

BUSINESS REPORT
MONTANA SENATE
62nd LEGISLATURE - REGULAR SESSION

SENATE JUDICIARY COMMITTEE

Date: Friday, March 25, 2011
Place: Capitol

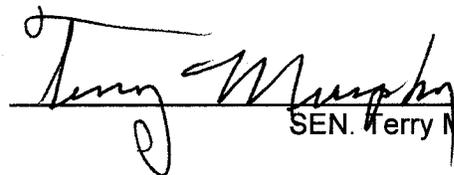
Time: 4:45 P.M.
Room: 405

BILLS and RESOLUTIONS HEARD:

EXECUTIVE ACTION TAKEN:

SB 423-Do Pass As Amended

Comments:



SEN. Terry Murphy, Chair

MONTANA STATE SENATE

ROLL CALL

2011 JUDICIARY COMMITTEE

DATE: 3/25/11 4:45pm.

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT/ EXCUSED</u>
CHAIRMAN, TERRY MURPHY	/	
VICE CHAIRMAN, JIM SHOCKLEY		/
SENATOR JEFF ESSMANN	/	
SENATOR SHANNON AUGARE	/	
SENATOR ANDERS BLEWETT	/	
SENATOR GREG HINKLE	/	
SENATOR ROWLIE HUTTON	/	
SENATOR LARRY JENT	/	
SENATOR CLIFF LARSEN	/	
SENATOR LYNDA MOSS	/	
SENATOR JIM PETERSON		/
SENATOR CHAS VINCENT	/	



SENATE STANDING COMMITTEE REPORT

March 25, 2011

Page 1 of 8

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 423** (first reading copy -- white) **do pass as amended.**

Signed: 
Senator Terry Murphy, Chair

And, that such amendments read:

1. Title, page 1, line 11.

Following: "45-9-127,"

Insert: "45-9-203,"

2. Title, page 1, line 12.

Following: "45-10-107,"

Insert: "50-46-201, 50-46-202,"

Following: "69-1-401, MCA;"

Insert: "REPEALING SECTIONS 50-46-101, 50-46-102, 50-46-103, 50-46-201, 50-46-202, 50-46-205, 50-46-206, 50-46-207, AND 50-46-210, MCA;"

3. Page 3, line 27.

Strike: "person"

Insert: "physician"

4. Page 4, line 11.

Following: "means"

Insert: ", at a minimum"

5. Page 4, line 12.

Following: "physician"

Insert: "or referral physician"

6. Page 4, line 13.

Following: "physician"

Committee Vote:

Yes 10, No 2

Fiscal Note Required

SB0423001SC.sdr

DE

Insert: "or referral physician"

7. Page 4, line 22.

Strike: "a referral physician" through "referral physician"

Insert: "the second physician who"

8. Page 4, line 23.

Following: "certification"

Insert: "for a minor or a qualifying patient whose debilitating medical condition is severe chronic pain"

9. Page 5, line 28.

Following: "family medicine"

Insert: "or internal medicine"

Strike: "gynecology"

Insert: "ophthalmology"

10. Page 8, line 13.

Following: "individual is"

Insert: "in the custody of or"

11. Page 8, line 14.

Following: "corrections"

Insert: ", a district court, a court of limited jurisdiction,"

12. Page 9, line 24.

Following: "physician's"

Insert: "business"

Following: "address"

Insert: ", if any"

13. Page 9, line 29.

Following: "has a"

Insert: "bona fide"

14. Page 10, line 25.

Following: "(4)"

Insert: "(a)"

15. Page 10, line 29.

Insert: "(b) The physician whose practices are under review shall pay the costs of the board's review activities."

16. Page 11, line 4.

Following: "(2)"

Strike: "A violation of"

Insert: "A registered cardholder who violates"

Strike: "\$10,000"

Insert: "\$500"

17. Page 11, line 5.

Strike: "1 year"

Insert: "6 months"

18. Page 13, line 15.

Following: "landlord's"

Insert: "written"

19. Page 13, line 18.

Following: "marijuana"

Insert: ". Except as provided in subsection (2)(b), the cardholder shall keep the marijuana"

20. Page 13, line 19.

Following: "1 ounce"

Insert: "of the cardholder's usable marijuana"

21. Page 14, line 16.

Strike: "\$1,000"

Insert: "\$500"

22. Page 14, line 18.

Strike: "An"

Insert: "Except as provided in [section 14] and subject to the provisions of subsection (7), an"

23. Page 15, line 19.

Following: line 18

Insert: "(7) The provisions of subsection (1) relating to protection from arrest or prosecution do not apply to an individual unless the individual has obtained a registry identification card, license, or registration prior to an arrest or the filing of a criminal charge. It is not a defense to a criminal charge that an individual obtains a registry identification card, license, or registration after an arrest or the filing of a criminal charge."

24. Page 16, line 20.

Strike: "or private health insurer"

Insert: ", a group benefit plan that is covered by the provisions of Title 2, chapter 18, an insurer covered by the provisions of Title 33, or an insurer as defined in 39-71-116"

25. Page 16, line 22.

Following: "marijuana"

Strike: "in any workplace"

26. Page 16.

Following: line 22

Insert: "(5) Nothing in this chapter may be construed to:
(a) prohibit an employer from including in any contract a provision prohibiting the medical use of marijuana; or
(b) permit a cause of action against an employer for wrongful discharge pursuant to 39-2-904 or discrimination pursuant to 49-1-102.

Renumber: subsequent subsections

27. Page 17, line 12.

Strike: "\$1,000"

Insert: "\$500"

Strike: "1 year"

Insert: "6 months"

28. Page 18.

Following: line 8

Insert: "(1)(a) The state licensing authority shall determine the number of licenses to be issued for therapeutic marijuana growers, therapeutic marijuana-infused products manufacturers, and couriers based upon an initial review and periodic reviews of the number of registered cardholders who have indicated to the department that they plan to obtain therapeutic marijuana from a grower or infused-products manufacturer.

(b) Based upon its initial review and periodic reviews of the number of registered cardholders and the resulting need for therapeutic marijuana, the state licensing authority may:

(i) issue temporary licenses; and

(ii) reduce the number of plants, seedlings, cuttings, and clones and the inventory of usable marijuana a grower may cultivate, manufacture, or possess."

Renumber: subsequent subsections

29. Page 21, line 27.

Following: "registrations for"

Insert: "a laboratory as allowed under [section 19] and for"

30. Page 27, line 10.

Following: "individual"

Insert: "who is in the custody of or"

Following: "corrections"

Insert: ", a district court, a court of limited jurisdiction,"

31. Page 44, line 25.

Insert: "**Section 51.** Section 45-9-203, MCA, is amended to read:

"45-9-203. Surrender of license or registry identification card. (1) If a court suspends or revokes a driver's license under 45-9-202(2)(e), the defendant shall, at the time of sentencing, surrender the license to the court. The court shall forward the license and a copy of the sentencing order to the department of

justice. The defendant may apply to the department for issuance of a probationary license under 61-2-302.

(2) If a person with a registry identification card issued pursuant to [section 4] for the therapeutic use of marijuana is convicted of an offense under this chapter, the court shall:

(a) at the time of sentencing, require the person to surrender the registry identification card; and

(b) notify the department of public health and human services of the conviction in order for the department to carry out its duties under [section 6]."

Renumber: subsequent sections

32. Page 45, line 10.

Insert: "Section 54. 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~~ before [the effective date of [section 61(4)]] may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board or the department of labor and industry, if:

(a) the qualifying patient or caregiver acquires, possesses, cultivates, manufactures, delivers, transfers, or transports marijuana not in excess of the amounts allowed in subsection (2); or

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

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

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

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

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

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

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

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

offense.

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

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

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

Insert: "Section 55. Section 50-46-202, MCA, is amended to read:

"50-46-202. Disclosure of confidential information relating to medical use of marijuana -- 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 as necessary to perform official duties of the department; or

(b) state or local law enforcement agencies, only as necessary to verify that a person is a lawful possessor of a registry identification card.

~~(1)~~(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."

Renumber: subsequent sections

33. Page 46, line 22.

Strike: "department of revenue"

Insert: "state licensing authority as defined in [section 2]"

34. Page 47, line 16.

Insert: "NEW SECTION. Section 60. Repealer. The following section of the Montana Code Annotated is repealed: The following

sections of the Montana Code Annotated are repealed:

- 50-46-101. Short title.
- 50-46-102. Definitions.
- 50-46-103. Procedures -- minors -- confidentiality -- report to legislature.
- 50-46-201. Medical use of marijuana -- legal protections -- limits on amount -- presumption of medical use.
- 50-46-202. Disclosure of confidential information relating to medical use of marijuana -- penalty.
- 50-46-205. Limitations of Medical Marijuana Act.
- 50-46-206. Affirmative defense.
- 50-46-207. Fraudulent representation of medical use of marijuana -- penalty.
- 50-46-210. Rulemaking -- fees."

Renumber: subsequent sections

35. Page 48, line 3.

Strike: "September 30"

Insert: "October 1"

36. Page 48, line 5.

Following: ", and"

Strike: "2 ounces"

Insert: "the following amounts of usable marijuana"

Following: "residence"

Insert: ":

- (a) 8 ounces from July 1 through July 31;
- (b) 6 ounces from August 1 through August 31;
- (c) 4 ounces from September 1 through September 30; and
- (d) 2 ounces on or after October 1."

37. Page 48, line 28 and 29.

Strike: section 59 in its entirety

38. Page 48, line 30.

Insert: "NEW SECTION. **Section 63. Instructions to code commissioner.** (1)Wherever a reference to "medical use of marijuana" appears in legislation enacted by the 2011 legislature, the code commissioner is directed to change the reference to "therapeutic use of marijuana".

(2) Wherever a reference to "medical marijuana" appears in legislation enacted by the 2011 legislature, the code commissioner is directed to change the reference to "therapeutic marijuana".

(3) Wherever a reference to 50-46-102 appears in legislation enacted by the 2011 legislature, the reference must be replaced with a reference to [section 2] of Senate Bill No. 423.

(4) Wherever a reference to 50-46-205 appears in legislation enacted by the 2011 legislature, the reference must be replaced

with a reference to [section 14] of Senate Bill No. 423."

Renumber: subsequent sections

39. Page 49, line 8.

Following: "4]"

Insert: " and, except as provided in subsection (4), [section
60]"

Strike: "is"

Insert: "are"

40. Page 49, line 9.

Strike: "[Section 61] is"

Insert: "[Section 59], the repeal of 50-46-103 provided for in
[section 60], [sections 61 and 63], and this section are"

- END -

MONTANA STATE SENATE

ROLL CALL VOTE 2011 JUDICIARY COMMITTEE

DATE 3/25/11 BILL NO SB423 MOTION NO. _____

MOTION: amend. 8,6,4,2 (02s.)

<u>NAME</u>	<u>AYE</u>	<u>NO</u>	<u>If Proxy Vote, check here & include signed Proxy Form with minutes</u>
SENATOR GREG HINKLE		1	
SENATOR LYNDA MOSS	1		
SENATOR CHAS VINCENT	1		
SENATOR LARRY JENT		1	
SENATOR ANDERS BLEWETT	1		
SENATOR SHANNON AUGARE	1		
SENATOR CLIFF LARSEN	1		
SENATOR ROWLIE HUTTON		1	
SENATOR JIM PETERSON	1		1
VICE CHAIRMAN SHOCKLEY	1		1
SENATOR JEFF ESSMANN		1	
CHAIRMAN MURPHY	1		

8/4

MONTANA STATE SENATE

ROLL CALL VOTE 2011 JUDICIARY COMMITTEE

DATE 3/25/11 BILL NO SB423 MOTION NO. 2

MOTION: amend 2,447,89

<u>NAME</u>	<u>AYE</u>	<u>NO</u>	<u>If Proxy Vote, check here & include signed Proxy Form with minutes</u>
SENATOR GREG HINKLE	—		
SENATOR LYNDA MOSS	—		
SENATOR CHAS VINCENT	—		
SENATOR LARRY JENT	—		
SENATOR ANDERS BLEWETT	—		
SENATOR SHANNON AUGARE	—		
SENATOR CLIFF LARSEN	—		
SENATOR ROWLIE HUTTON	—		
SENATOR JIM PETERSON	—		—
VICE CHAIRMAN SHOCKLEY	—		—
SENATOR JEFF ESSMANN	—		
CHAIRMAN MURPHY	—		

MONTANA STATE SENATE

ROLL CALL VOTE 2011 JUDICIARY COMMITTEE

DATE 3/25/11 BILL NO 58423 MOTION NO.

MOTION: amend 11 & 13

<u>NAME</u>	<u>AYE</u>	<u>NO</u>	<u>If Proxy Vote, check here & include signed Proxy Form with minutes</u>
SENATOR GREG HINKLE	—		
SENATOR LYNDA MOSS		—	
SENATOR CHAS VINCENT		—	
SENATOR LARRY JENT	—		
SENATOR ANDERS BLEWETT		—	
SENATOR SHANNON AUGARE		—	
SENATOR CLIFF LARSEN		—	
SENATOR ROWLIE HUTTON	—		
SENATOR JIM PETERSON	—		—
VICE CHAIRMAN SHOCKLEY	—		—
SENATOR JEFF ESSMANN	—		
CHAIRMAN MURPHY		—	

MONTANA STATE SENATE

ROLL CALL VOTE 2011 JUDICIARY COMMITTEE

DATE 3/25/11 BILL NO. SB423 MOTION NO. _____

MOTION: Do Pass As Amended

NAME	AYE	NO	If Proxy Vote, check here & include signed Proxy Form with minutes
SENATOR GREG HINKLE		—	
SENATOR LYNDA MOSS	—		
SENATOR CHAS VINCENT	—		
SENATOR LARRY JENT		—	
SENATOR ANDERS BLEWETT	—		
SENATOR SHANNON AUGARE	—		
SENATOR CLIFF LARSEN	—		
SENATOR ROWLIE HUTTON	—		
SENATOR JIM PETERSON	—		—
VICE CHAIRMAN SHOCKLEY	—		—
SENATOR JEFF ESSMANN	—		
CHAIRMAN MURPHY	—		

10/2

AUTHORIZED SENATE COMMITTEE PROXY

I, Senator Jim Peterson, request to be excused from the

Judiciary COMMITTEE

due to my other commitment. I desire to leave my proxy vote with:

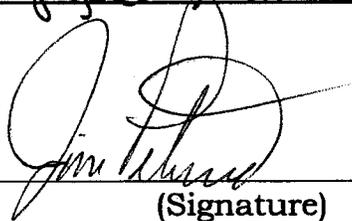
Vice Chair Terry Murphy

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT	AYE	NO
3/25/11		
SB423 (amend)		
P1, 24689 423.01	X	
P1 Sec 3 (ASO)	✓	
P1 Sect 5	X	
P4 Sect 23	X	
- separate	X	
P2, 10, 14, 15, 16, 17, 18	X	
P3, 4 Sec 20, 22, 24	X	
Amendment Concept	X	
P4 Uni 28, 29	X	
P2 Segregated 413	X	

BILL/AMENDMENT	AYE	NO
P3 Sect 21 (Segregated)	X	
P48 Uni 5 (225.)	X	
423.02	X	
423.03	X	
423.01	X	
P11, L 4 & 5	A	
P4 L 12	X	
P4 L 22-26	X	
P5 L 28	X	
P8 L 14	X	
SB423 - Doberman		
Amended	X	

Sen. _____


(Signature)

Date _____

AUTHORIZED SENATE COMMITTEE PROXY

I, Senator Jim Shockley, request to be excused from the

Judiciary COMMITTEE

due to my other commitment. I desire to leave my proxy vote with:

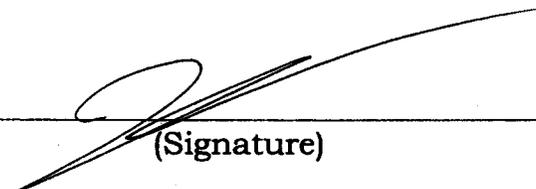
Vice Chair Terry Murphy

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT	AYE	NO
3/25/11		
SB 423 amended		
P1 Sect 246-289	X	
P1 Sect 3 (423.01) qso	X	
P1 Sect 5 P4 Sect 23	X	
REPEALER	X	
P2 Sect 10, 21, 22, 24	X	
P3, 4, Sect 20, 22, 24	X	
ESSMANN CONEP	X	
P4 Sect 28, 29	X	
P2, Sect 11, 13	X	
P3, Sect 21	X	
P48, Line 5 "ounces"	X	
✓ 423.02 qso	X	

BILL/AMENDMENT	AYE	NO
✓ 423.03	X	
✓ 423.01 ave	X	
P 11 line 4, 5	X	
P 4 line 12	X	
P 4 line 22-26	X	
P 5 line 28	X	
P 9 line 14	X	
SB 423 DoRess OS		
amended	X	

Sen. _____



(Signature)

Date

10 JAN 2011

AUTHORIZED SENATE COMMITTEE PROXY

I, Senator Larry Jent, request to be excused from the
Judiciary COMMITTEE
due to my other commitment. I desire to leave my proxy vote with:

Sen. Moss

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

BILL/AMENDMENT	AYE	NO
3/24/11		
HB 379 Balonemah	x	
HB 379 Table	x	
HB 480 Balonemah	x	
HB 14 Balonemah (Rev: Table)		x
HB 457 Balonemah		
SB 157 Table	x	
SB 170 Table	x	

BILL/AMENDMENT	AYE	NO
3/25/11		
SB 423 - amend		
P 3, 4, Sec 20, 22,		
24	x	

Sen. Larry Jent
(Signature)

Date _____

