



AN ACT ; AND PROVIDING EFFECTIVE DATES.

WHEREAS, Montana voters approved I-148, the "Medical Marijuana Act," in 2004 with 62 percent of the vote, creating safe access to medical marijuana for patients with debilitating illnesses; and

WHEREAS, the Legislature, with SB 423, repealed the "Medical Marijuana Act" in 2011 and replaced it with the "Montana Marijuana Act", overriding the will of the voters and creating obstacles for patients' safe access to medical marijuana; and

WHEREAS, patients with debilitating illnesses rely on providers for safe and reasonable access to medical marijuana; and

WHEREAS, medical marijuana offers relief for veterans and other Montanans suffering from post-traumatic stress disorder (PTSD); and

WHEREAS, providers should be held accountable through licensing and annual inspections; and

WHEREAS, Montana voters continue to support safe access to medical marijuana for patients with debilitating illnesses.

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

Section 1. Section 45-9-203, MCA, is amended to read:

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

(2) If a person with a registry identification card or license issued pursuant to 50-46-307 or 50-46-308 is convicted of an offense under this chapter, the court shall:

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

(b) notify the department of public health and human services of the conviction in order for the

department to carry out its duties under 50-46-330."

Section 2. Section 46-18-202, MCA, is amended to read:

"46-18-202. Additional restrictions on sentence. (1) The sentencing judge may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 that the judge considers necessary to obtain the objectives of rehabilitation and the protection of the victim and society:

- (a) prohibition of the offender's holding public office;
- (b) prohibition of the offender's owning or carrying a dangerous weapon;
- (c) restrictions on the offender's freedom of association;
- (d) restrictions on the offender's freedom of movement;
- (e) a requirement that the defendant provide a biological sample for DNA testing for purposes of Title 44, chapter 6, part 1, if an agreement to do so is part of the plea bargain;
- (f) a requirement that the offender surrender any registry identification card or license issued under 50-46-303;
- (g) any other limitation reasonably related to the objectives of rehabilitation and the protection of the victim and society.

(2) Whenever the sentencing judge imposes a sentence of imprisonment in a state prison for a term exceeding 1 year, the sentencing judge may also impose the restriction that the offender is ineligible for parole and participation in the supervised release program while serving that term. If the restriction is to be imposed, the sentencing judge shall state the reasons for it in writing. If the sentencing judge finds that the restriction is necessary for the protection of society, the judge shall impose the restriction as part of the sentence and the judgment must contain a statement of the reasons for the restriction.

(3) If a sentencing judge requires an offender to surrender a registry identification card or license issued under 50-46-303, the court shall return the card or license to the department of public health and human services and provide the department with information on the offender's sentence. The department shall revoke the card for the duration of the sentence and shall return the card if the offender successfully completes the terms of the sentence before the expiration date listed on the card."

Section 3. Section 50-46-301, MCA, is amended to read:

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

(2) The purpose of this part is to:

(a) improve the regulatory system to make the Montana marijuana program safe, functional, and transparent for patients, providers, regulators, and Montana communities;

(a)(b) provide legal protections to ~~persons~~ individuals with debilitating medical conditions, including posttraumatic stress disorder, who engage in the use of marijuana to alleviate the symptoms of the debilitating medical condition;

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

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

(e) require licensing for the cultivation of marijuana and manufacture of marijuana-infused products;

(f) provide for dispensaries, employees, and for the transport of marijuana and marijuana-infused products;

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

(h) provide for the testing of marijuana by licensed testing laboratories; ~~and~~

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

Section 4. Section 50-46-302, MCA, is amended to read:

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

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

(2) "Debilitating medical condition" means:

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

(b) cachexia or wasting syndrome;

(c) severe chronic pain that is persistent pain of severe intensity that significantly interferes with daily activities as documented by the patient's treating physician ~~and by:~~

~~—— (i) objective proof of the etiology of the pain, including relevant and necessary diagnostic tests that may include but are not limited to the results of an x-ray, computerized tomography scan, or magnetic resonance imaging; or~~

~~—— (ii) confirmation of that diagnosis from a second physician who is independent of the treating physician and who conducts a physical examination;~~

(d) intractable nausea or vomiting;

(e) epilepsy or an intractable seizure disorder;

(f) multiple sclerosis;

(g) Crohn's disease;

(h) painful peripheral neuropathy;

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

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

(k) post-traumatic stress disorder; or

~~(k)(l)~~ any other medical condition or treatment for a medical condition approved by the legislature.

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

(4) "Dispensary" means a registered location from which a provider or marijuana-infused products provider is approved by the department to dispense marijuana or marijuana-infused products to a registered cardholder.

(5)(a) "Employee" means an individual employed to do something for the benefit of an employer or a third person.

(b) The term includes a manager, agent, or director of a partnership, association, company, corporation, limited liability company, or organization.

~~(4)(6)~~ "Local government" means a county, a consolidated government, or an incorporated city or town.

~~(5)(7)~~ "Marijuana" has the meaning provided in 50-32-101.

~~(6)(8)~~ (a) "Marijuana-infused product" means a product that contains marijuana and is intended for use by a registered cardholder by a means other than smoking.

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

~~(7)~~(9) (a) "Marijuana-infused products provider" means a ~~Montana resident who meets the requirements of this part and who has applied for and received a registry identification card~~ person licensed by the department to manufacture and provide marijuana-infused products for a registered cardholder.

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

~~(8)~~(10) "Mature marijuana plant" means a harvestable female marijuana plant that is flowering.

~~(9)~~(11) "Paraphernalia" has the meaning provided in 45-10-101.

(12) "Person" means an individual, partnership, association, company, corporation, limited liability company, or organization.

~~(10)~~(13) (a) "Provider" means a ~~Montana resident 18 years of age or older who is authorized~~ person licensed by the department to assist a registered cardholder as allowed under this part.

(b) The term does not include ~~the~~ a cardholder's treating physician or referral physician.

~~(11)~~(14) "Referral physician" means ~~a person~~ an individual who:

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

(b) has an established office in Montana; and

(c) is the physician to whom a patient's treating physician has referred the patient for physical examination and medical assessment.

~~(12)~~(15) "Registered cardholder" or "cardholder" means a Montana resident with a debilitating medical condition who has received and maintains a valid registry identification card.

~~(13)~~(16) "Registered premises" means the location at which a provider or marijuana-infused products provider has indicated ~~the person will cultivate or manufacture~~ that marijuana will be cultivated or marijuana-infused products will be manufactured for a registered cardholder.

~~(14)~~(17) "Registry identification card" means a document issued by the department pursuant to 50-46-303 that identifies ~~a person~~ an individual as a registered cardholder, ~~provider, or marijuana-infused products provider.~~

~~(15)~~(18) (a) "Resident" means an individual who meets the requirements of 1-1-215.

(b) An individual is not considered a resident for the purposes of this part if the individual:

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

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

~~(16)~~(19) "Second degree of kinship by blood or marriage" means a mother, father, brother, sister, son, daughter, spouse, grandparent, grandchild, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law,

daughter-in-law, grandparent-in-law, grandchild-in-law, stepfather, stepmother, stepbrother, stepsister, stepson, stepdaughter, stepgrandparent, or stepgrandchild.

~~(17)~~(20) "Seedling" means a marijuana plant that has no flowers and is less than 12 inches in height and 12 inches in diameter.

~~(18)~~(21) "Standard of care" means, at a minimum, the following activities when undertaken by a patient's treating physician or referral physician if the treating physician or referral physician is providing written certification for a patient with a debilitating medical condition:

- (a) obtaining the patient's medical history;
- (b) performing a relevant and necessary physical examination;
- (c) reviewing prior treatment and treatment response for the debilitating medical condition;
- (d) obtaining and reviewing any relevant and necessary diagnostic test results related to the debilitating medical condition;
- (e) discussing with the patient and ensuring that the patient understands the advantages, disadvantages, alternatives, potential adverse effects, and expected response to the recommended treatment;
- (f) monitoring the response to treatment and possible adverse effects; and
- (g) creating and maintaining patient records that remain with the physician.

(22) "Testing laboratory" means a qualified person, licensed by the department, who:

- (a) provides testing of small samples of marijuana and marijuana-infused products; and
- (b) provides information regarding the chemical composition, the potency of a sample, and the presence of molds or pesticides in a sample.

~~(19)~~(23) "Treating physician" means ~~a person~~ an individual who:

- (a) is licensed under Title 37, chapter 3;
- (b) has an established office in Montana; and
- (c) has a bona fide professional relationship with the ~~person~~ individual applying to be a registered cardholder.

~~(20)~~(24) (a) "Usable marijuana" means the dried leaves and flowers of the marijuana plant and any mixtures or preparations of the dried leaves and flowers that are appropriate for the use of marijuana by ~~a person~~ an individual with a debilitating medical condition.

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

~~(24)~~(25) "Written certification" means a statement signed by a treating physician or referral physician that meets the requirements of 50-46-310 and is provided in a manner that meets the standard of care."

Section 5. Section 50-46-303, MCA, is amended to read:

"50-46-303. Department responsibilities -- issuance of cards and licenses -- confidentiality -- inspections -- reports. (1) (a) The department shall establish and maintain a program for the issuance of registry identification cards to Montana residents who:

(~~f~~) have debilitating medical conditions and who submit applications meeting the requirements of this part; and

~~—— (ii) are named as providers or marijuana-infused products providers by persons who obtain registry identification cards for their debilitating medical conditions.~~

(b) ~~Persons~~ Individuals who obtain registry identification cards are authorized to cultivate, manufacture, possess, and transport marijuana as allowed by this part.

(2) The department shall establish and maintain a program for the licensure of testing laboratories and persons who are named as providers or marijuana-infused products providers by registered cardholders.

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

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

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

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

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

(d) contain a unique identification number; and

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

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

~~(4)~~(5) (a) The department shall review the information contained in an application or renewal submitted

pursuant to this part and shall approve or deny an application or renewal within 30 days of receiving the application or renewal and all related application materials.

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

~~(5)~~(6) Rejection of an application or renewal is considered a final department action, subject to judicial review.

~~(6)~~(7) (a) Registry identification cards expire 1 year after the date of issuance unless:

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

or

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

~~(b) A provider's or marijuana-infused products provider's registry identification card expires at the time the department issues a card to a new provider or new marijuana-infused products provider named by a registered cardholder.~~ Licenses issued to providers, marijuana-infused products providers, and testing laboratories must be renewed annually.

~~(7)~~(8) A registered cardholder shall notify the department of any change in the cardholder's name, address, physician, provider, or marijuana-infused products provider or change in the status of the cardholder's debilitating medical condition within 10 days of the change. If a change occurs and is not reported to the department, the registry identification card is void.

~~(8)~~(9) The department shall maintain a confidential list of ~~persons~~ individuals to whom the department has issued registry identification cards. Except as provided in subsection ~~(9)~~ (10), individual names and other identifying information on the list must be confidential and are not subject to disclosure, except to:

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

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

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

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

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

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

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

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

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

Section 6. Section 50-46-307, MCA, is amended to read:

"50-46-307. Persons Individuals with debilitating medical conditions -- requirements -- minors -- limitations. (1) Except as provided in subsections (2) through (4), the department shall issue a registry identification card to ~~a person~~ an individual with a debilitating medical condition who submits the following, in accordance with department rules:

- (a) an application on a form prescribed by the department;
- (b) an application fee or a renewal fee;
- (c) the ~~person's~~ individual's name, street address, and date of birth;
- (d) proof of Montana residency;
- (e) a statement that the ~~person~~ individual will be cultivating ~~and manufacturing~~ marijuana and

manufacturing marijuana-infused products for the person's individual's use or will be obtaining marijuana from a provider or a marijuana-infused products provider;

(f) a statement, on a form prescribed by the department, that the person individual will not divert to any other person individual the marijuana or marijuana-infused products that the person individual cultivates, manufactures, or obtains for the person's individual's debilitating medical condition;

(g) the name of the person's individual's treating physician or referral physician and the street address and telephone number of the physician's office;

(h) the street address where the person individual is cultivating marijuana or manufacturing marijuana marijuana-infused products if the person individual is cultivating marijuana or manufacturing marijuana marijuana-infused products for the person's individual's own use;

(i) the name, date of birth, and street address of ~~the individual~~ the person the individual has selected as a provider or marijuana-infused products provider, if any; and

(j) the written certification and accompanying statements from the person's individual's treating physician or referral physician as required pursuant to 50-46-310.

(2) The department shall issue a registry identification card to a minor if the materials required under subsection (1) are submitted and the minor's custodial parent or legal guardian with responsibility for health care decisions:

(a) provides proof of legal guardianship and responsibility for health care decisions if the person individual is submitting an application as the minor's legal guardian with responsibility for health care decisions; and

(b) signs and submits a written statement that:

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

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

(A) consents to the use of marijuana by the minor;

(B) agrees to serve as the minor's marijuana-infused products provider;

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

(D) agrees that the minor will use only marijuana-infused products and will not smoke marijuana;

(c) submits fingerprints to facilitate a fingerprint and background check by the department of justice and federal bureau of investigation. The parent or legal guardian shall pay the costs of the background check and may not obtain a ~~registry identification card~~ license as a marijuana-infused products provider if the parent or legal guardian does not meet the requirements of 50-46-308.

(d) pledges, on a form prescribed by the department, not to divert to any ~~person~~ individual any marijuana cultivated ~~or manufactured~~ for the minor's use in a marijuana-infused product.

(3) An application for a registry identification card for a minor must be accompanied by the written certification and accompanying statements required pursuant to 50-46-310 from a second physician in addition to the minor's treating physician or referral physician.

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

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

(6) A registered cardholder may cultivate ~~or manufacture~~ marijuana ~~marijuana~~ and manufacture marijuana-infused products as allowed under 50-46-319 only:

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

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

Section 7. Section 50-46-308, MCA, is amended to read:

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

- (a)(i) the person's name, date of birth, and street address on a form prescribed by the department;
 - (b)(ii) proof that the person is a Montana resident;
 - (c)(iii) fingerprints to facilitate a fingerprint and background check by the department of justice and the federal bureau of investigation;
 - (d)(iv) a written agreement signed by the registered cardholder that indicates whether the person will act as the cardholder's provider or marijuana-infused products provider;
 - (e)(v) a statement, on a form prescribed by the department, that the person will not divert to any other person the marijuana that the person cultivates or the marijuana-infused products that the person manufactures for a registered cardholder;
 - (f)(vi) a statement acknowledging that the person will cultivate ~~and manufacture~~ marijuana and manufacture marijuana-infused products for the registered cardholder at only one location as provided in subsection (7)(5). The location must be identified by street address.
 - (g)(vii) a fee as determined by the department to cover the costs of the fingerprint and background check and associated administrative costs of processing the registration license.
- (b) If the person to be licensed consists of more than one individual, the names of all individuals must be submitted along with the fingerprints and date of birth of each.
- (2) The department may not ~~register~~ license a person under this section if the person or an individual with a financial interest in the person:
- (a) has a felony conviction or a conviction for a drug offense;
 - (b) is in the custody of or under the supervision of the department of corrections or a youth court;
 - (c) has been convicted of a violation under 50-46-331;
 - (d) has failed to:
 - (i) pay any taxes, interest, penalties, or judgments due to a government agency;
 - (ii) stay out of default on a government-issued student loan;
 - (iii) pay child support; or
 - (iv) remedy an outstanding delinquency for child support or for taxes or judgments owed to a government agency; ~~or~~
 - (e) is a registered cardholder who has designated a provider or marijuana-infused products provider in the ~~person's~~ individual's application for a card issued under 50-46-307; or

(f) has resided in Montana for less than 1 year[.]

(g) is under 18 years of age.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) A licensed provider or marijuana-infused products provider may:

- (a) operated dispensaries;
- (b) employ employees to cultivate marijuana, manufacture marijuana-infused products, and dispense and transport marijuana and marijuana-infused products; and
- (c) provide a small amount of marijuana or marijuana-infused product[] cultivated or manufactured on the registered premises to a licensed testing laboratory."

Section 8. Section 50-46-309, MCA, is amended to read:

"50-46-309. Marijuana-infused products provider -- requirements -- allowable activities. (1) ~~An individual registered~~ A person licensed as a marijuana-infused products provider shall:

(a) prepare marijuana-infused products at a registered premises ~~registered with the department that is used for the manufacture and preparation of marijuana-infused products;~~ and

(b) use equipment that is used exclusively for the manufacture and preparation of marijuana-infused products.

(2) A marijuana-infused products provider:

(a) may cultivate marijuana only for the purpose of making marijuana-infused products; and

(b) may not provide a cardholder with marijuana in a form that may be used for smoking unless the marijuana-infused products provider is also a registered licensed provider and is providing the marijuana to a registered cardholder who has selected the person as the ~~person's~~ cardholder's licensed provider.

(3) All registered premises on which marijuana-infused products are manufactured must meet any applicable standards set by a local board of health for a retail food establishment as defined in 50-50-102.

(4) Marijuana-infused products may not be considered a food or drug for the purposes of Title 50, chapter 31."

Section 9. Section 50-46-310, MCA, is amended to read:

"50-46-310. Written certification -- accompanying statements. (1) The written certification provided by a physician must be made on a form prescribed by the department and signed and dated by the physician.

The written certification must:

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

(b) the name, date of birth, and debilitating medical condition of the ~~person~~ patient for whom the physician is providing written certification.

(2) A treating physician or referral physician who is providing written certification for a patient shall provide a statement initialed by the physician that must:

(a) confirm that the physician is:

(i) the ~~person's~~ patient's treating physician and that the ~~person~~ patient has been under the physician's ongoing medical care as part of a bona fide professional relationship with the ~~person~~ patient; or

(ii) the ~~person's~~ patient's referral physician;

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

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

(d) confirm that the physician has assumed primary responsibility for providing management and routine care of the ~~person's~~ patient's debilitating medical condition after obtaining a comprehensive medical history and conducting a physical examination that included a personal review of any medical records maintained by other physicians and that may have included the ~~person's~~ patient's reaction and response to conventional medical therapies;

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

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

(g) confirm that the physician has reviewed all prescription and nonprescription medications and supplements used by the ~~person~~ patient and has considered the potential drug interaction with marijuana;

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

(i) confirm that the physician has explained the potential risks and benefits of the use of marijuana to the ~~person~~ patient;

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

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

(l) state that the physician will:

- (i) continue to serve as the ~~person's~~ patient's treating physician or referral physician; and
 - (ii) monitor the ~~person's~~ patient's response to the use of marijuana and evaluate the efficacy of the treatment; and
 - (m) contain an attestation that the information provided in the written certification and accompanying statements is true and correct.
- (3) A physician who is the second physician recommending marijuana for use by a minor shall submit:
- (a) a statement initialed by the physician that the physician conducted a comprehensive review of the minor's medical records as maintained by the treating physician or referral physician;
 - (b) a statement that in the physician's professional opinion, the potential benefits of the use of marijuana would likely outweigh the health risks for the minor; and
 - (c) an attestation that the information provided in the written certification and accompanying statements is true and correct.
- (4) If the written certification states that marijuana should be used for less than 1 year, the department shall issue a registry identification card that is valid for the period specified in the written certification."

Section 10. Section 50-46-317, MCA, is amended to read:

"50-46-317. Registry card or license to be carried and exhibited on demand -- photo identification required. A registered cardholder, provider, or marijuana-infused products provider shall keep the ~~person's~~ individual's registry identification card or license in the individual s or person's immediate possession at all times. The ~~person shall display the~~ registry identification card or license and a valid photo identification [shall] be displayed upon demand of a law enforcement officer, justice of the peace, or city or municipal judge."

Section 11. Section 50-46-318, MCA, is amended to read:

"50-46-318. Health care facility procedures for patients with marijuana for use. (1) (a) Except for hospices and residential care facilities that allow the use of marijuana as provided in 50-46-320, a health care facility as defined in 50-5-101 shall take the following measures when a patient who is a registered cardholder has marijuana in the patient's possession upon admission to the health care facility:

- (i) require the patient to remove the marijuana from the premises before the patient is admitted if the

patient is able to do so; or

(ii) make a reasonable effort to contact the patient's provider, marijuana-infused products provider, court-appointed guardian, or ~~person~~ individual with a power of attorney, if any.

(b) If a patient is unable to remove the marijuana or the health care facility is unable to contact an individual as provided in subsection (1)(a), the facility shall contact the local law enforcement agency having jurisdiction in the area where the facility is located.

(2) A provider, marijuana-infused products provider, court-appointed guardian, or ~~person~~ individual with a power of attorney, if any, contacted by a health care facility shall remove the marijuana and deliver it to the patient's residence.

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

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

Section 12. Section 50-46-319, MCA, is amended to read:

"50-46-319. Legal protections -- allowable amounts. (1) (a) A registered cardholder may possess up to 4 mature plants, 12 seedlings, and 1 ounce of usable marijuana.

(b) A provider or marijuana-infused products provider may possess 4 mature plants, 12 seedlings, and 1 ounce of usable marijuana for each registered cardholder who has named the person as the registered cardholder's provider.

(2) Except as provided in 50-46-320 and subject to the provisions of subsection (7) of this section, an individual who possesses a registry identification card or license issued pursuant to this part may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by a professional licensing board or the department of labor and industry, solely because:

(a) the ~~individual~~ person cultivates, manufactures, possesses, or transports marijuana in the amounts allowed under this section; or

(b) the registered cardholder acquires or uses marijuana.

(3) A physician may not be arrested, prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty or disciplinary action by the board of medical examiners or the

department of labor and industry, solely for providing written certification for a patient with a debilitating medical condition.

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

- (a) a registered cardholder's use of marijuana impairs the cardholder's job-related performance; or
- (b) a physician violates the standard of care or other requirements of this part.

(5) (a) An individual may not be arrested or prosecuted for constructive possession, conspiracy as provided in 45-4-102, or other provisions of law or any other offense solely for being in the presence or vicinity of the use of marijuana and marijuana-infused products as permitted under this part.

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

(6) Except as provided in 50-46-329, possession of or application for a license or registry identification card does not alone constitute probable cause to search the person or individual or the property of the individual or person possessing or applying for the registry identification card or otherwise subject the person or individual or property of the person or individual possessing or applying for the license or card to inspection by any governmental agency, including a law enforcement agency.

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

(8) (a) A registered cardholder, a provider, or a marijuana-infused products provider is presumed to be engaged in the use of marijuana as allowed by this part if the person:

- (i) is in possession of a valid registry identification card; and
- (ii) is in possession of an amount of marijuana that does not exceed the amount permitted under this part.

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

Section 13. Section 50-46-320, MCA, is amended to read:

"50-46-320. Limitations of act. (1) This part does not permit:

- (a) any ~~person~~ individual, including a registered cardholder, to operate, navigate, or be in actual physical control of a motor vehicle, aircraft, or motorboat while under the influence of marijuana; or
- (b) except as provided in subsection (3), the use of marijuana by a registered cardholder:
 - (i) in a health care facility as defined in 50-5-101;
 - (ii) in a school or a postsecondary school as defined in 20-5-402;
 - (iii) on or in any property owned by a school district or a postsecondary school;
 - (iv) on or in any property leased by a school district or a postsecondary school when the property is being used for school-related purposes;
 - (v) in a school bus or other form of public transportation;
 - (vi) when ordered by any court of competent jurisdiction into a correctional facility or program;
 - (vii) if a court has imposed restrictions on the cardholder's use pursuant to 46-18-202;
 - (viii) at a public park, public beach, public recreation center, or youth center;
 - (ix) in or on the property of any church, synagogue, or other place of worship;
 - (x) in plain view of or in a place open to the general public; or
 - (xi) where exposure to the marijuana smoke significantly adversely affects the health, safety, or welfare of children.

(2) A registered cardholder, provider, or marijuana-infused products provider may not cultivate marijuana or manufacture ~~marijuana~~ marijuana-infused products for use by a registered cardholder in a manner that is visible from the street or other public area.

(3) A hospice or residential care facility licensed under Title 50, chapter 5, may adopt a policy that allows use of marijuana by a registered cardholder.

(4) Nothing in this part may be construed to require:

- (a) a government medical assistance program, a group benefit plan that is covered by the provisions of Title 2, chapter 18, an insurer covered by the provisions of Title 33, or an insurer as defined in 39-71-116 to reimburse ~~a person~~ an individual for costs associated with the use of marijuana by a registered cardholder;
- (b) an employer to accommodate the use of marijuana by a registered cardholder;
- (c) a school or postsecondary school to allow a registered cardholder to participate in extracurricular activities; or

(d) a landlord to allow a tenant who is a registered cardholder, provider, or marijuana-infused products provider to cultivate or manufacture marijuana or to allow a registered cardholder to use marijuana.

(5) Nothing in this part may be construed to:

(a) prohibit an employer from including in any contract a provision prohibiting the use of marijuana for a debilitating medical condition; or

(b) permit a cause of action against an employer for wrongful discharge pursuant to 39-2-904 or discrimination pursuant to 49-1-102.

(6) Nothing in this part may be construed to allow a provider or marijuana-infused products provider to use marijuana or to prevent criminal prosecution of a provider or marijuana-infused products provider who uses marijuana or paraphernalia for personal use.

(7) (a) A law enforcement officer who has reasonable cause to believe that ~~a person~~ an individual with a valid registry identification card is driving under the influence of marijuana may apply for a search warrant to require the ~~person~~ individual to provide a sample of the ~~person's~~ individual's blood for testing pursuant to the provisions of 61-8-405. ~~A person~~ An individual with a delta-9-tetrahydrocannabinol level of 5 ng/ml may be charged with a violation of 61-8-401 or 61-8-411.

(b) A registered cardholder, provider, or marijuana-infused products provider who violates subsection (1)(a) is subject to revocation of the ~~person's~~ individual's registry identification card or license if the individual is convicted of or pleads guilty to any offense related to driving under the influence of alcohol or drugs when the initial offense with which the individual was charged was a violation of 61-8-401, 61-8-406, 61-8-410, or 61-8-411. A revocation under this section must be for the period of suspension or revocation set forth:

(i) in 61-5-208 for a violation of 61-8-401, 61-8-406, or 61-8-411; or

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

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

Section 14. Section 50-46-327, MCA, is amended to read:

"50-46-327. Prohibitions on physician affiliation with providers and marijuana-infused products providers -- sanctions. (1) (a) A physician who provides written certifications may not:

(i) accept or solicit anything of value, including monetary remuneration, from a provider or marijuana-infused products provider;

(ii) offer a discount or any other thing of value to a ~~person~~ patient who uses or agrees to use a particular provider or marijuana-infused products provider; or

(iii) examine a patient for the purposes of diagnosing a debilitating medical condition at a location where marijuana to be used for a debilitating medical condition is cultivated ~~or manufactured~~ or where marijuana-infused products are ~~made~~ produced.

(b) Subsection (1)(a) does not prevent a physician from accepting a fee for providing medical care to a provider or marijuana-infused products provider if the physician charges the ~~person~~ individual the same fee that the physician charges other patients for providing a similar level of medical care.

(2) If the department has cause to believe that a physician has violated this section, has violated a provision of rules adopted pursuant to this ~~chapter~~ part, or has not met the standard of care required under this ~~chapter~~ part, the department may refer the matter to the board of medical examiners provided for in 2-15-1731 for review pursuant to 37-1-308.

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

(4) If the board of medical examiners believes a physician's practices may harm the public health, safety, or welfare, the board may summarily restrict a physician's authority to provide written certification for the use of marijuana for a debilitating medical condition."

Section 15. Section 50-46-329, MCA, is amended to read:

"50-46-329. Inspection procedures. (1) The department and ~~state or local law enforcement agencies~~ may conduct unannounced inspections of registered premises, dispensaries, and testing laboratories.

(2) The department shall inspect annually each dispensary, registered premises, and testing laboratory.

~~(2)~~(3) (a) Each provider and marijuana-infused products provider shall keep a complete set of records necessary to show all transactions with registered cardholders. The records must be open for inspection by the department and state or local law enforcement agencies during normal business hours.

(b) The department may require a provider or marijuana-infused products provider to furnish information that the department considers necessary for the proper administration of this part.

~~(3)~~(4) (a) A registered premises or dispensary, including any places of storage, where marijuana is cultivated, manufactured, or stored is subject to entry by the department or state or local law enforcement agencies for the purpose of inspection or investigation during normal business hours.

(b) If any part of the registered premises or dispensary consists of a locked area, the provider or marijuana-infused products provider shall make the area available for inspection without delay upon request of the department or state or local law enforcement officials.

~~(4)~~(5) A provider or marijuana-infused products provider shall maintain records showing the names and registry identification numbers of registered cardholders to whom mature plants, seedlings, usable marijuana, or marijuana-infused products were transferred and the quantities transferred to each cardholder.

(6) The department may establish penalties, including financial penalties and license revocation, for the violation of agricultural or public health standards."

Section 16. Section 50-46-330, MCA, is amended to read:

"50-46-330. Unlawful conduct by cardholders -- penalties. (1) The department shall revoke and may not reissue the registry identification card of ~~a person~~ an individual who:

- (a) is convicted of a drug offense;
- (b) allows another ~~person~~ individual to be in possession of the ~~person's~~ individual's:
 - (i) registry identification card; or
 - (ii) mature marijuana plants, seedlings, usable marijuana, or marijuana-infused products; or
- (c) fails to cooperate with the department concerning an investigation or inspection if the ~~person~~ individual is registered and cultivating ~~or manufacturing~~ marijuana or manufacturing marijuana-infused products.

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

Section 17. Section 50-46-331, MCA, is amended to read:

"50-46-331. Fraudulent representation -- penalties. (1) In addition to any other penalties provided by law, ~~a person~~ an individual who fraudulently represents to a law enforcement official that the ~~person~~ individual is a registered cardholder, provider, or marijuana-infused products provider is guilty of a misdemeanor punishable by imprisonment in a county jail for a term not to exceed 1 year or a fine not to exceed \$1,000, or both.

(2) A physician who purposely and knowingly misrepresents any information required under 50-46-310 is guilty of a misdemeanor punishable by imprisonment in a county jail for a term not to exceed 1 year or a fine not to exceed \$1,000, or both.

(3) ~~A person~~ An individual convicted under this section may not be ~~registered~~ licensed as a provider or marijuana-infused products provider under 50-46-308."

Section 18. Section 50-46-339, MCA, is amended to read:

"50-46-339. Law enforcement authority. Nothing in this chapter may be construed to limit a law enforcement agency's ability to investigate unlawful activity in relation to a person or individual with a license or registry identification card."

Section 19. Section 50-46-341, MCA, is amended to read:

"50-46-341. Advertising prohibited. Persons with licenses and individuals with valid registry identification cards may not advertise marijuana or marijuana-related products in any medium, including electronic media."

Section 20. Section 50-46-344, MCA, is amended to read:

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

(a) the manner in which the department will consider applications for registry identification cards for providers and marijuana-infused products providers and for ~~persons~~ individuals with debilitating medical conditions and renewal of registry identification cards;

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

(c) the procedures for obtaining fingerprints for the fingerprint and background check required under 50-46-307 and 50-46-308;

~~(d)~~ other rules necessary to implement the purposes of this part.

(2) License fees for providers and marijuana-infused products providers may not exceed \$1,000 for 10 or fewer registered cardholders or \$5,000 for more than 10 registered cardholders. A provider of both marijuana and marijuana-infused products is required to have only one license.

(3) License fees for testing [labs] may not exceed \$1,200.

(4) All fees and civil penalties collected under this part must be deposited in the medical marijuana state special revenue account established in [section 24].

~~(2)(5)~~ The department's rules must establish application and renewal fees that generate revenue sufficient to offset all expenses of implementing and administering this part."

Section 21. Section 61-11-101, MCA, is amended to read:

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

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

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

(4) (a) On a conviction referred to in subsection (1) of a person who holds a commercial driver's license or who is required to hold a commercial driver's license, a court may not take any action, including deferring

imposition of judgment, that would prevent a conviction for any violation of a state or local traffic control law or ordinance, except a parking law or ordinance, in any type of motor vehicle, from appearing on the person's driving record. The provisions of this subsection (4)(a) apply only to the conviction of a person who holds a commercial driver's license or who is required to hold a commercial driver's license and do not apply to the conviction of a person who holds any other type of driver's license.

(b) For purposes of this subsection (4), "who is required to hold a commercial driver's license" refers to a person who did not have a commercial driver's license but who was operating a commercial motor vehicle at the time of a violation of a state or local traffic control law or ordinance resulting in a conviction referred to in subsection (1).

(5) (a) If a person who holds a valid registry identification card or license issued pursuant to 50-46-307 or 50-46-308 is convicted of or pleads guilty to any offense related to driving under the influence of alcohol or drugs when the initial offense with which the person was charged was a violation of 61-8-401, 61-8-406, 61-8-410, or 61-8-411, the court in which the conviction occurs shall require the person to surrender the registry identification card or license.

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

Section 22. Testing laboratories. (1) The department shall license testing laboratories that meet the requirements of this part to measure the tetrahydrocannabinol and cannabidiol content of marijuana and marijuana-infused products and to test marijuana and marijuana-infused products for toxins and mold.

(2) A person with a financial interest in a licensed testing laboratory may not have a financial interest in a provider for whom testing services are performed.

(3) Each licensed testing laboratory shall employ a scientific director who is responsible for ensuring the achievement and maintenance of quality standards of practice. The scientific director must have the following minimum qualifications:

(a) a doctorate in chemical or biological sciences from a college or university accredited by a national or regional certifying authority and a minimum of 2 years of postdegree laboratory experience; or

(b) a master's degree in chemical or biological sciences from a college or university accredited by a national or regional certifying authority and a minimum of 4 years of postdegree laboratory experience.

Section 23. License as privilege -- criteria. (1) A provider license is a privilege that the state may grant to an applicant and is not a right to which an applicant is entitled. In making a licensing decision, the department shall consider:

- (a) the qualifications of the applicant; and
- (b) the suitability of the proposed registered premises.

(2) The department may deny or revoke a license based on proof that the applicant made a false statement in any part of the original application or renewal application.

(3) (a) The department may deny a license if the applicant's proposed registered premises:

(i) is situated within a zone of a city, town, or county where an activity related to the medical use of marijuana is prohibited by ordinance or resolution, a certified copy of which has been filed with the department;

(ii) is within 500 feet of and on the same street as a building used exclusively as a church, synagogue, or other place of worship or as a school or postsecondary school other than a commercially operated school. This distance must be measured in a straight line from the center of the nearest entrance of the place of worship or school to the nearest entrance of the licensee's premises.

(iii) is not approved by local building, health, or fire officials; or

(iv) will adversely affect the welfare of the people residing in or of retail businesses located in the vicinity.

(b) For the purposes of this subsection (4), "school" and "postsecondary school" have the meanings provided in 20-5-402.

Section 24. Medical marijuana state special revenue account. (1) There is a medical marijuana state special revenue account within the state special revenue fund established in 17-2-102.

(2) Money deposited into the account pursuant to [section 20 (4)] must be used by the department for the purpose of administering the Montana Medical Marijuana Act.

Section 25. Transition. A person registered as a provider or marijuana-infused products provider may continue to operate as if the person was licensed under [this act] until the appropriate licensing provisions of [this act] are implemented.

Section 26. Codification instruction. [Sections 22 through 24] are intended to be codified as an integral part of Title 50, chapter 46, part 3, and the provisions of Title 50, chapter 46, part 3, apply to [sections 22 through 24].

Section 27. Effective dates. (1) Except as provided in subsection (2), [this act] is effective June 30, 2017.

(2) [Sections 3, 4, 5, 9 and 20] are effective on passage and approval.

- END -

I hereby certify that the within bill,
SB 0403, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2016.

Speaker of the House

Signed this _____ day
of _____, 2016.

_____ BILL NO. _____

INTRODUCED BY TAB DOUGHERTY

AN ACT ; AND PROVIDING EFFECTIVE DATES.