HB 4034-1 (LC 247) 1/29/20 (SCT/ps)

Requested by HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT (at the request of Representative John Lively)

## PROPOSED AMENDMENTS TO HOUSE BILL 4034

1 On page 1 of the printed bill, delete line 3 and insert "475B.477, 475B.526,

2 475B.791, 475B.810, 475B.831 and 475B.913; and declaring an emergency.".

3 On page 3, delete lines 25 through 45 and delete page 4.

4 On page 5, delete lines 1 through 31 and insert:

5 "SECTION 7. ORS 475B.831 is amended to read:

6 "475B.831. [(1)(a) A registry identification cardholder and the designated 7 primary caregiver of the registry identification cardholder may jointly

8 possess:]

9 "[(A) Six or fewer mature marijuana plants; and]

10 "[(B) Twelve or fewer immature marijuana plants.]

"[(b)(A) Unless an address is the marijuana grow site of a person designated to produce marijuana by a registry identification cardholder, the address where a registry identification cardholder or the primary caregiver of a registry identification cardholder produces marijuana may be used to produce not more than:]

16 "[(i) Six or fewer mature marijuana plants per registry identification 17 cardholder, up to 12 mature marijuana plants; and]

"[(ii) Twelve or fewer immature marijuana plants per registry identification
 cardholder, up to 24 immature marijuana plants.]

<sup>20</sup> "[(B) Except as provided in subparagraph (C) of this paragraph, an address <sup>21</sup> that is subject to this paragraph may not be used to produce plants in the 1 genus Cannabis within the plant family Cannabaceae pursuant to ORS
2 475B.301.]

<sup>3</sup> "[(C) Subject to subparagraph (D) of this paragraph, an address that is <sup>4</sup> subject to this paragraph may be used to produce plants in the genus Cannabis <sup>5</sup> within the plant family Cannabaceae pursuant to ORS 475B.301 if a person <sup>6</sup> other than a registry identification cardholder who is using the address to <sup>7</sup> produce marijuana plants pursuant to ORS 475B.785 to 475B.949 resides at the <sup>8</sup> address.]

9 "[(D) An address that is subject to this paragraph may not be used to 10 produce more than 12 total mature marijuana plants.]

"[(2)(a)] (1) A person may be designated to produce marijuana under ORS
 475B.810 by no more than [*eight*] two registry identification cardholders.

"[(b)] (2) A person responsible for a marijuana grow site may produce for
 a registry identification cardholder who designates the person to produce
 marijuana no more than:

16 "[(A)] (a) Six mature marijuana plants;

"[(B)] (b) 12 immature marijuana plants that are 24 inches or more in height; and

"[(*C*)] (c) The [*amount*,] **number** established by the Oregon Health Authority by rule[,] of immature marijuana plants that are less than 24 inches in height.

<sup>22</sup> "[(3) If the address of a person responsible for a marijuana grow site reg-<sup>23</sup> istered under ORS 475B.810 is located within city limits in an area zoned for <sup>24</sup> residential use:]

<sup>25</sup> "[(a) Except as provided in paragraph (b) of this subsection, no more than <sup>26</sup> the following amounts of marijuana plants may be produced at the address:]

27 "[(A) 12 mature marijuana plants;]

"[(B) 24 immature marijuana plants that are 24 inches or more in height;
and]

30 "[(C) The amount, established by the authority by rule, of immature

1 marijuana plants that are less than 24 inches in height; or]

"[(b) Subject to subsection (5) of this section, if each person responsible for
a marijuana grow site located at the address first registered with the authority
under ORS 475B.810 before January 1, 2015, no more than the following
amounts of marijuana plants may be produced at the address:]

6 "[(A) The amount of mature marijuana plants located at that address on 7 December 31, 2014, in excess of 12 mature marijuana plants, not to exceed 24 8 mature marijuana plants;]

9 "[(B) 48 immature marijuana plants that are 24 inches or more in height; 10 and]

11 "[(C) The amount, established by the authority by rule, of immature 12 marijuana plants that are less than 24 inches in height.]

"[(4) If the address of a person responsible for a marijuana grow site reg istered under ORS 475B.810 is located in an area other than an area described
 in subsection (3) of this section:]

"[(a) Except as provided in paragraph (b) of this subsection, no more than the following amounts of marijuana plants may be produced at the address:]

18 "[(A) 48 mature marijuana plants;]

"[(B) 96 immature marijuana plants that are 24 inches or more in height;
 and]

21 "[(C) The amount, established by the authority by rule, of immature 22 marijuana plants that are less than 24 inches in height; or]

<sup>23</sup> "[(b) Subject to subsections (5) and (6) of this section, if each person re-<sup>24</sup> sponsible for a marijuana grow site located at the address first registered with <sup>25</sup> the authority under ORS 475B.810 before January 1, 2015, no more than the <sup>26</sup> following amounts of marijuana plants may be produced at the address:]

"[(A) The amount of mature marijuana plants located at that address on
December 31, 2014, in excess of 48 mature marijuana plants, not to exceed 96
mature marijuana plants;]

30 "[(B) 192 immature marijuana plants that are 24 inches or more in height;

1 *and*]

2 "[(C) The amount, established by the authority by rule, of immature 3 marijuana plants that are less than 24 inches in height.]

4 "[(5)(a) If the authority suspends or revokes the registration of a person 5 responsible for a marijuana grow site that is located at an address described 6 in subsection (3)(b) of this section, no more than the following amounts of 7 marijuana plants may subsequently be produced at any address described in 8 subsection (3) of this section at which the person responsible for the marijuana 9 grow site produces marijuana:]

10 "[(A) 12 mature marijuana plants;]

11 "[(B) 24 immature marijuana plants that are 24 inches or more in height; 12 and]

13 "[(C) The amount, established by the authority by rule, of immature 14 marijuana plants that are less than 24 inches in height.]

"[(b) If the authority suspends or revokes the registration of a person responsible for a marijuana grow site that is located at an address described in subsection (4)(b) of this section, no more than the following amounts of marijuana plants may subsequently be produced at any address described in subsection (4) of this section at which the person responsible for the marijuana grow site produces marijuana:]

21 "[(A) 48 mature marijuana plants;]

22 "[(B) 96 immature marijuana plants that are 24 inches or more in height; 23 and]

<sup>24</sup> "[(C) The amount, established by the authority by rule, of immature <sup>25</sup> marijuana plants that are less than 24 inches in height.]

<sup>26</sup> "[(6) If a registry identification cardholder who designated a person to <sup>27</sup> produce marijuana for the registry identification cardholder pursuant to ORS <sup>28</sup> 475B.810 terminates the designation, the person responsible for the marijuana <sup>29</sup> grow site whose designation has been terminated may not be designated to <sup>30</sup> produce marijuana by another registry identification cardholder, except that

1 the person may be designated by another registry identification cardholder if 2 no more than 48 mature marijuana plants and no more than 96 immature 3 marijuana plants that are 24 or more inches in height are produced at the 4 address for the marijuana grow site at which the person produces 5 marijuana.]

6 "[(7) Subject to the limits described in subsections (2) to (6) of this section, 7 if multiple persons responsible for a marijuana grow site under ORS 475B.810 8 are located at the same address, the persons designated to produce marijuana 9 by registry identification cardholders who are located at that address may 10 collectively produce marijuana plants for any number of registry identification 11 cardholders who designate the persons to produce marijuana.]

"(3)(a) Subject to paragraph (b) of this subsection, an address at
which a marijuana grow site is located may be used to produce plants
in the genus Cannabis within the plant family Cannabaceae pursuant
to ORS 475B.301.

"(b) An address described in this subsection may not be used to
 produce more than 12 total mature marijuana plants.

"[(8)] (4) If a law enforcement officer determines that there is a number of marijuana plants at an address in excess of the quantities specified in this section, or that an address is being used to produce a number of marijuana plants in excess of the quantities specified in subsection [(1)(b)] (2) or (3) of this section, the law enforcement officer may confiscate only the excess number of marijuana plants.".

On page 6, after line 21, insert:

<sup>25</sup> "SECTION 9. ORS 475B.477 is amended to read:

"475B.477. (1) As used in this section, 'designated primary caregiver,'
'immature marijuana plant,' 'marijuana,' 'medical cannabinoid product' and
'registry identification cardholder' have the meanings given those terms in
ORS 475B.791.

30 "(2) A city or county may not adopt an ordinance, by referral or other-

1 wise, that prohibits or otherwise limits:

<sup>2</sup> "(a) The privileges described in ORS 475B.301; [or]

"(b) The right of a registry identification cardholder and the designated
primary caregiver of a registry identification cardholder to:

"(A) Possess the seeds of marijuana, immature marijuana plants or medical cannabinoid products as described in ORS 475B.785 to 475B.949; or

"(B) [Jointly possess up to six mature marijuana plants and up to 12 immature marijuana plants under ORS 475B.831 (1); or]

9 "[(C)] Jointly possess up to 24 ounces of usable marijuana under ORS
10 475B.834 (1)[.]; or

"(c) The right of a person designated to produce marijuana under
 ORS 475B.810 to produce up to the number of marijuana plants de scribed in ORS 475B.831 (2).".

14 In line 22, delete "9" and insert "10".

15 After line 44, insert:

<sup>16</sup> **"SECTION 11.** ORS 475B.791 is amended to read:

<sup>17</sup> "475B.791. As used in ORS 475B.785 to 475B.949:

"(1) 'Attending physician' means a physician licensed under ORS chapter
677 who has primary responsibility for the care and treatment of a person
diagnosed with a debilitating medical condition.

"(2) 'Cannabinoid' means any of the chemical compounds that are the active constituents of marijuana.

"(3) 'Cannabinoid concentrate' means a substance obtained by separating
 cannabinoids from marijuana by:

<sup>25</sup> "(a) A mechanical extraction process;

"(b) A chemical extraction process using a nonhydrocarbon-based solvent,
such as vegetable glycerin, vegetable oils, animal fats, isopropyl alcohol or
ethanol;

29 "(c) A chemical extraction process using the hydrocarbon-based solvent 30 carbon dioxide, provided that the process does not involve the use of high

1 heat or pressure; or

"(d) Any other process identified by the Oregon Health Authority, in
consultation with the Oregon Liquor Control Commission, by rule.

"(4) 'Cannabinoid edible' means food or potable liquid into which a
cannabinoid concentrate, cannabinoid extract or dried leaves or flowers of
marijuana have been incorporated.

7 "(5) 'Cannabinoid extract' means a substance obtained by separating
8 cannabinoids from marijuana by:

9 "(a) A chemical extraction process using a hydrocarbon-based solvent, 10 such as butane, hexane or propane;

11 "(b) A chemical extraction process using the hydrocarbon-based solvent 12 carbon dioxide, if the process uses high heat or pressure; or

"(c) Any other process identified by the Oregon Health Authority, in
 consultation with the Oregon Liquor Control Commission, by rule.

15 "(6) 'Debilitating medical condition' means:

"(a) Cancer, glaucoma, a degenerative or pervasive neurological condi tion, positive status for human immunodeficiency virus or acquired immune
 deficiency syndrome, or a side effect related to the treatment of those med ical conditions;

20 "(b) A medical condition or treatment for a medical condition that 21 produces, for a specific patient, one or more of the following:

22 "(A) Cachexia;

23 "(B) Severe pain;

24 "(C) Severe nausea;

<sup>25</sup> "(D) Seizures, including seizures caused by epilepsy; or

26 "(E) Persistent muscle spasms, including spasms caused by multiple 27 sclerosis;

28 "(c) Post-traumatic stress disorder; or

29 "(d) Any other medical condition or side effect related to the treatment 30 of a medical condition adopted by the Oregon Health Authority by rule or

1 approved by the authority pursuant to a petition filed under ORS 475B.946.

2 "(7)(a) 'Delivery' has the meaning given that term in ORS 475.005.

"(b) 'Delivery' does not include transfer of marijuana by a registry identification cardholder to another registry identification cardholder if no consideration is paid for the transfer.

6 "(8)(a) 'Designated primary caregiver' means an individual:

7 "(A) Who is 18 years of age or older;

"(B) Who has significant responsibility for managing the well-being of a
person who has been diagnosed with a debilitating medical condition; and
"(C) Who is designated as the person responsible for managing the wellbeing of a person who has been diagnosed with a debilitating medical condition on that person's application for a registry identification card or in
other written notification submitted to the authority.

"(b) 'Designated primary caregiver' does not include a person's attendingphysician.

16 "(9) 'High heat' means a temperature exceeding 180 degrees.

17 "(10) 'Immature marijuana plant' means a marijuana plant that is not 18 flowering.

"(11)(a) 'Marijuana' means the plant Cannabis family Cannabaceae, any
 part of the plant Cannabis family Cannabaceae and the seeds of the plant
 Cannabis family Cannabaceae.

22 "(b) 'Marijuana' does not include:

<sup>23</sup> "(A) Industrial hemp, as defined in ORS 571.269; or

"(B) Prescription drugs, as that term is defined in ORS 689.005, including
those containing one or more cannabinoids, that are approved by the United
States Food and Drug Administration and dispensed by a pharmacy, as defined in ORS 689.005.

"(12) 'Marijuana grow site' means a location registered under ORS
 475B.810 where marijuana is produced for use by a registry identification
 cardholder.

"(13) 'Marijuana processing site' means a marijuana processing site registered under ORS 475B.840 or a site for which an applicant has submitted an application for registration under ORS 475B.840.

4 "(14) 'Mature marijuana plant' means a marijuana plant that is not an 5 immature marijuana plant.

6 "(15)(a) 'Medical cannabinoid product' means a cannabinoid edible and 7 any other product intended for human consumption or use, including a 8 product intended to be applied to a person's skin or hair, that contains 9 cannabinoids or dried leaves or flowers of marijuana.

10 "(b) 'Medical cannabinoid product' does not include:

11 "(A) Usable marijuana by itself;

12 "(B) A cannabinoid concentrate by itself;

13 "(C) A cannabinoid extract by itself; or

<sup>14</sup> "(D) Industrial hemp, as defined in ORS 571.269.

"(16) 'Medical marijuana dispensary' means a medical marijuana
 dispensary registered under ORS 475B.858 or a site for which an applicant
 has submitted an application for registration under ORS 475B.858.

"(17) 'Medical use of marijuana' means the production, processing, possession, delivery or administration of marijuana, or use of paraphernalia used to administer marijuana, to mitigate the symptoms or effects of a debilitating medical condition.

<sup>22</sup> "(18) 'Person designated to produce marijuana by a registry identification <sup>23</sup> cardholder' means a person designated to produce marijuana by a registry <sup>24</sup> identification cardholder under ORS 475B.810 who produces marijuana for a <sup>25</sup> registry identification cardholder at an address other than the address where <sup>26</sup> the registry identification cardholder resides [or at an address where more <sup>27</sup> than 12 mature marijuana plants are produced].

"(19) 'Process' means the compounding or conversion of marijuana into
 medical cannabinoid products, cannabinoid concentrates or cannabinoid ex tracts.

1 "(20) 'Production' means:

"(a) Planting, cultivating, growing, trimming or harvesting marijuana; or
"(b) Drying marijuana leaves or flowers.

4 "(21) 'Registry identification card' means a document issued by the 5 Oregon Health Authority under ORS 475B.797 that identifies a person au-6 thorized to engage in the medical use of marijuana and, if the person has a 7 designated primary caregiver under ORS 475B.804, the person's designated 8 primary caregiver.

9 "(22) 'Registry identification cardholder' means a person to whom a reg-10 istry identification card has been issued under ORS 475B.797.

11 "(23)(a) 'Usable marijuana' means the dried leaves and flowers of 12 marijuana.

13 "(b) 'Usable marijuana' does not include:

14 "(A) The seeds, stalks and roots of marijuana; or

<sup>15</sup> "(B) Waste material that is a by-product of producing marijuana.

"(24) '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.

<sup>19</sup> "SECTION 12. ORS 475B.810 is amended to read:

<sup>20</sup> "475B.810. (1)(a) The Oregon Health Authority shall establish by rule a <sup>21</sup> marijuana grow site registration system to track and regulate the production <sup>22</sup> of marijuana by a registry identification cardholder or a person designated <sup>23</sup> by the registry identification cardholder to produce marijuana for the regis-<sup>24</sup> try identification cardholder.

"(b) Except as provided in paragraph (c) of this subsection, a person may
 not produce marijuana unless the person is registered under this section.

"(c) Paragraph (b) of this subsection does not apply to the production of
marijuana as provided in ORS 475B.010 to 475B.545 or as otherwise provided
for by the statutory laws of this state.

30 "(2) Rules adopted under this section must require an applicant for a

registry identification card, or a registry identification cardholder who produces marijuana or who designates another person to produce marijuana, to submit an application to the authority containing the following information at the time of making an application under ORS 475B.797 (2), renewing a registry identification card under ORS 475B.797 (6)(b), or notifying the authority of a change under ORS 475B.797 (6)(a):

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

8 "(b) Proof that the person is 21 years of age or older;

9 "(c) If the registry identification cardholder or the person responsible for 10 the marijuana grow site is not the owner of the premises of the marijuana 11 grow site, signed informed consent from the owner of the premises to register 12 the premises as a marijuana grow site;

13 "(d) The address of the marijuana grow site; and

"(e) Any other information that the authority considers necessary to track
 the production of marijuana under ORS 475B.785 to 475B.949.

"(3)(a) The authority shall conduct a criminal records check under ORS
 181A.195 of any person whose name is submitted under this section as the
 person responsible for a marijuana grow site.

"(b) A person convicted of a Class A or Class B felony under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled substance in Schedule I or Schedule II may not act as or be designated a person responsible for a marijuana grow site for two years from the date of conviction.

"(c) A person convicted more than once of a Class A or Class B felony
under ORS 475.752 to 475.920 for the manufacture or delivery of a controlled
substance in Schedule I or Schedule II may not act as or be designated a
person responsible for a marijuana grow site.

"(4) Subject to subsection [(11)] (12) of this section, the authority shall issue a marijuana grow site registration card if the requirements of subsections (2) and (3) of this section are met.

30 "(5) A person who holds a marijuana grow site registration card under

1 this section must display the card at the marijuana grow site at all times.

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

5 "(7)(a) All seeds, immature marijuana plants, mature marijuana plants 6 and usable marijuana associated with the production of marijuana for a 7 registry identification cardholder by a person responsible for a marijuana 8 grow site are the property of the registry identification cardholder.

9 "(b) All seeds, immature marijuana plants, mature marijuana plants and 10 usable marijuana associated with the production of marijuana for a registry 11 identification cardholder by a person responsible for a marijuana grow site 12 must be transferred to the registry identification cardholder upon the request 13 of the registry identification cardholder.

"(c) All usable marijuana associated with the production of marijuana for a registry identification cardholder by a person responsible for a marijuana grow site must be transferred to a marijuana processing site upon the request of the registry identification cardholder. For purposes of this paragraph, a request to transfer usable marijuana constitutes an assignment of the right to possess the usable marijuana.

(d) All seeds, immature marijuana plants and usable marijuana associ-20ated with the production of marijuana for a registry identification cardholder 21by a person responsible for a marijuana grow site must be transferred to a 22medical marijuana dispensary upon request of the registry identification 23cardholder. For purposes of this paragraph, a request to transfer seeds, im-24mature marijuana plants or usable marijuana constitutes an assignment of 25the right to possess the seeds, immature marijuana plants or usable 26marijuana. 27

"(e) Information related to transfers made under this subsection must be
submitted to the authority in the manner required by ORS 475B.816.

30 "(8) A registry identification cardholder, or the designated caregiver of a

registry identification cardholder, may reimburse a person responsible for a
marijuana grow site for all costs associated with the production of marijuana
for the registry identification cardholder.

4 "(9) The authority may inspect:

"(a) The marijuana grow site of a person designated to produce marijuana
by a registry identification cardholder to ensure compliance with this section
and ORS 475B.816 and 475B.831 and any rule adopted under this section and
ORS 475B.816 and 475B.831; and

9 "(b) The records of the marijuana grow site of a person designated to 10 produce marijuana by a registry identification cardholder to ensure compli-11 ance with this section and ORS 475B.816 and any rule adopted under this 12 section and ORS 475B.816.

"(10) The authority may refuse to register a registry identification cardholder or a designee under this section or may suspend or revoke the registration of a person responsible for a marijuana grow site if the authority determines that the applicant or the person responsible for a marijuana grow site violated a provision of ORS 475B.785 to 475B.949, a rule adopted under ORS 475B.785 to 475B.949 or an ordinance adopted pursuant to ORS 475B.928.

"(11) A marijuana grow site registered under this section may not
 produce marijuana for more than two registry identification
 cardholders.

"[(11)] (12) The authority may require a person responsible for a marijuana grow site, prior to issuing a marijuana grow site registration card under subsection (4) of this section, to pay a fee reasonably calculated to pay costs incurred under this section and ORS 475B.816 and 475B.879.

## <sup>27</sup> "SECTION 13. ORS 475B.913 is amended to read:

"475B.913. (1) Except as provided in ORS 475B.910, a person has an affirmative defense to a criminal charge of possession, delivery or manufacture
of marijuana, or any other criminal offense in which possession, delivery or

1 manufacture of marijuana is an element, if the person charged with the of-2 fense:

"(a) Was diagnosed with a debilitating medical condition within 12 months of the date on which the person was arrested and was advised by the person's attending physician that the medical use of marijuana may mitigate the symptoms or effects of that debilitating medical condition;

7 "(b) Is engaged in the medical use of marijuana; and

8 "(c) Possesses, delivers or manufactures marijuana only in quantities
9 permitted under ORS 475B.831.

"(2) A person does not need to lawfully possess a registry identification
 card to assert the affirmative defense established in this section.

"(3) A 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 the use of marijuana is not 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:

"(a) The person possesses, delivers or manufactures marijuana only as
 permitted under ORS 475B.831 [(1)]; and

"(b) The person has taken a substantial step toward complying with the
 provisions of ORS 475B.785 to 475B.949.

"(4) A defendant proposing to use the affirmative defense established in 22this section in a criminal action shall, not less than five days before the trial 23of the cause, file and serve upon the district attorney a written notice of the 24intention to assert the affirmative defense. The notice must specifically state 25the reasons why the defendant is entitled to assert the affirmative defense 26and the factual basis for the affirmative defense. If the defendant fails to file 27and serve the notice, the defendant is not permitted to assert the affirmative 28defense at the trial of the cause unless the court orders, for good cause, 29 otherwise.". 30

1 In line 45, delete "10" and insert "14".

On page 7, delete line 1 and insert "475B.477, 475B.526, 475B.791, 475B.810,
475B.831 and 475B.913 by sections 7 to 13 of this 2020 Act become operative
on June 1, 2020.".

Delete line 7 and insert "to ORS 475B.206, 475B.477, 475B.526, 475B.791,
475B.810, 475B.831 and 475B.913 by sections 7 to 13 of this 2020 Act.".

7 In line 8, delete "11" and insert "15".

- 8 In line 17, delete "12" and insert "16".
- 9 In line 45, delete "13" and insert "17".

10