

SENATE BILL NO. 423

INTRODUCED BY J. ESSMANN

BY REQUEST OF THE SENATE JUDICIARY STANDING COMMITTEE

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6 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA THERAPEUTIC MARIJUANA ACT
7 AND REVISING LAWS RELATING TO THE USE OF MARIJUANA; CREATING A SYSTEM OF LICENSING FOR
8 THE CULTIVATION, MANUFACTURE, TRANSPORTATION, AND TRANSFER OF MARIJUANA FOR
9 THERAPEUTIC USE; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; CREATING A
10 SPECIAL REVENUE ACCOUNT; ESTABLISHING A TRANSITION PROCESS; AMENDING SECTIONS
11 37-1-136, 37-1-316, 37-3-343, 37-3-347, 41-5-216, 45-9-101, 45-9-102, 45-9-103, 45-9-110, 45-9-127,
12 45-10-103, 45-10-107, 61-11-101, 69-1-114, AND 69-1-401, MCA; AND PROVIDING EFFECTIVE DATES."

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

15
16 NEW SECTION. **Section 1. Short title -- purpose.** (1) [Sections 1 through 40] may be cited as the
17 "Montana Therapeutic Marijuana Act".

18 (2) The purpose of [sections 1 through 40] is to:

19 (a) provide legal protections to individuals with debilitating medical conditions who engage in the
20 therapeutic use of marijuana as provided in [sections 1 through 40] to alleviate the symptoms of their debilitating
21 medical conditions;

22 (b) allow for the possession, cultivation, manufacture, delivery, and transportation of marijuana as
23 permitted by [sections 1 through 40]; and

24 (c) create a framework for therapeutic use of marijuana that protects the health, welfare, and safety of
25 both the persons engaging in the therapeutic use of marijuana and the general public by:

26 (i) allowing individuals who provide the required application materials to obtain registry identification
27 cards;

28 (ii) allowing individuals to assist, without compensation, up to four registered cardholders with the
29 cultivation and manufacture of therapeutic marijuana;

30 (iii) providing for licensure of individuals, businesses, and organizations that are involved in the cultivation,

1 manufacture, delivery, transportation, and transfer of therapeutic marijuana or related products;
2 (iv) allowing certain licensees to be reimbursed for their costs; and
3 (v) establishing reporting requirements for production of therapeutic marijuana and sales and inspection
4 requirements for licensed premises.

5
6 **NEW SECTION. Section 2. Definitions.** As used in [sections 1 through 40], unless the context clearly
7 requires otherwise, the following definitions apply:

8 (1) "Courier" means an individual or business that is licensed to transport and deliver therapeutic
9 marijuana or therapeutic marijuana-infused products from a licensed premises to a registered cardholder.

10 (2) "Debilitating medical condition" means:

11 (a) cancer, glaucoma, positive status for human immunodeficiency virus, or acquired immune deficiency
12 syndrome when the condition or disease results in symptoms that seriously and adversely affect the patient's
13 health status;

14 (b) cachexia or wasting syndrome;

15 (c) severe chronic pain that is documented by:

16 (i) the patient's primary care physician and by a specialist with expertise in the disease process that is
17 causing the pain; and

18 (ii) objective proof of the etiology of the pain, including diagnostic tests that include but are not limited to
19 the results of an x-ray, computerized tomography scan, or magnetic resonance imaging;

20 (d) intractable nausea or vomiting;

21 (e) epilepsy or an intractable seizure disorder;

22 (f) multiple sclerosis;

23 (g) Crohn's disease;

24 (h) painful peripheral neuropathy;

25 (i) a central nervous system disorder resulting in chronic, painful spasticity or muscle spasms;

26 (j) admittance into hospice care in accordance with rules adopted by the department; or

27 (k) any other medical condition or treatment for a medical condition approved by the legislature after
28 reviewing recommendations of the advisory board provided for in [section 3].

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

30 (4) "Licensed premises" means the premises at which a therapeutic marijuana grower, a therapeutic

1 marijuana-infused products manufacturer, or a registrant of a grower or manufacturer is authorized to cultivate,
2 manufacture, or provide therapeutic marijuana or therapeutic marijuana-infused products.

3 (5) "Licensee" means a courier, personal production assistant, therapeutic marijuana grower, or
4 therapeutic marijuana-infused products manufacturer that has received a license pursuant to [sections 17 through
5 40].

6 (6) "Limited access area" means a building, room, or other contiguous area on a licensed premises to
7 which only persons licensed or registered by the state licensing authority pursuant to [sections 17 through 40]
8 may have access.

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

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

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

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

13 (11) (a) "Personal production assistant" means an individual 18 years of age or older who is licensed
14 pursuant to [sections 17 through 40] and who has agreed to assist a registered cardholder as allowed under
15 [section 23].

16 (b) The term does not include the cardholder's primary care or referral physician.

17 (12) "Primary care physician" means a person who:

18 (a) is licensed under Title 37, chapter 3;

19 (b) has an established office in Montana; and

20 (c) has a bona fide professional relationship with the patient that has existed for at least 6 months and
21 has included at least four visits at which the patient's debilitating medical condition was reviewed or assessed.

22 (13) "Qualifying patient" means a person who has been diagnosed by a physician or physicians as having
23 a debilitating medical condition.

24 (14) "Referral physician" means a person who:

25 (a) is licensed under Title 37, chapter 3;

26 (b) has an established office in Montana; and

27 (c) is the person to whom a patient's primary care physician has referred the patient for physical
28 examination and medical assessment.

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

1 (16) "Registrant" means an individual who is registered by the state licensing authority for the purposes
2 of working for a therapeutic marijuana grower or therapeutic marijuana-infused products manufacturer.

3 (17) "Registry identification card" means a document issued by the department pursuant to [section 4]
4 that identifies an individual as a registered cardholder.

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

6 (b) An individual is not considered a resident for the purposes of [sections 1 through 40] if the individual:

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

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

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

11 (20) "Standard of care" means:

12 (a) the following activities when undertaken by a patient's primary care physician if the primary care
13 physician is providing written certification for a patient with a debilitating medical condition:

14 (i) obtaining the patient's medical history;

15 (ii) performing a relevant physical examination;

16 (iii) reviewing prior treatment and treatment response for the debilitating medical condition;

17 (iv) obtaining and reviewing relevant diagnostic test results related to the debilitating medical condition;

18 (v) discussing with the patient and ensuring that the patient understands the advantages, disadvantages,
19 alternatives, potential adverse effects, and expected response to the recommended treatment;

20 (vi) monitoring the response to treatment and possible adverse effects; and

21 (vii) creating and maintaining patient records that remain with the physician; or

22 (b) the following activities undertaken by a referral physician when the referral physician is providing
23 written certification:

24 (i) obtaining the patient's medical history;

25 (ii) reviewing prior treatment and treatment response for the debilitating medical condition;

26 (iii) obtaining and reviewing relevant diagnostic test results related to the debilitating medical condition;

27 and

28 (iv) creating and maintaining patient records that remain with the physician.

29 (21) "State licensing authority" means the public service commission provided for in 2-15-2602.

30 (22) "Therapeutic marijuana" means marijuana that is cultivated, manufactured, transferred, or used for

1 therapeutic use.

2 (23) "Therapeutic marijuana grower" means an organization that meets the requirements of [section 20]
3 and is licensed pursuant to [sections 17 through 40] to cultivate marijuana at a licensed premises.

4 (24) (a) "Therapeutic marijuana-infused product" means a product that contains therapeutic marijuana
5 and is intended for therapeutic use by means other than smoking.

6 (b) The term includes but is not limited to edible products, ointments, and tinctures.

7 (25) "Therapeutic marijuana-infused products manufacturer" means an organization that meets the
8 requirements of [section 20] and is licensed pursuant to [sections 17 through 40] to manufacture therapeutic
9 marijuana-infused products.

10 (26) "Therapeutic use" means:

11 (a) for a registered cardholder, the possession, cultivation, manufacture, transportation, or use of
12 marijuana or paraphernalia by a registered cardholder to alleviate the symptoms or effects of the cardholder's
13 debilitating medical condition; and

14 (b) for a licensee, the cultivation, manufacture, transportation, or storage of therapeutic marijuana or the
15 possession and use of paraphernalia for the manufacture of therapeutic marijuana:

16 (i) as allowed by the applicable license; and

17 (ii) solely for use by a registered cardholder.

18 (27) "Written certification" means a statement signed by a physician stating that:

19 (a) the physician has completed a full assessment of the qualifying patient's medical history and current
20 medical condition;

21 (b) the assessment meets the standard of care;

22 (c) the qualifying patient has a debilitating medical condition; and

23 (d) the potential benefits of the therapeutic use of marijuana would likely outweigh the health risks for the
24 qualifying patient.

25

26 **NEW SECTION. Section 3. Advisory board -- membership -- duties.** (1) There is an advisory board
27 consisting of eight medical practitioners representing the fields of neurology, pain management, medical
28 oncology, psychiatry, infectious disease, family medicine, and gynecology.

29 (2) (a) Each advisory board member must be nationally board-certified in the member's area of specialty
30 and knowledgeable about the therapeutic use of marijuana.

1 (b) The governor shall appoint the members from a list of practitioners proposed by Montana
2 organizations representing physicians and health care facilities.

3 (3) The board shall meet two times a year to:

4 (a) review debilitating medical conditions previously approved by the legislature to determine whether
5 to recommend changes to the eligibility criteria for individuals applying under those conditions or to review new
6 scientific evidence pertaining to currently approved conditions, including information on the amount of therapeutic
7 marijuana allowed for approved conditions or the form in which the marijuana should be used;

8 (b) review and, if necessary, recommend increases or decreases to the quantity of marijuana that
9 therapeutic marijuana growers and registered cardholders may cultivate or manufacture in order to provide an
10 adequate supply for registered cardholders;

11 (c) recommend the manner of consumption or application of marijuana-infused products that may be most
12 appropriate for a particular debilitating medical condition; and

13 (d) review and recommend to the law and justice interim committee provided for in 5-5-226 additional
14 debilitating medical conditions for which the benefits of the use of therapeutic marijuana would likely outweigh
15 the risks, based on petitions submitted to the department for the addition of new debilitating medical conditions.

16 (4) Members of the board are entitled to be paid in an amount to be determined by the department, not
17 to exceed \$50 for each day in which a member is actually and necessarily engaged in the performance of board
18 duties and to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while
19 performing board duties. The board's operational costs must be paid through fees, fines, and penalties paid
20 pursuant to [sections 1 through 16].

21
22 **NEW SECTION. Section 4. Registry identification cards -- minors -- exceptions -- report to**
23 **legislature.** (1) The department shall establish and maintain a program for the issuance of registry identification
24 cards to Montana residents who meet the requirements of [sections 1 through 40].

25 (2) Except as provided in subsections (4) and (5), the department shall issue a registry identification card
26 to a qualifying patient who submits the following, in accordance with department rules:

27 (a) written certification that the person is a qualifying patient;

28 (b) for a qualifying patient whose medical condition is severe chronic pain, objective proof of the etiology
29 of the pain established by the results of diagnostic tests, including but not limited to x-rays, a computerized
30 tomography scan, or magnetic resonance imaging;

- 1 (c) an application fee or renewal fee;
- 2 (d) the name, address, and date of birth of the qualifying patient;
- 3 (e) proof of Montana residency;
- 4 (f) the name, street address, and telephone number of the qualifying patient's primary care physician
5 and referral physician, if any;
- 6 (g) a statement on a form prescribed by the department pledging not to divert marijuana to anyone who
7 is not allowed to possess marijuana pursuant to [sections 1 through 40];
- 8 (h) a statement indicating that the qualifying patient intends to:
- 9 (i) cultivate the qualifying patient's therapeutic marijuana; or
- 10 (ii) obtain therapeutic marijuana from a therapeutic marijuana grower or a therapeutic marijuana-infused
11 products manufacturer;
- 12 (i) (i) the name, street address, and date of birth of the individual's personal production assistant, if any;
- 13 or
- 14 (ii) an application for approval to acquire therapeutic marijuana from a therapeutic marijuana grower or
15 therapeutic-marijuana infused products manufacturer.
- 16 (3) A registered cardholder may have only one personal production assistant if the cardholder chooses
17 to cultivate and manufacture therapeutic marijuana rather than obtain the marijuana from a therapeutic marijuana
18 grower or a therapeutic marijuana-infused products manufacturer.
- 19 (4) The department shall issue a registry identification card to a minor if the minor's custodial parent or
20 legal guardian with responsibility for health care decisions:
- 21 (a) submits the materials required under subsection (2);
- 22 (b) provides proof of legal guardianship and responsibility for health care decisions if the person is
23 submitting an application as the minor's legal guardian with responsibility for health care decisions; and
- 24 (c) signs and submits a written statement that:
- 25 (i) two physicians have explained to the minor and to the minor's custodial parent or legal guardian with
26 responsibility for health care decisions the potential risks and benefits of the therapeutic use of marijuana; and
- 27 (ii) the minor's custodial parent or legal guardian with responsibility for health care decisions:
- 28 (A) consents to the therapeutic use of marijuana by the minor;
- 29 (B) agrees to serve as the minor's personal production assistant;
- 30 (C) agrees to control the acquisition of marijuana and the dosage and frequency of the therapeutic use

1 of marijuana by the minor;

2 (D) submits fingerprints to facilitate a finger print and background check by the department of justice and
3 the federal bureau of investigation. The parent or legal guardian shall pay the costs of the background check and
4 may not be licensed if the parent or legal guardian does not meet the requirements of [sections 1 through 40].

5 (E) pledges, on a form prescribed by the department, not to divert marijuana to anyone who is not allowed
6 to possess marijuana pursuant to [sections 1 through 40].

7 (5) The application for a minor must include written certification and the statements required under
8 [section 5] from:

9 (a) the primary care physician who is recommending marijuana for therapeutic use; and

10 (b) a second physician who has conducted a comprehensive review of the minor's medical record as
11 maintained by the minor's primary care physician and who is recommending marijuana for therapeutic use by the
12 minor.

13 (6) An individual may not be a registered cardholder if the individual is under the supervision of the
14 department of corrections or a youth court.

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

18 (b) The department may deny an application or renewal only:

19 (i) if the applicant did not provide the information required pursuant to this section;

20 (ii) if the department determines that the information was falsified;

21 (iii) if the applicant is not qualified to receive a registry identification card under the provisions of [sections
22 1 through 40]; or

23 (iv) for other reasons specified by the department by rule.

24 (c) Rejection of an application or renewal is considered a final department action, subject to judicial
25 review.

26 (8) The department shall issue a registry identification card with a unique identification number within
27 15 days of approving an application or renewal. Registry identification cards expire 1 year after the date of
28 issuance unless a physician has provided a written certification stating that a card is valid for a shorter period of
29 time. A registry identification card must state:

30 (a) the name, street address, and date of birth of the registered cardholder;

1 (b) the name and street address of the primary care physician or referral physician, if any, who provided
2 the written certification for the cardholder;

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

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

5 (9) The department shall provide the state licensing authority with the name of each registered
6 cardholder who indicates on the application that the cardholder intends to:

7 (a) obtain therapeutic marijuana from a therapeutic marijuana grower or a therapeutic marijuana-infused
8 products manufacturer; or

9 (b) use a personal production assistant.

10 (10) (a) A registered cardholder shall notify the department within 10 days of any change in the:

11 (i) cardholder's street address, physician, or personal production assistant;

12 (ii) status of the cardholder's debilitating medical condition.

13 (b) If a change occurs and is not reported to the department, the registry identification card is void.

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

19

20 **NEW SECTION. Section 5. Written certification -- accompanying statements -- required**
21 **notification to board of medical examiners.** (1) The written certification provided by a physician must be made
22 on a form prescribed by the department and signed and dated by the physician. The form must include:

23 (a) the physician's name, license number, office address, and telephone number on file with the board
24 of medical examiners and the physician's e-mail address; and

25 (b) the qualifying patient's name, date of birth, and debilitating medical condition.

26 (2) A physician who is providing written certification for a qualifying patient 18 years of age or older or
27 who is the primary care provider for a minor applying for a registry identification card shall provide:

28 (a) a statement initialed by the physician that the physician:

29 (i) has a professional relationship with the qualifying patient that has existed for at least 6 months and
30 has included at least four visits at which the patient's debilitating medical condition was reviewed or assessed;

1 (ii) has assumed primary responsibility for providing management and routine care of the qualifying
2 patient's debilitating medical condition after conducting a comprehensive medical history and physical
3 examination that included a personal review of any medical records maintained by other treating physicians and
4 that may have included the qualifying patient's reaction and response to conventional medical therapies;

5 (iii) has reviewed all prescription and nonprescription medications and supplements used by the qualifying
6 patient and has considered the potential drug interaction with marijuana;

7 (iv) has explained the potential risks and benefits of the therapeutic use of marijuana to the qualifying
8 patient; and

9 (v) plans to continue to assess the patient and the patient's therapeutic use of marijuana during the
10 course of the physician-patient relationship;

11 (b) a statement that in the physician's professional opinion the potential benefits of the therapeutic use
12 of marijuana would likely outweigh the health risks for the qualifying patient; and

13 (c) an attestation that the information provided in the written certification and accompanying statements
14 is true and correct.

15 (3) A physician who is the second physician recommending marijuana for therapeutic use by a minor or
16 the second physician providing a written certification for a qualifying patient whose debilitating medical condition
17 includes severe chronic pain shall submit:

18 (a) a statement initialed by the physician that the physician conducted a comprehensive review of the
19 minor's medical records as maintained by the primary care physician or documented the qualifying patient's
20 severe chronic pain as required pursuant to [sections 1 through 40];

21 (b) a statement that in the physician's professional opinion, the potential benefits of the therapeutic use
22 of marijuana would likely outweigh the health risks for the minor or qualifying patient; and

23 (c) an attestation that the information provided in the written certification and accompanying statements
24 is true and correct.

25 (4) The department shall provide the board of medical examiners provided for in 2-15-1731 with the name
26 of each physician, except a referral physician, who provides written certification for 25 or more patients within a
27 12-month period. The board of medical examiners shall review the physician's practices in order to determine
28 whether they meet the standard of care.

29
30 **NEW SECTION. Section 6. Unlawful conduct by cardholder -- penalties.** (1) The department shall

1 revoke and may not reissue the registry identification card of a person who:

2 (a) is convicted of a drug offense; or

3 (b) allows another person to be in possession of the cardholder's card for any purpose.

4 (2) A violation of [sections 1 through 16] is punishable by a fine not to exceed \$10,000 or by imprisonment
5 in a county jail for a term not to exceed 1 year, or both, unless otherwise provided in [sections 1 through 16] or
6 unless the violation would constitute a violation of Title 45. An offense constituting a violation of Title 45 must be
7 charged and prosecuted pursuant to the provisions of Title 45.

8

9 **NEW SECTION. Section 7. Prohibitions on physician affiliation with therapeutic marijuana**

10 **licensees.** (1) (a) A physician may not:

11 (i) accept or solicit anything of value, including monetary remuneration, from a licensee or registrant or
12 offer anything of value to a licensee or registrant;

13 (ii) offer a discount or any other thing of value to an individual who uses or agrees to use a particular
14 licensee;

15 (iii) examine a patient for the purposes of diagnosing a debilitating medical condition at a location where
16 therapeutic marijuana is grown, manufactured, sold, or distributed; or

17 (iv) hold an economic interest in an enterprise engaged in the therapeutic use of marijuana if the
18 physician certifies the debilitating medical condition of an applicant for a registry identification card.

19 (b) This subsection (1) does not prevent a physician from accepting a fee for providing medical care to
20 a licensee or a registrant if the physician charges the licensee or registrant the same fee as the physician charges
21 other patients for providing a similar level of medical care.

22 (2) If the department has cause to believe that a physician has violated this section, has violated a
23 provision of rules adopted pursuant to [sections 1 through 40], or has not met the standard of care required under
24 [sections 1 through 40], the department may refer the matter to the board of medical examiners for review
25 pursuant to 37-1-308.

26 (3) A violation of this section constitutes unprofessional conduct as set out in 37-1-316. If the board of
27 medical examiners finds that a physician has violated this section, the board shall restrict the physician's authority
28 to provide written certification for the therapeutic use of marijuana. The board of medical examiners shall notify
29 the department of the sanction.

30 (4) If the board of medical examiners believes a physician's practices may harm the public health, safety,

1 or welfare, the board may summarily restrict, as provided in 2-4-631, a physician's authority to provide written
2 certification for the therapeutic use of marijuana.

3
4 **NEW SECTION. Section 8. Local government authority to regulate.** (1) To protect the public health,
5 safety, or welfare, a local government may by ordinance or resolution regulate a therapeutic marijuana grower
6 or a therapeutic marijuana-infused products manufacturer that operates within the local government's
7 jurisdictional area. The regulations may include but are not limited to:

8 (a) restrictions on number and location;

9 (b) business licensing requirements;

10 (c) building codes and standards; and

11 (d) the inspection of businesses to ensure compliance with any sanitary requirements established by the
12 state licensing authority.

13 (2) An incorporated city or town may adopt an ordinance or resolution that prohibits the cultivation or
14 manufacture of therapeutic marijuana by a therapeutic marijuana grower or a therapeutic marijuana-infused
15 products manufacturer within its jurisdictional area.

16
17 **NEW SECTION. Section 9. Health care facility procedures for patients who are registered**
18 **cardholders.** (1) Except for hospices that allow the therapeutic use of marijuana as provided in [section 14], a
19 health care facility as defined in 50-5-101 shall take the following measures in the order listed when a patient who
20 is a registered cardholder has therapeutic marijuana in the patient's possession upon admission to the health care
21 facility:

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

24 (b) make a reasonable effort to contact the patient's personal production assistant or a courier; or

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

26 (2) A personal production assistant or courier contacted by a health care facility shall remove the
27 therapeutic marijuana without charge to the health care facility and deliver it to the cardholder's residence or to
28 a therapeutic marijuana grower or therapeutic marijuana-infused products manufacturer for storage until the
29 patient is discharged from the facility. The personal production assistant or courier may return the therapeutic
30 marijuana to the cardholder upon the cardholder's discharge from the facility.

1 (3) A law enforcement agency contacted by a health care facility shall respond by removing and storing
2 the therapeutic marijuana until the patient is discharged from the facility.

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

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

7

8 **NEW SECTION. Section 10. Therapeutic use of marijuana -- limits on amount -- presumption of**
9 **therapeutic use.** (1) (a) Marijuana for therapeutic use may be cultivated or manufactured by:

10 (i) a registered cardholder who has indicated to the department that the cardholder will grow therapeutic
11 marijuana for personal use at the cardholder's residence;

12 (ii) a therapeutic marijuana grower; or

13 (iii) a therapeutic marijuana-infused products manufacturer that has also obtained a therapeutic marijuana
14 grower license.

15 (b) A cardholder who lives in a rental property must have the landlord's permission to cultivate or
16 manufacture therapeutic marijuana in or on the rental property.

17 (2) (a) A registered cardholder may possess up to 4 mature marijuana plants, 12 seedlings, and a
18 maximum of 2 ounces of usable marijuana at the cardholder's residence.

19 (b) A registered cardholder may not be in possession of more than 1 ounce when the cardholder is
20 outside of the cardholder's residence.

21 (3) A therapeutic marijuana grower or therapeutic marijuana-infused products manufacturer may provide
22 no more than 2 ounces of usable marijuana or its equivalent in an infused product to a registered cardholder
23 during a 30-day period. The licensee shall maintain records of transactions with cardholders to verify that the
24 licensee has met the requirements of this section.

25 (4) Marijuana for therapeutic use by registered cardholders must be grown and manufactured in Montana.

26 (5) (a) A registered cardholder or licensee is presumed to be engaged in the therapeutic use of marijuana
27 if the cardholder or licensee:

28 (i) is in possession of a registry identification card or an appropriate license; and

29 (ii) is in possession of an amount of marijuana that does not exceed the amount permitted under [sections
30 1 through 40].

1 (b) The presumption may be rebutted by evidence that the possession of marijuana was not for the
2 purpose of alleviating the symptoms or effects of a registered cardholder's debilitating medical condition.

3
4 **NEW SECTION. Section 11. Confidentiality of registry information -- disclosure.** (1) The
5 department shall maintain a confidential list of individuals to whom the department has issued registry
6 identification cards. Individual names and other identifying information on the list must be confidential and are not
7 subject to disclosure, except to:

8 (a) authorized employees of the department and the state licensing authority as necessary to perform
9 official duties of the department or state licensing authority; or

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

12 (2) A person, including an employee or official of the department or other state or local government
13 agency, commits the offense of disclosure of confidential information relating to therapeutic use of marijuana if
14 the person knowingly or purposely discloses confidential information in violation of this section.

15 (3) A person convicted of disclosure of confidential information relating to therapeutic use of marijuana
16 shall be fined not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

17
18 **NEW SECTION. Section 12. Legal protections for therapeutic use.** (1) An individual who possesses
19 a registry identification card issued pursuant to [section 4] or a person licensed or registered pursuant to [sections
20 17 through 40] may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege,
21 including but not limited to civil penalty or disciplinary action by a professional licensing board or the department
22 of labor and industry, solely because:

23 (a) the registered cardholder acquires, possesses, cultivates, or manufactures marijuana not in excess
24 of the amounts allowed under [section 10];

25 (b) the registered cardholder uses therapeutic marijuana; or

26 (c) the licensee or registrant undertakes the activities allowed under the applicable license or registration.

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

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

3 (a) an individual's therapeutic use of marijuana impairs the individual's job-related performance; or

4 (b) a physician violates the standard of care or other requirements of [sections 1 through 40].

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

8 (5) (a) An individual may not be arrested or prosecuted for constructive possession, conspiracy as
9 provided in 45-4-102, or other provisions of law or any other offense solely for being in the presence or vicinity
10 of the therapeutic use of marijuana as permitted under [sections 1 through 40].

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

14 (6) Except as provided in [section 37], possession of or application for a registry identification card or a
15 license does not alone constitute probable cause to search the individual or the property of the individual or entity
16 possessing or applying for the registry identification card, license, or registration or otherwise subject the
17 individual or property of the individual or entity possessing or applying for the card or license to inspection by any
18 governmental agency, including a law enforcement agency.

19
20 **NEW SECTION. Section 13. Registry card or license to be carried and exhibited on demand --**
21 **photo identification required.** A registered cardholder or an individual licensed or registered pursuant to
22 [sections 1 through 40] shall have the cardholder's registry identification card or the individual's license or
23 registration in the individual's immediate possession at all times. The individual shall display the registry
24 identification card, license, or registration and a valid photo identification upon demand of a law enforcement
25 officer, justice of the peace, or city or municipal judge.

26
27 **NEW SECTION. Section 14. Limitations of therapeutic marijuana act -- penalties.** (1) [Sections 1
28 through 40] do not permit:

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

- 1 (b) the use of marijuana by a licensee;
- 2 (c) except as provided in subsection (3), the therapeutic use of marijuana:
- 3 (i) in a health care facility as defined in 50-5-101;
- 4 (ii) in a school or a postsecondary school as defined in 20-5-402;
- 5 (iii) on or in any property owned by a school district or a postsecondary school; or
- 6 (iv) on or in any property leased by a school district or a postsecondary school when the property is being
- 7 used for school-related purposes; or
- 8 (d) the smoking of marijuana by a registered cardholder:
- 9 (i) in a school bus or other form of public transportation;
- 10 (ii) in a correctional facility;
- 11 (iii) at a public park, public beach, public recreation center, or youth center;
- 12 (iv) in plain view of or in a place open to the general public; or
- 13 (v) where exposure to the marijuana smoke significantly adversely affects the health, safety, or welfare
- 14 of children.
- 15 (2) A cardholder or licensee may not cultivate or manufacture therapeutic marijuana in a manner that is
- 16 visible from the street or other public area.
- 17 (3) A hospice licensed under Title 50, chapter 5, may adopt a policy that allows therapeutic use of
- 18 marijuana by a registered cardholder.
- 19 (4) Nothing in [sections 1 through 40] may be construed to require:
- 20 (a) a government medical assistance program or private health insurer to reimburse a person for costs
- 21 associated with the therapeutic use of marijuana; or
- 22 (b) an employer to accommodate the therapeutic use of marijuana in any workplace.
- 23 (5) Nothing in [sections 1 through 40] may be construed to allow a licensee or registrant to use marijuana
- 24 or to prevent criminal prosecution of a licensee or registrant who uses marijuana or paraphernalia for personal
- 25 use.
- 26 (6) (a) An individual who violates subsection (1)(a) is subject to a revocation of the individual's registry
- 27 identification card if the individual is convicted of or pleads guilty to any offense related to driving under the
- 28 influence of alcohol or drugs when the initial offense with which the individual was charged was a violation of
- 29 61-8-401, 61-8-406, or 61-8-410. A revocation under this section must be for the period of suspension or
- 30 revocation set forth:

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

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

3 (b) If an individual's registry identification card is subject to renewal during the revocation period, the
4 individual may not renew the card until the full revocation period has elapsed. The card subsequently may be
5 renewed only if the individual submits all materials required for renewal.

6

7 **NEW SECTION. Section 15. Fraudulent representation of therapeutic use of marijuana -- penalty.**

8 (1) A person commits the offense of fraudulent representation of therapeutic use of marijuana if the person
9 knowingly or purposely fabricates or misrepresents to a law enforcement officer a registry identification card,
10 license, or registration issued pursuant to [sections 1 through 40].

11 (2) A person convicted of fraudulent representation of therapeutic use of marijuana shall be fined not to
12 exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

13

14 **NEW SECTION. Section 16. Rulemaking -- fees.** (1) The department shall adopt rules necessary for
15 the implementation and administration of [sections 1 through 16]. The rules must include but are not limited to:

16 (a) the manner in which the department will consider applications for registry identification cards for
17 qualifying patients and renewal of registry identification cards for registered cardholders;

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

19 (c) the circumstances under which a patient's admittance into hospice care will qualify as a debilitating
20 medical condition;

21 (d) the diagnostic tests allowable as proof of a debilitating medical condition involving severe chronic
22 pain;

23 (e) the circumstances under which the department will notify the board of medical examiners of potential
24 violations of [section 7]; and

25 (f) other rules necessary to implement the purposes of the regulation of therapeutic marijuana.

26 (2) The department's rules must establish application and renewal fees that generate revenue sufficient
27 to offset all expenses of implementing and administering [sections 1 through 16]. The department may vary the
28 application and renewal fees along a sliding scale that accounts for an applicant's income.

29

30 **NEW SECTION. Section 17. State licensing authority.** (1) The state licensing authority may hire

1 employees to carry out the responsibilities assigned under [sections 17 through 40]. The employees are
2 employees of the public service commission.

3 (2) The operational costs of the state licensing authority related to carrying out its responsibilities under
4 [sections 17 through 40] must be fully funded by fees paid by licensees and registrants. The costs include but
5 are not limited to the costs of the authority's licensing, inspection, and investigation duties and operation of the
6 hotline provided for in [section 39].

7
8 **NEW SECTION. Section 18. State licensing authority -- powers and duties -- rulemaking authority.**

9 (1) The state licensing authority shall:

10 (a) grant or refuse state licenses for the cultivation, manufacture, distribution, transportation, and
11 provision of therapeutic marijuana as provided by law;

12 (b) suspend, restrict, or revoke licenses upon violation of [sections 1 through 40] or a rule adopted
13 pursuant to [sections 1 through 40];

14 (c) impose fines and penalties authorized by [sections 17 through 40] or a rule adopted pursuant to
15 [sections 17 through 40];

16 (d) take any action with respect to a registrant that it may take with respect to a licensee;

17 (e) propose and adopt rules and adopt rulings and findings as necessary for the proper regulation and
18 control of the cultivation, manufacture, distribution, transportation, and provision of therapeutic marijuana and for
19 the enforcement of [sections 1 through 40];

20 (f) hear and determine at a public hearing:

21 (i) an appeal of a state license denial; or

22 (ii) a complaint against a licensee;

23 (g) administer oaths and issue subpoenas to require the presence of persons and the production of
24 materials necessary for a hearing held pursuant to this section;

25 (h) maintain the confidentiality of reports obtained from a licensee showing the volume or quantity of
26 therapeutic marijuana provided to a particular individual or any other records that are exempt from public
27 inspection pursuant to state law;

28 (i) develop the forms, licenses, identification cards, and applications necessary for the administration of
29 [sections 17 through 40]; and

30 (j) report annually to the legislature the number of applications received and granted for each type of

1 license, the geographic locations of licensees, the number of registered cardholders served by each licensee,
2 and the number and types of licenses revoked by the state licensing authority. The report may not provide any
3 individually identifying information about licensees.

4 (2) A hearing held pursuant to this section must comply with the provisions of Title 2, chapter 4.

5 (3) The state licensing authority may adopt rules to carry out its duties and responsibilities, including but
6 not limited to rules related to:

7 (a) licensing procedures, including:

8 (i) procedures for applications for initial licenses, renewals, and reinstatements;

9 (ii) procedures for approval, denial, or suspension of a license;

10 (iii) provisions for fines and license restrictions or revocations;

11 (iv) the procedure and fees for submitting fingerprints for background checks; and

12 (v) the fees to be charged for license applications, license issuance, license renewals or reinstatements,
13 applications to change locations, and applications to transfer ownership. The fees must cover the operational
14 costs of the state licensing authority.

15 (b) the duties of officers and employees of the state licensing authority;

16 (c) requirements for inspections, investigations, searches, and seizures;

17 (d) penalties for violation of the provisions of [sections 17 through 40];

18 (e) prohibitions on misrepresentation and unfair practices;

19 (f) control of informational and product displays on licensed premises;

20 (g) development of individual identification cards for officers, managers, contractors, employees, and
21 other support staff of entities licensed or registered by the state licensing authority pursuant to [sections 17
22 through 40];

23 (h) security requirements for a licensed premises including, at a minimum, the lighting, physical security,
24 video, and alarm requirements and other minimum procedures for internal control as determined necessary for
25 the proper administration and enforcement of [sections 1 through 40];

26 (i) requirements for reporting changes, alterations, or modifications to a licensed premises;

27 (j) the storage of and transportation of therapeutic marijuana;

28 (k) sanitary requirements for therapeutic marijuana growers and for therapeutic marijuana-infused
29 products manufacturers;

30 (l) the acceptable forms of photo identification that a licensee may accept when verifying a transaction;

1 (m) labeling standards;

2 (n) records to be kept by licensees and the required availability of the records, including the availability
3 of information ensuring payment of applicable taxes;

4 (o) the sharing of information with other state agencies and with state and local law enforcement
5 agencies;

6 (p) the use of genetic markers, if feasible, to verify the source of marijuana in a registered cardholder's
7 possession or confiscated by a law enforcement agency; and

8 (q) other rules necessary to carry out the provisions of [sections 1 through 40].

9 (4) Nothing in [sections 1 through 40] may be construed to limit a law enforcement agency's ability to
10 investigate unlawful activity in relation to a licensee or registrant. A law enforcement agency may run a Montana
11 criminal justice information network criminal history record check of a licensee or a registrant during an
12 investigation of unlawful activity related to therapeutic marijuana.

13

14 **NEW SECTION. Section 19. Requirements for provision of therapeutic marijuana.** (1) The state
15 licensing authority shall establish by rule a process by which registered cardholders who plan to obtain
16 therapeutic marijuana from a therapeutic marijuana grower or therapeutic marijuana-infused products
17 manufacturer are provided with information about the grower or manufacturer from which the therapeutic
18 marijuana may be obtained.

19 (2) A registered cardholder may not obtain therapeutic marijuana directly from a therapeutic marijuana
20 grower or therapeutic marijuana-infused product manufacturer.

21 (3) The rules must include but are not limited to:

22 (a) the use of a courier to transport and deliver therapeutic marijuana;

23 (b) the manner in which licensees will ensure that therapeutic marijuana is provided only to registered
24 cardholders; and

25 (c) the procedures a licensee shall follow if the licensee has reasonable cause to believe an individual
26 is using a fraudulent registry identification card in an effort to obtain therapeutic marijuana.

27 (4) A licensee may provide a small amount of its therapeutic marijuana or therapeutic marijuana-infused
28 product for testing to a laboratory that is registered pursuant to rules adopted by the state licensing authority
29 pursuant to [sections 1 through 40].

30 (5) Therapeutic marijuana and marijuana-infused products must be labeled with a list of all chemical

1 additives that were used in the cultivation and production of the therapeutic marijuana or marijuana-infused
2 product, including but not limited to nonorganic pesticides, herbicides, and fertilizers.

3
4 **NEW SECTION. Section 20. Organizations eligible for certain licenses -- requirements.** (1) To
5 qualify for licensure as a therapeutic marijuana grower or a therapeutic marijuana-infused products manufacturer,
6 an applicant must be an organization that is formed or incorporated with a five-member structure of control and
7 that operates the licensed activities on a reimbursement-of-costs basis and not for the purposes of earning a
8 profit.

9 (2) An applicant under this section shall provide the state licensing authority with:

10 (a) proof of the organization's structure of control;

11 (b) a list of all individuals:

12 (i) with direct or indirect authority over the management policies of the facility; and

13 (ii) having a 5% or greater ownership in the licensed premises, whether the ownership is direct or indirect
14 and is in land, buildings, or other materials. The information must include owners of any entity that owns all or
15 part of the land.

16 (c) a brief business plan showing how the organization will fund operations during the first 2 years of
17 licensing, including the funding sources to be used;

18 (d) a description of the facility that will be used for the production of therapeutic marijuana; and

19 (e) other information as required by the state licensing authority.

20
21 **NEW SECTION. Section 21. Classes of licenses -- disclosure -- confidentiality.** (1) The state
22 licensing authority may issue:

23 (a) a courier license;

24 (b) a personal production assistant license;

25 (c) a therapeutic marijuana grower license;

26 (d) a therapeutic marijuana-infused products manufacturer license; and

27 (e) registrations for managers, operators, employees, contractors, and other support staff employed by,
28 working in, or having access to a limited access area of a licensed premises.

29 (2) The state licensing authority may take any action with respect to a registrant pursuant to [sections 17
30 through 40] that it may take with a licensee.

1 (3) The state licensing authority shall provide each appropriate local law enforcement agency with the
2 name and street address of each licensee in the agency's jurisdiction. The law enforcement agency may disclose
3 the information to authorized employees of the agency as necessary to verify that a therapeutic marijuana
4 operation is licensed and is in compliance with the provisions of [sections 17 through 40].

5
6 **NEW SECTION. Section 22. Couriers -- requirements -- allowable activities.** (1) The state licensing
7 authority may issue a courier license to an individual or business to transport therapeutic marijuana or therapeutic
8 marijuana-infused products from a licensed therapeutic marijuana grower or therapeutic marijuana-infused
9 products manufacturer to a registered cardholder.

10 (2) An applicant for a courier license shall:

11 (a) undergo the licensing procedures established in [section 26]; and

12 (b) submit application materials as required by the state licensing authority, including but not limited to
13 a statement acknowledging that possession of the license does not allow the person to engage in the use of
14 therapeutic marijuana or paraphernalia and agreeing not to divert therapeutic marijuana to anyone who is not
15 allowed to possess marijuana pursuant to [sections 1 through 40].

16 (3) A courier shall contract with the therapeutic marijuana grower or therapeutic marijuana-infused
17 products manufacturer and may be reimbursed at a rate established by the state licensing authority.

18 (4) Before a courier transports or delivers therapeutic marijuana, the courier shall notify the local law
19 enforcement agencies having jurisdiction in the areas where the courier will obtain and deliver the therapeutic
20 marijuana. The courier shall specify the licensee from whom the courier is obtaining therapeutic marijuana and
21 the registered cardholder to whom the courier is delivering the therapeutic marijuana.

22 (5) The state licensing authority may adopt rules relating to the amount of therapeutic marijuana that a
23 courier may possess and transport at any given time.

24 (6) The state licensing authority may grant a courier license to a therapeutic marijuana grower or a
25 therapeutic marijuana-infused products manufacturer under exceptional circumstances as established by rule.
26 Exceptional circumstances include but are not limited to the proximity of registered cardholders to a therapeutic
27 marijuana grower or infused products manufacturer.

28
29 **NEW SECTION. Section 23. Personal production assistants -- requirements -- allowable activities.**

30 (1) The state licensing authority shall issue a license to an individual who is named as a personal production

- 1 assistant in a registered cardholder's approved application if the individual:
- 2 (a) registers the individual's street address with the state licensing authority;
- 3 (b) signs a statement:
- 4 (i) agreeing to:
- 5 (A) assist in cultivating or manufacturing therapeutic marijuana only for registered cardholders who have
- 6 named the applicant as their personal production assistant;
- 7 (B) transport therapeutic marijuana only as allowed in [section 9]; and
- 8 (C) notify the state licensing authority and other regulatory entities within 10 days of any change in the
- 9 individual's street address or in the street address where the therapeutic marijuana is cultivated or manufactured;
- 10 and
- 11 (ii) acknowledging that the individual may not engage in the use of therapeutic marijuana or use
- 12 paraphernalia for any purpose other than cultivating or manufacturing marijuana for therapeutic use by a
- 13 registered cardholder; and
- 14 (iii) pledging not to divert marijuana to anyone who is not allowed to possess marijuana pursuant to
- 15 [sections 1 through 40];
- 16 (c) undergoes the licensing procedures established in [section 26]; and
- 17 (d) is not prohibited from licensure under the provisions of [section 27].
- 18 (2) An individual may serve as a personal production assistant for no more than four registered
- 19 cardholders unless the state licensing authority approves a personal production assistant to serve more than four
- 20 patients because of exceptional circumstances. Exceptional circumstances include but are not limited to the
- 21 registered cardholder's proximity to a therapeutic marijuana grower or therapeutic marijuana-infused products
- 22 manufacturer.
- 23 (3) A personal production assistant may not:
- 24 (a) receive compensation for activities allowed under [sections 1 through 40];
- 25 (b) hold any other license issued under [sections 17 through 40];
- 26 (c) delegate to another person the personal production assistant's authority to assist in the production
- 27 of therapeutic marijuana for a cardholder or engage others to assist in the production of therapeutic marijuana
- 28 for a cardholder; or
- 29 (d) cultivate or manufacture therapeutic marijuana at a location other than the residence of the registered
- 30 cardholder.

1 (4) A personal production assistant shall maintain at all times a list of the registered cardholders who
 2 have named the individual as their personal production assistant. The list must include the registry identification
 3 card number of each patient and must be provided to a law enforcement agency upon request.

4
 5 **NEW SECTION. Section 24. Therapeutic marijuana grower -- requirements -- allowable activities.**

6 (1) An organization licensed as a therapeutic marijuana grower shall cultivate marijuana at a licensed premises.

7 (2) A therapeutic marijuana grower shall:

8 (a) limit its therapeutic marijuana production to:

9 (i) 95 mature plants; and

10 (ii) the number of seedlings, cuttings, and clones and inventory of usable marijuana set by the state
 11 licensing authority by rule; and

12 (b) submit to the state licensing authority an acknowledgment that it will not exceed allowable production
 13 limits.

14 (3) A therapeutic marijuana grower may:

15 (a) sell marijuana to a therapeutic marijuana-infused products manufacturer as allowed by the state
 16 licensing authority; and

17 (b) contract with a courier to deliver therapeutic marijuana to a registered cardholder.

18 (4) A therapeutic marijuana grower may not:

19 (a) transfer therapeutic marijuana to another grower; or

20 (b) conduct transactions directly with a registered cardholder at the therapeutic marijuana grower's
 21 licensed premises.

22 (5) Therapeutic marijuana may not be used in any form on the licensed premises.

23
 24 **NEW SECTION. Section 25. Therapeutic marijuana-infused products manufacturer -- allowable**

25 **activities.** (1) An organization licensed as a therapeutic marijuana-infused products manufacturer shall:

26 (a) prepare therapeutic marijuana-infused products on a licensed premises that is used exclusively for
 27 the manufacture and preparation of therapeutic marijuana-infused products;

28 (b) use equipment that is used exclusively for the manufacture and preparation of therapeutic
 29 marijuana-infused products; and

30 (c) if it does not have a therapeutic marijuana grower license, execute a written agreement or contract

1 with a therapeutic marijuana grower that states at a minimum:

2 (i) the total amount of therapeutic marijuana to be obtained from the therapeutic marijuana grower and
3 used in the manufacturing process; and

4 (ii) the total amount of therapeutic marijuana-infused products to be manufactured from the therapeutic
5 marijuana obtained from the therapeutic marijuana grower.

6 (2) All licensed premises on which therapeutic marijuana-infused products are manufactured must meet:

7 (a) the sanitary standards for therapeutic marijuana-infused product preparation adopted by the state
8 licensing authority; and

9 (b) any applicable standards set by a local board of health for a food service establishment as defined
10 in 50-50-102.

11 (3) The state licensing authority shall determine the maximum amount and forms of marijuana that a
12 therapeutic marijuana-infused products manufacturer may obtain from a therapeutic marijuana grower.

13 (4) A therapeutic marijuana-infused product must be prepackaged and labeled in accordance with rules
14 adopted by the state licensing authority to indicate at a minimum that:

15 (a) the product contains therapeutic marijuana;

16 (b) the product is manufactured without any regulatory oversight for efficacy; and

17 (c) health risks may be associated with the consumption or use of the product.

18 (5) Therapeutic marijuana and therapeutic marijuana-infused products may not be consumed on a
19 licensed premises.

20 (6) A therapeutic marijuana-infused products manufacturer that also has a therapeutic marijuana grower
21 license may use the marijuana from the licensed premises affiliated with its grower license only for the purposes
22 of making therapeutic marijuana-infused products at its manufacturing premises.

23 (7) Therapeutic marijuana-infused products may not be considered a food or drug for the purposes of
24 Title 50, chapter 31.

25
26 **NEW SECTION. Section 26. Licensing procedures -- background checks.** (1) An applicant for a
27 license or registration shall submit the following, in accordance with rules adopted by the state licensing authority:

28 (a) the name and street address of the applicant;

29 (b) the names and street addresses of the officers, directors, or managers involved with the applicant;

30 (c) the street address or physical description, if no street address is available, where the applicant's

1 facility will be located;

2 (d) application and licensing fees as established by the state licensing authority in rule; and

3 (e) any other information required by the state licensing authority.

4 (2) Payment of the fee and submission of an application do not create an entitlement to receive a license
5 or a registration.

6 (3) (a) An applicant shall submit fingerprints to facilitate a fingerprint and background check by the
7 department of justice and the federal bureau of investigation.

8 (b) The state licensing authority may acquire a name-based criminal history record check for an applicant,
9 licensee, or registrant who has twice submitted to a fingerprint-based criminal history record check and whose
10 fingerprints are unclassifiable.

11 (4) The state licensing authority shall use the information resulting from a criminal history record check
12 conducted under this section to investigate and determine whether an applicant is qualified to hold a state license
13 or registration pursuant to [sections 17 through 40]. The state licensing authority may verify any information an
14 applicant is required to submit.

15 (5) (a) Except as provided in subsection (6)(b), a license or registration issued pursuant to this section
16 is valid for 2 years from the date of issuance unless revoked or suspended pursuant to [section 36 or 38].

17 (b) A personal production assistant license is valid for:

18 (i) the same period of time as the registry identification cards for the registered cardholders who have
19 named the individual as their personal production assistant; or

20 (ii) a maximum of 2 years if the registry identification card of at least one of the registered cardholders
21 who have named the individual as their personal production assistant would expire more than 2 years after the
22 individual was first licensed.

23 (6) Each license or registration issued under [sections 17 through 40] is separate and distinct. A licensee
24 or registrant may not:

25 (a) exercise any of the privileges granted under a license or registration other than the license or
26 registration that the licensee or registrant holds; or

27 (b) allow another person to exercise the privileges granted under the license or registration.

28 (7) (a) A licensee shall notify the state licensing authority in writing of the name, street address, and date
29 of birth of a new officer, manager, or employee before the new officer, manager, or employee begins working
30 at, managing, or being associated with the licensee.

- 1 (b) Before the individual may begin the association with the licensee, the individual shall:
- 2 (i) submit fingerprints to facilitate a fingerprint and background check by the department of justice and
- 3 the federal bureau of investigation; and
- 4 (ii) obtain the identification required by the state licensing authority.

5

6 **NEW SECTION. Section 27. Persons prohibited as licensees.** The state licensing authority may not

7 issue a license to:

- 8 (1) an individual with a felony conviction;
- 9 (2) a licensed physician providing written certification for the therapeutic use of marijuana;
- 10 (3) an individual under the supervision of the department of corrections or a youth court;
- 11 (4) a licensee who, during a period of licensure or at the time of application, has failed to:
- 12 (a) pay any taxes, interest, or penalties due;
- 13 (b) pay a judgment due to a government agency;
- 14 (c) stay out of default on a government-issued student loan;
- 15 (d) pay child support; or
- 16 (e) remedy an outstanding delinquency for child support or for taxes or judgments owed to a government
- 17 agency;
- 18 (5) a person who employs an individual who has not passed a criminal history record check;
- 19 (6) a peace officer, as defined in 45-2-101;
- 20 (7) an officer or employee of the state licensing authority;
- 21 (8) a person whose authority for a license of a different class has been revoked by the state licensing
- 22 authority;
- 23 (9) a person for a license for a location that is currently licensed pursuant to 50-57-201 as an
- 24 establishment or a retail food establishment; or
- 25 (10) an individual who has not been a resident of Montana for at least 5 years prior to the date of the
- 26 person's application.

27

28 **NEW SECTION. Section 28. Denial of license.** (1) The state licensing authority shall deny a license

29 to an applicant or licensee if:

- 30 (a) the premises on which the applicant proposes to conduct operations do not meet the requirements

1 of [sections 1 through 40];

2 (b) the applicant does not meet or fails to comply with any of the terms, conditions, or provisions of
3 [sections 1 through 40] or any rules adopted by the state licensing authority;

4 (c) the applicant fails to comply with any special terms or conditions that were placed on its license; or

5 (d) the licensed premises has been operated in a manner that adversely affects the public health or
6 welfare or the safety of the community in which the licensed premises is located.

7 (2) An applicant who is denied a license pursuant to subsection (1) is entitled to a hearing pursuant to
8 Title 2, chapter 4. The state licensing authority shall provide written notice of the reasons for denial at least 15
9 days before the hearing.

10

11 **NEW SECTION. Section 29. Restrictions applicable to new licenses -- local government authority.**

12 (1) The state licensing authority may not accept or approve an application for a license:

13 (a) until it is established that the applicant is or will be entitled to possession of the premises through a
14 lease, rental agreement, or other arrangement for possession or by virtue of ownership of the premises;

15 (b) for a location in an area where the cultivation, manufacture, and provision of therapeutic marijuana
16 as contemplated is not permitted under the applicable local government zoning laws; or

17 (c) if the building in which therapeutic marijuana is to be cultivated or manufactured is located within 2,000
18 feet of a school, a family or group day-care home as defined in 52-2-703, an alcohol or drug treatment facility,
19 or the principal campus of a postsecondary school or seminary. The distance must be measured in a straight line
20 from the nearest property line of the land used for a school, day-care home, alcohol or drug treatment center,
21 campus, or seminary to the nearest portion of the building to be used by the applicant.

22 (2) A local government may by ordinance or resolution vary the distance restrictions imposed by this
23 section or may eliminate one or more types of schools, campuses, or facilities from the application of a distance
24 restriction.

25

26 **NEW SECTION. Section 30. Licenses -- contents and display.** (1) A license issued pursuant to
27 [sections 17 through 40] must specify the date of issuance, the period of licensure, the name of the licensee, and
28 the premises that is licensed.

29 (2) The license must be conspicuously displayed at all times at the premises for which it is issued.

30 (3) The licensee shall at all times possess and maintain possession of the premises for which the license

1 is issued. Possession may be by ownership, lease, rental, or other arrangement.

2

3 **NEW SECTION. Section 31. Cash transactions prohibited.** (1) Cash transactions related to
4 therapeutic marijuana are prohibited.

5 (2) A licensee shall retain all documents related to transactions involving therapeutic marijuana, including
6 documents verifying the type of payment used for the transaction.

7 (3) A licensee shall make all documents related to transactions available to the state licensing authority
8 for inspection upon request.

9 (4) This section does not prohibit the use of checks, money orders, prepaid cards, debit cards, or credit
10 cards to reimburse licensees for costs.

11

12 **NEW SECTION. Section 32. Transfer of ownership -- change of location or manager.** (1) A
13 therapeutic marijuana grower license or therapeutic marijuana-infused manufacturer license may be transferred
14 to another organization upon application to the state licensing authority on forms prepared and furnished by the
15 state licensing authority. In determining whether to permit a transfer of ownership, the state licensing authority
16 shall consider the requirements of [sections 17 through 40] and rules adopted pursuant to [sections 17 through
17 40].

18 (2) A personal production assistant license or courier license is not transferable.

19 (3) A licensee shall report a transfer or change of ownership to the state licensing authority 30 days
20 before a transfer or change of ownership occurs.

21 (4) A report is required for transfers of capital stock of any corporation.

22 (5) Upon approval from the state licensing authority, a licensee may move the licensee's permanent
23 location to any place in the same city, town, or county for which the license was originally granted. Before granting
24 the request, the state licensing authority shall consider whether the proposed change of location would conform
25 with city, town, or county zoning requirements or regulatory decisions made pursuant to [section 8].

26 (6) A licensee shall employ a separate and distinct manager on the premises. The licensee shall report
27 to the state licensing authority:

28 (a) the name of the manager; and

29 (b) a change in manager 30 days prior to any change.

30

1 NEW SECTION. Section 33. Unlawful financial assistance. (1) The state licensing authority shall
2 require a complete disclosure of all persons having a direct or indirect financial interest in each license issued
3 pursuant to [sections 17 through 40]. The disclosure must include the extent of each person's financial interest.

4 (2) This section does not apply to:

5 (a) a financial institution as defined in 32-6-103;

6 (b) federal housing administration-approved mortgages; or

7 (c) stockholders, directors, or officers of financial institutions or the federal housing administration.

8 (3) This section is intended to prohibit and prevent the control of licenses by an individual, organization,
9 or business that is not licensed pursuant to the provisions of [sections 1 through 40].

10

11 NEW SECTION. Section 34. License renewal. (1) For all licenses except personal production
12 assistant licenses, the state licensing authority shall notify the licensee 90 days in advance of the expiration of
13 the license. The notification must be sent by first-class mail to the licensee's address of record with the state
14 licensing authority. Except as provided in subsection (2), a licensee shall apply for the renewal of an existing
15 license at least 30 days before the expiration date of the license.

16 (2) The state licensing authority, in its discretion and based upon reasonable grounds, may waive the
17 30-day requirement.

18 (3) (a) A licensee whose license has been expired for 90 days or less may file a late renewal application
19 upon the payment of a nonrefundable late application fee. A licensee who files a late renewal application and
20 pays the fee may continue to operate until the state licensing authority has taken final action on the application
21 unless the state licensing authority summarily suspends the license as provided in [section 38].

22 (b) A licensee whose license has been expired for more than 90 days may not cultivate, manufacture,
23 or distribute or otherwise transfer therapeutic marijuana until the person has obtained a new license.

24

25 NEW SECTION. Section 35. Inactive licenses. The state licensing authority may revoke or elect not
26 to renew a license if it determines that the licensed premises has been inactive for at least 90 days.

27

28 NEW SECTION. Section 36. Unlawful acts by licensees. (1) Except as otherwise provided in [sections
29 1 through 40], it is unlawful for a licensee to:

30 (a) possess more plants and usable marijuana than allowed by the terms of the license issued by the

- 1 state licensing authority or any rules adopted by the state licensing authority pursuant to [sections 17 through 40];
- 2 (b) have in possession or upon the licensed premises an amount of therapeutic marijuana in excess of
- 3 the amount allowed by the license;
- 4 (c) allow any use of therapeutic marijuana upon a licensed premises;
- 5 (d) have on the licensed premises any therapeutic marijuana or marijuana paraphernalia that shows
- 6 evidence of the therapeutic marijuana having been consumed or partially consumed;
- 7 (e) continue operating for the purpose of cultivation or manufacture of therapeutic marijuana or
- 8 therapeutic marijuana-infused products without filing the forms and paying the fees required under [sections 17
- 9 through 40];
- 10 (f) transfer or acquire therapeutic marijuana except as allowed pursuant to [sections 1 through 40];
- 11 (g) allow a person to be within a limited access area unless:
- 12 (i) the person's license or registration from the state licensing authority allows access and the person's
- 13 license or registration is displayed as required by [sections 1 through 40]; or
- 14 (ii) the person is an employee of the state licensing authority conducting an inspection pursuant to
- 15 [section 37];
- 16 (h) fail to designate areas of ingress and egress for limited-access areas and post signs in conspicuous
- 17 locations as required by rules adopted pursuant to [sections 17 through 40];
- 18 (i) fail to report a transfer or change of ownership or financial interest as required by [section 32];
- 19 (j) fail to report the names of or a change in managers as required by [section 32];
- 20 (k) display any signs;
- 21 (l) advertise in any medium, including electronic media;
- 22 (m) provide public premises for the purpose of using therapeutic marijuana in any form;
- 23 (n) provide therapeutic marijuana to a person not licensed pursuant to [sections 17 through 40] or to an
- 24 individual who is unable to produce a valid registry identification card;
- 25 (o) offer for sale or solicit an order for therapeutic marijuana;
- 26 (p) provide therapeutic marijuana anywhere other than the licensed premises specifically designated in
- 27 the license unless the licensee is a courier; or
- 28 (q) violate the provisions of 30-14-205 and 30-14-209.
- 29 (2) (a) It is unlawful for a therapeutic marijuana grower to possess, transfer, deliver, or cause to be
- 30 delivered to any person therapeutic marijuana not grown upon its licensed premises.

1 (b) A violation of this subsection (2) is grounds for the immediate revocation of the license granted under
2 [sections 17 through 40].

3 (3) (a) It is unlawful for a physician to make patient referrals to a therapeutic marijuana licensee or to
4 receive anything of value from a licensee or its agents, servants, or officers or anyone with a financial interest
5 in the license.

6 (b) It is unlawful for a licensee or registrant to offer anything of value to a physician.

7 (4) A person who violates a provision of this section commits a misdemeanor that is punishable by a fine
8 not to exceed \$10,000 or by imprisonment in a county jail for a term not to exceed 1 year, or both, unless the
9 violation would constitute a violation of Title 45. An offense constituting a violation of Title 45 must be charged
10 and prosecuted pursuant to the provisions of Title 45.

11
12 **NEW SECTION. Section 37. Inspection procedures.** (1) The state licensing authority may conduct
13 frequent, unannounced inspections.

14 (2) (a) Each licensee shall keep a complete set of records necessary to show all business transactions.
15 The records must be open for inspection by the state licensing authority at any time during business hours.

16 (b) The state licensing authority may require:

17 (i) a licensee to furnish information it considers necessary for the proper administration of [sections 1
18 through 40]; and

19 (ii) an audit of the licensee's records and accounts by an auditor selected by the state licensing authority.
20 The auditor may have access to all books and records of the licensee.

21 (3) The licensee shall pay the costs of an audit required under this section.

22 (4) (a) A licensed premises, including any places of storage, where therapeutic marijuana is cultivated,
23 manufactured, stored, cultivated, or distributed is subject to entry by the state licensing authority for the purpose
24 of inspection or investigation during all business hours and other times of apparent activity.

25 (b) (i) For examination of inventory or books and records required to be kept by the licensee, the state
26 licensing authority may have access during business hours.

27 (ii) If any part of the licensed premises consists of a locked area, the licensee shall make the area
28 available for inspection without delay upon request of the state licensing authority.

29 (5) A licensee shall keep all books and records showing all business transactions of the licensee for the
30 current tax year and the 7 tax years immediately preceding the current tax year.

1 (6) Within 15 days after the end of each month and in a manner prescribed by the state licensing
2 authority, a licensee shall file a statement showing for that month:

3 (a) the total gross income collected through reimbursement of costs;

4 (b) the amount of usable marijuana produced;

5 (c) the number of plants grown, seedlings started, and cuttings and clones in inventory;

6 (d) the names and registry identification numbers of registered cardholders to whom mature plants,
7 seedlings, usable marijuana, or marijuana-infused products were transferred and the quantities transferred to
8 each cardholder; and

9 (e) the number of mature plants, seedlings, cuttings, and clones and amount of usable marijuana
10 remaining in inventory.

11
12 **NEW SECTION. Section 38. Penalties for licensees.** (1) The state licensing authority may summarily
13 suspend a license or issue a notice of contemplated action for a violation of any provision of [sections 17 through
14 40] or rules adopted pursuant to [sections 17 through 40].

15 (2) A license may be revoked, suspended, or subject to other disciplinary action and a renewal action
16 may be denied for:

17 (a) failure to comply with or satisfy any provisions of [sections 1 through 40] or rules adopted by the state
18 licensing authority;

19 (b) failure to allow an inspection by an authorized representative of the state licensing authority;

20 (c) falsification of any material or information submitted to the state licensing authority;

21 (d) diversion of therapeutic marijuana as determined by the state licensing authority; or

22 (e) threatening or harming a registered cardholder, a physician, or an employee of the state licensing
23 department.

24 (3) (a) A licensee whose license has been summarily suspended or who has received a notice of
25 contemplated action may request a hearing and an administrative review of written materials as applicable. The
26 licensee shall file the request for a hearing within 30 days of the date the action is taken or the notice is received.

27 (b) The request must be sent to the state licensing authority and include:

28 (i) the requester's name, address, and telephone number;

29 (ii) a statement of the facts relevant to the review of the action;

30 (iii) a statement of the statutes and administrative rules relevant to the review of the action; and

1 (iv) any other information or evidence the requester considers relevant to the request.

2 (4) The state licensing authority shall consider the request as provided in title 2, chapter 4.

3

4 **NEW SECTION. Section 39. Hotline.** (1) The state licensing authority shall create and maintain a
5 hotline to receive reports of suspected abuse of the provisions of [sections 1 through 40].

6 (2) The state licensing authority may:

7 (a) investigate reports of suspected abuse of the provisions of [sections 1 through 40]; or

8 (b) refer reports of suspected abuse to the law enforcement agency having jurisdiction in the area where
9 the suspected abuse is occurring.

10

11 **NEW SECTION. Section 40. Special revenue account.** (1) There is an account in the state special
12 revenue fund to the credit of the state licensing authority for use in administering [sections 17 through 40]. The
13 account consists of money deposited into the account from licensing fees and penalties assessed by the state
14 licensing authority and any other source of revenue due to the state licensing authority. Interest earned on the
15 account must be deposited into the account and used to sustain the account.

16 (2) Money from the account must be used to cover the expenses of the state licensing authority.

17 (3) Money remaining in the account at the end of the fiscal year must be transferred to the general fund.

18

19 **Section 41.** Section 37-1-136, MCA, is amended to read:

20 **"37-1-136. Disciplinary authority of boards -- injunctions.** (1) Subject to 37-1-138, each licensing
21 board allocated to the department has the authority, in addition to any other penalty or disciplinary action provided
22 by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

23 (a) revocation of a license;

24 (b) suspension of its judgment of revocation on terms and conditions determined by the board;

25 (c) suspension of the right to practice for a period not exceeding 1 year;

26 (d) placing a licensee on probation;

27 (e) reprimand or censure of a licensee; or

28 (f) taking any other action in relation to disciplining a licensee as the board in its discretion considers
29 proper.

30 (2) Any disciplinary action by a board shall be conducted as a contested case hearing under the

1 provisions of the Montana Administrative Procedure Act.

2 (3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from
3 engaging in the practice of the occupation or profession regulated by the board until a license to practice is
4 procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

5 (4) An action may not be taken against a person who is in compliance with ~~Title 50, chapter 46~~ sections
6 1 through 40].

7 (5) Rules adopted under subsection (1) must provide for the provision of public notice as required by
8 37-1-311."

9

10 **Section 42.** Section 37-1-316, MCA, is amended to read:

11 **"37-1-316. Unprofessional conduct.** The following is unprofessional conduct for a licensee or license
12 applicant governed by this part:

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

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

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

20 (4) signing or issuing, in the licensee's professional capacity, a document or statement that the licensee
21 knows or reasonably ought to know contains a false or misleading statement;

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

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

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

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

- 1 (9) revealing confidential information obtained as the result of a professional relationship without the prior
2 consent of the recipient of services, except as authorized or required by law;
- 3 (10) use of alcohol, a habit-forming drug, or a controlled substance as defined in Title 50, chapter 32, to
4 the extent that the use impairs the user physically or mentally in the performance of licensed professional duties;
- 5 (11) having a physical or mental disability that renders the licensee or license applicant unable to practice
6 the profession or occupation with reasonable skill and safety;
- 7 (12) engaging in conduct in the course of one's practice while suffering from a contagious or infectious
8 disease involving serious risk to public health or without taking adequate precautions, including but not limited
9 to informed consent, protective gear, or cessation of practice;
- 10 (13) misappropriating property or funds from a client or workplace or failing to comply with a board rule
11 regarding the accounting and distribution of a client's property or funds;
- 12 (14) interference with an investigation or disciplinary proceeding by willful misrepresentation of facts, by
13 the use of threats or harassment against or inducement to a client or witness to prevent them from providing
14 evidence in a disciplinary proceeding or other legal action, or by use of threats or harassment against or
15 inducement to a person to prevent or attempt to prevent a disciplinary proceeding or other legal action from being
16 filed, prosecuted, or completed;
- 17 (15) assisting in the unlicensed practice of a profession or occupation or allowing another person or
18 organization to practice or offer to practice by use of the licensee's license;
- 19 (16) failing to report the institution of or final action on a malpractice action, including a final decision on
20 appeal, against the licensee or of an action against the licensee by a:
- 21 (a) peer review committee;
- 22 (b) professional association; or
- 23 (c) local, state, federal, territorial, provincial, or Indian tribal government;
- 24 (17) failure of a health care provider, as defined in 27-6-103, to comply with a policy or practice
25 implementing 28-10-103(3)(a);
- 26 (18) conduct that does not meet the generally accepted standards of practice. A certified copy of a
27 malpractice judgment against the licensee or license applicant or of a tort judgment in an action involving an act
28 or omission occurring during the scope and course of the practice is conclusive evidence of but is not needed
29 to prove conduct that does not meet generally accepted standards.
- 30 (19) the sole use of any electronic means, including teleconferencing, to obtain the information required

1 for a written certification that is used to apply for a registry identification card pursuant to [sections 1 through 40]."

2

3 **Section 43.** Section 37-3-343, MCA, is amended to read:

4 **"37-3-343. Practice of telemedicine prohibited without license -- scope of practice limitations --**
 5 **violations and penalty.** (1) A physician may not practice telemedicine in this state without a telemedicine license
 6 issued pursuant to 37-3-301, 37-3-341 through 37-3-345, and 37-3-347 through 37-3-349.

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

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

14 (4) A telemedicine license may not be used by a physician as a means to obtain the information required
 15 for a written certification that is used to apply for a registry identification card pursuant to [sections 1 through 40].

16 ~~(4)~~(5) A physician who practices telemedicine in this state without a telemedicine license issued pursuant
 17 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
 18 of that license, in violation of the scope of practice allowed by the license, or without a physician's license issued
 19 pursuant to 37-3-301, is guilty of a misdemeanor and on conviction shall be sentenced as provided in 37-3-325."

20

21 **Section 44.** Section 37-3-347, MCA, is amended to read:

22 **"37-3-347. Reasons for denial of license -- alternative route to licensed practice.** (1) The board may
 23 deny an application for a telemedicine license if the applicant:

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

26 (b) plans to use telemedicine as a means of obtaining the information required for a written certification
 27 that is used to apply for a registry identification card pursuant to [sections 1 through 40];

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

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

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

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

3

4 **Section 45.** Section 41-5-216, MCA, is amended to read:

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

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

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

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

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

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

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

28 (6) (a) When formal youth court records, law enforcement records, and department records are sealed
29 under subsection (1), the electronic records of the management information system maintained by the department
30 of public health and human services and by the department relating to the youth whose records are being sealed

1 must be preserved for the express purpose of research and program evaluation as provided in subsection (6)(b).

2 (b) The department of public health and human services and the department shall disassociate the
3 offense and disposition information from the name of the youth in the respective management information system.

4 The offense and disposition information must be maintained separately and may be used only:

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

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

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

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

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

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

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

22 (8) Nothing in this section prohibits the intra-agency use or information sharing of formal or informal youth
23 court records within the juvenile probation management information system. Electronic records of the youth court
24 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
25 of a record that is in electronic form, the juvenile probation officer shall make only a physical copy of the record
26 that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or
27 as provided in subsection (2) of this section.

28 (9) This section does not prohibit the intra-agency use or information sharing of formal or informal youth
29 court records within the department's youth management information system. Electronic records of the
30 department's youth management information system may not be shared except as provided in subsection (5).

1 If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the department
2 shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy
3 the record after it has fulfilled its purpose or as provided in subsection (2) of this section.

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

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

9 (12) This section does not prohibit the office of court administrator, upon written request from the
10 department of public health and human services or the state licensing authority as defined in [section 2], from
11 confirming whether a youth applying for a registry identification card or a license or registration as provided in
12 [sections 1 through 40] is currently under youth court supervision."

13

14 **Section 46.** Section 45-9-101, MCA, is amended to read:

15 **"45-9-101. Criminal distribution of dangerous drugs.** (1) Except as provided in ~~Title 50, chapter 46~~
16 [sections 1 through 40], a person commits the offense of criminal distribution of dangerous drugs if the person
17 sells, barter, exchanges, gives away, or offers to sell, barter, exchange, or give away any dangerous drug, as
18 defined in 50-32-101.

19 (2) A person convicted of criminal distribution of a narcotic drug, as defined in 50-32-101(18)(d), or an
20 opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or
21 more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

22 (3) A person convicted of criminal distribution of a dangerous drug included in Schedule I or Schedule
23 II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction for
24 criminal distribution of such a drug shall be imprisoned in the state prison for a term of not less than 10 years or
25 more than life and may be fined not more than \$50,000, except as provided in 46-18-222. Upon a third or
26 subsequent conviction for criminal distribution of such a drug, the person shall be imprisoned in the state prison
27 for a term of not less than 20 years or more than life and may be fined not more than \$50,000, except as provided
28 in 46-18-222.

29 (4) A person convicted of criminal distribution of dangerous drugs not otherwise provided for in
30 subsection (2), (3), or (5) shall be imprisoned in the state prison for a term of not less than 1 year or more than

1 life or be fined an amount of not more than \$50,000, or both.

2 (5) A person who was an adult at the time of distribution and who is convicted of criminal distribution of
3 dangerous drugs to a minor shall be sentenced as follows:

4 (a) If convicted pursuant to subsection (2), the person shall be imprisoned in the state prison for not less
5 than 4 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

6 (b) If convicted of the distribution of a dangerous drug included in Schedule I or Schedule II pursuant to
7 50-32-222 or 50-32-224 and if previously convicted of such a distribution, the person shall be imprisoned in the
8 state prison for not less than 20 years or more than life and may be fined not more than \$50,000, except as
9 provided in 46-18-222.

10 (c) If convicted of the distribution of a dangerous drug included in Schedule I or Schedule II pursuant to
11 50-32-222 or 50-32-224 and if previously convicted of two or more such distributions, the person shall be
12 imprisoned in the state prison for not less than 40 years or more than life and may be fined not more than
13 \$50,000, except as provided in 46-18-222.

14 (d) If convicted pursuant to subsection (4), the person shall be imprisoned in the state prison for not less
15 than 2 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

16 (6) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a
17 professional practice are exempt from this section."

18

19 **Section 47.** Section 45-9-102, MCA, is amended to read:

20 **"45-9-102. Criminal possession of dangerous drugs.** (1) Except as provided in ~~Title 50, chapter 46~~
21 ~~[sections 1 through 40]~~, a person commits the offense of criminal possession of dangerous drugs if the person
22 possesses any dangerous drug, as defined in 50-32-101.

23 (2) A person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate
24 weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a
25 misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 and by imprisonment in
26 the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended
27 or deferred sentence. A person convicted of a second or subsequent offense under this subsection is punishable
28 by a fine not to exceed \$1,000 or by imprisonment in the county jail for a term not to exceed 1 year or in the state
29 prison for a term not to exceed 3 years or by both.

30 (3) A person convicted of criminal possession of an anabolic steroid as listed in 50-32-226 is, for the first

1 offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 or by
2 imprisonment in the county jail for not more than 6 months, or both.

3 (4) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), shall be
4 imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more
5 than \$50,000, except as provided in 46-18-222.

6 (5) (a) A person convicted of a second or subsequent offense of criminal possession of
7 methamphetamine shall be punished by:

8 (i) imprisonment for a term not to exceed 5 years or by a fine not to exceed \$50,000, or both; or

9 (ii) commitment to the department of corrections for placement in an appropriate correctional facility or
10 program for a term of not less than 3 years or more than 5 years. If the person successfully completes a
11 residential methamphetamine treatment program operated or approved by the department of corrections during
12 the first 3 years of a term, the remainder of the term must be suspended. The court may also impose a fine not
13 to exceed \$50,000.

14 (b) During the first 3 years of a term under subsection (5)(a)(ii), the department of corrections may place
15 the person in a residential methamphetamine treatment program operated or approved by the department of
16 corrections or in a correctional facility or program. The residential methamphetamine treatment program must
17 consist of time spent in a residential methamphetamine treatment facility and time spent in a community-based
18 prerelease center.

19 (c) The court shall, as conditions of probation pursuant to subsection (5)(a), order:

20 (i) the person to abide by the standard conditions of probation established by the department of
21 corrections;

22 (ii) payment of the costs of imprisonment, probation, and any methamphetamine treatment by the person
23 if the person is financially able to pay those costs;

24 (iii) that the person may not enter an establishment where alcoholic beverages are sold for consumption
25 on the premises or where gambling takes place;

26 (iv) that the person may not consume alcoholic beverages;

27 (v) the person to enter and remain in an aftercare program as directed by the person's probation officer;

28 and

29 (vi) the person to submit to random or routine drug and alcohol testing.

30 (6) A person convicted of criminal possession of dangerous drugs not otherwise provided for in

1 subsections (2) through (5) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined
2 an amount not to exceed \$50,000, or both.

3 (7) A person convicted of a first violation under this section is presumed to be entitled to a deferred
4 imposition of sentence of imprisonment.

5 (8) Ultimate users and practitioners, as defined in 50-32-101, and agents under their supervision acting
6 in the course of a professional practice are exempt from this section."

7

8 **Section 48.** Section 45-9-103, MCA, is amended to read:

9 **"45-9-103. Criminal possession with intent to distribute.** (1) Except as provided in ~~Title 50, chapter~~
10 ~~46 [sections 1 through 40]~~, a person commits the offense of criminal possession with intent to distribute if the
11 person possesses with intent to distribute any dangerous drug as defined in 50-32-101.

12 (2) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), with intent to
13 distribute shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and
14 may be fined not more than \$50,000, except as provided in 46-18-222.

15 (3) A person convicted of criminal possession with intent to distribute not otherwise provided for in
16 subsection (2) shall be imprisoned in the state prison for a term of not more than 20 years or be fined an amount
17 not to exceed \$50,000, or both.

18 (4) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a
19 professional practice are exempt from this section."

20

21 **Section 49.** Section 45-9-110, MCA, is amended to read:

22 **"45-9-110. Criminal production or manufacture of dangerous drugs.** (1) Except as provided in ~~Title~~
23 ~~50, chapter 46 [sections 1 through 40]~~, a person commits the offense of criminal production or manufacture of
24 dangerous drugs if the person knowingly or purposely produces, manufactures, prepares, cultivates, compounds,
25 or processes a dangerous drug, as defined in 50-32-101.

26 (2) A person convicted of criminal production or manufacture of a narcotic drug, as defined in
27 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of
28 not less than 5 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

29 (3) A person convicted of criminal production or manufacture of a dangerous drug included in Schedule
30 I of 50-32-222 or Schedule II of 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction

1 that has become final for criminal production or manufacture of a Schedule I or Schedule II drug shall be
 2 imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more
 3 than \$50,000, except as provided in 46-18-222. Upon a third or subsequent conviction that has become final for
 4 criminal production or manufacture of a Schedule I or Schedule II drug, the person shall be imprisoned in the
 5 state prison for a term of not less than 40 years or more than life and may be fined not more than \$50,000, except
 6 as provided in 46-18-222.

7 (4) A person convicted of criminal production or manufacture of marijuana, tetrahydrocannabinol, or a
 8 dangerous drug not referred to in subsections (2) and (3) shall be imprisoned in the state prison for a term not
 9 to exceed 10 years and may be fined not more than \$50,000, except that if the dangerous drug is marijuana and
 10 the total weight is more than a pound or the number of plants is more than 30, the person shall be imprisoned
 11 in the state prison for not less than 2 years or more than life and may be fined not more than \$50,000. "Weight"
 12 means the weight of the dry plant and includes the leaves and stem structure but does not include the root
 13 structure. A person convicted under this subsection who has a prior conviction that has become final for criminal
 14 production or manufacture of a drug under this subsection shall be imprisoned in the state prison for a term not
 15 to exceed twice that authorized for a first offense under this subsection and may be fined not more than \$100,000.

16 (5) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a
 17 professional practice are exempt from this section."
 18

19 **Section 50.** Section 45-9-127, MCA, is amended to read:

20 **"45-9-127. Carrying dangerous drugs on train -- penalty.** (1) Except as provided in ~~Title 50, chapter~~
 21 ~~46 [sections 1 through 40]~~, a person commits the offense of carrying dangerous drugs on a train in this state if
 22 the person is knowingly or purposely in criminal possession of a dangerous drug and boards any train.

23 (2) A person convicted of carrying dangerous drugs on a train in this state is subject to the penalties
 24 provided in 45-9-102."
 25

26 **Section 51.** Section 45-10-103, MCA, is amended to read:

27 **"45-10-103. Criminal possession of drug paraphernalia.** Except as provided in ~~Title 50, chapter 46~~
 28 ~~[sections 1 through 40]~~, it is unlawful for a person to use or to possess with intent to use drug paraphernalia to
 29 plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test,
 30 analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body

1 a dangerous drug. A person who violates this section is guilty of a misdemeanor and upon conviction shall be
2 imprisoned in the county jail for not more than 6 months, fined an amount of not more than \$500, or both. A
3 person convicted of a first violation of this section is presumed to be entitled to a deferred imposition of sentence
4 of imprisonment."

5

6 **Section 52.** Section 45-10-107, MCA, is amended to read:

7 **"45-10-107. Exemptions.** Practitioners, as defined in 50-32-101, and agents under their supervision
8 acting in the course of a professional practice and persons in compliance with ~~Title 50, chapter 46~~ sections 1
9 through 40; are exempt from this part."

10

11 **Section 53.** Section 61-11-101, MCA, is amended to read:

12 **"61-11-101. Report of convictions and suspension or revocation of driver's licenses -- surrender**
13 **of licenses.** (1) If a person is convicted of an offense for which chapter 5 or chapter 8, part 8, makes mandatory
14 the suspension or revocation of the driver's license or commercial driver's license of the person by the
15 department, the court in which the conviction occurs shall require the surrender to it of all driver's licenses then
16 held by the convicted person. The court shall, within 5 days after the conviction becomes final, forward the license
17 and a record of the conviction to the department. If the person does not possess a driver's license, the court shall
18 indicate that fact in its report to the department.

19 (2) A court having jurisdiction over offenses committed under a statute of this state or a municipal
20 ordinance regulating the operation of motor vehicles on highways, except for standing or parking statutes or
21 ordinances, shall forward a record of the conviction, as defined in 61-5-213, to the department within 5 days after
22 the conviction becomes final. The court may recommend that the department issue a restricted probationary
23 license on the condition that the individual comply with the requirement that the person attend and complete a
24 chemical dependency education course, treatment, or both, as ordered by the court under 61-8-732.

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

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

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

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

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

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

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

14 (6) (a) If a person who holds a valid therapeutic marijuana registry identification card or a therapeutic
15 marijuana license or registration issued pursuant to [sections 1 through 40] is convicted of or pleads guilty to any
16 offense related to driving under the influence of alcohol or drugs when the initial offense with which the person
17 was charged was a violation of 61-8-401, 61-8-406, or 61-8-410, the court in which the conviction occurs shall
18 require the person to surrender the registry identification card, license, or registration.

19 (b) Within 5 days after the conviction becomes final, the court shall forward:

20 (i) the registry identification card and a copy of the conviction to the department of public health and
21 human services; or

22 (ii) the license or registration and a copy of the conviction to the department of revenue."

23

24 **Section 54.** Section 69-1-114, MCA, is amended to read:

25 **"69-1-114. Fees.** (1) Each fee charged by the commission must be reasonable.

26 (2) Except for a fee assessed pursuant to 69-3-204(2), 69-8-421(10), ~~or~~ 69-12-423(2), or [sections 17
27 through 40], a fee set by the commission may not exceed \$500.

28 (3) All fees collected by the department under 69-8-421(10) must be deposited in an account in the
29 special revenue fund. Funds in this account must be used as provided in 69-8-421(10)."

30

1 **Section 55.** Section 69-1-401, MCA, is amended to read:

2 **"69-1-401. Definitions.** As used in this part, the following definitions apply:

3 (1) "Department" means the department of public service regulation provided for in Title 2, chapter 15,
4 part 26.

5 (2) (a) "Regulated companies" means all organizations, corporations, associations, or other public or
6 private entities which now are or may ~~hereafter~~ become subject to regulation in any manner by the department
7 of public service regulation, the public service commission, or any successor agency. The term does not include
8 motor carriers regulated pursuant to Title 69, chapter 12.

9 (b) The term does not include individuals, businesses, or organizations licensed by the department
10 pursuant to [sections 17 through 40]."

11
12 NEW SECTION. Section 56. Emergency rulemaking. The department of public health and human
13 services and the public service commission shall adopt emergency rules as provided in 2-4-303 to allow for
14 issuance of registry identification cards and processing of license applications pursuant to [sections 1 through
15 40] by June 1, 2011.

16
17 NEW SECTION. Section 57. Transition. (1) (a) Registry identification cards issued prior to [the
18 effective date of this act] to qualifying patients for a debilitating medical condition that did not include severe or
19 chronic pain are valid until the expiration date listed on the card.

20 (b) Registry identification cards issued to qualifying patients for a debilitating medical condition that
21 included severe or chronic pain expire on August 31, 2011. An individual who is in possession of marijuana after
22 August 31, 2011, is not protected by the provisions of Title 50, chapter 46, that were in effect on [the effective date
23 of this act] if the individual was issued a registry identification card for a condition that included severe or chronic
24 pain and has not obtained a new registry identification card pursuant to sections [1 through 40].

25 (c) The department of public health and human services shall, before August 31, 2011, reissue cards to
26 qualifying patients who obtained a card before [passage and approval of this act] and whose debilitating medical
27 condition at the time of registration did not include severe or chronic pain. The cards must be issued using a color
28 that makes them easily distinguishable from cards issued prior to [the passage and approval of this act].

29 (2) The department of public health and human services may begin issuing new registry identification
30 cards pursuant to [sections 1 through 16] on July 1, 2011. Cards issued pursuant to [sections 1 through 16] must

1 be issued using a color that makes them easily distinguishable from cards issued before [passage and approval
2 of this act] and from cards issued pursuant to subsection (2)(c).

3 (3) From July 1, 2011, to September 30, 2011, an individual with a valid registry identification card issued
4 before [the effective date of this act] or pursuant to [sections 1 through 16] may possess four mature plants, 12
5 seedlings, and 2 ounces of usable marijuana at the cardholder's residence.

6 (4) (a) The public service commission may begin processing applications for licenses for couriers,
7 personal production assistants, therapeutic marijuana growers, and therapeutic marijuana-infused product
8 manufacturers on June 1, 2011.

9 (b) Personal production assistants may begin carrying out the activities allowed under their license on
10 July 1, 2011.

11 (c) Beginning July 1, 2011, therapeutic marijuana growers and therapeutic marijuana-infused product
12 manufacturers that have been licensed by the public service commission may cultivate, manufacture, and
13 possess marijuana for therapeutic use but may not engage in any transactions with cardholders or couriers before
14 October 1, 2011.

15 (d) Couriers licensed by the state licensing authority before October 1, 2011, may not undertake the
16 activities allowed by their license until October 1, 2011.

17 (4) A caregiver who obtained a registry identification card prior to [the effective date of this act] is
18 protected by the provisions of Title 50, chapter 46, that were in effect prior to [the effective date of this act] until
19 June 30, 2011. A caregiver may not be in possession of marijuana plants, seedlings, cuttings, clones, usable
20 marijuana, or marijuana-related products on July 1, 2011. Before July 1, 2011, the caregiver shall take the items
21 to the law enforcement agency having jurisdiction in their area. The law enforcement agency shall destroy the
22 items.

23
24 **NEW SECTION. Section 58. Codification instruction.** [Sections 1 through 40] are intended to be
25 codified as an integral part of Title 50, chapter 46, and the provisions of Title 50, chapter 46, apply to [sections
26 1 through 40].

27
28 **COORDINATION SECTION. Section 59. Coordination instruction.** (1) If House Bill No. 161 is not
29 passed and approved, then [this act] is void.

30

1 NEW SECTION. **Section 60. Severability.** If a part of [this act] is invalid, all valid parts that are
2 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
3 the part remains in effect in all valid applications that are severable from the invalid applications.

4
5 NEW SECTION. **Section 61. Effective dates.** (1) Except as provided in subsections (2) through (4),
6 [this act] is effective October 1, 2011.

7 (2) [Sections 17, 18, and 25 through 29] are effective June 1, 2011.

8 (3) [Section 4] is effective July 1, 2011.

9 (4) [Section 61] is effective on passage and approval.

10 - END -