

Senate Bill 540

Sponsored by Senator WINTERS

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**.

Prohibits retail sellers of marijuana for recreational use and medical marijuana facilities from being located within 1,000 feet of certified child care facility or preschool recorded program. Makes prohibitions operative January 1, 2016.

Creates crimes of unlawful manufacture of marijuana within 1,000 feet of child care facility or preschool recorded program and unlawful delivery of marijuana within 1,000 feet of child care facility or preschool recorded program. Punishes by maximum 20 years' imprisonment, \$375,000 fine, or both.

Creates crime of possession or use of marijuana at or near child care facility or preschool recorded program. Punishes by maximum five years' imprisonment, \$125,000 fine, or both.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to marijuana; creating new provisions; amending ORS 475.314, 475.858 and 475.862; and
3 declaring an emergency.

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

5 6 **PROXIMITY OF RETAIL SELLERS OF MARIJUANA AND** 7 **MEDICAL MARIJUANA FACILITIES TO CHILD CARE FACILITIES** 8 **AND PRESCHOOL RECORDED PROGRAMS**

9
10 **SECTION 1.** Sections 2 and 3 of this 2015 Act are added to and made a part of sections
11 3 to 70, chapter 1, Oregon Laws 2015.

12 **SECTION 2.** (1) Subject to subsection (2) of this section, the Oregon Liquor Control
13 Commission may not issue or renew a retail license under section 22, chapter 1, Oregon Laws
14 2015, to a person applying for the license or renewal if any part of the premises for which
15 the license is to be issued or renewed is located within 1,000 feet of a child care facility cer-
16 tified under ORS 329A.280 or a preschool recorded program recorded under ORS 329A.255.

17 (2) If a child care facility or preschool recorded program described in subsection (1) of
18 this section is established within 1,000 feet of any part of the premises for which a license
19 described in subsection (1) of this section has been issued, the license remains valid until the
20 date after the child care facility or preschool recorded program is first attended by children
21 on which the license is due for renewal.

22 **SECTION 3.** ORS 475.314, as amended by section 5, chapter 79, Oregon Laws 2014, is amended
23 to read:

24 475.314. [(1) *The Oregon Health Authority shall establish by rule a medical marijuana facility*
25 *registration system to authorize the transfer of usable marijuana and immature marijuana plants*
26 *from:]*

27 [(a) *A registry identification cardholder, the designated primary caregiver of a registry identifica-*

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 *tion cardholder, or a person responsible for a marijuana grow site to the medical marijuana facility;*
 2 *or]*

3 *[(b) A medical marijuana facility to a registry identification cardholder or the designated primary*
 4 *caregiver of a registry identification cardholder.]*

5 **(1) The Oregon Health Authority shall establish by rule a system for registering medical**
 6 **marijuana facilities that transfer usable marijuana and immature marijuana plants to regis-**
 7 **try identification cardholders and designated primary caregivers.**

8 (2) The registration system established under subsection (1) of this section must require **an ap-**
 9 **plicant for** a medical marijuana facility to submit an application to the authority that includes:

10 (a) The name of the person **or persons** responsible for the medical marijuana facility;

11 (b) The address of the medical marijuana facility;

12 (c) Proof that *[the]* **each** person responsible for the medical marijuana facility is a resident of
 13 *[Oregon]* **this state;**

14 (d) Documentation, as required by the authority by rule, that demonstrates the medical
 15 marijuana facility meets the *[qualifications for a medical marijuana facility as described in]* **re-**
 16 **quirements under** subsection (3) of this section; and

17 (e) Any other information that the authority considers necessary.

18 (3) To qualify for registration under this section, a medical marijuana facility:

19 (a) Must be located in an area that is zoned for commercial, industrial or mixed use or as ag-
 20 ricultural land;

21 (b) May not be located at the same address as a marijuana grow site;

22 (c) Must be registered as a business, or have filed *[a pending]* **an** application to register as a
 23 business, with the Office of the Secretary of State;

24 *[(d) Must not be located within 1,000 feet of the real property comprising a public or private ele-*
 25 *mentary, secondary or career school attended primarily by minors;]*

26 **(d) May not be located within 1,000 feet of:**

27 **(A) The real property comprising a public or private elementary, secondary or career**
 28 **school attended primarily by minors; or**

29 **(B) Any part of the premises of a child care facility certified under ORS 329A.280 or a**
 30 **preschool recorded program recorded under ORS 329A.255;**

31 (e) *[Must]* **May** not be located within 1,000 feet of another medical marijuana facility; and

32 (f) Must comport with rules adopted by the authority related to:

33 (A) Installing a minimum security system¹, *including a* **that includes** video surveillance
 34 *[system], an* alarm system and **a** safe; and

35 (B) Testing for pesticides, mold and mildew and the processes by which usable marijuana and
 36 immature marijuana plants that test positive for pesticides, mold or mildew must be returned to the
 37 registry identification cardholder, the **registry identification** cardholder's designated primary
 38 caregiver or the **registry identification** cardholder's registered grower.

39 (4)(a) The authority shall conduct a criminal records check under ORS 181.534 *[of a person*
 40 *whose name is submitted as the person responsible for a medical marijuana facility under subsection*
 41 *(2) of this section]* **for each individual named in an application under subsection (2) of this**
 42 **section.**

43 (b) *[A person]* **An individual** convicted for the manufacture or delivery of a controlled substance
 44 in Schedule I or Schedule II may not be *[the person]* responsible for a medical marijuana facility for
 45 five years from the date the *[person]* **individual** is convicted.

1 (c) [A *person*] **An individual** convicted more than once for the manufacture or delivery of a
 2 controlled substance in Schedule I or Schedule II may not be [*the person*] responsible for a medical
 3 marijuana facility.

4 (5) If a person submits the application required under subsection (2) of this section, the medical
 5 marijuana facility identified in the application meets the [*qualifications for a medical marijuana fa-*
 6 *cility described in*] **requirements under** subsection (3) of this section and [*the person responsible for*
 7 *the medical marijuana facility*] **each individual named in the application** passes the criminal re-
 8 cords check required under subsection (4) of this section, the authority shall register the medical
 9 marijuana facility and issue [*the person responsible for the medical marijuana facility*] proof of reg-
 10 istration. [*The person responsible for the medical marijuana facility shall display the*] Proof of regis-
 11 tration **must be displayed** on the premises of the medical marijuana facility at all times when
 12 usable marijuana or immature marijuana plants are being transferred as described in subsection (1)
 13 of this section.

14 (6)(a) A registered medical marijuana facility may receive usable marijuana or immature
 15 marijuana plants only from a registry identification cardholder, designated primary caregiver or
 16 person responsible for a marijuana grow site if the registered medical marijuana facility obtains
 17 authorization, on a form prescribed by the authority by rule and signed by a registry identification
 18 cardholder, to receive the usable marijuana or immature marijuana plants.

19 (b) A registered medical marijuana facility shall maintain:

20 (A) A copy of each authorization form described in paragraph (a) of this subsection; and

21 (B) Documentation of each transfer of usable marijuana or immature marijuana plants.

22 (7) A **registered** medical marijuana facility [*registered under this section*] may possess usable
 23 marijuana and immature marijuana plants in excess of the limits imposed on registry identification
 24 cardholders and designated primary caregivers under ORS 475.320.

25 (8)(a) A registered medical marijuana facility may not transfer any tetrahydrocannabinol-infused
 26 product that is meant to be swallowed or inhaled, unless the product is packaged in child-resistant
 27 safety packaging that meets standards established by the authority by rule.

28 (b) A registered medical marijuana facility may not transfer any tetrahydrocannabinol-infused
 29 product that is manufactured or packaged in a manner that is attractive to minors, as determined
 30 by the authority by rule.

31 (9) The authority may inspect:

32 (a) The premises of an applicant for a medical marijuana facility or a registered medical
 33 marijuana facility to ensure compliance with the [*qualifications for a medical marijuana facility de-*
 34 *scribed in*] **requirements under** subsection (3) of this section; and

35 (b) The records of a registered medical marijuana facility to ensure compliance with subsection
 36 (6)(b) of this section.

37 (10)(a) A registry identification cardholder or the designated primary caregiver of a registry
 38 identification cardholder may reimburse a **registered** medical marijuana facility [*registered under*
 39 *this section*] for the normal and customary costs of doing business, including costs related to trans-
 40 ferring, handling, securing, insuring, testing, packaging and processing usable marijuana and imma-
 41 ture marijuana plants and the cost of supplies, utilities and rent or mortgage.

42 (b) A **registered** medical marijuana facility may reimburse a person responsible for a marijuana
 43 grow site under this section for the normal and customary costs of doing business, including costs
 44 related to transferring, handling, securing, insuring, testing, packaging and processing usable
 45 marijuana and immature marijuana plants and the cost of supplies, utilities and rent or mortgage.

1 (11) **Subject to the provisions of ORS chapter 183**, the authority may revoke the registration
 2 of a medical marijuana facility [*registered under this section*] for failure to comply with ORS 475.300
 3 to 475.346, rules adopted under ORS 475.300 to 475.346 or ordinances adopted pursuant to section
 4 2, chapter 79, Oregon Laws 2014. The authority may release to the public a final order revoking a
 5 medical marijuana facility registration.

6 (12) The authority shall adopt rules to implement this section, including rules that:

7 (a) Require a **registered** medical marijuana facility [*registered under this section*] to annually
 8 renew [*that*] **the registration for that facility**; and

9 (b) Establish fees for registering and renewing registration for a medical marijuana facility un-
 10 der this section.

11 **SECTION 4. Section 5 of this 2015 Act is added to and made a part of ORS 475.300 to**
 12 **475.346.**

13 **SECTION 5. If a child care facility or preschool recorded program described in ORS**
 14 **475.314 (3)(d) is established within 1,000 feet of a medical marijuana facility registered under**
 15 **ORS 475.314, the medical marijuana facility may remain at its current location until the date**
 16 **after the child care facility or preschool recorded program is first attended by children on**
 17 **which the registration is due for renewal.**

18
 19 **CRIMES**
 20

21 **SECTION 6.** ORS 475.858 is amended to read:

22 475.858. (1) It is unlawful for any person to manufacture marijuana within 1,000 feet of the real
 23 property comprising a public or private elementary, secondary or career school attended primarily
 24 by minors, **a child care facility certified under ORS 329A.280 or a preschool recorded program**
 25 **recorded under ORS 329A.255.**

26 (2) Unlawful manufacture of marijuana within 1,000 feet of a school, **child care facility or**
 27 **preschool recorded program** is a Class A felony.

28 **SECTION 7.** ORS 475.862 is amended to read:

29 475.862. (1) It is unlawful for any person to deliver marijuana within 1,000 feet of the real
 30 property comprising a public or private elementary, secondary or career school attended primarily
 31 by minors, **a child care facility certified under ORS 329A.280 or a preschool recorded program**
 32 **recorded under ORS 329A.255.**

33 (2) Unlawful delivery of marijuana within 1,000 feet of a school, **child care facility or pre-**
 34 **school recorded program** is a Class A felony.

35 **SECTION 8. Section 9 of this 2015 Act is added to and made a part of ORS chapter 475.**

36 **SECTION 9. (1) It is unlawful for any person:**

37 (a) **To possess marijuana on the premises of a child care facility certified under ORS**
 38 **329A.280 or a preschool recorded program recorded under ORS 329A.255; or**

39 (b) **To smoke marijuana or use a device that vaporizes cannabinoid solutions:**

40 (A) **On private property located within 10 feet of any part of the premises of a child care**
 41 **facility certified under ORS 329A.280 or a preschool recorded program recorded under ORS**
 42 **329A.255;**

43 (B) **On public property located within 100 feet of any part of the premises of a child care**
 44 **facility certified under ORS 329A.280 or a preschool recorded program recorded under ORS**
 45 **329A.255; or**

1 (C) If the person is an employee of a child care facility certified under ORS 329A.280 or
2 a preschool recorded program recorded under ORS 329A.255, during the person's work shift,
3 including rest and lunch breaks.

4 (2) Unlawful possession or use of marijuana at or near a child care facility or a preschool
5 recorded program is a Class C felony.

6
7 **APPLICABILITY**

8
9 **SECTION 10.** (1) Section 2 of this 2015 Act applies to applications for issuance or renewal
10 of a retail license under section 22, chapter 1, Oregon Laws 2015, received by the Oregon
11 Liquor Control Commission on or after the operative date specified in section 11 of this 2015
12 Act.

13 (2) The amendments to ORS 475.314 by section 3 of this 2015 Act apply to:

14 (a) Applications for registration of a medical marijuana facility received by the Oregon
15 Health Authority on or after the operative date specified in section 11 of this 2015 Act;

16 (b) Applications for renewal of the registration of a medical marijuana facility received
17 by the authority on or after the operative date specified in section 11 of this 2015 Act; and

18 (c) Medical marijuana facility registrations updated by the authority on or after the op-
19 erative date specified in section 11 of this 2015 Act.

20 (3) Section 9 of this 2015 Act and the amendments to ORS 475.858 and 475.862 by sections
21 6 and 7 of this 2015 Act apply to conduct occurring on or after the effective date of this 2015
22 Act.

23
24 **OPERATIVE DATE**

25
26 **SECTION 11.** (1) Sections 1, 2, 4 and 5 of this 2015 Act and the amendments to ORS
27 475.314 by section 3 of this 2015 Act become operative on January 1, 2016.

28 (2) The Oregon Liquor Control Commission and the Oregon Health Authority may take
29 any action before the operative date specified in subsection (1) of this section that is neces-
30 sary to enable the commission and authority to exercise, on and after the operative date
31 specified in subsection (1) of this section, all the duties, functions and powers conferred on
32 the commission and authority by sections 1, 2, 4 and 5 of this 2015 Act and the amendments
33 to ORS 475.314 by section 3 of this 2015 Act.

34
35 **UNIT CAPTIONS**

36
37 **SECTION 12.** The unit captions used in this 2015 Act are provided only for the conven-
38 ience of the reader and do not become part of the statutory law of this state or express any
39 legislative intent in the enactment of this 2015 Act.

40
41 **EMERGENCY CLAUSE**

42
43 **SECTION 13.** This 2015 Act being necessary for the immediate preservation of the public
44 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect
45 on its passage.

