

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

A Bill for an Act entitled: "An Act creating a licensing and regulatory system for people who grow, manufacture, distribute, or sell medical marijuana; requiring Montana residency to obtain a registry identification card or a license; clarifying requirements for physicians who provide written certification; providing definitions; transferring funds; making an appropriation; amending sections 50-46-101, 50-46-102, 50-46-103, 50-46-201, 50-46-202, 50-46-205, 50-46-207, and 50-46-210, MCA; repealing section 50-46-206, MCA; providing effective dates; providing an applicability date; and providing a termination date."

WHEREAS, Montana voters approved Initiative 148 in 2004 to give Montanans with debilitating medical conditions protection under the law if they use marijuana to alleviate the symptoms of their medical conditions; and

WHEREAS, 7,339 Montanans held cards allowing their medical use of marijuana as of December 31, 2009; and

WHEREAS, the number of people approved for the medical use of marijuana increased to 19,635 in just six months, reflecting a 167% increase in cardholders between December 31, 2009, and June 30, 2010; and

WHEREAS, numerous cities and towns around Montana have discussed

or taken action on issues relating to the establishment of medical marijuana businesses within their boundaries or within certain areas of a city or town; and

WHEREAS, the increase in patients and caregivers has raised concerns not only for local governments but also for law enforcement, state regulators, and the medical marijuana industry itself; and

WHEREAS, the Children, Families, Health, and Human Services Interim Committee reviewed these concerns during the 2009-2010 interim as part of its oversight responsibility for matters involving health and human services; and

WHEREAS, the committee determined that legislators should establish to the greatest degree possible a line between what constitutes the legally protected medical use of marijuana and the illegal cultivation, possession, or sale of marijuana; and

WHEREAS, the committee further determined that the Medical Marijuana Act should be revised to maintain protections for individuals with debilitating medical conditions while at the same time creating more accountability for physicians, patients, and caregivers, establishing a system that allows for better tracking of the growth and distribution of medical marijuana, and providing more state regulation and oversight of the medical marijuana industry.

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

**Section 1.** Section 50-46-101 , MCA, is amended to read:

**"50-46-101. Short title -- purpose.** (1) This chapter may be

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

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

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

~~(2)(1) "Debilitating medical condition" means:~~

~~(a) cancer, glaucoma, or positive status for human immunodeficiency virus, or acquired immune deficiency syndrome, or the treatment of these conditions when the condition or disease results in symptoms that seriously and adversely affect the patient's health status;~~

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

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

~~(ii) (c) 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 pain or in the field of pain management;~~

~~(iii) (d) severe intractable nausea or vomiting;~~

~~(iv) (e) seizures, including but not limited to seizures caused by epilepsy or an intractable seizure disorder; or~~

~~(v) severe or persistent muscle spasms, including but not~~

limited to spasms caused by

(f) multiple sclerosis;

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

(h) painful peripheral neuropathy;

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

(j) a central nervous system disorder resulting in chronic,  
painful spasticity or muscle spasms;;

(k) hepatitis c infection that is currently being treated by a  
prescription;

(l) inflammatory or degenerative arthritis;

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

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

~~(3)~~(2) "Department" means the department of public health and  
human services. . . .

(19) (a) "Resident" means a person who meets the requirements of  
1-1-215.

(b) A person is not considered a resident for the purposes of  
[this chapter] if the person:

(i) claims residence in any other state or country for any  
purpose; or

(b) is an absentee property owner paying property tax on property  
in Montana.

(20) "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;

(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.

**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 (4) and (5), the department shall issue a registry identification card. . .

(5) A person may not be a registered cardholder if the person is under the supervision of the department of corrections or a youth court.

NEW SECTION. **Section 4. Unlawful conduct by cardholder -- penalties.** (1) The department shall permanently revoke the registry identification card of a person who:

(a) is convicted of a drug offense; or

(b) allows another person to be in possession of the cardholder's card.

(2) A violation of any other provision of [this chapter] is punishable by a fine not to exceed \$1,000 or by imprisonment in a county jail for a term not to exceed 6 months, or both, unless the violation would constitute a violation of Title 45. An offense constituting a violation of Title 45 must be charged and prosecuted pursuant to the provisions of Title 45.

NEW SECTION. **Section 5. Prohibitions on physician affiliation with medical marijuana licensees -- sanctions.** (1) A physician may not:

(a) accept or solicit any form of monetary remuneration from a medical marijuana licensee or registrant or offer any form of remuneration to a licensee or registrant;

(b) offer a discount or any other thing of value to a

person who uses or agrees to use a particular medical marijuana licensee;

(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 board of medical examiners finds that a physician has engaged in unprofessional conduct pursuant to 37-1-316 or has violated this section, the board 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 provide a written certification for medical marijuana. The board of medical examiners must notify the department of the sanction.

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

that:

(i) a physician has knowingly or purposely violated the provisions of [this chapter]; and

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

(b) The board shall 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.

**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.~~

(1) The following persons may cultivate or manufacture marijuana for medical use:



(a) a registered cardholder who has indicated to the department that the cardholder will be growing medical marijuana for personal use;

(b) a provider named by a registered cardholder as the licensee that will be growing medical marijuana for the registered cardholder;

(c) a medical marijuana dispensary with a medical marijuana grower license; or

(d) a medical marijuana-infused products manufacturer with a medical marijuana grower license.

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

(b) A provider or a medical marijuana dispensary may possess up to six marijuana plants and 2 ounces of usable marijuana for each registered cardholder who has named the provider or the medical marijuana dispensary as the licensee from whom the cardholder intends to obtain medical marijuana.

(c) A provider or a medical marijuana dispensary may provide no more than 2 ounces of usable marijuana to a registered cardholder during a 30-day period. A licensee shall maintain records of transactions with cardholders to verify that the licensee has met the requirements of this section.

(d) The number of plants and amount of usable marijuana that a medical marijuana grower may possess must correspond with the number of patients for whom the dispensary that holds an affiliated license is providing medical marijuana, either because:

(i) the dispensary has been named by a provider or cardholder;  
or

(ii) the dispensary has a contract to provide medical marijuana to a dispensary that does not have a medical marijuana license.

**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:

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

. . .

(5) (a) A person who violates subsection (1) (a) is subject to 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 the period of suspension or revocation set forth:

(i) in 61-5-208 for a violation of 61-8-401 or 61-8-406; or

(ii) in 61-8-410 for a violation of 61-8-410.

(b) If a person's registry identification card 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."

"50-46-210. **Rulemaking -- fees.** (1) The department shall adopt rules necessary for the implementation and administration of this chapter. The rules must address:

(a) the manner in which the department will consider application for and renewals of registry identification cards for ~~qualifying patients and caregivers~~ registered cardholders;

(b) the acceptable forms of proof of Montana residency;

(c) the circumstances under which a patient's admittance into hospice care will qualify as a debilitating medical condition; and

(d) the circumstances under which the department will notify the board of medical examiners of potential violations of [section 5].

(2) 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.*}

NEW SECTION. **Section 16. Classes of licenses - disclosure -- confidentiality.** (1) The state licensing authority may issue:

(a) a provider license;

(b) a medical marijuana dispensary license;

(c) a medical marijuana grower license;

(d) a medical marijuana-infused products manufacturer license;

and

(e) occupational licenses and registrations for owners,

managers, operators, employees, contractors, and other support staff employed by, working in, or having access to a limited access area of a licensed premises.

(2) The state licensing authority may take any action with respect to a person it registers pursuant to [this chapter] as it may take with a licensee.

(3) The state licensing authority shall provide each appropriate local law enforcement agency with the street address of each licensee in the agency's jurisdiction. The law enforcement agency may disclose the information only to authorized employees of the agency as necessary to verify that a medical marijuana operation is licensed and is in compliance with the provisions of [this chapter].

NEW SECTION. **Section 19. Medical marijuana grower -- eligibility -- confidentiality -- allowable activities.** (1) A medical marijuana dispensary or medical marijuana-infused products manufacturer may apply for a medical marijuana grower license.

(2) A medical marijuana grower may grow and cultivate medical marijuana at a licensed premises that is contiguous or not contiguous with the licensed premises of the person's medical marijuana dispensary or medical marijuana-infused products manufacturing premises.

(3) Except as provided in [section 16], the location of a medical marijuana grower licensee's premises is a confidential record. The state licensing authority and local governments shall keep the location of the premises confidential and shall redact the physical

location from public records.

NEW SECTION. **Section 23. Denial of license.** (1) The state licensing authority shall deny a license to an applicant if:

(a) the premises on which the applicant proposes to conduct business do not meet the requirements of [this chapter];

(b) the applicant or licensee has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of [this chapter] or any rules adopted by the state licensing authority;

(c) the applicant or licensee fails to comply with any special terms or conditions that were placed on its license; or

(d) the licensed premises have been operated in a manner that adversely affects the public health or welfare or the safety of the immediate neighborhood in which the business is located;

(2) An applicant is entitled to a hearing pursuant to Title 2, chapter 4. The state licensing authority shall provide written notice of the reasons for denial at least 15 days before the hearing.

(3) IF A LICENSEE OR THE SAME OWNER OF A BUSINESS LICENSED PURSUANT TO [THIS CHAPTER] APPLIES FOR A SECOND OR ADDITIONAL LICENSE, THE STATE LICENSING AUTHORITY SHALL CONSIDER THE EFFECT THAT ISSUING THE LICENSE WOULD HAVE ON COMPETITION. THE STATE LICENSING AUTHORITY MAY NOT APPROVE AN APPLICATION FOR A SECOND OR ADDITIONAL LICENSE THAT WOULD HAVE THE EFFECT OF RESTRAINING COMPETITION.

NEW SECTION. **Section 34. {standard} Repealer.** The following section of the Montana Code Annotated is repealed:

50-46-206. Affirmative defense.

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

NEW SECTION. **Section 41. {standard} Termination.** [Sections 14 through 33] terminate on September 30, 2016, unless re-authorized by the legislature. ALTERNATIVE DATE: Sept. 30, 2017

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