Statement Of Greenpoint, Oregon, Inc.
In Support of SB 460-8

Greenpoint, Oregon, Inc. respectfully requests that the Committee approve the -8 amendments to SB 460. The amendment eliminates an ambiguity in lines 7 - 8 of Section 116 of A-Engrossed HB 3400. Essential purposes of Ballot Measure 91 will be served by the -8 amendments.

Section 116 (pages 75 - 76) of A-Engrossed HB 3400 creates an opportunity for registrants in the medical marijuana system responsible for a site at which medical marijuana is grown may "opt-in" to the comparatively highly regulated non-medical market created by Ballot Measure 91 and refined in A-Engrossed HB 3400. Once the commission issues a license pursuant to Section 116, the licensee must conform his or her conduct to standards that would not be required if he or she had not become a licensee in the non-medical market. For example, licensees opting-in via Section 116 must:

- Allow the OLCC to apply the plant-tracking system it will create pursuant to Section 23 of A-Engrossed HB 3400. Section 116 (4)(b).

- Abide by rules that OLCC will adopt and apply to producers of non-medical marijuana. Section 116 (2)(b).

- Agree to be excluded from licensing in the non-medical marketplace if the proposed continued use of the site is prohibited by an applicable land use zone. Section 116 (2)(b) and Section 34.

Medical marijuana growers who opt in through Section 116 subject themselves to restrictions not applicable to other producers in the non-medical market. One of these restrictions creates the ambiguity in turn cured by the -8 amendments supported by Greenpoint.

The restriction appears on page 76, lines 7 - 8, of A-Engrossed HB 3400, which is Section 116(4)(a) of the bill. A person responsible for a marijuana grow site: "May not possess more than the amount or number of marijuana plants permitted pursuant to" OMMA. The referenced number changes over time under A-Engrossed HB 3400, and that is the problem.

Between now and March 1, 2016, the status quo prevails. OMMA limits medical marijuana growers to six mature plants and 24 ounces of usable marijuana for each registry identification cardholder or caregiver, to a maximum of four cardholders or caregivers. ORS 475.320(2)(b).

On March 1, 2016, section 82 of A-Engrossed HB 3400 becomes operative. Section 179(1). Section 82 significantly reduces the number of mature plants that will henceforth be allowed at any given site producing marijuana for the medical market.

After March 1, 2016, the limit is to be calculated for each grower — and for each address at which a grow is located — by reference to the number of mature plants the grower was authorized to have had at that location 15 months before (on December 31, 2014), and further by reference to absolute caps that depend on where the site is located. For sites within city limits and zoned for residential use, the absolute

maximum starting March 1, 2016 will be 24 mature plants. Section 82(3)(b). For sites elsewhere, the absolute maximum will be 96 mature plants. Section 82(4)(b).

Given that the number changes with time, the meaning of the limitation placed on Section 116 opt-in growers by Section 116(4)(a) depends on ***when*** one takes the measure of the licensee's activity.

The literal text of the limit leads to the conclusion that a grower opting in before March 1, 2016, will be subject to the plant canopy limits to be created by the OLCC in the rule making process commanded by Section 13 of A-Engrossed HB 3400, *but will not be subject to the reduced per-site limits that will subsequently, on March 1, 2016, become operative*. Nothing in the text of Section 116(4)(a) expressly states that the reduction in limits that will become operative on March 1, 2016 applies to an applicant who has opted in before that date.

Rules of construction provided by the Legislature and by the courts support the interpretation given above. The interpretation of Section 116(4)(a) will begin with examination of its text and context within the broader legislation of which it is a piece. ***State v. Gaines***, 346 Or 160, 171 (2009). Fixing the quantity of plants allowed a medical marijuana grower who opts-in via Section 116 tends to make that choice more attractive than remaining outside the highly regulated environment of Section 116. The interpretation supporting that outcome is consistent with explicit purposes of Ballot Measure 91 and A-Engrossed HB 3400. These purposes include:

- Establishing a comprehensive regulatory framework concerning marijuana. Section 1(1)(e) of BM 91.
- Preventing the diversion of marijuana from this state to other states. Section 1(2)(c) of BM 91 and Section 23 of A-Engrossed HB 3400 (tracking).
- Preventing revenue from the sale of marijuana from going to illicit organizations. Section 1(2)(b) of BM 91.

ORS 174.060 establishes a general rule that would undermine that interpretation but for the fact that the reduced limits that will become effective March 1, 2016 substantially change the essential provisions of the limit in comparison to the status quo as of the time an applicant seeks, via Section 116 and before March 1, 2016, a producer's license.

The -8 amendment confirms what Greenpoint believes is the proper interpretation of Section 116(4)(b). Subject to the canopy cap yet to be created by the OLCC through the rule-making process, the Assembly should explicitly require that the limit established by Section 116(4)(b) is to determined, once and forever, by the limit operative at the time the applicant submits his or her application for licensure under Section 116.

Submitted Tuesday, June 23, 2015
For Greenpoint Oregon, Inc.

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