientific research as to the safety and efficacy of marijuana as medicine. The department shall annually publish a report of the data and results.

The department will establish procedures to assist any dispensary, or any private or government researcher in conducting research into the safety and efficacy of medical marijuana.

Section 12. ORS 475.323 is amended to read:

475.323 (1) Possession of a registry identification card or designated [*primary*] **medical marijuana** caregiver identification card pursuant to ORS 475.309 shall not alone constitute probable cause to search the person or property of the cardholder or otherwise subject the person or property of the cardholder to inspection by any governmental agency.

(2) Any property interest possessed, owned or used in connection with the medical use of marijuana or acts incidental to the medical use of marijuana that has been seized by state or local law enforcement officers shall not be harmed, neglected, injured or destroyed while in the possession of any law enforcement agency. A law enforcement agency has no responsibility to maintain live marijuana plants lawfully seized. No such property interest may be forfeited under any provision of law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense. Usable marijuana and paraphernalia used to administer marijuana that was seized by any law enforcement office shall be returned immediately upon a determination by the district attorney in whose county the property was seized, or his or her designee, that the person from whom the marijuana or paraphernalia used to administer marijuana was seized is entitled to the protections contained in ORS 475.300 to 475.346. Such determination may be evidenced, for example, be a decision not to prosecute, the dismissal of charges, or acquittal.

(a) If the law enforcement agency involved refuses to return usable marijuana to the registry identification cardholder or designated medical marijuana caregiver cardholder then the law enforcement agency shall be liable to the cardholder for the fair market value of the marijuana.

Section 13. ORS 475.326 is amended to read:

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

(1) Advising a person whom the attending physician has diagnosed as having a debilitating medical condition, or a person who the attending physician knows has been so diagnosed by another physician licensed under ORS chapter 677, about the risks and benefits of medical use of marijuana or that the medical use of marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, provided the advice is based on the attending physician's personal assessment of the person's medical history and current medical condition; or

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

Section 14. ORS 475.328 is amended to read:

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

Section 15. ORS 475.331 is amended to read:

475.331. (1) The [*division*] **department** shall create and maintain a list of the persons to whom the [*division*] **department** has issued registry identification cards pursuant to ORS 475.309 and the names of any designated [*primary*] **medical marijuana** caregivers. Except as provided in subsection (2) of this section, the list shall be confidential and not subject to public disclosure.

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

(a) Authorized employees of the [*division*] **department** as necessary to perform official duties of the [*division*] **department**; and

(b) Authorized employees of state or local law enforcement agencies, only as necessary to verify that a person is a lawful possessor of a registry identification card or that a person is the designated [*primary*] **medical marijuana** caregiver of such a person.

(3) The department shall establish a system so that law enforcement agencies can verify this information at any time.

(4) Law enforcement agencies shall contact the department prior to obtaining a search warrant in any marijuana case unless they have specific credible evidence that activity not authorized under 475.300 to 475.342 has occurred.

Section 16. ORS 475.334 is amended to read:

[475.334. Any person may submit a petition to the division requesting that a particular disease or condition be included among the diseases and conditions that qualify as debilitating medical conditions under ORS 475.302. The division shall adopt rules establishing the manner in which the division will evaluate petitions submitted under this section. Any rules adopted pursuant to this section shall require the division to approve or deny a petition within 180 days of receipt of the petition by the division. Denial of a petition shall be considered a final division action subject to judicial review.]

Section 17. ORS 475. 338 is amended to read:

475.338. The [*division*] **Department of Human Services** shall adopt all rules necessary for the implementation and administration of ORS 475.300 to 475.346. **Rulemaking expenses and any costs associated with legal advice sought by the department shall be paid out of the budget of the Human Resources Department and not from the Oregon Medical Marijuana Program budget.**

Section 18. ORS 475.340 is amended to read:

475.340. Nothing in ORS 475.300 to 475.346 shall be construed to require:

- (1) A government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana; or
- (2) An employer to accommodate the medical use of marijuana in any workplace **except that the status of being a registered medical marijuana patient shall not in and of itself constitute cause for termination of employment.**

Section 19. ORS 475.342 is amended to read:

475.342. Nothing in ORS 475.300 to 475.346 shall protect a person from a criminal cause of action based on possession, production, or delivery of marijuana that is not authorized by ORS 475.300 to 475.346.

Section 20. Reciprocity. The laws and rules of states with medical marijuana laws shall be given full faith and credit by the state of Oregon.

Section 21. Any person who lawfully possesses a registry identification card, as defined in ORS 475.302 (9), shall be guaranteed such rights as are conferred by this Act, by means of a cause of action in law or equity, against any person who acts to deny such rights.

Section 22. If provisions of this act establishing medical marijuana dispensaries are enjoined or declared unconstitutional then enforcing laws against delivery of marijuana for consideration to cardholding patients shall be the lowest priority of law enforcement.

Section 23. (1) The department shall establish the Oregon Medical Marijuana Commission. This commission shall oversee the management of the Oregon Medical Marijuana Program administered by the department. This commission shall have the authority to propose administrative rules, veto OMMP staff decisions, and suggest future legislative changes to this Act. The staff of the Oregon Medical Marijuana Program must follow directives of this commission.

(2) The commission shall consist of the following positions:

- (a) One patient representative elected by the registry identification cardholding patients;**
- (b) One caregiver representative elected by the cardholding caregivers;**
- (c) One medical marijuana dispensary representative elected by the dispensaries;**
- (d) One representative from the department;**
- (e) One representative from law enforcement chosen by the Oregon District Attorneys Association;**
- (f) One representative from the criminal defense bar chosen by the Oregon Criminal Defense Lawyers Association; and**
- (g) One representative from the medical profession to be chosen by the Governor after consultation with medical professional organizations.**

(3) The department shall promulgate all rules necessary for the implementation of this section.

Section 24. Severability. If any Section or part of this act is declared invalid then all the remaining Sections remain in effect.