




DEPARTMENT OF JUSTICE  
GENERAL COUNSEL DIVISION

**MEMORANDUM**

DATE: February 9, 2015

TO: Senator Ginny Burdick, Chair  
Joint Committee on Implementing Measure 91

Representative Ann Lininger, Chair  
Joint Committee on Implementing Measure 91

FROM: Shannon K. O'Fallon, Senior Assistant Attorney General   
Health and Human Services Section

SUBJECT: Measure 91 and Oregon Medical Marijuana Act Overview

**MEASURE 91 OVERVIEW**

➤ **What Measure 91 does (broadly):**

- Provides for the regulation of the retail marijuana industry by OLCC.
- Permits personal possession and use of certain amounts of marijuana if over the age of 21.
- Taxes the producer on the sale of marijuana flowers, leaves and immature plants.
- Measure becomes operative on July 1, 2015.

➤ **Some of the things Measure 91 does not do:**

- Amend or affect:
  - Employment law;
  - Landlord-tenant law;
  - The Oregon Medical Marijuana Act ("OMMA"); or
  - Federal law.

➤ **Key Definitions:**

- Marijuana items: marijuana, marijuana products, marijuana extracts. This is the universe of things that a marijuana licensee can produce, process and sell.
- Marijuana: all parts of the plant whether growing or not.
- Marijuana product: product containing marijuana or marijuana extracts intended for human consumption, but does not include marijuana by itself or marijuana extract by itself.

- Marijuana extract: product obtained by separating resins from marijuana by using solvents (other than vegetable glycerin) that is highly concentrated with high levels of THC.
- Marijuana flowers: only the flowers of the plant.
- Marijuana leaves: only the leaves of the plant and no other part.
- Homegrown or homemade: means grown or made by a person 21 or older for noncommercial purposes.
- Usable marijuana: dried marijuana flowers and dried marijuana leaves, and any mixture or preparation thereof.
- Household: means a housing unit, and includes any place in or around the housing unit at which the occupants of the housing unit are producing, processing, keeping, or storing homegrown marijuana or homemade marijuana products.
- Housing unit: means a house, an apartment, a mobile home, a group of rooms, or a single room that is occupied as separate living quarters, in which the occupants live and eat separately from any other persons in the building and which have direct access from the outside of the building or through a common hall.

➤ **Homegrown Marijuana:**

- One or more persons 21 or over in a household can have the following at any one time:
  - 4 mature plants;
  - 8 oz. of usable marijuana;
  - 16 oz. of homemade marijuana products in solid form; or
  - 72 oz. of homemade marijuana products in liquid form.
- An individual 21 or older may deliver to another individual 21 or over for noncommercial purposes up to:
  - 1 oz. homegrown marijuana;
  - 16 oz. homemade marijuana products in solid form; or
  - 72 oz. of homemade marijuana products in liquid form.
- Individuals cannot make or possess homemade “extract” as that is defined.  
(Def. of marijuana extract; Sec. 57.)

➤ **OLCC Powers and Duties:**

- Regulate the purchase, sale, production, processing, transportation, and delivery of marijuana items, issue licenses and set standards for those licensees, and authority to grant, deny, suspend or revoke a license.
- Collect taxes.
- Investigate and aid in the prosecution of violations of Measure 91.
- Establish standards for marijuana items.
- Require testing of marijuana items.
- Limit the quantity of marijuana items that may be purchased at one time in order to prevent resale.
- Prohibit the sale of a brand of marijuana items that the OLCC believes is:
  - deceptively labeled or branded as to content; or

- contains injurious or adulterated ingredients.
- Regulate and prohibit advertising of licensees.
- Regulate the use of marijuana items for scientific, pharmaceutical, manufacturing, mechanical, industrial or other purposes.
- Present a report to the Legislature and make recommendations for changes in the Oregon Vehicle Code regarding driving under the influence of marijuana (on or before January 1, 2017).

➤ **Licensing:**

- On or before January 4, 2016, OLCC must begin accepting licenses for:
  - Production of marijuana: the manufacture, planting, cultivation, growing, or harvesting of marijuana
  - Processing of marijuana:
    - The processing, compounding, or conversion of marijuana into marijuana products or marijuana extracts;
    - The processing, compounding, or conversion of marijuana, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis;
    - The packaging or repackaging of marijuana items; or
    - The labeling or relabeling of any package or container of marijuana items.
  - Selling marijuana: A retailer may only sell marijuana items to a consumer in this state. (Consumer defined as “a person who purchases, acquires, owns, holds, or uses marijuana items other than for the purpose of resale”.)
- OLCC shall not “unreasonably delay” the processing, approval, denial or granting of licenses.
- Wholesale is not defined but you have to have a wholesale license for premises at which marijuana items are received, kept, stored or delivered.
- A person can hold multiple licenses. (Sec. 24)
- A license: (Sec. 25)
  - Is a personal privilege and does not constitute property.
  - Is valid for a year (except first time can be less) and can be renewed annually.
  - Can be transferred to another premises subject to OLCC’s rules.
  - Ceases upon death.
- Fees: (Section 28(4))
  - \$250 non-refundable application fee.
  - \$1,000 non-refundable license fee paid upon OLCC granting a license.

➤ **Grounds for refusing licensure:** All listed in Sec. 29(2).

➤ **Grounds for Suspending or Revoking a License:** All listed in Sec. 30

➤ **Civil Penalties.** Sec. 30(2)



➤ **Taxes.**

- Imposed on a producer at a rate of:
  - \$35 per ounce on flowers;
  - \$10 per ounce on leaves; and
  - \$5 per immature plant.
- Rates on flowers and leaves apply proportionally to quantities of less than an ounce.
- Producer must file a statement with OLCC on or before the 20<sup>th</sup> day of each month for the quantities sold the previous month and pay the tax on that amount before the time for the filing of the statement expires.
- For reporting periods beginning on or after July 1, 2017, the rates of tax are to be adjusted for each biennium according to the cost-of-living adjustment for the calendar year.
- Commission has to regularly review the rates of tax and make recommendations to the Legislature regarding appropriate adjustments to the rates that will further the purposes of:
  - Maximizing net revenue;
  - Minimizing the illegal marijuana industry under Oregon law; and
  - Discouraging the use of marijuana by minors under 21 years of age.

➤ **Distribution of Funds.**

- At the end of each month, OLCC must certify the amount of moneys available for distribution in the Oregon Marijuana Account and, after withholding funds necessary to carry out its obligations under Measure 91, must within 35 days of the month for which a distribution is made distribute the moneys as follows:
  - 40% to the Common School Fund;
  - 20% to the Mental Health Alcoholism and Drug Services Account (ORS 430.380);
  - 15% to the State Police Account (ORS 181.175);
  - 10% to assist local law enforcement in performing its duties under Measure 91 that is distributed to cities in shares. (Sec. 44(2)(d));
  - 10% to assist local law enforcement in performing its duties under Measure 91 that is distributed to counties in shares. (Sec. 44(2)(e));
  - 5% to OHA for drug and alcohol abuse prevention, early intervention and treatment.

➤ **Local Government.**

- Cities and counties can adopt reasonable time, place and manner ordinances related to the nuisance aspects of marijuana retailers if the city or county makes specific findings that the establishment would cause adverse effects to occur.
- Measure 91 says that it preempts local ordinances that are inconsistent with it.
- A city or county can prohibit the operation of licensed premises if a petition is filed that is signed by not less than 10% of the electors in the city or county. The election must be during a statewide general election. The soonest that could be is November 2016.



➤ **Prohibitions.** (Not complete list)

- Class C felony to import or export marijuana items for consideration;
- A Class A misdemeanor to import or export without consideration;
- You can't give marijuana away as a prize;
- You can't sell marijuana to someone who is visibly intoxicated;
- A person who exercises control over private property may not knowingly allow any person under 21 to consume marijuana on the premises or allow that person to remain if they have consumed on the property.
- A person under the age of 21 cannot work on the premises of a marijuana licensee.
- Only a licensed producer may possess a mature marijuana plant – not a processor or a retailer and no licensee can sell mature plants.
- Prohibits person from “engaging” in the use of marijuana in a public place – defined as:
  - a place to which the general public has access and includes, but is not limited to, hallways, lobbies and other parts of apartment houses and hotels not constituting rooms or apartments designed for actual residence, and highways, streets, schools, places of amusement, parks, playgrounds and premises used in connection with public passenger transportation.

## **OVERVIEW OF OREGON MEDICAL MARIJUANA LAWS**

### **Oregon Medical Marijuana Program**

- Administered by Oregon Health Authority (OHA):
- A patient – someone with a qualifying medical condition can apply to receive an OMMP card.
  - To apply you have to have an Attending Physician Statement (APS) that says you have 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.
  - A parent or legal guardian with the responsibility for health care decisions of a minor and who agrees to serve as the minors designated primary caregiver can apply for a minor under 18 to get a card.
    - The parent or legal guardian must agree to control the acquisition of marijuana and the dosage and frequency of use.
- Debilitating conditions:
  - Cancer, glaucoma, agitation incident to Alzheimer's disease, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, or a side effect related to the treatment of these medical conditions; and
  - A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:
    - Cachexia;
    - Severe pain;
    - Severe nausea;
    - Seizures, including seizures caused by epilepsy; or

- Persistent muscle spasms, including spasms caused by multiple sclerosis;
- Post-traumatic stress disorder.
- A patient can designate a primary caregiver – defined as an individual 18 years or older who has significant responsibility for managing the well-being of the patient.
- A patient can grow for themselves or designate a third party, his or her caregiver or someone else to grow.
- The address for the growsite has to be registered with OMMP.
- A fee of \$200 is required to get a card unless the applicant qualifies for a reduced fee. (SSI, OHP, SNAP, Veteran with a disability.)
- If OMMP grants an application cards are issued to the patient, caregiver and grower and a growsite registration card must be posted at the growsite.
- Cards must be renewed annually.
- Possession limits (ORS 475.320):
  - 6 mature plants.
  - 18 seedlings or starts (immature plants).
  - 24 oz. of usable marijuana.
  - If a patient has been convicted of a Class A or Class B felony for the manufacture or delivery of a controlled substance in Schedule I or Schedule II the patient and caregiver may only possess one ounce of usable marijuana at any given time for 5 years from the date of the conviction.
  - A grower may grow for up to four patients at any one time.
  - There is no limit on how many growers can grow at the same location.
  - Under the OMMA marijuana is considered the property of the patient.
  - A patient or caregiver can reimburse a grower for the costs of supplies and utilities associated with the production of marijuana but not for other costs and specifically not for the cost of labor.
- A individual authorized to possess, produce or use marijuana under the OMMA is not protected from criminal laws concerning marijuana if an individual (ORS 475.316):
  - Drives under the influence.
  - Engages in the use of marijuana in a public place.
  - Delivers marijuana to a non-cardholder.
  - Delivers marijuana for consideration.
  - Produces or manufactures marijuana at a location other than an authorized growsite or at more than one address.
- Law Enforcement can call OMMP or use an automated system to verify whether an individual has an OMMP card or whether an address is an authorized growsite.

### **Oregon Medical Marijuana Dispensary Program**

- Administered by OHA.
- Passed in 2013 (HB 3460) and became operative in March 1, 2014.

- Permits a person responsible for a medical marijuana facility (dispensary) to apply for a registration. In order to be registered:
  - You must be a resident of Oregon (by rule just domiciled here – not any particular length of time).
  - Must not have been convicted of manufacture or delivery of a controlled substance in Schedule I or II within five years from the date of conviction or convicted more than once.
  - The proposed location must not be within 1000 feet of a school.
  - The proposed location must not be within 1000 feet of another dispensary.
  - The proposed location must be in an area that is zoned for commercial, industrial or mixed use or as agricultural land and may not be located at the same address as a marijuana grow site.
  - Must be a business registered with the Sec. of State.
  - Must comply with OHA rules regarding security.
  - Test marijuana for pesticides mold and mildew.
- Once registered a dispensary:
  - May accept transfers of usable marijuana or immature plants from an OMMP patient, caregiver or grower – if authorized by the patient.
  - May transfer usable marijuana or an immature plant to an OMMP patient or caregiver.
- A dispensary may reimburse an OMMP grower who transfers usable marijuana or immature plants ***for the normal and customary costs of doing business, including costs related to transferring, handling, securing, insuring, testing, packaging and processing usable marijuana and immature marijuana plants and the cost of supplies, utilities and rent or mortgage.***
- An OMMP patient or caregiver may reimburse a dispensary ***for the normal and customary costs of doing business, including costs related to transferring, handling, securing, insuring, testing, packaging and processing usable marijuana and immature marijuana plants and the cost of supplies, utilities and rent or mortgage.***
- OHA has set the fees in rule. \$500 application fee, \$3500 registration fee.
- Must be renewed annually.
- The names of PRFs and the locations of dispensaries are confidential though law enforcement can verify that information. Some dispensaries waive confidentiality – those locations are listed on the program's website. <http://www.oregon.gov/oha/mmj/Pages/index.aspx>.
- During the 2014 legislative session SB 1531 was passed that:
  - Requires THC infused products meant to be swallowed or inhaled to be packaged in child-resistant safety packaging.
  - Prohibits the transfer of a THC infused product that is manufactured or packaged in a manner that is attractive to minors.
  - Permits a city or county to adopt ordinances that impose reasonable regulations on the operation of dispensaries. Sec. 2.
  - Permitted a city or county to enact a moratorium on the operation of dispensaries no later than May 1, 2014, that expires by May 1, 2015.



**Medical Marijuana/Retail Marijuana/Home-grow Chart**

	Medical Marijuana	Retail Marijuana	Home-grow/ Homemade
Governing Law	Oregon Medical Marijuana Act (OMMA), ORS 475.300-346; OAR 333, Division 8	Measure 91	Measure 91 Sec. 6, 57
Year first enacted	1998 for OMMP 2013 for MMDP (dispensaries)	2014	
Regulatory Agency	OHA	OLCC	
Permissible Amounts of Marijuana to Grow/Possess	<p><u>Patient</u>: 6 mature plants, 18 seedlings, 24 oz. usable marijuana. If patient convicted of Class A or B felony for manufacture or delivery of controlled substance, can have only 1 oz. of usable marijuana at any given time for a period of five years.</p> <p><u>Caregiver</u>: Same as patient, no limit on how many patients a caregiver can have.</p> <p><u>Grower</u>: Can grow for up to 4 patients (including yourself). Collectively a patient, caregiver and grower can have same amount as patient.</p> <p>An unlimited number of growers can grow at one site.</p> <p>ORS 475.320</p>	<p>OLCC can by rule limit the quantity of marijuana items that may be purchased at one time in order to prevent resale.</p> <p>Sec. 15</p>	<p>* 4 mature plants  * 8 oz. of usable marijuana  * 16 oz. of homemade marijuana products in solid form  * 72 oz. of homemade marijuana products in liquid form  * <b><u>Cannot</u></b> make or possess homemade extract unless is it made using vegetable glycerin.</p> <p>Sec. 6, 57</p>
Registration/ License	<p>Oregon Medical Marijuana Program (OMMP) registers: Patients; Caregivers; Growers; Growsites.</p> <p>Oregon Medical Marijuana Dispensary Program (MMDP) registers medical marijuana dispensaries.</p>	<p>OLCC issues licenses to:  Producers (growers); Processors;  Wholesalers, Retailers  ** Note that OHA will certify labs that will do the testing under ORS 438.605 to 438.62</p>	

	Medical Marijuana	Retail Marijuana	Home-grow/ Homemade
Basic rules	<p>Patient must have qualifying debilitating condition.</p> <p>Patient must submit application, fee, Attending Physician Statement (APS).</p> <p>Can designate a caregiver and a third party grower.</p> <p>OMMP card is defense against possession charge.</p> <p>May not use in public, drive under the influence, share with non-card holder, grow or manufacture at a place other than an authorized growsite, grow or manufacture at more than one address, sell.</p> <p>Marijuana is the property of the patient, even when grown by third party (ORS 475.320(2)(f))</p>	<p>Must have license from OLCC to produce, manufacture or sell.</p> <p>Producer pays tax at time of sale on flowers, leaves, immature plants.</p>	
Who can grow	<p>Patient may have 1 grow site.</p> <p>Patient may grow for themselves or designate a grower. Grow sites must be registered – address and name of person responsible.</p> <p>Grower may be reimbursed for costs and supplies but NOT for labor.</p> <p>Grow site may produce for up to 4 card holders at a time. <i>But see Dispensary rules below.</i></p>	<p>For commercial sale, only OLCC licensed producers</p>	<p>Any adult over age 21</p>
Caregiver rules	<p>Patient may designate 1 caregiver.</p> <p>Caregiver may possess marijuana for patients, may assist patient with use.</p> <p>Caregiver can have unlimited number of patients</p>	<p>NA</p>	
Who can “Sell”	<p>Dispensaries can “sell” to OMMP patients and caregivers</p> <p>Patient can authorize grower to “sell” to dispensaries</p>	<p>Licensed producers, wholesalers, processors to other licensed producers, wholesalers, processors or retailers.</p> <p>Retail marijuana licensees to consumer over 21 only.</p>	<p>Can deliver to another adult over the age of 21 for non-commercial purposes.</p>



	Medical Marijuana	Retail Marijuana	Home-grow/ Homemade
Permissible locations	<u>Registered Dispensaries:</u> Commercial, industrial, mixed use or agricultural zones. Not same location as grow site. Not within 1000 feet of a school, or another mm facility.  Authorized growers: Anywhere	Established by OLCC in rule	Any household as that is defined in Sec. 5 of Measure 91
Federal law	Under Controlled Substances Act marijuana is a schedule 1 drug – meaning that it has no accepted medical use and has a high potential for abuse. In recent budget bill, Congress says no federal enforcement against people complying with state <i>medical</i> marijuana laws. Accommodation: Cole Memo (issued August 29, 2013, by Deputy AG James M. Cole) provides guidance on DOJ federal marijuana enforcement re recreational activity, including civil enforcement, criminal investigation, and prosecution of marijuana in ALL states.		