

HOUSE BILL NO. 429

INTRODUCED BY T. BERRY

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MEDICAL MARIJUANA ACT TO ESTABLISH
5 PROCEDURES FOR OBTAINING APPROVAL FOR THE MEDICAL USE OF MARIJUANA; REQUIRING A
6 PHYSICIAN'S AFFIDAVIT AND A COURT ORDER FOR THE MEDICAL USE OF MARIJUANA; ELIMINATING
7 THE ISSUANCE OF REGISTRY IDENTIFICATION CARDS BY THE STATE; PROHIBITING THE USE OF
8 TELEMEDICINE; ALLOWING BLOOD TESTS FOR INDIVIDUALS SUSPECTED OF DRIVING UNDER THE
9 INFLUENCE; REVISING DEFINITIONS; EXPANDING THE LIMITATIONS ON MEDICAL USE; AMENDING
10 SECTIONS 37-3-343, 37-3-347, 50-46-102, 50-46-103, 50-46-201, 50-46-205, AND 50-46-207, MCA;
11 REPEALING SECTIONS 50-46-202, 50-46-206, AND 50-46-210, MCA; AND PROVIDING AN EFFECTIVE
12 DATE."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15
16 **Section 1.** Section 37-3-343, MCA, is amended to read:

17 **"37-3-343. Practice of telemedicine prohibited without license -- scope of practice limitations --**
18 **violations and penalty.** (1) A physician may not practice telemedicine in this state without a telemedicine license
19 issued pursuant to 37-3-301, 37-3-341 through 37-3-345, and 37-3-347 through 37-3-349.

20 (2) A telemedicine license authorizes an out-of-state physician to practice telemedicine only with respect
21 to the specialty in which the physician is board-certified or meets the current requirements to take the examination
22 to become board-certified and on which the physician bases the physician's application for a telemedicine license
23 pursuant to 37-3-345(2).

24 (3) A telemedicine license authorizes an out-of-state physician to practice only telemedicine. A
25 telemedicine license does not authorize the physician to engage in the practice of medicine while physically
26 present within the state.

27 (4) A telemedicine license may not be used by a physician as a means to obtain the information required
28 under 50-46-103 for the physician affidavit that a person will use to petition a court for authorization for the
29 medical use of marijuana.

30 ~~(4)~~(5) A physician who practices telemedicine in this state without a telemedicine license issued pursuant

1 to 37-3-301, 37-3-341 through 37-3-345, and 37-3-347 through 37-3-349, in violation of the terms or conditions
 2 of that license, in violation of the scope of practice allowed by the license, or without a physician's license issued
 3 pursuant to 37-3-301, is guilty of a misdemeanor and on conviction shall be sentenced as provided in 37-3-325."

4

5 **Section 2.** Section 37-3-347, MCA, is amended to read:

6 **"37-3-347. Reasons for denial of license -- alternative route to licensed practice.** (1) The board may
 7 deny an application for a telemedicine license if the applicant:

8 (a) fails to demonstrate that the applicant possesses the qualifications for a license required by 37-3-341
 9 through 37-3-345 and 37-3-347 through 37-3-349 and the rules of the board;

10 (b) plans to use telemedicine as a means of obtaining the information required under 50-46-103 for the
 11 physician affidavit that a person will use to petition a court for the medical use of marijuana;

12 (b)(c) fails to pay a required fee;

13 (c)(d) does not possess the qualifications or character required by this chapter; or

14 (d)(e) has committed unprofessional conduct.

15 (2) A physician who does not meet the qualifications for a telemedicine license provided in 37-3-345 may
 16 apply for a physician's license in order to practice medicine in Montana."

17

18 **Section 3.** Section 50-46-102, MCA, is amended to read:

19 **"50-46-102. Definitions.** As used in this chapter, the following definitions apply:

20 (1) (a) "Caregiver" means an individual, 18 years of age or older who has ~~agreed to undertake~~
 21 ~~responsibility for managing the well-being of a person with respect to the medical use of marijuana. A qualifying~~
 22 ~~patient may have only one caregiver at any one time~~ been named in a court order as the individual who will
 23 cultivate, manufacture, deliver, transfer, or transport marijuana for a person who has obtained a court order
 24 allowing the person to engage in the medical use of marijuana.

25 (b) The term does not include the ~~qualifying patient's~~ physician who provides the affidavit for a person
 26 petitioning a court for the medical use of marijuana.

27 (2) "Debilitating medical condition" means:

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

30 ~~— (b) a chronic or debilitating disease or medical condition or its treatment that produces one or more of~~

1 the following:

2 ~~_____ (i) cachexia or wasting syndrome;~~

3 ~~_____ (ii) severe or chronic pain;~~

4 ~~_____ (iii) severe nausea;~~

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

6 ~~_____ (v) severe or persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis~~

7 ~~or Crohn's disease; or~~

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

9 a medical condition determined by a physician to be debilitating for the person diagnosed with the condition.

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

11 ~~(4)(3) "Marijuana" has the meaning provided in 50-32-101.~~

12 ~~(5)(4) "Medical use" means:~~

13 (a) the acquisition, possession, cultivation, manufacture, delivery, transfer, or transportation of marijuana

14 or paraphernalia by a ~~qualifying patient~~ person or a caregiver named in a court order relating to the consumption

15 of marijuana to alleviate the symptoms or effects of ~~a qualifying patient's~~ the person's debilitating medical

16 condition;

17 (b) the use of marijuana or paraphernalia by a ~~qualifying patient~~ person with a court order to alleviate

18 the symptoms or effects of the ~~patient's~~ person's debilitating medical condition; or

19 (c) the use of paraphernalia by a caregiver for the cultivation, manufacture, delivery, transfer, or

20 transportation of marijuana for use by ~~a qualifying patient~~ the person with the court order allowing medical use

21 of marijuana.

22 ~~(6)(5) "Paraphernalia" has the meaning provided in 45-10-101.~~

23 ~~(7)(6) "Physician" means a person who is licensed under Title 37, chapter 3.~~

24 ~~(8) "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating~~

25 ~~medical condition.~~

26 ~~(9) "Registry identification card" means a document issued by the department that identifies a person~~

27 ~~as a qualifying patient or caregiver.~~

28 (7) (a) "Resident" means a person who meets the requirements of 1-1-215.

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

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

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

2 ~~(10)(8)~~ (a) "Usable marijuana" means the dried leaves and flowers of marijuana and any mixture or
3 preparation of marijuana.

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

5 ~~(11) "Written certification" means a qualifying patient's medical records or a statement signed by a
6 physician stating that in the physician's professional opinion, after having completed a full assessment of the
7 qualifying patient's medical history and current medical condition made in the course of a bona fide
8 physician-patient relationship, the qualifying patient has a debilitating medical condition and the potential benefits
9 of the medical use of marijuana would likely outweigh the health risks for the qualifying patient."~~

10

11 **Section 4.** Section 50-46-103, MCA, is amended to read:

12 **"50-46-103. Procedures -- minors -- confidentiality -- report to legislature penalty for physician**
13 **perjury.** ~~(1) The department shall establish and maintain a program for the issuance of registry identification
14 cards to persons who meet the requirements of this chapter.~~

15 ~~(2) Except as provided in subsection (3), the department shall issue a registry identification card to a
16 qualifying patient who submits the following, in accordance with department rules:~~

17 ~~—— (a) written certification that the person is a qualifying patient;~~

18 ~~—— (b) an application or renewal fee;~~

19 ~~—— (c) the name, address, and date of birth of the qualifying patient;~~

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

21 ~~—— (e) the name, address, and date of birth of the qualifying patient's caregiver, if any.~~

22 (1) A resident with a debilitating medical condition may engage in the medical use of marijuana if the
23 person obtains an affidavit from the persons's treating physician and an order from a district court that exempts
24 the person from prosecution under Title 45, chapter 9, if the person possesses and uses marijuana as provided
25 in this chapter.

26 (2) The affidavit from the person's treating physician must:

27 (a) state that the physician is the person's treating physician and that the person has been under the
28 physician's medical care and supervision;

29 (b) confirm that the person suffers from a debilitating medical condition;

30 (c) describe the debilitating medical condition, why the condition is debilitating, and the extent to which

1 it is debilitating;

2 (d) describe the medications, procedures, and other medical options used to treat the condition;

3 (e) state that the medications, procedures, or other medical options have not been effective;

4 (f) state that the physician has a reasonable degree of certainty that the person's debilitating medical
5 condition would be alleviated by the medical use of marijuana and that, as a result, the patient would be likely to
6 benefit from the medical use of marijuana;

7 (g) list restrictions on the person's activities due to the medical use of marijuana;

8 (h) specify the time period for which the medical use of marijuana would be appropriate, up to a
9 maximum of 1 year; and

10 (i) state that the physician will:

11 (i) continue to serve as the person's treating physician; and

12 (ii) supervise the person's medical use of marijuana and evaluate the efficacy of the treatment.

13 (3) The affidavit may describe the forms of usable marijuana that are most appropriate for use by the
14 person, based on the person's medical condition.

15 (4) A physician who provides false information on the affidavit may be prosecuted for perjury. A
16 conviction under this subsection is punishable by imprisonment in the state prison for a term not to exceed 10
17 years, a fine of up to \$50,000, or both.

18 (5) A person who has obtained an affidavit from the person's treating physician may petition the district
19 court having jurisdiction in the county where the person lives for a court order to exempt the person from
20 prosecution under Title 45, chapter 9, if the person is in compliance with the provisions of this chapter and the
21 terms of a court order issued pursuant to this chapter.

22 ~~(3) The department shall issue a registry identification card to a minor if the materials required under~~
23 ~~subsection (2) are submitted and the minor's custodial parent or legal guardian with responsibility for health care~~
24 ~~decisions signs and submits a written statement that:~~

25 ~~—— (a) the minor's physician has explained to the minor and to the minor's custodial parent or legal guardian~~
26 ~~with responsibility for health care decisions the potential risks and benefits of the medical use of marijuana; and~~

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

28 ~~—— (i) consents to the medical use of marijuana by the minor;~~

29 ~~—— (ii) agrees to serve as the minor's caregiver; and~~

30 ~~—— (iii) agrees to control the acquisition of marijuana and the dosage and frequency of the medical use of~~

1 marijuana by the minor:

2 ~~—— (4) (a) The department shall issue a registry identification card to the caregiver who is named in a~~
 3 ~~qualifying patient's approved application if the caregiver signs a statement:~~

4 ~~—— (i) agreeing to provide marijuana only to qualifying patients who have named the applicant as caregiver;~~
 5 ~~and~~

6 ~~—— (ii) acknowledging that possession of the registry identification card does not allow the caregiver to~~
 7 ~~engage in the use of marijuana or to use paraphernalia for any purpose other than cultivating, manufacturing,~~
 8 ~~delivering, transferring, or transporting marijuana for medical use by a qualifying patient.~~

9 ~~—— (b) The department may not issue a registry identification card to a proposed caregiver who has~~
 10 ~~previously been convicted of a felony drug offense.~~

11 ~~—— (c) A caregiver may receive reasonable compensation for services provided to assist with a qualifying~~
 12 ~~patient's medical use of marijuana:~~

13 (6) (a) A petition for a court order allowing the medical use of marijuana must contain:

14 (i) the petitioner's name, date of birth, and street address;

15 (ii) the name and date of birth of the individual who will serve as the person's caregiver, if any;

16 (iii) the original copy of the physician's affidavit required under this section; and

17 (iv) the filing fee required by the court.

18 (b) If the petitioner is naming an individual to serve as the person's caregiver, the petition must contain
 19 the street address of the residence of the proposed caregiver or of the location where the caregiver will cultivate
 20 or manufacture the marijuana if the cultivation or manufacture will take place at a location other than the
 21 caregiver's residence. If a street address does not exist for the caregiver's residence or the location, the petition
 22 must contain a physical description of the caregiver's residence or of the location where the marijuana will be
 23 cultivated or manufactured.

24 (7) (a) A court may grant the petition without a hearing.

25 (b) If the court determines that a hearing on the petition is required, the court shall mail a copy of the
 26 notice at least 14 days before the time set for the hearing. The notice must be addressed to the petitioner at the
 27 address provided in the petition. Proof that the notice was mailed must be made on or before the hearing and filed
 28 in the record of the proceeding.

29 (8) An order issued under this section to allow the medical use of marijuana may allow the person and
 30 the person's caregiver to each possess up to six plants and 1 ounce of usable marijuana. The order:

- 1 (a) may specify lesser amounts; and
- 2 (b) shall limit medical use to the forms of usable marijuana listed in the physician's affidavit, if any.
- 3 (9) A court may not issue an order allowing a person's medical use of marijuana if the person is under
4 the supervision of the department of corrections or a youth court.
- 5 (10) If the order is granted, the court shall provide a copy of the order to the person petitioning for medical
6 use and to the proposed caregiver if the caregiver meets the requirements of this section.
- 7 (11) A court may not approve the caregiver named in a person's petition if the proposed caregiver:
- 8 (a) is not a resident;
- 9 (b) has been convicted of a felony offense;
- 10 (c) is under the supervision of the department of corrections or a youth court; or
- 11 (d) does not meet the requirements of subsection (12).
- 12 (12) A caregiver may be a caregiver for only one person with a court order unless the caregiver is
13 simultaneously caring for two or more persons who have obtained court orders for medical use of marijuana and
14 who are related to the caregiver by the second degree of kinship by blood or marriage.
- 15 (13) A caregiver may not be compensated for:
- 16 (a) usable marijuana, marijuana plants, or paraphernalia provided to a person with a court order; or
- 17 (b) any service the caregiver provides related to the medical use of marijuana.
- 18 (14) (a) A person with a court order allowing the medical use of marijuana and the caregiver named in
19 the person's court order may cultivate and manufacture marijuana only at a property that is owned, rented, or
20 leased solely by the caregiver or the person with the court order.
- 21 (b) No portion of the property used for cultivation and manufacture of marijuana for medical use by a
22 person with a court order or that person's caregiver may be shared with or rented or leased to another caregiver
23 or person with a court order unless the persons with the court order are related to the second degree of kinship
24 by blood or marriage.
- 25 ~~(5) (a) The department shall verify the information contained in an application or renewal submitted~~
26 ~~pursuant to this section and shall approve or deny an application or renewal within 15 days of receipt of the~~
27 ~~application or renewal.~~
- 28 ~~(b) The department may deny an application or renewal only if the applicant did not provide the~~
29 ~~information required pursuant to this section, the department determines that the information was falsified, or the~~
30 ~~applicant is not qualified to receive a registry identification card under the provisions of this chapter. Rejection~~

1 of an application or renewal is considered a final department action, subject to judicial review:

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

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

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

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

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

9 ~~(7)(15) A person who has been issued a registry identification card~~ court order allowing the medical use
 10 of marijuana shall notify the department file an affidavit with the court to notify the court of any change in the
 11 qualifying patient's person's name, address, physician, or caregiver or change in status of the qualifying patient's
 12 person's debilitating medical condition within 10 days of the change. If a change occurs and is not reported to the
 13 department court, the registry identification card court order is void.

14 ~~(8)(16) The department shall maintain a confidential list of the persons to whom the department has~~
 15 ~~issued registry identification cards. Individual names and other identifying information on the list~~ petition,
 16 physician's affidavit, any other supporting documentation, and court order must be confidential and are not subject
 17 to disclosure, except may be provided to:

18 ~~(a) authorized employees of the department as necessary to perform official duties of the department;~~
 19 ~~or~~

20 ~~—— (b) authorized employees of state or local law enforcement agencies, only as necessary to:~~ verify that
 21 a person is a lawful possessor of a registry identification card

22 (a) determine whether the person who is the subject of a marijuana-related complaint has a court order
 23 allowing the medical use of marijuana; or

24 (b) confirm that a valid court order exists if a person states that the person is allowed to engage in the
 25 medical use of marijuana under a court order issued pursuant to this chapter but is not in possession of the court
 26 order.

27 ~~(9) The department shall report annually to the legislature the number of applications for registry~~
 28 ~~identification cards, the number of qualifying patients and caregivers approved, the nature of the debilitating~~
 29 ~~medical conditions of the qualifying patients, the number of registry identification cards revoked, and the number~~
 30 ~~of physicians providing written certification for qualifying patients. The department may not provide any identifying~~

1 information of qualifying patients, caregivers, or physicians.

2 (17) A person seeking renewal of a court order allowing the medical use of marijuana shall follow the
3 provisions of this section."

4

5 **Section 5.** Section 50-46-201, MCA, is amended to read:

6 **"50-46-201. Medical use of marijuana -- legal protections -- limits on amount --~~presumption of~~**

7 **~~medical use.~~** (1) A person who possesses or is named as a caregiver in a registry identification card court order
8 issued pursuant to 50-46-103 may not be arrested, prosecuted, or penalized in any manner or be denied any right
9 or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board or the
10 department of labor and industry; if:

11 (a) the ~~qualifying patient~~ person or caregiver acquires, possesses, cultivates, manufactures, delivers,
12 transfers, or transports usable marijuana not in excess of the amounts allowed ~~in subsection (2)~~ under the court
13 order; or

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

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

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

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

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

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

24 ~~(4)(2)~~ A physician may not be arrested, prosecuted, or penalized in any manner or be denied any right
25 or privilege, including but not limited to civil penalty or disciplinary action by the board of medical examiners or
26 the department of labor and industry, solely for providing ~~written certification~~ the affidavit required under
27 50-46-103 for a person petitioning for the medical use of marijuana ~~to qualifying patients.~~

28 ~~(5)(3)~~ An interest in or right to property that is possessed, owned, or used in connection with the medical
29 use of marijuana or acts incidental to medical use may not be forfeited under any provision of law providing for
30 the forfeiture of property other than as a sentence imposed after conviction of a criminal offense.

1 ~~(6)~~(4) A person may not be subject to arrest or prosecution for constructive possession, conspiracy, as
 2 provided in 45-4-102, or other provisions of law or any other offense for simply being in the presence or vicinity
 3 of the medical use of marijuana as permitted under this chapter.

4 ~~(7)~~(5) Possession of or ~~application~~ a petition for a registry identification card court order does not alone
 5 constitute probable cause to search the person or property of the person possessing or applying for the ~~registry~~
 6 ~~identification card court order~~ or otherwise subject the person or property of the person possessing or applying
 7 for the ~~card court order~~ to inspection by any governmental agency, including a law enforcement agency.

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

11

12 **Section 6.** Section 50-46-205, MCA, is amended to read:

13 **"50-46-205. Limitations of Medical Marijuana Act.** (1) This chapter does not permit:

14 (a) any person to operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or
 15 motorboat while under the influence of marijuana;

16 (b) the use of marijuana by a caregiver; or

17 (c) the ~~smoking~~ medical use of marijuana in the following locations by a ~~qualifying patient~~ person with
 18 a court order allowing medical use:

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

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

21 ~~(ii)~~(iii) on any school grounds or in any property owned by a school district or a postsecondary school or
 22 leased by a school district or postsecondary school when the property is being used for school-related purposes;

23 ~~(iii)~~(iv) in any correctional facility; ~~or~~

24 ~~(iv)~~(v) at any public park, public beach, public recreation center, or youth center;

25 (vi) in or on the property of any church, synagogue, or other place of worship; or

26 (vii) in plain view of the public.

27 (2) A law enforcement officer who suspects that a person with a court order issued pursuant to this
 28 chapter is driving under the influence of marijuana may apply for a search warrant to require the person to provide
 29 a sample of the person's blood for testing pursuant to the provisions of 61-8-405. A person with a
 30 tetrahydrocannabinol (THC) level of 3.5 ng/ml may be charged with a violation of 61-8-401.

- 1 ~~(2)~~(3) Nothing in this chapter may be construed to require:
- 2 (a) a government medical assistance program or private health insurer to reimburse a person for costs
- 3 associated with the medical use of marijuana; ~~or~~
- 4 (b) an employer to accommodate the medical use of marijuana ~~in any workplace;~~
- 5 (c) a school or a postsecondary school to allow a person with a court order allowing medical use of
- 6 marijuana to participate in extracurricular activities; or
- 7 (d) a landlord to allow a tenant to engage in the medical use of marijuana.
- 8 (4) An employment policy prohibiting drug use constitutes good cause in a wrongful discharge action
- 9 brought pursuant to Title 39, chapter 2, part 9.

10 ~~(3)~~(5) Nothing in this chapter may be construed to allow a caregiver to use marijuana or to prevent

11 criminal prosecution of a caregiver who uses marijuana or paraphernalia for the caregiver's personal use."

12

13 **Section 7.** Section 50-46-207, MCA, is amended to read:

14 **"50-46-207. Fraudulent representation of medical use of marijuana -- penalty.** (1) A person commits

15 the offense of fraudulent representation of medical use of marijuana if the person knowingly or purposely:

- 16 (a) fabricates or misrepresents a ~~registry identification card~~ court order to a law enforcement officer; or
- 17 (b) allows another individual to use the person's court order to obtain, use, or sell marijuana.

18 (2) A person convicted of fraudulent representation of medical use of marijuana shall be fined an amount

19 not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

20

21 NEW SECTION. Section 8. Repealer. The following sections of the Montana Code Annotated are

22 repealed:

23 50-46-202. Disclosure of confidential information relating to medical use of marijuana -- penalty.

24 50-46-206. Affirmative defense.

25 50-46-210. Rulemaking -- fees.

26

27 NEW SECTION. Section 9. Transition. A person who is in possession of a valid registry identification

28 card on [the effective date of this act] is subject to the requirements of [this act] when the person's card is due

29 for renewal.

30

