Amendments to Senate Bill No. 423
3rd Reading Copy

Requested by Representative Cary Smith

For the House Human Services Committee

Prepared by Sue O'Connell
April 6, 2011 (10:32am)

1. Title, page 1, line 5.
Strike: "THERAPEUTIC"

2. Title, page 1, line 6.
Strike: "SYSTEM OF LICENSING"
Insert: "REGISTRY PROGRAM"

3. Title, page 1, line 7 through line 9.
Strike: "FOR" on line 7 through "USE" on line 8
Insert: "BY CERTAIN INDIVIDUALS"
Strike: "CREATING" on line 8 through "ACCOUNT;" on line 9

4. Title, page 1, line 10 through line 11.
Strike: "37-1-101, 37-1-136"
Following: "41-5-216,"
Strike: "45-9-101" on line 10 through "50-46-202," on line 11
Insert: "45-9-203"

5. Page 1, line 14.
Insert: "WHEREAS, the state of Montana understands that manufacturing, distributing, or dispensing a controlled substance or possessing a controlled substance with intent to manufacture, distribute, or dispense the substance is a violation of the federal Controlled Substances Act; and

WHEREAS, marijuana is listed as a Schedule I controlled substance under that act; and

WHEREAS, by allowing the limited use of marijuana under the Montana Marijuana Act, the state of Montana does not condone the commission of a criminal violation of the federal Controlled Substances Act."

6. Page 1, line 17.
Strike: everything after the enacting clause
Insert: "NEW SECTION. **Section 1. Short title -- purpose.** (1) [Sections 1 through 17] may be cited as the "Montana Marijuana Act".

(2) The purpose of [sections 1 through 17] is to:

(a) provide legal protections to individuals 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, delivery, and possession of marijuana as permitted by [sections 1 through 17] by people who obtain registry identification cards;

and

(c) 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."

Insert: "NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 17], the following definitions apply:

(1)"Debilitating medical condition" means a medical condition determined by a physician to be debilitating for the person diagnosed with the condition.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Local government" means a county, a consolidated government, or an incorporated city or town.

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

(5) "Mature marijuana plant" means a harvestable female marijuana plant that is flowering.

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

(7) "Physician" means a person who is licensed under Title 37, chapter 3, and has an established office located in Montana.

(8)(a) "Provider" means a Montana resident 18 years of age or older who is authorized by the department to cultivate, manufacture, possess, or transport marijuana for use by a registered cardholder.

(b) The term does not include the cardholder's physician.

(9) "Registry identification card" means a document issued by the department pursuant to [section 3] that identifies a person as a registered cardholder or provider.

(10) "Registered cardholder" or "cardholder" means a Montana resident with a debilitating medical condition who has received and maintains a valid registry identification card.

(11) "Resident" means an individual who meets the requirements of 1-1-215.

(b) An individual is not considered a resident for the purposes of [sections 1 through 17] if the individual:

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

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

(12) "Seedling" means a marijuana plant that has no flowers and is less than 12 inches in height and 12 inches in diameter.

(13) "Standard of care" means the standard established by rule by the board of medical examiners.

(14) "Usable marijuana" means the dried leaves and flowers of the marijuana plant and any mixtures or preparations of the dried leaves and flowers that are appropriate for the use of marijuana by a person with a debilitating medical condition.

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

(15) "Written certification" means a statement signed by a treating physician that meets the requirements of [section 6] and is provided in a manner that meets the standard of care."

Insert: "NEW SECTION. **Section 3. Department responsibilities -- issuance of cards -- confidentiality -- reports.**(1) (a) The

department shall establish and maintain a program for the issuance of registry identification cards to Montana residents who:

(i) have debilitating medical conditions and who submit applications meeting the requirements of [sections 1 through 17]; and

(ii) are named as providers by persons who obtain registry identification cards for their debilitating medical conditions.

(b) Individuals who obtain registry identification cards are authorized to cultivate, manufacture, possess, and transport marijuana as allowed by [sections 1 through 17].

(2) The department shall conduct criminal history background checks as required by [sections 4 and 5] before issuing a registry identification card for a person named as a provider.

(3) Registry identification cards issued pursuant to [sections 1 through 17] must:

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

(b) state the name, address, and date of birth of the registered cardholder and of the cardholder's provider, if any;

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

(c) contain a unique identification number;

(d) easily identify whether the card is for a person with a debilitating medical condition or for a provider;

(e) list the name of the registered cardholder's provider, if any; and

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

(4) (a) The department shall verify the information contained in an application or renewal submitted pursuant to [sections 1 through 17] and shall approve or deny an application or renewal within 15 days of receiving the application or renewal and all related application materials.

(b) The department shall issue a registry identification card within 15 days of approving an application or renewal.

(5) Registry identification cards expire 1 year after the date of issuance, unless a registered cardholder changes providers. A provider's registry identification card expires at the time the department issues a card to a new provider named by a registered cardholder.

(6) A registered cardholder shall notify the department of any change in the cardholder's name, address, physician, or provider or change in the status of the cardholder's debilitating medical condition within 10 days of the change. If a change occurs and is not reported to the department, the registry identification card is void.

(7) The department shall maintain a confidential list of individuals to whom the department has issued registry identification cards. Except as provided in subsection (5), individual names and other identifying information on the list must be confidential and are not subject to disclosure, except to:

(a) authorized employees of the department as necessary to

perform the official duties of the department; and

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

(8) The department shall provide the names of registered cardholders and providers to the local law enforcement agency having jurisdiction in the area in which the cardholder or providers lives. The law enforcement agency and its employees are subject to the confidentiality requirements of [section 14].

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

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

(10) The department shall report biannually to the legislature the number of applications for registry identification cards, the number of registered cardholders approved, the nature of the debilitating medical conditions of the cardholders, the number of providers approved, the number of registry identification cards revoked, the number of physicians providing written certification for registered cardholders, and the number of written certifications each physician has provided. The report may not provide any identifying information of cardholders or physicians."

Insert: "NEW SECTION. **Section 4. Persons with debilitating medical conditions -- requirements -- minors -- limitations.** (1) Except as provided in subsections (3) and (4), the department shall issue a registry identification card to a person with a debilitating medical condition who submits the following, in accordance with department rules:

(a) an application on a form prescribed by the department;

(b) an application fee or a renewal fee;

(c) the person's name, street address, and date of birth;

(d) proof of Montana residency;

(e) a statement that the person will be cultivating and manufacturing marijuana for the person's use or will be obtaining marijuana from a provider;

(f) the name of the person's treating physician and the street address and telephone number of the physician's office;

(g) the street address where the person is cultivating or manufacturing marijuana if the person is cultivating or manufacturing marijuana for the person's own use;

(h) the name, date of birth, and street address of the individual the person has selected as a provider, if any; and

(h) a statement from the person's treating physician as required pursuant to [section 6].

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

written statement that:

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

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

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

(ii) agrees to serve as the minor's provider;

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

(iv) undergoes a name-based background check. The parent or legal guardian shall pay the costs of the background check.

(4) A person may not be a registered cardholder if the person is in the custody of or under the supervision of the department of corrections or a youth court.

(5) A registered cardholder who elects to obtain marijuana from a provider may not cultivate or manufacture marijuana for the cardholder's use.

(6) A registered cardholder may cultivate or manufacture marijuana as allowed under [section 9] only:

(a) at a property that is owned by the cardholder; or

(b) with written permission of the landlord, at a property that is rented or leased by the cardholder.

(6) No portion of the property used for cultivation and manufacture of marijuana for use by the registered cardholder may be shared with or rented or leased to a provider or to a registered cardholder unless the property is owned, rented, or leased by cardholders who are related to each other by the second degree of kinship by blood or marriage."

Insert: "NEW SECTION. **Section 5. Providers -- requirements -- limitations.** (1) The department shall issue a registry identification card to the person who is named as a provider in a registered cardholder's approved application if the person submits to the department:

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

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

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

(d) a written agreement signed by the registered cardholder;

(e) a statement indicating whether the person will cultivate and manufacture marijuana for the registered cardholder at a property owned, rented, or leased by the cardholder or by the person; and

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

(2) The department may not register a person as a provider if the person:

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

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

(c) has failed to:

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

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

(iii) pay child support; or

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

(3) A provider may assist only one registered cardholder unless the provider is simultaneously caring for up to three cardholders and two of the cardholders who are related to the provider by the second degree of kinship by blood or marriage.

(4) Marijuana for use pursuant to [sections 1 through 17] must be cultivated and manufactured in Montana.

(5) A provider may not:

(a) accept compensation for any services or products provided to a registered cardholder;

(b) use marijuana; or

(c) be a registered cardholder.

(6) (a) A provider may cultivate and manufacture marijuana for use by a registered cardholder only at:

(i) a property that is owned by the provider;

(ii) with written permission of the landlord, a property that is rented or leased by the provider; or

(iii) a property owned, leased, or rented by the registered cardholder pursuant to the provisions of [section 4].

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

Insert: "NEW SECTION. **Section 6. Physician statement.** (1) The written certification provided by a physician must:

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

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

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

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

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

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

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

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

(i) state that the physician will:

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

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

(2) If the written certification states that marijuana should be used for less than 1 year, the department shall issue a registry identification card that is valid for the period specified in the written certification."

Insert: "NEW SECTION. **Section 7. Registry card to be carried and exhibited on demand -- photo identification required.** A registered cardholder or provider shall have the cardholder's or provider's registry identification card in the person's immediate possession at all times. The person shall display the registry identification card and a valid photo identification upon demand of a law enforcement officer, justice of the peace, or city or municipal judge."

Insert: "NEW SECTION. **Section 8. Health care facility procedures for patients with marijuana for use.** (1) Except for hospices that allow the use of marijuana as provided in [section 10], a health care facility as defined in 50-5-101 shall take the following measures in the order listed when a patient who is a registered cardholder has marijuana in the patient's possession upon admission to the health care facility:

(a) require the patient to remove the marijuana from the premises before the patient is admitted, if the patient is able to do so;

(b) make a reasonable effort to contact the patient's provider, if any; or

(c) contact the local law enforcement agency having jurisdiction in the area where the facility is located.

(2) A provider contacted by a health care facility shall remove the marijuana and deliver it to the patient's residence.

(3) A law enforcement agency contacted by a health care facility shall respond by removing and destroying the marijuana.

(4) A health care facility may not be charged for costs related to removal of the marijuana from the facility's premises."

Insert: "NEW SECTION. **Section 9. Legal protections -- allowable amounts.** (1) (a) A registered cardholder may possess up to 4 mature plants, 12 seedlings, and 1 ounce of usable marijuana.

(b) A provider may possess the amounts allowed under this subsection (1) for each registered cardholder who has named the person as their provider.

(2) Except as provided in [section 10] and subject to the provisions of subsection (7), an individual who possesses a registry identification card issued pursuant to [sections 1 through 17] may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board or the department of labor and industry, solely because:

(a) the registered cardholder or provider cultivates, manufactures, possesses or transports marijuana in the amounts

allowed under this section; or

(b) the registered cardholder acquires or uses marijuana.

(3) A physician may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by the board of medical examiners or the department of labor and industry, solely for providing written certification for a patient with a debilitating medical condition.

(4) Nothing in this section prevents the imposition of a civil penalty or a disciplinary action by a professional licensing board or the department of labor and industry if:

(a) a registered cardholder's use of marijuana impairs the cardholder's job-related performance; or

(b) a physician violates the standard of care or other requirements of [sections 1 through 17].

(5) (a) An individual may not be arrested or prosecuted for constructive possession, conspiracy as provided in 45-4-102, or other provisions of law or any other offense solely for being in the presence or vicinity of the use of marijuana as permitted under [sections 1 through 17].

(b) This subsection (5) does not prevent the arrest or prosecution of an individual who is in the vicinity of the therapeutic use of marijuana if the individual is in possession of or is using marijuana and is not a registered cardholder.

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

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

Insert: "NEW SECTION. **Section 10. Limitations of the act.** (1) [Sections 1 through 17] do not permit:

(a) Any person, including a registered cardholder, to operate, navigate, or be in actual physical control of a motor vehicle, aircraft, or motorboat while under the influence of marijuana; or

(b) except as provided in subsection (3), the use of marijuana by a registered cardholder:

(i) in a health care facility as defined in 50-5-101;

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

(iii) on or in any property owned by a school district or a postsecondary school;

(iv) on or in any property leased by a school district or a postsecondary school when the property is being used for school-related purposes;

(v) in a school bus or other form of public transportation;
(vi) in a correctional facility;
(vii) at a public park, public beach, public recreation center, or youth center;
(viii) in or on the property of any church, synagogue, or other place of worship;
(ix) in plain view of or in a place open to the general public; or
(x) where exposure to the marijuana smoke significantly adversely affects the health, safety, or welfare of children.
(2) A registered cardholder or a provider may not cultivate or manufacture marijuana for use by a registered cardholder in a manner that is visible from the street or other public area.
(3) A hospice licensed under Title 50, chapter 5, may adopt a policy that allows use of marijuana by a registered cardholder.
(4) Nothing in [sections 1 through 17] may be construed to require:
(a) a government medical assistance program or private health insurer, a group benefit plan that is covered by the provisions of Title 2, chapter 18, an insurer covered by the provisions of Title 33, or an insurer as defined in 39-71-116 to reimburse a person for costs associated with the use of marijuana by a person with a debilitating medical condition;
(b) an employer to accommodate the use of marijuana by a registered cardholder;
(c) a school or postsecondary school to allow a registered cardholder to participate in extracurricular activities;
(d) a landlord to allow a tenant who is a registered cardholder or a provider to cultivate or manufacture marijuana or to allow a registered cardholder to use marijuana.
(5) Nothing in [sections 1 through 17] may be construed to:
(a) prohibit an employer from including in any contract a provision prohibiting the use of marijuana for a debilitating medical condition; or
(b) permit a cause of action against an employer for wrongful discharge pursuant to 39-2-904 or discrimination pursuant to 49-1-102.
(6) Nothing in [sections 1 through 17] may be construed to allow a provider to use marijuana or to prevent criminal prosecution of a provider who uses marijuana or paraphernalia for personal use.
(7) (a) A law enforcement officer who suspects that a registered cardholder or provider is driving under the influence of marijuana may apply for a search warrant to require the person to provide a sample of the person's blood for testing pursuant to the provisions of 61-8-405. A person with a tetrahydrocannabinol (THC) level of 3.5 ng/ml may be charged with a violation of 61-8-401.
(b) A registered cardholder or provider who violates subsection (1)(a) is subject to revocation of the person's registry identification card if the individual is convicted of or pleads guilty to any offense related to driving under the influence of alcohol or drugs when the initial offense with which the individual was charged was a violation of 61-8-401, 61-8-406, or 61-8-410. A revocation under this section must be for the

period of suspension or revocation set forth in

(i) in 61-5-208 for a violation of 61-8-401 or 61-8-406; or

(ii) in 61-8-410 for a violation of 61-8-410.

(c) If a person's registry identification card is subject to renewal during the revocation period, the person may not renew the card until the full revocation period has elapsed. The card may be renewed only if the person submits all materials required for renewal."

Insert: "NEW SECTION. **Section 11. Local government authority to regulate.** To protect the public health, safety, or welfare, a local government may by ordinance or resolution regulate a provider that operates within the local government's jurisdictional area. The regulations may include but are not limited to inspections of locations where marijuana is cultivated or manufactured in order to ensure compliance with any public health, safety, and welfare requirements established by the department or the local government."

Insert: "NEW SECTION. **Section 12. Unlawful conduct by cardholders -- penalties.** (1) The department shall revoke and may not reissue the registry identification card of a person who:

(a) is convicted of a drug offense; or

(b) allows another person to be in possession of the cardholder's:

(i) registry identification card; or

(ii) marijuana plants or usable marijuana.

(2) A registered cardholder or a provider who violates [sections 1 through 17] is punishable by a fine not to exceed $500 or by imprisonment in a county jail for a term not to exceed 6 months, or both, unless otherwise provided in [sections 1 through 17] or unless the violation would constitute a violation of Title 45. An offense constituting a violation of Title 45 must be charged and prosecuted pursuant to the provisions of Title 45."

Insert: "NEW SECTION. **Section 13. Fraudulent representation -- penalties.** (1) In addition to any other penalties provided by law, a person who fraudulently represents to a law enforcement official that the person is a registered cardholder or a provider shall be guilty of a felony punishable by imprisonment in the state prison of not less than 1 year or not more than 5 years or a fine not to exceed $50,000, or both.

(2) A physician who purposely and knowingly represents any information required under [section 6] shall be guilty of a felony punishable by imprisonment in the state prison of not less than 1 year or not more than 5 years or a fine not to exceed $50,000, or both."

Insert: "NEW SECTION. **Section 14. Confidentiality of registry information -- penalty.** (1) A person, including an employee or official of the department of public health and human services, commits the offense of disclosure of confidential information related to registry information if the person knowingly or purposely discloses confidential information in violation of [sections 1 through 17].

(3) A person convicted of disclosure of confidential information relating to the registry shall be fined not to exceed

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

Insert: "NEW SECTION. **Section 15. Law enforcement authority.** Nothing in this chapter may be construed to limit a law enforcement agency's ability to investigate unlawful activity in relation to a person with a debilitating medical condition or the person's provider."

Insert: "NEW SECTION. **Section 16. Forfeiture.** Marijuana, paraphernalia relating to marijuana, or other property seized by a law enforcement official from a person claiming the protections of [sections 1 through 17] in connection with the cultivation, manufacture, possession, transportation, distribution, or use of marijuana must be returned to the person immediately upon a determination that the person is in compliance with the provisions of [sections 1 through 17].

(2) A law enforcement agency in possession of marijuana plants seized as evidence is not responsible for the care and maintenance of the plants."

Insert: "NEW SECTION. **Section 17. Rulemaking authority -- fees.** (1) The department shall adopt rules necessary for the implementation and administration of [sections 1 through 17]. The rules must include but are not limited to:

(a) the manner in which the department will consider applications for registry identification cards providers and for persons with debilitating medical conditions and renewal of registry identification cards for providers and registered cardholders;

(b) the acceptable forms of proof of Montana residency;

(c) the procedures for obtaining fingerprints for the fingerprint and background check required under [section 5]; and

(d) other rules necessary to implement the purposes of [sections 1 through 17].

(2) The department's rules must establish application and renewal fees that generate revenue sufficient to offset all expenses of implementing and administering [sections 1 through 17]."

Insert: "Section 18. Section 37-1-316, MCA, is amended to read:

"37-1-316. Unprofessional conduct. The following is unprofessional conduct for a licensee or license applicant governed by this part:

(1) conviction, including conviction following a plea of nolo contendere, of a crime relating to or committed during the course of the person's practice or involving violence, use or sale of drugs, fraud, deceit, or theft, whether or not an appeal is pending;

(2) permitting, aiding, abetting, or conspiring with a person to violate or circumvent a law relating to licensure or certification;

(3) fraud, misrepresentation, deception, or concealment of a material fact in applying for or assisting in securing a license or license renewal or in taking an examination required for licensure;

(4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee knows or

reasonably ought to know contains a false or misleading statement;

(5) a misleading, deceptive, false, or fraudulent advertisement or other representation in the conduct of the profession or occupation;

(6) offering, giving, or promising anything of value or benefit to a federal, state, or local government employee or official for the purpose of influencing the employee or official to circumvent a federal, state, or local law, rule, or ordinance governing the licensee's profession or occupation;

(7) denial, suspension, revocation, probation, fine, or other license restriction or discipline against a licensee by a state, province, territory, or Indian tribal government or the federal government if the action is not on appeal, under judicial review, or has been satisfied;

(8) failure to comply with a term, condition, or limitation of a license by final order of a board;

(9) revealing confidential information obtained as the result of a professional relationship without the prior consent of the recipient of services, except as authorized or required by law;

(10) use of alcohol, a habit-forming drug, or a controlled substance as defined in Title 50, chapter 32, to the extent that the use impairs the user physically or mentally in the performance of licensed professional duties;

(11) having a physical or mental disability that renders the licensee or license applicant unable to practice the profession or occupation with reasonable skill and safety;

(12) engaging in conduct in the course of one's practice while suffering from a contagious or infectious disease involving serious risk to public health or without taking adequate precautions, including but not limited to informed consent, protective gear, or cessation of practice;

(13) misappropriating property or funds from a client or workplace or failing to comply with a board rule regarding the accounting and distribution of a client's property or funds;

(14) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by the use of threats or harassment against or inducement to a client or witness to prevent them from providing evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being filed, prosecuted, or completed;

(15) assisting in the unlicensed practice of a profession or occupation or allowing another person or organization to practice or offer to practice by use of the licensee's license;

(16) failing to report the institution of or final action on a malpractice action, including a final decision on appeal, against the licensee or of an action against the licensee by a:

(a) peer review committee;

(b) professional association; or

(c) local, state, federal, territorial, provincial, or Indian tribal government;

(17) failure of a health care provider, as defined in

27-6-103, to comply with a policy or practice implementing 28-10-103(3)(a);

(18) conduct that does not meet the generally accepted standards of practice. A certified copy of a malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act or omission occurring during the scope and course of the practice is conclusive evidence of but is not needed to prove conduct that does not meet generally accepted standards;

(19) the sole use of any electronic means, including teleconferencing, to obtain the information required for the written certification that is used to apply for a registry identification card pursuant to [sections 1 through 17]."

{*Internal References to 37-1-316:*
28-10-103 37-1-319 37-1-320 37-2-304
*37-3-348 37-35-301 37-35-301 * 37-35-301 **
50-20-307 }"

Insert: "Section 19. Section 37-3-343, MCA, is amended to read:

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

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

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

(4) A telemedicine license may not be used by a physician as a means to obtain the information required for the written certification that is used to apply for a registry identification card pursuant to [sections 1 through 17].

~~(4)~~(5) A physician who practices telemedicine in this state without a telemedicine license issued pursuant 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 of that license, in violation of the scope of practice allowed by the license, or without a physician's license issued pursuant to 37-3-301, is guilty of a misdemeanor and on conviction shall be sentenced as provided in 37-3-325."

{*Internal References to 37-3-343:*
*37-3-301 * 37-3-341 * 37-3-342 * 37-3-342 **
*37-3-343 * 37-3-343 * 37-3-344 * 37-3-347 **}"

Insert: "Section 20. Section 37-3-347, MCA, is amended to read:

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

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

board;

(b) plans to used telemedicine as a means to obtain the information required for the written certification that is used to apply for a registry identification card pursuant to [sections 1 through 17].

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

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

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

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

{*Internal References to 37-3-347:*
*37-3-301 * 37-3-341 * 37-3-342 * 37-3-342 **
*37-3-343 * 37-3-343 * 37-3-344 * 37-3-347 **}"

Insert: "Section 21. Section 41-5-216, MCA, is amended to read:

"41-5-216. Disposition of youth court, law enforcement, and department records -- sharing and access to records. (1) Formal youth court records, law enforcement records, and department records that are not exempt from sealing under subsections (4) and (6) and that pertain to a youth covered by this chapter must be physically sealed on the youth's 18th birthday. In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the records must be physically sealed upon termination of the extended jurisdiction.

(2) Except as provided in subsection (6), when the records pertaining to a youth pursuant to this section are sealed, an agency, other than the department, that has in its possession copies of the sealed records shall destroy the copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

(3) Except as provided in subsection (6), this section does not prohibit the destruction of records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(4) The requirements for sealed records in this section do not apply to medical records, fingerprints, DNA records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements of the court's judgment or disposition, records referred to in 42-3-203, reports referred to in 45-5-624(7), or the information referred to in 46-23-508, in any instance in which the youth was required to register as a sexual offender pursuant to Title 46, chapter 23, part 5.

(5) After formal youth court records, law enforcement records, and department records are sealed, they are not open to inspection except, upon order of the youth court, for good cause, including when a youth commits a new offense, to:

(a) those persons and agencies listed in 41-5-215(2); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority.

(6) (a) When formal youth court records, law enforcement records, and department records are sealed under subsection (1), the electronic records of the management information system

maintained by the department of public health and human services and by the department relating to the youth whose records are being sealed must be preserved for the express purpose of research and program evaluation as provided in subsection (6)(b).

(b) The department of public health and human services and the department shall disassociate the offense and disposition information from the name of the youth in the respective management information system. The offense and disposition information must be maintained separately and may be used only:

(i) for research and program evaluation authorized by the department of public health and human services or by the department and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(7) (a) Informal youth court records for a youth for whom formal proceedings have been filed must be physically sealed on the youth's 18th birthday or, in those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, upon termination of the extended jurisdiction and may be inspected only pursuant to subsection (5).

(b) The informal youth court records may be maintained and inspected only by youth court personnel upon a new offense prior to the youth's 18th birthday.

(c) Except as provided in subsection (7)(a), when a youth becomes 18 years of age or when extended supervision ends and the youth was involved only in informal proceedings, informal youth court records that are in hard-copy form must be destroyed and any electronic records in the youth court management information system must disassociate the offense and disposition information from the name of the youth and may be used only for the following purposes:

(i) for research and program evaluation authorized by the office of the court administrator and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

(8) Nothing in this section prohibits the intra-agency use or information sharing of formal or informal youth court records within the juvenile probation management information system. Electronic records of the youth court may not be shared except as provided in 41-5-1524. If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the juvenile probation officer shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection (2) of this section.

(9) This section does not prohibit the intra-agency use or information sharing of formal or informal youth court records within the department's youth management information system. Electronic records of the department's youth management information system may not be shared except as provided in subsection (5). If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the department shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or as provided in subsection

(2) of this section.

(10) This section does not prohibit the sharing of formal or informal youth court records with a short-term detention center, a youth care facility, a youth assessment center, or a youth detention facility upon placement of a youth within the facility.

(11) This section does not prohibit access to formal or informal youth court records, including electronic records, for purposes of conducting evaluations as required by 41-5-2003.

(12) This section does not prohibit the office of court administrator, upon written request from the department of public health and human services, from confirming whether a person applying for a registry identification card pursuant to [sections 4 or 5] is currently under youth court supervision."

{*Internal References to 41-5-216:*
3-10-518 41-5-215 41-5-220 41-5-221
41-5-1524 42-3-203 }"

Insert: "Section 22. Section 45-9-203, MCA, is amended to read:

"45-9-203. Surrender of license. (1) If a court suspends or revokes a driver's license under 45-9-202(2)(e), the defendant shall, at the time of sentencing, surrender the license to the court. The court shall forward the license and a copy of the sentencing order to the department of justice. The defendant may apply to the department for issuance of a probationary license under 61-2-302.

(2) If a person with a registry identification card issued pursuant to [sections 4 or 5] is convicted of an offense under this chapter, the court shall:

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

(b) notify the department of public health and human services of the conviction in order for the department to carry out its duties under [section 12]."

{*Internal References to 45-9-203: None.*}"

Insert: "Section 23. Section 61-11-101, MCA, is amended to read:

"61-11-101. Report of convictions and suspension or revocation of driver's licenses -- surrender of licenses. (1) If a person is convicted of an offense for which chapter 5 or chapter 8, part 8, makes mandatory the suspension or revocation of the driver's license or commercial driver's license of the person by the department, the court in which the conviction occurs shall require the surrender to it of all driver's licenses then held by the convicted person. The court shall, within 5 days after the conviction becomes final, forward the license and a record of the conviction to the department. If the person does not possess a driver's license, the court shall indicate that fact in its report to the department.

(2) A court having jurisdiction over offenses committed under a statute of this state or a municipal ordinance regulating the operation of motor vehicles on highways, except for standing or parking statutes or ordinances, shall forward a record of the conviction, as defined in 61-5-213, to the department within 5 days after the conviction becomes final. The court may recommend that the department issue a restricted probationary license on the condition that the individual comply with the requirement that the person attend and complete a chemical dependency

education course, treatment, or both, as ordered by the court under 61-8-732.

(3) A court or other agency of this state or of a subdivision of the state that has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report an action and the adjudication upon which it is based to the department within 5 days on forms furnished by the department.

(4) A conviction becomes final for the purposes of this part upon the later of:

(a) expiration of the time for appeal of the court's judgment or sentence to the next highest court;

(b) forfeiture of bail that is not vacated; or

(c) imposition of a fine or court cost as a condition of a deferred imposition of a sentence or a suspended execution of a sentence.

(5) (a) On a conviction referred to in subsection (1) of a person who holds a commercial driver's license or who is required to hold a commercial driver's license, a court may not take any action, including deferring imposition of judgment, that would prevent a conviction for any violation of a state or local traffic control law or ordinance, except a parking law or ordinance, in any type of motor vehicle, from appearing on the person's driving record. The provisions of this subsection (5)(a) apply only to the conviction of a person who holds a commercial driver's license or who is required to hold a commercial driver's license and do not apply to the conviction of a person who holds any other type of driver's license.

(b) For purposes of this subsection (5), "who is required to hold a commercial driver's license" refers to a person who did not have a commercial driver's license but who was operating a commercial motor vehicle at the time of a violation of a state or local traffic control law or ordinance resulting in a conviction referred to in subsection (1).

(6) (a) If a person who holds a valid registry identification card issued pursuant to [sections 4 or 5] is convicted of or pleads guilty to any offense related to driving under the influence of alcohol or drugs when the initial offense with which the person was charged was a violation of 61-8-401, 61-8-406, or 61-8-410, the court in which the conviction occurs shall require the person to surrender the registry identification card, license, or registration.

(b) Within 5 days after the conviction becomes final, the court shall forward the registry identification card and a copy of the conviction to the department of public health and human services."

{*Internal References to 61-11-101:*
61-5-307 61-5-307 61-5-308 61-8-442
61-10-154 }"

Insert: "NEW SECTION. **Section 24. {standard} Repealer.** The following sections of the Montana Code Annotated are repealed:

50-46-101. Short title.
50-46-102. Definitions.
50-46-103. Procedures -- minors -- confidentiality -- report to legislature.

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

{*Internal References to 50-46-101: None.*
Internal References to 50-46-102: None.
Internal References to 50-46-103: 50-46-201 50-46-202
Internal References to 50-46-201: None.
Internal References to 50-46-202: None.
Internal References to 50-46-205: 50-46-206
Internal References to 50-46-206: None.
Internal References to 50-46-207: None.
Internal References to 50-46-210: None.}"

Insert: "NEW SECTION. **Section 25. Transition.** (1) Registry identification cards issued to persons with debilitating medical conditions prior to the effective date of [this act] are valid until the expiration date listed on the card.

(2) A person who obtained a registry identification card as a caregiver pursuant to 50-46-103 before July 1, 2011, may not be in possession of marijuana plants, seedlings, cuttings, clones, usable marijuana, or marijuana-related products on July 1, 2011. Before July 1, 2011, the caregiver shall take the items to the law enforcement agency having jurisdiction in their area. The law enforcement agency shall destroy the items."

Insert: "NEW SECTION. **Section 26. {standard} Codification instruction.** [Sections 1 through 17] are intended to be codified as an integral part of Title 50, chapter 46, and the provisions of Title 50, chapter 46, apply to [sections 1 through 17]."

Insert: "COORDINATION SECTION. **Section 27. Coordination instruction.** (1) If both House Bill No. 161 and [this act] are passed and approved, then [this act] is void.

(2) If both House Bill No. 175 and [this act] are passed and approved and [this act] repeals sections 50-46-101, 50-46-102, 50-46-103, 50-46-201, 50-46-202, 50-46-205, 50-46-206, 50-46-207, and 50-46-210, MCA, then House Bill No. 175 is void."

Insert: "NEW SECTION. **Section 28. Instructions to code commissioner.** (1) Wherever a reference to "medical use of marijuana" or "medical marijuana" appears in legislation enacted by the 2011 legislature, the code commissioner is directed to change the reference to "use of marijuana for a debilitating medical condition".

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

(3) Wherever a reference to 50-46-205 appears in legislation enacted by the 2011 legislature, the reference must be replaced with a reference to [section 7] of Senate Bill No. 423."

Insert: "NEW SECTION. **Section 29. {standard} Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of

[this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

Insert: "NEW SECTION. **Section 30. {standard} Effective dates.** This act is effective July 1, 2011."

- END -

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