

HOUSE BILL NO. 498

INTRODUCED BY J. BAHR

1  
2  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING PROBATIONERS AND PAROLEES TO USE  
5 MARIJUANA FOR DEBILITATING MEDICAL CONDITIONS; ESTABLISHING LIMITATIONS ON USE;  
6 AMENDING SECTIONS 50-46-302, 50-46-307, AND 50-46-320, MCA; AND PROVIDING AN IMMEDIATE  
7 EFFECTIVE DATE."

8  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10  
11 **Section 1.** Section 50-46-302, MCA, is amended to read:

12 **"50-46-302. Definitions.** As used in this part, the following definitions apply:

13 (1) "Canopy" means the total amount of square footage dedicated to live plant production at a registered  
14 premises consisting of the area of the floor, platform, or means of support or suspension of the plant.

15 (2) "Chemical manufacturing" means the production of marijuana concentrate.

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

18 (a) any of the prisons listed in 53-30-101; or

19 (b) community-based residential programs under contract with the department of corrections for the  
20 placement, supervision, and rehabilitation of adult felons.

21 (4) "Debilitating medical condition" means:

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

25 (b) cachexia or wasting syndrome;

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

28 (d) intractable nausea or vomiting;

29 (e) epilepsy or an intractable seizure disorder;

30 (f) multiple sclerosis;

- 1 (g) Crohn's disease;
- 2 (h) painful peripheral neuropathy;
- 3 (i) a central nervous system disorder resulting in chronic, painful spasticity or muscle spasms;
- 4 (j) admittance into hospice care in accordance with rules adopted by the department; or
- 5 (k) posttraumatic stress disorder.
- 6 (5) "Department" means the department of public health and human services provided for in 2-15-2201.
- 7 (6) "Dispensary" means a registered premises from which a provider or marijuana-infused products
- 8 provider is approved by the department to dispense marijuana or marijuana-infused products to a registered
- 9 cardholder.
- 10 (7) (a) "Employee" means an individual employed to do something for the benefit of an employer or a
- 11 third person.
- 12 (b) The term includes a manager, agent, or director of a partnership, association, company, corporation,
- 13 limited liability company, or organization.
- 14 (8) "Local government" means a county, a consolidated government, or an incorporated city or town.
- 15 (9) "Marijuana" has the meaning provided in 50-32-101.
- 16 (10) "Marijuana concentrate" means any type of marijuana product consisting wholly or in part of the resin
- 17 extracted from any part of the marijuana plant.
- 18 (11) "Marijuana derivative" means any mixture or preparation of the dried leaves, flowers, resin, and
- 19 byproducts of the marijuana plant, including but not limited to marijuana concentrates and marijuana-infused
- 20 products.
- 21 (12) (a) "Marijuana-infused product" means a product that contains marijuana and is intended for use by
- 22 a registered cardholder by a means other than smoking.
- 23 (b) The term includes but is not limited to edible products, ointments, and tinctures.
- 24 (13) (a) "Marijuana-infused products provider" means a person licensed by the department to
- 25 manufacture and provide marijuana-infused products for a registered cardholder.
- 26 (b) The term does not include the cardholder's treating or referral physician.
- 27 (14) "Mature marijuana plant" means a harvestable female marijuana plant that is flowering.
- 28 (15) "Paraphernalia" has the meaning provided in 45-10-101.
- 29 (16) "Person" means an individual, partnership, association, company, corporation, limited liability
- 30 company, or organization.

1 (17) (a) "Provider" means a person licensed by the department to assist a registered cardholder as  
2 allowed under this part.

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

4 (18) "Referral physician" means an individual who:

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

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

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

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

11 (20) "Registered premises" means the location at which a provider or marijuana-infused products  
12 provider:

13 (a) has indicated that marijuana will be cultivated, chemical manufacturing will occur, or  
14 marijuana-infused products will be manufactured for a registered cardholder; or

15 (b) has established a dispensary for sale of marijuana or marijuana-infused products to a registered  
16 cardholder.

17 (21) "Registry identification card" means a document issued by the department pursuant to 50-46-303  
18 that identifies an individual as a registered cardholder.

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

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

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

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

23 (23) "Second degree of kinship by blood or marriage" means a mother, father, brother, sister, son,  
24 daughter, spouse, grandparent, grandchild, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law,  
25 daughter-in-law, grandparent-in-law, grandchild-in-law, stepfather, stepmother, stepbrother, stepsister, stepson,  
26 stepdaughter, stepgrandparent, or stepgrandchild.

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

29 (25) "Standard of care" means, at a minimum, the following activities when undertaken by a patient's  
30 treating physician or referral physician if the treating physician or referral physician is providing written certification

1 for a patient with a debilitating medical condition:

2 (a) obtaining the patient's medical history;

3 (b) performing a relevant and necessary physical examination;

4 (c) reviewing prior treatment and treatment response for the debilitating medical condition;

5 (d) obtaining and reviewing any relevant and necessary diagnostic test results related to the debilitating  
6 medical condition;

7 (e) discussing with the patient and ensuring that the patient understands the advantages, disadvantages,  
8 alternatives, potential adverse effects, and expected response to the recommended treatment;

9 (f) monitoring the response to treatment and possible adverse effects; and

10 (g) creating and maintaining patient records that remain with the physician.

11 (26) "Testing laboratory" means a qualified person, licensed by the department, who meets the  
12 requirements of 50-46-311 and:

13 (a) provides testing of small samples of marijuana and marijuana-infused products; and

14 (b) provides information regarding the chemical composition, the potency of a sample, and the presence  
15 of molds or pesticides in a sample.

16 (27) "Treating physician" means an individual who:

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

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

19 (c) has a bona fide professional relationship with the individual applying to be a registered cardholder.

20 (28) (a) "Usable marijuana" means the dried leaves and flowers of the marijuana plant and any marijuana  
21 derivatives that are appropriate for the use of marijuana by an individual with a debilitating medical condition.

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

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

26 **Section 2.** Section 50-46-307, MCA, is amended to read:

27 **"50-46-307. Individuals with debilitating medical conditions -- requirements -- minors --**  
28 **limitations.** (1) Except as provided in subsections (2) through (4), the department shall issue a registry  
29 identification card to an individual with a debilitating medical condition who submits the following, in accordance  
30 with department rules:

- 1 (a) an application on a form prescribed by the department;
- 2 (b) an application fee or a renewal fee;
- 3 (c) the individual's name, street address, and date of birth;
- 4 (d) proof of Montana residency;
- 5 (e) a statement that the individual will be cultivating marijuana and manufacturing marijuana-infused
- 6 products for the individual's use or will be obtaining marijuana from a provider or a marijuana-infused products
- 7 provider;
- 8 (f) a statement, on a form prescribed by the department, that the individual will not divert to any other
- 9 individual the marijuana or marijuana-infused products that the individual cultivates, manufactures, or obtains for
- 10 the individual's debilitating medical condition;
- 11 (g) the name of the individual's treating physician or referral physician and the street address and
- 12 telephone number of the physician's office;
- 13 (h) the street address where the individual is cultivating marijuana or manufacturing marijuana-infused
- 14 products if the individual is cultivating marijuana or manufacturing marijuana-infused products for the individual's
- 15 own use;
- 16 (i) the name, date of birth, and street address of the person the individual has selected as a provider or
- 17 marijuana-infused products provider, if any; and
- 18 (j) the written certification and accompanying statements from the individual's treating physician or
- 19 referral physician as required pursuant to 50-46-310.
- 20 (2) The department shall issue a registry identification card to a minor if the materials required under
- 21 subsection (1) are submitted and the minor's custodial parent or legal guardian with responsibility for health care
- 22 decisions:
- 23 (a) provides proof of legal guardianship and responsibility for health care decisions if the individual is
- 24 submitting an application as the minor's legal guardian with responsibility for health care decisions; and
- 25 (b) signs and submits a written statement that:
- 26 (i) the minor's treating physician or referral physician has explained to the minor and to the minor's
- 27 custodial parent or legal guardian with responsibility for health care decisions the potential risks and benefits of
- 28 the use of marijuana; and
- 29 (ii) the minor's custodial parent or legal guardian with responsibility for health care decisions:
- 30 (A) consents to the use of marijuana by the minor;

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

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

4 (c) if the parent or guardian will be serving as the minor's provider, submits fingerprints to facilitate a  
5 fingerprint and background check by the department of justice and federal bureau of investigation. The parent  
6 or legal guardian shall pay the costs of the background check and may not obtain a license as a  
7 marijuana-infused products provider if the parent or legal guardian does not meet the requirements of 50-46-308.

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

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

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

15 (b) An individual under the supervision of the department of corrections or a youth court may not be a  
16 registered cardholder if the individual is placed in a correctional facility or program.

17 (c) The department shall revoke the registry identification card of a registered cardholder who is under  
18 the supervision of the department of corrections or a youth court upon notification that the cardholder has been  
19 placed in a correctional facility or program.

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

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

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

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

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

1

2           **Section 3.** Section 50-46-320, MCA, is amended to read:

3           **"50-46-320. Limitations of act.** (1) This part does not permit:

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

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

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

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

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

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

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

13           ~~(vi) when ordered by any court of competent jurisdiction into a correctional facility or program;~~

14           ~~(vii)~~(vi) if a court has imposed restrictions on the cardholder's use pursuant to 46-18-202;

15           ~~(viii)~~(vii) if the cardholder is under the supervision of the department of corrections or a youth court and  
16 has been placed into a correctional facility or program;

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

18           (ix) in or on the property of any church, synagogue, or other place of worship;

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

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

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

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

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

28           (a) a government medical assistance program, a group benefit plan that is covered by the provisions of  
29 Title 2, chapter 18, an insurer covered by the provisions of Title 33, or an insurer as defined in 39-71-116 to  
30 reimburse an individual for costs associated with the use of marijuana by a registered cardholder;

- 1 (b) an employer to accommodate the use of marijuana by a registered cardholder;
- 2 (c) a school or postsecondary school to allow a registered cardholder to participate in extracurricular  
3 activities; or
- 4 (d) a landlord to allow a tenant who is a registered cardholder, provider, marijuana-infused products  
5 provider, dispensary, or testing laboratory to cultivate, manufacture, dispense, sell, or test marijuana, marijuana  
6 concentrates, or marijuana-infused products or to allow a registered cardholder to use marijuana.
- 7 (5) Nothing in this part may be construed to:
- 8 (a) prohibit an employer from including in any contract a provision prohibiting the use of marijuana for  
9 a debilitating medical condition; or
- 10 (b) permit a cause of action against an employer for wrongful discharge pursuant to 39-2-904 or  
11 discrimination pursuant to 49-1-102.
- 12 (6) Nothing in this part may be construed to allow a provider, marijuana-infused products provider, or  
13 employee of a licensee to use marijuana or to prevent criminal prosecution of a provider, marijuana-infused  
14 products provider, or employee of a licensee who uses marijuana or paraphernalia for personal use.
- 15 (7) (a) A law enforcement officer who has reasonable cause to believe that an individual with a valid  
16 registry identification card is driving under the influence of marijuana may apply for a search warrant to require  
17 the individual to provide a sample of the individual's blood for testing pursuant to the provisions of 61-8-405. An  
18 individual with a delta-9-tetrahydrocannabinol level of 5 ng/ml may be charged with a violation of 61-8-401 or  
19 61-8-411.
- 20 (b) A registered cardholder, provider, or marijuana-infused products provider who violates subsection  
21 (1)(a) is subject to revocation of the individual's registry identification card or license if the individual is convicted  
22 of or pleads guilty to any offense related to driving under the influence of alcohol or drugs when the initial offense  
23 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  
24 under this section must be for the period of suspension or revocation set forth:
- 25 (i) in 61-5-208 for a violation of 61-8-401, 61-8-406, or 61-8-411; or
- 26 (ii) in 61-8-410 for a violation of 61-8-410.
- 27 (c) If an individual's registry identification card or license is subject to renewal during the revocation  
28 period, the individual may not renew the card until the full revocation period has elapsed. The card or license may  
29 be renewed only if the individual submits all materials required for renewal.
- 30 (8) A provider or marijuana-infused products provider who violates 15-64-103 or 15-64-104 is subject



1 to revocation of the person's license from the date of the violation until a period of up to 1 year after the  
2 department of revenue certifies compliance with 15-64-103 or 15-64-104."

3

4 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

5

- END -