

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 5, 2011 (8:47am)

1. Title, page 1, line 5.

Strike: "THERAPEUTIC"

2. Title, page 1, line 6.

Strike: "CREATING" through "FOR"

Insert: "ALLOWING A DEFENSE IN CASES INVOLVING"

3. Title, page 1, line 7 through line 9.

Strike: "FOR" on line 7 through "USE" on line 8

Strike: "PROVIDING RULEMAKING" 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

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 11] may be cited as the "Montana Marijuana Act."

(2) The purpose of [sections 1 through 11] is to provide a person who meets the requirements of [sections 1 through 11] an opportunity to offer as a defense to a marijuana-related citation or criminal charge issued or filed under Montana law any evidence that the person is:

(a) cultivating, manufacturing, possessing, and using marijuana to alleviate the symptoms of a debilitating medical condition; or

(b) cultivating, manufacturing, possessing, and transporting marijuana for use by a person with a debilitating medical condition."

Insert: "NEW SECTION. Section 2. Definitions. As used in [sections 1 through 11], the following definitions apply:

(1) "Debilitating medical condition" means one of the following conditions that has been diagnosed by a physician:

(a) cancer for which a patient is receiving only palliative care;

(b) multiple sclerosis;

(c) neuropathy, including diabetic neuropathy;

(d) epileptic seizures;

(d) cerebral palsy; and

(e) crushing injuries of the spine.

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

(3) "Marijuana plant" means:

(a) a harvestable female marijuana plant that is flowering;

or

(b) a seedling that has no flowers and is less than 12 inches in height and 12 inches in diameter.

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

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

(6) (a) "Provider" means a person 18 years of age or older who is registered with the person's local law enforcement agency and is authorized to cultivate, manufacture, possess, or transport marijuana for use by a person with a debilitating medical condition.

(b) The term does not include the physician who is treating the person with a debilitating medical condition.

(7) "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 11] 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.

(8) "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."

Insert: "NEW SECTION. Section 3. Defense to criminal citations or charges.

(1) A Montana resident who is found to be cultivating, manufacturing, possessing, or transporting marijuana

may raise as a defense to any marijuana-related citation or criminal charge issued or filed under Montana law the fact that the person:

(a) suffers from a debilitating medical condition, is registered with a local law enforcement agency, and engages in the use of marijuana to alleviate the symptoms of the condition or its treatment; or

(b) is registered as a provider with a local law enforcement agency and is assisting a person who has a debilitating medical condition with the use of marijuana for the debilitating medical condition.

(2) The defense may be raised only if the person was in possession of:

(a) four or fewer marijuana plants under a height of 4 feet; and

(b) 1 ounce or less of usable marijuana.

(3) Except as provided in [section 5], a provider may raise the defense if the provider is assisting only one person with the use of marijuana for a debilitating medical condition.

(4) A person raising a defense pursuant to this section on the grounds that the person suffers from a debilitating medical condition must provide evidence that:

(a) at the time the person was arrested or cited for an offense involving marijuana, the person was diagnosed by a physician as having a debilitating medical condition;

(b) the marijuana was cultivated or manufactured at a property owned, leased, or rented by the person or the person's provider pursuant to [sections 4 and 5]; and

(c) the marijuana was cultivated, manufactured, or stored in a secure location.

(5) A person raising a defense pursuant to this section on the grounds that the person is a provider must provide evidence that at the time the person was arrested or cited for an offense involving marijuana, the person:

(a) was registered as a provider with the law enforcement agency having jurisdiction in the area where the person resides; and

(b) was cultivating, manufacturing, possessing, or transporting marijuana solely for use by the person with a debilitating medical condition who named the person as a provider.

(6) A court shall consider evidence of a person's debilitating medical condition, including but not limited to:

(a) a written statement from the person's treating physician confirming that:

(i) the physician had an ongoing bona fide professional relationship with the patient before the arrest was made or citation was issued; and

(ii) in the physician's professional opinion, the person suffered from a debilitating medical condition at the time the

person was arrested or cited for an offense involving marijuana;

(b) medical records demonstrating that the person suffered from a debilitating medical condition at the time of arrest or citation; or

(c) testimony from the person's physician that the person suffered from a debilitating medical condition at the time of arrest or citation. The testimony must include the nature of the condition, the facts supporting the condition, and the expected duration of the condition."

Insert: "NEW SECTION. Section 4. Persons with a debilitating medical condition -- requirements -- limitations. (1) A person with a debilitating medical condition may cultivate or manufacture marijuana for use in alleviating the symptoms of the debilitating medical condition if the person is under the treatment of a physician.

(2) A person with a debilitating medical condition who is using marijuana to alleviate the symptoms of the debilitating medical condition shall register with the local law enforcement agency having jurisdiction in the area where the person resides by providing:

(a) the person's name and date of birth; and

(b) the street address where the person is cultivating or manufacturing marijuana, if the person is cultivating or manufacturing for the person's use.

(3) A person cultivating or manufacturing marijuana under this section may cultivate or manufacture the marijuana only:

(a) at a property that is owned by the person with the debilitating medical condition; or

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

(4) No portion of the property used for cultivation and manufacture of marijuana for use by a person with a debilitating medical condition may be shared with or rented or leased to a provider or another person with a debilitating medical condition unless the property is owned, rented, or leased by persons with debilitating conditions who are related to each other by the second degree of kinship by blood or marriage."

Insert: "NEW SECTION. Section 5. Providers -- requirements -- allowable activities -- registration. (1) A person who agrees to cultivate, manufacture, possess, or transport marijuana for use by a person with a debilitating medical condition shall register with the local law enforcement agency having jurisdiction in the area in which the person resides.

(2) A person registering pursuant to this section shall submit to the law enforcement agency:

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

(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) the name of the person with the debilitating medical condition for whom the person will be providing assistance with use of marijuana;

(e) a written agreement signed by the person with the debilitating medical condition;

(f) a statement indicating whether the person will cultivate and manufacture marijuana for use by a person with a debilitating medical condition at property owned, rented, or leased by the person with the debilitating medical condition or by the provider; and

(g) pay a fee as determined by the law enforcement agency to cover the costs of the fingerprint background check and associated administrative costs of processing the registration. The fee may not exceed \$500.

(3) A law enforcement agency may not register a person as a provider if the person has:

(a) 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, a district court, a court of limited jurisdiction, or a youth court;

(c) 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.

(4) A provider may assist only one person with a debilitating medical condition unless the provider is simultaneously caring for two or more persons who have debilitating medical conditions and who are related to the provider by the second degree of kinship by blood or marriage.

(5) A provider may not:

(a) accept compensation for any services or products provided to the person with a debilitating medical condition;

(b) use marijuana; or

(c) be a person with a debilitating medical condition who uses marijuana for the debilitating medical condition.

(6) (a) A provider may cultivate and manufacture marijuana for use by a person with a debilitating medical condition 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 person with the debilitating medical condition 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 person with a debilitating medical condition."

Insert: "NEW SECTION. Section 6. 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 11] 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 11].

(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 7. Limitations of the act. (1) [Sections 1 through 11] do not permit:

(a) a person with a debilitating medical condition to operate, navigate, or be in actual physical control of a motor vehicle, aircraft, or motorboat while under the influence of marijuana;

(b) except as provided in subsection (3), the use of marijuana by a person with a debilitating medical condition:

(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; or

(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; or

(c) the smoking of marijuana by a person with a debilitating medical condition:

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

(ii) in a correctional facility;

(iii) at a public park, public beach, public recreation center, or youth center;

(iv) in plain view of or in a place open to the general public; or

(v) where exposure to the marijuana smoke significantly adversely affects the health, safety, or welfare of children.

(2) A person covered by [sections 1 through 11] may not cultivate or manufacture marijuana for use by a person with a debilitating medical condition 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 person with a debilitating medical condition.

(4) Nothing in [sections 1 through 11] 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; or

(b) an employer to accommodate the use of marijuana by a person with a debilitating medical condition.

(5) Nothing in [sections 1 through 11] 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 11] 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 person who violates subsection (1)(a) may not use the defense provided for in [section 3] as a defense to a citation or criminal charge related to driving under the influence of alcohol or drugs."

Insert: "NEW SECTION. Section 8. Fraudulent representation -- penalties. In addition to any other penalties provided by law, a person who fraudulently represents to a law enforcement official that the person has a debilitating medical condition or is 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 fraudulently represents in a written statement that the physician has an ongoing bona fide professional relationship as the treating physician for a person claiming a defense under [section 3] or that the person has a debilitating medical condition 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 9. Health care facility procedures for patients with marijuana for use. (1) Except for hospices that allow the use of marijuana as provided in [section 7], a health care facility as defined in 50-5-101 shall take the following measures in the order listed when a patient who uses marijuana for a debilitating medical conditions 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 storing the marijuana until the patient is discharged from the facility.

(4) If the marijuana is being held by a law enforcement agency, the patient may pick up the marijuana upon discharge from the hospital at no cost to the patient.

(5) 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 10. Confidentiality of registry information -- penalty. The department of public health and human services shall maintain the confidentiality of the list of persons to whom the department issued registry identification cards pursuant to 50-46-103 prior to July 1, 2011. Individual names and other identifying information on the list must be confidential and are not subject to disclosure except to state and local law enforcement agencies, only as necessary to verify that a person was a lawful possessor of a registry identification card.

(2) 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 this section.

(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 11. Law enforcement authority.

(1) 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.

(2) A local law enforcement agency shall maintain a confidential list of the persons with a debilitating medical condition and the providers who are registered with the agency as providers. Individual names and other identifying information must be confidential and are not subject to disclosure except to:

(a) authorized employees of the agency, only as necessary to carry out the registration duties of this section; or

(b) authorized employees of state or local law enforcement agencies, a district court, or a court of limited jurisdiction, only as necessary to verify that a person is a registered provider."

Insert: "Section 12. 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 to diagnose a person's debilitating medical condition as defined in [section 2] for the purposes of [sections 1 through 11]."

{*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 13. 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 to diagnose a debilitating medical condition as defined in [section 2] for the purposes of [sections 1 through 11].

~~(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 14. 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 to diagnose a debilitating medical condition as defined in [section 2] for the purposes of [sections 1 through 11].

~~(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 15. 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 a local law enforcement agency, from confirming whether a person registering as a provider pursuant to [section 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: "NEW SECTION. **Section 16. {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 17. Transition. (1) Registry identification cards issued prior to the effective date of [this act] are void after June 30, 2011.

(2) A caregiver 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 168. {standard} Codification instruction. [Sections 1 through 11] 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 11]."

Insert: "COORDINATION SECTION. Section 19. Coordination instruction. (1) If both House Bill No. 82 and [this act] are passed and approved and [this act] does not contain a definition of "written certification", then House Bill No. 82 is void.

(2) If both House Bill No. 161 and [this act] are passed and approved, then [this act] is void.

(3) 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: "COORDINATION SECTION. Section 20. Coordination instruction. If both House Bill No. 43 and [this act] are passed and approved and House Bill No. 43 amends 39-71-407 and [this act] does not contain a definition of written certification, then 39-71-407 must be amended as follows:

"**39-71-407. Liability of insurers -- limitations.** (1) For

workers' compensation injuries, each insurer is liable for the payment of compensation, in the manner and to the extent provided in this section, to an employee of an employer covered under plan No. 1, plan No. 2, and the state fund under plan No. 3 that it insures who receives an injury arising out of and in the course of employment or, in the case of death from the injury, to the employee's beneficiaries, if any.

(2) (a) An insurer is liable for an injury, as defined in 39-71-119, if the injury is established by objective medical findings and if the claimant establishes that it is more probable than not that:

(i) a claimed injury has occurred; or

(ii) a claimed injury aggravated a preexisting condition.

(b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury aggravated a preexisting condition is not sufficient to establish liability.

(3) (a) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

(i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement and the travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or

(ii) the travel is required by the employer as part of the employee's job duties.

(b) A payment made to an employee under a collective bargaining agreement, personnel policy manual, or employee handbook or any other document provided to the employee that is not wages but is designated as an incentive to work at a particular jobsite is not a reimbursement for the costs of travel, gas, oil, or lodging, and the employee is not covered under this chapter while traveling.

(4) ~~An Except as provided in subsection (5), an employee is not eligible for benefits otherwise payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the major contributing cause of the accident. However, if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol or drugs, this subsection does not apply.~~

(5) (a) An employee who uses marijuana for a debilitating medical condition pursuant to [sections 1 through 11], is eligible for benefits payable under this chapter, subject to the limitations of [section 5 of House Bill No. 43] and subsections (5) (b) and (5) (c) of this section.

(b) An employee is not eligible for benefits otherwise payable under this chapter if the use of marijuana for a debilitating medical condition pursuant to [sections 1 through 11] is the major contributing cause of the injury or occupational disease.

(c) An insurer is not liable for payment of benefits payable under this chapter if those benefits are related to an employee's use of marijuana for a debilitating medical condition or the consequences of the employee's use of marijuana for a debilitating medical condition.

(6) The provisions of subsection (4) do not apply if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol or drugs not prescribed by a physician. This subsection (6) does not apply to the use of marijuana for a debilitating medical condition, as marijuana is not a prescribed drug.

(5)(7) If there is no dispute that an insurer is liable for an injury but there is a liability dispute between two or more insurers, the insurer for the most recently filed claim shall pay benefits until that insurer proves that another insurer is responsible for paying benefits or until another insurer agrees to pay benefits. If it is later proven that the insurer for the most recently filed claim is not responsible for paying benefits, that insurer must receive reimbursement for benefits paid to the claimant from the insurer proven to be responsible.

(6)(8) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury.

(7)(9) An employee is not eligible for benefits payable under this chapter unless the entitlement to benefits is established by objective medical findings that contain sufficient factual and historical information concerning the relationship of the worker's condition to the original injury.

(8)(10) For occupational diseases, every employer enrolled under plan No. 1, every insurer under plan No. 2, or the state fund under plan No. 3 is liable for the payment of compensation, in the manner and to the extent provided in this chapter, to an employee of an employer covered under plan No. 1, plan No. 2, or the state fund under plan No. 3 with an occupational disease that arises out of or is contracted in the course and scope of employment.

(9)(11) Occupational diseases are considered to arise out of employment or be contracted in the course and scope of employment if:

(a) the occupational disease is established by objective medical findings; and

(b) the events occurring on more than a single day or work shift are the major contributing cause of the occupational disease in relation to other factors contributing to the occupational disease.

(10)(12) When compensation is payable for an occupational disease, the only employer liable is the employer in whose employment the employee was last injuriously exposed to the

hazard of the disease.

~~(11)~~ (13) When there is more than one insurer and only one employer at the time that the employee was injuriously exposed to the hazard of the disease, the liability rests with the insurer providing coverage at the earlier of:

(a) the time that the occupational disease was first diagnosed by a treating physician or medical panel; or

(b) the time that the employee knew or should have known that the condition was the result of an occupational disease.

~~(12)~~ (14) In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or substantially all of the assets of a mine from a person who was an operator of the mine on or after December 30, 1969, is liable for and shall secure the payment of all benefits that would have been payable by that person with respect to miners previously employed in the mine if acquisition had not occurred and that person had continued to operate the mine, and the prior operator of the mine is not relieved of any liability under this section.

~~(13)~~ (15) As used in this section, "major contributing cause" means a cause that is the leading cause contributing to the result when compared to all other contributing causes."

{Internal References to 39-71-407:

39-71-124 39-71-510 }

Insert: "NEW SECTION. Section 20. 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 21. {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 22. {standard} Effective dates. This act is effective July 1, 2011."

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