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As of: September 1, 2010 (7:33am)

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**** 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

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

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:

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

"50-46-101. Short title -- purpose. (1) This chapter may be cited as the "Medical Marijuana Act".

(2) The purpose of this act is to:

(a) provide legal protections to persons with debilitating medical conditions who engage in the medical use of marijuana as provided in this act to alleviate the symptoms of their conditions;

(b) allow for the acquisition, possession, cultivation, manufacture, delivery, transfer, or transportation of medical marijuana as permitted by this act; and

(c) create a framework for medical use that protects the health, welfare, and safety of both the persons engaging in medical use of marijuana and of the general public."

{*Internal References to 50-46-101: 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, 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

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

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 two physicians;

~~(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

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

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

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

(3) "Licensed premises" means the premises at which a person licensed under this chapter is authorized to cultivate, manufacture, distribute, or sell medical marijuana.

(4) "Limited access area" means a building, room, or other contiguous area on a licensed premises to which only persons licensed pursuant to this chapter have access.

~~(4)~~(5) "Marijuana" has the meaning provided in 50-32-101.

(6) "Medical marijuana" means marijuana that is grown, manufactured, sold, or used for medical use.

(7) (a) "Medical marijuana dispensary" means a person licensed pursuant to [this chapter] to operate a business that sells marijuana for medical use to registered cardholders or to providers.

(b) A medical marijuana dispensary may not also act as a provider.

(8) (a) "Medical marijuana grower" means a person licensed pursuant to [this chapter] to grow and cultivate medical marijuana at a licensed premises.

(b) A person may obtain a medical marijuana grower license only if the person also has applied for and obtained a medical marijuana dispensary license or a medical marijuana-infused products manufacturer license.

(9) (a) "Medical marijuana-infused product" means a product that contains medical marijuana and is intended for medical use by means other than smoking.

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

(b) The term includes but is not limited to edible products, ointments, and tinctures.

(10) "Medical marijuana-infused products manufacturer" means a person licensed pursuant to [this chapter] to operate a business that manufactures products that contain medical marijuana and are sold for medical use.

~~(5)~~ (11) "Medical use" means:

(a) the acquisition, possession, cultivation, manufacture, delivery, transfer, or transportation of marijuana or paraphernalia by a ~~qualifying patient or a caregiver~~ registered cardholder, a provider, a medical marijuana dispensary, a medical marijuana-infused products manufacturer, or a medical marijuana grower and relating to the consumption of marijuana to alleviate the symptoms or effects of a ~~qualifying patient's~~ 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 ~~caregiver~~ person licensed pursuant to [this chapter] for the cultivation, manufacture, delivery, transfer, or transportation of marijuana for use by a ~~qualifying patient~~ registered cardholder.

~~(6)~~ (12) "Paraphernalia" has the meaning provided in 45-10-101.

(13) (a) "Person" means an individual, partnership, association, company, corporation, limited liability company, or

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

organization.

(b) The term includes the manager, agent, owner, director, servant, officer, or employee of a partnership, association, company, corporation, limited liability company, or organization.

~~(7)~~(14) "Physician" means a person who is licensed under Title 37, chapter 3, and who has an established office in Montana that is not in a location where marijuana is grown, manufactured, sold, or distributed.

(15) (a) "Provider" means an individual 18 years of age or older who is licensed pursuant to [this chapter] and has agreed to assist with a registered cardholder's medical use of marijuana.

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

~~(8)~~(16) "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

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

~~(9)~~(18) "Registry identification card" means a document issued by the department that identifies a person as a ~~qualifying patient or caregiver~~ registered cardholder.

(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:

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

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

(ii) 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.

(22) "State licensing authority" means the department of revenue.

~~(10)~~ (23) (a) "Usable marijuana" means the dried leaves and flowers of marijuana and any mixture or preparation of marijuana.

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

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

~~(11)~~ (24) (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 (4) and (5), 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;

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

(b) an application or renewal fee;

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

(d) proof of Montana residency;

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

~~(e)~~(f) a statement indicating that the registered cardholder intends to:

(i) cultivate the cardholder's medical marijuana;

(ii) cultivate the cardholder's medical marijuana and obtain it from a provider or a medical marijuana dispensary; or

(iii) obtain medical marijuana from either a provider or a medical marijuana dispensary;

(g) the name, street address, and date of birth of the qualifying patient's ~~caregiver~~ provider, if any; and

(h) the name and street address of the medical marijuana dispensary that the person will use, if any.

(3) A registered cardholder may have only one provider.

~~(3)~~(4) The department shall issue a registry identification card to a minor if the materials required under subsection (2) 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

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

(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~~ provider; 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 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.~~

(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.

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

~~(5)~~(6) (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.

~~(6)~~(7) The department shall issue a registry identification card with a unique identification number 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 that states a card must be valid for a shorter period of time. Registry identification cards must state:

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

(b) the name, street address, and date of birth of the ~~qualifying patient's caregiver~~ registered cardholder's provider or medical marijuana dispensary, if any;

(c) the date of issuance and expiration date of the

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

registry identification card; and

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

(8) When a registered cardholder indicates on the application that the cardholder intends to obtain medical marijuana from a provider or a medical marijuana dispensary, the department shall provide the state licensing authority with the name of the cardholder and the name of the provider or medical marijuana dispensary selected by the cardholder.

~~(7)~~(9) 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, street address, physician, or ~~caregiver~~ provider 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.

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

~~(9)~~(10) 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. 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.

NEW SECTION. **Section 6. Local government authority to regulate.** (1) To protect public, health, safety or welfare, a local government as defined in subsection (4) may by ordinance or resolution regulate a provider, a medical marijuana dispensary, a medical marijuana-infused products manufacturer, or a medical marijuana grower that operates within the local government's jurisdictional boundaries. The regulations may include but are

not limited to:

- (a) restrictions on number and location;
- (b) business licensing requirements; and
- (c) building codes and standards.

(2) A provider, medical marijuana dispensary, medical marijuana-infused products manufacturer, or medical marijuana grower that is in lawful operation at the time an ordinance or resolution is enacted as provided in subsection (1) and that is not in compliance with the ordinance or resolution must come into compliance within 2 years of the effective date of the ordinance or resolution.

(3) Nothing in this section authorizes a local governing body to prohibit the cultivation or use of medical marijuana by individual licensees as provided in [this chapter].

(4) As used in this section, "local government" means a county, a consolidated government, or an incorporated city or town.

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,~~

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

~~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

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

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 grower license.

(3) (a) A ~~qualifying patient or caregiver~~ registered cardholder, provider, medical marijuana dispensary, medical marijuana-infused products manufacturer, or medical marijuana grower is presumed to be engaged in the medical use of marijuana if the ~~qualifying patient or caregiver~~ registered cardholder or licensee:

(i) is in possession of a registry identification card or an appropriate license; and

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

(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~~ the registered cardholder's debilitating medical condition.

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

~~(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)~~ (4) Marijuana for medical use by Montana registered cardholders must be grown and manufactured in Montana.

(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)~~ (6) (a) (i) A registry identification card or its

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

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 provider license issued by the department.

(ii) A person authorized by another state to assist an out-of-state person who as a registry identification card or its equivalent with the medical use of marijuana may not assist an individual other than the person with the registry identification card or its equivalent.

(b) A person with a registry identification card or its equivalent from another state may possess up to six plants and 2 ounces 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. 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 and the state licensing authority as necessary to perform official duties of the department or state licensing authority; 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.

(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 provider license issued pursuant to [section X] 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:

(a) the registered cardholder or provider 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 provider 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 or license to be carried and exhibited on demand -- photo identification required.

(1) A registered cardholder or person licensed pursuant to [this chapter] must have the cardholder's registry identification card or the person'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) (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:

(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;

(b) the use of marijuana by a ~~caregiver~~ provider unless the

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

provider is also a registered cardholder;

(c) except as provided in subsection (2), the medical use or possession of marijuana:

(i) in a health care facility as defined in 50-5-101;

(ii) in a school or a postsecondary school as defined in 20-5-402;

(iii) on or in any property owned by a school district or postsecondary school; or

(iv) on or in any property leased by a school district or a postsecondary school when the property is being used for school-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;

(iv) in plain view of or in a place open to the general public; or

(v) where exposure to the marijuana smoke significantly adversely affects the health, safety, or welfare of children.

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

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

(a) a government medical assistance program or private

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

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 caregiver provider who is not also a registered cardholder to use marijuana or to prevent criminal prosecution of a caregiver provider who is not also a registered cardholder and who uses marijuana or paraphernalia for the caregiver's providers's personal use.

(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 in 61-5-208 for a violation of 61-8-401, 61-8-406, or 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."

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

Section 11. 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 a license issued pursuant to [this chapter] to a law enforcement officer.

(2) A person convicted of fraudulent representation of 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 50-46-207: None.}

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

"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 14. State licensing authority -- hiring -- costs. (1) (a) The state licensing authority may hire employees to carry out the responsibilities assigned under [this chapter]. The employees shall be employees of the department of revenue.

(2) The operational costs of the state licensing authority, including the costs of carrying out licensing, inspection, and investigation duties, must be fully funded by fees paid by licensees.

NEW SECTION. Section 15. State licensing authority -- powers and duties -- rulemaking authority. (1) The state licensing authority shall:

(a) grant or refuse state licenses for the cultivation, manufacture, distribution, and sale of medical marijuana as provided by law;

(b) suspend, fine, restrict, or revoke licenses upon a violation of [this chapter] or a rule adopted pursuant to [this chapter];

(c) impose penalties authorized by [this chapter] or a rule adopted pursuant to [this chapter];

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

(d) take any action with respect to a person registered by the state licensing authority pursuant to [this chapter] as it may take with respect to a licensee;

(e) propose and adopt rules and adopt rulings and findings as necessary for the proper regulation and control of the cultivation, manufacture, distribution, and sale of medical marijuana and for the enforcement of [this chapter];

(f) hear and determine at a public hearing:

(i) an appeal of a state license denial; or

(ii) a complaint against a licensee.

(g) administer oaths and issue subpoenas to require the presence of persons and the production of materials necessary to the determination of a hearing held pursuant to this section.

(h) maintain the confidentiality of reports obtained from a licensee showing the sales volume or quantity of medical marijuana sold or any other records that are exempt from public inspection pursuant to state law;

(i) develop the forms, licenses, identification cards, and applications necessary for the administration of [this chapter]; and

(j) report annually to the legislature the number of applications received and granted for each type of license, the location of licensees, the number of registered cardholders per licensee, and the number and types of licenses revoked by the state licensing authority. The report may not provide any individually identifying information about licensees.

(2) A hearing held pursuant to this section must comply with

the provisions of Title 2, chapter 4.

(3) The state licensing authority may adopt rules to carry out its duties and responsibilities, including but not limited to rules related to:

(a) licensing procedures, including:

(i) procedures for applications for initial licenses, renewals, and reinstatements;

(ii) procedures for approval, denial, or suspension of a license;

(iii) provisions for fines and license restrictions or revocations;

(iv) the procedure and fees for submitting fingerprints for background checks; and

(v) the fees to be charged for license applications, license issuance, license renewals or reinstatements, applications to change locations, and applications to transfer ownership. The fees must cover the operational costs of the state licensing authority.

(b) the duties of officers and employees of the state licensing authority;

(c) requirements for inspections, investigations, searches, and seizures;

(d) penalties for violation of the provisions of [this chapter];

(e) prohibitions on misrepresentation and unfair practices;

(f) control of informational and product displays on licensed premises;

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

(g) development of individual identification cards for owners, officers, managers, contractors, employees, and other support staff of entities licensed or registered by the state licensing authority pursuant to [this chapter];

(h) security requirements for a licensed premises including, at a minimum, the lighting, physical security, video, and alarm requirements, and other minimum procedures for internal control as determined necessary for the proper administration and enforcement of [this chapter];

(i) requirements for reporting changes, alterations, or modifications to a licensed premises;

(j) the storage of, warehouses for, and transportation of medical marijuana;

(k) sanitary requirements for medical marijuana dispensaries and for medical marijuana-infused products manufacturers;

(l) the acceptable forms of photo identification that a medical marijuana center may accept when verifying a sale;

(m) labeling standards;

(n) records to be kept by licensees and the required availability of the records, including the availability of information ensuring payment of income taxes; and

(o) the sharing of information with other state agencies and with state and local law enforcement agencies.

(4) Nothing in this section may be construed as delegating to the state licensing authority the power to establish prices for medical marijuana.

(5) Nothing in [this chapter] may be construed to limit a law enforcement agency's ability to investigate unlawful activity in relation to a provider, medical marijuana dispensary, medical marijuana grower, medical marijuana-infused products manufacturer, or other person licensed or registered by the state licensing authority. A law enforcement agency may run a Montana criminal justice information network criminal history record check of a licensee or an employee of a licensee during an investigation of unlawful activity related to medical marijuana.

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 17. Providers -- requirements -- allowable activities.** (1) The state licensing authority shall issue a license to the person who is named as a provider in a registered cardholder's approved application if the person:

(a) registers the person's street address with the state licensing authority;

(b) registers the street address of the location where the provider will cultivate or manufacture marijuana for medical use, if the registered cardholder has named the provider as the person who will be cultivating or manufacturing marijuana for the cardholder's use; and

(c) signs a statement:

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

(ii) agreeing to notify the state licensing authority and other regulatory entities within 10 days of any change in the provider's street address or in the street address where the medical marijuana is cultivated or manufactured; and

(iii) acknowledging that possession of the license does not allow the provider 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 provider has also applied for and received a registry identification card because the provider has a debilitating medical condition.

(2) A person may serve as a provider for no more than five registered cardholders, unless the state licensing authority approves a provider to serve more than five patients because of exceptional circumstances.

(3) A provider:

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

(b) may not delegate to another person the provider's authority to provide medical marijuana to a patient or engage others to assist in providing medical marijuana to a cardholder;

(c) may not join with another provider to cultivate or manufacture medical marijuana; and

(d) shall maintain at all times a list of the registered cardholders who have named the person as their provider. The list must include the registry identification card number of each patient and must be provided to a law enforcement agency upon request.

NEW SECTION. **Section 18. Medical marijuana dispensary -- allowable activities -- requirements.** (1) A medical marijuana dispensary may sell:

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

(a) medical marijuana grown at the medical marijuana grower premises associated with the dispensary;

(b) medical marijuana purchased from another medical marijuana dispensary; or

(c) medical marijuana-infused products obtained from a medical marijuana-infused products manufacturer.

(2) A medical marijuana dispensary may:

(a) purchase up to 30% of its total on-hand inventory from another medical marijuana dispensary; and

(b) sell up to 30% of its total on-hand inventory to a medical marijuana dispensary or a medical marijuana-infused products manufacturer.

(3) Medical marijuana-infused products sold by a medical marijuana dispensary must be prepackaged and labeled to indicate that:

(a) the product contains medical marijuana;

(b) the product is manufactured without any regulatory oversight for health, safety, or efficacy; and

(c) health risks may be associated with the consumption or use of the product.

(4) A medical marijuana licensee may contract with a medical marijuana-infused products manufacturing licensee for the manufacture of medical marijuana-infused products upon a medical marijuana-infused products manufacturing licensee's licensed premises.

(5) (a) Before completing a sale, a medical marijuana dispensary employee shall verify that the purchaser has a valid

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

registry identification card and a valid photo identification that matches the name on the registry card.

(b) If a dispensary or a dispensary's employee has reasonable cause to believe that a person is using a fraudulent registry identification card in an attempt to obtain medical marijuana, the dispensary or employee may confiscate the registry identification card, if possible, and shall, within 72 hours of the confiscation, turn it over to the department or to a state or local law enforcement agency.

(c) Failure to confiscate a fraudulent registry identification card or to turn it over to the department or to a state or local law enforcement agency within 72 hours does not constitute a criminal offense.

(6) A medical marijuana dispensary may provide a small amount of its medical marijuana for testing to a laboratory that is licensed pursuant to the occupational licensing rules by the state licensing authority pursuant to [this chapter].

(7) Medical marijuana sold at a medical marijuana dispensary must be labeled with a list of all chemical additives that were used in the cultivation and production of the medical marijuana, including but not limited to nonorganic pesticides, herbicides, and fertilizers.

(8) A medical marijuana dispensary shall comply with Title 49, chapter 4, it relates to persons with disabilities.

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 X], 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 20. Medical marijuana-infused products manufacturer -- allowable activities.** (1) A medical marijuana-infused products manufacturer shall:

(a) prepare medical marijuana-infused products on a licensed premises that is used exclusively for the manufacture and preparation of medical marijuana-infused products;

(b) use equipment that is used exclusively for the manufacture and preparation of medical marijuana-infused products; and

(c) have a written agreement or contract with a medical marijuana dispensary licensee that states at a minimum:

(i) the total amount of medical marijuana to be obtained from a medical marijuana dispensary and used in the manufacturing

process; and

(ii) the total amount of medical marijuana-infused products to be manufactured from the medical marijuana obtained from the medical marijuana dispensary.

(2) A medical marijuana-infused products manufacturer may not use medical marijuana from more than five different medical marijuana dispensaries in the production of one medical marijuana-infused product.

(3) A medical marijuana-infused products manufacturer may sell its products to any medical marijuana dispensary.

(4) All licensed premises on which medical marijuana-infused products are manufactured shall meet the sanitary standards for medical marijuana-infused product preparation as adopted by the state licensing authority.

(5) A medical marijuana-infused product must be sealed and clearly labeled in accordance with [this chapter] and rules adopted by the state licensing authority.

(6) Medical marijuana-infused products may not be consumed on any licensed premises.

(7) A medical marijuana-infused products manufacturer that has a medical marijuana grower license may use the marijuana from the licensed growing premises only for the purposes of making medical marijuana-infused products at its manufacturing premises.

(8) Medical marijuana-infused products may not be considered a food or drug for the purposes of Title 50, chapter 31.

NEW SECTION. **Section 21. Licensing procedures --**

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

background checks. (1) An applicant for a license must submit the following information, in accordance with department rules:

(a) the name and street address of the applicant;

(b) the names and street addresses of the officers, directors, or managers;

(c) the street address or physical description, if no street address is available, where the applicant's business will be located; and

(d) any other information required by the state licensing authority.

(2) An applicant shall submit fingerprints to facilitate a fingerprint and background check by the department of justice and the federal bureau of investigation. An applicant who has previously submitted fingerprints for state licensing purposes may request that the fingerprints on file be used.

(3) The state licensing authority shall use the information resulting from the fingerprint-based criminal history record check to investigate and determine whether an applicant is qualified to hold a state license pursuant to this article. The state licensing authority may verify any information an applicant is required to submit.

(4) The state licensing authority may acquire a name-based criminal history record check for an applicant or a licensee who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable.

(5) (a) Except as provided in subsection (b), a license issued pursuant to this section is valid for 2 years from the

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

date of issuance unless revoked or suspended pursuant to [sections x-x].

(b) A provider license is valid for the same period of time as the registry identification cards for the registered cardholders who have named the person as their provider.

(6) Each license issued under [this chapter] is separate and distinct. A person may not:

(a) exercise any of the privileges granted under a license other than the license that the person holds; or

(b) allow another person to exercise the privileges granted under the licensee's license.

(7) A separate license is required for each business or business entity and for each location at which an entity conducts business.

(8) (a) A medical marijuana dispensary, medical marijuana grower, or medical marijuana-infused products manufacturer shall notify the state licensing authority in writing of the name, street address, and date of birth of a new owner, officer, manager, or employee before the new owner, officer, manager or employee begins working at, managing, owning, or being associated with the licensee.

(b) Before the person may begin the person's association with the licensee, the person shall:

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

(ii) obtain the identification card or badge required by the

state licensing authority.

NEW SECTION. **Section 22. Persons prohibited as licensees.**

The state licensing authority may not issue a license to:

- (1) a person with a felony conviction;
- (2) a licensed physician making patient recommendations;
- (3) a person under the supervision of the department of corrections or a youth court;
- (4) a person licensed pursuant to [this chapter] who, during a period of licensure or at the time of application, has failed to:
 - (a) pay any taxes, interest, or penalties due;
 - (b) pay a judgment due to a government agency;
 - (c) stay out of default on a government-issued student loan;
 - (d) pay child support; or
 - (e) remedy an outstanding delinquency for taxes owed, an outstanding delinquency for judgments owed to a government agency, or an outstanding delinquency for child support.
- (5) a person who employs another person at a medical marijuana facility who has not passed a criminal history record check;
- (6) a peace officer, as defined in 45-2-102;
- (7) an officer or employee of the state licensing authority;
- (8) a person whose authority for a license of a different class has been revoked by the state licensee facility;
- (9) a person for a license for a location that is currently licensed as a retail food establishment or wholesale food

registrant; or

(10) a person who has not been a resident of Montana for at least two years prior to the date of the person's application. This requirement does not apply to a person who submits an application for licensure by December 15, 2011, if the person was a resident of Montana on December 15, 2010.

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.

NEW SECTION. **Section 24. Restrictions applicable to new licenses -- local government authority.** (1) The state licensing

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

authority may not accept or approve an application for a state license:

(a) if the application involves a location that is the same as or within 1,000 feet of a location for which the state denied an application for the same class of license within the two years immediately preceding the date of application, if the denial was because of the nature of the use or other concern related to the location;

(b) until it is established that the applicant is or will be entitled to possession of the premises for which application is made under a lease, rental agreement, or other arrangement for possession of the premises or by virtue of ownership of the premises;

(c) for a location in an area where the cultivation, manufacture, and sale of medical marijuana as contemplated is not permitted under the applicable local government zoning laws; or

(d) if the building in which medical marijuana is to be sold is located within 1,000 feet of a school, an alcohol or drug treatment facility, or the principal campus of a postsecondary school, seminary, or a family or group day-care home as defined in 52-2-703. The distance must be measured in a straight line from the nearest property line of the land used for a school, campus, seminary, or day-care home to the nearest portion of the building in which medical marijuana is to be sold.

(2) The provisions of this section shall not affect the renewal or re-issuance of a license or apply to a license in effect if the licensee was actively doing business before the

principal campus of a postsecondary school was built.

(3) A local government may by ordinance or resolution vary the distance restrictions imposed by this section or may eliminate one or more types of schools, campuses, or facilities from the application of a distance restriction.

NEW SECTION. Section 25. Licenses -- contents and display.

(1) Licenses issued pursuant to [this chapter] shall specify the date of issuance, the period of licensure, the name of the licensee, and the premises that is licensed.

(2) The license must be conspicuously displayed at all times at the place for which it is issued.

(3) The licensee shall at all times possess and maintain possession of the premises for which the license is issued by ownership, lease, rental, or other arrangement for possession of the premises.

NEW SECTION. Section 26. Transfer of ownership -- change of location or manager. (1) (a) A license granted pursuant to [this chapter] may be transferred upon application to the state licensing authority on forms prepared and furnished by the state licensing authority. In determining whether to permit a transfer of ownership, the state licensing authority shall consider the requirements of [this chapter]] and rules adopted pursuant to [this chapter].

(2) A licensee shall report a transfer or change of ownership to the state licensing authority 30 days before a

transfer or change of ownership occurs.

(3) A report is required for transfers of capital stock of any corporation.

(4) Upon approval from the state licensing authority, a licensee may move the licensee's permanent location to any place in the same city, town, or county for which the license was originally granted. Before granting the request, the state licensing authority shall consider whether the proposed change of location would conform with the city, town, or county's zoning requirements or any regulatory decisions made pursuant to [section 6].

(5) A licensee shall manage the licensed premises or employ a separate and distinct manager on the premises. The licensee shall report to the state licensing authority:

- (a) the name of the manager; and
- (b) a change in manager 30 days prior to the change.

NEW SECTION. Section 27. Unlawful financial assistance.

(1) The state licensing authority shall require a complete disclosure of all persons having a direct or indirect financial interest in each license issued pursuant to [this chapter]. The disclosure must include the extent of each person's financial interest.

(2) Except as provided in subsection (3), a person may not have an unreported financial interest in a license unless the person has submitted fingerprints to facilitate a fingerprint and background check by the department of justice and the federal

bureau of investigation.

(3) This section does not apply to;

(a) banks, savings and loan associations, or industrial banks supervised and regulated by an agency of the state or federal government;

(b) federal housing administration-approved mortgages; or

(c) stockholders, directors, or officers of financial institutions or the federal housing administration.

(4) This section is intended to prohibit and prevent the control of the outlets for the sale of medical marijuana by a person or party other than the persons licensed pursuant to the provisions of [this chapter].

NEW SECTION. **Section 28. License renewal.** (1) For all licenses except a provider licenses, the state licensing authority shall notify the licensee 90 days in advance of the expiration of the license. The notification must be sent by first class mail at the licensee's address of record with the state licensing authority. Except as provided in subsection (2), a licensee shall apply for the renewal of an existing license at least 30 days before the expiration date of the license.

(2) The state licensing authority, in its discretion and based upon reasonable grounds, may waive the 30-day requirement.

(3) (a) A licensee whose license has been expired for 90 days or less may file a late renewal application upon the payment of a nonrefundable late application fee of \$500. A licensee who files a late renewal application and pays the fee may continue to

operate until the state licensing authority has taken final action on the application unless the state licensing authority summarily suspends the license as provided in [this chapter].

(b) A licensee whose permanent annual license has been expired for more than 90 days may not cultivate, manufacture, distribute, or sell medical marijuana until the person has obtained a new license.

NEW SECTION. **Section 29. Inactive licenses.** The state licensing authority may revoke or elect not to renew a license if it determines that the licensed premises have been inactive for at least 1 year.

NEW SECTION. **Section 30. Unlawful acts by licensees.** (1) Except as otherwise provided in [this chapter], it is unlawful for a licensee to:

(a) possess more than six plants and 2 ounces of usable marijuana for each registered cardholder who has selected a provider or a medical marijuana dispensary to provide medical marijuana for the cardholder;

(b) have in possession or upon the licensed premises an amount of medical marijuana in excess of the amount allowed by the license;

(c) allow any use of medical marijuana in a medical marijuana dispensary or upon a licensed premises;

(d) have on the licensed premises any medical marijuana or marijuana paraphernalia that shows evidence of the medical

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

marijuana having been consumed or partially consumed;

(e) continue operating a business for the purpose of cultivation, manufacture, or sale of medical marijuana or medical marijuana-infused products without filing the forms and paying the fee required under [this chapter].

(f) buy, sell, transfer, give away, or acquire medical marijuana except as allowed pursuant to [this chapter].

(g) allow a person to be within a limited-access area unless:

(i) the person's license or registration allows access and the person's license or registration is displayed as required by [this chapter]; or

(ii) the person is an employee of the state licensing authority conducting an inspection pursuant to [section 31];

(h) fail to designate areas of ingress and egress for limited-access areas and post signs in conspicuous locations as required by [this chapter];

(i) fail to report a transfer or change of financial interest as required by [section 26];

(j) fail to report the name of or a change in managers as required by [section 26];

(k) display any signs that are inconsistent with local laws or regulations;

(l) use advertising material that is misleading, deceptive, false, or designed to appeal to minors;

(m) provide public premises for the purpose of using medical marijuana in any form;

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

(n) sell medical marijuana to a person not licensed pursuant to this article or to a person who is unable to produce a valid registry identification card;

(o) offer for sale or solicit an order for medical marijuana in person except within the licensed premises;

(p) buy medical marijuana from a person not licensed to sell it as provided by [this chapter];

(q) except for a provider, sell medical marijuana anywhere other than the permanent location specifically designated in the license;

(r) require a medical marijuana dispensary or a medical marijuana grower to deliver marijuana to a premises other than the specific licensed premises where the medical marijuana is to be sold; or

(s) violate the provisions of 30-14-205 and 30-14-209;

(2) (a) Except as provided in sections [17 through 20], it is unlawful for:

(i) a provider, medical marijuana dispensary, medical marijuana grower, or medical marijuana-infused products manufacturer to sell, deliver, or cause to be delivered to a licensee any medical marijuana not grown upon its licensed premises; or

(ii) a medical marijuana grower to sell, possess, or permit sale of medical marijuana not grown upon its licensed premises.

(b) A violation of this subsection (2) is grounds for the immediate revocation of the license granted under [this chapter].

(3) (a) It is unlawful for a physician who makes patient

referrals to a medical marijuana dispensary to receive anything of value from the medical marijuana dispensary licensee or its agents, servants, officers, owners, or anyone with a financial interest in the license.

(b) It is unlawful for a person licensed or registered by the state licensing authority pursuant to [this chapter] to offer anything of value to a physician for making patient referrals to the licensee or registrant.

(4) A person who violates a provision of this section commits a misdemeanor that 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 31. Inspection procedures.** (1) (a) Each licensee shall keep a complete set of records necessary to show all business transactions. The records must be open for inspection by the state licensing authority at any time during business hours.

(b) The state licensing authority may require:

(i) a licensee to furnish information it considers necessary for the proper administration of [this chapter]; and

(ii) an audit of the licensee's records and accounts by an auditor selected by the state licensing authority. The auditor shall have access to all books and records of the licensee.

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

(2) The licensee shall pay the costs of an audit required under this section.

(3) (a) The licensed premises, including any places of storage where medical marijuana is grown, stored, cultivated, sold, or dispensed, are subject to inspection by the state licensing authority during all business hours and other times of apparent activity, for the purpose of inspection or investigation.

(b) (i) For examination of inventory or books and records required to be kept by the licensee, the state licensing authority may have access during business hours.

(ii) If any part of the licensed premises consists of a locked area, the area must be made available for inspection upon request of the state licensing authority, without delay by the licensee.

(4) A licensee shall keep all books and records showing all business transactions of the licensee for the current tax year and the three tax years immediately preceding the current tax year.

(5) A licensee shall file within 15 days after the end of each quarter and in a manner prescribed by the state licensing authority, a statement showing for that quarter:

(a) the total gross income collected;

(b) the amount of usable marijuana sold;

(c) the number of plants grown and sold;

(d) the number of registered cardholders to whom the usable marijuana or plants were sold;

(e) the number of plants and usable marijuana remaining in inventory; and

(f) for a medical marijuana dispensary, the amount of medical marijuana purchased from or sold to another medical marijuana dispensary.

NEW SECTION. **Section 32. Penalties for licensee**

violations. (1) In addition to any other sanctions imposed by [this chapter] or by rules adopted pursuant to [this chapter], the state licensing authority may suspend or revoke a license if a licensee or any of the agents or employees of the licensee has violated:

- (a) the provisions of [this chapter];
- (b) a rule adopted pursuant to [this chapter]; or
- (c) a term, condition, or provision of the license.

(2) The state licensing authority may suspend or revoke a license only after an investigation and an opportunity for a public hearing at which the licensee must be given an opportunity to be heard.

(3) The state licensing authority may administer oaths and issue subpoenas to require the presence of persons and the production of materials needed for a hearing held under this section.

(4) The state licensing authority shall provide notice of suspension, revocation, fine, or other sanction, as well as the required notice of the hearing by notifying the licensee in writing at the address contained in the license.

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

(5) Except in the case of a summary suspension, a suspension is limited to a maximum of 6 months.

(6) If a license is suspended or revoked, the licensing fee may not be returned to the licensee.

(7) (a) A license or registration issued by the state licensing authority may be summarily suspended by the state licensing authority without notice pending any prosecution, investigation, or public hearing. Nothing in this section prevents the summary suspension of a license or registration.

(b) If a medical marijuana dispensary license is summarily suspended, a registered cardholder who has selected the dispensary as the cardholder's source of medical marijuana may immediately name another medical marijuana dispensary as the source of medical marijuana.

(8) (a) When the state licensing authority determines that a license should be suspended for 14 days or less, the licensee may, before the suspension becomes effective, petition for permission to pay a fine in lieu of all or part of the license suspension. Upon receipt of the petition, the state licensing authority may stay the proposed suspension, undertake an optional investigation, and grant the petition if it is satisfied that:

(i) the public health, safety, and welfare would not be impaired by permitting the licensee to operate during the period set for suspension;

(ii) payment of the fine will achieve the desired disciplinary purposes;

(iii) the licensee's books and records accurately reflect

the loss of sales that the licensee would have suffered had the suspension gone into effect; and

(iv) the licensee's license or permit has not been:

(A) suspended or revoked during the 2 years immediately preceding the date of the motion or complaint that resulted in the determination to suspend the license or permit; and

(B) a potential suspension of the license or permit during that time had not been stayed by payment of a fine.

(b) The fine accepted in lieu of suspension must be no less than \$500 and no more than \$100,000.

(c) Payment of a fine pursuant to this section must be in the form of cash or in the form of a certified check or cashier's check made payable to the state licensing authority.

(9) Upon payment of the fine provided for in subsection (8), the state licensing authority shall enter an order permanently staying the imposition of the suspension.

(10) If the state licensing authority decides against accepting a fine in lieu of suspension for a suspension of 14 days or less, it shall set an effective date for the suspension.

NEW SECTION. **Section 33. Special revenue account.** (1)

There is a special revenue account to the credit of the state licensing authority for use in administering [this chapter]. The account consists of money deposited into the account from licensing fees, penalties, and any other source. Interest earned on the account must be deposited into the account and used to sustain the account.

(2) Funds from the account must be used to cover the expenses of the state licensing authority.

(3) Funds remaining in the account at the end of the fiscal year must be transferred to the general fund.

Section 34. 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. (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 that the person attend and complete a chemical dependency

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

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 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)."

{*Internal References to 61-11-101:*
61-5-307 61-5-307 61-5-308 61-8-442
61-10-154 }

NEW SECTION. **Section 35. {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 36. Transfer.** There is transferred \$AN AMOUNT from the special revenue account credited to the department to the state licensing authority for the initial costs of the state licensing authority's operations.

NEW SECTION. **Section 37. Appropriation.** There is appropriated \$2 MILLION in each year of the 2013 biennium from the special revenue account created in [section 33] to the state licensing authority.

NEW SECTION. **Section 38. {standard} Codification instruction.** (1) [Sections 4 through 6] are intended to be

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

codified as an integral part of Title 50, chapter 46, part 1, and the provisions of Title 50, chapter 46, part 1, apply to [sections 4 through 6].

(2) [Sections 9 and 10] are intended to be codified as an integral part of Title 50, chapter 46, part 2, and the provisions of Title 50, chapter 46, part 2, apply to [sections 9 and 10].

(3) [Sections 14 through 33] are intended to be codified as an integral part of Title 50, chapter 46, and the provisions of Title 50, chapter 46, apply to [sections 14 through 33].

NEW SECTION. **Section 39. {standard} Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 40. {standard} Effective dates.** (1) Except as provided in subsections (2) and (3), [this act] is effective upon passage and approval.

(2) [Sections 33] is effective July 1, 2011.

(3) [Sections 16 through 32] are effective Oct. 1, 2011.

NEW SECTION. **Section 41. {standard} Applicability.** (1) (a) A person registered as a caregiver under the provisions of Title 50, chapter 46, as of July 1, 2011, must apply by October. 1, 2011, to be licensed as:

Unofficial Draft Copy

As of: September 1, 2010 (7:33am)

LCMM01

- (i) a provider;
- (ii) a medical marijuana dispensary; or
- (iii) or a medical marijuana-infused products manufacturer.

(b) If applicable, the person also may apply for a medical marijuana grower license.

(2) Payment of the fee and submission of the form does not create an entitlement to receive a license. A person who has not applied for a license by October 1, 2011, or who is has applied but is not licensed by the state licensing authority by Nov. 1, 2011, is not protected by the provisions of Title 50, chapter 46, if the person acquires, possesses, cultivates, manufactures, delivers, transfers, or transports marijuana or paraphernalia.

NEW SECTION. **Section 42. {standard} Termination.** [Sections 14 through 33] terminate on September 30, 2017, unless re-authorized by the legislature.

- END -

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