



# **Oregon Marijuana 101**

**Rob Bovett  
Legal Counsel  
Association of Oregon Counties**

**Sean O'Day  
General Counsel  
League of Oregon Cities**

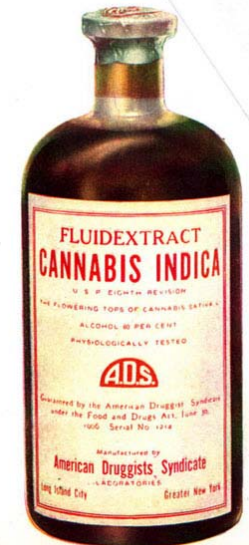
# Outline

- **1. Brief history of marijuana regulation in Oregon**
- **2. Overview of the Oregon Medical Marijuana Act**
- **3. Medical Marijuana Dispensaries**
- **4. Overview of Measure 91**
- **5. Some current legislative issues**

# **1. Brief history of marijuana regulation in Oregon**

# 1923

- **Cannabis indica prohibited, except:**
  - Medical preparations with 4 grains or more per ounce, with a prescription
  - Medical preparations with under 4 grains per ounce, no prescription  
(1 grain = 64.79891 mg, or 1/7000 of pound)
  - Other distribution or possession of cannabis indica was made a crime



#### MR. BINNS TRIES HASHEESH.

*From the Baltimore Sun, March 6.*

A well-dressed young man, who gave the name of Binns, came to the City Hospital. He had yielded to a strange desire to enjoy a dose of hasheesh, a drug that produces curious results. He told the doctor that he had some doubts as to the locality of his face, which to him seemed situated at least two feet from where it really was. Then he was dubious whether he had any legs or was simply walking on his chin. The latter idea seemed to have a firm hold on him, for he stamped his feet on the ground a dozen times. His request to be relieved was pitiful. He feared that some one would steal an arm or leg from him. After medical treatment Binns felt better.

# 1931

- **Cannabis sativa added to prohibition, with same exceptions**

## INDICA

Fat Leaves and Short Bush = INDICA

It is a short plant, generally between 3 and 6 feet, and its leaves have short broad fingers. The leaves are generally dark green sometimes tinged with purple. As they near maturity, the leaves may become significantly more purple. It is a strong smelling plant with a "stinky" or "skunky" smell. The smoke of indicas is generally thick and more prone to cause coughing when inhaled. Indicas are the traditional source of hashish. Higher CBD than THC equals heavier, sleepy type of high.



## SATIVA

Thin Leaves and Tall Bush = SATIVA

A tall plant, generally between 8 and 12 feet. The leaves have long thin fingers and are light green. The more equatorial varieties have more yellow pigments to protect the plant from intense light. Sativa buds are long and thin and turn red as they mature in a warm environment. In cooler environments the buds may be slightly purple. Sativa plants smell sweet and fruity and the smoke is generally quite mild. Higher THC than CBD equals cerebral, soaring type of high, more energetic.



Reference: 1931 Oregon Laws, Chapter 203 (Enrolled Senate Bill 173)

# 1935

- Oregon adopted the **Uniform State Narcotic Drug Act**



**Uniform Law Commission**  
The National Conference of Commissioners on Uniform State Laws

- All cannabis illegal
  - Except medicinal preparations that contained no more than half of a grain of extract per ounce



Reference: 1935 Oregon Laws, Chapter 121 (Enrolled House Bill 107)

# 1941

- **Exception for medicinal preparations was removed**
  - **All cannabis illegal**



Reference: 1941 Oregon Laws, Chapter 190 (Enrolled Senate Bill 243)

# 1973

- **Oregon became the first state to decriminalize possession of user amounts of marijuana**
  - **Less than one ounce**



Reference: 1973 Oregon Laws, Chapter 680 (Enrolled House Bill



# 1986

- **1986 Ballot Measure 5 (initiative):**  
**“Legalizes Private Possession and Growing of Marijuana for Personal Use.”**
- **Results:**
  - **Yes: 279,479 (26%)**
  - **No: 781,922 (74%)**

# 1997

- **Legislature attempts to recriminalize possession of user amounts (less than one ounce)**
  - **from a Violation to a C Misdemeanor**
- **Opponents of the bill got twice the number of signatures they needed to stop the bill from going into effect, and refer the matter to the voters**

# 1998

- **Ballot Measure 57 (referendum):**  
**“Makes Possession of Limited Amount of Marijuana Class C Misdemeanor.”**
- **Results:**
  - **Yes: 371,967 (33%)**
  - **No: 736,968 (67%)**

# 1998

- **Ballot Measure 67 (initiative):**  
**“Allows Medical Use of Marijuana Within Limits; Establishes Permit System.”**
- **Results:**
  - Yes: 611,190 (55%)
  - No: 508,263 (45%)

# 2004

- **Ballot Measure 33 (initiative):**  
**“Amends Oregon Medical Marijuana Act: Increases marijuana amount patients may possess; allows sales; creates dispensaries.”**
- **Results:**
  - **Yes: 764,015 (42%)**
  - **No: 1,021,814 (57%)**

# 2005

- **Legislature increased amounts of permissible medical marijuana:**
  - **Before**
    - 3 ounces
    - 3 mature plants
    - 4 seedlings
  - **After**
    - 24 ounces
    - 6 mature plants
    - 18 seedlings
- **Plus enabled “card stacking”**
  - **More on that shortly**

# 2009

- **Legislature directs Board of Pharmacy to down-schedule marijuana:**
  - **Board of Pharmacy moves marijuana to Schedule II in Oregon**

# 2010

- **Ballot Measure 74 (initiative):**  
**“Establishes medical marijuana supply system and assistance and research programs; allows limited selling of marijuana.”**
- **Results:**
  - **Yes: 626,749 (44%)**
  - **No: 790,979 (56%)**



# 2012

- **2012 Ballot Measure 80 (initiative):**  
**“Allows personal marijuana, hemp cultivation/use without license; commission to regulate commercial marijuana cultivation/sale.”**
- **Results:**
  - **Yes: 810,538 (47%)**
  - **No: 923,071 (53%)**

# 2013

- **SB 40: Reduced crime levels for possession and manufacture**
- **HB 3194: Reduced sentencing levels for commercial and substantial quantity marijuana crimes**

# 2013

- **HB 3460: Medical marijuana dispensaries**
  - **More on this in a later**

# 2014

- **SB 1531: Dispensaries – local options**
  - **More on this later**

# 2014

- **Ballot Measure 91**
  - **More on this later**

## **2. Overview of the Oregon Medical Marijuana Act**

# Patients

- **A patient with a qualifying condition and a recommendation from their attending physician can get a OMMP card from OHA**
  - **That person becomes a “cardholder”**

# Cardholders

- **A cardholder can possess:**
  - **6 mature MJ plants;**
  - **18 MJ plant seedlings; and**
  - **24 ounces (1½ pounds) of usable MJ**
- **A cardholder is exempted from the state criminal laws relating to MJ so long as they are in compliance with the OMMA**



# Designated Caregivers

- **A cardholder can also have a designated caregiver**
  - **The caregiver gets a card too**
  - **The caregiver can possess the MJ for the patient, and assist in its use**

# Growers

- **A cardholder may grow for themselves, or register a grower**
  - **Only one grow site per patient**
  - **Up to 4 patients per grower**
  - **No sale – only reimbursement of expenses**
  - **Up to 6 mature plants, 18 seedlings, and 24 ounces of usable MJ per patient**
  - **Thus up to 24 mature plants, 72 seedlings, and 96 ounces (6 pounds) of usable MJ per grower**

# Mature plants can be BIG



The large plant diameters are nearly the size of the cargo utility trailer parked in the driveway at the upper left side of the picture, and as tall as the fence.

# Combinations

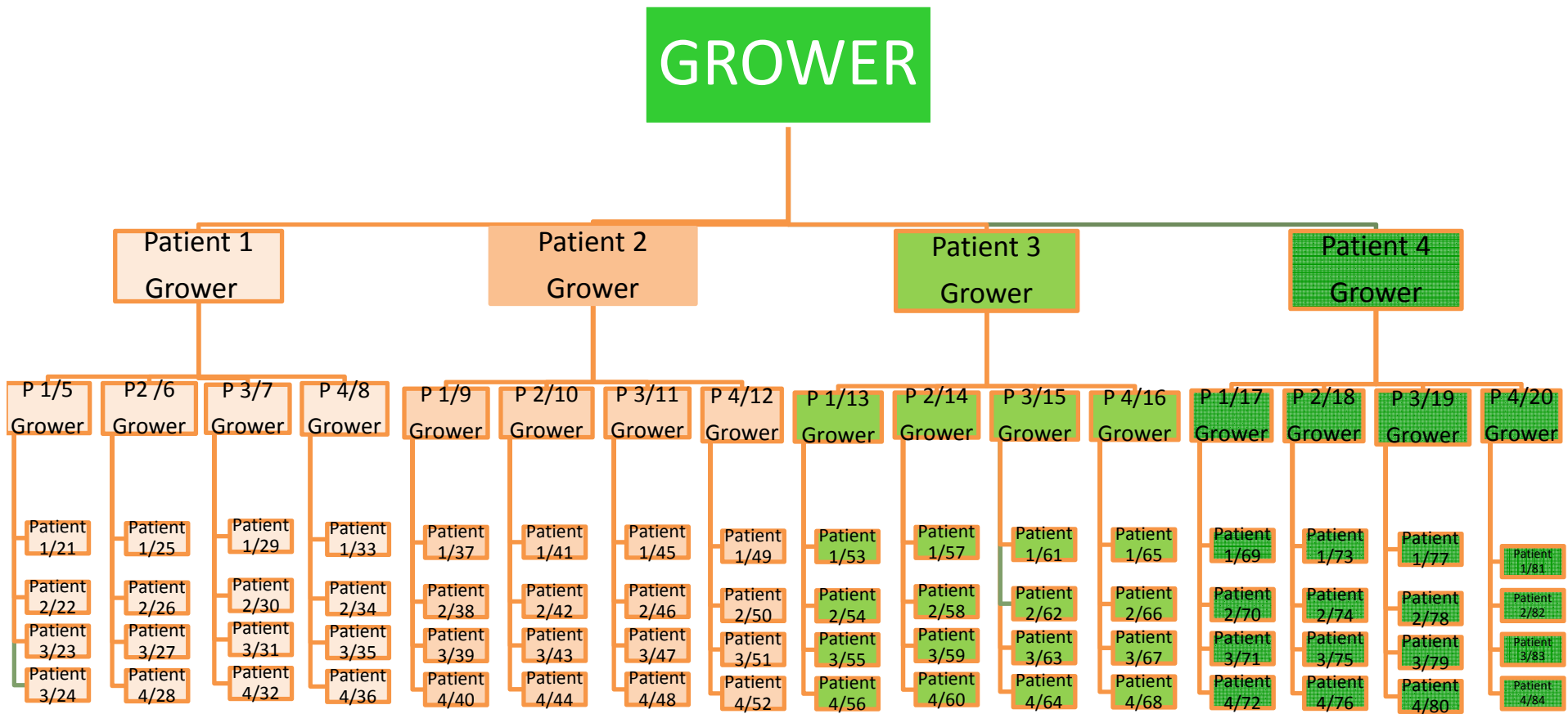
## Example:

- Person “A” is a:
  - Patient;
  - Grower for self and 3 others; and
  - Caregiver for 26 patients
- Person “A” can possess:
  - 45 pounds of MJ  
(6 as a grower, 39 as a caregiver)



# Card Stacking

GROWER

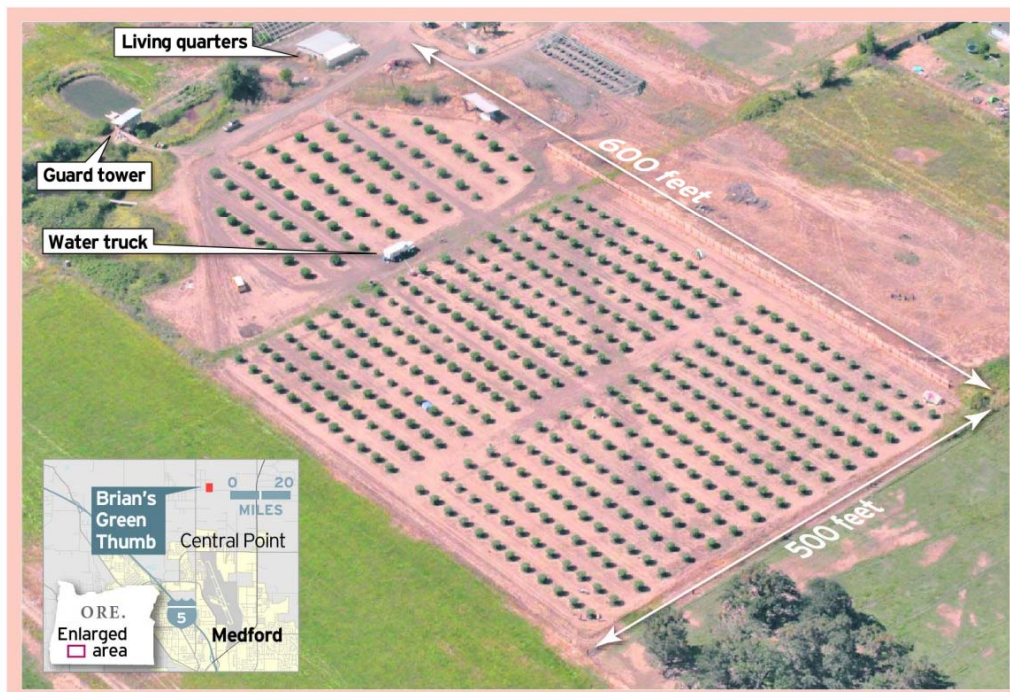
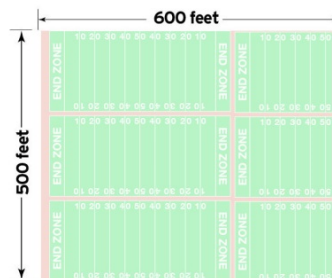


# Card Stacking

- Multiple growers/caregivers at single location

## A big harvest at Green Thumb Farm

Federal agents at Brian's Green Thumb Farm, shown in this surveillance photo, found more than 1,000 pounds of marijuana, two processing machines and a money counter. Prosecutors say the operation – large enough to accommodate 4½ football fields – exemplifies the massive over-production achieved by people exploiting Oregon's medical marijuana program. Operator Brian Wayne Simmons has been charged with drug conspiracy and is awaiting trial.



Source: U.S. Drug Enforcement Administration.

DAN AGUAYO/THE OREGONIAN

# Non-Cardholder Patients

- **Affirmative defense to state criminal MJ charges for person that isn't a cardholder but:**
  - **Diagnosed with qualifying condition within 12 months prior to arrest;**
  - **Advised by attending physician that MJ may help; and**
  - **Otherwise complies with OMMA limits**

# Other Limits

- **No use in public view**
- **No growing in public view**
- **DUII law still applies**



# Oregon Medical Marijuana Program (OMMP)

## Statistics

(as of 7/1/2014)

# Total Number of Cardholders

**64,838**

Source: Oregon Health Authority (2014)

# Number of Cardholders by County

(most are between 1% and 3% of total population)

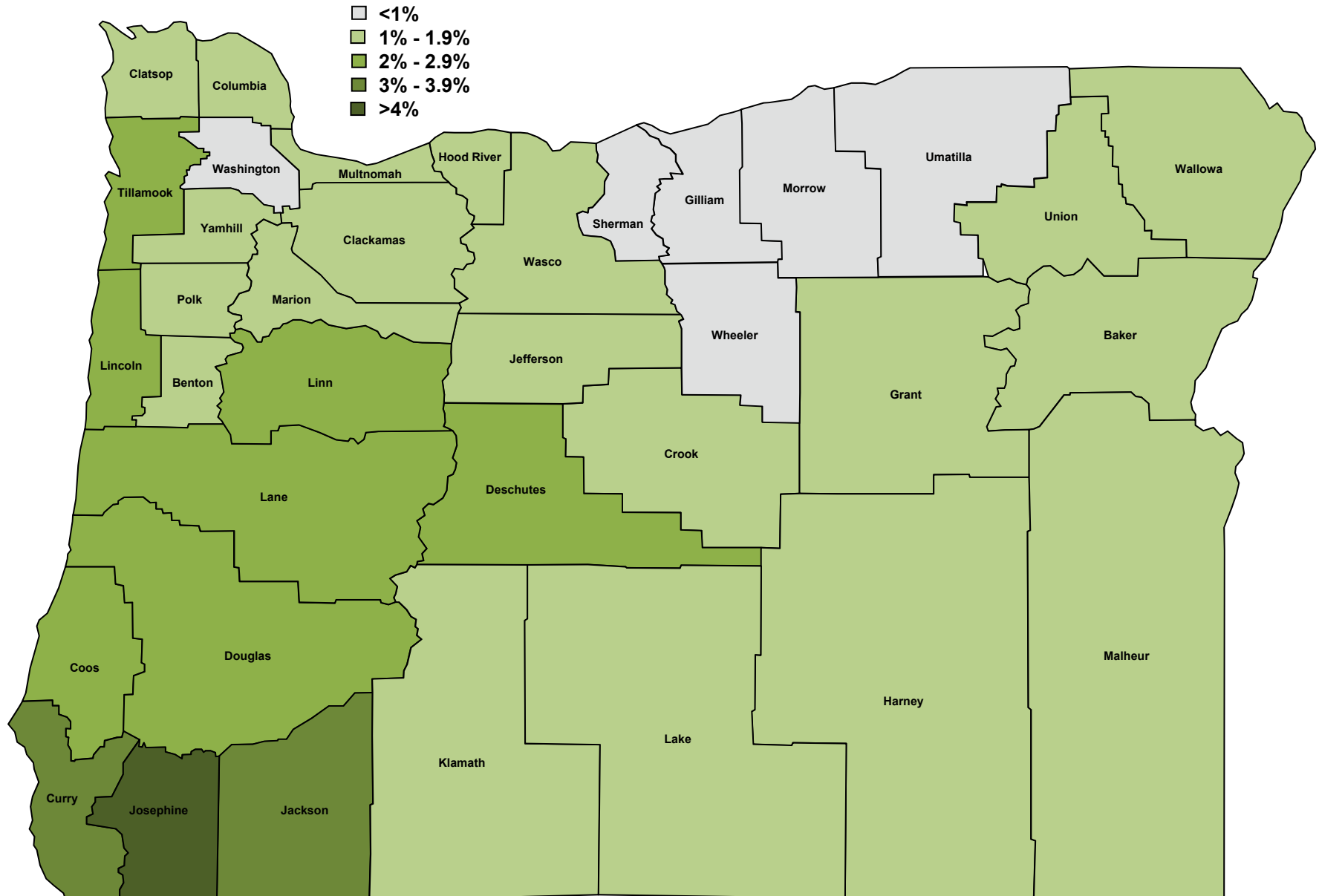
• Baker	247	1.5%	• Lane	7,010	2.0%
• Benton	941	1.1%	• Lincoln	1,050	2.3%
• Clackamas	4,692	1.2%	• Linn	1,843	1.6%
• Clatsop	590	1.6%	• Malheur	440	1.4%
• Columbia	900	1.8%	• Marion	3,609	1.1%
• Coos	1,638	2.6%	• <b>Morrow</b>	<b>70</b>	<b>.6%</b>
• Crook	370	1.8%	• Multnomah	11,231	1.5%
• <b>Curry</b>	<b>734</b>	<b>3.3%</b>	• Polk	973	1.3%
• Deschutes	3,341	2.1%	• Tillamook	534	2.1%
• Douglas	2,400	2.2%	• <b>Umatilla</b>	<b>596</b>	<b>.8%</b>
• Grant	104	1.4%	• Union	390	1.5%
• Harney	101	1.4%	• Wallowa	130	1.9%
• Hood River	306	1.3%	• Wasco	413	1.6%
• <b>Jackson</b>	<b>7,771</b>	<b>3.8%</b>	• <b>Washington</b>	<b>4,585</b>	<b>.8%</b>
• Jefferson	339	1.5%	• Yamhill	1,106	1.1%
• <b>Josephine</b>	<b>5,075</b>	<b>6.1%</b>	• Gilliam / Sherman / Wheeler	83*	
• Klamath	1,106	1.7%			
• Lake	120	1.5%			

\* "Note: To protect the confidentiality of patients, the responses for these counties have been combined. This practice is consistent with OHA policy and HIPAA requirements."

Source: Oregon Health Authority (2014); 2012 US Census.

# Per Capita Percentage of Cardholders Per County

(as of July 1, 2014)



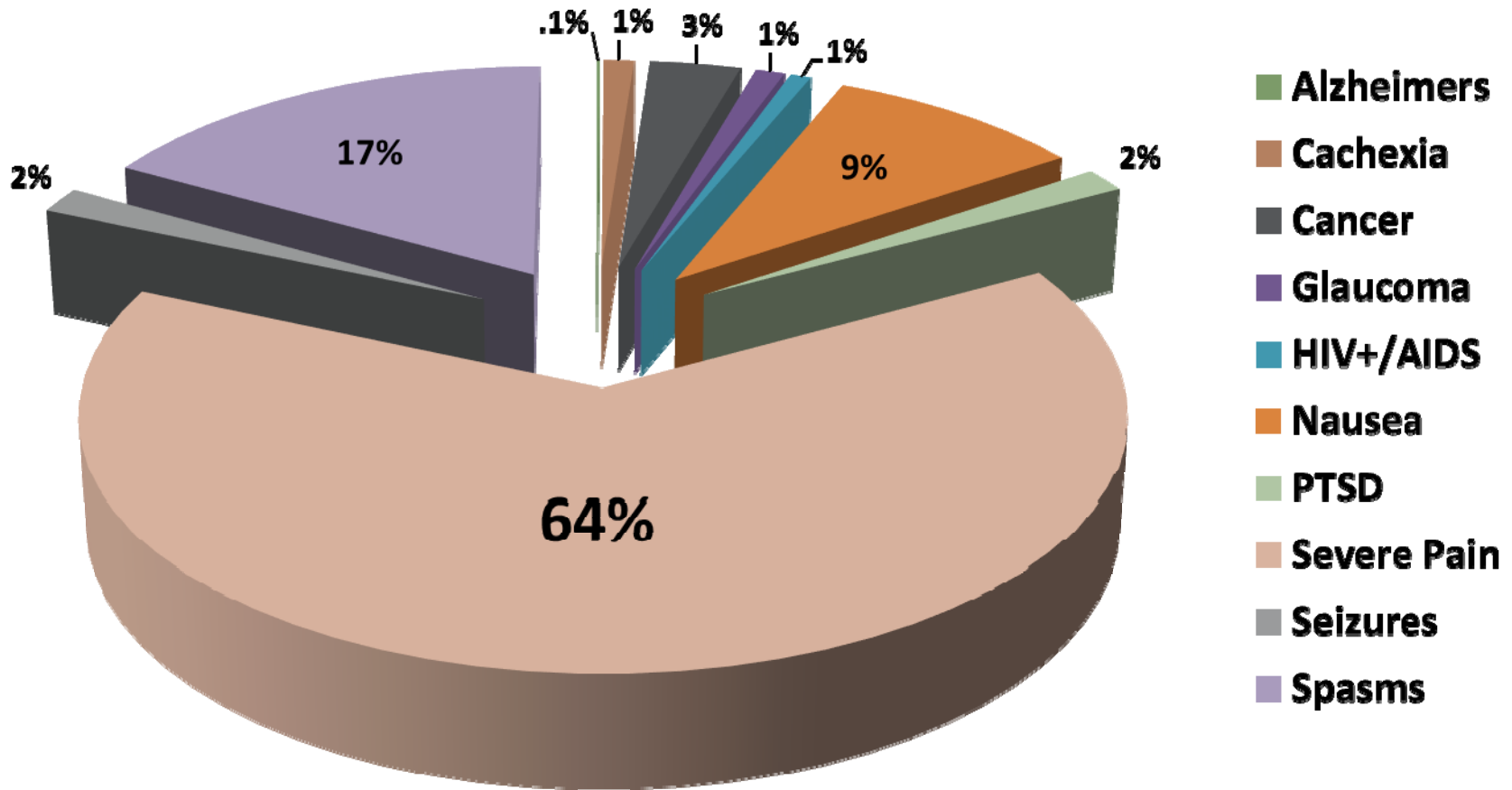
# Qualifying Conditions\*

• Agitation related to Alzheimer's disease	85
• Cachexia	1,062
• Cancer	3,167
• Glaucoma	1,022
• HIV+/AIDS	725
• Nausea	8,985
• PTSD	1,517
• Severe Pain	62,095
• Seizures, including but not limited to epilepsy	1,640
• Persistent muscle spasms, including but not limited to those caused by Multiple Sclerosis	16,295

\* *A person can have more than one qualifying condition.*

Source: Oregon Health Authority (2014).

# Qualifying Conditions

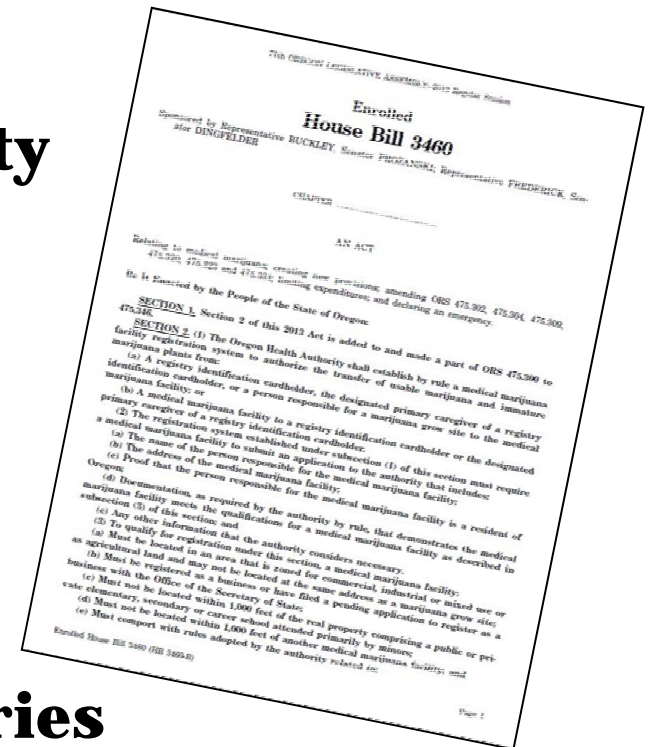


Source: Oregon Health Authority (2014)

# **3. Medical marijuana dispensaries**

# HB 3460

- **Allows / provides immunity for transfer of “excess” marijuana**
- **Directed Oregon Health Authority to establish rules for a medical marijuana facility registration system**
- **Criminal background checks (doesn't include dispensary employees)**
- **Security for registered dispensaries**
- **Testing of marijuana**





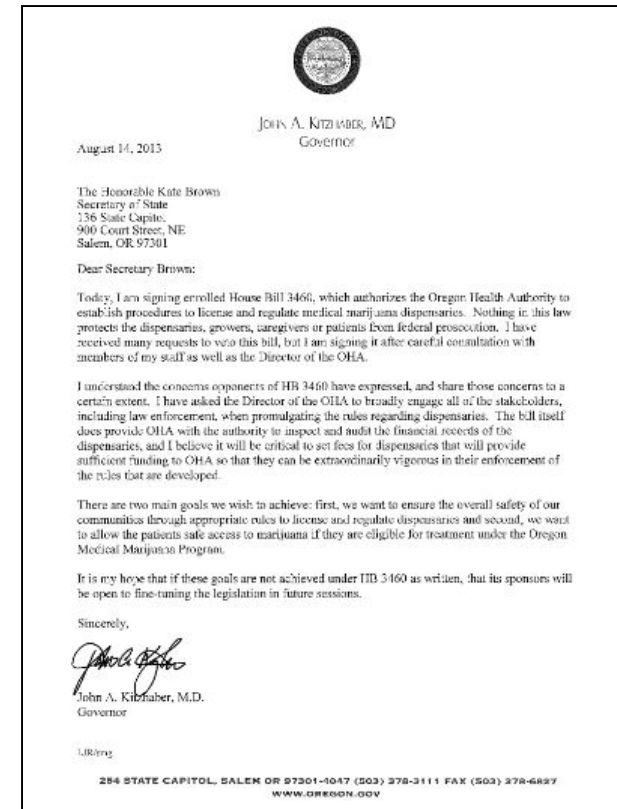
# HB 3460

- **Location: Commercial, Industrial, Mixed Use, or agricultural land**
- **Cannot locate:**
  - **At the same address as a grow site**
  - **Within 1,000 feet of a school (elementary, secondary or career) attended primarily by minors**
  - **Within 1,000 feet of another dispensary**



# HB 3460

- **Signing statement**
  - **“extraordinarily vigorous”**
  - “enforcement of the rules”**



# HB 3460 RAC

- **Rules Advisory Committee**
- **13 members**



# HB 3460 RAC

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## Committee drafting medical marijuana rules considers testing, fees and security



Under new a new state law, medical marijuana must be tested for mold, mildew and pesticides. A committee that met in Salem on Friday is trying to decide exactly how that will be done and by whom. *(Beth Nakamura/The Oregonian)*

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# HB 3460 RAC

- **Many more deficiencies in HB 3460 come to light**

# HB 3460 RAC



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## Medical marijuana in Oregon: Rob Bovett says dispensary law needs tweaks



By Noelle Crombie | [ncrombie@oregonian.com](mailto:ncrombie@oregonian.com)

[Email the author](#) | [Follow on Twitter](#)

on November 19, 2013 at 10:58 AM, updated November 20, 2013 at 5:37 AM



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Rob Bovett's irritation over aspects of Oregon's new medical marijuana dispensary law was clear to everyone attending a meeting Monday to review the latest draft of rules designed to govern the industry.

Bovett, the Lincoln County district attorney and a leading law enforcement voice on drug policy, told other members of the rules committee that he planned to write a letter to Gov. John Kitzhaber detailing what he sees as a "laundry list" of problems with House Bill 3460. The law creates a registry of medical marijuana

### MEDICAL MARIJUANA OUTLETS

Medford, other cities trying to ban medical marijuana outlets

FAQ: Can local governments ban medical marijuana outlets?

Photos: Medical marijuana in Medford

Video: Medford resident thinks dispensaries should remain

### Laws and lawmakers



# HB 3460 RAC

- RAC finalized the draft rules
- But the problem was the bill itself

DRAFT HB 3460 RULES  
December 4, 2013

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# HB 3460

- **Deficiencies:**
  - **Rob's Top 10**
  - **In no particular order**





# HB 3460

- **1. Inadequate staffing and enforcement**
  - **Governor called for “extraordinarily vigorous” “enforcement of the rules”**
  - **Only 6 FTE**

# HB 3460

- **2. Dispensers unlicensed and unregulated**
  - **Compare to pharmacies**
  - **Compare to alcohol**

# HB 3460

- **3. Testers unlicensed and unregulated**
- **4. Growers unlicensed and unregulated**
- **5. Product types unregulated**
  - **BHO, RSO, hash, “gummi bears,” etc**
- **6. Marketing unregulated**
- **7. Labeling largely unregulated**
- **8. Zoning issues**
- **9. Local control issues (more on this in a moment)**
- **10. Indoor Clean Air Act issues**

# HB 3460

- **First week applications were accepted**
  - **281 total applications**
- **Benton 4; Clackamas 10; Clatsop 4; Columbia 1; Coos 4; Curry 3; Deschutes 16; Douglas 5; Hood River 2; Jackson 19; Josephine 3; Klamath 3; Lincoln 10; Linn 4; Malheur 3; Marion 13; Multnomah 129 Polk 2; Umatilla 1; Union 1; Washington 4; Yamhill 1.**
- **Counties where no dispensaries applied: Baker, Crook, Gilliam, Grant, Harney, Jefferson, Lake, Morrow, Sherman and Tillamook, Wallowa, Wasco and Wheeler.**

### Current Marijuana Dispensaries

**CannaBend**  
3312 N Hwy 97  
Zone: Commercial General

**The Herb Center**  
2205 NE Division St  
Zone: Commercial Limited

**Bloom Well**  
1814 NE Division St  
Zone: Commercial Limited

**MARSHALL HIGH SCHOOL**

**The Medication Station**  
817 NW Hill St  
Zone: Commercial General

**Garden Kings OMMP Club**  
325 NE Franklin Ave  
Zone: Commercial Limited

### Legend

- ★ School
- Marijuana Dispensary
- 1000 ft Buffer

**CannaCopia Collective**  
2330 NE Division St Unit 8  
Zone: Commercial Limited

**M.A.M.A**  
454 NE Revere Ave  
Zone: Residential

**Bend's Best Buds**  
345 NE Greenwood Ave  
Zone: Commercial Limited

**High Grade Organics**  
804 NE 3rd St  
Zone: Commercial Limited

★ **BEND SENIOR HIGH SCHOOL**

**Vine Street Apothecary**  
224 SE Vine Ln  
Zone: Commercial Limited

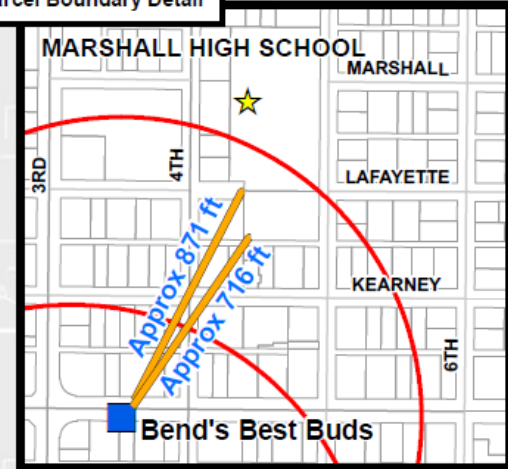
**Dr. Jolly's LLC (\*pending)**  
415 SE 3rd St  
Zone: Commercial Limited

**Northern Lights Collective**  
630 SE 9th St  
Zone: Industrial Limited

### Key Provisions

- No dispensary may open or operate within 1,000 feet of a primary or secondary school
- No dispensary may open or operate within 1,000 feet of another dispensary. Applications for competing locations will be processed on a first-come, first-served basis
- Dispensaries must be located only in areas zoned commercial, industrial or agriculture.
- There must be a strong security system in place

### Parcel Boundary Detail



**DiamondTree**  
2669 NE Twin Knolls Rd SUITE 208  
Zone: Mixed Employment



# Local Control

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## FAQ: Can local governments ban medical marijuana outlets?

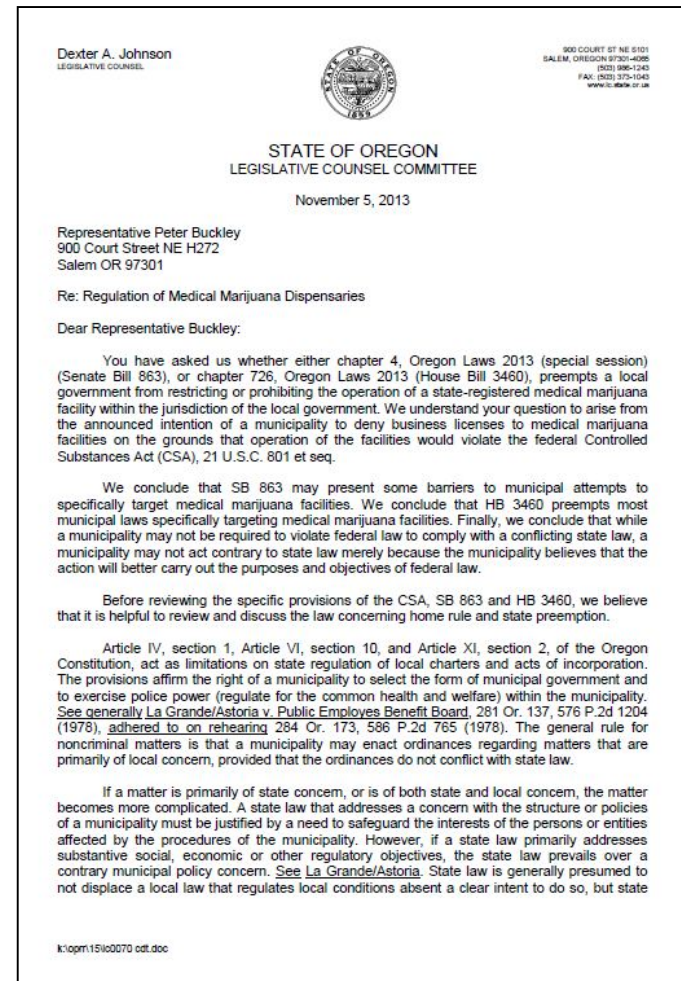


**Medford Police Chief Tim George**

Medford Chief of Police Tim George explains a recent modification to an ordinance that prevents marijuana dispensaries from operating within city limits.

# Local Control

- **LC Opinion**
  - **HB 3460 and/or SB 863 likely preempt local authority to ban**



# Local Control

- What is SB 863?
  - “GMO” bill
  - “Grand Bargain”

77th OREGON LEGISLATIVE ASSEMBLY--2013 Special Session

Enrolled  
**Senate Bill 863**

Sponsored by JOINT COMMITTEE ON SPECIAL SESSION

CHAPTER .....

AN ACT

Relating to preemption of the local regulation of agriculture; and declaring an emergency.

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

**SECTION 1.** Sections 2 and 3 of this 2013 special session Act are added to and made a part of ORS 633.511 to 633.750.

**SECTION 2.** (1) As used in this section, “nursery seed” means any propagant of nursery stock as defined in ORS 571.005.

(2) The Legislative Assembly finds and declares that:

(a) The production and use of agricultural seed, flower seed, nursery seed and vegetable seed and products of agricultural seed, flower seed, nursery seed and vegetable seed are of substantial economic benefit to this state;

(b) The economic benefits resulting from agricultural seed, flower seed, nursery seed and vegetable seed and seed product industries in this state make the protection, preservation and promotion of those industries a matter of statewide interest that warrants reserving exclusive regulatory power over agricultural seed, flower seed, nursery seed and vegetable seed and products of agricultural seed, flower seed, nursery seed and vegetable seed to the state; and

(c) The agricultural seed, flower seed, nursery seed and vegetable seed and seed product industries in this state will be adversely affected if those industries are subject to a patchwork of local regulations.

**SECTION 3.** (1) As used in this section:

(a) “Local government” has the meaning given that term in ORS 174.116.

(b) “Nursery seed” means any propagant of nursery stock as defined in ORS 571.005.

(2) Except as provided in subsection (3) of this section, a local government may not enact or enforce a local law or measure, including but not limited to an ordinance, regulation, control area or quarantine, to inhibit or prevent the production or use of agricultural seed, flower seed, nursery seed or vegetable seed or products of agricultural seed, flower seed, nursery seed or vegetable seed. The prohibition imposed by this subsection includes, but is not limited to, any local laws or measures for regulating the display, distribution, growing, harvesting, labeling, marketing, mixing, notification of use, planting, possession, processing, registration, storage, transportation or use of agricultural seed, flower seed, nursery seed or vegetable seed or products of agricultural seed, flower seed, nursery seed or vegetable seed.

(3) Subsection (2) of this section does not prohibit a local government from enacting or enforcing a local law or measure to inhibit or prevent the production or use of agricultural



# Local Control

- But federal law may preempt any state law that preempts local authority

348 Or. 159  
230 P.3d 518  
En Banc.  
EMERALD STEEL FABRICATORS, INC., Petitioner on Review,  
v.  
BUREAU OF LABOR AND INDUSTRIES, Respondent on Review.  
(BOLI 3004; CA A130422; SC S056265).  
Supreme Court of Oregon.  
Argued and Submitted March 6, 2009.  
Decided April 15, 2010.

[230 P.3d 519]

On review from the Court of Appeals.<sup>4</sup>  
Terence J. Hammons, of Hammons & Mills,  
Eugene, argued the cause and filed the brief for  
petitioner on review.

Janet A. Metcalf, Assistant Attorney General,  
Salem, argued the cause and filed the brief for  
respondent on review. With her on the brief  
were John R. Kroger, Attorney General, and  
Erika L. Hadlock, Acting Solicitor General.

Paula A. Barran, of Barran Liebman LLP,  
Portland, filed the brief for amicus curiae  
Associated Oregon Industries.

James N. Westwood, of Stael Rives LLP,  
Portland, filed the brief for amici curiae Pacific  
Legal Foundation and National Federation of  
Independent Business. With him on the brief  
was Deborah J. La Fetra.

KISTLER, J.

The Oregon Medical Marijuana Act  
authorizes persons holding a registry  
identification card to use marijuana for medical  
purposes. ORS 475.306(1). It also exempts those  
persons from state criminal liability for

[230 P.3d 520]

manufacturing, delivering, and possessing  
marijuana, provided that certain conditions are  
met. ORS 475.309(1). The Federal Controlled  
Substances Act, 21 U.S.C. § 801 *et seq.*,  
prohibits the manufacture, distribution,  
dispensation, and possession of marijuana even

when state law authorizes its use to treat medical  
conditions. *Gonzales v. Raich*, 545 U.S. 1, 29,  
125 S.Ct. 2195, 162 L.Ed.2d 1 (2005); see  
*United States v. Oakland Cannabis Buyers'  
Cooperative*, 532 U.S. 483, 486, 121 S.Ct. 1711,  
149 L.Ed.2d 722 (2001) (holding that there is no  
medical necessity exception to the federal  
prohibition against manufacturing and  
distributing marijuana).

The question that this case poses is how  
those state and federal laws intersect in the  
context of an employment discrimination claim;  
specifically, employer argues that, because  
marijuana possession is unlawful under federal  
law, even when used for medical purposes, state  
law does not require an employer to  
accommodate an employee's use of marijuana to  
treat a disabling medical condition. The Court of  
Appeals declined to reach that question,  
reasoning that employer had not preserved it.  
*Emerald Steel Fabricators, Inc. v. BOLI*, 220  
Or.App. 423, 186 P.3d 300 (2008). We allowed  
employer's petition for review and hold initially  
that employer preserved the question that it  
sought to raise in the Court of Appeals. We also  
hold that, under Oregon's employment  
discrimination laws, employer was not required  
to accommodate employee's use of medical  
marijuana. Accordingly, we reverse the Court of  
Appeals decision.

Since 1992, employee has experienced  
anxiety, panic attacks, nausea, vomiting, and  
severe stomach cramps, all of which have  
substantially limited his ability to eat. Between  
January 1996 and November 2001, employee  
used a variety of prescription drugs in an attempt  
to alleviate that condition. None of those drugs

# Local Control

- So we did a bill
- SB 1531
  - Clarify local right to
    - Opt out
    - Regulate
- Senator Bill Hansell
- Senator Rod Monroe
- Many others

77th OREGON LEGISLATIVE ASSEMBLY—2014 Regular Session

## Senate Bill 1531

Sponsored by Senators HANSELL, MONROE; Senators BAEHTSCHLIGER JR, BOQUIST, CLARK, FERRELLI, GIBBO, JOHNSON, KNOPP, KURSK, OLSEN, THOMSEN, WHITSITT, WINTERS, Representatives ESQUIVEL, JENSEN, THOMPSON, WHELAN (at the request of Association of Oregon Counties and League of Oregon Cities) (Previous filed)

### 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.

Specifies that governing body of city or county may regulate or restrict operation of medical marijuana facility, prohibit registration of medical marijuana facility, or regulate, restrict or prohibit storing or dispensing of marijuana by facility legally authorized to store or dispense marijuana. Declares emergency, effective March 1, 2014.

### A BILL FOR AN ACT

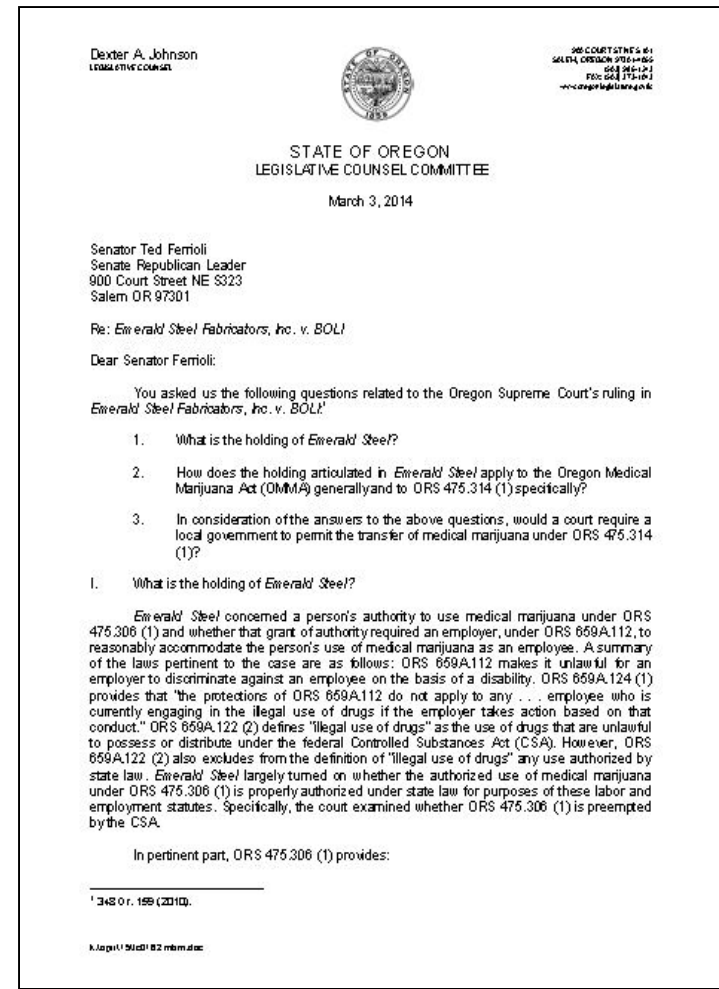
1 Relating to marijuana facilities; creating new provisions; amending ORS 475.314; and declaring an  
2 emergency.  
3  
4 Be It Enacted by the People of the State of Oregon:  
5  
6 SECTION 1. Section 2 of this 2014 Act is added to and made a part of ORS chapter 475.  
7 SECTION 2. Notwithstanding ORS 633.738, the governing body of a city or county may  
8 adopt ordinances that:  
9 (1) Regulate or restrict the operation of medical marijuana facilities registered under  
10 ORS 475.314 that are located in the area subject to the jurisdiction of the city or county;  
11 (2) Prohibit the registration under ORS 475.314 of medical marijuana facilities that are  
12 located in the area subject to the jurisdiction of the city or county; or  
13 (3) Regulate, restrict or prohibit within the area subject to the jurisdiction of the city  
14 or county the storing or dispensing of marijuana by a facility authorized to store or dispense  
15 marijuana under the laws of this state.  
16 SECTION 3. ORS 475.314 is amended to read:  
17 475.314. (1) The Oregon Health Authority shall establish by rule a medical marijuana facility  
18 registration system to authorize the transfer of usable marijuana and immature marijuana plants  
19 from:  
20 (a) A registry identification cardholder, the designated primary caregiver of a registry identi-  
21 fication cardholder, or a person responsible for a marijuana grow site to the medical marijuana fa-  
22 cility; or  
23 (b) A medical marijuana facility to a registry identification cardholder or the designated primary  
24 caregiver of a registry identification cardholder.  
25 (2) The registration system established under subsection (1) of this section must require a med-  
26 ical marijuana facility to submit an application to the authority that includes:  
27 (a) The name of the person responsible for the medical marijuana facility;  
28 (b) The address of the medical marijuana facility;  
29 (c) Proof that the person responsible for the medical marijuana facility is a resident of Oregon;

NOTE: Matter in bold-faced type in an amended section is new; matter in (italics and brackets) is existing law to be omitted. New sections are in bold-faced type.

LC 217

# Local Control

- LC issued another opinion
  - Federal law likely trumps state preemption



# Local Control

- **SB 1531C**
  - **Sunsets clarification of local authority to opt out on May 1, 2015**

77th OREGON LEGISLATIVE ASSEMBLY—2014 Regular Session

**C-Engrossed  
Senate Bill 1531**

Ordered by the House March 5  
Including Senate Amendments dated February 14 and House Amendments  
dated February 25 and March 5

Sponsored by Senators HANSELL, MONROE, STARR; Senators BARSTSCHEGER JR, BOQUIST, CLORE,  
FERRELL, GIBBO, JOHNSON, KNIFE, KRUSE, MONROE ANDERSON, OLSEN, THOMPSON, WITTSBY,  
WINTERS; Representatives ESQUIVEL, JENSON, VIATCHIK, TURMISON, WHISMANT, WITT (at the re-  
quest of Association of Oregon Counties and League of Oregon Cities (Prevention Fund))

**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.

Specifies that governing body of city or county may (prohibit) the establishment or regulate or restrict the operation) adopt ordinances that impose reasonable regulations on operation of medical marijuana facilities. Specifies that governing body of city or county may enact moratorium on operation of registered medical marijuana facility until May 1, 2015, if moratorium is enacted no later than May 1, 2014.

Imposes standards for transference of tetrahydrocannabinol-infused products by medical marijuana facilities.

Declares emergency, effective March 1, 2014.

**A BILL FOR AN ACT**

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

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

5 **SECTION 1.** Section 2 of this 2014 Act is added to and made a part of ORS 475.300 to  
6 475.346.

7 **SECTION 2.** Notwithstanding ORS 633.738, the governing body of a city or county may  
8 adopt ordinances that impose reasonable regulations on the operation of medical marijuana  
9 facilities registered, or applying for registration, under ORS 475.314 that are located in the  
10 area subject to the jurisdiction of the city or county. For purposes of this section, "reason-  
11 able regulations" includes reasonable limitations on the hours during which a medical  
12 marijuana facility may be operated, reasonable limitations on where a medical marijuana  
13 facility may be located within a zone described in ORS 475.314 (3)(a) and reasonable condi-  
14 tions on the manner in which a medical marijuana facility may dispense medical marijuana.

15 **SECTION 3.** (1) Notwithstanding ORS 475.314 and section 2 of this 2014 Act, the governing  
16 body of a city or county may adopt an ordinance enacting a moratorium on the operation  
17 of registered medical marijuana facilities until May 1, 2015, in the area subject to the juris-  
18 diction of the city or county if the moratorium is enacted no later than May 1, 2014.

19 (2) Notwithstanding ORS 475.309 (1)(b), a person who is responsible for or employed by a  
20 registered medical marijuana facility located in an area subject to the jurisdiction of a city  
21 or county that enacts a moratorium under this section is not exempted from the criminal  
22 laws of this state for possession or delivery of marijuana, aiding and abetting another in the

NOTE: Matter in bold-faced type is an amended section or new matter (State and brackets) or existing law to be created.  
New sections are in bold-faced type.

LC 217

# Local Control

- SB 1531C enacted



77th OREGON LEGISLATIVE ASSEMBLY—2014 Regular Session

Enrolled  
Senate Bill 1531

Sponsored by Senators HANSELL, MONROE, STARR; Senators BAERTSCHIGER JR, BOQUIST, CLORE, FERRIOLI, GIRD, JOHNSON, KNOPP, KRUSE, MONNES ANDERSON, OLSEN, THOMSEN, WHITSETT, WINTERS; Representatives ESQUIVEL, JENSON, THATCHER, THOMPSON, WHISNANT, WITT (at the request of Association of Oregon Counties and League of Oregon Cities) (Pressession filed.)

CHAPTER .....

AN ACT

Relating to marijuana facilities; creating new provisions; amending ORS 475.314; and declaring an emergency.

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

**SECTION 1.** Section 2 of this 2014 Act is added to and made a part of ORS 475.300 to 475.346.

**SECTION 2.** Notwithstanding ORS 633.738, the governing body of a city or county may adopt ordinances that impose reasonable regulations on the operation of medical marijuana facilities registered, or applying for registration, under ORS 475.314 that are located in the area subject to the jurisdiction of the city or county. For purposes of this section, "reasonable regulations" includes reasonable limitations on the hours during which a medical marijuana facility may be operated, reasonable limitations on where a medical marijuana facility may be located within a zone described in ORS 475.314 (3)(a) and reasonable conditions on the manner in which a medical marijuana facility may dispense medical marijuana.

**SECTION 3.** (1) Notwithstanding ORS 475.314 and section 2 of this 2014 Act, the governing body of a city or county may adopt an ordinance enacting a moratorium on the operation of registered medical marijuana facilities until May 1, 2015, in the area subject to the jurisdiction of the city or county if the moratorium is enacted no later than May 1, 2014.

(2) Notwithstanding ORS 475.300 (1)(b), a person who is responsible for or employed by a registered medical marijuana facility located in an area subject to the jurisdiction of a city or county that enacts a moratorium under this section is not excepted from the criminal laws of this state for possession or delivery of marijuana, aiding and abetting another in the possession or delivery of marijuana or any other criminal offense in which possession or delivery of marijuana is an element.

(3) The governing body of a city or county that enacts a moratorium under this section must notify the Oregon Health Authority, in a manner prescribed by the authority, of the moratorium.

(4) A registered medical marijuana facility that is located in an area subject to the jurisdiction of a city or county that enacts a moratorium under this section may choose to surrender the medical marijuana facility's registration. To surrender registration under this subsection, the medical marijuana facility must notify the authority, in a manner prescribed

# SB 1531: One year litigation reprieve?

- ***Mary Jane's Attic***  
**v**  
***City of Medford***

1		RECEIVED AND FILED
2		2014 MAY 13 PM 1:32
3		JACKSON CIRCUIT COURT
4		BOOKED BY: _____
5		IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR JACKSON COUNTY
6	MARLENE NUCKOLS, INDIVIDUALLY AND IN HER CAPACITY AS PRESIDENT OF BAM RESULTS INC., AND OF BAM SOLUTION INC., AND AS LICENSEE, and RICHARD NUCKOLS, DBA MAYJANE'S ATTIC AND MARYJANE'S BASEMENT.	Case No. 14CV02349
7		<b>ORDER ON REVIEW</b>
8		<b>(ORS 34.100)</b>
9		
10	v.	Plaintiffs,
11	CITY OF MEDFORD,	
12		Defendant.
13		
14		
15		This matter having come before the Court on May 7, 2014 for hearing following the return of the
16		Writ of Review with the certified copy of the record and Petitioners (hereafter Nuckols) appearing
17		personally and through counsel, Leland Berger and Robert Graham, and Respondent City of Medford
18		(hereafter City) appearing through its counsel, John Huttli and Kevin McConnell, and the Court having
19		reviewed the parties' written submissions, and the written record before the Court and having
20		considered the arguments of counsel and now, after having taken the matter under advisement, makes
21		the following proposed factual findings and legal conclusions.
22		I. <b><u>Brief Procedural Background</u></b>
23		The Nuckols initially appeared before the Court on March 26, 2014 with their Petition for
24		Writ of Review challenging the City's revocation of their business license for distributing
25		marijuana in violation of City ordinance. The City appeared at that time through its
26		counsel. Following the hearing, the Court entered its Order, dated March 31, 2014,
		allowing the Writ of Review pursuant to ORS 34.040. The Writ was issued on April 1,
		Page 1 – ORDER
		JACKSON COUNTY CIRCUIT COURT 100 SOUTH OAKDALE MEDFORD, OR 97501

# SB 1531: One year litigation reprieve?

- ***City of Cave Junction***

**v**

***State of Oregon  
(Cave Junction I)***

- ***Providing All Patients Access***

**v**

***City of Cave Junction  
(Cave Junction II)***

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**RECEIVED**  
APR 30 2014

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF JOSEPHINE

CITY OF CAVE JUNCTION, an Oregon Municipal Corporation, Plaintiff, v. STATE OF OREGON; OREGON HEALTH AUTHORITY; and THE HONORABLE JOHN A. KITZHABER, Governor of the State of Oregon, Defendants.	Case No. <b>14cv0588</b> <b>COMPLAINT FOR DECLARATORY RELIEF</b> [NOT SUBJECT TO ARBITRATION]
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**PARTIES**

1.  
Plaintiff City of Cave Junction, is an Oregon Municipal Corporation.

2.  
Defendant State of Oregon is a state organized and existing under the Oregon and United States Constitutions.

3.  
Defendant Oregon Health Authority is a state agency established under the laws of Oregon.

4.  
Defendant the Honorable John A. Kitzhaber is named in his official capacity as Governor

Page 1 - COMPLAINT FOR DECLARATORY RELIEF

James E. Johnson, Esq. / Kitzhaber LLC  
Attorney for Plaintiff  
1000 NE Oregon Street  
Medford, OR 97504  
(541) 753-1111

## Issues in Cave Junction Cases

- **1. Does state law preempt local opt out of medical marijuana dispensaries?**
  - **HB 3460**
  - **SB 863**
  - **SB 1531**
- **2. If so, does federal law, in turn, preempt?**
  - *Emerald Steel v BOLI, et al*



# Status of Cave Junction Cases

- **1. Cave Junction I:**
  - **LOC/AOC prevailed in trial court**
    - **State law does not preempt**
  - **On appeal to the Court of Appeals**
    - **Awaiting briefing**
- **2. Cave Junction II:**
  - **Awaiting oral argument on April 17**

# **4. Overview of Measure 91**

# Election Result

## Measure 91

Marijuana legalization

> 95% of est. votes counted

**Yes**



822,078

**55.9%**

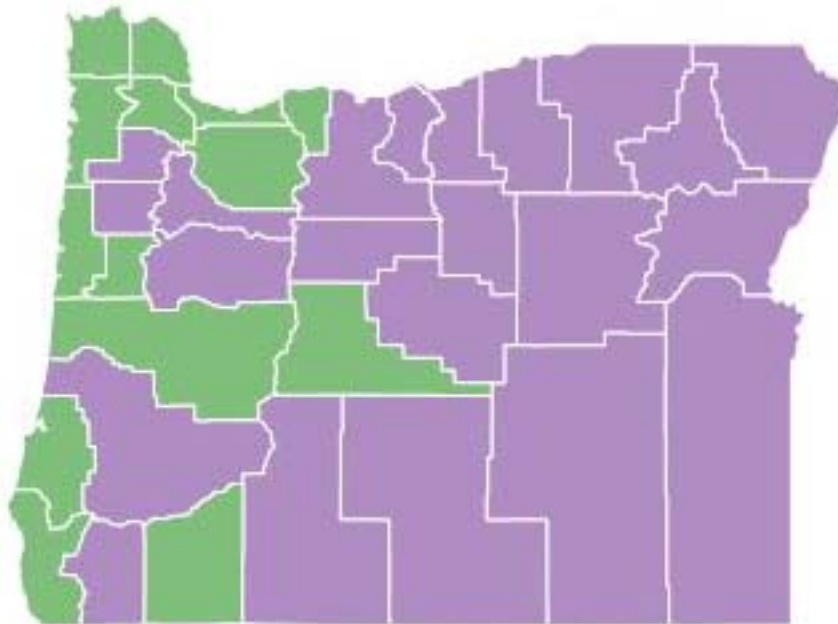
No



649,223

**44.1%**

UPDATED: 8:24 PM, NOV 8



# Measure 91 (Marijuana Legalization)

- **Two Primary Components**
  - **A. Personal Allowance**
  - **B. Retail Regulation and Taxation**

## A. Personal Allowance

- **Effective July 1, 2015, a person 21 or older can:**
  - **Have in their household (not readily seen from a public place), up to:**
    - **8 ounces of useable marijuana (dried marijuana flowers and leaves);**
    - **4 marijuana plants;\***
    - **1 pound of solid homemade marijuana products; and**
    - **4½ pounds of liquid homemade marijuana products.**
  - **Have, outside of their household, up to 1 ounce of useable marijuana.**

# Personal Allowance - Delivery

- **Effective July 1, 2015, a person 21 or older can:**
  - **Deliver to another person 21 or older, for noncommercial purposes, up to:\***
    - **1 ounce of homegrown marijuana;**
    - **1 pound of solid homemade marijuana products; and**
    - **4½ pounds of liquid homemade marijuana products.**
  - **No consumption in public.**

## **But no MCS or DCS <1,000' school**

- **\* Measure 91 amended MCS and DCS MJ statutes to allow for that manufacture and delivery, but did not amend the MCS and DCS MJ < 1,000 feet of a school statutes.**

## **B. Retail Regulation and Taxation**

- **The Oregon Liquor Control Commission (OLCC) will regulate all other production, processing, and sales of retail marijuana and marijuana products. By January of 2016, OLCC will start accepting applications for the following businesses (a person can hold more than one license):**
  - **Producers;**
  - **Processors;**
  - **Wholesalers; and**
  - **Retailers.**



# Taxation


- **Taxation of retail marijuana, as it leaves the grower, at the following rates:**
  - **\$35 per ounce for flowers (bud);**
  - **\$10 per ounce for leaves; and**
  - **\$5 per immature plant (clone).**

# Local Control


- **Opt out**
- **Time, place, and manner regulation**
- **Taxation**

# LOC/AOC Opinion

- Provisions in Measure 91 are not proscriptive



LEAGUE  
of Oregon  
CITIES



AOC | Association of  
Oregon Counties

To: Mike McCauley, Executive Director, League of Oregon Cities  
Mike McArthur, Executive Director, Association of Oregon Counties

From: Sean O'Day, General Counsel, League of Oregon Cities  
Katherine Thomas, Assistant General Counsel, League of Oregon Cities  
Rob Bovett, Legal Counsel, Association of Oregon Counties

Re: Measure 91 and Local Control

Date: March 4, 2015

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You have asked us to examine whether Measure 91 preempts local governments in Oregon from regulating, prohibiting, or taxing the growing, processing, distribution, or retail sales of recreational marijuana. For the reasons that follow, the preemptive effect of Measure 91 is not free from doubt. Oregon's strong home rule principles, the history of the Oregon Liquor Control Act on which Measure 91 appears to be based, and federal law all call into question the preemptive effect of Measure 91.

I. Home Rule Authority

Before examining the text of Measure 91, it is important to note that Oregon is a home rule state, which allows a city or county the power to adopt ordinances on any matter unless specifically preempted by state law.<sup>1</sup>

City governments in Oregon derive their home rule authority through the adoption of a home rule charter by the voters of that community pursuant to Article XI, section 2, of the Oregon Constitution, which was added to the Oregon constitution in 1906 by the people's initiative. Article XI, section 2, provides, in part that:

"The Legislative Assembly shall not enact, amend or repeal any charter or act of incorporation of any municipality, city or town. The legal voters of every city and

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<sup>1</sup> Home rule stands in contrast to a corollary principle known as Dillon's Rule. Dillon's Rule holds that municipal governments may engage only in activities expressly allowed by the state because they derive their authority and existence from the state. John F. Dillon, 1 The Law of Municipal Corporations § 96, 93 (2d ed 1873). Under Dillon's Rule, if there is a reasonable doubt about whether a power has been conferred to a local government, then the power has not been conferred. *Id.* §55, at 173. In contrast, in a home rule state like Oregon, a home rule charter approved by a vote of the people operates like a state constitution, in that it vests all government power in the governing body of the municipality, except as expressly stated in that charter, or in state or federal law.

1

<https://olis.leg.state.or.us/liz/2015R1/Downloads/CommitteeMeetingDocument/50835>

# Recent Local Taxation Elections

- **November 2014**
  - **Advisory question on locally taxing marijuana**
  - **Josephine 17-65 YES 76.51% NO 23.49%**
- **March 2015**
  - **Local taxation of medical and retail marijuana**
  - **Jackson 15-133 YES 62.94% NO 37.06%**

# Distribution of Net Revenue

- **40 percent to schools;**
- **25 percent for substance abuse treatment and prevention services;**
- **15 percent to the Oregon State Police; and**
- **To assist local law enforcement in performing it duties under the measure, \* 10 percent to cities and 10 percent to counties.**
  - Before July 1, 2017, distributed based on population.
  - After July 1, 2017, distributed based on proportion of marijuana businesses. \*

# Miscellaneous

- **The measure does not affect:**
  - **The rights of employers**
    - *Emerald Steel v BOLI*
  - **The rights of landlords**
  - **The Oregon Medical Marijuana Act (OMMA)**

## **5. Some current legislative issues**

# Some 2015 Legislative Issues

- **Controlling the medical marijuana supply chain (card stacking, etc)**
- **Local control**
  - **Opt out, regulation, taxation**
- **State tax distribution scheme**
  - **Upper end formula issues**
  - **Lower end formula issues**



# Lower End Formula Issue



# Some 2015 Legislative Issues

- **Taxation point**
- **Concentrates**
- **Labelling and packaging**
- **Zoning issues**
- **Cross-pollination with hemp**
- **Seeds**
- **Additional OLCC license categories**

# Joint Marijuana Committee

- **The plan: Two omnibus bills**
  - **Technical amendments for OLCC**
    - **SB 844 is the vehicle**
  - **Substantive amendments**
    - **One or two bills (OMMA and M91)**



**AOC**

**Association of  
Oregon Counties**

**Questions?**

