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As of: August 6, 2010 (3:31pm)

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**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act ; repealing section 50-46-206, MCA."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-40-103, MCA, is amended to read:

"50-40-103. Definitions. As used in this part, the following definitions apply:

(1) "Bar" means an establishment with a license issued pursuant to Title 16, chapter 4, that is devoted to serving alcoholic beverages for consumption by guests or patrons on the premises and in which the serving of food is only incidental to the service of alcoholic beverages or gambling operations, including but not limited to taverns, night clubs, cocktail lounges, and casinos.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Enclosed public place" means an indoor area, room, or vehicle that the general public is allowed to enter or that serves as a place of work, including but not limited to the following:

- (a) restaurants;
- (b) stores;

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(c) public and private office buildings and offices, including all office buildings and offices of political subdivisions, as provided for in 50-40-201, and state government;

(d) trains, buses, and other forms of public transportation;

(e) health care facilities;

(f) auditoriums, arenas, and assembly facilities;

(g) meeting rooms open to the public;

(h) bars;

(i) community college facilities;

(j) facilities of the Montana university system; and

(k) public schools, as provided for in 20-1-220 and 50-40-104.

(4) "Establishment" means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.

(5) "Incidental to the service of alcoholic beverages or gambling operations" means that at least 60% of the business's annual gross income comes from the sale of alcoholic beverages or gambling receipts, or both.

(6) "Person" means an individual, partnership, corporation, association, political subdivision, or other entity.

(7) "Place of work" means an enclosed room where one or more individuals work.

(8) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokable product, including marijuana intended for medical use as

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provided for in Title 50, chapter 46."

{Internal References to 50-40-103: None.}

Section 2. Section 50-46-102, MCA, is amended to read:

"50-46-102. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Caregiver" means an individual 7 18 years of age or older who is licensed by the state and has agreed to undertake responsibility for managing the well-being of a person with respect to the medical use of marijuana. A ~~qualifying patient~~ registered cardholder may have only one caregiver at any one time.

(b) The term does not include the ~~qualifying patient's~~ registered cardholder's physician.

(2) "Debilitating medical condition" means:

(a) cancer~~;~~;

(b) glaucoma~~;~~;

(c) or positive status for human immunodeficiency virus~~;~~ or acquired immune deficiency syndrome~~;~~; ~~or the treatment of these conditions;~~

~~(b) a chronic or debilitating disease or medical condition or its treatment that produces one or more of the following:~~

~~(i) (d) severe anorexia or cachexia or wasting syndrome;~~

(e) severe or chronic pain documented by a written certification from:

(i) a primary care physician; and

(ii) a specialist in the underlying condition causing the

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pain or in the field of pain management;

(f) ~~severe~~ intractable nausea or vomiting;

(g) ~~seizures, including but not limited to seizures caused~~
by epilepsy; or

~~(v) severe or persistent muscle spasms, including but not
limited to spasms caused by~~

(h) multiple sclerosis;

(i) ~~or~~ Crohn's disease; or

(j) painful peripheral neuropathy;

(k) amyotrophic lateral sclerosis (Lou Gehrig's disease);

(l) damage to the nervous tissue of the spinal cord, with
objective neurological indication of intractable spasticity;

(m) hepatitis c infection currently receiving antiviral
treatment;

(n) admittance into hospice care in accordance with rules
adopted by the department; or

~~(c)~~(o) any other medical condition or treatment for a
medical condition adopted by the department by rule.

(3) "Department" means the department of public health and human services.

(4) "Marijuana" has the meaning provided in 50-32-101.

(5) "Medical use" means:

(a) the acquisition, possession, cultivation, manufacture, delivery, transfer, or transportation of marijuana or paraphernalia by a ~~qualifying patient~~ registered cardholder or a licensed caregiver relating to the consumption of marijuana to alleviate the symptoms or effects of a ~~qualifying patient's~~

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registered cardholder's debilitating medical condition;

(b) the use of marijuana or paraphernalia by a ~~qualifying patient~~ registered cardholder to alleviate the symptoms or effects of the ~~patient's~~ registered cardholder's debilitating medical condition; or

(c) the use of paraphernalia by a licensed caregiver for the cultivation, manufacture, delivery, transfer, or transportation of marijuana for use by a ~~qualifying patient~~ registered cardholder.

(6) "Paraphernalia" has the meaning provided in 45-10-101.

(7) "Physician" means a person who is licensed under Title 37, chapter 3, has an established office in Montana that is not in a location where marijuana is grown, manufactured, sold, or distributed.

(8) "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

(9) "Registered cardholder" means a Montana resident with a debilitating medical condition who has applied for and received a valid registry identification card.

~~(9)~~(10) "Registry identification card" means a document issued by the department that identifies a person as a ~~qualifying patient or caregiver~~ registered cardholder.

(11) "Standard of care" means the following activities undertaken by a physician who provides written certification to a person with a debilitating medical condition:

(a) obtaining the patient's medical history;

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- (b) performing a relevant physical examination;
- (c) reviewing prior treatment and treatment response for the debilitating medical condition;
- (d) obtaining and reviewing relevant diagnostic test results related to the debilitating medical condition;
- (e) discussing with and ensuring that the patient understands the advantages, disadvantages, alternatives, potential adverse effects, and expected response to the recommended treatment;
- (f) monitoring the response to treatment and possible adverse effects;
- (g) creating and maintaining patient records that remain with the physician; and
- (h) notifying the patient's primary care physician when appropriate.

~~(10)~~ (12) (a) "Usable marijuana" means the dried leaves and flowers of marijuana and any mixture or preparation of marijuana.

(b) The term does not include the seeds, stalks, and roots of the plant.

~~(11)~~ (13) (a) "Written certification" means ~~a qualifying patient's medical records or~~ a statement signed by a physician stating that in the physician's professional opinion, after having completed a full assessment of the qualifying patient's medical history and current medical condition ~~made in the course of a bona fide physician-patient relationship,~~ the qualifying patient has a debilitating medical condition and the potential benefits of the medical use of marijuana would likely outweigh

the health risks for the qualifying patient.

(b) The written certification must be provided in a manner that meets the standard of care."

{Internal References to 50-46-102: None.}

Section 3. Section 50-46-103, MCA, is amended to read:

"50-46-103. Procedures Registry identification cards -- minors -- exceptions -- confidentiality -- report to legislature.

(1) The department shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of this chapter.

(2) Except as provided in ~~subsection (3)~~ subsections (3) and (4), the department shall issue a registry identification card to a qualifying patient who submits the following, in accordance with department rules:

(a) written certification that the person is a qualifying patient;

(b) an application or renewal fee;

(c) the name, address, and date of birth of the qualifying patient;

(d) proof of Montana residency;

~~(d)~~(e) the name, address, and telephone number of the qualifying patient's physician; and

~~(e)~~(f) the name, address, and date of birth of the qualifying patient's caregiver, if any.

(3) The department shall issue a registry identification card to a minor if the materials required under subsection (2)

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are submitted and the minor's custodial parent or legal guardian with responsibility for health care decisions signs and submits a written statement that:

(a) the minor's physician has explained to the minor and to the minor's custodial parent or legal guardian with responsibility for health care decisions the potential risks and benefits of the medical use of marijuana; and

(b) the minor's custodial parent or legal guardian with responsibility for health care decisions:

(i) consents to the medical use of marijuana by the minor;

(ii) agrees to serve as the minor's caregiver; and

(iii) agrees to control the minor's acquisition of marijuana and the dosage and frequency of the minor's medical use of marijuana ~~by the minor.~~

~~(4) (a) The department shall issue a registry identification card to the caregiver who is named in a qualifying patient's approved application if the caregiver signs a statement:~~

~~—— (i) agreeing to provide marijuana only to qualifying patients who have named the applicant as caregiver; and~~

~~—— (ii) acknowledging that possession of the registry identification card does not allow the caregiver to engage in the use of marijuana or to use paraphernalia for any purpose other than cultivating, manufacturing, delivering, transferring, or transporting marijuana for medical use by a qualifying patient.~~

~~—— (b) The department may not issue a registry identification card to a proposed caregiver who has previously been convicted of~~

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~~a felony drug offense.~~

~~(c) A caregiver may receive reasonable compensation for services provided to assist with a qualifying patient's medical use of marijuana.~~

(4) A person who is under the supervision of the department of corrections may not be a registered cardholder.

(5) (a) The department shall verify the information contained in an application or renewal submitted pursuant to this section and shall approve or deny an application or renewal within 15 days of receipt of the application or renewal.

(b) The department may deny an application or renewal only if:

(i) the applicant did not provide the information required pursuant to this section;

(ii) the department determines that the information was falsified; or

(iii) the applicant is not qualified to receive a registry identification card under the provisions of this chapter.

(c) Rejection of an application or renewal is considered a final department action, subject to judicial review.

(d) A person whose application was denied because of falsified information on an application or renewal form may not reapply for a registry identification card for 6 months.

(6) The department shall issue a registry identification card within 5 days of approving an application or renewal. Registry identification cards expire 1 year after the date of issuance, unless a physician has provided a written certification

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for a shorter period of time. Registry identification cards must state:

(a) the name, address, and date of birth of the ~~qualifying patient~~ registered cardholder;

(b) the name, address, and date of birth of the ~~qualifying patient's~~ registered cardholder's caregiver, if any;

(c) the date of issuance and expiration date of the registry identification card; and

(d) other information that the department may specify by rule.

(7) A person who has been issued a registry identification card shall notify the department of any change in the ~~qualifying patient's~~ registered cardholder's name, address, physician, or caregiver or change in status of the ~~qualifying patient's~~ registered cardholder's debilitating medical condition within 10 days of the change. If a change occurs and is not reported to the department, the registry identification card is void. The department shall revoke the card if notified by a physician or law enforcement of changes that were not reported.

~~(8) The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list must be confidential and are not subject to disclosure, except to:~~

~~—— (a) authorized employees of the department as necessary to perform official duties of the department; or~~

~~—— (b) authorized employees of state or local law enforcement~~

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~~agencies, only as necessary to verify that a person is a lawful possessor of a registry identification card.~~

~~(9)~~(8) The department shall report annually to the legislature the number of applications for registry identification cards, the number of ~~qualifying patients and caregivers~~ registered cardholders approved, the nature of the debilitating medical conditions of the ~~qualifying patients~~ registered cardholders, the number of registry identification cards revoked, and the number of physicians providing written certification for ~~qualifying patients~~ registered cardholders. The department may not provide any identifying information of ~~qualifying patients, caregivers,~~ registered cardholders or physicians."

{Internal References to 50-46-103:
50-46-201 50-46-202}

NEW SECTION. **Section 4. Caregiver licensure -- exceptions -- background checks required -- report to legislature.** (1) The department shall issue a license to the caregiver who is named in a registered cardholder's approved application if the caregiver:

(a) submits fingerprints to facilitate a fingerprint and background check by the department of justice and the federal bureau of investigation;

(b) pays a licensing fee as determined by the department;

(c) registers the caregiver's physical address with the department; and

(d) signs a statement:

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(i) agreeing to provide marijuana only to registered cardholders who have named the applicant as caregiver;

(ii) agreeing to notify the department and other regulatory entities within 10 days of any change in the caregiver's physical address; and

(iii) acknowledging that possession of the license does not allow the caregiver to engage in the use of marijuana or to use paraphernalia for any purpose other than cultivating, manufacturing, delivering, transferring, or transporting marijuana for medical use by a registered cardholder, unless the caregiver has also applied for and received a registry identification card because the caregiver has a debilitating medical condition.

(2) The department may not issue a license to a proposed caregiver who:

(a) is under the supervision of the department of corrections;

(b) has previously been convicted of a felony offense; or

(c) if the caregiver is under the age of 21, has previously been convicted of a misdemeanor drug offense.

(3) A caregiver may receive reasonable compensation for services provided to assist with a registered cardholder's medical use of marijuana.

(4) The department shall report annually to the legislature the number of applications for caregiver licenses, the number of applications approved, the location of licensed caregivers, and the number of patients per licensed caregiver. The department may

not provide any identifying information for licensed caregivers.

NEW SECTION. **Section 5. Prohibitions on physician-caregiver affiliations -- sanctions.** (1) A physician may not:

(a) accept or solicit any form of monetary remuneration from a licensed caregiver or offer any form of remuneration to a licensed caregiver;

(b) offer a discount or any other thing of value to a person who uses or agrees to use a particular licensed caregiver;

(c) examine a patient for the purposes of diagnosing a debilitating medical condition at a location where medical marijuana is grown, manufactured, sold or distributed; or

(d) hold an economic interest in an enterprise engaged in the medical use of marijuana if the physician certifies the debilitating medical condition of a person for participation in the medical marijuana program.

(2) If the department has reasonable cause to believe that a physician has violated this section, violated a provision of rules adopted pursuant to 50-46-210, or has not met the standard of care required under this chapter, the department may refer the matter to the board of medical examiners provided for in 2-15-1731 for an investigation and determination.

(3) If the department has reasonable cause to believe that a physician has violated this section, the department shall conduct a hearing to determine whether a violation has occurred.

(4) If the board of medical examiners finds that a physician has engaged in unprofessional conduct pursuant to 37-1-316 or if

the department finds a physician has violated this section, the department shall restrict the physician's authority to recommend the use of medical marijuana. The restrictions may include revocation or suspension of a physician's privilege to recommend medical marijuana. The restriction shall be in addition to any sanction imposed by the board of medical examiners.

(5) (a) The department may summarily suspend a physician's authority to recommend the use of medical marijuana pending an investigation and hearing when the department has objective and reasonable grounds to believe and finds, upon a full investigation, that:

(i) a physician has knowingly and willfully violated the provisions of this chapter; and

(ii) the public health, safety, or welfare requires emergency action.

(b) The department must incorporate its findings into an order before the suspension may take place.

(c) A hearing on the order of summary suspension must be held no later than 30 days after issuance of the order, unless the parties agree to a longer time period. An initial decision on the order must be issued no later than 30 days after the conclusion of the hearing.

NEW SECTION. **Section 6. Revocation of registry identification card.** The department shall permanently revoke the registry identification card or caregiver license of a person who:

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- (1) is convicted of a drug offense;
- (2) allows another person to be in possession of the cardholder's card or caregiver's license; or
- (3) violates any provision of this chapter.

Section 7. Section 50-46-201, MCA, is amended to read:

"50-46-201. Medical use of marijuana -- ~~legal protections~~ -- limits on amount -- presumption of medical use. ~~(1) A person who possesses a registry identification card issued pursuant to 50-46-103 may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board or the department of labor and industry, if:~~

- ~~—— (a) the qualifying patient or caregiver acquires, possesses, cultivates, manufactures, delivers, transfers, or transports marijuana not in excess of the amounts allowed in subsection (2); or~~
- ~~—— (b) the qualifying patient uses marijuana for medical use.~~

~~(2)~~ (1) A qualifying patient registered cardholder and that qualifying patient's registered cardholder's licensed caregiver may not possess more than six marijuana plants and 1 ounce of usable marijuana each.

~~(3)~~ (2) (a) A qualifying patient registered cardholder or licensed caregiver is presumed to be engaged in the medical use of marijuana if the qualifying patient registered cardholder or licensed caregiver:

- (i) is in possession of a registry identification card; and

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(ii) is in possession of an amount of marijuana that does not exceed the amount permitted under subsection ~~(2)~~ (1).

(b) The presumption may be rebutted by evidence that the possession of marijuana was not for the purpose of alleviating the symptoms or effects of a ~~qualifying patient's~~ registered cardholder's debilitating medical condition.

~~(4) A physician may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by the board of medical examiners or the department of labor and industry, for providing written certification for the medical use of marijuana to qualifying patients.~~

~~(5)~~ (3) Marijuana for medical use must be grown and manufactured in Montana.

(4) An interest in or right to property that is possessed, owned, or used in connection with the medical use of marijuana or acts incidental to medical use may not be forfeited under any provision of law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense.

~~(6) A person may not be subject to arrest or prosecution for constructive possession, conspiracy, as provided in 45-4-102, or other provisions of law or any other offense for simply being in the presence or vicinity of the medical use of marijuana as permitted under this chapter.~~

~~(7) Possession of or application for a registry identification card does not alone constitute probable cause to~~

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~~search the person or property of the person possessing or applying for the registry identification card or otherwise subject the person or property of the person possessing or applying for the card to inspection by any governmental agency, including a law enforcement agency.~~

~~(8)(5) (a) (i)~~ A registry identification card or its equivalent issued by another state government to permit the medical use of marijuana by a ~~qualifying patient~~ registered cardholder or to permit a person to assist with a ~~qualifying patient's~~ registered cardholder's medical use of marijuana has the same force and effect as a registry identification card or caregiver license issued by the department.

(ii) A person authorized by another state to assist an out-of-state cardholder with the medical use of marijuana may not assist an individual other than the registered cardholder.

(b) A registered cardholder from another state may possess up to six marijuana plants and 1 ounce of usable marijuana when in Montana."

{Internal References to 50-46-201: None.}

Section 8. Section 50-46-202, MCA, is amended to read:

"50-46-202. ~~Disclosure of confidential information relating to medical use of marijuana~~ Confidentiality of registry information -- disclosure -- penalty. (1) The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards or caregiver licenses. Individual names and other identifying information on

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the list must be confidential and are not subject to disclosure, except to:

(a) authorized employees of the department as necessary to perform official duties of the department; or

(b) authorized employees of state or local government agencies, only as necessary to verify that a person is a lawful possessor of a registry identification card or caregiver license.

(2) A person, including an employee or official of the department or other state or local government agency, commits the offense of disclosure of confidential information relating to medical use of marijuana if the person knowingly or purposely discloses confidential information in violation of ~~50-46-103~~ this section.

~~(2)~~(3) A person convicted of disclosure of confidential information relating to medical use of marijuana shall be fined not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

{Internal References to 50-46-202: None.}

NEW SECTION. Section 9. Legal protections for medical use.

(1) A person who possesses a registry identification card issued pursuant to 50-46-103 or a caregiver license issued pursuant to [section 4] may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board or the department of labor and industry, solely because:

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(a) the registered cardholder or licensed caregiver acquires, possesses, cultivates, manufactures, delivers, transfers, or transports marijuana not in excess of the amounts allowed in 50-46-201; or

(b) the registered cardholder uses marijuana for medical use.

(2) A physician may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by the board of medical examiners or the department of labor and industry, solely for providing written certification for the medical use of marijuana to qualifying patients.

(3) Nothing in this section prevents the imposition of a civil penalty or a disciplinary action by a professional licensing board or the department of labor and industry, if:

(a) a person's medical use of marijuana impairs the person's job-related performance; or

(b) a physician violates the standard of care required under this chapter.

(4) (a) A person may not be subject to arrest or prosecution for constructive possession, conspiracy, as provided in 45-4-102, or other provisions of law or any other offense for simply being in the presence or vicinity of the medical use of marijuana as permitted under this chapter.

(b) This subsection (4) does not prevent the arrest or prosecution of a person who is in the vicinity of the medical use of marijuana if the person is in possession of or is using

marijuana and is not a registered cardholder.

(5) Possession of or application for a registry identification card or a caregiver license does not alone constitute probable cause to search the person or property of the person possessing or applying for the registry identification card or otherwise subject the person or property of the person possessing or applying for the card to inspection by any governmental agency, including a law enforcement agency.

NEW SECTION. Section 10. Registry card and identification to be carried and exhibited on demand.

(1) A registered cardholder or licensed caregiver must have the cardholder's registry identification card or the caregiver's license in the person's immediate possession at all times. The person shall display the registry identification card or the license and a valid photo identification upon demand of a peace officer, highway patrol officer, justice of the peace, or city or municipal judge.

(2) (a) Violation of this section is a misdemeanor.

(b) A person charged with violating this section may not be convicted if the person produces in court or the office of the arresting officer a valid registry identification card or license and photo identification.

Section 11. Section 50-46-205, MCA, is amended to read:

**"50-46-205. Limitations of Medical Marijuana Act --
penalties.** (1) This chapter does not permit:

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(a) any person, including a person with a registry identification card, to operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marijuana;

(b) the use of marijuana by a licensed caregiver unless the caregiver is also a registered cardholder;

(c) the medical use or possession of marijuana:

(i) in any school or Montana university system building;

(ii) on or in any property owned by a school district or the Montana university system; or

(iii) on or in any property leased by a school district or the Montana university system when the property is being used for school- or university-related purposes; or

~~(c)~~(d) the smoking of marijuana by a ~~qualifying patient~~ registered cardholder:

(i) in a school bus or other form of public transportation;

~~(ii) on any school grounds;~~

~~(iii)~~(ii) in any correctional facility; or

~~(iv)~~(iii) at any public park, public beach, public recreation center, or youth center; or

(iv) except as otherwise provided, in a health care facility as defined in 50-5-101 and in any portion of the facility's campus that is subject to a smoke-free campus policy.

(e) A hospice licensed under Title 50, chapter 5, may adopt a policy that allows smoking of marijuana by a registered cardholder.

(2) (a) A person who violates subsection (1) (a) is subject to

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a revocation of the person's registry identification card if the person is convicted of or pleads guilty to any offense related to driving under the influence when the initial offense with which the person was charged was a violation of 61-8-401, 61-8-406, or 61-8-410. A revocation under this section shall be for a period of:

(i) 6 months if the conviction or plea was for a first offense; or

(ii) 1 year if the conviction or plea was for a second or subsequent offense within 5 years of the first offense.

(b) If a person's registry identification card or caregiver license is subject to renewal during the revocation period, the person may not renew the card until the full revocation period has elapsed. The card may be renewed only if the person submits all materials required for renewal.

~~(2)~~(3) Nothing in this chapter may be construed to require:

(a) a government medical assistance program, a workers' compensation insurance program, or private health insurer to reimburse a person for costs associated with the medical use of marijuana; or

(b) an employer to accommodate the medical use of marijuana in any workplace.

~~(3)~~(4) Nothing in this chapter may be construed to allow a licensed caregiver who is not also a registered cardholder to use marijuana or to prevent criminal prosecution of a licensed caregiver who is not also a registered cardholder who uses marijuana or paraphernalia for the caregiver's personal use."

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{Internal References to 50-46-205:
50-46-206}

Section 12. Section 50-46-207, MCA, is amended to read:

"50-46-207. Fraudulent representation of medical use of marijuana -- penalty. (1) A person commits the offense of fraudulent representation of medical use of marijuana if the person knowingly or purposely fabricates or misrepresents a registry identification card or caregiver license to a law enforcement officer.

(2) A person convicted of fraudulent representation of medical use of marijuana:

(a) shall forfeit the person's registry identification card or caregiver license; and

(b) shall be fined not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

{Internal References to 50-46-207: None.}

Section 13. Section 50-46-210, MCA, is amended to read:

"50-46-210. Rulemaking -- fees. The department shall adopt rules necessary for the implementation and administration of this chapter. The rules must address the manner in which the department will consider application for and renewals of registry identification cards for ~~qualifying patients~~ registered cardholders and licensed caregivers. The department's rules must establish application and renewal fees that generate revenue sufficient to offset all expenses of implementing and

administering this chapter. The department may vary the application and renewal fees along a sliding scale that accounts for a qualifying patient's income."

{Internal References to 50-46-210: None.}

Section 14. Section 61-11-101, MCA, is amended to read:

"61-11-101. Report of convictions and suspension or revocation of driver's licenses -- surrender of licenses and registry identification cards. (1) If a person is convicted of an offense for which chapter 5 or chapter 8, part 8, makes mandatory the suspension or revocation of the driver's license or commercial driver's license of the person by the department, the court in which the conviction occurs shall require the surrender to it of all driver's licenses then held by the convicted person. The court shall, within 5 days after the conviction becomes final, forward the license and a record of the conviction to the department. If the person does not possess a driver's license, the court shall indicate that fact in its report to the department.

(2) A court having jurisdiction over offenses committed under a statute of this state or a municipal ordinance regulating the operation of motor vehicles on highways, except for standing or parking statutes or ordinances, shall forward a record of the conviction, as defined in 61-5-213, to the department within 5 days after the conviction becomes final. The court may recommend that the department issue a restricted probationary license on the condition that the individual comply with the requirement

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that the person attend and complete a chemical dependency education course, treatment, or both, as ordered by the court under 61-8-732.

(3) A court or other agency of this state or of a subdivision of the state that has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report an action and the adjudication upon which it is based to the department within 5 days on forms furnished by the department.

(4) A conviction becomes final for the purposes of this part upon the later of:

(a) expiration of the time for appeal of the court's judgment or sentence to the next highest court;

(b) forfeiture of bail that is not vacated; or

(c) imposition of a fine or court cost as a condition of a deferred imposition of a sentence or a suspended execution of a sentence.

(5) (a) On a conviction referred to in subsection (1) of a person who holds a commercial driver's license or who is required to hold a commercial driver's license, a court may not take any action, including deferring imposition of judgment, that would prevent a conviction for any violation of a state or local traffic control law or ordinance, except a parking law or ordinance, in any type of motor vehicle, from appearing on the person's driving record. The provisions of this subsection (5) (a) apply only to the conviction of a person who holds a commercial driver's license or who is required to hold a commercial driver's

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license and do not apply to the conviction of a person who holds any other type of driver's license.

(b) For purposes of this subsection (5), "who is required to hold a commercial driver's license" refers to a person who did not have a commercial driver's license but who was operating a commercial motor vehicle at the time of a violation of a state or local traffic control law or ordinance resulting in a conviction referred to in subsection (1).

(6) When a person who holds a valid registry identification card or caregiver license pursuant to Title 50, chapter 46, is convicted of any charge when the initial charge was a violation of 61-8-401, 61-8-406, or 61-8-410, the court in which the conviction occurs shall:

(a) require the person to surrender the registry identification card or caregiver license; and

(b) within 5 days after the conviction becomes final, forward the registry identification card or caregiver license and a record of the conviction to the department of public health and human services."

{Internal References to 61-11-101:

61-5-307

61-5-307

61-5-308

61-8-442

61-10-154}

NEW SECTION. Section 15. {standard} Repealer. The following section of the Montana Code Annotated is repealed:
50-46-206. Affirmative defense.

{Internal References to 50-46-206: None.}

- END -

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