

1 HOUSE BILL NO. 161

2 INTRODUCED BY M. MILBURN

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING THE MEDICAL MARIJUANA ACT; AMENDING
5 SECTIONS 37-1-136, 45-9-101, 45-9-102, 45-9-103, 45-9-110, 45-9-127, 45-10-103, AND 45-10-107, MCA;
6 REPEALING SECTIONS 50-46-101, 50-46-102, 50-46-103, 50-46-201, 50-46-202, 50-46-205, 50-46-206,
7 50-46-207, AND 50-46-210, MCA; AND PROVIDING AN EFFECTIVE DATE."

8

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

10

11 **Section 1.** Section 37-1-136, MCA, is amended to read:

12 **"37-1-136. Disciplinary authority of boards -- injunctions.** (1) Subject to 37-1-138, each licensing
13 board allocated to the department has the authority, in addition to any other penalty or disciplinary action provided
14 by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

15 (a) revocation of a license;

16 (b) suspension of its judgment of revocation on terms and conditions determined by the board;

17 (c) suspension of the right to practice for a period not exceeding 1 year;

18 (d) placing a licensee on probation;

19 (e) reprimand or censure of a licensee; or

20 (f) taking any other action in relation to disciplining a licensee as the board in its discretion considers
21 proper.22 (2) Any disciplinary action by a board shall be conducted as a contested case hearing under the
23 provisions of the Montana Administrative Procedure Act.24 (3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from
25 engaging in the practice of the occupation or profession regulated by the board until a license to practice is
26 procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.27 ~~(4) An action may not be taken against a person who is in compliance with Title 50, chapter 46.~~28 ~~(5)~~(4) Rules adopted under subsection (1) must provide for the provision of public notice as required by
29 37-1-311."

30

1 **Section 2.** Section 45-9-101, MCA, is amended to read:

2 **"45-9-101. Criminal distribution of dangerous drugs.** (1) ~~Except as provided in Title 50, chapter 46,~~
3 ~~a~~ A person commits the offense of criminal distribution of dangerous drugs if the person sells, barter, exchanges,
4 gives away, or offers to sell, barter, exchange, or give away any dangerous drug, as defined in 50-32-101.

5 (2) A person convicted of criminal distribution of a narcotic drug, as defined in 50-32-101(18)(d), or an
6 opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or
7 more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

8 (3) A person convicted of criminal distribution of a dangerous drug included in Schedule I or Schedule
9 II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction for
10 criminal distribution of such a drug shall be imprisoned in the state prison for a term of not less than 10 years or
11 more than life and may be fined not more than \$50,000, except as provided in 46-18-222. Upon a third or
12 subsequent conviction for criminal distribution of such a drug, the person shall be imprisoned in the state prison
13 for a term of not less than 20 years or more than life and may be fined not more than \$50,000, except as provided
14 in 46-18-222.

15 (4) A person convicted of criminal distribution of dangerous drugs not otherwise provided for in
16 subsection (2), (3), or (5) shall be imprisoned in the state prison for a term of not less than 1 year or more than
17 life or be fined an amount of not more than \$50,000, or both.

18 (5) A person who was an adult at the time of distribution and who is convicted of criminal distribution of
19 dangerous drugs to a minor shall be sentenced as follows:

20 (a) If convicted pursuant to subsection (2), the person shall be imprisoned in the state prison for not less
21 than 4 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

22 (b) If convicted of the distribution of a dangerous drug included in Schedule I or Schedule II pursuant to
23 50-32-222 or 50-32-224 and if previously convicted of such a distribution, the person shall be imprisoned in the
24 state prison for not less than 20 years or more than life and may be fined not more than \$50,000, except as
25 provided in 46-18-222.

26 (c) If convicted of the distribution of a dangerous drug included in Schedule I or Schedule II pursuant to
27 50-32-222 or 50-32-224 and if previously convicted of two or more such distributions, the person shall be
28 imprisoned in the state prison for not less than 40 years or more than life and may be fined not more than
29 \$50,000, except as provided in 46-18-222.

30 (d) If convicted pursuant to subsection (4), the person shall be imprisoned in the state prison for not less

1 than 2 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

2 (6) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a
3 professional practice are exempt from this section."

4

5 **Section 3.** Section 45-9-102, MCA, is amended to read:

6 **"45-9-102. Criminal possession of dangerous drugs.** (1) ~~Except as provided in Title 50, chapter 46,~~
7 ~~a~~ A person commits the offense of criminal possession of dangerous drugs if the person possesses any
8 dangerous drug, as defined in 50-32-101.

9 (2) A person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate
10 weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a
11 misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 and by imprisonment in
12 the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended
13 or deferred sentence. A person convicted of a second or subsequent offense under this subsection is punishable
14 by a fine not to exceed \$1,000 or by imprisonment in the county jail for a term not to exceed 1 year or in the state
15 prison for a term not to exceed 3 years or by both.

16 (3) A person convicted of criminal possession of an anabolic steroid as listed in 50-32-226 is, for the first
17 offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 or by
18 imprisonment in the county jail for not more than 6 months, or both.

19 (4) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), shall be
20 imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more
21 than \$50,000, except as provided in 46-18-222.

22 (5) (a) A person convicted of a second or subsequent offense of criminal possession of
23 methamphetamine shall be punished by:

24 (i) imprisonment for a term not to exceed 5 years or by a fine not to exceed \$50,000, or both; or

25 (ii) commitment to the department of corrections for placement in an appropriate correctional facility or
26 program for a term of not less than 3 years or more than 5 years. If the person successfully completes a
27 residential methamphetamine treatment program operated or approved by the department of corrections during
28 the first 3 years of a term, the remainder of the term must be suspended. The court may also impose a fine not
29 to exceed \$50,000.

30 (b) During the first 3 years of a term under subsection (5)(a)(ii), the department of corrections may place

1 the person in a residential methamphetamine treatment program operated or approved by the department of
 2 corrections or in a correctional facility or program. The residential methamphetamine treatment program must
 3 consist of time spent in a residential methamphetamine treatment facility and time spent in a community-based
 4 prerelease center.

5 (c) The court shall, as conditions of probation pursuant to subsection (5)(a), order:

6 (i) the person to abide by the standard conditions of probation established by the department of
 7 corrections;

8 (ii) payment of the costs of imprisonment, probation, and any methamphetamine treatment by the person
 9 if the person is financially able to pay those costs;

10 (iii) that the person may not enter an establishment where alcoholic beverages are sold for consumption
 11 on the premises or where gambling takes place;

12 (iv) that the person may not consume alcoholic beverages;

13 (v) the person to enter and remain in an aftercare program as directed by the person's probation officer;

14 and

15 (vi) the person to submit to random or routine drug and alcohol testing.

16 (6) A person convicted of criminal possession of dangerous drugs not otherwise provided for in
 17 subsections (2) through (5) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined
 18 an amount not to exceed \$50,000, or both.

19 (7) A person convicted of a first violation under this section is presumed to be entitled to a deferred
 20 imposition of sentence of imprisonment.

21 (8) Ultimate users and practitioners, as defined in 50-32-101, and agents under their supervision acting
 22 in the course of a professional practice are exempt from this section."

23

24 **Section 4.** Section 45-9-103, MCA, is amended to read:

25 **"45-9-103. Criminal possession with intent to distribute.** (1) ~~Except as provided in Title 50, chapter~~

26 ~~46, a~~ A person commits the offense of criminal possession with intent to distribute if the person possesses with
 27 intent to distribute any dangerous drug as defined in 50-32-101.

28 (2) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), with intent to
 29 distribute shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and
 30 may be fined not more than \$50,000, except as provided in 46-18-222.

1 (3) A person convicted of criminal possession with intent to distribute not otherwise provided for in
2 subsection (2) shall be imprisoned in the state prison for a term of not more than 20 years or be fined an amount
3 not to exceed \$50,000, or both.

4 (4) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a
5 professional practice are exempt from this section."

6

7 **Section 5.** Section 45-9-110, MCA, is amended to read:

8 **"45-9-110. Criminal production or manufacture of dangerous drugs.** (1) ~~Except as provided in Title~~

9 ~~50, chapter 46, a~~ A person commits the offense of criminal production or manufacture of dangerous drugs if the
10 person knowingly or purposely produces, manufactures, prepares, cultivates, compounds, or processes a
11 dangerous drug, as defined in 50-32-101.

12 (2) A person convicted of criminal production or manufacture of a narcotic drug, as defined in
13 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of
14 not less than 5 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

15 (3) A person convicted of criminal production or manufacture of a dangerous drug included in Schedule
16 I of 50-32-222 or Schedule II of 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction
17 that has become final for criminal production or manufacture of a Schedule I or Schedule II drug shall be
18 imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more
19 than \$50,000, except as provided in 46-18-222. Upon a third or subsequent conviction that has become final for
20 criminal production or manufacture of a Schedule I or Schedule II drug, the person shall be imprisoned in the
21 state prison for a term of not less than 40 years or more than life and may be fined not more than \$50,000, except
22 as provided in 46-18-222.

23 (4) A person convicted of criminal production or manufacture of marijuana, tetrahydrocannabinol, or a
24 dangerous drug not referred to in subsections (2) and (3) shall be imprisoned in the state prison for a term not
25 to exceed 10 years and may be fined not more than \$50,000, except that if the dangerous drug is marijuana and
26 the total weight is more than a pound or the number of plants is more than 30, the person shall be imprisoned
27 in the state prison for not less than 2 years or more than life and may be fined not more than \$50,000. "Weight"
28 means the weight of the dry plant and includes the leaves and stem structure but does not include the root
29 structure. A person convicted under this subsection who has a prior conviction that has become final for criminal
30 production or manufacture of a drug under this subsection shall be imprisoned in the state prison for a term not

1 to exceed twice that authorized for a first offense under this subsection and may be fined not more than \$100,000.

2 (5) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a
3 professional practice are exempt from this section."

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5 **Section 6.** Section 45-9-127, MCA, is amended to read:

6 **"45-9-127. Carrying dangerous drugs on train -- penalty.** (1) ~~Except as provided in Title 50, chapter~~
7 ~~46, a~~ A person commits the offense of carrying dangerous drugs on a train in this state if the person is knowingly
8 or purposely in criminal possession of a dangerous drug and boards any train.

9 (2) A person convicted of carrying dangerous drugs on a train in this state is subject to the penalties
10 provided in 45-9-102."

11

12 **Section 7.** Section 45-10-103, MCA, is amended to read:

13 **"45-10-103. Criminal possession of drug paraphernalia.** ~~Except as provided in Title 50, chapter 46,~~
14 ~~it~~ It is unlawful for a person to use or to possess with intent to use drug paraphernalia to plant, propagate,
15 cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack,
16 store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug. A
17 person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county
18 jail for not more than 6 months, fined an amount of not more than \$500, or both. A person convicted of a first
19 violation of this section is presumed to be entitled to a deferred imposition of sentence of imprisonment."

20

21 **Section 8.** Section 45-10-107, MCA, is amended to read:

22 **"45-10-107. Exemptions.** Practitioners, as defined in 50-32-101, and agents under their supervision
23 acting in the course of a professional practice ~~and persons in compliance with Title 50, chapter 46,~~ are exempt
24 from this part."

25

26 **NEW SECTION. Section 9. Repealer.** The following sections of the Montana Code Annotated are
27 repealed:

28 50-46-101. Short title.

29 50-46-102. Definitions.

30 50-46-103. Procedures -- minors -- confidentiality -- report to legislature.

- 1 50-46-201. Medical use of marijuana -- legal protections -- limits on amount -- presumption of medical use.
- 2 50-46-202. Disclosure of confidential information relating to medical use of marijuana -- penalty.
- 3 50-46-205. Limitations of Medical Marijuana Act.
- 4 50-46-206. Affirmative defense.
- 5 50-46-207. Fraudulent representation of medical use of marijuana -- penalty.
- 6 50-46-210. Rulemaking -- fees.

7

8 NEW SECTION. **Section 10. Effective date.** [This act] is effective July 1, 2011.

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