

SENATE BILL NO. 406

INTRODUCED BY R. DRISCOLL

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA MARIJUANA ACT; CODIFYING THE DISTRICT COURT DECISION OF JANUARY 6, 2015; ALLOWING USE OF MARIJUANA FOR POSTTRAUMATIC STRESS DISORDER; ESTABLISHING FEES FOR PROVIDERS AND MARIJUANA-INFUSED PRODUCTS PROVIDERS; AMENDING SECTIONS 50-46-301, 50-46-302, 50-46-303, 50-46-308, AND 50-46-344, MCA; REPEALING SECTION 50-46-341, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 50-46-301, MCA, is amended to read:

"50-46-301. Short title -- purpose. (1) This part may be cited as the "Montana Marijuana Act".

(2) The purpose of this part is to:

(a) provide legal protections to persons with debilitating medical conditions who engage in the use of marijuana to alleviate the symptoms of the debilitating medical condition;

(b) allow for the ~~limited~~ cultivation, manufacture, sale, delivery, and possession of marijuana as permitted by this part by persons who obtain registry identification cards;

(c) allow individuals to assist ~~a limited number of~~ registered cardholders with the cultivation and manufacture of marijuana or marijuana-infused products;

(d) establish reporting requirements for production of marijuana and marijuana-infused products and inspection requirements for premises; and

(e) give local governments a role in establishing standards for the cultivation, manufacture, and use of marijuana that protect the public health, safety, and welfare of residents within their jurisdictions."

Section 2. Section 50-46-302, MCA, is amended to read:

"50-46-302. Definitions. As used in this part, the following definitions apply:

(1) "Correctional facility or program" means a facility or program that is described in 53-1-202 and to which a person may be ordered by any court of competent jurisdiction.

- 1 (2) "Debilitating medical condition" means:
- 2 (a) cancer, glaucoma, positive status for human immunodeficiency virus, or acquired immune deficiency
- 3 syndrome when the condition or disease results in symptoms that seriously and adversely affect the patient's
- 4 health status;
- 5 (b) cachexia or wasting syndrome;
- 6 (c) severe chronic pain that is persistent pain of severe intensity that significantly interferes with daily
- 7 activities as documented by the patient's treating physician and by:
- 8 (i) objective proof of the etiology of the pain, including relevant and necessary diagnostic tests that may
- 9 include but are not limited to the results of an x-ray, computerized tomography scan, or magnetic resonance
- 10 imaging; or
- 11 (ii) confirmation of that diagnosis from a second physician who is independent of the treating physician
- 12 and who conducts a physical examination;
- 13 (d) intractable nausea or vomiting;
- 14 (e) epilepsy or an intractable seizure disorder;
- 15 (f) multiple sclerosis;
- 16 (g) Crohn's disease;
- 17 (h) painful peripheral neuropathy;
- 18 (i) a central nervous system disorder resulting in chronic, painful spasticity or muscle spasms;
- 19 (j) posttraumatic stress disorder;
- 20 ~~(j)(k)~~ admittance into hospice care in accordance with rules adopted by the department; or
- 21 ~~(k)(l)~~ any other medical condition or treatment for a medical condition approved by the legislature.
- 22 (3) "Department" means the department of public health and human services provided for in 2-15-2201.
- 23 (4) "Local government" means a county, a consolidated government, or an incorporated city or town.
- 24 (5) "Marijuana" has the meaning provided in 50-32-101.
- 25 (6) (a) "Marijuana-infused product" means a product that contains marijuana and is intended for use by
- 26 a registered cardholder by a means other than smoking.
- 27 (b) The term includes but is not limited to edible products, ointments, and tinctures.
- 28 (7) (a) "Marijuana-infused products provider" means a Montana resident who meets the requirements
- 29 of this part and who has applied for and received a registry identification card to manufacture and provide
- 30 marijuana-infused products for a registered cardholder.

- 1 (b) The term does not include the cardholder's treating or referral physician.
- 2 (8) "Mature marijuana plant" means a harvestable female marijuana plant that is flowering.
- 3 (9) "Paraphernalia" has the meaning provided in 45-10-101.
- 4 (10) (a) "Provider" means a Montana resident 18 years of age or older who is authorized by the
5 department to assist a registered cardholder as allowed under this part.
- 6 (b) The term does not include the cardholder's treating physician or referral physician.
- 7 (11) "Referral physician" means a person who:
- 8 (a) is licensed under Title 37, chapter 3;
- 9 (b) has an established office in Montana; and
- 10 (c) is the physician to whom a patient's treating physician has referred the patient for physical
11 examination and medical assessment.
- 12 (12) "Registered cardholder" or "cardholder" means a Montana resident with a debilitating medical
13 condition who has received and maintains a valid registry identification card.
- 14 (13) "Registered premises" means the location at which a provider or marijuana-infused products provider
15 has indicated the person will cultivate or manufacture marijuana for a registered cardholder.
- 16 (14) "Registry identification card" means a document issued by the department pursuant to 50-46-303
17 that identifies a person as a registered cardholder, provider, or marijuana-infused products provider.
- 18 (15) (a) "Resident" means an individual who meets the requirements of 1-1-215.
- 19 (b) An individual is not considered a resident for the purposes of this part if the individual:
- 20 (i) claims residence in another state or country for any purpose; or
- 21 (ii) is an absentee property owner paying property tax on property in Montana.
- 22 (16) "Second degree of kinship by blood or marriage" means a mother, father, brother, sister, son,
23 daughter, spouse, grandparent, grandchild, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law,
24 daughter-in-law, grandparent-in-law, grandchild-in-law, stepfather, stepmother, stepbrother, stepsister, stepson,
25 stepdaughter, stepgrandparent, or stepgrandchild.
- 26 (17) "Seedling" means a marijuana plant that has no flowers and is less than 12 inches in height and 12
27 inches in diameter.
- 28 (18) "Standard of care" means, at a minimum, the following activities when undertaken by a patient's
29 treating physician or referral physician if the treating physician or referral physician is providing written certification
30 for a patient with a debilitating medical condition:

- 1 (a) obtaining the patient's medical history;
- 2 (b) performing a relevant and necessary physical examination;
- 3 (c) reviewing prior treatment and treatment response for the debilitating medical condition;
- 4 (d) obtaining and reviewing any relevant and necessary diagnostic test results related to the debilitating
- 5 medical condition;
- 6 (e) discussing with the patient and ensuring that the patient understands the advantages, disadvantages,
- 7 alternatives, potential adverse effects, and expected response to the recommended treatment;
- 8 (f) monitoring the response to treatment and possible adverse effects; and
- 9 (g) creating and maintaining patient records that remain with the physician.
- 10 (19) "Treating physician" means a person who:
- 11 (a) is licensed under Title 37, chapter 3;
- 12 (b) has an established office in Montana; and
- 13 (c) has a bona fide professional relationship with the person applying to be a registered cardholder.
- 14 (20) (a) "Usable marijuana" means the dried leaves and flowers of the marijuana plant and any mixtures
- 15 or preparations of the dried leaves and flowers that are appropriate for the use of marijuana by a person with a
- 16 debilitating medical condition.
- 17 (b) The term does not include the seeds, stalks, and roots of the plant.
- 18 (21) "Written certification" means a statement signed by a treating physician or referral physician that
- 19 meets the requirements of 50-46-310 and is provided in a manner that meets the standard of care."
- 20

21 **Section 3.** Section 50-46-303, MCA, is amended to read:

- 22 **"50-46-303. Department responsibilities -- issuance of cards -- confidentiality -- reports.** (1) (a)
- 23 The department shall establish and maintain a program for the issuance of registry identification cards to Montana
- 24 residents who:
- 25 (i) have debilitating medical conditions and who submit applications meeting the requirements of this
- 26 part; and
- 27 (ii) are named as providers or marijuana-infused products providers by persons who obtain registry
- 28 identification cards for their debilitating medical conditions.
- 29 (b) Persons who obtain registry identification cards are authorized to cultivate, manufacture, possess,
- 30 and transport marijuana as allowed by this part.

1 (2) The department shall conduct criminal history background checks as required by 50-46-307 and
2 50-46-308 before issuing a registry identification card for a person named as a provider or marijuana-infused
3 products provider.

4 (3) Registry identification cards issued pursuant to this part must:

5 (a) be laminated and produced on a material capable of lasting for the duration of the time period for
6 which the card is valid;

7 (b) state the name, address, and date of birth of the registered cardholder and of the cardholder's
8 provider or marijuana-infused products provider, if any;

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

10 (d) contain a unique identification number;

11 (e) easily identify whether the card is for a person with a debilitating medical condition, a provider, or a
12 marijuana-infused products provider; and

13 (f) contain other information that the department may specify by rule.

14 (4) (a) The department shall review the information contained in an application or renewal submitted
15 pursuant to this part and shall approve or deny an application or renewal within 30 days of receiving the
16 application or renewal and all related application materials.

17 (b) The department shall issue a registry identification card within 5 days of approving an application or
18 renewal.

19 (5) Rejection of an application or renewal is considered a final department action, subject to judicial
20 review.

21 (6) (a) Registry identification cards expire 1 year after the date of issuance unless:

22 (i) a physician has provided a written certification stating that a card is valid for a shorter period of time;

23 or

24 (ii) a registered cardholder changes providers or marijuana-infused products providers.

25 (b) A provider's or marijuana-infused products provider's registry identification card expires at the time
26 the department issues a card to a new provider or new marijuana-infused products provider named by a
27 registered cardholder.

28 (7) A registered cardholder shall notify the department of any change in the cardholder's name, address,
29 physician, provider, or marijuana-infused products provider or change in the status of the cardholder's debilitating
30 medical condition within 10 days of the change. If a change occurs and is not reported to the department, the

1 registry identification card is void.

2 (8) The department shall maintain a confidential list of persons to whom the department has issued
3 registry identification cards. Except as provided in subsection (9), individual names and other identifying
4 information on the list must be confidential and are not subject to disclosure, except to:

5 (a) authorized employees of the department as necessary to perform the official duties of the department;
6 and

7 (b) authorized employees of state or local government agencies, including law enforcement agencies,
8 only as necessary to verify that an individual is a lawful possessor of a registry identification card.

9 (9) The department shall provide the names of providers and marijuana-infused products providers to
10 the local law enforcement agency having jurisdiction in the area in which the providers or marijuana-infused
11 products providers are located. The law enforcement agency and its employees are subject to the confidentiality
12 requirements of 50-46-332.

13 ~~(10) (a) The department shall provide the board of medical examiners with the name of any physician
14 who provides written certification for 25 or more patients within a 12-month period. The board of medical
15 examiners shall review the physician's practices in order to determine whether the practices meet the standard
16 of care.~~

17 ~~———— (b) The physician whose practices are under review shall pay the costs of the board's review activities.~~

18 ~~(11)~~(10) The department shall report biannually to the legislature the number of applications for registry
19 identification cards, the number of registered cardholders approved, the nature of the debilitating medical
20 conditions of the cardholders, the number of providers and marijuana-infused products providers approved, the
21 number of registry identification cards revoked, the number of physicians providing written certification for
22 registered cardholders, and the number of written certifications each physician has provided. The report may not
23 provide any identifying information of cardholders, physicians, providers, or marijuana-infused products providers.

24 ~~(12)~~(11) The board of medical examiners shall report annually to the legislature on:

25 ~~———— (a) the number and types of complaints the board has received involving physician practices in providing
26 written certification for the use of marijuana, pursuant to 37-3-203; and~~

27 ~~———— (b) the number of physicians whose names were provided to the board by the department as required
28 under subsection (10). The report must include information on whether a physician whose practices were
29 reviewed by the board pursuant to subsection (10) met the standard of care when providing written certifications."~~

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1 **Section 4.** Section 50-46-308, MCA, is amended to read:

2 **"50-46-308. Provider types -- requirements -- limitations -- activities.** (1) The department shall issue
3 a registry identification card to or renew a card for the person who is named as a provider or marijuana-infused
4 products provider in a registered cardholder's approved application if the person submits to the department:

5 (a) the person's name, date of birth, and street address on a form prescribed by the department;

6 (b) proof that the person is a Montana resident;

7 (c) fingerprints to facilitate a fingerprint and background check by the department of justice and the
8 federal bureau of investigation;

9 (d) a written agreement signed by the registered cardholder that indicates whether the person will act
10 as the cardholder's provider or marijuana-infused products provider;

11 (e) a statement, on a form prescribed by the department, that the person will not divert to any other
12 person the marijuana that the person cultivates or manufactures for a registered cardholder;

13 (f) a statement acknowledging that the person will cultivate and manufacture marijuana for the registered
14 cardholder at only one location as provided in subsection ~~(7)~~ (5). The location must be identified by street
15 address.

16 (g) a fee as determined by the department to cover the costs of the fingerprint and background check
17 and associated administrative costs of processing the registration.

18 (2) The department may not register a person under this section if the person:

19 (a) has a felony conviction or a conviction for a drug offense;

20 (b) is in the custody of or under the supervision of the department of corrections or a youth court;

21 (c) has been convicted of a violation under 50-46-331;

22 (d) has failed to:

23 (i) pay any taxes, interest, penalties, or judgments due to a government agency;

24 (ii) stay out of default on a government-issued student loan;

25 (iii) pay child support; or

26 (iv) remedy an outstanding delinquency for child support or for taxes or judgments owed to a government
27 agency; or

28 (e) is a registered cardholder who has designated a provider or marijuana-infused products provider in
29 the person's application for a card issued under 50-46-307.

30 ~~(3) (a) (i) A provider or marijuana-infused products provider may assist a maximum of three registered~~

1 cardholders.

2 ~~—— (ii) A person who is registered as both a provider and a marijuana-infused products provider may assist~~
3 ~~no more than three registered cardholders.~~

4 ~~—— (b) If the provider or marijuana-infused products provider is a registered cardholder, the provider or~~
5 ~~marijuana-infused products provider may assist a maximum of two registered cardholders other than the provider~~
6 ~~or marijuana-infused products provider.~~

7 ~~(4) A provider or marijuana-infused products provider may accept reimbursement from a cardholder only~~
8 ~~for the provider's application or renewal fee for a registry identification card issued under this section.~~

9 ~~(5)(3)~~ Marijuana for use pursuant to this part must be cultivated and manufactured in Montana.

10 ~~(6)(4)~~ A provider or marijuana-infused products provider may not:

11 ~~—— (a) accept anything of value, including monetary remuneration, for any services or products provided to~~
12 ~~a registered cardholder;~~

13 ~~—— (b) buy or sell mature marijuana plants, seedlings, cuttings, clones, usable marijuana, or~~
14 ~~marijuana-infused products; or~~

15 ~~—— (c) use marijuana unless the person is also a registered cardholder.~~

16 ~~(7)(5)~~ (a) A person registered under this section may cultivate and manufacture marijuana for use by a
17 registered cardholder only at one of the following locations:

18 (i) a property that is owned by the provider or marijuana-infused products provider;

19 (ii) with written permission of the landlord, a property that is rented or leased by the provider or
20 marijuana-infused products provider; or

21 (iii) a property owned, leased, or rented by the registered cardholder pursuant to the provisions of
22 50-46-307.

23 (b) No portion of the property used for cultivation and manufacture of marijuana may be shared with or
24 rented or leased to another provider or marijuana-infused products provider or another registered cardholder."

25

26 **Section 5.** Section 50-46-344, MCA, is amended to read:

27 **"50-46-344. Rulemaking authority -- fees.** (1) The department shall adopt rules necessary for the
28 implementation and administration of this part. The rules must include but are not limited to:

29 (a) the manner in which the department will consider applications for registry identification cards for
30 providers and marijuana-infused products providers and for persons with debilitating medical conditions and

- 1 renewal of registry identification cards;
- 2 (b) the acceptable forms of proof of Montana residency;
- 3 (c) the procedures for obtaining fingerprints for the fingerprint and background check required under
- 4 50-46-307 and 50-46-308;
- 5 (d) other rules necessary to implement the purposes of this part.
- 6 (2) (a) The department's rules must establish application and renewal fees that generate revenue
- 7 sufficient to offset all expenses of implementing and administering this part.
- 8 (b) Providers and marijuana-infused products providers shall pay an annual fee of \$100."
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10 **NEW SECTION. Section 6. Repealer.** The following section of the Montana Code Annotated is

11 repealed:

12 50-46-341. Advertising prohibited.

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14 **NEW SECTION. Section 7. Effective date.** [This act] is effective on passage and approval.

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- END -