

# House Bill 3387

Sponsored by Representative PRUSAK

## 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**.

Authorizes nurses to discuss medical use of marijuana with patients. Specifies licensed health care providers who may recommend medical use of marijuana to registry identification cardholder.

## A BILL FOR AN ACT

1  
2 Relating to medical marijuana; creating new provisions; and amending ORS 475B.791, 475B.797,  
3 475B.913, 475B.916 and 475B.952.

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

5 **SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS 475B.785 to**  
6 **475B.949.**

7 **SECTION 2. A nurse licensed under ORS 678.040 to 678.101 may discuss the medical use**  
8 **of marijuana with a person with whom the nurse has a patient-provider relationship.**

9 **SECTION 3. ORS 475B.791 is amended to read:**

10 475B.791. As used in ORS 475B.785 to 475B.949:

11 (1) "Attending [*physician*] **provider**" means [*a physician licensed under ORS chapter 677*] **one**  
12 **of the following health care providers** who has primary responsibility for the care and treatment  
13 of a person diagnosed with a debilitating medical condition[.]:

14 (a) **A physician licensed under ORS chapter 677;**

15 (b) **A physician assistant licensed under ORS 677.505 to 677.525;**

16 (c) **A nurse practitioner licensed under ORS 678.375 to 678.390;**

17 (d) **A clinical nurse specialist licensed under ORS 678.370 and 678.372;**

18 (e) **A certified registered nurse anesthetist as defined in ORS 678.245; or**

19 (f) **A naturopathic physician licensed under ORS chapter 685.**

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

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

24 (a) A mechanical extraction process;

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

27 (c) A chemical extraction process using the hydrocarbon-based solvent carbon dioxide, provided  
28 that the process does not involve the use of high heat or pressure; or

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

31 (4) "Cannabinoid edible" means food or potable liquid into which a cannabinoid concentrate,

**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 cannabinoid extract or dried leaves or flowers of marijuana have been incorporated.

2 (5) “Cannabinoid extract” means a substance obtained by separating cannabinoids from  
3 marijuana by:

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

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

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

10 (6) “Debilitating medical condition” means:

11 (a) Cancer, glaucoma, a degenerative or pervasive neurological condition, positive status for  
12 human immunodeficiency virus or acquired immune deficiency syndrome, or a side effect related to  
13 the treatment of those medical conditions;

14 (b) A medical condition or treatment for a medical condition that produces, for a specific pa-  
15 tient, one or more of the following:

16 (A) Cachexia;

17 (B) Severe pain;

18 (C) Severe nausea;

19 (D) Seizures, including seizures caused by epilepsy; or

20 (E) Persistent muscle spasms, including spasms caused by multiple sclerosis;

21 (c) Post-traumatic stress disorder; or  
22 (d) Any other medical condition or side effect related to the treatment of a medical condition  
23 adopted by the Oregon Health Authority by rule or approved by the authority pursuant to a petition  
24 filed under ORS 475B.946.

25 (7)(a) “Delivery” has the meaning given that term in ORS 475.005.

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

28 (8)(a) “Designated primary caregiver” means an individual:

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

30 (B) Who has significant responsibility for managing the well-being of a person who has been  
31 diagnosed with a debilitating medical condition; and

32 (C) Who is designated as the person responsible for managing the well-being of a person who  
33 has been diagnosed with a debilitating medical condition on that person’s application for a registry  
34 identification card or in other written notification submitted to the authority.

35 (b) “Designated primary caregiver” does not include a person’s attending [*physician*] **provider**.

36 (9) “High heat” means a temperature exceeding 180 degrees.

37 (10) “Immature marijuana plant” means a marijuana plant that is not flowering.

38 (11)(a) “Marijuana” means the plant Cannabis family Cannabaceae, any part of the plant  
39 Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae.

40 (b) “Marijuana” does not include:

41 (A) Industrial hemp, as defined in ORS 571.269; or

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

45 (12) “Marijuana grow site” means a location registered under ORS 475B.810 where marijuana

1 is produced for use by a registry identification cardholder.

2 (13) “Marijuana processing site” means a marijuana processing site registered under ORS  
 3 475B.840 or a site for which an applicant has submitted an application for registration under ORS  
 4 475B.840.

5 (14) “Mature marijuana plant” means a marijuana plant that is not an immature marijuana  
 6 plant.

7 (15)(a) “Medical cannabinoid product” means a cannabinoid edible and any other product in-  
 8 tended for human consumption or use, including a product intended to be applied to a person’s skin  
 9 or hair, that contains 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
- 14 (D) Industrial hemp, as defined in ORS 571.269.

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

18 (17) “Medical use of marijuana” means the production, processing, possession, delivery or ad-  
 19 ministration of marijuana, or use of paraphernalia used to administer marijuana, to mitigate the  
 20 symptoms or effects of a debilitating medical condition.

21 (18) “Person designated to produce marijuana by a registry identification cardholder” means a  
 22 person designated to produce marijuana by a registry identification cardholder under ORS 475B.810  
 23 who produces marijuana for a registry identification cardholder at an address other than the address  
 24 where the registry identification cardholder resides or at an address where more than 12 mature  
 25 marijuana plants are produced.

26 (19) “Process” means the compounding or conversion of marijuana into medical cannabinoid  
 27 products, cannabinoid concentrates or cannabinoid extracts.

28 (20) “Production” means:

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

31 (21) “Registry identification card” means a document issued by the Oregon Health Authority  
 32 under ORS 475B.797 that identifies a person authorized to engage in the medical use of marijuana  
 33 and, if the person has a designated primary caregiver under ORS 475B.804, the person’s designated  
 34 primary caregiver.

35 (22) “Registry identification cardholder” means a person to whom a registry identification card  
 36 has been issued under ORS 475B.797.

37 (23)(a) “Usable marijuana” means the dried leaves and flowers of marijuana.

38 (b) “Usable marijuana” does not include:

- 39 (A) The seeds, stalks and roots of marijuana; or
- 40 (B) Waste material that is a by-product of producing marijuana.

41 (24) “Written documentation” means a statement signed by the attending [*physician*] **provider**  
 42 of a person diagnosed with a debilitating medical condition or copies of the person’s relevant med-  
 43 ical records.

44 **SECTION 4.** ORS 475B.797 is amended to read:

45 475B.797. (1) The Oregon Health Authority shall establish a program for the issuance of registry

1 identification cards to applicants who meet the requirements of this section.

2 (2) The authority shall issue a registry identification card to an applicant who is 18 years of age  
 3 or older if the applicant pays a fee in an amount established by the authority by rule and submits  
 4 to the authority an application containing the following information:

5 (a) Written documentation from the applicant's attending [*physician*] **provider** stating that the  
 6 attending [*physician*] **provider** has diagnosed the applicant as having a debilitating medical condi-  
 7 tion and that the medical use of marijuana may mitigate the symptoms or effects of the applicant's  
 8 debilitating medical condition;

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

10 (c) The name, address and telephone number of the applicant's attending [*physician*] **provider**;

11 (d) Proof of residency, submitted in a form required by the authority by rule;

12 (e) The name and address of the applicant's designated primary caregiver, if the applicant is  
 13 designating a primary caregiver under ORS 475B.804; and

14 (f) The information described in ORS 475B.810 (2), if the applicant is applying to produce  
 15 marijuana or designate another person under ORS 475B.810 to produce marijuana.

16 (3)(a) The authority shall issue a registry identification card to an applicant who is under 18  
 17 years of age if:

18 (A) The applicant pays the fee and submits the application described in subsection (2) of this  
 19 section; and

20 (B) The custodial parent or legal guardian who is responsible for the health care decisions of  
 21 the applicant signs and submits to the authority a written statement that:

22 (i) The applicant's attending [*physician*] **provider** has explained to the applicant and to the  
 23 custodial parent or legal guardian the possible risks and benefits of the medical use of marijuana;

24 (ii) The custodial parent or legal guardian consents to the medical use of marijuana by the ap-  
 25 plicant;

26 (iii) The custodial parent or legal guardian agrees to serve as the applicant's designated primary  
 27 caregiver; and

28 (iv) The custodial parent or legal guardian agrees to control the acquisition, dosage and fre-  
 29 quency of the medical use of marijuana by the applicant.

30 (b) An applicant who is under 18 years of age may not apply to produce marijuana under sub-  
 31 section (2)(f) of this section.

32 (4) The authority shall:

33 (a) On the date on which the authority receives an application described in subsection (2) of this  
 34 section, issue a receipt to the applicant verifying that the authority received an application under  
 35 subsection (2) or (3) of this section; and

36 (b) Approve or deny an application received under subsection (2) or (3) of this section within  
 37 30 days after receiving the application.

38 (5)(a) If the authority approves an application, the authority shall issue a serially numbered  
 39 registry identification card to the applicant within five days after approving the application. The  
 40 registry identification card must include the following information:

41 (A) The registry identification cardholder's name, address and date of birth;

42 (B) The issuance date and expiration date of the registry identification card;

43 (C) If the registry identification cardholder designated a primary caregiver under ORS 475B.804,  
 44 the name and address of the registry identification cardholder's designated primary caregiver; and

45 (D) Any other information required by the authority by rule.

1 (b) If the registry identification cardholder designated a primary caregiver under ORS 475B.804,  
2 the authority shall issue an identification card to the designated primary caregiver. The identifica-  
3 tion card must contain the information required by paragraph (a) of this subsection.

4 (6) A registry identification cardholder shall:

5 (a) In a form and manner prescribed by the authority, notify the authority of any change con-  
6 cerning the registry identification cardholder's:

7 (A) Name, address or attending [*physician*] **provider**;

8 (B) Designated primary caregiver, including the designation of a primary caregiver made at a  
9 time other than at the time of applying for or renewing a registry identification card; or

10 (C) Person responsible for a marijuana grow site, including the designation of a person respon-  
11 sible for a marijuana grow site made at a time other than at the time of applying for or renewing  
12 a registry identification card.

13 (b) Annually renew the registry identification card by paying a fee in an amount established by  
14 the authority by rule and submitting to the authority an application that contains the following in-  
15 formation:

16 (A) Updated written documentation from the registry identification cardholder's attending [*phy-*  
17 *sician*] **provider** stating that the registry identification cardholder still has a debilitating medical  
18 condition and that the medical use of marijuana may mitigate the symptoms or effects of the registry  
19 identification cardholder's debilitating medical condition;

20 (B) The information described in subsection (2)(b) to (f) of this section; and

21 (C) If the registry identification cardholder is under 18 years of age, a statement signed by the  
22 custodial parent or legal guardian of the registry identification cardholder that meets the require-  
23 ments of subsection (3) of this section.

24 (7) The authority shall:

25 (a) On the date on which the authority receives an application described in subsection (2) of this  
26 section, issue a receipt to the applicant verifying that the authority received an application under  
27 subsection (6)(b) of this section; and

28 (b) Approve or deny an application received under subsection (6)(b) of this section within 30  
29 days after receiving the application.

30 (8)(a) If the registry identification cardholder's attending [*physician*] **provider** determines that  
31 the registry identification cardholder no longer has a debilitating medical condition, or determines  
32 that the medical use of marijuana is contraindicated for the registry identification cardholder's de-  
33 bilitating medical condition, the registry identification cardholder shall return the registry identifi-  
34 cation card to the authority within 30 calendar days after receiving notice of the determination.

35 (b) If, because of circumstances beyond the control of the registry identification cardholder, a  
36 registry identification cardholder is unable to obtain a second medical opinion about the registry  
37 identification cardholder's continuing eligibility for the medical use of marijuana before having to  
38 return the registry identification card to the authority, the authority may grant the registry iden-  
39 tification cardholder additional time to obtain a second medical opinion.

40 (9)(a) The authority may deny an application for a registry identification card or an application  
41 to renew a registry identification card, or may suspend or revoke a registry identification card, if:

42 (A) The applicant or registry identification cardholder does not provide the information required  
43 by this section;

44 (B) The authority determines that the applicant or registry identification cardholder provided  
45 false information; or

1 (C) The authority determines that the applicant or registry identification cardholder violated a  
2 provision of ORS 475B.785 to 475B.949 or a rule adopted under ORS 475B.785 to 475B.949.

3 (b) If a registry identification card is revoked, any associated identification card issued under  
4 subsection (5)(b) of this section, or marijuana grow site registration card issued under ORS 475B.810  
5 (6), shall also be revoked.

6 (c) A person whose application is denied, or whose registry identification card is revoked, under  
7 this subsection may not reapply for a registry identification card for six months from the date of the  
8 denial or revocation unless otherwise authorized by the authority.

9 (10)(a) The authority may deny a designation of a primary caregiver made under ORS 475B.804,  
10 or suspend or revoke an associated identification card issued under subsection (5)(b) of this section,  
11 if the authority determines that the designee or the registry identification cardholder violated a  
12 provision of ORS 475B.785 to 475B.949 or a rule adopted under ORS 475B.785 to 475B.949.

13 (b) A person whose designation has been denied, or whose identification card has been revoked,  
14 under this subsection may not be designated as a primary caregiver under ORS 475B.804 for six  
15 months from the date of the denial or revocation unless otherwise authorized by the authority.

16 (11)(a) Notwithstanding subsection (2) or (6)(b) of this section, if an applicant for a registry  
17 identification card, or a registry identification cardholder applying for renewal of a registry iden-  
18 tification card, submits to the authority proof of having served in the Armed Forces of the United  
19 States, the authority may not impose a fee that is greater than \$20 for the issuance or renewal of  
20 the registry identification card.

21 (b) Notwithstanding subsection (6)(b)(A) of this section, the requirement that a registry identifi-  
22 cation cardholder include in the application to renew a registry identification card updated written  
23 documentation from the cardholder's attending [*physician*] **provider** regarding the cardholder's con-  
24 tinuing debilitating medical condition does not apply to a service-disabled veteran who:

25 (A) Has been assigned a total and permanent disability rating for compensation that rates the  
26 veteran as unable to secure or follow a substantially gainful occupation as a result of service-  
27 connected disabilities as described in 38 C.F.R. 4.16; or

28 (B) Has a United States Department of Veterans Affairs total disability rating of 100 percent  
29 as a result of an injury or illness that the veteran incurred, or that was aggravated, during active  
30 military service and who received a discharge or release under other than dishonorable conditions.

31 (12) For any purpose described in ORS 475B.785 to 475B.949, including exemption from criminal  
32 liability under ORS 475B.907, a receipt issued by the authority verifying that an application has  
33 been submitted to the authority under subsection (2), (3) or (6)(b) of this section has the same legal  
34 effect as a registry identification card for 30 days following the date on which the receipt was issued  
35 to the applicant.

36 **SECTION 5.** ORS 475B.913 is amended to read:

37 475B.913. (1) Except as provided in ORS 475B.910, a person has an affirmative defense to a  
38 criminal charge of possession, delivery or manufacture of marijuana, or any other criminal offense  
39 in which possession, delivery or manufacture of marijuana is an element, if the person charged with  
40 the offense:

41 (a) Was diagnosed with a debilitating medical condition within 12 months of the date on which  
42 the person was arrested and was advised by the person's attending [*physician*] **provider** that the  
43 medical use of marijuana may mitigate the symptoms or effects of that debilitating medical condi-  
44 tion;

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

1 (c) Possesses, delivers or manufactures marijuana only in quantities permitted under ORS  
2 475B.831.

3 (2) A person does not need to lawfully possess a registry identification card to assert the affir-  
4 mative defense established in this section.

5 (3) A person engaged in the medical use of marijuana who claims that marijuana provides med-  
6 ically necessary benefits and who is charged with a crime pertaining to the use of marijuana is not  
7 precluded from presenting a defense of choice of evils, as set forth in ORS 161.200, or from pre-  
8 senting evidence supporting the necessity of marijuana for treatment of a specific disease or medical  
9 condition, provided that:

10 (a) The person possesses, delivers or manufactures marijuana only as permitted under ORS  
11 475B.831 (1); and

12 (b) The person has taken a substantial step toward complying with the provisions of ORS  
13 475B.785 to 475B.949.

14 (4) A defendant proposing to use the affirmative defense established in this section in a criminal  
15 action shall, not less than five days before the trial of the cause, file and serve upon the district  
16 attorney a written notice of the intention to assert the affirmative defense. The notice must specif-  
17 ically state the reasons why the defendant is entitled to assert the affirmative defense and the fac-  
18 tual basis for the affirmative defense. If the defendant fails to file and serve the notice, the defendant  
19 is not permitted to assert the affirmative defense at the trial of the cause unless the court orders,  
20 for good cause, otherwise.

21 **SECTION 6.** ORS 475B.916 is amended to read:

22 475B.916. The **Oregon Board of Naturopathic Medicine, Oregon Medical Board and Oregon**  
23 **State Board of Nursing** may not impose a civil penalty or take other disciplinary action against  
24 an attending [*physician*] **provider** for:

25 (1) Advising a person diagnosed as having a debilitating medical condition by the attending  
26 [*physician*] **provider** or another physician licensed under ORS chapter 677, **physician assistant li-**  
27 **censed under ORS 677.505 to 677.525, nurse practitioner licensed under ORS 678.375 to 678.390,**  
28 **clinical nurse specialist licensed under ORS 678.370 and 678.372, certified registered nurse**  
29 **anesthetist as defined in ORS 678.245 or naturopathic physician licensed under ORS chapter**  
30 **685** about the risks and benefits associated with the medical use of marijuana or that the medical  
31 use of marijuana may mitigate the symptoms or effects of the person's debilitating medical condition,  
32 provided that the advice is based on the attending [*physician's*] **provider's** personal assessment of  
33 the person's medical history and current medical condition; or

34 (2) Providing the written documentation necessary for issuance or renewal of a registry iden-  
35 tification card under ORS 475B.797, provided that the written documentation is based on the at-  
36 tending [*physician's*] **provider's** personal assessment of the person's medical history and current  
37 medical condition and the attending [*physician*] **provider** has discussed with the person the potential  
38 risks and benefits associated with the medical use of marijuana.

39 **SECTION 7.** ORS 475B.952 is amended to read:

40 475B.952. (1) The Oregon Cannabis Commission is established within the Oregon Health Au-  
41 thority. The commission consists of:

42 (a) The Public Health Officer or the Public Health Officer's designee; and

43 (b) Eight members appointed by the Governor as follows:

44 (A) A registry identification cardholder, as defined in ORS 475B.791;

45 (B) A person designated to produce marijuana by a registry identification cardholder, as defined

1 in ORS 475B.791;

2 (C) An attending [*physician*] **provider**, as defined in ORS 475B.791;

3 (D) A person representing the Oregon Health Authority;

4 (E) A person representing the Oregon Liquor Control Commission;

5 (F) A local health officer, as described in ORS 431.418;

6 (G) A law enforcement officer; and

7 (H) A person knowledgeable about research proposal grant protocols.

8 (2) The term of office of each member of the commission is four years, but a member serves at  
9 the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall  
10 appoint a successor whose term begins on January 1 of the following year. A member is eligible for  
11 reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to be-  
12 come immediately effective for the unexpired term.

13 (3) The appointment of each member of the commission is subject to confirmation by the Senate  
14 in the manner prescribed in ORS 171.562 and 171.565.

15 (4) Members of the commission are not entitled to compensation, but may be reimbursed for  
16 actual and necessary travel and other expenses incurred by them in the performance of their official  
17 duties in the manner and amounts provided for in ORS 292.495.

18