

SENATE BILL NO. 154

INTRODUCED BY D. LEWIS

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING LICENSURE OF AND ESTABLISHING A

5 REGULATORY STRUCTURE FOR PERSONS WHO ACQUIRE, POSSESS, CULTIVATE, SELL, DELIVER,

6 TRANSFER, OR TRANSPORT MARIJUANA FOR MEDICAL USE FOR A PERSON OTHER THAN

7 THEMSELVES; ESTABLISHING LICENSING PROCEDURES AND FEES FOR GROWERS AND FOR

8 PREMISES WHERE MARIJUANA FOR MEDICAL USE IS CULTIVATED OR WHERE OTHER ACTIVITIES

9 INVOLVING THE MEDICAL USE OF MARIJUANA OCCUR; CREATING EXCEPTIONS FOR PARENTS OF

10 MINOR CHILDREN WHO ARE REGISTERED FOR MEDICAL USE OF MARIJUANA; REQUIRING PUBLIC

11 NOTICE OF AND OPPORTUNITY TO PROTEST APPLICATIONS TO LICENSE PREMISES OR CHANGE THE

12 LOCATION OF LICENSED PREMISES; ESTABLISHING INSPECTION AND REPORTING REQUIREMENTS;

13 ESTABLISHING A FEE ON SALES OF MARIJUANA FOR MEDICAL USE; CREATING A SPECIAL REVENUE

14 ACCOUNT; PROVIDING RULEMAKING AUTHORITY; ESTABLISHING A TRANSITION PERIOD; AMENDING

15 SECTIONS 50-46-102, 50-46-103, 50-46-201, 50-46-205, 50-46-206, AND 50-46-210, MCA; AND PROVIDING

16 A DELAYED EFFECTIVE DATE."

17

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

19

20 **Section 1.** Section 50-46-102, MCA, is amended to read:

21 **"50-46-102. Definitions.** As used in this chapter, the following definitions apply:

22 ~~(1) (a) "Caregiver" means an individual, 18 years of age or older who has agreed to undertake~~

23 ~~responsibility for managing the well-being of a person with respect to the medical use of marijuana. A qualifying~~

24 ~~patient may have only one caregiver at any one time.~~

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

26 ~~(2)~~(1) "Debilitating medical condition" means:

27 (a) cancer, glaucoma, or positive status for human immunodeficiency virus, acquired immune deficiency

28 syndrome, or the treatment of these conditions;

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

30 the following:

- 1 (i) cachexia or wasting syndrome;
- 2 (ii) severe or chronic pain;
- 3 (iii) severe nausea;
- 4 (iv) seizures, including but not limited to seizures caused by epilepsy; or
- 5 (v) severe or persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis
- 6 or Crohn's disease; or
- 7 (c) any other medical condition or treatment for a medical condition adopted by the department by rule.
- 8 ~~(3)~~(2) "Department" means the department of public health and human services provided for in
- 9 2-15-2201.
- 10 (3) (a) "Grower" means an individual 18 years of age or older who has agreed to cultivate marijuana for
- 11 medical use and undertake other activities involving the medical use of marijuana for a person with a valid registry
- 12 identification card.
- 13 (b) The term does not include the physician providing care or written certification for the person with the
- 14 registry identification card.
- 15 (4) "Marijuana" has the meaning provided in 50-32-101.
- 16 (5) "Medical use" means:
- 17 (a) the acquisition, possession, cultivation, manufacture, delivery, transfer, or transportation of marijuana
- 18 or paraphernalia by a qualifying patient or a ~~caregiver~~ grower relating to the consumption of marijuana to alleviate
- 19 the symptoms or effects of a qualifying patient's debilitating medical condition;
- 20 (b) the use of marijuana or paraphernalia by a qualifying patient to alleviate the symptoms or effects of
- 21 the patient's debilitating medical condition; or
- 22 (c) the use of paraphernalia by a ~~caregiver~~ grower for the cultivation, manufacture, delivery, transfer, or
- 23 transportation of marijuana for use by a qualifying patient.
- 24 (6) "Paraphernalia" has the meaning provided in 45-10-101.
- 25 (7) (a) "Person" means an individual, partnership, association, company, corporation, limited liability
- 26 company, or organization.
- 27 (b) The term includes the manager, agent, owner, director, servant, officer, or employee of a partnership,
- 28 association, company, corporation, limited liability company, or organization.
- 29 ~~(7)~~(8) "Physician" means a person who is licensed under Title 37, chapter 3.
- 30 (9) "Premises" means the physical building or property within or upon which a licensed grower cultivates

1 marijuana for medical use or undertakes other activities involving the medical use of marijuana.

2 ~~(8)~~(10) "Qualifying patient" means a person who has been diagnosed by a physician as having a  
3 debilitating medical condition.

4 ~~(9)~~(11) "Registry identification card" means a document issued by the department that identifies a person  
5 as a qualifying patient ~~or caregiver~~.

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

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

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

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

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

11 ~~(40)~~(14) (a) "Usable marijuana" means the dried leaves and flowers of marijuana and any mixture or  
12 preparation of marijuana.

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

14 ~~(44)~~(15) "Written certification" means a qualifying patient's medical records or a statement signed by a  
15 physician stating that in the physician's professional opinion, after having completed a full assessment of the  
16 qualifying patient's medical history and current medical condition made in the course of a bona fide  
17 physician-patient relationship, the qualifying patient has a debilitating medical condition and the potential benefits  
18 of the medical use of marijuana would likely outweigh the health risks for the qualifying patient."  
19

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

21 **"50-46-103. Procedures -- minors -- confidentiality -- report to legislature.** (1) The department shall  
22 establish and maintain a program for the issuance of registry identification cards to persons who meet the  
23 requirements of this chapter.

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

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

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

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

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

30 ~~(e)~~(v) the name, street address, and date of birth of the qualifying patient's ~~caregiver~~ grower, if any.

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

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

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

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

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

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

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

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

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

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

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

19 (c) A grower named by a custodial parent or legal guardian to provide marijuana for medical use for a  
20 minor with a valid registry identification card may not engage in any direct transaction with the minor.

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

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

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

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

30 ~~———— (c) A caregiver may receive reasonable compensation for services provided to assist with a qualifying~~

1 ~~patient's medical use of marijuana.~~

2 (5) (a) The department shall verify the information contained in an application or renewal submitted  
3 pursuant to this section and shall approve or deny an application or renewal within 15 days of receipt of the  
4 application or renewal.

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

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

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

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

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

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

16 (7) A person who has been issued a registry identification card shall notify the department of any change  
17 in the qualifying patient's name, address, physician, or ~~caregiver~~ grower or change in status of the qualifying  
18 patient's debilitating medical condition within 10 days of the change. If a change occurs and is not reported to the  
19 department, the registry identification card is void.

20 (8) The department shall maintain a confidential list of the persons to whom the department has issued  
21 registry identification cards. Individual names and other identifying information on the list must be confidential and  
22 are not subject to disclosure, except to:

23 (a) authorized employees of the department as necessary to perform official duties of the department;

24 ~~or~~

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

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

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

28 or

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

1 (9) The department shall report annually to the legislature the number of applications for registry  
 2 identification cards, the number of qualifying patients and ~~caregivers~~ approved, the nature of the debilitating  
 3 medical conditions of the qualifying patients, the number of registry identification cards revoked, and the number  
 4 of physicians providing written certification for qualifying patients. The department may not provide any identifying  
 5 information of qualifying patients, ~~caregivers~~, or physicians."  
 6

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

8 **"50-46-201. Medical use of marijuana -- legal protections -- limits on amount -- presumption of**  
 9 **medical use.** (1) A person who possesses a registry identification card issued pursuant to 50-46-103 or a license  
 10 issued pursuant to this chapter may not be arrested, prosecuted, or penalized in any manner or be denied any  
 11 right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board  
 12 or the department of labor and industry, if:

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

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

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

18 (b) A qualifying patient may not possess more than 1 ounce of usable marijuana.

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

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

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

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

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

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

1 patients.

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

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

8 (7) ~~Possession~~ Except as provided in [section 15], possession of or application for a registry identification  
9 card or a grower or premises license does not alone constitute probable cause to search the person or property  
10 of the person possessing or applying for the registry identification card or grower license or otherwise subject the  
11 person or property of the person possessing or applying for the card or license to inspection by any governmental  
12 agency, including a law enforcement agency.

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

17

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

19 **"50-46-205. Limitations of Medical Marijuana Act.** (1) This chapter does not permit:

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

22 (b) the use of marijuana by a ~~caregiver~~ grower; or

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

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

25 (ii) on any school grounds;

26 (iii) in any correctional facility; or

27 (iv) at any public park, public beach, public recreation center, or youth center.

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

29 (a) a government medical assistance program or private health insurer to reimburse a person for costs  
30 associated with the medical use of marijuana; or

1 (b) an employer to accommodate the medical use of marijuana in any workplace.

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

5

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

7 **"50-46-206. Affirmative defense.** Except as provided in 50-46-205, it is an affirmative defense to any  
8 criminal offense involving marijuana that the person charged with the offense:

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

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

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

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

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

23

24 **Section 6.** Section 50-46-210, MCA, is amended to read:

25 **"50-46-210. Rulemaking -- fees.** (1) The department shall adopt rules necessary for the implementation  
26 and administration of this chapter. The rules ~~must address~~ may include but are not limited to the manner in which  
27 the department will:

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

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



1 chapter.

2 (2) The department's rules must establish application and renewal fees that generate revenue sufficient  
3 to offset ~~at the department's~~ expenses of implementing and administering this chapter. The department may vary  
4 the application and renewal fees along a sliding scale that accounts for a qualifying patient's income."  
5

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

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

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

12 (2) A grower may not:

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

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

17 (3) A grower may not allow on the premises licensed pursuant to [section 9] the consumption of  
18 marijuana acquired, cultivated, manufactured, delivered, transferred, transported, or sold for medical use.

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

21 (b) The grower transferring the marijuana and each grower receiving marijuana from that grower shall:

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

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

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

28 (5) A grower who also holds a license for a premises may provide a small amount of marijuana cultivated  
29 on the premises to a laboratory that is registered pursuant to rules adopted by the state licensing authority.  
30

- 1            **NEW SECTION. Section 8. Grower license -- requirements -- -- exception -- fees.** (1) The state  
2 licensing authority may issue a grower license that authorizes a person to cultivate marijuana for medical use and  
3 undertake other activities involving the medical use of marijuana by individuals with valid registry identification  
4 cards who have indicated that the applicant will act as the individuals' grower for the purposes of this chapter.
- 5            (2) A person applying for a grower license shall:
- 6            (a) submit proof that the person is a resident;
- 7            (b) provide the street address of the proposed premises;
- 8            (c) sign a statement:
- 9            (i) agreeing to provide marijuana only to individuals with valid registry identification cards who have  
10 named the applicant as their grower; and
- 11            (ii) acknowledging that possession of the license does not allow the applicant to engage in the use of  
12 marijuana or to use paraphernalia for any purpose other than cultivating, manufacturing, delivering, transferring,  
13 or transporting marijuana for medical use by a person with a valid registry identification card unless the applicant  
14 also has a valid registry identification card; and
- 15            (d) except as provided in subsection (4), submit fingerprints to facilitate a fingerprint and background  
16 check by the department of justice and the federal bureau of investigation. An applicant who has previously  
17 submitted fingerprints for state licensing purposes may request that the fingerprints on file be used.
- 18            (3) (a) Except as provided in subsection (3)(b), each applicant for a license shall pay:
- 19            (i) an application fee of \$25;
- 20            (ii) the costs of the background check required under subsection (2) or (4); and
- 21            (iii) a license fee as set by the department in rule.
- 22            (b) The state licensing authority may waive the license fee or establish a lower license fee for an  
23 individual meeting the requirements of subsection (4)(a).
- 24            (4) (a) The state licensing authority shall acquire a state name-based criminal history record check for  
25 an individual who is applying for a grower license and is:
- 26            (i) the custodial parent or legal guardian of a minor who has a valid registry identification card; and  
27            (ii) acting as a grower only for the minor.
- 28            (b) An individual who meets the requirements of subsection (4)(a) is exempt from the requirements of  
29 [sections 9, 10, 12, 15, and 16].
- 30            (5) A grower who also holds a license for a premises may employ an individual to work at the licensed

1 premises only if the individual has applied for and received a grower's license after meeting the requirements of  
 2 [section 11] and this section. The grower shall provide the state licensing authority with the names of all  
 3 individuals employed at the licensed premises.

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

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

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

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

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

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

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

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

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

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

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

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

23

24 **NEW SECTION. Section 9. Licensing of premises.** (1)(a) Except as provided in subsection (1)(b), a  
 25 grower may not cultivate marijuana for medical use or undertake other allowable activities related to medical use  
 26 of marijuana at a premises that is not licensed by the state licensing authority. A grower applying to license a  
 27 premises shall submit:

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

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

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

2 (b) A grower may transport or transfer marijuana for medical use in order to deliver the marijuana to a  
3 person with a valid registry identification card or to other licensed growers pursuant to [section 7].

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

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

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

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

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

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

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

16

17 **NEW SECTION. Section 10. Change of location of licensed premises.** (1) A grower holding a license  
18 for a premises may apply to the state licensing authority to change the location of the licensed premises to  
19 different premises within the city, town, or county in which the license was granted if:

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

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

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

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

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

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

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

2

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

6 (a) the qualifications of the person applying for the license; and

7 (b) the suitability of the premises proposed for licensing.

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

9 (a) has been a Montana resident for less than 1 year;

10 (b) is under the supervision of the department of corrections or a youth court;

11 (c) has violated any provision of this chapter; or

12 (d) has been convicted of a felony offense unless:

13 (i) the person has successfully completed the terms of the sentence imposed for the felony offense and  
14 is no longer under the supervision of the state; and

15 (ii) the conviction was not for:

16 (A) a felony drug offense in Montana or another state; or

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

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

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

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

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

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

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

30 (d) (i) within 600 feet of and on the same street as a building used exclusively as a church, synagogue,

1 or other place of worship, as a school, or as a postsecondary school as defined in 20-5-402. This distance must  
 2 be measured in a straight line from the center of the nearest entrance of the place of worship, school, or  
 3 postsecondary school to the nearest entrance of the licensee's premises.

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

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

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

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

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

12

13 **NEW SECTION. Section 12. Notice of application -- investigation -- publication -- protest.** (1) When  
 14 a person files an application to license a premises or to change the location of a licensed premises, the state  
 15 licensing authority shall review the application for completeness. Based upon review of the application and any  
 16 other information supplied to the state licensing authority, the state licensing authority shall determine whether  
 17 the applicant and the premises to be licensed meet the criteria provided in this chapter.

18 (2) (a) Except as provided in [section 8], when the state licensing authority determines that an application  
 19 for a license for a premises or a change of location for a licensed premises is complete, the state licensing  
 20 authority shall publish in a newspaper of general circulation in the city, town, or county where an applicant  
 21 proposes to license the premises a notice of the application to license a premises or to change the location of  
 22 a licensed premises. The notice must state that protests may be made by residents of the city, town, or county  
 23 where the applicant proposes to license the premises.

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

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

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

30 NOTICE OF APPLICATION TO LICENSE A PREMISES FOR MEDICAL USE OF MARIJUANA OR FOR

1 A CHANGE OF LOCATION FOR A LICENSED PREMISES

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

11 Dated .....

12 Signed

13 .....

14 ADMINISTRATOR

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

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

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

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

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

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

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

1 in [section 10]; or

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

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

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

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

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

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

18  
19 **NEW SECTION. Section 13. Determination of public convenience and necessity.** (1) The state  
20 licensing authority may approve a license for a premises or a change of location for a licensed premises if the  
21 state licensing authority does not receive the minimum number of protests required for a public convenience and  
22 necessity determination pursuant to [section 12]. Failure to obtain the minimum number of protests required for  
23 a public convenience and necessity determination must be regarded as a prima facie showing of public  
24 convenience and necessity, and no further determination of public convenience and necessity is allowed.

25 (2) (a) If the state licensing authority receives at least the minimum number of protests required for a  
26 public convenience and necessity determination as provided in [section 12], an application must be approved  
27 when evidence indicates that the issuance of an original license or approval of a change of location will materially  
28 promote the ability of individuals with registry identification cards to obtain marijuana for medical use.

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



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

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

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

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

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

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

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

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

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

22

23 **NEW SECTION. Section 14. License renewal -- revocation -- suspension.** (1) (a) A grower shall  
24 apply for renewal of a grower license or a premises license at least 30 days before the expiration date of the  
25 existing license.

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

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

29 (i) applied for renewal before the expiration date of the existing license; or

30 (ii) paid the application or licensing fees required under this chapter.

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

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

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

7 (i) violates any provision of this chapter or an administrative rule adopted pursuant to this chapter; or

8 (ii) is convicted of a felony offense after obtaining a license.

9 (b) A revocation under subsection (4)(a)(i) is subject to an opportunity for a hearing under Title 2, chapter  
10 4, part 6.

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

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

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

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

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

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

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

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

4  
 5 **NEW SECTION. Section 16. Required reports -- business fee.** (1) Except as provided in [section 8],  
 6 there is a fee of 10% on a grower's gross sales.

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

9 (a) the amount of marijuana a grower transferred pursuant to [section 7], the grower to whom the  
 10 marijuana was transferred, and the date the transfer occurred;

11 (b) a summary of the grower's production for the calendar quarter;

12 (c) a summary of the grower's inventory on hand at the conclusion of the calendar quarter;

13 (d) the amount and types of items sold, including but not limited to the number of plants, the ounces of  
 14 usable marijuana, and other marijuana-related or business-related products;

15 (e) the price charged for each item; and

16 (f) the registry identification card number of the purchaser and the type and amount of the item sold if  
 17 the purchase involved:

18 (i) marijuana plants;

19 (ii) usable marijuana; or

20 (iii) paraphernalia.

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

23 (a) one-fourth of the cost of an annual grower or premises license issued to the grower; and

24 (b) the full cost of a fee paid for a change of location during the calendar quarter.

25  
 26 **NEW SECTION. Section 17. Rulemaking.** The state licensing authority may adopt rules necessary to  
 27 carry out the provisions of [sections 7 through 18], including but not limited to:

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

30 (2) the establishment of fees for:

- 1 (a) issuing and renewing licenses for growers and premises;
- 2 (b) approving changes of location; and
- 3 (c) registering laboratories;
- 4 (3) the manner in which inspections must be conducted, including provisions for contracting with another
- 5 state agency to conduct inspections;
- 6 (4) recordkeeping rules for growers, including the length of time records related to sales and transfers
- 7 must be kept;
- 8 (5) registration and operational requirements for laboratories;
- 9 (6) penalties for violations of this chapter, including suspension or revocation of a license; and
- 10 (7) the formula to be used in distributing grants to local governments from the special revenue account
- 11 created pursuant to [section 18].
- 12

13 **NEW SECTION. Section 18. Special revenue account.** (1) There is an account in the state special

14 revenue fund to the credit of the state licensing authority for the purposes of carrying out its responsibilities under

15 this chapter. The account consists of application fees paid pursuant to [sections 8, 9, and 10], the grower

16 business fee paid pursuant to [section 16], and any other fees or penalties paid pursuant to this chapter. Interest

17 earned on the account must be deposited into the account and used to sustain the account.

- 18 (2) Revenue from the account must be distributed as follows:
- 19 (a) 50% to the state licensing authority to be used for grants to the governing body of a city, town, or
- 20 county according to a formula based on the number of licensed growers in each city, town, or county; and
- 21 (b) 50% to the state licensing authority and the department, as follows:
- 22 (i) an amount to the state licensing authority that is sufficient to cover the costs of carrying out the
- 23 provisions of [sections 7 through 18]; and
- 24 (ii) the remainder to the department.
- 25 (3) Funds distributed to the department must be used for:
- 26 (a) home and community-based medicaid waiver services provided to people who are 65 years of age
- 27 or older or who are served pursuant to Title 53, chapter 19;
- 28 (b) direct-care worker wage increases for employees of:
- 29 (i) providers of home and community-based medicaid waiver services for people who are 65 years of
- 30 age or older or who are served pursuant to Title 53, chapter 19;

- 1 (ii) nursing homes; and  
2 (iii) medicaid personal assistance services; and  
3 (c) nonmedicaid services provided by entities designated as area agencies pursuant to 52-3-103.  
4

5 **NEW SECTION. Section 19. Transition.** (1) A person who is registered as a caregiver before January  
6 1, 2012, is protected by the provisions of Title 50, chapter 46, if the person:

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

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

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

13  
14 **NEW SECTION. Section 20. Codification instruction.** [Sections 7 through 18] are intended to be  
15 codified as an integral part of Title 50, chapter 46, and the provisions of Title 50, chapter 46, apply to [sections  
16 7 through 18].

17  
18 **NEW SECTION. Section 21. Severability.** If a part of [this act] is invalid, all valid parts that are  
19 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
20 the part remains in effect in all valid applications that are severable from the invalid applications.

21

22 **NEW SECTION. Section 22. Effective date.** [This act] is effective January 1, 2012.

23

- END -