

Montana Medical Marijuana Act
INITIATIVE NO. 148

NEW SECTION. **Section 1. Short title.** [Sections 1 through 9] may be cited as the "Medical Marijuana Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 9], the following definitions apply:

- (1) "Debilitating medical condition" means:
 - (a) cancer, glaucoma, or positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions;
 - (b) a chronic or debilitating disease or medical condition or its treatment that produces one or more of the following:
 - (i) cachexia or wasting syndrome;
 - (ii) severe or chronic pain;
 - (iii) severe nausea;
 - (iv) seizures, including but not limited to seizures caused by epilepsy; or
 - (v) severe or persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis or Crohn's disease; or
 - (c) any other medical condition or treatment for a medical condition adopted by the department by rule.
- (2) "Department" means the department of public health and human services.
- (3) "Marijuana" has the meaning provided in 50-32-101.
- (4) "Medical use" means the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marijuana or paraphernalia relating to the consumption of marijuana to alleviate the symptoms or effects of a qualifying patient's debilitating medical condition.
- (5) "Physician" means a person who is licensed under Title 37, chapter 3.
- (6) (a) "Caregiver" means an individual, 18 years of age or older who has agreed to undertake responsibility for managing the well-being of a person with respect to the medical use of marijuana. A qualifying patient may have only one caregiver at any one time.
 - (b) The term does not include the qualifying patient's physician.
- (7) "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.
- (8) "Registry identification card" means a document issued by the department that identifies a person as a qualifying patient or caregiver.
- (9) (a) "Usable marijuana" means the dried leaves and flowers of marijuana and any mixture or preparation of marijuana.
 - (b) The term does not include the seeds, stalks, and roots of the plant.
- (10) "Written certification" means a qualifying patient's medical records or a statement signed by a physician stating that in the physician's professional opinion, after having completed a full assessment of the qualifying patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the qualifying patient has a debilitating medical condition and the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient.

NEW SECTION. **Section 3. Procedures -- minors -- confidentiality -- report to legislature.** (1) The department shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of [sections 1 through 9].

- (2) Except as provided in subsection (3), the department shall issue a registry identification card to a qualifying patient who submits the following, in accordance with department rules:
 - (a) written certification that the person is a qualifying patient;
 - (b) an application or renewal fee;
 - (c) the name, address, and date of birth of the qualifying patient;
 - (d) the name, address, and telephone number of the qualifying patient's physician; and
 - (e) the name, address, and date of birth of the qualifying patient's caregiver, if any.
- (3) The department shall issue a registry identification card to a minor if the materials required under subsection (2) are submitted and the custodial parent or legal guardian with responsibility for health care decisions for the minor signs and submits a written statement that:
 - (a) the minor's physician has explained to that minor and to the custodial parent or legal guardian with responsibility for health care decisions for the minor the potential risks and benefits of the medical use of marijuana; and
 - (b) the custodial parent or legal guardian with responsibility for health care decisions for the minor:
 - (i) consents to the medical use of marijuana by the minor;
 - (ii) agrees to serve as the minor's caregiver; and
 - (iii) agrees to control the acquisition of marijuana and the dosage and frequency of the medical use of marijuana by the minor.
- (4) The department shall issue a registry identification card to the caregiver who is named in a qualifying patient's approved application if the caregiver signs a statement agreeing to provide marijuana only to qualifying patients who have named the applicant as caregiver. The department may not issue a registry identification card to a proposed caregiver who has previously been convicted of a felony drug offense. A caregiver may receive reasonable compensation for services provided to assist with a qualifying patient's medical use of marijuana.
- (5) (a) The department shall verify the information contained in an application or renewal submitted pursuant to this section and shall approve or deny an application or renewal within 15 days of receipt of the application or renewal.
 - (b) The department may deny an application or renewal only if the applicant did not provide the information required pursuant to this section, the department determines that the information was falsified, or the applicant is not qualified to receive a registry identification card under the provisions of [sections 1 through 9]. Rejection of an application or renewal is considered a final department action, subject to judicial review.
- (6) The department shall issue a registry identification card within 5 days of approving an application or renewal. Registry identification cards expire 1 year after the date of issuance. Registry identification cards must state:
 - (a) the name, address, and date of birth of the qualifying patient;
 - (b) the name, address, and date of birth of the qualifying patient's caregiver, if any;
 - (c) the date of issuance and expiration date of the registry identification card; and
 - (d) other information that the department may specify by rule.
- (7) A person who has been issued a registry identification card shall notify the department of any change in the qualifying patient's name, address, physician, or caregiver or change in status of the qualifying patient'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) The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. 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 official duties of the department; or
 - (b) authorized employees of state or local law enforcement agencies, only as necessary to verify that a person is a lawful possessor of a registry identification card.
- (9) The department shall report annually to the legislature the number of applications for registry identification cards, the number of qualifying patients and caregivers approved, the nature of the debilitating medical conditions of the qualifying patients, the number of registry identification cards revoked, and the number of physicians providing written certification for qualifying patients. The department may not provide any identifying information of qualifying patients, caregivers, or physicians.

NEW SECTION. Section 4. Medical use of marijuana -- legal protections -- limits on amount -- presumption of medical use. (1) A qualifying patient or caregiver who possesses a registry identification card issued pursuant to [section 3] 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, for the medical use of marijuana or for assisting in the medical use of marijuana if the qualifying patient or caregiver possesses marijuana not in excess of the amounts allowed in subsection (2).

- (2) A qualifying patient and that qualifying patient's caregiver may not possess more than six marijuana plants and 1 ounce of usable marijuana each.
- (3) (a) A qualifying patient or caregiver is presumed to be engaged in the medical use of marijuana if the qualifying patient or caregiver:
- (i) is in possession of a registry identification card; and
 - (ii) is in possession of an amount of marijuana that does not exceed the amount permitted under subsection (2).
- (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 qualifying patient's debilitating medical condition.
- (4) 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, for providing written certification for the medical use of marijuana to qualifying patients.
- (5) An interest in or right to property that is possessed, owned, or used in connection with the medical use of marijuana or acts incidental to medical use may not be forfeited under any provision of law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense.
- (6) A person may not be subject to arrest or prosecution for constructive possession, conspiracy, as provided in 45-4-102, or other provisions of law or any other offense for simply being in the presence or vicinity of the medical use of marijuana as permitted under [sections 1 through 9].
- (7) Possession of or application for a registry identification card does not alone constitute probable cause to search the person or property of the person possessing or applying for the registry identification card or otherwise subject the person or property of the person possessing or applying for the card to inspection by any governmental agency, including a law enforcement agency.
- (8) A registry identification card or its equivalent issued by another state government to permit the medical use of marijuana by a qualifying patient or to permit a person to assist with a qualifying patient's medical use of marijuana has the same force and effect as a registry identification card issued by the department.

NEW SECTION. Section 5. Disclosure of confidential information relating to medical use of marijuana -- penalty. (1) A person, including an employee or official of the department or other state or local government agency, commits the offense of disclosure of confidential information relating to medical use of marijuana if the person knowingly or purposely discloses confidential information in violation of [section 3].

- (2) A person convicted of disclosure of confidential information relating to medical use of marijuana 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.

NEW SECTION. Section 6. Limitations of medical marijuana act. (1) [Sections 1 through 9] do not permit:

- (a) any person to operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marijuana; or
 - (b) the smoking of marijuana:
 - (i) in a school bus or other form of public transportation;
 - (ii) on any school grounds;
 - (iii) in any correctional facility; or
 - (iv) at any public park, public beach, public recreation center, or youth center.
- (2) Nothing in [sections 1 through 9] may be construed to require:
- (a) a government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana; or
 - (b) an employer to accommodate the medical use of marijuana in any workplace.

NEW SECTION. Section 7. Affirmative defense. Except as provided in [section 6], it is an affirmative defense to any criminal offense involving marijuana that the person charged with the offense:

- (1)(a) has a physician who states that or has medical records that indicate that, in the physician's professional opinion, after having completed a full assessment of the person's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the potential benefits of medical marijuana would likely outweigh the health risks for the person; or
 - (b) provides marijuana to a person described in subsection (a) if the person does not provide marijuana to anyone for uses that are not medical;
- (2) is engaged in the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marijuana or paraphernalia relating to the consumption of marijuana to alleviate the symptoms or effects of the medical condition of the person identified in subsection (1)(a); and
- (3) possesses marijuana only in an amount that is reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of alleviating the symptoms or effects of the medical condition of the person identified in subsection (1)(a).

NEW SECTION. Section 8. Fraudulent representation of medical use of marijuana -- penalty. (1) A person commits the offense of fraudulent representation of medical use of marijuana if the person knowingly or purposely fabricates or misrepresents a registry identification card to a law enforcement officer.

- (2) A person convicted of fraudulent representation of medical use of marijuana 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.

NEW SECTION. Section 9. Rulemaking -- fees. The department shall adopt rules necessary for the implementation and administration of [sections 1

through 9]. The rules must address the manner in which the department will consider application for and renewals of registry identification cards for qualifying patients and caregivers. The department's rules must establish application and renewal fees that generate revenue sufficient to offset all expenses of implementing and administering [sections 1 through 9]. The department may vary the application and renewal fees along a sliding scale that accounts for a qualifying patient's income.

Section 10. Section 37-1-136, MCA, is amended to read:

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

- (a) revocation of a license;
- (b) suspension of its judgment of revocation on terms and conditions determined by the board;
- (c) suspension of the right to practice for a period not exceeding 1 year;
- (d) placing a licensee on probation;
- (e) reprimand or censure of a licensee; or
- (f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by a board shall be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

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

(4) An action may not be taken against a person who is in compliance with [sections 1 through 9]."

Section 11. Section 45-9-101, MCA, is amended to read:

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

(2) A person convicted of criminal distribution of a narcotic drug, as defined in 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 not less than 2 years or more than life and may be fined not more than \$50,000, except as provided in 46-18-222.

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

(4) A person convicted of criminal distribution of dangerous drugs not otherwise provided for in subsection (2), (3), or (5) shall be imprisoned in the state prison for a term of not less than 1 year or more than life or be fined an amount of not more than \$50,000, or both.

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

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

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

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

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

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

Section 12. Section 45-9-102, MCA, is amended to read:

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

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

(3) A person convicted of criminal possession of an anabolic steroid as listed in 50-32-226 is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than \$100 or more than \$500 or by imprisonment in the county jail for not more than 6 months, or both.

(4) A person convicted of criminal possession of an 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 more than 5 years and may be fined not more than \$50,000, except as provided in 46-18-222.

(5) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection (2), (3), or (4) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed \$50,000, or both.

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

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

Section 13. Section 45-9-103, MCA, is amended to read:

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

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

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

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

Section 14. Section 45-9-110, MCA, is amended to read:

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

(2) A person convicted of criminal production or manufacture of a narcotic drug, as defined in 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 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.

(3) A person convicted of criminal production or manufacture of a dangerous drug included in Schedule I of 50-32-222 or Schedule II of 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction that has become final for criminal production or manufacture of a Schedule I or Schedule II drug shall be imprisoned in the state prison 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 in 46-18-222. Upon a third or subsequent conviction that has become final for criminal production or manufacture of a Schedule I or Schedule II drug, the person shall be imprisoned in the 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 as provided in 46-18-222.

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

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

Section 15. Section 45-9-127, MCA, is amended to read:

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

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

Section 16. Section 45-10-107, MCA, is amended to read:

"45-10-107. Exemptions. Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice and persons in compliance with [sections 1 through 9] are exempt from this part."

NEW SECTION. **Section 17. Codification instruction.** Sections 1 through 9 are intended to be codified as an integral part of Title 50, and the provisions of Title 50 apply to sections 1 through 9.

NEW SECTION. **Section 18. Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 19. Effective date.** This act is effective upon approval by the electorate.