

AN ACT REVISING THE LIMITATIONS OF THE MEDICAL MARIJUANA ACT FOR EMPLOYMENT SITUATIONS; CLARIFYING THAT MEDICAL MARIJUANA IS NOT A LEGAL PRODUCT FOR PURPOSES OF THE WRONGFUL DISCHARGE ACT; EXPANDING THE DEFINITION OF "EMPLOYEE" FOR THE PURPOSES OF DRUG TESTING AND WORKPLACE SAFETY; AMENDING SECTIONS 50-46-205, 39-2-313, AND 39-2-206 MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, employers who are concerned about public and workplace safety have increasingly faced issues associated with employees and potential employees who use or are associated with medical marijuana; and

WHEREAS, clarifications are necessary to affirm employers' rights in the hiring and termination process, drug testing and other issues related to the use, possession, acquisition, cultivation, manufacture, delivery, transfer, or transportation of medical marijuana in an employee's course and scope of employment.

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

Section 1. Section 50-46-205, MCA, is amended to read:

"50-46-205. Limitations of Medical Marijuana Act. (1) This chapter does 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;

(b) the use of marijuana by a caregiver; or

(c) the smoking of marijuana by a qualifying patient:

(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 this chapter may be construed to require:

(a) a government medical assistance program, ~~or~~ private health insurer, a self-insured employer, or workers' compensation insurer as defined in 39-71-116 to reimburse a person for costs associated with the medical use of marijuana; or

(b) an employer to accommodate the medical use, possession, acquisition, cultivation, manufacture, delivery, transfer, or transportation of marijuana in any workplace the employee's course and scope of employment, or an employee who is under the influence of medical marijuana in the course and scope of employment.

(c) a workers' compensation insurer as defined in MCA 39-71-116 to pay any type of workers' compensation benefits, including but not limited to disability benefits, hospital, medical and related services and retraining benefits, based in whole or in part on an injured worker's use, possession, acquisition, cultivation, manufacture, delivery, transfer or transportation of marijuana.

(3) Nothing in this chapter may be construed to permit a cause of action against an employer for wrongful discharge pursuant to 39-2-904, or discrimination pursuant to 49-1-102 based on an employee's medical use, possession, acquisition, cultivation, manufacture, delivery, transfer, or transportation of marijuana, or being under the influence of medical marijuana in the employee's course and scope of employment.

(4) Nothing in this chapter may be construed to prohibit an employer from prohibiting the medical use, possession, acquisition, cultivation, manufacture, delivery, transfer, or transportation of marijuana in any contract.

~~(3)~~ (5) Nothing in this chapter may be construed to allow a caregiver to use marijuana or to prevent criminal prosecution of a caregiver who uses marijuana or paraphernalia for the caregiver's personal use."

Section 2. Section 39-2-313, MCA, is amended to read:

"39-2-313. Discrimination prohibited for use of lawful product during nonworking hours -- exceptions. (1) For purposes of this section, "lawful product" means a product that is legally consumed, used, or enjoyed and includes food, beverages, and tobacco.

(2) Except as provided in subsections (3) and (4), an employer may not refuse to employ or license and may not discriminate against an individual with respect to compensation, promotion, or the terms, conditions, or privileges of employment because the individual legally uses a lawful product off the employer's premises during nonworking hours.

(3) Subsection (2) does not apply to:

(a) use of a lawful product that:

(i) affects in any manner an individual's ability to perform job-related employment responsibilities

or the safety of other employees; or

(ii) conflicts with a bona fide occupational qualification that is reasonably related to the individual's employment;

(b) an individual who, on a personal basis, has a professional service contract with an employer and the unique nature of the services provided authorizes the employer, as part of the service contract, to limit the use of certain products; or

(c) an employer that is a nonprofit organization that, as one of its primary purposes or objectives, discourages the use of one or more lawful products by the general public.

(d) an individual who uses, possesses, acquires, cultivates, manufactures, delivers, transfers, or transports medical marijuana pursuant to 50-46-201, or is under the influence of medical marijuana in the course and scope of employment.

(4) An employer does not violate this section if the employer takes action based on the belief that the employer's actions are permissible under an established substance abuse or alcohol program or policy, professional contract, or collective bargaining agreement.

(5) An employer may offer, impose, or have in effect a health, disability, or life insurance policy that makes distinctions between employees for the type or price of coverage based on the employees' use of a product if:

(a) differential rates assessed against employees reflect actuarially justified differences in providing employee benefits;

(b) the employer provides an employee with written notice delineating the differential rates used by the employer's insurance carriers; and

(c) the distinctions in the type or price of coverage are not used to expand, limit, or curtail the rights or liabilities of a party in a civil cause of action."

Section 3. Section 39-2-206, MCA, is amended to read:

"39-2-206. Definitions. As used in [39-2-205](#) through [39-2-211](#), the following definitions apply:

(1) "Alcohol" means an intoxicating agent in alcoholic beverages, ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(2) "Alcohol concentration" means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath, as indicated by an evidential breath test.

(3) "Controlled substance" means a dangerous drug, as defined in 49 CFR, part 40, except a drug

used pursuant to a valid prescription or as authorized by law.

(4) "Employee" means an individual engaged in the performance, supervision, or management of work in a hazardous work environment, security position, position affecting public safety, position where driving a motor vehicle is necessary for all or part of work duties, position involving the instruction or supervision of minors, or fiduciary position for an employer and does not include an independent contractor. The term includes an elected official.

(5) "Employer" means a person or entity that has one or more employees and that is located in or doing business in Montana.

(6) "Hazardous work environment" includes but is not limited to positions:

(a) for which controlled substance and alcohol testing is mandated by federal law, such as aviation, commercial motor carrier, railroad, pipeline, and commercial marine employees;

(b) that involve the operation of or work in proximity to construction equipment, industrial machinery, or mining activities; or

(c) that involve handling or proximity to flammable materials, explosives, toxic chemicals, or similar substances.

(7) "Medical review officer" means a licensed physician trained in the field of substance abuse.

(8) "Prospective employee" means an individual who has made a written or oral application to an employer to become an employee.

(9) "Qualified testing program" means a program to test for the presence of controlled substances and alcohol that meets the criteria set forth in [39-2-207](#) and [39-2-208](#).

(10) "Sample" means a urine specimen, a breath test, or oral fluid obtained in a minimally invasive manner and determined to meet the reliability and accuracy criteria accepted by laboratories for the performance of drug testing that is used to determine the presence of a controlled substance or alcohol."

Section 4. Effective date. This act is effective on passage and approval.

Section 5. Contingent Voidness. If [The Montana Medical Marijuana Act] 50-46-101 through 50-46-210 are repealed by the 62nd Legislature, this act is void.