

1 HOUSE BILL NO. 655

2 INTRODUCED BY E. BUTTREY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING MARIJUANA LAWS; REVISING LABOR
5 LAWS RELATING TO MARIJUANA; REVISING EMPLOYEE RIGHTS OF REBUTTAL TO DRUG TESTING
6 RELATING TO MARIJUANA AND MEDICAL MARIJUANA; REQUIRING CERTAIN DRUG TESTING TO
7 COMPLY WITH APPLICABLE FEDERAL LAWS; PROVIDING CERTAIN EXEMPTIONS FOR MEDICAL
8 MARIJUANA; REVISING LAWS RELATED TO THE BURDEN OF PROOF IN WORKERS COMPENSATION
9 RELATING TO MARIJUANA; INCREASING FEE DISCOUNT PERCENTAGES IN THE EVENT THE
10 DEPARTMENT OF REVENUE DOES NOT PROCESS A LICENSE WITHIN THE STATUTORY
11 REQUIREMENTS; AMENDING SECTIONS 39-2-209, 39-2-210, 39-51-2303, 39-71-407, AND 50-46-303,
12 MCA; AND PROVIDING AN EFFECTIVE DATE."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15
16 **Section 1.** Section 39-2-209, MCA, is amended to read:

17 **"39-2-209. Employee's right of rebuttal.** The employer shall provide an employee who has been
18 tested under any qualified testing program described in 39-2-208 with a copy of the test report. The employer is
19 also required to obtain, at the employee's request, an additional test of the split sample by an independent
20 laboratory selected by the person tested. The employer shall pay for the additional tests if the additional test
21 results are negative, and the employee shall pay for the additional tests if the additional test results are positive.
22 The employee must be provided the opportunity to rebut or explain the results of any test. The opportunity to
23 rebut or explain test results does not need to be given to an individual who tested positive for marijuana and
24 who does not have a registry identification card issued by the department of public health and human services
25 pursuant to 50-46-303."

26
27 **Section 2.** Section 39-2-210, MCA, is amended to read:

28 **"39-2-210. Limitation on adverse action.** Except as provided in 50-46-320, no adverse action,

1 including followup testing, may be taken by the employer if the employee presents a reasonable explanation or
2 medical opinion indicating that the original test results were not caused by illegal use of controlled substances
3 or by alcohol consumption. If the employee presents a reasonable explanation or medical opinion, the test
4 results must be removed from the employee's record and destroyed. For the purposes of this section, a
5 reasonable explanation or medical opinion relating to the use or consumption of marijuana or marijuana
6 products only applies to an employee who has a registry identification card issued by the department of public
7 health and human services pursuant to 50-46-303."

8
9 **Section 3.** Section 39-51-2303, MCA, is amended to read:

10 **"39-51-2303. Disqualification for discharge due to misconduct.** An individual must be disqualified
11 for benefits after being discharged:

12 (1) for misconduct connected with the individual's work or affecting the individual's employment until
13 the individual has performed services:

14 (a) for which remuneration is received equal to or in excess of eight times the individual's weekly
15 benefit amount subsequent to the week in which the act causing the disqualification occurred; and

16 (b) that constitute employment as defined in 39-51-203 and 39-51-204; ~~or~~

17 (2) for gross misconduct connected with the individual's work or committed on the employer's
18 premises, as determined by the department, for a period of 52 weeks; or

19 (3) for failure to pass, or refusal to take, a drug test in violation of an employer's stated workplace
20 drug policy, if the testing procedures comply with federal drug testing statutes and administrative regulations
21 applicable to private sector employers and employees as provided in Title 39, chapter 2. This subsection does
22 not apply to a drug test for marijuana or marijuana products that was administered to an individual who is a
23 registered cardholder under Title 50, chapter 46, part 3."

24
25 **Section 4.** Section 39-71-407, MCA, is amended to read:

26 **"39-71-407. —(Temporary) Liability of insurers -- limitations.** (1) For workers' compensation
27 injuries, each insurer is liable for the payment of compensation, in the manner and to the extent provided in this
28 section, to an employee of an employer covered under plan No. 1, plan No. 2, and the state fund under plan

No. 3 that it insures who receives an injury arising out of and in the course of employment or, in the case of death from the injury, to the employee's beneficiaries, if any.

(2) An injury does not arise out of and in the course of employment when the employee is:

(a) on a paid or unpaid break, is not at a worksite of the employer, and is not performing any specific tasks for the employer during the break; or

(b) engaged in a social or recreational activity, regardless of whether the employer pays for any portion of the activity. The exclusion from coverage of this subsection (2)(b) does not apply to an employee who, at the time of injury, is on paid time while participating in a social or recreational activity or whose presence at the activity is required or requested by the employer. For the purposes of this subsection (2)(b), "requested" means the employer asked the employee to assume duties for the activity so that the employee's presence is not completely voluntary and optional and the injury occurred in the performance of those duties.

(3) (a) Subject to subsection (3)(c), an insurer is liable for an injury, as defined in 39-71-119, only if the injury is established by objective medical findings and if the claimant establishes that it is more probable than not that:

(i) a claimed injury has occurred; or

(ii) a claimed injury has occurred and aggravated a preexisting condition.

(b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury aggravated a preexisting condition is not sufficient to establish liability.

(c) Objective medical findings are sufficient for a presumptive occupational disease as defined in 39-71-1401 but may be overcome by a preponderance of the evidence.

(4) (a) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

(i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement and the travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or

(ii) the travel is required by the employer as part of the employee's job duties.

(b) A payment made to an employee under a collective bargaining agreement, personnel policy

1 manual, or employee handbook or any other document provided to the employee that is not wages but is
2 designated as an incentive to work at a particular jobsite is not a reimbursement for the costs of travel, gas, oil,
3 or lodging, and the employee is not covered under this chapter while traveling.

4 (5) (a) Except as provided in subsection (6), an employee is not eligible for benefits otherwise
5 payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the major
6 contributing cause of the accident.

7 (b) For the purposes of this subsection (5), if an employee fails or refuses to take a drug test after the
8 accident and if the testing procedures comply with federal drug testing statutes and administrative regulations
9 applicable to private sector employers and employees as provided in Title 39, chapter 2, there is a presumption
10 that the major contributing cause of the accident was the employee's use of drugs not prescribed by a
11 physician.

12 (6) (a) An employee who has received written certification, as defined in 50-46-302, from a physician
13 for the use of marijuana for a debilitating medical condition and who is otherwise eligible for benefits payable
14 under this chapter is subject to the limitations of subsections (6)(b) through (6)(d).

15 (b) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use
16 of marijuana for a debilitating medical condition, as defined in 50-46-302, is the major contributing cause of the
17 injury or occupational disease.

18 (c) Nothing in this chapter may be construed to require an insurer to reimburse any person for costs
19 associated with the use of marijuana for a debilitating medical condition, as defined in 50-46-302.

20 (d) In an accepted liability claim, the benefits payable under this chapter may not be increased or
21 enhanced due to a worker's use of marijuana for a debilitating medical condition, as defined in 50-46-302. An
22 insurer remains liable for those benefits that the worker would qualify for absent the worker's use of marijuana
23 for a debilitating medical condition.

24 (7) The provisions of subsection (5) do not apply if the employer had knowledge of and failed to
25 attempt to stop the employee's use of alcohol or drugs not prescribed by a physician. This subsection (7) does
26 not apply to the use of marijuana for a debilitating medical condition because marijuana is not a prescribed
27 drug.

28 (8) If there is no dispute that an insurer is liable for an injury but there is a liability dispute between two

1 or more insurers, the insurer for the most recently filed claim shall pay benefits until that insurer proves that
2 another insurer is responsible for paying benefits or until another insurer agrees to pay benefits. If it is later
3 proven that the insurer for the most recently filed claim is not responsible for paying benefits, that insurer must
4 receive reimbursement for benefits paid to the claimant from the insurer proven to be responsible.

5 (9) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to
6 the same part of the body, the workers' compensation insurer is not liable for any compensation or medical
7 benefits caused by the subsequent nonwork-related injury.

8 (10) Except for cases of presumptive occupational disease as provided in 39-71-1401 and 39-71-1402,
9 an employee is not eligible for benefits payable under this chapter unless the entitlement to benefits is
10 established by objective medical findings that contain sufficient factual and historical information concerning the
11 relationship of the worker's condition to the original injury.

12 (11) (a) For occupational diseases, every employer enrolled under plan No. 1, every insurer under
13 plan No. 2, or the state fund under plan No. 3 is liable for the payment of compensation, in the manner and to
14 the extent provided in this chapter, to an employee of an employer covered under plan No. 1, plan No. 2, or the
15 state fund under plan No. 3 if the employee is diagnosed with a compensable occupational disease.

16 (b) The provisions of subsection (11)(a) apply to presumptive occupational disease if the employee is
17 diagnosed and meets the conditions of 39-71-1401 and 39-71-1402.

18 (12) An insurer is liable for an occupational disease only if the occupational disease:

19 (a) is established by objective medical findings; and

20 (b) arises out of or is contracted in the course and scope of employment. An occupational disease is
21 considered to arise out of or be contracted in the course and scope of employment if the events occurring on
22 more than a single day or work shift are the major contributing cause of the occupational disease in relation to
23 other factors contributing to the occupational disease. For the purposes of this subsection (12), an occupational
24 disease is not the same as a presumptive occupational disease.

25 (13) When compensation is payable for an occupational disease or a presumptive occupational
26 disease, the only employer liable is the employer in whose employment the employee was last injuriously
27 exposed to the hazard of the disease.

28 (14) When there is more than one insurer and only one employer at the time that the employee was

1 injuriously exposed to the hazard of the disease, the liability rests with the insurer providing coverage at the
2 earlier of:

3 (a) the time that the occupational disease or presumptive occupational disease was first diagnosed by
4 a health care provider; or

5 (b) the time that the employee knew or should have known that the condition was the result of an
6 occupational disease or a presumptive occupational disease.

7 (15) In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or
8 substantially all of the assets of a mine from a person who was an operator of the mine on or after December
9 30, 1969, is liable for and shall secure the payment of all benefits that would have been payable by that person
10 with respect to miners previously employed in the mine if acquisition had not occurred and that person had
11 continued to operate the mine, and the prior operator of the mine is not relieved of any liability under this
12 section.

13 (16) As used in this section, "major contributing cause" means a cause that is the leading cause
14 contributing to the result when compared to all other contributing causes. (Void on occurrence of contingency--
15 sec. 7, Ch. 158, L. 2019.)

16 **39-71-407. (Effective on occurrence of contingency) Liability of insurers -- limitations.** (1) For
17 workers' compensation injuries, each insurer is liable for the payment of compensation, in the manner and to
18 the extent provided in this section, to an employee of an employer covered under plan No. 1, plan No. 2, and
19 the state fund under plan No. 3 that it insures who receives an injury arising out of and in the course of
20 employment or, in the case of death from the injury, to the employee's beneficiaries, if any.

21 (2) An injury does not arise out of and in the course of employment when the employee is:

22 (a) on a paid or unpaid break, is not at a worksite of the employer, and is not performing any specific
23 tasks for the employer during the break; or

24 (b) engaged in a social or recreational activity, regardless of whether the employer pays for any
25 portion of the activity. The exclusion from coverage of this subsection (2)(b) does not apply to an employee
26 who, at the time of injury, is on paid time while participating in a social or recreational activity or whose
27 presence at the activity is required or requested by the employer. For the purposes of this subsection (2)(b),
28 "requested" means the employer asked the employee to assume duties for the activity so that the employee's

1 presence is not completely voluntary and optional and the injury occurred in the performance of those duties.

2 (3) (a) An insurer is liable for an injury, as defined in 39-71-119, only if the injury is established by
3 objective medical findings and if the claimant establishes that it is more probable than not that:

4 (i) a claimed injury has occurred; or

5 (ii) a claimed injury has occurred and aggravated a preexisting condition.

6 (b) Proof that it was medically possible that a claimed injury occurred or that the claimed injury
7 aggravated a preexisting condition is not sufficient to establish liability.

8 (4) (a) An employee who suffers an injury or dies while traveling is not covered by this chapter
9 unless:

10 (i) the employer furnishes the transportation or the employee receives reimbursement from the
11 employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement
12 and the travel is necessitated by and on behalf of the employer as an integral part or condition of the
13 employment; or

14 (ii) the travel is required by the employer as part of the employee's job duties.

15 (b) A payment made to an employee under a collective bargaining agreement, personnel policy
16 manual, or employee handbook or any other document provided to the employee that is not wages but is
17 designated as an incentive to work at a particular jobsite is not a reimbursement for the costs of travel, gas, oil,
18 or lodging, and the employee is not covered under this chapter while traveling.

19 (5) (a) Except as provided in subsection (6), an employee is not eligible for benefits otherwise
20 payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the major
21 contributing cause of the accident.

22 (b) For the purposes of this subsection (5), if an employee fails or refuses to take a drug test after the
23 accident and if the testing procedures comply with federal drug testing statutes and administrative regulations
24 applicable to private sector employers and employees as provided in Title 39, chapter 2, there is a presumption
25 that the major contributing cause of the accident was the employee's use of drugs not prescribed by a
26 physician.

27 (6) (a) An employee who has received written certification, as defined in 50-46-302, from a physician
28 for the use of marijuana for a debilitating medical condition and who is otherwise eligible for benefits payable

1 under this chapter is subject to the limitations of subsections (6)(b) through (6)(d).

2 (b) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use
3 of marijuana for a debilitating medical condition, as defined in 50-46-302, is the major contributing cause of the
4 injury or occupational disease.

5 (c) Nothing in this chapter may be construed to require an insurer to reimburse any person for costs
6 associated with the use of marijuana for a debilitating medical condition, as defined in 50-46-302.

7 (d) In an accepted liability claim, the benefits payable under this chapter may not be increased or
8 enhanced due to a worker's use of marijuana for a debilitating medical condition, as defined in 50-46-302. An
9 insurer remains liable for those benefits that the worker would qualify for absent the worker's use of marijuana
10 for a debilitating medical condition.

11 (7) The provisions of subsection (5) do not apply if the employer had knowledge of and failed to
12 attempt to stop the employee's use of alcohol or drugs not prescribed by a physician. This subsection (7) does
13 not apply to the use of marijuana for a debilitating medical condition because marijuana is not a prescribed
14 drug.

15 (8) If there is no dispute that an insurer is liable for an injury but there is a liability dispute between two
16 or more insurers, the insurer for the most recently filed claim shall pay benefits until that insurer proves that
17 another insurer is responsible for paying benefits or until another insurer agrees to pay benefits. If it is later
18 proven that the insurer for the most recently filed claim is not responsible for paying benefits, that insurer must
19 receive reimbursement for benefits paid to the claimant from the insurer proven to be responsible.

20 (9) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to
21 the same part of the body, the workers' compensation insurer is not liable for any compensation or medical
22 benefits caused by the subsequent nonwork-related injury.

23 (10) An employee is not eligible for benefits payable under this chapter unless the entitlement to
24 benefits is established by objective medical findings that contain sufficient factual and historical information
25 concerning the relationship of the worker's condition to the original injury.

26 (11) For occupational diseases, every employer enrolled under plan No. 1, every insurer under plan
27 No. 2, or the state fund under plan No. 3 is liable for the payment of compensation, in the manner and to the
28 extent provided in this chapter, to an employee of an employer covered under plan No. 1, plan No. 2, or the

state fund under plan No. 3 if the employee is diagnosed with a compensable occupational disease.

(12) An insurer is liable for an occupational disease only if the occupational disease:

(a) is established by objective medical findings; and

(b) arises out of or is contracted in the course and scope of employment. An occupational disease is considered to arise out of or be contracted in the course and scope of employment if the events occurring on more than a single day or work shift are the major contributing cause of the occupational disease in relation to other factors contributing to the occupational disease.

(13) When compensation is payable for an occupational disease, the only employer liable is the employer in whose employment the employee was last injuriously exposed to the hazard of the disease.

(14) When there is more than one insurer and only one employer at the time that the employee was injuriously exposed to the hazard of the disease, the liability rests with the insurer providing coverage at the earlier of:

(a) the time that the occupational disease was first diagnosed by a health care provider; or

(b) the time that the employee knew or should have known that the condition was the result of an occupational disease.

(15) In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or substantially all of the assets of a mine from a person who was an operator of the mine on or after December 30, 1969, is liable for and shall secure the payment of all benefits that would have been payable by that person with respect to miners previously employed in the mine if acquisition had not occurred and that person had continued to operate the mine, and the prior operator of the mine is not relieved of any liability under this section.

(16) As used in this section, "major contributing cause" means a cause that is the leading cause contributing to the result when compared to all other contributing causes."

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

"50-46-303. Medical marijuana registry -- department responsibilities -- issuance of cards and licenses -- confidentiality. (1) The department shall establish and maintain a registry of persons who receive registry identification cards or licenses under this part. The department shall issue:

1 (a) registry identification cards to Montana residents who have debilitating medical conditions and
2 who submit applications meeting the requirements of this part;

3 (b) licenses:

4 (i) to persons who apply to operate as providers or marijuana-infused products providers and who
5 submit applications meeting the requirements of this part;

6 (ii) for dispensaries established by providers or marijuana-infused products providers; and

7 (iii) through the state laboratory, to testing laboratories that submit applications meeting the
8 requirements of this part; and

9 (c) endorsements for chemical manufacturing to a provider or a marijuana-infused products provider
10 who applies for a chemical manufacturing endorsement and meets requirements established by the department
11 by rule.

12 (2) (a) An individual who obtains a registry identification card and indicates the individual will not use
13 the system of licensed providers and marijuana-infused products providers to obtain marijuana or marijuana-
14 infused products is authorized to cultivate, manufacture, possess, and transport marijuana as allowed by this
15 part.

16 (b) An individual who obtains a registry identification card and indicates the individual will use the
17 system of licensed providers and marijuana-infused products providers to obtain marijuana or marijuana-
18 infused products is authorized to possess marijuana as allowed by this part.

19 (c) A person who obtains a provider, marijuana-infused products provider, or dispensary license or an
20 employee of a licensed provider or marijuana-infused products provider is authorized to cultivate, manufacture,
21 possess, sell, and transport marijuana as allowed by this part.

22 (d) A person who obtains a testing laboratory license or an employee of a licensed testing laboratory
23 is authorized to possess, test, and transport marijuana as allowed by this part.

24 (3) The department shall conduct criminal history background checks as required by 50-46-307 and
25 50-46-308 before issuing a license to a provider or marijuana-infused products provider.

26 (4) (a) Registry identification cards and licenses issued pursuant to this part must:

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

- 1 (ii) state the name, address, and date of birth of the registered cardholder;
- 2 (iii) indicate whether the cardholder is obtaining marijuana and marijuana-infused products through the
- 3 system of licensed providers and marijuana-infused products providers;
- 4 (iv) indicate whether a provider or marijuana-infused products provider has an endorsement for
- 5 chemical manufacturing;
- 6 (v) state the date of issuance and the expiration date of the registry identification card or license;
- 7 (vi) contain a unique identification number; and
- 8 (vii) contain other information that the department may specify by rule.
- 9 (b) Except as provided in subsection (4)(c), in addition to complying with subsection (4)(a), registry
- 10 identification cards issued pursuant to this part must:
- 11 (i) include a picture of the registered cardholder; and
- 12 (ii) be capable of being used to track registered cardholder purchases.
- 13 (c) (i) The department shall issue temporary registry identification cards upon receipt of an
- 14 application. The cards are valid for 60 days and are exempt from the requirements of subsection (4)(b). Printing
- 15 of the temporary identification cards is exempt from the provisions of Title 18, chapter 7.
- 16 (ii) The cards may be issued before an applicant's payment of the fee has cleared. The department
- 17 shall cancel the temporary card after 60 days and may not issue a permanent card until the fee is paid.
- 18 (5) (a) The department or state laboratory, as applicable, shall review the information contained in an
- 19 application or renewal submitted pursuant to this part and shall approve or deny an application or renewal
- 20 within 30 days of receiving the application or renewal and all related application materials.
- 21 (b) If the department fails to act on a completed application within 30 days of receipt, the department
- 22 shall:
- 23 (i) refund the fee paid by an applicant for a registry identification card;
- 24 (ii) reduce the cost of the licensing fee for a new applicant for licensure or for a licensee seeking
- 25 renewal of a license by ~~5%~~ 10% each week that the application is pending; and
- 26 (iii) if a licensee is unable to operate because a license renewal application has not been acted on,
- 27 reimburse the licensee 50% of the gross sales the licensee reported in the most recent quarter for the purpose
- 28 of the tax provided for in 15-64-102.

1 (c) Applications that are not processed within 30 days of receipt remain active until the department
2 takes final action.

3 (d) An application for a license or renewal of a license is not considered complete until the department
4 has completed a satisfactory inspection as required by this part and related administrative rules.

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

7 (6) Review of a rejection of an application or renewal may be conducted as a contested case hearing
8 pursuant to the provisions of the Montana Administrative Procedure Act.

9 (7) (a) Registry identification cards expire 1 year after the date of issuance unless a physician has
10 provided a written certification stating that a card is valid for a shorter period of time.

11 (b) Licenses and endorsements issued to providers, marijuana-infused products providers, and
12 testing laboratories must be renewed annually.

13 (8) (a) A registered cardholder shall notify the department of any change in the cardholder's name,
14 address, or physician or change in the status of the cardholder's debilitating medical condition within 10 days of
15 the change.

16 (b) A registered cardholder who possesses mature plants or seedlings under 50-46-319(1) shall notify
17 the department of the location of the plants and seedlings or any change of location of plants or seedlings. The
18 department shall provide the names and locations of cardholders who possess mature plants or seedlings to
19 the local law enforcement agency having jurisdiction in the area in which the plants or seedlings are located.
20 The law enforcement agency and its employees are subject to the confidentiality requirements of 50-46-332.

21 (c) If a change occurs and is not reported to the department, the registry identification card is void.

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

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

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

1 (c) a judge, magistrate, or other authorized judicial officer in response to an order requiring disclosure;
2 and

3 (d) another person or entity when the information pertains to a cardholder who has given written
4 consent to the release and has specified:

5 (i) the type of information to be released; and

6 (ii) the person or entity to whom it may be released.

7 (10) The department shall provide the names and phone numbers of providers and marijuana-infused
8 products providers and the city, town, or county where registered premises and testing laboratories are located
9 to the public on the department's website. The department may not disclose the physical location or address of
10 a provider, marijuana-infused products provider, dispensary, or testing laboratory.

11 (11) The department may share only information about providers, marijuana-infused products
12 providers, dispensaries, and testing laboratories with the department of revenue for the purpose of investigation
13 and prevention of noncompliance with tax laws, including but not limited to evasion, fraud, and abuse. The
14 department of revenue and its employees are subject to the confidentiality requirements of 15-64-111(1)."

15
16 NEW SECTION. **Section 6. Effective date.** [This act] is effective July 1, 2021.

17 - END -