

SENATE BILL NO. 403

INTRODUCED BY R. WEBB

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A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING ADMINISTRATIVE RESPONSIBILITIES UNDER THE MONTANA MARIJUANA ACT FROM THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO THE DEPARTMENT OF LABOR AND INDUSTRY; INCREASING PENALTIES; AND AMENDING SECTIONS 41-5-216, 45-9-203, 46-18-202, 50-46-302, 50-46-319, 50-46-330, 50-46-331, 50-46-332, 50-46-343, AND 61-11-101, MCA."

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

Section 1. Section 41-5-216, MCA, is amended to read:

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

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

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

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

(5) After formal youth court records, law enforcement records, and department records are sealed, they

1 are not open to inspection except, upon order of the youth court, for good cause, including when a youth commits
2 a new offense, to:

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

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

6 (6) (a) When formal youth court records, law enforcement records, and department records are sealed
7 under subsection (1), the electronic records of the management information system maintained by the department
8 of public health and human services and by the department relating to the youth whose records are being sealed
9 must be preserved for the express purpose of research and program evaluation as provided in subsection (6)(b).

10 (b) The department of public health and human services and the department shall disassociate the
11 offense and disposition information from the name of the youth in the respective management information system.
12 The offense and disposition information must be maintained separately and may be used only:

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

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

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

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

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

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

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

30 (8) Nothing in this section prohibits the intra-agency use or information sharing of formal or informal youth

1 court records within the juvenile probation management information system. Electronic records of the youth court
2 may not be shared except as provided in 41-5-1524. If a person authorized under 41-5-215 is in need of a copy
3 of a record that is in electronic form, the juvenile probation officer shall make only a physical copy of the record
4 that is authorized and the person receiving the record shall destroy the record after it has fulfilled its purpose or
5 as provided in subsection (2) of this section.

6 (9) This section does not prohibit the intra-agency use or information sharing of formal or informal youth
7 court records within the department's youth management information system. Electronic records of the
8 department's youth management information system may not be shared except as provided in subsection (5).
9 If a person authorized under 41-5-215 is in need of a copy of a record that is in electronic form, the department
10 shall make only a physical copy of the record that is authorized and the person receiving the record shall destroy
11 the record after it has fulfilled its purpose or as provided in subsection (2) of this section.

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

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

17 (12) This section does not prohibit the office of court administrator, upon written request from the
18 department of ~~public health and human services~~ labor and industry, from confirming whether a person applying
19 for a registry identification card pursuant to 50-46-307 or 50-46-308 is currently under youth court supervision."
20

21 **Section 2.** Section 45-9-203, MCA, is amended to read:

22 **"45-9-203. Surrender of license.** (1) If a court suspends or revokes a driver's license under
23 45-9-202(2)(e), the defendant shall, at the time of sentencing, surrender the license to the court. The court shall
24 forward the license and a copy of the sentencing order to the department of justice. The defendant may apply
25 to the department for issuance of a probationary license under 61-2-302.

26 (2) If a person with a registry identification card issued pursuant to 50-45-307 or 50-46-308 is convicted
27 of an offense under this chapter, the court shall:

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

29 (b) notify the department of ~~public health and human services~~ labor and industry of the conviction in order
30 for the department to carry out its duties under 50-46-330."

1
2 **Section 3.** Section 46-18-202, MCA, is amended to read:
3 **"46-18-202. Additional restrictions on sentence.** (1) The sentencing judge may also impose any of
4 the following restrictions or conditions on the sentence provided for in 46-18-201 that the judge considers
5 necessary to obtain the objectives of rehabilitation and the protection of the victim and society:

- 6 (a) prohibition of the offender's holding public office;
7 (b) prohibition of the offender's owning or carrying a dangerous weapon;
8 (c) restrictions on the offender's freedom of association;
9 (d) restrictions on the offender's freedom of movement;
10 (e) a requirement that the defendant provide a biological sample for DNA testing for purposes of Title
11 44, chapter 6, part 1, if an agreement to do so is part of the plea bargain;
12 (f) a requirement that the offender surrender any registry identification card issued under 50-46-303;
13 (g) any other limitation reasonably related to the objectives of rehabilitation and the protection of the
14 victim and society.

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

21 (3) If a sentencing judge requires an offender to surrender a registry identification card issued under
22 50-46-303, the court shall return the card to the department of ~~public health and human services~~ labor and
23 industry and provide the department with information on the offender's sentence. The department shall revoke
24 the card for the duration of the sentence and shall return the card if the offender successfully completes the terms
25 of the sentence before the expiration date listed on the card."

26
27 **Section 4.** Section 50-46-302, MCA, is amended to read:
28 **"50-46-302. Definitions.** As used in this part, the following definitions apply:
29 (1) "Correctional facility or program" means a facility or program that is described in 53-1-202 and to
30 which a person may be ordered by any court of competent jurisdiction.

- 1 (2) "Debilitating medical condition" means:
- 2 (a) cancer, glaucoma, positive status for human immunodeficiency virus, or acquired immune deficiency
- 3 syndrome when the condition or disease results in symptoms that seriously and adversely affect the patient's
- 4 health status;
- 5 (b) cachexia or wasting syndrome;
- 6 (c) severe chronic pain that is persistent pain of severe intensity that significantly interferes with daily
- 7 activities as documented by the patient's treating physician and by:
- 8 (i) objective proof of the etiology of the pain, including relevant and necessary diagnostic tests that may
- 9 include but are not limited to the results of an x-ray, computerized tomography scan, or magnetic resonance
- 10 imaging; or
- 11 (ii) confirmation of that diagnosis from a second physician who is independent of the treating physician
- 12 and who conducts a physical examination;
- 13 (d) intractable nausea or vomiting;
- 14 (e) epilepsy or an intractable seizure disorder;
- 15 (f) multiple sclerosis;
- 16 (g) Crohn's disease;
- 17 (h) painful peripheral neuropathy;
- 18 (i) a central nervous system disorder resulting in chronic, painful spasticity or muscle spasms;
- 19 (j) admittance into hospice care in accordance with rules adopted by the department; or
- 20 (k) any other medical condition or treatment for a medical condition approved by the legislature.
- 21 (3) "Department" means the department of ~~public health and human services~~ labor and industry provided
- 22 for in ~~2-15-2204~~ 2-15-1701.
- 23 (4) "Local government" means a county, a consolidated government, or an incorporated city or town.
- 24 (5) "Marijuana" has the meaning provided in 50-32-101.
- 25 (6) (a) "Marijuana-infused product" means a product that contains marijuana and is intended for use by
- 26 a registered cardholder by a means other than smoking.
- 27 (b) The term includes but is not limited to edible products, ointments, and tinctures.
- 28 (7) (a) "Marijuana-infused products provider" means a Montana resident who meets the requirements
- 29 of this part and who has applied for and received a registry identification card to manufacture and provide
- 30 marijuana-infused products for a registered cardholder.

- 1 (b) The term does not include the cardholder's treating or referral physician.
- 2 (8) "Mature marijuana plant" means a harvestable female marijuana plant that is flowering.
- 3 (9) "Paraphernalia" has the meaning provided in 45-10-101.
- 4 (10) (a) "Provider" means a Montana resident 18 years of age or older who is authorized by the
5 department to assist a registered cardholder as allowed under this part.
- 6 (b) The term does not include the cardholder's treating physician or referral physician.
- 7 (11) "Referral physician" means a person who:
- 8 (a) is licensed under Title 37, chapter 3;
- 9 (b) has an established office in Montana; and
- 10 (c) is the physician to whom a patient's treating physician has referred the patient for physical
11 examination and medical assessment.
- 12 (12) "Registered cardholder" or "cardholder" means a Montana resident with a debilitating medical
13 condition who has received and maintains a valid registry identification card.
- 14 (13) "Registered premises" means the location at which a provider or marijuana-infused products provider
15 has indicated the person will cultivate or manufacture marijuana for a registered cardholder.
- 16 (14) "Registry identification card" means a document issued by the department pursuant to 50-46-303
17 that identifies a person as a registered cardholder, provider, or marijuana-infused products provider.
- 18 (15) (a) "Resident" means an individual who meets the requirements of 1-1-215.
- 19 (b) An individual is not considered a resident for the purposes of this part if the individual:
- 20 (i) claims residence in another state or country for any purpose; or
- 21 (ii) is an absentee property owner paying property tax on property in Montana.
- 22 (16) "Second degree of kinship by blood or marriage" means a mother, father, brother, sister, son,
23 daughter, spouse, grandparent, grandchild, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law,
24 daughter-in-law, grandparent-in-law, grandchild-in-law, stepfather, stepmother, stepbrother, stepsister, stepson,
25 stepdaughter, stepgrandparent, or stepgrandchild.
- 26 (17) "Seedling" means a marijuana plant that has no flowers and is less than 12 inches in height and 12
27 inches in diameter.
- 28 (18) "Standard of care" means, at a minimum, the following activities when undertaken by a patient's
29 treating physician or referral physician if the treating physician or referral physician is providing written certification
30 for a patient with a debilitating medical condition:

- 1 (a) obtaining the patient's medical history;
- 2 (b) performing a relevant and necessary physical examination;
- 3 (c) reviewing prior treatment and treatment response for the debilitating medical condition;
- 4 (d) obtaining and reviewing any relevant and necessary diagnostic test results related to the debilitating
- 5 medical condition;
- 6 (e) discussing with the patient and ensuring that the patient understands the advantages, disadvantages,
- 7 alternatives, potential adverse effects, and expected response to the recommended treatment;
- 8 (f) monitoring the response to treatment and possible adverse effects; and
- 9 (g) creating and maintaining patient records that remain with the physician.
- 10 (19) "Treating physician" means a person who:
- 11 (a) is licensed under Title 37, chapter 3;
- 12 (b) has an established office in Montana; and
- 13 (c) has a bona fide professional relationship with the person applying to be a registered cardholder.
- 14 (20) (a) "Usable marijuana" means the dried leaves and flowers of the marijuana plant and any mixtures
- 15 or preparations of the dried leaves and flowers that are appropriate for the use of marijuana by a person with a
- 16 debilitating medical condition.
- 17 (b) The term does not include the seeds, stalks, and roots of the plant.
- 18 (21) "Written certification" means a statement signed by a treating physician or referral physician that
- 19 meets the requirements of 50-46-310 and is provided in a manner that meets the standard of care."

21 **Section 5.** Section 50-46-319, MCA, is amended to read:

22 **"50-46-319. Legal protections -- allowable amounts.** (1) (a) A registered cardholder may possess up

23 to 4 mature plants, 12 seedlings, and 1 ounce of usable marijuana.

24 (b) A provider or marijuana-infused products provider may possess 4 mature plants, 12 seedlings, and

25 1 ounce of usable marijuana for each registered cardholder who has named the person as the registered

26 cardholder's provider.

27 (2) Except as provided in 50-46-320 and subject to the provisions of subsection (7) of this section, an

28 individual who possesses a registry identification card issued pursuant to this part may not be arrested,

29 prosecuted, or penalized in any manner or be denied any right or privilege, including but not limited to civil penalty

30 or disciplinary action by a professional licensing board or the department of labor and industry, solely because:

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

3 (b) the registered cardholder acquires or uses marijuana.

4 (3) A physician may not be arrested, prosecuted, or penalized in any manner or be denied any right or
5 privilege, including but not limited to civil penalty or disciplinary action by the board of medical examiners or the
6 department of ~~labor and industry~~, solely for providing written certification for a patient with a debilitating medical
7 condition.

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

10 (a) a registered cardholder's use of marijuana impairs the cardholder's job-related performance; or

11 (b) a physician violates the standard of care or other requirements of this part.

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

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

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

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

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

29 (i) is in possession of a valid registry identification card; and

30 (ii) is in possession of an amount of marijuana that does not exceed the amount permitted under this part.

1 (b) The presumption may be rebutted by evidence that the possession of marijuana was not for the
2 purpose of alleviating the symptoms or effects of a registered cardholder's debilitating medical condition."
3

4 **Section 6.** Section 50-46-330, MCA, is amended to read:

5 **"50-46-330. Unlawful conduct by cardholders -- penalties.** (1) The department shall revoke and may
6 not reissue the registry identification card of a person who:

7 (a) is convicted of a drug offense;

8 (b) allows another person to be in possession of the person's:

9 (i) registry identification card; or

10 (ii) mature marijuana plants, seedlings, usable marijuana, or marijuana-infused products; or

11 (c) fails to cooperate with the department concerning an investigation or inspection if the person is
12 registered and cultivating or manufacturing marijuana.

13 (2) A registered cardholder, provider, or marijuana-infused products provider who violates this part is
14 punishable by a fine not to exceed ~~\$500~~ \$1,500 or by imprisonment in a county jail for a term not to exceed 6
15 months, or both, unless otherwise provided in this part or unless the violation would constitute a violation of Title
16 45. An offense constituting a violation of Title 45 must be charged and prosecuted pursuant to the provisions of
17 Title 45."
18

19 **Section 7.** Section 50-46-331, MCA, is amended to read:

20 **"50-46-331. Fraudulent representation -- penalties.** (1) In addition to any other penalties provided by
21 law, a person who fraudulently represents to a law enforcement official that the person is a registered cardholder,
22 provider, or marijuana-infused products provider is guilty of a misdemeanor punishable by imprisonment in a
23 county jail for a term not to exceed 1 year or a fine not to exceed ~~\$1,000~~ \$1,500, or both.

24 (2) A physician who purposely and knowingly misrepresents any information required under 50-46-310
25 is guilty of a misdemeanor punishable by imprisonment in a county jail for a term not to exceed 1 year or a fine
26 not to exceed ~~\$1,000~~ \$1,500, or both.

27 (3) A person convicted under this section may not be registered as a provider or marijuana-infused
28 products provider under 50-46-308."
29

30 **Section 8.** Section 50-46-332, MCA, is amended to read:

1 **"50-46-332. Confidentiality of registry information -- penalty.** (1) Except as provided in 37-3-203, a
2 person, including an employee or official of the department, commits the offense of disclosure of confidential
3 information related to registry information if the person knowingly or purposely discloses confidential information
4 in violation of this part.

5 (2) A person convicted of a violation of this section shall be fined not to exceed ~~\$1,000~~ \$1,500 or
6 imprisoned in the county jail for a term not to exceed 6 months, or both."

7

8 **Section 9.** Section 50-46-343, MCA, is amended to read:

9 **"50-46-343. Legislative monitoring.** (1) The ~~children, families, health, and human services~~ economic
10 affairs interim committee shall provide oversight of the department's activities related to registering individuals
11 pursuant to this part and of issues related to the cultivation, manufacture, and use of marijuana pursuant to this
12 part.

13 (2) The committee shall identify issues likely to require future legislative attention and develop legislation
14 to present to the next regular session of the legislature."

15

16 **Section 10.** Section 61-11-101, MCA, is amended to read:

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

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

30 (3) A court or other agency of this state or of a subdivision of the state that has jurisdiction to take any

1 action suspending, revoking, or otherwise limiting a license to drive shall report an action and the adjudication
2 upon which it is based to the department within 5 days on forms furnished by the department.

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

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

14 (5) (a) If a person who holds a valid registry identification card issued pursuant to 50-46-307 or
15 50-46-308 is convicted of or pleads guilty to any offense related to driving under the influence of alcohol or drugs
16 when the initial offense with which the person was charged was a violation of 61-8-401, 61-8-406, 61-8-410, or
17 61-8-411, the court in which the conviction occurs shall require the person to surrender the registry identification
18 card.

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

21 - END -