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As of: August 19, 2010 (10:31am)

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**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act clarifying employer rights related to an employee's use of medical marijuana; expanding the types of employees covered by the workforce drug and alcohol testing act; creating employment-related exceptions to the protections of the medical marijuana act; amending sections 39-2-206, 39-2-313, 50-46-201, and 50-46-205, MCA; and providing an immediate effective date."

WHEREAS, employers who are concerned about public and workplace safety have increasingly faced issues associated with employees and potential employees who are approved for or associated with the medical use of marijuana; and

WHEREAS, clarifications are necessary to affirm employers' rights in the hiring and termination process, drug testing and other issues related to the medical use of marijuana in an employee's course and scope of employment.

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

Section 1. Section 39-2-206, MCA, is amended to read:

"39-2-206. Definitions. As used in 39-2-205 through 39-2-211, the following definitions apply:

(1) "Alcohol" means an intoxicating agent in alcoholic

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beverages, ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(2) "Alcohol concentration" means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath, as indicated by an evidential breath test.

(3) "Controlled substance" means a dangerous drug, as defined in 49 CFR, part 40, except a drug used pursuant to a valid prescription or as authorized by law.

(4) "Employee" means an individual engaged in the performance, supervision, or management of work in a hazardous work environment, security position, position affecting public safety, position where driving a motor vehicle is necessary for any part of the person's work duties, position involving the instruction or supervision of minors, or fiduciary position for an employer and does not include an independent contractor. The term includes an elected official.

(5) "Employer" means a person or entity that has one or more employees and that is located in or doing business in Montana.

(6) "Hazardous work environment" includes but is not limited to positions:

(a) for which controlled substance and alcohol testing is mandated by federal law, such as aviation, commercial motor carrier, railroad, pipeline, and commercial marine employees;

(b) that involve the operation of or work in proximity to construction equipment, industrial machinery, or mining activities; or

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(c) that involve handling or proximity to flammable materials, explosives, toxic chemicals, or similar substances.

(7) "Medical review officer" means a licensed physician trained in the field of substance abuse.

(8) "Prospective employee" means an individual who has made a written or oral application to an employer to become an employee.

(9) "Qualified testing program" means a program to test for the presence of controlled substances and alcohol that meets the criteria set forth in 39-2-207 and 39-2-208.

(10) "Sample" means a urine specimen, a breath test, or oral fluid obtained in a minimally invasive manner and determined to meet the reliability and accuracy criteria accepted by laboratories for the performance of drug testing that is used to determine the presence of a controlled substance or alcohol."

{*Internal References to 39-2-206:*

39-2-205* 39-2-206* 39-2-207* 39-2-211*}

Section 2. Section 39-2-313, MCA, is amended to read:

"39-2-313. Discrimination prohibited for use of lawful product during nonworking hours -- exceptions. (1) For purposes of this section, "lawful product" means a product that is legally consumed, used, or enjoyed and includes food, beverages, and tobacco.

(2) Except as provided in subsections (3) and (4), an employer may not refuse to employ or license and may not discriminate against an individual with respect to compensation,

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promotion, or the terms, conditions, or privileges of employment because the individual legally uses a lawful product off the employer's premises during nonworking hours.

(3) Subsection (2) does not apply to:

(a) use of a lawful product that:

(i) affects in any manner an individual's ability to perform job-related employment responsibilities or the safety of other employees; or

(ii) conflicts with a bona fide occupational qualification that is reasonably related to the individual's employment;

(b) an individual who, on a personal basis, has a professional service contract with an employer and the unique nature of the services provided authorizes the employer, as part of the service contract, to limit the use of certain products; ~~or~~

(c) an employer that is a nonprofit organization that, as one of its primary purposes or objectives, discourages the use of one or more lawful products by the general public;

(d) an individual who in the course and scope of employment engages in the medical use of marijuana, as defined in 50-46-102.

(4) An employer does not violate this section if the employer takes action based on the belief that the employer's actions are permissible under an established substance abuse or alcohol program or policy, professional contract, or collective bargaining agreement.

(5) An employer may offer, impose, or have in effect a health, disability, or life insurance policy that makes distinctions between employees for the type or price of coverage

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based on the employees' use of a product if:

(a) differential rates assessed against employees reflect actuarially justified differences in providing employee benefits;

(b) the employer provides an employee with written notice delineating the differential rates used by the employer's insurance carriers; and

(c) the distinctions in the type or price of coverage are not used to expand, limit, or curtail the rights or liabilities of a party in a civil cause of action."

{*Internal References to 39-2-313:*
39-2-314 39-2-903}

Section 3. 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~~ Except as provided in 50-46-205, 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) A qualifying patient and that qualifying patient's

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caregiver may not possess more than six marijuana plants and 1 ounce of usable marijuana each.

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

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

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

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

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

Section 4. Section 50-46-205, MCA, is amended to read:

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

(a) any person 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 caregiver; or

(c) the smoking of marijuana by a qualifying patient:

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

(ii) on any school grounds;

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(iii) in any correctional facility; or

(iv) at any public park, public beach, public recreation center, or youth center.

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

(a) a government medical assistance program, a workers' compensation insurer as defined in 39-71-116, ~~or private~~ a health insurer regulated under Title 2 or Title 33, a health insurer covered by the employee retirement income security act, or a multiple employer welfare association to reimburse a person for costs associated with the medical use of marijuana; ~~or~~

(b) an employer to accommodate in the course and scope of employment: ~~the medical use of marijuana in any workplace:~~

(i) the medical use of marijuana by an employee; or

(ii) an employee who is under the influence of marijuana because of the employee's medical use of marijuana; or

(c) a workers' compensation insurer to pay workers' compensation benefits for an injury or occupational disease for which the benefits resulted from the worker's medical use of marijuana. The benefits covered by this subsection (2)(c) include but are not limited to indemnity benefits, medical benefits and related services, and vocational rehabilitation benefits.

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

(a) prohibit an employer from including in any contract a provision prohibiting the medical use of marijuana; or

(b) permit a cause of action against an employer for wrongful discharge pursuant to 39-2-904 or discrimination pursuant to 49-1-102 based on:

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(i) an employee's medical use of marijuana in the course and scope of employment; or

(ii) actions by an employee who was under the influence of medical marijuana in the course and scope of employment.

~~(3)~~(4) Nothing in this chapter may be construed to allow a caregiver to use marijuana or to prevent criminal prosecution of a caregiver who uses marijuana or paraphernalia for the caregiver's personal use."

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

NEW SECTION. **Section 5. {standard} Effective date.** [This act] is effective on passage and approval.

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