

SENATE SUBCOMMITTEE  
EXHIBIT NO. 6  
DATE 2/11/11  
SB 154

2011 Montana Legislature

THE MONTANA MEDICAL CANNABIS ACT

Formerly: SENATE BILL NO. 154

INTRODUCED BY D. LEWIS

Revised and Rewritten to include material from House Bill 68, introduced by Rep. Diane Sands (D), and  
*The MMGA 2011 Legislators' Guide to Medical Cannabis*

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING LICENSURE OF AND ESTABLISHING A REGULATORY STRUCTURE FOR PERSONS WHO ACQUIRE, POSSESS, CULTIVATE, SELL, DELIVER, TRANSFER, OR TRANSPORT MARIJUANA CANNABIS FOR MEDICAL USE FOR A PERSON OTHER THAN THEMSELVES; ESTABLISHING LICENSING PROCEDURES AND FEES FOR GROWERS AND FOR PREMISES WHERE MARIJUANA CANNABIS FOR MEDICAL USE IS CULTIVATED OR WHERE OTHER ACTIVITIES INVOLVING THE MEDICAL USE OF MARIJUANA CANNABIS OCCUR; CREATING EXCEPTIONS FOR PARENTS OF MINOR CHILDREN WHO ARE REGISTERED FOR MEDICAL USE OF MARIJUANA CANNABIS; REQUIRING PUBLIC NOTICE OF AND OPPORTUNITY TO PROTEST APPLICATIONS TO LICENSE PREMISES OR CHANGE THE LOCATION OF LICENSED PREMISES; ESTABLISHING INSPECTION AND REPORTING REQUIREMENTS; ESTABLISHING A FEE ON SALES OF MARIJUANA CANNABIS FOR MEDICAL USE; CREATING A SPECIAL REVENUE ACCOUNT; PROVIDING RULEMAKING AUTHORITY; ESTABLISHING A TRANSITION PERIOD; AMENDING SECTIONS 50-46-102, 50-46-103, 50-46-201, 50-46-205, 50-46-206, AND 50-46-210, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** 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 cannabis. A qualifying patient may have only one caregiver at any one time.~~

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

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

(a) cancer, glaucoma, or positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions;

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

(i) cachexia or wasting syndrome;

(ii) severe or chronic pain;

(iii) severe nausea;

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

(v) severe or persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis or Crohn's disease;

(vi) PTSD or

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

(i) conditions changes must be reviewed and approved by the Board Medical of Examiners

(ii) The Medical Board of Examiners will establish a 3 member condition review committee

(iii) only a licensed Montana physicians may submit proposed changes

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

(3) (a) "Grower" means an individual 18 years of age or older who has agreed to cultivate marijuana cannabis for medical use and undertake other activities involving the medical use of marijuana cannabis for a provider who has selected that grower to exclusively grow cannabis for one or more patients.

(b) The term does not include the physician providing care or written certification for the person with the registry identification card.

(4) (a) "Provider" means an individual 18 years of age or older who has agreed to cultivate and supply cannabis for medical use and undertake other activities involving the medical use of cannabis for a person is a licensed patient.

(b) The term does not include the physician providing care or written certification for the person with the registry identification card.

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

(5)(6) "Medical use" means:

(a) the use, acquisition, possession, cultivation, manufacture, delivery, transfer, or transportation of marijuana cannabis or paraphernalia by a qualifying patient or a caregiver grower or licensee relating to the consumption of marijuana cannabis to alleviate the symptoms or effects of a qualifying patient's debilitating medical condition;

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

(c) the use of paraphernalia by a caregiver grower patient for the cultivation, manufacture, delivery, transfer, or transportation of marijuana cannabis for use by a qualifying patient.

~~(6)(7)~~ "Paraphernalia" has the meaning provided in 45-10-101.

~~(7)(8)~~ (a) "Person" means an individual, partnership, association, company, corporation, limited liability company, or 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)(8)(9)~~ "Physician" means a person who is licensed under Title 37, chapter 3.

~~(9)(10)~~ "Premises" means the physical building or property within or upon which a licensed grower licensee cultivates, manufactures, sells, tests, marijuana cannabis for medical use or undertakes other activities involving the medical use of marijuana cannabis.

~~(8)(10)(11)~~ "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

~~(9)(11)(12)~~ "Registry identification card" means a document issued by the department that identifies a person as a qualifying patient or caregiver.

~~(12)(13)~~ (a) "Resident" means a person who meets the requirements of 1-1-215.

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

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

~~(ii)~~ is an absentee property owner paying property tax on property in Montana

~~(b)~~ Patients obtaining a medical cannabis license must have Montana identification.

~~(13)(14)~~ "State licensing authority" means the department of revenue provided for in 2-15-1301.

~~(10)(14)~~ (a) "Usable marijuana" means the dried leaves and flowers of marijuana and any mixture or preparation of marijuana

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

(14)(15) "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 cannabis would likely outweigh the health risks for the qualifying patient."

(16) "Cannabis Store Front" - A retail outlet where patient(s) licensed to an individual caregiver may either walk in or by appointment purchase their medicinal product on-site from their Provider.

(17) "Delivery" - Any licensed provider with more than ten (10) qualifying patients that is not participating in a store front with those patients.

(18) "Grow Facility" - A commercial grow facility is the physical location where the medical cannabis is grown or cultivated with more than ten (10) patient cards.

(19) "Medibles" - Any product made from or including medical cannabis for the purposes of ingestion.

(20) "Sundries" - Cannabis infused products other than are ingested

(21) "Courier" - Any person that transports or delivers medical cannabis and is neither the provider nor grower.

(22) "Cannabis Exchange Broker" - A person licensed to broker cannabis between growers and or providers.

(23) "Bloom Plant" - A bloom plant is a plant that has begun to flower or has begun the flowering stage

(24) "Vegetative Plant" - Clones or any rooted plant not in the bloom cycle. Many varieties require lengthy vegetative schedules and may include "mothers" or plants not going to bloom but are used for cloning.

(25) "Seed" - There is no medicinal efficacy in seeds and therefore does not require specific regulation.

(26) "Trim" - When a plant is harvested, there is waste plant material that is either discarded or used for low level production of other by-products.

(27) "Usable Medical Cannabis" - The product has been properly cured and is ready for sale.

(28) "Unusable Medical Cannabis" - The product is in the curing stage and is not ready for sale

(29) "Patient Allowable Cannabis" - 1 ounce per week from their caregiver unless documented by the caregiver with supporting rationale from the recommending physician. Examples would be terminally ill patients or far remote patients where delivery is problematic. A patient may maintain his/her own six bloom plants and retain the yield in full.

(30) "Provider Allowable Cannabis" - Six Bloom Plants per patient with no restrictions on usable product. Provider is prohibited from growing six plants for any patient that has been registered through that provider to a grower.

(31) "Grower Allowable Cannabis" - Six Bloom Plants per patient with no restrictions on usable product for each patient registered by a provider for that grower to grow.

(32) "Infused Product Manufacturer" - An individual or entity that produces edibles or sundry products.

(33) "Cannabis Testing Facility" - Any facility, location, or entity licensed by the State to test medical cannabis.

(34) "Conditional License" - a new licensee who has not yet completed required continuing education classes as may be determined by administrative rule. The conditional license shall be in effect for a maximum of 90 days. If continuing education has not been successfully completed in 90 days, the licensee applicant must file a new application and is not permitted to act as a licensee until the new application has been processed.

(35) "Conditional Provider License" - a new provider who has not yet completed required continuing education classes as may be determined by administrative rule.

(36) "Conditional Grower License" - a new grower who has not yet completed required continuing education classes as may be determined by administrative rule through the department of agriculture.

(37) "Conditional Infused Product Manufacturer License" - a new infused product manufacturer who has not yet completed required continuing education classes in health and safety as may be determined by administrative rule.

**Section 2.** Section 50-46-103, MCA, is amended to read:

**"50-46-103. Procedures -- minors -- 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) (a) Except as provided in subsection (3), the department shall issue a registry identification card to a qualifying patient who submits the following, in accordance with department rules:

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

(b)(ii) an application or renewal fee;

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

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

(e)(v) the name, street address, and date of birth of the qualifying patient's caregiver grower provider,

if any.

(b) A person with a valid registry identification card may have only one grower provider at a time.

(3) 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 cannabis; and

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

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

(ii) agrees to serve as the minor's caregiver indicates whether the custodial parent, legal guardian, or a grower provider will provide the minor's marijuana cannabis for medical use; and

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

(4) (a) A custodial parent or legal guardian who chooses to have a grower provider provide supply the minor's marijuana cannabis for medical use may not also grow or otherwise obtain marijuana cannabis for medical use by the minor.

(b) If the custodial parent or legal guardian indicates that a grower provider will be providing supplying the minor's marijuana cannabis for medical use, the parent or guardian shall:

(i) provide the department with the grower's provider's name, street address, and date of birth; and

(ii) directly acquire the marijuana cannabis for medical use from the grower provider.

(c) A grower provider named by a custodial parent or legal guardian to provide marijuana cannabis for medical use for a minor with a valid registry identification card may not engage in any direct transaction with 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) 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. Provider changes will become effective upon receipt of certified mail confirmation that the change has been received by the licensing authority, provided:

(i) the new provider is a currently registered provider

(ii) the new provider does not begin to grow the six plants for that patient until the new license is received

(b) The department may deny an application or renewal only if the applicant did not provide the information required pursuant to this section, the department determines that the information was falsified, or the applicant is not qualified to receive a registry identification card under the provisions of this chapter. Rejection of an application or renewal is considered a final department action, subject to judicial review.

(6) The department shall issue a registry identification card within 5 days of approving an application or renewal. Registry identification cards expire 1 year after the date of issuance. Registry identification cards must state:

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

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

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

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

(7) A person who has been issued a registry identification card shall notify the department of any change in the qualifying patient's name, address, physician, or ~~caregiver~~ grower provider or change in status of the qualifying patient'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;

(b) authorized employees of the state licensing authority to allow for the licensing of a grower-provider named by:

(i) a person with a valid registry identification card; or

(ii) the custodial parent or legal guardian of a minor who has obtained a valid registry identification card; or

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

**Section 3.** Section 50-46-201, MCA, is amended to read:

**"50-46-201. Medical use of marijuana cannabis-- legal protections -- limits on amount -- presumption of medical use.** (1) A person who possesses a registry identification card issued pursuant to 50-46-103 or a license issued pursuant to this chapter 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~~ grower or licensee acquires, possesses, cultivates, manufactures, delivers, transfers, or transports marijuana cannabis not in excess of the amounts allowed in subsection (2); or

(b) the qualifying patient uses marijuana cannabis for medical use.

(2) (a) A qualifying patient and that qualifying patient's ~~caregiver-grower provider~~ may each not possess no more than six marijuana flowering cannabis plants and 1 ounce of usable marijuana for each licensed patient.

(b) A qualifying patient may not ~~possess~~ acquire more than 1 ounce of usable marijuana cannabis within a 7 day period.

(c) A grower licensee may not possess more than 2 ounces of the yield of usable marijuana cannabis for each individual with a valid registry identification card for whom the grower licensee provides marijuana cannabis for medical use.

(d) A provider may elect to contract with a grower for exclusive rights to grow a patient's six plants, and/or a Store Front to distribute medicinal product to an individual patient. All contract arrangements must be registered with the licensing authority.

e) All yields must be recorded and registered. All cannabis provided by a grower to a provider must be recorded and registered with the licensing authority.

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

(i) is in possession of a registry identification card or valid license issued pursuant to this chapter; and

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

(b) The presumption may be rebutted by evidence that the possession of marijuana cannabis 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 cannabis 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 cannabis 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 cannabis as permitted under this chapter.

(7) Possession Except as provided in [section 45 18], possession of or application for a registry identification card or a provider, grower or premises 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 a provider, grower, or premises license or otherwise subject the person or property of the person possessing or applying for the card or license to inspection by any governmental agency, including a law enforcement agency.

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

(a) A qualifying out of state patient must select one provider to obtain their medicinal product while in Montana.

(b) The Provider must register the out of state patient with the state licensing authority

(c) The Provider must advise the out of state patient in writing that the medicinal product must only be consumed in the State of Montana

(9) Nothing in this bill shall prohibit an individual or entity from bringing into evidence at trial, facts relating to charges related to medical use of cannabis if it is involved in the charges.

(10) Patient recommendations shall be considered a temporary license once confirmation of registered mail receipt by the licensing authority is received by the patient or provider, if:

(a) The patient has not selected a provider, or

(b) the patient has selected a currently licensed provider, the physical license must be received prior to starting to grow the patients six plants or contract for the growing

(c) A temporary license for a patient shall expire 90 days from date of recommendation.

(11)(1) a licensee shall be acting in accordance with the provisions of this Bill and shall not be subject to prosecution if they:

(a) has a physician who states that or has medical records that indicate that, in the physician's professional opinion, after having completed a full assessment of the person's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the potential benefits of medical cannabis would likely outweigh the health risks for the person; or

(b) provide medical cannabis to a person described in subsection (1)(a) if the person does not provide cannabis to anyone for uses that are not medical;

(2) (a) are engaged in the acquisition, possession, cultivation, manufacture, delivery, transfer, or transportation of cannabis or paraphernalia relating to the consumption of cannabis to alleviate the symptoms or effects of the medical condition of the person identified in subsection (1)(a) if the person charged with the offense is a qualifying patient or licensee and is in compliance with the provisions of this Bill; or

(b) is engaged in the use of cannabis if the person charged with the offense is a qualifying patient;  
and

(3) possesses cannabis only in an amount that is reasonably necessary to ensure the uninterrupted availability of cannabis for the purpose of alleviating the symptoms or effects of the medical condition of the person identified in subsection (1)(a)."

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

**"50-46-205. Limitations of Medical Marijuana Cannabis 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 cannabis;

(b) the use of marijuana cannabis by a caregiver grower licensee unless they are a registered patient; or

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

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

(ii) on any school grounds;

(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 or private health insurer to reimburse a person for costs associated with the medical use of marijuana cannabis; or

(b) an employer to accommodate the medical use of marijuana cannabis in any workplace where other prescription medications may have also been restricted and whereby the use may constitute a safety concern.

(3) Nothing in this chapter may be construed to allow a caregiver grower licensee to use marijuana cannabis or to prevent criminal prosecution of a caregiver grower licensee who uses marijuana cannabis or paraphernalia for the caregiver's grower's licensee's personal use unless the grower-licensee has also applied for and received a registry identification card."

**Section 5.** Section 50-46-206, MCA, is amended to read:

~~"50-46-206. Affirmative defense. Except as provided in 50-46-205, it is an affirmative defense to any criminal offense involving marijuana that the person charged with the offense:~~

~~— (1) (a) has a physician who states that or has medical records that indicate that, in the physician's professional opinion, after having completed a full assessment of the person's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the potential benefits of medical marijuana would likely outweigh the health risks for the person; or~~

~~— (b) provides marijuana to a person described in subsection (1)(a) if the person does not provide marijuana to anyone for uses that are not medical;~~

~~— (2) (a) is engaged in the acquisition, possession, cultivation, manufacture, delivery, transfer, or transportation of marijuana or paraphernalia relating to the consumption of marijuana to alleviate the symptoms or effects of the medical condition of the person identified in subsection (1)(a) if the person charged with the offense is a qualifying patient or a caregiver grower or~~

~~— (b) is engaged in the use of marijuana if the person charged with the offense is a qualifying patient; and~~

~~— (3) possesses marijuana only in an amount that is reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of alleviating the symptoms or effects of the medical condition of the person identified in subsection (1)(a)."~~

**Section 6(5).** 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~~ may include but are not limited to the manner in which the department will:

(a) consider application for and renewals of registry identification cards for qualifying patients and caregivers; and

(b) provide information to the state licensing authority to assist with the licensure provisions of this chapter.

**(2)** The department's rules must establish application and renewal fees that generate revenue sufficient to offset ~~all~~ the department's 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."

**NEW SECTION. Section 7 (6). Growers -- allowable activities -- prohibitions.** (1) A person licensed as a grower may:

(a) at the premises covered by a license issued pursuant to section 9 12, undertake any of the activities specified for medical use in 50-46-102(5)(a) and (5)(c); and

(b) receive reasonable compensation for services provided to assist with the medical use of marijuana cannabis by a person with a valid registry identification card.

(2) A grower may not:

(a) acquire, possess, deliver, transfer, or transport marijuana cannabis that is not cultivated in Montana by a licensed provider or grower for medical use; or

(b) manufacture or sell a marijuana-cannabis related product unless the product is made from marijuana cannabis cultivated and manufactured in Montana by a licensed grower or provider.

(3) A grower may not allow on the premises licensed pursuant to section 9 12 the consumption of marijuana cannabis acquired, cultivated, manufactured, delivered, transferred, transported, or sold for medical use, except when medically necessary as defined in Section 1.

~~(4) (a) A grower may transfer a maximum of 30% of the grower's marijuana plants or usable marijuana to other licensed growers annually.~~

~~(4)(b)(a) The grower transferring the any amount of marijuana cannabis and each grower provider receiving marijuana that cannabis from that grower shall:~~

~~(i) keep records as required by rule of the amount transferred and the dates on which the transfers occurred;~~

~~(ii) include in the quarterly reports required by section 46-19 the amount of any transfer made or received during a calendar quarter; and~~

~~(iii) provide to the state licensing authority or any state or local law enforcement agency upon request the records of the transfers made and received.~~

~~(5) The grower may only cultivate the six plants permitted per patient card registered to a licensed provider that has been assigned to that grower.~~

~~(6) Multiple growers may utilize a common grow location.~~

~~**NEW SECTION. Section 8. Grower license -- requirements -- exception -- fees.** (1) The state licensing authority may issue a grower license that authorizes a person to cultivate marijuana for medical use and undertake other activities involving the medical use of marijuana by individuals with valid registry~~

identification cards who have indicated that the applicant will act as the individuals' grower for the purposes of this chapter.

(2) A person applying for a grower license shall:

(a) submit proof that the person is a resident;

(b) provide the street address of the proposed premises;

(c) sign a statement:

(i) agreeing to provide marijuana only to individuals with valid registry identification cards who have named the applicant as their grower; and

(ii) acknowledging that possession of the license does not allow the applicant 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 person with a valid registry identification card unless the applicant also has a valid registry identification card; and

(d) except as provided in subsection (4), 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) (a) Except as provided in subsection (3)(b), each applicant for a license shall pay:

(i) an application fee of \$25;

(ii) the costs of the background check required under subsection (2) or (4); and

(iii) a license fee as set by the department in rule.

(b) The state licensing authority may waive the license fee or establish a lower license fee for an individual meeting the requirements of subsection (4)(a).

(4) (a) The state licensing authority shall acquire a state name-based criminal history record check for an individual who is applying for a grower license and is:

(i) the custodial parent or legal guardian of a minor who has a valid registry identification card; and

(ii) acting as a grower only for the minor.

(b) An individual who meets the requirements of subsection (4)(a) is exempt from the requirements of [sections 9, 10, 12, 15, and 16].

(5) A grower who also holds a license for a premises may employ an individual to work at the licensed premises only if the individual has applied for and received a grower's license after meeting the

requirements of [section 11] and this section. The grower shall provide the state licensing authority with the names of all individuals employed at the licensed premises.

(6) (a) Except as provided in subsection (6)(b), a license issued pursuant to this section is valid for 1 year.

(b) A license expires in less than 1 year if the individuals who have named the licensee as a grower:

(i) no longer have valid registry identification cards; or

(ii) have named another licensed grower as the person who will assist with their medical use of marijuana.

(c) A licensed grower whose employment for another grower is terminated by either party is not protected under the provisions of this chapter unless the individuals with valid registry identification cards who named the grower as the person assisting them with medical use of marijuana retain the grower in that capacity.

(d) The department shall, on a monthly basis, provide the state licensing authority with:

(i) the names of growers identified by each person with a valid registry identification card and the registry identification card numbers of those persons; and

(ii) the registry identification card numbers of the persons whose cards have expired and the name of the grower those persons had identified as assisting them with the medical use of marijuana.

(7) A license issued under this chapter must state:

(a) the name of the person to whom it is issued;

(b) the street address of the premises where marijuana for medical use will be cultivated or where other activities involving the medical use of marijuana will be undertaken. If no street address exists, the license must contain a specific description of the location of the premise.

(c) other information as required by the state licensing authority.

**NEW SECTION. Section 7. Providers -- allowable activities -- prohibitions.** (1) A person licensed as a provider may:

(a) at the premises covered by a license issued pursuant to [section 9 12 ], undertake any of the activities specified for medical use in 50-46-102(5)(a) and (5)(c); and

(b) receive reasonable compensation for services provided to assist with the medical use of cannabis by a person with a valid registry identification card.

(2) A provider may not:

(a) acquire, possess, deliver, transfer, or transport cannabis that is not cultivated in Montana by a licensee for medical use; or

(b) manufacture or sell a cannabis related product unless the product is made from cannabis cultivated and manufactured in Montana by a licensee.

(3) A provider may not allow on the premises licensed pursuant to [section 9-12] the consumption of cannabis acquired, cultivated, manufactured, delivered, transferred, transported, or sold for medical use, except when medically necessary as defined in Section 1.

(4) (a) A provider may register their patient card plant count with a maximum of 3 growers, with the limit of one grower being selected for one registered card

(b) The provider receiving cannabis from each grower shall:

(i) keep records as required by rule of the amount transferred and the dates on which the transfers occurred;

(ii) include in the quarterly reports required by [section 16-19] the amount of any transfer made or received during a calendar quarter; and

(iii) provide to the state licensing authority or any state or local law enforcement agency upon request the records of the transfers made and received.

(5) (a) A provider may register their patient card at a store front for retail distribution with the limit of one storefront being selected for a particular patient card

(b) The provider supplying the store front with cannabis shall:

(i) keep records as required by rule of the amount transferred and the dates on which the transfers occurred;

(ii) include in the quarterly reports required by [section 16-19] the amount of any transfer made or received during a calendar quarter; and

(iii) provide to the state licensing authority or any state or local law enforcement agency upon request the records of the transfers made and received.

(6) A provider may supply a small amount of cannabis cultivated on the premises to a laboratory that is registered pursuant to rules adopted by the state licensing authority.

(7)(a) Providers may only provide medical cannabis in any form to the individual that selected them as their provider.

(b) A patient may only have one provider:

- (i) A patient may change provider a maximum of three (3) times per year unless an exception is granted by the state licensing agency
- (ii) A patient provider change is effective when the change and fee for change is received by the state licensing agency only if the provider is currently licensed as a provider
- (iii) A patient may only acquire medical cannabis from their selected Provider or their designated Store Front
- (iv) A provider may not grow six (6) plants for a patient if they have elected to have the growing executed by a Grower.
- (v) A provider is responsible to insure a patient does not acquire more medicine that permitted by law.

(8) A provider may supply an infused product manufacturer with the necessary cannabis to complete the required medible or medicinal sundry product.

(9) Multiple providers may utilize a common store front location

**NEW SECTION. Section 8. Testing Facilities -- allowable activities -- prohibitions.** (1) A person licensed as a provider may:

(a) at the premises covered by a license issued pursuant to [section 9 12 ], undertake any of the activities specified for medical use in 50-46-102(5)(a) and (5)(c); and

(b) receive reasonable compensation for services provided to assist with the medical use of cannabis by a person with a valid registry identification card.

(2) A testing facility may not:

(a) acquire, possess, deliver, transfer, or transport cannabis that is not cultivated in Montana by a licensed provider, patient, and grower for medical use; or

(b) test medical cannabis related product unless the product is made from cannabis cultivated and manufactured in Montana by a licensed grower, provider, or patient.

c) have direct contact with any patient unless it is the patient themselves having the medicine tested.

d) grow cannabis

(3) A testing facility may not allow on the premises licensed pursuant to [section 9 12 ] the consumption of cannabis acquired, cultivated, manufactured, delivered, transferred, transported, or sold for medical use, except when medically necessary as defined in Section 1.

(a) The testing facility receiving cannabis from each provider, patient, or grower shall:

(i) keep records as required by rule of the amount transferred and the dates on which the transfers occurred;

(ii) include in the quarterly reports required by [section 16-19 ] the amount of any transfer made or received during a calendar quarter; and

(iii) provide to the state licensing authority or any state or local law enforcement agency upon request the records of the transfers made and received.

(iv) retain for 3 years copies of all testing results including the provider or grower name, business, product tested and results.

(4) A testing facility may receive a small amount of cannabis cultivated by a licensee pursuant to rules adopted by the state licensing authority.

(5) A testing facility may not grow its own medical cannabis.

**NEW SECTION. Section 9. Infused Product Manufacturer -- allowable activities -- prohibitions.**

(1) A person licensed as an infused product manufacturer may:

(a) at the premises covered by a license issued pursuant to [section 9 12 ], undertake any of the activities specified for medical use in 50-46-102(5)(a) and (5)(c); and

(b) receive reasonable compensation for services provided to assist with the medical use of cannabis by a person with a valid registry identification card.

(2) An Infused product manufacturer may not:

(a) acquire, possess, deliver, transfer, or transport cannabis that is not cultivated in Montana by a licensed provider, patient, or grower for medical use; or

(b) manufacture or sell a cannabis related product unless the product is made from cannabis cultivated and manufactured in Montana by a licensed provider, patient, or grower.

(3) An infused product manufacturer may not allow on the premises licensed pursuant to [section 912], the consumption of cannabis acquired, cultivated, manufactured, delivered, transferred, transported, or sold for medical use, except when medically necessary as defined in Section 1.

(4)(a) The infused product manufacturer receiving cannabis from each patient, provider or grower shall:

(i) keep records as required by rule of the amount transferred and the dates on which the transfers occurred;

(ii) include in the quarterly reports required by [section 46-19 ] the amount of any transfer made or received during a calendar quarter; and

(iii) provide to the state licensing authority or any state or local law enforcement agency upon request the records of the transfers made and received.

(iv) provide on all packaging product labeling as established by rule which must include THC weight content

(iv) retain copies of all

5) A infused product manufacturer may not grow its own medical cannabis

**NEW SECTION. Section 10. Store Front -- allowable activities -- prohibitions.** (1) A person licensed as a store front may:

(a) at the premises covered by a license issued pursuant to [section 9 12 ], undertake any of the activities specified for medical use in 50-46-102(5)(a) and (5)(c); and

(b) receive reasonable compensation for services provided to assist with the medical use of cannabis by a person with a valid registry identification card as permitted by law .

(2) A store front may not:

(a) acquire, possess, deliver, transfer, or transport cannabis that is not cultivated in Montana by a licensed grower or provider for medical use; or

(b) manufacture or sell a cannabis related product unless the product is made from cannabis cultivated and manufactured in Montana by a licensed grower or provider.

(3) A store front may not allow on the premises licensed pursuant to [section 9 12 ] the consumption of cannabis acquired, cultivated, manufactured, delivered, transferred, transported, or sold for medical use, except when medically necessary as defined in Section 1.

(4) (a) A store front may participate with multiple providers.

(b) The store front receiving cannabis from each provider shall:

(i) keep records as required by rule of the amount transferred and the dates on which the transfers occurred;

(ii) include in the quarterly reports required by [section 46-19 ] the amount of any transfer made or received during a calendar quarter; and

(iii) provide to the state licensing authority or any state or local law enforcement agency upon request the records of the transfers made and received.

(iv) provide to participating providers of that store front daily access to their registered patients purchase activity

(v) require from participating provider daily updates of "non store front" purchases for their registered purchase activity

(5) A store front may provide a small amount of cannabis provided to the store front from participating providers to a laboratory that is registered pursuant to rules adopted by the state licensing authority.

(6) A store front may only provide medical cannabis in any form to the individual that was selected by their provider.

(7) Multiple providers may utilize a common store front location

(8) Multiple store fronts with multiple locations must have available all patient purchase history daily for any patients permitted to purchase medicine from that location

(9) A store front may not supply cannabis to any patient that has not been registered with a provider or where that provider has not selected that store front as a distribution location for that patients.

(10) A Store Front may only obtain cannabis in the amount of 1 ounce per participating patient from a provider or grower designated by a provider to serve the provider's patients at that store front.

**NEW SECTION. Section 11. Premises license -- requirements -- exception -- fees.** (1) The state licensing authority may issue a license that authorizes a person to cultivate cannabis for medical use and undertake other activities involving the medical use of cannabis by individuals with valid registry identification cards who have indicated that the applicant will act as the individuals' provider. For the purposes of this chapter, "licensee" shall apply to grower, provider, infused product manufacturer and testing facility.

(2) A person applying for a license shall:

(a) submit proof that the person has been a resident of Montana for a minimum of one (1) year;

(b) provide the street address of the proposed premises;

(c) sign a statement:

(i) agreeing to provide cannabis only to individuals with valid registry identification cards who have named the applicant as their provider or has been designated as the grower or retail store front for that patient; and

(ii) acknowledging that possession of the license does not allow the applicant to engage in the use of cannabis or to use paraphernalia for any purpose other than cultivating, manufacturing, delivering, transferring, or transporting cannabis for medical use by a person with a valid registry identification card unless the applicant also has a valid registry identification card; and

(d) except as provided in subsection (4), 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) (a) Except as provided in subsection (3)(b), each applicant for a license shall pay:

(i) the costs of the background check required under subsection (2) or (4); and

(ii) a license fee as set by the department in rule.

(b) The state licensing authority may waive the license fee or establish a lower license fee for an individual meeting the requirements of subsection (4)(a).

(4) (a) The state licensing authority shall acquire a state name-based criminal history record check for an individual who is applying as a provider except when that individual is:

(i) the custodial parent or legal guardian of a minor who has a valid registry identification card; and

(ii) acting as a provider only for the minor.

(b) An individual who meets the requirements of subsection (4)(a) is exempt from the requirements of [sections 9 12, 40 13, 42 15, 45 18, and 46- 19].

(5) A licensee for a premise may employ an individual to work at the licensed premises only if the individual has applied for and received a provider license after meeting the requirements of [section 14 14] and this section. The licensee shall supply the state licensing authority with the names of all individuals employed at the licensed premises upon request.

(6) (a) Except as provided in subsection (6)(b), a license issued pursuant to this section is valid for 1 year.

(b) A license expires in less than 1 year if the individuals who have named the licensee as a provider:

(i) no longer have valid registry identification cards; or

(ii) have named another licensed provider as the person who will assist with their medical use of cannabis.

(c) A licensed provider whose employment with another provider is terminated by either party is not protected under the provisions of this chapter unless the individuals with valid registry identification cards who named the provider as the person assisting them with medical use of cannabis retain the provider in that capacity.

(d) The department shall, on a monthly basis, provide the state licensing authority with:

(i) the names of providers identified by each person with a valid registry identification card and the registry identification card numbers of those persons; and

(ii) the registry identification card numbers of the persons whose cards have expired and the name of the provider those persons had identified as assisting them with the medical use of cannabis.

(7) A license issued under this chapter must state:

(a) the name of the person to whom it is issued;

(b) the street address of the premises where cannabis for medical use will be cultivated or where other activities involving the medical use of cannabis will be undertaken. If no street address exists, the license must contain a specific description of the location of the premise.

(c) other information as required by the state licensing authority.

(8) all employees of a premise or assisting a premise must be either a licensed patient or provider if that individual comes in contact with the actual cannabis without appropriate protection

**NEW SECTION. Section (9)-12. Licensing of premises.** (1)(a) Except as provided in subsection (1)(b), a grower licensee, and for the purposes of this chapter "licensee" refers to a provider, grower, testing facility, infused product manufacturer or store front may not cultivate marijuana cannabis for medical use or undertake other allowable activities related to medical use of marijuana cannabis at a premises that is not licensed by the state licensing authority. A grower person applying to license a premise shall submit:

(i) the street address and physical description of existing or proposed buildings and other information related to the premises as required by the state licensing authority;

(ii) a fee sufficient to cover the costs of publishing notice of the application as required in [section 12 15]; and

(iii) a license fee as set by the state licensing authority in rule.

(b) A grower licensee may transport or transfer marijuana cannabis for medical use in order to deliver the marijuana cannabis to a person with a valid registry identification card or to other growers-licensees pursuant to section 7 6.

(2) (a) If the person applying to license a premises is a partnership or if more than one person has a financial interest in the business operated under the license, the names of all persons in the partnership or with a financial interest of ten (10) percent ownership or more must appear on the license. Each person named on the license application shall submit fingerprints for a background check to be conducted pursuant to section 8 11 and must meet the requirements of section 11 14 and this section before a license may be issued.

(b) This subsection (2) does not apply to a financial institution as defined in 32-6-103.

(3) Upon receipt of a completed application, the state licensing authority shall determine whether:

(a) the applicant is qualified to receive a license;

(b) the premises are suitable for the proposed business use; and

(c) the requirements of this chapter and administrative rules adopted pursuant to this chapter are met.

(4) Except for an individual meeting the provisions of section 8 11(4)(a), a license for a premises may not be issued before the date set in the notice provided for in section 12 15 for hearing protests.

**NEW SECTION. Section (10) 13. Change of location of licensed premises.** (1) A licensee for the purposes of this chapter "licensee" refers to a provider, grower, testing facility or infused product manufacturer grower, and store front holding a license for a premise may apply to the state licensing authority to change the location of the licensed premises to different premises within the city, town, or county in which the license was granted if:

(a) major loss or damage has occurred because of unforeseen natural causes;

(b) the lease of the licensed premises has expired;

(c) in the case of a rented premises, the landlord has evicted the licensee or increased the rent; or

(d) the grower licensee has proposed a transfer to premises that are as substantially suited for activities related to the medical use of marijuana cannabis as the currently licensed premises.

(2) (a) Unless a public convenience and necessity hearing is required by section 12 15, the state licensing authority may, after notice and opportunity for protest pursuant to section 12 15, approve a change of location if the state licensing authority believes the change would benefit the licensee and is justified by public convenience and necessity pursuant to section 13 16.

(b) The state licensing authority may not allow a change of location to different premises if the sanitary, health, and service facilities are less satisfactory than the facilities on the currently licensed premises.

(3) The state licensing authority shall establish in rule the fee for an application for a change of location.

**NEW SECTION. Section (11) 14. License as privilege -- criteria for denials.** (1) A grower license or premises license under this chapter is a privilege that the state may grant to an applicant and is not a right to which an applicant is entitled. In making a licensing decision, the state licensing authority shall consider:

- (a) the qualifications of the person applying for the license; and
- (b) the suitability of the premises proposed for licensing.

(2) The state licensing authority may, at their discretion, not issue a license to or renew the license of a person who:

- (a) has been a Montana resident for less than 1 year;
- (b) is under the supervision of the department of corrections or a youth court;
- (c) has violated any provision of this chapter; or
- (d) has been convicted of a felony offense unless:

- (i) the person has successfully completed pre-release and cannot reside in any type of correctional facility the terms of the sentence imposed for the felony offense and is no longer under the supervision of the state;

- (ii) has approval from the Department of Corrections and

- (iii) the conviction was not for:

- (A) felony sexual or violent offenders drug offense in Montana or another state; or

- (B) a violation of any other Montana statute as established by the state licensing authority in rule or a violation of an equivalent law in another state.

(3) (a) The state licensing authority may deny or revoke a license based upon proof that an applicant made a false statement in any part of the original application, any part of a renewal application, or any hearing conducted pursuant to an application.

(b) A statement on an application or at a hearing that is based upon a verifiable assertion by a governmental officer, employee, or agent may not be used as the basis for a denial or revocation of a license under subsection (3)(a) if the applicant relied upon the assertion in good faith.

(4) The state licensing authority may deny the issuance of a premises license if the location is:

(a) within a zone of a city, town, or county where an activity related to medical use of marijuana cannabis is prohibited by ordinance or resolution;

(b) off regular police beats and cannot be properly policed by local authorities;

(c) not approved by local building, health, or fire officials; or

(d) (i) ~~within 600 feet of and on the same street as a building used exclusively as a church, synagogue, or other place of worship, as a school, or as a postsecondary school as defined in 20-5-402. This distance must be measured in a straight line from the center of the nearest entrance of the place of worship, school, or postsecondary school to the nearest entrance of the licensee's premises. In violation of local zoning regulations~~

(ii) This subsection (4)(d) does not apply to a commercially operated school.

(5) A premises may not be licensed if the state licensing authority finds from the evidence at the hearing required pursuant to section 12-15 that:

(a) the welfare of the people residing or of retail licensees located in the vicinity of the premises will be adversely and seriously affected;

(b) if required, there is not a public convenience and necessity justification pursuant to section 13-16; or

(c) the applicant or the premises proposed for licensing fails to meet the eligibility or suitability criteria established by this chapter or administrative rules adopted pursuant to this chapter.

**NEW SECTION. Section (12) 15. Notice of application -- investigation -- publication -- protest.**

(1) When a person files an application to license a premises or to change the location of a licensed premises, the state licensing authority shall review the application for completeness. Based upon review of the application and any other information supplied to the state licensing authority, the state licensing authority shall determine whether the applicant and the premises to be licensed meet the criteria provided in this chapter.

(2) (a) Except as provided in section 8-11, when the state licensing authority determines that an application for a license for a premises or a change of location for a licensed premises is complete, the

state licensing authority shall publish in a newspaper of general circulation in the city, town, or county where an applicant proposes to license the premises a notice of the application to license a premises or to change the location of a licensed premises. The notice must state that protests may be made by residents of the city, town, or county where the applicant proposes to license the premises.

(b) Notice of an application for a new license must be published once a week for 4 consecutive weeks. Notice of an application for a change of location for a licensed premise must be published once a week for 2 consecutive weeks.

(3) Protests must be mailed to a named administrator in the state licensing authority within 10 days after publication of the final notice.

(4) (a) Notice must be substantially in the following form:

NOTICE OF APPLICATION TO LICENSE A PREMISE FOR MEDICAL USE OF MARIJUANA CANNABIS OR FOR A CHANGE OF LOCATION FOR A LICENSED PREMISE

Notice is given that on the ..... day of ....., 20....., (name of applicant) filed an application with the state licensing authority to cultivate marijuana cannabis for medical use or undertake other activities involving the medical use of marijuana cannabis at (describe location of proposed premises) or to change the location of a licensed premises to (describe location of proposed premises). Residents of ..... (city, town, or county) may protest against the approval of the application. Each protestor is required to mail a letter that contains in legible print the protestor's full name, mailing address, and street address. Each letter must be signed by the protestor. A protest petition bearing the names and signatures of persons opposing the approval of an application may not be considered as a protest. Protests must be mailed to ....., department of revenue, Helena, Montana, on or before the ..... day of ....., 20.....

Dated .....

Signed

ADMINISTRATOR

(b) Except as provided in [section 8 11], each applicant seeking to license or change the location of a premises shall, at the time of filing an application, pay to the state licensing authority an amount sufficient to cover the costs of publishing the notice.

(5) A protest filed pursuant to this section may not be considered unless it is filed in the form of a letter satisfying all the requirements contained in the notice in subsection (4)(a).

(6) (a) If the administrator receives no written protests, the state licensing authority may approve the application without holding a public hearing.

(b) If the administrator receives sufficient written protests against the approval of the application, the state licensing authority shall hold a public hearing as provided in subsection (7).

(7) (a) If the state licensing authority receives at least one protest but less than the number of protests required for a public convenience and necessity determination as specified in subsection (7)(c), the state licensing authority shall schedule a public hearing to be held in Helena, Montana, pursuant to the provisions of Title 2, chapter 4, part 6. The state licensing authority shall use information provided at the hearing to determine whether the protest presents sufficient cause to deny the application based on:

(i) the qualifications of the applicant as provided in [section 8 11];

(ii) the criteria for licensing a premises as provided in [section 9 12] or for a change of location as provided in [section 10 13]; or

(iii) the grounds for denial of an application as provided in [section 11 14], exclusive of public convenience and necessity.

(b) If the state licensing authority receives the number of protests required for a public convenience and necessity determination as specified in subsection (7)(c), the state licensing authority shall schedule a public hearing to be held in the county of the proposed location of the license pursuant to the provisions of Title 2, chapter 4, part 6. The state licensing authority shall use information provided at the hearing to determine whether the protest presents sufficient cause to deny the application based on:

(i) the qualifications of the applicant as provided in [section 8 11];

(ii) the criteria for licensing a premises as provided in [section 9 12] or for a change of location as provided in [section 10 13]; or

(iii) the grounds for denial of an application as provided in [section 11 14], including public convenience and necessity.

(c) A hearing shall take into account whether the application satisfies the public convenience and necessity requirements of [section 13 16], if the number of protests is equal to 25% of the quota established pursuant to 16-4-201(1), (2), and (5) for all-beverages licenses for the area in which a person has applied to license a premises or for a change of location for a licensed premises.

**NEW SECTION. Section (13) 16. Determination of public convenience and necessity.** (1) The state licensing authority may approve a license for a premises or a change of location for a licensed

premises if the state licensing authority does not receive the minimum number of protests required for a public convenience and necessity determination pursuant to [section 42 15]. Failure to obtain the minimum number of protests required for a public convenience and necessity determination must be regarded as a prima facie showing of public convenience and necessity, and no further determination of public convenience and necessity is allowed.

(2) (a) If the state licensing authority receives at least the minimum number of protests required for a public convenience and necessity determination as provided in [section 42 15], an application must be approved when evidence indicates that the issuance of an original license or approval of a change of location will materially promote the ability of individuals with registry identification cards to obtain marijuana cannabis for medical use.

(b) The issuance of a license for a premises or the approval of a change of location will materially promote the ability of individuals with registry identification cards to obtain marijuana cannabis for medical use if:

(i) the applicant's history and experience demonstrate the capacity to operate the proposed premises in a lawful manner;

(ii) the approval of the application for the premises at the proposed location is consistent with the demand or probable demand of individuals with registry identification cards for marijuana cannabis for medical use in the city, town, or county where the proposed premises is located and in areas adjacent to the proposed location;

(iii) the approval of the application contributes to the ability of individuals with registry identification cards to obtain marijuana cannabis for medical use throughout the region where the proposed premises is located; and

(iv) the approval of the application for the premises at the proposed location is consistent with:

(A) adopted planning, annexation, and zoning ordinances of local governments that confer or will confer jurisdiction over business; or

(B) planning, annexation, and zoning ordinances that are under consideration at the time of the hearing or were publicly considered within the year preceding the date of the hearing.

(3) When determining whether an application is justified by public convenience and necessity, the state licensing authority may:

(a) receive evidence at the public hearing specified in [section 12 15] only from the applicant, any protestors whose protests the department has accepted pursuant to [section 12 15], and any other person asked by either the applicant or a protestor to provide evidence;

(b) find that the application is justified by public convenience and necessity if the applicant has provided substantial credible evidence that the state licensing authority's approval of the application will materially promote the ability of individuals with registry identification cards to obtain marijuana cannabis for medical use. The substantial credible evidence required must include a consideration of each of the elements provided in subsection (2)(b).

**NEW SECTION. Section (14) 17. License renewal -- revocation -- suspension.** (1) (a) All licensees shall apply for renewal of any license provided in this bill, grower license or a premises license at least 30 days before the expiration date of the existing license.

(b) An applicant for renewal of a license must meet the licensing criteria established in [sections 8 11, 9-12, and 11 14].

(2) (a) The state licensing authority shall suspend a grower or premises any license if the licensee has not:

- (i) applied for renewal before the expiration date of the existing license; or
- (ii) paid the application or licensing fees required under this chapter.

(b) The state licensing authority shall notify the licensee by the most expedient means available of the suspension and the steps the licensee must take to maintain licensure.

(3) The state licensing authority shall revoke a grower or premises any license if the license has been suspended and the licensee fails to submit an application for renewal or to pay the appropriate fees within 5 business days after receiving notice of the suspension.

(4) (a) The state licensing authority shall revoke a grower or premises any license if the licensee:

- (i) violates any provision of this chapter or an administrative rule adopted pursuant to this chapter; or
- (ii) is convicted of a felony offense after obtaining a license.

(b) A revocation under subsection (4)(a)(i) is subject to an opportunity for a hearing under Title 2, chapter 4, part 6.

**NEW SECTION. Section (15)-18. Inspections.** (1) Except as provided in section 8 11, the state licensing authority shall inspect licensed growers and premises on an annual basis. The inspections must include but are not limited to:

(a) a determination that the cultivation and manufacture of marijuana cannabis for medical use meets agricultural and public health and safety standards established by the state licensing authority in rule;

(b) a comparison of the number of plants and amount of usable marijuana cannabis to the number of individuals with valid registry identification cards who have identified the grower as the person providing marijuana cannabis for medical use;

(c) a determination of whether the number of plants and amount of usable marijuana cannabis the grower is authorized to possess reconcile with the information provided in the quarterly reports required under section 16 19. The determination must take into consideration the number of individuals with valid registry identification cards who have identified the grower as the person providing marijuana cannabis for medical use, based on the information provided by the department to the state licensing authority pursuant to section 8 11.

(d) any other criteria established by the state licensing authority in rule.

(2) In developing administrative rules under this section, the state licensing authority shall consult with the department of agriculture provided for in 2-15-3001 to determine appropriate agricultural standards and with the department to determine appropriate public health and safety standards.

(3) The state licensing authority may contract with the department of agriculture or the department for development of proposed administrative rules or for the inspections required under this section.

(4) The state licensing authority shall establish penalties for violation of agricultural or public health or safety standards, up to and including revocation of a grower or premises license. The state licensing authority shall establish in rule financial penalties to be imposed under this section.

(5) Inspections may not interfere with blackout grow cycles of the grower or provider

**NEW SECTION. Section (16) 19. Required reports -- business fee.** (1) Except as provided in section 8, there is a fee of 10% on a grower's gross sales.

(2)(1) Within 15 days of the end of each calendar quarter, a grower licensee shall submit to the state licensing authority a report on forms prescribed by the department listing information that may include but is not limited to:

- (a) the amount of marijuana cannabis a grower licensee transferred pursuant to section 7.6, the grower licensee to whom the marijuana cannabis was transferred, and the date the transfer occurred;
- (b) a summary of the grower's licensee's production for the calendar quarter;
- (c) a summary of the grower's licensee's inventory on hand at the conclusion of the calendar quarter;
- (d) the amount and types of items sold, including but not limited to the number of plants, the ounces of usable marijuana cannabis, and other marijuana cannabis-related or business-related products;
- (e) the price charged for each item; and
- (f) the registry identification card number of the purchaser and the type and amount of the item sold if the purchase involved:
  - (i) marijuana cannabis plants;
  - (iii) usable marijuana cannabis; or
  - (iv) paraphernalia.

(3) ~~At the time the grower files the report, the grower shall submit a payment equal to 10% of the gross sales for the calendar quarter, less:~~

- ~~(a) one-fourth of the cost of an annual grower or premises license issued to the grower; and~~
- ~~(b) the full cost of a fee paid for a change of location during the calendar quarter.~~

(2) Division of Banking is directed to establish appropriate banking procedures to provide financial deposit accounts for licensees and establish an accepted SIC code for the licensees:

(a) Licensees are protected from federal prosecution for identifying their business as being involved in medical cannabis

(3) State licensing authority may modify reporting procedures

(4) State licensing authority to develop an online reporting system that will provide automatic updates to law enforcement and licensees.

NEW SECTION. Section 20. License Fee Structure – The state licensing authority may assign quarterly fees to be collected by the department based on a schedule that will fund the licensing board and its related activities for one year. License fees will be established for a conditional license, provider license, store front license, grower's license, Infused product manufacturer license, testing facility license, delivery license, and caregiver changes and other categories of license that may be approved by rule.

(1) The annual license fees will be in quarterly payments based on the following criteria:

- a. Conditional licenses not to exceed \$35
  - b. Provider license – based on per patient count at the close of the prior quarter, not to exceed \$15 per patient
  - c. Store Front License - \$1,000 per store front location
  - d. Growers License - \$1,000 per physical grow location where that location has more than 10 registered cards or 60 plants.
  - e. Infused Product Manufacturer - \$1,000 per location
  - f. Testing facility license - \$1,000 per location
  - g. Delivery License - \$100
  - h. Courier License - \$100
  - i. Caregiver Changes - \$10 – per occurrence
- (2) Funds determined by the state licensing authority to be in excess of annual requirements to fund the activities of the licensing board will be added to a state drug education fund to school and public education on the dangers of all medicine that may be found in the home including proper care by patients using any prescribed or recommended medicine.
- (3) Fines resulting from non compliance with this act shall be used for state drug education

**NEW SECTION. Section 21. Medical Cannabis Licensing Board (MCLB) - the state licensing authority will administer the creation and oversight of new a Medical Cannabis Licensing Board and establish the scope of limitations.**

- (1) The responsibilities of the MCLB include the following:
- a. To sanction and regulate licensee education, insuring that caregivers are professional, properly educated and trained, and insure that they adhere to basic levels of professional conduct and ethics.
  - b. To set growing standards with the assistance the Department of Agriculture to insure that all medicine is grown with appropriate protocols and in an acceptable manner.
  - c. Establish guidelines for Provider changes.
  - d. To establish and collect licensing fees. The Fee structure should be sufficient to fund the new Board and regulatory oversight.
  - e. To establish guidelines for a closed loop tracking system

- f. To establish inspection guidelines for licensees and sanction intra-industry inspection teams to include legal compliance, health & safety, grow protocols and product quality with the assistance of the Department of Agriculture.
- g. To establish a protocol to handle intra-industry issues. This would include complaints regarding Standard of Care and product diversion. The Board would also have a mediation alternative for the medical cannabis industry, paid for by the litigants.
- h. To establish a protocol for caregivers to report patients that may be selling medicine to non-patients to DPHHS to investigate potential revocation of the patient's license.
- i. To design and implement a paper and electronically delivered license that displays the type license number and the number of patients registered to that provider or other premises and is available at the end of each month.
- j. Create an online submission and monitor the industry reporting requirements as outlined in this bill.

(2) The MCLB will have (eleven) 11 members including:

- a. 1 Patient with a medical cannabis license that has been active for a minimum two consecutive years.
- b. 1 Physician currently licensed who has made at least 20 medical cannabis recommendations over the preceding two years.
- c. 1 Law Enforcement/DOJ or other legal official
- d. 1 Representative from the State Department of Agriculture
- e. 1 Grower currently licensed with a minimum of two years of caregiver/provider experience who has maintained a minimum of 50 Patients for the preceding two years.
- f. 1 Provider currently licensed with a minimum of two years of caregiver/provider experience who has maintained a minimum of 15 but less than 50 Patients for the preceding two years.
- g. 1 Provider currently licensed with a minimum of two years of caregiver/provider experience who has maintained a minimum of 1 but less than 15 Patients for the preceding two years.
- h. 1 Infused Product Provider.
- i. 1 Store Front Owner currently licensed with a minimum of two years of caregiver/provider experience.
- j. 1 Public Member - Non Patient, Non Provider, Non Medical Practitioners, Non Law Enforcement
- k. 1 Member representing the state licensing authority

(3) License Fees may be adjusted by the state licensing authority collecting no more than 10% greater than the approved budget.

**NEW SECTION. Section (41) 22. Registry card or license to be carried and exhibited on**

**demand -- photo identification required.** (1) A registered cardholder or person licensed or registered pursuant to this chapter shall have the cardholder's registry identification card or the person's license or registration in the person's immediate possession at all times when medical cannabis is being consumed. The person shall display the registry identification card, license, or registration and valid photo identification upon demand of a law enforcement officer, justice of the peace, or city or municipal judge.

(2) A person charged with violating this section may not be convicted if the person produces in court or in the office of the arresting officer a valid registry identification card, license, or registration and photo identification but may be assessed a non-criminal fine.

**NEW SECTION. Section 23. Unlawful conduct by cardholder -- penalties.** (1) The department shall revoke and may not reissue the registry identification card of a person who:

(a) is convicted of a drug trafficking offense; or

(b) allows another person to be in possession of the cardholder's card for any purpose other than a necessary purpose.

(2) A violation of part 1 or 2 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 24. Prohibitions on physician affiliation with medical marijuana cannabis licensees -- sanctions.** (1) (a) A physician may not:

(i) accept or solicit anything of value, including monetary remuneration, from a licensee or registrant or offer anything of value to a licensee or registrant;

(ii) offer a discount or any other thing of value to a person who uses or agrees to use a particular licensee;

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

(iv) hold an economic interest in an enterprise engaged in the medical use of marijuana cannabis if the physician certifies the debilitating medical condition of a person who applies for a registry identification card.

(b) This subsection (1) does not prevent a physician from accepting a fee for providing medical care to a licensee or a registrant if the physician charges the licensee or registrant the same fee as the physician charges other patients for providing a similar level of medical care.

(2) If the department has cause to believe that a physician has violated this section, has violated a provision of rules adopted pursuant to this chapter, 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 review pursuant to 37-1-308.

(3) A violation of this section constitutes unprofessional conduct as set out in 37-1-316. If the board of medical examiners finds that a physician has violated this section, the board shall restrict the physician's authority to provide written certification for the medical use of marijuana cannabis. The board of medical examiners shall notify the department of the sanction.

(4) If the board of medical examiners believes a physician's practices may harm the public health, safety, or welfare, the board may summarily restrict, as provided in 2-4-631, a physician's authority to provide written certification for the medical use of marijuana cannabis.

**NEW SECTION. Section 25. Local government authority to regulate.** (1) To protect the public, health, safety, or welfare, a local government as defined in subsection (4) may by ordinance or resolution regulate a licensee that operates within the local government's jurisdictional area. The regulations may include but are not limited to:

(a) restrictions on number and location;

(b) business licensing requirements;

(c) building codes and standards; and

(d) the inspection of businesses to ensure compliance with any sanitary requirements established by the state licensing authority.

(2) A licensee that is in lawful operation at the time an ordinance, resolution, or licensing requirement is enacted as provided in subsection (1) and that is not in compliance with the ordinance, resolution, or requirement at the time of enactment must be grandfathered.

(3) A local government, including a local government with self-government powers, may not adopt an ordinance or resolution that prohibits the medical use of marijuana cannabis within its jurisdictional area.

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

**NEW SECTION. Section 26. Out of State Patients –Medical Cannabis patients licensed in other States may participate in the Montana medical cannabis program with the following provisions:**

(1) A temporary patient license must be obtained and carried when consuming medical cannabis:

- a. Valid for a period of less than six months
- b. A copy of patient's home state license must be presented to licensing authority a minimum 15 days in advance with an estimate of their time in the state
- c. An Out of State Patient must sign an affidavit as part of the temporary patient license application process that the medicine is for their own consumption while in the State of Montana.
- d. An out of state temporary patient license will be a maximum \$100, and may be adjusted by rule

(2) An out of state patient must register with a Montana licensed provider

- a. All regulations for Montana licensed patients apply to out of state temporary patient licensees.

**NEW SECTION. Section 27. Physician Review**

The Medical Board of Examiners is granted the authority to act on Physician complaints

(1) Against:

- a. Physicians
- b. Entities who may hire physicians.

(2) Require that law enforcement officials file complaints with the Board against any physician they have probable cause to believe has made a medical cannabis recommendation in violation of the Board's Standards of Practice.

(3) Medical Records

- a. If no medical records are available, a physical exam must be completed by the Physician prior to making a recommendation verifying the physical condition that is approved under the act and that the patient may benefit from medical cannabis

**NEW SECTION. Section (17) 28. Rulemaking.** The state licensing authority may adopt rules necessary to carry out the provisions of [Sections 7-6 through 48 29], including but not limited to:

(1) the review of license applications for completeness and conformity with the requirements of this chapter;

(2) the establishment modification of fees for:

(a) issuing and renewing licenses for all licensees and premises;

(b) approving changes of location; and

(c) registering laboratories and manufacturing locations;

(3) the manner in which inspections must be conducted, including provisions for contracting with another state agency to conduct inspections;

(4) recordkeeping rules for growers licensees, including the length of time records related to sales and transfers must be kept;

(5) registration and operational requirements for laboratories and manufacturing locations;

(6) penalties for violations of this chapter, including suspension or revocation of a license; and

(7) the formula to be used in distributing grants to local governments funds from the special revenue account created pursuant to [section 20 31].

**NEW SECTION. Section (18) 29. Special revenue account.** (1) There is an account in the state special revenue fund to the credit of the state licensing authority for the purposes of carrying out its responsibilities under this chapter. The account consists of application fees paid pursuant to [sections 8 11, 9 12, and 40 13], the grower business fee paid pursuant to [section 16-19], and any other fees or penalties paid pursuant to this chapter. Interest earned on the account must be deposited into the account and used to sustain the account.

(2) Revenue from the account must be distributed as follows:

(a) 50% to the state licensing authority to be used for grants to the governing body of a city, town, or county according to a formula based on the number of licensed growers in each city, town, or county; and

(b) 50% to the state licensing authority and the department, as follows:

(i) an amount to the state licensing authority that is sufficient to cover the costs of carrying out the provisions of [Sections 7-6 through 48 29]; and

(ii) the remainder to the department.

(4) Funds in excess of the annual budget distributed to the department must be used for educational programs for schools and the public on physician prescription and recommendations:

a. Distribution of funds for local education will be provided to local jurisdictions based on an application from that jurisdiction for funding. Funding will be based pro-rata share of excess funds not required to operate the licensing agency. Program requests must provide the funding required and objectives of the program. Program results must be provided to the licensing authority.

b. All funds received from fines to licensees must be deposited in the educational fund.

~~(a) home and community-based Medicaid waiver services provided to people who are 65 years of age or older or who are served pursuant to Title 53, chapter 19;~~

~~(b) direct care worker wage increases for employees of:~~

~~(i) providers of home and community-based Medicaid waiver services for people who are 65 years of age or older or who are served pursuant to Title 53, chapter 19;~~

~~(ii) nursing homes; and~~

~~(iii) Medicaid personal assistance services; and~~

~~(c) non-Medicaid services provided by entities designated as area agencies pursuant to 52-3-103.~~

**NEW SECTION. Section (23) 30. Transition.** (1) A person who is registered as a caregiver licensee before January 1, 2012, is protected by the provisions of Title 50, chapter 46, if the person:

(a) applies for licensure under Title 50, chapter 46, at the time the state licensing authority begins accepting applications or no later than January 3, 2012; and

(b) receives licensure within 6 months of submission of the application.

(2) A person who has not applied for licensure on or before January 3, 2012, is not protected by the provisions of Title 50, chapter 46, if the person acquires, possesses, cultivates, manufactures, delivers, transfers, or transports marijuana cannabis or paraphernalia.

**NEW SECTION. Section (24) 31. Codification instruction.** [Sections 7-6 through 48 29] 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 7-6 through 48 29].

**NEW SECTION. Section ~~(25)~~ 32. 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 ~~(26)~~ 33. Effective date.** [This act] is effective January 1, 2012.

- END -

---