

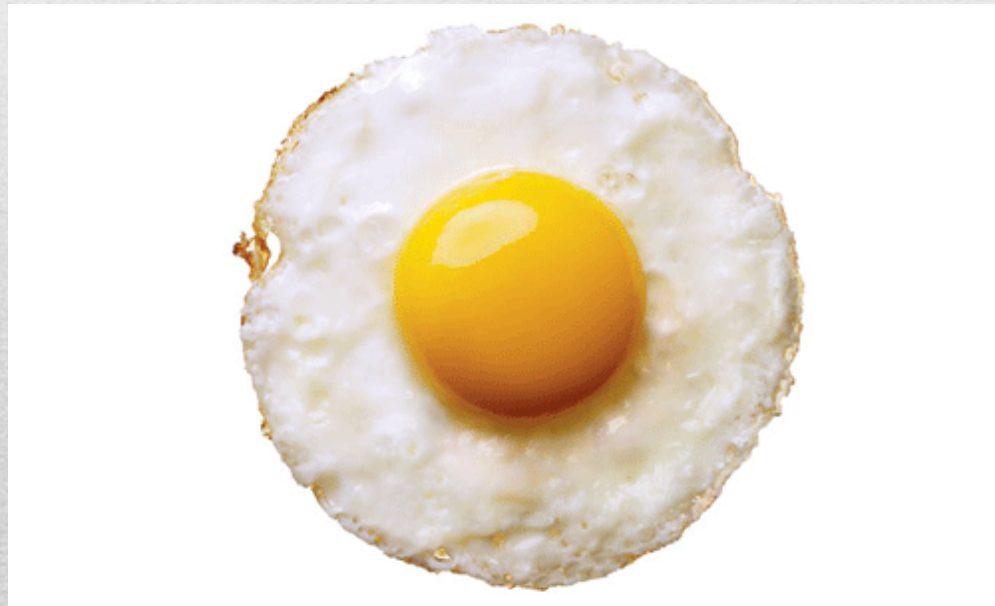
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The Path to Legalization in OR: *Measure 91*

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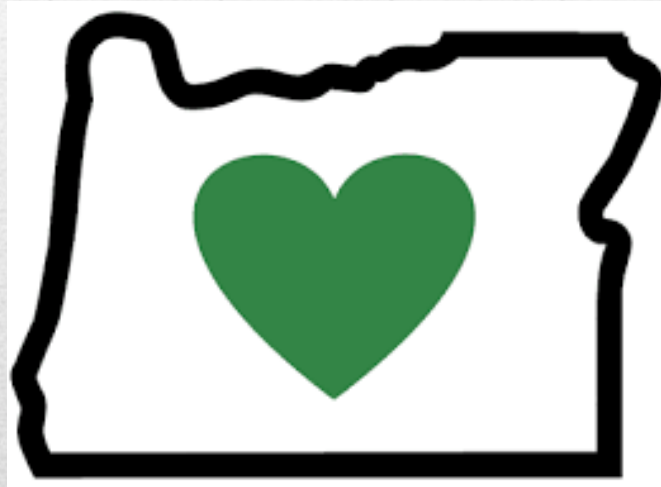
Measure 91 and OMMA “License” and “Registration”

Measure 91 is like a “Sunny Side-Up Egg”



“*Alis Volat Propriis*”

“She flies with her own wings”



One of federalism’s chief virtues is that “a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.” *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J. dissenting)

Agenda

1. Abridged History of Oregon Cannabis Law
2. Oregon Medical Marijuana Act (the “OMMA”)
3. Ballot Measure 91 – A Sunny Side-Up Egg



PCS, DCS, MCS

3 Categories of Major MMJ Crimes in OR

“**Possession**” means to have physical possession or otherwise to exercise dominion or control over the controlled substance. Possession charges are commonly seen when you have drugs in your home, in your vehicle, or on your person.

“**Deliver**” or “**delivery**” means the actual, constructive or attempted transfer from one person to another of a controlled substance. Under Oregon law, deliveries generally include possession with the intent to deliver. Delivery charges stem from giving, providing or selling drugs to another person and from possessing large amounts of drugs which the state believes you intend to deliver to another.

“**Manufacture**” refers to the production, preparation, propagation, compounding, conversion or processing of a controlled substance by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. Manufacturing charges are most often seen when someone is manufacturing (growing) marijuana.

Table of Oregon Marijuana Offenses

OFFENSES INVOLVING MARIJUANA		
(does not reflect changes made by 2013 legislature 2014 election)		
ORS 475.856	A Felony	Unlawful manufacture of marijuana.
ORS 475.858	A Felony	Unlawful manufacture of marijuana within 1000 feet of a school.
ORS 475.860(2)(a)	B Felony	Unlawful delivery of marijuana for consideration.
ORS 475.860(2)(b)	C Felony	Unlawful delivery of marijuana for no consideration (more than one ounce).
ORS 475.860(3)(a)	A Misdemeanor	Unlawful delivery of marijuana for no consideration and is less than one ounce.
ORS 475.860(3)(b)	Violation	Unlawful delivery of marijuana for no consideration and is less than five grams.
ORS 475.860(4)(a)	A Felony	Unlawful delivery of marijuana to a person under 18 years of age if the defendant is at least 18 years of age and is three or more years older than the recipient.
ORS 475.860(4)(b)	C Misdemeanor	Unlawful delivery of marijuana for no consideration within 1000 feet of a school and is less than five grams and the recipient is 18 years or older.
ORS 475.862	A Felony	Unlawful delivery of marijuana within 1000 feet of a school
ORS 475.864(2)	B Felony	Unlawful possession of marijuana (an ounce or more).
ORS 475.864(3)	Violation	Unlawful possession of less than an ounce of marijuana.
ORS 475.864(4)	C Misdemeanor	Unlawful possession of less than an ounce of marijuana within 1000 feet of a school



1973

The First State to Decriminalize

In 1973, Oregon becomes first state to decriminalize possession of cannabis

- *See, House Bill 2936 (1973 Oregon Laws, Chap. 680*
- *28.35 grams (1 ounce) or less = a violation*
- *not a crime, i.e. misdemeanor or felony*
- Punishable by a \$500 to \$1,000 fine, akin to traffic ticket
- A young state legislator championed the bill by the name of Earl Blumenauer.

1.) Abridged History of Oregon Cannabis Law



Oregon Marijuana Initiative Ballot Measure 5 (1986)

OMI fails to qualify in 1984, but does make ballot in 1986.

- Nation's first initiative to legalize marijuana to qualify for ballot and be submitted to the people for their vote
- OMI “Legalizes Private Possession and Growing of Marijuana for Personal Use”
- Result: The People Aren't Ready Yet
 - No: 781,922 (74%)
 - Yes: 279,479 (26%)



OMMP Shutdown

The Summer of 2005

On June 6 of 2005: *Gonzales v. Raich*, 545 U.S. 1 (2005) is decided.

- 2 week shutdown of OMMP immediately ensues....mass confusion...
- On June 17, 2005 Oregon A.G. opinion:
 - *Raich does not* mean CSA preempts OR mmj laws
 - OMMP back up and running through today, then.....

SB 1085 passes in legislature on August 4, 2005

- ‘Growers’
- ‘Grow site’ registration system
- increased plant and possession limits

Senate Bill 1085

“Outgrowing Prohibition”

Before SB 1085:

- 3 ounces
- 3 “mature plants”
- 4 seedlings
- patients & caregivers

After SB 1085:

- 24 ounces
- 6 “mature plants”
- 18 seedlings
- 24 oz of usable mj
- Growers + Grow site registration

Senate Bill 1085

“Out-Producing Prohibition”

- **ORS 475.005(20) “Production”** includes the **manufacture**, planting, cultivation, growing or harvesting of a controlled substance.
- **ORS 475.005(15) “Manufacture”** means the **production**, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance
- **NON-ECONOMIC, COMPASSION-BASED Supply until HB 3460 (2013)**

2012 Measure 80

OREGON CANNABIS TAX ACT



- Allows unlicensed personal cultivation
- Unlimited adult personal possession
- Prohibits “Hemp” regulations
- Creates Oregon Cannabis Commission to regulate, license, buy, sell.
- OCC purchases “entire crop of marijuana and sells at cost.”
 - ❖ 7 commissioners elected by growers, processors
 - ❖ Authorized to sell cannabis to other states
- Requires OR Attorney General to defend in ct against preemption based on 10th Amendment theory

Result: Yes: 810,538 (47%) – No: 923,071 (53%)

1.) Abridged History of Oregon Cannabis Law

November 6, 2012

Measure 80

OREGON
CANNABIS
TAX ACT



2012



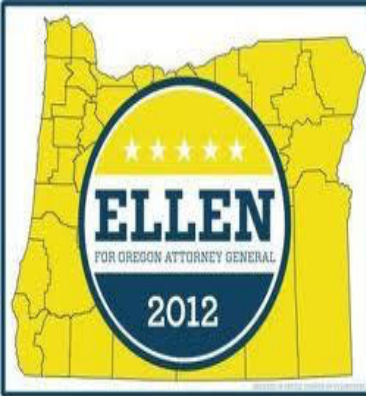
- **One man's vision**
- **Survive federal preemption?**
- **No broad engagement of industry/community**
- **Public interest & public safety concerns**
- **Economic realities**
- ❖ **Poor drafting. i.e., oft-maligned 'preamble'**
 - ❖ George Washington grew hemp. Thomas Jefferson and Gouverneur Morris of Pennsylvania letters "hemp is to be preferred" over tobacco."
- ❖ **Lack of Funding** → A grassroots campaign effort
- ❖ **No professional media/communications strategy**
- ❖ **No legitimate political campaign strategy**

1.) **Abridged History of Oregon Cannabis Law**





Path To Measure 91: The 'Not Dwight' Campaign



**Primary Campaign Victory of Ellen Rosenblum in May 2012 results:
June 10, 2013 – A.G. Rosenblum's letter in support of HB 3460**



**Political Response to the Federal MMJ Crackdown
Campaign Masterminded by Jim Greig**

The Path To Measure 91: HB 3460 (2013)

- **Medical Marijuana Facilities (dispensaries) legalized**
- Centralized state **REGISTRY** – proof of **REGISTRATION**
- ‘normal and customary costs of doing business’
 - “transfers”
 - Security
 - Testing
 - Zoning
 - Registered as business w/ OR. S.O.S.
 - Patient authorization
- **ORS 475.309(1)(b)** – immunity for employees, volunteers, and PRF of a registered MMF.



1.) **Abridged History of Oregon Cannabis Law**

Bird's Eye View of OMMA: ORS 475.300 through 475.346

Caregiver grow site with multiple patients and growers...



There are 96 marijuana plants in the photo

Note the size of the plants in relation to the size of the people in the top of the frame.

a grower loophole was closed by SB 1085 by limiting the number of persons one grower could produce Marijuana for. There is no limit on how many plants in a

Another Bird's Eye View of OMMA: ORS 475.300 through 475.346

ORS 475.300 - Findings	ORS 475.323 – Search and seizure
ORS 475.302 – Definitions	ORS 475.324 – Confiscation
ORS 475.303 - Advisory committee	ORS 475.326 - Attending phys.
ORS 475.304 – Grow Site Reg. Sys.	ORS 475.328 – Limits on
ORS 475.306 – Medical use of MMJ	professional licensing boards
ORS 475.309 – Registry ID Cards	ORS 475.331 – Lists of persons
ORS 475.312 – Caregiver	ORS 475.334 – Adding qual. cond.
ORS 475.314 – MMF Reg. System	ORS 475.338 – Rules
ORS 475.316 – Limits on immunity	ORS 475.340 – Reimbursement of
ORS 475.319 – Affirmative Defense	costs and empl. accommodation
ORS 475.320 – Possession Limits	ORS 475.342 – Limits on immunity

2.) The Oregon Medical Marijuana Act (the “OMMA”)

Oregon Medical Marijuana Act (the “OMMA”)

- Adopted in 1998 by voters
- Doesn’t legalize - “excepts” - Immunity from crim & civ. penalties; Affirmative Defense
- ORS 475.300 through 475.346
- Over 60,000 registry identification cardholders in OMMP
- Registration process with Oregon Health Authority
 - ❖ Registry identification cardholder (patients)
 - ❖ Designated primary caregiver (caregivers)
 - ❖ Person responsible for a marijuana grow site (growers)
 - ❖ Medical marijuana facility (dispensaries)

2.) The Oregon Medical Marijuana Act (the “OMMA”)

ORS 475.309(1)

THE CORE OF OMMA

Except as provided in ORS 475.316 (Limitations on cardholders immunity from criminal laws involving marijuana), 475.320 (Limits on amounts possessed) and 475.342 (Limitations on protection from criminal liability) a person engaged in or assisting in the medical use of marijuana is excepted from the criminal laws of the state for possession, delivery or production of marijuana, aiding and abetting another in the possession, delivery or production of marijuana or any other criminal offense in which possession, delivery or production of marijuana is an element if the following conditions have been satisfied: [...the person applies for and is issued state reg. ID card, other conditions and restrictions are met]

2.) The Oregon Medical Marijuana Act (the “OMMA”)

Emerald Steel preempts ORS 475.306(1)
“the use of medical marijuana”.... ..

ORS 475.302(8) the “Medical use of marijuana” means the production, possession, delivery, **distribution**, or administration of marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of the person’s debilitating medical condition.

*distribution added by SB 281 in 2013.....*see*, ‘Cooperative Federalism’ – Chemerinsky law review

2.) The Oregon Medical Marijuana Act (the “OMMA”)

The federal CSA: 21 USC § 903 - Application of State Law

“No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, **unless there is a positive conflict between that provision of this subchapter and that State law so that the two cannot consistently stand together.**”

2.) The Oregon Medical Marijuana Act (the “OMMA”)

21 USC § 903

Application of State Law

The Oregon Supreme Court explained in *Emerald Steel*, an **actual conflict** will exist either:

1. When it is “physically impossible” to comply with both state and federal law; or
2. When state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”

2.) **The Oregon Medical Marijuana Act (the “OMMA”)**
Emerald Steel v. BOLI, 230 P.3d at 528 (2010)

Emerald Steel v. BOLI, 348 Ore. 159 (2010)

Employment Discrimination

- ORS 475.306 - “affirmatively authorizes the use of medical marijuana,” therefore preempted by the federal CSA.
 - The state law did not prevent the federal government from enforcing its own laws against Oregon mmj users. But by “affirmatively authorizing a use that federal law prohibits,” the Oregon law “stands as an obstacle to the implementation and execution of the full purposes of the CSA.”
- Holding: There can be no dispute that Congress has the authority under the Supremacy Clause to preempt state laws that affirmatively authorize the use of medical marijuana.
 - Distinction between “**exemption**” and “**authorization**”

2.) The Oregon Medical Marijuana Act (the “OMMA”)

Willis v. Winters, 350 Or. At 309 (2011)

MJ Patients + Concealed Handgun Licenses

- The Sheriffs of both Jackson and Washington counties refused to issue concealed handgun licenses to persons who met all of the state statute conditions required for issuance of *CHL* licenses by sheriffs, because they admitted to using medical marijuana pursuant to OMMA registry identification cards.
- HELD: “The Federal Gun Control Act does *not* preempt the state's concealed handgun licensing statute and, therefore, the sheriffs must issue (or renew) the requested licenses.”

2.) The Oregon Medical Marijuana Act (the “OMMA”)

Willis v. Winters: When a state law stands as an *obstacle*:

Obstacle preemption questions are to be resolved by examining the federal law to ascertain its purposes and intended effects, examining the state statute to determine its effects, and comparing the results to determine whether the latter statute in some way obstructs the accomplishment of the objectives that have been identified with respect to the former statute. See, e.g. *Perez v. Campbell*, 402 U.S. 637, 644, 91 S.Ct 1704, L.Ed. 2d 233 (1971) [...] When traditional regulatory powers of the states are implicated (as in the present case), that analysis incorporates a presumption that Congress did not intend to preempt. See *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230, 67 S.Ct. 1146, 91 L.Ed 1447 (1947).

The OMMA survives federal preemption, under *Willis* obstacle preemption standard.

2.) The Oregon Medical Marijuana Act (the “OMMA”)

Who Cares when a state law stands as an *obstacle*? Measure 91's Drafters

Measure 91 was drafted INTENTIONALLY to survive **OBSTACLE** preemption analysis. Check out Section 1 of Measure 91....

- pretty consistent with the federal law's purposes and objectives

Plus, Rohrbacher-Farr Amendment passed December 2014:

SEC. 558. None of the funds made available in this Act to the Department of Justice may be used, with respect to the States of Alabama, [...], Oregon,[...] to prevent such States from implementing their own State laws that *authorize* the use, distribution, possession, or cultivation of medical marijuana.

2.) The Oregon Medical Marijuana Act (the "OMMA")

Emerald Steel v. BOLI, 348 Ore. 159 (2010)

- “The only issue that employer’s preemption argument raises is whether federal law preempts ORS 475.306(1) to the extent that it **authorizes** the use of medical marijuana.....it is preempted.
- In holding that federal law does preempt that subsection, we do not hold that federal law preempts the other sections of the OMMA that *exempt* medical marijuana use from criminal liability.”

Emerald Steel, 230 P.3d at 526 fn 12.

Willis v. Winters,

350 Or. 299, 253 P.3d 1058, 65 A.L.R. 6th 717, (2011)
cert. den. (2012).

“ Congress lacks constitutional authority to commandeer the policy-making or enforcement apparatus of the states by requiring them to enact or enforce a federal regulatory program. *Printz v. United States*, 521 U.S. 898, 925 (1997); *New York v. United States*, 505 U.S. 144, 161-69 (1992).”

2.) The Oregon Medical Marijuana Act (the “OMMA”)

Emerald Steel and Willis v. Winters

A Drafting Guide for HB 3460 & Measure 91

- ORS 475.309(1)(b) - immunity for PRF and staff of registered medical marijuana facility, exemption from state criminal prosecution
- ORS 475.314(5) - application process modeled after CHL?
- ORS 475.314(6) - patient's authorization req'd

Why Did Measure 91 Pass?

We > Me



We are the Drug Policy Alliance.



Who Wrote Measure 91?

Oregon

- Measure 91 drafted by Anthony Johnson and Dave Kopilak, transposing Oregon's Liquor Statutes. Over 30 revisions were written and re-written, by Lee Berger – drafter of OMMA, John Sajo – chief petitioner of OMMA and the 1986 marijuana initiative, Paul Loney, the Oregon ACLU, Drug Policy Alliance, Paul Stanford of Measure 80, national experts from around the country, I was even there for it, plus many other people were given a voice.
 - New Approach = A COALITION; Stakeholders vet measure.
 - The legislative process is another story – its ugly out there
- 2.) The Oregon Medical Marijuana Act (the “OMMA”)

Senate Bill 1531 (2014)

Preempting Local Government Bans

- SB 863 – “the gmo bill” – State preemption of all local government regulation of seeds and the products of seeds
- **SB 1531, Section 2:** Notwithstanding ORS 633.738 [SB 863], a local gov may adopt “reasonable regulations” on time, place, and manner of MMF operations.
- **SB 1531 parallels Measure 91 Section 59.....**

Senate Bill 1531

A New Approach:

SECTION 3. (1) Notwithstanding ORS 475.314 [HB 3460] 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. [...]

SECTION 4. Section 3 of this 2014 Act is repealed on January 2, 2016.

What happens on January 1, 2016?....OLCC licensing!

Local Option?

Compare SB 1531 w/ BM 91

- Section 58. Marijuana laws supersede and repeal inconsistent charters and ordinances
- **Section 59. Authority of cities and counties over establishments that serve marijuana [SB 1531, Section 2, PLUS]**
- Section 60. Petition for local option
- Section 61. Sales not affected by local option laws
- Section 62. Effective date of local option.

Measure 91

The Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act

- **Section 3. Short Title.** Sections 3 to 70 of this Act shall be known and may be cited as the Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act.
- **Section 13. Licensees and licensee representatives.** Licensees and licensee representatives may produce, deliver, and possess marijuana items subject to the provisions of sections 3 to 70 of this Act. [...]

The production, delivery, and possession of marijuana items by a licensee or a licensee representative in compliance with sections 3 to 70 of this Act **shall not constitute a criminal or civil offense under Oregon law.**

Butane Hash Oil Explosions and Measure 91

Section 57. Homemade marijuana extracts prohibited. No person may produce, process, keep, or store homemade marijuana extracts.

HASH OIL LAB FOUND AT SCENE OF ROSEMEAD APARTMENT EXPLOSION, FIRE



Firefighters battle a fire at a residential complex in Rosemead on Tuesday, Feb. 17, 2015. (KABC) Wednesday, February 18, 2015 09:01AM, by Janet Kinnaman

<http://abc7.com/news/hash-oil-lab-found-at-scene-of-apartment-explosion-fire/523370/>

3.) Measure 91

High Federalism

Fed/State/Local Government Tensions

Ongoing litigation re: HB 3460 and SB 1531.....and Measure 91?

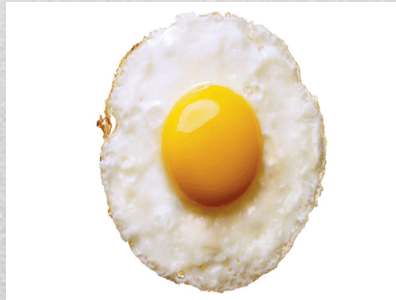
- **Cave Junction I:** SB 1531 and HB 3460 not preemptive.....federal preemption not an issue.
- **Cave Junction II:** TBD

The CSA does not preempt the authority of OR to exempt a state registered MMF's staff from state criminal prosecution under ORS 475.309(1)(b) due to the 10th Amendment's anti-commandeering doctrine as enumerated by the Oregon Supreme Court's preemption tests from both *Emerald Steel* and *Willis v. Winters*.

1.) **Abridged History of Oregon Cannabis Law**

Measure 91 and OMMA “License” and “Registration”

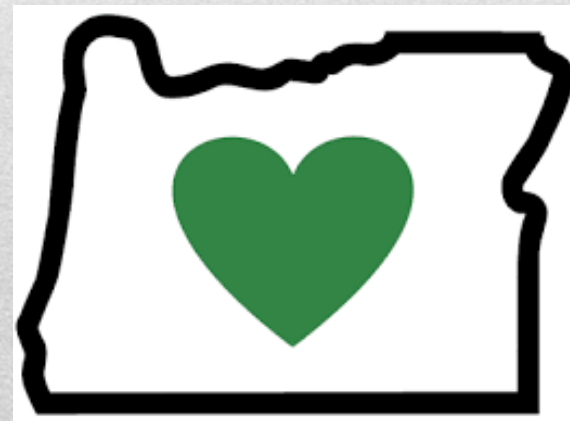
- **Section 4. Limitations.** Sections 3 to 70 of this Act may not be construed: [...] (7) To amend or affect in any way the Oregon Medical Marijuana Act
- **Section 5.** (10) “Licensee” means any person holding a license issued under this Act, or any person holding a license or permit issued under any regulation promulgated under paragraph (e) of subsection (2) of section 7 of this Act. (OLCC’s regulations...)
- **Section 6. Exemptions.** (2) Sections 7 to 70 of this Act: (a) Do not apply to the extent a person acts within the scope of and in compliance with the OMMA[...]



OR is NOT Colorado or WA

“Oregon Cannabicultural Areas”

- My idea - to preserve Oregon’s globally unique outdoor growing climates from contamination by Hemp through zoning and other land use planning: O.C.A. statute/rules
- Our States share the Emerald Triangle growing region in the mythological ‘State of Jefferson’ area. Oregon will have a jump-start over California!? “States as laboratories”
- Analogous concept to American Viticultural AreasWine Appellation – Napa valley region
- Idea came to me from French concept of ‘terroir’ – a project I did in Maastricht.



“She flies with her own wings”

State Legalization Efforts Panel:

OREGON

REGULATE IT
LEGALIZE IT ⁹¹ TAX IT

The Regular Session of the 78th Legislative Assembly of the Oregon State Legislature began on February 2nd 2015

- Target *sine die* is the end of June or early July....July 1, 2015.....important date
- Will the OMMA survive as promised to the Voters?
- What will the ‘Joint Committee on Implementing Measure 91’ do?
- Follow legislative news online at: olis.leg.state.or.us or legiscan
- e-subscribe online to committee updates here:

<https://olis.leg.state.or.us/liz/2015R1/Committees/JM91/Overview>